Revenue (1898) Department.

PRESS SERIES.

G.O., No. 101-702

Dated 19th Feby 1898.

[Despatch Abstract.]

The Judicial Stamps Bill

Communicating the opinions of the Govt of Madras on the provisions of —.

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Government {1898} of Madras.

REVENUE.

Recd. } 1898. *Enclosures*

Regd. } 1898. *Spare copies*

G.O., No. 101, 19th February 1898.

FEBRUARY.

The Indian Stamp Bill.

Directing the transmission of a letter to the Government of India containing the views of this Government on —.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again G.O., No. 50, Revenue, dated 28th January 1898.

Abstract.—Ordering that the Government of India be addressed on the subject of the Indian Stamp Bill.

Order—No. 101, Revenue, dated 19th February 1898.

Separate Revenue No. 13.

Ordered that the following letter be despatched to the Government of India in continuation of letter, No. 51, dated 28th January 1898.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

Exd. Shaik Karim.

30 Copies.

1898.

LEGISLATIVE DEPARTMENT.

From

The Government of Fort St. George.

Recd.	1898.	*Enclosures*
Regd.		*Spare copies*

Letter, No. 102, 19th February 1898.

FEBRUARY.

The Indian Stamp Bill.

Communicating the opinions of the Government of Madras on the provisions of —

REVENUE DEPARTMENT.

From

The Hon'ble Mr. G. S. FORBES, M.A., I.C.S.,
Acting Secretary to the Government of Madras,

To

The SECRETARY to the GOVERNMENT of INDIA,
Legislative Department,

Dated Fort St. George, 19th February 1898.

Sir,

In continuation of my letter, No 51, Revenue, dated 28th January 1898, I am directed to communicate to you the following opinions of the Local Government on the provisions of the Indian Stamp Bill. The points requiring notice are dealt with in the order of the sections of the Bill.

Separate Revenue No. 14.

2. (i) *Section* 2 (4).—It is doubtful whether the term "Bill of Lading" is intended to be used solely in reference to sea-going ships or whether it is meant also to include receipts used in the case of vessels plying on inland waters, such receipts being identical in terms and appearance with a bill of lading. It seems desirable that the point should be made clear in the Act.

(ii) *Section* 2 (5) (*c*).—It appears that instruments relating to the delivery of goods or merchandize for advances received are now treated as agreements and stamped with As. 8. There seems to be no reason why a distinction should be made between instruments relating to the delivery of grain and other agricultural produce which under this section are treated as bonds and those relating to the delivery of goods or merchandize. It is accordingly suggested that the words "or any goods or merchandize" may be inserted after the word "produce" in line 3.

(iii) *Section* 2 (11).—The definition of the term "duly stamped" should make it clear that it covers also an instrument certified by endorsement as duly stamped; and it may be amended by the addition, at the end of the clause, of the words "or has been certified under sections 37 and 42."

(iv) *Section* 2 (13).—The Government considers that the definition of the term "instrument" may be improved by including every document by which any right or liability is or purports to be *extended* as well as *limited*.

(v) *Section* 2 (15) (*d*).—The expression "by which trees are leased for the production of food or drink" does not seem quite happy. It may perhaps be replaced by the words "by which the enjoyment of the produce of trees is leased."

(vi) *Section* 2 (23).—The term "settlement" should be so defined as to include the case of the transfer of property to a Hindu widow for life in satisfaction of her claim to maintenance. In a case which was referred by the Madras Board of Revenue in 1896, it was held by a full bench of the High Court, in an unreported decision, that an instrument by which A set apart a piece of land for the maintenance of a woman B, to revert to him on her death, was a settlement within the meaning of the Stamp Act.

(vii) *Section* 5.—The section should, in the opinion of this Government, be so worded as to make it clear that it does not apply to cases where the *distinct matters* referred to therein are in the nature of alternative agreements. It seems also desirable to add a few illustrations to show clearly what is meant by *distinct matters*.

(viii) *Section* 11.—A provision may be inserted permitting the use of adhesive stamps in the case of promissory-notes made in British India, when the amount chargeable on such notes does not exceed As. 4. This concession is desirable in the interests of many who may not find it convenient or even possible to obtain stamped papers when required.

(ix) *Section* 12.—Though clauses (1) (*a*) and (1) (*b*) of the section require the cancellation of an adhesive stamp at the time of affixing it or of executing the instrument, clause (2) leaves it doubtful whether when a cancellation has been made subsequent to the time above mentioned, the instrument will be deemed stamped or otherwise. The point may be made clear.

(x) *Section* 18.—It occasionally happens that the stamp duty paid under this section by the party presenting the document is insufficient and the document after being stamped by the Superintendent of Stamps is subsequently impounded and the penalty levied. This procedure seems to be unnecessarily severe upon persons who have no desire to evade the stamp law; and accordingly His Excellency in Council would recommend that, at the end of the section, a proviso be inserted to the effect that if the party presenting the instrument desires the opinion of the Collector as to the proper stamp to be affixed to it, the Collector shall proceed as provided in chapter III.

(xi) *Section* 26.—The existing law, as the Advocate-General points out, may be the cause of great and unexpected hardship in cases in which sums may become payable periodically under an instrument and especially in cases of leases for long terms reserving rent in kind either in whole or in part. It is proposed in the Bill to insert a proviso to meet the case of the lease of a mine in which a share of the produce is received as rent or part of the rent. There seems to be no reason why this proviso should be restricted to mining leases, nor why in the case of a mining lease, the lessor should be competent to recover by suit a larger amount than that covered by the stamp duty originally paid without being required to pay the excess stamp duty. His Excellency in Council agrees with the Advocate-General that the most equitable provision would be to enact that, if the court is satisfied that the stamp duty was originally paid on an amount, which, with reference to the circumstances as existing at the date of the execution of the instrument, was honestly estimated to be the probable amount payable under the instrument, the party shall not be debarred from claiming more than the amount covered by the stamp, on his paying the excess of stamp duty which would be required to cover the extra amount claimed, together with the penalty thereon; though in such case the penalty might well be remitted.

(xii) *Section* 29.—The proviso, now inserted, does not remove the hardship existing in cases of voluntary partition pointed out in paragraph 2 (under proposal V) of the Hon'ble Mr. A. T. Arundel's letter, No. 426, dated 28th August 1896. His Excellency the Governor in Council considers that the proviso should be extended so as to cover such cases also.

(xiii) *Section* 35—

(1) The remarks of the Advocate-General in paragraph 1 of his letter, dated 28th December 1897, printed with G.O., No. 50, dated 28th January 1898, of which a copy was forwarded to you with my letter No. 51, of the same date, merit consideration. It seems desirable to enact, as suggested by him, a provision extending the provisions of proviso (*a*) to this section, to cases in which secondary evidence of an instrument, which could not be produced, would be admissible and the deficient stamp duty and penalty would, if the instrument had been tendered in evidence, be payable.

(2) The proviso (*a*) to this section, as it stands, makes it obligatory on a court to admit in evidence instruments not duly stamped other than those excepted, on payment of the duty and the penalty, whether or not there was any reasonable excuse

for the instrument not having been duly stamped and whether or not there was a wilful evasion of the stamp law. His Excellency in Council is inclined to consider that this is too lenient and that when there is reason to believe that an instrument has been left unstamped, or not properly stamped, in order to evade the stamp law, the courts should not have power to admit it even on payment of duty and penalty.

(3) *Proviso* (*b*).—This proviso applies literally only to cases where the person who granted the receipt is plaintiff and the party to whom it is granted is defendant in a suit. It should be amended so as to apply also to cases where the person to whom the receipt is granted is the plaintiff, and also to cases in which such receipt is tendered in evidence in answer to a plea of set-off.

(xiv) *Section* 39 (2).—It is presumed that this clause does not contemplate an application from the party concerned nor in default of such application a reference by the Collector to the Chief Controlling Revenue authority. If so, the introductory "or" at the end of clause (1) of the section should apparently be altered into "and".

(xv) *Sections* 40 (1) *and* 42 (2).—The provisions of these sections require that an application should be presented by the party concerned for the return of the impounded documents and it has been brought to notice that, unless there is such an application, the impounded document is not returned to the registering officer, and that very often through ignorance the parties do not present such documents again for registration. It would be convenient if the provision in the repealed Stamp Act XVIII of 1869, section 24 (*a*) is restored, which authorizes the adjudicating officer to return the document to the "registering or other public officer by whom it was sent".

(xvi) *Section* 45 (1).—This clause does not prescribe the period within which the application for remission of penalty should be presented. The Government considers that when the penalty is payable under section 35 the period may be fixed at one month from the date of the order requiring payment of the penalty.

(xvii) *Section* 48.—This section does not provide for the recovery, as if they were arrears of land revenue, of sums for which offences have been compounded. The defect may be remedied.

(xviii) *Section* 54—

(1) To provide for cases in which the heirs or representatives in interest apply for refund, the words "or the person through whom such person claims" may be inserted in clauses (*a*) and (*b*) after the words "person" and "he," respectively, and the words "or is the representative of" between "is" and "a licensed vendor" in the proviso.

(2) The fact that in the case of a licensed vendor, the repayments should be less the discount allowed is not mentioned in the proviso.

(xix) *Section* 61.—This should be enlarged so as to permit the Collector to act also in cases where a Court has *over valued* the stamp duty payable if he considers that injustice has been done thereby.

(xx) *Section* 63.—The words "in manner prescribed" apply presumably to clauses 1 and 2 of section 12, and it is accordingly suggested that section 63 be modified so as to make it clear that the words quoted do not refer exclusively to clause (3) of section 12.

(xxi) *Section* 75.—If the penalty which may be prescribed under this section is to be only a fine, the point may be made clear in the section itself; and the maximum fine that can be prescribed may also be stated in it.

Schedule I.

(xxii) *Article* 3.—Adoption is usually made by Hindus as a sacred duty, and cannot, having due regard to the constitution of the Hindu family, be regarded solely in the light of the creation of a proprietary interest in favour of the adopted person. His Excellency the Governor in Council recommends that a fixed duty of Re. 1, instead of Rs. 10, be prescribed in the case of instruments recording an adoption. The Inspector-General of Registration, Madras, suggests that if it is considered necessary to impose an *ad valorem* duty, one rupee for every one thousand rupees

value up to a maximum of ten rupees may be fixed; but *ad valorem* duties involve troublesome and often inconclusive enquiries as to the value of the property affected, and should, if possible, be avoided in such cases.

(xxiii) *Article* 5.—This article may be extended so as to cover (1) agreements to sell, (2) service agreements or agreements to serve or employ a person as one's clerk and (3) agreements stipulating for hire for the use of moveable property such as carts, bullocks, &c.

(xxiv) *Article* 12.—It has been brought to notice that parties to a partition, instead of executing a duly stamped instrument, occasionally evade the stamp law by getting a third person to make an award and registering it as such. It is feared that the practice may become general, and it is recommended that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition-deeds.

(xxv) *Article* 17.—A uniform rate of duty of Rs. 5 now fixed for instruments of cancellation will, it is considered, be excessive in many cases of small transactions. It may accordingly be provided that the duty to be levied should be the same as the duty on the original, subject to a maximum of Rs. 5.

(xxvi) *Article* 23.—The rates of duty prescribed for *certificates of sale* (article 18) for values not exceeding Rs. 25 may, it is suggested, be adopted for *conveyances* (article 23) up to that value.

(xxvii) *Article* 24.—

(1) The clause "when applied for . . . . petty officer" under exemption (*b*) (iii) in this article applies to cases (i) and (ii) as well and should be printed accordingly.

(2) The words "and the Registrar-General of Births, Deaths and Marriages" should be inserted after the words "Marriage Registrar" in exemption (*c*) under this article. It is reported that applications are often made for extracts from the returns and register kept in the Registrar-General's office.

(xxviii) *Article* 25.—The words "and for the purposes of cultivation" now inserted in exemption (*a*) under article 35 relating to leases do not appear in that relating to counterparts. The exemption clause under the latter would therefore seem to cover non-agricultural leases as well. It is doubtful whether this was intended by the Government of India.

(xxix) *Article* 32.—The letters "*i.e.*," occurring in the second line have been inadvertently retained in the published copy of the Bill.

It is desirable to make it clear whether clause (*b*) of this article applies only to cases of further charge made in favour of the first mortgagee or includes also cases of further charge in favour of a different person. The Board of Revenue, Madras, has ruled that the latter classes of documents should be treated as subsequent mortgages.

(xxx) *Article* 35—

(1) It has not been made clear as suggested in paragraph (3) xvii of Mr. Arundel's letter, No. 426, dated 28th August 1896, whether article 35 includes leases in which the consideration is service to be rendered by the lessee to the lessor on specified occasions as in section 105 of the Transfer of Property Act IV of 1882.

(2) If the amendment suggested in the wording of section 2 (15) (*d*), be adopted, a similar amendment will be required in exemption (*a*) under this article.

(xxxi) *Articles* 40 *and* 57.—The Government is of opinion that instruments executed under the Agriculturists' Loans Act, 1884, which are now exempted * from duty, should, like those under the Land Improvement Loans Act, 1883, be included in article 40, exemption 1 and article 57, exemption (*d*).

* Notification No 5199-S.R., dated 1st November 1895, article 8 (*a*) of Schedule II.

(xxxii) *Article* 45.—The Government considers that a proviso should be added to article 45 exempting a partition-deed from duty when it is executed in pursuance of a duly stamped agreement to divide, subject to the condition that if the duty payable on the former is greater than that paid on the latter, the difference alone shall be chargeable.

(xxxiii) *Article* 48 (*a*).—The wording of this clause may be slightly altered so as to make it clear that a power of attorney executed for the purpose both of presenting and admitting execution of a document need be stamped with a duty of As. 8 only.

(xxxiv) *Article* 61.—*Surrender of lease.*—The duty may be made chargeable on the money consideration, where there is such consideration, and in other cases, on the duty leviable on the original lease for *the unexpired term.*

(xxxv) *Article* 62—*Transfer.*—Transfers of bonds, mortgages and policies of insurance may be made chargeable with duty for the *unpaid* or *unliquidated* portion of the principal amount and interest due under the original bonds or mortgage-deed, subject to a maximum of Rs. 5.

(xxxvi) *Article* 63—

(1) No provision is inserted in the schedule to meet cases of transfers which take place in consequence of the reconstruction of companies, as urged in paragraph 2 under proposal xix in the Hon'ble Mr. Arundel's letter quoted above. The Government is of opinion that such cases should be treated with special leniency.

(2) It also considers that, as suggested in paragraph 2 of the same letter under proposal xiii, articles 64 and 62 should be amended so that trust-deeds may be chargeable with an *ad valorem* scale of duty similar to that for bonds, subject to a maximum of Rs. 15; and that instruments of (1) revocation of trust, and (2) transfer of trust property, may be similarly chargeable, subject to a maximum duty of Rs. 10 and 5, respectively.

I have the honour to be,
Sir,
Your most obedient servant,

Ag. Secretary to Government.

Exd. Shaik Karim.

20 Copies.

NOTES CONNECTED WITH G.O., Nos. 101, 102, REVENUE, DATED 19TH FEBRUARY 1898.

[SUBJECT.—*The Indian Stamp Bill.*]

In their Resolution, dated 30th January 1895, the Government of India desired to be furnished with an expression of opinion of the Local Governments on certain proposals for the amendment of the Stamp Act, I of 1879, and the remarks of this Government were submitted with letter No. 426, dated 28th August 1896. The Government of India having amended and recast to a certain extent the provisions of the Act, now forward the Bill for favour of opinion of this Government and of the Honourable the Judges of the High Court and of such selected officers and other persons as this Government may deem fit to consult on the subject. The Bill was accordingly referred to the Honourable the Judges of the High Court, the Advocate-General, the Administrator-General, the Inspector-General of Registration, the Superintendent of Stamps and the Board of Revenue for remarks. The reply to the Government of India was due on 1st January 1898, but the report of the Inspector-General of Registration was received only on the 14th January 1898.

In G.O., No. 425 of 28th Aug. 1896.

G.O., No. 930, dated 11th November 1897.

2. Three of the Judges of the High Court—the Honourable the Chief Justice and Justices Shephard and Benson—have, it is reported, no remarks to offer; the Hon'ble Mr. Justice Boddam sees no objection to the Bill, while the Hon'ble Mr. Justice Subramania Aiyar has recorded no opinion yet.

Vide letter from the Registrar of High Court.

3. Attention is solicited to the Hon'ble Sir James Westland's speech in the Imperial Legislative Council, in which the nature of the amendments made in the Stamp Law is explained.

The principal alterations in the provisions of the Act, together with the remarks and suggestions of the Board of Revenue and other officers consulted, will be set forth below.

4. First as to the proposals made by the Government of India and referred to in paragraph 2 of this Government's letter, No. 426, dated 28th August 1896;

(i) That the term instrument be defined as in the English Stamp Act so as to include every written document with a view to avoid, for instance, any question being raised as to whether copies or extracts certified by a public officer to be true copies or extracts are instruments within the meaning of section 5 of the Act. The term has now been defined—*vide* section 2 (13) of the Bill. The definition in 54 and 55 Vic., chapter 39, section 122, is "Instrument includes every written document". The definition adopted in the Bill is:—

"Instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extinguished or recorded." The Board considers (paragraph 2 (i), sub-clause 3 of B.P., No. 549, dated 26th December 1897) that the definition should include every document by which any right or liability is or purports to be extended as well as limited. This may be pointed out to the Government of India.

If you extend a right you create it. The Govt. of India will see the Board's suggestion.
G. S. FORBES.

H. W. B[LISS].

(ii) That the Act should prescribe some definite mode of cancelling adhesive stamps as under the English Act—*vide* 54 and 55 Vic., chapter 39, section 8. This has been accepted and a paragraph has been added to section 12 of the Bill as follows:—

"In the case of an adhesive stamp the person required by sub-section 1 to "cancel the stamp may cancel it by writing on or across the stamp his name or initials "or the name or initials of his firm with the true date of his so writing." Referring to this provision Sir James Westland, in his speech at the Legislative Council, said: "We provided in the law one method of cancellation; that method is not absolutely "obligatory, but it is desirable to give people one clear method of complying with the "prescription of the law as to effecting cancellation."

The Administrator-General considers this section to be unnecessary and thinks difficulties may arise by a person endeavouring to cancel an adhesive stamp in the manner provided and not doing it completely, as by the omission of the true date of affixing the signature or initials, in which case it may give room for the contention that not being cancelled in the manner required by the Act, the instrument ought to be treated as not duly stamped.

Sub-paragraph of paragraph 3 of his letter.

An objection more or less to the above effect was urged by the Board when the proposal was first under consideration, but the Government overruled it—*vide* paragraph 2 (ii) of Board's Proceedings, No. 321, dated 13th July 1895, in G.O., No. 425, dated 28th August 1896, and paragraph 2 (ii) of letter to India, No. 426, dated 28th August 1896. The Superintendent of Stamps remarks (*vide* paragraph 7 of his letter) that as "the section refers only to adhesive stamps, the words 'in the case of an adhesive stamp' are redundant and confusing". It is submitted the words may stand. He also points out that the word "may" should be "shall", as section 63 of the Bill refers to the manner of cancellation prescribed, not permitted. The Board states (paragraph 2 (iv) of the Board's Proceedings) that several of the Collectors also have pointed out this inconsistency. Looking to the view expressed by Sir James Westland, it will probably be best to insert the words "or in any other effective manner" after the word "section" in line 5 of section 63 of the Bill.

The confusion has no doubt arisen from failing to examine section 63 after adding clause (3) to section 12: "in manner prescribed" refers to clauses (1) and (2), *i.e.*, "cancel so that it cannot be used again": clause (3) only gives a permissive mode of doing this. It will be enough to ask that section 63 should be modified so as to make it clear that the "manner prescribed" does not refer exclusively to clause (3) of section 12. This will sufficiently draw the attention of the Government of India to the difficulty.

G.S.F.
H.W.B.

To prevent this provision pressing hardly on the ignorant public, it was suggested by this Government that each adhesive stamp should bear as a part of its device a notice in the vernacular to the following effect: "This stamp must be cancelled by writing the name of the signer and the date across it". This suggestion, if approved, will form a matter for an executive instruction by the Government of India.

But apparently the Government of India do not desire to lay down a hard and fast rule: and *vide* the Administrator-General's objections.

G.S.F.

(iii) That the rate for the conversion of foreign money into Indian currency in section 19 of Act I of 1879 should be modified and that a pound should be taken as equivalent to Rs. 15 and 100 francs as equivalent to Rs. 60 instead of Rs. 10 and 40, respectively, as at present. Section 19 of the Act of 1879 has now been omitted and the scope of section 20 has been enlarged so as to include all currencies other than the currency of British India, including pounds sterling, dollars, etc.—*vide* section 20 (1) of the Bill.

Section 20 (2) provides that the Governor-General in Council may from time to time by notification in the *Gazette of India* prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purpose of calculating stamp duty, etc.

No objection is raised to this provision by any of the officers consulted, nor does any seem to exist.

(iv) That section 25 of the Act should be amended so as to provide for valuing "deferred" annuities also. This Government suggested that the words "or next after the date of a contingency mentioned in such instrument or conveyance as the case may be" may be inserted at the end of sub-sections (*b*) and (*c*). The Government of India have now omitted the words "next after the date of such instrument "or conveyance" occurring at the end of each of the clauses and substituted in their place the words "calculated from the date on which the first payment becomes due."

Section 25 (*b*) and (*c*) of the Bill.

This seems an improvement.

G.S.F.
H.W.B.

(v) That a revenue officer or civil court directing a partition should be authorized to remit at discretion the stamp-duty payable on the portion of an estate or holding which remains undivided in consequence of some share-holders electing to continue to hold jointly and that the stamp duty payable should be levied only on the share or shares partitioned off.

With reference to this proposal, the Madras Government observed:—

"A decree or order of a civil court directing a partition of property is not an instrument of partition within the meaning of section 3, clause 11, and is not liable to stamp duty under article 37 of the first schedule. It is not, therefore, understood why reference is made to such decrees or orders of the civil court, or whether it is proposed that they should be stamped under the Indian Stamp Act, notwithstanding that a court-fee is paid when the aid of the civil court is invoked for effecting partition . . . In this connection I am to draw attention to the hardship which the Stamp Act works in cases of voluntary partition. As the law is at present understood, when one or two of many co-owners of joint property separate, the rest continuing joint, stamp duty has to be paid on the whole property and not merely on the portions taken by the retiring members. When the rest divide among themselves later on, stamp duty has again to be paid on the portion of the property so divided."

In the definition of the term "instrument of partition" [section 2 (14)], the Government of India have now made it clear that it includes also a final order for effecting partition passed by any civil court.

