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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue - DEPARTMENT

G.O. No. 738
B.P. No.

Press
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Dated 2-6-1876 196- .

Not to be folded or roughly handled

738

*Proceedings of the Madras Government, Revenue Department,
2nd June 1876.*

No. 28. Read the following Endorsement of the Chief Secretary to Government, Fort St. George, dated 15th May 1876, No. 750 :—

Read the following letter from the Hon. P. MACFADYEN, Chairman, Chamber of Commerce, to the Hon. W. HUDLESTON, Chief Secretary to Government, Ootacamund, dated Madras, 12th May 1876.

I HAVE the honor, by desire of this Chamber, to hand you herewith a Memorial from the Madras Chamber of Commerce, the North Wynaad, and the South Wynaad Planters' Associations, to the Viceroy and Governor-General in Council, praying for the reconsideration of the existing schedule of the Stamp Act that regulates the duty on Crop Agreements, and two spare copies of that Memorial.

2. I am to ask you to solicit His Grace the Governor in Council to permit the Memorial to be forwarded to the Government of India.

ENCLOSURE No. 1.

Petition from the Chairman, Chamber of Commerce, Madras, the Chairman, Planters' Association, North Wynaad, and the Chairman, Planters' Association, South Wynaad, to His Excellency the Viceroy and Governor-General in Council, Fort William, dated 11th May 1876.

MY LORD,—In 1872 the Madras Chamber of Commerce had the honor to address the Madras Government with reference to the burden imposed on the coffee industry of this Presidency by a recent decision of the High Court of Madras, such decision being to the effect that a simple form of agreement in ordinary use by the planter engages to deliver his crop to the agent for sale on his account in return of advances of money to be made to him by the agent for the purpose of cultivating his estate, is, in effect, a mortgage, and requires to be stamped accordingly, and also to be registered under the Registration Act to give it validity.

The Madras Government referred the subject to the Board of Revenue, who minuted thereon that, in their opinion, the relief prayed for should be given, and that they regarded the present state of the law as an unforeseen consequence of the rigid definition of the word mortgage included in Act XVIII of 1869.

The Madras Government then referred the papers, through the Legislative Department, for the consideration of the Supreme Government.

The Supreme Government replied that they could not sanction the proposal of the local Government, and that the duty prescribed by law must continue to be levied.

The Proceedings above referred to will be found in the following papers :—Proceedings of Madras Board of Revenue, dated 26th March 1872, No. 495 ; Order of Madras Government, 13th June 1872, No. 935 ; and letter from Officiating Under-Secretary to the Government of India, Financial Department, to Chief Secretary to Government, Fort St. George, 16th November 1872, No. 3,976.

The decision in question is felt by the planting community as not only the confirmation of a heavy tax on an industry which, while it undoubtedly confers much good on the country, has already many and great disadvantages to contend against, but as the institution of a system which will, when its working comes to be practically tested, operate most injuriously in checking that flow of cheap English capital into the country which the planting interests so much require ; and, as the official representatives of the planting community, we venture to bring the entire subject once more before the attention of Government, in the hope that a fuller exposition of the grievances complained of and the relief sought may induce the Government to take a different view of the question.

We would first refer to the circumstances which attended the change of the duty or tax affecting the agreements in question.

*Proceedings of the Madras Government, Revenue Department,
2nd June 1876.*

Under the old Stamp Act (X of 1862), Schedule A, Section 4, such agreements were made liable to stamp on an ascending scale, not exceeding Rupee 1. This Act provided various rates of stamp-duty for various forms of agreements; and it was generally felt that it would be more convenient to have a uniform rate of duty for all "Agreements" of ordinary occurrence and possessing no special or exceptional features. This partly led to the introduction of the present Stamp Act (No. XVIII of 1869), which was referred to a Special Committee for report, who stated that, "for the varying duties now chargeable on different forms of agreement, we have substituted the uniform duty of 8 Annas." The Committee's report deals in a full manner with all changes intended to be effected by the amended Act; but there is nowhere mention made of any intention to transfer a well-known and important class of documents, "agreements to cultivate," provided for by the old Act, into a class of an entirely different nature, subject to stamp-duty at a very high rate.

