M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 489-90 Press ~~Mis.~~

468-71

Dated 25th Jebruary 1869.

Not to be folded or roughly handled

Proceedings of the Madras Government Revenue Department,
25th February 1869.

Read the following papers :—

No. 468. From the Sub-Secretary to the Board of Revenue, to the Acting Secretary to Government, Revenue Department, dated 13th February 1869, No. 961.

I AM directed to acknowledge the receipt of Government Order, dated 18th ultimo, No. 144, in which the Board are required to report on the time which will be required to prepare the necessary machinery for bringing the new Stamp Law into operation, and the Rules of Practice to be framed under Section 46 of the Bill; and also the receipt of Government Order, dated 3rd instant, No. 292, requiring them to report their opinion of the Bill.

2 The Stamps required under the Bill are Adhesive and Impressed.

Adhesive Stamps.

Of the former, Schedule V. prescribes seven denominations, while Section I. requires the use of nine; the denominations which appear in the latter, but not in the former Schedule being 3 Annas and 9 Annas, and 7½ Rupees, while one, 2 Annas, is in the former, but not in the latter.

3. At present four kinds of Adhesive Stamps are in use. The stock of each description now in the possession of the Superintendent of Stamps, is shown below. If these Stamps may be used indifferently for all the purpose of Schedule I., and several Stamps may be used to make up the full duty, there will be a sufficiency for the commencement of operations under the new law. If, however, the Supreme Government contemplate the use of one particular kind of Stamp, the value only varying, a supply must be procured from England before the new Act can come into force:—

	Foreign Bills.	Transfers.	Receipts.	Customs.
	No.	No.	No.	No.
1 Anna	.....	5,280	5,33,280	1,38,240
2 Do.	2,07,367	5,046	.....	.....
4 Do.	3,89,040	2,112	.....	.....
8 Do.	1,93,178	2,208	.....	.....
12 Do.	13,760	2,536	.....	.....
1¼-Rupee	.....	.....	.....	.....
3¾ Do.	.....	160	.....	....
7½ Do.	.....	3,815	.....	.....

Impressed Stamps.

4. As to Impressed Stamps, the Mint Master reports that the new value dies for the blue and black color impressions under Schedule V. will be ready by the 10th March.

5. It seems to the Board impossible to bring the new Act into operation on the date named by the Supreme Government— namely, the 1st April next. Not only have Stamps to be prepared and distributed over the Presidency, but the Act has to be translated and made public. The new law differs materially from the old one, and time must be allowed for the public to become familiar with its requirements. The Board would name the 1st July as the earliest date at which it should come into operation. It would then be in force for three-quarters of the official year 1869-70.

6. *Rules under Section* 46.—The rules now in force will, with a few trifling alterations, (which have been made in the accompanying draft,) answer every purpose. The Board, however, deprecate the abrogation of Sections 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 48 of Act X. of 1862. These are all penal, and should, therefore, in their judgment, form a part of the substantive law of the land. In the "Statement of Objects and Reasons" attached to the Bill, this point is thus noticed: "In lieu of the existing provisions of the law regarding the sale of Stamps, the

NOTE.—5,000 Foreign Bill Stamps of 8-Anna value have been converted into Petition Stamps by cutting off the words "Foreign Bill". Of the Foreign Bill Stamps, 2,59,073 have the words "Foreign Bills" stamped across their face in green ink. The other three descriptions have their purposes denoted in such a manner that they cannot be altered. There are 18,592 Foreign Bill and Transfer Stamps of 3-Anna value.

Bill proposes to invest the local Governments with the power of framing rules for the regulation of such sale. It is almost impossible to devise a single set of rules suitable to the circumstances of all the provinces of British India, and separate systems, adapted to the provinces subject to each local Government, are better calculated to have successful operation." The Board quite admit that mere rules of procedure for the guidance of the executive in the administration of the law should not be embodied in the law; but there is a wide distinction between rules of this nature and the rules which, if the Sections abovementioned are cancelled, must be framed in lieu of them. These last rules will create offences punishable by fine and imprisonment, and this, the Board submit, is the prerogative of the Legislature, not of the Executive Government. The security of the public requires that the power of declaring what acts shall be deemed offences criminally punishable, should rest with the Legislature alone; and it is obvious that the reason assigned for departing from this safe and constitutional rule in the present instance does not apply, because the Sections in question are equally necessary in every part of India. The Board recommend that these Sections be incorporated in the new Act, or, at least, that they be left as they are, unrepealed. The existing rules briefly give the purport of these Sections, in order that Venders may have, in the rules, a succinct but complete enunciation of all their obligations and liabilities; but if the Sections are rescinded, it will be necessary to transfer these, in their entirety, to the rules, as has been done in the draft.

