ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 18

Jan. - Dec.

1879

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

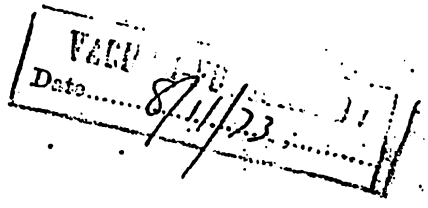
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1879.

WITH INDEX.

VOL. XVIII.



Published by the Authority of the Governor General.

Gazettes & Debates Section
Parliament Library Building
Room No. FB-025
Block 'G'

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.
1880.

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 Wednesday, the 15th January, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

STAMP BILL.

The Hon'ble MR. COCKERELL moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Stamps be taken into consideration. He said there were two reports before the Council; the first or preliminary report had been presented by him to the Council at the commencement of September last, and at the time of its presentation he had explained very fully all the material amendments of the existing law for which the Bill, as then amended, provided. That report, together with the Bill, had been published, and from the communications which had been received from the various Local Governments he was in a position to state that this publication had extended to every Province of the Empire; it was further apparent, from the communications received, that the proposed alterations of the law had attracted the attention of public bodies and persons, such, for instance, as the British Indian Association, the Trades' Association, the Association of Attornies, vakils of the High Court and articled clerks—in short public bodies and persons who might be taken as fairly representing the sec-

tions of the community who would be most interested in a measure of this kind; so that it might reasonably be assumed that the proposals of the Committee in regard to the alteration of the Stamp-law had obtained ample publicity. In regard to this preliminary report, he need only add that the various communications received alike from official and non-official sources were in the sense of a general approval of the provisions contained in the amended Bill, and some of these communications had especially commended the exclusion of all matter relating to Court-fees. But although, as a matter of convenience, the amendment of the law in regard to Court-fees had been altogether dropped out of this Bill, it must not be supposed that the need for fresh legislation on the subject was by any means to be ignored, or in fact that such legislation was not as necessary and as urgent as the amendment of the law with which the Council was now dealing.

But any proposal for the amendment of the law in regard to Court-fees introduced into this Council as a substantive measure dealing exclusively with that subject would be obviously incomplete if it avoided the question of the propriety of distinctly affirming the fitness of, and consequent desirability of maintaining, the existing rates of fees on the institution of suits, or of introducing such amendments of those rates as might be thought desirable. The Court-fees Act had now been in operation for nearly nine years, and as during a considerable part at least of that period there had been abnormal activity in litigation, it might fairly be said that sufficient experience had been gained to show whether the rates of institution-fees prescribed by the existing law were such as should be maintained permanently or modified. Connected also with the subject of the amendment of the law relating to Court-fees was the question of maintaining as at present, or enhancing, the rates of fees on probates, letters of administration and certificates of administration. But until the law relating to certificates of administration (Act XXVII of 1860) had undergone some alteration, it would be of no use to alter the existing rates; for practically that law was so defective as regards the provision for compelling the payment of the full fee chargeable, that until this defect was remedied, the determination of a proper rate was of secondary importance. The question of the amendment of the working provisions of Act XXVII of 1860 had been somewhat complicated by a proposal which had been recently made for extending the system of granting certificates for the collection of the debts due to the estate of a deceased person, to the grant of letters of administration to the entire estate of such person. It was probably well known to the Council that as a matter of fact these certificates for the collection of debts were largely used as though they were letters of administra-

tion to the whole property of the deceased person, and it had been proposed in consequence of this well known practice to make the law more in accordance with the practice. Whilst that project was under consideration, consequently, and the question as to the best mode of levying fees in suits remained unsettled, there were difficulties in the way of proceeding immediately with legislation relating to Court-fees. But he hoped that the matter would be vigorously taken in hand as soon as might be practicable, and that as the general Stamp Act of 1869 had been followed by the Court-fees Act of 1870, so, if this Bill should become law, the Stamp Act of 1879 would be followed by a Court-fees Act of 1880.

