COUNCIL OF GOVERNOR GENERAL

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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 22nd March 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal, K. C. S. I.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the office and duties of Administrator General, be taken into consideration. He said that he thought the best way of explaining what the Select Committee had done in regard to this Bill, would be to take in their order such amendments as the Select Committee had made, and explain them one by one. The first amendment was in Section 2, and was comprised in the repeal of Act XXVII of 1860, "except as to Hindús, Muhammadans and Buddhists, and persons exempted under the Indian Succession Act." Act XXVII of 1860 was an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased Hindús, Muhammadans "and others not usually designated as British subjects." The provisions of that Act, except as to Hindús, Muhammadans and Buddhists, had been virtually repealed by the Indian Succession Act, 1865, but it was obviously desirable to make that repeal express.

The next amendment was in Section 6, in which it was stated that every person hereafter appointed Administrator General should be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland, and should be of not less than five years' standing. The alteration in this Section consisted in the omission of the words "of not less than five years' standing," as these words might possibly preclude persons who were well fitted for the office from accepting the appointment.

The next amendment was in Section 12, and what was new in it was this, that in the case of a petition when the Administrator General had no personal knowledge of the facts therein stated, the petition might be subscribed and verified by any competent person, and if such person should make a false statement he would be liable to be proceeded against as for perjury. The next Section in which an amendment had been made was Section 15. What was new in that Section was contained in the clause "The Administrator General shall be deemed to have a right to letters of administration in preference to that of any person on the ground of his being a creditor, *a legatee other than an universal legatee*, or a friend of the deceased." The effect of that was, that an universal legatee should continue to be preferred to the Administrator General. In the Bill as it originally stood, the word "legatee" was simply used, but that included an universal legatee, who, being an executor according to the tenor, should certainly be preferred to the Administrator General. In Section 16, there were two or three amendments, the first of which was contained in the words of the person who had died "shall have left assets exceeding *at the date of the death or within one year thereafter*, the value of *one thousand* rupees," then, in such a case the Administrator General could come in: it very often occurred that, at the date of the death, the assets were small, but that shortly after other assets came in, and swelled the original assets to the amount at which the Administrator General was required to come in and administer the estate. The next alteration was with reference to the period within which the Administrator General would be entitled to take out letters of administration as against all comers. That period was at present one month, but the Select Committee had thought proper to extend it to three months. He (MR. HOBHOUSE) thought that he should not discuss here the reasons for this change, because he found that notice had been given of two amendments on the subject, and when those amendments were proposed, it would be best to consider once for all the effect of this clause. The next amendment was in the first part of Section 27, which ran thus:—

"Whenever the Administrator General shall declare a dividend among such creditors of the deceased as have proved their debts, and shall notify the payment of such dividend by

advertisement in the official *Gazette*, no creditor of the deceased who shall not previously to such declaration and advertisement have proved his debt, shall be entitled to participate as such in the assets wherewith such dividend shall be made."

The practice he understood was this. When the Administrator General administered to any estate, he issued a notice that he had done so, and creditors were called on to come forward with their claims as soon as possible; one year was allowed to ascertain all the liabilities of the estate, and a general dividend was made amongst the creditors who had come forward and proved their claims; but it often happened that certain negligent creditors who had not come forward within the time allowed, did so afterwards, and disturbed the whole arrangement with reference to the estate. Suppose, for instance, a dividend of one thousand rupees each was declared to five creditors out of an estate, and that some of them had taken their dividends: now if another creditor came in, he would disturb the whole arrangement. He (MR. HOBHOUSE) thought that ample notice had been given, and that if persons did not choose to come in within the time allowed, they should not be permitted to share in the funds with which the dividend had been declared: of course, if sufficient assets came in afterwards, such creditors would take their shares as well as any body else. The next amendment was in Section 33, which was very like the corresponding Section of the former Act, except that it went further. In the Section as it first stood, it was provided that, if any person who had a claim on an estate sued the Administrator General in any Court other than a High Court without having first submitted proofs of his claim to the Administrator General, such suitor even if he got a decree, should not be entitled to enforce it. The reason for exempting the High Courts was that in such Courts the Administrator General could institute an administration suit and thus put a stop to the proceeding. But the Select Committee thought there was no reason why a creditor who had not taken the usual course of submitting and proving his claim should be allowed to go to the High Court, and put the estate to great expense and the Administrator General to much trouble in defending the suit: such person should not be entitled to get any benefit over the other creditors. They had further enacted that—

"If in any such suit judgment is pronounced in favour of the plaintiff, he shall nevertheless be only entitled to payment out of the assets of the deceased *pari passu* with the other creditors."

The intention was that a person should not, although he brought a suit, take more than he was entitled to, and that he should be paid in the same proportion as other creditors. The next alteration was in Section 34. As the Bill originally stood, when the assets of an estate were below five hundred

rupees, and the deceased died intestate, the Administrator General was entitled to issue a certificate instead of taking out letters of administration: that provision was now to apply to estates whose assets were not more than one thousand rupees and even to cases where the deceased had left a Will. When estates were of such small value, it was found that after payment of the ordinary funeral expenses, the costs of administration or probate, servants' wages, and so on, there was nothing left to administer; it seemed better, therefore, for all parties not to burthen the Administrator General with the charge of such small estates, but to enable him to issue certificates in such cases. The next amendment was in Section 53. Under that Section as the Bill originally stood, the Governments of the Presidencies of Fort Saint George and Bombay had the power, with the sanction of the Governor General in Council, from time to time to lower, and again to raise, the amount of commission that the Administrators General of those Presidencies respectively might take: that commission could never exceed five per cent. which it was at present, but it might be desirable hereafter to lessen the amount of commission and again to raise it. Now, as it was probable that owing to the operation of the Succession Act and other causes, the sums received by the Administrator General of Bengal might so far be reduced that a commission of three per cent., the amount at which it now stood, would not enable the Government to procure the services of a person of sufficient standing to undertake the important functions of that office, the Committee had given the Governor General in Council a power analogous to that vested in the Governments of Madras and Bombay, and enabled him to raise the commission receivable by the Administrator General of Bengal to any rate not exceeding five per cent., and again to reduce it. Section 64 was entirely a new provision. It would be in the memory of the Council that, by the provisions of this Act, the Administrator General of Bengal could administer to any estate other than that of a Hindú, Muhammadan and the like, whether the person had died in the North-Western Provinces or the Panjáb, in Oudh, or the Central Provinces. It might be objected to this that the European population of these territories would so increase that a Deputy Administrator General should be appointed for the North-Western Provinces, Oudh and the Central Provinces, and possibly also for the Panjáb. Section 64 accordingly empowered the Governor General in Council to appoint a Deputy Administrator General, who would be under the jurisdiction of the High Court of the North-Western Provinces or the Chief Court of the Panjáb, as the case might be. Those were, he believed, all the essential provisions of the Bill as amended by the Select Committee to which he thought it necessary to draw the attention of the Council.

The Hon'ble MR. BRANDRETH said there was one point on which he should wish to ask a question. By the existing law, a residuary legatee was preferred to the Administrator General, but by section 15 he found that the preferential right was given to the Administrator General. That appeared an important alteration of the law, of which, as far as he had seen, no explanation had yet been given to the Council. Moreover, such preference of the residuary legatee was conferred by the Indian Succession Act, an Act which had been often eulogized by the Hon'ble Mr. Maine as a piece of most exemplary legislation. No provision in such an Act ought to be set aside unless there was reason to believe that it was not well considered. By the Bill, as it stood before it was amended, even a universal legatee was set aside in favour of the Administrator General: he wished, therefore, to ask whether the claims of the residuary legatee had been well considered, and on what grounds they were set aside.

The Hon'ble MR. MAINE said that the Council would understand the case was that of a legatee who was not one of the next-of-kin. It was undoubted that the residuary legatee was in theory understood in a peculiar manner to represent the testator, and that view was intelligible at a time when, in practice, the residuary legatee was the principal legatee. Nowadays, the position formerly attributed to the residuary legatee was to a great extent a fiction. In a very large number of cases, perhaps in the majority, the particular legacies exhausted the great bulk of the personalty, and the residuary legatee was only appointed to sweep up the little that might remain. The Committee had discarded the fictitious privilege of the residuary legatee, but had continued in his former priority the universal legatee, who might certainly be said in a special manner to represent the deceased.

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that, in sections 16 and 22, the words "one month" be substituted for "three months." He said he moved it now inasmuch as on this amendment hinged his further amendment and also that of Mr. Cowie. He would endeavour to state the relation of the amendments to one another and to the existing law. Until the law should be altered by the present Bill, if a person belonging to certain classes died in India, then, if no executor had applied for probate, and (in the case of intestacy) none of the next-of-kin had applied for administration at the expiration of a month from the death, the Administrator General must take out administration and enter upon the property of the deceased. On such of the property as he realised, he was entitled to a certain commission. If, however, within six months, probate or letters of administration were granted to some other person

by the High Court, the powers of the Administrator General would be revoked, and he would be ousted from the possession of the assets, retaining, however, his commission. It was probably unnecessary to explain to the Council that this period of one month during which the property was left vacant, so far as the Administrator General was concerned, was originally fixed with reference only to British India. The time was supposed sufficient for executors and next-of-kin resident in India to come in and take out probate or letters of administration. It probably never entered into the ideas of the framers of the Act that the property of the deceased should be left to take care of itself until executors or next-of-kin in England could be communicated with. But facilities of communication with England had increased, and the Select Committee had altered the period of one month to three, under the idea that this was about the time in which intelligence of the death could be conveyed to England and instructions received therefrom. This decision was arrived at by the Committee on a petition from the Chamber of Commerce at Madras. It would not be unjust to the petitioners to say that they were actuated by regard, though not by an unjustifiable or unreasonable regard, to their own private interests. Most of them were doubtless members or agency firms. Now the case of an executor or one of the next-of-kin coming out in person to India to administer, was of extremely rare occurrence, if it ever occurred at all. What practically took place was this. The executor or next-of-kin employed an attorney or agent here, who took out probate or administration in his name. Of course this agent, so constituted representative of the deceased, made a charge for his services. It was thus the agency firms which really competed with the Administrator General. It was even said that some of them, which had branches or principal places of business in England, actually kept lists of the next-of-kin of their constituents, and on intelligence of a death being received, applied for permission to act as attornies of the person entitled to probate or administration. There was nothing immoral or dishonourable in the proceeding, but it struck MR. MAINE as somewhat undignified, and he should be surprised if his Hon'ble friends at the other end of the table did not disclaim any connection with the practice. On these representations, however, the majority of the Select Committee introduced the period of three months. On the other hand, a very respectable body, the Trades' Association of Calcutta petitioned in the opposite sense. They stated that it was an injury to them, in, their capacity of creditors, that the property should remain virtually vacant for so long a period as three months. It was true that, under sections 17 and 18, the Administrator General might enter, and might be compelled to enter, on an order of a High Court, if waste or misappropriation or (if the amendment of his Hon'ble friend Mr. Hobhouse should be carried) deterioration, could be

established by sufficient evidence. But evidence on the point which would satisfy the Court had to be procured, and though there might be even a presumption under this climate of the deterioration of that kind of property which was becoming most frequent, plantations and so forth, nevertheless, from the distance and other difficulties, it might not be easy to satisfy the High Court of the fact.

