

MADRAS RECORD OFFICE.

Government of Madras.

Rename DEPARTMENT.

G.O. No. 618	Press ~~Mis.~~
206.208	
Dated	12-4-1918.4

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
12th April 1864.*

Read the following papers :—

No. 206. From the Collector and Magistrate of Nellore.

Requesting the Government orders as to whether he, as Magistrate, is bound to proceed according to his own judgment, in a case of breach of the Stamp Laws, or is at liberty to act according to the opinion of the Board of Revenue. (Here enter 1st March 1864, No. 8.)

No. 207. Proceedings of the Board of Revenue.

Declining to alter their opinion in the case of illegal sale of Stamps at Saidapuram, and stating that there is no necessity for referring the whole of the correspondence on the subject to Government. (Here enter 10th March 1864, No. 1,509A.)

No. 208. ORDER THEREON, 12th April 1864, No. 618.

1. The Governor in Council observes that Section 52 of the Stamp Act (X of 1862) declares that no person shall be proceeded against for any offence affecting the Public Revenue under it except at the Suit or prosecution of the Collector of the Stamp Revenue of the District or other specially empowered Officer, and Section 35 declares that all orders passed by the Collector of Stamp Revenue shall be open to revision by the Board of Revenue except orders passed under Sections XV and L.

2. It follows, therefore, that any order of the Collector under Section 52 is open to the Board's revision, but the Board cannot of course interfere with the conduct of the prosecution by the Magistrate.

3. In the instance which has given rise to the correspondence above recorded, the Board had power to interdict or stop the prosecution, but with the trial itself or the conviction and punishment of the prisoner they could not interfere.

4. The Board hold that the Collector should leave the trial of offences prosecuted by his order to his subordinates. The Government agree with the Board that this should be the general practice, but they consider that the Board go too far, when they declare that Section LII precludes the Collector from acting as Magistrate in such cases. The very next Section of the Act declares that "every offence punishable by this Act may be tried by any Officer exercising the powers of a Magistrate or of a Subordinate Magistrate of the first class." Moreover, the Board's opinion if correct, would place every offence under the Act beyond the jurisdiction of the Chief Magistrate of the District.

5. The Board seem to the Government to have exceeded their powers in expressing any opinion on the guilt or innocence of the seller of the Stamp, who was tried and convicted by the Magistrate, and has not appealed; and their opinion that a person buying Stamps and deliberately declaring the terms on which they may be sold can be held to have bought them "for use and not for sale" and may sell them without a license is clearly erroneous. In their

letter to Government, dated 29th January* last, No. 618, (paragraphs 5 and 6), the Board characterised the practice of Merchants selling Stamps bought for use without a license as "doubtless a straining of the provision of the law," but in this case the party contemplated such a sale, and provided for it in his instructions to his constituent.

6. With regard to this individual (Pullaya Chetty) the Government consider that what is known of him, is not of a nature to call for the Board's interposition in his favor. The object of Section 52 was doubtless to protect the public from being harassed by improper prosecutions, but in this case the Government think the Board might well have left Mr. Dykes to exercise his own discretion.

7. There is much of a suspicious nature in the whole case.

8. The Government regret the style of some parts of the Board's correspondence.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.

Collector and Magistrate of Nellore.

Exd. S. T. Augustin.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 30th December 1863.

Read the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated 27th November 1863, No. 408:—

1. I have the honor to submit for the Board's consideration the conduct of the Deputy Magistrate, in the Stamp case referred to in my letter of yesterday.

2. On the 29th ultimo, the Superintendent of Police brought to my notice, that some Stamps had been found at Saidapur under suspicious circumstances, and might be connected with the Madras frauds, but he did not know what further had been done in the matter; on which information, I at once wrote* to Shama Ravu, the Deputy Magistrate, before whom the case was pending, requesting to be informed, by bearer, what had been done, and to be furnished with any depositions, &c., that might have been taken.

* No. 229, October 29th.

3. The letter was sent out express to Saidapur, which is some 30 miles off, and in his reply of the following day, the 30th,† Shama Ravu informed me that he had dismissed the case that morning, an hour before my letter arrived; a marginal note further informing me, his decision had been written the day before.

† No. 23.

‡ With the rest of the records all translated.
Enclosure A.

4. The Deputy Magistrate's decision, a translation of which I enclose,‡ sets forth that the case had been taken up under Section 262 of the Indian Penal Code; and as there was nothing to show the Defendants had used a Government Stamp known to have been used before, they had been discharged.

