

GOVERNMENT OF INDIA.

FINANCIAL DEPARTMENT.

SEPARATE REVENUE.
Stamps.

To

No. 1783.

Dated, Fort William, the 27th March 1871.

Received

12⁰ 0/10.

*Submitting copy of correspondence
with the Bombay Govt regarding
the evasion of duty under provisions
of Article 5, Sch. II of the General
Stamp Act. No. 18 of 1869.*

O. S. G. P.—No. 9077 C. F.—25-3 71.—40.

No 676-15 Apr/71

With order

*Proceedings of the Madras Government, Revenue Department,
15th April 1871.*

No. 151. Read the following letter from the Under-Secretary to the Government of India, Financial Department, (Separate Revenue—Stamps,) to the Chief Secretary to the Government of Bombay, dated Fort William, 27th March 1871, No. 1,783:—

WITH reference to your communication, No. 1,085, dated 6th March 1871, I am directed to state that the Acting Remembrancer of Legal Affairs, in paragraph 5 of his letter, dated 25th February 1871, has given a correct description of the writing which should be charged with Stamp-duty under Article 5, Schedule II. of the General Stamp Act of 1869. If the account be written by, or entered up in the books of the obligee and signed by the obligor, then the transaction amounts to an acknowledgment of the balanced account or debt by the obligor on the part of both the parties thereto, and such acknowledgments are liable to be charged under the above-mentioned article.

2. I am to suggest that measures may be adopted to enforce the law in accordance with the views expressed above.

ORDERED that copies of the correspondence be forwarded to the other local Governments and Administrations for information and guidance.

(Signed) J. WESTLAND,
Under-Secy. to the Govt. of India.

Resolution by the Government of Bombay, dated 6th March 1871, No. 1,084.

Read letter from the Superintendent of Stamps, No. 2,462, dated 18th November 1870, submitting, for publication in the *Government Gazette*, a draft Notification for drawing the attention of the public to the provisions of Article 5 of Schedule II. of the General Stamp Act of 1869, which, from information received by him, appear to be either systematically evaded or misconceived.

Memorandum from the Acting Solicitor to Government, No. 1,030, dated 24th November 1870, reporting on the above.

Memorandum from the Superintendent of Stamps, No. 2,542, dated 30th November 1870, differing from the opinion of the Solicitor to Government contained in the above report, and suggesting that the subject be referred to the Supreme Government, with a request that the decision to which it may arrive may be notified, for general information, in the *Gazette of India*.

Memorandum from the Solicitor to Government, No. 203, dated 27th February 1871, forwarding a copy of the opinion of the Acting Legal Remembrancer, who states that he thinks that the Notification proposed by the Superintendent of Stamps ought not to be issued, and that Article 5 in Schedule II. of the Stamp Act was intended to make liable to Stamp-duty adjusted accounts of the value of Rs. 20 and upwards; an adjusted account being one that has the consent of both parties.

RESOLUTION.—Government are of opinion that the publication of any Notification such as has been proposed by the Collector of Stamps would not be expedient. The correspondence which has taken place should, however, be forwarded to the Government of India for information and orders, as it shows the difference of opinion which exists as to the correct interpretation to be placed on Article 5, Schedule II. of the General Stamp Act, and it may be considered desirable that measures should be taken to make the meaning of the Legislature more clear than it now is as to the precise description of writing which is required to be stamped by the said article.

*Proceedings of the Madras Government, Revenue Department,
15th April 1871.*

No. 1,085.

Submitted to the Government of India in the Financial Department, with copies of the correspondence noted above.

From F. F. ARBUTHNOT, Esq., Superintendent of Stamps, to the Acting Chief Secretary to the Government of Bombay, dated 18th November 1870, No. 2,462.

I HAVE the honour to submit, for publication in the *Government Gazette*, a draft Notification, bringing to the notice of the public the provisions of Article 5 of Schedule II. of the General Stamp Act No. 18 of 1869, which, from information I have received, appear either to be systematically evaded or misconceived.

2. In Bombay, where the law, it is presumed, should be generally known, the provisions of the Article referred to are but little attended to; while in the districts money-lenders and others, as a rule, only obey the law when they desire to resort to it for their own benefit.

3. The publication of the Notification is, therefore, a necessity, and will probably lead to an improvement of the stamp-revenue in the particular instances now brought to notice.

NOTIFICATION—By the Superintendent of Stamps, Bombay.

It having been brought to notice that the provisions of Article 5 of Schedule II. of the General Stamp Act No. 18 of 1869 are generally overlooked or systematically evaded, the Right Honourable the Governor in Council desires to call the attention of the mercantile community, and the public generally, to the law as therein laid down. Under the words "Note or memorandum" must be included a letter of a depositor in a bank, acknowledging the correctness of his account as balanced, also a letter or a signature, whereby a MERCHANT'S account current is acknowledged to be correct, or the amount to be due.

