# COUNCIL OF GOVERNOR GENERAL

# OF

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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.

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The Council met at Government House on Friday, the 1st 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 Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
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.

## ORIENTAL GAS COMPANY EXTENSION BILL.

His Honour the LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to empower the Oriental Gas Company, Limited, to extend their operations to certain places in British India, be taken into consideration. The Select Committee had made no amendments in the Bill.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR also moved that the Bill be passed.

The Motion was put and agreed to.

## ADMINISTRATION OF JUSTICE (DARJÍLING) BILL.

His Honour the LIEUTENANT-GOVERNOR also presented the Report of the Select Committee on the Bill to make further provision for the administration of justice in the District of Darjíling.

## PRESIDENCY JAILS' BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of the High Courts at the Presidency towns, be taken into consideration. He said that Act XII of 1865, as had been before explained to the Council, had been originally framed for the purpose of being introduced into the Bengal Legislature; but owing to a technical difficulty, His Honour the Lieutenant-Governor had brought it into the Imperial Council, and it had become law. The immediate occasion of the present measure had been a request of the Madras Government that the Act might be extended to Madras, and Calcutta had only been included in order to bring the whole law on the subject within the compass of a single enactment. The course pursued had been so far fortunate that it had enabled MR. MAINE to have several conferences with the present Chief Justice of the High Court at Fort William, and owing to his suggestions and those of other Judges, the Select Committee had recommended that certain duties of the Superintendent of Jails, which by the existing law were left to inference, should be expressly set forth in the present measure. Such duties were those of retaining in custody prisoners for contempt, prisoners committed for confinement under the Mutiny Act, prisoners reserved when the High Court was not actually sitting, and prisoners committed by the Coroner. It was not easy, when the legislature had to deal with so very ancient an officer as the Sheriff, to be sure that all his duties had been completely transferred to a new official. But to prevent any danger of omission, a Section had been introduced of a general character:—

Superintendents to detain persons committed.

"The said jails shall be the jails of Calcutta, Madras and Bombay respectively, and the Superintendents so to be appointed are hereby respectively authorized and required to keep and detain all persons duly committed to their custody pursuant to the provisions of this Act or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner or other public officer lawfully exercising Civil or Criminal jurisdiction according to the exigency of any writ, warrant or order by which such person shall have been committed, or until such person shall be discharged by due course of law."

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved that, in lieu of the definition of "Magistrate" in Section 1, the following be substituted, *viz.*—

"Magistrate" includes a Magistrate of Police appointed under any Act for the time being in force for regulating the Police of the towns of Calcutta, Madras and Bombay."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the words "in Calcutta as if the words Superintendent of the Presidency Jail, and" be omitted in lines 8, 9 and 10 of Section 18.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

## INDIAN SUCCESSION ACT, 1865, EXTENSION (STRAITS' SETTLEMENT) BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to extend the Indian Succession Act, 1865, to the Straits Settlement.

## CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division.

## PORT DUES (MOULMEIN AND BASSEIN) BILL.

The Hon'ble MR. GREY moved that the Report of the Select Committee on the Bill for the levy of enhanced Port-dues in the Ports of Moulmein and Bassein, and to provide for the establishment and maintenance of Coast Lights in the eastern part of the Bay of Bengal, be taken into consideration. He said that the only substantial alteration which the Committee had made was to provide, in Section 3 of the Bill as amended by them, for the prospective levying of tolls on vessels making voyages from Rangoon or Moulmein to Bassein, or from Bassein to Rangoon or Moulmein.

The levying of tolls on ships making those voyages was prohibited by Section 6 of the original Bill; but the Chief Commissioner of British Burmah had brought to notice that it would be necessary to levy such tolls when the light house in the Baraguay Flat or the Krishna Shoal should have been established and maintained. It was therefore thought necessary to insert a clause bringing these voyages under the provisions of Section 3, in the same manner as voyages from Calcutta to Akyab.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

## PÂNDHARÍ TAX (CENTRAL PROVINCES) BILL.

The Right Hon'ble MR. MASSEY moved that the Report of the Select Committee on the Bill to provide for the re-assessment of the Pándharí tax in certain parts of the Central Provinces, be taken into consideration. He said that the Select Committee to whom the Bill had been referred had made two amendments of some importance. The Bill, as originally drawn, was limited to the Native community in accordance with the practice under which the tax had hitherto been levied; but there appeared to be no sufficient ground for adhering to that limitation, and the Committee had accordingly made Europeans subject to the operation of the tax, in the same manner as Natives had hitherto been. As to the rates of assessment, the Committee, considering them too high, had provided that no person should be assessed at a rate exceeding two per cent, and had limited the maximum amount leviable from any tax-payer to five hundred rupees, instead of one thousand rupees as it stood in the Bill as originally drawn. The latter sum was considered to be excessive, and the Committee were unanimously of opinion that it might properly and conveniently be reduced. A provision had also been made limiting, in the first instance, the process for the recovery of arrears to distress and sale of the moveable property of the defaulter. MR. MASSEY hoped that these amendments would be considered improvements on the Bill as it was originally drafted, and that the Bill as amended by the Select Committee would be passed.

The Hon'ble MR. BRANDRETH said that the Bill had been originally prepared by the Chief Commissioner of the Central Provinces, and he therefore concluded that it correctly described the tax which was there collected under the name of the Pándharí tax; as such it did not appear to be based on any very correct principles. It was not a license-tax on trades and professions, as it was not necessary that any one should exercise a trade or profession in order to be subjected to it. Nor was it a tax on incomes other than agricultural, because, by Section 3 of the Bill, certain persons on receipt of fixed salaries and pensions were to be exempted. If tried by any general rule of taxation, the Pándharí tax was no doubt open to serious objections. There appeared no sufficient reasons why persons who invested all their money in Government paper should be subjected to the tax, while persons who invested their whole possessions in landed property should not be subjected to it. But the Select Committee had not had before them any information which would have enabled them to make any material alterations in the Bill; they were obliged, therefore, to accept it very much as received from the Chief Commissioner of the Central Provinces. A great argument in favour of the tax was that it had been in existence for a very long time, and was not op-

posed to the feelings of the people. It was moreover very difficult to devise any new system of taxation in India which would not be open to objection in one form or another. With regard to the amendment bringing Europeans under the operation of the Bill, he would observe that, where Europeans were placed in the same circumstances as those Natives who would be subject to the tax, there seemed no reason why they should be exempted. It was not clear whether it was intended that the Chief Commissioner and other officers in the service of Government should be exempted, but power was given to the Chief Commissioner, with the sanction of the Governor General in Council, to exempt persons on receipt of fixed salaries. It was not probable that the Chief Commissioner intended the Act to apply to such persons, because the Bill originally did not include Europeans. A tax on persons other than those who paid the land revenue was, he believed, very common under former Governments in many parts of India, but in the Bengal Presidency the Central Provinces' administration alone was entitled to the credit of having retained a tax of this nature for imperial purposes; the reason why he intended voting for this Bill was not that he considered the Pándharí a perfect tax, but because it was certainly necessary to provide an indemnity for anything done in regard to the collection of this tax hitherto; and until a better tax could be devised, it was certainly desirable that the tax should continue to be collected as heretofore; he would, therefore, with these remarks, beg to support the motion.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

## PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BRANDRETH moved that the Report of the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in the Panjáb, and for other purposes, be taken into consideration. He said that several amendments had been introduced into this Bill by the Select Committee which had no doubt considerably improved it, but he did not intend to ask the attention of the Council to more than one or two of those amendments. In Section 12, which gave power to the Lieutenant-Governor of the Panjáb to suspend or limit all or any of the powers of any Municipal Committee, and to cancel any of the proceedings or rules of such Committee, he was obliged to consent to the omission of the word "modify." It was in regard to this Section that he had had most difficulty in overcoming the objections of one

or two Members of the Committee, and inducing them to let the Section stand in its present modified form. He thought it was necessary that the Lieutenant-Governor should have the powers given by the Section as it now stood. Municipal Committees were controlled by the necessity of obtaining the previous sanction of the Lieutenant-Governor to any tax they wished to impose. But suppose a Committee, influenced by the Deputy Commissioner, wished to levy a tax on a commodity such as salt, the great marts for which were limited in the Panjáb to one or two parts of the country? or suppose they should levy a tax on some great branch of industry, which might be materially injured by the imposition of such a tax? There were many such taxes already sanctioned, and no doubt without a very minute scrutiny of the items of which those taxes were composed, such injurious imposition might frequently be made. It seemed, therefore, to him that it would be proper to give the Lieutenant-Governor the power of cancelling any objectionable proceedings of this kind. A Bill of this nature had also been applied for by the Chief Commissioner of the Central Provinces, and it was thought that the present Bill would suit those provinces as well as the Panjáb. Accordingly, an additional Section had been introduced enabling the Governor General in Council to extend the Bill to any town in the Central Provinces A new Section had also been added by which provision was made that the Act should expire in five years. Several of the provisions of the Bill were of an experimental character, and it was therefore thought that the propriety of continuing the Act should be reconsidered after that interval. By MR. BRANDRETH'S agreeing to that provision several differences which existed between himself and other Members of the Committee were smoothed over, as the Committee were quite willing to give the Act a fair trial for five years. He might also mention that the Lieutenant-Governor of the Panjáb approved of the Bill as amended, but regretted that his proposal for directing a portion of the funds of the Muncipal Committees to be placed at the disposal of Government should have been omitted, as the Select Committee had not approved of it. No doubt, under the Act for appointing a Municipal Committee in Lucknow, the powers of the Committee were very limited, but the Members of the Council at the time that Act was passed must have held very different opinions, as under that Act the Municipal Committee had no voice whatever with regard to the things to be taxed, or the amount of taxation; they could claim one-third of the net collections of the tax.

The draft Bill received from the Chief Commissioner of the Central Provinces restricted the powers of the Municipal Committees even still more. MR. BRANDRETH had taken charge of the Bill, but he found that it would be quite impossible, after the expression of the opinion of the Council on the motion to

introduce the present Bill, to propose a Bill of that character for the sanction of the Council. The Select Committee appeared willing to agree to any powers proposed to be vested in Municipal Committees, but wished to limit the powers of the Chief Commissioner or the Lieutenant-Governor as much as possible. The Chief Commissioner of the Central Provinces did not approve of the Bill as amended by the Select Committee. It would be observed that the Bill had not, however, been made applicable to the Central Provinces in the first instance, but that only a power of extension had been provided. MR. BRANDRETH could not but think that the Governor General in Council would hold that the Municipal Committees ought to be invested with greater powers than they had under the Lucknow Act. The Chief Commissioner of Oudh approved of the Bill, and had suggested that steps be taken to extend the Act to Oudh. If the motion which MR. BRANDRETH now made was carried, he would propose an amendment by which the Act might be extended to Oudh as well as to the Central Provinces.

The Hon'ble MR. HOBHOUSE said that, as he was one of those who *primâ facie* disapproved of many of the provisions of the Bill, he thought it right to state shortly the reason why he agreed to the Bill as it at present stood. In the first place, he had not been aware of the nature of the Municipal Committees in existence in the Panjáb. He now found that, as far as the persons composing those Committees were concerned, they were in fact elective bodies; that they were chosen by members of different trades, or in some such way, from amongst the towns-people by the towns-people themselves. He also found that those Committees had done, and were doing, a great deal of good service, and that in many places the authorities spoke of them as composed of persons taking a real interest in works of improvement in the towns; and he found further that they were generally composed of Natives; that the officers of Government were in a great many cases not even members of the Committee, and that, practically, the whole business of the Committee was carried on by Native members. It was therefore quite clear that if the papers laid before the Select Committee showed—and he believed that they did show—what was going on in the Panjáb, an entirely novel system of governing towns in that province was at this moment being tried. It therefore seemed to him that municipal bodies of that kind were carrying on a business of a very important nature, and without any regular control of the authorities. It was essential to have some real control over their powers, and he therefore now agreed to that Section of the Bill which gave the Lieutenant-Governor power to suspend or limit any of the powers of Municipal Committees, and cancel their proceedings whenever necessary. For instance, it might happen amongst elective bodies, that some sort of taxation might be introduced which might cause great harm to the country.

Another objection that he had expressed to the Bill was that it gave no power to the Committees, while it gave great power to the Lieutenant-Governor. In this he found that he was to some extent mistaken. He thought now that the Committees had a real power, and one which it was very important to watch. In the first instance, they were the persons who must originate the tax out of which the municipal funds were to be created, and they must not only originate the tax, but must also declare the amount and rate of taxation; and it was only when they had made a proposition for taxation, that the sanction of the Lieutenant-Governor came in. The Committees had also several other powers. There was, out of the funds to be collected, what was to be called a common fund; of that fund they had the entire control and application subject to certain provisions of the Bill. They might also appoint their own officers, fix their salaries, and remove them as they thought fit, and they had the further power of making rules for carrying on their duties. Although it was declared that Committees must provide for a Police establishment, the cleanliness of of streets, roads, drains, and so on, they had at the same time power to construct new streets, drains, tanks, and water-courses, and to construct and provide for the management of poorhouses, dispensaries, market-places, and other works of general utility, and generally to do all things necessary for purposes of conservancy and local improvement. They were also to make provision for the establishment of schools, and otherwise for the promotion of education. They had also power to define, prohibit, and remove nuisances, and to provide for the registration of births and deaths. These seemed really important functions, and his objection to the powers conferred on Municipal Committees did not therefore now exist. They had a real power and seemed to have been exercising it hitherto with very great attention and success. Under these circumstances, he thought the power given to the Lieutenant-Governor to suspend any of their powers, or cancel anything that might have been done by them, was quite sufficient, and he had therefore now no objection to the Bill.

His Excellency the COMMANDER-IN-CHIEF said, with regard to what the Hon'ble Mr. Hobhouse had mentioned, he should like to put a question to the Hon'ble Member who was in charge of the Bill. HIS EXCELLENCY did not wish to say that he dissented from the Bill, but he wished to know whether the consequences of a particular part of Section 10 had received that attention from the Select Committee which the Council had a right to expect. It was stated in the 10th Section, that any Committee might make rules for regulating the time and place of their meetings, the conduct of their business, the division of duties among themselves, and the salaries, appointment, suspension, and removal of their officers. It had been his fortune in certain parts of

India, when watching the effect of municipal measures not dissimilar to the present, to observe that, in the matter of salaries, the municipal authorities were very apt to come into direct collision with the executive body from which they sprung. It was quite impossible that municipal business could be carried on without the employment of officers with salaries sufficient to induce them to forsake all other business, and devote their time exclusively to that of the Municipality. He had known one or two important occasions when the municipal authorities came into contact with, and contested the wishes of the Government, and the mode they had adopted of enforcing their opposition was, if possible, to reduce or suspend the salary of some important functionary on whom the very existence of the municipality depended. He had seen this take place; animated debates went on in opposition to the Government, which was obliged to adopt very summary measures, for otherwise the municipal business would have come to a stand-still. The Hon'ble Mr. Hobhouse had detailed to the Council the very great powers which were confided to Municipal Committees, and which were controlled in a general manner by the 12th Section of the Bill. The Hon'ble Mr. Brandreth had suggested that he was dissatisfied with that Section, because it took away from the Lieutenant-Governor such a power as he (the COMMANDER-IN-CHIEF) ventured to think might possibly be required for the control of the power given in the 10th Section. He thought that that was a matter which should not be treated hurriedly. If the Hon'ble Member in charge of the Bill should be inclined to divide the Council as to that particular part of the 10th Section which related to salaries, HIS EXCELLENCY would be happy to render him his support.

The Hon'ble MR. BRANDRETH observed that the matter had been very carefully discussed by the Select Committee. Though it did not meet with his approval at the time, he did not now wish to suggest any amendment.

