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Proceedings of the Madras Government, Revenue Department, 7th August 1873.

No. 35. Read the following letter from ERNEST BARCLAY, Esq., Acting Government Solicitor, Madras, to the Hon. R. A. DALYELL, Acting Secretary to Government, Revenue Department, Ootacamund, dated Madras, 21st June 1873, No. 357.—

I HAVE the honour to acknowledge the receipt of the Order of Government, dated 12th instant, No. 594, Revenue Department, together with its enclosures, requesting the Advocate-General's opinion relative to the liability to Stamp-duty of copies of depositions and exhibits granted to persons in confinement desirous of appealing.

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

OPINION.

THE Notification of the Government of India, No. 996, of 6th June 1873, disposes of the question referred so far as regards, 1st, copy or translation of the charge furnished to an accused person under Section 199 of the Code of Criminal Procedure; (2) copies of depositions furnished to an accused person under Section 201; (3) copy of the Judgment or Order of a Criminal Court furnished under Section 276 to a person affected by it, if he be in jail or if the Court thinks fit; (4) copy of the examination of witnesses granted to the accused under Section 357; (5) copy of charges granted to the accused under Section 446; (6) copies of orders of maintenance under Section 538.

2. From this Notification, it must be inferred that copies of any of the above documents furnished by a Court of criminal jurisdiction, under circumstances other than those referred to in the Notification, would, in the opinion of the Government of India, be liable to the stamp prescribed by Article 6, 7, or 9 of Schedule 1 of the Court Fees Act, 1870.

3. If this interpretation of Article 9 be accepted, it would seem to follow that "exhibits," filed in a case, fall within its scope, and that copies of exhibits accordingly should bear a stamp.

4. On the same ground, it might be contended that copies of the evidence, plaints, and petitions in civil cases are within the purport of Article 9, and that copies of such documents ought to be stamped under that Article.

5. The High Court, however, in its proceedings of July 26th, 1869, took a different view of the meaning of the corresponding Article of the Stamp Act then in force (Article 5 of Schedule B of Act XXVI. of 1867). The Judges considered that the words "*judicial proceeding*" were intended to refer only to writings in the nature of an opinion, determination, or proceeding, recorded by a Court on the hearing of a case, and cannot include depositions of witnesses or other documents which form part of the evidence at the trial. Nor can the words which follow, viz., "*account, statement, report*, or the like, be held, except by a strained interpretation, to include either". The same view was expressed by the late Chief Justice, 27th March 1871, on a reference by the Registrar; he decided that, while notes of the evidence taken by a Judge fall within Article 9, copies of plaints, petitions, etc., are exempt.

6. This concludes the question so far as the Civil and Criminal Courts are concerned. It is possible that another tribunal might take a different view of the effect of Article 9, and, as pointed out above, the recent Notification suggests the inference that the Government of India does not regard depositions as falling without the scope of the Article. The matter appears, however, to have been considered on two separate occasions by the High Court, and it is probable, therefore, that the Government may not think it worthwhile to call in question an opinion which has the sanction of such high authority.

7. My reply, therefore, to the question referred by the Board is that, apart from the exemptions conferred by the recent Government Notification in criminal cases, copies of exhibits and depositions do not require a stamp, but that copies of the Judge's notes of the evidence do.

20th June 1873.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

(True Copies.)

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

REVENUE DEPARTMENT,
OOTACAMUND,
7th August 1873.

No. 815.

No. 36.
To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT, *(Judicial).*

Separate Revenue, No. 3.
Stamps.

SIR,—I am directed to bring to the notice of the Government of India that a difference of opinion exists regarding the liability to Stamp-duty of copies of depositions and documents which form part of the evidence in cases.

2. In 1869 the Madras High Court gave expression to their views on this point, with reference to Act XXVI. of 1867, in the following words:—

"Article 5 of Schedule B of Act XXVI. of 1867 is the only Article of the Stamp Act which can be supposed to impose a Stamp-duty on copies of depositions, etc., in a criminal trial, and, in the opinion of the High Court, the words *judicial proceedings* were intended to refer only to writings in the nature of an opinion, determination, or proceeding recorded by the Court in the hearing of a case, and cannot include depositions of witnesses or other documents which form part of the evidence at the trial. Nor can the words which follow, viz., *Account, statement, report, or the like*, be held, by a strained interpretation, to include either. It is reasonable to presume that depositions would have been expressly mentioned if the legislature intended the provisions of the Stamp Act to apply to them."

3. The words thus commented upon re-appear in Article 9, Schedule 1, of the Court Fees Act (VII. of 1870), and many officers, therefore, consider themselves bound to act in conformity with the opinion of the High Court. A considerable diversity of practice has however existed and the Board of Revenue, in bringing this to notice, have referred the question to this Government, with a view to the opinion of the law-officers being obtained.