5. And the decision further sets forth that the Stamps did not appear to have been purchased purposely for sale. A perusal of the records, however, led me to an exactly opposite conclusion, on this latter point, to that to which the Deputy Magistrate had arrived at. There was, the records a letter produced by the man who had sold the Stamps, and addressed to him telling him what commission to charge on them; and as, saving this passing allusion in the decision, no further proceedings had been had in the matter by the Deputy Magistrate under Section 43 of the Stamp Act, under this Section, I determined it was competent to me to proceed as the Magistrate of the District, and, issuing process in due course, on the 20th instant, I closed the case, so far as the parties then before me were concerned, and finding Vanjivakam Ramasawmi guilty, not being a licensed Vendor, of having sold a Stamp that had not been obtained "in an authorized manner for use and not for sale" fined him Rupees 100, which was paid the next morning.

§ Enclosure B.

|| Occurrence Report of 22nd October.
Enclosure C.

¶ 30th October, No. 22.

4th November, No. 23.
Enclosure D.

6. From the evidence recorded by me,§ the Police reports,|| and the Deputy Magistrate's explanations,¶ it will be seen that the following are the facts of the case.

7. On the 22nd ultimo, in the afternoon, three Stamp papers, each of 8 Annas value were presented by certain parties in a case disposed of in their favour by the Deputy Magistrate, for a copy of his decision; and one of these papers being rejected as already written on, the applicants requested one Petluru Subbaya to get them another.

8. The Deputy Magistrate was then holding his Kacheri at Saidapur, where there is no Stamp Vendor. The applicants and Petluru Subbaya were strangers, who had come in for the case; and on being told to get another Stamp, and, the 5th witness,* Duvvuru Govindu Reddy says, told in the Kacheri they could get a Stamp in the bazar, Petluru Subbaya went to the bazar, was directed to a merchant's house, and from this merchant, the man I fined, bought what he wanted, viz., another 8 Anna Stamp.

* In Case No. 74 of 1863 before the Magistrate.

duct. The offence committed under his own eyes of selling without license was clear and distinct, and this offence that he wholly suppressed from my knowledge, there is good reason to believe is connected with darker transactions still; and on this point I beg to call the attention of the Board to a remark in the Deputy Magistrate's letter of the 4th that Vajivakam Ramasawmi, the prisoner, had explained to him, Shama Ravu the Deputy Magistrate, that "such Stamps are generally obtained in Madras," to a similar remark in the Deputy Magistrate's letter of the 30th ultimo, that he was informed "that at Madras plain papers were being taken to the Mint and there printed and given to parties;" and to a copy of a deposition given before Colonel Wilson, Commissioner of Police, by Pullaya, as follows:—

Enclosure G. "I gave paper and got it stamped. One Ramasawmi Nayudu "employed at that Office used to receive paper from me, get it stamped, "and afterwards bring it to my house* at Perya Mettu. This was "about three years ago."

Which explains his letter "that it was not as if they "had been sold before." Paragraph 12.

ENCLOSURE A.
ABSTRACT.—Translation of Deputy Magistrate B. Shama Ravu's decision and the rest of the records in Case No. 80 of 1863, of his file.

ENCLOSURE B.
ABSTRACT.—Evidence recorded by the Magistrate of Nellore in Case No. 74 of 1863, on his file.

ENCLOSURE C.
ABSTRACT.—Police Occurrence Report of 22nd October 1863.

ENCLOSURE D.
ABSTRACT.—Magistrate's letter (two) and Deputy Magistrate's explanations in reply.

ENCLOSURE E.
ABSTRACT.—Telegraphic correspondence with Mr. Blisset, Director of Telegraphs Southern India, referred to in paragraph 19 of the Collector's letter.

ENCLOSURE F.
ABSTRACT.—Semi-official letter from the Superintendent of Stamps, dated 30th October 1863.

ENCLOSURE G.
ABSTRACT.—Copy of a Deposition given by Vanjivakam Pullaya Chetty before Colonel Wilson, Commissioner of Police, Madras, with Colonel Wilson's letter forwarding the same.

1. The Board have carefully considered the facts stated in the above letter and its enclosures, and have communicated with the Superintendent of Stamps on the subject, and they are not satisfied that the view taken by the Collector is the correct one.

2. From inspection of the Stamp papers produced by the party who was fined for selling Stamps without a license, and which were received from Mr. Dykes, the Board find no reason to ground any suspicion upon them. Some have evidently been stamped as private materials at the Stamp Office, having on them the $\frac{1}{2}$ So, which at one time was the only indication needed at the Stamp Office of the intended purpose for which the Stamp was required.

3. Others have evidently passed through a Vendor's hands. One or two bear neither mark, but as it is certain that on the first introduction of the new Stamp Law, perfectly blank private materials were for a short time impressed on application at the Stamp Office, and were issued without any other distinguishing mark, it is impossible to ground any charge on such an isolated

circumstance, especially as the Stamps appear to have been sent from Madras in 1861, when the Act was recent, and as the conduct of the holder of the Stamps is such as to afford no good ground for suspicion. The holder of the Stamps produced the papers, and the letter consigning them to him without any hesitation, and appears to have re-produced them a second time after they had been returned to him, and ample opportunity had been afforded him of making away with them. The Stamps themselves are undoubtedly genuine.