So, then, stood the case—the agency firms in their own interest petitioning one way, and the Trades' Association, representing the class of creditors generally, petitioning the other. MR. MAINE's own amendment proposed a sort of compromise, and in submitting it, he would state the principle on which it rested. He could only admit that, in regard to the distribution of a dead man's assets, two questions could be asked; first, what did the dead man himself desire? secondly, what was best for the interests of the persons concerned in the distribution of his estate, as legatees, next-of-kin or creditors? As regarded the first question, MR. MAINE admitted that the fullest effect must be given to the dead man's wishes. If he had left a Will, it should be acted upon, even though it should be true that, in particular cases, it would be better that the estate should be distributed rather by the Administrator General than by the executor who had been named. When, therefore, there was a Will, MR. MAINE was content to discourage the Administrator General from entering, to the extent contemplated in his amendment, which provided that the Administrator General when superseded by an executor within three months, should not retain his commission. But Mr. Cowie's amendment applied the same principle to an administrator, and this MR. MAINE was prepared to resist. He hoped that the Council would bear with him while he described from the pages of the greatest authority on the subject the nature of the office of an administrator—

> This is the original of administrators, as they at present stand. They are the officers of the Ordinary appointed by him in pursuance of the Statute, and their title and authority are derived exclusively from the ecclesiastical Judge, by grants which are usually denominated letters of administration.

Such a functionary had no resemblance to an executor, who was recognized in every part of the law as the delegate of the testator for the purpose of carrying out his wishes. The administrator was merely the officer of the Ecclesiastical Court, or of the Court which inherited the powers of such Court; and he was an officer of a very rude and barbarous kind. The fact was that for a long time the Ecclesiastical Court retained, on behalf of the ecclesiastical power, the assets of intestate persons as against the creditors. This privilege it was compelled by an old Statute of the reign of Edward III to renounce, and having been compelled to distribute the personalty among the family, t

had no expedient to adopt except that of selecting one of the next-of-kin or a creditor or a friend of the deceased as its officer, and to compel him to do his duty by the rude device of exacting security. The point, therefore, being established, that the private administrator was a mere officer of the Court, MR. MAINE could not for a moment admit any moral right on his part to enjoy priority over a great public officer appointed for the special purpose of administration. Nor was that all. Suppose the question to be asked as to the probable wishes of the deceased person? It might be perhaps assumed, though the assumption was not always correct, that the dead man wished his property to be distributed among his family. But, on the point which of his family was to conduct that distribution, there were simply no materials for forming an opinion. It might be guessed, if conjecture was admissible, that he would have selected the best man of business among his next-of-kin to act as his representative. But it was in the highest degree unlikely that the arbitrary rules of selection observed by the Ecclesiastical Court would single out the person best fitted for the office of administrator. But when the other question came to be asked—what arrangement was best for all concerned?—MR. MAINE had no hesitation as to the answer. He hoped his Hon'ble friends would excuse him for speaking frankly; but he felt that in this case he was not simply backing his own opinion, but maintaining the cause of the whole European community in India, and of those connected with it at home, and of the whole body of creditors. Take the two modes of administration. In the one case the private administrator was necessarily not in India, for otherwise he would have entered within the period of one month. He very rarely came out to administer, but practically, in the great majority of cases, employed an agency firm to represent him. This firm was of course remunerated for its trouble by a percentage, which was usually, at all events, not less than that charged by the Administrator General. But then, what followed? The agent was not necessarily learned in the law, and when difficult questions arose, he was placed in the somewhat painful position of having to discharge, without advice, a duty which he had taken upon himself for a pecuniary consideration, or of having to delegate it to a firm of solicitors. MR. MAINE had no hesitation in saying that the proper course was for the agency firm to avail itself of legal guidance; and thus a second set of expenses was incurred. The questions arising might be of unusual difficulty, particularly in the case of devolving trusts, and thus the process might end in an administration suit in the High Court, which of course would entail still further expense. Now take the other side. The Administrator General in the first instance would be a barrister, and presumably appointed for his capacity. More than that, he would be a barrister devoting him-

self to one line of business, and would therefore become an expert in the law of intestate and testamentary succession. He was at the head of a great office, constantly employed at this particular business, and would very rarely require assistance from without; and for all this one commission, and one only, would be charged. MR. MAINE therefore had the strongest conviction that an estate in the hands of the Administrator General was realized and distributed, from first to last, vastly more safely, vastly more cheaply, and vastly more expeditiously than by the agent of a private administrator resident in England. Nor was it unworthy of observation that, while the mistakes in law of the Administrator General fell on himself, those of the agency-houses were visited on the unfortunate principal at home. MR. MAINE would not disguise from the Council that if he could have his own way, he would go even further than his present proposal. He would give the Administrator General preference over all private administrations. Many and great inconveniences were to be traced in England to this rude practice of private administration. No doubt, with the vast mass of property devolving at home, it would be a strong thing to create a great body of Administrators General. But here in India the class affected was comparatively small and manageable, and easily brought within the system of operation of the various Administrators General. We had much better avail ourselves to the utmost of the advantage we enjoyed, than curtail the powers of this most useful functionary. MR. MAINE would conclude by saying that the Council would observe he was, so far as possible, maintaining the existing law. It was the Select Committee that had proposed to alter the law, and it was on its members that the burden of proof rested of the necessity of any such alteration.

The Hon'ble MR. COWIE said he was not a member of the Select Committee which considered this Bill. If he had been, he should have entirely concurred with the votes of the majority which, he understood, were in favour of the three months' clause. At the same time he readily admitted that that extension of the time in which the Administrator General might come in was not required in Bengal, for both the present Administrator General and his predecessor had always been most reticent in taking charge of estates when any intimation had been given them that a Will was in existence, or that next-of-kin were about to apply.

But we had it on good authority that this had not been the case in a neighbouring Presidency, where the Administrator General had been in the habit of seizing (if he might use the word) estates where duly authorized representatives were on the point of appearing. Now, he did not think we ought to make laws which left it to a public officer's conscientiousness or courtesy

whether he should use them as an engine of oppression or not, and he must therefore vote against the amendment. As the Hon'ble Mr. Maine had in some degree mixed up the two amendments and spoken upon both, he (MR. COWIE) might take the liberty of doing the same. The Hon'ble gentleman's second amendment had his support as far as it went, but it did not go far enough. It was confined entirely to the case of probates, and ignored letters of administration. He thought the experience of Members of this Council would show how common was such a case as this:—a man died intestate in India, leaving assets in Government Securities in a Bank where there was no probability of deterioration or misappropriation. His widow in England lost no time in sending out power for administration to a relative, friend or an agent, but she found that the assets had been taken possession of by the Administrator General, who, before he would give them up, would mulct her in commission, to the extent of one and a half per cent. in Calcutta, or two and a half per cent. in Madras or Bombay. Now he asked the Council if that was just or reasonable. He need not, however, rely on the strong case of a widow. The deceased person might have left a father in England, who would be his sole heir-at-law, and the charge he had described would fall with great injustice upon him if the Hon'ble Member's amendment became law. The Hon'ble Member was of course aware that the majority of administrations here were granted to the attornies of absent executors, and it was a theory of Judges of the High Court and of the Administrator General, that such administrators undertook all the responsibilities and trusts which the testator had laid upon his executor. He could not then understand why the Hon'ble Member desired to draw so strong a line between executors and administrators.

The Hon'ble MR. HOBHOUSE said he had listened with great attention, and with every desire to be convinced by the arguments adduced by the Hon'ble Mr. Maine in favour of his amendment, but he (MR. HOBHOUSE) was certainly not convinced by those arguments. Of course there could not be a doubt that, in the respects he had mentioned, the Administrator General was, ordinarily speaking, fitter to look after the estates of deceased persons than most people were, because the Administrator General was a person with legal knowledge, and who had an establishment whose duties were to administer to estates, and who knew those duties thoroughly; the Administrator General also gave security for the due performance of his functions, and was under certain penalties for misconduct. Now take the case of another officer, the Official Trustee. There was a Bill introduced by the Hon'ble Mr. Maine, and passed in 1864, relating to Official Trustees. Under that Act, the Official

Trustee was enabled to act in the place of other trustees who had made a settlement of the affairs of the trust and transferred the trust to him. The Official Trustee was in the same position as the Administrator General: he was an officer with the requisite legal knowledge; he had an establishment accustomed to the duties; he gave security, and was under penalties for misconduct, and he was, therefore, a person more fit to manage settlements and trusts than anybody else. Yet nobody thought of extending the powers of the Official Trustee so as to prevent other persons from acting in the management of private trusts. He (MR. HOBHOUSE) would deny that the Administrator General was the very best person to administer to estates; he was a public servant and had a public office; but there were also certain disadvantages attendant on his administration of an estate. The private affairs of every person in the world would not bear strict investigation; there were many things connected with a man's family affairs which he might not wish to be known; but if the administration of an estate went into the hands of the Administrator General, every thing became known to a public officer and his establishment, and ran the risk of being made public. Then as regarded the assets of an estate, the Administrator General would know nothing about them; but a private agency firm, or the deceased person's solicitors, would know all about that person's affairs; the deeds, documents, &c., were all known to a man's solicitor, and he was therefore a better person than the Administrator General to administer to the estate. Then it was said that the Administrator General had more knowledge of the law of intestacy and testamentary succession than any other person. That was possible, but ordinarily speaking, he (MR. HOBHOUSE) was told that, in the great majority of estates, there were no very great legal difficulties to be dealt with; that the administration was confined to simple matters of the transactions of every-day life, which were put in the hands of a private agent or family solicitor to deal with, and such a person was more competent to manage such affairs than the Administrator General.

