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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. 1628 Press
B.P. No. Mis.

Dated 12-7-1846 196

Not to be folded or roughly handled

GOVERNMENT OF MADRAS

MADRAS RECORD OFFICE

Court Fees Act.

Read the following papers:—

No. 77. From Major T. WELDON, Senior Magistrate of Police, to the Hon. W. HUDLESTON, Chief Secretary to Government, Ootacamund, dated Madras, 2nd May 1876, No. 61.

By an Order dated 3rd June 1871, No. 743 (Judicial), Government, on the recommendation of the Board of Revenue, directed that all applications made to a Judge or Magistrate to attest Powers of Attorney, other than those intended to be filed in criminal cases, should bear a stamp of 1 Rupee.

2. The fact was probably overlooked that the Court Fees Act, 1870 (Schedule II., No. I-b), prescribes a stamp of 8 *Annas* only on all applications to Criminal Court or to a Magistrate in his executive capacity, and not otherwise provided for by that Act.

3. Government may possibly think proper to modify their Order above quoted, in which view I have now the honor to address you.

No. 710.

REFERRED to the Board of Revenue for their remarks.

OOTACAMUND,
5th May 1876.

(Signed) W. HUDLESTON,
Chief Secretary.

No. 78. *Proceedings of the Board of Revenue, dated 2nd June* 1876, *No.* 1,462.

THE Board are of opinion that the case referred is not governed by the Court Fees Act. The words "executive capacity" imply power conferred by law which enables the Magistrate to act, *e.g.*, under Section 518 or Section 519, Criminal Procedure Code; but the Board are not aware of any law which empowers a Magistrate to attest Powers of Attorney. And although Section 85 of the Indian Evidence Act requires the Courts to presume the due execution and authentication of such instrument executed before and authenticated by certain persons, a Magistrate among them, it is clear that the primary object of that section was to exempt such public persons from attendance in Court in such cases, a secondary consequence being the *pro tanto* increased legal value to the holder of an instrument thus executed; but the section does not convey to the Magistrate and others named any power of attestation.

2. The Board consider, therefore, that the fee of 1 Rupee prescribed to be paid to the Magistrate must be regarded merely as the equivalent of the service rendered by a Government official, and that this was the view taken by the Government of India is evident from the letter of the Secretary in the Financial Department, dated 29th October 1870, No. 4,445, embodied in Proceedings of the Government of Madras, dated 11th November 1870, No. 1,752, Revenue Department. The Senior Magistrate of Police has apparently been misled by the

circumstance that the Government of India ordered these fees to be credited to Stamp Revenue. This was, of course, merely a matter of account.

(A true Extract.)

(Signed) E. GIBSON,
Acting Sub-Secretary.

No. 79. ORDER THEREON, 24th June 1876, No. 1271.

The Governor in Council agrees with the Board of Revenue that attestations of Powers of Attorney by Magistrates do not fall under the Court Fees Act, as Magistrates are not required by law to attest such documents. The order to levy a fee of 1 Rupee on such attestations was made by Government in their executive capacity, and was so made in accordance with the views of the Government of India, communicated in their Financial letter, dated 29th October 1870, No. 4445, wherein they authorized the levy of a fee in such cases "under executive orders for the service performed," and directed it to be credited as stamp revenue.

G.O., dated 3rd June 1871, No. 743, Judicial Department.

G.O., dated 11th November 1870, No. 1752, Revenue Department.

(True Extract.)

Acting Secretary.

To the Senior Magistrate of Police, Madras.
" Board of Revenue.
" Revenue Department.

Exd. A. S. Rodgers.

N. 2802
Revenue 1876 Depart.

Govt. of {1876} Madras.

JUDICIAL.

To

THE SENIOR MAGISTRATE OF POLICE,
Madras

&c., &c., &c.

Dated June, 24th.

Issued 27

Recd. 1 July 76. Encl.

G.O., 24th June 1876, No. 1271.

JUNE.
Nos. 77—79.

Dis Inc.

Court Fees Act.—The Board of Revenue concurred with that attestations of Powers of Attorney by Magistrates do not fall under the Court Fees Act as Magistrates are not required by law to attest such documents.

Lodge D. No. 1628

12 July 1876

11-7-76