

Read the following papers :—

No. 165. From the Chairman, Chamber of Commerce, Madras, to the Chief Secretary to Government, Fort St. George, dated 7th March 1872.

You are probably aware that it is a common practice in the coffee-growing districts of this Presidency for planters, who find themselves temporarily short of funds for the cultivation of their estates, to obtain advances from bankers, which are adjusted out of the crop. In evidence of the arrangement an Agreement is generally executed similar to the one enclosed, under which the planter, in consideration of certain advances to be made to him month by month for the purpose indicated, engages to deliver to the lender of the money a sufficiency of the year's crop to repay the loan.

2. Under the old Stamp Act (No. X. of 1862), Schedule A., Section 4, such Agreements were made liable to stamp on an ascending scale, not exceeding Rupee 1. This Act provided various rates of Stamp-duty for various forms of Agreement; and it was generally felt that it would be more convenient to have a uniform rate of duty for all "Agreements" of ordinary occurrence and possessing no special or exceptional features. This partly led to the introduction of the present Stamp Act (No. XVIII. of 1869), which was referred to a Special Committee for report, who stated that, "For the varying duties now chargeable on different forms of Agreement we have substituted the uniform duty of 8 Annas." The Committee's report deals in a full manner with all changes intended to be effected by the amended Act; but there is nowhere mention made of any intention to transfer a well-known and important class of documents, "Agreements to cultivate" provided for by the old Act, into a class of an entirely different nature, subject to Stamp-duty at a very high rate. "Crop-agreements" have accordingly, from the passing of the new Act to this time, been usually stamped at the rate of 8 Annas, as ordinary Agreements not otherwise specially provided for by the Act, Schedule II., Section 2.

3. A case has now arisen which points to the need of this general interpretation of the Act being expressly sanctioned by the Government. The Acting Collector of Madras having raised the objection that such Agreements properly come under the heading of Mortgage Deeds "when possession was not given at the time of execution" (Schedule I., Section 10), a reference was made to the Board of Revenue, who referred the case to the High Court, when a full Court of three Judges decided that, under Section 3, Clause 18 ("Mortgage Deed includes every instrument evidencing a pledge of property for securing the repayment of money"), the Agreements are mortgages, and liable to be stamped as such, and require registration to give them validity.

4. From the preceding recital of the circumstances which attended the change of the Stamp Act, the Chamber contend that the Select Committee had no intention, or expressed none, that Agreements to cultivate should be in future classed as mortgages. Such Agreements, I should add, are of a very temporary nature; but the ruling of the High Court places them on the same footing with a permanent mortgage of the estate itself. The stamp must, therefore, cover the largest amount of advance expressed as payable, although such advance is only payable by instalments, and notwithstanding it often happens that only a portion

of the amount agreed upon is drawn. Circumstances may occur to occasion reduced expenditure, or the planter may find his own available means larger than he anticipated. It seems to the Chamber unjust to insist on a mortgage stamp calculated on a value of advance which may never be given. It cannot be said that the crop is mortgaged. The Agreement is often entered into before a berry of crop is formed; it is drawn on an estimate of what the outturn of the crop may be; and should the crop promise to be less, it is varied to meet the actual prospect. The Agreement being thus entirely subject to the future creation of the crop, or the property to be dealt with, it cannot be placed in the same category with an "instrument evidencing a pledge of property," such property being in existence at the time the Deed is executed.

5. I have now, therefore, the honour to solicit the Government to propose to the Government of India either the amendment of the Stamp Act, so as to provide for crop-agreements, or the declaration that such Agreements are to be considered as ordinary Agreements and not mortgages. Great inconvenience and hindrance to business will now be caused by the necessity of stamping and registering such Agreements as mortgages, and that, too, to a class of persons who deserve so much encouragement as the Coffee-planters do, and who, for the most part, have, as it is a hard struggle to make both ends meet, without being weighted with a heavy Stamp-duty on the funds which necessity obliges them to borrow.

Enclosure No. 1.