Then with regard to waste, the provisions of the Act, with the amendment regarding "deterioration" of which notice had been given, were quite sufficient. Under Sections 16 and 17 of the Bill, the Court, of its own motion or on the application of any relative or friend, or of the Administrator General, when it was proved that there was danger of waste or deterioration, might put the Administrator General in charge and he would then be entitled to his commission. Those provisions seemed quite sufficient to prevent waste. It was said that if you did not take out administration to an estate within one month, the creditors suffered, but he (MR. HOBHOUSE) did not understand that. The

creditors would in any case have to wait a year, for the Administrator General could not make any payments before the expiration of that period; and if three months were allowed for an executor, or the next-of-kin, to come in, the creditors would only have to wait two months longer.

Taking the principle of the objection raised to private administrations, he (MR. HOBHOUSE) thought that every person had a right to manage his own affairs. It was true that a person who died intestate had not stated who was to be his executor, or what was to be done with his property. But take the case of an intestate who died leaving his father him surviving. From the moment of that person's decease, the property was the father's; but you said that he must employ the Administrator General to administer to the affairs of the deceased: surely this was an interference with private rights which the Council ought not to sanction. The present Act stated that certain persons might have a preference if they came in within one month, but persons in England or elsewhere out of the country could not come in within one month, and why should there be a distinction between persons living in England and persons who were resident here? The principle was that anybody who was entitled should come in: the Committee were not therefore acting against that principle when they asked that one month should be changed into three months for the benefit of a numerous class of persons in England, *viz.*, the relatives of persons in this country. That being the view of the case which he (MR. HOBHOUSE) took, he must think that either the three months' clause should be retained, or what was better, that the Hon'ble Mr. Cowie's amendment should be carried. Under that amendment, administrators resident here would come in within one month, and persons at home would come in within three months: that would be the practical effect of the amendment, and he (MR. HOBHOUSE) preferred it to the provision of the Bill as it now stood. But anyhow he preferred the three months' clause, as recommended by the Select Committee, to the amendment of the Hon'ble Mr. Maine.

The Hon'ble MR. TAYLOR said that he was aware that there was much to be said on both sides of this question, and while holding the views of his Hon'ble friend Mr. Hobhouse, he was nevertheless prepared like him to be convinced by the arguments of his Hon'ble friend Mr. Maine in the opposite sense. He had listened attentively to all that had been said by the speakers who had preceded him, and he was bound to say that the weight of argument appeared to him to be on the side of his Hon'ble friends Messrs. Hobhouse and Cowie, and he was consequently unshaken in his previous opinion. He failed to discover any valid reasons why the office of the Administrator General should be protected like a monopoly. He was unable to perceive on what grounds of justice

or expediency persons should be denied the privilege of disposing of, or managing, their property otherwise than through the agency of a public officer. There were many reasons why persons would wish their estates to be wound up by their agents in preference to a public officer. Their agents were often their private and most intimate friends, and, as remarked by Mr. Hobhouse, they were already acquainted with all their affairs. The question then arose—Was it, or was it not, better for the general interests that both executors and next-of-kin should have the right of claiming probate or letters of administration in preference to the Administrator General? The law already allowed the privilege, the right was conceded to them by the existing Act: but the period of one month after death, at the expiration of which the Administrator General was empowered to take proceedings, was too short to enable executors out of India to exercise that right. On what principle, he would ask, should absence from India operate to debar a widow, a son, or a father, from the exercise of a privilege which was allowed to those who were close at hand? Had such executors or next-of-kin been resident in India, their claim would have been preferable, without any dispute, to that of the Administrator General, it was therefore *primâ facie* preferable wherever they might be, and reasonable time should be allowed to them to prefer their claim.

His Hon'ble friend Mr. Maine would restrict the privilege to cases where a Will was produced and probate taken out. But the claims of the next-of-kin were undeniable even in the absence of a Will, and could not in justice be set aside. For these reasons he was in favour of the extension of the period from one to three months as proposed. The office of Administrator General was one in the thorough efficiency of which the public was deeply interested. His position was on the whole very much improved by the amended Bill; he (MR. TAYLOR) would be very sorry to advocate any measure which was calculated to impair the efficiency of the office, or which would have the effect of materially diminishing its emoluments. But he did not think that the extension of the period after which he was now entitled to act would have that effect. Were it likely to be otherwise it would then be matter for consideration whether the Administrator General should not be paid a fixed salary and the fees credited to Government, an arrangement which might possibly be the most satisfactory to all parties.

The Hon'ble MR. GREY said that the Hon'ble Mr. Maine's argument, which had had so little effect on the Hon'ble Mr. Hobhouse, seemed to him (MR. GREY) so thoroughly convincing that he should not have thought it necessary to do more than give a silent vote, but for his desire to call the attention of the Council to one point which might be overlooked, the fact, namely, that what was now proposed was an alteration of the law in force for the last twelve years. He

therefore thought that a very strong case ought to be made out to alter a law with regard to which no complaints had been received, except one which was made in general terms by some merchants in Madras. Of the merits of that he knew nothing. Even the Hon'ble Mr. Cowie admitted that, on this side of India, there was no occasion for the alteration of the law. It appeared strange, therefore, that an alteration so very material should have been adopted by the Select Committee without giving any essential reason for the change. It seemed to him (MR. GREY) that the Hon'ble Mr. Cowie and the Hon'ble Mr. Taylor had rather ingeniously mixed up two quite distinct matters—administration by an executor, and administration of an intestate estate. The latter only was really in question now; and the point was whether, in the case of an absent next-of-kin, it was preferable for the estate and the heirs generally, that such next-of-kin should employ a public officer like the Administrator General, or that he should be at liberty to employ any private agent of his own. The Hon'ble Mr. Cowie and the Hon'ble Mr. Hobhouse had quoted some cases to show the harshness of forcing the estate into the hands of the Administrator General, but of course the cases put were very exceptional, when there was only one person entitled to administer to the estate. Generally there were several such persons. Take for instance the case of a man dying and leaving a son and several grandchildren. That son, as next-of-kin, might come in and get administration, but there was nothing at all to show that the estate in his hands would be safer, as concerned the interests of the grandchildren, than in the hands of the Administrator General. MR. GREY'S own opinion was very strong that, in the case of an intestate estate, especially where the next-of-kin was an absentee, it was better for the public interests generally that the estate should be put into the hands of the Administrator General.

The Right Hon'ble MR. MASSEY had listened to the discussions without much previous consideration of the subject, but he must say that the reasoning of the Hon'ble Mr. Maine had satisfied him as to the expediency of the course he proposed to follow. Looking at this question from an English point of view, he (MR. MASSEY) could confirm the statement that the tendency of the best informed opinion at the present day was decidedly in favour of withdrawing these duties from private individuals, and vesting them in skilled and responsible public officers. The expense and confusion that had arisen from private persons intermeddling in trusts, the inextricable difficulties in which estates had been involved from not having been at first placed in the hands of a public officer, had been proved by the experience of so many unhappy years that it was now the opinion of many lawyers that the time had arrived for changing the system entirely, and that no discretion should be allowed, either

in the case of trusts or intestacies, but that the execution of trusts and the administration of intestates' estates should be vested in a public department. That was a much more extensive proposition than was contained in the Bill before the Council. We had here an officer whose knowledge and capability were undoubted, who had a special establishment for the administration of estates, and whose duties had been performed satisfactorily. It had been said that private parties ought to be allowed to come in and intermeddle in administrations. But, as Mr. Maine had said, this depended on the answer to two questions: first, what did the dead man expressly desire? secondly, what was best for the interests of the persons entitled to his assets? In the case of intestacies, there could be no contention as to the will of the deceased, because he had not expressed it, and, apart from the statute, the only claim of the next-of-kin to administer was derived from his presumed knowledge of the personal property and affairs of the intestate, and his desire to distribute that property amongst the kinsmen of the deceased. Some person was selected to administer, but he might have no knowledge of the affairs of the deceased, and he might have no means of ascertaining the assets of the estate. It was clear that persons possessing or knowing of assets belonging to the estate of the deceased would be by no means so ready to inform a private administrator, as a public officer, of the direction his enquiries should take in order to ascertain those assets. There were other persons besides those who would take under the Statute of distributions, there were creditors, and they would no doubt prefer the administration of a public officer to that of a person of whom they knew nothing—an officer whose whole time was given up to the business, who was furnished with official machinery, and who could with promptitude and accuracy discharge all the duties of an administrator, in a far preferable manner to any casual who might be appointed in the ordinary way, and whose duties were discharged by his private solicitors. The private solicitor might be a respectable and conscientious man, and familiar with the affairs of the deceased, or he might be neither one nor the other. If this came to be a question between the public officer and the unknown private administrator, his (MR. MASSEY'S) vote would be given to the public officer.

The Hon'ble MR. SKINNER did not wish to discuss the advantages of public or private administration. The Administrator General could no doubt administer to an estate so as to give satisfaction to all persons concerned; but he could also administer so that his administration might prove a burthen to the persons interested in the estate. Whatever might be the opinion as to the merits or demerits of administration by a public officer, it seemed to him (MR. SKINNER) that the question for the consideration of the Council was, as to whether any ground had been made out for denying to private persons the option of availing themselves of private administration, or administration by a public officer,

as they might think best. The object was not so much to benefit the Administrator General or the public generally, as to give parties their option. He (MR. SKINNER) did not think that three months was too long a time to allow an absentee to come in and take out letters of administration, and would therefore vote against the amendment.

