

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1465	Press
		Mis.
	20.23	
Dated	2-7	1867.

Not to be folded or roughly handled

Read again letters from Government Pleader, dated 21st and 29th May 1867, and recorded in Proceedings, 28th May and 5th June 1867, Nos. 1,206 and 1,271.

Read also the following letters :—

No. 20. From the Officiating Government Pleader, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 10th June 1867, No. 102.

Dated 28th May 1867, No. 1,206. Government noted in the margin, and to my letter to your address No. 95, dated 29th May last, I have the honour to report, for the information of Government, the decision of the High Court upon the question as to the liability to Stamp duty, under Act XXVI of 1867, of Petitions of Appeal to the High Court in its Appellate jurisdiction from decrees and orders having the force of decrees in the Mofussil Courts.

2. The Chief Justice and Mr. Justice Collett agreed in holding that all such Petitions of Appeal were liable to the increased Stamp duty under the above-mentioned Act, Mr. Justice Holloway, however, dissenting from them, held that they were not liable.

3. The Chief Justice and Mr. Justice Collett delivered written Judgments, for copies of which I have applied to the Registrar of the High Court, and which, when obtained, I will, in due course, forward to you, for the information of Government. Mr. Justice Holloway, however, delivered merely an oral Judgment, minutes of which I have taken, and which I can, if desired, also forward to you.

4. I have the honour to suggest that, in view of the proposed amendment and consolidation of the existing Stamp Laws, the attention of the Supreme Government should be called to the question that has arisen in the High Court here, upon the point above referred to, and the difference of opinion prevailing between the three Judges, who have had to decide it, in order, if it is thought necessary, that, by a clearly expressed provision in the proposed new Act, the doubt may be set at rest. This course appears to be the more necessary, as the Chief Justice (although he ultimately differed from Mr. Justice Holloway) agreed with him that the law as it now stood was very much involved.

No. 21. From the same Officer, dated Madras, 14th June 1867, No. 106.

With reference to the third paragraph of my letter to your address, under the

Dated 10th June 1867, No. 102.

date and number marginally noted, I have the honour to forward copies of the written Judgments delivered by Chief Justice and Mr. Justice Collett, and copy of my notes of Mr. Justice Holloway's Judgment upon the question as to the liability to Stamp duty, under Act XXVI of 1867, of Petitions of Appeal to the High Court in its Appellate jurisdiction from decrees and orders having the force of decrees of the Mofussil Courts.

COPY—DECISION OF THE CHIEF JUSTICE.

Ex parte.

This is an application for an order directing the Registrar to receive an unstamped Petition of Appeal against the decree of the Principal Sudder Ameen of ————— in Appeal Suit

No. 382 of 1864, on the ground that Schedule (B) of the recent Act XXVI of 1867 was now the only Schedule under which Stamps were leviable in Courts of Justice, and it contained no provision which imposed a Stamp on Petitions of Appeal to the High Court against an order rejecting a plaint or a decree or order having the force of a decree. The point being an extremely important one, not only to suitors, but as respects the revenue, and the Court not agreeing in opinion at the close of the arguments, we took a little time to consider the enactments bearing on the question, and which present certainly a somewhat involved piece of legislation.

Article 11 of Schedule (B) in Act XXVI of 1867, is no doubt the only provision in force relating to Petitions of Appeal against a decree or order in the nature of a decree, and if that Act had stood alone, such petitions in the High Court would clearly have been left unprovided for.

But Act XXVI of 1867 was passed to amend the law relating to Stamp duties. It enacts, in Section 5, that the Schedule (B) following that Section shall be substituted for Schedule (B) in Act X of 1862, and in Section 8, that Section 5 with the other Sections mentioned, shall be read as part of the said Act, but without retrospective effect, and Section 9 provides that nothing in the Act shall affect the Stamps leviable under the several Acts therein mentioned or on instruments not therein before expressly provided for. The effect of those provisions is to do away with the Schedule annexed to Act X of 1862, and to substitute the provisions contained in the new Schedule (B), and also to preserve Stamps leviable by law on writings, not expressly provided for in the Act. We must therefore read Article 11 of the new Schedule with the enactments in Section 30 of Act X of 1862, and give operation to the provision in Section 2 of Act XX of 1862.