Turning now to the subject of the second report, he might remark that the further alterations recommended by the Committee had been adopted in consequence of the representations which they had received on the publication of the preliminary report, and these, though numerous, were not for the most part of any very great importance. The only further change which it was proposed to introduce into the schedule of rates of duties was an increase of the duty chargeable on general powers-of-attorney, to which matter he would advert presently. The rest of the alterations might be said to be confined to improving the arrangement and wording of the rules and procedure laid down in the several sections of the Bill, and rendering the whole subject generally more intelligible. Amongst the changes of this character he might specially notice the following:—Under section 9 of the Bill, a power had been given to the Governor General in Council to provide by rules for the number of impressed stamps which might be used for stamping any instrument, and the size of the paper to be used in the case of hundís or Native bills of exchange. The number of stamps to be used was now to be fixed by rule instead of, as had hitherto been done, by a substantive provision of the Act itself. The provision of the existing law was so far imperfect that it merely prohibited the use of more than one stamp when the duty chargeable did not exceed one thousand rupees, and a single stamp for the amount required was readily procurable; but it made no regulation as to the number of stamps to be used when the conditions just mentioned did not apply; and the fact was that something more elastic than could be supplied by a substantive provision of the Act was required to regulate matters of this kind; and the Committee had therefore, he thought, done wisely in taking out of the Act the determination of a matter of this kind and leaving it to be settled by rule.

With regard to the provision in the same section for regulating the size of the paper to be used for hundís, he thought he could perhaps better explain its object by stating to the Council the different modes of stamping instruments now in force.

By far the largest number of instruments executed in British India were written on paper bearing an impressed stamp and sold by the Government; but inasmuch as this stamp-impressed paper was unsuitable for instruments drawn up in the English form, the Government conceded (by rule) the privilege of writing such instruments on unstamped paper and bringing the same, before the instrument was executed, to the Collector or other specially appointed officer, in order that the paper might be stamped by him.

Amongst the instruments to which this privileged mode of stamping extended were bills of exchange, and as this class of document included hundís, they might be so stamped. Paper stamped by the Collector in the same manner as unexecuted documents brought by private persons was supplied and sold by the Government to be used for hundís. So that there were two kinds of hundí-paper in use under the present law, and it had been found—he believed in both cases—that frauds were practised by cutting off the portion of the paper so stamped, upon which there was any writing, in the case of time-expired hundís, and using the clear portion of the stamped paper again, either once or more often as the size of the paper might permit. The new provision therefore was designed to prevent this fraud, and to make the provision effective it would further be necessary to exclude hundís from the privilege above described, which had heretofore been accorded to bills of exchange generally.

This regulation of the size of paper therefore would be confined to the case of paper sold by Government and could not therefore be productive of any inconvenience to the public. No doubt it would be extremely convenient to the public if a larger use of adhesive stamps could be permitted, but the use of adhesive stamps, except under special conditions, that is to say, where the stamp was to be affixed by somebody responsible to the Government in some way or other, would be sure to entail great loss of revenue through frauds; and the Legislature was therefore obliged to be very chary of extending this provision. In section 10, two such extensions were provided for—one in the case of notarial acts, and the other of entries of the names of advocates, vakils or attornies of the High Courts. In the case of notarial acts, the stamps had to be affixed by the Notary, who, though not a public officer in the technical sense of the word, was under the control of public officers; he had morever no interest in avoiding the obligation of affixing a stamp, because the cost of providing the stamp would have to be found by somebody else. And in the case of entries of the names of advocates, vakils or attornies on the roll of a High Court, the act of fixing the stamp was to be performed by an officer of the Court, and the paper upon which it was to be affixed remained in the Court. Therefore, in these two instances, the extension of the privilege of the use of

adhesive stamps could be safely conceded with due regard to the interests of the revenue.