AN AGREEMENT made this _____ day of _____ 18____ between _____ of _____ of the one part and _____ respectively carrying on business together in co-partnership as Bankers and Agents at Madras under the style or firm of "A. and Company" (hereinafter described as "the said Messieurs A. and Company") of the other part as follows: (that is to say) the said _____ in consideration of the sum of _____ agreed to be advanced to him by the said Messieurs A. and Company by the instalments and at the times following (that is to say) the sum of _____ upon the execution of this Agreement and a further sum of Rupees _____ to be paid in the under-mentioned proportions on the _____ day of _____ the following months, that is to say _____ until the whole of the said sum of Rupees _____ shall have been advanced (subject however to such deduction as is hereinafter provided), doth hereby agree with the said Messieurs A. and Company that he the said _____ will on or before the _____ day of _____ deliver to their Agents at _____ the whole of the crop of Coffee to be obtained from the _____ Estate situated at _____ belonging to the said _____ during the season of 18____ for preparation shipment and consignment to Messieurs A. and Company the Agents in London

of the said Messieurs A. and Company, and that the said Messieurs A. and Company shall be at liberty to pass their own drafts on the said Agents secured by hypothecation of the Bills of Lading for the said Coffee for such sum as shall be sufficient to meet the sums advanced to him the said _____ by the said Messieurs A. and Company under the provisions of this Agreement, together with all sums paid by them for insurance, interest at the rate of _____ Rupees per centum per annum on all sums advanced from the dates on which the same respectively shall have been advanced to _____ on negotiation of said drafts on Messieurs A. and Company's Agents, and commission at the rate of two Rupees per cent. on the net proceeds of the Account Sales of all the Coffee consigned to the said Agents under the provisions of this Agreement, and also that the said Messieurs A. and Company shall be at liberty to insure the shipment and to charge the cost to the said _____

and also that in the event of the drafts so to be drawn by the said Messieurs A. and Company as aforesaid not being sufficient to liquidate the amount advanced together with all sums paid by them for insurance and interest, and commission as aforesaid, he the said _____

will so soon as the deficiency has been ascertained and notified to him by the said Messieurs A. and Company deliver to them his Promissory Note for the amount of the deficiency payable _____ months after date with interest at the rate of twelve Rupees per centum per annum, and also that he the said _____ will apply all sums advanced to him by the said Messieurs A. and Company for the working, cultivating and carrying on of the said _____ Estate and will not use any

portion of such advances for the purpose of clearing planting or opening up fresh land, and also that he the said _____ will at all times during the continuance of this Agreement keep the said _____ Estate in good order and shall allow the said Messieurs A. and Company or their Agents for the time being from time to time to inspect the same for the purpose of viewing the state and condition thereof, and in the event of their finding that the said Estate is not in such good condition as it should be, regard being had to the amount of advances made by the said Messieurs A. and Company under the provisions of this Agreement, will at his own expense forthwith take all such steps as shall be requisite for putting the said Estate in good order and condition to the satisfaction of the said Messieurs A. and Company or their Agents for the time being, and it is hereby agreed and declared that it shall be lawful for the said Messieurs A. and Company at any time to have the coming crop of Coffee now estimated at _____ tons re-estimated, and if on such re-estimation it shall be found that the crop has been previously over-estimated, then to make a proportionate reduction on all subsequent advances, to be made by them to the said _____

under the provisions of this Agreement, and also that it shall be lawful for the said Messieurs A. and Company to retain in their hands out of the moneys to be advanced by them under the provisions of this Agreement the sum of one hundred Rupees per ton of the estimated crop to be applied by them in meeting the cost of carriage and preparation for shipment of such crop. And it is hereby further agreed and declared that it shall be lawful for the said _____

to effect a sale of the coming crop of Coffee from the said Estate either in this country or to any third party; but in either of such cases the said _____ shall pay to the said Messieurs A. and Company a commission of three Rupees per cent. upon the amount of the proceeds of such crop in lieu of the commission hereinbefore mentioned. And for further and better securing to the said Messieurs A. and Company the re-payment of all moneys intended to be hereby secured to them by the said _____ he the said _____

doth hereby agree that the said Messieurs A. and Company shall have a lien on the crop of Coffee now growing on the said Estate and on future crops until all sums due to them by the said Messieurs A. and Company are re-paid in full, and that if he shall make default in the due performance of all or any of the Agreements on his part hereinbefore contained, it shall be lawful for the said Messieurs A. and Company or their Agents to enter upon the said Estate and take possession thereof and hold and work and carry on the same until they shall have picked and taken posses-

