Though the Treasury is really one of the parties to the dispute with the Audit Office in its contention that the penalties imposed by the Stamp Act cannot justifiably be suspended at the discretion of the administration, the Colonial Treasurer appears to have concluded it to be out of the region of all doubt that the attitude of the Audit Office is extreme, that its objections are frivolous, that these objections are merely to the failure of some few individuals to affix a penny stamp, or to cancel such stamps in strict accordance with the law.

One great point of the dispute is whether the contention of the Audit Office does not proceed on right principles, and it is consequently to be yet decided whether the Colonial Treasurer has any good and just ground for stigmatizing, as he now stigmatizes, the objections which the Audit Office has raised. If, under the circumstances, terms of reflection or reproach have any force, or can with propriety be used by him in addressing the Audit Office, the force or propriety is only that which would be derived as the corollary of argument. The Colonial Treasurer, however, to whom the Audit Office looks with confidence to be supported in the performance of duties of a character naturally invidious, ventures, without even the appearance of argument in support of his propositions, to assume them to have been proved, and "to express the surmise . . . . that they will not redound to the credit of the Audit Office."

The more thoroughly and reliably that the Audit Office performs its duty, and the more careful that the Government is to inculcate for the service of the office the respect which it is doubtless the wish of the Government to preserve, the greater will be the care taken by the departments of administration, and the smaller or less serious the faults which the Audit Office may find, but which the office must nevertheless challenge, on the principle that notice of the smallest irregularities is necessary to obtain a proper standard of efficiency, and prevent the faults from becoming serious. Thus, the better that the service of the Audit Office is performed, the more invidious must be its duty, and the more careful the Government should be to repress any indication of impatience with the office. It is the principle that should be kept clearly in view, if there is to be a right understanding of the objections raised by the office.

A great authority tells us that "a penal statute is virtually annulled if the penalties which it imposes are regularly remitted as often as they are incurred"; and that it is evidently our wisdom "to watch with jealousy the first beginnings of encroachment, and never to suffer irregularities, even when harmless in themselves, to pass unchallenged, lest they acquire the force of precedents." If there is nothing in the Stamp Act to make the discretion of the Government paramount over all the provisions for imposing the penalties in question, the Government arbitrarily annuls these penalties by not putting them into force in every such case of a breach of the Act as is not one of those surprising emergencies in which the Governor in Council might be advised to exercise his discretion.

The following extract from one of my memoranda on the subject explains the attitude of the Audit Office: "The question is really not so much one of duly affixing a duty stamp of a penny as of a compliance with the law which has been enacted in the interests of the revenue. One bad precedent begets another, and soon the penalties of the Act may become a dead-letter, with the obvious result that the stamp duties of which the payment is induced by a fear of the penalties may cease to be paid, and that these duties may not yield the revenue that they are expected and ought to yield. And, so far as the colony must raise by taxation from other sources than stamps a revenue in addition to the stamp revenue, every such sacrifice of stamp revenue as the want of a faithful and vigorous administration of the Stamp Act may entail can only be at the expense of other taxpayers—of those who pay the land-tax, the income-tax, the Customs duties, &c. This surely is anything but a trumpery matter."

It would, I submit, be well if the questions raised by the Audit Office and the consequent discussions were to be regularly communicated in a yearly report to Parliament, in order that the Legislature might estimate the character of the questions, and judge of the consideration which they should receive.

The Treasury memorandum speaks, among other things not unquestionable, of the business of the department as being so enormous that there must obviously be "occasions" when in the interest and furtherance of public convenience no more than a reasonable compliance with the law should be expected—as if, assuming that such circumstances as these could justify the Treasury in passing over some cases of a breach of the Stamp Act, the question were that of "occasions" or exceptional cases in the Treasury, and were not that of the penalties themselves having virtually become a dead-letter, and the provisions of the statute having so far been arbitrarily suspended.

Another great point of the whole question is whether the penalties are not necessary to the protection of the revenue. The Legislature has made the penalty for giving unstamped a receipt liable to stamp duty subject to no qualification whatever; and the Treasury is not justified in assuming that the spirit or intention of the law is that there may be any qualification, or that the Treasury itself can dispense with the penalty. Yet the memorandum of the Treasury, by making the words "so long as the revenue does not suffer" conclude an enumeration of the abstract circumstances under which, in the judgment of the Treasury, exceptional cases of the remission of the penalties might be reasonable, would appear to be assuming—what the Legislature has not contemplated—that the Treasury was capable of reliably determining that the revenue cannot suffer.

I ought to observe that, though the provisions which are pointed out to me of section 61 of the Stamp Act do not apply to such a breach of the Act as the giving unstamped of a receipt liable to stamp duty, the section provides, not as it is stated by the Treasury to provide, "that it shall be sufficient if," but that "an instrument is not to be deemed duly stamped . . . . unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time." The section makes only a negative provision, and it no more follows that "if it is otherwise proved, &c.," the relative instrument *is* to be deemed duly stamped than, to illustrate my meaning