The Hon'ble MR. SHAW STEWART said that, as regarded the question whether the duties connected with the administration of intestate estates could be best carried on by the Administrator General or by the next-of-kin, he thought the Council should not judge the question entirely from at English point of view. They had here a peculiar means of administration, *viz.*, the great houses of agency, who stood in the position of private friends of most of their constituents; and he was not prepared to admit that anything had been shown to satisfy him that the Administrator General would administer better than those houses of agency. One part of the Hon'ble Mr. Maine's argument bore out the opinion that he (MR. SHAW STEWART) had just expressed, for it showed the care that the agents took in looking after the interests of their constituents. He did not think that the circumstance of the agents keeping lists of the next-of-kin of their constituents was at all an argument against those agents; on the contrary, he rather thought that this showed what interest they took in the affairs of their constituents. The Administrator General had no such record to assist him. For these reasons he (MR. SHAW STEWART) was of opinion that it would be better to allow three months as proposed in the Bill.

The Hon'ble MR. MAINE said that his Hon'ble friend Mr. Cowie had somewhat misunderstood him. He (MR. MAINE) had never meant to imply that an agent who made a mistake through an error of law would not be exposed to very disagreeable consequences. What he had meant to say was that the principal at home would not be protected. He must remind the Hon'ble Mr. Skinner that they were not discussing the powers of executors, who were true delegates of the deceased, but of administrators, who were officers of the Ecclesiastical Court, chosen on a barbarous and exploded system. The question before the Council was of the simplest kind. Would they give private administrators a new advantage over the Administrator General? A private administrator was at best a relic of a barbarous age, and was selected almost at haphazard, and in the present case he was resident thousands of miles from the theatre of his duties. Would they prefer him to a skilled public officer, surrounded by every sort of safeguard, and in the long run charging to the estate a considerably less commission than was charged by the private administrator? It was not he himself, but his Hon'ble friend Mr. Cowie and the Select Committee, who proposed to change the law, and against this change

he (MR. MAINE) protested in the name of the whole body of creditors. It was for his opponents to show what there was in a private administrator which entitled him to precedence over the Administrator General.

The Motion having been put, the Council divided—

AYES.	NOES.
His Excellency the President.	Hon'ble Mr. Taylor.
His Honour the Lieutenant-Governor	Hon'ble Mr. Shaw Stewart.
His Excellency the Commander-in-Chief.	Hon'ble Mr. Hobhouse.
Hon'ble Mr. Maine.	Hon'ble Mr. Skinner.
Hon'ble Mr. Grey.	Hon'ble Mr. Cowie.
Right Hon'ble Mr. Massey.	
Hon'ble Colonel Sir H. Durand.	
Hon'ble Mr. Brandreth.	

So the Motion was carried.

The Hon'ble MR. COWIE then moved that the following clause be added to section 26:—

"Provided that, in any such case, when the deceased has left a Will appointing an executor, and probate of the Will has been granted by any Court in the Presidency to such executor within three months after the death, or when the widow or next-of-kin has, within one month, if resident within the Presidency, or within three months, if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased, then and in either of such cases the Administrator General shall (without prejudice to the provisions contained in sections 17 and 18 of this Act) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration shall have been granted as last aforesaid.

He said that, in putting his own amendment, he had but little to add to what he had already stated. Both the Hon'ble Mr. Maine and the Hon'ble Mr. Grey appeared to ignore the fact that administration was constantly granted by the Court here to the representatives of absent executors, and although these powers were technically called letters of administration, they were for all practical purposes probates. Yet they were entirely untouched by the Hon'ble Mr. Maine's amendment. He should not have desired to speak in that Council in any other capacity than as a member of it, but the Hon'ble Mr. Maine had so pointedly alluded to the Hon'ble Mr. Skinner and himself as agents who acted as administrators, that he might be excused in making the following very brief remarks.

The Hon'ble gentleman recorded his opinion that the duties of an administrator were performed far better by a public officer than by a private agent. He had a perfect right to entertain that opinion, but it was incontestable that the public both here and in England did not share in it. There was in many quarters a very strong feeling against the employment of an Administrator General.

The Hon'ble Member referred to a practice in home agency firms of searching out next-of-kin of deceased persons in India, in order that letters of administration might be procured by their corresponding firms here. The Hon'ble Member might have peculiar sources of information, but for himself he could only say he never heard of such a practice.

The Hon'ble MR. MAINE could not accede to the amendment, which differed from his own in depriving the Administrator General of his commission, not only when the executor, but when the private administrator supervened.

The Motion having been put, the Council divided—

AYES.	NOES.
His Honour the Lieutenant-Governor.	His Excellency the President.
Hon'ble Mr. Taylor.	His Excellency the Commander-in-Chief.
Hon'ble Colonel Sir H. Durand.	Hon'ble Mr. Maine.
Hon'ble Mr. Brandreth.	Hon'ble Mr. Grey.
Hon'ble Mr. Shaw Stewart.	Right Hon'ble Mr. Massey.
Hon'ble Mr. Hobhouse.	
Hon'ble Mr. Skinner.	
Hon'ble Mr. Cowie.	

So the Motion was carried.

The Hon'ble Mr. MAINE said that, Mr. Cowie's amendment having been carried, his (MR. MAINE'S) own fell to the ground.

The Hon'ble MR. HOBHOUSE moved that the word "deterioration" be inserted after the word "misappropriation" in sections 17 and 18. He said that, in this country, it often happened that property was wasted, not so much by actual waste or misappropriation, as by deterioration from the effects of climate. It seemed wise, therefore, that on proof of such deterioration, the

creditors should be enabled to direct the Administrator General to take out probate or letters of administration either within one month or three months as the case might be.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill as amended by the Select Committee, together with the amendments since adopted, be passed.

The Motion was put and agreed to.

REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications, be taken into consideration. He said that the Bill as amended by the Select Committee bore on the face of it the appearance of considerable alteration; but as a matter of fact there were no material alterations introduced in the law of the land generally. It was considered advisable, when the Bill was being considered in Committee, to repeal and re-enact in the Bill a cognate law on the subject of printing-presses and the registration of periodicals, and also to provide that, on the payment of the usual fee, that registration should be a registration of copyright also. It would therefore be observed that sections 3 to 8 of the amended Bill were simply re-enactments of Act No. XI of 1835 relating to printing-presses and periodicals; and that sections 12 to 15 were also repetitions of the same law, but in these latter sections there had been an amendment of some value. Under Act No. XI of 1835 a person guilty of infringement of the Act was liable to fine and imprisonment; but that was considered a very severe penalty, and in accordance with the provisions of the Penal Code it had been altered to fine *or* imprisonment, or both. What was new in the Bill with reference to the registration of books was little. He would first draw attention to the interpretation-clause, in which the word "book" originally included newspapers; but it was thought that, if the Government were compelled to take three copies of every newspaper published in India, there would be no room in the Government Library to place the enormous amount of books (as interpreted by the clause) with which the Government would be flooded. The word "book" had therefore been defined to include, not newspapers as before, but merely "every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed." That would also exclude from the Government Library such trifling things as price-lists of books, auctioneers' catalogues and so

on, which the Government did not wish to have. As regarded the registration of books, there was a material alteration in section 9, for which he (MR. HOBHOUSE) had prepared the Council on the last occasion on which he addressed it on the subject of the Bill, *viz.*, that the person who should be required to deliver the books to the Government should not be the publisher, but the printer; and by this section the printer could compel the publisher to assist him to the extent required to enable him to deliver to Government three copies of the book published. If the publisher had to deliver the books, the Act must be a dead letter, because, in most cases, it was extremely difficult to find who the publisher was, whereas the name of the printer was very easily discoverable, as he was bound to register his press, and to put his name to every book that he printed. Section 16 referred to the catalogue of books to be kept. The words of this section to which he (MR. HOBHOUSE) would draw attention, were to be found after clause 14 of the section. That section described what the memorandum was to contain, and then said that every registration under this section should, upon payment of two rupees, be deemed to be an entry in the Book of Registry kept under Act XX of 1847, that was, the Copyright Act. It had been thought that, as persons would be bound to present and register their works, such registration should also entitle them to copyright, if they chose to pay two rupees, as they now did, for that privilege. There was another section, 22, by which the Act, instead of being confined to Bengal, was extended to the whole of India, the Governor General in Council having by a previous section the right to exclude any class of books he chose, and to continue the Act only so long as he considered requisite. The Act was a very light one, and would be of much benefit to printers and publishers; and if there was any necessity for the Act at all, the same reason applied to the other Presidencies as well as to Bengal.

The Hon'ble MR. MAINE said that Mr. Riddell had appended to the report of the Select Committee an objection to the incorporation of Act No. XI of 1835 with the present measure. His Hon'ble friend was not here to explain at large his reasons for so objecting; but MR. MAINE supposed that he considered the enactments to be scarcely *in pari materiâ*. MR. MAINE did not agree in that opinion; but among other strong reasons for the amalgamation of the enactments was one derived from the limited application of Act No. XI of 1835. Although that measure, in describing the sphere of its operation, spoke of itself as applying to all the territories in the possession of the East India Company, the present Advocate General, Mr. Cowie, had advised the Chief Commissioner of Oudh, and (MR. MAINE held) rightly, that it only applied to such territories as were possessed by the East India Company in 1835.

The true doctrine was that Acts of Parliament gave the law to British India in whatever manner British India might be constituted thereafter; but that Acts of the Governor General in Council, which employed language similar to that of the enactment under consideration, only applied to British India as it existed at the time being. MR. MAINE, however, in examining the papers in the Foreign Office, had discovered a letter addressed to his Hon'ble and gallant friend Sir H. Durand when Commissioner of Tenasserim, in which the Government of India committed itself to the opinion that Act XI of 1835 was in force in British Burma. And hence MR. MAINE could not help suspecting that many acts had been done illegally in the subsequently acquired territories, in the *bonâ fide* belief that the Printing Act was then in force.

