Wednesday, August 11, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

1869

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 11th August 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. MAINE moved that the Bill to provide against European Vagrancy be referred to a Select Committee with instructions to report thereon in three weeks. He said, "This Bill, though it was not referred to a Select Committee, was introduced into the Council of your Excellency's predecessor, in order that it might be published, and the feeling of the country as to its provisions might be elicited. The views of the Local Governments and other authorities were at the same time invited. "The result of this appeal and enquiry is, that the measure has been very generally approved of. I have not observed any objection whatever to its principles, and none to its machinery as a whole, and, with one exception, there has been no objection to any material detail. Under these circumstances, as the general feeling on the subject and the views of the local authorities have been ascertained for some time, it is perhaps right that I should explain what are the difficulties which have led to the delay which has occurred in enacting a measure of which the urgency is universally recognised. The first of these difficulties arises from certain provisions of Statute 3 & 4 Wm. IV., c. 85. The 81st and succeeding sections regulate the terms upon which natural-born subjects of the Queen, other than officials and natives of the country, are to be admitted into

British India; and their principle is that of dividing the territory which forms the British Indian Empire into two portions,—territory acquired before the year 1800, and territory acquired afterwards. Into the first part of the territory of the British Indian Empire, European British subjects may enter freely and remain there: provided that at the port of debarkation they register the objects they had in view in coming to the country. Into the remaining British territory they are forbidden to enter without a license. The system was no doubt liberal as compared with that which preceded it, but singularly restrictive as compared with that now in force. Very few Englishmen now in India are perhaps aware that, as a matter of strict law, they cannot, unless in the service of Government, live without a license at such places as Rangoon, Poona, Lahore, Allahabad, or at any of the Himalayan Hill Stations, and that they must, when they land at Madras, Calcutta or Bombay, explain to some official the objects for which they come to India. Indeed, I am not sure that, when the station-master of Calcutta delivers a ticket for Allahabad to a non-official gentleman unprovided with a license, he is not in strictness abetting an illegality. The system, however, appears to have been obsolete from the first. I cannot find that there ever was a registration of Europeans disembarking at Calcutta, nor can I discover that any of the Queen's natural-born subjects have ever been kept out of prohibited portions of British India, though there is one case on record of deportation from Nagpore. However the sections exist in the Statute Book. They are quite inconsistent with the measure, and unless we can repeal them, the measure cannot become law.

"Now, I should not think it worth while discussing the system of these sections as an alternative to the system of the Bill, if I had not seen it suggested in England that, for the purpose of suppressing European Vagrancy, all that was necessary was to put the Charter Act in force, somewhat narrowing the area of the prohibited territory. I am wholly of a different opinion. The effect of such a system would be to let the vagrants wander freely in the provinces inhabited by the feebler and less masculine populations, while they would be kept from annoying the more vigorous races of Hindustan Proper. Possibly the presence of the vagrants among the races of Upper India may be the greater political evil and danger; but I fear that it is in such populations as those of Bengal Proper that they inflict the greatest suffering and wrong. I have been told, and no doubt my Hon'ble friend, MR. COCKERELL, will admit the possibility of the alleged fact, that two European vagrants have been known to go into a Bengálí village for the purpose of quartering themselves on the inhabitants, and the next morning the whole of the villagers were found to have fled into the jungle, men, women, and children, leaving their houses closed. But the conclusive objection to the system of the Charter Act is the existence of railways in India. Whatever territory is

forbidden to Europeans, it must always be territory in which there is a great central railway station—for example, Allahabad. Either then all passengers by railway must be allowed to enter the forbidden territory, which would be tantamount to having no system at all, or everybody who takes a railway ticket must provide himself with a license from the State. In order, then, to pass this Bill, it was necessary to get these provisions out of the way, and accordingly a section was inserted by the Secretary of State in the Governor General of India's Bill introduced into Parliament. This Bill has been cut down to very small proportions; but it appears from a telegram, which your Excellency sent me a few hours ago, that the Bill as passed contains a section which allows this Council to repeal the obstructive sections.

"The other class of legal difficulties arise upon certain sections of the Bill, which provide for the deportation of European vagrants. The difficulty here is a fruit of the imperfect power which this Council has of legislating for the sea. The sections were intended to compel the deportation of the vagrant, and at the same time to ensure to him kind treatment on the part of the ship-master. But this Council can only legislate for those parts of the sea which, under the Law of Nations, are considered to belong to the land—that is, a space of three miles from the shore, and the water of bays, estuaries, and indentations of the coast. It has no power to legislate for the high sea, except under certain provisions of the Merchant Shipping Acts; and though some of these provisions are so extremely wide and vague as perhaps to sustain the sections, still I think them on the whole of doubtful validity. The Secretary of State was asked by Lord Lawrence's Government to give us by further statutory enactment the necessary power; but he stated in a despatch that he thought there was no use in applying to Parliament for the purpose. I believe the true reason may be given by the statement that, at the very time when public opinion was roused in India to the great evils occasioned by vagrancy, there arose a panic of a similar kind in England. I propose, therefore, to omit these sections (which, I may remark, are the only part of the Bill which has been seriously objected to), and, subject to what the Committee may decide, to substitute for the system proposed in them a system of voluntary agreement, the breach of which will be enforced by criminal penalties. Using popular language, I propose that when a vagrant or any person of European extraction has agreed in writing with the Government to be deported at the expense of the State, then if he refuses on notice given to go on board a particular ship and remain there, or if, having been actually deported, he returns to India within a certain limit of time, he will be subject to fine and imprisonment. The provisions compelling ship-owners to receive vagrants on board will also be omitted.

"With reference to the phrase, 'person of European extraction,' in the definition of vagrants, it seems to have been doubted whether that expression included Australians and Americans. I should have said that it obviously did; but, to prevent a doubt which I was not prepared for, I am quite willing, if the Select Committee thinks fit, to provide that persons of 'European extraction' shall include persons of American or Australian extraction. With regard to the definition of Magistrate, a question of importance is, whether Magistrates of all grades shall be entrusted with some of the powers conferred by the Bill. The provision was deliberately inserted to prevent the vagrants ever being out of reach of the arm of the law, but the point is one for the consideration of the Select Committee. An objection of the same kind has been taken in section 3 to the mention of the Superintendent of Police, and it has been doubted whether he is the proper person to give orders under that section, but that is a matter that persons who have more practical acquaintance with administration than I have, would be better able than I to decide. I would only say that the original Madras proposals specially included Superintendents of Police.

