M.R.O. 14-5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1852 Press ~~Mis.~~

203.205

Dated 9—8—1867.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 9th. August 1867.

Read the following papers :—

No. 203. From the Acting Magistrate, Madras District, to the Acting Chief Secretary to Government, Fort Saint George, dated Saidapett, 8th July 1867, No. 133.

1. I have the honor to forward copy of a letter, from the Cantonment Magistrate at the Mount, raising the question whether it is necessary for Public Officers to make application for Summons under Sections 272,* 273, and 278, &c., of the Indian Penal Code on the required stamp, or whether the latitude given to Magistrates, under the exemption marginally† noted, is fairly applicable to such cases.

* Sale of noxious food, &c.

† "Any such petition, application, &c., when "such Court shall think that it ought to be "exempted."

2. The offences described in the Sections quoted are among those for which a Police Officer cannot arrest without warrant, and applications for Summons against persons guilty of them should, therefore, be written on a stamp paper. But the nature of the offences is such that few but Public Officers will interfere with, and it is of the utmost importance, in a sanitary point of view, that every encouragement should be given to Police and other Public Servants to take notice of them, and bring the offenders on all occasions before a Magistrate.

3. The necessity of filing a complaint on a stamp paper would, on the other hand, directly deter Public Servants from moving in the matter.

4. Under these circumstances, I have the honor to request the orders of Government as to whether it is not expedient to exempt from the operation of the Stamp Act applications made by Police or other Public Officers, acting in their official capacity, for Summons for the offences described in Sections 272, 273, 274, 278, 284, and 290, Indian Penal Code.

From the Cantonment Magistrate, St. Thomas' Mount, to the Collector and Magistrate, Madras District, dated St. Thomas' Mount, 28th June 1867, No. 86.

1. With reference to Section 6, Clause 10 of Act XXVI of 1867, requiring a stamp of one Rupee on any application to a Criminal Court regarding the commission of an offence other than an offence for which Police Officers may arrest without warrant, as specified in column 3 of the Schedule annexed to the Code of Criminal Procedure, I have the honor to request that you will be good enough to obtain an opinion or ruling as to whether an official, for instance the Staff Officer at this Station, who is in charge of conservancy of the Cantonment, is obliged to make his application for a Summons to answer a complaint under Sections 272, 273, 278, and other Sections of a like nature of Indian Penal Code, on the required stamp, or whether I am justified in admitting them without, under the exemption "Any such petition, application, &c., when such Court shall think that it ought to be exempted."

2. It appears to me that that exemption, as a rule, applies to people who are too poor to pay the stamp, but that where there are funds specially devoted to conservancy purposes, a stamp may be required, as it is nine times out of ten recoverable from the defendant in case of conviction.

3. I have intimated to the Staff Officer that until I hear to the contrary, I am prepared to take up the cases in question without the payment of the Stamp duty.

Referred for the opinion of the Advocate General as to the necessity for a stamp under the Act.

11*th July* 1867. (Signed) W. HUDLESTON,
Secretary to Government.

No. 204. From the Acting Government Solicitor, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 30th July 1867, No. 508.

Dated 11th July 1867, and made on letter from Acting Magistrate, Madras District, to Government, dated 8th idem, No. 133.

1. I have the honor to acknowledge the Order of Government noted in the margin, with its enclosure, requesting the Advocate General's opinion as to the liability of applications for Summons under Sections 272, 273, 278, &c., of the Indian Penal Code.

2. I have submitted them for the consideration of the Acting Advocate General; and

3. I now forward a copy of his opinion, and return the order and enclosure above noted.

OPINION.

I have already given an opinion on a precisely similar question, upon a reference from the Inspector General of Police, answered this day. I need only observe further that the power of exempting from Stamp duty is one reposed in the discretion of the Court, and should be exercised with reference to all the circumstances of the case. Where the complaint is preferred by a Public Officer on public grounds, and is in itself a proper one, I conceive the Magistrate would be fully justified in exempting from Stamp duty.

Opinion dated 27th July 1867, on letter No. 1,155, dated 5th July 1867.