Collectors of stamp-revenue in the Mofussil are desired to pay particular attention to the Law in this respect, as it is believed that village shroffs, money-lenders, shop-keepers, and others are either ignorant of the law, or evade it by stamping such notes or memoranda only in cases where it is necessary to resort to the Courts of Law.

All parties who may be found to be evading the payment of Stamp-duty IN THIS WAY should be prosecuted under Section 29 of the General Stamp Act.

From C. PEILE, Esq., Acting Solicitor to Government, to the Secretary to Government, Bombay, dated 24th November 1870, No. 1,030.

I THINK, before a public Notification of this kind is made, there should be no reasonable doubt that the duty demanded is chargeable.

2. With regard to the documents relating to banking accounts, I am not certain that stamps are requisite.

3. By Section 15, Clause 2, receipts given for money deposited in any bank or in the hands of any banker or person acting as a banker, to be accounted for, are exempt from payment of stamp-duty.

4. If the banker were to send in an account showing that he held a certain sum of money for the depositor, it would be equivalent to his giving a receipt for that amount, and I am not prepared to say that it would not be exempt from stamp-duty under Section 15 above referred to.

5. If, on the other hand, the account showed that the balance was in favour of the banker, it would be an acknowledgment of a debt due, because he could not acknowledge a debt to be due to himself, the banker might claim a certain amount as due to him, but the only party to acknowledge it would be the debtor.

6. It might, therefore, be contended that until the account was signed by the person acknowledging the debt to be due, namely, the depositor, no stamp-duty was chargeable.

7. Persons receiving banker's accounts showing themselves indebted to the bank very often take no notice of them, although requested to sign them as correct and return them.

*Proceedings of the Madras Government, Revenue Department,
15th April 1871.*

8. The Collector would no doubt contend that when an account, amounting to Rs. 20 or upwards, is expressed to be balanced, it is chargeable with stamp-duty, but I presume such memorandum would have to be signed before payment of duty could be enforced.

9. It is the practice amongst bankers in Bombay to write to their customers, informing them that their deposit account has been balanced, and request that a letter may be written in reply admitting the correctness of the balance. The question naturally arises on which of the letters is the stamp-duty payable, or is it payable on each of them.

10. Until it has been decided by a Court of law, I should hesitate before forming any strong opinion as to the proper interpretation to be put on the clause in Schedule 2 of the Act referred to.

11. I would, therefore, with great submission, suggest that until there has been a decision by one of the Courts, that the documents above referred to are chargeable with stamp-duty, the Notification, so far as it relates to banking transactions, should not be published.

12. As regards the reference to merchants' accounts in the Notification, I would remark that it is not very clear whether any penalties could be enforced in respect of a memorandum or note not signed while the Notification speaks of a letter or signature.

13. I return the original papers.

From F. F. ARBUTHNOT, Esq., Superintendent of Stamps, to the Secretary to Government, Bombay, dated 30th November 1870, No. 2,542.

With reference to the above, I have the honour to state that, with all deference to Mr. Peile's opinion, I am unable to see any connection with the exemption quoted by Mr. Peile in the 3rd paragraph of his letter and the note or memorandum alluded to in Clause 5 of Schedule II. of the General Stamp Act, whereby a customer or a debtor of a bank acknowledges to his account having been balanced or the amount to be due. Such acknowledgments, whether in the form of a note or memorandum or a letter, I still contend, require a stamp of one Anna, when the amount is twenty Rs. or upwards, under the before-mentioned clause.

2. More than one bank, I believe, stamp such acknowledgments, and the reason that the practice is not general is most probably a want of attention to the requirements of the law.

3. Merchants' acknowledgments, in whatever form, whether that of a letter or note, or memorandum or a signature at the foot of an account, are also sometimes stamped, as coming under the operation of the said clause of the Act.

4. Mr. Peile, in his 8th paragraph, usually admits that the Collector would be right in contending that when an account (a banker's), amounting to Rs. 20 or upwards, is expressed to be balanced, it is chargeable with stamp-duty. The question which he afterwards raises, as to whether such memorandum would have to be signed before payment of duty could be enforced, is of little importance. The real question is, are such memoranda liable to the payment of stamp-duty or not.

5. Neither has the practice described by Mr. Peile in his 9th paragraph any practical bearing on the subject. It is simply a matter for the decision of the banks which of the two letters should be stamped. Government do not require that double stamp-duty shall be paid on one transaction.

6. It is advisable, however, that the questions raised by Mr. Peile as to the proper interpretation to be put on Clause 5 of Schedule II. of the Act, be authoritatively decided; and with this view I would respectfully suggest that the subject be referred to the Supreme Government, with a request that the decision to which it may arrive may be notified for general information in the *Gazette of India*.

Memorandum by R. V. HEARN, Esq., Solicitor to Government, Bombay, dated 27th February 1871, No. 20.

I ANNEX a copy of the opinion No. 20 of the Acting Legal Remembrancer.