"I pass on to the 24th section, to which the Board of Trade has taken objection, though that Department is not supported by the Secretary of State for India. The Australian precedents, on which the section is founded, are said to be not deserving of much respect. This section imposes a penalty on the master of a ship who knowingly lands in any part of India an European who, in any part of Her Majesty's dominions, has committed an offence amounting to felony. I am for retaining the provision. I would readily omit it if India were a country in which an Englishman could hope to retrieve a lost character, but, from circumstances of climate and others, it is not so. It is not a country in which the tendencies which have developed themselves in a man that has been convicted of felony, are likely to be controlled. Has he committed a crime of violence? Why, one of the objects of the measure is to prevent violence to the natives. Has he committed a fraudulent crime? Every body knows that the largest number of situations open here to non-official Europeans are situations of confidence, and the temptations to abuse it are exceptionally great, as exemplified in the fact that the want of trustworthy agency is the great difficulty with which private enterprise has to struggle. I am, therefore, for keeping out of India every body who has once been convicted of felony.

"As the Bill is eminently one for a Select Committee, I have no further observations to offer to the Council. The evil is great, perhaps greater than any with which we have had to deal of late years. European opinion and Native opinion are at one as to its magnitude, and as to the urgent necessity for putting an end

to it. It must be some satisfaction to your Excellency and the Council, that they are also agreed that the proper means of abating it are to be found in this measure."

The Motion was put and agreed to.

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY, in moving that the report of the Select Committee on the Bill to shorten the time for landing cargo be taken into consideration, said that the Committee had proposed to make two slight alterations in the Bill. The first of these was in the title, which was originally not quite correct; the other, to cut out that clause which rendered it necessary that, when the Local Government had fixed a time within which cargo should be landed, the orders should receive the sanction of the Governor General in Council. Ordinarily, when provisions of this kind were inserted in the Acts of the Legislature, the object was to secure some uniformity of practice on the part of the various Local Governments; but in this case, there appeared to be no object of the kind. The time that ought to be allowed in different parts of India for landing cargo would depend upon the facilities that existed for unloading ships, and upon purely local circumstances, of which the Local Governments were the best judges, and in which there was no necessity for the Government of India to interfere. He had already explained that this Bill was not brought in for any purpose of the Government, but to meet the well-ascertained wishes of the mercantile community of Calcutta in a matter which affected their interests and convenience. He mentioned when he asked leave to introduce this Bill that the Trades Association of Calcutta, an important and influential body, had objected to the measure, and he said at the same time that he had no doubt that their objections would receive the full consideration of this Council. The Trades Association had represented that, in the present position of the port of Calcutta, cargo could not be landed very rapidly, and that if the time for landing were shortened, the result would be that goods would be removed from the ships by persons who had no interest in the condition of the goods, and that thus fragile articles would be more or less liable to damage.

The Association also anticipated that exorbitant demands for landing goods would be made on the part of those who had authority over the boats.

Although full consideration was due to the opinions of the Trades Association, the representations of the Chamber of Commerce and of the merchants of Calcutta must, he thought, be accepted as conclusive in regard of the opinions of the general

mercantile public. The Chamber of Commerce affirmed in a positive manner that not one-tenth of the goods annually imported into Calcutta was consigned to members of the Association, or passed through their agency, and the Chamber had a right to say that its opinion must be considered the more weighty of the two. We had heard nothing of the opinion of the Trades Association since the Bill was introduced, and it was possible that the successful construction of the new jetties in Calcutta might modify the objections formerly made.

In one of their former letters that the Association said that "the want of appliances for speedy delivery all tend to show the inadvisability of any reduction in the period now allowed. The Committee, in common with all importers, would only be too glad to support any plan which would ensure a more speedy delivery of cargo; and if the facilities for landing cargo had been increased since the present rule came into force, the Committee would support the Chamber of Commerce in their request."

MR. STRACHEY thought, therefore, that as we had reason to hope that the facilities for landing cargo would be considerably increased before long, we might fairly anticipate that the objections formerly urged by the Trades Association would cease to be applicable.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill for imposing stamp-duties on certain instruments be taken into consideration. He said that the Bill purported to effect an entire reconstruction of the law relating to the stamp-duties chargeable on the execution of certain instruments.

The title of the proposed enactment had been criticized on the ground of its assumed technical incorrectness. It was argued that the term "General Stamp Act" was inaptly applied to an enactment which contained no reference to judicial stamps, and their exclusion from this measure was objected to as detrimental to public convenience. This objection rested on the assumption that the public were specially interested in finding in the same enactment the law regarding the stamp duties leviable on instruments, and the stamps used to denote the fees chargeable on the institution of suits.

If it could be supposed that even in the majority of cases, the execution of an instrument liable to stamp duty was necessarily to be followed by the institution of a suit in respect of the transaction effected by the instrument, there might be some weight in this objection; but obviously this was not the case even remotely. So far as the returns of stamp proceeds admitted of any distinct conclusion on this matter, it would appear that scarcely six per cent. of the transactions involving the execution of stamped instruments, became the subject of litigation.

Regarding the question of maintaining on general grounds in the same enactment the combination of stamp duties chargeable on instruments and stamps used to denote the Court fees levied in judicial proceedings, the inexpediency of such a course seemed to be unquestionable.

In the first place, there was this difficulty in the way of including these two subjects in the same legislative measure. The question of the rates of fees to be adopted in judicial proceedings was not ripe for decision. The Government, with the information which it had before it at the time that this Bill was matured, was not then prepared either to confirm or set aside the rates fixed by Act XXVI of 1867, and the amendment of the law in regard to the stamp duties on instruments had long been urgently called for, and admitted of no further delay.

Apart from this consideration, however, the retention of the amalgamation was for other reasons undesirable, for what connection was there between the tax imposed on the execution of instruments and Court fees which would not, with equal consistency, bring within the scope of a general Stamp Act the regulation of Postal and Electric Telegraph rates, in both of which cases stamps were, to a large extent, employed as the most convenient collecting machinery?

There certainly seemed to be something anomalous in the practice of crediting in the public accounts Court fees when levied by means of stamps to stamp-revenue, and placing the same source of income, when realized by cash payments, under the head of "Law and Justice;" and this practice, which obtained up to the present time, was probably entirely owing to the former legislative amalgamation of two distinct branches of revenue.

To the same cause indirectly at least was attributable the fact that only by special enquiry could the proportions in which the stamp-revenue derived from those different sources contributed to its aggregate amount be even approximately ascertained; and he (MR. COCKERELL) ventured to say that if the separation which the Bill proposed to effect, had been maintained in past legislation, the Council

would have been in a better position to determine the rates of stamp duty which should be imposed on the instruments to which this Bill applied.

The re-construction of the stamp law embraced two important reforms. The main defect in the existing law was its general unintelligibility, arising out of the complete absence of any logical order in the arrangement of its provisions, and the ambiguous language in which many of its requirements were expressed.

