Revenue (1898) Department.

PRESS SERIES.

G.O., No. 50 & 51

DATED 28th January 1898

[Despatch Abstract.]

Indian Stamp Bill.

Ordering that the Govt of India be addressed on the subject of the —.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.

FURTHER PAPERS.

G.O.	No	Department.	Date.	G.O.	No.	Department.

Revenue 1897. Department

Current Number 1055.

From

THE SUPERINTENDENT,

GOVERNMENT PRESS,

Madras,

THE ~~CHIEF~~ SECRETARY TO GOVERNMENT,

Revenue Department, *Madras*

Dated 16th } December 1897

Received 16

Regd 16

Subject.

REPORTS the dates on which the within-mentioned Bill was published in the "Fort St. George Gazette."

No. 5504.

Statement showing the dates on which the undermentioned Bill was published in the "Fort St. George Gazette."

(Vide *para.* 2 *of G.O., dated 2nd June* 1891, *No.* 1042, *Judicial.*)

Title of the Bill.	English.	Tamil.	Telugu.	Canarese.	Malayalum.	Hindustani.	Remarks.
	1897.	1897.	1897.	1897.	1897.	1897.	
India Bill no. 16 of 1897 - The Indian Stamp Bill.	16th November	dated 14th December issued 15th December	14th December	14th December	14th December	dated 14th December issued 15th December	G.O. No 4930 Press, dated 11th November 1897, Revenue Department.

Government Press,
Madras, 16th December 1897.

To

The ~~Chief~~ Secretary to Government,
Revenue Department, Madras.

R. Rice
Superintendent.

Account No. 160.
500—1-4-96.

64 Word Form.

INDIAN TELEGRAPHS.

Code Class. | To (Office) | From (Office) | Words. Day. Hour. Minute. Official Instructions. | Monthly Number.

To (Person) | From (Person)

Recd. from ... Hrs. ... Mts. by ... LN.

Sent to ... Hrs. ... Mts. by ... LN.

Telegraph Master.

F. C 2.

O G P—No. 833 T—7 8 '96—200000.

Revenue (1897) Department.

CURRENT No.

From The Superintendent of Stamps

RECEIVED 19 DEC 97 REVENUE

Order

No. 2635

Dated 17th December 1897

Received 18

Registered 18

Enclosures

Spare copies

SUBJECT.

Submitting remarks on the Indian Stamps Bill.

Old No. 10-12 4.8 98

BACK PAPERS.

G.O.	No.	Department.	Date.
		G & C Record	Prepared 23/12/97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Ref No. $\frac{994}{G\&B}$ dated 10-12-1897.

From

J. W. Atkinson Esq. I.C.S.
Ag. Collector of Madras

To

The Secretary to the Commissioners
of Salt, Abkari & Separate Revenue

Sir,

Adverting to Board's Proceedings No. 50 30 dated 18-11-1897, I have the honor to submit the following remarks on the Bill to consolidate and amend the Law relating to Stamps. I would first solicit the Board's attention to my predecessor's letter to the Board No-1142 dated 30th April 1895, making various suggestions for amendment of the Stamp Law. The remarks following embody for the most part my own observations and suggestions.

2. Section 2 (4). The definition of Bill of lading has been very much curtailed. As it stands in the Bill, there is ample room for ambiguity. Ordinarily, a Bill of lading is a term only used in reference to sea-going ships. Is it absolutely restricted to this extent? Some vessels plying only on inland waters, for example, on the Buckingham Canal, use a form of receipt for goods carried identical in terms and appearance with a Bill of

Lading.

ading; the document being on the face of it styled a Bill of Lading. Do such receipts come within the definition in the Bill?

3. Section 2(6). The words "the commencement of" are not well chosen.

Section 2(10). It is decided in Board's Proceedings no. 571 dated 23-3-1887 that a right under a decree is property. A deed conveying such a right is then a conveyance. The present definition divides property into moveable or immoveable; and these terms are sometimes interpreted as referring only to tangible things. Perhaps it would be well to make it clear that what I believe are technically known as "Choses in Action" are included

Section 2(11). An unstamped instrument may be certified to by endorsement under Section 42 and the instrument so endorsed may then be acted upon as if duly stamped. It should be made clear that such an instrument is covered by the definition.

5. Section 2(15)(d). The language seems unhappy. A lease is not given for the production of anything but to enable the leaseholder to enjoy the produce.

6. Section 3. The word "said" after "thatis" in the sixth line of this is presumably an error.

7. Section 12(3). The clause is badly drafted. The section refers only to adhesive stamps; the words "in the case of an adhesive stamp" are therefore redundant and confusing. The word "may" should be "shall"; for Section 63 of the Bill refers to the manner of cancellation prescribed, not permitted.

8. Section 18(2). This directs the Collector to have any instrument brought to him to be stamped, stamped with a stamp of such value as the person taking such instrument may require and pay for. This is the present law and it entails some unnecessary hardship. For though the stamp duty named be insufficient, stamps of an insufficient value must be affixed, and then after the instrument is returned stamped from the office of the Superintendent of Stamps. It is, under N-C. Board's Proceedings no. 811 dated the 14th June 1880, impounded and penalty levied. The Board has recently pointed out in their Proceedings no. 4825 mis dated 5-11-1897 in a case of the kind that the applicant should have been asked to send the required stamp duty. But the strict letter of the law warrants no such procedure. I therefore think it desirable

desirable to add words to the following effect after "pay for"; "or as the Collector finds from the nature of the instrument to be necessary, the difference of duty being collected from the applicant, if the duty found by the Collector is more than the amount remitted by the applicant, or returned to the applicant if it is less than that sum."

9. Section 19. There is no provision for the contingency of the first holder failing to observe the formalities prescribed in this section and the Bills of Exchange coming into the hands of another holder. Subsequent holders should be given an opportunity to protect themselves; of course without relieving the first holder of his liability to penalty.

10. Section 39 (1). The Collector may be given power to refund whether upon application or not, without reference to the Chief Controlling Revenue Authority.

11. Section 48. It would be convenient if sums for which offences are compounded under Section 70 are made recoverable in the same manner as duties and penalties under this section.

12. Section 51. after the words "Chief Controlling Revenue Authority," I would suggest the insertion of "or if so authorised by the Local Government, the Collector."

13. Section 52. (a).

Under Board's proceedings No. 872 N.C. dated 8th April 1886 refunds are now being given in cases where a stamp of insufficient value has been used, and the parties desire to have a stamp of proper value substituted. It would be convenient to extend this section to cover such cases.

I have &c
(sd) J. M. Atkinson.
Ag: Collector of Madras.

(True copy)

J. M. Atkinson
Ag. Superintendent of Stamps.

hjt

No. 2635

GENERAL STAMP OFFICE,

Madras, 9 December 1897.

From

J. W. Atkinson. Esq. I.C.S
Ag. SUPERINTENDENT OF STAMPS,

MADRAS,

To

Government
The SECRETARY TO ~~THE COMMISSIONER OF SALT~~,

~~ABKARI AND SEPARATE REVENUE~~,
Revenue department.

~~MADRAS.~~

SIR,

With reference to G.O. No. 930 Press dated 11th ultimo. forwarding for remarks the Indian Stamp Bill, I have the honor to submit a copy of a letter addressed by me as Collector of Madras to the Board of Revenue on the subject and to state that I have nothing to add to the observations and suggestions made therein.

×dy 10 Dec. 1897
Rly no. 994/4013

I have the honor to be,

Sir,

Your most obedient Servant,

J. W. Atkinson

Ag Superintendent.

1897
GENERAL REGISTRY.
Diary No. 1
Date 13 Dec

STAMP. (189) DEPARTMENT.

From

THE SUPERINTENDENT OF STAMPS,

Madras,

To

SECRETARY TO THE COMMISSIONER

OF SALT, ABKÁRI AND

SEPARATE REVENUE,

Madras.

Dated
Received } 189 .

No.

ENCLOSURE.

Subject.

0/18 4,000—19-7-97.

Revenue (189 7) Department.

CURRENT No. 10788

From Mr. Godavia & Bapat

Order

No. 2 [illegible]

Dated 21 - 12 - 97

Received [illegible]

Registered [illegible]

Enclosures

Spare copies.

SUBJECT.

Claiming [illegible] the Hon. Mr. Ch[illegible] Justice and Justices Muttu[illegible] and Benson have no [illegible] mandate to affix on a bill [illegible] Consolidate and amend the law relating to Stamps.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Judicial (1897) Department.

CURRENT No. 5402

CHIEF SECRETARY
19 DEC 1897
GOVERNMENT OF MADRAS

From

Endorsement Order No. 2820 dt 21-12-97. The Registrar,
High Court of Judicature,
Madras.

Transferred to the Revenue Dept. Ref. on Cur. No. 2593/97.

for Chief Secretary.

Dated 18th December 1897.
Received 19 — do —
Registered 20 — do —
Enclosures
Spare copies

RECEIVED 20 DEC 97 MADRAS

Mr 21/12/97.

SUBJECT.

Stating that the Hon. the Chief Justice and Justices Shephard and Benson have no remarks to offer on a Bill to consolidate and amend the law relating to Stamps.

To the Rev. Dept.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Current No 5402

Ref. on Cur. No.2593/97.

High Court of Judicature,
Madras, 13th December 1897.

From

D. W. G. Cowie, Esquire,
Registrar of the High Court of Judicature,
Madras.

To

The Honorable Mr. A. T. Arundel,
Chief Secretary to the Government of Madras.

Honorable Sir,

With reference to G.O., No.1614, Judicial, dated 13th November 1897, communicating a letter from the Government of India, Legislative Department, dated 19th October 1897, No.1672, and forwarding, for favor of remarks, a Bill to consolidate and amend the law relating to Stamps, I am directed to state that the Honorable the Chief Justice and Justices Shephard and Benson have no remarks to offer and that the Honorable Mr. Justice Boddam sees no objection to the Bill.

2. Any minute that may be recorded by the Honorable Mr. Justice Subramania Aiyar will be duly communicated.

I have the honor to be,
Honorable Sir,
Your most obedient servant,

D. W. G. Cowie

Registrar.

0/18 4,000—19-7-97.

Revenue (189) Department.

CURRENT No. 1115.

From The Advocate-Genl

Order

No. ..

Dated 20. 12. 97

Received 29. 12. 97

Registered 29. 12. 97

Enclosures

Spare copies.

SUBJECT.

Reporting about the amendment of the Succession Stamps ~~Bill~~ Act.

BACK PAPERS.

