M.R.O. 14—18,000—27-9-34

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1204 Press Mis.—

174-175

Dated 11— 7— 1886

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 11th July 1864.

No. 174. Read the following letter from E. H. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, with the Governor General, to the Secretary to the Government of Bombay, dated Simla, the 2[illegible]th May 1864, No. 267 :—

SIR,

In reply to the reference made in your letter, No. 795 of the 4th March last, I am instructed to forward for your information and guidance copy of the Advocate General's opinion.

Copy of correspondence to the other local Governments and to minor Administrations, for information and guidance.

(True Copy.)

(Signed) THOMAS PEACHEY,
Principal Assistant Secy. to the Govt. of India.

From A. D. ROBERTSON, Esq., Officiating Chief Secretary to the Government of Bombay, to E. H. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, dated 4th March 1864, No. 795.

SIR,

1. I am directed by His Excellency the Governor in Council to forward herewith a copy of the papers, as per margin, relative to the Stamp duty on an Agreement with Promissory Note attached, executed in England.

Letter from the Superintendent of Stamps, No. 132, dated 4th February 1864, with accompaniments.
Report by the Solicitor to Government, No. 69, dated 17th February 1864.

2. The Superintendent of Stamps has been desired, in the present case, to follow the course recommended in the 13th paragraph of the report by the Solicitor to Government, and I am instructed to request that the Government of India will favor this Government with their instructions on the question raised in the correspondence for future guidance.

From G. SCOTT, Esq., Superintendent of Stamps, Bombay, to the Honorable A. D. ROBERTSON, Officiating Chief Secretary to Government, dated 4th February 1864, No. 132.

SIR,

1. I have the honor herewith to forward an Agreement, with Promissory Note attached, received from Mr. Watson with Rupees 10 for adjudication as to whether the documents having been executed in England require to be stamped here.

2. Section 19 of Act X of 1862 refers to deeds unexecuted; but as these were executed in England, it seems necessary that a decision should be passed as to whether they require to be post-stamped with the Indian stamp in order to render them legal documents in this country.

3. It will be observed that they have not been impressed in England where *they were fully executed*. I am of opinion that the English stamp was necessary, and that had it been impressed, no other would have been required.

£ 60 0 0 — *London*, 15*th July* 1863.

On demand I promise Mr. John Watson or order the sum of sixty pounds sterling, value received.

EDWARD LARTER.

These Articles of Agreement made and entered into this fifteenth day of July, one thousand eight hundred and sixty-three between John Watson carrying on the trade or business of a Linen and Woollen Draper and Silk Mercer, Tailor and Outfitter at Bombay and elsewhere in the East Indies under the style or firm of "John and William Watson and Company" of the one part, and Edward Larter of 72, Holborn Hill, London, Draper's Assistant, witness that in consideration of the covenants and agreements on the part of the said John Watson hereinafter contained, he the said Edward Larter for himself, his heirs, executors and administrators, doth hereby covenant and agree with the said John Watson, his executors, administrators and assigns in manner following, that is to say :—

1. That he the said Edward Larter will, on the twenty-fifth day of July instant, set out from England and proceed to Bombay aforesaid, and will during the term of three years, if he shall so long live, commencing from the day of his appearance at the place of business in Bombay of the said John Watson, will diligently and faithfully to the utmost of his power and ability serve the said John Watson and such person or persons as may be co-partner

or co-partners in trade with him or such person or persons as shall for the time being constitute the firm of John and William Watson and Company under its present or any other name or style in the capacity of Draper's Assistant in his or their said trade or business at Bombay or at any other place where he or they may carry on their said trade or business and cheerfully and readily obey all the lawful orders and commands of his said employer or employers for the time being, and demean himself civilly and respectfully towards him and them and his and their customers, servants and others.

2. That he the said Edward Larter will devote himself exclusively to his said employment in all the usual and regular hours of business observed in the establishment of his said employer or employers (sickness or other unavoidable contingency excepted) and will not absent himself from the service of his said principal or principals without his or their leave and permission first obtained.

3. That he the said Edward Larter will not during the period of his said service buy or sell goods of any kind on his own account, that he will keep the secrets of his said employer or employers, and that he will not engage in any other trade or business or serve any other person or persons for hire or reward either during the time allowed him for relaxation and rest or during such time as he shall be permitted to absent himself from his said employment as aforesaid, and will not do or engage in any act which shall unfit or disqualify him for the regular and vigorous discharge of the duties of his said employment, or which may be reasonably expected to induce or bring about any such unfitness or disqualification.