The law, moreover, contained no definition or interpretation of the various terms by which the instruments thereby made chargeable with stamp duty, were designated; and the rates of *ad valorem* duty were so adjusted as to result in extreme inequality of taxation. The aim of the Bill, therefore, was first, so to arrange and express the provisions of the law as to popularize them, and make them more readily intelligible; and, secondly, to secure a more equitable incidence of taxation by a revision and equalization, as far as practicable, of the *ad valorem* duties.

It was believed that if the Bill became law, the first of these objects was likely to be fairly attained. The utmost possible publicity had been given to the proposed alterations of the law, and criticism had been thereby freely invoked. The result might be said to be a general *consensus* of opinion on the part of those who had most experience in the working of the law that these changes were calculated to effect a vast improvement in the desired direction. As regards the second object, the equalization of *ad valorem* duties, it would be seen that the amended Bill provided for a considerable reduction of the rates propounded in the original Bill in respect of bonds and conveyances of large amount. The scale of *ad valorem* duties contemplated by the original Bill was framed on the principle of the English law. It fixed the duty chargeable on any instrument at an uniform percentage of the amount of the transaction effected by such instrument, in substitution for the irregular sliding scale of the existing law. The effect of the proposed change was to reduce in a small degree the duty chargeable on instruments of an amount not exceeding Rs. 10,000, whilst on transactions of higher amount, the tax was more or less enhanced, in many cases to the extent of more than double the rates of the existing law.

The proposed enhancement had met with a strong protest from several quarters. It was represented that the declared objects of the revision of the stamp law comprehended no increase of existing rates, and it was asserted that this excessive enhancement of those rates on transactions of large amount was calculated to impede the transfer of property, and that, with the diminution of business caused thereby, the nett result of the change would be an absolute loss of revenue.

This conclusion was apparently based on the supposition that the stamp revenue depended mainly on the duties accruing from transactions of large amount; whereas the returns of stamp-sales showed a directly contrary state of things, and proved that the bulk of the revenue was derived from the duties leviable on transactions of very small amount. MR. COCKERELL had already referred to the difficulty, caused by the amalgamation of stamp-duties chargeable on instruments with judicial stamps, of ascertaining the proportions in which each contributed to the gross amount credited in the general accounts under the head of stamp-revenue. But this at least was certain that one-fourth of that revenue was derived from stamps of denominations not exceeding eight annas in value. Hence it was conceivable that a very slight abatement of the stamp duties at the lower end of the scale would produce a greater loss of revenue than would be compensated even by an excessive enhancement of the duties chargeable on transactions of large amount. And when it was considered that the plan of the original Bill provided for a small abatement of all duties charged on bonds and conveyances, and other instruments subject to similar rates up to Rs. 35 and Rs. 70 respectively, it was fairly maintainable that the scale fixed by the Bill as introduced into this Council, was not inconsistent with the declaration that the proposed revision of the stamp law included no design of securing any increase of the revenue.

The majority of the Select Committee, however, concurred in the views of the objectors as to the impolicy of the enhanced rates; and as the principle of an equal proportion of taxation according to the amount involved in the transactions without limit or restriction in regard to such amount, could only otherwise be maintained by a very serious reduction of rates at the lower end of the scale (a course which was altogether impracticable as involving a sacrifice which the revenue could not possibly afford) the retention of the sliding scale system, which governed the rates obtaining under the existing law, was recommended by the Committee, and assented to by the Government of India.

The rates of the principal *ad valorem* duties of the amended Bill were adjusted on this principle: they embraced the substitution of gradual ascents for the very irregular ascents of the existing law, and as compared with the rates fixed by that law were, in their individual incidence on the transaction effected by them, generally in favour of the tax-payer.

Another objection to the existing law was that it afforded no sufficient check to the fraudulent evasion of the stamp-duties imposed on the execution of instruments. The law certainly contained criminal penalties for such evasions, but provided no sufficient means of enforcing them, and as the necessary result, they

proved in effect to a great extent inoperative. For the Collector, with whom alone rested the power of instituting a criminal prosecution, could only act when the unstamped instrument came into his hands, and no Court or public officer could impound any unstamped document for the purpose of facilitating a criminal prosecution of the executants of such document, however palpably fraudulent the omission to stamp it might appear.

The Bill gave this power of impounding unstamped or insufficiently stamped documents to all Courts and public officers, and it was thought that this power properly exercised by Registrars of Assurances ought to afford most valuable protection to the interests of the revenue. This provision of the original Bill had undergone no alteration by the Committee, and he only referred to it here for the purpose of stating that, in the opinion of the Committee, it went quite far enough in the direction of facilitating the detection and punishment of fraud, and that the further measure, the adoption of which was strongly pressed upon them, of allowing a criminal prosecution to be instituted on the information of any person as to the alleged possession of unstamped documents by some other person, could not be adopted without such risk of intolerable abuse, as it would be wrong to incur merely for the security of the revenue.

It had been suggested that the Civil Courts, which by the Bill, as by the existing law, were bound to take cognizance of unstamped or insufficiently stamped documents when produced in evidence, and to levy the extreme fiscal penalty incurred by their default, should be vested with the same discretionary power as could be exercised by the Collector in determining the amount of the penalty to be levied in such cases.

It had been asked also whether the admission of any instrument as not requiring a stamp, or being sufficiently stamped, by a Civil Court or Registrar of Assurances, or other public officer, was to be binding upon every other Court and public officer, and to preclude any question as to the sufficiency of the stamp being raised at any subsequent period?

The provisions of the Bill in regard to these matters were regulated by the consideration that, consistently with the due protection of the interests of the revenue, to the Revenue Authorities alone as directly responsible for the maintenance of those interests, could be assigned the power of foregoing any just claim, which the revenue might have or be thought to have in respect of any instrument.

The power of exacting less than the full penalty incurred on the default of any instrument, which virtually amounted to a power of remission of a portion of

such penalty, was, therefore, advisedly allowed to be exercised by the Revenue Authorities only. The single exception to this rule was where a Civil Court had proceeded to adjudicate in the case of an instrument brought before it, not bearing the proper stamp, and had levied what it deemed to be the extreme penalty incurred by the default of such instrument. In such case, the Court's adjudication was accepted as final to obviate undue annoyance to the individual holder of such instrument. But no such weight was accorded to the Court's expressed opinion that any instrument is not chargeable with stamp duty or additional stamp duty. Still less therefore obviously could it be the intention of the Bill that the ignorant or negligent omission either of a Civil Court to take cognizance of an improperly stamped instrument, or of a registering or other public officer to impound the same, should operate to save the validity of such instrument from being impugned on any occasion of its further production.