The Hon'ble MR. MAINE said that His Excellency the Commander-in-Chief would observe that the Bill was limited to five years. There could be no doubt that the Panjáb Government was trying a set of very interesting experiments, and among them was that of permitting Committees to fix the expenses of their establishments. If, at the end of the period to which the measure was limited, it proved that these municipal bodies had laid themselves open to the suspicions which, no doubt with some reason, had been expressed by His Excellency, it would be a grave question whether the present enactment should not be modified in the sense of the Commander-in-Chief's remarks.

The Hon'ble MR. HOBHOUSE believed it was on his recommendation that the word "modify," which would meet the objection of His Excellency the

Commander-in-Chief, was struck out. If the rest of the Council were willing to re-insert the word, he would raise no objection.

The Hon'ble MR. RIDDELL objected to any such amendment being made without due consideration: if it were wished to make the amendment, the consideration of the Bill should be deferred for a week.

HIS EXCELLENCY THE PRESIDENT said that he was told that the objections which had been raised to the Bill on a former occasion had been withdrawn. He was always of opinion that it was very important that the powers proposed to be conferred by the Bill should be given, and he was quite confirmed in that opinion from his own knowledge and experience of what had hitherto been done on the subject of municipal management and taxation in the Panjáb, where he had always found the municipal system to work well. The objections had, moreover, been effectually met by the provision limiting the operation of the Act to five years, and he had every hope that the experiment would be successful. The powers of the Committees were very important, but he did not think they were liable to abuse. He thought, also, that the powers given to the Local Government were proper and reasonable. The Committees had hitherto worked in accord with the Lieutenant-Governor, and HIS EXCELLENCY thought they would continue to do so. He was quite sure that the present Lieutenant-Governor of the Panjáb, or any future Lieutenant-Governor, would never think of initiating or proposing any rule or principle without having previously consulted, not only the Municipal Committee, but the leading inhabitants of the town which it would affect. If any rule were considered objectionable, the Lieutenant-Governor would no doubt modify it, or arrange for its modification.

The Motion was then put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the following Section be substituted for Section 21:—

"21. Section 20 of this Act shall apply to the Central Provinces and Oudh, as if for the words 'Lieutenant-Governor or Chief Commissioner of the Panjáb,' the words 'Chief Commissioner of the Central Provinces and Oudh' were substituted, and as if the extension next hereinafter mentioned had been made. And it shall be lawful for the Governor General of India in Council to extend this Act or any of its provisions, by notification in the *Gazette of India* and the local official *Gazette*, to any town in the territories respectively under the administrations of the Chief Commissioners of the Central Provinces and Oudh, and on and after such extension, this Act shall be construed in such town as if the words 'Lieutenant-Governor' were defined to include Chief Commissioners of the Central Provinces and Oudh; as if for the word 'Government,' the word 'administration' were sub-

Application of Section 20 to Central Provinces and Oudh.

Power to extend this Act to Central Provinces and Oudh.

stituted; and as if for the words and figures 'Act No. XXVI of 1850 (*to enable improvements to be made in towns*),' the words and figures 'Act No. XVIII of 1864 (*to provide for the appointment of a Municipal Committee for the City of Lucknow*)' were substituted. Provided that, when such extension shall be effected, the previous sanction of the Governor General of India in Council shall be necessary to the validity of any order made by a Chief Commissioner under Section 12 of this Act."

The Motion was put and agreed to.

The Hon'ble MR. BRANDRETH also moved that the words "or Oudh" be inserted after the word "Provinces" in line 5 of Section 22; and that the words "or Oudh, as the case may be," be inserted after the word 'Provinces' in line 7 of the same Section.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART observed that there was an important provision in Act XXVI of 1850, an Act which was mentioned in the Bill before the Council. It was that the publication of municipal accounts every year should be rendered compulsory. It was very important that those accounts should be published, not only in English but in the vernaculars, in order that the affairs of the town might be made known to the people. If the Hon'ble Mr. Brandreth should desire to move such an amendment, it would be well to postpone the further consideration of the Bill.

The Hon'ble MR BRANDRETH thought that the Section of the Bill empowering the Lieutenant-Governor to make rules, amongst other things, for the rendering of accounts relating to the expenditure of the municipal fund, would enable the Lieutenant-Governor to provide for the publication of those accounts.

The Hon'ble MR. RIDDELL thought it was necessary that the accounts should be published. He had himself once asked to see the accounts of certain Municipal Committees, and it was curious to see the modes of taxation adopted. The Commissioners were gradually levying taxes of the nature of transit-duties, which must have a very injurious effect on trade. The limit of five years would no doubt to a great extent remove that objection; but only two days ago he had seen a remark in the *Delhi Gazette*, in which it was stated that a town had been ruined in consequence of a toll levied on goods coming into it. That town was formerly a large cotton-mart, but this year, according to the statement in the *Delhi Gazette*, the trade had been ruined. He thought it was desirable that the accounts should be published.

The Hon'ble MR. HOBHOUSE thought that the objection would be completely met, if, after the word "rendering," the words "and publishing" were inserted.

The Hon'ble MR. SHAW STEWART acordingly moved that the words "and publishing" be inserted after the word "rendering" in line 10 of Section 7.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

## EXEMPTION OF CERTAIN VILLAGES (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART introdnced the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

## TRANSSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART also presented the Report of the Select Committee on the Bill to authorize the transshipment, without payment of duty, of goods imported into Bombay by steamers.

## STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the law relating to stamp-duties, and moved that it be referred to a Select Commitiee with instructions to report in a fortnight. He said, on the last occasion on which he addressed the Council on the subject of this Bill, he had entered so fully into the circumstances which led to the introduction of the Bill and the principles on which it was based, that he would not detain the Council now longer than was absolutely necessary. He would state shortly the circumstances which led to the preparation of the Bill, and show how the different Sections of the Bill bore on the observations that he had made on the last occasion.

The first reason which led to the Bill was a proposition on the part of Mr. Strachey that a certain sum of money should be expended in enhancing the salaries of ministerial officers and of the judicial officers of certain Courts. That proposition involved an extra expenditure of about fifteen lákhs of rupees:

of that sum about eight lákhs had already been sanctioned. Mr. Strachey's proposition had been referred to the Presidencies of Bombay and Madras, and from those Presidencies also it was expected that propositions would come up, involving an expenditure of about fifteen lákhs more, or in all about thirty lákhs for the three Presidencies. To meet that and, generally, the expenditure incurred on account of the Courts, a Commission was appointed for considering the stamp-laws and before them was laid a proposal of the Hon'ble Mr. Roberts. That proposal embraced simply an amendment of the scale in Article 11 of Schedule B of the stamp-law; but the recommendations of the Stamp Commission went further, and as those recommendations would be found embodied in the Bill, he would at once revert to its provisions. The first provision which required notice was Section 2 of the Bill. That was a matter with which the Stamp Commission had no concern, but which had come up after it had commenced to sit. By Section 30 of the stamp-law, certain Courts established by Royal Charter were exempted from the operation of Schedule B. The High Court of the North-Western Provinces was one so established, and the provisions of Schedule B did not apply to it. That Court exercised very nearly the same jurisdiction which had been exercised by the Sadr Díwání and Nizámat Adálat of the North-Western Provinces. It had an appellate jurisdiction, and a jurisdiction on revision, and so on, similar to the late Sadr Court; and in addition it had an extraordinary original jurisdiction. By Section 2 of the Bill it was intended to bring that Court within the scope of Schedule B. A similar provision had been made with reference to the High Court of Calcutta, by Act XX of 1862.

