M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 229 Press ~~Mis.~~

459-460

Dated 29-1- 18 61.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 29th January 1861.

No. 459. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras, to J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department, dated Madras, 17th January 1861, No. 38:—

SIR,

Dated 10th January 1861, No. 60, Revenue Department.

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, and its enclosure.

2. I submitted same for the consideration of the Advocate General, of whose opinion I now send you a copy.

3. I likewise return the enclosure above noted.

COPY OPINION.

1. This is the first Document of the kind I have ever seen, and I was not a little at a loss what to make of it. It is not an agreement with any person named or referred to by implication; nor is any consideration whatever mentioned or implied, and I much doubt whether any Court could construe it as an agreement, or whether any amount of Stamps could give it any value beyond that of the paper upon which it is written.

2. I understand, however, that it has sometimes been the practice in the Military Secretary's Office, when that Officer receives property belonging to a deceased Officer, who has died intestate, to deliver over such property to the widow or next of kin on such party's signing a paper of this description. If I am correctly informed on this point, the sooner this practice is discontinued the better. The duty of the Military Secretary is to retain such property, until there be an Executor or duly constituted legal representative by virtue of Letters of Administration; and, if he parts with it to any person not clothed with such a title, his so dealing with the property makes him an Executor *de son tort*, and liable to the demands of creditors. In the present case I understand that Mrs. Carpenter has actually left India and gone to England, and, as is believed, without either taking out Administration or appointing any Attornies. Probably in this particular case there may be no great danger of claims being left unsatisfied, but it serves to show the risk of the practice I have referred to.

3. Putting the most favorable construction on the document in question, it might be suggested to be meant either as indemnity to the Military Secretary, in his public capacity, to save him harmless from the consequences of acting illegally, as Executor *de son tort*, by giving up the assets of the Estate to an unauthorized person; or else, as an agreement with the Military Secretary, in his public capacity, to take out Administration and pay all just claims. I do not think it could be enforced in either of these aspects; but, supposing it to hold good in either of them, it would then clearly come under the exemption which declares that Instruments to which any Public Officer, in a public capacity, is a party, do not require Stamps.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

14*th January* 1861.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 460. ORDER THEREON, 29th January 1861, No. 229.

1. With reference to this opinion of the Advocate General the Government resolve to recall that gentleman's attention to his letter of the 23rd November 1860, addressed to the Military Secretary to Government. It appears to Government that the opinion given in that letter would include the present case, as respects liability to Stamp.

2. In passing orders in the Revenue Department on the former letter, it was remarked that the Military Secretary is, under Section 63 of the Mutiny Act, an Administrator General, and that "Deeds, instruments and writings" executed by him in that capacity, came within the note to the general exemption at the end of Schedule A of the new Stamp Act.

(Signed) J. D. BOURDILLON,
Secretary to Government.

Secretary

I Eliza Margaret Carpenter widow of the late Major General Thomas David Carpenter of the Madras Infantry ——— do hereby engage myself to be responsible for all demands against the Estate of the said Major General Thomas David Carpenter, Madras Infantry ——— to the extent of his Estate and to take out Letters of Administration if necessary. and I do further bind myself that in the event of my leaving this Country before the final adjustment of the Estate I will appoint some responsible party or parties residing in India as my Attornies who may be willing to adjust any claims against the deceased.

Signed in our presence,

E M Carpenter

Witnesses.

F. C. Mackenzie

Charles Waymouth Capt.
17th Lancers

11th December 1860

997]

Rev Dept

No 222

No. 329.

Proceedings of the Madras Government

Under date the 29th January 1861.

Read the following letter from the Govt Solicitor Madras

Forwards with reference to Proc:s of Govt 10th January 1861 No 60 Revenue Dept copy of Advocate Generals opinion on the Document signed by Mrs Carpenter relative to the Estate of the late Major General Carpenter deceased and advising that such document is exempt from stamp duty

Rec:d enter 17th January 61 No 381

With reference to this opinion of the Advocate General the Government resolve to recall that gentlemans attention to his letter of the 23rd Nov:r 1860, addressed to the Mill:y Secretary to Government. It appears to Govt that the opinion given in that letter would include the present case, as respects liability to Stamp.

2 In passing orders in the Revenue Department on the former letter, it was remarked that the Military

Secretary

Secretary is, under Sec. 63 of the Inland Revenue Act, an Administrator General, and that "Deeds, instruments and writings" executed by him in that capacity, came within the note to the General Exemption at the end of Schedule A of the new Stamp Act.

1 Copy to Hon. Advocate General Desp. 9
7 Copies - Military Department
2 " Government Solicitors
13 " Boards of Revenue

R- 2 Jany/61 № 385-386.
R- 10 " " — 116-117.

Revenue 1861 Despatch
Pro: of Govt for January.

№229.

Pro: of the Madras Govt
D/29: January/61.

~~From Advocate Genl D/11 Feb/61~~
Rec: 378.

Advocate Genl Opinion
on the Documents signed
& Mrs Carpenter

Letter from the Govt
Solicitor Madras subs-
mitting the Advocate
Generals opinion respecting
the stamping of the Do:
cument executed by Mrs
Carpenter Communicated
to Military Departt

№459 & 460-

10th January 1861 No 116-117

J.J.

Rev: 1861 Departt
Pros: of Govt for January
No 164
From
The Govr to Govt Madras
To The Offg Secy to Govt
Revenue Departt

Date 17
Rec'd 18 January

No 38.

2 Enclosures

No 4

Forwards with reference to Proceedings of Government 10th January 1861 No 60. Revenue Department Copy advocate General's Opinion on the Document signed by Mrs Carpenter Relative to the Estate of the late Major General Carpenter deceased and advising that such document is exempt from Stamp duty. —

No 229 29th January.

Ordered to be communicated to the Military Department with reference to the order in that Department dated 24th December 1860.

No 229

2 It appears from the Advocate Generals opinion that the document executed by Mrs Carpenter does not required Stamp, but that it is one of no legal validity

Fort St. Geo.
29 Jany 1861

7 Copies. Military Departt Disp. 30
1 " Government Solicitor
13 — Bd of Rev 31

No 459 —

6-2: Rs 87+