It was probably owing to a misconception of the above principle, which was a leading feature of the provisions of the Bill in regard to unstamped or insufficiently stamped instruments, that the general power of remission of penalties vested in the chief controlling Revenue Authority by section 43 of the amended Bill had been in some quarters objected to, as giving that authority a quasi-appellate jurisdiction over judicial tribunals.

That section properly construed did not involve the consequence thus assumed. For the due protection of the revenue, the law bound the Courts down to the enforcement of the penalties which it imposed. But in order to prevent undue hardship resulting therefrom in individual cases, it permitted the intervention of the Revenue Authorities, not for the purpose of questioning the correctness of the judicial award, with which they had no concern, but to admit of the mitigation of the punishment legally incurred by the default, where the special circumstances of the case might be held to justify such leniency, and the relaxation might be granted compatibly with a due regard to the general security of the revenue.

He now came to the details of the amendments proposed by the Select Committee, and it might be as well to state here that when citing the numbers of sections, he referred to the sections of the amended Bill as published in the *Gazette of India* of the 12th March 1869.

'Property' was defined to mean only property situate within British India, for the purpose of excluding from the operation of the Act instruments relating to the transfer of property situated elsewhere, which had to be executed wholly or in part, within this country, because the parties, or at least some of the parties, happened to be resident in this country at the time of the execution.

The fourth clause of section 4 of the original Bill, by which instruments executed before the proposed law should come into force, but not brought to this country for the purpose of taking any action thereon until after it should begin to operate, were subjected to its provisions, had been omitted in the amended Bill, in consideration of the fact that instruments executed out of British India were, under the prevailing construction of the existing law, not liable to stamp-duty. It would, in the opinion of the Committee, be unreasonable to subject the transactions of persons to the operation of a law which, at the time at which such transactions took place, was not in existence, and by which consequently their conduct in regard to those transactions could not have been regulated.

The use of adhesive stamps was, by the amended Bill, restricted to those instruments to which they might be applied under the existing law and practice. The extension of such use contemplated by the original Bill, with a view to public convenience, was represented to be not desired by the mercantile community, which regarded the present mode of stamping as on the whole more conducive to general convenience. It was obviously, therefore, inexpedient that the revenue should incur the risk of loss from the greater evasion of duty which necessarily attached to the extended use of adhesive stamps.

Section 8 of the original Bill, by which it was proposed to make the first part of a set of bills of exchange bear the stamp required for denoting the full amount of duty chargeable on the set, had been omitted. The conditions which it was necessary for the security of the revenue to attach to this provision would, it was represented, have entailed great public inconvenience. The effect of the omission and the corresponding alteration of the schedule was to preserve the mode of stamping bills of exchange in force under the existing law.

Section 10 contained an entirely new provision for settling the amount of stamp-duty chargeable when the consideration stated in, or the sum secured by, any instrument was expressed in a foreign currency. It was represented to the Committee that in this country, where the expression in a foreign currency of the amount involved in a certain class of instruments was of such frequent occurrence, the absence of any provision of this kind constantly gave rise to doubts as to the validity of such instruments.

To the list of exemptions in section 14, certain documents which enjoyed exemption from stamp-duty under the existing law, but were not included in the original Bill, had been added, and the restriction in regard to amount of salary, placed upon the general exemption from stamp-duty of bonds executed by public officers for the due execution of the duties of their office, had been withdrawn,

Under the existing law, no instruments to which the Government was a party were liable to stamp duty, but by the Bill such instruments were exempted only when, under its other provisions, the obligation to bear the cost of such duty would rest upon the Government.

In the case of bonds, the person executing the instrument was required to pay the stamp duty, and consequently, but for the special exemption in their favour, bonds given by public servants for the due execution of the duties of their office, would be required to be stamped, and the cost of the stamp would fall upon them. It was thought that the contract entered into by a salaried officer for the due discharge of his duties stood on a very different footing from other contracts, and that it was inexpedient to burden him with a tax to which he had not heretofore been subjected.

The new section 15 comprised merely the substance of Act XVIII of 1865, which empowered the Governor General to reduce or remit stamp duties in certain cases. The provisions of that Act had been transferred to the Bill without alteration, and merely for the purpose of more convenient reference.

Section 16 had been introduced for the purpose of excluding bailbonds, personal recognizances, copies of proceedings granted by the Courts, and other documents, which were specially dealt with in the enactments relating to stamps used in judicial proceedings, from liability to the stamp-duties imposed by this Bill.

The penalty incurred by an unstamped or insufficiently stamped instrument produced within one year from the date of its execution, had been reduced from ten times the amount of the deficient duty—the limit of the original Bill—to five times that amount. It was thought that many cases might occur in which, though the grounds for an absolute remission of all penalty might be wanting, the defaulter would be entitled to some consideration, and the exaction of the higher penalty would be too severe.

The Committee proposed further that the maximum penalty to be exacted in any case of default should be one thousand rupees. That amount was sufficiently high to make wilful evasion of the proper duty unprofitable, and it was obviously not for the true interests of the revenue to make the penalties prohibitory, and a default practically irremediable in any case.

The High Court at Calcutta had by section 42 been made the Court of reference in respect of cases arising anywhere in India without the limits of the Presidencies of Madras and Bombay. To give additional weight to the rulings of the Courts in the referred cases, it was provided by the original Bill, and

the condition had been retained in the amended Bill, that these references should be heard by a Bench consisting of not less than three Judges. In Oudh, the Central Provinces, and British Burma, where the High Court was represented by a single Judge, this condition could not have been fulfilled, and some alteration was, therefore, necessary.

If the High Court of the North-Western Provinces and the Chief Court of the Punjáb were to remain Courts of reference in these cases, as they would have been under the provisions of the original Bill, there would have been some difficulty in determining to which High Court cases arising in the Central Provinces and Oudh should be referred. Moreover, there was an obvious advantage in having as few Courts of reference in such cases as possible, as thereby the risk of conflicting decisions on important points was diminished.

It was not anticipated that these referred cases would be very numerous, and on the whole, therefore, the provision of the existing Bill was considered to effect the best practicable arrangement in this matter.

The power of framing rules for the sale of stamps and stamped papers was, by the amended section 49, made applicable to judicial stamps. This was a temporary provision, pending the more complete revision of the law regarding stamp fees in judicial proceedings, and was necessitated by the repeal of those sections of Act X of 1862, which related to the sale of stamped papers generally.

The number of schedules had been reduced from four to two, and a more general and simple classification of instruments adopted than that contained in the original Bill. The Committee, after a careful consideration of this matter, came to the conclusion that the only sound basis of classification was the amount of duty chargeable on any instrument, and that the stamp duties were fairly susceptible of division into two classes only,—one, duties of variable amount; the other, fixed duties.