With reference to this change in the definition, the Board of Revenue * and the Administrator-General † observe that as parties to partition suits have to pay heavy court-fees and other expenses incidental to such suits, it will be hard to compel them to pay in addition a stamp-duty for the purpose of carrying the Court's decree into effect. It is submitted that the attention of the Government of India may again be drawn to the point. The Government of India have also added as first proposed by them a proviso to section 29 (*h*) to the effect that a Revenue authority or a civil court passing an order for partition "may in its discretion remit the duty payable on such portion of an estate or holding "as may remain undivided in consequence of some shareholders continuing to hold jointly."

* Paragraph 2 (i), sub-clause 4.
† Paragraph 1 of his letter.

The hardship existing in cases of voluntary partition pointed out by this Government has not been removed. The Inspector-General of Registration suggests that the proviso to section 29 (*h*) may be extended so as to cover such cases. May this be urged on the Government of India again?

Yes. I think so.

G.S.F.
H.W.B.

(vi) That chapter IV of the Act be amended to cover the case of an instrument sufficiently but not duly stamped. That is to say, the proviso to section 34 of the Act is so worded as to provide only for an instrument being received in evidence on payment of the deficient duty and a penalty, but it was considered necessary also to provide for the case of an instrument executed on a stamp of a wrong description, though of the full amount. The necessary provison has now been inserted (*vide* section 37 of the Bill).

The Local Government suggested that the same rule should be extended to documents written in contravention of sections 12 and 13 of the Act.

This suggestion has not been adopted by the Government of India, apparently because sections 36 and 37 of the Act (sections 39 and 40 of the Bill) already authorize the Collector to refund or remit the whole penalty.

(vii) That section 33 of the Act should be amended to provide that a Municipal officer is a public officer for the purposes of that section, *i.e.*, for the purposes of the examination and impounding of instruments. In the new Bill this has not been directly provided. But a provision has been inserted to the effect that for the purposes of the section in cases of doubt, "the Governor-General in Council may determine "what offices shall be deemed to be public offices"—*vide* section 33 (3) (*a*) of the Bill.

(viii) & (ix). That section 42 of the Act should be amended so as to give the Chief Controlling Revenue Authority (1) power to remit as well as to refund penalties and (2) power to refund excess stamp duty erroneously levied.

The necessary provisions have now been inserted—*vide* sections 45 (1) and 45 (3) of the Bill. But in section 45 (1) no appeal time has been fixed. This may be fixed at three months as in section (3) of the section, or at least one month.

Within three months or one month, of what date? The penalty is to be remitted only on the occurrence of a particular event, *i.e.*, under section 35 when the instrument is required to be produced in evidence or under section 40 on being impounded: in the latter case no definition of time is needed; in the former the penalty is exactable before the instrument can be admitted, and it is this penalty that is remittable, for this, application may be required within one month.
G.S.F.
H.W.B.

With reference to section 45 (3), the Board remarks that power should be given to the Chief Controlling Revenue Authority to refund the excess stamp-duty levied without application from the party concerned; that the section as drafted does not state that the application must be from the party and with a view to obviate difficulties of interpretation, it suggests that the words "upon the matter being brought to notice" be substituted for the words "upon application in writing."

Parties must move in the matter themselves I think. The Government of India will see the suggestion.
G.S.F.
H.W.B.

May the suggestion be recommended to the Government of India? The cases in which parties concerned will not move in the matter, where there is a chance of refund, are very rare.

In connection with these proposals (viii) and (ix) it was pointed out by this Government that cases might arise in which duty or penalty might have been wrongly omitted to be levied by the Collector and that the best course to meet all such cases would be to authorize the Chief Controlling Revenue Authority to call for and revise the Proceedings of Collectors under sections 36, 37 and 38 of the Act.

Section 56 (1) of the Bill which has been newly inserted and which declares that "the powers exercisable by a Collector under Chapter IV and Chapter V shall in all "cases be subject to the control of the "Chief Controlling Revenue Authority" seems sufficient.

G.S.F.
H.W.B.

(x) That section 45 of the Act should be amended so as to give the Chief Controlling Revenue Authority the statutory right of hearing appeals from the Collector's orders regarding the adjudication of the legal stamp duty on instruments. The new section 56 (1) inserted in the Bill confers upon the Chief Controlling Revenue Authority control over only such of the Collector's powers as are exercisable under Chapters IV and V. The power of adjudication referred to above falls under Chapter III, section 31. The omission does not seem to be intentional, as the Government of India themselves said in 1895 that the proposal was reasonable. It is submitted, therefore, that the omission should be brought to their notice. It can be easily supplied by inserting "Chapter III" before "Chapter IV" in line 2 of section 56 (1).

But by clause (2) of section 56 of the Bill the Collector may refer to the Chief Controlling Authority in cases of doubt under Chapter III. Probably, the Government of India does not want a general power of appeal.
G.S.F.
I should say it did not.
H.W.B.

(xi) That section 50 should be amended so as to give to Appellate courts revisionary powers in respect of decisions of Criminal courts as well as of Civil and Revenue courts in the matter of impounding or refusing to admit in evidence instruments not duly stamped.

The necessary amendment has now been made by the insertion of words "or "any criminal court in any proceeding under Chapter XII or Chapter XXXVI of the "Code of Criminal Procedure" after the words "Revenue jurisdiction" in line 2 of the section—*vide* section 61 (1) of the Bill, which corresponds to section 50 of the Act of 1879.

In regard to this amendment the Board points out (paragraph 2 (xiv)) that the reference to Chapters XII and XXXVI of the Code of Criminal Procedure is insufficient, inasmuch as under section 33* (2), proviso (*a*), a criminal judge may now impound a document even when it does not come before him in proceedings under these chapters. This remark seems to be based on some misapprehension; for section 61 (1) refers only to an order under section 35† and an order under this section of the nature contemplated, can be passed by a criminal court only in a proceeding under Chapter XII or Chapter XXXVI.

* *Vide* page 20 of this note *infra*.

† Section 35 (*c*) of the Bill.

(xii) That the Act should provide that certified copies of receipts when attested by the payee shall, like duplicate receipts, be liable to stamp duty. This Government approved the proposal; but added that the duty leviable on such copies and on duplicate receipts should be payable by the payer for whose convenience they are granted, not by the payee who furnishes the stamp for the original receipt.

The new Bill contains the necessary provisions—*vide* 24 (*b*) of Schedule I and section 29 (*b*) of the Bill.

(xiii) That declarations of trust should be charged with stamp duty on an *ad valorem* scale, similar to that prescribed for bonds in article 13 of Schedule I subject to a maximum duty of Rs. 15. This Government accepted the proposal and suggested also that article 56 (revocation of trust) and clause (*d*) of article 60 (transfer of trust property from one trustee to another) should be similarly amended, the maximum duty being fixed at Rs. 10 and 5, respectively.

It was further suggested that, as doubts were entertained whether the term "trust" was to be understood in the restricted sense assigned to it in section 3 of the Indian Trust Act II of 1882, it might be defined as including all kinds of trusts, *e.g.*, trusts for religious or charitable purposes, as well as other trusts.

Neither the original proposal made by the Government of India nor any of the suggestions made by this Government has been given effect to in the new Bill. The result is that (1) declarations of trust and (2) revocations of trust, will continue to be liable to a fixed duty of Rs. 15 and Rs. 10, respectively.

Vide article 64 of schedule I of Bill.

The Inspector-General of Registration reports: "Complaints have been fre-"quently made by Registration officers that a duty of Rs. 15 on declarations of trust "and of Rs. 10 on revocations of trust is excessive and presses with undue severity "and will cause much hardship, as in the majority of cases the value of the property "involved is small, not exceeding a few hundreds of rupees. There is reason to "believe that this duty is at present evaded to a large extent by the substitution of "sale-deeds for nominal sums; and in some cases where landed property is concerned, "by a simple transfer of the patta or revenue registry in the name of the person or "institution to be benefited by the trust."

The Board* also considers that a fixed duty of Rs. 15 presses heavily on the parties concerned in the case of small trusts and suggests a minimum of Rs. 5, declarations involving property of the value of Rs. 1,000 and upwards being stamped *ad valorem* as bonds.

* Paragraph 2 (xv), sub-clause 6.

The hardship which the existing provision involves was pointed out to the Government of India by this Government so long ago as 1887 and in the remarks

under proposal XIII (*vide* page 5 of G.O., No. 425, dated 28th August 1896) it was stated that they were disposed to accept it. It is not, therefore, clear why they have not seen fit to amend the law in this particular now.

Orders are requested as to whether the point may be urged on the Government of India again and, if so, whether any opinion should be expressed regarding the proposal now made by the Board of Revenue. The Board's proposal while providing for some relief in the case of smaller trusts will tend to considerably increase the duty in the case of larger ones, *i.e.*, those involving property valued at more than Rs. 3,000. This will certainly force the people to resort to some means of evading the duty and will probably also discourage religious and charitable trusts to a certain extent.

Some relief might be given in the case of religious and charitable trusts, if the present duties really discourage such benefactions; but in the case of other trusts I do not think it is desirable to urge the matter farther. Trusts affecting ordinary property give a great deal of trouble, and there is no special reason to tax them lightly.

G.S.F.

I don't see that they give Government any trouble. I should urge our former proposal.

H.W.B.

(xiv) That article 30, schedule I should be amended by the substitution in clause (*a*) of the words "when either the original mortgage or the instrument imposing the further charge" for the words "when the original mortgage."

Under clauses (*a*) and (*b*) of the article higher or * lower rates of stamp duty are chargeable according as the original mortgage is with or without possession. Where, therefore, two mortgage deeds are drawn one following the other, the first leaving the mortgaged property with the mortgagor and the second imposing a further charge thereon and giving possession to the mortgagee, the article levies stamp duty on the second deed as if no possession were given and it was originally thought by this Government that this would afford an opportunity for fraudulent evasion of the Act, as a person wishing to effect a mortgage with possession for a considerable amount had only to effect a preliminary mortgage on the same property without possession for a nominal sum in which case he would be liable to pay only the lower rate of duty on the second or principal mortgage. The Government of India, however, pointed out that in such a case the second instrument charging the same property but altering the conditions of the original mortgage should be held to be a second or a fresh mortgage, and not merely "an instrument imposing a further charge on mortgaged property" as defined in article 30. But they stated that the matter would be put beyond doubt in the revision of the Act. On further consideration the Government of Madras expressed concurrence in the above view of the Government of India and added that the term "further charge" in article 30 of the first schedule would then be applicable only to cases of further loans on the security of the same property, the conditions of the original mortgage being left unaltered in any way. The Government of India has now made the necessary amendment. This amendment will provide against all possible cases of evasion of duty—*vide* article 32 (*b*), schedule I of the Bill.

* *Vide* remarks on page 5 of G.O., No. 425, dated 28th August 1896.

Yes, but it is a slip which they will notice.

G.S.F.

May as well point out.

H.W.B.

The letters "*i.e.*" occurring in the second line of the article should be omitted.

The Inspector-General of Registration suggests that it should be made clear whether this provision applies only to cases of further charge made in favour of the first mortgagee or includes also cases of further charge in favour of a different person. The Board on a reference made by the Collector of Madura in 1883 ruled that the latter classes of documents should be treated as subsequent mortgages—*vide* B.P., No. 1416, dated 22nd May 1883.

The point may be noticed.

G.S.F.

Yes.

H.W.B.

(xv) That the Act should be amended to bring it into accord with the English stamp law as regards the amount of stamp duty leviable on an instrument executed as further security for an advance or loan already secured by a previous and duly stamped instrument. This Government accepted the proposal and suggested also that instruments which, while leaving the amount of debt and the conditions of the mortgage unaltered, merely substitute one property for another previously mortgaged, might be dealt with likewise.

The English Act imposes a very much smaller duty on further securities than on the principal or primary security. Please see 54 and 55 Vic., Ch. 39. First schedule—under "Mortgage."

The necessary amendments have now been made—*vide* article 40 (*c*) of schedule I.

(xvi) That the Act should be amended to render instruments purporting to be powers of attorney employed in transactions which are virtually mortgages liable to stamp duty as mortgages. The Madras Government did not support the proposal as there are two important limitations in the case of the powers of attorney referred to, which distinguished them from mortgages, namely, that the powers of attorney are revoked by the death of the debtor and will not bind his successors and that even when the creditor sells the property he has no right to retain the sale-proceeds.

The Government of India have, however, given effect to the proposal—*vide* article 48 (*f*) of schedule I.

In connection with this proposal it was pointed out by this Government that article 29 of schedule I provides for stamp duty on equitable mortgages * only when the loan is repayable within one year and suggested that the scope of the article might be so enlarged as to provide for cases in which the time for repayment of loan exceeds one year.

* Referred to in article 29 as an instrument evidencing an agreement to secure the repayment of a loan made upon the deposit of title-deeds or other valuable security or upon the hypothecation of moveable property.

This has now been done with an increase in the rate of duty—*vide* article 6 of schedule I. As to the increase in the rate of duty the Honourable Sir James Westalnd explained in the Legislative Council: "An equitable mortgage is a transaction which frequently covers considerable amounts of money, and it is a cheap way of carrying out ordinary borrowings from banks and the like. We propose to raise the duty payable in these cases to about one-fifth of the amount required in the case of formal borrowing by bond. This rate is, in proportion to the duty upon bonds, half of what is leviable by the English law, and seems to us a moderate demand in respect of the transactions involved."

(xvii) That the Act should be amended to render receipts endorsed on postal money orders for sums over Rs. 20 liable to a stamp duty of one anna. As the stamp duty on these receipts was remitted only by a notification of the Government of India, the point does not arise in dealing with the amendment of the Act.

Vide article 14 (*c*) of the second schedule of the Notification No. 5199 S R., dated 1st November 1895 (Appendix No. I to the Act of 1879).

(xviii) That the Act should be amended to provide for the levy of stamp duty on transfers of debentures issued by joint stock companies under the terms of a mortgage deed. This Government accepted the proposal and suggested that the rate of duty on such transfers should be half that provided on conveyances.

The proposal has been given effect to, the rate of duty being fixed at one quarter of the duty payable on a conveyance for a consideration equal to the amount of the debenture—*vide* article 62 (*b*) of schedule I.

(xix) That transfers or assignments of leases should be treated as ordinary conveyances and stamped accordingly.

This proposal has already been given effect to—*vide* section 3 of Act XIII of 1897 and now inserted as article 63 of schedule I of the Bill. In dealing with this proposal it was urged by this Government that when the transfers take place in consequence of the re-construction of companies they should be treated with special leniency, as such re-constructions are often almost *pro forma* in order to facilitate the business of companies, as in the very common case of capital being split up into preferred and ordinary

shares and as the imposition of a heavy stamp duty would be a serious impediment to business in such cases. The new Bill embodies no provisions to meet cases of this nature. The Government of India may be of the opinion that in such cases the concession should, if at all, be granted by a special notification in each case.

We need not notice the matter further.
G.S.F.

I think we had better. It is often a matter of importance.
H.W.B.

(xx) That provision should be made in the Act to the effect that when an instrument has been executed by or on behalf of the Government it shall not be objected to for want of a stamp or for an insufficient stamp.

This has now been done—*vide* section 35 (*d*) of the Bill. The general exemption * from payment of duty on behalf of Government contained in schedule II of the Act of 1879 has now been inserted in the body of the Act as proviso to clause 3 of the Bill.

* Exemption 18.

(xxi) That instruments evidencing ordinary pawn transactions should be exempted in schedule II as exempted instruments. The question was first raised by this Government in 1890 and as the other Local Governments consulted were in favour of the proposal a notification was published by the Government of India in the same year, remitting the duty chargeable on instruments evidencing ordinary pawn transactions for a sum not exceeding Rs. 20. In reference to the proposal this Government expressed the opinion that the exemption allowed in the case of pawn transactions for sums not exceeding Rs. 20 should be continued and should be embodied in the second schedule.

Vide remarks (under proposal XXI) on page 9 of G.O, No. 425, dated 28th August 1896.

The Government of India have now gone beyond this suggestion and exempt from duty all instruments of pledge or pawn of goods if unattested—*vide* exemption (3) under article 40 of schedule I.

(xxii) That the Act should provide for composition for the duty payable on share warrants under section 35 of the Indian Companies Act VI of 1882 and on debentures issued by Municipalities, Port Trusts and other corporate bodies under the Stamp Act.

Provision as regards the latter part of the proposal was made in Act XIII of 1897, section 1, reproduced in section 8 of the present Bill. Section 9 (*b*) of the Bill gives effect to the first part of the proposal.

5. The suggestions made by this Government in paragraph 3 of its letter to the Government of India, No. 426, dated 28th August 1896, and how far they have been given effect to will now be noticed.

(i) That the terms "*executed*", "*execution*", "*bill of exchange*", "*promissory note*" and "*agreement*" as well as all the terms occurring in the two schedules should be defined and that, if they cannot be adequately defined, explanations should be added as in the Indian Penal Code.

In the new Bill the definitions of the first four terms named above—but of no others—have been inserted—*vide* sections 2 (2), (12), and (21). In a few cases explanatory notes have been added in schedule I—*vide* articles 27, 40, &c.

(ii) That the terms "moveable" and "immoveable" property be defined in the Act.

This has not been done, possibly because the terms are defined in the General Clauses* Act (X of 1897). The suggestion was made because the Madras High Court had some doubt whether growing crops of coffee should be regarded as moveable or immoveable property for the purposes of the Stamp Act. A notification † was published in November 1895 reducing the rate of duty in the case of mortgage of crops and this has now been inserted in the schedule (*vide* article 41) with this difference that when the loan is repayable more than three months but not more than one year, from the date of instrument, the duty payable is fixed at a considerably

* Section 3 (25) and (34).
Yes.
G.S.F.
No doubt.
H.W.B.

† *Vide* article 3 of first schedule of the Notification No. 5199-S R., dated 1st November 1895 (Appendix I, Act of 1879).

Government {1896} of Madras.

REVENUE.

Recd.	1896.	*Enclosures*
Regd.		*Spare copies*

G.O., No. 425, 28th August 1896.

AUGUST.

Indian Stamp Act of 1879.

Ordered that a letter be despatched to the Government of India regarding certain proposals for the amendment of the —.

higher rate than in the case of bills of exchange payable otherwise than on demand, which was the rate fixed under the notification. For instance if the sum secured is Rs. 1,600, the duty under the notification would be Re. 1, but under the Bill it is Rs. 4 (being four annas for every Rs. 100). May the Government of India be requested to reduce the rate of duty to what it is under the notification?

I am inclined to think the duty is too high and should be reduced as proposed.

G.S.F.

I don't know. It is only half the rate on a bond.

H.W.B

(iii) That in [section 3, sub-section (11)] the definition of "instrument of partition", the word "property" should be made to include debts by inserting the words "inclusive of debts" after "property" where it occurs for the first time. This has not been attended to—*vide* section 2 (14) of Bill.

(iv) That the doubt which now exists as to in what cases powers of attorney should be stamped under article 50 of schedule I of the Stamp Act and in what cases they should be considered to be vakalatnamas or muktiarnamas within the meaning of article 10 of schedule II of the Court Fees Act, should be cleared.

The question arose in connection with the case reported at page 146 of volume IX, I.L.R, Madras. A full Bench of the High Court decided that a document authorizing a vakil to apply for copies of records from the Collector's office was properly stamped with a court-fee stamp under article 10 (*a*) of schedule II of the Court Fees Act 1870 and did not require to be stamped as a power of attorney under article 50 (*b*) of schedule I of Act I of 1879.

G.S.F.
H.W.B. | This has not been done. The point may be dropped.

(v) That section 12 of the Act should be amended so as to make it clear whether an instrument written upon paper stamped with an impressed stamp may be continued on the reverse, *i.e.*, the side which does not bear the stamp.

Rule 7(6) of Notification No. 2170, dated 22nd May 1891 (Appendix II of Act of 1879).

The section has been left unaltered. Possibly the notification on the point will be amended.

(vi) That with a view to minimise correspondence Collectors may be empowered to recover stamp duty which a court has by mistake omitted to levy, instead of applying to the appellate court as required by the Act as it stands.

Vide section 61 of the Bill.

The Act has not been amended in this respect.

(vii) That sections 34, 37 and 38 of the Act be amended so that all instruments chargeable with a duty of one anna, bills of exchange and promissory notes should be capable of being validated when unstamped on payment, if necessary, of a very heavy penalty, as, where the omission is due to fraud, it is the person guilty of the fraud, viz., the executant that benefits by the documents being inadmissible in evidence.

The only amendment made is that a proviso has been added to section 35 which provides for the admission of unstamped receipts as evidence against the person by whose fault they were unstamped, on payment of a penalty of one rupee by the person tendering it—*vide* section 35 (*b*). But as the Administrator-General points out (paragraph 4 of his letter) the proviso from its wording applies only to cases where the person who granted the receipt is plaintiff and the party to whom it is granted is defendant in a suit; he expresses the opinion that it should be amended so as to apply also to cases where the person to whom the receipt is granted is a plaintiff, as where A having discharged a debt due by him to B and having received a receipt not properly stamped as evidence of that discharge files a suit for the recovery of some property which had been pledged as security for the original debt, and has to use the receipt at the trial of the suit to prove the discharge of the original debt.

I do not think this is right; the phrase "*admissible in evidence against him*" has no relation to the position of the parties in a suit as plaintiff or defendant. Need not be specially noted.

G.S.F.

The Administrator-General seems to be right. Proviso (6) speaks of the person *bringing* a suit, that is, he must be the plaintiff. The section (or rather proviso) needs amendment as the Administrator-General says. Better point this out.

H.W.B.

The Advocate-General remarks (paragraph 4 of his letter) that the clause as it stands does not apply to the case in which such receipt is tendered in evidence in answer to a plea of set-off and that it should be modified so as to include such a case.

G.S.F.

Referring to the excepted instruments in section 35, proviso (*a*) of the Bill, viz., instruments chargeable with a duty of one anna, bills of exchange and promissory notes, the Advocate-General observes (paragraphs 3 and 5 of his letter) that the stringency of the existing provision against the levy of the deficient stamp duty and penalty in their case may be relaxed without any detriment to the public revenue by providing that the court before which the instrument is tendered in evidence shall admit it in evidence on payment of the stamp duty and penalty, if the court be satisfied that the instrument was not duly stamped by reason of a mistake and not from an intent to defraud the Government. It is submitted that the foregoing suggestions may be urged on the Government of India.

I presume that the exception of bill of exchange and promissory note has regard to the question of their *negotiability* and that if once wrongly stamped or unstamped they cannot be admitted.

G.S.F.

Better leave things as they are.

H.W.B.

In regard to instruments not duly stamped other than those excepted, it is obligatory (under section 35, proviso (*a*) of the Bill) on the court to admit them in evidence on payment of the duty and penalty whether or not there was any reasonable excuse for the instrument not having been duly stamped and whether or not there was a wilful evasion of the stamp law.

I think this is too lenient and that when there is reason to believe that an instrument has been left unstamped, or not properly stamped in order to the evasion of the stamp law, courts should not have power to admit it even on payment of duty and penalty.

H.W.B.

