COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 7

APRIL - DEC.

BOOK NO 2

1868

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 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th December 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble Colonel H. W. Norman, C. B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dirg-Bijay Singh, Bahádur, K.C.S.I., of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

The Hon'ble MR. BULLEN took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL moved that the Bill for imposing stamp duties on certain instruments be referred to a Select Committee with instructions to report in two months. He said that the Bill, it would be seen, contemplated an entire reconstruction of the existing law relating to stamp duties. When he obtained leave to introduce the Bill he had explained generally the principal alterations in the law which were proposed: summarized they were 1st, a complete re-arrangement and simplification of the provisions of the existing law relating to the imposition and realization of stamp duties; 2nd, the extension of the powers of the Civil Courts and public officers in dealing with unstamped and insufficiently stamped documents; and, 3rd, the classification of *ad valorem* stamp duties. In regard to the first of these heads he had explained that the evidence as to the general unpopularity of the

existing law by reason of the complicated nature of its provisions and the difficulty which many persons experienced in ascertaining what the law required at their hands was overwhelming, and that the main object of the present legislation was rather to simplify the law and make it intelligible to the community, than to secure any material increase of stamp-revenue. Whether this Bill, which had now been published for some weeks, was calculated to attain that object sufficiently, or how far the process of simplification might be extended, were matters for the consideration of a Select Committee, to which he hoped the Council would agree to refer the Bill; but he apprehended that, at all events, the very imperfect arrangement of the present law was an undisputed fact, and that it would be admitted that the law needed a thorough reformation in this respect.

As regards unstamped instruments liable to stamp duty he had explained that the provisions of the law for the enforcement of criminal penalties were found to be insufficient for the protection of the stamp-revenue; and that it would be necessary to extend the powers of the Civil Courts in dealing with documents not bearing a proper stamp.

He was not at that time aware that the expediency of maintaining invalidation, as regards their reception in evidence, of unstamped documents, and thereby making use of the agency of the Courts for the protection of the stamp-revenue, was practically ignored by the Bill for defining the law of evidence which was referred to a Select Committee at the last meeting of the Council. The Hon'ble mover of that Bill had stated that, in the opinion of Government, the security which the existing system afforded for the realization of the stamp-revenue could not be abandoned, and he in a manner referred to him (Mr. Cockerell) as having been engaged in enquiries into the working of the existing stamp law for the corroboration of that view. MR. COCKERELL was quite certain that he was justified by the facts which he had ascertained in the course of his enquiries into the working of the stamp law in asserting that the protection which was derived from the existing provision for the invalidation in evidence of unstamped or insufficiently stamped documents could not be dispensed with. Previous to the enactment of Act XXVI of 1867 the annual income from stamp duties amounted to about £2,000,000; about half of that sum, or £1,000,000 was realized from stamps on judicial proceedings, or what was more properly termed Court fees. Of the amount accruing from general stamps, to which alone this Bill was applicable, £200,000 were the proceeds of duty chargeable on bills of exchange and receipts, which class of documents could not be validated by

after-stamping. Of the remaining £800,000 no less than £120,000 were realized in the form of deficient duty and penalties levied through the action of the Civil Courts; that was to say, fifteen per cent. of the revenue obtained from documents of the class which, if not properly stamped, could be received in evidence or acted on only after payment of the deficient duty and prescribed penalties, was collected through the direct agency of the Courts. He had therefore no hesitation in saying that it would be a very serious risk to the interests of the stamp-revenue to forego the protection which the present system afforded.

The necessary inference from the fact of so large a percentage of the stamp-revenue being realized through the action of the Courts was that the stamp duties were largely evaded, and that if the protection afforded by that action was to be withdrawn, there would be hardly any check to the increase of such evasions, and the loss of revenue consequent thereon.

For, the loss to be apprehended was not to be measured simply by the amount now realized through the action of the Courts. He argued that if the risk which the present law attached to the execution of instruments not bearing a proper stamp was withdrawn, it would no longer be to the interest of the public to attend to the provisions of the law; that was to say, if a bond debt could be recovered by a suit founded on an unstamped instrument, it was reasonable to assume that persons executing a bond would not be likely to incur the expense of providing a stamp at the time of execution. It had been supposed, however, that the injury to the revenue could be remedied by the provision of more stringent criminal penalties for the evasion of stamp duties.

The extension of the powers of the Courts and public officers in dealing with improperly stamped instruments for the express purpose of facilitating the enforcement of criminal penalties was an important part of the Bill under consideration.

There was no lack of provision of sufficiently severe criminal penalties for proved evasions of stamp duty under the present law, but the difficulty attending their enforcement had been found to render them practically inoperative. As the only remedy for this state of things, the Bill proposed to vest the Courts and public officers with the power of impounding unstamped instruments produced before them which would render the parties thereto subject to criminal prosecution, but if the Courts were no longer bound to take judicial cognizance of unstamped or insufficiently stamped documents, it would be useless to invest them with this power, because the fact of the instruments not bearing proper

stamps would in all probability not become known to the Court, and the power of attachment consequently would not be exercised.

