

attempt to compel any accused person to make any admission detrimental to his interests. As a matter of fact the procedure invariably in England is to inform the accused that he may make a statement, but that any statement he may make may be given in evidence against him. Having regard to section 117 of the Code of Criminal Procedure, and to the fact that the Magistrate concerned has 'acted' within the meaning of that section, it appears to me that I have got no power to make an order of transfer, and that also is the opinion of other Judges of this Court whom I have consulted in the matter. What I have power to do is to quash the proceedings, so far as Gudar Singh is concerned, and I accordingly make an order quashing the proceedings in question so far as Gudar Singh is concerned. This order will not prevent fresh proceedings being taken against Gudar Singh by any Magistrate other than the Magistrate referred to in the affidavit of Gudar Singh.

1897

IN THE MAT-
TER OF THE
PETITION OF
GUDAR
SINGH.

FULL BENCH.

1897

February 11.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox and Mr. Justice Burkitt.

REFERENCE UNDER SECTION 46 OF ACT NO. 1 OF 1879.*

Act No. 1 of 1879 (Indian Stamp Act) Sch. I, Art. 22—Stamp—Copy of order of a Municipal Board certified by the Secretary—Public Officer—Act No. 1 of 1872 (Indian Evidence Act), sections 74, 76, 78.

Held that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within article 22 of the first schedule to the Indian Stamp Act, 1879, and required to be stamped.

The Secretary of a Municipal Board is a public officer within the meaning of article 22 of the first schedule to the Indian Stamp Act, 1879, for the purposes indicated therein.

THIS was a reference made under section 46 of the Indian Stamp Act, 1879, by the Board of Revenue for the North-Western Provinces of the question whether a copy of an order passed by a Municipal Board, such copy being certified by the Secretary of the

* Miscellaneous No. 131 of 1896.

1897

REFERENCE
UNDER SEC-
TION 46 OF
ACT NO. 1 OF
1879.

Board, required to be stamped under article 22 of the first schedule to the Indian Stamp Act, 1879. The facts which gave rise to the reference are sufficiently stated in the opinion given by the Court.

Mr. *E. Chamier* for the Board of Revenue.

The opinion of the Court (EDGE, C.J., KNOX and BURKITT, J.J.) on the question referred was delivered by—

EDGE, C.J.—One Subhan presented a petition to the Municipal Board of Allahabad, asking permission to erect a tiled shed and to keep a house for storing wood on certain land within the jurisdiction of the Municipal Board. On that petition action was taken by the Municipal Board, and certain orders were passed by the department of the Board to which such questions were delegated. Later on Subhan applied to the Secretary of the Board for, and obtained, a copy of his petition and the order passed by the Board thereon. That copy was certified as correct by the Secretary of the Board. That copy was produced by Subhan and put in evidence in a Magistrate's Court. The Board of Revenue for these Provinces has referred to us the question whether the copy, which was given upon plain paper and bore no stamp, came within article 22 of the first schedule to the Indian Stamp Act. It was not a copy chargeable with duty under the law relating to court fees. The question turns in our opinion on the point as to whether or not the Secretary of the Municipal Board was, in certifying the copy to be a true copy, a public officer.

The question is not free from difficulty and doubt. The term "public officer" is not defined in the Stamp Act. We may say that, in our opinion, a fiscal Act, which imposes the payment of duty on the subject, ought to contain definitions of all terms which have to be considered in applying the Act, and which are not accepted as well recognised terms of universal application. For instance, under the Indian Penal Code, apparently, the Secretary of a Municipal Board would be a public servant, but he would not be a public officer as that term is defined in the Code of Civil Procedure. On turning to the Evidence Act we find that, by clause v of section 78, the record of the proceedings of a Municipal

body in British India is a 'public document.' Curiously the word 'record' is not used in the clause, which merely enacts that the proceedings of a Municipal body in British India are within the meaning of public documents. Clause v of section 78 brings the record of the proceedings of a Municipal body in British India within clause 2 of sub-section (1) of section 74, as the record of the acts of an official body. Turning to section 76 we find that "every public officer having the custody of a public document which any person has a right to inspect shall give that person a copy on payment, &c." According to the explanation to section 76, "Any officer who, by the ordinary course of his official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section." Working back from that we find that the record of the proceedings of a Municipal Board is a public document, and the officer who is authorized by the ordinary course of his official duties to give copies of public documents is for these purposes a public officer. Now the Secretary of a Municipality is an officer who by the ordinary course of his official duty is authorized to deliver copies of the public documents of which he has the custody as Secretary. Our answer is that the copy in question came within article 22 of schedule 1 of the Indian Stamp Act and required an eight-anna stamp. We wish to guard ourselves against it being considered that we have decided that the Secretary of a Municipal Board is, for any other purposes than that of certifying copies or extracts of public documents, a public officer. Our opinion will be communicated to the Board of Revenue.

1897

REFERENCE
UNDER SEC-
TION 46 OF
ACT No. 1 OF
1879.