M.R.O. 1—20,002—12-8-65.

(1) Number of Pages 22.

(2) Date of repair 24.2-67.

(3) Initials of the Referencer 100

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No. 1349. Press
B.P. No. Mis.

Dated 19-10-1874 196

Not to be folded or roughly handled

No. 257. Read the following:—

OPINION.

As to the printed forms of Bills of Exchange, a refund of the duty on which is desired by the Secretary to the Madras Bank, I am of opinion that they may be deemed "spoiled or unfit for use" within the last clause but one of Section 46 of the General Stamp Act, 1869, as being negotiable instruments which have "never been brought into use."

2. As to the powers of attorney I do not consider that they can be deemed to have become "spoiled or unfit for use" within the meaning of Section 46. They cannot, without a too violent stretch of language, be regarded as falling within the 2nd clause of the section as suggested by the Collector. They are in no sense "spoiled or unfit for use," and the only reason why the Bank Agent wishes to cancel them is that the Bank authorities prefer another form. He ought, I think, to be informed that the refund cannot now be allowed, more than a year having elapsed since the purchase.

3. With respect to the Notification of the Government of India under which these refunds are claimed, I adhere to my previous opinion that the provision that a refund may be had within six months after the stamped paper becomes spoiled or unfit for use, although more than a year has elapsed from the date of purchase, is of very doubtful legality. Section 16 empowers the Governor-General in Council to remit or reduce the stamp duties on particular instruments; but I do not find in the Act any power conferred on the Governor-General in Council of varying the conditions under which a refund may be made under Section 45, and I scarcely think that such a power can be fairly inferred from Section 16. I think the point should be referred for the consideration of the Government of India in the Legislative Department, and, if necessary, for the opinion of the law-officers. One difficulty involved in the Notification is that in several of the cases of "becoming spoiled, etc.," mentioned in Section 46, it is impossible to say at what moment the spoiling takes place, and consequently to fix the commencement of the period of six months prescribed by the Notification. In my opinion, the refund can be legally made under Section 45 only within a year after the date of purchase.

No. 1,041 of June 13th, 1873.

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

No. 258. ORDER THEREON, 19th October 1874, No. 1,349.

Separate Revenue, No. 20.
Stamps.

COMMUNICATED to the Board of Revenue in continuation of G. O., 26th August last, No. 1,087.

2. The opinion expressed in paragraphs 1 and 2 should be acted upon.

Proceedings of the Madras Government, Revenue Department,
19th October 1874.

3. A reference to the Government of India will be made with reference to paragraph 3.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

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

Ed. F. R. Bantleman.

2
1869

5/1349

Aug 18th 1874

My dear Commeline

Kindly express to the Govt of Madras that the Govt of India have no objection to the Madras Govt acting on the opinion of the Advocate General as to the refund of the Stamp duty on Bills of Exchange &c. drawn on Stamps of the Madras Presidency

Govt. of {1874} Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated October 19th.

Read. *Encl.*

G. O., 19th October 1874, No. 1,349.

OCTOBER.

Nos. 257-258.

Refund of Stamp-duty paid on certain printed forms of Bills of Exchange and Powers of Attorney.—Communicating to Revenue Board the Advocate-General's opinion regarding claim for — preferred by the Madras and Oriental Banks; directing that the opinion expressed in paragraphs 1 and [illegible] acted upon; and resolving to make a reference to the Government of India in regard to paragraph 3.

was not understood; the term
or as then occurs a misprint in the
which reduces the effect to
Innocuous.

I thought then a Clause was drawn
the Interpretation of the Govt of
India is illegal as being
ultra vires - Section 15 of
the Indian Stamp Act enables

5/1349

4/1349

the G.G. to remit or reduce the
Stamp in particular cases but
not to modify the conditions under
which a refund may be made under
Section 45.
I think a representation should be
made to the Government of India,
pointing out the illegality of the
Interpretation & requesting the
Issue of another - At any rate

5
1849

I hope that I am not understood as pleading guilty to "an erroneous interpretation". I maintain that I am right & the Govt of India wrong.

Government Gaol
Mr Cunningham
Magistrate Bareilly
Rohilkund
Bareilly
Gaol

7th September 1874.

Rc

The claims preferred by the Madras and Oriental Banks for Refund of Stamp duty paid on certain printed forms of Bills of Exchange and Powers of Attorney.

H.V.
13.10.74

The Honorable
The Advocate Genl.

Will be pleased to advise as requested in the accompanying Order of Government dated 26 August 1874 No 1087. Revenue Department

Richard
Govt. Solicitor

Opinion

7/1849

As to the printed forms of Bills of Exchange a refund of the duty on which is claimed by the Secretary & the Madras Bank, & one of the Oriental Banks that they may be deemed "spoiled or unfit for use" within the last clause but one of section 46 of the General Stamp Act 1869, as being Instruments which have never been brought into use".

As to the powers of attorney I do not consider that they can be deemed to have become "spoiled or unfit for use" within the meaning of section 46. They can not be said to be too peculiar [illegible]

of language, to regarded as falling within the 2nd clause of the section, as suggested by the Collector - they are in the 2nd case "shorter a unfit for use", the only reason why the Bank agent wishes to cancel them is that the Bank authorities prefer another form. If ought, I think, to be informed that the refund can not now be allowed, more than a year having elapsed since the purchase.

3 Note with reference to the Notification of the Govt. of India, under which these refunds are claimed, I adhere

No 1041 of June 13. 1873.

to my previous opinion that the provision that a refund may be had within 6 months after the Stamp paper becomes spoiled or unfit for use, although more than a year has elapsed from the date of purchase, is of very doubtful legality. Section 16 empowers the Governor General in Council to remit or reduce the Stamp Duties on particular Instruments, but I do not find in the Act any section empowering the Governor General in Council to frame Rules under which a refund may be made under Section 45, & I scarcely think that such a power can be implied from section 16.

I think the point should be referred
for the consideration of the Scots Office
to the Legislation Department, & of
Secretary, for the opinion of the London Law
Officers. The difficulty involved in
the Interpretation is that in regard
of the cases of "becoming provided as"
mentioned in Section 46, it is
impossible to say at what moment
the offering takes place & consequently
to fix the commencement of the period
of 6 months prescribed by the Section.
It may of course the refund can be
legally made under Section 45, only within
a year after the date of payment.

H. T. Cunningham

No. 3612.
Revenue 1874 Departt.

From

The Advocate General.

Dated
Recd 16 } Oct. 1874.

SCOs 1049. 19 October 1874.

Stating his opinion on the claim to refund of Stamp duty paid on certain printed forms of Bills of Exchange and Powers of Attorney, prefered by the Madras and Oriental Bank Co.

257.

Revenue Department

No. 1349 10/1343

Proceedings of the Madras Government

Under date the 19th October 1874

Read the following opinion of the Advocate Genl.

On the claim to refund Stamp duty paid on certain printed forms of Bills of Exchange and Powers of Attorney, preferred by the Madras & Oriental Bank Co. } H.C. October 1874.

Communicated to the Board of Revenue in continuation of G.O. 25th August last. No. 1087.

2. The opinion expressed in paragraphs 1 and 2 should be acted upon.

3. A reference to the Government of India will

will be made with
reference to paragraph

GLL

14 To the Board of Revenue Orissa No
14 The Government Solicitor

11
1949