*Proceedings of the Madras Government, Revenue Department,
15th April 1871.*

Opinion by C. S. MAYHEW, Esq., Acting Remembrancer of Legal Affairs, Bombay, dated 25th February 1871, No. 20.

THERE are two questions involved in the papers submitted in this case; 1st, whether the Government ought to issue the Notification in question; and, 2nd, what is the meaning of Article 5 in Schedule II. of the Stamp Act No. 18 of 1869.

2. On the 1st question, assuming that I concurred in the construction put upon Article 5 as expressed in the Notification, yet, as a lawyer, I should feel bound to advise that it is no part of the executive duties of Government to put a construction upon a clause in a Legislative Act and publish it to the public with a warning in the manner suggested by the draft of the proposed Notification which is before me. If it is desired that the attention of the public should be drawn particularly to Article 5, it should be published in its *exact words*, and the public requested to observe that as well as all other provisions of the stamp laws. It is the business of the judicial tribunals of the country to construe the Legislative Acts, and where a judicial construction has been put upon them, Notifications of such constructions are both politic and useful. I do not hesitate to express my opinion that the Notification in question ought not to be issued.

3. On the 2nd question, there can be no doubt that the words of Article 5 are wide enough to take in bankers' and merchants' accounts. The difficulty is at what stage they become liable to stamp-duty; whether when the balance or amount acknowledged to be due is agreed to on *both sides*, or when the document is written containing the representation of one side only.

4. So far as I understand the contention of Mr. Arbuthnot, he insists that the liability to the stamp-duty accrues on the statement being made in writing, whether the party to whom the statement is addressed agrees to it or not, while I understand Mr. Peile to insist that the duty attaches when the writing is agreed to on *both sides*.

5. I concur in Mr. Peile's view. I think Article 5 was intended to make liable to stamp-duty adjusted accounts of the value of Rs. 20 and upwards: an account is not adjusted unless both parties consent.

6. If Mr. Arbuthnot's contention is right, all correspondence by which one man writing to another admits that he owes him Rs. 20 and upwards, would be liable to stamp-duty, and in default the writers would be liable to penalties. I cannot think that is the intention of the Stamp Act.

No. 152.

ORDER THEREON, 15th April 1871, No. 676.

Separate Revenue, No. 7.

Stamps.

COMMUNICATED to the Board of
Revenue.

(True Extract.)

(Signed)

W. HUDLESTON,

Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Colt. of 18713 27/10/1871

REVENUE.

THE BOARD OF REVENUE.

Dated April 15th.

Recd.

Encl.

G. O., 15th April 1871, No. 676.

APRIL.

Nos. 151-152.

Evasion of Stamp-duty.—Communication from Government of India forwarding correspondence on this subject, communicated to Board of Revenue.

Revenue Department
15th April 1871
77-678.

To
The Sanarial Secretary
to Gov^t of India.

Sir,
In forwarding to you
for submission to the Gov^t of
India the accompanying Proceed-
ings of this Gov^t on the
subject of Opium I am anxious
to explain that they were
held before receipt of the
new Tariff Act 13 of 1871
which provides an Import duty
on Opium at the old rate of
24 Rs. per Seer, and that the
drug shall not be exported unless
covered by a pass granted by an

Officer

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"Officers appointed in this behalf
by the Local Govt" but fixes
no rate of export duty and
prescribes no conditions for the
pass.

Section 1 Act 14 of 1871
has given legal force to the
Governor-General's Notification in
prohibiting its exportation by
land or sea if not covered by
pass so that the incentives
to illicit trade remain as
strong as before. It is for the
Govt of India to consider whether
they can be weakened without
creating greater inconvenience
in other directions.

The difficulty in the
way of detecting or checking
the

the smuggling of the drug
is manifestly excessive.

J. B.

Ch. 63.
Part of India
Revenue Dept.
in the subject of
Opium Smuggling

W. H. L.

REVENUE DEPARTMENT.
FORT SAINT GEORGE,
15th April 1871.

No. 678.

No. 155.
To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCIAL DEPARTMENT.

Separate Revenue, No. 8.
Customs.

SIR,—In forwarding to you, for submission to the Government of India, the accompanying Proceedings of this Government on the subject of Opium,

I am directed to explain that they were held before receipt of the new Tariff Act XIII. of 1871, which provides an export-duty on Opium at the old rate of 24 Rs. per Seer, and that the drug shall not be exported "unless covered by a Pass granted by an officer appointed in this behalf by the *Local Government*," but fixes no rate of Export-duty, and prescribes no conditions for the Pass.

2. Section 1, Act XIV. of 1871, has given legal force to the Governor-General's Notification, prohibiting its exportation by *land* or sea if not covered by a Pass; so that the incentives to illicit trade remain as strong as before. It is for the Government of India to consider whether they can be weakened without creating greater inconvenience in other directions.

3. The difficulty in the way of detecting or checking the smuggling of the drug is manifestly excessive.

I have the honour to be,
Sir,

Your most obedient servant,

(Signed) W. HUDLESTON,
Secretary to Government.