In accordance with this view, all instruments, subject to an *ad valorem* duty, had been ranged in the first schedule, and all other instruments chargeable with fixed duties were placed in the second schedule.

The rates of duty on bills of exchange as now proposed involved no material modification of the existing law. The amended scale, as compared with that now in operation, showed a general reduction of rates, averaging about two annas, or one-eighth per cent. on bills for an amount below Rs. 1,500. The ascents were more gradual, and the steps more numerous in respect of bills for amounts ranging between Rs. 100 and Rs. 30,000; hence the average duty on bills between those amounts was slightly reduced. In respect of bills of amount exceeding Rs. 30,000, there was

no alteration of existing rates. The rates of stamp duty on bills of exchange were by these alterations fixed at an uniform percentage on the amount of the bill, and as compared with English rates showed an uniform excess of 25 per cent.

Under the present stamp law, bills drawn for a term exceeding one year were chargeable as bonds. It was proposed to discontinue this provision, and in conformity with the more recent English legislation on this subject, to make no distinction in the liability to duty between bills drawn for short or long terms.

Promissory notes, the liability of which under the existing law was somewhat ambiguously expressed, were subjected to the same rates, without exception, as bills of exchange.

The duty on marine, fire, and general policies of insurance had been reduced to one-half the present rate, and it was proposed to remit the duty on life policies altogether. These changes were recommended by the Committee as politic and expedient on general grounds, and in accordance with recent changes in the English law in the same direction. The entire revenue derived from the stamp duties levied on this class of instruments was too inconsiderable to make the loss of revenue which may result from the reduction worth taking into account.

The special rates, which amounted to only one-quarter of the rates charged on ordinary conveyances chargeable on transfer of shares by endorsement, have been extended to these transfers when effected by separate deed. This was in accordance with the provision of the existing law on this subject. It was represented to the Committee that the probable effect of the provision of the original Bill would be to render obsolete the practice of making transfers of shares by separate deed, a result which, on general considerations, was held to be undesirable, and that in that case the revenue would gain nothing by the restriction.

The rates chargeable on bonds, mortgages, conveyances and other instruments subject to similar *ad valorem* duties, had undergone very considerable reduction in respect of all instruments involving an amount exceeding Rs. 10,000. The *ad valorem* duties of the original Bill were, as he had before stated, adjusted on the principle of the English law, *i. e.*, the duty was assessed at an uniform rate of percentage on the maximum amount of each ascent.

This uniform rate was for bonds half per cent., and for conveyances one per cent.

The effect of the alterations made by the Committee was to retain the half per cent. and one per cent., respectively, when the amount of the bond or conveyance did not exceed Rs. 10,000, to reduce the half per cent. and one per cent. to a quarter and

half per cent. respectively when the amount of the instrument exceeded Rs. 10,000, but did not exceed Rs. 30,000, and to substitute for those rates one-eighth per cent. on the maximum amount of each ascent in the case of a bond or other instrument similarly chargeable, when the amount secured by the bond exceeded Rs. 30,000, and three-eighths per cent. on such maximum amount in the case of a conveyance or instrument, subject to like duty when the amount of the consideration stated in the conveyance exceeded Rs. 1,00,000.

It was thus proposed to reduce the duty on bonds where the amount involved exceeded Rs. 30,000 to one-fourth, and on conveyances when the consideration therein expressed exceeded Rs. 1,00,000, no less than one-half the amount contemplated by the original Bill, and to bring the rates chargeable on such instruments to an exact equality with the rates obtaining under the English law.

It was difficult to make any exact comparison between the rates of the amended Bill and those obtaining under the existing law, as the ascents in the scale of the latter were so abrupt and irregular. But generally it might be stated with certainty that the duties chargeable on these instruments had been more or less reduced throughout, and that this reduction had been proportionately more considerable in the case of bonds.

Directly, therefore, a certain loss of revenue, the approximate amount of which it was impossible to estimate, would seem to be the necessary result of this re-adjustment of the *ad valorem* duties. But MR. COCKERELL thought that there was some compensation to be looked for from other provisions of the Bill, by which ignorant and fraudulent evasions of the stamp-duty would be materially checked, and that the expectation that the nett result of the proposed change of the law would in time prove financially profitable, was not without foundation.

The other changes proposed by the Select Committee were of minor importance. The lower rates of duty applicable to short-term leases had been extended to leases the term of which did not exceed three years. This was a concession chiefly in favour of the tenants of houses, whose leases, in the Presidency towns at least, were ordinarily for a term of three years. It was thought that this class was too heavily taxed under the present system.

Instruments effecting the surrender of a lease, which were liable to certain stamp duties under the English law, were brought within the category of chargeable instruments, and made liable, as in England, to the same duty as leases up to a certain amount, and thereafter to the fixed duty of Rs. 16, which came near to the amount of the fixed duty imposed by the English law.

The duties chargeable on indemnity-bonds, bonds for the due execution of the duties of an office and instruments purporting to effect an assignment of any interest secured by bond or mortgage-deed, had been similarly adjusted in substitution for the unlimited *ad valorem* duties heretofore chargeable.

Following the course of the English law, it was proposed to substitute for the varying rates of duty chargeable on agreements a fixed rate of eight annas, and for the present *ad valorem* duty on counterparts of leases a fixed duty of one rupee. A low rate of duty which would be uniformly applicable to every description of agreement was calculated to prevent alike fraudulent and ignorant evasion of the requirements of the law, and the levy of an *ad valorem* duty on the counterpart of a lease when the lease itself had been already subjected to such duty, was clearly inconsistent with the principle of the Bill.

The special rate of eight annas was imposed on powers of attorney for the sole purpose of registering documents, as the act to be performed under such powers was very similar to the duty devolving on persons filing powers of attorney in judicial proceedings, and it seemed equitable that the duty chargeable in the one case should not exceed that which was levied under similar circumstances in the other.

Instruments relating to the appointment of trustees and the declaration of a trust had not hitherto been subjected to the duty imposed by the Bill. Such instruments were chargeable under the English law, and by the existing law in this country a conveyance of property from one set of trustees to another was taxed with the ordinary *ad valorem* duties applicable to conveyances.

Such charge was virtually discontinued by the provisions of the Bill in regard o conveyances; hence the instruments above referred to might unobjectionably be required to bear the fixed duty imposed by the Bill.

For the *ad valorem* duty on partition-deeds, a fixed duty of Rs. 16 was substituted. This change was suggested by the difficulty of estimating an *ad valorem* duty upon the miscellaneous descriptions of property which came within those instruments.

The insertion in this schedule of petitions for leave to file a specification involved no new impost. The duty borne by them was imposed by Act XV of 1859; and they had been transferred to this Bill in order that the entire law regarding stamp duties might be comprised in one enactment.