G.O.	No.	Department.	Date

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Docket

Re

The Indian Stamp Bill

(Vide G.O. No. 930 Press dated 11th November 1897
Revenue Department

Remarks

1. 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. But the presumption is one that may be rebutted, and it has been held, under the existing Stamp law, following the English case of Marine Investment Co v. Heaviside, L.R. 5. Eng & Ir appeals p 624, that, when the presumption is rebutted, the deficient stamp duty and penalty could not be levied and secondary evidence could not, therefore, be admitted. (Vide I.L.R 2 Mad 208 & I.L.R 7 Mad 440). Lord Cairns in the English case above cited remarked, at p 634;

"It

"It is always in some sense a disagreeable and sometimes an invidious thing to hold that a case should fail for want of a stamp being affixed on an instrument; and there are cases in which such a result arising from accident must be regarded with painful regret."

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.

It does not at all seem probable that the Legislature could have intended this result; for, it is not easy to suggest any reason why the party relying upon an instrument not duly stamped should be allowed to cure the defect when the instrument is produced in evidence, but should be debarred from curing such defect when, for no fault of his, the instrument itself could not be produced.

2. A provision should, therefore, be enacted, extending the provisions of Proviso (a) to section 35 relating to the payment of the deficient stamp duty and penalty, to cases in which secondary evidence of such instrument will be admissible and the deficient stamp duty and penalty would, if the instrument had been tendered in evidence, be payable.

3. Another feature of the Stamp Law which demands serious consideration is the rule, which no doubt is in strict accordance with the English law, (vide sec. 54 and 55 Vict ch 39. Sections 37 and 14), that the bills of exchange, promissory notes and instruments chargeable

chargeable with a duty of one anna only shall not be received in evidence if they have not been duly stamped, even on payment of the deficiency in the stamp duty and the prescribed penalty. Such stringent provision is probably necessary to safeguard the revenue as the risk of litigation among the mercantile classes in respect of such instruments is remote, and the temptation to evade the stamp duty and take the risk of having to pay the penalty should it become necessary to institute a suit thereon, will be strong. But it has to be borne in mind that several dealings by persons who do not belong to the mercantile class take the form of, or are accompanied by, promissory notes or bills of exchange, and that, in some cases, notwithstanding the desire of the legislature to make the provisions of the Stamp law as clear as possible, reasonable doubts

doubts exist as to whether a particular document is a bond or a pro note or a bill of exchange, or what the proper duty thereon is. As justly observed by Sir James Westland, when he moved for leave to introduce this Bill, the Stamp law has to be "applied by persons themselves to their own transactions and the burden of its interpretation rests not merely upon the lawyer but upon the layman. It is all the more necessary, therefore, that in its working and in its explanation it should be as clear as possible, so that people who desire to pay proper duty upon their documents and who have no intention of evading the duty in any way, may thoroughly and clearly understand the obligations which rest upon them" The difficulty in the interpretation of the stamp law in this country is one which no amount of precision or care in drafting can remove, the reason being

being that the Indian Stamp law is enacted necessarily after the model of the English Stamp law and with reference mainly to transactions and forms of instruments as they obtain in England. Though in this country corresponding transactions and forms of instruments exist, to which the Stamp law has to be applied, yet certain differences both in substance and in form do exist; and it is this circumstance which makes it much more difficult in this country than in England to apply the provisions of the Stamp law to every day transactions. The definitions of a promissory note and a bill of exchange have been enlarged so as to cover instruments not now falling within the scope of those terms. The Indian Stamp Law, to say nothing of its translation into vernaculars, is one which cannot safely be construed either by the Indian lawyer or

or layman unless he has some knowledge of the English law of Contracts especially of mercantile law and usage.

4. A relaxation in the case of receipts liable to the payment of a stamp duty of one anna, has been introduced by Clause (b) of section 35, by providing that an unstamped receipt may be admitted in evidence on payment of a penalty of one rupee. By the way it may be remarked that that Clause as it now 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.

5. Under proviso (a) to section 35, it is obligatory on the Court to admit in evidence, subject to all just exception, instruments not duly stamped, other than those excepted, on payment of the duty and the prescribed penalty,

and

and the party tendering such instrument is entitled to the benefit of the provision 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. In the case of the excepted instruments already referred to, the stringency of the existing provision against the levy of the deficient stamp duty and penalty may be relaxed, without any detriment to 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. Such wholesome provision will be all the more necessary in view to the important change in the stamp duty

duty which will be introduced by the Bill when it is passed into law, in regard to promissory notes payable on demand, which, ever since the introduct of Stamp law into this country, have proverbially been subject to a stamp duty of one anna only. It will be years before the people will unlearn this beneficent provision with which they have long been familiar, and realise the change that will be effected by the new stamp law.

6. The effect of section 26 is that whatever may be the stamp duty affixed to an instrument of the class therein described, it is one that is duly stamped and, therefore, the provisions of the proviso (a) to section 35 will not apply though the instrument is regarded as duly stamped yet the party claiming under it is visited with a serious penalty, by incapacitating him from claiming under the terms of the instrument any sum in excess

excess of the maximum amount covered by the Stamp. This 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 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 ~~not~~ at all be brought during the term of the instrument. The hardship will be all the greater under the new law (I L R 3 Mad p 342) 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. (See Art. 35 Sch I) The Bill proposes to modify the existing law by adding a proviso to section 26, to meet the case of a lease of a mine in which a share of the produce is received as rent or part of the rent. There is no reason why this proviso should be restricted to mining leases, nor do I see any reason 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. 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 bonafide 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.

7. I presume that the penalty which may be prescribed for the breach of any rule which may be made in exercise of the powers conferred by section 75, is intended to be only a fine. This should be made clear and the maximum fine which may be prescribed should also be fixed by the section

Madras
28th December 1897

V. Bashyam Iyengar
Offg. Advocate General

Sameas C. No 8 of 1898.

REVENUE DEPARTMENT.

1897.

Board of Revenue

(Separate Revenue),

MADRAS.

SECRETARIAT RECORD DEPT.

Printed January 21st, 1898.

Proceedings, No. 549, 26th December 1897.

DECEMBER.

Submitting to Government remarks and suggestions of Collectors with the Board's opinion thereon regarding the Indian Stamp Bill.

PROCEEDINGS OF THE BOARD OF REVENUE

(SEPARATE REVENUE).

READ—again Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 5030, dated 18th November 1897.

ABSTRACT.—Drawing the attention of all Collectors to the Indian Stamp Bill published in the supplement to the *Fort St. George Gazette*, dated 16th November 1897, and requesting them to favour the Board with their remarks on the Bill so as to reach the Board's office by the 5th December at latest.

READ—also replies from the several Collectors to the above Board's Proceedings.

RESOLUTION—No. 549, dated 26th December 1897.

With reference to the draft of the Indian Stamp Bill communicated with G.O., No. 930, Press, dated 11th November 1897, the Board begs to submit the following remarks and suggestions. The time allowed for its consideration was very short but the Collectors of Ganjám, Gódávari, Madras and Coimbatore have been able to draw attention to several points and their assistance is acknowledged. The Board accepts the Bill generally and except on some points of detail has no objections to offer to its being passed into law. It is presumed that the suggestions made by it in its Proceedings, No. 321, dated 13th July 1895, have been remitted to the Government of India for consideration and that such of them as do not appear in the present draft have been rejected by that Government.

2. Omitting some obvious grammatical errors, the points now principally calling for consideration appear to be the following:—

(i) *Clause* 2, *Definitions*—(4) "*bill of lading.*"—In lieu of the definition of this term which appears in section 3 (3) of the present Act, the draft Bill substitutes merely the words "bill of lading includes a through bill of lading." It seems a mistake to abolish the definition altogether; no explanation of the reasons for adopting this course has been offered.

(10) "*Conveyance.*"—It is not quite clear from the Bill whether the word "property" as used in this definition covers intangible as well as tangible property. It has been held in Board's Proceedings, No. 571, dated 23rd March 1887, that a right under a decree is property and a deed conveying such a right should therefore be regarded as a conveyance. This should be made clear in the new Act, the term "property" being defined so as to include rights of an intangiblenature. A similar suggestion was made in paragraph 3 (i) (1) of Board's Proceedings, No. 321, dated 13th July 1895, with reference to the definition of "instrument of partition."

(13) "*Instrument.*"—The definition should include every document by which any right or liability is or purports to be *extended* as well as *limited*.

(14) "*Instrument of partition.*"—The words "or any Civil Court" have been added to this definition, but the Statement of Objects and Reasons is silent as to the object of this innovation. The parties to partition suits have to pay Court-fees on the institution of the suit and it appears therefore to be hard to compel them to pay in addition a stamp duty for the purpose of carrying the Court's orders into effect.

(ii) *Clause* 3 (*a*).—In the case of an instrument executed in British India transferring property situated outside British India, the Collector of Ganjám suggests that a lower rate of duty should be chargeable than in the case of an instrument transferring property situated within British Indian limits. The Board does not, however, consider that the proposal can be sustained. If the party executing the document wishes to avail himself of the privileges conferred by registering it in British India there is no reason why he should not pay the ordinary stamp duty chargeable on such documents.

(iii) *Clause* 11.—Under the existing law, promissory notes, if payable on demand, are chargeable with a duty of one anna and may be stamped with adhesive stamps. If article 49 of schedule I of the draft Bill is approved, such promissory notes will be chargeable with a duty *ad valorem* in the same way as Bills of Exchange and must be written on stamped paper. This may cause some hardship in the case of promissory notes for small sums and the suggestion has been made that notes for sums less than Rs. 100 should be stamped with one anna adhesive labels as heretofore and that permission should be granted for the use of adhesive labels when the duty chargeable on such notes does not exceed four annas. The Board 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. This concession appears to be necessary in the interests of many who may not find it convenient or even possible to obtain stamped papers when required.

(iv) *Clause* 12 (3).—Several Collectors have remarked that the wording of this clause conflicts with the wording of clause 63. Under the latter section any person required by the former section to cancel an adhesive stamp and failing to do so in the manner therein prescribed is liable to a penalty. But, as is in fact stated in the Statement of Objects and Reasons, section 12 merely indicates one manner in which an adhesive stamp may be cancelled and does not prescribe *the* manner in which this should be done.

(v) *Clause* 18 (2).—Under this clause, which corresponds with the existing law, the Collector is bound to stamp the document with a stamp of such value only as the person presenting it may require and pay for, and 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 is unnecessarily harsh and in such cases the Collector should be required to collect and to stamp the document with the proper stamp duty whether he is asked to do so or not. The effect of this would, however, be to deprive Government of the adjudication fee chargeable under clause 31. The Board is of opinion that it is desirable to draw the attention of the public more prominently to the adjudication clauses of the Act and would add to the clause under discussion 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.