7. As regards the general provisions of the Bill, the Board beg to make the following remarks:—

Section 3.—The definition of "Collector" will not include the Superintendent of Stamps at Madras, who is now, and for obvious reasons must continue to be, a "Collector" of the Stamp Revenue, within the limits of the Town of Madras. The Board are not sure that they quite understand what is meant by "jurisdiction equivalent to that of a Collector of a District". They would alter the last sentence to "and any Officer whom the local Government may, by Notification in the official Gazette of the Presidency, appoint to be a Collector of Stamp Revenue".

8. The interpretation of "Counterpart" excludes a description of duplicate or Counterpart in common use in this Presidency. Leases are frequently drawn in duplicate, both copies being executed by all the parties, but one being endorsed "Lease," and the other "Counterpart." Such documents apparently would be chargeable either with a duty of one Rupee under Article 23, Schedule 4, or as duplicates under Article 29, Schedule 4, while the less fully executed Counterparts, according to the interpretation and Schedules, pay the same duty as the originals.

Section 5 (*a*).—The words "or printed" should be added after the word "written."

Section 8.—The mere stamping of the words "duty paid" on the seconds and thirds of Bills will be an imperfect precaution.

Section 15, *Clause* 7.—The amount of salary might well be raised. As a matter of fact such Bonds are never required from servants on salaries of 10 Rupees.

Clause 13.—This paragraph requires to be more explicitly drawn. Public officers are required by different enactments—*ex. gr.*, the Registration Act—to grant copies of documents to private individuals for purely private purposes. These are chargeable with duty under Articles 28 and 32, of Schedule A. of Act X. of 1862, and it is presumed that the practice is intended to be continued, and that only copies given for public and official purposes are to be exempted. The exemptions special to Madras, at the end of Articles 33 and 42, Schedule A., Act X. of 1862, should be added.

Section 17.—It is not clear why this Section should not include all the instruments specified in Section 24. The distinction between the Sections is also not apparent.

Section 18.—The Board question the propriety of the change proposed in this Section. It is in accordance with English law; but the circumstances of India are very different. Legal documents are not as universally drawn by legal practitioners in India as in England and a greater ignorance as well difficulty of meeting the requirements of the law prevails in this country. The penalty for *intentionally* executing a deed is a criminal prosecution and the invalidation of the deed. It is only where proof is afforded of the absence of any intention to evade payment of the proper Stamp duty that the law provides a remedy; and such heavy penalties as ten and twenty times the deficient duty are not only excessive where there was no criminal

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25th February 1869.

intent, but defeat the great object of inducing those who have unwittingly infringed the law, to come forward and comply with its requirements, when their error becomes known to them. Considering the circumstances of the country, the Board would charge double the deficient duty, if the document be brought forward within three months of execution, and raise the penalty gradually to a maximum of ten times. This would be a sufficiently heavy penalty to induce caution, and would be preferable to leaving remission of penalty solely to the discretion of the chief Revenue authority. Though the latter should still possess this power, the uncertainty, which necessarily attends its exercise, might operate to deter parties from coming forward.

Section 22.—The wording of this Section is somewhat equivocal. By "such" instrument is evidently meant an instrument sent to the Collector under Section 21, because with those sent under Section 20, he has no discretion, but *must* prosecute. The words "or brought" are, the Board presume, meant to refer to instruments voluntarily brought forward by the parties concerned. It would probably be better to word the Section in some such way as this: "When any instrument "not bearing the proper Stamp, is sent to the Collector under Section 21, or is voluntarily brought "to him by the parties concerned or interested in its due execution, (otherwise than, etc.)

Clause b.—The Board would remove the limit as to time, (the grounds of the remission being restricted by the clause to "urgent necessity or unavoidable accident,") and either include cases coming under Section 18, or vest the Civil Courts with the like power of remission.

