

1598
*Proceedings of the Madras Government. Revenue Department,
14th September 1871.*

No. 181. Read again Proceedings, No. 1,309, dated 27th July 1871, Revenue Department.

Read also the following letter from the Government Solicitor, Madras, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 2nd August 1871, No. 310.

I HAVE the honour to acknowledge the receipt of the Order of Government, dated 27th July 1871, No. 1,309, Revenue Department, requesting the Acting Advocate-General's opinion as to whether Stamp-duty is leviable under the Court Fees Act upon suits under Regulation VI. of 1831.

2. I submitted the matter for the consideration of the Acting Advocate-General; and I now forward herewith a copy of his opinion.

OPINION.

I THINK Stamp-duty is leviable under the Court Fees Act upon suits under Regulation VI. of 1831. The Court Fees Act plainly contemplates stamps being levied upon suits decided in Revenue Courts, if not expressly exempted, and there is no exemption as to suits under that regulation; nor do I think it can be said that the subject-matter of such suits is of no value. The emoluments cannot be sold no doubt, but this does not diminish their value in the hands of the officers, and they have the very special value of being exempt from Court process. As to Section 7 the tenure of office is during good behaviour, and, as this is presumed, the incumbency is of a sufficiently permanent nature to have a substantial value.

2. In the great majority of cases the suit would not come under Section 7 of the Court Fees Act at all, but would be a suit for a declaration of title, and the stamp would be Rs. 10. Where a vacancy occurs, and there are rival claimants, or where one person is selected by the Collector acting in his executive capacity, and another person says he ought to have been selected, the suit is really neither a suit for land nor for money, but to establish a right to an office to which certain emoluments are attached. Accordingly in the case A. suggested by the Government, the course would be for one of the claimants to join all the others as defendants, and to bring a suit for a declaration of his title to the office. The same course would properly be adopted in case B. The only objection to this course would be that a declaratory decree cannot be executed, and therefore, if the defendant were actually in possession, a fresh suit would be necessary to turn him out. But I imagine that an office-holder who was declared to have no title would very seldom put the successful claimant to a fresh suit, especially since the question of title would have been finally settled by the former suit.

3. In the case suggested by the 3rd paragraph of the Government Proceedings, and in all cases where the object of the suit was to eject a party in possession, and not merely to try a question of title, the plaint would have to be upon full stamp, valued in the manner pointed out in Section 7 of the Court Fees Act.

(Signed) J. D. MAYNE,
Acting Advocate-General.

1st August 1871.

Proceedings of the Madras Government, Revenue Department,
14th September 1871.

No. 182.

ORDER THEREON, 14th September 1871, No. 1,598.

Separate Revenue, No. 13.
Stamps.

REGULATION VI. of 1831 was enacted "to prevent the misappropriation of emoluments annexed by the State to hereditary village and other offices in the Revenue and Police Departments, and to maintain the due efficiency of those offices." It declares that all such emoluments are inalienable from such offices by mortgage, sale, gift, or otherwise, and are not liable to attachment or other process in satisfaction of decrees of Court. It bars the jurisdiction of the ordinary Courts of Judicature in respect of claims to the possession of, or succession to, such hereditary village or other offices, or to the enjoyment of any of the emoluments annexed thereto. It provides that all such claims shall, in the first instance, be adjudicable by the Collector of the district in which the claim may arise, giving him power to call in Native Assessors to aid him in adjudicating on the claims; to refer the claims to the Assessors for investigation; and to enforce the attendance of witnesses. It gives an appeal within three months to the Board of Revenue, whose decision, subject to revision by the Governor in Council, "whenever he may deem it necessary for the ends of justice," shall be final and conclusive.

False evidence before the Collector or the Native Assessors is punishable, as is perjury, before the ordinary Courts. The regulation made no provision for institution fees or the use of stamps, or for the award of costs in such suits.

2. The question has now arisen as to the effect of the "Court Fees" Act (VII. of 1870) in regard to such suits, and the Acting Advocate-General has given his opinion that, as there is no special exemption in Section 19 of suits under Regulation VI. of 1831, therefore Stamp-duty is leviable on them under the Act; that the great majority of the suits would be liable to a Stamp-duty of Rs. 10, as being for a declaration of title (apparently under Schedule II., Art. 17, Clause iii, which prescribes this rate of duty for "plaint or memorandum of appeal to obtain a declaratory decree where no consequential relief is prayed"); and he includes in this category cases of rival claimants to an existing vacancy, as well as claims adverse to a selection made by the Collector in his executive capacity, even when the selected candidate has been placed in possession; but he points out that as a declaratory decree cannot be executed in the latter case, and in all other cases where it may be desired to eject a party in possession, a separate suit must be brought, the Stamp-duty on which must be assessed in the manner provided in Section 7 of the Act, which prescribes a duty equal to fifteen times the annual net value in suits for land paying no revenue to Government, or partially exempt from such revenue, or for the interest of an assignee of land-revenue, which two classes of claims would include all Service Inams.