(vi) *Clauses* 29 *and* 48.—It is suggested 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. The duty of conserving the revenue ought to fall equally on both and chiefly on the one for whose benefit the document exists or has existed. It occasionally happens that the party liable under the present Act is unable to pay and the other does not care to pay and cannot be compelled.

(vii) *Clause* 39 (2).—As observed by the Collector of Coimbatore, 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 clause as under clause 39 (1). The Board presumes that neither application nor reference is necessary but, if so, the introductory "or" should be "and". Full control is, in any case, reserved to the Chief Controlling Revenue authority under clause 56 (1).

(viii) *Clause* 45 (3).—Power should be given to the Chief Controlling Revenue authority to refund the excess stamp duty levied without application from the party concerned. The clause, as drafted, does not state that the application must be from the party, but, to obviate difficulties of interpretation, the Board would substitute "upon the matter being brought to notice" for "upon application in writing."

(ix) *Clause* 48.—This clause, as drafted, 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 want of some such provision is much felt in practice.

(x) *Clause* 49 (6).—As, under clause 2 (12), the word "executed" means "signed" the words "or executed" in this clause are clearly redundant.

(xi) *Clause* 51.—After the words "Chief Controlling Revenue authority" the words "or, if so authorized by the Local Government, the Collector" should be inserted.

(xii) *Clause* 52 (*a*).—Under Board's Proceedings, No. 872, dated 8th April 1896, refunds are now being granted in cases where a stamp of *insufficient* value has been used and the parties desire to have a stamp of proper value substituted. This procedure should be expressly authorized under the new Act. The refund is at present granted under section 51 (*d*) (6) of Act I of 1879, but the application of that section to this class of cases is, under its amendment, now barred and it seems desirable that special provision should be made for them.

(xiii) *Clause* 54.—No provision has been made for cases in which the heirs or representatives in interest of licensed vendors apply for refund. It is therefore suggested that the words "or the person through whom such person claims" be inserted in clause (*a*) between "such person" and "with a *bonâ fide* intention, &c.," and in clause (*b*) between "he" and "has." In the proviso to the draft section the words "or is the representative of" should be similarly inserted between "is" and "a licensed vendor." These amendments only embody in the Act a concession already granted under departmental orders.

(xiv) *Clause* 61.—This clause makes no provision for cases in which the Collector considers that a Court has *over*-valued the stamp duty payable. This omission might be rectified either:—

(1) by enlarging clause 56 (2) so as to allow the Collector to refer the case to the Board for an authoritative decision, or

(2) by amending clause 61 so as to allow the Collector to address the Appellate Court and, if it concurs with him, to refund the excess duty and penalty levied.

The Board considers that clause 61 should be enlarged so as to permit the Collector to act in such cases if he considers that injustice has been done.

It is also to be pointed out that the reference to Chapters XII and XXXVI of the Code of Criminal Procedure is insufficient, inasmuch as, under clause 33 (2), proviso (*a*), a criminal judge may now impound a document which does *not* come before him in proceedings under these Chapters. 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 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 Court from the decision of a Tahsildar or other subordinate.

(xv) *Schedule I, Article* (12).—It has lately been brought to notice by the Inspector-General of Registration that the 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, and, as the temptation to substitute awards for partition deeds is undoubtedly great and may also tend to an undesirable increase of litigation, the Board would suggest that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition deeds.

Articles 15, 49 *and* 53.—It is incorrect to use the words "as defined by" in reference to Bonds, Promissory notes and Receipts, as these terms are *not* defined in the clauses to which reference is made. The substitution of the word "*vide*" for "as defined by" would be more proper.

Article 35 (v).—Whereas in clause 25 of the draft Bill, the term "in perpetuity" is taken as equivalent to twenty years, in Article 35 (v) it is assumed to mean ten years only for the purpose of levying duty. It is observed that the two sections relate to different matters—clause 25 to an annuity, &c., and Article 35 (v) to a lease. The discrepancy may, however, have been unintentional and may deserve consideration.

Article 45.—The definition of an "instrument of partition" includes also agreements to divide property under clause 2 (14). An agreement to divide is therefore chargeable with the same duty as a Bond and when the agreement is carried into effect by a partition deed, this deed is again chargeable with the same duty. The Board agrees with the Collector of Gódávari in considering that this is inequitable and 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.

Article 57, *exemption* (*a*).—Bonds under the Agriculturists Loans Act ought also to be exempted from duty.

Article 64.—A duty of Rs. 15 charged on a "declaration of trust" irrespective of the value of the property involved presses heavily on the parties concerned in the case of small trusts. A minimum duty of Rs. 5, declarations involving property of the value of Rs. 1,000 and upwards being stamped *ad valorem* as bonds, would seem more appropriate.

(xvi) The Collector of Ganjám suggests:—

(1) that a new Article providing for "instruments of rectification" should be added to schedule I;

(2) that a small duty not exceeding Re. 1 might be charged on wills and other testamentary instruments;

(3) that an "agreement to sell" should be specifically provided for; and

(4) that a distinction should be drawn between simple and possessory mortgages under the provisions relating to an "agreement to mortgage."

The Board cannot support any of these suggestions.

(True Extract.)

(Signed) N. S. BRODIE,
Secretary.

(True Copy.)

Ag. Assistant Secretary.

To the Secretary to Government, Revenue Department. *despd on 11th S already.*

Copy to all Collectors.
" the Superintendent of Stamps.
" the Inspector-General of Registration.

Exd. Md. Pahilvan.

Revenue

~~Pension~~ (189) Department.

CURRENT No. 8

Order

From The Secretary to the Commissioner of Salt, Abkari and Separate Revenue Madras

No. 549

Dated 26th December 1897

Received 30.12.97

Registered 1-1-98.

Enclosures

Spare copies

SUBJECT.

Submitting to Government pendoks and Suggestions of Collectors with the Board's opinion thereon regarding the Indian Stamp Bill

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

1,000
19-4-05

REVENUE BOARD OFFICE
MADRAS.

Proceedings of the Board of Revenue

(Separate Revenue),

Dated 26th December 1897.

Press. No. 549.

Read again Board's Proceedings this No 5030 (S.R) dated 18th November 1897 drawing the attention of all Collectors to the Indian Stamps bill published in the Supplement to the Fort Saint George Gazette dated 16th November 1897 and requiring them to favour the Board with their remarks on the bill soon to reach the Board's office by the 5th December at the latest.

Read also replies from Collectors to the above Proceedings.

Resolution

with reference to the draft of the Indian Stamps bill communicated with Government Order No 930 Press dated 11th November 1897 the Board beg to submit the following remarks and suggestions. The time allowed for its consideration was very short but the Collectors of Ganjam, Godavari, Madras and Coimbatore [illegible]

have been able to draw attention to several points and their assistance is acknowledged. The Board

Accepts the Bill generally and except on some points of detail has no objections to offer to its being passed into law. It is presumed that the suggestions made by it in its Proceedings No 321 dated 13th July 1895 have been remitted to the Govt of India for consideration and that such of them as do not appear in the present draft have been rejected by that Government.

2. On the usual obvious grammatical errors the points now principally calling for consideration appear to be the following:—

(1) clause 2. Definitions.

4 "Bill of Lading":- In lieu of the definition of this term which appears in S. 3(3) of the present Act. the draft Bill substitutes merely the words "bill of lading" : includes a "through bill of lading". It seems a mistake to abolish the definition altogether; no explanation of the reasons for adopting this course has been offered.

(10). "Conveyance" It is not quite clear from the bill whether the word "property" as used in the definition covers intangible as well as tangible property. It has been held in Board's Proceedings No 571 dated 23rd March 1887 that a right under a deed is property and a deed conveying such a right should therefore be regarded as a conveyance. This should be made clear in the new act the term "property" being defined so as to include rights of an intangible nature. A similar suggestion was made in para 3(1)(1) of Board's Proceedings No 321 dated 13th July 1895 with reference to the definition of "instrument of partition".

(3) "Instrument". The definition should include every document by which any right or liability is or purports to be extended as well as limited

(14). "Instrument of partition". The words "or any Civil Court" have been added to this definition but the statements of Objects and Reasons is silent as the object of this amendation

union action. The parties to partition suits have to pay court fees on the cause of the suit and it appears therefore to be hard to compel them to pay in addition a stamp duty for the purpose of carrying the Court's orders into effect.

(ii) Clause 3(a). In the case of any instrument executed in British India transferring property situated outside British India, the Collector of Gurgaon suggests that a lower rate of duty should be chargeable than in the case of an instrument transferring property situated within British India limits. The Board does not however consider that the proposal can be sustained. If the party executing the document wishes to avail himself of the privileges conferred by registering it in British India there is no reason why he should not pay the ordinary stamp duty chargeable on such documents.

(iii) Clause 11. Under the existing law promissory notes, if payable on demand, are chargeable with a duty of one anna and may be stamped with adhesive stamps. If article 49 of Schedule I of the draft Bill is approved, such promissory notes will be chargeable with a duty ad valorem in the same way as bills of exchange and must be written on stamped paper. This may cause hardship in the case of promissory notes for small sums and the suggestion has been made that notes for sums less than Rs 100 should be stamped with one anna adhesive labels as heretofore and that provision should be provided for the use of adhesive labels when the duty chargeable on such notes does not exceed four annas. The Board 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. This concession appears to be necessary in the interests of many who may

may not find it convenient or even possible to obtain Stamped papers when required.

(IV) Clause 12(3). Several Collectors have remarked that the wording of this Clause conflicts with the wording of Clause 63. Under the latter Section any person required by the former Section to cancel an adhesive stamp and failing to do so in the manner thereon prescribed is liable to a penalty of Rs. as is in fact stated in the Statement of objects and reasons. Section 12 merely indicates the manner in which adhesive stamps may be cancelled and does not prescribe the manner in which they shall be done.

(V) Clause 18(2). Under this clause, which corresponds with the existing Law the Collector is bound to stamp the document with a stamp of such value only as the person presenting it may require and pay for, and it sometimes happens that the document is, on its returns affixing being stamped by the Superintendent of Stamps, necessarily impounded and penalty levied, the stamp duty paid being insufficient. This procedure is unnecessary harsh and in such cases the Collector should be required to collect and to stamp the document with the proper stamp duty whether he is asked to do so or not. The effect of these words however, be to deprive Government of the adjudication fee chargeable under clause 31. We are of opinion that it is desirable to draw the attention of the public more prominently to the adjudication clauses of the Act and would add to the clause under discussion 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.