9. Avani of Durmati.
4. The Board see no reason whatever from the letter produced, to think that the Stamps were sent from Madras otherwise than *bona fide* for use and not for sale, and the phrase on which Mr. Dykes grounds his suspicions of intended traffic in Stamps without a license appears to the Board to lead to a directly opposite conclusion.

5. They would infer from it that the Stamps had been obtained by the consignor on payment of the full Stamp duty for use in the business transactions of the Firm; and in providing for the very possible contingency of his correspondent disposing of one to a third party, he directs him to require payment of one Anna in addition to the value of the Stamp in such a case, and "not to sell the Stamp for nothing" as it is worded in the translation; or in other words, not to part with it without getting the one Anna profit on the purchase money which had been invested in it.

6. Section 48, Act X of 1862 distinctly provides for the unlicensed sale of Stamps obtained for use and not for sale, and the circumstances of the case lead the Board to the conclusion that the Stamps were *bona fide* obtained and intended for use; although the possibility of parting with one or more on payment was also contemplated.

7. This expectation was shown by the events to be reasonable and excusable, for the non-provision of a licensed dealer in the locality, for which omission the Collector is to blame, removes all reason for the condemnation of such traffic. It is not to be expected that those who require Stamps for use in the ordinary transactions of every day life will go long distances to buy of a licensed Vendor, when they can obtain them on the spot with little risk; and the difficulty of obtaining security from licensed Vendors is not a sufficient excuse for the omission to make convenient provision for the easy working of the Law, and to meet the reasonable requirements of the public.

8. When such difficulty exists, the Collector should bring it to the notice of the Board in view to a remedy being devised.

9. The Collector will gather from the foregoing that the Board do not condemn the seller of the Stamp or the Deputy Magistrate who absolved him from blame, and that they do not approve of the Collector's proceedings in the matter. They especially condemn the course he adopted in trying and disposing of a case as a Magistrate in which he himself as Collector was prosecutor.

10. They are further of opinion that there is no ground for a charge or prosecution under the Stamp Act against the Madras correspondent of the Nellore Merchant who sold the Stamp, and although they are not legally empowered to interfere with the Collector's proceedings in this respect under Act X of 1862, and still less to question his acts as a Magistrate, they trust that Mr. Dykes will re-consider the matter before renewing his application to the Madras Commissioner of Police to execute his warrant for the apprehension of Pullaya Chetty on this charge.

11. The Stamp papers received from Mr. Dykes will be returned to him by the Secretary.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.

Copy to R. W. Norfor, Esq., Superintendent of Stamps.

Exd. J. Wright.

No. 343.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 18th January 1864.

Read the following letter from the Collector of Nellore, dated 11th January 1864, No. 9 :—

1. I have the honor to acknowledge the receipt of the Board's Proceedings of the 30th, No. 8,173, acquitting Shama Row, and "specially condemning" me.

2. In paragraph 7, the Board observe, it is not to be expected people will go long distances for Stamps. In this instance, the distance was *seven* miles. I have the honor to request I may be informed of the maximum radius in the opinion of the Board for a Stamp Vendor's circle.

3. It is not however for the long distance of the Stamp Vendor's range that I am *specially condemned*. It is for disposing of a case as Magistrate, in which I, as Collector, was prosecutor; and on this point, I have the honor to request the Board's Orders as to who I am to prosecute before in future.

4. As Magistrate I prosecute before myself daily; and, as Collector, I, a few days ago, prosecuted under Regulation IX of 1822 in a case in which I, as Collector, fined a village between 2,000 and 3,000 Rupees. In fact Judge and Prosecutor may be considered the normal state of affairs in this country; and unless Stamps are made an exception, it will, I fear, be difficult to preserve consistency under the Orders under acknowledgment.

5. With reference to paragraph 10, I will for the present withdraw my warrant against Pullaya Chetty, who is, I believe, about to be tried by the High Court for trying to bribe a Clerk to admit, what the Board have no doubt of.

1. Mr. Dykes is informed that prosecutions for breach of the Stamp laws should be conducted at his instance, and in his name, before any one of his Magisterial subordinates.

2. The Board see no occasion to prescribe a maximum range for a Stamp Vendor's circle. They consider that there should, if possible, be a Vendor in every village of importance, and of course in every petty town.

3. Mr. Dykes will of course be guided by his own judgment as regards Pullaya Chetty's case.

4. The circumstance of this man's offering a bribe to a Government official in order to obtain evidence of an asserted fact, does not, in the Board's opinion, afford any reason whatever for modifying their view of the case.