Under the present system, the question of any document produced in a Court bearing the proper stamp was raised on the motion of some party to the suit whose interests were affected by its legal validity, but if the invalidating status ceased to be recognized, it was no longer a matter of concern to any person who was not responsible for the interests of the revenue whether the document produced was or was not properly stamped, and the disclosure of evasions of stamp duty through the action of the Courts would, it was to be apprehended, under such circumstances, be of rare occurrence.

The reasons which had dictated the provision of this Bill for extending the powers of the Courts in dealing with unstamped documents seemed to apply with double force to the maintenance of the existing provision of the law, by which the Courts were restricted from taking judicial cognizance of such instruments. He trusted therefore that the invalidation of improperly stamped instruments which had in this presidency been prescribed by the law in force for the past forty years and upwards, and which the present Bill proposed to secure, would on no account be discontinued.

The proposed scale for the equalization of *ad valorem* stamp duties had been framed as nearly as possible on the model of the English system. Indian rates were doubtless much higher than the rates prevailing in England; but then it must be recollected that the mass of transactions in this country involved much smaller amounts than general transactions in England, and that the reduction of the Indian, to the standard of the English, rates might result in a very serious sacrifice of revenue which the State could not afford to bear.

Moreover, if the English standard of rates was to be adopted, it must be wholly adopted, and this would have the effect of largely increasing the stamp duty chargeable on transactions of small amount, and be consequently oppressive to the very classes which in any scheme of taxation it was the policy of the State to relieve. In England the lowest rate of stamp duty chargeable was 1*s.* 3*d.*, which was equivalent to 10 annas; whereas the starting point in the scale propounded by the Bill was 4 annas; and when he stated to the Council that in Bengal no less than $\frac{1}{3}$rd, and in Madras and Bombay $\frac{1}{4}$th, of the entire stamp-revenue was realized from the stamps of denominations not exceeding 8 annas' value, it would be easily conceived that the adoption of the English rates of stamp duty, whilst it would very probably entail a considerable loss of revenue, might at the same time impose a greater burden of taxation on the poorer classes of the community.

At all events it would be such a complete alteration of the existing law as he was not prepared to recommend. The equalizing process had been so carried out as not to disturb very materially the existing rates; they had been increased considerably in some instances where the subject-matter of the instrument chargeable with stamp duty involved an amount exceeding Rs. 10,000, and on instruments involving a less amount the existing rates were more or less reduced. The net result was undoubtedly in favour of the tax-payer, and especially so as regarded the poorer classes thereof. The scale proposed by the Bill provided an uniform percentage of duty chargeable alike on transactions of large as of small amount, in accordance with the principle on which the scale of *ad valorem* duties was adjusted under the English stamp law.

He now came to the detail alterations of the law which the Bill contemplated, and which he would endeavour to explain as briefly as possible. By the fourth section of the Bill an ambiguity which attached to the existing law was removed. It had been frequently contended that the language of the 2nd section of Act X of 1862, which provided that—

"for every deed, instrument, or writing which shall be executed from the time when this Act shall come into force, and which shall be of any of the kinds specified as requiring stamps by the schedule annexed to this Act, there shall be payable to Government a stamp duty of the amount indicated in the said schedule to be proper for such deed, instrument or writing—"

excluded instruments executed out of British India; the words had been understood to mean "which should be executed in British India." He did not know what reason there was for supposing that the framers of the law intended to restrict its operation to documents executed in India. Such was not the practice obtaining under the English stamp law. By it deeds executed beyond Great Britain were required to bear the proper stamp duty on being made use of in England. The present Bill therefore proposed to leave no doubt on this point as to the intentions of the legislature; it explained that where deeds executed out of British India were made use of within those territories they must bear the stamp required by the Indian law.

By the 3rd clause of section 4 it was provided that an instrument executed out of India before, but becoming obligatory therein after the passing of the Bill should bear the stamp duty required by it. This had been objected to as an instance of *ex post facto* legislation and therefore indefensible in principle. He did not think that this objection could be deemed to have any force in its application to the case in point, since no hardship resulted to the executant of the instrument when no penalty or disability could attach in consequence of not properly stamping the document at the time of its execution,

and special provision had been made in section 22 by which an instrument executed out of British India, if brought within two months from its receipt into this country, could be stamped without penalty.

The fifth section of the present Bill laid down how stamp duties were to be levied on different classes of documents. There was no specific provision of this kind in the existing law, and that seemed to be an omission which it had been thought fit to supply. Section 6 also laid down rules for fixing the obligation of bearing the expense of any stamp prescribed by the three first schedules; these rules would be found, he believed, to be in accordance not only with the English law, but also with the general practice in this country.