Clause c.—The Board would increase the period to three months at least.

Section 25, (*a*). The procedure here seems complicated. The receiver or payee might be simply required to give a duly stamped receipt.

9. With regard to the change of practice introduced by this Chapter, namely, substituting an endorsement by the Collector or Civil Court for the impressment of a stamp on insufficiently stamped instrument, it merits consideration whether the parties interested might not be allowed the option of having the paper stamped, they incurring all expenses and risks consequent on the sending of the instrument to be so stamped. Cases may arise in which the genuineness of the endorsement might be questioned in civil proceedings, and it might be difficult to prove its genuineness. The number of Civil Courts, for instance, is large, and there are necessarily frequent changes among the Officers presiding over them, and a suitor might be put to considerable expense and difficulty in proving the signature of one of them.

CHAPTER IV.

Section 29.—The initials of a Firm might be admissible, and the date should be equally required when a seal or stamp is used. The date, in fact, is the most effectual means of guarding against re-use of a Stamp; but the necessity of affixing it will be an inconvenience to the public.

Section 31.—Here also the initial letters of a Firm might be allowed as well as the use of a seal, as in Section 29.

Section 33.—The Board would add the word "knowingly" before the word "inserts." The penalties attached to the offence seem to the Board extravagantly severe.

CHAPTER V.

Section 36.—The Board consider it inexpedient to make any change in the present law as to adjudication in cases of doubt. The cases in which a doubt really exists are few; and to secure uniformity of principle in rulings, it is very desirable to limit the number of adjudicating Officers. There are twenty Collectors, and the probability is, therefore, that there will be great divergences of opinion in these adjudications. The Board have the great advantage in the solution of difficult questions, that they can always take the advice of the Law Officers of Government. Their experience of these cases is, that very often the doubt is created designedly, instruments being ingeniously drawn so as to bear a lower Stamp than the interest dealt with requires. The permission to have instruments already executed, even on insufficiently stamped paper, adjudicated needs consideration, as it will more or less nullify those parts of the Act which provide for prosecution. A party who draws an instrument on unstamped or insufficiently stamped paper with the intention of evading the duty, has only, when he apprehends discovery, to take the document to the Collector

with five Rupees, and assert a "doubt." He has then to pay the proper duty and the penalty; but the absence "of any intention to evade payment of the proper duty," which must be proved under Section 18, and the "urgent necessity or unavoidable accident" which must be shown under Section 22 (*b*), do not enter into the question, and prosecution is frustrated. The Board do not dispute the desirability of allowing executed instruments to be adjudicated on, but would restrict the privilege to cases where it can be shown that there was some real ground for anticipating a decision.

Section 37.—The Board deprecate the appeal here allowed. It seems to them very inexpedient to allow the time of the highest tribunal in the country to be occupied with such matters, and to cast upon Government and its Law Officers the duty of upholding decisions which are voluntarily sought, and need not be accepted The law does not require parties to resort to the Collector, nor does it compel them to accept his decision. If any appeal is to be allowed, it would be better to let it lie to the local Civil Court, whereby considerable delay will be obviated, and the time of the High Court economised.

10. The law, it is observed, does not specially enable a Collector to declare a document *not* liable to any duty. So that such instruments are excluded from the advantage of adjudication.

Section 39.—The Board consider this a valuable addition; but as Section 38 specially excludes the adjudications of Collectors under Section 36, it is not clear what appeals are referred to in Section 39. It should also be declared whether such appeals, which are practically adjudications, are to be admitted without payment of any fee or deposit for expenses.

CHAPTER VI.

Section 43.—The time allowed, namely, one year, seems to the Board far too great. They would reduce it to three months. It is not desirable to induce parties to keep stamped papers which they no longer require.

Section 45.—The Board consider this objectionable on principle. The penalties provided are ample, and they cannot advocate making it the interest of parties to join in fraud, in the hope of ultimately profiting by the fraud in which they have participated.

Section 46.—The Board have already urged that the Penal Sections of Act X. of 1862 should be embodied in the new Act. The necessity of obtaining the sanction of the Supreme Government to mere administrative rules will prove very inconvenient and embarrassing. The present rules have been in force for six years, and nothing has occurred to indicate the expediency of requiring the sanction of the Supreme Government.