4. This reference was made prior to the receipt of the Governor-General's Notification, No. 996, dated 6th June 1873, and as the exemption of depositions taken in certain cases therein mentioned seems to imply that all other depositions are liable to Stamp-duty, and as it would seem to follow that exhibits are also liable, I am to request that this Government may be furnished with an authoritative decision of the question.

I have the honour to be,
Sir,
Your most obedient servant,

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

Exd. F. B. Bantleman.

Opinion.—

1. The Notification of the Government of India No. 996 of 6th June 1873, disposes of the question referred so far as regards 1st, Copy or translation of the charge furnished to an accused person under S. 199 of the C. Cr: Procedure, (2) Copies of depositions furnished to an accused person under S. 201, (3.) Copy of the Judgment or order of a Criminal Court furnished under S. 276 to a person affected by it, if he be in jail, or if the Court thinks fit: (4) Copy of the examination of witnesses granted to the accused under Section 35; (5) Copy of charges granted to the accused under S. 446, (6) Copies of orders of maintenance under S. 538.

2. From this notification it must be inferred that copies of any of the above documents furnished by a Court of Criminal jurisdiction under circumstances other than those referred to in the notification would in the opinion of the Government of India be liable to the Stamp prescribed by Article 6, 7 or 9 of Schedule 1 of the Court Fees Act 1870.

3. If this interpretation of Article 9 be accepted, it would seem to follow that "exhibits", filed in a case, fall within its scope and that copies of exhibits accordingly should bear a Stamp.

4. On the same ground it might be contended that copies of the evidence, Plaints and Petitions in Civil Cases are within the purport of Article 9, and that

that copies of such documents ought to be stamped under that Article.

5. The High Court, however, in its proceedings of July 26, 1869, took a different view of the meaning of the corresponding article of the Stamp Act then in force (Article 5 of Schedule B of Act XXVI of 1867). The Judges considered that the words "Judicial proceeding" were intended to refer only to writings in the nature of an opinion, determination or proceeding, recorded by a Court on the hearing of a case, and cannot include depositions of witnesses or other documents which form part of the evidence at the Trial. Nor can the words which follow, viz, "account, Statement, Report or the like be held except by a strained interpretation to include either." The same view was expressed by the late Chief Justice 27th March 1871 on a reference by the Registrar - he decided that, while notes of the evidence taken by a Judge, fall within Article 9, Copies of Plaints, Petitions &c. are exempt.

6. This concludes the question so far as the Civil and Criminal Courts are concerned. It is possible that another tribunal might take a different view of the effect of Article 9, and, as pointed out above, the recent notification suggests the inference that the Government of India does not regard depositions as falling without the scope of the Article. The matter appears however, to have been considered on two separate occasions by the High

High Court, and it is probable, therefore, that the Government may not think it worthwhile to call in question an opinion, which has the sanction of such high authority.

7. My reply, therefore, to the question referred by the Board is that, apart from the exemptions conferred by the recent Government notification in Criminal Cases, Copies of Exhibits and depositions do not require a Stamp, but that Copies of the Judges notes of the evidence do.-

/Signed/ H. S. Cunningham
Advocate General
20th June 1873.

/True Copy/
Ernest Barclay
Actg. Government Solicitor.

No. 357.

Madras, 21st June 1873.

From

Ernest Barclay
Actg. Government Solicitor
Madras,

To

R. A. Dalyell Esqre
Actg. Secretary to Government,
Revenue Department,
Ootacamund.

Sir,

1. I have the honor to acknowledge the receipt of the Order of Government dated 12th Instant, No. 594, Revenue Department, together with its enclosures, requesting the Advocate General's opinion relative to the liability to Stamp duty of Copies of Depositions and Exhibits granted to persons in confinement desirous of appealing.-

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

I have the honor to be,
Sir,
Your most Obedient Servant,

Ernest Barclay

Actg. Government Solicitor.-

Read the Letter

P 1874/13

Enclosure in Letter from the Actg. Govt. Solicitor Barclay to the Actg. Secretary to Govt. Revenue Department, dated 21st June 1873, No. 357.-

G.O. 22 June 1873 No 72-73

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Lr 35-36

Rec'd 1873. Dept.
From No. 1804
The Ag. Govt. Solicitor
Madras.
To The Offg. Secretary to Government
Revenue Department
Cotteamund.

Dated 21st
Rec'd 23rd June

Enclosure

No. 357.

Forwards copy of the Advocate Generals Opinion relative to the liability to Stamp duty of Copies of Depositions and Exhibits granted to persons in Confinement desirous of appealing.