(viii) That section 51 of the Act be amended so as to provide for allowance being made (1) for stamps rendered useless by some change of circumstances dispensing with the necessity for the instrument written on the stamp paper or (2) for stamps in cases in which owing to some mistake made or accident the writing becomes useless. The latter class of cases has now been provided for by the insertion of the words "by error in writing or any other means" in clause (*a*) of the section. But no provision has been made to cover the other class of cases—*vide* section 49 (*a*) of the Bill.

(ix) That provision should be made in the Act for the recovery of the stamp duty and penalty like arrears of land revenue. This has been done—*vide* section 48 of the Bill. But both the Superintendent* of Stamps and the Board† of Revenue point out that this clause is defective in as much as it does not provide for the recovery of sums for which offences have been compounded ‡ as if they were arrears of land revenue. The defect may be brought to the notice of the Government of India. The Inspector-General of Registration seems to suggest that it should be made clear that the power given to Collectors in clause 48 should be exercised only after the appeal time fixed in section 45 (1) expires or after the appeal, if presented, is disposed of. But no appeal time is fixed in this section § May the omission and the Inspector-General's suggestion be brought to the notice of the Government of India.

* Paragraph 11 of his letter.
† Paragraph 2 (ix) of the Board's Proceedings.
‡ *Vide* section 70 (2) of the Bill.

G.S.F.
H.W.B.

§ *Vide* remarks at page 4 *Supra*.
See notes on that page.

G.S.F.

(x) That it will greatly conduce to public convenience if one-anna postage stamps, which are easily procurable everywhere, be substituted for revenue receipt stamps.

This is not provided for in the Bill, but it seems to be open to the Government of India to make a rule in this respect, if they choose, under section 10 (2) (*a*). It may be mentioned also that as under the new Bill (sections 69 and 74) no license is necessary for the sale of one-anna adhesive stamps; they will doubtless be procurable more easily hereafter than at present.

Yes.

G.S.F.

(xi) That the stamp duty on bonds may be reduced to one anna when the amount or value secured does not exceed Rs. 10 and to two annas when such amount or value exceeds Rs. 10, but does not exceed Rs. 20.

The existing * rates are:—

	Stamp duty. As.
(1) When the amount does not exceed Rs. 10	2
(2) When the amount exceeds Rs. 10, but not Rs. 50 ...	4

These rates have been retained † in the Bill.

* Article 13 of schedule I of Act of 1879.

† *Vide* article 15 of schedule I of the Bill.

(xii) That documents evidencing a contract to pay hire for moveable property, such as a carriage or a boat, and agreements to pay wages for service rendered at stipulated rates which appear to be 'bonds' within the meaning of section 3 clause (4) of the Act, and therefore chargeable with duty under article 13 of schedule I, should, if they are not bonds, be chargeable with a low uniform rate of annas 8.

The Act has not been amended in this respect.

The question is whether such documents are bonds. If they are, as they seem to be from the definition of the term, they will have to pay duty accordingly. Otherwise they will be agreements—article 5 of schedule 1 of the Bill. The Inspector-General of Registration suggests that this article should be extended so as to cover (1) agreements to sell, (2) service agreements or agreements to serve or employ a person as one's clerk or gumastah and (3) agreements stipulating hire for the use of the moveable property such as carts, bullocks, etc. Orders are requested.

This may be suggested.

G.S.F.

Yes.

H.W.B.

With reference to a suggestion made ‡ by the Collector of Ganjám that an agreement to sell should be specifically provided for, the Board reports that it is not prepared to support the suggestion.

‡ *Vide* paragraph 2 (xvi) (3) of the Board's Proceedings.

(xiii) That it should be made clear whether the term "hypothecation of moveable property" in article 29 of schedule I means a pledge of moveable property *with* or *without* possession. This has not been done—*vide* article 6 of schedule I of the Bill.

In paragraph 2 of their letter No. 5232, § dated 5th November 1890, the Government of India explained that instruments evidencing pawn transactions for sums exceeding Rs. 20 should be stamped as mortgage deeds under article 44, schedule I of Act of 1879, and it was thought by this Government that the Government of India must have intended to refer to cases in which no date for repayment was mentioned or such date was over one year, article 29 being held to be applicable where the date for repayment was not over one year. Now that the limitation as to the date of repayment has been withdrawn in what was article 29 (*vide* clause 6 of schedule I of the Bill) it is clear that the Government of India must have intended that all instruments of pledge or pawn of goods should be treated only as mortgage-deeds whatever the time for repayment may be. The exemption from duty allowed in the case of instruments of pledge or pawn of goods, if unattested, has also been entered under article 40—Mortgage deed—in the Bill.

§ In G.O., No. 945, dated 20th Nov. 1890.

(xiv) That in column 2 against article 37 ‖ of schedule I, the word 'value' should be defined so as to permit the stamp duty being charged on the net

‖ Instrument of Partition.

value of the property after deducting debts borrowed on personal security or on promissory-notes or bonds for the benefit of the family and not merely after deducting encumbrances specifically charged against it.

The Act has not been amended in this respect, *vide* article 45 of schedule I of the Bill, nor does it seem necessary to press the point on the Government of India.

No.
G.S.F.
H.W.B.

(xv) That a proviso be added to article 37 of schedule I of the Act as in article 39 (Leases), providing for the levy of a low rate of duty (annas 8) on an instrument of partition executed in pursuance of an agreement to divide property, which has been stamped with the *ad valorem* stamp required for an instrument of partition and that a similar proviso be added in the case of settlements (article 57).

Neither of these suggestions has been adopted in the Bill—*vide* articles 45 and 58 of the Bill.

Both the Board (paragraph 2 (xv), sub-clause 4 of the Board's Proceedings), and the Administrator-General (sub-paragraph of paragraph 1 of his letter) consider that a proviso should be added to article 45 of the Bill *exempting* a partition deed from duty when it is executed in pursuance of a duly stamped agreement. The Administrator-General adds that if the duty payable on the actual instrument of partition is greater than that paid on the agreement to divide, provision should be made for payment of the difference only.

This may be suggested.
G.S.F.
Yes.
H.W.B.

These proposals are not likely to find favour with the Government of India, as even the more moderate one made by this Government has not been accepted.

(xvi) That the duty on instruments conferring authority to adopt may be raised from Rs. 10 to Rs. 100.

The duty on such instruments has been left unaltered, but it is provided that the same duty shall be levied on instruments *recoraing* an adoption as well. The Inspector-General of Registration remarks—

Vide article 3 of schedule I of the Bill.

"The imposition of a duty of Rs. 10 on instruments recording the fact of adoption which have hitherto been exempt from stamp duty will be felt as a very great hardship. It is not the case that such documents generally pass between persons possessing ample estate. In thousands of instances the value of property passed seldom exceeds a few hundred rupees. In many cases the adoption is made more as a religious duty for the spiritual benefit of the person adopting than for the purpose of conveying any inheritance. I think that if a duty should be imposed at all it should not exceed one rupee, or if it is considered necessary to impose an *ad valorem* duty, one rupee for every one thousand rupees value up to a maximum of Rs. 10 might be fixed."

A. I think this should be strongly pressed. If a man has no son it is often a sacred duty to adopt. It cannot, having due regard to the constitution of the Hindu family, be regarded in the light of the creation of a proprietary interest in favour of the adopted person. I would recommend a fixed fee of one rupee. *Ad valorem* duties should be avoided if possible in such cases as they involve a troublesome inquiry, sure to be replete with perjury and fraud in many cases, as to the value of the property. It would also have to be decided whether that value is to be taken as at the date of the adoption (which properly it should be, to be logical), or at the date of death of the maker of the deed.

H.W.B.

G.S.F.

A. I don't mind this. What I said was that instruments conferring authority to adopt should be highly taxed.

H.W.B.

When the question was last raised Honourable Members were of opinion that an instrument declaring (or recording) an adoption should, like a will, be free of duty—*vide* notes at page 40 of the first note under G.O., No. 425, dated 28th August 1896.

(xvii) That it should be made clear whether article 39 of schedule I includes leases in which the consideration is service to be rendered by the lessee to the lessor on specified occasions, as in section 105 of the Transfer of Property Act IV of 1882.

Vide article 35 of schedule I of the Bill.

The new Bill does not make the point clearer than it is.

H W.B.

The point may be noticed again, but I take it if the service is part of the consideration it must be valued. The consideration of a bond is the amount *or* "*value*" secured.

G.S.F.

(xviii) That, in order to prevent evasion of stamp duty, the words "at the time of execution" in article 44 (*a*) of schedule I "*Mortgage deed*" should be omitted. This has been done—*vide* article 40 (*a*) of schedule I of the Bill; but it is thought that the same words occurring in clause (*b*) of the article should also be omitted.

No.
G.S F.
H.W.B.

(xix) That as under article 49 (*a*) (1) of schedule I as it stands at present, the duty of one anna on a *Policy of Insurance* would be payable without reference to the amount insured, the words "in respect of every full sum of Rs. 1,000 and also any fractional part of Rs. 1,000 insured by the policy" should be inserted.

This * has not been done. It is observed that under the English law also the rate does not vary (it is one penny) where the premium or consideration does not exceed the rate of 2*s.* 6*d* per centum of the sum insured and has no reference to the sum so insured.

* *Vide* article 47-A (1) (i) of schedule I of the Bill.
Vide article 'Policy of Sea Insurance' on page 70 of 54 and 55 Vic. Cap. 39.

(xx) That article 50 (*a*) of schedule I, *Powers of Attorney*, should be enlarged so as to cover powers of attorney executed for the sole purpose of admitting execution of documents before registering officers. The necessary amendment has been made—*vide* article 48 (*a*) of schedule I of the Bill.

The Inspector-General of Registration presumes that a power of attorney executed for the purpose both of presenting and admitting execution of a document need be stamped with a duty of annas 8 only and suggests that the word "and †" may be substituted for "or". This may be suggested to the Government of India.

† The substitution of this word alone would defeat the purpose in view. To give effect to the suggestion the clause should run "for the purpose of . . . . or of . . . . or of either" or some such phraseology. But if it is to be recommended, the Government of India will find the proper terms.

G.S.F.

I don't know whether *or* or *and* is meant. Draw attention to the point.

H.W.B.

(xxi) (*a*) That transfers otherwise than by endorsement of a non-negotiable promissory-note not falling within the definition of bond, when made for a money consideration, which are charged under article 21 (Conveyance) should not be taxed more heavily than bonds.

If a promissory-note is transferred otherwise than by endorsement, the deed of transfer should have no special exemption. At least I can see no reason for any special treatment.

G.S.F.
H.W.B.

No amendment of the law has been made with reference to this suggestion. The Inspector-General of Registration considers that transfers of promissory-notes by separate instruments should be made chargeable with duty leviable on the original subject to a maximum of Rs. 5.

(*b*) That a low uniform rate of duty should be prescribed for instruments executed to cancel or render ineffective a previously-existing document.

In the Bill (*vide* article 17) a uniform rate of duty of Rs. 5 has been fixed for instruments of cancellation. The Inspector-General of Registration considers this to be excessive in the case of small transactions and suggests that the same duty as that on the original may be levied subject to a maximum of Rs. 5. This seems a good proposal and may be supported.

Yes.
G S.F.
H.W.B.

The Inspector-General also suggests that rectification, ratification and modification deeds may be provided for under this article. This may lead to evasion of duty at times and it is submitted that the suggestion should not be supported.

G.S.F.
H.W.B.

The Collector of Ganjám suggests that a new article providing for instruments of rectification should be added to schedule I, but the Board is unable to support it—*vide* paragraph 2 (xvi) (i) of the Board's Proceedings.

(*c*) That transfers of property otherwise than on sale, *e.g.*, the transfer of property to a Hindu widow in satisfaction of a claim to maintenance, should be provided for in the schedule, as they do not fall under "Conveyance" as defined in section 3 (9) of the Act and as they have not been shown under article 60 of the schedule.

No action seems to have been taken with reference to this suggestion. Please see section 2 (10) and article 62 of schedule I of the Bill.

The Inspector-General of Registration considers that the term settlement should be so defined as to include transfers of property of the nature referred to above. In this connection please see the ruling of the High Court under Board's Proceedings, No. 432, dated 25th October 1896. It was held by a full Bench of the High Court that an instrument by which A set apart a piece of land for the maintenance of a widow B to revert to him on her death, was a settlement within the meaning of the Stamp Act.

The law might be made clear, this decision being referred to.

G.S.F.
H W.B.

(xxii) That as documents evidencing substantially the same transactions are treated differently according as they are drawn up in the form of leases or mortgages, the possibility of removing the inequality may be considered.

But they are vastly different A lease can never ripen into a proprietary title; a mortgage may.

G.S.F.
H.W.B.

Nothing seems to have been done in this direction.

(xxiii) That, with reference to article 13, schedule II, it would be clearer if provision be made in the schedule for the exemption of "agreements to lease" and "transfer of leases" in cases in which leases are now exempt from stamp duty under the article. The case of "transfers of leases" has been provided for under article 63 of schedule I of the Bill.

The other case of "agreements to lease" does not seem to have been provided for, nor does it follow that because certain leases are exempt from duty, "agreements to lease" in such cases should also be exempt from duty. The case of *surrender* or *transfer* seems to be different.

G.S.F.
H.W.B.

(xxiv) That in article 13, clauses (*b*) and (*c*) of schedule II, the term "Cultivator" may be made to include lessees of palmyra, cocoanut and other fruit trees, so that leases of such trees and counterparts of such leases may be exempt from duty.

The former has been provided for [*vide* section 2 (15) (*d*) of the Bill and exemption (*a*) under article 35 of schedule I of the Bill] but not the latter—*vide* exemption under article 25 of schedule I. The omission seems to be due to an oversight and may be pointed out to the Government of India.

It is provided for all right—*vide* article 25, "Exemption" at top of page 22 of Bill.

G.S.F.

Referring to section 2 (15) (*d*) which says a lease includes "an instrument by which trees are leased for the production of food or drink," the Superintendent of Stamps remarks (paragraph 5 of his letter), the language is "unhappy. A lease is not given for the production of anything but to enable the leaseholder to enjoy the produce." Perhaps the expression "for their produce" may be substituted for the words "for the production of food or drink."

The words "are leased" might be inserted at the end of the clause.

G.S.F.

I should say "the enjoyment of the produce of trees is leased."

H.W.B.

Referring to the exemption from duty under article 25 of schedule I of "counterpart of any lease granted to a cultivator," the Inspector-General of Registration remarks that as in the exemption clause relating to leases (article 35), the words "for the purposes of cultivation" have been added and the same expression does not appear in the exemption clause relating to counterparts, the exemption clause under the latter would seem to cover non-agricultural leases as well. It is not known whether this was intended. Should the attention of the Government of India be drawn to the point? In regard to the exemption under article 35, the Inspector-General of Registration suggests that the words "in the case of a cultivator" be omitted, so that all leases executed for the purposes of cultivation whether the executants are cultivators or not, may be exempt. There seems to be no reason why any exemption should be allowed in the case of leases executed by persons who are not themselves cultivators.

Yes.

G.S.F.
H.WB.

What does it matter whether the executant of a lease is a cultivator or not? The executant will rarely be a cultivator. The words "in the case of a cultivator" clearly refer, I should say, to the person in whose favour a lease is granted, and I seem correct.

H.W.B.

(xxv) That it should be made clear whether the exemption afforded by article 14 (*b*) of schedule II to letters of hypothecation accompanying a Bill of exchange should extend to letters hypothecating other things than the Bill which it accompanies.

No change has been made in the law in this respect. Article 14 (*b*) of schedule II has been reproduced as exemption (2) under article 40 of schedule I of the Bill.

(xxvi) That if the exemption granted by article 17 (*a*) of schedule II extends to transfer by endorsement of non-negotiable promissory notes, it may be discontinued.

If it is "not negotiable" *can* it be transferred by *endorsement*?

G.S.F.

I don't see how.

H.W.B.

The wording of the exemption has been left unaltered—*vide* exemption (*a*) under article 62 of schedule I.

(xxvii) That in the case of ryotwari lands paying full assessment, the value of which for the purposes of partition has been fixed by a notification of the Government of India, No. 5199 S.R., dated 1st November 1895, at five times the annual revenue, the market value of such lands, which in many cases considerably exceeds the value fixed by the notification, may be adopted.

The provision in the notification has been inserted in the schedule under article 45 without any modification and it is submitted this may be allowed.

6. Such of the amendments of the law, as have not been referred to in the letter from this Government, No. 426, dated 28th August 1896, but which are contained in the Bill, and the suggestions of the officers consulted on the existing provisions of the Act will now be noticed.

Definitions—(i) *Section* 2 (2) *and* (3).—Following the English Stamp Act, 1891, the definition of the "Bill of Exchange" has been enlarged and a new definition of "Bill of exchange payable on demand" has been added. The definitions include as is the case in England, many instruments which could not be classed as "Bills of exchange" within the definition of the term in the Negotiable Instruments Act (XXVI of 1881), but which for stamp purposes ought to fall within the same category. The result will be the inclusion, mostly under the one-anna rate of duty, of a number of instruments which at present escape duty because they are drawn in the native character and are not called hundis, the native hundi being the only name that is expressly included in the term bill of exchange.

Vide page 233 of Sir James Westland's speech.

(ii) *Section* 2 (4).—The present definition of "Bill of Lading" has been cut short and is expressed thus: "Bill of lading includes a through bill of lading." The Inspector-General of Registration considers that the present definition may be retained and may include "a through bill of lading." The Board observes (para.

2 (1) of B.P.) that the omission of the definition is a mistake and the Superintendent of Stamps reports (para. 2 of his letter) that the definition as curtailed gives room for ambiguity and enquires whether the term is used only in reference to sea-going ships or it extends also to receipts used in reference to vessels plying in inland waters which are identical in terms and appearance with a bill of lading. This may be mentioned in the reply to the Government of India in view to the point being made clear in the Act.

G S F.
H.W.B.

(iii) *Section* 2 (5) (*c*) *of the Bill.*—The Inspector-General of Registration suggests the addition at the end of this clause, in the definition of "*Bond*" of the words "or any goods or merchandise." He observes that instruments relating to the delivery of goods or merchandise for advances received are now treated as agreements and stamped with eight annas and there is no reason why any distinction should be made between instruments relating to the delivery of grain and other agricultural produce and those relating to the delivery of goods or merchandise. There is no mention of advances received in this clause.

But the definition of Bond only runs: "Bond *includes*, &c."

I agree with the Inspector-General.

H.W.B.

(iv) *Section* 2 (10).—The word "conveyance" is defined to mean "a conveyance on sale" and to include "every instrument by which property (whether moveable or immoveable) is transferred on sale."

The Superintendent of Stamps * and the Board of Revenue † report that a right under a decree has been held to be property and the deed transferring such a right, a conveyance, but that it is not quite clear whether the word property as used in the definition covers intangible as well as tangible property. It is, therefore, suggested that the term "property" should be so defined as to include rights of an intangible nature. "Moveable property" as defined in the General Clauses Act means "property of every description except immoveable property" and apparently includes the right in question. A definition of the word property in the Stamp Act appears therefore to be unnecessary.

* Para. 4 of his letter.

† Para. 2 (i), sub-clause 2.

Yes.
G.S.F.
H.W.B.

(v) *Section* 2 (11).—The definition of "duly stamped" has been amended so as to be applicable also to instruments first executed abroad but afterwards stamped in British India. The Superintendent of Stamps states (sub-para. of para. 4 of his letter) that an unstamped instrument may be certified to by endorsement under clause 42, that the instrument so endorsed may then be acted upon as if duly stamped and that it should be made clear that such an instrument is covered by the definition. The instrument referred to is not stamped either at the time of execution or afterwards, but is merely regarded as such on payment of the proper duty or duty and penalty as the case may be. The endorsement made under clause 42 seems sufficient and the definition need not be altered. The Inspector-General of Registration reports that it has been suggested by some registering officers that the definition of the term "duly stamped" should be altered so as to exclude all documents drawn on stamps purchased more than six months previously. Such a provision would, it is urged, diminish the chances of fraud—ante-dating and forgery. He considers this is a point worthy of consideration, but he admits that the measure would cause inconvenience to the public and add to the work of refunding officers. These are weighty objections and it is submitted that no amendment is desirable in this respect.

The definition clashes with the words "duly stamped" in section 37. I should amend it by adding "or has been certified under sections 37 and 42 (and perhaps there may be other sections)."

H.W.B.

G.S.F.

No.
G.S.F.
H.W.B.

(vi) *Section* 2 (18).—The definition of policy of insurance has been amended so as to cover policies of every description.

(vii) *Section* 2 (20)—(*Power of Attorney*).—The words "for and in the name of" have been substituted for the words "in the stead of" so as to make it clear that the definition relates only to powers of attorney and does not include all contracts creating the relationship of principal and agent.

(viii) *Section* 2 (21).—The term "Promissory note" has been defined, the definition having been taken from the English Stamp Act, 54 and 55, Vic. Cap. 39, s. 33.

(ix) *Section* 2 (22).—In the definition of the term "receipt," the word advertisement has been left out, as the machinery of the Act is not applicable to advertisements acknowledging receipt of money.

Stamp duties.

(x) *Section* 3.—The general exemption on behalf of Government contained in schedule II of the Act of 1879 has now been inserted in the body of the Act as a proviso to section 3.

Vide page 8 *supra.*

(xi) *Section* 4.—According to the existing provisions of the Act, when several instruments are employed for completing a single transaction, only the principal instrument is chargeable with the duty prescribed in the schedule, each of the others being liable to a duty of one rupee and the parties may determine which of the instruments shall be the principal instrument. In order that the option given to the parties to elect which shall be considered to be the principal instrument, may not be used for the purpose of evading stamp duty, the following proviso has been added "provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed."

(xii) With reference to section 5 which provides that an instrument relating to several distinct matters should be chargeable with the aggregate amount of duties, the Administrator-General suggests that the clause should be so worded as to make it clear that it does not apply to cases where the *distinct matters* referred to therein are in the nature of alternative agreements as where A in consideration of a present loan of Rs. 100 agrees at the option of the creditor six months after date either to pay Rs. 100 in cash or to deliver a quantity of grain of the value of Rs. 150.

G.S.F.
H.W.B.

The Inspector-General of Registration also deems it desirable to add a few illustrations to this section to show clearly what is meant by distinct matters. The attention of the Government of India may be drawn to these suggestions.

Yes.
G.S F.
H.W.B.

(xiii) *Section* 8.—A penalty clause taken from the English Stamp Act [54 and 55 *Vic.* C. section 115 (5)] has been added to this clause. It may be retained.

A continuing penalty of so much per mensem has been provided for. Point out that this is a course to which India took strong exception in its comments on the Municipal Bill, so that we had to alter a number of sections.

H.W.B.

This is a forfeit penalty, not a penalty on *conviction* before a Magistrate.

G.S.F.
17-2-98.