5. Mr. Dykes must be singular in his opinion, if in this country he deems such a circumstance any proof that the assertion is false. Bribes are probably more often given to public officials to induce them to do what they ought, rather than what they ought not, but it is perfectly consistent with the Board's view of the case that no entry in the Register may be forthcoming, and yet that Pullaya Chetty may be innocent of any fraud upon Government.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.

Exd. J. Wright.

Recd. 26/1/64

1863.

Department.

No:

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 30th December 1863.

Despatched

Received

No. 8,173.

Making certain observations on the Collector's letter regarding the conduct of the Deputy Magistrate, Shama Row, in a certain Stamp case.

For Mr. Dykes
26/1/64

No. 804.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 5th February 1864.

Read the following letter from the Collector of Nellore, dated Udayagiri, 27th January 1864,
No. 18:—

1. I have the honor to acknowledge the receipt of the Board's Proceedings of the 18th, ordering that breach of the Stamp laws be prosecuted, with reference to my letter of the 11th, at my instance before any of my Subordinates.

2. Chapter II of the Code of Criminal Procedure treats of the question of jurisdiction and lays down (Section 26) that the offence shall be ordinarily tried in the jurisdiction where it is committed. Section 36 further lays down that the Magistrate of the District is competent to withdraw any criminal case from a Subordinate Court and try it himself, or refer it to another Subordinate Court. But I nowhere find, that the Prosecutor has power to elect in which Court he will have his case tried; and if the Board of Revenue would wish Collectors invested with such powers, in respect to Stamp prosecutions, I would suggest application be made to the High Court under Sections 35 and 443.

3. As regards the Board's remarks on bribery, I take this opportunity to state that I had no intention of being singular in my opinion on this subject, or in any way limiting the unhappy prevalence of bribery in this country. With the Sydapuru case before me, and holding the views I did, it would have been singular if I had had any such intention. Though I freely admit that I find it hard to understand how a man can be bribed to do what he ought when he is bribed to certify what is false, or how Pullaya Chetti has established his innocence. It seems to me the presumption is he is guilty.

4. The Board leaving the disposal of this man's case to my judgment, I propose waiting the revision of the case by the Sessions Court, the Stamps and my proceedings having been called for under date the 9th instant, apparently not on appeal; and I shall be obliged by the Board's Orders at an early date on paragraph 2 of this letter.

1. The Board are doubtful whether they rightly understand what it is on which Mr. Dykes requests orders. They can scarcely suppose that the expression "any one of his Magisterial subordinates" has misled Mr. Dykes into supposing that the Board intended to lay down that he should transfer cases without cause or authority from the jurisdiction of one Magistrate to another. The Board of course intended Mr. Dykes to understand that he, as Collector of Stamp Revenue, should prosecute in cases of breach of the Stamp Law before any one of his Magisterial subordinates within whose jurisdiction such cases may occur.

2. The Board can only regret that their opinion of Pullaya Chetti's case differs from that of Mr. Dykes.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.

Exd. J. Wright.

Rev 609/64

Ind. 1/14 Sept
No 403.

Ind. 1/14 Sept
No 403.

No. 8.

Magistrate's Office,
1 March 1864.

From, J. W. B. Dykes Esquire,
Magistrate of Kelsoe.

To, The Honorable A. J. Arbutnot
Chief Secretary to Government,
Judicial Department,
Fort Saint George.

Sir,
I have the honor to request the
favor of Government giving me their order
on the following point, viz, as Magistrate, am
I bound to proceed according to my own judgment
in a case involving a breach of the Stamp Law,
or am I at liberty to act according to the opinion
of the Board of Revenue.
2. Some time ago, at the close of last
year, I took up a case under the Stamp
Act, and having occasion to report the
misconduct of a Subordinate to the Board,
was informed that they disapproved of my

Recd = 689/64

No.

Department.

1864.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 6th February 1864.

Despatched

Received

No. 804.

Observing that Mr. Dykes, as Collector of
Stamp Revenue, should prosecute in cases of
breach of the Stamp law before any of his
Magisterial Subordinates, and regretting that
the Board's opinion of Pullaya Chetti's case
differs from that of Mr. Dykes.

Recd. 1th April
No 403

my proceedings in toto. "They did not condemn the seller of the stamps or the Deputy Magistrate who absolved him from blame," x x x x and they requested I would "reconsider" the case before proceeding against the man who had sent the stamps, the sale of which without a licence was the offence I had tried.

* Proceedings of the Board of Revenue dated 30th December 1863, N. 8178.

3. The stamps had been sent from Madras by one Pullaya, then awaiting his trial for bribery, at the last Sessions before the High Court in connexion with the possession of these stamps. And, in deference to the Board's views, I withdrew the warrant I had issued for his apprehension, and informed the Board of what I had done.

