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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.

B.P. No.

27h.

Press

Mis.

Dated

h. 2. 1875 196.

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Not to be folded or roughly handled

No. 98. Read the following Proceedings of the Board of Revenue, dated 3rd February 1875, No. 238 :—

Read the following letter from J. HUNTER-BLAIR, Esq., Collector of Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 4th January 1875, No. 1 :—

In their Proceedings, Miscellaneous No. 8,834 of 16th ultimo, the Board direct me to prosecute the executants of impounded documents remaining undisposed of, under Section 29 of the Stamp Act XVIII. of 1869, observing that fraudulent intent is not of the essence of an offence under that section.

2. In reply, I beg to state that, in regard to all impounded and other documents coming before the Collector, Section 24 of the Act prescribes a special procedure, by which the Collector is not at liberty to prosecute unless an intention to evade payment of the proper stamp duty is apparent.

3. In my letter to the Board, No. 89 of 22nd December 1870, I solicited their special instructions as to the disposal of documents impounded by the Registration Department, representing that no fraudulent intent can be presumed in their case, and the Board, in reply,

* Board's Proceedings, No. 318 of 21st January 1871. directed* me to keep them for one year, and then destroy them. Not only is

prosecution likely to fail in such cases, but there is also no provision in the law for levying the duty and penalty chargeable thereon, by coercive process.

4. As regards the destruction of such documents after any fixed period, I now doubt whether the Collector can ever destroy them without risk of future action for damages. No time is prescribed by the Stamp Act within which parties must claim such documents, they can therefore pay the duty and penalty due thereon whenever they like, and the Collector is bound, under Section 25, to return the documents with the certificate of payment of stamp duty endorsed thereon.

5. By Section 83 of the Registration Act VIII. of 1871, "documents remaining unclaimed in any Registration Office for a period exceeding two years may be destroyed;" but I doubt whether documents impounded and sent to a Collector can be held to be documents remaining unclaimed in a Registration Office. If they can be, they will have to be preserved for, at least, two years, not one as ordered in the Board's Proceedings, No. 318 of 21st January 1871, a date prior to the

† 24th March 1871.

passing† of the Registration Act VIII. of 1871.

6. There are no documents, impounded from other offices, remaining unclaimed.

THE Board see reason to believe that the provisions of Act XVIII. of 1869, relating to impounded documents, and the procedure which Collectors ought to adopt with reference to them, are very imperfectly understood.

2. These provisions were new, and conferred upon Collectors most important powers for the protection of the Stamp Revenue. They were intended to operate in two ways, by ensuring that the Collector should have information of every case of evasion of the stamp laws which might come under the notice of any public

functionary, and that he should be furnished with the necessary evidence, or a material part of it, for a successful prosecution if such should seem to him advisable in the interests of the revenue. Under Section 23, all Registrars and all public officers, including a Collector himself (unless the instrument is brought for adjudication as to the proper stamp, Section 24), are bound to impound unstamped or insufficiently stamped instruments coming into their offices in any way. Under Section 22, Civil or Criminal Courts *may* impound such instruments if the executants appear to the Court to have had the intention of evading payment of the duty, and the Collector in that case *must* institute prosecution. But unless the Court is of the opinion specified, it has no power to impound the document, and even if the Court be of the opinion specified, it has the option of abstaining from action. This seems to be an imperfection in the machinery of the law foreign to its general principle, and for which the Board see no reason. It follows, however, that when a Court impounds a document and sends it to the Collector, the Court is to be presumed to have found intention to evade the duty, and the Collector must prosecute the offender.

3. When the impounded document comes to the Collector, he either makes an endorsement upon it that it is properly stamped, or if he finds that there was intention to evade the duty, he prosecutes the offender; or if he does not so find, he proceeds under Section 20; and on such penalty as he may impose, and the deficient duty being paid, he validates the instrument and makes the endorsement prescribed in that case. But he cannot properly adopt either of the last two courses unless he has the party or parties before him, and hears what they have got to say; and if they do not voluntarily appear, he should invariably summon them, in order to the disposal of the case. He has power under Act III. of 1869 (Madras), to issue summons for this purpose; and in any case a notice that, in default of appearance, a prosecution would be instituted, would doubtless have the desired effect.