(xiv) *Section* 11.—Under the present Act, promissory notes when payable on demand and the amount exceeds Rs. 20 are chargeable with a duty of one anna and may be stamped with adhesive stamps. But according to article 49 of schedule I of the Bill, such promissory notes will be chargeable,* as bills of exchange, with an *ad valorem* duty rising from two annas, and will consequently have to be written on stamped

* *Vide* page 25 *infra.*

paper. This will cause some hardship in the case of promissory notes for small sums and a suggestion * has been made to the Board of Revenue that notes for sums less than Rs. 100 should be stamped with one-anna adhesive labels when the duty chargeable on such notes does not exceed four annas. The Board of Revenue, however, does not consider that the increase of duty under the draft Bill is objectionable, but supports the suggestion that the use of adhesive labels be permitted when the amount chargeable does not exceed four annas.

* Paragraph 2 (iii) of the Board's Proceedings.

Yes.
G.S.F.
H.W.B.

This concession is stated to be necessary in the interests of many who may not find it convenient or even possible to obtain stamped papers when required. As the hardship will be a real one, the Government of India may be moved to insert a provision in section 11.

(xv) *Section* 12.—The Administrator-General observes that though section 12 [clauses 1 (*a*) and (*b*)] requires the cancellation of an adhesive stamp at the time of affixing it or of executing the instrument, clause 2 leaves it doubtful whether when a cancellation has been made subsequent to the time above mentioned, the instrument will be deemed stamped or otherwise. It is suggested that this should be made clear.

G.S.F.
H.W.B.

(xvi) *Section* 18.—The clause requires the Collector to stamp the document with a stamp of such value only as the person presenting may require and pay for. The Superintendent of Stamps † and the Board of Revenue ‡ point out that it sometimes happens that the document is on its return after being stamped by the Superintendent of Stamps, necessarily impounded and penalty levied, the stamp duty paid being insufficient. This procedure seems to be unnecessarily harsh; but if the Collector is required to collect and stamp the document with the proper stamp duty whether he is asked to do so or not, it would deprive the Government of the adjudication fee chargeable under section 31 of the Bill. The Board is of opinion that the attention of the public should be drawn more prominently to the adjudication clauses of the Act and therefore proposes the addition to section 18 of a proviso to the effect that if the party presenting the document desires the opinion of the Collector as to the proper stamp to be affixed to it, the Collector shall proceed as provided in chapter III. This proposal will remove the hardship and at the same time avoid loss of revenue to Government. It may be suggested for the consideration of the Government of India.

† Paragraph 8 of his letter.
‡ Paragraph 2 (v) of the Board's Proceedings.

G.S.F.
H.W.B.

(xvii) Under section 19 of the Bill, the first holder in British India of any bill of exchange, &c., drawn out of British India is required to affix thereto the proper stamp and cancel the same. The Superintendent of Stamps remarks that there is no provision for the contingency of the first holder failing to observe the formalities prescribed in this section and the bill of exchange, &c., coming into the hands of another holder and suggests that subsequent holders should be given an opportunity to protect themselves without of course relieving the first holder of his liability to penalty. There is no reason why such a contingency should be provided for.

(xviii) *Section* 24.—An explanation and two illustrations have been added to this section to remove doubts as to its construction.

(xix) Under section 26, where the amount of the subject-matter of any instrument chargeable with *ad valorem* duty is not ascertainable at the date of its execution, nothing can be claimed more than the highest amount or value for which the stamp used would have been sufficient. The Advocate-General observes that the instrument being regarded as duly stamped, the provisions of section 35 providing for the payment of duty in the case of insufficiently stamped instruments will not apply and consequently the existing law "works a great and unexpected hardship in cases "in which sums may become payable periodically under an instrument and especially

Paragraph 6 of his letter.

"in cases of leases for long terms reserving rent in kind either in whole or in part. "Whether or not amounts voluntarily paid, under the terms of the instrument prior "to the suit which is brought on the instrument, are to be taken into account in "determining the amount for which the decree is to be passed in the suit, is by no "means clear. If sums already recovered in prior suits exhaust the stamp, the result "will be that no subsequent suits could at all be brought during the term of the "instrument. The hardship will be all the greater under the new law which provides "that in the case of a perpetual lease, the stamp duty shall be the same as for a conveyance for an amount equal to one-fifth of the whole amount of rents which would "be paid or delivered in respect of the first fifty years of the lease."

The Bill proposes to modify the existing law by providing that in the case of a lease of a mine in which a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such share for the purpose of stamp duty at Rs. 20,000 a year and that the whole amount of such share shall be claimable under such lease. The Advocate-General remarks that there is no reason why this proviso should be restricted to mining leases or why in the case of a mining lease, the lessor should be competent to recover by suit a larger amount than that covered by the stamp-duty originally paid, without being required to pay the excess stamp duty. He considers, therefore, that "the most equitable provision both in the interests of justice and in the interests of revenue would probably be to enact that, if the court be satisfied that the stamp duty was originally paid on an amount which, with reference to the circumstances, as existing at the date of the execution of the instrument, was *bonâ fide* estimated to be the probable amount payable under the instrument, the party shall not be debarred from claiming more than the amount covered by the stamp, on his paying the excess of stamp duty which would be required to cover the extra amount claimed. together the penalty thereon." This may be suggested to the Government of India.

Yes.
G.S.F.

Yes. But I don't quite see why under such circumstances any penalty should be required.
H.W.B.

(xx) *Section* 29.—This clause specifies the persons by whom the stamp duty should be borne. The Board remarks that it occasionally happens that the party liable is unable to pay and the other does not care to pay and cannot be compelled and suggests that the person in whose favour a document is executed or his representative in interest should, equally with the executant of the document, be liable to make good the deficient duty and penalty. There seems to be no need for such a provision. A document which is not duly stamped cannot be admitted in evidence unless the deficient duty and penalty are paid. If therefore the person in whose favour it is executed wishes that it should be produced and admitted in evidence, it will be to his interest to pay the amount and get the document. He can recover the money thereafter under section 44 of the Bill.

Paragraph 2 (vi) of the Board's Proceedings.

G.S.F.
H.W.B.

Instruments not duly stamped.

(xxi) *Section* 33, *proviso* (*a*).—Under the existing law, the Magistrate or Judge of a Criminal Court is not required to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Criminal Procedure Code. In the Bill, the expression "if he does not think fit so to do" has been inserted after the words "or impound." The effect of the amendment is that the Judge or Magistrate may, if he thinks fit to do so, examine or impound an instrument coming in the course of *any* proceeding.

(xxii) *Section* 34.—Under the present law, an audit officer of public accounts, before whom an unstamped receipt is produced, must impound the instrument but has no power to require the substitution of a duly stamped receipt. A section has been added remedying the defect.

(xxiii) *Sections* 35 *and* 40.—Registration officers are, it is reported, unanimously of opinion that the minimum penalty of Rs. 5 prescribed in these sections bears hard on persons executing documents of small value, that in the majority of cases, there is no intention to defraud and that to charged the minimum penalty of Rs. 5 in all such cases without reference to the amount of stamp revenue lost to the State, seems harsh and oppressive. The Inspector-General, therefore, suggests that either the minimum be abolished or reduced to Re. 1. This suggestion was already considered and it was thought that the minimum should be retained for the protection of the revenue (*vide* Honourable Member's remarks on page 14 of the first note under Government Order, No. 425, dated 28th August 1896).

Yes. A revenue law being easily evaded is always severe.

G.S.F.
H.W.B.

With regard to proviso (*a*) to section 35 which provides for insufficiently stamped instruments being admitted in evidence on payment of duty and penalty, the Advocate-General makes the following suggestion.

Paragraphs 1 and 2 of his letter.

Where an instrument liable to stamp duty is lost or withheld by the opposite party after notice to produce it has been given, the presumption is that it was duly stamped and secondary evidence is admissible in proof of the existence, condition or contents of the document. The presumption is a rebuttable one and it has been held that when it is rebutted. the deficient stamp duty and penalty could not be levied and secondary evidence could not therefore be admitted.

I.L.R., 2 Madras, p. 208.
" 7 " p. 440.

"Instances often occur of a deficient stamp being affixed owing to doubts in the interpretation of the stamp law and not from an intention to evade the payment of the proper stamp duty and if in such cases the instrument happens to be lost or withheld by the opposite party, it works serious injustice as the party is precluded from paying the deficiency in the stamp duty and the prescribed penalty and proving the transaction evidenced by such instrument by adducing secondary evidence of it, in the shape of a duly authenticated copy thereof obtained from the Registration office or otherwise." He, therefore, suggests that a provision should be made extending the provisions of proviso (*a*) to section 35, relating to the payment of deficient duty and penalty, to cases in which secondary evidence of an instrument which could not be produced, will be admissible and the deficient stamp duty and penalty would, if the instrument had been tendered in evidence, be payable. This may be brought to the notice of the Government of India.

G.S.F.
H.W.B.

(xxiv) *Section* 39.—Addition has been made to this section empowering the Collector to refund any portion of the penalty in excess of five rupees, even though no application is made but "with the consent of the Chief Controlling Revenue authority." The Superintendent of Stamps considers (paragraph 10 of his letter) that the Collector should be authorized to exercise the power without reference to the Chief Controlling Revenue authority. This question is not, however, important as full control is in any case reserved to it under clause 56 (1).

No reason to alter.

G.S.F.

I don't see why any refund should be provided for if no application is made.

H.W.B.

Section 39 (2).—The Board remarks it is not quite clear whether, if no application has been made to the Collector, the sanction of the Chief Controlling Revenue authority must be obtained under this section as under section 39 (1). It presumes that neither application nor reference is necessary and suggests that the introductory "or" should be "and". The Board's view seems correct and its suggestion may be supported.

G.S.F.
H.W.B.

(xxv) *Sections* 40 (1) *and* 42 (2).—Referring to the provisions of these sections which require that an application should be presented for the return of impounded documents, the Inspector-General of Registration states that unless there is such an application, the impounded document is not returned to the registering officer and that very often through ignorance the parties do not present such documents again for registration and considers that it would be convenient if the provision in the repealed Stamp Act XVIII of 1869 section 24 (*a*), authorizing the adjudicating officer to return the document to the "Registering or other public officer by whom it was sent" is restored. Orders are requested.

This may be recommended.

G.S.F.
H.W.B.

(xxvi) *Section* 44.—Provision has been made for the stamp duty which a party to a suit may be obliged to pay through the default of another, being recovered as costs of the suit thus avoiding the necessity for a separate suit.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

(xxvii) *Sections* 49 *and* 50.—Are merely redrafts of the existing section 51 with slight alterations to make the provisions clearer and bring them more nearly into accord with the corresponding provisions of the English Stamp Duties Management Act, 1891. The alterations requiring notice are :—

54 and 55 Vic., Ch. 38.

(1) Allowance is proposed to be made for the stamp on any document written out but not signed or executed. This will cover cases in which a party to a transaction retracts at the last moment and will really prove a beneficent provision to the other party who cannot compel him to complete it. As under section 2 (12) the word "executed" means "signed," the words "or executed" in the section seem to be redundant as remarked by the Board.

Section 49 (*b*) of the Bill.

(2) Another point is this Section 51 of the Act of 1879, as it is worded at present, applies to documents which have been found by a court of law to be void. But under the provisions of the English law from which the Indian law is taken, if a document is found to be void in law from the beginning, the parties who executed it can claim refund of the duty paid upon it only if no legal proceeding has been commenced in which the document would have been given in evidence. If a document is found by a court to be void, it must have been produced in evidence before that court and must have been made use of by the party producing it. The necessary amendment has now been made—*vide* proviso to section 49.

Vide Sir James Westland's speech (paragraph 2, page 236, *Gazette of India*).

(3) The period for application for relief in cases falling under section 49 (*d*) (5) is reduced from six to two months.

(xxviii) *Section* 51.—A new section has been added giving power to the Chief Controlling Revenue authority to make allowances, without limit of time, for stamp paper on printed forms used by any incorporated company or other body corporate where such forms have ceased to be required. The Superintendent of Stamps (paragraph 12 of his letter) and the Board of Revenue (paragraph 2 (xi) of the Board's Proceedings) suggest the insertion of "or if so authorized by the Local Government, the Collector" after the words "the Chief Controlling Revenue authority." The amendment suggested seems hardly necessary.

The authority of the Local Government would be more trouble to get than for the Board of Revenue to pass the order itself.

G.S.F.
H.W.B.

(xxix) *Section* 52.—In cases where a stamp of insufficient value has been used and the parties desire to have a stamp of proper value substituted, refunds are now being granted under section 51 (*d*) (6) of Act I of 1879. The Board states that the section as now amended (section 49 (*d*) (6)) is inapplicable to this class of cases and both the Superintendent of Stamps and the Board suggest that special provision

should be made for them under section 52. It is not clear how if the class of cases referred to can be said to be covered by section 51 (*d*) (6) of the Act, they cannot be equally covered by section 49 (*d*) (6) of the Bill.

(xxx) *Section* 54.—To the section dealing with allowance for stamps not required for use, a provision has been added authorizing the Collector to make repayments to a licensed vendor of stamps without any deduction. The Board points out that no provision has been made for cases in which the heirs or representatives in interest of licensed vendors apply for refund. They are now granted refunds under departmental orders and the Board suggests the insertion of the words "or the person through whom such person claims" in clauses (*a*) and (*b*) after the words "person" and "he" respectively, and of the words "or is the representative of" in the proviso.

G.S.F.
H.W.B.

The suggestion is a good one. It will meet also cases similar to that dealt with in G.O., No. 2534, dated 30th June 1896.

Vide paragraph 5 of Standing Order, No. 46-A.

This should be noticed.
G.S.F.
H.W.B.

The fact that in the case of a licensed vendor the repayments should be less the discount allowed is not mentioned in the proviso.

(xxxi) *Section* 55.—A new section has been added to give facilities to companies in respect of renewals of debentures.

REFERENCE AND REVISION.

"Otherwise coming to its notice" would clearly cover a reference by the Inspector-General or any body else. But section 56 (2) could be amended by inserting the Inspector-General after "Collector under . . . . section 41." But nothing is required in my opinion.
G.S.F.
H.W.B.

(xxxii) *Section* 57 (1) *and* 56 (2):—The Inspector-General of Registration suggests that if under this section he cannot refer stamp questions to the Board of Revenue he should be empowered to do so.

(xxxiii) *Section* 61.—The Board considers that this section makes no provision for cases in which the Collector considers that a court has *overvalued* the stamp duty payable and that it should be enlarged so as to permit the Collector to act in such cases if he considers that injustice has been done. This may be suggested for the consideration of the Government of India. The Board also remarks "the contingency of the Collector being himself the appellate authority either in his Revenue capacity or as District Magistrate has also to be considered. Under the section as it at present stands, it is further conceivable that the Collector may have occasion to apply for adjudication to one of his divisional officers acting as appellate courts from the decision of a Tahsildar or other subordinate."

Paragraph 2 (xiv) of Board's Proceedings.

G.S.F.
H.W.B.

Criminal Offences and Procedure.

(xxxiv) *Section* 64.—This has been extended to cover all acts done with intent to defraud the Government of any duty or penalty.

Supplemental Provisions.

(xxxv) *Section* 73.—To give Collector power to trace insufficiently stamped documents, this section has been added providing that every public officer should permit the person authorized by the Collector to inspect and to take notes and extracts from the books, registers, &c., in his custody. It is taken from the English Act (51 and 55 Vic. cap. 39, section 16.)

(xxxvi) *Section* 75—Provides that the Governor-General in Council may make rules to carry out generally the purposes of the Act and may by such rules prescribe the penalties to be incurred on breach thereof. The Advocate-General presumes (paragraph 7 of his letter) that the penalty which may be prescribed is intended to be only a fine and suggests that this should be made clear and also that the maximum fine which may be prescribed should be stated in the section.

G. S. F.
H. W. B.

Schedule.

Article 1.—Acknowledgment of a debt exceeding Rs. 20 is now liable, whether attested or unattested, to a duty of one anna. It is proposed that the attested acknowledgment of a debt which is clearly in the nature of a *bond* should be stamped as such.

Article 5.—The Inspector-General of Registration suggests that *kuri* or *chit* associations referred to in I.L.R., Mad., Vols. XIX and XX, pages 31 and 69, respectively, should be separately provided for if they do not fall under article 5 as agreement not otherwise provided for.

Yes.
G.S.F.
H.W.B.

Where the association is held to be not illegal, the instrument executed in its favour would seem to fall under article 5.

Article 12. *Award.*—The Inspector-General of Registration lately brought to the notice of the Board of Revenue that parties to a partition, instead of executing a duly stamped instrument, occasionally evade the stamp law by getting a third person to make an award and registering it as such. He fears that the practice will shortly become general. As the temptation to substitute awards for partition deeds is undoubtedly great and may also tend to an undesirable increase of litigation, the Board suggests that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition-deeds.

Paragraph 2 (xv), sub-clause (1) of the Board's Proceedings.

Partition-deeds and awards are liable to the same duty as bonds; but in the case of the former there is no maximum fixed, while in the case of the latter the maximum chargeable is Rs. 5.

This may be recommended.
G.S.F.
H.W.B.

Articles 13 *and* 21.—Bill or exchange payable on demand and cheque are now liable to a duty of one anna, only when the amount exceeds Rs. 20. But it is proposed to make all such instruments chargeable with duty without any regard to the amount. The exemption now allowed appears to have arisen by mistake. The proposal is in accordance with the English law under which there is no such exemption.

Vide Sir James Westland's speech on page 233 of the Gazette.

The duty with which a *certificate of sale* (*article* 18) is chargeable is reduced, in the Bill, in cases where the value of the property sold does not exceed Rs. 25. Under article 16 of schedule I of Act I of 1879, the minimum duty is 8 annas which is the duty prescribed where the value of the property sold does not exceed Rs. 50. In the Bill it is proposed to reduce it to 2 annas where the value of the property does not exceed Rs. 10 and to four annas where it is above Rs. 10 but not above Rs. 25. This will be felt as a great relief in several cases.

Article 23.—The Inspector-General suggests that the rates of duty—2 and 4 annas—prescribed for certificates of sale (article 18) for value not exceeding Rs. 10 and 25, respectively, may be adopted for conveyances of that value. The latter up to the value of Rs. 50 are now subject to a duty of 8 annas. As conveyances for a consideration less than Rs. 25 will be rare, the proposal is not likely to affect the revenue to any appreciable extent and may be recommended.

H. W. B.

Article 24. *Copy or Extract.*—The Inspector-General of Registration thinks that the clause "when applied for . . . . petty officer" under exemptions (*b*) (iii) in this article is intended to cover cases (i) and (ii) as well and that it should be printed accordingly.

The view is correct, for in the notification published by the Government of India in their Gazette, the clause is properly printed—*vide* page 894, dated 2nd November 1895 (part I). He also suggests that as applications are often received for extracts from the returns and register kept in the Registrar-General's office, the words "Registrar-General of Births, Deaths and Marriages" should be inserted after the "Marriage Registrar" in exemption C under the article.

G. S. F.
H.W.B.

Vide page 1293 of the *Fort St. George Gazette*, dated 12th November 1895.

G.S.F.
H.W.B.

Article 35 (v). *Leases.*—For the purpose of levying duty, the term "in perpetuity" is assumed to be equivalent to 10 years under this article and to 20 years under section 25 of the Bill. The Board observes that though the two provisions relate to different matters—the former to leases and the latter to an annuity, &c.—the discrepancy may have been unintentional and may deserve consideration.

G.S.F.
H.W.B.

Article 39.—This article provides that where a memorandum of association of a company is unaccompanied by articles of association, the duty thereon shall be Rs. 40, while if it is so accompanied, it will be only Rs. 15. The duty chargeable under the Act of 1879 is—

Article 43 of schedule I of Act of 1879.	Rs. 15 on memorandum of association of a company, and
Do. 8 do. do.	Rs. 25 on articles of association.

The change now introduced by the Government of India has not been explained but seems to be due to the fact that, under section 37 of the Indian Companies Act, articles of association are *required* to be filed only in the case of an unlimited company or of a company limited by guarantee, and the Government of India apparently consider that the full amount of Rs. 40 should be levied even where in the case of a company limited by shares, the memorandum of association is *not* accompanied by the articles of association.

Article 46.—All instruments of partnership are now liable to a duty of Rs. 10. (Article 52 of schedule I of Act 1879.) It is proposed to reduce the duty to Rs. 2-8-0, where the capital of the partnership does not exceed Rs. 500. It would probably be desirable to prescribe an intermediate rate of Rs. 5, where the capital does not exceed Rs. 1,000.

Not necessary.
G.S.F.
H.W.B.

Article 49.—Promissory note payable on demand is in the nature of a continuing security and in England pays the same duty as a bill or note—not payable on demand. The same rule has now been made applicable to India. In reference to this, Sir James Westland said:—

Page 233 of the Gazette.

"In the case of promissory notes there is another alteration which has been made and in "which we have also copied the English law. As the law at present stands a promissory note "bears the same duty as a bill of exchange payable on demand. Demand means a very different "thing in the case of a bill of exchange from what it means in the case of a promissory note. "When a bill of exchange is payable on demand, it is intended, unless it is of the variety known "as kites, to start at once upon its journey; it passes through various hands and towards discharge. "Now, when a person makes a promissory note payable on demand nothing would surprise him "more than the presentation of the note being immediately made to him. It is not really meant "to be payable on demand although it is expressed to be so. A promissory note is therefore "treated as a continuing security in England, and it is provided that promissory notes shall bear "the duty which is payable on a bill of exchange drawn otherwise than on demand. In this "respect, therefore, we have copied the English Act and made a change which increases the duty "payable upon these documents."

Article 57. *Security bond or mortgage deed executed by way of security for due performance of office.*—The Inspector-General of Registration suggests that this article should be enlarged so as to cover cases in which security bonds are executed by a contractor pledging his property for the due performance of his contract. It appears that such documents are at present treated as falling under the definition of "mortgage deeds." It would be more appropriate if the instruments in question are brought under the term "security bond."

But the Bill adds: "*or other property*," and the article is entitled "mortgage deed by way of security." Nothing more seems required.

G.S.F.
H.W.B.

To the clause (*d*) of the exemptions under this article the Board proposes that instruments executed under the Agriculturists'* Loans Act should also be added. This should also be added to the exemption 1 under article 40.

* They are now exempted under the notification No. 5199-S.R., dated 1st November 1895, article 8 (*a*) of schedule II (*vide* appendix I of the Act).

G.S.F.
H.W.B.

Article 58, *section* (*b*).—The Inspector-General of Registration considers that the fixed duty of Rs. 10 in the case of "revocations of settlement" is excessive and that the duty may be fixed on an *ad valorem* scale as for settlements, subject to a maximum of Rs. 10. In the case of declarations and revocations of trust a similar suggestion was made but the Government of India have not adopted it (*vide* 5 page *supra*). In these cases, however, *both* are subject to a fixed duty. As an instrument of settlement is liable only to an *ad valorem* duty, the revocation of such an instrument may well be liable to an *ad valorem* duty, subject to the maximum of Rs. 10.