Sections 30 and 31 of the Bill related to the adjudication of the proper duty chargeable in any case. It had been suggested to the Committee that they were wrong in their first amendment of the law in omitting to provide for the penalty where the instrument brought for adjudication had been previously executed, and no doubt the English law required in all cases of *executed* instruments that the penalty should be paid; but the Committee had considered this matter very carefully, and the conclusion to which they came was that, in this country, where there was greater ignorance perhaps on the part of those who had to execute instruments as to the requirements of the Stamp-law, it was very desirable that a person should have the opportunity, without liability to any fine, and on payment of a very small adjudication-fee fixed by law, of resolving all honest doubt as to the amount of duty with which his instrument might be chargeable; and it was to be observed that as the Bill was framed, although executed instruments might be brought to the Collector for adjudication of the proper duty, they could only be so brought within one month of their execution; and it was thought that such a qualification was sufficient to secure the restriction of the privilege to cases in which there was a real uncertainty as to the proper stamp to be used and a *bonâ fide* desire to have such doubt removed.

Some alteration had been made in the language, but not in the substance, of section 40 of the Bill. That section, or its corresponding section in the Bill published, drew forth the criticism that it was quite unnecessary to say that the Collector might prosecute in certain cases, because another section in the chapter on criminal penalties laid down the conditions of offences very clearly, and also gave power to the Collector to prosecute in respect of *all* offences. It seemed therefore desirable to explain what the exact object of the provision contained in section 40 was. The language had been altered in order to indicate that object more clearly. The object was to show that, the Bill providing for a double set of penalties in circumstances constituting the same offence, both provisions might be worked concurrently, and were not intended to have a merely alternative operation.

In section 54 of the Bill provision had been made for a refund of the value of a stamp bought with the *bonâ fide* intention of using and which was not required for use. That provision had been inserted in consequence of the alteration of section 68 of the Bill, which had now been drawn so as to exclude

absolutely sales of stamps by persons not licensed to sell. The Committee, it would be seen from the changes made at different stages of the Bill, had been undecided in their opinion in regard to this matter. The Bill as introduced, like the Bill now before the Council, had been framed so as to absolutely prohibit the sale of stamps by unlicensed persons. In consequence of representations made in regard to that prohibition, the amended Bill published with the preliminary report (Bill No. II) contained a provision by which the sale of stamps by private persons was allowed in certain cases and under certain conditions. But it had been pointed out to the Committee that whatever conditions they might impose, if the sale of stamps was allowed in any form by private persons, the privilege would be greatly abused. MR. COCKERELL could perhaps best describe to the Council the arguments urged on this side of the question by reading an extract from one of the papers received. The Judge of the Assam Valley Districts wrote:—

> Every one is familiar with the practice which prevails in India, of persons buying stamps from licensed vendors and selling them after several years, yellow with age, to any one wishing to use them for forging deeds of more or less ancient date. The Bill implies that the legislature will not interfere with this practice. As for the provision in section 66, that the original purchaser must have purchased *bonâ fide* to avoid a prosecution, it is, I think, of little value, as false evidence is easily procurable on this point. A purchaser, who has bought a stamp for which, after purchase, he has found no use, might, I think, be allowed to return it to the treasury within a given period, a refund of its value being made to him; and if this is done, I do not see what ground exists for permitting a purchaser to resell.

The Committee on mature consideration of this question thought it was perhaps best to prohibit sales of stamps by private persons and to facilitate the recovery of the value of any stamp-paper which was not required for use.