Such acts, being innocent in themselves, deserved an indemnity, and hence the Select Committee had introduced the provision in Section 2, that—

"In any territory acquired by the East India Company or Her Majesty since the passing of the said Act No. XI of 1835, such Act shall, so far only as regards acts, punishments and fines purporting to have been done, inflicted and levied thereunder, be deemed to have been in force from the date of such acquisition up to the date of passing this Act."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the law relating to stamp-duties, be taken into consideration. He said that he had dwelt so much at length on the occasion, first of asking for leave to introduce the Bill, and afterwards of introducing it, that he did not propose now to go into any other details except such as had been amended by the Select Committee. He would therefore take up the Bill section by section, and would state what the amendments were that the Select Committee had introduced. The first amendment would be found under Article 2, Section 6 of the Bill. Perhaps he should first state that, in Section 4, there had been an amendment of the Code of Civil Procedure, which provided that certain stamp-duties should not be maintained, but as those duties would be levied under this Act, it was thought necessary to repeal that provision. Article 2 provided an addition to certificates granted under Act XXVII of 1860 in the words "or under Regulation VIII of 1827 of the Bombay Code, or Act XL of 1858." The Bombay Regulation was the cognate law to Act XXVII of 1860, and so also was Act XL of 1858, for

making better provision for the care of the persons and property of minors in Bengal. Act XXVII of 1860 and the Regulation of the Bombay Code referred to the collection of debts on successions and the recognition of administrators, and Act XL of 1858 referred to the case of the property of minors. Certificates under those Acts were liable to stamp-duty under a separate provision, and they had now been placed under the same Article as Act XXVII of 1860, and the stamp-duty had been very slightly increased, *viz.*, from four to five rupees, to facilitate calculation under the decimal system. The next amendment was in Article 3. The words of that Article ran thus :—

	Rupees.	Annas.
"Copy of decree or order having the force of a decree—		
When passed by the High Court ...	4	0
When passed by any Civil Court other than a High Court or by any Revenue Court—		
If the decree or order purports to determine a claim of which the subject-matter is 50 rupees or less than 50 rupees in amount or value"	0	8

* * * * * *

So again in Article 4—

"If the subject to which the judgment or order refers is 50 rupees or less than 50 rupees in amount or value" ...	0	4

* * * * * *

And so in Article 10—

"When [the petition or application is] presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any cantonment joint Magistrate sitting as a Court of civil judicature under Act III of 1859, or to any Court of Small Causes constituted under Act XI of 1865, or to a Collector or officer of revenue, in relation to any suit or care in which the amount or value of the subject-matter is less than 50 rupees"...	0	1

That was in accordance with the recommendation of the Stamp Commission, but by some omission this recommendation was not put into the Report. The members of the Select Committee on the present Bill were also taken into consultation at the later sittings of the Stamp Commission, and a large number of the members of the Council were members of that Committee, and they urged the imposition of the stamp-duties mentioned, there being no reason why some stamp should not be taken on petitions and on applications in suits under fifty rupees in value.

The next point was the wording of the conditions under which certain complaints before the criminal Courts would be liable to the stamp-duty of one rupee which had already been so much discussed. According to the wording of

Article 10, petitions or applications having reference to complaints would only be liable to stamp-duty when they involved complaints of the offence of wrongful confinement or wrongful restraint, or of an offence for which the Police might not arrest without warrant. Offences for which the Police might arrest without warrant, were all offences of the most heinous nature, such as robbery, dacoity, and so on, which told on the public generally, and not so much on private persons. On the other hand, the offence of wrongful confinement, of wrongful restraint, and offences for which the Police might not arrest without warrant, were almost all of a light description; there might be one or two exceptions, but in adopting the distinction of offences for which the Police might or might not arrest without warrant, the Committee had exercised the best discrimination they could. With regard to the exemptions under this head, they were, as the Bill stood before, "petitions or applications made or laid before an officer of Police;" but it was found that there were heads of villages in Madras and village Police officers in Bombay, who had magisterial powers, and they exercised those powers in a patriarchal way, and their proceedings were exempted from the provisions of the Code of Criminal Procedure. It was therefore thought advisable to exempt complaints made before those officers.

In Article 11 there was a provision which stood as follows:—

"In suits for possession instituted under Section 15, Act XIV of 1859, and applications for immediate possession under Section 1, Clause 2 of Act XVI of 1838, and Act V of 1864 passed by the Governor of Bombay in Council.	A stamp of one-fourth the value prescribed in the foregoing scale."

It would be observed that the first words of this provision referred to suits for possession under the Limitation Law, Act XIV of 1859. A person was ousted from property to which he thought he had a claim; if he brought his complaint within six months, then, whether his claim was good or not, he might be replaced in possession, and the other party might have recourse to a suit in the Civil Court to set aside this summary decision. Such suits were liable to a stamp-duty of one-fourth the value prescribed for ordinary suits, and the Hon'ble Mr. Shaw Stewart had told the Committee that there were suits of a similar nature under Act V of 1864 of the Bombay Code, and it had therefore been thought fair to bring those suits under the same provision as suits under Section 15 of the Limitation Law.

The next amendment was contained under the "special rules for the Bombay Presidency," under one of the provisions of which, in suits for revenue-paying or non-revenue-paying land, there were rules laid down for calculating the market-value of such land. Originally there were certain provisions for Bengal which were held to apply also to Madras and Bombay, but the Hon'ble Mr. Shaw Stewart had asked the Select Committee to introduce

special rules for the Bombay Presidency, and those rules seemed to place Bombay on exactly the same footing as Madras and Bengal, but the mode of calculation was made special. The Hon'ble member would no doubt explain the objects and reasons of those provisions.

The next provision was near the top of page 7, under Note 3. It referred to the mode by which, in cases of dispute, the Courts should ascertain whether the assumed value of land paying or not paying revenue was correct. Under the proviso in the original Bill, it was necessary that the person who contested that value should make an application; but under the amended rules, the Court might now, either of its own motion or on the application of the parties, make enquiries, and if the valuation were found too high, a refund would be made, or if too low, the difference would be charged, the object being to prevent persons from continually raising these questions as to the assumed value of suits, and harrassing the Courts to the great detriment of justice.

Section 7 had been remodelled on the same principle as the provision regarding stamps on criminal complaints had been amended; and Section 9 had been altered so as to save certain provisions of existing laws; those laws had not been amended, but a special proviso had been inserted with reference to them. Such were the principal amendments which the Select Committee had made.

The Hon'ble MR. BRANDRETH said that, from the Report of the Select Committee, it would be seen that there were two points on which he differed from the conclusions of the Committee. He therefore wished briefly to state the grounds on which he entertained that difference of opinion. The points on which he differed were the graduation of the scale under Article 11, and the question of a refund of stamp-duty paid on plaints, if it appeared, on the case being called up for trial, that there was no dispute between the parties. As regarded the first point, that was, the scale of stamp-duty on plaints, he thought that the rate ought not to be a uniform one up to 1,000 rupees. The Hon'ble Mr. Hobhouse, in his Statement of Objects and Reasons, observed that Article 11 imposed a comparatively high rate of duty on the poorer classes of suitors, and a comparatively low rate on the richer classes; but it must be remembered that small suits often took up the same time in hearing as large ones, and if small suits were to contribute in any appreciable degree towards the expense of the Courts, they must be taxed at a higher rate than suits of a greater value.

The other point to which he (MR. BRANDRETH) referred was the question of refund of stamp-duty on confessions of judgment. As far as his experience

went, most of the suits that were brought into the Courts were owing to the intention of the parties to defraud each other: such suits were no doubt most appropriate subjects of taxation, especially when they were contested, and when, as was usually the case, much false evidence was adduced on both sides. But he thought most people would admit that it was very desirable to prevent such contests as far as possible, and to induce the parties to come to terms with each other; and when the intention to defraud was not very deliberate, and the anger of the parties had had time to evaporate, and the course of resorting to the Court and the influence of friends had prevailed, and the parties had come to a settlement, when it was found that there was no dispute, and the Court gave judgment without much trouble, he thought that such suits were hardly fit subjects for consideration. He would not wish to exempt these suits altogether, but did not think that the increased stamp-duty should be taken, and would recommend that the refund of a fair proportion of such stamp should be given in such suits.

In all other respects he entirely concurred in the Bill as amended by the Select Committee, and did not bring forward the points on which he differed as affording any sufficient reason for objecting to the passing of the Bill.

The Hon'ble MR. HOBHOUSE said that, with reference to the latter portion of the Hon'ble Mr. Brandreth's remarks, he could not concur at all in the policy of refunds on what were called confessions of judgment. According to Mr. Brandreth's own statement, persons came into Court deliberately more or less with intention to defraud. There was no dispute between the parties, but they only required to use the pressure of the Court. In cases of that sort, where persons who might come to an agreement would not do so until the pressure of the stamp-law was put on them, he (MR. HOBHOUSE) should have a strong objection to make any refund at all. He believed that that was the only point on which he need make any remark, as the Hon'ble Member did not propose any substantive amendment in the scale of stamp-duty on plaints.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved the following amendments:—

That the following words be omitted from Article 10 of the Schedule contained in Section 6:—

	Rupees.	Annas.
"When presented to any Criminal Court, when the petition or application contains a complaint of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which Police officers may arrest without warrant, as specified in column 3 of the Schedule annexed to the Code of Criminal Procedure"	1	0

Also that the following words be omitted from the Exemptions to the said Article, *viz.* :—

"Petition, application, charge or information respecting any offence, when presented, made or laid before an officer of Police or before the heads of villages in the Presidency of Fort St. George or before village Police officers in the Presidency of Bombay.

"Any such petition, application, charge or information presented, made or laid before a Criminal Court, when such Court shall think that it ought to be exempted from stamp-duty."

And that the following words be substituted in lieu thereof as an Exemption:—

"Any petition, application, charge or information presented, made or laid to or before any public servant in reference to any offence or to any trial or enquiry relating to an offence."

Also that Section 7 be omitted.

He said that he felt that he was at a great disadvantage, because of the Members of this Council whom he had consulted, none had shared his opinion. Still he was encouraged to press his amendment because he found that its principle had been affirmed by the Legislative Council of 1860.

It appeared, that in the Presidency of Bengal, *i. e.*, in the districts under the Lieutenant-Governors of Bengal, the North-Western Provinces and the Panjáb, the custom had existed for long, in Bengal it may be said from time immemorial, of requiring all complaints of any criminal offences to be written on stamped paper of the value of eight annas, and that, in addition, complainants were required to pay for taking out and serving summonses, and for diet-money and subsistence to witnesses. In the Presidencies of Madras and Bombay, on the other hand, no fees or costs whatever were ever levied, and criminal proceedings were absolutely free as far as complaints were concerned. The institution-fee of eight annas was stopped when the general Stamp Act of 1860 was passed. He found that the paragraphs continuing this impost in Bengal, and exempting Madras and Bombay, were discussed on the 14th April 1860, when Sir Barnes Peacock, Sir James Outram, Sir Bartle Frere, Mr. Wilson, Mr. LeGeyt, Mr. Harington, Mr. Forbes, Sir Charles Jackson and Mr. Sconce were present. On this occasion, when the exemption of Bombay and Madras came under consideration, the Chief Justice, who was in the chair, remarked as follows:—

"He was of opinion that criminal proceedings ought to be exempt from stamp-duty everywhere, but if it was considered necessary that Bengal should be liable, he saw no sufficient reason for exempting Madras and Bombay."

and a discussion took place in which Sir Charles Jackson, Mr. Wilson and Sir Bartle Frere took part, the latter gentleman remarking as follows:—

"He agreed with the Hon'ble and learned Chairman that it was monstrous to demand a stamp tax from a man who wanted to complain of a criminal offence having been committed, and he would therefore willingly exempt such petitions in Bengal, as they were at present exempted in Madras and Bombay."