27*th July* 1867. (Signed) J. D. MAYNE,
Acting Advocate General.

No. 205. ORDER THEREON, 9th August 1867, No. 1,852.

Separate Revenue, No. 12.
Stamps.

1. The opinion of the Acting Advocate General will be communicated to the Acting Magistrate of Madras, together with copy of G. O. No. 1,757, Revenue Department, dated 31st July 1867, with reference to his letter of 8th July 1867, No. 133.

2. The papers will also be communicated to all Magistrates of Districts.

3. The present papers will be forwarded to the Government of India, together with those in G. O. No. 1,757, and the recommendation for an order of exemption under Act XVIII of 1865 will include *all* cases of complaints laid before Magistrates by Government Officers in their public capacity.

Proceedings of the Madras Government, Revenue Department, 9th August 1867.

4. It is evident that if the Stamp duty be levied in such cases, the charge must be borne by Government, so that the State revenues can in no way be benefited by enforcing the letter of the law, even were the public interests not likely to be injuriously affected by such enforcement, as they probably would be.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Magistrate of Madras, } With G. O. No. 1,757.
,, all Magistrates of Districts, }
,, the Revenue Board.
,, the Acting Government Solicitor.
,, the Judicial Department.
,, the Inspector General of Police.

Exd. S. T. Augustin.

It seems to me that a difficulty exists which calls for removal, in regard to the manner in which the "exemption" is to be effected. — In the Bill as first reached this Committee, as I recollect, a petition to any Criminal Court was to be drawn out on a one rupee stamped paper only; on inquiry, the Judge or Magistrate had power to refund the one rupee.

As the law under the Act now stands, a Magistrate may exempt — but how is this exemption to be carried out? Is the Magistrate to hear an oral statement of each complaint & thereon declare that it is of a kind to justify exemption, or is he to accept a written statement, hear it read, or himself read it — and then say it may be received from the stamp? If the presented in a written form, as I suppose it must be on a stamped paper, the cost of which should be repaid to the complaining party if exemption be determined on.

In regard to such repayment an order appears to me to be necessary. Either the Magistrate must pay the price of the stamp out of the Government funds, or funds placed at their disposal for this purpose & refund on order on the Treasury must be issued. The latter system would be cumbersome & uneconomical. Much time per week the Magistrate himself is invited to pay the stamp value in coin & produce the petition at the end of the month as a voucher for the repayment. WR

The opinion of the Advocate Gen.
with the Comm.r the Asst.s
of Madras together with copy
of G.O. 4th. 1857. Rev.D. of 31. July 57
& R. of Sec.y to this letter of 8 July 57.
No. 33. The papers will also be
Comm.d to all Mag.s of Districts
present Depos.
& will be
forwarded to the Govt. of India
together with those in G.O. 4th. 1857.
and the recommend.n for an
exten.n of exemption under
Act 15. of 65. with inclos.
all cases of Complaints laid
before Magistrates & Govt.
Officers in their public capacity
It is evident that

of the Stamps duly be levied in such cases. The charges must be borne by Govt. so that the State revenues can in no way be benefitted by enforcing the letter of the law. Even the public themselves not likely to be injuriously affected by such enforcement, as they probably would be.

9th augt 867.

1 2 Govt of Madras
19 Ad Govt of Bo
14 Rev Bd
14 Asst Solicitor
1 Govt of Bengal

with Govt do 1767 dtd 10 Aug

Pro: 11 July 1867 No 1763 Ad
" 31 " " 824—26
Telegrams: 11 14 March 1867 P D

15/4/68

Pro of Govt 867 Despatch
Pro of Govt 1 Aug 68.

From actg Govt Solr
Madras

To Secy to Govt Revenue Deptt.
Madras

Dated 30th July
Rec'd 30th
No 508

Forwards actg advocate's opinion as to the liability of applications for Summons under sections 272. 273. 275 &c of the Indian Penal Code.

No 1852 9th augt

Lieut order

3 Encs

No 203@205

c Dauf 68 p 5