4. That he the said Edward Larter will not within fourteen years next after the expiration of this agreement, whether the same shall be determined by effluxion of time or in any other manner whatsoever, exercise or carry on either alone or in partnership with any other person or persons the trades or businesses of a Linen and Woollen Draper or Silk Mercer, Tailor and Outfitter or either of them or any other trade or business carried on by the said John and William Watson & Co., in Bombay aforesaid, Kurrachee or Poona, or at any other place in the East Indies where he or they may carry on their said business or within fifteen miles of either of these places or (subject to the same restrictions as to time and space) exercise his trade or calling of Draper's Assistant either in the service or employment of any person or persons carrying on such trade or business or otherwise, and that in case of the breach or non-observance by the said Edward Larter of this clause, he the said Edward Larter will pay to the said John Watson or to such other person or persons as aforesaid the sum of one thousand five hundred pounds not in the nature of a penalty but as ascertained and liquidated damages but without prejudice to the right of the said John Watson or such other person or persons as aforesaid to proceed by injunction or otherwise against the said Edward Larter for breach of this stipulation.

5. That if he the said Edward Larter shall not well and faithfully, in manner aforesaid, serve the said John Watson or such person or persons as aforesaid, it shall be lawful for the said John Watson or such person or persons as aforesaid to dismiss the said Edward Larter from his or their employment, and to put an end to this agreement except as to clause 4, and the said Edward Larter shall not be entitled to a return of any of the sums to be retained for him under clause 7.

6. That he the said Edward Larter shall accept a Promissory Note due on demand for the sum of sixty pounds or Rupees six hundred for passage money and interest thereon, which note shall not be demanded should this agreement be fulfilled, but shall be given up on the expiration of this agreement.

7. That the said John Watson and such other person or persons as aforesaid shall be at liberty to retain out of the wages or salary of the said Edward Larter hereinafter mentioned the sum of fifteen Rupees per month (he or they paying interest thereon at the rate of five per cent. per annum to the said Edward Larter) and the gross amount of the sums to be so retained shall be returned to the said Edward Larter in case he shall return to England pursuant to the provision of Article 11, hereinafter contained or on the due fulfilment by him of this agreement, but otherwise shall belong to the said John and William Watson and Company, and these Articles of agreement further witness that in consideration of the covenants and agreements on the part of the said Edward Larter hereinbefore contained, the said John Watson doth hereby for himself, his executors, and administrators, covenant and agree with the said Edward Larter, his executors, administrators and assigns in manner following, that is to say—

8. That the said John Watson will hire and employ, and he doth hereby accordingly engage the said Edward Larter in his aforesaid trade or business at Bombay or at such other place as aforesaid for the term of three years to commence from the day of his appearance at his place of business in Bombay aforesaid.

9. That the said John Watson will at his own costs and charges convey the said Edward Larter as a second class passenger by the Overland route from England *viâ* Southampton on the twenty-fifth day of July instant, and will also pay to the said Edward Larter the sum of one pound sterling to cover all incidental expenses of the journey.

10. That the said John Watson, his executors, administrators or assigns, and the person or persons as aforesaid, will during the said term of three years, in consideration of the service of the said Edward Larter, pay and allow unto him the wages or a salary at the following rates, viz., the sum of one hundred pounds per annum by equal instalments of eight pounds, six shillings and eight pence per month, and will also find and provide the said Edward Larter during the said term good and sufficient board and lodging as usually provided in the said Establishment and will make the first payment of such wages or salary at the expiration of the first month after the commencement of the said term of three years, and will make all such payments at the beginning of every month except the deduction mentioned in Article 7 hereinbefore contained, and will at the end of the term pay to the said Edward Larter interest at five per cent. on the sums so from time to time to be retained, less a deduction at the rate of four Rupees per day for all time lost without leave, which will be made by the said John Watson and such person or persons aforesaid, and be forfeited to him or them for his and their own use.

11. That if in the opinion of a competent medical man the state of health of the said Edward Larter shall compel his return to England, he the said Edward Larter shall be at liberty to give up and abandon his said employment on the first day on which his wages shall be due next after the date of a certificate to be given by such medical man and to return to England, and thereupon the covenants and agreements and every clause matter and thing herein contained shall cease, determine and be void to all intents and purposes except clauses 4 and 5, but without prejudice to the rights and remedies of the respective parties on account of any breach or non-performance thereof during the time in which they shall have been in force. Witness the hands and seals of the parties, the day and year first above written.

Signed, sealed and delivered by the above-named Edward Larter (the name Larter having been erroneously spelt and altered throughout) in the presence of } EDWARD LARTER. (Seal.)

THOS. MORTON HARVEY,
Solicitor, 6, *Old Jury, London.*

No. 69, dated 17th February 1864.