It was not possible to lay down any rules on this subject in respect to the stamps mentioned in the 4th schedule, but as those stamps were all of inconsiderable amount, the question of providing the expense of such stamps might be, without inconvenience, left to the determination of the parties to the instruments on which they were chargeable.

Section 8 proposed some material alteration of the existing law and practice in regard to the mode of levying stamp duties on bills of exchange, and he had no doubt that this was a matter on which the Hon'ble Members of Council who represented the mercantile community would have some objection to urge. Since the publication of the Bill, MR. COCKERELL had been informed that the contemplated alteration was not likely to work well, and he himself had certainly great doubts in the matter. The existing practice was to distribute the stamp duty on bills drawn in sets over each part of the set. Well, it had been thought that, both for the convenience of the public and the protection of the revenue, it would be advantageous if adhesive stamps could be applied to such documents in lieu of impressed stamps. The Hon'ble Member of this Council who had special charge of the administration of the Financial Department could probably corroborate his statement that there had been a good deal of correspondence from time to time in regard to the mode of stamping bills of exchange, and that the practice had undergone much variation. It was a question beset with much difficulty, and would require the careful consideration of the Select Committee. At present MR. COCKERELL understood the practice to be to apply adhesive stamps, and impress those adhesive stamps for the purpose of obliteration with a plain die. That was in substitution for the former practice of stamping with a plain die. He was sure that it was the wish of the Government of India to meet the convenience of bill-drawers consistently with the due protection of the interests of the stamp-revenue.

If it were thought that the practice obtaining under the existing law would be more generally convenient than the provision laid down in the Bill, there would, he believed, be no objection to maintain that practice.

In the fifteenth section of the Bill an alteration was made in regard to instruments executed by or on behalf of Government. That was a point on which difficulties had been found in the working of the existing law. Every person whose transactions with Government involved the execution of an instrument liable to stamp duty claimed exemption from such duty on the ground that, as the Government was a party to such instrument, it was, constructively at least, executed on it's behalf. He contended that such was not the intention of the legislature; the instrument was only properly exempted from stamp duty when, but for such exemption, the Government would be bound to provide the expense of such stamp. There was no ground for exempting a person dealing with Government from the obligation of providing the expense of the stamp required for the instrument executed in relation to such dealing which would have unquestionably attached to such person had the instrument been executed in pursuance of his transactions with any other party than Government: the clause had therefore been worded so as to exclude only those instruments for which the Government would be bound, if it were a private party, to provide the stamp.

The civil penalties provided in the 18th section were somewhat in amendment of the existing law. The present law made several distinctions in the amount of penalty to be levied, accordingly as the improperly stamped instrument might be brought to the Collector or the Civil Court within six weeks, four months, or beyond four months from the date of it's execution. These minute distinctions seemed to rest on no recognized principle, and were not to be found in the English law. The Bill therefore contemplated the substitution of two grades of penalties for the fluctuating penalties of the existing law, and the adoption, as the period of grace within which a purely accidental omission to affix the proper stamp to any document might be rectified without the levy of any penalty, of the one year allowed by the English law in such cases.

The power of impounding unstamped documents given by sections 20 and 21 he had already adverted to; it would be found necessary to facilitate criminal prosecutions. The objection to the existing law was that criminal penalties could not be enforced, because it was difficult, in the absence of any power of seizing the unstamped instrument, to obtain sufficient grounds for the institution of criminal prosecutions.

The exercise of the power of attaching such documents was made compulsory in certain cases and discretionary in others; this distinction was made for the purpose of obviating possible obstructions to the administration of justice which might result if the Courts were bound to impound every instrument not bearing a proper stamp tendered in evidence or otherwise brought before them.

Section 32, clause 2, was taken from the English law; it laid down that where property was sold subject to a mortgage, the amount of that mortgage should, for the purpose of determining the proper stamp duty chargeable on the conveyance, be taken as part of the consideration money.

This had been objected to, but he thought that the provision was justified by certain other provisions to be found in another part of the Bill under which instruments for the re-conveyance, or purporting to surrender an equity of redemption, of mortgaged property, would be subjected to a mere nominal stamp duty instead of the rates charged, as for a regular conveyance under the existing law.

The 33rd section of the Bill was in substitution of clause 2, section 51, of the existing law, which merely stated generally that any person wilfully inserting in a conveyance a less sum than the amount of the purchase money should be liable to a certain penalty. No doubt that was intended to apply especially to persons employed professionally in the preparation of instruments liable to stamp duty, who were most likely to have the opportunity of making such insertions. The present Bill laid down that such persons, who might be supposed to have a better knowledge than others of the requirements of the law, should undergo more severe penalties than those prescribed by the existing law for offences of this description.