(VI) Clauses 29 and 40:- It is suggested that the person in whose favour a document is

is executed or his representative in interest shall equally with the executant of the document be liable to make good the deficient duty and penalty. The duty of conserving the revenue ought to fall equally on both and chiefly on the one for whose benefit the document exists or has existed. It occasionally happens that the party liable under the present act is unable to pay and the other does not care to pay and cannot be compelled.

(VII) Clause 39 (2). As observed by the Collector of Coimbatore, 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 clause as under clause 39 (1). The Board presumes that neither application nor reference is necessary; but if so, the introductory "or" should be "and". Full control is, in any case, reserved to the Chief Controlling Revenue Authority under clause 56 (1).

(VIII) Clause 48. This clause, as drafted, 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 want of some such provision is much felt in practice.

(X) Clause 49 (b). At present under clause 2 (2), the word "executed" means "signed" the words "or executed" in this clause are clearly redundant.

(IX) Clause 45 (3). Power should be given to the Chief Controlling Revenue Authority to refund the excess stamp duty levied without application from the party concerned. The clause, as drafted does not state that the application must be from the party, but to obviate difficulties of interpretation the Board would substitute "upon the matter being brought to notice" for "upon application in writing"

(XI) Clause 51 After the words "Chief Controlling Revenue Authority" the words "or

superior

"or, if so authorised by the Local Government. the Collector" should be inserted.

(xii) Clause 52 (a). Under Board's Proceedings No 872 dated 8th April 1896 refunds are now being granted in cases where a stamp of insufficient value has been used and the parties desire to have a stamp of proper value substituted. This procedure should be expressly authorised under the new Act. The refund is at present granted under Section 51 (d) (b) of Act I of 1879 but the application of that Section to this class of cases is, under its amendment, now barred and it seems desirable that special provision should be made for them.

(xiii) Clause (54). No provision has been made for cases in which the heirs or representatives in interest of deceased Vendors apply for refund. It is therefore Suggested that the words "or the person through whom such person claims" be inserted in clause (a) between "such person" and "with a bona fide intention to"

and

in clause (b) between "he" and "has".

In the proviso to the draft section the words "or is the representative of" should be similarly inserted between "is" and "a licensed Vendor".

These amendments only embody in the Act a concession already granted under departmental orders.

(xiv) Clause 61. This clause makes no provision for cases in which the Collector considers that a Court has undervalued the stamp duty payable. This omission might be rectified either:-

(1) by enlarging clause 58 (2) so as to allow the Collector to refer the case to the Board for an authoritative decision, or

(2) by amending clause (61) so as to allow the Collector to address the appellate Court and if it concurs with him, to refund the excess duty and penalty levied.

The Board consider that clause (61) should be enlarged so as to permit the Collector to act in such cases if he considers that injustice has been done.

It is also to be provided that the

reference

reference to Chapters XII and XXXVI of the Code of Criminal Procedure is insufficient, inasmuch as, under clause 33(2) proviso (a) a Criminal Court may now impound a document which does not come before him in proceedings under these chapters. 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 clause as it at present stands, it is further conceivable that the Collector may have occassion to apply for adjudication to one of his Divisional officers acting as appellate court from the decision of a Tahsildar or other Subordinate.

(XV) Schedule I art(12). It has lately been brought to notice by the Inspector General of Registration that the 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 and as the temptation to substitute awards for partition deed is undoubtedly great and may also tend to an undesirable increase of litigation, the Board would suggest that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition deeds

Articles 15, 49 & 53. It is incorrect to use the words "as defined by" in reference to Board's Promissory notes and Receipts, as these terms are not defined in the clauses to which reference is made. The substitution of the word "vide" for "as defined by" would be more proper.

Article 35 (V) Whereas in clause 25 of the draft Bill the term "in perpetuity" is taken as equivalent to 20 years, in article 35(V) it is assumed to mean 10 years only for the purpose of levying duty. It is observed that the two sections relate to different matters — clause 25 to an annuity &c and article 35(V) to a lease. The discrepancy may, however, have been unintentional and may deserve consideration

Article 45. The definition of an "instrument of partition" includes also agreements to divide property under clause 2(4). An agreement is therefore

therefore chargeable with the same duty as a Bond and when the agreement is carried into effect by a partition deed, this deed is again chargeable with the same duty. The Board agree with the Collector of Godavari in considering that this is inequitable and 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.

Article 57: exemption (a). Bonds under the agriculturists Loans Act ought also to be exempted from duty.

Article 64. A duty of Rs 15 charged on a "declaration of Trust," irrespective of the value of the property involved presses heavily on the parties concerned in the case of small trusts. A minimum duty of Rs 5, declarations involving property of the value of Rs 1000 and upwards being stamped ad valorem as bonds, would seem more appropriate.

(xvi) The Collector of Ganjam Suggests:—

(1) That a new article providing for "instruments of rectification" should be added to Schedule I

(2) That a small duty not exceeding R1 might be charged on wills and other testamentary instruments.

(3) That an "agreement to sell" should be specifically provided for, and

(4) That a distinction should be drawn between simple and possessory mortgages under the provisions relating to an agreement to mortgage.

The Board cannot support any of these suggestions.

(True Extract)

A Ramaraman Iyer Ca
Ag. Assistant Secretary

To

The Secretary to Government
Revenue Department
Copy to all Collectors.

Revenue 1898 Department

Current No 138.

Judicial

~~CURRENT No 79~~

From

The Administrator-General

of Madras.

To

The Chief Secretary,

to the Govt: of Madras.

Endorsement No. 4407 7th January 1898.

Transferred to the Rev. Dept.

A. R. Knapp.

Asst Secretary.

1898 January 6.

Recd 7/1/98

Regd 7/1/98

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HR
7.1.98

Subject.

Offering certain remarks on the Bill to consolidate and amend the law relating to stamps.

CURRENT NO 79

Administrator-General's Office.

Madras 6 January 1898.

From

N. S U B R A H M A N Y A M,

Administrator-General.

To

T H E C H I E F S E C R E T A R Y,

to the Govern[illegible] of Madras.

CHIEF SECRETARY
-6 JAN 1898
GOVERNMENT OF MADRAS

Sir,

I have the honor to sub it the following remarks on the Bill to consolidate and amend the law relating to stamps.

1. The proposed definition of "instrument of partition" will apparently include, a decree for partition, as also an order for partition passed in execution of such a decree. It seems to me that parties who have to pay a heavy Court fee in partition suits and incur other expenses incidental to such suits ought not to be called upon in reaping the fruits of decrees passed in those suits to pay in addition a stamp duty also.

Again the said definition includes an instrument by which co-owners "divide or agree to divide" Where parties who are co-owners of property, first enter into an agreement to divide and this is followed up afterwards by an Instrument of actual division by metes and bounds, the two should be considered as parts of really the same transaction; and if they have paid the full amount of stamp duty on the Agreement to divide they ought not to be required to pay stamp duty again on the Instrument of actual partition. If however the duty payable on the actual Instrument of Partition is greater than that paid on the Agreement to divide provision should be made for their paying the difference only.

2. I think Section 5 of the Act 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 certain quantity of grain of the value of Rs150.

3. Though Section 12 (clauses 1 (a) & (b)) requires the cancellation of an adhesive stamp at the time of affix-ing it or of executing the Instrument to which it is affix-ed 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: I think this should be made clear.

Clause 3 of the said section providing for one mode of cancellation is in my opinion unnecessary. Difficulties may arise by a person endeavouring to cancel an adhesive stamp in this particular manner and not doing it completely, as by the omission of the true date of affixing the signature or initials, 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.

4. I think the provision in Clause (b) in Section 35 is a very beneficial one so far as it goes. In my opinion it does not go far enough. It applies in terms 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 also be made to apply 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 this receipt at the trial of the suit to prove the discharge of the original debt.

I think this provision should not be confined to suits only but should be extended to other proceedings also.

I have the honor to be,

Sir,

Your Obedient Servant,

Administrator-General.

Revenue

Judicial (1898) Department.

CURRENT No. ~~183~~ 242

CHIEF SECRETARIAT
12 JAN. 1898
GOVERNMENT OF MADRAS

From

The Inspector General of Registration Madras.

G. No. 77

Dated 8
Despatched 11 } January 1898
Received 12
Registered 13 } — do —
Enclosures —
Spare copies

SUBJECT.

Submitting remarks on the Stamp Bill No. 16 of 1897.

~~Order~~
End. No. 90 dy 13 Jan. 1898
Transferred to the Rev. Dept.
A. Mukerjee.
Asst. Under Secretary.

13-1-98.

The Revenue Dept.

P.W.
15.1.98

BACK PAPERS.

G.O.	No.	Department.	Date.

C)

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Current. No. 183

REGISTRATION DEPARTMENT.

G.No. 77.

From

The Honourable P. Rajaratna Mudaliyar,

Dewan Bahadur,

Inspector-General of Registration,

Madras,

To

The Honourable A.T. Arundel, I.C.S.,

Chief Secretary to Government,

Fort St. George.

Nidamarayalam
~~Madras~~, 8 th. January 1898.

Sir,

I have the honour to submit the following remarks on the Stamp Bill No.16 of 1897, received with Government endorsement No.2435, Judicial, dated 18th. November 1897.

Section 2. Definitions. Clause (4). The definition of Bill of lading as given in the present Act may be retained and may include a "through bill of lading". It is not clear why the existing definition has been omitted.

(5) Clause C. I would suggest the addition of the words "or any goods or merchandize". Instruments relating to the delivery of goods or merchandize for advances received are now treated as agreements and stamped with eight annas. 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 merchandize.

(11) 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. This is a point worthy of

of consideration, but, at the same time, it must be admitted that this would cause inconvenience to the public and add to the work of refunding officers.

(12) The Board of Revenue has held that Signature includes initials. It is not clear whether the words "Signed" and "Signature" in this clause are intended to include "Initials" and Initialled". It is much easier to forge one's initials than his full signature.

(23) As remarked in para 23 (3) of my predecessor's letter recorded in G.O., No.425, Revenue, dated 28th. August 1896, the definition of the term "Settlement" requires amendment. Where a person bestows property upon a single member of his family or upon two or more persons *jointly, for whom he desires to provide, it was held that the arrange*ment did not fall within the meaning of the term, which, as it is at present defined, carries with it an idea of plurality and "distribution". The definition should be worded so as to cover also cases of transfer of property to a Hindu widow for life enjoyment in satisfaction of her claim to maintenance. Vide also Madras High Court ruling in referred case 5 of 1896. Board's Proceedings, No.432, dated 25th. October 1896.

2. Section 5. It is desirable to add a few illustrations to this section to show clearly what is meant by"distinct matters" as used in this section.