4. On bowing to their judgment however

+ Proceedings of the Board of Revenue N. 343, dated 11th January 1864.

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However, the Board ruled in subsequent proceedings, I must be guided by my own.

** Collector's letter to Board, N. 18 dated 27th January 1864.

5. But, while the letters were passing, my proceedings as Magistrate had been called for by the Sessions Court. And, I informed the Board, I would wait the result of this revision.

6. The breach of the stamp laws I had punished, was the sale of stamps without a licence. And the Board absolved the seller 1st on the ground of "distance" and 2nd on the meaning of a passage in the letter sent by Pullaya with the stamps, which they construed differently to myself.

7. As regards "distance" it was seven miles from the village where the stamps were sold to where they could be

he bought legally at Gudur, and I do
not think that this would be considered
a long distance even at home still, ^{left} he told
them to absolve a breach of the law. And
as regards the real meaning of a Pilgrimage
letter, though the Board are of course
as likely to be right as I am, still, the
view I took of it is, I think, sufficiently
supported by the fact that the man I
fined did not appeal. He was a Chetty.
I had fined him 100 Rs. If I had taken
a wrong view of the letter, & he did not
appeal either he did not know his own
language, or did not care about his
money, neither of which suppositions
are very probable. And the Sessions
Court having returned my proceedings
as no longer required or in other words

I may presume approved, as regards my
course as Magistrate, if I am bound to
act on my own judgment I have no doubt.
As Magistrate, I have no doubt
that Pullaya sent the stamps to his brother
and correspondent, who sold them, that he
told the man he sent them to what
commission he was to charge on them, and
that as the case stands the evidence will
require his being put on his trial for
the share he so took in the illegal sale.
But, on the other hand, as Collector, I am
the Board's subordinate. I have no wish
to set their authority at defiance. And
I therefore apply for the orders of Govern-
ment, in reality as to whether a breach
of the stamp laws is to be considered
an offence against society or simply

them without comment.

I have the honor to be,
Sir,
Your most Obedt. Servt.

W. H. Dr. R.
Magistrate

a matter of the five in which the Magistrate
may bow to the wishes of the Public
Prosecutor.

9. In forwarding for reference,

if required, the
enclosed correspondence

it is necessary I
should add that I

may hereafter have
to address Government

in regard to the case

the Board have passed on my conduct

as Magistrate, whilst in the next paragraph

they disclaim the right to question my

acts in that capacity on which point

I am about to address them now that

the Sessions Court meet whose cognizance

such acts legally come have passed

them

1. Collector's letter to Board, 1863 dated 27th
November 1863.
2. Board's Proceedings thereon, 1863 dated
30th December 1863.
3. Collector's letter to Board, 1864 dated 11th
January 1864.
4. Board's Proceedings thereon, 1864 dated 18th
January 1864.
5. Collector's letter to Board, 1864 dated 27th
January 1864.
6. Board's Proceedings thereon, 1864 dated 5th
February 1864.

Referred
to be
returned

Copy C. P.

No. 1,509A.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 10th March 1864.

Read the following letter from the Collector of Nellore, dated 26th February 1864, No. 52 :—

1. I have the honor to acknowledge the receipt of the Board's Proceedings of the 5th, No. 804, and request they will be pleased to re-consider their several orders in the matter referred to.

referred to.

2. In their Proceedings under acknowledgment, "the Board are doubtful whether they rightly understand what it is on which I request orders" in my letter of the 27th ultimo; and then, informing me that they have no intention of laying down laws for my guidance as a Magistrate, they proceed to inform me what it is they intended I should do as Collector.

3. I think the whole correspondence

3. I think the whole correspondence noted* has arisen from a confusion of my acts in these two very different capacities. When I submitted for the consideration of the Board the misconduct of Shama Row, the Deputy Magistrate in charge of the Zemindary tracts, there were two aspects to the case, one its fiscal with which the Board had every thing to do, the other its Magisterial, of which they had been attended to, in all probability, I should

only partial cognizance; and had this distinction been attended to, in the first place, we should not have had to trouble the Board again and for the fourth time on this subject.

4. On information received, I called up a stamp case pending before Shama Row, Deputy Magistrate in charge of the Zemindary tracts; I fined the accused Rupees 100, and considering that Shama Row was as well able as I was, to see the guilt of the accused, and had deliberately closed his eyes to it, I reported him to the Board.

5. In their Proceedings on this report,

Paragraph 9, No. 817.

5. In their Proceedings on this report, the Board inform me that they do not take the same view of the case as I took. "They do not condemn the seller of the Stamp or the Deputy Magistrate who absolved him from blame, and they do not approve of the Collector's proceedings in the matter," all points coming fully within their cognizance. But the Board do not stop there. They go on "specially to condemn the course I adopted in trying and disposing of a case as a Magistrate" in which I myself as Collector was prosecutor; and herein the Board seem to me to have forgot the two aspects, and the distinction involved.