The result was that the principle of taxing complainants in criminal cases was unanimously rejected, and criminal complaints were declared free throughout India.

He (MR. SHAW STEWART) was unable to discover by what law or why the practice of making the complainant pay for summonses and other costs was discontinued in Bengal, but he found it stated that it was discontinued, and that since 1860, neither institution-fee nor costs had been levied in Bengal. After the experience of seven years, it was now sought to revert to the old practice, and this Bill required the institution-fee and costs to be lumped in one sum, and levied as an institution-fee of one rupee on all complaints throughout India.

There were four reasons given for this proposal which he desired to examine in their order. These were—

1. The unanimity of all officers in the Presidency of Bengal.
2. That this measure would suppress petty and vexatious complaints.
3. That it was right that the people who used the Magistrates' Courts should pay their fair share of the cost of those Courts.
4. That this provision was surrounded by such safeguards as to prevent any chance of its pressing hardly on any one.

Now the unanimity of the officers in Bengal who had been consulted was remarkable, but at the best it amounted to this, that petty and vexatious complaints had greatly increased within a certain period. And what was this period? it commenced in 1860, at the time when the two great Criminal Codes became law—laws whose effect, in changing the character of a people and the nature of their relations with the Magistrates, could not be over-estimated. He could see no good cause shown for attributing the increase of complaints, as most of the officers in Bengal did, to the suppression of the institution-fee, rather than to the action of those laws, and in the absence of any proof to the contrary, he could not but adopt the more rational conclusion that the increase had been caused by the Codes, rather than by the Stamp Act. But however this

might be, there was a most remarkable instance of a difference of opinion in the midst of all this unanimity. He found that, of eight Commissioners who were asked by the Government of Bengal to suggest remedies for the state of things existing, four only urged a reversion to the imposition of an institution-fee, while four did not. Of these four, he would especially signal one, Mr. Dampier, the Commissioner of Nuddea, whose opinion was, he thought, remarkably sound. He would refer to this hereafter, but he might state now, that Mr. Dampier suggested the adoption of the English system, by which the Magistrates' Courts were open to all comers, rich or poor, without fee, and those complainants who wished to take out process paid for the cost of summons and other expenses.

The second reason was that an institution-fee would prevent petty complaints. The only complaints which, in his opinion, would be prevented by it, were those of poor weak-spirited persons, who might be prevented coming to the Magistrates' Courts by this tax. Such a person might have been willing to undertake the journey of thirty or forty miles (no uncommon distance, he was informed, in Bengal), but if the thought of the rupee was too much for him, he staid at home to brood over his injuries, real or fancied, and to devise other means of redress or vengeance. To the rich, over-bearing man the proposed tax would be no impediment; he would gladly pay his rupee, thinking that he thereby purchased the right of hearing. He (MR. SHAW STEWART) did not think that this measure would effect any sensible diminution in the number of that class of complaints which alone were objectionable and injurious.

As to the third reason, he (MR. SHAW STEWART) would admit that it was fair to make those who benefited by the Courts pay for them; but who really benefited? It was not those who used them, who were compelled to seek redress for some criminal wrong in our Courts. It was the others who could stay at home, enjoying the happy results of good laws and good Courts, these were the persons who benefited and who ought to pay, and for this reason he thought that the cost of our Magistrates' Courts ought to be defrayed from the general revenues, and not in any special degree from those that had to use them.

The safeguards that surrounded this provision were two in number, both unsatisfactory. The first was, that if the accused person was convicted and fined, and the fine paid, the Magistrate might repay the complainant his rupee out of the fine, but the best case might break down. The accused might get off, or, if he was convicted and fined, the fine might not be recovered, and the chance of recouping the complainant depended on all this. The other safeguard that gave to the Magistrates a discretional power of remitting the fee was still more unsatisfactory and unbusiness-like. There was no principle

whatever for the Magistrate's guidance, when he was to remit and when to levy. One Magistrate might think this institution-fee a mistake, and likely to be injurious, and might remit it in all cases; another might approve of the principle and levy it in all cases. We could hardly call this a safeguard.

Having thus examined the reasons on which the Bill was based, he would state to the Council the very grave objections which he had to it. The first was that, if this fee prevented any one from bringing a complaint before a Magistrate, we ran a great risk of forcing him to seek redress in some other way less satisfactory. Take the case of a person who had a quarrel with his neighbour, and wished to bring a complaint, true or false, petty or the reverse, before a Magistrate; he found that he could not, or he would not, pay one rupee, and he was not unlikely then to take his complaint to the Police, changing it, if need were, to one that the Police could take cognizance of without warrant, or he might resort to means of revenge still more objectionable. Now, he did not think we could consider the Police of India to be in such a perfect state that it was desirable that common people should resort to them rather than to the Magistrate.

The next objection was that the Code of Criminal Procedure provided ample remedies which ought to be tried before they were said to fail. MR. SHAW STEWART gathered that the Local Governments of the Presidency of Bengal had for long been urging their Magistrates to use these remedies, and that the Magistrates had, for some reason or other, declined doing so. These remedies were found enough in other parts of India, in proof of which he would read the following extract from a letter from the present Commissioner of Sind. Mr. Mansfield said—

"I cannot concur with the views of the Lieutenant-Governor of Bengal that it would be advisable to impose a stamp of eight annas on petitions to Magistrates. The reason urged for such a course is that petty criminal litigation has been increased by the exemption of these petitions from stamp-duty. The law, however, amply provides for all cases in which false charges have been brought, or in which the complaints shall be declared to be frivolous and vexatious. In the first case, the complainants have made themselves liable to a criminal prosecution. In the second case, where the offences charged are of a trivial nature, they render themselves liable to fine, the amount of which may be awarded to the accused person. The Penal Code, moreover, provides that an act is not an offence which causes such slight harm that no person of ordinary sense and temper would complain. If these provisions of the law be strictly carried out, they would form a greater check on the needless institution of criminal charges than any stamp law could effect. The principle of not imposing any stamp-duty on any criminal complaint is one which, in my opinion, cannot be too strongly advocated."

Besides this he would remark that these remedies must be had recourse to sooner or later, for unless the one rupee institution-fee stopped vexatious com-

plaints, which he was sure it would not, whatever effect it might have on petty ones, the evil would increase unless the reluctance of the Magistrates in Bengal to adopt the remedies provided in the Code were overcome. In the next place he thought the measure was essentially un-English, and opposed to the custom of all civilized countries. In England, Magistrates' Courts were open to all, and every one, however poor or however petty his grievance, might come and complain free of charge. If process was taken out on the complaint, summons had to be paid for and costs incurred, but the right of petition or application was free. He thought it was a thing to be proud of that the Code of Criminal Procedure had established this principle in Bengal and confirmed it in Madras and Bombay, and it was certainly backward legislation that would bar our Magisterial Courts to all but those who paid a rupee. A few words from the Magistrate did good. He did not know whether, on this side of India, Magistrates allowed themselves to give utterance to extra-judicial advice or directions, but in other parts a great proportion of the unnecessary and petty complaints were stopped by a few words of advice or rebuke, and the complainant went off satisfied with having stated his grievance and got a "*hukm.*" But if he had to pay a rupee, he would not be satisfied with this; he would expect more for his money than a few words from the Magistrate, and would go away dissatisfied. The fourth objection that he had to urge was that this tax would be unpopular and unproductive. The Government of Bombay said regarding it, that it would be "very unproductive and most justly unpopular" in that Presidency, and he believed the unpopularity would extend to the whole of India. The Stamp Committee had estimated the out-turn for Bombay at a lakh of rupees a year, but he should be surprised if it yielded more than half that sum. He should rather be inclined to estimate the result at rupees 30,000 or 40,000 for the whole Presidency.

In the next place, he thought the manner in which the offences had been classified was most unsatisfactory. He found that the Advocate General, who applied for a warrant to arrest on a charge of high treason; the policeman who made a similar application regarding an affray; the sufferers in grievous cases of extortion or wrongful confinement; all persons who complained of bribery, perjury or forgery, and the ryot whose cattle were mischievously injured, must all bring their complaints on stamped paper. While, on the other hand, complaints, however petty, of theft or hurt by a dangerous weapon, of defiling public reservoirs or injuring water-courses, might be preferred without any fee. The inconsistency of this was obvious. Lastly, he would urge that this measure was directly opposed to the dicta of our greatest jurists and philosophers. He should never forget the clear and convincing arguments by which

the Hon'ble Mr. Maine had shewn that Bentham's objections to judicial taxes did not apply to the civil procedure of India as long as the complex laws of the different sects were preserved; but these very arguments showed that Bentham's objections would apply with increased force to the measure now proposed, as no one could deny that our Criminal Codes were the simplest and best in the world.

He had thus attempted to show that the reasons assigned for this measure were insufficient, and that there were most serious objections to it. He did not know if his remarks had had any effect in convincing the Council, but he was satisfied in his own mind that the principle was bad. He would mention shortly what he thought ought to be done. He would leave it to the local legislatures to adopt, if they considered any change to be necessary, the English system, which was nearly identical with that proposed by Mr. Dampier, and while leaving free the right of petition or application, let the complainant pay for the cost of taking out and serving summons and the other preliminary expenses, to be recovered along with, or in addition to, any fine that might be imposed. He thought that some measure of this kind might without objection be adopted by the local legislatures in some parts of India.

But he most earnestly deprecated this Council attempting to legislate on a matter of such importance, the proper handling of which must depend on local circumstances, regarding which it could have, as in this case, no knowledge or experience.