The imposition of stamp-duty on articles of clerkship was new. Those instruments had not hitherto been subjected to any duty in this country, though in Eng-

land they bore a much heavier duty than that now proposed. It was not expected that any material addition to the stamp revenue would accrue from this source, and the measure was proposed chiefly on the ground that, under the existing law, the mukhtárs practising in the Mofussil Courts and on the Appellate Side of the High Courts, who were taxed annually in an amount varying from Rs. 25 to Rs. 5, were placed at a disadvantage with their co-practitioners in the Courts at the Presidency towns, who were subject to no such professional tax. It had been urged by several respectable attorneys that the provision of the Bill in regard to this matter did not go far enough, that the articles of clerkship might, with advantage, be subjected to an additional duty of Rs. 250, and that the Bill should provide for the imposition of a further duty of Rs. 250 on the order of admission as an attorney.

The English law exacted a duty of £80 on the articles of clerkship, and £25 on the admission of the clerk to practise as an attorney.

The attornies as a body no doubt regarded a high entrance fee in the form of duty as likely to afford some check upon the too indiscriminate enrolment of new members in the ranks of their profession. Considering, however, that hitherto no duty had been levied on these instruments, the proposed rate, which was necessarily of a tentative nature, appeared to be sufficient.

Such were the amendments which seemed to call for explanation, and MR. COCKERELL had only to add that the amended Bill had been unanimously adopted by the Select Committee, and that its provisions were the result of the most careful and protracted deliberations. The two hon'ble Members of this Council who represented the mercantile community of Calcutta, cordially approved of the Bill, to the elaboration of the details of which they, as Members of the Select Committee, gave their earnest attention and most valuable assistance.

The Chamber of Commerce of Bombay, which body, MR. COCKERELL presumed, represented the chief commercial interests (and he drew attention to these circumstances, because a stamp law affected such interests in an especial degree) of that other leading mercantile centre, had, since the publication of the amended Bill, communicated its unreserved acquiescence in the propriety of the proposed changes of the law.

After the report of the Select Committee was presented in March last, the amended Bill was published in the official Gazettes, and special communications were addressed to the various Local Governments, inviting the opinions and suggestions of the whole administrative staff of the Empire. Replies to those communications had been received from every quarter. Some of them had led

to certain alterations of the details of the Bill, and to these he would have occasion to advert presently when moving the adoption of the amendments of which he had given notice. But the soundness and expediency of the main provisions of the Bill might be said to have been generally assented to.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved the following amendments:—

That in section 1, the word and figures "January 1870" be substituted for "October 1869."

He observed that, as there were certain executive arrangements, which required some time for completion, as, for instance, the translation of the Act into the several vernacular languages, and its publication in that form, as well as the supply of a large number of stamps of new denominations, to be made before the Act could be properly worked, it was thought desirable to postpone its coming into operation until January next.

That in section 3, for the definition of "lease," the following be substituted:—

"'Lease' includes every instrument (not being a counterpart) by which one person lets or agrees to let, or takes or agrees to take, immoveable property to or from another."

He said that it had been represented that in many parts of the country a 'kabúliyát' given by the tenant was the only instrument executed on the letting of property. As the new law would admit of counterparts of leases passing with a mere nominal duty, it was thought that without the safeguard provided by the amendment, this kabúliyát, which in the cases referred to, constituted the sole record of the lease granted by the proprietor, would escape the *ad valorem* duty which the law designed to impose on such transactions.

That in the definition of 'Notarial Act,' lines 1 and 4, the words 'endorsement, note or entry,' be inserted after 'instrument.'

This amendment, he said, was intended to show that, for example, the attestation of a power of attorney or any other instrument by a notary public, was chargeable with stamp duty under the bill as a Notarial Act.

That in section 5, line 5, the word 'customs-bonds,' and in Schedule I, No. 8, the asterisk and the note to such number be omitted.

He said that the effect of these alterations was to exclude customs-bonds from the category of instruments to which adhesive stamps were applicable. It appeared that printed forms were now invariably used in the execution of these instruments, and that they were signed in the presence of the Collector of Customs. Measures were now being adopted by the Revenue Authorities for supplying these forms on stamped paper of the required value for sale to the public, whose convenience would, under these circumstances, be consulted if the stamp-duty chargeable on these instruments were required to be denoted by impressed stamps.

That in section 10, lines 5 and 8, the words 'or currency' be inserted after 'sterling.'

This addition, he said, was proposed on the representation of the Government of Bombay, that the amount of foreign bills drawn on Bombay coming from Ceylon and other places, was frequently expressed in 'pounds currency' instead of 'pounds sterling.'

That in section 12, line 2, after 'annuity' the words 'or other sum payable periodically' be inserted, and that in line 8 for 'payable,' the words 'or other sum payable periodically' be inserted, and that in lines 3 and 8 the word 'time' be substituted for 'period,' and that in the sixth and last lines, for 'annual payment' the words 'payment calculated for one year' be substituted.

This, he said, was a verbal addition to meet the very common case in this country of a periodical allowance, the term of which was expressed by the month or some other period, instead of by the year.

That to section 13, the following words be added:—

"Provided that where the instruments are liable to different rates of duty under this Act, the instrument liable to the highest of such rates shall be deemed to be the principal instrument."

He observed that when two or more instruments were executed for the purpose of giving effect to any single transaction, and one of such instruments thereby became liable only to the small fixed duty chargeable on collateral instruments, the parties to such instruments were by section 13 allowed to determine for themselves, which should, for the purpose of computing the proper stamp duty required for either instrument, be deemed to be the principal instrument.

The proposed additional clause was intended to prevent the permission in such cases being used for evading payment of the higher rate of duty where the several instruments executed in respect of the single transaction were liable to different rates.

That after section 13, the following section be inserted:—

"14. An instrument so framed as to come within two or more of the definitions in section 3, shall, when the instruments to which those definitions apply are liable to different rates of duty under this Act, be charged with the highest of such rates:

Provided that when any one instrument purports, for distinct considerations, to convey by way of sale, to lease, to give, or to mortgage two or more subject-matters,

or to convey by way of sale, to lease, or to give one subject-matter, and to mortgage another,

such instrument shall be chargeable with the aggregate amount of the duties to which instruments effecting separately each of such conveyances, leases, gifts or mortgages would be liable under this Act."

He said that the original Bill contained a somewhat similar section which was left out of the amended Bill. The Select Committee rejected that section on the ground of its liability to misconstruction. Since the publication of the amended Bill it had been represented from more than one quarter that some such provision was required, and it was thought that the section now proposed, with the safeguard of the proviso attached to it, was calculated to meet the requirements of the case, without being open to the objection on the score of ambiguity which attached to the rejected section.

