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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Rev. DEPARTMENT

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Not to be folded or roughly handled

No. 11. Read the following letter from D. BARBOUR, Esq., Officiating Under Secretary to the Government of India, Financial Department, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Simla, 28th May 1873, No. 590 :—

I am desired to forward a copy of the papers noted in the margin regarding the execution at Madras of a Bill of Sale of the Barque *Phœnix* on unstamped paper, and to request that you will be good enough to communicate the decision of the Government of India on the subject to the Registrar of Shipping at that Presidency.

Letter from Chief Commissioner, British Burmah, No. 339-172, dated 12th April 1873, and enclosures, and reply to that letter, No. 589, dated this date.

—

From Major H. T. DUNCAN, Officiating Secretary to the Chief Commissioner, British Burmah, to the Secretary to the Government of India, Financial Department, dated Rangoon, 12th April 1873, No. 339-173.

Financial Department—Customs.

I am directed to submit, for the consideration and orders of the Government of India, a copy of the correspondence, as noted in the margin, relative to a Bill of Sale of the Barque *Phœnix* having been executed at Madras on unstamped paper.

No. 135, dated 14th March, from the Commissioner of Tenasserim, with enclosures.

2. It would appear from the letter of the Registrar of Shipping, Madras, No. 11, dated 20th February 1873, that the exemption is claimed under Section 9 of the "Merchant Shipping Act," 1854 (17 and 18 Vic., Cap. 104), but, from the opinion of the Advocate-General, Bengal, Section 9 of this Act does not apply to India, or to any British possession out of the United Kingdom.

3. The Chief Commissioner desires me to say that it appears to him that the Registrar of Shipping at Madras is clearly wrong, and I am to request that steps may be taken to remedy the error into which that officer has fallen.

—

From W. TWEMLOW, Esq., Collector of Customs, Moulmein, to the Commissioner of the Tenasserim Division, British Burmah, dated Moulmein, 11th March 1873, No. 175.

Customs—Revenue.

I have the honour to forward copy of correspondence, as per margin, relating to a Bill of Sale of the Barque *Phœnix* executed at Madras on unstamped paper, to which I objected.

Moulmein Registrar of Shipping's letter, No. 150, dated 29th January 1873.
Madras Registrar of Shipping's letter, No. 4, dated 20th February 1873.

2. The Registrar of Shipping at Madras contends that Section 9 of the Merchant Shipping Act of 1854 provides for exemption of stamp duty.

3. On the other hand, I have the opinion of the Advocate-General of *India* that Bills of Sales of British Ships in India are liable to stamp duty, and this more so, as since then Act XIV. of 1870, Schedule Part I., repeals Section 9 of 17 and 18 Vic., Cap. 104, as far as it relates to India.

4. The statement that an Indian Act cannot overrule an Act of Parliament *primâ facie* seems correct, but it is not a question of setting aside any constitutional Parliamentary privilege, but a simple fiscal question which the Government of India has power to regulate.

5. As this is a point for higher authority to decide, I submit the matter.

Docket No. 185.

Copy, with copies of enclosures, forwarded to Officiating Secretary, so that orders of the Chief Commissioner may be obtained and steps taken to remedy the error into which the Registrar of Shipping, Madras, appears to have fallen.

(Signed) D. BROWN, Colonel,
Commr., Tenasserim Division of British Burmah.

Rangoon Dated (Received)
Moulmein, 14th *March* 1873.

From W. TWEMLOW, Esq., Collector of Customs and Registrar of Shipping, Moulmein, to the Registrar of Shipping, Madras, dated Moulmein, 29th January 1873, No. 150.

Adverting to my letter, No. 148, dated 29th January, I beg to point out that the Bill of Sale of the Barque *Phœnix* by Manager Row to Kasser Chund Mogun Mull Soocar is without the usual stamp. It is not a valid document without the duty. Meantime I have recorded the change.

From H. D. E. DALRYMPLE, Esq., Registrar of Shipping, Madras, to the Registrar of Shipping, Moulmein, dated Madras, 20th February 1873, No. 11.

With reference to your letter, No. 150, of the 29th ultimo, I have the honour to direct your attention to the provisions laid down in Section 9 of the Merchant Shipping Act of 1854, and to state that it is not in the nature of an Indian Act to overrule an Act passed by Parliament.

From F. D. CHAMTRELL, Esq., Solicitor to Government, to G. U. M. BATTEN, Esq., Under Secretary to the Government of India, Financial Department, dated Fort William, 26th February 1870, No. 1202.

With reference to your endorsement, No. 1472, 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.

Opinion of the Advocate-General of India.

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 the 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 the transfer of any moveable property," would include a Bill of Sale of a ship.

It is further to be observed that, even if Section 9 of the Merchant Shipping Act is to be considered as extending to India 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 other 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.

Proceedings of the Madras Government, Marine Department,
9th June 1873.

From D. BARBOUR, Esq., Officiating Under Secretary to the Government of India, Financial Department, to the Chief Commissioner, British Burmah, dated Simla, 28th May 1873, No. 589.

In reply to your Secretary's letter, No. 399-173, dated 12th ultimo, relative to a Bill of Sale of the Barque *Phœnix* executed at Madras on unstamped paper, I am desired to state that assignments of ships in British Indian waters, at the date of the assignment, are subject to Act XVIII. of 1869, and are or are not liable to stamp duty according as they do or do not fall within the exceptions specified in Section 3, Clause 11.

2. I am to add that the Registrar of Shipping at Moulmein ought not to have acted on a document which, though requiring a stamp, was not stamped.

No. 12. ORDER THEREON, 9th June 1873, No. 152.

Ordered to be communicated to the Registrar of Shipping at Madras.

(True Extract.)

J. Stuart
Ag. Under Secretary
to Chief Secretary.

To the Registrar of Shipping, Madras.
" Revenue Department.

Exd. J. H. Burns.

N° 128

Communicated to the Royal Society