Section 47.—This seems hardly fit subject for legislation.

Section 48.—Schedule 4 should be added. The Board would allow as many stamped papers to be used as the parties concerned see fit, subject to the proviso which forms Section 49. The cost of stamped paper is too trifling to render economy in its use a matter of paramount importance, while the convenience of the public will be materially met by the relaxation proposed. The granting of Certificates is not compulsory under the Act, and will be troublesome. If the restriction be retained, the Board would reduce the limit from 1,000 Rupees to 100. There are many small places of vend scattered over the country, where stamps of such large value as 1,000 Rupees are often not procurable.

Section 49.—This should be made applicable to the whole of Section 48.

Section 50.—This seems scarcely to be matter for legislation.

SCHEDULE I.

I. Bill of Exchange, etc. The words "date or" should be inserted between the words "after" and "sight."

14. The revenue from proxies will be so trifling that the Board would strike them out.

SCHEDULE II.

10. The Board would charge "Counter-parts" at a lower rate, where the originals are proved to have been fully stamped.

11. Comparing this with 4 in Schedule III., it is not clear what "mortgage deeds" are here referred to.

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SCHEDULE III.

NOTE.—There is a clerical error in the column headed "Proper duty." For "five Rupees for *every hundred* Rupees" it should be every *five hundred* Rupees.

2, 3, 4, 5.—All these instruments should, the Board think, be taxed more lightly than conveyances.

8.—Vide remark on Schedule II., 10.

SCHEDULE IV.

Article 3.—Some villages in this Presidency are cultivated on a peculiar tenure, whereby the portions held by each sharer are periodically interchanged. Instruments of such exchanges should be exempted.

5. *Authority to adopt.*—It is very desirable to encourage such authority being given in writing. The Board would, with this view, reduce the Stamp duty to one Rupee. Total exemption would, however, be preferable.

11. *Reconveyance of mortgaged property.*—As Mortgage Deeds of property are subject to an *ad valorem* duty, it would be fairer to make the duty on reconveyance of the mortgaged property a certain proportion—one-fourth or one-eighth of the original *ad valorem* duty.

27. *Appraisements.*—The Board would omit this Article altogether. The receipts will be very trifling.

28. The awards of Village Punchayets under Regulation V. of 1816 should be exempted here, or in Section 15, Article 29. The Board advocate an uniform charge per sheet for copies.

11. The Board beg to forward a letter* from the Acting Superintendent of Stamps, and to call attention to paragraphs 5 and 9. They consider that the conclusions in paragraphs 3, 4, and 8 are correct: that all Wills and copies of Wills are exempt from duty, and that the documents mentioned in paragraph 14 have been advisedly admitted.

* Dated 8th January 1869, No. 30.

...869. Proceedings of the Board of Revenue, dated 13th February 1869, No. 962 :—

Read the following Proceedings of the Madras Government, dated 8th February 1869, No. 326, Revenue Department:—

ABSTRACT.—*General Stamp Act Bill.*—Board of Revenue requested to consider the suggestions made by the Honorable V. Ramiengar on this subject.

THE Board concur in the views expressed by the Acting Registrar General in paragraph 2, Clauses 2 and 3 of paragraph 4, paragraphs 5, 6, 7, 8, 10, 11, 12, 13, 15, and 16, which will be fund embodied in the letter to Government, dated 13th instant, No. 961.

2. They consider that leases of the kind mentioned in paragraph 3 are exempt, and the duty referred to in paragraph 14 is on the entire Schedule.

3. The exemption alluded to in Clause 1 appears in the copy of the Bill received with Government Order, dated 3rd instant, No. 292.

No. 470. ORDER THEREON, 25th February 1869, No. 489.

Separate Revenue, No. 22.
Stamps.

Resolved that the following letter be despatched to the Secretary to the Government of India, Financial Department:—

(Signed) R. A. DALYELL,
Acting Secretary to Government.

Proceedings of the Madras Government, Revenue Department, 25th February 1869.

Ordered that the following letter be despatched.

No. 471. From the Acting Secretary to Government of Fort Saint George, to the Secretary to the Government of India, Financial Department, dated 25th February 1869, No. 490.

Sir,

Separate Revenue, No. 23.
Stamps.