An important alteration was also contained in the clauses relating to the adjudication of doubts as to the proper stamp to be borne by any instrument. The provisions of the existing law on this subject worked unsatisfactorily; they involved a reference to the chief controlling revenue authority, and there was a great deal of expense, loss of time, and risk of injury to documents *in transitu* entailed by such references; and the consequence was that they were rarely put in force.

The necessity for an improved mode of obtaining adjudications in such cases was fully recognized in the Bill, which had adopted the provisions of the English Statute 13 & 14 Vic., cap. 97, sections 14 and 15.

The appellate jurisdiction of the chief controlling revenue authority conferred by section 38 of the Bill was somewhat in extension of that obtaining under the existing law, the provisions of which, in this respect, were rather conflicting; for instance, by clause 5, section 15 of Act X of 1862, an appeal from the Collector's order in regard to the proper stamp to be borne by any instrument was allowed to the chief controlling revenue authority only when the stamp fixed by the Collector had not been impressed on the instrument adjudged liable to bear it; whereas by section 35 the only exceptions to the power of appeal against the Collector's order were cases in which refund of stamp duty had been granted or refused on the presentation of spoiled stamps, and the Collector's decision as to whether the after-stamping of an instrument executed on paper not bearing a proper stamp should or should not be allowed.

There seemed to be no ground for excluding the orders of the Collector, which were excepted by the existing law, from the control of the chief revenue authority, and the Bill therefore extended the latter's appellate jurisdiction to all orders by the Collector.

The Bill also proposed to confer on the same authority a general power of remission or mitigation of penalties imposed for infringements of the stamp law. This had been objected to on the ground that it was impolitic to vest the chief revenue authority, which was a purely executive authority, with appellate jurisdiction over the decisions of judicial tribunals. The answer to this was that the objection proceeded on a misconception of the nature of the jurisdiction which the Bill conferred on the chief revenue authority. That jurisdiction was not of an appellate character; the revenue authority in the exercise of it did not call into question the correctness of the decision of any Court by which a penalty was imposed for a breach of the stamp law, but simply determined whether in the case in question the interests of the revenue required the retention of the penalty inflicted, or admitted of its remission or mitigation.

The 43rd section of the Bill enlarged the power of refund of duty allowed by the existing law to purchasers of stamped papers. The law required that the paper must have been in some way spoiled and rendered unfit for its purpose to entitle the purchaser or holder of it to a refund of its value. The Bill provided for granting refund on the production of stamped papers not required by the holders, although the papers might not have been in any way spoiled. The same result might be indirectly obtained under the present system, *i. e.*, the holder of a stamped paper, who did not require it, and desired to recover its value, might always attain his object by rendering the stamped paper unfit

for use, and thus bringing his claim to a refund of its value within the conditions of the law. It seemed desirable to remedy this state of things, and also to provide for the withdrawal of the power of sale of stamped papers by other than a licensed or duly authorized vendor, should such withdrawal be deemed advisable in the rules regarding the sale of stamps to be framed under section 46 of this Bill.

The provision of the 45th section was taken from an old English Statute (48 Geo. 3, cap. 149); it was designed to protect the revenue in regard to the statement of the true consideration money in a conveyance, by allowing the purchaser, in the event of the full consideration money not being stated in such conveyance, to recover as much as he had paid in excess of the declared amount. The object was to prevent collusion—to create that amount of distrust between the parties to the conveyance which would prevent their acting in concert to defraud the revenue. It might be objected to this that, as the purchaser was bound to provide the expense of the stamp, he might ultimately benefit by his own fraud; but it was clear that the fraud could only take place through the connivance of the seller.

The provision of the 46th section was in substitution of the detailed rules regarding the sale of stamps in the existing law; those rules, it appeared from all the reports received, worked with different success in different places, and it was impossible that any one set of rules should be applicable to the circumstances of all the provinces of the Empire. It seemed therefore better to reserve to each Local Government, subject to the general control of the Government of India, the power of framing such rules regarding the sale of stamps as seemed applicable to the provinces under its control.

Schedule A of the existing law had been divided into four schedules. The object of this division was to simplify the law as much as possible by a distinct classification of all instruments liable to stamp duty, by means of which persons about to execute any such instrument might readily ascertain the stamp duty required on any particular instrument.

If it were possible to attain that object in some better way, MR. COCKERELL would have no objection to any amendment in that direction; according to the present arrangement of the Bill, all documents to which adhesive stamps might be applied were classed together, all other instruments subject to *ad valorem* duties had been placed in separate schedules according to the rate of duties chargeable, and all instruments subject to fixed stamp duties were placed in a distinct schedule. In regard to the details of the first schedule, the rates

on bills of exchange were the same as under the present law, except that on the higher amounts a slight increase had resulted from the process of equalization: this was in a measure, however, compensated by the reduction of the amount of each ascent in the scale between the sums of Rs. 1,000 and Rs. 50,000. On the whole it was probable that the bill-drawer would rather profit than lose by the proposed alteration of the scale.