The next Section to which he would refer was Section 4, which had reference to Schedule A of the Stamp Act, and referred, not to proceedings before the Courts, but to private proceedings between parties. It was not intended in the first instance to amend any part of that Schedule, because that Schedule was considered to require much more consideration than could be given to it at present. It was therefore intended to postpone the amendment of that Schedule to the next year. There was no mention in that Schedule of an important class of documents which affected a very large number of people in Calcutta. It was well known that there were many Joint Stock Companies in this town, and when any shareholder in one of those Companies wished to vote by proxy, he was bound to provide his proxy with a letter or power of attorney, the stamp-duty on which was of two kinds—a general letter of attorney was subject to a stamp-duty of four rupees, and a special letter of attorney, when the property was below five hundred rupees in value, was subject to a stamp-duty of one rupee. In the majority of instances, shareholders voting by proxy had pro-

perty in Joint Stock Companies in excess of five hundred rupees. It therefere followed that, when any shareholder wished a person to vote for him by proxy, he must provide him with authoritg to do so on a stamp paper of four rupees. This was the case to such an extent in Calcutta, that very few proxies were stamped at all; the law was evaded, and anything done by authority of those proxies was not binding on the Companies. It seemed quite clear that, with such a heavy duty, the Act would be evaded. He believed that, in England, the duty on such proxies was six pence when given to vote at any one meeting. He therefore proposed to follow the English law, and provide a duty of four annas on every proxy to vote at any one meeting. That was the only amendment of Schedule A which it was proposed to make in this Bill.

He would now refer to the amendments proposed in Schedule B. On looking at Section 5 of the Bill, it would be found that the whole of that Schedule had been repealed; but the object of that was not actually to alter the whole Schedule, but only to bring all the provisions of the Schedule into one place. While there were a few verbal amendments in Articles 1 to 9, there was no material alteration. The Article to which he would therefore first draw the attention of the Council was the tenth. That Article, as it at present stood in the Stamp Act, contained a special rule for Bengal, which declared that petitions of appeal to a Board of Revenue or other Chief Revenve authority, or any other petitions or applications to such Board or authority, or petitions or applications to a Criminal Court or Revenue officer, should be on a stamp-paper of the nature and amount therein described. But there seemed to be no reason why that rule should not be made general in all India. If there was any reason why those petitions and applications should be subject to stamp-duty in Bengal, he thought the same reason would apply to similar petitions and applications in the other Presidencies. If it were not so, the persons representing those Presidencies should show why it was not so: but he believed that the Hon'ble Messrs. Taylor and Shaw Stewart would support him in the assertion, that there was no reason why the same rule should not be applied to those Presidencies, and he believed there was no reason why it should not be. A great many petitions and applications, not in the nature of appeals, were made vexatiously and for trumpery matters: such applications took up the time of high by, and there was no reason why the applicants should not be made to pay for such applications. There might also be some desire to suppress the number of those petitions. It was not only proposed that that rule should not be special for Bengal, but that it should also be extended to certain Courts and officers to whom it did not now extend. The first two clauses of the Article ap-

plied only to the Board of Revenue or other chief Revenue authority: but there were many officers to whom such petitions and applications were made, who were not only revenue but executive authorities, for instance, Commissioners of Divisions, and Chief Commissioners of Provinces. The Governments of the Panjáb, the Central Provinces and Oudh, had represented that petitions and applications made to those authorities should be made on stamp-paper, the object being to suppress petitions of a petty nature, or at any rate to make people instituting such proceedings pay for the trouble they gave to those officers. There was another addition to the Article, but that amendment he had already explained fully: it was that by which petitions containing any complaints of an offence in a Criminal Court should be instituted on a stamp of one rupee. The law which obtained in reference to those petitions formerly, and up to the year 1860, was this:—a petition of that nature was liable to an institution-stamp of eight annas, and the complainant was also liable to pay certain sums of money for the service of the summons on the accused, and for the attendance of witnesses. Therefore, in fact, although the institution-stamp was only eight annas, yet in reality the complainant paid a much larger sum, probably nearly two rupees. But when the Code of Criminal Procedure was passed, the fees for summonses to the accused and witnesses were done away with, and it resulted that the porson who had formerly to pay down a certain institution-fee of nearly two rupees, had nothing to pay from 1860 and 1861. He had shown, on the last occasion, the disastrous results of that amendment of the law as it existed prior to 1860, and substantially what he now prososed was to re-enact the law which prevailed in Bengal from 1795 to the time abovementioned.

The next point to which he would refer was that which was to be found in the scale under Article 10 of the present law. He had already pointed out that that scale was defective in two particulars; first, inasmuch as it jumped too largely from sum to sum; and secondly, inasmuch as the scale of stamp-duty was founded on no sort of principle: for instance, in a suit valued at 801 rupees, the same stamp was levied as in a suit for 1,600 rupees, and so on throughout the scale. He proposed to amend that defect, and to enact that no suit for sums less than ten rupees should be instituted on a less stamp-duty than one rupee. From ten rupees to a hundred rupees, the scale would jump by five rupees at a time; from a hundred rupees to one thousand rupees, by ten rupees at a time, and from one thousand and upwards, at the rate of a hundred rupees at a time. In this way the first serious defect in the scale would be amended. He would have proposed that, whatever the amount the stamp-duty should be levied on that amount, but for the difficulty and inconvenience that the stamp-office would experience in providing stamps

for fractional amounts. But now the scale would jump only to the very limited extent that was absolutely necessary. The principle on which the stamp-duty was at present levied on suits according to their valuation was no principle at all. In suits for ten rupees to fifteen rupees, according to the present scale, the duty was as high as ten per cent. and as low as six per cent.; in suits from twenty rupees to thirty-five rupees, it varied from eleven to six per cent.; in suits from forty rupees to sixty-five rupees, it varied from twelve to six per cent.; from seventy rupees to one hundred and sixty rupees, from eleven to five per cent.; and from one hundred and sixty rupees to three hundred and twenty rupees, from ten to five per cent. It would therefore be seen that the present scale was founded on no sort of principle; a suit, for instance, of sixty rupees was assessed at about six per cent., and a suit for sixty-five rupees at about twelve per cent. In the proposed scale, up to three hundred and twenty rupees, there was no increase but only an equalization of the scale. He therefore proposed a uniform duty up to a certain point; that was, up to one thousand rupees the duty would be ten per cent., and in suits over one thousand rupees, the duty would gradually decrease. He should mention that, ten per cent. on the value of a suit of one thousand rupees was two and a half per cent. less than what was levied as an institution-fee in the Presidency Small Cause Courts. By these amendments he hoped to equalize the scale, and get an excess revenue of about twenty-seven lákhs.

The next point was the mode in which the value of land, whether paying revenue to Government, or whether revenue-free, was arrived at. The present rule was this:—In lands that were permanently settled, you found the assessment annually paid to Government, and you multiplied that sum by three; in lands temporarily settled and lands situated in Bombay and in Madras, you found the annual assessment, and that was taken to be the value of the suit. In revenue-free land, you were supposed to find the annual net profit, and to multiply it by eighteen, and that represented the value of the suit. The object ever sought to be obtained was that all suits should be assessed alike, and he found, in note *e* of the present stamp-law, that suits for property other than revenue-paying or revenue-free land were valued at the estimated selling-price, *i. e.*, the market-value of the property in dispute. In 1829 an attempt was made to find what was the estimated selling-price or market-value of revenue-paying or revenue-free land, and it was found, from sales of land for arrears of revenue, that in the case of permanently settled estates, the selling price or value was three times, and in the case of land temporarily settled once, the amount of the annual assessment. He proposed to assess all suits at the market-value of the land, whether paying revenue to Government or free. But if the market-value were alone laid

down as the measure of assessment for the purposes of stamp-duty, there would at once arise the difficulty of the Court arriving at that value, besides harassment to the suitor. He thought, therefore, that there should be some rule for the guidance of the Courts, and that the burden of disproof should lie on the suitors. Therefore, *primâ facie*, the market-value was to be the value of the assessment, with this proviso, that eight or ten times the amount of the annual assessment should be taken to be the value of revenue-paying land until the contrary was proved. As to lands revenue-free, he would require the annual profits to be taken as the value of the property in suit, and would multiply that sum by twenty (eighteen was too low) and take that to be the value until the contrary was proved. This would throw the burden of proof on the person who maintained that the property was of less value. He could find no other way of getting over the difficulty. The reason why he had taken eight or ten times the amount of revenue was this, that he found that to be the average of the market-value of such land throughout the empire. From returns he had received from the Panjáb and other places, he found that the value of land in sales for arrears of revenue varied considerably. In Bengal it fell as low as one year's purchase; and it was as high as thirty years' purchase: in the Panjáb it was as high as forty-seven; in Madras it was fourteen; in the North-Western Provinces it was as high as sixty-six, and in Bombay it was sixteen. The average was about eight times the value of the annual assessment. He therefore proposed that, in permanently settled estates, ten times the assessment should be taken to be the value of the land in suit, and in lands temporarily settled, eight times, until the contrary were proved.