May be recommended.
G.S.F.

I think I would leave it alone.
H.W.B.

Article 61.—The Inspector-General suggests that the duty on "surrenders of leases" should be chargeable on the money consideration where there is one and in other cases on the duty leviable on the original lease for the *unexpired term*. He also makes a similar suggestion in the case of transfers of bonds, mortgages and policies of insurance (article 62) subject to a maximum of Rs. 5. At present they are chargeable with duty paid on the original bond, &c., subject to that maximum. It would be equitable to levy the duty only on the amount yet due under the bond, &c., and with which alone the surrender or transfer deals.

May be noticed.
G.S.F.
H.W.B.

Article 62.—Transfers of Court decrees have been held to fall within the definition of conveyance. There appears to be no reason why these instruments should be charged so heavily as conveyances. The Inspector-General suggests that the transfers of decrees should be made chargeable with duty like bonds subject to a maximum of Rs. 10. As the terms bonds, promissory notes, and receipts are not defined in the Act, the Board considers it incorrect to use the words "as defined by" in articles 15, 49 and 53 and suggests the substitution of the word "*vide*" in their place. The point may be mentioned in the reply to the Government of India.

Why not? Such a transfer is better than most voluntary conveyances.
G.S.F.

Yes.
H.W.B.

This is a matter of drafting, which we need not notice. The Government of India will see the papers.
G.S.F.
H.W.B.

V.P.
29-1-98.

To the Honourable Member—

The office-note is very carefully and accurately done, and notices all the points. I have made marginal notes.

G.S.F.
8-2-98.

A very good note.

H.W.B.
11-2-98.

Office—

Now draft please, only on points requiring notice—urgent.

G.S.F.
12-2-98.

Draft submitted.

V.P.
17-2-98.

Submit in proof—very urgent.

G.S.F.
17-2-98.

To Secretary—

A proof copy of the letter to the Government of India on the Indian Stamp Bill is submitted to the Secretary as directed. If proof is approved, arrangements will be made to get a few clean copies from the Press and despatch them this evening, spare copies being despatched to-morrow.

Yes.
G.S.F.

Office Order No. 56 requires that all draft letters to the Government of India other than those relating to routine matters should be marked for His Excellency the Governor.

His Excellency is on tour and this letter is very urgent. Orders are requested.

V.P.
19-2-98.

Issue.

Government of India have telegraphed.

G.S F.
19-2-98.

R.: The Indian Stamp Bill.

~~G.O. 425 28 8 96 Legislative~~

In their Resolution dated 30th Jany. 1895, the Government of India desired to be furnished with an expression of opinion of the Local Governments on certain proposals for the amendment of the Stamp Act, I of 1879 and the remarks of this Govt. were submitted with letter No.436 d/28-8-96. The Govt. of India having amended and recast to a certain extent the provisions of the Act, now forward the Bill re favour of opinion of this Govt. and of the Hon'ble the Judges of the High Court and of such selected officers and other persons as this Govt. may deem fit to consult on the subject. The Bill was accordingly referred to the Hon'ble the Judges of the High Court, the Advocate-General, the Administrator-General, the Inspector-General of Registration, the Superintendent of Stamps and the Board of Revenue for remarks. The reply to the Govt. of India was due on 1st Jany. 1898 but the report of the Inspector-General of Registration

G.O. 930 11-11-97

C. 10/3/98
R. 12/4/98

was received only on the 14th Jany.1898.

2. Three of the Judges of the High Court— the Hon'ble the Chief Justice and Justices Shephard and Benson—have, it is reported, no remarks to offer; the Hon'ble Mr.Justice Boddam sees no objection to the Bill, while the Hon'ble Mr.Justice Subramania Aiyar has recorded no opinion yet.

3. Attention is solicited to the Hon. Sir James Westland's speech in the Imperial Legislative Council, in which the nature of the amendments made in the Stamp Law is explained.

The principal alterations in the provisions of the Act together with the remarks and suggestions of the Board of Revenue and other officers consulted will be set forth below:-

4. First as to the proposals made by the Govt.of India and referred to in para 2 of this Government's letter No.426,d/ 28-8-96.

I. That the term instrument be defined as in the English Stamp Act so as to include every written document with a view to avoid, for instance, any question being

raised as to whether copies or extracts certified by a public officer to be true copies or extracts are instruments within the meaning of Section 5 of the Act. The term has now been defined - vide Cl. 2 (13) of the Bill. The definition in 54 and 55 Vic.Ch.39,Section 122 is "Instrument includes every written document". The definition adopted in the Bill is:-

" Instrument includes every document by which any right or liability is or purports to be created, transferred, limited, extinguished or recorded". The Board considers that the definition should include every document by which any right or liability is or purports to be extended as well as limited. This may be pointed out to the Govt.of India.

Para 2 (1) subclause 3 of B P 529 16.12.97

If you extend a right you create it. The S. of S. will see the Board's suggestion para 2. iv of Letter

II. That the Act should prescribe some definite mode of cancelling adhesive stamps as under the English Act- Vide 54 and 55 Vic.Ch.39, Section 8. This has been accepted and a para has been added to Clause 12 of the Bill as follows:-

" In the case of an adhesive stamp the person required by Sub-Section 1 to

may cancel it by writing on or across the stamp
"cancel the stamp his name or initials or
"the name or initials of his firm with the
"true date of his so writing". Referring
to this provision Sir James Westland, in
his speech at the Legislative Council said
" We provided in the law one method of
"cancellation; that method is not absolutely
"obligatory, but it is desirable to give
"people one clear method of complying with
"the prescription of the law as to effect-
"ing cancellation".

The Administrator-General considers this clause to be unnecessary and thinks difficulties may arise by a person endeavouring to cancel an adhesive stamp in the manner provided and not doing it completely, as by the omission of the true date of affixing the signature or initials, in which case it may give room for the contention that not being cancelled in the manner required by the Act the instrument ought to be treated as not duly stamped.

An objection more or less to the above effect was urged by the Board when the proposal was first under consideration but

but the Govt.overruled it-vide para 2-II of B.P.No.321,d/13-7-95, in G.O.No.425,d/28-8-96 and para 2- II of letter to India No.426,d/28-8-96. The Superintendent of Stamps remarks(vide para 7 of his letter) that as " the section refers only to adhesive stamps, the words "in the case of an adhesive stamp" are redundant and confusing". It is submitted the words may stand. He also points out that the word "may" should be "shall" as section 63 of the Bill refers to the manner of cancellation prescribed not permitted. The Board (para 2(vi) of the AP) states that several of the Collrs.also have pointed out this inconsistency.Looking to the view expressed by Sir James Westland, it will probably be best to insert the words "or in any other effective manner" after the word"section"in line 5 of Cl.63 of the Bill.

To prevent this provision pressing hardly on the ignorant public it was suggested by this Govt.that each adhesive stamp should bear as a part of its device a notice in the vernacular to the follow-

following effect: " This stamp must be cancelled by writing the name of the signer and the date across it". This suggestion, if approved, will form a matter for ~~the~~ an executive instruction by the Govt.of India.

III. That the rate for the conversion of foreign money into Indian currency in section 19 of Act I of 1879 should be modified and that a pound should be taken as equivalent to Rs.15 and 100 francs as equivalent to Rs.60 instead of Rs.10 and 40 respectively, as at present. Section 19 of the Act of 1879 has now been omitted and the scope of section 20 has been enlarged so as to include all currencies other than the currency of British India, including pounds sterling, dollars &c.Vide Cl.20(1) of the Bill.

Clause 20(2) provides that the Governor-General in Council may from time to time by notification in the Gazette of India prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purpose of calculating stamp duty &c

No objection is raised to this provision by any of the officers consulted, nor does any seem to exist.

IV. That section 25 of the Act should be amended so as to provide for valuing "deferred" annuities also. This Govt.suggested that the words " or next after the date of a contingency mentioned in such instrument or conveyance as the case may be" may be inserted at the end of sub-sections (b) and (c). The Govt.of India have now omitted the words " next after the date of such instrument or conveyance" occurring at the end of each of the clauses and substitued in their place the words "calculated from the date on which the first payment becomes due".

Section 25(b)+(c) of the Bill

This seems an improvement.

V. That a revenue officer or civil court directing a partition should be authorized to remit at discretion, the stamp duty payable on the portion of an estate or holding which remains undivided in consequence of some share-holders electing to continue to hold jointly and that the

stamp duty payable should be levied only on the share or shares partitioned off.

With reference to this proposal the Madras Govt. observed:-

"A decree or order of a civil court directing a partition of property is not an instrument of partition within the meaning of section 3, Cl.11 and is not liable to stamp duty under Art.37 of the first schedule. It is not, therefore, understood why reference is made to such decrees or orders of the civil court, or whether it is proposed that they should be stamped under the Indian Stamp Act, notwithstanding that a court fee is paid when the aid of the civil court is invoked for effecting partition. × × × In this connection I am to draw attention to the hardship which the Stamp Act works in cases of voluntary partition. As the law is at present understood, when one or two of many co-owners of joint property separate, the rest continuing joint, stamp duty has to be paid on the whole property and not merely on the portions taken by the retiring members. When the rest divide among themselves later

× para 26 of the Circular letter
× para 1 of this letter

later on, stamp duty has again to be paid on the portion of the property so divided.

In the definition of the term "instrument of partition"(Cl.2(14)) the Govt. of India have now made it clear that it includes also a final order for effecting partition passed by any civil court.

With reference to this change in the definition, the Board of Revenue and the Administrator-General observe that as parties to partition suits have to pay heavy court fees and other expenses incidental to such suits, it will be hard to compel them to pay in addition a stamp duty for the purpose of carrying the court's decree into effect. It is submitted that the attention of the Govt. of India may again be drawn to the point. The Govt. of India have also added as first proposed by them a proviso to Cl. 29 (h) to the effect that a revenue authority or a civil court passing an order for partition " may in its discretion remit the duty payable on such portion of an estate or holding as may remain undi-

undivided in consequence of some shareholders continuing to hold jointly".

The hardship existing in cases of voluntary partition pointed out by this Govt. has not been removed. The Inspector-General of Registration suggests that the proviso to Cl.29(h) may be extended so as to cover such cases. May this be urged upon the Govt. of India again?

Yes: I think so

VI. That Ch.IV of the Act be amended to cover the cases of an instrument sufficiently but not duly stamped. That is to say- The proviso to section 34 of the Act is so worded as to provide only for an instrument being received in evidence on payment of the deficient duty and a penalty but it was considered necessary also to provide for the case of an instrument executed on a stamp of a wrong description, though of the full amount. The necessary provision has now been inserted vide Cl.37 of the Bill.

The Local Govt. suggested that the same rule should be extended to documents written in contravention of sections 12 and 13 of the Act.

This suggestion has not been

adopted by the Govt. of India, apparently because sections 36 and 37 of the Act (Cl.39 and 40 of the Bill) already authorize the Collector to refund or remit the whole penalty.

VII. That section 33 of the Act should be amended to provide that a Municipal Officer is a public officer for the purposes of that section, i.e. for the purposes of the examination and impounding of instruments. In the new Bill this has not been directly provided. But a provision has been inserted to the effect that for the purposes of the section in cases of doubt, "the Governor-General in Council may determine what offices shall be deemed to be public offices"-Vide Cl.33(3)(a) of the Bill.

VIII & IX. That section 42 of the Act should be amended so as to give the Chief Controlling Revenue Authority (1) power to remit as well as to refund penalties and (2) power to refund excess stamp-duty erroneously levied.

The necessary provisions have now been inserted.-Vide Clauses 45(1) and 45 (3) of the Bill. But in Clause 45(1) no

appeal time has been fixed. This maybe fixed at three months as in clause (3) of the section or at least one month

Written 3 months as of what date? The penalty is to be remitted only on the occurrence of a particular event - ie. under S.35 before the instr. is required to be produced in evidence or under S.40 on being impounded: - in the latter case no time definition of time is needed; in the former the penalty is payable before the instr. can be admitted, ie. it is this penalty that is remittable, for this application may be required within one month

BS SK

para 2-xxvii of letter

With reference to Clause 45(3), the Board remarks that power should be given to the Chief Controlling Revenue Authority to refund the excess stamp duty levied without application from the party concerned; that the clause as drafted does not state that the application must be from the party and with a view to obviate difficulties of interpretation it suggests that the words- "upon the matter being brought to notice" be substituted for the words "upon application in writing". May the suggestion be recommended to the Govt.of India? The cases in which parties concerned will not move in the matter, where there is a chance of refund, are very rare.

Parties must move in the matter themselves I think: The S. of I. will see the suggestion.

SK BS

In connection with these proposals VIII and IX, it was pointed out by this Govt. that cases might arise in which duty or penalty might have been wrongly omitted to be levied by the Collr. and that the best course to meet all such cases would be to authorise the Chief Controlling Revenue Authority to call for and revise the Progs. of Collrs. under sections 36, 37 & 38

of the Act.

Clause 56(1) of the Bill which has been newly inserted and which declares that "the powers exercisable by a Collr. under Chapter IV and Chapter V shall in all cases be subject to the control of the Chief Controlling Revenue Authority" seems sufficient.

X. That section 4F of the Act should be amended so as to give the Chief Controlling Revenue Authority the statutory right of hearing appeals from the Collector's orders regarding the adjudication of the legal stamp duty on instruments. The new clause 56(1) inserted in the Bill confers upon the Chief Controlling Revenue Authority control over only such of the Collector's powers as are exercisable under Chapters IV and V. The power of adjudication referred to above falls under Chapter III S.31. The omission does not seem to be intentional as the Govt.of India themselves said in 1895 that the proposal was reasonable. It is submitted therefore, that the omission should be

Bulk clause (2) of S.56 of the Bill (the Govt may refer to the C.C.A in case of doubt under Ch III. Probably the S. of I. does not want a general power of appeal to the C.C.A

However say it did not

brought to their notice. It can be easily supplied by inserting "Chapter III" before "Chapter IV" in line 2 of Clause 56(1).

XI. That section 50 should be amended so as to give to appellate courts revisionary powers in respect of decisions of criminal courts as well as of Civil and Revenue Courts in the matter of impounding or refusing to ~~refuse~~ admit in evidence instruments not duly stamped.

The necessary amendment has now been made by the insertion of words "or any criminal court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure" after the words "Revenue jurisdiction in line 2 of the section. Vide Clause 61(1) of the Bill, which correponds to section 50 of the Act of 1879.

In regard to this amendment the Board points out that the reference to Chapters XII and XXXVI of the Code of Criminal Procedure is insufficient, inasmuch as under Clause 35(2), proviso (a), a criminal judge may now impound a document

para 2(xiv)

vide page 63 of this vol infra

even when it does not come before him in proceedings under these chapters. This remark seems to be based on some misapprehension, for Clause 61(1) refers only to an order under section 35 and an order under this section of the nature contemplated, can be passed by a criminal court only in a proceeding under Chapter XII or Chapter XXXVI.

XII. That the Act should provide that certified copies of receipts when attested by the payee shall, like duplicate receipts, be liable to stamp duty. This Govt. approved the proposal; but added that the duty leviable on such copies and on duplicate receipts should be payable by the payer for whose convenience they are granted- not by the payee who furnishes the stamp for the original receipt.

The new Bill contains the necessary provisions-vide 24(b) of Schedule I and Clause 29(b) of the Bill.

XIII. That declarations of trust should be charged with stamp duty on an ad valorem scale, similar to that prescribed for

bonds in Art.13 of Schedule I subject to a maximum duty of Rs.15. This Govt. accepted the proposal and suggested also that ~~those~~ Art.56 (Revocation of Trust) and Clause (d) of Art.60 (Transfer of trust property from one trustee to another) should be similarly amended, the maximum duty being fixed at Rs.10 and 5 respectively.

It was further suggested that, as doubts were entertained whether the term "trust" was to be understood in the restricted sense assigned to it in section 3 of the Indian Trust Act II of 1882, it might be defined as including all kinds of trusts e.g. trusts for religious or charitable purposes, as well as other trusts.

Neither the original proposal made by the Govt.of India nor any of the suggestions made by this Govt.has been given effect to in the new Bill. The result is that (1) declarations of trust and (2) revocations of trust, will continue to be liable to a fixed duty of Rs.15 and Rs.10 respectively.

vide art 64 of Sch. I of Bill

The Inspector-General

of Registration reports: "complaints have "been frequently made by registration "officers that a duty of Rs.15 on declara- "tions of trust and of Rs.10 on revocations "of trust is excessive and presses with "undue severity and will cause much hard- "ship as in the majority of cases the "value of the property involved is small- "not exceeding a few hundreds of rupees. "There is reason to believe that this duty "is at present evaded to a large extent "by the substitution of sale-deeds for "nominal sums, and in some cases where "landed property is concerned, by a simple "transfer of the patta or revenue registry "in the name of the person or institution "to be benefited by the trust".

Para 2(xi) Subclause b

The Board also considers that a fixed duty of Rs.15 presses heavily on the parties concerned in the case of small trusts and suggests that a minimum of Rs.5, declarations involving property of the value of Rs.1000 and upwards being stamped ad valorem as bonds.

The hardship which the ex-

existing provision involves was pointed out to the Govt.of India by this Govt.so long ago as 1887 and in the remarks under proposal XIII (vide page 5 of G.O.No.425 d/28-8-96) it was stated that they were disposed to accept it. It is not, therefore, clear why they have not seen fit to amend the law in this particular now.

Orders are requested as to whether the point may be urged on the Govt.of India again and if so whether any opinion should be expressed regarding the proposal now made by the Board of Revenue. The Board's proposal while providing for some relief in the case of smaller trusts, will tend to considerably increase the duty in the case of larger ones.i.e.those involving property valued at more than Rs.3000. This will certainly force the people to resort to some means of evading the duty and will probably also discourage religious and charitable trusts to a certain extent.

XIV. That Article 30,Schedule I,should be amended by the substitution in clause (a) of the words "when either the original

Some relief might be given in the case of religious & charitable trusts, if the present duties really discourage such benefactions. But in the case of other trusts I do not think it is desirable to ease the matter further. Trusts affecting ordinary property give a great deal of trouble, & there is no special reason to tax them lightly.

para 2 - xxxviii (2) 9

+ N&C remarks on page 5 of No. 425 28.8.96

mortgage or the instrument imposing the further charge" for the words "when the original mortgage".

Under Clauses (a) and (b) of the Art. higher or lower rates of stamp duty are chargeable according as the original mortgage is with or without possession. Where therefore, two mortgage deeds are drawn-one following the other, the first leaving the mortgaged property with the mortgagor and the second imposing a further charge thereon and giving possession to the mortgagee, the article levies stamp duty on the second deed as if no possession were given and it was originally thought by this Govt.that this would afford an opportunity for fraudulent evasion of the Act, as a person wishing to effect a mortgage with possession for a considerable amount had only to effect a preliminary mortgage on the same property without possession for a nominal sum in which case he would be liable to pay only the lower rate of duty on the second or principal mortgage. The Govt.of India, however, pointed out that in such a case

the second instrument charging the same property but altering the conditions of the original mortgage should be held to be a second or a fresh mortgage, and not merely " an instrument imposing a further charge on mortgaged property" as defined in article 30. But they stated that the matter would be put beyond doubt in the revision of the Act. On further consideration the Govt.of Madras expressed concurrence in the above view of the Govt.of India and added that the term "further charge" in Art.30 of the first Schedule would then be applicable only to cases of further loans on the security of the same property, the conditions of the original mortgage being left unaltered in any way. The Govt.of India has now made the necessary amendment. This amendment will provide against all possible cases of evasion of duty-vide Art.32 (b)-Sch. I of the Bill.

The letters-i.e.- occurring in the second line of the article should be omitted.

The Inspector-General of Registration suggests that it should be made clear whether this provision applies only to cases of further charge made in favour of the first mortgagee or includes also cases of further charge in favour of a different person. The Board on a reference made by the Collr.of Madura in 1883 ruled that the latter classes of documents should be treated as subsequent mortgages-vide B.P. No.1416 dated 22-5-83.

XV. That the Act should be amended to bring it into accord with the English Stamp Law as regards the amount of stamp duty leviable on an instrument executed as further security for an advance or loan already secured by a previous and duly stamped instrument. This Govt. accepted the proposal and suggested also that instruments which, while leaving the amount of debt and the conditions of the mortgage unaltered, merely substitute one property for another previously mortgaged, might be dealt with likewise.

The necessary amendments have now been made vide Art.40(c) of Sch.I

XVI. That the Act should be amended to render instruments purporting to be powers of attorney employed in transactions which are virtually mortgages liable to stamp duty as mortgages. The Madras Govt.did not support the proposal as there are two important limitations in the case of the powers of attorney referred to, which distinguished them from mortgages,

namely that the powers of attorney are revoked by the death of the debtor & will not bind his successors and that even when the creditor sells the property he has no right to retain the sale proceeds.

The Govt.of India have however given effect to the proposal. Vide Art.48(f) of Sch.I

In connection with this proposal it was pointed out by this Govt.that Art. 29 of Sch.I provides for stamp duty and on equitable mortgages only when the loan is repayable within one year and suggested that the scope of the article might be so enlarged as to provide for cases in which the time for repayment of loans exceeds one year.

This has now been done with an increase in the rate of duty. (vide Art.6 of Sch.I.) As to the increase in the rate of duty the Hon.Sir James Westland explained

Referred to in Art.29 as an instrument evidencing an agreement to secure the repayment of a loan made upon the deposit of title deeds or other valuable security or upon the hypothecation of moveable property.

in the Legislative Council:- " An equitable "mortgage is a transaction which frequently "covers considerable amounts of money, and "it is a cheap way of carrying out ordinary "borrowings from banks and the like. We "propose to raise the duty payable in these "cases to about one-fifth of the amount "required in the case of formal borrowing "by bond. This rate is, in proportion to "the duty upon bonds, half of what is levi- "able by the English Law, and seems to us "a moderate demand in respect of the trans- "actions involved".

vide art.48(f) of the Indian Stamp (Amendment) Act of 1899

XVII. That the Act should be amended to render receipts endorsed on postal money orders for sums over Rs.20 liable to a stamp duty of one anna. As the stamp duty on these receipts was remitted only by a notification of the Govt.of India, the point does not arise in dealing with the amendment of the Act.

XVIII. That the Act should be amended to provide for the levy of ~~in~~ stamp duty on transfers of debentures issued by ~~joint~~ joint stock companies under the terms of

a mortgage deed. This Govt.accepted the proposal and suggested that the rate of duty on such transfers should be half that provided on conveyances.

The proposal has been given effect to, the rate of duty being fixed at one-quarter of the duty payable on a conveyance for a consideration equal to the amount of the debenture-vide Art.62(b) of Sch.I.