All policies of insurance had been included under one head, without any distinction on the ground of the amount of premium thereon, and subjected to the same rates of stamp duty as bills of exchange, and as regards many of them the effect was to increase the duty now charged about 50 per cent. By the English law bills of exchange and policies of insurance were subject to similar rates of duty. Bills of exchange in this country had always been subject to a duty of 50 per cent. in excess of the rates obtaining in England; the proposed increase therefore was consistent with the relative proportion of Indian to English rates prevailing in regard to other instruments. There might, however, be objections to the proposed increase of which he was not at present aware; and it would therefore be a matter for the consideration of the Select Committee.

A good deal of objection had been made to the proposed alteration in the third article of this schedule, *viz.*, the stamp duty on transfers in shares. Under the existing law these beneficial rates of stamp duty as compared with that chargeable on other conveyances extended to transfers by deed as well as by endorsement. The Bill proposed to limit such rates to the latter. To this it had been objected that transfers of shares were largely effected by deeds, and that the effect of the exclusion of such transfers from the beneficial rates of stamp duty might be the gradual abandonment of such forms of transfer; a result not to be desired. There might be some ground for this objection, but it would be seen that there was some compensation provided by the proposed change. Under the present law every transfer was charged with stamp duty on the market value of the shares, and the result was that, when a transfer was made from one set of trustees to another, the stamp duty was paid, although the transfer was purely nominal: under the proposed law, therefore, there being no consideration, the transfer would not be subject to stamp duty. Moreover, the English law made no distinction between the sale or transfer of shares, and other conveyances of property, as regards the stamp duty chargeable on such instruments.

There were some other alterations of minor importance to which it was perhaps unnecessary to make particular reference. A distinction had been

drawn between instruments effecting a mortgage with transfer of possession of property, and mortgage without such transfer of possession; in the former cases the duty, which was on the sum so bound, had been raised to that of a conveyance. Leases had been classed with bonds and conveyances, accordingly as the leases were for a term of one year or in excess of one year. Some objection had been taken to subjecting leases to the same duty as conveyances, but the Bill really made no material alteration in the rates of duty chargeable on leases; as in the case of the equalization of the duties on bonds and conveyances, so here the change effected by the Bill was really in favour of the lessees of property of small amount, or value.

The Hon'ble MR. BULLEN said, that he presumed the Hon'ble Mr. Cowie and himself would be placed on the Select Committee to which the Bill would be referred; he would not therefore take up the time of the Council at present, as his (MR. BULLEN'S) objections were to the details of the Bill. He would now merely remark that section 8 of the Bill to which the Hon'ble mover had made special reference, had been drawn in entire ignorance of the usual course of dealing with bills of exchange.

The Hon'ble MR. COWIE said, he had already received intimation that his name would be included in the Select Committee, and he would therefore refrain from making any remarks at present.

The Hon'ble SIR RICHARD TEMPLE said that, as this Bill immediately concerned the Financial Department, he had been in constant communication regarding it with the Hon'ble mover (Mr. Cockerell), and could, therefore, bear witness to the care, skill and ability which his hon'ble friend had brought to bear on this important subject; and he would further acknowledge the assistance received on this occasion—as on so many other occasions—from the labours of the Secretary to the Council (Mr. Whitley Stokes).

He (SIR RICHARD TEMPLE) had heard of an apprehension being entertained by some that this Bill would increase the taxation of the people in respect to stamp duties. But he did not at all share this apprehension. On the contrary, while the duties on some of the higher transactions were increased, those on the lower, that is the great mass of transactions, were lessened: and, on the whole, the change was in favour of the people rather than of the State. So far, then, this Bill was characterized by that principle of equity which pervaded our legislation in this country.

Possibly the revenue under this head would rise hereafter (though that was far from certain). But if such should be the case, it would arise, not from

increased duties, but from the extended use of these documents; from the progress of trade; from the growing popularity of the administration.

He (SIR RICHARD TEMPLE) understood Mr. Cockerell to have proceeded on the principle of simplifying and re-adjusting the scale of duties; of rather lowering them on the whole; and of trusting to improved strictness of administration for compensation for any sacrifice of revenue that might result. In arranging this, regard had been given to the model of the English stamp law; local custom had been noticed; the requirements of the traders had been considered; and in prescribing penalties, endeavour had been made to render them as mild, and as little vexatious and inquisitorial, as might be compatible with due enforcement of the law.