The only material change in the schedule which he need notice was that which he had already incidentally referred to; namely, the enhancement of the duty on certain powers-of-attorney. The change would be found in article 50 of the schedule. The Committee had provided that, where the number of persons appointed under one power-of-attorney exceeded a reasonable allowance—and by reasonable allowance he meant ten persons,—an extra rupee should be levied upon the power-of-attorney in respect of every additional person appointed under it. The provision was novel certainly; it could not be said to derive any support from anything in the English law on the subject, but then the practice in England was very different. A single power-of-attorney for general purposes in favour of a very large number of persons was hardly ever met with. But in this

country they had instances where 116 and 85 persons were appointed by one power-of-attorney, and the local Revenue-authorities, considering that that was an abuse, had ordered that the general power-of-attorney should be recognized only as covering the appointment of a single person. That order obviously was not warranted by the present law, and had to be withdrawn. But there was no doubt that the extent to which powers-of-attorney were being made to cover the appointment of a large number of persons did require some remedy, and the best mode of dealing with the subject was thought to be the course which had been adopted in the present Bill; namely, the imposition of an extra duty of one rupee for every person in excess of ten appointed under the power-of-attorney. The enhanced rate would fall only on persons who could very well afford to pay it; namely, persons who had to appoint a large number of agents because they had property in a correspondingly large number of places.

Having thus briefly commented upon the material changes introduced into the Bill now before the Council, he would proceed very briefly to notice the suggestions which had been made to the Committee, but which had not been adopted. The Committee was strongly advised by the Government of the North-Western Provinces and some of its subordinate Revenue-officers to exclude, from the definition of instrument of partition, partitions effected by the Revenue-authorities. It was urged that it would be inconvenient in practice, because it would be difficult to say at what particular stage of the proceedings this duty should be levied; that, moreover, partitions by the Revenue-authorities were very costly proceedings, and it was not desirable to increase their cost by the imposition of an *ad valorem* stamp-duty. As regards the period at which the duty should be levied, the Bill proposed that the stamp should be borne by the paper recording the final order for effecting a partition, and that final order might be the final order of the Collector or of the Commissioner, or of the chief controlling Revenue-authority; but the word "final" pointed to the stage at which the duty was to be paid. Then, as to the cost of effecting partitions being very great, from MR. COCKERELL'S own experience he should say that they were only very costly when great obstructions to the proceedings were made by some of the parties concerned. These partitions, which in some instances extended over several years and involved protracted and consequently expensive deputations of Amíns, were invariably cases in which some of the parties to the transaction were passively obstructing the progress of the work, by not producing necessary papers and in other ways witholding assistance required from them; he did not think that a case had been made out for excluding from liability to stamp-duty partitions effected by the Revenue-authorities; and to impose the liability to duty on some

partitions, whilst the largest and most important class was to be specially exempted from the tax, would in his opinion be inequitable.

The Board of Revenue of the Lower Provinces also had again pressed their former proposal to compel the payment of stamp-duty on intermediate transfers of shares. The Committee had been unable to adopt the suggestion of the Board, for the simple reason that there was no way in their opinion by which the duty could be levied in such cases; for the transactions were not reduced to writing further than that a signature upon a blank deed was taken; but the whole conditions of the transfer and the obligations of the parties under it were matters of oral or parol contract; hence the document could not operate as a conveyance or be produced in Court as evidence, and there seemed consequently to be no ground for subjecting it to duty, even if any feasible mode of compelling the payment of duty could be devised.

The circumstances of the case in great measure resembled that of successive purchase and sub-purchases of property where only one conveyance of the property forming the subject of such purchase and resale was made.

In such cases one conveyance-duty only was chargeable, and the principle of this rule seemed to apply to the case under notice.

The third and last case in which the Committee had been unable to adopt the course recommended was in regard to the allowance of appeals against, and revisions of orders and certificates of, a Collector. It seemed very undesirable that these questions as to the proper stamp-duty should remain long undecided. In England there was only one authority by which such questions were disposed of—the Inland Revenue Commissioners; and in this country the Collector must for these purposes be treated as taking the place of the Inland Revenue Commissioners. But this withholding of a power of appeal or of revision, in individual cases, did not take away the general power of revision which every controlling authority could exercise over its subordinates; and it seemed quite sufficient to prevent the subordinate Revenue-authorities from going very far in a wrong direction, that there was always the probability of any specially misdirected application of the law being made the subject of orders for the future guidance and direction of the subordinate authorities concerned.