The decision of the Madras High Court amounts to this—that certain coffee berries, which, at the time of entering into such an agreement as we are discussing, are not in existence, and may never, in fact, be produced, are "property," and that a written promise to deliver them (should they come into existence) for the repayment of advances required for the cultivation of the trees which are to produce them is a "mortgage."

We would remark on this point that all these agreements are contingent upon certain eventualities. They are very generally entered into before any definite estimate can be formed of the amount of crop which will be gathered. It is a common thing to find such estimates considerably affected by unfavorable seasons, and the advances reduced proportionately when such reduction can be carried into effect without injury to the prospects of the estate. Yet it is ruled that these uncertain arrangements, dependent upon circumstances of weather, or from disease, or otherwise, to the coffee tree, are to be dealt with on the same principle as a mortgage of house or other property actually in existence, the value of which can be definitely and accurately computed; and that a stamp is to be paid on a gross value of advances which may be only partially required or given, exactly in the same manner as where a sum of money is paid down on execution of a mortgage. We venture to think that the cases are so very dissimilar that a similar corresponding fiscal legislation cannot justly be applied to each.

It may be well to explain how these agreements are entered into. It frequently happens that a planter, after having made his estate, finds himself, before the estate comes into such full bearing as to cover working expenses, in want of money to provide for some months' cultivation. In a few months more he expects to have a crop sufficient to cover all his requirements, but temporarily wants an advance of a few months' expenditure. In some cases he applies to a local agent, in others to his agents in London, and has no uncertainty in getting the money he wants on undertaking to cover the advance by coffee when his crop has been picked. But if such a letter of agreement, or more definite form of agreement as passes between the parties, is to be stamped as a mortgage prior to execution, and to be formally registered, the expense will be totally disproportionate to the temporary character of the transaction, and the delay (where delay in getting funds may mean serious mischief) of getting documents registered in the Council Registration Offices, is too well known to leave a doubt that this formality must be a great hindrance and inconvenience, especially so, where the advancing party resides in England, and all the formalities of procuring Powers of Attorney &c., to register on his behalf must be complied with. We have no hesitation in saying that in many cases the business will be done without any formal agreement, rather than comply with such obstructive conditions, and it must be obvious that any imperfection in security simply means more costly terms to the planter.

We, therefore, venture to appeal to your Excellency in Council in the hope that the decision of Government may be reconsidered, and that the existing Schedule of the Stamp Act may be amended by the insertion of provisions for agreement, to extend over one or more years, to cultivate and deliver produce in consideration of advances for the purpose of cultivation. We would submit that, in the generally of cases, a simple agreement without any of the characteristic

*Proceedings of the adras Government, Revenue Department,
2nd June 1876.*

features of what is ordinarily known as a mortgage of real property is all that takes place between the parties; and that a simple 8-Anna agreement stamp, without further formality, would be a sufficient tax for Government to levy on a transaction out of which the country derives so many indirect advantages.

In the case of agreements having a more permanent character, where, for instance, more than one season's crop may be pledged to secure the advances required by the estate, and conditions are expressed which may contain some elements of a mortgage, such, for example, as where in case of the death of the planter, or his misconduct, or careless cultivation of the estate, a right is reserved to the advancing party of placing his nominee in charge of the estate, until the crop has been picked, we would submit that the occasions when such rights or powers would be exercised are exceedingly rare, and venture to think that it would be sufficient were Government to order that such powers should not be exercised until a further and supplementary stamp had been affixed to the document, which further stamp might be calculated by the provisions regulating the stamps on mortgages.

We would further submit, in regard to the decision as to the registration of these agreements, that arrangements of such a temporary character as most of these transactions are can hardly be classed with the transactions to provide for which the Registration Act was framed; and we venture to assure your Excellency in Council that the delay and expense which must attend such registration will inevitably operate to hinder and discourage the development of an industry which undoubtedly has done vast good to this Presidency, and has considerable claims for consideration at the hands of Government.

