

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	741	Press Nis.
243-44 Dated	19-5-1820	49

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
19th May 1870.*

No. 243. Read the following Proceedings of the Government of India in the Financial Department, dated Fort William, 27th April 1870, No. 2,549.

Read the following papers:—

Office Memorandum from the Secretary to the Council of the Governor-General for making Laws and Regulations, dated Fort William, 29th March 1870, No. 175.

The undersigned has the honour to acknowledge the receipt of the memorandum from the Financial Department, No. 1,824, dated the 16th March, and of its enclosures, regarding the question whether Bills of Sales of ships, executed in British India before the 1st January 1870, are exempt from the Stamp-duty; and in reply to communicate the following remarks.

2. The Statute 17 and 18 Vic., Cap. 104, Section 9, enacts that all instruments used in carrying into effect the second part of the Statute shall be exempt from Stamp-duty.

3. The second part applies to British India (see Sections 17 and 30), and provides (see Section 55) that a registered ship shall be transferred by a Bill of Sale.

4. So far, then, it seems to this department tolerably clear that such Bills of Sale were exempt in India from the 7th May 1855, when the Merchant Shipping Act came into operation.

5. But in 1862 the Indian Legislature passed an Act (No. X. of 1862) which, without referring to the Merchant Shipping Act, imposed an *ad valorem* duty on every Bill of Sale of movable property executed in British India.

6. The question then arises, did Act X. of 1862 impliedly repeal Statute 17 and 18 Vic., Cap. 104, Section 9? This department is of opinion that it does not, as it is settled that a special enactment is not repealed by a subsequent general affirmative enactment, unless when they are quite inconsistent. Affirmative words do not take away a prior exemption *R. v. Pugh* 1, Dongl. 188 per Lord Mansfield.

7. The result is therefore that Stamp-duty was not legally leviable on Bills of Sale of ships until 1st January 1870, when Act XVIII. of 1869 came into force.

8. Mr. Cowie contends that the Stamp-duty, mentioned in Section 9 of the Merchant Shipping Act, is the Stamp-duty leviable in the United Kingdom under the English Stamp Acts. There is something to be said in support of this construction. But, on the whole, this department thinks that Section 9 applies to British India just as much as Section 13, and that both Sections apply to all Her Majesty's dominions. It was probably just as important to promote the use of Bills of Sale in India as in England. But whether this be so or not, mere conjecture as to the intention of the Home Legislature not to interfere with the Stamp law of the Colonies is not enough to restrict the plain meaning of the words which it has chosen to employ.

9. I am to add, that to prevent all such doubts in future, the Section in question will be added to the Schedule to the Bill to repeal certain obsolete

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enactments now before the Council of the Governor-General for making Laws and Regulations.

(Signed) W. STOKES,
*Secretary to the Council of the Governor-General
for making Laws and Regulations.*

From the Solicitor to Government, to the Under-Secretary to the Government of India, Financial Department, dated Fort William, 28th February 1870, No. 1,201.

WITH reference to your Endorsement, No. 1,472, of the 23rd June last, I have the honour to forward, for your information, a certified copy of the Opinion of the Advocate-General as to whether a Bill of Sale of a steam vessel, executed in India in the form prescribed by "the Merchant Shipping Act, 1854" (17 and 18 Vic., Cap. 104), should be stamped.

ENCLOSURE No. 1.

OPINION.

I CANNOT say that the question is quite free from difficulty; but my opinion is that a Bill of Sale of a ship, executed in British India since the passing of Act X. of 1862, does require an *ad valorem* Stamp. Had the 9th Section of the Merchant Shipping Act of 1854 extended to India, I should have thought it very doubtful whether the words used in Clause 23 of Schedule A. to the Stamp Act of 1862 operated as an implied repeal of the 9th Section of the English Act. But I think that that (9th) Section never did apply to India or to any British possession out of the United Kingdom. I read the exemption as applying only to the Stamp-duties forming part of the revenues of the United Kingdom, and I consider that the most express words would have been required to effectuate the intention of the Legislature, had that intention been to fetter the action of subordinate Legislatures such as those of India and the Colonies in increasing their local revenues by Stamps. It is no answer to say that another Section of Part I. of the Merchant Shipping Act does expressly refer to India. Then, if no repeal of the 9th Section of the Merchant Shipping Act was necessary as regards India, it is quite clear that the language of Schedule A. of the Stamp Act of 1862, "instrument executed for the sale or transfer of any movable property," would include a Bill of Sale of a ship.

2. It is further to be observed, that even if Section 9 of the Merchant Shipping Act is to be considered as extending to India, and as not having been impliedly repealed by the Stamp Act of 1862, still as respects Bills of Sale executed after 1st January 1870, there can be no question that the exempting clause of the English Act is repealed by the Stamp Act of 1869; for the 3rd Section of that Act gives a very particular definition of the term "Conveyance," excluding from its meaning expressly certain specified instruments, and thereby impliedly including all others by which "property is conveyed *inter vivos*," and a Bill of Sale of a ship is not one of the excluded instruments. But as I need hardly remark, the operation of the new Act is not retrospective.

(Signed) T. H. COWIE,
Advocate-General.

{ (True Copy.)

(Signed) F. D. CHAUNTRELL,
Solicitor to Government.

*Proceedings of the Madras Government, Revenue Department,
19th May 1870.*

ORDERED that a copy of this memorandum and of the one from the Solicitor to Government, No. 1,201, dated 28th February 1870, with enclosure, be forwarded to the Government of Bombay, with reference to letter, No. 2,364, dated 31st July 1869; also that a copy of the above be forwarded to the Governments of Bengal and Madras and to the Chief Commissioner of British Burmah.

(Signed) R. H. HOLLINGBERRY,
Assistant Secretary to the Government of India.

ORDER THEREON, 19th May 1870, No. 741.

No. 244.

Separate Revenue, No 12.
Stamps.

COMMUNICATED to the Board of Revenue for their information.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

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Communicated to the Board
of Revenue for their information.
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19th May/70.

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REVENUE.

To

THE BOARD OF REVENUE

Date 27th May, 1870.

From

G. O. 19th May 1870, No. 741.

TAX.

Nos. 213-214.

Bill of Sales of Slaves etc. in India
--Proceedings of the Government of India regarding
the Bill of Sales to Slaves etc. communicated to
Board of Revenue for information.