Section 29. The proviso to clause (h) of this section may be extended so as to cover cases of partition effected by parties themselves.

Sections 35 and 40. Registration officers who have most to do with questions of deficient stamp duty are unanimously of opinion - that the minimum penalty of Rs.5 prescribed in these sections bears hard on persons executing documents of small values. In the majority of cases, there is no intention to defraud, and the omission to use the proper stamp is due entirely to ignorance or inadvertance. To charge a 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. Thousands of such instances could be quoted from the records of this department, but I shall mention only one which very recently came to my notice. In this case, a lease was impounded by a Subregistrar under a mistaken impression that it should be stamped with an eight annas stamp, and the Divisional officer to whom the document was sent levied the minimum penalty. The party (an ignorant ryot) pleaded that he had previously consulted the Registering officer himself. If the Divisional officer had been allowed discretion in the matter, he would most certainly not have levied a penalty exceeding the proper stamp duty, Viz,, eight annas, that is assuming that the document was held to be chargeable with duty. I beg therefore to suggest that either the minimum be abolished as proposed by my predecessor in para 25 (2) of his letter already referred to or the minimum be reduced to Re.One.

Sections 40 (1) and 42 (2). In the Stamp Act XVIII of 1869, the adjudicating officer was authorized to return the document to "the Registering or other public officer by whom it was sent". It would be convenient if this provision is restored. Under the present Act, unless there is an application to that effect from the party himself, the impounded document is not returned to the Registering officer, and very often, through ignorance, the parties do not present them again for registration. It may also be noted that at one time the Board of Revenue held that the application referred to should bear a stamp of eight annas. This ruling was however subsequently cancelled. In this connection, it has been urged by several officers of the department that the interval between the date of impounding and the date of return of the document after adjudication should be excluded for purposes of calculating the period prescribed for registration of documents under Sections 23, 24 and 34 of the Registration Act III of 1877, as in several cases there is delay in the return of documents, and registration had to be refused in such cases under Sections 23 and 24. To avoid hardship to

to the parties, registration officers are authorized by departmental orders to record their admissions before impounding and sending the documents to Collectors, but this seems hardly a correct procedure. I think it proper that the interval referred to should be excluded as proposed, but a provision of the kind should more appopriately find a place in the Registration Act rather than in a Stamp Law.

Section 48. The power given to Collectors in this section will, it is presumed, be exercised only after the appeal time fixed in Section 45 (1) expires or after the appeal, if presented, is disposed of.

Section 57 (1). It is presumed that the Inspector-General of Registration can refer stamp questions to the Board of Revenue under this section (Vide expression "or otherwise coming to its notice"). If he cannot, he should be empowered to do so as suggested by the late Inspector-General in para 25 clause 4 on page 24 of his letter already referred to.

Schedule.

Article 3. Adoption deed. 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 the 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.

Article 5. 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 moveable property such as carts, bullocks, boats, etc.

Article 17. The fixed duty of Rs.5 on cancellation deeds seems excessive in the case of small transactions. The same duty as that on the original may be levied subject to a maximum of Rs.5.

Rectification, Ratification and Modification deeds may be provided for under this article.

Article 23. The rate of duty prescribed for certificates of sale (article 18) for values not exceeding Rs.25 may be adopted for Conveyances up to Rs.25.

Article 24. The clause "when applied for ....petty officer" in (b) (iii) under exemption in this article is evidently intended to cover cases i, ii, and iii. The clause should be printed accordingly.

Clause c - exemptions. As applications are often received for extracts from the returns and register kept in the Registrar-General's office, it is necessary to insert "Registrar-General of Births, Deaths and Marriages", after the "Marriage Registrar" in this clause.

Article 25. The expression "Counterpart of any lease" etc. occurring in the exemption clause under this article would seem to cover non-agricultural leases. I believe that this was intended. In the exemption clause relating to leases (article 35), the words "for the purposes of cultivation" have been added, but the same expression does not appear in the exemption clause relating to counterparts.

Article 32. The letters "i.e." should be omitted.

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. In its No.1416, dated 22nd. May 1883, the Board of Revenue ruled that the latter classes of documents should be treated as subsequent mortgages.

Article 35 Exemption (a). The exemption is confined to leases executed in the case of a cultivator and for the purposes of cul-

cultivation. It follows therefore that leases for cultivation executed by persons who are not themselves cultivators will not be exempt. It is a question for consideration whether all leases executed "for the purposes of cultivation" should not be exempt.

Article 39 (b). Kuri or chit associations referred to in I.L.R. 19 and 20, Madras, 31 and 69, respectively should be separately provided for if they do not fall under Article 5 ante as agreement not otherwise provided for.

Article 48 (a). It is presumed 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 eight only as hitherto. If so, the word "and" might be substituted for "or".

Article 57. This article does not cover cases in which security bonds are executed by a contractor pledging his property for the due performance of his contract, though it provides for security bonds executed by his surety. Such documents are at present treated as falling under the definition of "mortgage deeds", but it seems more appropriate to enlarge the term Security bond so as to cover all cases in which security is offered.

Article 58 B. The fixed duty of Rs.10 in the case of "Revocations of settlement" is excessive. The duty may be fixed on an ad valorem scale as for settlements subject to a maximum of Rs.10.

Article 61. The duty 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.

Article 62. 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.

Transfers of Promissory notes[†] by separate instruments and transfers of court[⊗] decrees have been held to fall within the definition of conveyance. There is no specific provision in the schedule. The former should be made chargeable with duty leviable on the original subject to a maximum of Rs.5, and the latter with duty like bonds subject to a maximum of Rs.10.

[†] Board's Proceedings, No.192, dated 19th.May 1897.

[⊗] Board's Proceedings, No.1292, dated 9th.May 1883.

Article 64. Complaints have been frequently 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 question was fully discussed so long ago as 1887, and the Government of India decided to abolish this heavy duty and charge an ad valorem duty subject to a maximum of Rupees 15. It is not therefore understood why this view has now been abandoned.

I have the honour to be,

Sir,

Your most obedient servant

Insp. Genl. of Regn.

Secy

A note on the Indian stamp Bill is being copied and will be submitted to the Secy tomorrow.

As the papers have to go in circulation it will be at least a full week before the opinions of this Govt. on the Bill can be communicated to the Govt of India.

In the meanwhile it is submitted that the opinions of the local officers, the last of which was rec'd on the 14th inst may be transmitted to the Govt of India. These have been put in type & copies can issue without delay.

A draft G.O. & letter are submitted.

CA
26 Aug 98.

HT.

This may be done: please see draft below for approval

8-9 26 : 1-8

Since
Secretariat time to
Opinions considered
dated 11 received
CA.

C.261/1898
R.271/1898
Encl.

Read again G.O. No 930 d 11.11.97
Read also C.No 10815,
— do — 10878,
— do — 10988,
" " 11110,
" " 8 of 1898.
" " 138 —do—
" " 272 —do—

Sept. Rev. No 4

~~Order thereon~~

G.O. (Press) No 50 d/ 28-1-98.

Ordered that the following letter be despatched to the Govt of India.

G.A.
26 gangd.

(Please see draft letter written on Separate sheet).

To

The Rt. Hon'ble Sir C. Rivaz (Sep. Rev.)
" Hon'ble the Advocate General (thro' the Govt. Solicitor)
" Administrator General
" Judicial Dept.

4 copies
3/4/98

Leg: Dept: Rev: No 5

Letter No. 51

To

The Secretary to the Govt of India
Legislative Department.

Sir,

With reference to your letter No. 1672 7/9 October 1897, I am directed to forward a copy of the Proceedings of this Government No. 50 dated 28-1-98, embodying the opinions of the marginally noted officers on the Bill to consolidate and amend the law relating to Stamps and to state that the opinions of the Local Government will be communicated in the course of next week.

2. I am to add that the Bill together with the Statement of Objects and Reasons was published in the Fort St George Gazette in English on 16th November 1897 and in Tamil, Telugu, Canarese, Malayalam and Hindustani on the 14th December 1897.

I have &c.
26/1/98.

Superintendent of Stamps.
The Hon'ble the Judges of the High Court.
Advocate-General
Board of Revenue
Administrator-General
Inspector-General of Registration.

Lt.
26 Jan 98.

30/1

Government {1898} of Madras.

REVENUE.

Recd. } 1898. *Enclosures -*

Regd. *Spare copies*

G.O., No. 50, 28th January 1898.

JANUARY.

Indian Stamp Bill.

Ordering that the Government of India be addressed on the subject of the —.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again G.O., No. 930, Revenue, dated 11th November 1897.

Abstract.—Communicating 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 favour of early remarks, the Indian Stamp Bill forwarded by the Government of India.

Read—the following statement from the Superintendent, Government Press, dated 16th December 1897, No. 5504 :—

Statement showing the dates on which the under-mentioned Bill was published in the *Fort St. George Gazette* (*vide* paragraph 2 of G.O., No. 1042, Judicial, dated 2nd June 1891).

Title of the Bill.	English.	Tamil.	Telugu.	Canarese.	Malayalam.	Hindustani.	Remarks.
India Bill No. 16 of 1897. The Indian Stamp Bill.	16th November 1897.	Dated 14th December, issued 15th December 1897.	14th December 1897.	14th December 1897.	14th December 1897.	Dated 14th December, issued 15th December 1897.	G.O., No. 930, Press, dated 11th November 1897, Revenue Department.

Madras,
16th December 1897.

(Signed) R. HILL,
Superintendent, Government Press.

To the Secretary to Government, Revenue Department, Madras.

Read—the following letter from J. N. ATKINSON, Esq., I.C.S., Acting Superintendent of Stamps, Madras, to the Secretary to Government, Revenue Department, dated 17th December 1897, No. 2635 :—

With reference to G.O., No. 930, Press, dated 11th ultimo, forwarding for remarks the Indian Stamp Bill, I have the honour to submit a copy of a letter addressed by me as Collector of Madras to the Board of Revenue on the subject, and to state that I have nothing to add to the observations and suggestions made therein.

Dated 10th December 1897, Ref. No. 994-G and B.

Enclosure.

From J. N. ATKINSON, Esq., I.C.S., Acting Collector of Madras, to the Secretary to the Commissioner of Salt, Abkári and Separate Revenue, dated 10th December 1897, Ref. No. 994-G and B.

Adverting to Board's Proceedings, Mis. No. 5030, dated 18th November 1897, I have the honour to submit the following remarks on the Bill to consolidate and amend the law relating to stamps. I would first solicit the Board's attention to my predecessor's letter to the Board No. 1142, dated 30th April 1895, making various suggestions for amendment of the Stamp Law. The remarks following embody for the most part my own observations and suggestions.