Perhaps it may not be out of place to mention that exclusive of coffee property owned and managed by Natives, there are in this Presidency some 430 estates owned by Europeans, comprising some 150,000 acres on which, at the very least, 2½ millions sterling must have been expended. These estates and a well-paid staff of European and Native servants, who bring the indirect employment given to the large bodies of coolies, and the many thousands of women and children who, during the four months of the curing and shipping season, are employed in the curing and garbling works on the Coast and elsewhere, the energy and perseverance which have produced such a result out of the wild jungles of the western ghats, in face of hardships and obstacles of all kinds, deserve some recognition from a Government to which those jungles were formerly practically valueless; and it is in this belief that we respectfully appeal against the recent decision of your Government, and express our earnest hope that your Excellency in Council will be pleased to order a reconsideration of the subject and such an alteration of the existing law as that indicated above.

TRANSFERRED to the Revenue Department for disposal.

(Signed) W. HUDLESTON,
Chief Secretary.

No. 29. ORDER THEREON, 2nd June 1876, No. 738.

Separate Revenue, No. 5.

Stamp.

ORDERED that the Memorial be forwarded to the Government of India.

(True Extract.)

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

To the Chairman of the Chamber of Commerce.

Exd. F. R. Bantleman.

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FROM

THE CHAIRMAN CHAMBER OF COMMERCE,
Madras.

THE CHAIRMAN PLANTERS' ASSOCIATION,
North Wynaad.

and

THE CHAIRMAN PLANTERS' ASSOCIATION,
South Wynaad.

TO

HIS EXCELLENCY,
THE VICEROY AND GOVERNOR GENERAL IN COUNCIL,
Fort William.

MY LORD,

In 1872, the Madras Chamber of Commerce has the honor to address the Madras Government with reference to the burden imposed on the Coffee industry of this Presidency by a recent decision of the High Court of Madras, such decision being to the effect that a simple form of document in ordinary use between planters and their agents, under which the planter engages to deliver his crop to the agent for sale on his account, in return of advances of money to be made to him by the agent for the purpose of cultivating his Estate, is in effect a mortgage, and requires to be stamped accordingly, and also to be registered under the Registration Act to give it validity.

The Madras Government referred the subject to the Board of Revenue, who, minuted thereon that in their opinion the relief prayed for should be given, and that they regarded the present state of the law as an unforeseen consequence of the rigid definition of the word mortgage included in Act XVIII of 1869.

The Madras Government then referred the papers through the Legislative Department for the consideration of the Supreme Government.

The Supreme Government replied that they could not sanction the proposal of the Local Government, and that the duty prescribed by law must continue to be levied.

The Proceedings above referred to will be found in the following papers:—Proceedings of Madras Board of Revenue, dated 26th March 1872, No. 495. Order of Madras Government, 13th June 1872, No. 935 and letter from Officiating Under Secretary to the Government of India, Financial Department, to Chief Secretary to Government, Fort Saint George, 10th November 1872, No. 3,976.

The decision in question is felt by the planting community as not only the confirmation of a heavy tax on an industry which, while it undoubtedly confers much good on the country, has already many and great disadvantages to contend against, but as the institution of a system which will, when its working comes to be practically tested, operate most injuriously in checking that flow of cheap English capital into the country which the planting interests

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REVENUE
THE CHAIRMAN OF THE CHAMBER
OF COMMERCE
JUN
NOV 28 1872
Order from the Madras Chamber of Commerce
to the Government of India—
Ordering to forward to Government of India—
request for the consideration of the existing
provisions of the Stamp Act that requires the duty
on Copy Agreement.

so much require; and, as the official representatives of the planting community, we venture to bring the entire subject once more before the attention of Government, in the hope that a fuller exposition of the grievances complained of, and the relief sought, may induce the Government to take a different view of the question.