Now, simply construing the new Schedule with Section 30 of the former Act, Stamps on the Appellate side of the High Court would appear to be leviable only in the instances in which the High Court is in terms mentioned or included, and Article 11 certainly is not, as I have just observed, one of those instances. It becomes necessary then to consider what was the operation of Section 2 of Act XX of 1862, with reference to the old Schedule (B), and it is upon this point that the decision of the present question really hinges.

That Act was passed expressly to set at rest doubts as to the levying of Stamp duties in the High Court under the old Schedule (B), and Section 2 provides that no instruments or writing of any of the kinds specified in that Schedule, as requiring Stamps, shall be filed, &c., in, or received or furnished by the High Court in the exercise of its Appellate jurisdiction under Section 15 of the Letters Patent, &c., "unless such instrument or writing be upon a Stamp of a value not less than that indicated by the Schedule (B) annexed to Act X of 1862, as the proper Stamp for similar instruments and writings in the Sudder Court, anything in Section 30 of the said Act to the contrary notwithstanding; but subject to the proviso therein contained." The plain operation of this Section is to get rid of the exception in Section 30 of Act X of 1862, as respects proceedings in the High Court, and to make writings of the kind specified in the Schedule to Act X subject to Stamp duty on the Appellate side of the High Court, and the same amounts leviable as were fixed for similar kinds of writings in the Sudder Court.

Now, Article 11 of the Schedule annexed to Act X of 1862, undoubtedly made Petitions of Appeal against decrees or decretal orders subject to fixed amounts of Stamp duty and, in my opinion, it applied to the Sudder Court through that Court at the time of the passing of the said Act, and until the establishment of the High Court held its sittings and conducted its proceedings at a place within the local limits of the jurisdiction of the Supreme Court. If the objection now made in this respect had been taken before the establishment of the High Court, it might have had the effect of the putting the Sudder Court to flight outside those limits. But the clear meaning of the Section 30 of Act X of 1862 is that the Stamp duties in the annexed Schedule should be leviable in every Court except a Court established by Royal Charter and a Small Cause Court established within the local limits of any such Court and governed by that Section in the construction of Article 11 of the said Schedule (now abolished), I think the true imports of the words "any Civil Court not within the local limits of the jurisdiction of the Courts established by Royal Charter," was any Civil Court not established, that is, not having jurisdiction over persons or property within such local limits. In my opinion, therefore, the Stamps indicated by Article 11 of that Schedule

were leviable in the Sudder Court, though the place of its sittings happened to be within the local limits of the Supreme Court, and consequently on the Appellate side of the High Court under Section 2, Act XX of 1867.

This being so, it seems to me that the same Section must be taken to impose the Stamps indicated by Article 11 of the new Schedule (B) in lieu of the former Stamps. The law, as respects this application, remains, I think, the same as before Act XXVI of 1867 was passed, except in regard to the amounts of Stamp duty, and the inconsistency that a Schedule which in direct terms imposes Stamps in the High Court is made part of an Act which expressly excepts from Stamp duty writings in Courts established by Royal Charter. Act XXVI of 1867 was intended, and may, I think, be construed to have the effect only of making the substituted Stamp duties leviable on instruments and writings of a like kind to those on which Stamp duty under the old Schedule was payable in the Sudder Court and on the Appellate side of the High Court. In other words, that in every instance in which before the passing of that Act, Article 11 of the abolished Schedule was to be looked to for the proper amount of Stamp duty leviable on Appeal Petitions in the High Court under Section 2 of Act XX of 1867, in every similar instance Article 11 of the substituted Schedule should be looked to afterwards.