3. The Board of Revenue, endorsing the unanimous opinion of the Collectors and other district officers, point out how injurious must be this application of the law, coupled as it is with inability to award costs to the successful litigant, and with his contingent liability to summary ejectment for inefficiency at any moment by the Collector; and they affirm that its effect already, although by no means vigorously enforced, has been to debar *bona fide* claimants from bringing forward

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their claims, and must soon altogether extinguish the appeal to the Board which the regulation provides.

They did not view the requirements of the Act as being so stringent as the Acting Advocate-General has interpreted them to be; but even from their point of view, they deemed it very desirable that the first inquiry and decision as to conflicting claims amongst candidates for any village appointment should be entirely free from Stamp-duty, and that application should be made to the Governor-General in Council to reduce, or wholly remit the fees claimable under the "Court Fees" Act on suits under Regulation VI. of 1831, adding their opinion that it would be sufficient to declare all applications under the regulation, whether petitions for executive orders or complaints, or memoranda of appeal, to be liable to fixed fees under Schedule II. of the Act, and not to "*ad valorem*" fees under Schedule I.

The Government do not see how this last suggestion would be practicable in any case of a suit to obtain possession of office or emoluments, as there is no article in Schedule II. under which such suits could be included; but it is possible that the Board may contemplate the addition of special articles to the Schedule.

The Government are, however, of opinion that no "Court Fees" should be levied in any case, unless there be power given to the Court at the same time to award costs to the successful litigant, which power is not now possessed by Collectors acting under Regulation VI. of 1831; and considering the nature of the cases adjudicable under that regulation, and the manifest intention of the original framers of the measure to retain the disposal of them as a matter of State administration rather than of adjudication of private rights between individuals, they deem it desirable that the "Court Fees" Act be declared inapplicable to cases coming within the purview of Regulation VI. of 1831. The Government do not understand why the regulation is supposed not to be in force in Malabar and Canara, and desire further explanation on this point.

The papers will be forwarded for submission to the Supreme Government, with a recommendation in accordance with the above view.

(True Extract.)

(Signed)

W. HUDLESTON,

Secretary to Government.

To, the Board of Revenue.
,, the Government Solicitor.

Exd. F. R. Bantleman.

Read again 1/310.
Madras 2nd August 1871.
By J. G. Grew,

To, H. G. Richard,
Govt. Solicitor. Madras.

~~Captain A. de C. Scott. R. E.~~
~~Under Secretary to Govt.~~
~~Public Works Dept.~~

Sir,

I have the honor to acknowledge the receipt of the Order of Government dated 27th July 1871, No. 1309, Revenue Department, requesting the Acting Advocate General's opinion as to whether stamp duty is leviable under the Court Fees Act upon suits under Regulation VI of 1831.

2. Submitted the matter for the consideration of the Acting Advocate General and

3. Now forward herewith a copy of his opinion.

I have the honor to be,

Sir,

Your most Obedt. Servant,

H. G. Richard

Government Solicitor.

I think stamp duty is leviable under the Court Fees Act upon suits under Reg VI of 1831. The Court Fees Act plainly contemplates stamps being levied upon suits decided in Revenue Courts, if not expressly exempted and there is no exemption as to suits under that Regulation. Nor do I think it can be said that the subject matter of such suits is of no value. The emoluments cannot be sold no doubt, but this does not diminish their value in the hands of the Officers, and they have the very special value of being exempt from Court process. As to S. 7, the tenure of Office is during good behaviour and, as this is presumed, the incumbency is of a sufficiently permanent nature to have a substantial value. In the great majority of cases the suit would not come under S. 7 of the Court Fees Act at all, - but would be a suit for a declaration of title and the stamp would be Rs. 10. Where a vacancy occurs and there are rival claimants, or where one person is selected by the Collector acting

From, John, D. Clinton,
 No. 1, 4th St. New York City.
 New York, N. Y.

Feb 3/0.
Guelders 1. 10.

Forwarding Copy of the
Act. Your opinion
as to whether it should
be leviable under the
Court Fees Act upon
units under Regulation
VI of 1831.