Report by the Solicitor to Government, Revenue Department.

1. The documents submitted for my opinion as to the Stamp they require are, first, a Promissory Note for sixty pounds, dated, London, 15th July 1863, and payable on demand to John Watson or order, and second an agreement under seal, also dated 15th July 1863, and made between John Watson of the one part, and Edward Larter (the makee of the Promissory Note above referred to) therein described as of London of the other part, whereby Larter agrees on a specified date to set out from England and proceed to Bombay, and there or elsewhere to serve Watson in the capacity of a Draper's Assistant for three years at a salary of £100 per annum payable monthly, his board and lodging being also provided by Watson.

2. Watson is described in this deed as carrying on business as a Draper, &c., at Bombay and elsewhere in the East Indies; but the part of the deed before me is not executed by him.

3. Probably Larter has a counterpart of the deed executed by Watson, but where such counterpart (if it exists) was executed, or whether it is stamped, does not appear.

4. The part of the deed before me was evidently executed by Larter in England, and his signature is attested by a London Solicitor.

5. The agreement contains a covenant on the part of Larter not to carry on the business of a Draper, &c., for four years after the expiration of the agreement within 15 miles of certain specified places, and in the event of any breach to pay £1,500 "not in the nature of a penalty but as ascertained and liquidated damages."

6. The Superintendent of Stamps states that the Agreement and Promissory Note were received from Mr. Watson for adjudication, as to whether the documents having been executed in England require to be stamped here.

7. And he observes that they have not been impressed in England where *they were fully executed,* and expresses his opinion that the English Stamp was necessary, and that had it been impressed, no other would have been required.

8. The point whether the documents were or were not stamped in England does not, in my opinion, at all effect the question as to their liability to Indian Stamp duty, but it does not, I think, arise in the present instance, the Promissory Note being in fact impressed with the proper English duty of nine pence, and the agreement being exempted from English Stamp duty under the 17 & 18 Vic. C. 83 S. 21 as an agreement entered into the United Kingdom relating to the service in one of Her Majesty's Possession abroad of a person as an Artificer, Clerk, Domestic Servant or Labourer.

9. In my opinion neither of the documents returned herewith (if as stated by the Superintendent of Stamps they were fully executed in England) are liable to Indian Stamp duty.

10. By the 14th Section of Act 10 of 1862, it is enacted that except as otherwise provided by that Act, no instrument *for which any duty shall be payable under Section 2 of the Act* shall be received or acted upon in any Civil proceeding in a Court of Justice or by any public officer unless sufficiently stamped.

11. And by Section 2 it is enacted that for every instrument which shall be executed after the time the Act came into operation, and which shall be of any of the kinds specified as requiring Stamps by Schedule A., a Stamp duty shall be payable of the amount indicated in the Schedule; but as the application of that Section must be limited by the limits of the territories within, and for which the legislative body by which the Act was passed had power to legislate it cannot, I think, be held to apply to instruments executed beyond those territories.

12. I do not think that even as regards the Promissory Note the provisions of Section 3 of the Act which enacts among other things that if any person shall negotiate, pay, or receive payment of any unstamped or insufficiently stamped Promissory Note, *which should bear a Stamp of the value set forth in the Schedule*, he shall be liable to a penalty, is inconsistent with this construction, because a Promissory Note drawn abroad is not in my opinion within the limitation effected by the words "which should bear a Stamp" nor is it I think included in the description "Bill of Exchange" (even as extended by the Interpretation clause) used in the 9th, 10th and 11th Sections of the Act which provide for the payment of duty upon all Bills of Exchange wheresoever drawn or payable if negotiated in India.

13. The operation of Section 19 of the Act under which a fee of Rupees 10 is payable for the adjudication of the proper duty is restricted by Section 18 to cases where the documents have not been executed, and the revenue authorities are not empowered by it to decide that a document is not liable to any Stamp duty; I should therefore recommend Government to return the fee of ten Rupees which is stated to have been paid, and simply to decline to stamp the documents abstaining from passing any decision upon the question whether they are liable to duty or not.

14. If Government were to determine that the documents were not liable to duty, the decision, being one that Government are not empowered to make, must be treated as a nullity by a Court of Law, and the point be decided without reference to it.

15. If contrary to my opinion, the documents are either of them should be held to be liable to duty, the applicant would suffer no hardship from the refusal of Government to stamp them, because under the 17th Section they may be received in evidence "on payment into Court of the proper amount of Stamp duty *to be determined by the Court*" together with the penalty, and the penalty may afterwards be remitted or mitigated by Government if there be any sufficient reason.