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Under the old Stamp Act (X of 1832) Schedule A. Sec. 4, such agreements were made liable to stamp on an ascending scale, not exceeding Rupee 1. This Act provided various rates of stamp-duty for various forms of agreements; and it was generally felt that it would be more convenient to have a uniform rate of duty for all "Agreements" of ordinary occurrence, and possessing no special or exceptional features. This partly led to the introduction of the present Stamp Act, (No. XVIII of 1869), which was referred to a Special Committee for report, who stated that, "for the varying duties now chargeable on different forms of agreement, we have substituted the uniform duty of 8 annas." The Committee's report deals in a full manner with all changes intended to be effected by the amended Act; but there is nowhere mention made of any intention to transfer a well-known and important class of documents, "agreements to cultivate," provided for by the old Act, into a class of an entirely different nature, subject to Stamp-duty at a very high rate.

The decision of the Madras High Court amounts to this—that certain Coffee berries which at the time of entering into such an agreement as we are discussing, are not in existence, and may never in fact be produced—are "property," and that a written promise to deliver them (should they come into existence) for the repayment of advances required for the cultivation of the trees which are to produce them is a "mortgage."

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It may be well to explain how these agreements are entered into. It frequently happens that a planter after having made his estate, finds himself, before the estate comes into such full bearing as to cover working expenses, in want of money to provide for some months' cultivation. In a few months more he expects to have a crop sufficient to cover all his requirements, but temporarily wants an advance of a few months' expenditure. In some cases he applies to a local agent, in others to his agents in London, and has no difficulty in getting the money he wants on undertaking to cover the advance by Coffee when his crop has been picked. But if such a letter of agreement, or more definite form of agreement, as passes between the parties, is to be stamped as a mortgage, prior to execution, and to be formally registered, the expense will be totally disproportionate to the temporary character of the transaction, and the delay (where delay in getting funds may mean serious mischief) of getting documents registered in the Mofussil registration offices, is too well known to leave a doubt, that this formality must be a great hindrance and inconvenience: especially so, where the advancing party resides in England and all the formalities of procuring powers of attorney, &c., to register on his behalf must be complied with. We have no hesitation in saying that in many cases, the business will be done without any formal agreement, rather than comply with such obstructive conditions, and it must be obvious that any imperfection in security, simply means more costly terms to the Planter.

We therefore venture to appeal to Your Excellency in Council in the hope that the decision of Government may be re-considered, and that the existing Schedule of the Stamp Act may be amended by the insertion of provisions for agreement, to extend over one or more years, to cultivate and deliver produce in consideration of advances for the purpose of culti-

vation. We would submit that in the generality of cases, a simple agreement without any of the characteristic features of what is ordinarily known as a mortgage of real property, is all that takes place between the parties; and that a simple eight annas agreement stamp, without further formality, would be a sufficient tax for Government to levy on a transaction out of which the country derives so many indirect advantages.

In the case of Agreements having a more permanent character,—where, for instance, more than one season's crop may be pledged to secure the advances required by the estate,—and conditions are expressed which may contain some elements of a mortgage,—such for example as where in case of the death of the Planter, or his misconduct, or careless cultivation of the estate, a right is reserved to the advancing party of placing his nominee in charge of the estate, until the crop has been picked—we would submit that the occasions when such rights or powers would be exercised are exceedingly rare, and venture to think that it would be sufficient were Government to order that such powers should not be exercised until a further and supplementary stamp had been affixed to the document—which further stamp might be calculated by the provisions regulating the stamps on mortgages.

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Perhaps it may not be out of place to mention that exclusive of Coffee property owned and managed by natives, there are in this Presidency some 430 estates owned by Europeans, comprising some 150,000 acres on which at the very least 2½ millions sterling must have been expended. These estates find a well paid employment for over 40,000 regular labourers, besides the indirect employment given to the large bodies of cartmen, boatmen and others, who bring supplies to the estates and remove the Coffee to the Coast, and the many thousands of women and children who, during the four months of the curing and shipping season, are employed in the curing and garbling works on the Coast and elsewhere. The energy and perseverance which have produced such a result out of the wild jungles of the Western Ghats, in face of hardships and obstacles of all kinds, deserve some recognition from a Government to which those jungles were formerly practically valueless, and it is in this belief, that we respectfully appeal against the recent decision of your Government, and express our earnest hope that your Excellency in Council will be pleased to order a re-consideration of the subject, and such an alteration of the existing law, as that indicated above.

We have the honor to remain, My Lord,

Your Lordship's most obedient servants,

for the Madras Chamber of Commerce.