2. *Section* 2 (4).—The definition of Bill of Lading has been very much curtailed. As it stands in the Bill there is ample room for ambiguity. Ordinarily a Bill of Lading is a term

only used in reference to sea-going ships. Is it absolutely restricted to this extent? Some vessels plying only on inland waters, for example, on the Buckingham canal, use a form of receipt for goods carried identical in terms and appearance with a Bill of Lading, the document being on the face of it styled a Bill of Lading. Do such receipts come within the definition in the Bill?

3. *Section* 2 (6).—The words "the commencement of" are not well chosen.

4. *Section* 2 (10).—It is decided in Board's Proceedings, No. 571, dated 23rd March 1887, that a right under a decree is property. A deed conveying such a right is then a conveyance. The present definition divides property into moveable or immoveable; and these terms are sometimes interpreted as referring only to tangible things. Perhaps it would be well to make it clear that what I believe are technically known as "choses in action" are included.

Section 2 (11).—An unstamped instrument may be certified to by endorsement under section 42 and the instrument so endorsed may then be acted upon as if duly stamped. It should be made clear that such an instrument is covered by the definition.

5. *Section* 2 (15) (*d*).—The language seems unhappy. A lease is not given for the production of anything but to enable the lease-holder to enjoy the produce.

6. *Section* 3.—The word "said" after "that is" in the sixth line of this is presumably an error.

7. *Section* 12 (3).—The clause is badly drafted. The section refers only to adhesive stamps; the words "in the case of an adhesive stamp" are therefore redundant and confusing. The word "may" should be "shall" for section 63 of the Bill refers to the manner of cancellation *prescribed* not permitted.

8. *Section* 18 (2).—This directs the Collector to have any instrument brought to him to be stamped, stamped with a stamp of such value as the person taking such instrument may require and pay for. This is the present law and it entails some unnecessary hardship. For though the stamp duty named be insufficient, stamps of an insufficient value must be affixed, and then after the instrument is returned stamped from the office of the Superintendent of Stamps it is under Board's Proceedings, No. 811, dated the 14th June 1880, impounded and penalty levied. The Board has recently pointed out in their Proceedings, Mis. No. 4825, dated 5th November 1897, in a case of the kind that the applicant should have been asked to send the required stamp duty. But the strict letter of the law warrants no such procedure. I therefore think it desirable to add words to the following effect after "pay for," "or as the Collector finds from the nature of the instrument to be necessary, the difference of duty being collected from the applicant, if the duty found by the Collector is more than the amount remitted by the applicant or returned to the applicant if it is less than that sum."

9. *Section* 19.—There is no provision for the contingency of the first holder failing to observe the formalities prescribed in this section and the bills of exchange, &c., coming into the hands of another holder. Subsequent holders should be given an opportunity to protect themselves; of course without relieving the first holder of his liability to penalty.

10. *Section* 39 (1).—The Collector may be given power to refund whether upon application or not, without reference to the Chief Controlling Revenue authority.

11. *Section* 48.—It would be convenient if sums for which offences are compounded under section 70 are made recoverable in the same manner as duties and penalties under this section.

12. *Section* 51.—After the words "Chief Controlling Revenue authority" I would suggest the insertion of "or if so authorized by the Local Government, the Collector."

13. *Section* 52-*A*.—Under Board's Proceedings, No. 872, dated 8th April 1886, refunds are now being given in cases where a stamp of insufficient value has been used, and the parties desire to have a stamp of proper value substituted. It would be convenient to extend this section to cover such cases.

Read—the following letter from D. W. G. COWIE, Esq., Registrar of the High Court of Judicature, Madras, to the Chief Secretary to Government, dated 18th December 1897, Ref. on C. No. 2593 :—

With reference to G.O., No. 1614, Judicial, dated 18th November 1897, communicating a letter from the Government of India, Legislative Department, No. 1672, dated 19th October 1897, and forwarding, for favour of remarks, a Bill to consolidate and amend the law relating to Stamps, I am directed to state that the Hon'ble the Chief Justice and Justices Shephard and Benson have no remarks to offer, and that the Hon'ble Mr. Justice Boddam sees no objection to the Bill.

2. Any minute that may be recorded by the Hon'ble Mr. Justice Subramania Aiyar will be duly communicated.

Endt. No. 2820, Judicial.

Transferred to the Revenue Department.

21st December 1897. (Signed) J. H. A. TREMENHEERE,
for Chief Secretary.

Read—the following letter from the Hon'ble V. BHASHYAM AIYANGAR, B.A., B.L., C.I.E., Diwan Bahadur, Officiating Advocate-General, to the Chief Secretary to Government, dated Madras, 28th December 1897 :—

[*Re* The Indian Stamp Bill (*vide* G.O., No. 930, Revenue, dated 11th November 1897.)]

Remarks.

1. 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. But the presumption is one that may be rebutted, and it has been held, under the existing Stamp Law, following the English case of Marine Investment Co. *v.* Haviside, L.R., 5 Eng., and Ir. Appeals, page 624, that, when the presumption is rebutted, the deficient stamp duty and penalty could not be levied and secondary evidence could not, therefore, be admitted (*vide* I.L.R., 2 Mad., 208, and I.L.R., 7 Mad., 440). Lord Cairns, in the English case above cited, remarked at page 634 : "It is always in some sense a disagreeable and sometimes an invidious thing to hold that a case should fail for want of a stamp being affixed on an instrument ; and there are cases in which such a result arising from accident must be regarded with painful regret."

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.

It does not at all seem probable that the Legislature could have intended this result : for, it is not easy to suggest any reason why the party relying upon an instrument not duly stamped should be allowed to cure the defect when the instrument is produced in evidence, but should be debarred from curing such defect when, for no fault of his, the instrument itself could not be produced.

2. A provision should, therefore, be enacted, extending the provisions of proviso (*a*) to section 35 relating to the payment of the deficient stamp duty and penalty, to cases in which secondary evidence of such instrument will be admissible and the deficient stamp duty and penalty would, if the instrument had been tendered in evidence, be payable.

3. Another feature of the Stamp Law which demands serious consideration is the rule, which no doubt is in strict accordance with the English Law (*vide* St. 54 and 55 Vict., Ch. 39, sections 37 and 14) that the bills of exchange, promissory notes and instruments chargeable with a duty of one anna only shall not be received in evidence if they have not been duly stamped even on payment of the deficiency in the stamp duty and the prescribed penalty. Such stringent provision is probably necessary to safeguard the revenue as the risk of litigation among the mercantile classes in respect of such instruments is remote and the temptation to evade the stamp duty and take the risk of having to pay the penalty, should it become necessary to institute the suit thereon, will be strong. But it has to be borne in mind that several dealings with persons who do not belong to the mercantile class take the form of, or are accompanied by, promissory notes or bills of exchange and that in some cases notwithstanding the desire of the Legislature to make the provisions of the stamp law as clear as possible, reasonable doubts exist as to whether a particular document is a bond or a pro-note or a bill of exchange or what the proper duty thereon is. As justly observed by Sir James Westland, when he moved for leave to introduce this Bill, the Stamp Law has

to be "applied by persons themselves to their own transactions and the burden of its interpretation rests not merely upon the lawyer but upon the layman. It is all the more necessary, therefore, that in its working and in its explanation it should be as clear as possible, so that people who desire to pay proper duty upon their documents and who have no intention of evading the duty in any way may thoroughly and clearly understand the obligations which rest upon them." The difficulty in the interpretation of the Stamp Law in this country is one which no amount of precision or care in drafting can remove, the reason being that the Indian Stamp Law is enacted necessarily after the model of the English Stamp Law and with reference mainly to transactions and forms of instruments as they obtain in England. Though in this country corresponding transactions and forms of instruments exist, to which the Stamp Law has to be applied, yet certain differences both in substance and in form do exist ; and it is this circumstance which makes it much more difficult in this country than in England to apply the provisions of the Stamp Law to every-day transactions. The definitions of a promissory note and a bill of exchange have been enlarged so as to cover instruments not now falling within the scope of those terms. The Indian Stamp Law, to say nothing of its translation into vernaculars, is one which cannot safely be construed either by the Indian lawyer or layman unless he has some knowledge of the English Law of Contracts, especially of Mercantile Law and Usage.

4. A relaxation in the case of receipts liable to the payment of a stamp-duty of one anna has been introduced by clause (*b*) of section 35, by providing that an unstamped receipt may be admitted in evidence on payment of a penalty of one rupee. By the way, it may be remarked that that clause, as it now 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.

5. Under proviso (*a*) to section 35, it is obligatory on the court to admit in evidence, subject to all just exceptions, instruments not duly stamped, other than those excepted, on payment of the duty and the prescribed penalty and the party tendering such instrument is entitled to the benefit of this provision 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. In the case of the excepted instruments already referred to the stringency of the existing provision against the levy of the deficient stamp-duty and penalty 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. Such wholesome provision will be all the more necessary in view to the important change in the stamp-duty which will be introduced by the Bill when it is passed into law, in regard to promissory notes payable on demand which, ever since the introduction of Stamp Law into this country have proverbially been subject to a stamp-duty of one anna only. It will be years before the people will unlearn this beneficent provision with which they have long been familiar and realize the change that will be effected by the new Stamp Law.

6. The effect of section 26 is that whatever may be the stamp-duty affixed to an instrument of the class therein described, it is one that is duly stamped and, therefore, the provisions of the proviso (*a*) to section 35 will not apply. Though the instrument is regarded as duly stamped yet the party claiming under it is visited with a serious penalty by incapacitating him from claiming under the terms of the instrument any sum in excess of the maximum amount covered by the stamp. This 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 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 (I.L.R. 3 Mad., p. 342) 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 (see article 35, schedule I). The Bill proposes to modify the existing law by adding a proviso to section 26, to meet the case of a lease of a mine in which a share of the produce is received as rent or part of the rent. There is no reason why this proviso should be restricted to mining leases, nor do I see any reason 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. 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 with the penalty thereon.

7. I presume that the penalty which may be prescribed for the breach of any rule which may be made in exercise of the power conferred by section 75 is intended to be only a fine. This should be made clear and the maximum fine which may be prescribed should also be fixed by the section.

Read—the following Proceedings of the Board of Revenue (Separate Revenue), No. 549, dated 26th December 1897:—

Read—again Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 5030, dated 18th November 1897.

Abstract.—Drawing the attention of all Collectors to the Indian Stamp Bill published in the supplement to the *Fort St. George Gazette*, dated 16th November 1897, and requesting them to favour the Board with their remarks on the Bill so as to reach the Board's office by the 5th December at the latest.

Read—also replies from the several Collectors to the above Board's Proceedings.