16. As the question is one of some difficulty and doubt, especially as regards the Promissory Note, it may be well that it should be submitted to the Government of India for further opinion, and with that view I have in the earlier paragraphs of this opinion set out the purport of the two documents.

No. 1,464, dated Simla, 17th March 1864.

Endorsed by Government of India, Financial Department.

Forwarded to the Solicitor to Government, for an expression of opinion from the Advocate General.

From R. F. STACK, Esq., Officiating Solicitor to Government, to E. H. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, dated 29th April 1864, No. 1,034.

SIR,

With reference to your Office docket, No. 1,464, dated the 17th March last, I have the honor to forward herewith a copy of the Advocate General's opinion on the question submitted by the Government of Bombay, relative to the Stamp duty on an Agreement with Promissory Note attached.

2. The letter, No. 795, of the 4th March last, from the Government of Bombay, and its enclosures, are herewith returned.

OPINION by T. H. COWIE, Esq., Advocate General, Fort William, dated 27th April 1864.

Except as regards Bills of Exchange, Promissory Notes, Cheques, and the like, the liability of an instrument to bear an English or an Indian Stamp depends on the place of its execution. Under the Indian Stamp Law (which in this respect differs from the English) an instrument does not require a Stamp on the ground that it relates to property situate

within or to matters to be done within India. Therefore, in the present case, the part of the Agreement executed by Mr. Larter does not require a Stamp, as it was executed out of India.

2. As regards the Promissory Note, the case is different. By the 3rd Section of the Indian Act, a penalty is imposed on any person who shall endorse, negociate, pay, or receive payment of any unstamped Promissory Note which should bear a Stamp of the value set forth in Schedule A. The Solicitor to the Government of Bombay seems to think that the words "which should bear a Stamp, &c." exclude from the operation of this Section a note made out of India. But I think this is not so. It is admitted that the Legislature meant to impose the duty in respect of the endorsement, negociation, &c., of a Bill of Exchange, though such Bill is drawn out of India; and in principle the same construction ought to apply to a Note. If a Bill is to be liable to a Stamp though not drawn in India, so ought a Note to be liable under the same circumstances. And by the interpretation clause "Bill of Exchange" includes "a Hoondee or any other instrument of a like nature," while in the 3rd Section Bills of Exchange are mentioned in connection with Promissory Notes "or other similar instruments," showing, I think, that the legislature intended to deal in the same way with all negociable instruments for the payment of money or (as the Schedule states) any order or obligation for the payment of money not being a Bond, &c. Further, the effect of the construction excluding Promissory Notes made out of India from the operation of Section 3 would be to exclude foreign Bills of Exchange from liability to Stamp. The 9th Section of Act 10 of 1862 speaks of "the duty imposed by this Act on foreign Bills of Exchange," but the Schedule does not impose any duty on foreign Bills as such. And when it is considered that the Schedule to Act 36 of 1860 did expressly impose a particular duty on foreign Bills, the inference is clear that the Legislature in 1862 must have intended to include in the prohibition of Section 3 the acceptance, negociation &c., of Bills drawn out of India, and if of Bills, so also of all other negociable instruments for the payment of money. Therefore, if the Promissory Note in the present case is negociated or paid in India without being stamped, the penalty imposed by Section 3 will be payable. I quite concur with the Solicitor to the Government of Bombay in thinking that the case is not one for adjudication under Section 19 of the Act, and have given the preceding opinion merely as a guide for the future. Mr. Watson should be informed that it will be necessary for him to stamp the Promissory Note before he can make any use of it.

(True Copy.)

(Signed) THOMAS PEACHEY,
Principal Asst. Secy. to the Govt. of India.

No. 175. ORDER THEREON, 11th July 1864, No. 1,204.

Separate Revenue No. 35.
Stamps.

Communicated to the Board of Revenue.

(True Extract.)

(Signed) J. D. SIM,
Secretary to Government.

To the Board of Revenue.

Exd, S. T. Augustin.

No. 267.

From E. H. LUSHINGTON, Esquire,

Secretary to the Government of India,

Financial Department, with the Governor General;

To the Secretary to the Government of Bombay.

Simla, the 20th May 1864.

Financial Department.

Sir,

In reply to the reference made in your letter, No. 795, of the 4th March last, I am instructed to forward for your information and guidance copy of the Advocate General's opinion.

I have the honor to be,

Sir,

Your most obedient servant,

E. H. LUSHINGTON,

Secy. to the Govt. of India, with the Governor General.

Copy of correspondence to the other local Governments and to minor Administrations, for information and guidance.

(True Copy.)

Edward Bradley

Principal Assistant Secy. to the Govt. of India.

[Exd. N. C. Coar.]