Papers

GO 7 August 1873 No 815

Lr 5 Sept R 7 Augt
C 23 July 1873 R 26 July

Revenue Dept.

11/2

Memo: for Orders on No. 1804

Govt: Solicitor

Advr: Genls opinion relative to the liability to Stamp duty of copies of Depositions & Exhibits granted to persons in confinement desirous of appealing

21 June 1873. No 357.

1. The Govt at the request of the Board asked the Advocate General whether in his opinion copies of depositions and exhibits should bear a stamp.

2. In 1869 the High Court commenting upon that Article of Act XXVI of 1867 which corresponds word for word with Article 9 Schedule I of the Court Fees Act now in force gave it as their opinion that

that it

"Cannot include depositions of witnesses or other documents which form part of the evidence at the trial."

3. Since the reference to the Advocate General was made the Notification of the Govt. of India dated 6th June 1873, No. 996 has been received. By this "Copies of depositions furnished to accused persons under Sec: 207 of the Crim: Procedure Code and copies of the Examination of witnesses given

given to accused persons under Sec: 357" are specially exempted from stamp duty.

4. The Advocate General now says that from the above "it must be inferred that copies of any of the above documents furnished by a Court of Criminal jurisdiction under circumstances other than those referred to in the Notification would in the opinion of the Govt. of India be liable to the Stamp prescribed

prescribed by Article 6, 7. or 9 of Schedule of the Court Fees Act;" that "it would seem to follow that Exhibits fell within its scope;" and that their copies "should bear a stamp;" and that "on the same ground it might be contended that copies of the evidence plaints and petitions in Civil Cases are within the purport of Article 9."

5. He then calls attention to the High Court's opinion above referred

referred to and says that in March 1871 the late Chief Justice expressed similar views and that as "the Govt may not think it worth while to call in question an opinion which has the sanction of such high authority" he would therefore say that "Copies of Exhibits and depositions do not require a stamp."

6. It is however submitted that the authority of the Govt

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India is still higher than that of the Madras High Court, and that as they have taken the trouble specifically to exempt copies of depositions in certain cases they must hold that in all others such copies should bear stamps. The republication of the High Court's opinion will, as the Acg: Collector of Trichinopoly wrote to the Board, "considerably reduce the revenue derived from stamp duties."

7. Under these circumstances it might be

I think it he should refer the question to the Government for decision - Then we he shall be in collision with the High Court

L.P.C.

be as well to withhold the Advocate General's opinion and inform the Board that Govt are of opinion that with the exceptions made in the recent Govt of India notification copies of depositions and Exhibits are liable to stamp duty.

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Memo: for Orders

Stamp duty on copies of depositions & Exhibits granted to persons in confinement desirous of appealing

GO 815

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Mr Chamier

Hon Members

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30/7/73

Revenue Dept. 19a

No 815. 7th Augt 1873.

To

The Secretary to the Govt of India
Home Dept: (Jud.)

Sir,

I am directed to bring to the notice of the Govt of India that a difference of opinion exists regarding the liability to Stamp duty of copies of depositions and documents which form part of the evidence in cases.

2. In 1869 the Madras High Court gave expression to their views on this point with reference to Act XXVI

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C 25 July/73 R 26 July R.C 5 Augt R 7.

of 1867 in the following words:—

"Article V of schedule B of Act XXVI of 1867 is the only article of the Stamp Act which can be supposed to impose a stamp duty on copies of depositions &c. in a criminal trial, and in the opinion of the High Court the words Judicial Proceedings were intended to refer only to writings in the nature of an opinion, determination or proceeding recorded by the Court in the hearing of a case, and cannot include

include depositions of witnesses or other documents which form part of the evidence at the trial. Nor can the words which follow, viz: Account, Statement, Report, or the like, be held except by a strained interpretation to include either. It is reasonable to presume that depositions would have been expressly mentioned if the legislature intended the provisions of the Stamp Act to apply to them."

3. The words thus commented upon appear in

in Article 9 Schedule I of the Court Fees Act (VII of 1870) and many officers therefore consider themselves bound to act in conformity with the opinion of the High Court. A considerable diversity of practice has however existed and the Board of Revenue in bringing this to notice have referred the question to this Govt with a view to the opinion of the law officers being obtained.

4. This reference was made prior to the

receipt of the Govern General's notification No. 996 dated 6 June 1873 and as the exemption ~~mentioned in this~~ of depositions taken in certain cases therein mentioned seems to imply that all other depositions are liable to Stamp duty, and as it would seem to follow that Exhibits are also liable, I am to request that this Govt may be furnished with an authoritative decision of the question &c

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Dep 13/8

Govt. of India

Stamp duty on copies of depositions Exhibits granted to persons in Conservancy Settlement decisions of appellate