In other descriptions of suits, as in suits for damages or compensation, he would take the market or money value at whatever sum the complainant might estimate it; and in certain other cases, where no value could be placed at all, as, for instance, in suits for restitution of conjugal rights, and other sorts of suits which were becoming very frequent in the Panjáb, he had placed the stamp-duty at a fixed sum of thirty-two rupees. If any person should dispute the computed or market-value used, he had provided a procedure by which the Courts should ascertain the value: they might employ a Civil Amín or other proper person to ascertain the market-value.

The next was a special provision, which enacted that, in suits for mesne profits, if the profits decreed were in excess of the profits claimed, the decree should not be executed until the difference between the stamp-duty actually paid, and the stamp-duty which would have been payable had the suit comprised the whole of the profits so decreed, should have been paid to the proper officer. The meaning was this:—when a person sued

for mesne profits, the certainty was that he had been out of possession for some time, and was not in a position to ascertain the amount of profits that he was entitled to, or he might have ascertained the exact amount of profits, but not stated it correctly in his plaint. For instance, a man sued for mesne profits, estimating them at one thousand rupees; then, in the execution of the decree, the profits were found to be two thousand rupees. In such a case a man would recover two thousand rupees on a stamp-duty of one thousand rupees. The law would therefore provide that, when the amount of mesne profits should be found to exceed the amount sued for, the litigant should be required to pay the difference of stamp-duty.

The next provision to which he would refer was note *c*. That, to a certain extent, was a repetition of note *f* of article 11 of the present law. The meaning of the note was this:—When a person sued, suppose, on two bonds, one of which was valued at one thousand rupees, and the other at five hundred rupees, amounting altogether to one thousand five hundred rupees, he would sue on a stamp-duty calculated on the aggregate amount of one thousand five hundred rupees. The Court of first instance might find that the suit was barred by the Statute of limitations, and dismiss the suit. The plaintiff appealed, and the appellate Court found that the Statute of limitations barred the bond for one thousand rupees, but not the bond for five hundred rupees, and remanded the case for investigation on the merits as to the bond for five hundred rupees. The law at present said that, when an appellate Court remanded a case to be tried on its merits, then the Court should direct the full amount of stamp-duty paid on the petition of appeal to be remitted; but the object clearly was only to remit that part of the duty which referred to the part of the case remanded. Therefore, in the case he had put, the stamp-duty on five hundred rupees should be remitted, but not the duty on the one thousand rupees, a final decision on which had been given; for, if it were otherwise, the litigant would obtain a decision in appeal on a suit for one thousand rupees without the payment of any stamp-duty at all. It was to meet that defect that the amendment in note *c* was proposed.

Note *d* was a new provision, and it also was necessitated by what was found to be a means of evading the stamp-duty. He would put the same case as before:—suppose a plaintiff sued for two sums of one thousand rupees and five hundred rupees? the lower Court gave a decree for one thousand rupees, but dismissed that portion of the suit which related to five hundred rupees. The plaintiff appealed, and then the respondent came in, and, under Section 348 of the Code of Civil Procedure, objected not only to the judgment of the lower Court as to the five hundred rupees, but to the judgment as to the whole

one thousand five hundred rupees: the appellate Court was bound to hear him, and might entirely set aside the judgment of the lower Court, and give the respondent a decree for the whole sum of one thousand five hundred rupees. In such a case, it seemed improper that a person should be allowed to raise an issue involving a sum of one thousand five hundred rupees on a stamp-duty which only covered the five hundred rupees regarding which the plaintiff had appealed.

There was only one other provision to which he wished to refer, and that was in reference to suits under Act X of 1859. In order to equalize the stamp-duty on suits instituted under that Act, with other suits relating to land, it was only necessary, as he had said before, to repeal note *g* of the present law. He therefore proposed to repeal it altogether.

The Hon'ble MR. MAINE said, before His Excellency put the question, he thought he might venture to express, on the part of the Executive Government, their sense of the patience and sagacity with which the Committee consisting of Mr. Justice L. Jackson, his Hon'ble friend Mr. Hobhouse, and Mr. Prinsep, had sifted the details of a most perplexed subject, and had not only produced a financially favourable result, but had recommended a scale of stamps in itself more equitable and consistent than that which it was proposed to supersede. MR. MAINE believed he might add, in the name of that Council, their appreciation of the ability with which Mr. Hobhouse had argued in favour of his proposals. MR. MAINE did not concur in all the arguments which had been employed, but it so happened that, when his Hon'ble friend had used an argument in which MR. MAINE did not concur, he had coupled it with another in which MR. MAINE entirely agreed; and on the whole MR. MAINE was entirely in favour of Mr. Hobhouse's Bill. In the next place, MR. MAINE, after giving their due to the Committee, wished to reply by anticipation to certain objections of a general character which might be urged against their recommendations. His Excellency the President would remember that, when it was originally proposed that this Committee should be formed, a distinguished officer of Government had, without expressing any opinion as to the existing scale of duties, stated that he had a general objection to judicial taxation, and requested to be relieved from service on the Committee. The same general objection had been repeated in some papers which had fallen under MR. MAINE'S observation, and in particular in a letter from the Bombay Chamber of Commerce. MR. MAINE believed that there was a complete answer to that objection, and it would be well that it should be stated. No doubt all generalities were every day becoming more and more

formidable in India; but there was a special reason for distrusting all general propositions as to taxes on judicial proceedings after the facts and arguments adduced by his Hon'ble friend Mr. Hobhouse had received proper attention. If there were one general proposition which at first sight seemed clearer than another, in connection with this subject, it was that it was improper to require a stamp on applications to the Criminal Courts for the redress of wrong. MR. MAINE felt sure that, if the question had been submitted five or six years ago to him, as it was to the present Chief Justice of Bengal, whether certain petitions to the Criminal Courts should be taxed, he should have agreed with Sir Barnes Peacock. Yet, what had been the practical result of this relaxation of the stamp-law? They had it on irrefragable authority that the result had been to produce seventy-five per cent. of demonstrably false accusations—accusations, the greater number of which were not persevered in, the accuser having gained his point by the fact of accusing, the remainder being rejected by the Courts. This astounding fact might well make them cautious as to minor and therefore less hazardous generalities on the subject of judicial taxes in India. But it still remained to refute the more sweeping generalisation that judicial taxes in all countries were mischievous and improper. MR. MAINE was convinced that his Right Hon'ble friend Mr. Massey would concur with him in saying that the opinion against judicial taxation was extremely modern. For centuries on centuries, there had seemed to be nothing more simple or natural than that the parties to a dispute should remunerate the authority by whom their differences were arranged. No doubt, in modern Europe the mistake had been made of allowing judicial fees to go into the pocket of the Judge himself, and not into the exchequer of the State that paid him. This had led, in France, before the Revolution, by a perfectly logical association, to the sale of judicial offices; and in England, though it had always been illegal to traffic in such offices, the same result had practically been obtained by the creation of sinecures which were conferred on relations of the Judge. Against such scandals and abuses Jeremy Bentham, now not far short of a hundred years ago, protested with all the vehemence of which he was capable, and MR. MAINE ventured to say that the opinion against judicial taxation was entirely produced by Jeremy Bentham, and was not older. It was true, as Mr. Hobhouse had observed, that Jeremy Bentham's opinions in this respect had not been practically carried out at home, and that large amounts were still levied in the form of judicial taxes, in aid of the payments which the State made to its judicial officers. But the truth was, that Bentham's name was now so great in England, that even those views of his which had never been acted upon had obtained currency and importance in the shape of commonplaces. It was, however, an urgent matter