1. With advertence to your letter, dated 31st December 1868, No. 3,749, and to that from the Under Secretary in the Home Department (Legislative), dated 7th December 1868, No. 507, I am directed to forward for submission to the Government of India, two reports of the Board of Revenue, with enclosures, on the amendments desirable in "the Bill for imposing Stamp duties," and stating the period required, to prepare the necessary machinery for bringing the proposed new law into operation, and I am to express the general concurrence of this Government in the views expressed by the Board.

2. His Excellency the Governor General in Council will observe, that it will be inconvenient to introduce the Act before the first July next, and that the existing rules for the sale of Stamps, with a few trifling alterations, will answer every purpose. This Government, however, fully concurs with the Board of Revenue, in considering that the Penal Clauses of the rules should, for the reasons given, find a place in the body of the enactment.

3. The observations of the Board of Revenue, on Section 36 of the bill seem to merit the special consideration of the Government of India, and it is essential for the proper working of the proposed Act in this Presidency, that the definition of a "Collector" should be so modified as to include the Superintendent of Stamps at Madras, and that the documents referred to in the Board's remarks on Clause 13 of Section 15 and Articles 3 and 28 of Schedule IV., should be exempted from taxation.

4. This Government is also of opinion that a reduction in the number of the rates of duty proposed for Bonds and Conveyances, would tend to simplify the enactment, and would at the same time make it more easy of application, by rendering it unnecessary to prepare and distribute so large a number of Stamped papers of different values. It is observed that under the scheme proposed, it will be necessary to manufacture and keep a stock of Stamped papers of upwards of eighty different values, a number which might be very considerably reduced; if the suggestions made on this point in the enclosures of this Government's letter of 9th July 1868, had been adopted.*

* Bonds to be charged an *ad valorem* duty of 8 Annas per hundred up to Rupees 1,000. Five Rupees per Rupees 1,000 or fraction thereof up to Rupees 10,000, and fifty Rupees per Rupees 10,000 or fraction thereof. Conveyances to be charged double the duty levied on bonds, and in the same grades.

Rev. Dept.

Financial 1869 Department.

[ ]

From Government of

Fort St. George.

4894

Dated 25th Feb. } *No. 490.*

R. } *Enclosures.*

6 spare copies.

D. No.

L. No. Progs. { *D.* / *No.*

Nos. 468-471.

Forwarding two reports of the Board of Revenue, with enclosures on the amendments desirable in the Bill for imposing Stamp duties.

From Board dated 5 March 1869
Cor. 779.

Revenue Department

No. 489-

Proceedings of the Madras Government
Under date the 25th. February 1869

Read the following papers

From the Chief Secy to the Board of Revenue Recommending that 1st July be fixed as date for introduction of Revenue Stamps Act and submitting opinion relative to alterations necessary in Stamps Bills —	Here enter 13th February 1869 No. 961
Proceedings of the Board of Revenue Submitting opinion on suggestions of Ag Registrar General of Assurances relative to General Stamps Act Bills	Here enter 13th February 1869 No. 962

Resolved that the following letter be despatched.

To

The Secretary to the Govt. of India
Financial Department

Here enter

11 Copies Letter Bd of Rev dated 25th

Prod. Stamp Act

25th July 1868

Revenue Dept.

87.490.

To

The Secy. to the Government of India

Financial Dept.

Sir,

With reference to your letter dated 31st Dec. 1868 No. 3949, and to that from the Under Secy. in the Home Dept. (Legislative) dated 4th "Dec. 1868 No. 5071 I am directed to forward for submission to the Govr. of India two copies of the Board of Revenue's letter enclosing an amendments desirable in the Bill for preventing stamp duties, and the period required to prepare the necessary machinery for bringing the proposed new law into operation, and I am to express the general concurrence

W. N.

A. A.

of application by rendering it unnecessary to prepare and distribute so large a number of stamped papers of different values. It is observed that under the scheme proposed it will be necessary to manufacture and keep a stock of stamped papers of upwards of eighty different values, a number which might be very considerably reduced; if the suggestions made on this point in the enclosures of this Government's letter of 9th July 1868 had been adopted*

VIN.

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Conveyances to be charged double the duty levied on bonds, and in the same grades.

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Fr. Gonsalvi

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