P. A. G. A. G.

for the N. Wynaad Planters' Association.

McChawson

for the S. Wynaad Planters' Association.

W. H. Thompson

11 May 1876.

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FROM

THE CHAIRMAN CHAMBER OF COMMERCE,

Madras.

THE CHAIRMAN PLANTERS' ASSOCIATION,

North Wynaad.

and

THE CHAIRMAN PLANTERS' ASSOCIATION,

South Wynaad.

TO

HIS EXCELLENCY,

THE VICEROY AND GOVERNOR GENERAL IN COUNCIL,

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Sp 2 January 76 No 778
1 Feb 1949/76

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Signed /

P. Macfadyen

for the Madras Chamber of Commerce.

Signed /

H. C. Dawson

for the N. Wynad Planters' Association.

Signed /

J. S. Thompson

R. S. B.

for the S. Wynad Planters' Association.

11th May 1876.

FROM

THE CHAIRMAN CHAMBER OF COMMERCE,
Madras.

THE CHAIRMAN PLANTERS' ASSOCIATION,
North Wynaad.

and

THE CHAIRMAN PLANTERS' ASSOCIATION,
South Wynaad.

TO

HIS EXCELLENCY,
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so much require; and, as the official representatives of the planting community, we venture to bring the entire subject once more before the attention of Government, in the hope that a fuller exposition of the grievances complained of, and the relief sought, may induce the Government to take a different view of the question.

We would first refer to the circumstances which attended the change of the duty or tax affecting the agreements in question.

Under the old Stamp Act (X of 1862) Schedule A. Sec. 4, such agreements were made liable to stamp on an ascending scale, not exceeding Rupees 1. This Act provided various rates of stamp-duty for various forms of agreements; and it was generally felt that it would be more convenient to have a uniform rate of duty for all "Agreements" of ordinary occurrence, and possessing no special or exceptional features. This partly led to the introduction of the present Stamp Act, (No. XVIII of 1869), which was referred to a Special Committee for report, who stated that, "for the varying duties now chargeable on different forms of agreement, we have substituted the uniform duty of 8 annas." The Committee's report deals in a full manner with all changes intended to be effected by the amended Act; but there is nowhere mention made of any intention to transfer a well-known and important class of documents, "agreements to cultivate," provided for by the old Act, into a class of an entirely different nature, subject to Stamp-duty at a very high rate.

The decision of the Madras High Court amounts to this—that certain Coffee berries which at the time of entering into such an agreement as we are discussing, are not in existence, and may never in fact be produced—are "property," and that a written promise to deliver them (should they come into existence) for the repayment of advances required for the cultivation of the trees which are to produce them is a "mortgage."

We would remark on this point, that all these agreements are contingent upon certain eventualities. They are very generally entered into before any definite estimate can be formed of the amount of crop which will be gathered. It is a common thing to find such estimates considerably affected by unfavorable seasons, and the advances reduced proportionately when such reduction can be carried into effect without injury to the prospects of the estate. Yet it is ruled that these uncertain arrangements, dependent upon circumstances of weather, or injury from disease, or otherwise, to the Coffee tree, are to be dealt with on the same principle as a mortgage of house or other property actually in existence, the value of which can be definitely and accurately computed; and that a stamp is to be paid on a gross value of advances which may be only partially required or given, exactly in the same manner as where a sum of money is paid down on execution of a mortgage. We venture to think that the cases are so very dissimilar, that a similar corresponding fiscal legislation cannot justly be applied to each.

It may be well to explain how these agreements are entered into. It frequently happens that a planter after having made his estate, finds himself, before the estate comes into such full bearing as to cover working expenses, in want of money to provide for some months' cultivation. In a few months more he expects to have a crop sufficient to cover all his requirements, but temporarily wants an advance of a few months' expenditure. In some cases he applies to a local agent, in others to his agents in London, and has no difficulty in getting the money he wants on undertaking to cover the advance by Coffee when his crop has been picked. But if such a letter of agreement, or more definite form of agreement, as passes between the parties, is to be stamped as a mortgage, prior to execution, and to be formally registered, the expense will be totally disproportionate to the temporary character of the transaction, and the delay (where delay in getting funds may mean serious mischief) of getting documents registered in the Mofussil registration offices, is too well known to leave a doubt, that this formality must be a great hindrance and inconvenience: especially so, where the advancing party resides in England and all the formalities of procuring powers of attorney, &c., to register on his behalf must be complied with. We have no hesitation in saying that in many cases, the business will be done without any formal agreement, rather than comply with such obstructive conditions, and it must be obvious that any imperfection in security, simply means more costly terms to the Planter.