This is the construction which I have no doubt the Legislature intended, and which I think may properly be given to the several provisions. I am, therefore, of opinion that Petitions of Appeal on the Appellate side of the High Court against a decree or an order having the force of a decree must bear the Stamp indicated by Article 11 of the Schedule (B) now in force.

(True Copy.)

(Signed) H. J. BROCKMAN,
Officiating Government Pleader.

COPY—DECISION OF MR. JUSTICE COLLETT.

I agree with the Chief Justice in his view of the Law, and I shall only briefly state my reasons. I consider that by the words in Section 30 of Act X of 1862, a writing of any of the kinds specified as requiring Stamps in Schedule "B" is meant any writing of any of the classes mentioned in the Schedule. The principle on which Schedule B and also Schedule A, appear to me to have been framed, is to divide instruments and writings into classes; and I take it that the class with which Article 11 of Schedule B is concerned, is that of petitions of plaint or appeal; and it is to these classes or "kinds" of writings to which reference is made by the words of Section 30 as being "specified" in Schedule B. Then by Section 31 the Schedules are to be read as if they were in the body of the Act. Section 30 contains the general provision of the Act, and its effect is that except in two Courts, Stamps are to be levied in every other Court in the country. Then when we come to the Schedule, we have to apply Section 30 to the terms descriptive of each class of writing or of each variety of a class contained in the Schedule; and it will be found that the results of thus reading Section 30 along with the Schedule will be, in respect to some classes of writings, to exempt them from Stamp duty when used in a Supreme Court, though the terms of the Schedule itself would have rendered them liable in such a Court. When we come to Article 11, we have equally to bear in mind the general provision of Section 30, and we ought, therefore, if we reasonably can, to put upon the words "in any suit and appeal instituted in any Civil Court" not within the local limits of the jurisdiction of the Courts established by Royal Charter," such a construction as may render the terms of the Schedule consistent with the terms of the Section, so that both may stand.

And this, I think, we may reasonably and rightly do, if we regard those words of the Schedule as having reference only to the locality of the scene for the exercise of the jurisdiction of such Civil Court. If so, then the exercise of the jurisdiction of the late Sudder Court was entirely without the local limits of the jurisdiction of the late Supreme Court, and we are to have regard to this fact, and not to the mere accident that the sittings of the Sudder Court were within those limits. This construction, as it seems to me, does no violence to the words of the Schedule, and

without it the clear intention of the general provision of Section 30 would be defeated. I think, therefore, that we may properly adopt this construction.

Then, Act XX of 1862, passed on the establishment of the High Court, makes the same Stamps as were leviable in the late Sudder Court, leviable in future in the High Court when exercising its Appellate jurisdiction in substitution of the jurisdiction of the late Sudder Court. Clearly, as it seems to me by the terms of this Act, the accident that the High Court when exercising this portion of its Appellate jurisdiction has its sittings within the local limits of the jurisdiction of the late Supreme Court, is rendered perfectly immaterial.

Next, the new Act XXVI of 1867 has substituted a new Schedule B for that originally in Act X of 1862, and expressly the new Schedule is to be taken and read as part of Act X of 1862. For the purpose of construing the terms of the new Schedule we must treat it as if it had been part of the original Act, though of course in respect to the additional burdens imposed by the new Schedule, it has been declared that it is to have no retrospective effect. But having thus incorporated the new Schedule into the old Act, we are then treating the whole as constituting Act X of 1862 to apply Act XX of 1862, and the result will necessarily be that the same Stamps are now leviable in the High Court as in point of fact would have been leviable in the late Sudder Court. Applying, therefore, Section 30 of Act X of 1862, I put the same construction upon Article 11 in the new Schedule, as I did upon Article 11 in the old Schedule. I consequently agree with the Chief Justice that the Petition of Appeal, in respect to which the present application has been made, is liable to the Stamp required by Article 11 of the new Schedule B.

(True Copy.)

(Signed) H. J. BROCKMAN,

Officiating Govt. Pleader.