He would now in conclusion briefly summarize the effects of the amended Bill in modifying the provisions of the existing law.

It provided for a direct increase of duty in the case of the following instruments:—

I. Bonds, Conveyances, Leases, Mortgages, Settlements,	where the amount involved exceeds Rs. 10,000.
II. Bonds and other instruments chargeable as Bonds,	where the amount involved exceeds Rs. 10 but does not exceed Rs. 25.
III. Policies of insurance other than insurance against risks by sea.	

It substituted *ad valorem* duties for fixed duties in the case of—

(1) Instruments guaranteeing repayment of loans at short periods;
(2) Instruments of gift;
(3) Instruments of exchange, and
(4) Instruments of partition.

It imposed a new duty on the entry of names of advocates, vakíls and attornies on the rolls of any High Court. These were the material increases of the stamp-duties imposed by the existing law. *Per contra*, the Bill provided for the reduction of the maximum limit of *ad valorem* duty in four classes of instruments—

(1) Indemnity-bonds,
(2) Security-bonds,
(3) Transfer of interests secured by other stamped deeds, and
(4) Surrenders of leases.

What these alterations in the rates of duty were likely to produce in the way of increased revenue, MR. COCKERELL had attempted to show when he presented the preliminary report of the Select Committee. Further, the present Bill aimed at rendering the Stamp-law generally more intelligible, by clearer interpretations, by a better arrangement of the matter of the law, and by the simplification of the Schedule. And it was specially designed to effect to a great extent the prevention of the evasion of the payment of duty, by the more stringent provisions which it introduced for dealing with instruments insufficiently stamped, and for putting a pressure upon the Courts to co-operate in the protection of the revenue. Of these dif-

ferent measures he should expect most from the more stringent provisions of the Bill for checking evasion. There could be no doubt, he thought, for the reasons he gave when presenting the preliminary report, that the majority of the Courts—he did not speak of *all*—were unwilling to give sufficient attention to the protection of the interests of the revenue. Why this should be so he himself did not, and never had been able to, understand—why the Court, which recognised its responsibility to protect one individual from wrong-doing by another, or to give redress where wrong was inflicted by one person upon another, should be so slow to act when the wrong inflicted affected a large number of persons, he could not say, but such was certainly the case; for it must be obvious that the wilful evasion of stamp-duties or of any other tax differed from any act of fraud or attempted misappropriation of property in this only, that whereas in the latter case the wrong was inflicted by B. upon C.; in the former it was inflicted by B. upon all the other letters of the alphabet; because the person who wilfully evaded the payment of duty was attempting to shift the burden of taxation from his own shoulders to the shoulders of the community generally; for if the treasury lost by the excessive evasion of stamp-duty, the loss must be replaced by some other means of taxation.

He (MR. COCKERELL) would only further say that he was not so sanguine as to suppose that the Bill, which, if it became law, must, by reason of its affecting the transactions of such a large number of persons, be subjected to so much wear and tear, would be found absolutely without defect; but he did venture to hope that it would be found to work more conveniently and satisfactorily to the public—as being generally more intelligible—and at the same time produce a larger revenue, than any of its predecessors.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill as amended be passed. He desired, before the motion was put to the Council, to supply an omission in his previous remarks. He had omitted to offer the explanation which seemed to be called for by some of the criticisms received in regard to the Bill as first amended, in respect of the definition of "receipt" having been framed so as to cover receipts by advertisement. It had been said that an adhesive stamp could not be affixed to the paper bearing such advertisement, and no doubt this was so. But then the Committee deliberately desired to stop the practice of advertising receipts of money exceeding Rs. 20, because, so long as persons obtained the acknowledgment of their payments of money by means of these advertisements, it was hopeless to expect them to exercise their

IMPERIAL RECORDS

power—a power given to them for the protection of the revenue—of demanding receipts which would have to bear a stamp. No inconvenience would result to the public from the stoppage of advertised receipts in these cases; and the Committee clearly were bound to consider the interests of the revenue and the necessity for protecting them before the convenience of newspaper proprietors.