Ms. A. 9. 2. 1378-14. c. 10. h. 1. n. 1.
1871

St. Louis, Mo. 11. 1871
C. J. Smith

acting in his executive capacity, and another person says he ought to have been selected, the suit is really neither a suit for land nor for money, but to establish a right to an Office to which certain emoluments are attached. Accordingly in the Case A suggested by the Government the Course would be for one of the Claimants to join all the others as defendants, and to bring a suit for a declaration of his title to the Office. The same Course would properly be adopted in Case B. The only objection to this Course would be that a declaratory decree cannot be executed, and therefore if the Defendant were actually in possession a fresh suit would be necessary to turn him out. But I imagine that an Office holder who was declared to have no title, would very seldom put the successful claimant to a fresh suit, especially since the question of title would have been finally settled by the former suit.

3. In the Case suggested by the 3rd para. of the Government Proceedings, and in all Cases where the object of the suit was to eject a party in possession, and not merely to try a question of title, the plaint would have to be upon full stamp, valued in

the manner pointed out in S. 7. of the Court Fees Act.

1st August
1871

Hof John D. Mayne

Acting Advocate General

(True Copy)

H. J. Richard

Govt Solicitor

1810/11 von Ad. 1811

24-96/71

before looking over to
 the paper - & I hope it is
 not a paper that is
 as serious before - & I.

I am pretty sure
that this question
was fully discussed
in our debate on
the Stamp Law -
if not, also in the
debates of the Rep.
Leg. Council - If it
were not, I am sure
in sending this

100

3 № 1598

14 Sept 41.

Back of front!

Had again Hoofbeats &
W 1304. J. 27. & 4/1871

Read also the following
from the N. S. Liberator.

Sept. 5. of 1831. was
 enacted, "to prevent the
 misappropriation of
 monies raised by
 the State & Land Tax & has
 & this office in the Bureau
 of the Dept. to maintain
 the efficiency
 of these offices. It is
 that all such monies
 are made available from
 such offices by mortgage
 sale gift or otherwise
 are not to be used & attention
 on other provisions of
 of decrees of Court & the
 the jurisdiction of the inferior
 courts of judicature in

1. Dubois & Co. Lipton & Co.
Latter of the latter assisted
in furnishing a copy of the report
to the ordinary Court.

The Regulations make no provision for collecting fees on the use of stamps: or for the award of certificates in such cases.

2. The question is now
arisen as to the effect of

The Court Dec. Act (7 of 70) in regard to such suits, and the Afd. Sup. has given his opinion that stamp duty is leviable on them under the act. - that the great majority of the suits would be liable to a stamp duty of \$10. as being for a declaration of title (apparently under Sec II Art 17. Ch. III. S. 2) prescribes that it is for a final or summary judgment of appeal & obtain a declaratory decree & his Co. consequential & he is prayed / and he includes in this category cases of real claimants & non-duty vacancy - as well as claims adverse to a collector made by the collector in his executive capacity. - even when the collector and date has been placed in possession - but he prints out that as a declaratory decree cannot be executed in the latter cases, and in all other cases where it may be desired to get a party in possession, a complaint must give the benefit of the stamp duty and since he assessed in the manner provided in

[illegible]

that the first inquiry
and decision as to
an infliction claimed
amongst ourselves
from village app't.
Not be cut off from
from Stamford. and

under the Great Seal
of Great Britain, under Reg. 6 of
St. adding this petition
that it is his duty to present
to declare all applications
under the Reg. & other
petitions for execution
and or plaintive
or remembrance of
appeal - He hath
first put under the
II. of the act and the
I ad valorem fees

under the
High. don't see how
the last suggestion of the
practicality of many cases
for improvement of the
position of the community. as
there is no article in it.
The under of such kind
could be included. but it
is possible that the position
in time of the editor of
the spirit. articles of the Liberator

The Govt. are however of opinion that no further fees should be levied in any case unless there

The power given to the Court
 the same time & award
 cost of the witnesses
 to the Court. It is not
 and provided by the act
 under the 3d of Feb. and
 considering the nature of the
 case, it is not under that
 leg. and the manifest
 intention of the original framers
 of the measure. It is in
 the disposal of them as a
 matter of the administration
 rather than of adjudication
 of private rights between individuals,
 they deem it desirable that
 the Court should act in the
 application of cases coming
 before them. The framers of the
 6th of Feb.

The papers with the
 forwarded for submission
 of the Court for the
 Commission in accordance
 with the Act.

5. Aug. 1876

111. For the Board of Commissioners
 11. The Post-Office

The regulation is
 supposed not to
 be in force in
 Canada. Advice
 for this explanation
 in this point

The American courts
 are all held in
 money - and the
 is not too late. The
 Court is the only one

No 181-182

60

Sample of ...
181-182 ...
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Section

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