NOTES OF JUDGMENT DELIVERED BY MR. JUSTICE HOLLOWAY.

This case has been considered by us. As I differ from the majority of the Court, although I think I may be wrong, I feel bound to give my opinion on the point. There is no doubt that the argument for imposing Stamps on Appeals from decrees and orders having the force of decrees is exceedingly strong. Section 2 of Act XX of 1862 says so. Unquestionably, if no words could be found in Section 11 of Schedule B to satisfy requirements of that Act, and if I found that no document in Schedule would satisfy requirements of that Section, however strong words to narrow jurisdiction, the words must be extended to meet the requirements. Supposing, under Section 15 of Letters Patent the Court took evidence, the proceedings would require Stamp, and so would Vakalatnamah. As, therefore, I find that there are other matters which would satisfy requirements of Section 2 of Act XX, I do not think there is anything which should lead us to give to the words of Section of Schedule B more extended meaning than they naturally bear. Words of Schedule B "Courts not within the limits." The words of the new Act stronger. Those words are part of the specification. I am unable to concur with Advocate General that the "words not within the local limits" should be struck out. Those words are just as much part of the specification as the other words in the clause.

(True Copy.)

(Signed) H. J. BROCKMAN,

Officiating Govt. Pleader.

No. 22. From the Acting Advocate General, to the Chief Secretary to Government, Fort Saint George, dated Madras, 25th June 1867.

1. I have the honour to communicate the decision of the High Court as to the right to levy Stamp duty upon Petitions of Appeal preferred to that Court in the exercise of its Appellate jurisdiction.

2. Schedule B of the new Stamp Act XXVI of 1867 provides in Clause II for the Stamps to be levied in any Suits and Appeals instituted in any Civil or

Revenue Court outside the local limits of the ordinary original jurisdiction of the High Court. Now, the High Court in Calcutta, and I believe also in Bombay, does exercise its Appellate jurisdiction in a building which is outside the local limits of its own ordinary original jurisdiction. The contrary is the case in Madras. It was therefore contended that in Madras Stamp duty could not be levied on Appeals preferred to the High Court under clause II of Schedule B., and admittedly they could not be levied unless under that clause.

3. The Court considered the point of so much importance as to have the matter set down for argument before a full bench, consisting of the Chief Justice and Holloway and Collett, J. J. Mr. Miller appeared to oppose the levy of Stamp duty, and I appeared on behalf of the Government.

4. The Judges differed in opinion. The Chief Justice and Collett, J., delivered written Judgments, sent herewith, in which they held that Stamp duty was leviable on Appeals preferred to the High Court. Holloway, J., differing from them, delivered an oral Judgment, of which I have no accurate note. His view was that the words in Clause II of Schedule B, "any Court outside the local limits," &c., meant any Court sitting outside those limits, and not any Court exercising jurisdiction outside those limits. He also thought that in Section 2 of Act XX of 1862, which provides for Stamp duty in the High Court, the words "no instrument or writing of any of the kinds specified as requiring Stamps in the Schedule B," must be construed as including in the specification the local position of the Court to which the Appeal was preferred. Hence no writing would require a Stamp under Act XX of 1862, unless it was not only the same sort of writing denoted in Section B, but also addressed to the same sort of Court. The other Judges, as will be seen, disagreed with him on both these points.

No. 23. ORDER THEREON, 2nd July 1867, No. 1,465.

<p>Separate Revenue, No. 1. Stamps.</p>

Resolved that copy of the above correspondence be transmitted to the Supreme Government for consideration when the Stamp Act comes again under discussion.

Ordered that the following letter be despatched :—

(Here enter No. 1,466, dated 2nd July 1867.)

(True Extract.)

(Signed) W. HUDLESTON,

Secretary to Government.

To the Government Pleader.
„ the Revenue Board.

Ed. S. T. Augustin.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
2nd July 1867.

No. 1,466.

No. 24.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCIAL DEPARTMENT.

SIR,

Senarate Revenue, No. 2.
Stamps.

