

MADRAS RECORD OFFICE.

Government of Madras.

Treasury DEPARTMENT.

G.O. No. 2800

Press
~~Mis.~~

472.473

Dated 26 - 11 - 1867.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
26th November 1867.*

No. 472. Read the following Proceedings of the Board of Revenue, dated 25th November 1867 :—

Read the following letters :—

From the Superintendent of Stamps, to the Secretary to the Board of Revenue, dated Madras, 16th November 1867, No. 855.

1. On the — of last month, one Mr. Christian, an East Indian, brought me

* 1. Mr. J. B. Cardoza, Uncovenanted Assistant in the Office of the Inspector General of Ordnance and Magazines.

2. Mr. G. S. Casmier, 2nd Assistant in do.

3. Mr. R. J. Newbigging, 3rd Assistant in do.

information that in a transaction in which the parties named in the margin* were concerned, the Government were defrauded of Stamp duty by the purchase or consideration money for a convey-

ance of real property, not being truly expressed and set forth in the document. After satisfying myself by private enquiries, and by reference to the books of the Deputy Registrar of Assurances, that the information was in the main correct, I prosecuted the parties, with the assistance of the Government Solicitor, before the Magistrate, Mr. Clarke. The facts elicited during the enquiry were briefly these :—

In the month of December 1865, Mr. Cardoza borrowed 1,000 Rupees from the Madras Building Society on the security of his house, of which he executed a Conveyance on a stamp paper of the proper value, viz., 12 Rupees, to the then Trustee of the Fund, Mr. Newbigging. On the liquidation of the loan, the property does not appear to have been re-conveyed by the Trustee to its owner, Mr. Cardoza ; so that, in March of this year, when Mr. Cardoza borrowed, on the security of the same house, 6,000 Rupees from a Branch Fund, which had been established in the interim, Mr. Newbigging conveys the house to Mr. Casmier, one of the present Trustees, and the purchase, or consideration money, entered in the deed is not the sum borrowed from the Fund, namely, Rupees 6,000, but a nominal price of 100 Rupees, and the Conveyance is accordingly stamped 1 Rupee, instead of 75 Rupees, which would have been the proper stamp had the true amount been set forth. It was contended for the defendants that the sale by Mr. Newbigging was in reality only a nominal one ; but it was not shewn that there was any mortgage deed, or other document executed direct by Mr. Cardoza to the Fund, as security for the loan. The Conveyance executed by Mr. Newbigging on behalf, to all intents and purposes, of Mr. Cardoza, was the only document forthcoming, as that on which the 6,000 Rupees was indirectly paid to the latter, the owner of the property. The Magistrate found Messrs. Newbigging and Casmier guilty, as the immediate parties to the Conveyance, and, under Section 51 of the Stamp Act, adjudged them to pay five times the amount of deficient duty, or $5 \times 74 = 370$ Rupees, and a fine of 100 Rupees each, or 570 Rupees in all. Rupees 100 was awarded to the informer, Mr. Christian, under Section 55.

2. I have paid to the Deputy Registrar of Assurances a fee of one Rupee for searching for the Conveyance, and to the Magistrate Rupees $2\frac{1}{2}$ for Summonses and Subpoenas. The total, Rupees $3\frac{1}{2}$, will be charged in my Contingent Bill.

3. I beg to be favored with the opinion of the Board as to whether the penalty of Rupees 370, levied from the parties, should not properly be remitted by the Magistrate to my Office, and be brought into my accounts, instead of being allowed to merge in the Magisterial fines. It will be seen from Section 23 that the sum is

*Proceedings of the Madras Government, Revenue Department,
26th November 1867.*

to go in reduction of the penalty leviable under Section 15, in the event of the document being presented to me to be properly stamped. Pending the Board's reply, Mr. Clarke has promised to hold the amount in deposit.

4. The documents executed by parties obtaining loans from the Building Fund should, I conceive, be of the nature of mortgage deeds, as the money is lent simply on the security of property. Why, instead of making the transactions appear in this their true character, apparently outright sales are executed by the borrowers, I am not aware, unless it be to make it appear that the sales are not *bonâ fide*, but simply nominal, and thus evade the stamp duty prescribed by Law. As the Managers of the Fund thus act on mutual understanding, and for their mutual benefit, regardless apparently of proper forms, the question arises whether in the event of money being borrowed and lent on *mortgage* deeds hereafter, instead of on Conveyances, and the sum advanced being understated in the documents, the Law as it stands would reach the parties. Section 51 clearly refers only to cases of *sales* of property, whilst the provisions of Section 3 would not apply, as, in the cases supposed, the documents would not be unstamped, or insufficiently stamped, with reference to the sums inserted therein. If the circumstances of the present case shew, in the opinion of the Board, that evasion, such as I have above supposed, is likely to occur in connection with the Madras Building Society, or other cognate bodies, of which there are several in Madras, I think Section 51 should be so amended as to take in mortgage deeds also.

5. I also think that the case under notice strongly shews the desirableness of making the provisions of Section 51 more stringent, as already suggested by

Vide remarks on Section 51.

me in the paper submitted with my letter of the 4th July last, No. 35. The disparity between the penalties imposed by Sections 51 and 15 is also worthy of notice. Under the provisions of the former, the full penalty to which Messrs. Newbigging and Casmier were liable was only a fine of 500 Rupees *plus* five times the deficient duty, or $5 \times 74 = 370$, total 870 Rupees; whereas, if the document had been brought to my Office to be properly stamped, under Section 15, the parties would have had to pay the deficient duty 74 Rupees + $20 \times 74 = 1,480$ Rupees, total 1,554 Rupees, so that it is actually more profitable to parties, so far as pecuniary loss or gain goes, to run the risk of incurring the penalties imposed by Section 51, than to go to work under the requirements of Section 15.

6. I enclose the *Madras Standard* of the 11th instant, as it contains a correct copy of Mr. Clarke's Judgment.

From the Superintendent of Stamps, to the Secretary to the Board of Revenue,
dated Madras, 21st November 1867, No. 879.

With reference to my letter to you, dated the 16th instant, No. 855, and to the accompanying Notice from Messrs. Newbigging and Casmier, intimating their intention to move the High Court for a writ of *Certiorari*, I have the honor to request that the Government may be applied to, to instruct their Law Officers to appear on my behalf to support the conviction of the parties by the Police Magistrate.

*Proceedings of the Madras Government, Revenue Department,
26th November 1867.*

1. Resolved that the foregoing letter be submitted to Government, with the Board's request that the Law Officers of Government may be directed to appear on Wednesday next, in support of the Magistrate's conviction.

2. The Board are of opinion that no part of the penalty or fine imposed by the Magistrate can be credited to the Stamp Revenue.

3. The Superintendent's suggestions regarding the amendment of the Act will be considered when the Board's report on the whole Act, which is now under preparation, is submitted to Government.

No. 473. ORDER THEREON, 26th November 1867, No. 2,800.

Separate Revenue, No. 33.

Stamps.

The Government Solicitor will take the necessary steps to secure the services of the Advocate General, on behalf of Government, at the hearing of the application in question.

(True Extract.)

(Signed) W. HUDLESTON,

Secretary to Government.

To the Government Solicitor.
the Board of Revenue.

Exd. F. R. Bantleman.

W. 2800. 31

The Govt. Solicitor

will take the necessary
steps to secure the services
of the Advocate General
on behalf of Govt. at
the hearing of the appld.
in question. L.B.

26th Nov. 1897

4 Copies to the Govt. Solicitor 26th
14 - - - - -
OB of Rev. S.

31