He would not style this measure by the epithet with which the idea it contained was unanimously rejected by the Council of 1860, but he would express his firm opinion that it was a measure which could not be defended on the grounds of principle or expediency.

The Hon'ble MR. HOBHOUSE was strongly opposed to the amendment, and he would go as briefly as he could through the several objections of the Hon'ble Mr. Shaw Stewart. In the first instance, he said that the Council of 1860 had strongly condemned this measure: that he (MR. HOBHOUSE) denied, not because the word "monstrous" was not used by one of the Members, but because on looking over those debates there seemed to him to have been no discussion at all. Mr. Harington had simply put the usual clause, *viz.*, a stamp of eight annas on the institution of criminal complaints; then Sir Barnes Peacock objected, not that the tax was immoral, but simply that Bengal should not be taxed because Bombay and Madras were not, and then certain Members agreed to that without any debate at all. He had looked very carefully through the debates, and found that only a very short discussion took place, and that it was apparently

decided that because Bombay and Madras did not pay, Bengal should not. That seemed to him rather an impotent conclusion. He did not think that, until the present time, the question had ever been properly and fairly laid before the public or this Council. Then the Hon'ble Mr. Shaw Stewart took exceptions to the opinions expressed by different authorities in Bengal. He said that all the officers in Bengal wanted the imposition of such a stamp-duty, and then immediately afterwards he said that he did not think they wanted it, but he (MR. HOBHOUSE) would shew that all the authorities on this side of India were in favour of such a measure. The Lieutenant-Governor of the North-Western Provinces had strongly advised the imposition of an eight-anna stamp-duty; the members of the Board of Revenue and of the Sadr Court of those provinces said the same. The Chief Commissioner and every officer of experience in Oudh said the same. The Lieutenant-Governor, the Financial Commissioner, and the Judicial Commissioner of the Panjáb said the same. The Lieutenant-Governor of Bengal said the same; and so on through the different Commissioners and Magistrates in Lower Bengal. The Hon'ble Mr. Shaw Stewart had stated that, of the Commissioners in Bengal who were consulted on the subject, some said they wanted the imposition of the stamp-duty, but others said nothing about it, but he (MR. HOBHOUSE) did not think that that was the way in which the matter should have been stated to the Council. It was found by the Lieutenant-Governor of Bengal that a certain number of false and frivolous complaints for offences of a minor character were being instituted before the Magistrates' Courts; he had pointed this out year after year, and told the Magistrates that they had a remedy for the prevention of frivolous and vexatious complaints in the Code of Criminal Procedure, and asked the Magistrates why they did not adopt the remedy; and in reply the Magistrates said that they had applied the provisions of the Code of Criminal Procedure, but found that they did not answer the purpose. The Lieutenant-Governor had then asked the Commissioners and other officers how they would propose to remedy the evil, and, though he had not suggested this remedy of the imposition of a stamp-duty, yet, out of eight Commissioners, four volunteered their opinion that the imposition of a stamp on the institution of such complaints was necessary, and the Commissioner of Nuddea alone thought that the imposition of a stamp would not effect the object desired: that, however, was contrary to the opinion of the judicial officers in the Nuddea Division. He said that he would put nothing between a complainant and the Magistrate to whom he came for redress, and that was a fair argument enough, but he went on to say that the moment a man had made out his complaint, he would make him pay the summons fee. But that was the very thing which he (MR. HOBHOUSE) would not do. When a man had made out his case *primâ facie*, he would let

him go on without payment; but to say that you ought not to step between a man and the Courts before the complaint had been made, but that you might do so after a case had been made out, was, in his opinion, the very reverse of what ought to be done. The Hon'ble Mr. Shaw Stewart said he did not think that the proposed stamp would check petty complaints, but in saying so he was opposed to every authority on the subject; for it was certain that the moment the institution-stamp and payment for summonses were abolished, immediately up sprung an enormous number of petty complaints, and something like seventy-five per cent. of those complaints were never called up for trial at all, or were dismissed. The Hon'ble Mr. Shaw Stewart would not have such complainants pay for the expense of the Courts whose time they so largely occupied. He (MR. HOBHOUSE) so far agreed that access to the Criminal Courts should be as free as possible; all that he wanted was that complainants should pay something. Formerly, there was not only the institution-stamp of eight annas, but the subsistence allowance of witnesses, which was calculated at least at one anna a day, and it might be three annas, for thirty days; besides *talabáná* for peons at the fate of two annas per day; so that, formerly, a complainant never had to pay less than three rupees, and in some cases the expense might amount to six or seven rupees, before he could be heard in the Criminal Courts. In lieu of all those expenses, it was now proposed to impose the very low stamp of one rupee; eight annas to represent the institution-stamp, and the rest the summons, *talabáná*, &c. He thought that the safeguards that had been provided would prevent any injustice being done. The Hon'ble Mr. Shaw Stewart did not understand how a Magistrate was to exercise the discretion vested in him; but he (MR. HOBHOUSE) thought that, ordinarily speaking, on the average it would be found that officers did exercise their discretion very well, and why the Magistrates should not exercise their discretion judiciously in this instance he could not understand. If a man came with what was vulgarly called a black eye, and said A B struck him, the Magistrate would no doubt, in the exercise of his discretion, permit such a person to make his complaint without payment of stamp-duty. Again, if in any case the complainant made out his statement, he could be reimbursed by putting on a fine for the purpose of recouping the complainant; and as it was found that, in the majority of cases, fines were usually recovered, therefore the complainant would in most cases be recouped his original expenses. Then, it should also be remembered that, under the provisions of Act XVIII of 1865, which were saved by this Bill, the Governor General in Council could exempt any particular province or place from the operation of any one or more parts of the stamp law; and therefore there was

not only the discretion of the judicial officer, and the probability of repayment of a complainant's expenses to act as safeguards, but there was also the power of exemption given to the Governor General in Council.

MR. HOBHOUSE would now say something on the general principle that complainants should, in each particular instance, be called on to pay something towards the expenses of the Courts. Officers of great experience said that the present law, by opening the way too readily to complaints of a trivial and false character, prevented all compromise out of the Courts. If, formerly, a man got a box in the ear, he would consider whether he should go into Court, because he would have to pay for complaining; but now he would say—"It will cost me nothing at all; I shall make out a plausible story; my enemy will come up to the Court and bring his witnesses, and then I am not to the fore; I do not appear again; my enemy is called up; his witnesses (innocent persons) are brought up"—and thus a feud was got up in the village. But if such a man had to pay a stamp of one rupee, he would never have brought the complaint, and no feud would have arisen. He (MR. HOBHOUSE) therefore thought the imposition of an institution-fee of one rupee would tend to keep from the Courts petty matters which ought not to be brought into Court at all. The Hon'ble Mr. Shaw Stewart had also said that if you imposed a stamp-duty only on the more trifling offences, it would have the effect of inducing a person who wanted to bring a false or vexatious complaint to select a heinous offence in order to avoid the stamp-duty, but he (MR. HOBHOUSE) thought that the experience in Bengal was different; that, for the purposes of a false complaint, people selected a trivial offence in preference to one of a more heinous nature. Again, it was said that the tax would be unpopular and unproductive. He doubted that, because it was not so unproductive before; in Bengal it actually produced about a lákh and a half of rupees, in addition to the *talabáná* and other fees; so that, in reality, the proposed institution-stamp should bring in at least as much, as the fee before was much less. He believed that he had now answered, to the best of his ability, the various objections raised by the Hon'ble Member, and he trusted that the Council would consider the answers satisfactory.

The Hon'ble MR. SHAW STEWART had a few words to say in rejoinder. He thought the Hon'ble gentleman could not have examined the proceedings of 1860, when he said there was no discussion, because he found that the Chairman, Sir Barnes Peacock, Sir C. Jackson, Mr. Harington, Mr. LeGeyt, Sir B. Frere and Mr. Wilson, all spoke in condemnation of the proposal to tax criminal complaints. In fact there was no one in the Council who attempted

to defend it. The Hon'ble Mr. Hobhouse considered that the divergence of opinion among the Bengal Commissioners was of no weight, but he would remind his Hon'ble friend that the Government of Bengal had specially asked the Commissioners to state what remedies they would propose, and though the remedy of an institution-fee was not expressly suggested to them, yet, there was no doubt, they would have proposed it if they had thought it necessary or likely to succeed. He could not too often draw the Council's attention to the difference between an institution-fee on the first complaint or application, and the levy of the costs after that complaint had been entertained, and it was this practice, so well known in England, that Mr. Dampier had suggested for Bengal. As for the chance of village feuds arising from complaints being freely taken up by Magistrates, he was of opinion that they were much more likely to be caused, and compromises prevented, by a measure which would limit in any degree the right of petition, and the power of the Magistrates to interfere with sound and reasonable advice.

The Hon'ble MR. HOBHOUSE said, he believed he had omitted to answer the observations of the Hon'ble Mr. Shaw Stewart as to the distinction of offences adopted by the Select Committee. He (MR. HOBHOUSE) had said before that it was extremely difficult to frame the distinction; no doubt there were one or two offences of a somewhat heinous nature for which complainants would have to pay a stamp-duty; but as it was found extremely difficult to draw the line, that list was taken which seemed on the whole to meet the case the best. He did not say that the line that had been drawn between offences for which complainants should pay, and offences complaints regarding which might be made without payment of stamp-duty, was perfect, but it was as perfect as the law would admit of its being made.

The Motions were severally put and negatived.

The Hon'ble MR. SHAW STEWART would ask the Hon'ble Mover of this Bill one question. Whether, being aware that the Bombay Government, having been telegraphed to, had replied that it was averse to the measure as regarded an institution-fee on criminal complaints, and that it had had no opportunity of expressing at length its opinion, he proposed to introduce any provision by which Bombay would be exempted temporarily or otherwise from the operation of the portion of the Bill referred to.

The Hon'ble MR. HOBHOUSE said, it seemed to him better to lay down a principle which would apply to all the provinces of India. There was an Act by which the Governor General in Council could exempt any province from the

operation of this particular schedule. It seemed better to pass the Bill as it stood, so as to leave the Governor General in Council to exempt any place he thought necessary.

The Hon'ble MR. SHAW STEWART desired to move an amendment with the object of suspending a portion of the Bill in the Presidency of Bombay, and asked His Excellency the President whether he might introduce it now, or move the adjournment of the debate.