Proceedings of the Madras Government, Revenue Department,
13th June 1872.

tion of the crop of Coffee then on the trees or sufficient thereof to repay them all moneys due them. As witness the hands of the said parties hereto.

Witness to the Signature
of the abovenamed.

REFERRED to the Board of Revenue for their remarks.

(Signed) W. HUDLESTON,
Officiating Chief Secretary.

9th March 1872.

No. 166. Proceedings of the Board of Revenue, dated 26th March 1872,
No. 495.

Read endorsement of Government, dated 9th March 1872, on letter from Chairman, Chamber of Commerce, to the Chief Secretary to Government, Madras, dated 7th March 1872.

ABSTRACT. — Referring to the Board for remarks letter from the Chairman, Chamber of Commerce, soliciting to propose to the Government of India either the amendment of the Stamp Act so as to provide for crop-agreements on the declaration that such Agreements are to be considered as ordinary Agreements and not mortgages.

The Board resolve to submit for the information of Government a copy of their Proceedings dated the 8th December 1871, No. 4,965, and 26th January 1872, No. 157.

2. The Board are of opinion that the form of Agreement referred to by the Chamber of Commerce is an Agreement of the nature described in Schedule A., Article 4, Act X. of 1869, and should be freed from the heavy Stamp-duty payable on mortgage Deeds. They regard the present state of the law in this respect as an unforeseen consequence of the rigid definition of the word "Mortgage" included in Act XVIII. of 1869.

No. 167.

ORDER THEREON, 13th June 1872, No. 935.

Separate Revenue, No. 15.
Stamps.

ORDERED that the above papers be referred, through the Legislative Department, for the consideration of the Supreme Government.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Legislative Department,
the Board of Revenue,
the Chairman of the Chamber of Commerce.

Ed. F. R. Gentleman.

Revenue Department

N^o 935.

Proceedings of the Madras Government
Under date the April 1872.

Read the following

From Chairman, Chamber of Com.
Soliciting Madras
Govt to make certain propositions
on the subject of the Stamp Act.

H.L. 7. March 1872.

Proceedings B^d of Rev.
Submitting to Govt
Board's Proceedings regarding
Stamp duty on an agreement
between Messrs. Hind & Co. & Co.

H.L. 26. March 1872 No. 495

Ordered that the
above papers be referred
through the Legislative
Department for the consideration
of the Supreme Govt.

[Signature]

To the Legislative Dept. On 15 June
11p^m 4 Board of Revenue
1 Chairman of the Chamber of Commerce

[Signature]

Ms. 165 - 16

165
Hamp. duty
an account
of the same

GOVT OF 1872

REVENUE.

THE LEGISLATIVE DEPARTMENT

U. S. DEPT. OF THE INTERIOR

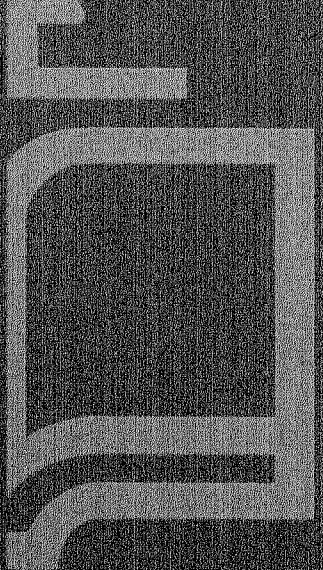
JUNE

Nos. 165-167

Approved by the President of the Senate
and the House of Representatives
on the 14th day of June 1872
at the City of Washington

27-2/85-1

Vide No. 2840/2



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