That to section 14, clause 1, the following words be added:—"or (in the Presidencies of Madras and Bombay) of inám lands."

He said that clause 1 provided for the exemption of receipts granted to the cultivators of revenue-paying lands. It had been represented that as the payments made by the holders of inám lands to the Government were not held to be revenue payments, the exemption would not apply to receipts granted by those persons, and yet that the principle of the exemption in the case of revenue-paying landholders was as applicable to their case. It was proposed therefore to extend the exemption to receipts given by inámdárs.

That in section 17, line 2, the words "under this Act" be omitted, and that in line 20, for "this Act," the words "the law in force in British India at the time of its execution" be substituted.

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That in section 19, line 2, the words "under this Act" be omitted, and that in line 4, for "proper stamp," the words "stamp required by the law in force in British India at the time of its execution" be substituted.

That in section 21, line 7, for the words "prescribed by this Act" the words "required by the law in force in British India at the time of its execution" be substituted.

That in section 22, line 7, for the words "under this Act," the words "with stamp duty under the law in force in British India at the time of its execution" be substituted, and that in line 9, for 'this Act' the words 'that law' be substituted.

And that in section 23 *(a)*, line 19, for the words "this Act," the words "the law relating to stamp duties in force in British India at the time of its execution" be substituted, and that in the last line of the same clause the words "under this Act" be omitted.

He remarked that the object of these verbal alterations was to include, within the provisions referred to, instruments executed before this Act came into operation.

That in section 24, clause (*a*), line 25, after 'and' the words 'subject to the provision contained in section 40' be inserted, and that to clause (*d*) of section 24, the same words be prefixed. That the same words also be inserted in section 25, line 11, after the word 'shall.'

These provisos, he said, related to the appellate jurisdiction conferred on the chief controlling Revenue Authority by section 40. It was necessary to declare that the effect of the Collector's certificate, as laid down in sections 24 and 25, was subject to the power of revision vested in the chief Revenue Authority.

That to section 25 the following clause be added:—"In case any instrument sent or returned under sections twenty-two, twenty-three, or twenty-four, or the former part of this section, be lost, destroyed or injured during transmission, the Court or officer sending or returning the same shall not be liable for such loss, destruction or injury."

He observed that by sections 22 and 23, the Court and the registering officer were required in certain contingencies to send documents to the Collector, and by sections 24 and 25 the Collector was required to return such documents. It was necessary to protect the Court or public officer fulfilling this requirement from responsibility for any accident that might happen to the document in transit. A similar provision was made in the existing law to meet the case of loss or injury of documents sent by the Collector at the instance of the owner or holder of such

documents to the chief controlling Revenue Authority for determination of the stamp duty to which they were liable.

That in section 26, line 4, for "or any other instrument chargeable hereunder with duty not exceeding one anna comes to the hand of any person," the following be substituted:—"by any banker or person acting as a banker, chargeable hereunder with the duty of one anna, comes to his hands unstamped."

He said that the effect of this alteration was to exclude the 'other instrument chargeable with a duty of one anna' from the provision of the section. It would be observed that the last sentence of the section was wholly inapplicable to the case of the "other instrument." This would be rendered clearer by a reference to Schedule II, Nos. 2—8 which contained a description of the "other instruments" referred to. The fact was that those instruments which it was now proposed to exclude from the section ought never to have been brought within it, for the provision of the section was not applied to them under the existing law, or in the English statute from which the provision was taken. The alteration would bring the provision of the Bill into exact accordance with the English statute.

That in section 26, clause *(b)* underneath the 3rd line, the words "or firm," and in 4th line of same clause after the word "he," the words "or it" be inserted.

That in section 28, line 1, for "whoever makes signs, or issues," the words "any person or firm making, signing or issuing" be substituted, and that in lines 3, 4 and 5, for the words "accepts, endorses, transfers, pays or receives," the words "accepting, endorsing, transferring, paying or receiving" be substituted, and that in line 10 for "whoever makes, executes, or signs," the words "any person making, executing, or signing" be substituted.

And that in section 29, for the words "whoever presents for acceptance or for payment, or accepts, pays or endorses, transfers or in any manner negociates," the following be substituted:—"any person or firm presenting for acceptance or for payment, or accepting, paying, endorsing, transferring, or in any manner negociating."

And that in section 30, line 1, for "whoever presents," the words "any person or firm presenting" be substituted, and that in lines 6 and 7, for "whoever endorses, transfers, or in any manner negociates," the following be substituted:—"any person or firm, endorsing, or in any manner negociating," and that in line 8, after "his" the words "or its" be inserted, and that in line 14, for "and whoever" the words "any person or firm who or which" be substituted, and that in lines 16 and 17, for "and refuses or neglects," the words "refusing or neglecting" be substituted.

And that in section 31, line 1, for "whoever draws or executes," the words "any person or firm drawing or executing" be substituted, and that in lines 6 and 7, for "does not at the same time draw or execute," the words "not at the same time drawing or executing" be substituted.

And that to section 37 the following clause be added:—

"In the case of a firm, the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the firm, or to all or any of the members thereof."

He observed that these verbal alterations were designed to extend to a 'firm' the liability of a 'person' for offences against the stamp law. It had been represented that, in the Bombay Presidency, unstamped bills were frequently drawn and accepted in the name of Native firms by an agent acting on behalf of such firms; that as the identity of the offending agent in such cases could not be established, a criminal prosecution was found to be impracticable, and that the stamp law was thus systematically evaded by certain classes with perfect impunity.

That section 33 be omitted (the numbers of the subsequent sections being altered), and that the following clause be added to section 32:—"Any person making or executing such instrument, and failing to cancel the stamp affixed thereto in manner aforesaid, shall for every such offence be liable to fine not exceeding one hundred rupees."

This alteration, he said, was merely intended to effect a better arrangement of the provisions of the law without any change of their subject-matter.

That section 40 be omitted (the numbers of the subsequent sections being altered), and that in section 41 the words "except such as are passed under section thirty-nine" be omitted.

He said, that the effect of this amendment was to restore to the chief Controlling Revenue Authority the final adjudication of doubts as to the proper stamp duty to which any instrument was liable. The Revenue Authority possessed this jurisdiction under the existing law. But the Bill proposed to transfer it to the High Court, in conformity with the English law, which gave an appellate jurisdiction in such matters to the Court of Exchequer.

It was doubted whether, even in England, such appeals were often made, and whether the power of appeal to the Court was regarded as conferring any particular benefit on the public. It was thought that in this country the necessary expenses of an appeal to the High Court in such cases would prove deterrent, and that the

advantage of giving the power of such appeal was very doubtful. Moreover, a difficulty was anticipated from the different procedures enjoined by sections 40 and 42 as they stood.

