M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 194	**Press** ~~**Mis.**~~
385 386	
Dated 26-1- 18 61.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 26th January 1861.

No. 385. Read the following Proceedings of the Madras Government in the Military (Estate) Department, dated 29th November 1860 : —

Read the following letter from THOMAS SYDNEY SMYTH, Esq., Advocate General, to Colonel H. MARSHALL, Secretary to Government, Military Department, Fort Saint George, dated 23rd November 1860.

SIR,

In reply to your letter of the 22nd instant, I have the honor to state, that, in my opinion, the words " without payment of any duty" in Section 63 of the 20th and 21st Vic. Cap., 66, refer merely to the payment of duty upon taking out probate or letters of administration, and were not intended to exempt from the operation of Act XXXVI of 1860, or any similar Act, such documents as those specified in the margin of your letter.

Referred to the Revenue Department with advertence to Section 34 of Act No. XXXVI of 1860, and to " exemption" under No. 24, and " General Exemption and rule," and " Note" of Schedule A.

No. 386. ORDER THEREON, 26th January 1861, No. 194.

The " *Note*" to the " General Exemption and rule" at the end of Schedule A of the Stamp Act, applies to the documents referred to in the foregoing proceedings. The " Military Secretary" though a " Public Officer" acting " in a public capacity" is really, under Section 63 of the Mutiny Act an " Administrator General," and therefore " Deeds, Instruments and Writing's" executed by him are not entitled to exemption, but must bear the appropriate stamp.

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

Deceased for the Payment of any Duty
which may be claimed in respect of

Military Estate Depart.

To

The Advocate General

Sir,

With reference to the Act
N.o XXXVI of 1860, I have the honor to
request that I may be favored forwarded
with your opinion, whether under
section LXIII of the
Mutiny Act, the
documents* as per
per margin, should
be stamped in terms of the Indian
Legislative Act of 1860, or exempted
from "Payment of any Duty" under
the Act of Parliament.

/Signed/ H. M.
21

* The latest copy received in this Department is forwarded for easy reference to be returned.

* Affidavits or declarations.
Engagements
Acquittances
Receipted Bills
Agreements
Obligations.

X.o 81.

deceased for the Payment of any Duty
which may be claimed in respect of

Rec.d 29/8/60.

Mem.

The Military Secretary to Govt. applied on the 22 ultimo to the Advocate General for his opinion on a matter connected with the Stamp Act. XXXVI of 1860.

The question was whether under sec LXIII of the Auctions Act, documents such as Affidavits or declarations, Engagements. Acquittances. Receipts Bills. Agreements. Obligations were chargeable with duty or should be exempt from duty or should be stamped in accordance with the Indian Law.

Sec. LXIII of the Act in question (20 & 21 Vict. Cap 66.) runs as follows:- "All such "Regimental debts shall and may be paid "without Probate of any will being obtained "or any Letters of Administration or any "Confirmation of Testament or Letters Testa- "mentary or Datum being taken out by any "Person, and the Surplus only of such Arrears "of Pay and Allowances, Prize or Bounty "Money, Equipage, Goods and Chattels, and "other Effects to be collected and received as "aforesaid, or the Proceeds thereof, shall "be deemed the Personal Estate of the "Deceased for the Payment of any Debts "which may be claimed in respect of

"the same; and it shall be lawful for
"the Military Secretary aforesaid
"to order and direct the Payment or
"Distribution of any such Surplus,
"to any amount not exceeding One
"thousand Company's Rupees, without
"any Probate or Letters of Administra-
"tion or Confirmation of Testament
"or Letters Testamentary or Dative,
"or Payment of any Duty; and it
"shall also be lawful for any Pay-
"master or other Person to issue any
"sum, not exceeding the value of One
"Thousand Company's Rupees, which
"may be due to any deceased Officer
"or Soldier, unto the Widow or relative
"of any Officer or Soldier deceased,
"or unto the Representative or Repre-
"sentatives of any such Officer's Widow
"or Relative in India, in like manner,
"without any Probate or Letters of Ad-
"ministration or Confirmation of Tes-
"tament or Letters Testamentary
"or Dative or Payment of any Duty,
"the same to be paid to the person who
"shall be notified by the said Military
"Secretary aforesaid as being entitled
"thereto &c &c."

The Advocate General replied "that the words "without payment of

to the Payment of Duty upon taking out Probate or Letters of Administration, and were not intended to exempt from the operation of Act XXXVI of 1860, or any similar Act, such documents as those specified by the Military Secretary.

That is, the Advocate General simply answered the question just put to him, but did not give any opinion as to whether the documents specified would or would not be exempt under Act XXXVI of 1860.

The papers are referred to the Revenue Dept with reference to Sec. XXXIX of the Stamp Act: to "Exemption" under No. 24; "General Exemption" Rule and "Note" to Schedule A.

Sec XXXIX forbids the receipt or attestation of "an affidavit not made for the immediate purpose of being filed, read, or used in any Court of Law" without the prescribed Stamp.

"Exemption" under No. 24. Schedule A. q.v. does not seem to have much to do with the question.

The "General Exemption and Rule," however, at the end of the same Schedule, states that "Deeds, Instru-

"Govt, or any Board, Commissioners,
"Court or Public Officer may, in a
"Public Capacity, be a party, do not
"require Stamps."

Orders are requested whether the Documents in question shd be exempt or not —

GJW

Note. The Military Secy Govt a "public Officer" acting "in a public capacity" is really an Administrator Genl and I apprehend comes within the Scope of the "Note" & the General Exemptions at foot of page 12 of the Enclosed Copy of the Stamp Act. If the new is right — Stamps are Necessary in the Cases referred to.

J. D. L.

C12 Jany/1861

Revenue Depart.

No. 194.

Proceedings of the Madras Government
Under date the 26th January 1861

Read the following
Proceedings of the Madras Govert
in the Military Department.

Referring a letter from the Advocate General on certain points bearing on the Stamp Act XXXVI of 1860.

(Herewith 29 Recd 60 Nos)

The "Note" to the "General Exemption and rule" at the end of Schedule A of the Stamp Act, applies to the documents referred to in the foregoing Proceedings — The "Military Secretary" though a "Public Officer" acting in a public Capacity" is really, under Section XLIII of the Mutiny Act an "Administrator General," and therefore "Deeds, Instruments and writings" executed by him are not entitled to exemption but must bear the appropriate Stamps

GJW

7 Copies
To the Military Depart. Dispt 28

Revenue 1861 Depart.t
Pro: of Govt. for January.

N.o 194.

Pro: of the Madras Govt.
Dd 26.th January 1861.

~~From Advocate Genl.s 11 July 60~~
N.o 378.

On a letter from the
Advocate General on
certain points bearing
on the Stamp Act ~~XXXVI~~
of 1860.

N.o 385 & 386.

Lieut - Under rules