to enquire what were the reasons of Bentham for denouncing judicial taxation as mischievous. Not certainly any vague notion, couched in figurative language, that you must not tax justice. Bentham's idea was that all litigation, or all but a very little, was entirely the fault of Government, and therefore he naturally objected that Government, which caused litigation, should profit by it. Bentham believed that litigation was owing to the complexity of law, and that this litigation might be almost entirely removed by legislation adapted to true principles. He thought that litigation, and therefore the expense of litigation, might be reduced to a minimum, if it were not for the blindness, or the stupidity, or the cupidity of legislatures in not simplifying the laws. Mr. Maine would quote the panacia expressly prescribed by Bentham for the all but complete suppression of fees and costs. "An all-comprehensive code of substantive law, having for its end in view the greatest happiness of the greatest number, each part of it present to the minds of all persons on whom conformity to its enactments, its attainment of its end, depends, and an all-comprehensive code of adjective law, otherwise called a code of procedure, having for its end the giving, to the utmost possible amount, execution and effect to the enactments of the substantive code." The passage was quoted from the *Principles of Judical Procedure* as a statement of Bentham's expedient for preventing judicial taxation, and accordingly he argued with perfect logic, that if costs and fees were inevitable, it was the Government and not the litigant that ought to pay them.

Now, without entering into the question of the truth of these views, had they any application whatever to India? The simple fact was that the people of India objected to having their laws and institutions simplified, and resented such interference as a breach of the conditions on which the country was governed. There was an excellent illustration in the Indian Succession Act, the only chapter of that code of substantive law contemplated by Bentham, which was at present in force in India. As it had been passed by this Council in almost the same form as it had been received from the Indian Law Commissioners, Mr. Maine might describe it without vanity as a most excellent and equitable piece of legislation. But the first admission that had to be made by the Indian Law Commissioners, by the Home Government and by themselves, was that it could not possibly be extended to the intestate successions of Hindús, Muhammadans and Buddhists, or in other words, to the great mass of the population. They were told that it was as much as the empire was worth to impose an uniform law of intestate succession on the country, and so inveterate had become the conviction that each sect of the country was entitled to its own law of succession, that Mr. Maine would be surprised if, when the measure for extending the Succes-

sion Act to the Straits' Settlement came on for discussion, it was not contended that every division of that heterogeneous community was entitled to its own law, and that even the Sandwich Islander had a right to have his law of inheritance administered by the Courts. Now, it had been calculated that nine-tenths of the heavier litigation of England, that which came into the Court of Chancery, was occasioned by the English law of succession. But the Hindú law on the subject was at least as complex as the English, and it was mixed up with and dependent on the system of adoption, and the system of joint occupation of property during life. This was then a case in which the strong feeling of the people had compelled the legislature to maintain a most complex system of law, and one most fruitful of litigation. Another most striking illustration of the Native feeling on the subject of simplifying had been furnished by some of the answers to a circular recently prepared and issued from the Legislative Department. This circular referred to the formalities of executing wills; it did not propose that the actual power of making a will should be either extended or diminished; but it suggested that certain securities against fraud, such as signature and attestation, should accompany the execution of every will. From the more enlightened parts of India, the answers were favourable, but from those sections of the country which required the most careful watching, what was the reply? It was remarkable that the Muhammadans of the North-Western Provinces made, in the most express language, every admission which Bentham would have required. They allowed that every sort of fraud resulted from the system of oral death-bed wills; but they urged that it was an inference from the words of their Prophet, that a man up to the last moment of his life might bequeath by word of mouth whatever property he might lawfully dispose of, and hence they resented as an outrage on their religious feelings the imposition of the formalities required by the Succession Act. The Hindús followed suit; they admitted that wills, oral or written, were no part of their religious system; but they argued that they ought not to be placed in a worse position than the Muhammadans, and that they were entitled to as many prejudices as any Muhammadan. Hence they, too, objected to the simplification of the law. The truth appeared to be that the people of this country were not only wedded by custom and religious feeling to complex systems of law, but prided themselves on their usages in proportion to the complexity of those usages. If this were so, the foundation of Bentham's doctrine collapsed, and the doctrine itself had no application to India. The legislature was estopped, by the conditions of our tenure of the country, from so simplifying the law as to render judicial taxation mischievous. MR. MAINE did not mean to imply that indefinite judicial taxation was legitimate in this country. All he argued was

that it was governed by the same principles as the levying of any other tax, and not by any special consideration of the mischievousness of judicial taxation.

The Hon'ble MR. TAYLOR said he would not occupy the time of the Council with remarks upon the general scope or principle of the Bill. The question whether justice ought or ought not to be taxed—whether in short the public in this country might fairly be made to pay for the luxury of litigation—had already been dealt with by abler hands than his. He would content himself with the expression of his full concurrence in the arguments used by the Hon'ble Mover of the Bill, who had shown, in clear and forcible terms, both the justice and expediency of the proposed measure, not only from the point of view of checking petty and vexatious litigation, but also as a means of providing, in some degree for the higher remuneration of the subordinate Judges and ministerial officers of the Courts throughout the country.

The few observations which he should make to the Council had special references to one or two points in regard to which his Hon'ble friend had done him the honour to refer to him as an authority. Now, although he had no wish to escape the responsibility properly attaching to him as the only representative in the Council of the Presidency of Madras, still he was not quite prepared to go so far as his Hon'ble friend, who seemed disposed to contend that his (MR. TAYLOR'S) individual opinion on any question discussed in this Council must be held to be the opinion of the Government he had the honour to represent. He could not certainly accept this position in reference to a question of such importance as the imposition of a stamp-duty upon all applications or complaints, and petitions of appeal, to the Revenue authorities, the Magistrates and lower Criminal Courts—a question in regard to which very material differences of opinion had always existed and still did exist—to which the strongest objections were urged, both by the Government of Madras and of Bombay, when the stamp-law was last discussed, and upon which, so far as he was aware, those Governments had not been consulted on the present occasion.

Individually, as he had said, he was in favour of the measure introduced by his Hon'ble friend, and he was unable to advance any valid reason why, if it was good for Bengal and the North-West Provinces, it should not be made general for all India. As regarded more especially a stamp-duty on complaints before Magistrates, he found it impossible to resist the argument deduced from the figures quoted by Mr. Hobhouse from the Police-returns, which showed that seventy-five per cent. of the persons charged with the most common offences were either not brought to trial at all, or acquitted. Speaking from his past experience as a Magistrate and Collector, he believed that the effect

of the proposed measure would be to check the very numerous complaints of a petty and vexatious nature with which the District officers were often swamped; and, guarded in the way provided by the Bill as introduced, *viz.*, by giving a discretionary power to the Magistrate to remit the stamp-duty in cases of real and just complaint of poverty, and for other reasons, he had no fear of its acting injuriously.

The second point to which he desired to allude had been discussed in the part of his Hon'ble friend's opening speech which related to the subject of determining the valuation, for the purpose of assessing the stamp-duty in suits, of lands paying revenue to Government. In the course of his remarks on the inaccuracy of the system in force under the present law, for determining the actual value of the land, his Hon'ble friend had drawn an illustration from the effect produced by the *Inám* settlement in Madras in respect of lands which were formerly rent or revenue-free. Mr. Hobhouse very accurately described the loss of stamp-revenue which was involved whenever such lands became the subject of suits, in consequence of their conversion from revenue-free to revenue-paying lands. The same land which before paid five hundred rupees stamp-duty, now that it had been permanently settled on a very light assessment paid no more than sixteen rupees. So far his Hon'ble friend was quite correct, and he went with him entirely in supporting the principle of assessing these lands for the purposes of the duty at their market-value, so far as that value could be approximately determined by the means proposed.