XIX. That transfers ~~are~~ or assignments of leases should be treated as ordinary conveyances and stamped accordingly.

This proposal has already been given effect to- vide section 3 of Act XIII of 1897 and Art.63 of Sch.I of the Bill. In dealing with this proposal it was urged by this Govt. that when the transfers take place in consequence of the reconstruction of companies they should be treated with special leniency, as such reconstructions are often almost pro forma in order to facilitate the business of companies, as in the very common case of capital being split up into preferred and ordinary shares and as the imposition of a heavy stamp duty would be a serious impediment to business

I think we had we needed what the better. Was often a matter of sentiment Matter further B/2. para 2 - xxx vide my letter

in such cases. The new Bill embodies no provisions to meet cases of this nature. The Govt.of India may be of the opinion that in such cases the concession should, if at all, be granted by a special notification in each case.

XX. That provision should be made in the Act to the effect that when an instrument has been executed by or on behalf of the Govt.it shall not be objected to for want of a stamp or for an insufficient stamp.

This has now been done-vide Clause 3F(d) of the Bill. The general exemption (from payment of duty) on behalf of Govt.contained in Sch.II of the Act of 1879 has now been inserted in the body of the Act as proviso to Cl.3 of the Bill.

X Exempt 6/8

XXI. That instruments evidencing ordinary pawn transactions should be exempted in Sch.II as exempted instruments. The question was first raised by this Govt. in 1890 and as the other Local Govts.consulted were in favour of the proposal a notification was published by the Govt.of India in the same year, remitting the duty chargeable on

vide remarks (under proposal xxi)) on page 9 of G.O 425 24-8-96

3

instruments evidencing ordinary pawn transactions for a sum not exceeding Rs.20. In reference to the proposal this Govt. expressed the opinion that the exemption allowed in the case of pawn transactions for sums not exceeding Rs.20 should be continued and should be embodied in the second schedule.

The Govt. of India have now gone beyond this suggestion and exempt from duty all instruments of pledge or pawn of goods if unattested-vide exemption (3) under Art. 40 of Sch. I.

XXII. That the Act should provide for composition for the duty payable on share warrants under section 35 of the Indian Companies Act VI of 1882 and on debentures issued by Municipalities, Port Trusts and other corporate bodies under the Stamp Act.

Provision as regards the latter part of the proposal was made in Act XIII of 1897 Section 1, reproduced in Clause 8 of the present Bill. Clause 9(b) of the Bill gives effect to the first part of the proposal.

5. The suggestions made by this Govt. ~~[illegible]~~ in para 3 of its letter to the Govt. of India No. 426 d/ 28-8-96 and how far they have been give effect to, will now be noticed.

(i) That the terms "executed", "execution", "bill of exchange", "Promissory note" & "agreement" as well as all the terms occuring in the two schedules should be defined and that, if they cannot be adequately defined, explanations should be added as in the Indian Penal Code.

In the new Bill the definitions of the first four terms named above-but of no others- have been inserted, vide clauses 2(2), (12), & (21). In a few cases explanatory notes have been added in schedule I. Vide articles 27, 40 &c.

(ii) That the terms "moveable" & "immoveable" property be defined in the Act.

This has not been done, possibly because the terms are defined in the General Clauses Act (X of 1897). The suggestion was made because the Madras High Court

had some doubt whether growing crops of coffee should be regarded as moveable or immoveable property for the purposes of the Stamp Act. A notification was published in Novr. 1895 reducing the rate of duty in the case of mortgage of crops and this has now been inserted in the schedule- vide art. 41 - with this difference that when the loan is repayable more than 3 months but not more than one year, from the date of instrument, the duty payable is fixed at a considerably higher rate than in the case of Bills of Exchange payable otherwise than on demand, which was the rate fixed under the notification.

vide art 3 of 12 Act of the Noln no 5799-S R 1-11-95 (Appx I Act of 1879)

for instance if the sum secured is Rs 1600, the duty under the notifn would be Re 1- but under the Bill it is Rs 4- (being four annas for every Rs 100)- may the G.I. be requested to reduce the rate of duty to what it is under the notifn?

I dont know- It is only half the rate on a bond WS

I am inclined to think the duty is too high & should be reduced as proposed SB

(iii) That in (sec.3 sub-sec(11)) the definition of "instrument of partition", the word "property" should be made to include debts by inserting the words "inclusive of debts" after "property" where it occurs for the first time. This has not been attended to.

vide clause 2(14) of Bill

(iv) That the doubt which now exists as to in what cases powers-of-attorney should be stamped under Art.50 of schedule I of

The question arose in connection with the case reported at page 146 of Vol IX, I.L.R. Mad. A full Bench of the H.C. decided that a document authorizing a vakil to apply for copies of records from the Collectors office was properly stamped with a Court-fee stamp under art. 10(b) of sch. II of the C.F. Act 1870 & did not require to be stamped as a power-of-attorney under art. 50(b) of sch I of Act I of 1879. SB

"when a single sheet is found in- "sufficient to admit of the entire instru- "ment being written on the side of the paper "which bears the stamp, so much plain "paper may be subjoined thereto as may be ne- "cessary for the complete writing of such instrument"

Rule 7(b) of Rules no 2170 d 22-5-91 (Appx II of Act of 1879)

vide clause 61 of the Bill

of the Stamp Act and in what cases they should be considered to be vakalatnamas or muktiarnamas within the meaning of Art 10 of schedule II of the Court Fees Act, should be cleared.

This has not been done. The point may be dropped.

(v) That sec. 12 of the Act should be amended so as to make it clear whether an instrument written upon paper stamped with an impressed stamp may be continued on the reverse, i.e., the side which does not bear the stamp.

The section has been left unaltered

Possibly the notification on the point will be amended.

(vi) That with a view to minimise correspondenceCollectors may be empowered to recover stamp-duty which a court has by mistake omitted to levy, instead of applying to the appellate Court as required by the Act as it stands.

The Act has not been amended in this respect.

(vii) That sections 34, 37, & 38 of the Act be amended so that all instruments

chargeable with a duty of one anna, bills of exchange & promissory notes should be capable of being validated when unstamped on payment, if necessary, of a very heavy penalty, as, where the omission is due to fraud, it is the person guilty of the fraud, viz., the executant that benefits by the documents being inadmissible in evidence.

The only amendment made is that a proviso has been added to sec. 34 which provides for the admission of unstamped receipts as evidence against the person by whose fault they were unstamped, on payment of a penalty of one rupee by the person tendering it. Vide clause 35(b).

But as the Administrator-General points out ~~that~~ ** para 4 of his letter* the proviso from its wording applies only to cases where the person who granted the receipt is Plaintiff and the party to whom it is granted is defendant in a suit; ~~and~~ he expresses the opinion that it should be amended so as to apply also to cases where the person to whom the receipt is granted is a Plaintiff, as where A ~~[illegible]~~ discharged a debt due by him to

I do not think this is right. the phrase "admissible in evidence against him" has no relation to the position of the parties in a suit as plff. & deft. Need not be specially noted
S.J.
The Advt. Genl. seems to the right. Ross's (6) speaks of the person bringing suit — that is, he must be the Plff. The section (or the proviso) needs amendment as the Advt. Genl. suggests. Better limit this note. *WS*
para 2 xv of letter.

para 4 of his letter

para 2 xv of letter *S.J.*

Para 3 of his letter

I presume that the exception of Bill of Exch. & Pro. Note has regard to the practice of their negotiability & that if once wrongly stamped they cannot be sued on *or upstamped* *admitted*
S.J.
Better leave things as they are
WS

to it and having received a receipt duly properly stamped as evidence of that discharge files a suit for the recovery of some property which had also been pledged as security for the original debt, and has to use the receipt at the trial of the suit to prove the discharge of the original debt.

The Advocate-General remarks that the clause as in stamps does not apply to the case in which such receipt is tendered in evidence in answer to a plea of set-off and that it should be recast so as to include such a case.

Referring to the exemption in instruments in clause 35, proviso (a) of the Bill, viz., instruments chargeable with a duty of one anna, bills of exchange and promissory notes, the Advocate-General observes that the stringency of the existing provision against the levy of the deficient stamp-duty and penalty in these cases may be relaxed without any detriment to the public revenue by providing that the Court before which the instrument is tendered in evidence shall certify it in evidence on payment of the stamp duty and penalty, if the Court be satisfied that the instrument was not duly stamped by reason of a mistake and not from an intent to defraud the Government.

it is submitted that the foregoing suggestions may be given on the Govt. of India.

In regard to instruments not duly stamped other than those exempted, it is obligatory (under clause 60, proviso (a) of the Bill) on the court to permit them in evidence on payment of the duty and penalty whether or not there was any reasonable excuse for the instrument not having been duly stamped and whether or not there was a wilful evasion of the stamp law.

(viii) Each section of of the Act be altered so as to provide for allowance [illegible] for stamps cancelled by some change of circumstances disconnected with the necessity for the instrument written on the stamp paper or[2] for stamps in cases in which a case of some mistake made or accident happened in writing [illegible]. The latter class of cases was now also provided for by the insertion of the words "by erasure in writing" or any other cause" in clause (c) of the section, but no provision has been made to cover the other class of cases. Vide clause 48 (c) of the Bill.

(ix) That provision should be made in the new for the recovery of the stamp duty as well as fine because of loss of revenue. This has been done

be omitted.

I think this is too lenient (that is when there is reason to believe that an instrument has been kept unstamped, or not properly stamped, in order to the evasion of the Stamp Law, Courts should not have power to admit it even on payment of duty & penalty

BS

para 2 - xiv (c) of letter

x para 11 of his letter
x para 12 of the S.P.

* vide clause 70(b) of the Bill.

para 2 - xix of letter.

BS 8/7/1

See notes on there

BS 8/7

Jer 1

Jer

cope. Vide clause 45 of the Bill, but for the sake, of clause 60 the Board of Revenue point out that this clause is defective inasmuch as it does not provide for the recovery of sums for which offences have been compounded as if they were arrears of land revenue. The defect may be brought to the notice of the Govt. of India. [illegible]. The Inspector-General of Registration seems to suggest that it should be made clear that the power given to collectors in clause 48 should be exercised only after the appeal (if any) in sec. 20(1) abates or after the appeal, if accepted, is disposed of, but as appeal lies in this section, by the omission of the Inspector-General's suggestion be brought to the notice of the Govt. of India.

(x) That it will greatly conduce to public convenience if one-anna postage stamps, which are easily procurable everywhere, be substituted for reverse existing stamps.

This is not provided for in the Bill but it seems to be open to the Govt. of India to make a rule in this respect if they choose, under clause 10(2) (a). It may be mentioned also that as under the new Bill (clauses 8 & 74) no license is necessary for the sale of one-anna postage and as,

...ney will doubtless be procurable more ...
...easily hereafter than at present.

(xi) That the stamp duty on bonds may be reduced to one-anna when the amount or value secured does not exceed Rs. 10 and to two annas when such amount or value exceeds Rs. 10, but does not Rs. 20.

The existing rates are:—

(1) when the amount does not exceed Rs. 10 ----- ----- --

(2) when the amount exceeds Rs. 10 but not Rs. 20. ----- --

These rates have been retained in the Bill

(xii) When mortgages exceeding a certain to pay hire for movable property, such as a carriage or a horse and agreements to pay rents for servants executed in Calcutta or Bombay appear to be 'bonds' within the meaning of section 4 clause (4) of the Act and therefore chargeable with duty under art. 16 of schedule I, should, if they are not bonds, be chargeable with a low uniform rate of 2 annas.

The Act has not been enforced in this respect.

The question is whether such documents are bonds. If they are, as they seem to be, from the definition of the term they will have to pay duty accordingly. Otherwise they will

× Art 13 of Sch I of Act of 1879

...share duty.
annas.

⊗ vide art 15 of Sch I of the Bill

This may be expected
vide
para 2-xxv of letter.

× vide para 2(xvi) (3) of the B-Pro.

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20.11.90

will nevertheless be free under art. 6 of schedule I of the Bill, the Inspector-General of Registration suggests that this article should be extended so as to cover (1) agreements to sell, (2) service agreements or agreements to serve or employ a person as one's clerk or servant and (3) agreements stipulating hire for the use of the moveable property such as carts, omnibuses etc. Orders are requested.

With reference to a suggestion made by the Collector of Sanjan that an agreement to sell should be specifically provided for, the terms records that it is not proposed to support the suggestion.

(xiii) Here it should be made clear that the term "hypothecation of moveable property" in Art. 38 of schedule I means a charge of moveable property with or without possession.
This has not been done vide cont b of sch I of the Bill.

In para 2 of their letter, etc. ×

Orders dated 6-11-90 the Govt. of India explained that insurance companies' down transactions for sums exceeding Rs. 20 should be charged as conveyance under art. 44, schedule I of Act of 1879 are in the account by this Govt. that the Govt. of India must have intended to refer to cases in which no note for repayment was required or other note was over one year; art. 29 being held to be confined

where the date for repayment was not over one year. Now that the limitation as to the date of repayment has been withdrawn in most was art. 29 (vice clause (c) of schedule I of the bill) it is clear that the govt. of India cost never intended that all instruments or cheques or bank of sums should be treated only as promissory notes by the mistake repayment may be. The exemption from duty allowed in the case of instruments or cheques or bank or sums, if unstamped, has been enforced under art.40- Collector-duty-in the bill).

(xiv) Item in col. 2 against art. 37 of schedule I, the word 'value' should be redrafted so to permit the stamp duty being based on the value of the property under mortgage or charge security or on the money taken on bond for the remain of the money and not merely affect debentures and charges specifically charge against it.

Has not been pressed in this respect, nor does it seem necessary to press the point on the govt. of India.

(xv) Does a proviso to be added to art.39 of schedule I of the bill to exclude as (bonds), debentures (under the law or a sum made or issued (under 3) or any instrument or certificate

partition executed in pursuance of an agreement to divide property, which has been charged with the ad valorem stamp required for an instrument of partition and that a similar proviso be added in the case of settlements (art.57).

Neither of these suggestions has been adopted in the bill- vide articles 45 and 57 of the bill.

Both the Board and the Administrator-General consider that a proviso should be added to art. 45 of the bill exempting a partition deed from duty where it is executed in pursuance of a duly stamped instrument, and the Administrator-General says that in the case of a partition effected by several instruments the duty payable on the instrument of partition is greater than that paid on the agreement to divide provision should be made for payment of the difference only.

These proposals are not likely to find favour with the Govt. of India as even the more moderate one made by this Govt. are not been accepted.

(xvi) That the duty on instruments conferring authority to accept may be raised from rs. 10 to rs. 100.

The duty on such instruments has been left unaltered, but it is provided that the stamp duty shall be levied on instruments according to the portion of bill. The Administrator-

x Instrument of Partition

x vide art 45 of Sch I of the bill

This may be suggested

para 2- xxxiv of letter

be omitted

tal of registration charges:-

"The imposition of a duty of Rs. 10 on instruments recording the fact of "adoption which have hitherto been "exempt from stamp duty will be felt "as a very great hardship. It is not the "case that such documents generally "pass between persons possessing ample "estate. In thousands of instances the "value of property passed seldom exceeds "a few hundred ~~of~~ rupees. In many cases "the adoption is made more as a religious "duty- for the spiritual benefit of "the person adopting- than for the pur-"pose of conveying any inheritance. I "think that if a duty should be impos-"ed at all it should not exceed one rupee "or if it is considered necessary to "impose an ad valorem duty one rupee "for every one thousand rupees value "or to a maximum of Rs. 10, might be "fixed."

"When the question was last raised "hon. members were of opinion that an "instrument declaring (or recording) "an adoption should, like a will, be "free of duty. Vide notes at page 402 "of the first note under s. 0. not, also a/ "re-:-ed.

(xvii) that it should be made clear whether article 5 of schedule I in-cludes leases in which the consider-tion is service to be rendered by the lessee to the lessor or specific

I doubt whether this should not be left unfettered by statutory control

para 2. xxiv of letter.

I think this shd be strongly pressed. If a man has no son it is often a sacred duty to adopt. It cannot, having due regard to the Constitution of the Hindu family, be regarded in the light of ~~acquisition~~ the creation of a proprietary interest in favour of the adopted person. I wd. recommend a fixed fee of one rupee. Ad valorem duties shd be avoided if possible in such cases as they involve a troublesome inquiry, sure to be replete with perjury & fraud in many cases, as to the value of the property. It wd. also have to be decided whether that value is to be taken as at the date of the adoption (which properly it shd be, I suppose logically), or at the date of death of the maker of the deed BZ

vide art 35 of Sch I of the Bill

The point may be raised again but I take it if the service is part of the consideration it must be valued. The consdn of a Bond is the amount or "value" secured.

para 2. xxxiii of letter. BZ

No BZ

vide art 47 A (i) of Sch I of the Bill

vide art Policy of Sea Insurance in page 70 of 54 & 55 Vic. ch 39.

specified occasions, as in sec. 105 of the Transfer of Property Act IV of 1882. The new bill does not make the point clearer than it is.

(xviii) that in order to prevent evasion of stamp duty, the words "at the time of execution" in article 44 (a) of schedule I appear to be omitted. this has been done vide art. 40(a) of schedule I of the bill; but it is thought that the same words, occurring in clause (b) of the article should also be omitted.

(xix) that as under art. 4a(a)(1) of schedule I as it stands at present, the duty on a Policy of Insurance is calculated with reference to the amount insured, the form of "in respect of every sum not exceeding Rs. 1000 and also an additional part of Rs. 1000, insured by the policy" should be inserted.

this has not been done. It is observed that under the English law also the rate does not vary (it is one penny) where the premium or consideration does not exceed the rate of £ 2. 0. 0 per centum of the sum insured and has no reference to the sum so insured.

(xx) that article 50(a) of schedule I should be enlarged so as to cover conveyance of property executed for the sole purpose of securing execution of accountable bonds relinquishing ri-

Powers of Attorney

tioners. the necessary amendment has been made. vide art. 4:(a) of schedule I of the bill.

the inspector-general of registration observes that a conveyance executed for the purpose both of presenting and evidencing execution of a document need be stamped with a duty of twenty eight only and suggests that the word "and" may be substituted for "or". This may be suggested to the Government of India.

(xxi)

(c) that transfers otherwise than by sale, e.g. exchanges, gifts, and non-testamentary dispositions not falling within the definition of conveyance, which are exempted under article 31 (conveyance) should not be taxed more heavily than under

a strict reading of the law may seem to require with reference to gifts inter vivos. the inspector-general of registration considers that transfers of promissory notes by separate instruments should be taxed according with duty leviable on the original subject to a maximum rs. 5.

(d) that a low uniform rate of duty should be prescribed for instruments executed to cancel or render ineffective previously existing convey-

I don't know whether or not an amendment — Draw attention of the framers to para 2 - xxxv of letter.

*The substitution of this word would defeat the purpose in view. To give effect to the suggestion the clause should run "for the purpose of -- or of -- or of either" or some such phraseology. But if it is to be recommended, the Govt of India will find the proper terms.

If a Pro. note is transferred otherwise than by indorsement, the deed of transfer should have no special exemption. At least I can see no reason for any special treatment

ance. vide art. 17 of schedule I of the bill.

the inspector-general of registration considers that to be excessive in the case of small transactions and suggests that the same duty as that on the original may be levied subject to a maximum of rs. 5. this seems a good proposal and may be adopted.

the inspector-general also suggests that rectification, cancellation and modification deeds may be provided for under this article. this may lead to evasion of duty at times but it is considered that the suggestion should not be adopted.

the collector of [illegible] suggests that a new article providing for instruments of cancellation should be made to prevent a duty the executants unable to support it.

(e) that transfers of property otherwise than by sale, e.g., the transfer of property to a third person in satisfaction of a claim to maintenance, should be provided for in the schedule, as they do not fall under "conveyance" as defined in section 2(9) of the act and strictly have not been made under article 31 of the schedule.

the collector seems to have been under

...ation reference to this subsection. Please see clause 4(1) and 6? of schedule 1 of the Bill.

The Inspector-General of Registration considers that the term settlement should be so defined as to include transfers of property of the nature referred to above. In this connection please see the ruling of Judge ... which Judge under s. 6. no. 4?? refers to-

(xvii) That an occupants ordinarily, substantially the same broad principle as trade, difficulty according as they are given as to the form of lease or conveyance, the possibility of disputes as to liability may be considered...

(xviii) That with reference to paragraph 11, it would be clearer if provision be made in the Schedule for the exemption of "expenses to lease" and "transfer of leases" in cases in which terms are for twenty years or under only where the rental...

...but case of "surrender of lease" not seem provided for under exemptions of Schedule 1 of the Bill.

The other case of "surrender of lease" does not seem to come under any exemption, nor does it follow that because certain leases are exempt

It was held by a full Bench of the H.C. that an instrument by which A set apart a piece of land for the maintenance of B. to revert to him on her death, was a settlement within the meaning of the stamp Act.

The law might be made clear: this decision being refused to

MD SR

para 2. (i) of letter.

But they are vastly different. A lease can never ripen into a proprietary title: a mortgage may

SR MD

MD SR

It is provided for all right vide art 25. "exemption" at top of p. 22 of Bill

SR

para 5 of letter.

"If" should say "the enjoyment of the premises of this island"

MD

para 2. v of letter.

The words "are leased" might be inserted at the end of the clause

+

...from duty, "expenses to lease" in such cases should also be exempt from duty. The object suggested or transfer seems to be different.

(xxiv) That in article 16, clauses (c) and (e) of schedule 11, the term cultivation may be made to include leases or saltpans, coconut and other fruit trees, so that leases of such areas and counterparts of such leases may be exempt from duty.

The notice has been provided for (vide clause 8(1c)(c) of the Bill and exemption (e) under article 6? of schedule 1 of the Bill) but not the latter- vise exemption under art.25 of schedule 1. The omission seems to be due to be overlooked and may be pointed out to the Govt. of India.

Referring to clause 8(1c)(a) which says a lease includes "an instrument by which any land are leased for the production of coco de pring", the said clause renders the language is "unmeaning. A lease is not given for the production of anything but to enable the lessee to enjoy the produce." Perhaps the expression "for their produce" may be substituted for the words "for the production of coco de pring".

Referring to the exemption from duty under art. 6? of schedule 1 of "counterpart of any lease granted

to a cultivator", the l. c. of section ... section relates only as in the exemption clause relating to leases (sch.6), ... words "use of the agricultural ... section" have been given ... the same expression does not appear in the exemption clause relating to counterparts, the exemption clause under the latter would cover non-agricultural leases as well. It is not known whether this was intended. Should the extension of the term of liable be ... to the object. In order to the exemption ... of registration ... words "in the case of a cultivator" ... be omitted so that ... for the purposes of cultivation" ... exempt. There seems to ... any ... be in the case of leases ... whether they are not ... tivators.

(xxv) that it should be made clear whether the exemption relating to sch. 1a(c) of schedule II, to leases of agricultural land by a will or document should extend to leases ... agricultural ... land which ...