Resolution—No. 549, dated 26th December 1897.

With reference to the draft of the Indian Stamp Bill communicated with G.O., No. 930, Press, dated 11th November 1897, the Board begs to submit the following remarks and suggestions. The time allowed for its consideration was very short but the Collectors of Ganjám, Gódávari, Madras and Coimbatore have been able to draw attention to several points and their assistance is acknowledged. The Board accepts the Bill generally and except on some points of detail has no objections to offer to its being passed into law. It is presumed that the suggestions made by it in its Proceedings, No. 321, dated 13th July 1895, have been remitted to the Government of India for consideration and that such of them as do not appear in the present draft have been rejected by that Government.

2. Omitting some obvious grammatical errors, the points now principally calling for consideration appear to be the following:—

(i) *Clause* 2, *Definitions*—(4) "*bill of lading.*"—In lieu of the definition of this term which appears in section 3 (3) of the present Act, the draft Bill substitutes merely the words "bill of lading includes a through bill of lading." It seems a mistake to abolish the definition altogether; no explanation of the reasons for adopting this course has been offered.

(10) "*Conveyance.*"—It is not quite clear from the Bill whether the word "property" as used in this definition covers intangible as well as tangible property. It has been held in Board's Proceedings, No. 571, dated 23rd March 1887, that a right under a decree is property and a deed conveying such a right should therefore be regarded as a conveyance. This should be made clear in the new Act, the term "property" being defined so as to include rights of an intangible nature. A similar suggestion was made in paragraph 3 (i) (1) of Board's Proceedings, No. 321, dated 13th July 1895, with reference to the definition of "instrument of partition."

(13) "*Instrument.*"—The definition should include every document by which any right or liability is or purports to be *extended* as well as *limited*.

(14) "*Instrument of partition.*"—The words "or any Civil Court" have been added to this definition, but the Statement of Objects and Reasons is silent as to the object of this innovation. The parties to partition suits have to pay Court-fees on the institution of the suit and it appears therefore to be hard to compel them to pay in addition a stamp duty for the purpose of carrying the Court's orders into effect.

(ii) *Clause* 3 (*a*).—In the case of an instrument executed in British India transferring property situated outside British India, the Collector of Ganjám suggests that a lower rate of duty should be chargeable than in the case of an instrument transferring property situated within British Indian limits. The Board does not, however, consider that the proposal can be sustained. If the party executing the document wishes to avail himself of the privileges conferred by registering it in British India there is no reason why he should not pay the ordinary stamp duty chargeable on such documents.

(iii) *Clause* 11.—Under the existing law, promissory notes, if payable on demand, are chargeable with a duty of one anna and may be stamped with adhesive stamps. If article 49 of schedule I of the draft Bill is approved, such promissory notes will be chargeable with a duty *ad valorem* in the same way as Bills of Exchange and must be written on stamped paper. This may cause some hardship in the case of promissory notes for small sums and the suggestion has been made that notes for sums less than Rs. 100 should be stamped with one anna adhesive labels as heretofore and that permission should be granted for the use of adhesive labels when the duty chargeable on such notes does not exceed four annas. The Board 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. This concession appears to be necessary in the interests of many who may not find it convenient or even possible to obtain stamped papers when required.

(iv) *Clause* 12 (3).—Several Collectors have remarked that the wording of this clause conflicts with the wording of clause 63. Under the latter section any person required by the former section to cancel an adhesive stamp and failing to do so in the manner therein prescribed is liable to a penalty. But, as is in fact stated in the Statement of Objects and Reasons, section 12 merely indicates one manner in which an adhesive stamp may be cancelled and does not prescribe *the* manner in which this should be done.

(v) *Clause* 18 (2).—Under this clause, which corresponds with the existing law, the Collector is bound to stamp the document with a stamp of such value only as the person presenting it may require and pay for, and 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 is unnecessarily harsh and in such cases the Collector should be required to collect and to stamp the document with the proper stamp duty whether he is asked to do so or not. The effect of this would, however, be to deprive Government of the adjudication fee chargeable under clause 31. The Board is of opinion that it is desirable to draw the attention of the public more prominently to the adjudication clauses of the Act and would add to the clause under discussion 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.

(vi) *Clauses* 29 *and* 48.—It is suggested 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. The duty of conserving the revenue ought to fall equally on both and chiefly on the one for whose benefit the document exists or has existed. It occasionally happens that the party liable under the present Act is unable to pay and the other does not care to pay and cannot be compelled.

(vii) *Clause* 39 (2).—As observed by the Collector of Coimbatore, 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 clause as under clause 39 (1). The Board presumes that neither application nor reference is necessary but, if so, the introductory "or" should be "and". Full control is, in any case, reserved to the Chief Controlling Revenue authority under clause 56 (1).

(viii) *Clause* 45 (3).—Power should be given to the Chief Controlling Revenue authority to refund the excess stamp duty levied without application from the party concerned. The clause, as drafted, does not state that the application must be from the party, but, to obviate difficulties of interpretation, the Board would substitute "upon the matter being brought to notice" for "upon application in writing."

(ix) *Clause* 48.—This clause, as drafted, 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 want of some such provision is much felt in practice.

(x) *Clause* 49 (*b*).—As, under clause 2 (12), the word "executed" means "signed" the words "or executed" in this clause are clearly redundant.

(xi) *Clause* 51.—After the words "Chief Controlling Revenue authority" the words "or, if so authorized by the Local Government, the Collector" should be inserted.

(xii) *Clause* 52 (*a*).—Under Board's Proceedings, No. 872, dated 8th April 1886, refunds are now being granted in cases where a stamp of *insufficient* value has been used and the parties desire to have a stamp of proper value substituted. This procedure should be expressly authorized under the new Act. The refund is at present granted under section 51 (*d*) (6) of Act I of 1879, but the application of that section to this class of cases is, under its amendment, now barred and it seems desirable that special provision should be made for them.

(xiii) *Clause* 54.—No provision has been made for cases in which the heirs or representatives in interest of licensed vendors apply for refund. It is therefore suggested that the words "or the person through whom such person claims" be inserted in clause (*a*) between "such person" and "with a *bonâ fide* intention, &c.," and in clause (*b*) between "he" and "has." In the proviso to the draft section the words "or is the representative of" should be similarly inserted between "is" and "a licensed vendor." These amendments only embody in the Act a concession already granted under departmental orders.

(xiv) *Clause* 61.—This clause makes no provision for cases in which the Collector considers that a Court has *over*-valued the stamp duty payable. This omission might be rectified either:—

(1) by enlarging clause 56 (2) so as to allow the Collector to refer the case to the Board for an authoritative decision, or

(2) by amending clause 61 so as to allow the Collector to address the Appellate Court and, if it concurs with him, to refund the excess duty and penalty levied.

The Board considers that clause 61 should be enlarged so as to permit the Collector to act in such cases if he considers that injustice has been done.

It is also to be pointed out that the reference to Chapters XII and XXXVI of the Code of Criminal Procedure is insufficient, inasmuch as, under clause 33 (2), proviso (*a*), a criminal judge may now impound a document which does *not* come before him in proceedings under these Chapters. 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 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 Court from the decision of a Tahsildar or other subordinate.

(xv) *Schedule I*, *Article* (12).—It has lately been brought to notice by the Inspector-General of Registration that the 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, and, as the temptation to substitute awards for partition deeds is undoubtedly great and may also tend to an undesirable increase of litigation, the Board would suggest that a proviso be added to article 12 excluding from its provisions all awards of the nature of partition deeds.

Articles 15, 49 *and* 53.—It is incorrect to use the words "as defined by" in reference to Bonds, Promissory notes and Receipts, as these terms are *not* defined in the clauses to which reference is made. The substitution of the word "*vide*" for "as defined by" would be more proper.

Article 35 (v).—Whereas in clause 25 of the draft Bill, the term "in perpetuity" is taken as equivalent to twenty years, in Article 35 (v) it is assumed to mean ten years only for the purpose of levying duty. It is observed that the two sections relate to different matters—clause 25 to an annuity, &c., and Article 35 (v) to a lease. The discrepancy may, however, have been unintentional and may deserve consideration.

Article 45.—The definition of an "instrument of partition" includes also agreements to divide property under clause 2 (14). An agreement to divide is therefore chargeable with the same duty as a Bond and when the agreement is carried into effect by a partition deed, this deed is again chargeable with the same duty. The Board agrees with the Collector of Gódávari in considering that this is inequitable and 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.

Article 57, *exemption* (*a*).—Bonds under the Agriculturists Loans Act ought also to be exempted from duty.

Article 64.—A duty of Rs. 15 charged on a "declaration of trust" irrespective of the value of the property involved presses heavily on the parties concerned in the case of small trusts. A minimum duty of Rs. 5, declarations involving property of the value of Rs. 1,000 and upwards being stamped *ad valorem* as bonds, would seem more appropriate.

(xvi) The Collector of Ganjám suggests:—

(1) that a new Article providing for "instruments of rectification" should be added to schedule I;

(2) that a small duty not exceeding Re. 1 might be charged on wills and other testamentary instruments;

(3) that an "agreement to sell" should be specifically provided for; and

(4) that a distinction should be drawn between simple and possessory mortgages under the provisions relating to an "agreement to mortgage."

The Board cannot support any of these suggestions.

(True Extract.)

(Signed) N. S. BRODIE,
Secretary.

To the Secretary to Government, Revenue Department.

Copy to all Collectors.
" the Superintendent of Stamps.
" the Inspector-General of Registration.

Read—the following letter from N. SUBRAHMANYAM, Esq., Administrator-General, to the Chief Secretary to the Government of Madras, dated 6th January 1898 :—

I have the honour to submit the following remarks on the Bill to consolidate and amend the law relating to stamps :—

1. The proposed definition of "instrument of partition" will apparently include, a decree for partition, as also an order for partition passed in execution of such a decree. It seems to me that parties who have to pay a heavy court-fee in partition suits and incur other expenses incidental to such suits ought not to be called upon in reaping the fruits of decrees passed in those suits to pay in addition a stamp-duty also.

Again the said definition includes an instrument by which co-owners "divide or agree to divide." Where parties who are co-owners of property, first enter into an agreement to divide and this is followed up afterwards by an instrument of actual division by meets and bounds, the two should be considered as parts of really the same transaction; and if they have paid the full amount of stamp-duty on the agreement to divide they ought not to be required to pay stamp-duty again on the instrument of actual partition. If, however, the duty payable on the actual instrument of partition is greater than that paid on the agreement to divide provision should be made for their paying the difference only.

2. I think section 5 of the Act 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 certain quantity of grain of the value of Rs. 150.