6. I could either acquit or "condemn" the seller of the Stamps, I do not seem competent to institute such. But

6. How the Board could either acquit or "condemn" the seller of the Stamps, I do not know. There had been no trial before them. They were not competent to institute such. But the Deputy Magistrate's conduct having been brought before them for censure or such notice as might be deemed necessary they are competent either to acquit or condemn him; and having acquitted him, had they refrained from criticizing me, there would have been no necessity for further correspondence.

7. It is true there are circumstances in the case in question, that might, I think, have been taken as somewhat in favor of my not being so altogether in the wrong as the Board conclude. There were some very awkward gaps in the Deputy Magistrate's inquiries. There was a curious coincidence to be observed in his taking up a case at seven, or half-past seven in the morning, not to begin a long and troublesome inquiry, but to close an inquiry that had been begun in hot haste, and had been subsequently languishing its slow length along in most unseemly delay, till that particular morning which followed the despatch of an express from me the night before. It was curious that morning's dispensal of justice should just precede the receipt of the express despatched by me the evening before to send the case in. Still more curious was it, that the decision

Grandfather & the
Barman Sept. 1. -

Wm. Brewster

1884
 Dear
 Sheriff of St. Paul.
 (1) \$1000.00 & disburse
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dated 12/2
 delivered 23/1
 received 24/1
 1400

Ch.

10.8.18
continued
Hatters

Repeating the command

Capitolo, in forma di

judged according to his own
 judgment as a case of

heard of the Stamp case in
at liberty to act according

to the opinion of the Board of

Jan 6 18. 12 50 PM

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No 206.

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the morning light saw given to the Court should have been written the day before by the Deputy Magistrate but not pronounced. And, finally, supposing the Deputy Magistrate had written his decision and kept it to sleep over it, though I have only a rough knowledge of Telugu, still, using it familiarly every day of my life, the Board I think might have given me credit for knowing something of the language I have to use so often, and if they discredited my powers of discrimination, still might have given some weight to the involuntary and unmistakable evidence of the man I had fined a 100 Rupees, who, a Chetti, evidently thought I was so near the mark in the interpretation the Board and Shama Row took a different view of, that he did not think it worth his while to appeal.

8. But be all this as it may, the Board came to the opposite conclusion, and condemned my conduct as Magistrate in the strongest terms they could well use and on as grave grounds of objection as could well be raised; whilst in the very next paragraph they of their own accord state, that they have no right *even* to question my acts in my Magisterial capacity.

11th January 1864, No. 9.

9. In reply to these Proceedings, I simply asked the Board's orders as to who I was might be considered the normal state of things in this country.

10. The Board thereon ruled, that prosecutions for a breach of the stamp laws should be conducted before any one of my Magisterial subordinates.

11. And on my pointing out to the Board that, as prosecutor, I could not elect where I would have my case tried, the Board find themselves in the difficulty described in the Proceedings under acknowledgment, and referring still to my subordinates, do not see that the case on which this discussion arose was not a question of subordinates, of "transferring cases from one Magistrate to another" *but to a subordinate from myself*. The case had been called up by me, in my capacity of Magistrate of the District, and could only be transferred from my Court at my instance as prosecutor, in the event of prosecutors in stamp cases being invested with special powers, as pointed out in the 2nd paragraph of my letter of the 27th ultimo, No. 18.

12. I have, I trust now made clear what the Board were in doubt about, and in other words, that if the Board had been "legally empowered" to censure me, the censure was unfounded, because, as Magistrate, having called up the case, it was thereby in my Court, and as prosecutor I had no power to move it.

13. But, as the Board themselves admit "legally" they had no right to question my acts as Magistrate at all; and I have therefore the honor to request that the Board will be pleased to withdraw the censure passed, or submit the whole correspondence for the orders of Government, to whom I have applied for orders as regards Pullaya, now that the Sessions Court has passed without comment the conviction of his accomplice in the sale.

1. Mr. Dykes appears to the Board to have misapprehended altogether his position, and the grounds on which the Board proceeded in the case in question.

2. From the documents submitted to them the Board were and still are of opinion that the individual who was assumed by Mr. Dykes to be liable to punishment for selling stamps without a license, had *bona fide* obtained the Stamps in an authorized manner "for use and not for sale," and therefore was not liable under Section 48 of the Stamp Act No. X of 1862.

3. They also consider that under Section 35 of the Stamp Act, they are competent to decide whether any prosecution under the Stamp Act shall be proceeded with by Collectors or not, although Section 52 of the Act requires that the prosecution shall be at the suit of the Collector of Stamp Revenue only, unless in the case of a specially authorized officer other than the Collector.