No change has been made in the law in this respect. Article 1a(c) of schedule II was drawn somewhat as exemption (2) under article 49 of

para 2 - xxx of letter MS

What does it matter whether the executant of a lease is a cultivator or not? The executant will rarely be a cultivator - the word "in the case of a cultivator" clearly refers, I should say, to the person in whose favour a lease is granted, & seems correct MS

all

whether the executants are cultivators or not,

If it is "untransferable" can it be transferred by endt?!
I don't see how MS

of schedule 1 of the Bill

(xxvi) ... that it the exemption ... by article 17(2) of schedule II ... to transfer by ... of non-agricultural promissory notes, it may be ... considered.

The proviso of the ... was ... left unaltered- viz. ... tion (2) under article 49 of schedule 1.

(xxvii) ... in the case of ... lands having full ... value of ... for the purposes of ... tion ... deed ... of a ... tion of the sum of £1-11-3d ... 3.65% ... at five times the annual revenue, the ... of such land, which in many cases ... ably exceeds the value ... by the ... tion, may be ...

The provision in the ... tion has been inserted in the schedule under article 49, without any ... tion and it is ... this may be allowed.

be omitted.

6. Such of the amendments of the law, as have not been referred to in the letter from this Government No.428 d/23th August 1898, but which are contained in the Bill, and the suggestion of the officers consulted on the existing provisions of the Act will now be noticed.

Definitions.

Clause 2 (2) & (9).- Following the English Stamp Act 1891, the definition of the "Bill of exchange" has been enlarged and a new definition of "Bill of exchange payable on demand" has been added. The definitions include as is the case in England, many instruments which could not be classed as "Bills of exchange" within the definition of the term in the Negotiable Instruments Act (XXVI of 1881) but which for stamp purposes ought to fall within the same category. The result will be the inclusion, mostly under the one anna rate of duty, of number of instruments which at present escape duty --

vide page 233 of Sir James Westland's speech

because they are drawn in the native character and are not called hundis, the native hundi being the only name that is expressly included in the term bill of exchange.

Clause 2 (4).-

ii. The present definition of "Bill of Lading" has been cut short and is expressed thus :- "Bill of lading includes a through bill of lading". The Inspector-General of Registration considers that the present definition may be retained and may include "a through bill of lading". The Board observes that the omission of the definition is a mistake and the Superintendent of Stamps reports that the definition as curtailed gives room for ambiguity and enquires whether the term is used only in reference to sea going ships or it extends also to receipts used in reference to vessels plying in inland waters which are identical in terms and appearance with a bill of lading. This may be mentioned in the reply to the

But the defn of Bond only says "Bond includes &c"

Agree with the D.G.
Mrs
Para 2. of letter

Government of India in view to the point being made clear in the Act.

iii Section 2 (5) (c) of the Bill.- The Inspector-General of Registration suggests the the addition at the end of the clause in the definition "of Bond" of the words "or any goods or merchandise". He observes that instruments relating to the delivery of goods or merchandise for advances received are now treated as agreements and stamped with eight annas and there is no reason why any distinction should be made between instruments relating to the delivery of grain and other agricultural produce and those relating to the delivery of goods or merchandise. There is no mention of advances received in this clause.

Clause 2 (10).-

iv. The word "conveyance" is defined to mean "a conveyance on sale" and to include "every instrument by which property (whether moveable or immoveable) is transferred on sale".

The Superintendent of Stamps and

the Board of Revenue report that a --
right under a decree has been held to
be property and the deed transferring
such a right, a conveyance, but
that it is not quite clear whether the
word property as used in the defini-
tion covers intangible as well as tan-
gible property. It is therefore sugge-
sted that the term "property" should be
so defined as to include rights of an
intangible nature. "Moveable property"
as defined in the General Clauses Act
means "property of every description
except immoveable property" and appa-
rently includes the right in question.
A definition of the word property in
the Stamp Act appears therefore to be
unnecessary.

Clause 2 (11).-

The definition of "duly --
stamped" has been amended so as to be
applicable also to instruments first
executed abroad but afterwards stamped
in British India. The Superintendent
of Stamps xxyx states that an -----

The definition clashes with the words "duly stamped" in s. 37- I should amend it by adding "or has been certified under ss 37 & 42 (and perhaps other sections)"

Para 2 - III of letter.

unstamped instrument may be certified to by endorsement under clause 42, that the instrument so endorsed may then be acted upon as if duly stamped and that it should be made clear that such an instrument is covered by the definition. The instrument referred to is not stamped either at the time of execution or afterwards but is merely regarded as such on payment of the proper duty or duty and penalty as the case may be. The endorsement made under clause 42 seems sufficient and the definition need not be altered.

The Inspector-General of Registration reports that it has been suggested by some registering officers that the definition of the term "duly stamped" should be altered so as to exclude all documents drawn on stamps purchased more than six months previously. Such a provision would, it is urged, diminish the chances of fraud - antedating and forgery. He considers this is a point worthy of consideration but he

admits that the measure would cause inconvenience to the public and add to the work of refunding officers. These are weighty objections and it is submitted that no amendment is desirable in this respect.

vi Clause 2 (18).-

The definition of policy of insurance has been amended so as to cover policies of every description.

vii Clause 2 (20) (Power of Attorney).-

The words "for and in the name of" have been substituted for the words "in the stead of" so as to make it clear that the definition relates only to powers of attorney and does not include all contracts creating the relationship of principal and agent.

viii Clause 2 (21).-

The term "Promissory Note" has been defined, the definition having been taken from the English Stamp Act.

ix Clause 2 (22).-

In the definition of the term "receipt," the word advertisement has been left out, as the machinery of the Act is not applicable to advertisements acknowledging receipt of money.

Stamp duties.-

x Clause 3

The general exemption on behalf of Government contained in schedule I of the Act of 1879 has been inserted in the body of the Act as a proviso to clause 3.

xi Clause 4.-

According to the existing provisions of the Act, when several instruments are employed for completing a single transaction, only the principal instrument is chargeable with the duty prescribed in the schedule, each of the others being liable to a duty of one rupee and the parties may determine which of the instruments shall be the principal instrument. In order that the option given to the parties to elect which shall be considered to be the principal instrument, may not be used for the purpose of evading

stamp duty, the following proviso has been added "Provided that the duty -- chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed".

xii With reference to clause F which provides that an instrument relating to several distinct matters should be chargeable with the aggregate amount of duties, the Administrator-General suggests that the clause should be so worded as to make it clear that it does not apply to cases where the distinct matters referred to therein are in the nature of alternative agreements as where A in consideration of a present loan of Rs.100 agrees at the option of the creditor 6 months after date either to pay Rs.100 in cash or to deliver a quantity of grain of the value of Rs.150.

The Inspector-General of Registration also deems it desirable to add a few illustrations to this clause to show clearly what is meant by ---

para 2. vii of letter

para 2. viii of letter

A continuing penalty of so much per mensem has been provided for. Point out that this is a common feature which Indian took strong exception in its comments on the Transfer Bill, so that we had to alter a number of sections.

this is a forfeit penalty not a penalty recoverable as such

"Clause"? Is it not "section"?

distinct matters. The attention of the Government of India may be drawn to these suggestions.

xiii Clause 8.-

A penalty clause taken from the English Stamp Act has been added to this clause. It may be retained.

xiv Clause 11.-

Under the present Act, Promissory notes when payable on demand and the amount exceeds Rs.20 are chargeable with a duty of one anna and may be stamped with adhesive stamps. But according to article 48 of Schedule I of the Bill, such promissory notes will be chargeable, as bills of exchange, with an advalorem duty arising from two annas, and will consequently have to be written on stamped paper. This will cause some hardship in the case of promissory notes for small sums and a suggestion has been made to the Board of Revenue that notes for sums less than Rs.100 should be stamped with one anna adhesive labels

* vide page 79 of the note

† para 2 (xiv) of the D.O.

when the duty chargeable on such notes does not exceed 4 annas. The Board of Revenue however does not consider - that the increase of duty under the - draft bill is objecticrable but supports the suggestion that the use of adhesive labels be permitted when the amount chargeable does not exceed 4 - annas. This concession is stated to be necessary in the interests of many - who may not find it convenient or even possible to obtain stamped papers -- when required. As the hardship will be a real one, the Government of India may be moved to insert a provision in clause 11.

xv. Clause 12.-

The Administrator-General observes that though section 12 --- (clause 1 (a) & (b)) requires the cancellation of an adhesive stamp at the time of affixing it or of executing the instrument, clause 2 leaves it -- doubtful whether when a cancellation has been made subsequent to the time

para 2. x of letter

x para 8 of this letter
+ para 2 (v) of the B.P.

above mentioned, the instrument will be deemed stamped or otherwise. It is suggested that this should be made -- clear.

xvi Clause 13.-

The clause requires the Collector to stamp the document with a stamp of such value only as the person presenting may require and pay for. The Superintendent of Stamps and the Board of Revenue points out that it - sometimes happens that the document is on its return after being stamped by the Superintendent of Stamps, necessarily impounded and penalty levied, the stamp duty paid being insufficient. This procedure seems to be unnecessarily harsh; but if the Collector is - required to collect and stamp the document with the proper stamp-duty whether he is asked to do so or not, it would deprive the Government of the adjudication fee chargeable under cl. 21 of the Bill. The Board is of opinion that the attention of the public --- should be drawn more prominently to

the adjudication clauses of the Act & therefore proposes the addition to -- clause 18 of a proviso to the effect that if the party presenting the document desires the opinion of the Collector as to the proper stamp to be affixed to it, the Collector shall proceed as provided in Chapter III. This proposal will remove the hardship and at the same time avoid loss of revenue to Government. It may be suggested for the consideration of the Government of India.

Under clause 19 of the bill, the first holder in British India of any bill of exchange &c. drawn out of British India is required to affix thereto the proper stamp and cancel the same. The Superintendent of Stamps remarks that there is no provision for the contingency of the first holder failing to observe the formalities prescribed in this clause and the Bill of exchange &c coming into the hands of another holder and suggests that subsequent holders should be given an opportunity to protect themselves without of course relieving the first holder of his liability to penalty. There is no reason why such a contingency should be provided for.

xviii Clause 24.-

An explanation and two illustrations have been added to this clause to remove doubts as to its construction.

xix Under clause 26, where the amount of the subject matter of any instrument chargeable with advalorem duty is not ascertainable at the date of its execution, nothing can be claimed more than the highest amount or value for which the stamp used would have been sufficient. The Advocate-General observes that the instrument being regarded as duly stamped, the provision of clause 37 providing for the payment of duty in the case of insufficiently stamped instruments will not apply and consequently the existing -

law "works a great and unexpected
"hardship in cases in which sums may
"become payable periodically under an
"instrument and especially in cases of
"leases for long terms reserving rent
"in kind either in whole or in part.
"Whether or not amounts voluntarily -
"paid under the terms of the instrument
"prior to the suit which is brought on
"the instrument are to be taken into
"account in determining the amount for
"which the decree is to be passed in
"the suit is by no means clear. If sums
"already recovered in prior suits are
"to be taken into account, the result will be
"that no subsequent suits could at all
"be brought during the term of the
"instrument. The hardship will be all
"the greater under the new law which
"provides that in the case of a perpe-
"tual lease, the stamp duty shall be
"the same as for a conveyance for an
"amount equal to one-fifth of the
"whole amount of rents which would be
"paid or delivered in respect of the

"first fifty years of the lease".

The Bill proposes to modify the existing law by providing that in the case of a lease of a mine in which a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such share for the purpose of stamp duty at Rs.20,000 a year and that the whole amount of such share shall be claimable under such lease. The Advocate-General remarks that there is no reason why this proviso should be restricted to mining leases or why in the case of a mining lease, the lessor should be competent to recover by suit a larger amount than that covered by the stamp duty originally paid, without being required to pay the excess stamp duty. He considers therefore that "the
"most equitable provision both in the
"interests of justice and in the inte-
"rests of revenue would probably be to
"enact that, if the Court be satisfied
"that the stamp duty was originally -

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be omitted.

"paid on an amount which, with reference
"to the circumstances, as existing at the
"date of the ~~execution~~ execution of the
"instrument, was bonafide estimated to
"be the probable amount payable under the
"instrument, the party shall not be de-
"barred from claiming more than the --
"amount covered by the stamp, on his pay-
"ing the excess of stamp-duty which --
"should be required to cover the extra amount --
"claimed, together with the penalty --
"thereon." This may be suggested to the
Government of India.

xx. Clause 28.-

This clause specifies the persons by whom the stamp duty should be borne. The Board remarks that it occasionally happens that the party liable is unable to pay and the other does not care to pay and cannot be compelled and suggests that the person in whose favour a document is executed or his representative in interest should, equally with the executant of the document, be liable to

Yes. Must Collector take security under such circumstances and penalty should be specified.
Para 2. xii of letter.

para 2(vi) of the B.P.

make good the deficient duty and penalty. There seems to be no need for such a provision. A document which is not duly stamped cannot be admitted in evidence unless the deficient duty and penalty are paid. If therefore the person in whose favour it is executed -- wishes that it should be produced and admitted in evidence, it will be to his interest to pay the amount and get the document. He can recover the money thereafter under clause 44 of the Bill

Instruments not duly stamped.

xxi Clause 33 proviso (a).- Under the existing law, the magistrate or judge of a criminal court is not required to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Criminal Procedure Code. In the bill, the expression "if he does not think fit so to do" has been inserted after the words "or impound". The effect of the amendment is that

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the judge or magistrate may, if he thinks fit to do so, examine or impound an instrument coming in the course of any proceeding.

xxii Clause 34.-

Under the present law, an audit officer of public accounts, before whom an unstamped receipt is produced, must impound the instrument but and has no power to require the substitution of a duly stamped receipt. A clause has been added remedying the defect.

xxiii Clauses 35 & 40.-

Registration officers are, it is reported, unanimously of opinion that the minimum penalty of Rs.5 prescribed in these clauses bears hard on persons executing documents of small value, that in the majority of cases, there is no intention to defraud and that the charge of the minimum of penalty of Rs.5 in all such cases without reference to the amount of stamp revenue lost to the state seems harsh and oppressive.

Yes: a revenue law being easily evaded is always severe
MS G.H.

The Inspector-General therefore suggests that either the minimum be abolished or reduced to 1 Rupee. This suggestion was already considered and it was thought that the minimum should be retained for the protection of the revenue (vide Hon'ble remarks on page 44 of the first Book under G.O. No.425 dated 28-8-93).

With regard to proviso (a) to clause 35 which provides for insufficiently stamped instruments being admitted in evidence on payment of duty and penalty, the Advocate-General makes the following suggestion:

"Where an instrument liable to stamp duty is lost or withheld by the opposite party after notice to produce it has been given, the presumption is that it was duly stamped and secondary evidence is admissible in proof of the existence, condition or contents of the document. The presumption is a rebuttable one and it has been held that when it is rebutted, the deficient stamp duty and penalty could not

NLR 2 Rad 1 Rad 208
7 Rad p 440
33

be levied and secondary evidence --
could not therefore be admitted.

"Instances often occur of a deficient
"stamp being affixed owing to doubts
"in the interpretation of the Stamp -
"Law and not from an intention to evade -
"the payment of the proper stamp duty
"and if in such cases the instrument
"happens to be lost or withheld by the
"opposite party, it works serious in-
"justice as the certain is precluded
"from paying the deficiency in the stamp
"duty and the prescribed penalty and -
"proving the transaction evidenced by -
"such instrument by adducing secondary
"evidence of it" in the shape of a duly authenticated copy thereof obtained from the registration office or otherwise. he therefore suggests
that a provision should be made ex-
tending the provisions of proviso (a)
to Sec 35, relating to the payment of deficient duty & penalty,
to cases in which secondary evidence,
which could not be produced,
of an instrument will be admissible
and the deficient stamp duty and pe-
nalty would, if the instrument had been
tendered in evidence, be payable.
This may be brought to the notice of
the Government of India.

para 2-xvi(6) of letter

para 2-xviii of letter

Schedule may be amended so as to provide for if no application is made. MS
para 2-xvi(a) of letter

MS

¶ para 10 of this letter

Clause 39(2). The Board remarks it is not clear whether if no app^n has been made to the collector, the sanction of the chief controlling Rev. authority must be obtained under this clause as under clause 39(1). It presumes that neither app^n nor reference is necessary & suggests that the introductory "or" shd be "and". The Board's view seems correct & its suggestion may be supported.

para 2-xvi(b) of letter MS

xxiv. Section 39.-

Addition has been made to this clause empowering the Collector to refund any portion of the penalty in excess of five rupees, even though no application is made but -- "with the consent of the Chief Controlling Revenue authority." The Superintendent of Stamps considers that the Collector should be authorized to exercise the power without reference to the Chief Controlling Revenue authority. This question is not, however important as full control is in any case reserved to it under clause 58(1)

xxv. Sections 40(1) & 42(2).-

Referring to the provisions of these clauses which require that an application should be presented for the return of impounded document, the Inspector-General of Registration states that unless there is such an application, the impounded document is not returned to the Registering officer and that very often through ignorance the parties do not present such documents again for registration and considers that it would be convenient

if the provision in the repealed Stamp Act XVIII of 1869 (section 24:a) authorising the adjudicating officer to return the document to the "Registering or other public officer by whom it was sent" is restored. orders are requested.

This may be recommended
S.V.R. M.S.
para 2. xvij of letter

xxvi Section 44.-

Provision has been made for the stamp duty, which a party to a suit may be obliged to pay through the default of another, being recovered as costs of the suit thus avoiding the necessity for a separate suit.

Allowances for stamps in certain cases-

xxvii Section 49 & 50. are merely redrafts of the existing section 51 with slight alterations to make the provisions clearer and bring them more nearly into accord with the corresponding provisions of the English Stamp Duties Management Act 1891.

× 54 & 55 vic c 38.

The alterations requiring notice are

(1) allowance is proposed to be made for the stamp on any document written out but not signed or executed

×Section 49(b) of the Bill

vide Sir James Westland's speech (para 2 page 236 Gaz. 1 2nd)

executed. This will cover cases in which a party to a transaction retracts at the last moment and will really prove a beneficiant provision to the other party who cannot compel him to complete it. As under clause 2(12) the word "executed" means "signed", the words "or executed" in the clause seem to be redundant as remarked by the Board.

(2) Another point is this. Section 51 of the Act of 1879, as it is worded at present, applies to documents which have been found by a Court of law to be void. But under the provisions of the English law from which the Indian law is taken, if a document is found to be void in law from the beginning, the parties who executed it can claim refund of the duty paid upon it only if no legal proceeding has been commenced in which the document would have been given in evidence. If a document is found by a court to be void, it must have been produced in evidence before that court and must have been made use

of by the party producing it. The necessary amendment has now been made. Vide proviso to clause 49.

(3) The period for application for relief in cases falling under clause 49 (6) (5) is reduced from 3 to 2 -- months.

xxviii, Section 51.-

A new clause has been added giving power to the Chief Controlling Revenue authority to make allowances, without limit of time, for stamp paper or printed forms used by any incorporated company or other body corporate where such forms have ceased to be required. The Superintendent of Stamps and the Board of Revenue suggest the insertion of "or if so authorized by the local Govt., the Collector" after the words "the Chief Controlling Revenue authority". The amendment suggested seems hardly necessary.

xxix. Section 52.-

In cases where a stamp of insufficient value has been used and

x para 12 of his letter
⊕ para 2(xi) of the B.P.

The authority of the Govt. for which however Hon'ble Dept. know better than B of R & from the order itself

the parties desire to have a stamp of proper value substituted, refunds are now being granted under section 51 (3) (a) of Act I of 1879. The Board states that the section as now amended (Clause 49 (d) (a)) is inapplicable to this class of cases and both the Superintendent of Stamps and the Board suggest that special provision should be made for them under clause 52. It is not clear how if the class of cases referred to can be said to be covered by section 51 (d)(a) of the Act, they cannot be equally covered by --- clause 49 (d)(a) of the bill.

xxx Section 54./

To the clause dealing with allowance for stamps not required for use, a provision has been added authorizing the Collector to make repayments to a licensed vendor of stamps without any deduction. The Board points out that no provision has been made for cases in which the heirs or representatives in interest of licensed vendors

apply for refund. They are now granted refunds under departmental orders and the Board suggests the insertion of - the words "or the person through whom such person claims" in clauses (a) and (b) after the words "person" and "he" respectively, and of the words "or is the representative of" in the proviso.

The suggestion is a good one. It will meet also cases similar to that dealt with in G.O. No. 2534 d/30-6-96.

The fact that in the case of a licensed vendor the repayments should be less the discount allowed is not mentioned in the proviso.

xxxi. Section 55.- A new clause has been added to give facilities to companies in respect of renewals of debentures.

Reference and Revision.

xxxii. Section 57(1) & 56(2).- The Inspector-General of Registration suggests that if under this section he cannot refer stamp questions to the Bd. of Rev. he should be empowered to do so.

para 2-xx(b) letter.

vide para 5 of S.O No 46 A.

This should be noticed

para 2-xx(c) of letter

"Whereas coming into notice" would clearly cover a reference by the I.S. or any body else. But Sec 56(2) should be amended by inserting the I.S. after "Collector under ... for 41". But nothing is required in my opinion.

Para 2(xiv) of G.O.

para 2-xxi of letter

xxxiii. Section 61.- The Board considers that this clause makes no provision for cases in which the Collector considers that a court has overvalued the stamp duty payable and that it should be enlarged so as to permit the Collector to act in such cases if he considers that injustice has been done. This may be suggested for the consideration of the Govt of India. The Board also remarks "The contingency of the Collector being himself the appellate authority either in his revenue capacity or as Dt. Magistrate has also to be considered". Under the clause as it at present stands, it is further conceivable that the Collector may have occasion to apply for adjudication to one of his divisional officers acting as appellate courts from the decision of a Tahsildar or other subordinate."

Criminal offences & Procedure.

xxxiv. Section 64.- This has been-

extended to cover all acts done with intent to defraud the Govt. of any duty or penalty.

Supplemental Provisions.

xxxv. Section 73.- To give Collector power to trace insufficiently stamped documents, this clause has been added providing that every public officer should permit the person authorized by the Collector to inspect and to take notes and extracts from the books, registers &c. in his custody. It is taken from the English Act.

54+55 Vic. ch. 39 016

xxxvi. Section 75.- provides that the Governor-General in Council may make rules to carry out generally the purposeof the Act and may by such rules prescribe the penalties to be incurred on breach thereof. The Advocate-General presumes that the penalty -- which may be prescribed is intended to be only a fine and suggests that this should be made clear and also that the maximum fine which may be prescribed should be stated in the Law.

para 7 of his letter

RO para 2. xxiii of letter

Art. 5

The Inspector General of Regs suggests that Kuri or chit associations referred to in I.R. med. Vol XIX + XX, pages 31+69 respectively should be separately provided for if they do not fall under art 5. as agreement not otherwise provided for.

Where the association is held to be not illegal, the instrument executed in favor would seem to fall under art. 5.

RO

Para 2 (xi) sub clause i of the B.P.