4. It seems to be supposed that the object of the imposition of a penalty under Section 20 is to inflict punishment for the offence against the law, and this notion is fostered by the provision in Section 23, Act X. of 1862 (not found in Act XVIII. of 1869), that other penalties incurred are to be set off against it. But the penalty under Section 20 Act XVIII. of 1869 is merely a fee for the validation of the instrument, and the scale seems to be fixed with reference to the magnitude of the transaction represented, and the probable importance of the validation to the party. If the instrument is not validated by the party paying the amount fixed, the penalty is not recoverable in any way. Collectors should be guided by these principles in assessing penalties; and the Board would deprecate too great severity. If it is necessary to punish offenders, a criminal prosecution is the proper way. The Board believe that, in many cases, parties await the Collectors' summons, or are deterred from appearing before the Collectors, and getting their instruments validated, through fear of having incurred excessive penalties of various kinds. It is evident that in this way, excessive severity (at least if coupled with what seems to be the usual inaction on the part of a Collector who receives an impounded document) might defeat its own object. The parties would find it cheaper to execute fresh documents on the proper stamps. This illustrates the importance of Collectors procuring the attendance of the

parties in all cases. The Board think that it would be a great convenience to the poor and ignorant, and to inhabitants of remote tracts in the Mofussil, if the powers given to Collectors under Sections 24 and 39 of the Act could be extended to Divisional Officers, but this does not seem to be possible in the present state of the law.

5. The power of remission given by Clause (b) Section 24 should, in the Board's opinion, be freely used. The sole object of the Collector should be to see that in every case the Government gets the tax due to it on the transaction, and generally to protect the revenue. If the parties do not appear in obedience to the Collector's summons, the fact would go far to negative the presumption of good faith arising from the party having produced the instrument before a public officer; and the Collector should institute a prosecution as the only means left him of recovering the Government due. Under Section 29, the mere fact of execution of a document on other than the proper stamp renders a party liable to punishment without any question of intention; and though the Collector is bound to prosecute when he thinks there has been wilful evasion, there is nothing in the Act to debar him from prosecuting in other cases when the interests of the revenue require it. Documents, to which the provisions of Sections 24 and 20 and the means thereby given of recovering the Government dues are inapplicable, may be impounded and sent to him (Sections 28 and 23); and even though he may be satisfied that there was no wilful evasion of the law, it may still be his duty to prosecute with a view to vindicate the law and protect the revenue by making an example. For instance, when there is a common, even though ignorant, evasion—as in the case of bonds and bills, of which probably thousands are made and negotiated annually amongst natives on plain paper—the Collector should, as a rule, prosecute when a case is brought to his notice.

6. The Collector of Madras will proceed to dispose of the eighty-one impounded documents lying in his office for want of the appearance of the parties, in accordance with the principles above laid down. When the parties have appeared, but have not validated their documents, and when the Collector nevertheless sees no ground for further action, he should record his reasons and an order accordingly, and place the papers in the records. They might then be struck out of the lists of papers undisposed of.

7. As to the length of time for which these documents should be kept, the Board think that if the Collector keeps them a reasonable time, and the period of two years laid down for registering officers may be held to be a reasonable time, they may then be destroyed. The difficulty imagined by the Collector would not be likely to arise if the documents were promptly disposed of as they ought to be, and the attendance of the parties procured without delay; but the Board resolve to request Government to obtain the Advocate-General's opinion, whether impounded documents lying in Collectors' offices may be safely destroyed after the lapse of two years.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

*Proceedings of the Madras Government, Revenue Department,
8th March 1875.*

No. 99.

ORDER THEREON, 8th March 1875, No. 378.

Separate Revenue, No. 17.

Stamps.

REFERRED to the Advocate-General,
through the Government Solicitor, for his
opinion.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Government Solicitor.
„ the Board of Revenue.

Exd. W. H. French.

No. 238.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 3rd February 1875.

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4. As regards the destruction of such documents after any fixed period, I now doubt whether the Collector can *ever* destroy them without risk of future action for damages. No time is prescribed by the Stamp Act within which parties must claim such documents, they can therefore pay the duty and penalty due thereon whenever they like, and the Collector is bound, under Section 25, to return the documents with the certificate of payment of stamp duty endorsed thereon.

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(A true Copy and Extract.)

H. V. S. S. S.

Acting Secretary.

To the Acting Secretary to Government, Revenue Department.
,, the Collector of Madras.

Copy to all Collectors.

Exd. W. H. French.

C 224 7/27/75 10/24/75

*4. To the Collector of Madras
in the Board of Directors*

*23/2/75
W. H. French
8/2/75*

*the Govt. Advocate for his
opinion.*

*Report to the
No. 378*

Passes 1875. No. 378
Board of Directors,
MADRAS.

PROCEEDINGS, 3RD FEBRUARY 1875, No. 238.

20th Feb 1875

Received 20th Feb 1875

FEBRUARY.
No. 238.

Documents—impounded as being unstamped or insufficiently stamped.—Remarks passed on provisions of Act XVIII. of 1869 (General Stamp Act) relating to—and on procedure to be adopted by Collectors with reference to them. Government requested to obtain Advocate-General's opinion, whether impounded documents lying in Collectors' offices may be safely destroyed after lapse of two years.

*20th Feb 1875
W. H. French*