4. They also pointed out to the Collector that he being appointed by the law to prosecute in such cases is clearly not competent to adjudicate in such cases as Magistrate, and they objected to his having done this, as again they consider they were perfectly competent to do. Mr. Dykes assumes that he having as Magistrate called for the case from the Deputy Magistrate, the Board were powerless to interfere; an interpretation of the law which would at once render nugatory the provisions of Section 35.

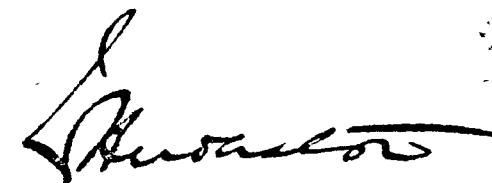
5. Mr. Dykes's attention is called to Government Order dated 6th November 1863, No. 1,995, in Board's Circular Order (Standing) dated 10th idem.

6. He appears to the Board to proceed on an utterly wrong assumption when he argues that in many cases he as Magistrate is both prosecutor and judge. The Board believe that in all such cases the legal fiction is that the Queen prosecutes, although the Judge or the Magistrate may direct that the suit be prosecuted; but they have no doubt that the provision in the Stamp Act (Section 52) is peculiar and exceptional, and precludes the Collector from adjudicating as Magistrate in such cases of statutory revenue offences.

7. In the particular case under reference, the Board consider that the conduct of the party charged was altogether inconsistent with the assumption of a fraudulent intent, and their opinion is not affected by the fact that he did not appeal from Mr. Dykes's decision. It is quite compatible with the Board's view that although he had no fraudulent intent, he may have supposed that he had unwittingly infringed the law and rendered himself liable to fine, although, in the Board's opinion, he was not so liable, and the charge should not have been prosecuted.

8. The Board see no necessity to refer the whole correspondence for the orders of Government, but as Mr. Dykes appears to have addressed Government direct in the matter, copy of these Proceedings will be submitted for their information, and they will doubtless call for the further papers, if they require them.

(A true Copy and Extract.)



Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.
Copy to J. D. Sim, Esq., Secretary to Government, R. D.

Exd. J. Wright.

clerk's check and
orders

Memorandum

Section 52 of the Stamp Act of 1862 declares that no person shall be proceeded against for any offence affecting the Public Revenue under it except at the suit or prosecution of the Collector of the Stamp Revenue of the District or other specially empowered Officer, and Section 35 declares that all orders

[Signature]

Recd - 1864.
Department.
Sd/- G. S. Govt. Secy.

No. 105-

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 10th March 1864.

Despatched 17th March

Received 18th March

No. 1,509A

N. 207.

Declining to alter their opinion in the case of illegal sale of Stamps at Saidapuram, and stating that there is no necessity for referring the whole of the correspondence on the subject to Government.

Sd/- Comdr. 18-12-64

228/Handwritten

orders passed by the
Collector of Stamp
Revenue shall be
open to revision by
the Board of Revenue
except orders passed
under Sections XV and
L.

It follows there-
fore that any orders
of the Collector under
Section 52 is open to
the Board's re-
vision - but the
Board cannot of
course inter-
fere with the
conduct of the
prosecution

stop - so far as to direct the
Collector to desist from going
on with the prosecution. They
could not stay the action of
the Mag. in the case as far
as it had come before him.

The Board have nothing
to do with this.

prosecution by
the Magistrate.

In the instance
which has given
rise to this corres-
pondence the Board
had power to
interdict the prose-
cution - but with
the trial, itself on
the conviction and
punishment of the
prisoner they could
not interfere.

I think the
Board are also right
in holding that as
a general rule the
Collector should as a
general

general rule leave the trial of offences prosecuted by his order to his ^{from the subordinate} subordinates - but to ^{the extent of the} they go too far, in my opinion, when they declare that Section II precludes the collector from acting as Magistrate in such cases - The very next section of the act declares that "every offence punishable by this act may be tried by any officer ^{or} exercising the powers of a Magistrate or of a Subordinate Magistrate of the first class" - Moreover the Board's opinion

if

if correct, would place every offence under the act beyond the jurisdiction of the Chief Magistrate of the District.

The Board seem to me to have exceeded their powers in expressing any opinion on the guilt or innocence of the seller of the stamp, who was tried and convicted by the Magistrate, and ^{has not appealed} their opinion that a person buying stamps and deliberately declaring the terms on which they may be sold can be held to have bought them "for use and not for sale" and may sell them without

③ Certainly the Board
is wrong in giving any
opinion at all -

a license is clearly erroneous.
In their letter to Government
dated 29th January last
they characterized the prac-
tice of merchants selling
stamps bought for use
without a license as "doubt-
less a straining of the pro-
vision of the law: but in
this case the party con-
templated in such a
sale, & provided for it in
his instructions to his con-
stituent.