Partition-deeds & awards are liable to the same duty as bonds; but in the case of the former there is no maximum fixed, while in the case of the latter the maximum chargeable is Rs 5/-

This may be recommended

S.F.

para 2- xxvi of letter

Schedule.

Article 1.- Acknowledgment of a debt exceeding 20 Rs. is now liable whether attested or unattested, to a duty of one anna. It is proposed that the attested acknowledgment of a debt which is clearly in the nature of a bond, should [illegible].

Article 12.- Award.

The Inspector-General of Registration lately brought to the notice of the Board of Revenue that parties to a partition, instead of executing a duly stamped instrument, occasionally evade the stamp law by getting a third person to make an award and registering it as such. He fears that the practice will shortly become general. As the temptation to substitute awards for partition deeds is undoubtedly great and may also tend to an undesirable increase of litigation, the Board suggests that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition-

ceeds.

Articles 19 & 21.- Bill of exchange payable on demand and cheques are now liable to a duty of one anna only when the amount exceeds Rs.20. But it is proposed to make all such instruments chargeable with duty without any regard to the amount. The exemption now allowed appears to have arisen by mistake. The proposal is in accordance with the English law under which there is no such exemption. The duty with which certificate of sale (art. 19) is chargeable is reduced, in the bill, in cases where the value of the property sold does not exceed Rs.25.

vide Sir James Westland's Speech on page 233 of the Gazette.

Under art. 16 of sch I of Act I of 1879, the minimum duty ~~payable~~ is 8 annas - which is the duty prescribed where the value of the property sold does not exceed Rs 50 - In the Bill it is proposed to reduce it to 2 annas where the value of the property does not exceed Rs 10 and to four annas where it is above Rs 10 but not above Rs 25. This will be a great relief in several cases.

Article 23.- The Inspector-General suggests that the rates of - duty - 2 annas and 4 annas - prescribed for certificates of sale (art. 19) for value not exceeding Rs 10 & Rs 25 respectively may be -- adopted for conveyances of that value. The latter up to the value of Rs.50 are now subject to a duty of 8 annas. As conveyances for consideration less than Rs.25 will be rare, the proposal

C.S.

para 2. xxviii of letter

para 2. xxix(b) of letter

vide page 1293 of the Report of Legislative Department

para 2. xxix (a) of letter.

is not likely to affect the revenue to any appreciable extent and may be recommended.

Article 24.- Copy or Extract :- The Inspector-General of Registration thinks that the -- clause "when applied for ..... petty officer" ~~(i) (ii)~~ under exemption (b)iii in this article is intended to cover - cases (i) and (ii) as well and that it should be printed accordingly.

The view is correct, for in the notification published by the Government of India in their Gazette, the clause - is properly printed - vide page 994 -- dated 2nd November 1889 (Part I). He - also suggests that as applications are often received for extracts from the returns and register kept in the Registrar-General's office the words "Registrar-General of Births, Deaths and Marriages", should be inserted after the "Marriage Registrar" in exemption C under the article.

-Leases-

Article 35(V). For the purpose of levying duty, the term "in perpetuity" is assumed to be equivalent to

10 years under this article and to 20 years under section 25 of the bill. The Board observes that though the two provisions relate to different matters - the former to leases and the letter to for annuity etc.- the discrepancy may -- have been unintentional and may deserve consideration.

Article 39.- This article provides that where a memorandum of association of a company is accompanied by articles of association, the duty thereon shall be Rs.40/-, while if it is accompanied, it will be only Rs.15/-.

The duty chargeable under the Act of 1879 is

Rs.15/- on memorandum of association of a company, and

Rs.25/- on articles of association.

This change now introduced by the Government of India has not been explained - but seems to be due to the fact that - under section 37 of the Indian Companies Act, articles of association are required to be filed only in the case of an unlimited company or of a company limited by guarantee and the Government

1892 para 2. xxxii (2) of letter

of India apparently considered that the duty of Rs.40/- should be levied Where in the case of a company limited by shares or by guarantee and having a capital of more than one lakh of rupees but not exceeding 5 lakhs of rupees, as provided by the article as amended.

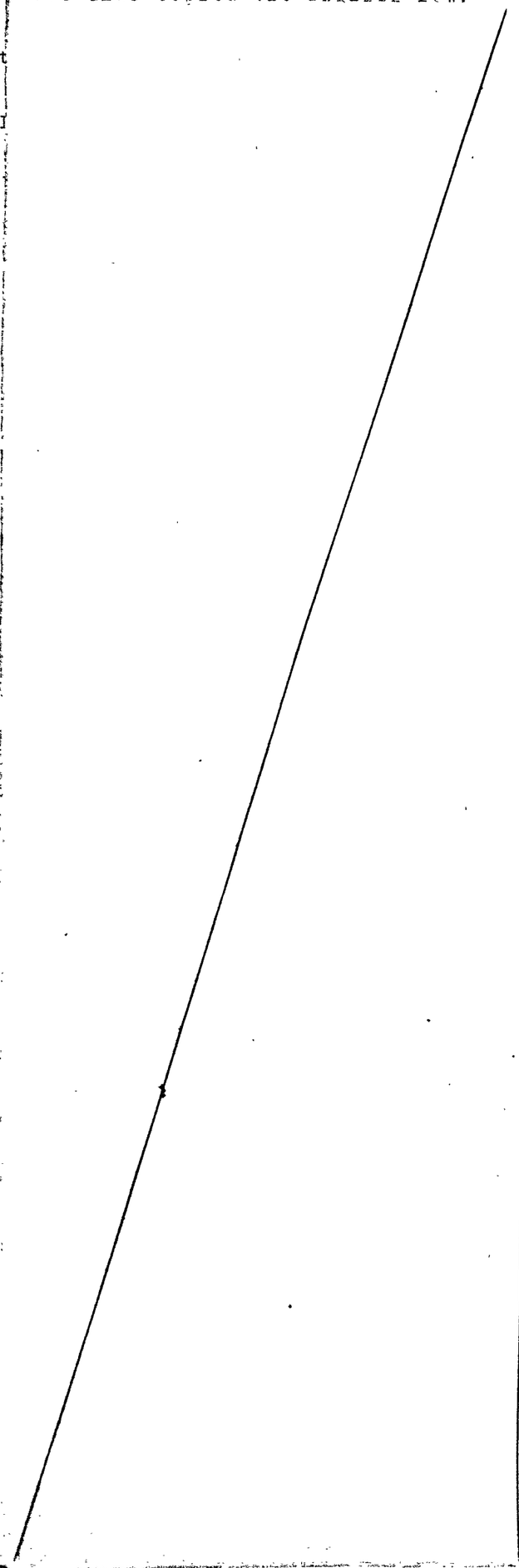
Article 41.- All instruments executed out of British India and relating to property situate in British India, where the instrument is not executed by any person while in British India, shall be chargeable with duty as if it were executed at the place where the property is situate or is intended to be situated after execution thereof, if executed in India, and as if the instrument were executed in India.

Article 42.- Promissory Notes will be treated in the nature of negotiable property and in England are the same duty as a bill or note payable on demand. The same rule will also be more applicable to India. In reference to this, Sir James Westland said :-

"In the case of Promissory Notes there is another alteration --- which proposes that in which no -

Not necessary

ave also copied the English law.



payable ~~on~~ upon these documents".

Art 57. Security Bond or Mortgage deed executed by way of security for due performance of duties of office

The Inspector-General of Registration suggests that this article should be enlarged so as to cover cases in which security bonds are executed by a contractor pledging his property for the due performance of his contract. It appears that such documents are at present treated as falling under the definition of "mortgage deeds". It would be more appropriate if the instruments in question, are brought under the term "security bond".

But the Bill adds "or other property", & the [illegible] article is entitled "Mortgage deed by way of security". Nothing more seems required. [illegible]

~~[illegible]~~.

To the clause (d) of the exemptions under this article, the Board proposes that ^x^ instruments executed under the Agriculturists' Loans Act should also be added. This should also be added to the exemption 1 under article 40.

* They are now exempted under the Not: 5199-S.R. 1-1-95 art 8(b) of Sch II (vide app x II of the act) [illegible]

para 2 - xxxiii of letter.

Article 58(b).- The Inspector-General of Registration considers that the fixed duty of Rs.10 in the case of "Revocations of Settlement" [illegible]

[illegible] on an ad valorem scale as for [illegible], subject to a maximum of Rs. 10. In the case of declarations and revocations of trusts a similar suggestion [illegible] the Govt of India [illegible] (vide pp. 15+16 of the notes). At present, however, [illegible] are subject to a fixed [illegible]. As an instrument [illegible] is liable to ad valorem duty, the revocation [illegible] should be liable to an ad valorem duty, subject to the maximum of Rs 10.

May be recommended [illegible]

I think [illegible]

Article 61.- The Inspector-General [illegible] that the duty on "surrenders of lease" should be chargeable on the money consideration where there is one and in other cases on the duty leviable on the original lease for the unexpired term. He also makes a similar suggestion in the case of transfers of bonds, mortgages and policies of insurance (art. 62) subject to a maximum of Rs.5. At present they are chargeable with duty paid on the original [illegible] subject to a maximum [illegible] levy

...t duty only on the amount yet due ...er the bond &c. and with which -- ...lose the surrender or transfer deals

Article 62.- Transfers of Court decrees have been held to fall within the definition of conveyance. There appears to be no reason why these instruments should be charged so heavily as conveyances. The Inspector General suggests that the transfers of decrees should be made chargeable with duty - like bonds subject to a maximum of Rs. 10, as the terms bonds, promissory notes, and receipts are not defined in the - act, the Board considers it incorrect to use the words "as defined by" in - articles 15, 40 and 55. and suggests - the substitution of the word "vide" in their place. The point may be mentioned in the reply to the Govt. of India.

H.P.
29/Jan/98. H.M.

The office note is very carefully & accurately done, & notices all the points. I have made marginal notes.

H.M. 2/2/98

May be noticed
E.B. 2/2
paras 2. xxxii xxxiii of letter.

Why not? Such a transfer is better than most voluntary conveyances.
H.M. 2/2/98

This is a matter of drafting, which we need not notice. The S. of S. will see the Ps.
H.M. 2/2

A very good note
H.M.
1/2/98

Office
Now draft please, only on points req. which I have Submitted.
H.M. 2/2/98
2/2/98

Secy

A proof copy of the letter to the Govt of India on the Indian Stamp Bill is submitted to the Secy as directed. If proof is approved, arrangements will be made to get a few clean copies from the Press & despatch them this evening, spare copies being despatched tomorrow.

Office order No 56 requires that all draft letters to the Govt of India other than those relating to routine matters, should be marked for H.E. the Governor.

His Excy is on tour & this letter is Emergent. Orders are requested.

H.P.
19/Feb/98. H.M.

1/2/98

Govt of India Letter dated

...dian Stamp Act. No. 60 dated
28th January 1898.

...(Secret) No. 101 R/19-2-98.

Ordered that the following letter be despatched to the Government of India in continuation of letter No. 61 dated 28th January 1898.

Despatched 19/2/98

Lubrut Sine in proof very urgent

SH
17.2.98

Page 48 of the work

Letter No. 102

From Secy. to the Govt. of India,
Legislative Department.

Sir,

In continuation of my letter No. 61 Rev., dated 28th January 1898, I am directed to communicate to you the following opinions of the Local Government on the provisions of the Indian Stamp Bill. The points requiring notice are dealt with in the order of the clauses of the bill.

2. 1. Section 2 (4). It is doubtful whether the term 'bill of lading' is intended to be used solely in reference to sea-going ships or it is meant to include the case of such ...to vessels used in ...or inland waters,

receipts being
are identical in terms and appearance with a bill of lading. It seems desirable that the point should be made clear in the Act.

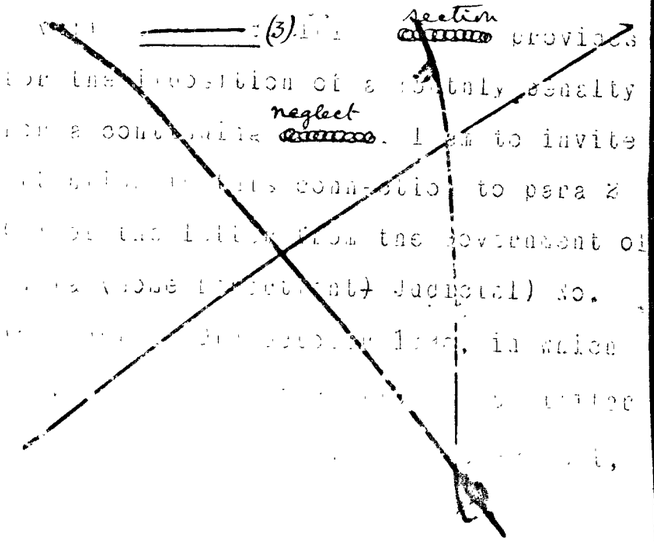
ii. Section 2 (5) c. It appears that instruments relating to the delivery of goods or merchandize for advances received are now treated as agreements and stamped with 8 annas. There seems to be no reason why a distinction should be made between instruments relating to the delivery of grain and other agricultural produce which under this section are treated as bonds and those relating to the delivery of goods or merchandize. It is accordingly suggested that the words "or any goods or merchandize" may be inserted after the word "produce" in line 8.

iii. Clause 2 (11). The definition of the term "duly stamped" seems to clash with the same words occurring in Secs. 37 & 42 and to should make it clear that it covers also an instrument certified by endorsement as duly stamped; it may be amended by the addition, at the end of the clause, of the words "or has been certified under Secs. 37 & 42." p. 51.

iv. Clause 2 (15). The Government considers that the definition of the term "instrument" may be enlarged by scope includes every document by which any right or liability is or purports to be extended as well as limited. p. 3.

v. Clause 2 (15) d. The expression p. 43.

by which
perhaps
by which
Corresponding amendment
under the Act of the
in an unreported decision,
section
neglect
in G.O. 14 Leg 26.2.96.



in the bill to amend the Madras District Municipalities Act, 1884.

viii. Clause 11. A provision may be inserted permitting the use of adhesive stamps in the case of promissory notes made in British India, when the amount chargeable on such notes does not exceed 4 annas. This concession is desirable in the interests of persons who may not find it convenient or even possible to obtain stamped papers when required.

ix. Section 12. Though clause (1)(a) & (b) of the section requires the cancellation of an adhesive stamp at the time of affixing it or of executing the instrument, clause (2) leaves it doubtful whether when a cancellation has been made subsequent to the time above mentioned, the instrument will be deemed stamped or otherwise. The point may be made clear.

xi. Section 18. It occasionally happens that the stamp duty paid under this section by the party presenting the document is insufficient and the document after being stamped by the Superintendent of Stamps is subsequently impounded and the penalty levied. This procedure seems to be unnecessarily severe upon persons who have no desire to evade the stamp laws; and accordingly we would recommend that at the end of the section, a proviso to the effect that if the party presenting the instrument desires the opinion of the Collector as to the proper stamp to be affixed to it, the Collector shall proceed as provided

(as the Madras Government may be the cause of)

Penalty thereon; though it is not clear the penalty might well be remitted.

Hemp agrees with the above that

that if the Court is satisfied that the stamp duty was originally paid on an amount, which with reference to the circumstances as existing at the date of the execution of the instrument, was equal to the proper amount payable under the instrument, the party shall not be prevented from stamping more than the amount covered by the stamp, on his paying the deficit stamp-duty which may be required to cover the extra amount claimed, together with

the proviso now in

existing in cases of voluntary partition pointed out in para 2 (under proposal v) of the hon. Mr.A.I.Arundel's letter no. 426 dated 25th August 1898. His excellency the Governor in Council considers that the proviso should be extended so as to cover such cases also.

xiv. (1) ~~Adopt~~ as ~~it~~. The remarks of the Advocate General ~~are~~ in para 1 of his letter dated 17th Dec. 1897 printed with G.O. no. 60 dated 25th January 1898 of which a copy was forwarded to you with my letter no. 91 of the same date, merit consideration. It seems desirable to enact, as suggested by him, a provision extending the provisions of ~~this~~ proviso (a) to this section, to cases in which secondary evidence of an instrument, which could not be produced, would be admissible and the deficient stamp duty and penalty would, if the instrument had been tendered in evidence, be payable.

(2) The proviso (b) to this section, as it stands, makes it obligatory on a court to admit in evidence instruments not duly stamped other than those excepted, on payment of the duty and the penalty, whether or not there was any reasonable excuse for the instrument not having been duly stamped and whether or not there was a wilful evasion of the stamp law. It ~~is~~ N.S.wil. ~~proposed~~ is inclined to consider that this is too lenient and that when there is reason to believe that an instrument has been left unstamped, or not properly stamped, in order to ~~be~~ evade

/ 32

in James Westland explained that the provision was made for the benefit of the public - vide the last 3 lines on page 235 of the Legislative Gazette of India 8/16.1897.

literally

Proviso

also

the

(1). ... if

39

default of such application

Proviso (1) of the introductory "or" at the end of clause (1) of the section shall apparently be altered to "and".

Sections 10 (1) & 12 (2). The provisions of these sections require that an application should be presented by the party concerned for the return of the impounded documents, and it was seen prudent to notice that fact in order to show an application for impounded document is not receivable by the assistant officer, and

4

await for registration. It would be convenient if the provision in the proviso stands not with or from (sec. 2,) authorizing the adjudicating officer to return the documents to the "registering or other public officer by whom it was sent" is retained.

xvii. Section 45(1). This clause does not prescribe the period within which the application for remission of penalty should be presented. The Government considers that the period may be fixed at one month from the date of the order when the penalty is payable under sec 35 requiring payment of the penalty.

xviii. Section 48. This clause ~~is in that it~~ does not provide for the recovery of ~~the~~ sums for which offences have been compounded as if they were arrears of land revenue. The defect ~~clearly in the opinion of this Government~~ may be remedied. A New clause

xix. Section 54(1) to provide for cases in which the heirs or representatives in interest apply for refund, the words "or the person through whom such person claims" may be inserted in clauses (a) & (b) after the words "person" and "he" respectively, and the words "or is the representative of" between "is" and "a licensed vendor". in the proviso.

(2) The fact that in the case of a licensed vendor, the repayments should be less the discount allowed is not mentioned in the proviso.

xx. Section 61. This should be enlarged so as to permit the Collector to act also

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5

1. Section

, amended

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9/4

is to

can

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Schedule I

iv.

by Hindus

usually

solely

if it is considered necessary to impose

affected

possible, be avoided in such cases.

xxv. Article 5. This article may be extended so as to cover (1) agreements to sell, (2) service agreements or agreements to serve or employ a person as one's clerk and (3) agreements stipulating for hire for the use of moveable property such as carts, bullocks, &c.

xxvi. Article 12. It has been brought to notice that parties to a partition, instead of executing a duly stamped instrument, occasionally evade the stamp law by getting a third person to make an award and registering it as such. It is feared that the practice may become general, and it is recommended that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition-deeds.

xxvii. Article 17. A uniform rate of duty of Rs. 5 now fixed for instruments of cancellation will be excessive in the many cases of small transactions. It may be provided that the duty be limited to the original duty levied subject to a maximum of Rs. 5.

xxviii. Article 23. The rates of duty prescribed for certificates of sale (Art. 18) for values not exceeding Rs. 25 may be adopted for conveyances (art. 23) up to that value.

xxviii (1) Article 24. The clause "when applied for * * * petty officer" under exemption (b) iii in this article

6

[illegible] and [illegible] words [illegible] multi- [illegible] adds [illegible] kept [illegible]

1. Page [illegible] the words "for the cultivation" inserted in [illegible] under art. 35, [illegible] to the purpose in that relat- [illegible] the exemption [illegible] the latter ought therefore [illegible] agricultural losses [illegible] whether this [illegible] the Government of India [illegible] the letters "i.e." [illegible] in the second line of the inadvertently retained in the published copy of the Bill. It is desir- -able to make it clear whether clause (b) of this article applies only to cases of further charge made in favour of the first mortgagee or includes also cases of further charge in favour of a different person. The Board of Revenue, Madras, has ruled that the latter class- of cases should be treated as subsequent mortgages.

N. Leine

N. L. (1)

xxix. Article 35. It has not been [illegible] as suggested in para (c) xvii [illegible] of the Bill

cludes leases in which the considera-
tion is service to be rendered by the
lessee to the lessor on ascertained occa-
sions as in sec.10b of the Transfer of
Property Act IV of 1882. In the opi-
nion of this Government the policy
needs attention.

(2) For the purpose of levying duty, the term in perpetuity is assumed to be equivalent to 10 years under this article and to 20 years under sec. 26 of the Bill. Unless this difference was intended for some special reason, the same period may be prescribed in both the cases.

(3) Consistently with the amendment suggested in the wording of section 2 (15) (d), the words "enjoyment of the profits of these" may be substituted for "rents for the receipt of rent" in lieu 2 & 3 of exemption (a) under this article.

xxxiii. Arts. 40 & 57. The Government is of opinion that instruments executed under the Agriculturists' Loans Act, 1884, should like those under the Land Improvement Loans Act, 1883, be included in Art. 40, exemption 1 and Art. 57, exemption (a).

xxxiii Article 45. The Government considers that a proviso should be added to Art. 45 exempting a partition-deed from duty when it is executed in pursuance of a duly stamped agreement to divide, sub-

deed on the condition that if the duty
payable ... power is greater than
... paid alone ...
... make ... it shall have a power of
... the ... purpose, but the purpose shall
... the ... not be given execution
... a deed ... shall be stamped with a
... of ... only.

xxxvi. Article 61. Surrender of lease. The duty may be made chargeable on the money consideration, where there is such consideration and in other cases, on the duty leviable on the original lease for the unexpired term.

xxxvii. Article 62. Transfer. Transfer of ... and policies ... chargeable ... may ... for the ... or ... option of the principal amount and interest due under the original bonds or mortgage deed, subject to a maximum of Rs. 5.

xxxviii. Article 62. No provision is inserted in the Schedule to meet cases of transfers which take place in consequence of the reconstruction of companies as in para 2 under proposal ... in the Act. Mr. Arundel's letter quoted above. The Government is of opinion that such cases should be ... treated with special leniency.

(2) ... considers that, as ... XX of the same let-

Why unless the Doctrine of Repetition - 1/5th of 50 years rent may not be 10 years rent ??

* Notifn 5199-S.R dt. 1.11.95 art. 8(a)-App. I (Sch. II), of the Act.

N.B.

-ter under proposal XIII, Arts. 64 & 82 should be amended so that Trust deeds may be chargeable with an ad valorem scale of duty similar to that for bonds, subject to a maximum of Rs. 15, and that instruments of (1) revocation of trust and (2) transfer of trust property may be similarly chargeable, subject to a maximum duty of Rs. 10 and 5 respectively.

S.R.
17/2/88

L.R.
17 Feb 88.

First copy sent to Press

Returned for signature

Despatched to Press

4.9.26 II
15.5.47 V