On the whole he (SIR RICHARD TEMPLE) was sanguine that, when this Bill should have received all the emendation that might be suggested by the practical and professional knowledge of the Select Committee, it would conduce not only to the benefit of the State, but also to the convenience of the community; and would prove to be a worthy result of the labours of the Hon'ble mover Mr. Cockerell.

The Hon'ble MAHÁRÁJÁ SIR DIRG-BIJAY SINGH said that apparently the only object of this Bill was to define, with more clearness, the provisions of former Acts on the same subject, and so far it was a wise and judicious measure; but from the cursory glance he had been able to cast over the Bill, the stamp duty seemed to him to have been in several instances increased. He trusted therefore that the Committee to which the Bill was about to be referred would make such amendments as might be necessary to prevent such increase.

The Motion was put and agreed to.

EXPROPRIATION BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to consolidate and amend the law for the acquisition of land needed for works of public utility, said that, before he stated to the Council the reasons which had led the Government to the opinion that legislation on this subject was necessary, it would be convenient that he should state very briefly the nature of the existing law on the subject. The present law was contained in Act VI of 1857 and Act XXI of 1861, but the latter Act contained provisions, for his present purpose, of comparatively little importance; practically it might be considered that the law was contained in

Act VI of 1857. When the Local Government came to the conclusion that land was to be taken at the public expense for any public purpose, the first step was that a declaration was made to the effect that the land was required for that purpose under the signature of a Secretary to the Government or some other duly authorized official, and that declaration was taken as conclusive evidence that the purpose for which the land was needed was a public purpose. After such declaration had been made, the land must be taken; the Government could not draw back from the transaction. After the land had been marked out and measured, the Collector made an offer to the owner of the property of a sum which he thought suitable as compensation. If the owner agreed to the offer, the matter was disposed of; but if the offer was not accepted, unless the Collector and the proprietor of the land concurred in the appointment of a single arbitrator, the proprietor appointed one arbitrator and the Collector another, and the two together nominated a third. The decision of those three arbitrators was final, and the award made under the Act could be reversed or altered on no ground whatever, unless it should be decided by a Civil Court that there had been corruption or misconduct on the part of the arbitrators; and practically that was quite impossible to be proved. To all intents and purposes, therefore, the decision of the arbitrators was absolutely final.

Since the extension of railways and other great public works which had been going on to such a great extent during late years, the matter had become of much greater importance than it used to be, and frequent complaints had been made, especially in the Public Works Department, regarding the extremely uncertain manner in which compensation for land had been awarded. The Government had made various efforts to protect the interests of the public; it had called on the local authorities to take increased care in the selection of arbitrators, and had adopted other measures likely to protect the public interests; but practically no effectual relief had been obtained. MR. STRACHEY thought that the imperfections of the existing law would be best shown to the Council by a statement of some cases that had actually occurred within the last year or two. The first case to which he would refer occurred not long ago.

Some years ago in one of the stations of the North-Western Provinces, a piece of ground belonging to the Government was made over to a person who wished to build a house. The Government gave him a lease, at a low rent, for fifty years, renewable at his pleasure on the expiration of that term for fifty years more at the same rate. Adjoining this ground there was a piece of land which had been an old brick-field, and in a large portion of it there were irre-

gular pits and excavations, the result of the brick-making that had gone on there. After the lessee had built his house he made an application to the Government officers with the object of obtaining a lease of this adjoining ground. He represented that it was quite useless for building purposes, and that he only wanted it because, in consequence of the nature of the ground, nuisances were commonly committed upon it. Under these circumstances, and as the land could apparently be turned to no other purpose, he asked to be allowed to occupy it at one-third of the usual rent. This was agreed to, and he received a lease of the ground for fifty years renewable for fifty years more. Two or three months after this had been done, it appeared that the ground must be taken possession of for the Railway Company. The lessee at first consented to give up the land, but he subsequently declined to do so without payment of compensation. The Collector offered to pay Rs. 75 for the surrender of the lease, considering that it was unreasonble to propose to give more, since the lease had only been granted on the assumption, in accordance with the declaration of the lessee himself, that the ground was worthless. The lessee refused this offer, but said that he would accept Rs. 2,000 as compensation, or any other sum that the Board of Revenue might award. It was thought absurd to agree to pay Rs. 2,000 for property which, on the admission of the owner himself, must be almost valueless; and in consequence of the difference of opinion as to what sum ought to be paid, it was ordered that the amount of compensation should be determined by arbitration in accordance with Act VI of 1857. The award of the arbitrators gave to the lessee Rs. 47,400 for this piece of ground for which he had himself only asked Rs. 2,000, or anything that the Board of Revenue chose to give, and for which the Collector thought Rs. 75 a sufficient price. The other piece of ground on which a house had been built was also required for Railway purposes, and the value of this ground and house was determined at the same time by the same arbitrators. For the house the owner had asked Rs. 24,000. The award gave him Rs. 30,200. For the loss of the lease he had asked Rs. 5,000, or including the compensation for the other lease of which he had been speaking, Rs. 7,000. Instead of this sum the award gave him Rs. 71,200, or more than ten times the highest amount which he had himself ever demanded. If the Government had paid him every farthing that he had ever asked, both for the house and the land, he would have received Rs. 31,000. The sum awarded to him was Rs. 1,01,400. The arbitrators declined to give any reasons for their award, nor were they in any way bound to do so by the law. A reference was made to the Advocate General who gave as his opinion that "the public money had been absolutely thrown away," but that as the law stood there was no remedy. The money was accordingly paid.