His Excellency THE PRESIDENT expressed a desire that the debate should proceed.

The Hon'ble MR. SHAW STEWART then moved as an amendment:—

That the following section be added to the Bill:—

"So much of this Act as requires any petition or application regarding a criminal offence, or the first examination of a complainant, to be written on stamp paper of the value of one rupee, shall not take effect in the Presidency of Bombay for the period of one year from the date of passing of this Act, unless the Governor in Council of Bombay shall by order in the Government *Gazette* direct it to take effect at any earlier date."

He said he hoped this amendment would be approved. The Government of Bombay had never had an opportunity of giving an opinion on the matured measure. In November last he was asked by the Stamp Commissioners to obtain the opinion of the Government of Bombay on this among other points, and he wrote to the Chief Secretary, forwarding copy of a memorandum prepared by Mr. Hobhouse. The Bombay Government probably deferred answering this letter till they had the report of the Stamp Committee, which they evidently expected would be sent them. At length, and apparently after learning from a telegram from the Assistant Secretary that their opinion was expected, they forwarded a reply to his letter of November, of which he would read the following:—

"In reply, I am directed to observe that it would not seem necessary to enter at any length into the first question, because it appears from paragraph 18 of Mr. Hobhouse's memorandum that the tax in question is admitted to be 'evidently not needed,' while paragraph 51 of the some memorandum shows that its imposition is now contemplated only in the Bengal Presidency. As, however, the Committee appointed to consider the subject of judicial stamps has asked for an expression of the opinion of this Government, I am directed to state that His Excellency in Council fully concurs with yourself and your predecessors in objecting to the tax; that he is strongly opposed to its imposition in this Presidency, where, he believes, it would be very unproductive and most justly unpopular, and that, if there be any serious desire to extend such a tax to this Presidency, he trusts that this Government will be allowed full time to obtain information and opinions from the local officers, and to submit their views in a matured shape to the Government of India."

In addition to this, he found from a summary that had been prepared in the Bombay Secretariat that two officers (a Revenue Commissioner and a Judge) were in favour of a tax on criminal complaints, while "the great majority of officers deprecated any alteration in this respect." MR. SHAW STEWART had already read to the Council the opinion of one of the ablest members of the Bombay Civil Service, and he thought that this Council could not force the measure on Bombay in spite of the facts that no fee or costs had ever been levied there, that the Government had never been properly consulted on the measure, that it was averse to it, and that nearly all the public officers in the Presidency objected to it. His amendment would give the Government of Bombay a year's time to state their objections, and would not cause a loss of more than thirty or forty thousand rupees of revenue.

The Hon'ble MR. HOBHOUSE said he was in the hands of the Council in this matter. He would briefly explain how it was that the matter had been submitted to the Bombay Government without the expression of his opinion as to the advisability of imposing this criminal stamp in the Bombay Presidency. The truth was that he had not formed any opinion when he first drew up certain rough notes for the consideration of the Stamp Committee. These notes were put into the hands of the Hon'ble Mr. Shaw Stewart, and he (MR. HOBHOUSE) had not been aware that they had been sent to Bombay. So far as the sending of the Stamp Commission's Report to Bombay was concerned, he was not aware how it had happened that it had not been forwarded to that Presideney. He preferred that the Bill should be passed as it was, and that the Governor General in Council should exempt that Presidency if he thought proper. But if the Council thought otherwise, he would not object.

The Hon'ble MR. TAYLOR said, he thought there was a strong objection to making any exemption in favour of Bombay. He could not conceive any such objection that did not equally apply to Madras, and the opinions received from the Madras Government were entirely in favour of the Bill.

His Excellency THE PRESIDENT said that no doubt it was to be regretted that the draft of the Bill was not sent to Bombay with the view of eliciting the opinion of the Bombay Government on it; but the fact was that the details of the Bill had been before that Government, and that they had given an opinion on the subject under discussion. The Council had heard the letter of that Government read, and also an abstract of the opinions of the different local judicial officers. It seemed, therefore, that all the information likely to come from Bombay was before the Council. At any rate, if the Government of Bombay should think proper again to make a representation on the subject, he was confident that it would have that consideration that was due to it. But

it seemed to His Excellency inexpedient to accept the amendment before the Council. As remarked by the Hon'ble Mr. Taylor, if the Council exempted Bombay, they were bound also to exempt Madras. His Excellency even went further: he thought that if they delayed to extend the law to Bombay and Madras, they were bound to give the Bengal Presidency the same advantage. He was in favour of the Bill being passed as it was, leaving it to the Bombay Government to come up and show any reason for exempting that Presidency from the operation of the clause imposing an institution-fee on certain criminal complaints. The Hon'ble Mr. Shaw Stewart had spoken very effectively in favour of the views he had urged; but His Excellency must say, as an old Magistrate and Commissioner, that he did not admit the force of his arguments. From his own experience he could say that without preventing people coming up, a small stamp-duty would have the effect of diminishing the number of petty and vexatious complaints which were continually brought up in every part of India where he had been. While now and then a man might be desirous of presenting to a Magistrate a petition that should be exempted from the payment of stamp-duty, nevertheless the great majority of complaints were really fit subjects of taxation, as they were of the nature of petty misdemeanours. Cases of that sort should not be exempted, and he thought the levy of a stamp-duty in such cases would discourage people from quarrelling with their neighbours, and make them endeavour, so far as was practicable, to adjust their disputes amongst themselves. If people chose to complain about petty matters, they should pay some small penalty for the luxury of coming into Court.

The Motion was put and negatived.

The Hon'ble Mr. Hobhouse moved that the Bill as amended by the Select Committee be passed.

The Hon'ble Sir Henry Durand wished to say a few words in connection with the Bill before intimating his agreement to it. He made these remarks in consequence of observations from various quarters to the effect that, for the successful working of a Bill of this kind in the hands both of the public and of the judicial officers, it was a great matter that it should be in a simple compact form. He knew very well that the revision of Schedule A had yet to take place, and that the Right Hon'ble Mr. Massey was anxious that the passing of this Bill should not be delayed; he (Sir H. Durand) had not, therefore, thought it necessary, in the previous stages of this Bill, to say anything with reference to this subject, because he had

no doubt that the Hon'ble Mr. Hobhouse would have the time and the leisure, during the next Session of the Council, to put the Bill into a complete form, repealing Act X of 1862 and the amending Acts which had followed, including the present Bill, and consolidating the whole into one complete Act, throwing out all that he wished to omit in the former Acts, but keeping all that he wished to retain; and putting the whole before the public in the form which was most convenient, with the addition of a good index.

The Right Hon'ble MR. MASSEY said that the whole subject of the stamp laws would come before the Council during their next Session, and then any errors which existed in this Bill might be corrected. He hoped that would satisfy not only the Hon'ble Sir Henry Durand, but also the Hon'ble Mr. Shaw Stewart who had been so discomfited to-day. If the Bombay Government should be of opinion, from the working of this Bill, that it should be modified or that the Bombay Presidency should be entirely excluded from the operation of the particular clause which had been so much discussed, those reasons would come with much greater weight when they were backed by the experience of a year.

The Hon'ble MR. SHAW STEWART said that it would have been better, in his opinion, to have made enquiries before legislating, than to pass a law to which all local officers objected, and to promise revision if after trial the law seemed undesirable.

The Right Hon'ble MR. MASSEY thought that the law was based on most ample and extensive enquiry.

The Motion was put and agreed to.

DISTRIBUTION OF BUSINESS PANJÁB COURTS' BILL.

The Hon'ble MR. BRANDRETH presented the Report of the Select Committee on the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts. He said that the amendments made by the Committee were merely that, in accordance with the wishes of the Lieutenant-Governor of the North-Western Provinces, and the Chief Commissioners of Oudh and the Central Provinces, the Bill had been extended to the Jhánsí Division, to Oudh and the Central Provinces. A section had also been added, to prevent misconception, that nothing in the Act should apply to Courts of Small Causes. As the amendments were of so simple and obviously indisputable a character, he would ask His Excellency to suspend the Rules for the Conduct of Business to enable him to pass the Bill at once through it subsequent stages.

The Hon'ble MR. BRANDRETH having applied to His Excellency the President to suspend the Rules for the Conduct of Business,—

The President declared the Rules suspended.

The Hon'ble MR. BRANDRETH then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PETTY SESSIONS (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. MAINE introduced the Bill to remove doubts as to the legality of certain sentences passed by tribunals, called Petty Sessions Courts, in the North-Western Provinces. He said that, on the last day of meeting, he had explained to the Council that the Bill was deemed necessary by the High Court of the North-Western Provinces; that, looking to the system of Indian criminal procedure, the legality of sentences passed by a Board of Honorary Magistrates sitting together was at least doubtful. A copy of the Bill had been forwarded to the learned Chief Justice of the High Court at Agra, and a letter had since been received from the Chief Justice, from which he (MR. MAINE) concluded that the Bill was approved. The Bill, which was very short, provided that—

"When two or more persons authorized to exercise all or any of the powers of a Magistrate sit together for the despatch of business in any place in the said provinces, any summons, warrant or process or other proceeding, and any order, judgment, finding or sentence, signed by any two or more of them, shall be as valid to all intents and purposes as if it were solely signed, when the powers of one or more of them are higher than the powers of the others or other of them, by such one of them as has, or by one of such of them as have, been invested under section 23 of the Code of Criminal Procedure with the highest of such powers, or, when their powers are equal, by any one of them;"

And that—

"All sentences heretofore passed by any Magistrates sitting together in any such place as aforesaid, shall be deemed to be as valid as if this Act had then been passed."

It was also provided that the High Court might frame rules for the conduct of business by Magistrates sitting together, and that any Local Government might extend the Act.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,—

The President declared the Rules suspended.

The Hon'ble MR. MAINE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill be passed.

The Motion was put and agreed to.

His Excellency THE PRESIDENT said that his Hon'ble friend Mr. Cowie had sent in his resignation. They were all sensible of the value of the opinions which he had given them on commercial questions, and of the uniform courtesy of his demeanour. They deeply regretted the loss of his services after the unprecedented period of four years.

The Council then adjourned *sine die*.

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

CALCUTTA,
The 22nd March, 1867.

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