3. 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 to which it is affixed, 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. I think this should be made clear.

Clause 3 of the said section providing for one mode of cancellation is, in my opinion, unnecessary. Difficulties may arise by a person endeavouring to cancel an adhesive stamp in this particular manner and not doing it completely, as by the omission of the true date of affixing the signature or initials, 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.

4. I think the provision in clause (*b*) in section 35 is a very beneficial one so far as it goes. In my opinion it does not go far enough. It applies in terms 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 also be made to apply 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 this receipt at the trial of the suit to prove the discharge of the original debt.

I think this provision should not be confined to suits only but should be extended to other proceedings also.

Endorsement No. 44, Judicial.

Transferred to the Revenue Department.

7th January 1898. (Signed) A. R. KNAPP,
Acting Under Secretary.

Read—the following letter from the Hon'ble P. RAJARATNA MUDALIYAR, Diwan Bahadur, Inspector-General of Registration, Madras, to the Chief Secretary to Government, dated Nidamangalam, 8th January 1898, G. No. 77 :—

I have the honour to submit the following remarks on the Stamp Bill No. 16 of 1897, received with Government endorsement, No. 2433, Judicial, dated 18th November 1897 :—

Section 2—*Definitions*—*Clause* (4).—The definition of bill of lading as given in the present Act may be retained and may include a "through bill of lading." It is not clear why the existing definition has been omitted.

(5) *Clause* (*c*).—I would suggest the addition of the words "or any goods or merchandize." Instruments relating to the delivery of goods or merchandize for advances received are now treated as agreements and stamped with 8 annas. 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 merchandize.

(11) 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. This is a point worthy of consideration, but, at the same time, it must be admitted that this would cause inconvenience to the public and add to the work of refunding officers.

(12) The Board of Revenue has held that signature includes initials. It is not clear whether the words "signed" and "signature" in this clause are intended to include "initials" and "intialled." It is much easier to forge one's initials than his full signature.

(23) As remarked in paragraph 23 (3) of my predecessor's letter recorded in G.O., No. 425, Revenue, dated 28th August 1896, the definition of the term "settlement" requires amendment. Where a person bestows property upon a single member of his family or upon two or more persons jointly, for whom he desires to provide, it was held that the arrangement did not fall within the meaning of the term, which, as it is, at present defined, carries with it an idea of plurality and "distribution." The definition should be worded so as to cover also cases of transfer of property to a Hindu widow for life enjoyment in satisfaction of her claim to maintenance—*vide* also Madras High Court ruling in referred case 5 of 1896—Board's Proceedings, No. 432, dated 25th October 1896.

2. *Section* 5.—It is desirable to add a few illustrations to this section to show clearly what is meant by "distinct matters" as used in this section.

Section 29.—The proviso to clause (*h*) of this section may be extended so as to cover cases of partition effected by parties themselves.

Sections 35 *and* 40.—Registration officers who have most to do with questions of deficient stamp duty are unanimously of opinion that the minimum penalty of Rs. 5 prescribed in these sections bears hard on persons executing documents of small values. In the majority of cases, there is no intention to defraud and the omission to use the proper stamp is due entirely to ignorance or inadvertence. To charge a 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. Thousands of such instances could be quoted from the records of this department, but I shall mention only one which very recently came to my notice. In this case, a lease was impounded by a Sub-Registrar under a mistaken impression that it should be stamped with an 8-anna stamp, and the Divisional-officer, to whom the document was sent, levied the minimum penalty. The party (an ignorant ryot) pleaded that he had previously consulted the registering officer himself. If the Divisional-officer had been allowed discretion in the matter, he would most certainly not have levied a penalty exceeding the proper stamp duty,

viz., 8 annas, that is assuming that the document was held to be chargeable with duty. I beg therefore to suggest that either the minimum be abolished as proposed by my predecessor in paragraph 25 (2) of his letter already referred to or the minimum be reduced to Re 1.

Sections 40 (1) *and* 42 (2).—In the Stamp Act, XVIII of 1869, the adjudicating officer was authorised to return the document to "the registering or other public officer by whom it was sent." It would be convenient if this provision is restored. Under the present Act, unless there is an application to that effect from the party himself, the impounded document is not returned to the registering officer, and very often through ignorance, the parties do not present them again for registration. It may also be noted that at one time the Board of Revenue held that the application referred to should bear a stamp of 8 annas. This ruling was, however, subsequently cancelled. In this connection, it has been urged by several officers of the department that the interval between the date of impounding and the date of return of the document after adjudication should be excluded for purposes of calculating the period prescribed for registration of documents under sections 23, 24 and 34 of the Registration Act III of 1877, as in several cases there is delay in the return of documents, and registration has to be refused in such cases under sections 23 and 24. To avoid hardship to the parties, registration officers are authorized by departmental orders to record their admissions before impounding and sending the documents to Collectors, but this seems hardly a correct procedure. I think it proper that the interval referred to should be excluded as proposed but a provision of the kind should more appropriately find a place in the Registration Act rather than in a Stamp Law.

Section 48.—The power given to Collectors in this section will, it is presumed, be exercised only after the appeal time fixed in section 45 (1) expires or after the appeal, if presented, is disposed of.

Section 57 (1).—It is presumed that the Inspector-General of Registration can refer stamp questions to the Board of Revenue under this section —*vide* expression "or otherwise coming to its notice". If he cannot, he should be empowered to do so as suggested by the late Inspector-General in paragraph 25, clause 4 on page 24 of his letter already referred to.

SCHEDULE.

Article 3, *Adoption deed.*—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 the 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.

Article 5.—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 moveable property such as carts, bullocks, boats, &c.

Article 17.—The fixed duty of Rs. 5 on cancellation deeds seems excessive in the case of small transactions. The same duty as that on the original may be levied subject to a maximum of Rs. 5.

Rectification, ratification and modification deeds may be provided for under this article.

Article 23.—The rate of duty prescribed for certificates of sale (article 18) for values not exceeding Rs. 25 may be adopted for conveyances up to Rs. 25.

Article 24.—The clause "when applied for * * * petty officer" in (*b*) (iii) under exemption in this article is evidently intended to cover cases (i), (ii) and (iii). The clause should be printed accordingly.

Clause (*c*)—*Exemptions.*—As applications are often received for extracts from the returns and register kept in the Registrar-General's office, it is necessary to insert "Registrar-General of Births, Deaths and Marriages" after the "Marriage Registrar" in this clause.

Article 25.—The expression "counterpart of any lease", &c., occurring in the exemption clause under this article would seem to cover non-agricultural leases. I believe that this was intended. In the exemption clause relating to leases (article 35), the words "for the purposes of cultivation" have been added, but the same expression does not appear in the exemption clause relating to counterparts.

Article 32.—The letters "*i.e.*" should be omitted.

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. In its No. 1416, dated 22nd May 1883, the Board of Revenue ruled that the latter classes of documents should be treated as subsequent mortgages.

Article 35—*Exemption* (*a*).—The exemption is confined to leases executed in the case of a cultivator and for the purposes of cultivation. It follows therefore that leases for cultivation executed by persons who are not themselves cultivators will not be exempt. It is a question for consideration whether all leases executed "for the purposes of cultivation" should not be exempt.

Article 39 (*b*).—Kuri or chit associations referred to in I.L.R., 19 and 20, Madras, 31 and 69, respectively, should be separately provided for if they do not fall under article 5 *ante* as agreement not otherwise provided for.

Article 48 (*a*).—It is presumed 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 as hitherto. If so, the word "and" might be substituted for "or".

Article 57.—This article does not cover cases in which security bonds are executed by a contractor pledging his property for the due performance of his contract, though it provides for security bonds executed by his surety. Such documents are at present treated as falling under the definition of "mortgage deeds," but it seems more appropriate to enlarge the term security bond so as to cover all cases in which security is offered.

Article 58 (*b*).—The fixed duty of Rs. 10 in the case of "revocations of settlement" is excessive. The duty may be fixed on an *ad valorem* scale as for settlements subject to a maximum of Rs. 10.

Article 61.—The duty 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.

Article 62.—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.

Transfers of promissory * notes by separate instruments and transfers of court † decrees have been held to fall within the definition of conveyance. There is no specific provision in the schedule. The former should be made chargeable with duty leviable on the original subject to a maximum of Rs. 5, and the latter with duty like bonds subject to a maximum of Rs. 10.

* Board's Proceedings, No. 192, dated 19th May 1897.

† Board's Proceedings, No. 1292, dated 9th May 1883.

Article 64.—Complaints have been frequently 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 question was fully discussed so long ago as 1887, and the Government of India decided to abolish this heavy duty and charge an *ad valorem* duty subject to a maximum of Rs. 15. It is not, therefore, understood why this view has now been abandoned.

Endorsement No. 90, Judicial.

Transferred to the Revenue Department.

13th January 1898. (Signed) A. R. KNAPP,
Acting Under Secretary.

Order—No. 50, Revenue, dated 28th January 1898.

Separate Revenue, No. 4.

Ordered that the following letter be despatched to the Government of India.

(True Extract.)

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

To the Board of Revenue (Separate Revenue).
„ the Honourable the Advocate-General (through the Government Solicitor).
„ the Administrator-General.
„ the Judicial Department.

Exd. Md. Pahilvan.

150 Copies.

1898.

LEGISLATIVE DEPARTMENT.

From *The Government of Fort St. George.*

Recd. } 1898. *Enclosures*

Regd. } *Spare copies*

Letter, No. 51, 28th January 1898.

JANUARY.

Bill to consolidate and amend the Law relating to Stamps.

Forwarding a copy of the Proceedings of this Government embodying the opinions of certain officers on the —.

REVENUE DEPARTMENT.

From

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

To

The SECRETARY to the GOVERNMENT OF INDIA,
Legislative Department.

Dated Fort St. George, 28th January 1898.

Sir,

With reference to your letter, No. 1672, dated 19th October 1897, I am directed to forward a copy of the Proceedings of this Government, No. 50, dated 28th January 1898, embodying the opinions of the marginally-noted officers on the Bill to consolidate and amend the law relating to stamps and to state that the opinions of the Local Government will be communicated in the course of next week.

Separate Revenue No. 5.

Superintendent of Stamps.
The Hon'ble the Judges of the High Court.
Advocate-General.
Board of Revenue.
Administrator-General.
Inspector-General of Registration.

2. I am to add that the Bill, together with the Statement of Objects and Reasons, was published in the *Fort St. George Gazette* in English on 16th November 1897, and in Tamil, Telugu, Canarese, Malayalam and Hindustani on the 14th December 1897.

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

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

Exd. Shaik Karim.

30 Copies.

4-9-26 II

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