He thought that this case was a sufficient illustration of the manner in which the present law sometimes worked. No one could say that the law was in a satisfactory state when such things as these were possible. Nor must it be supposed that the case which he had given was at all singular. Although it was certainly the strongest case that he had met with, it would be easy to give many other examples of a very similar character, but it was unnecessary that he should take up the time of the Council in quoting them in detail.

MR. STRACHEY did not for a moment intend to assert that in these cases the arbitrators had not usually acted in good faith, although he confessed that he could not believe that that had always happened; there was no doubt that the real foundation of the evil was not in the want of principle on the part of arbitrators, but in the fact that there was a complete absence in the existing law of any statement of the principles which ought to regulate the award of the arbitrators. Nor was the Government the only sufferer by the present state of the law in this respect. In consequence of the total absence of all guidance for the arbitrators in regard to the principle on which the amount of compensation in such cases ought to be paid, it might happen that private interests would suffer just as much as those of the Government. He did not think that there was any really great difficulty in laying down the main principles for regulating, to some extent at least, the price which ought to be paid for land taken for public purposes by Government, although no doubt there might be very considerable difficulty in applying those principles in detail. Thus, he thought that the law should clearly lay down that the price to be paid was not to be what he might call a fancy price; that it was to be the real *bonâ fide* market value of the property to be taken, with such margin in addition as would compensate the owner fully for any loss and inconvenience caused to him by the forced sale of his property: so also it would be right to make full allowance for injury done to the adjacent land by severing the land taken from the other property of the owner. On the other hand, MR. STRACHEY thought it clear that there were certain considerations which ought not to be taken into consideration in determining the price, although considerations of that kind had, he believed, been practically taken into account. Those matters were, first, the degree of urgency which led the Government to require the land, the disinclination of the party interested to part with the land, and (and this was a matter of much importance) no damages sustained by the owner ought to be taken into account, if it was damage of a kind which, if it had been caused by a private person, would not render such person liable to a suit: further it was obvious that no damage which after the time of the Government coming into possession was likely to be caused by the ex-

cation of a particular work ought to be taken into account, though he believed that as a matter of fact such hypothetical damage had frequently been taken into consideration. Nor, again, was it reasonable to consider any increase to the value of the land which was likely to accrue from the execution of the work for which the land was needed, and it would also be reasonable to lay down that no compensation should be given on account of any improvement effected on the land by the owner with the deliberate intention of enhancing the compensation made under the Act. Again, MR. STRACHEY thought it would be clearly reasonable to provide that the owner of the land should always be called on to declare the price at which he was willing to dispose of his property, and that the Government should also declare the price which it was prepared to give. If the owner and the Government could not agree as to the amount of compensation, it would be right to say that in no case should the sum awarded be more than the price which the owner had asked, and that in no case should it be less than the amount which the Government had offered to give.

MR. STRACHEY believed the mere laying down of simple principles of this kind would alone go very far to remove the practical evils experienced under the existing law, but still he thought there could be no doubt that considerable alterations in the existing procedure were necessary. He had already given a sketch of the principal provisions of the existing law. It had been proved by experience that the plan of leaving absolutely, without any power of appeal under any circumstances, the decision of the amount of compensation to be paid to three arbitrators, was not satisfactory. A question had been raised by some authorities whether it was expedient to retain the system of arbitration at all, and whether it would not be better to refer such questions to the Civil Courts as ordinary suits. There could be no doubt that reference to the Courts would have the advantage of simplicity, and in cases in which the parties agreed to this course, it would be highly desirable to leave the determination of the amount of compensation to a Civil Court: the Court would in fact act as a single arbitrator between the Government and the owner of the land, but it seemed probable that, under ordinary circumstances and in the majority of disputed cases, this course would not be popular, and that it might be said that the subordinate Judges being servants of the Government would be biassed in favour of their masters. But MR. STRACHEY thought that the plan of treating cases of disputed compensation to some extent as if they were civil suits might be still adopted, and that the security of guarding all interests, both public and private, might be obtained. The Bill would be based on that principle.