We therefore venture to appeal to Your Excellency in Council in the hope that the decision of Government may be re-considered, and that the existing Schedule of the Stamp Act may be amended by the insertion of provisions for agreement, to extend over one or more years, to cultivate and deliver produce in consideration of advances for the purpose of culti-

vation. We would submit that in the generality of cases, a simple agreement without any of the characteristic features of what is ordinarily known as a mortgage of real property, is all that takes place between the parties; and that a simple eight annas agreement stamp, without further formality, would be a sufficient tax for Government to levy on a transaction out of which the country derives so many indirect advantages.

In the case of Agreements having a more permanent character,—where, for instance, more than one season's crop may be pledged to secure the advances required by the estate,—and conditions are expressed which may contain some elements of a mortgage,—such for example as where in case of the death of the Planter, or his misconduct, or careless cultivation of the estate, a right is reserved to the advancing party of placing his nominee in charge of the estate, until the crop has been picked—we would submit that the occasions when such rights or powers would be exercised are exceedingly rare, and venture to think that it would be sufficient were Government to order that such powers should not be exercised until a further and supplementary stamp had been affixed to the document—which further stamp might be calculated by the provisions regulating the stamps on mortgages.

We would further submit in regard to the decision as to the registration of these agreements, that arrangements of such a temporary character as most of these transactions are can hardly be classed with the transactions to provide for which the Registration Act was framed; and we venture to assure your Excellency in Council that the delay and expense which must attend such registration will inevitably operate to hinder and discourage the development of an industry, which undoubtedly has done vast good to this Presidency, and has considerable claims for consideration at the hands of Government.

Perhaps it may not be out of place to mention that exclusive of Coffee property owned and managed by natives, there are in this Presidency some 430 estates owned by Europeans, comprising some 150,000 acres on which at the very least 2½ millions sterling must have been expended. These estates find a well paid employment for over 40,000 regular labourers, besides the indirect employment given to the large bodies of cartmen, boatmen and others, who bring supplies to the estates and remove the Coffee to the Coast, and the many thousands of women and children who, during the four months of the curing and shipping season, are employed in the curing and garbling works on the Coast and elsewhere. The energy and perseverance which have produced such a result out of the wild jungles of the Western Ghats, in face of hardships and obstacles of all kinds, deserve some recognition from a Government to which those jungles were formerly practically valueless, and it is in this belief, that we respectfully appeal against the recent decision of your Government, and express our earnest hope that your Excellency in Council will be pleased to order a re-consideration of the subject, and such an alteration of the existing law, as that indicated above.

We have the honor to remain, My Lord,

Your Lordship's most obedient servants,

Signed/ *P. Macfarlane*
for the Madras Chamber of Commerce.

Signed/ *H. C. Dawson*
for the N. Wynnad Planters' Association.

Signed/ *E. S. Thompson*
for the S. Wynnad Planters' Association.

11th May 1876

738/9
The Chamber of Commerce.

Madras, 12th May 1876

From

The Honble P. Krishna Rao,

Chairman, Chamber of Commerce

To

The Honble W. S. Madleston,

Chief Secretary to Government,

Potacamund

Sir,

I have the honor by desire of
this Chamber to hand you herewith a
Memorial from the Madras Chamber of
Commerce, the North Wynnad, and the
South Wynnad Planters' Associations, to
the Viceroy and Governor General in
Council, praying for the re-consideration
of the existing Schedule of the Stamp
Act that regulates the duty on Crop
Agreements; and two spare copies of that
Memorial.

Recd 1949/76
14/7/84