But there was one expression of his Hon'ble friend to which he must be permitted to take exception. On more than one occasion he spoke of "what are called *Inám* lands in Madras" being *resumed*. He said "the moment those lands are *resumed;* on the *resumption* of that land," and so forth—as if this phrase described in accurate terms the process to which the *Inám* tenures of that Presidency had been subjected. Now as the case was far otherwise, and as the phrase to which he had objected was calculated to recall to many minds,—though such he felt sure was not in the remotest degree the intention of his Hon'ble friend,—a vision of the old resumption-laws which created so much dissatisfaction and ill-feeling on this side of India, and with which the *Inám* settlement of Madras had nothing whatever in common, he desired to describe in more accurate terms what the effect of that settlement had been.

The pledge which was given by Lord Stanley from his place in Parliament, when Secretary of State for India during the Session, if he remembered rightly, of 1858, in respect to the working of the Madras Commission, had been honestly and thoroughly redeemed. The object of the enquiry was, he said,

to confirm and not to disturb titles. It was not to resume or to deprive the holders of their lands, but to give security to landed property, to improve the position of the *Inámdárs* throughout the Presidency, to enhance the value of their tenures which had hitherto been precarious and subject to vexatious restrictions as regarded succession and otherwise.

That object had been fully attained; an indefeasible freehold title had been given to every *Inámdár*, in return for which he paid to the State an annual quit-rent varying from one-eighth to half of the full assessment of his holding, according to the value of the previous reversionary interest of the Government in each *Inám*.

These terms were even more liberal than those which had been conceded to the *Inámdárs* of Bombay; and on referring to the printed volume of debates in the Imperial Legislative Council in 1861, he found an Hon'ble Member—the then Member for Bengal, Mr. Seton-Karr—thus expressing himself in reference to the measure for Bombay which was then under discussion :—

"There never was a case in which the legal maxim could be of greater truth or more instant application *Interest reipublicæ ut sit finis litium*. I can only judge here from my experience of Native feeling in Bengal. With what avidity and alacrity would such a summary settlement as is now proposed have been accepted by the natives of Bengal some twenty years ago! It was entirely owing to the want of such a provision that we, in Bengal, had incurred considerable expenditure, introduced complications into claims for real property, engendered irritation, and confirmed discontent. No Native connected with landed interest feels any grievance comparable to the grievance consequent on the resumption laws."

After this, the Hon'ble Member would not, he thought, be surprised that he should demur to the application of so odious a term to the proceedings of the *Inám* Commission in Madras.

Before leaving this subject it might be well to show to the Council what would be the effect of the proposed aleration of the stamp-law as regarded the valuation of *Inám* or revenue-free lands. Continuing the illustration of his Hon'ble friend, suppose that the full annual assessment of an *Inámdár's* estate, as determined by survey or otherwise, were one thousand rupees? then, instead of multiplying that sum by eight, as in the case of ordinary *ryotwári* land, you would multiply the quit-rent, which was a permanent charge, by ten, and the stamp-duty, which, on land fully assessed at one thousand rupees, would have been four hundred and fifty rupees, would, in the case of *Inám* land, be rupees 300, 175 or 115, according as the rate of quit-rent were one-half, one-fourth or one-eighth of the full assessment. The lowest payment would be rupees one hundred and fifteen, instead of only sixteen as at present.

There was only one other point to which he desired to allude, and that was the proposed alteration of that provision of the present law under which a person was privileged to sue, for arrears of rent in the revenue Courts, on a lower stamp-duty than in the ordinary Courts. He had no experience of the working of Act X of 1859, but *primâ facie* he agreed with his Hon'ble friend that there ought to be no such distinction. As regarded Madras, under the old Regulation for the recovery of rent, the Collector had only a summary jurisdiction, and not a regular jurisdiction: the Rent Recovery Act (No. VIII of 1865) recently passed by the Madras Council, had not altered the chararter of the law in this respect. A summary suit under that Act must be brought within thirty days from the date of cause of action, and process must be taken out within one year from the time the rent became due. It was true that suits brought before a Collector under the Act were at present exempt from stamp-duty, but MR. TAYLOR supposed that, under the new law, the only charge to which summary suitors would be liable would be the general stamp-duty of eight annas on ordinary applications, and to this he saw no objection.

The Right Hon'ble MR. MASSEY entirely concurred with the Hon'ble Mr. Maine in the sense which was entertained of the care and ability with which this somewhat difficult subject had been investigated and dealt with by the Hon'ble Mr. Hobhouse. MR. MASSEY need hardly add that, as this Bill originated in the Report of a Committee specially appointed by the Government of India to consider the stamp-laws, he concurred in the principle on which the Bill was based: he thought that some very important principles were enunciated in the Bill, and he hoped they would not be seriously modified by the Committee to which it would be referred. The Hon'ble Mr. Maine had effectively disposed, by anticipation, of an argument not likely to be raised in this country, that the imposition of stamp-duties on legal proceeding was indefensible. That idea had originated in the writings of Bentham, and had acquired authority from the great reputation of that theoretic statesman. But as far as he, MR. MASSEY, was aware, the theory had never been practically adopted in England, or any other country with which he was acquainted. Indeed, so far from recognizing the privilege of immunity from judicial taxation, in the most recent instance of the organization of a judicial system—the establishment of County Courts about twenty years ago—they were constituted on the express principle of being made self-supporting, and the suitors were required to pay fees which went directly to the remuneration of the Judges of those Courts, and to defray the Court charges. Subsequently, however, on considerations of financial convenience, that arrangement was converted into a system of paying the Judges and officers of those Courts in the same manner as

in the other courts, and the fees, instead of going directly to the Judges, were paid over to the public treasury. The Council were not therefore called on to vindicate the policy of levying stamp duties on judicial proceedings; and when he considered the peculiar circumstances of this country, any objection such as had been alluded to, if it had any foundation in the practice or principles of European countries, would not be applicable here. He learned from the Hon'ble Mr. Hobhouse that litigation was resorted to in this country as an excitement and pastime, and too frequently from motives of a more objectionable character. When the machinery of those expensive establishments was put in motion to gratify the litigious disposition of the people, or still worse, to administer to malignity or private malice, MR. MASSEY thought that a tax should be imposed to repress such litigation and check the desire to resort to the Courts for any such purpose.

The Bill would, no doubt, be referred to a Select Committee for consideration and report. The scale of duty on plaints and petitions of appeal which was laid down in the Bill was, as he was at present advised, free from objection, but as that scale would probably undergo careful scrutiny at the hands of the Committee, he should desire to reserve his opinion on the details until they had examined the subject more minutely. But this he might venture to observe, without presuming to restrict the discretion of the Committee, that this Bill would go before them under different circumstances from other measures. A measure which had originated in a public office, or with an individual Member of the Council, might justly be subjected to careful scrutiny; but when a measure was founded, as this was, on a Report by a Committee specially appointed by the Government of India to consider the subject, and had been so carefully prepared, he thought that any Committee of this Council would feel that their labours had been greatly lightened, and it would therefore not be necessary for them to examine the Bill with the same minuteness and critical accuracy as other Bills. He might add that, for financial reasons, it was obviously desirable that the Bill should pass into law without unnecessary delay.

He thought the Hon'ble Mr. Hobhouse had exercised a wise discretion in introducing into the Bill the provision of the English law regarding proxies, and reducing the stamp to four annas. It was only a few days ago that he had received, from a body of respectable gentlemen, a remonstrance on the subject of the stamp-duty required under the present law for proxies, which restricted considerably the privilege of voting at meetings of Joint Stock Companies. As the subject was one of urgent importance, he thought the Council should deal with it at once, although it was not connected with the subject of the bulk of the Bill. The present high duty on proxies was a grievous oppression, which could

never have been intended by the legislature, and which ought to be remedied as soon as possible. Therefore, with regard to that part of the Bill, he, speaking as the Member of Council more particularly charged with the protection of the revenue, wished to state his entire agreement to the reduction to which he had referred.