It was proposed that disputed cases should be disposed of by the Judge of a Civil Court with the assistance of assessors, unless the parties should agree to leave the decision to the Judge alone; and in cases of difference of opinion between the assessors and the Judge, an appeal would lie to the High Court. It was proposed that, in the first instance, the Collector, as under the existing law, should make an offer on behalf of the Government: if that offer was accepted, the matter would be finally concluded and settled and the award would be filed in Court; but if the offer was not accepted, the Collector would make an application to the Court to determine the value of the land, and the Court would then proceed to enquire into the case very much as in an ordinary suit. If the parties preferred to leave the amount of compensation to the decision of the Court and have no arbitrators, the Judge would himself dispose of the case; otherwise the Court would call on the Collector and the owner of the land each to nominate an assessor to sit with the Judge to determine the value of the property proposed to be taken. The proceedings and consultations of the assessors would take place in Court before the Judge, and the Judge would decide the points of law that might arise. If the assessors were unanimous and the Judge agreed with them, the award would be final. If the assessors were not unanimous and the Judge agreed with the majority of them, the award would be final; but if the Judge differed from the assessors or the majority of them, there would be an appeal to the High Court from the decision of the Judge either by the Government or the owner of the land as the case might be.

The award of the assessors and of the Judge would distinctly declare the grounds on which the amount of compensation had been awarded, and when the award was confirmed by the Judge, it would become the judgment of the Court, and it would contain, in case of appeal to the High Court, all the information and detail necessary to enable the High Court to form a judgment in the case.

Mr. Strachey had now only given a rough sketch of the provisions which it was proposed to insert in the Bill, but they of course would require very careful consideration and elaboration in detail; he believed, however, it would be found possible to obtain a procedure which would protect both public and private interests and which would give satisfaction to all parties by providing for the settlement of disputes by a tribunal whose independence would be admitted by all. Whatever care might be taken to avoid delay, there was no doubt that the giving the power of appeal to the High Court would sometimes lead to greater delay than under the present system; but the advantage in many cases of getting the judgment of the High Court would be so great that, even if some delay should occur in the decision of disputes from this cause, he thought the advantage gained would be well worth the price paid.

In speaking of the procedure under the present law, MR. STRACHEY had omitted to mention one matter of some importance in which the law had been found to require amendment. As the law now stood, when a declaration had been once made by the Government under the Act, that a certain piece of land was required for a public purpose, even though it should turn out afterwards that the declaration had been made by mistake, and the land really was not required, and if this conclusion should be come to before any practical action whatever had been taken by the Government, still, having once made a formal declaration, it was impossible for the Government to draw back, even if the owner himself should concur with the Government in the desire that the land should not be taken. Government having begun the proceedings, must complete them. Very extraordinary cases had occurred in consequence of this provision of the law. He need not take up the time of the Council in stating these cases in detail; but in some of them, in consequence of the issue erroneously of a declaration that the land was wanted for a public purpose, the Government, although it had really done nothing whatever to actually take up the land and had interfered in no way whatever with any private right of property, had been forced to continue the proceedings and had been compelled to take land not wanted, and to pay large sums for no useful purpose whatever. Those provisions, as they now stood, gave practically no additional protection whatever to private property; while, on the other hand, they put in the hands of unscrupulous persons the means of making the Government pay heavily for errors committed by officers of Government, but which really caused no loss to any one. The Bill therefore proposed that the Government might withdraw at any time before taking possession of the land, being, however, liable to pay compensation for any damages sustained in consequence of the declaration that the land was wanted.

MR. STRACHEY had now given a sketch of the reasons which had led the Government to the conclusion that an amendment of the law was necessary. When the Bill was laid before the Council, it would require very careful consideration in all its details. He would now only add that the Executive Government did not desire to be invested with any powers beyond those which it possessed under the existing law. It asked for no arbitrary authority to interfere with private rights of property. It desired that, whenever it became necessary for the benefit of the public at large to interfere with private rights, the law should not only give protection to the interests of the public, but that, in all the proceedings taken, every possible consideration should be shown not only for the rights but for the convenience of the persons with whose interests

it had become necessary to interfere. The Government had in this matter no interest apart from the interest of the public, and in now proposing to alter the law, it desired to obtain every assistance which the public could give in enabling the legislature to arrive at correct conclusions. With this feeling the Government hoped that, when the time arrived for discussing the details of the Bill which it was proposed to introduce, the non-official Members of the legislature, in particular, would give to the Council the benefit of their assistance, and that they would take an active part in the settlement of the details of the measure that might be adopted.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for imposing Stamp Duties on certain instruments—The Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, and the Hon'ble Messrs. Gordon Forbes, Cowie, Shaw Stewart, Bullen and the mover.

The Council adjourned till the 18th December 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 11th December 1868.

Office Supdt. Govt. Printing.—No. 6347 L. C.—16-12-68.—180.