From Officiating Government Pleader, dated
21st May 1867, No. 88.
Order thereon, dated 28th May 1867, No. 1,206.
From Officiating Government Pleader, dated
29th May 1867, No. 95.
Order thereon, dated 5th June 1867, No. 1,271.
From Officiating Government Pleader, dated
10th June 1867, No. 102.
From do. do., 14th June 1867, No. 106,
with three enclosures.
From Acting Advocate General, dated 25th June
1867, No.
Order thereon, dated 2nd July 1867, No. 1,465.

within the local limits of the ordinary original jurisdiction of the former Supreme Court and present High Court.

I am directed to forward, for submission to the Government of India, copy of the correspondence noted in the margin, having reference to the question as to the necessity for stamping Appeals to the High Court from Decrees and Orders of the Mofussil Courts, in order that the subject may receive consideration when the Stamp Act comes again under discussion.

2. It should be explained that the building in which the old Sudr Court of Madras held their sittings was situated

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) W. HUDLESTON,

Secretary to Government.

Revenue Department

28-1465

Proceedings of the Madras Government
Under date the 29th July 1867.

Read again letters
from Government Pleaders
dated 21st and 29th May
1867 and recorded in Pro:
28th May and 5th June 1867
Nos 1206 & 1271.

Read also the following
Papers -
~~Letters from the Off^r Govern^t~~
~~ment Pleaders.~~

From the Off^r Gov^t Pleaders
Informing that the High
Court has delivered judgment
upon the question as to the neces-
sity of Stamp duty on Petitions
of Appeals preferred to the High
Court in its appellate jurisdiction
from the Decrees & orders of the Mofussil
Courts &c.

(Here enter 10th June 1867
No 102)

Forwards copies of written judg-
ments delivered by Chief Justice and Mr.
Justice Collett & a copy of G. L.'s notes
of Mr Justice Holloway's judgment
upon the question as to the liability
of Stamp duty under Act XXV of 1867.
From Advocate General.

(Here enter 14th June 1867
No 106)

Forwards the decision
of the High Court upon the sub-
ject of Appeals being stamped
Resolved that copies of the whole correspondence about

Shall be transmitted
to the Supreme Government
for consideration when the
Stamp Act comes again under
discussion.

Ordered that the fol-
lowing letter be despatched.

To The Secy to the Govt of }
India, Fin^l & Departs } (Here enter)

L.D.

3 Copies Letter from Secy to Govt of India

in Charge of the Secy to Govt of India

June 1864 before
court on jury

No 1465

Wardlaw's Court
2^d June 1864

Persons on the
list of the
petition of a
Wardlaw's Court to
be duty to be
submitted to Court
indica-

See
from

(1)

No 447-448

18/3/67

No 71-72

18-18-67

No 200-203

Copy to Secy

No. 1466.

REVENUE DEPARTMENT.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA.

SIR,

Financial Dept.

I am directed to forward for submission to the Government of India copy of the correspondence noted in the margin having reference to the question as to the necessity for stamping appeals to the High Court from Decrees and orders of the Mofussil Courts, in order that the subject may receive consideration when the Stamp act comes again under discussion.

It sh^d be explained that the building in B. the old indst of Madras held this things was situated in the local limits of the office.

From Off^r Gov^r Pleader of 21 May 1867 No 88
 do thereon " 28 " " 1206
 From Off^r Secy Pleader " 29 " " 95
 do thereon " 5 June " 1271
 From Off^r Secy Pleader " 10 " " 102
 do " " " 11 " " 106
 From Adv^o Advocate Genl 25 June 1867 with three enc.
 do thereon " 2 June 1867 No 1466

N.

W.D.

No 1466

Presenting papers
 on the question of the
 liability of the holders
 of Mofussil Court Decrees
 to stamp the same. The plain
 may the execution of the
 appeal of Court of Madras

No 1466.

To
 The Government of India
 27th July 1867.

Revenue 1867 Dept^t
 No of Govt for duty.