It might happen that, in an appeal decided under section 40, some ruling on an important point was laid down by a single Judge of the High Court, and that on the same point arising in a case referred under section 42, the three Judges required to try such references would be unable to assent to the ruling, or to admit it as binding on, their judgment. Obviously any conflicting rulings so brought about would be a very great evil, far more than counterbalancing the benefit of a right of appeal to High Court in such cases.

On the whole, therefore, it seemed better to let the appeals against the Collector's decision in adjudication go to the Authority invested with appellate jurisdiction in the case of all other orders by the Collector under the Stamp Law, and to trust to the power of reference provided by section 42, doing all that was needful for the proper adjudication of doubtful points.

That in section 41, line 1, after 'All' the words 'certificates and' be inserted and that the following proviso be added:—

"Provided that no order passed on such revision shall invalidate any registration or other proceeding previously made or taken upon an instrument endorsed by the Collector under section 24 or section 25."

This proviso, he said, was required to prevent a difficulty arising in cases where, on the strength of the certificate given by the Collector, some action might have been taken on the certified instrument previous to the interposition of the appellate authority.

That in section 44, lines 4 and 5, the words 'of the district' be omitted, and that in line 5, for "he" the words "the Local Government generally or the Collector" be substituted.

This addition, he said, was needed to give the Local Government the power of investing any officer other than the Collector or his delegate with authority to prosecute offenders against the Stamp Law. Such a power was given by the existing law.

That in section 46, for "who has obtained" the word "possessing" be substituted, that in line 2, after "paper" the words "which has been obtained" be inserted, and that in line 6, after 'duties' the words "or any paper on which the

stamp has been denoted by the Collector or Superintendent of Stamps" be inserted, and that in line 8, for "obtained" the word "possessed" be substituted.

That in section 47, line 1, after the word "paper" the words "or paper on which the stamp has been denoted by the Collector or Superintendent of Stamps" be inserted.

He said that, as section 46 stood in the amended Bill, the provisions in regard to refund for spoiled or useless stamped papers applied to impressed stamps only. But in the Presidency towns stamps of considerable value were affixed by the Collector, and these did not come within the category of impressed stamps. Persons who had paid for such stamps were clearly entitled to refund, in the event of any such accident or contingency as was contemplated by section 46 occurring in respect to them. The proposed verbal alterations would have the effect of making the refund-provisions applicable to such cases.

That to section 49 the following clause be added :—

"Any person appointed to sell such stamps and stamped paper, who knowingly disobeys any such rule, shall be punished with simple imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both."

He said that the existing law contained various penalties for offences by stamp-vendors, which were wholly excluded from the Bill. It was thought that penalties prescribed by the rules to be made under section 49 might not be susceptible of enforcement under the legal power conferred by that section. A general clause laying down a maximum criminal penalty was therefore thought to be needed.

That for the first clause of section 50 the following be substituted :— "When an impressed stamp is used under section 5 to denote the amount of duty with which any instrument is chargeable, such amount shall be denoted by a single stamp, except," &c.

This, he said, was a verbal alteration to adapt the provision of the section to that of section 5.

That in Schedule II the paragraph No. 28 be omitted, and that the numbers of the subsequent paragraphs be altered; and that in No. 14 the words "not chargeable under Schedule II, No. 28" be omitted.

He said that the conveyance of a right of redemption of mortgaged property which by the item of the schedule he now proposed to omit, was subjected to a small fixed duty, was considered to be equitably liable to the usual *ad valorem* duty chargeable on an ordinary conveyance, inasmuch as the property or interest in property covered by the instrument had not, by the original mortgage transaction, been already subjected to taxation. The considerations upon which a reconveyance of mortgaged property was made liable by the Bill to a mere nominal duty, did not apply to the case of the class of instruments to which this amendment referred.

That in Schedule I, No. 10, for the words "such amount" the words "the amount secured" be substituted, and that under line 3 the following be inserted :—

"11. Instrument of further charge on such property whether by indorsement or otherwise."

And that the numbers of the subsequent Articles be altered.

That in Schedule I, after No. 15, the following be inserted :—

"17. Instrument of further charge on such property whether by indorsement or otherwise."

And that the numbers of the subsequent Articles be altered.

These additions were, he said, designed to prevent a practice for evading the full duty chargeable on a mortgage deed, which might be resorted to in the absence of the proposed provision. A small amount might be stated to be secured by the mortgage, and a proportionately small *ad valorem* duty paid thereon : subsequent advances could be thereafter made by way of further charge on the same property, the instrument executed in connection therewith being stamped merely as an Agreement.

22. That in Schedule II, to paragraph No. 16, the following clause be added :—

"Provided that the counterpart shall not be available unless the Collector or such other officer as he may authorize in that behalf shall certify that the proper stamp-duty on the original instrument has been paid. Such certificate shall be endorsed on the counterpart on the same being produced together with the original instrument, and on the whole being duly executed and duly stamped in other respects."

This provision was, he said, in accordance with the English law, and secured that protection to the interests of the revenue necessitated by the reduction to

a small fixed duty of the *ad valorem* duty heretofore chargeable on counterparts of leases.

That in Schedule II, No. 32, the words from "when" to "adopted" be omitted.

He said that the effect of this amendment was to render all instruments purporting to confer an authority to adopt liable to the fixed duty of Rs. 8 The restriction contemplated by the amended Bill would render the clause inoperative, as there could be no certainty in regard to the condition which it imposed.

The Motions were put and agreed to.

The Hon'ble MR. ELLIS moved that in section 1, line 1, the word 'Documentary' be substituted for 'General.'

The Motion was put and lost.

The Hon'ble MR. COCKERELL then moved that the Bill as amended be passed.

The Hon'ble MR. MAINE said,—"Before your Excellency puts the question, may I be permitted to say that this measure has cost very great labour to all concerned in its preparation. It would have been impossible or very difficult for the Legislative Department to undertake it as part of its ordinary work without extraneous assistance. I think the acknowledgments of your Excellency's Government are due to my hon'ble friend, Mr. Cockerell, for the very great pains he has bestowed on the Bill, and for the sagacity with which he has arranged the vast mass of papers submitted to him. We are also much indebted to the mercantile members, Mr. Cowie, and Mr. Bullen who has now left India, for the help they gave us in adjusting the scale of duties."

The Motion was put and agreed to.

The following Select Committee was named on the Bill to provide against European Vagrancy:—His Excellency the Commander-in-Chief, the Hon'ble Messrs. Strachey, Ellis, Cockerell, and the Mover.

The Council adjourned to Friday, the 13th August 1869.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.