The Motion was put and agreed to.

BURMA COAST-LIGHTS BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to the maintenance of coast-lights in the eastern part of the Bay of Bengal, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Rivers Thompson and Cockerell and the Mover. He had, when obtaining leave for its introduction, stated the object and reasons for the measure. He had now only to mention that the voyages which would for the first time be brought within the scope of the law relating to the Burma coast-lights were as follows:—

Voyages from ports in British Burma to Chittagong and places west of Chittagong;

Voyages from Chittagong to ports in British Burma;

Voyages to or from Chittagong and places west of Chittagong (except Calcutta), from or to Port Blair and places east of Mergui;

Voyages from places east of Mergui to Rangoon, and from Rangoon and ports in British Burma west of Rangoon to places east of Mergui;

Voyages to or from any port in British Burma other than Tavoy and Mergui, from or to Port Blair.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette*, the *Bombay Government Gazette*, the *Fort Saint George Gazette* and the *British Burma Gazette*, in English and in such other languages as the Local Governments, respectively, think fit.

The Motion was put and agreed to.

OUDH LAND-REVENUE ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. COLVIN introduced the Bill to amend the Oudh Land-Revenue Act, 1876, and moved that it be referred to a Select Committee con-

sisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Stokes and Cockerell, and the Hon'ble Sayyad Ahmad Khán and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

HACKNEY-CARRIAGES BILL.

The Hon'ble MR. THORNTON moved for leave to introduce a Bill for the regulation of hackney-carriages in certain municipalities and cantonments. He observed that the Bill was the result of a strong representation by His Excellency the Commander-in-Chief and by the Government of the Panjáb regarding the ill-regulated and unsatisfactory condition of the hackney-carriage service in the principal cantonments and municipalities of that Province—a public inconvenience which, it appeared, could not be effectually removed without the aid of legislation.

In proof of the ill-condition of the Panjáb hackney-carriage service, he might, if need be, cite eloquent passages from official correspondence and representations in the local journals, but he would not take up the time of the Council by so doing; for personal knowledge enabled him to state that its condition might be briefly, but accurately, described by a single epithet—"infamous." Vehicles dilapidated, horses unbroken and frequently half-starved, drivers innocent of all knowledge of their profession—such were the ordinary incidents of locomotion in the Panjáb hackney-carriage, a mode of progression which might be said to combine, in a manner unprecedented even in India, the minimum of comfort and the maximum of danger. Added to which there were no authorized tables of fares, and no legal means available for promptly settling disputes.

The Municipal Committee of Lahore, the Cantonment Committee of Ambála, and, doubtless, all other Municipal and Cantonment Committees concerned, were anxious to remedy so discreditable a state of things, and the first-named Committee, some time ago, proposed bye-laws for effecting this desirable object; but it was held by high legal authority that, inasmuch as the Panjáb Municipal Act, IV of 1873, did not expressly empower Municipal Committees to make bye-laws for regulating hackney-carriage service, the proposed regulations were

ultra vires. In these circumstances the aid of the legislature had to be invoked to obtain for the local authorities the necessary powers.

The Government of India admitted the necessity for legislation in the case of the Panjáb, but considered that the local extent of the measure might be appropriately enlarged, and its provisions made applicable to the municipalities and cantonments of all those Provinces of India which had no local legislatures. It was, therefore, provided in the draft Bill that the law should have effect—at the option of the Local Governments concerned—not only in the Panjáb, but in the North-Western Provinces and Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 29th January, 1879.

CALCUTTA;
The 15th January, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 425 L. D.—17-1-79.—230.