Considering that
this man was ^{charged} ~~convicted~~
^{with} endeavouring to bribe
the subordinates of the
Stamp Office and so pro-
cure a false certificate
that the stamps sold

in

in Mellore were obtained
from that office, I cannot
see why the Board should
interfere to prevent Mr.
Dykes dealing with him,
as he thinks fit. The ob-
ject of section 52 was
doubtless to protect the
public from being harassed
by improper prosecutions.
but in this case the prose-
cution would surely be
proper - and a briber
scarcely merits protection.

The whole business
looks to me a very ^{ugly}
affair - from the Deputy
Collector who dismissed
the case so opportunely
to the man whom Mr. Dykes
now

now wishes to prosecute
and the style of the Board's
correspondence is I think to
be regretted as neither
warranted by any thing
Mr. Dykes had done nor
calculated to do any good.

LH

Proceedings of the Madras Government
Under date the 12th April 1864.

Read the following
papers

From the Collyer & May
of Kellore.

Requesting the Govern-
ment orders as to whether the
Magistrate, is bound to proceed ac-
cording to his own judgment in
a case of breach of the Stamp
Laws, or is at liberty to act ac-
cording to the opinion of the
Board of Revenue.

(Here enter 1st March 1864
No. 8)

Secy of the Board of Revenue

Declining to alter their opi-
nion in the case of illegal
sale of stamps at Suidupuram,
and stating that there is no ne-
cessity for referring the matter
of the correspondence on the sub-
ject to Government.

(Here enter 10th March 1864
No. 1509A)

1. The Genl. observes
that Section 52 of the
Stamp Act (x of 1862) declares

that no person shall be proceeded against for any offence affecting the Public Revenue under it except at the suit or prosecution of the Collector of the Stamp Revenue of the District or other specially empowered officer, and section 35 declares that all orders passed by the Collector of Stamp Revenue shall be open to revision by the Board of Revenue except orders passed under sections XV and I.

2. It follows therefore that any order of the Collector under section 52 is open to the Board's revision - but the Board cannot of course interfere with

15
with the conduct of the prosecution by the Magistrate.

3. In the instance which has given rise to the correspondence above recorded, the Board had power to interdict or stop the prosecution - but with the trial itself or the conviction and punishment of the prisoner they could not interfere.

4. The Board hold that the Collector should leave the trial of

of offences prosecuted
by his order to his sub-
ordinates. They ^{Govt} agree
with the Board that this
~~should generally be so but~~
should be the general practice
~~in the opinion of Govt~~
tice, but they consider that
the Board go too far, when
they declare that section II
precludes the Collector from
acting as Magistrate in such
cases. The very next sec-
tion of the Act declares that
"every offence punishable
by this Act may be tried by
any officer exercising the
powers of a Magistrate or
of a Subordinate Ma-
gistrate of the first
class". Moreover the
Board's opinion is
if

if correct, would place
every offence under the
act beyond the juris-
diction of the Chief
Magistrate of the District.

The Board then
to the Govt to have ex-
ceeded their powers in
expressing any opinion
on the guilt or innocence
of the seller of the
stamp, who was tried
and convicted by the
Magistrate - and has
not appealed; and their
opinion that a person
buying stamps and
deliberately declaring
the terms on which they
may be sold can be
held to have bought
them "for use and not
for sale" and may
sell them without a
license.

license is clearly erroneous. - In their letter to Govt dated 29th January last No 618 (paras 5 and 6) the Board characterizes the practice of merchants selling stamps bought for use without a license as "doubtless a straining of the provision of the law" - but in this case the party contemplated such a sale, and provided for it in his instructions to his constituent. -

6. With regard to this individual (Pulda-yafetty) the Govt considers that what is known of him, is not of a nature to call for the Board's interposition in his favor. - The object of Section 52 was doubtless to protect the public

* In L.O. 1st March
1864, No 367. -

public from being harassed by improper prosecutions, but in this case the Govt think the Board might well have left Mr. Sykes to exercise his own discretion. -

7. There is much of a suspicious nature in the whole case. -

8. The Govt regret the style of some parts of the Board's correspondence. -

I JS

14 To The Board of Revenue
1 " " Collector of Bellary
Despt 13th Apr 64

Revenue Dept.
Pro: of Govt for April

N: 618.

Pro: of the Madras Govt.
27th April 1864.

Pro: of the Board of Rev.
27 28 April / 64. No: 1118.

Question put by
the Magistrate of Mellore
whether he, as a Magistrate,
is bound to proceed accordi-
ng to his own judgment
in a case of breach of
Stamp Laws or is at
liberty to act according to
the opinion of the Bd of
Revenue.

N: 206 Q208.