He entirely concurred in the principle of the Bill, but when the Bill was referred to a Select Committee, he would be glad to hear the opinions of the Members on the scale of stamp-duty proposed for the institution of suits.

The Hon'ble MR. BRANDRETH concurred with the Hon'ble Mr. Hobhouse in the greater part of his observations. MR. BRANDRETH thought that the increase in the whole was exceedingly moderate. He entirely agreed that suits under Act X of 1859 should be subject to the same stamp-duty as other suits, and he also agreed as to the necessity of imposing some stamp-duty on petitions to Criminal Courts in regard to certain offences. There were several points of detail on which he had opinions, but he would reserve the discussion of them, as he hoped his Hon'ble friend would put his name on the Committee on the Bill.

The Hon'ble MR. SHAW STEWART would make a very few remarks on the proposal for levying stamp-duties in criminal cases. The object of doing so was stated to be the suppression of false and vexatious complaints. If he thought that the levying of a stamp of one rupee would have the effect of preventing the preferring of complaints, he should be inclined to vote against it even as regarded Bengal; but as he believed that it would not have that effect, he saw no objection whatever to the institution of such a duty. In this country he thought, from his general experience, that the unrestricted power which people had of bringing those petty complaints acted as a sort of safety-valve, and deterred them from redressing their own grievances in a more arbitrary and summary manner. He should therefore object to any proposal for suppressing the preferment of those complaints, but he was of opinion that the contemplated stamp-duty of one rupee would not have that effect. On the contrary, he thought that a person would be very glad to pay a small duty, feeling that thereupon he had a right to make the complaint and to be heard. But as regarded Bombay, where criminal complaints had always been exempted from duty, he saw far more objection to introducing it there now, and he believed that the feeling of all the local Magistrates and other officers would be opposed to the introduction of such stamp-duties. Besides, he did not agree with the Hon'ble Mr. Maine as to the inapplicability to this country of the arguments against the imposition of a tax on judicial proceedings, but, for special reasons,

he thought the Council ought to be very careful in taking any steps calculated to prevent Natives from bringing their complaints, however petty, before the criminal tribunals.

The Hon'ble MR. SKINNER agreed thoroughly in the general principles on which the Bill was framed, and it seemed to him that, as a measure of taxation, it was eminently adapted to the circumstances of the country. There was one point on which he could not so readily admit the conclusions of the Hon'ble Mr. Hobhouse, and that was as to the provisions regarding criminal and revenue proceedings. MR. SKINNER did not deny that Revenue Courts could not be used for suits of a vexatious nature; but that, in regard to them, justice was not exposed, except in a very minor degree, to abuses of that sort. The effect of the Bill, as far as concerned the checking of vexatious litigation, would be rather the reverse of what was desired, for, as his Hon'ble friend was very well aware, it was not the institution of suits for arrears of revenue, but the opposition to them, that was vexatious. The more obstacles you put on the institution of those suits, the more encouragement you gave to opposing such suits. He trusted, therefore, that the Hon'ble Mr. Hobhouse would re-consider the grounds on which he based his proposal as far as regarded the law for the recovery of rent.

The Hon'ble MR. HOBHOUSE had few remarks to make in reply. As far as he could make out, the Bill generally had the approval of the whole Council, and in fact there were very few tangible objections to the general principles of the Bill. In the matter of the general policy of levying a stamp-duty on suits before the Courts, he had simply stated what was his own experience and what he had gathered to be the law as founded on the experience of the legislators of this country; and the Right Hon'ble Mr. Massey and the Hon'ble Mr. Maine had confirmed on general principles that which he (MR. HOBHOUSE) had laid down as a principle gathered from his special experience of the laws and people of this country.

He might, perhaps, better mention in detail his views as to one or two points that had been referred to in the debate. He did not understand the Hon'ble Mr. Taylor to take a general objection of any kind, but he simply took special exception to the use of the term "resumption." MR. HOBHOUSE did not object to call the thing by any name that was preferred. He understood that what the Hon'ble Mr. Taylor meant was that the actual fixing of a quit-rent was not a resumption, but simply the paying of a quit-rent at the option of the *Inámdar*. That was very different from the law of resumption in this Presidency, and no doubt he, MR. HOBHOUSE, had confounded the two things.

With regard to the levy of a duty on summary proceedings, the case as he understood it was this. When a tenant was in arrears, the landlord, or the Government, which was the general landlord in the Madras Presidency, at once distrained the tenant's property, and if the tenant objected, he appealed to the Collector, and the Collector decided the matter as if it were a suit for arrears of rent of the current year. The effect of this Bill on such applications would be that they would require to be made on a stamp-duty of eight annas, because this law would be passed by the Imperial Government subsequently to the passing of the law of Madras.

The next objection was that taken by the Hon'ble Mr. Shaw Stewart. MR. HOBHOUSE thought, perhaps, that this was owing to his own fault; that perhaps he had not declared sufficiently clearly the two principles on which he would have a stamp-duty levied an complaints in the Criminal Courts. The object of that duty was, not only to repress vexatious and false complaints, but also to declare that persons who would bring petty charges in the Criminal Courts should pay a certain amount towards the expense of the machinery employed in the investigation of their complaints. That seemed to him to be the main principle on which a duty of that kind was justifiable. Perhaps Mr. Shaw Stewart had not considered the safeguards with which he (MR. HOBHOUSE) proposed to surround that duty. The Magistrate who heard the complaint might either remit the duty, or, if he should find tnat the complainant had made a just complaint, and if he should think that it was a case for reimbursement then, under Section 44 of the Code of Criminal Procedure, the complainant would be reimbursed the amount of stamp-duty. Inasmuch as the object of the duty was to make people pay for using expensive machinery for petty matters, and as the duty would, under certain circumstances, be remitted or reimbursed to the complainant, he thought it could not but be a fair and beneficial tax.

In regard to the Hon'ble Mr. Skinner's observations, MR. HOBHOUSE was not quite sure that he had understood them. The object with which he proposed to get rid of the privilege now conferred on suitors in the revenue Courts, was simply to place them in the same position as other suitors, and he thought there was no good ground for the exemption which they now enjoyed. The provision applied only to certain parts of Bengal, not to the rest, and there was no reason now for continuing a provision given to certain suitors, and which others did not possess.

The Motion was put and agreed to.

## REGISTRATION OF BOOKS BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of 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.

Leave was granted.

## JUDICIAL OFFICES' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to authorize the making of acting appointments to certain Judicial Offices, said that the Governor General of India in Council or the Local Government was empowered by various enactments to appoint the Judges of certain Courts; but it had been doubted by an eminent legal authority whether, in the absence of an express provision, this authorised the appointment of persons to act temporarily as Judges of such Courts. The object of the present Bill was to preclude such doubts by enacting that, in all such cases, the authority empowered to appoint a Judge should be deemed to have power to appoint an acting Judge.

The Hon'ble MR. HOBHOUSE asked whether the powers which the Local Governments possessed were not sufficient, without any Act or Regulation, to enable them to make the appointments contemplated by the Bill. He hardly thought the Bill was necessary.

The Hon'ble MR. MAINE said that he declined to give his own opinion, but as the doubts referred to had been expressed by a very high authority, he thought the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also 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 introduced the Bill and moved that it 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.

The following Select Committees were named:—

On the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency—The Hon'ble Messrs. Maine and Hobhouse and the Mover.

On the Bill to amend the law relating to Stamp-duties—The Hon'ble Mr Maine, the Right Hon'ble Mr. Massey, the Hon'ble Messrs. Riddell, Brandreth, Shaw Stewart, Skinner and Cowie and the Mover.

The Council adjourned till the 5th March 1867.

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

CALCUTTA,
*The 1st March 1867.*

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