

Wednesday, October 10, 1877

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 10th October 1877.

PRESENT :

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

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

His Excellency the Commander-in-Chief, K. C. B.

The Hon'ble Sir E. C. Bayley, K. 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.

Major-General the Hon'ble Sir E. B. Johnson, K. C. B.

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

The Hon'ble F. R. Cockerell.

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

STAMP BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the law relating to Stamps and Court-fees and moved that it be circulated for the purpose of eliciting opinion thereon. He said that, as a considerable period—nearly two years—had elapsed since leave was given to introduce a Bill on this subject, it seemed expedient that he should remind the Council of the scope of the former project of legislation and give some explanation of the circumstances which had delayed its progress and led to the proposal of the several further modifications of the present law provided for in the Bill now introduced. When their late colleague, Mr. Inglis, moved for leave to introduce a Bill for the alteration of the stamp law it was proposed to bring together the Stamp Act of 1869, the Court-fees Act, so much of Act XIII of 1875 as related to the fees leviable on probates and letters of administration, and the several exemptions and remissions of duty and fees which the Governor General in Council had in the exercise of the powers vested in him by the Stamp and Court-fees Acts from time to time allowed; and also to explain and amend the provisions of the existing law in regard to which questions had been raised, and interpretations and constructions laid down through the decisions and rulings of the Courts.

Such a measure of consolidation and amendment was in itself very necessary in the interest of the public convenience alone; for, between the year 1870 and the time when the Council was asked to sanction the introduction of a Bill relating to stamps and Court fees, there had been hardly less than forty cases of remissions and reductions of duty and fees and other orders of Government relating to this subject, all constituting amendments of the existing law and scattered over numerous editions of the *Gazette of India*.

Before further progress in the desired legislation could be made, the much vexed question of the propriety and expediency of substituting the use of impressed for adhesive stamps, with the object of checking the frauds which were alleged to be prevalent to such an extent as to imperil the security of the revenue, became ripe for decision, and was referred to a Committee of which his honourable colleague (Mr. Hope) and he (Mr. COCKERELL) were members. As the complete abandonment of the use of adhesive stamps in judicial proceedings would have necessitated very material alterations in the law relating to Court fees, further action in the Legislative Department in respect of the Stamp Bill was suspended until the Committee had made its report. The opportunity was taken of referring also to the consideration of this Committee the question of the feasibility of such amendments of the stamp law as would conduce to its improved working and the acquisition of a larger revenue.

About the same time that these questions were referred to the Committee, the Government of India through its Financial Department circulated certain proposals for the amendment of the law and directed the several Local Governments, after consulting their subordinate officers, to report thereon. Suggestions as to the propriety or expediency of other amendments were also invited. The main points referred thus for the opinion of the Local Governments were—(1) the omission from the Stamp Act of any specification of the description of stamp to be used for the realization of stamp duties or Court fees, and the substitution therefor of a power to the Government to regulate the use of a particular description of stamp for specified purposes by rules; (2) the specification in the Act of fees of fixed amount chargeable for the service of processes in lieu of the present system under which those fees are determined by rules framed by the High Courts, and the restoration to the executive of the same power of regulating the process-serving establishments as it has in regard to all other establishments; and (3) the reservation to the Governor General in Council of the power of making rules under the Stamp and Court-fees Act, now exercised by the Local Governments subject to the sanction of the Government of India.

The local authorities returned an almost unanimous assent to the propriety and expediency of these proposals, and at the same time submitted their views as to other amendments of the law. The Committee specially appointed for the consideration of the questions above referred to submitted their report; this report was sent by the Home Department to the several Local Governments, and a fresh set of opinions on all the matters treated of in it was thus elicited.

The result of all this was that the entire subject of the revision of the stamp law had been considered and discussed in much detail by the local authorities; and he (MR. COCKERELL) had thus had the great advantage in framing those provisions of the Bill, which embraced amendments of the existing law, of consulting the two sets of opinions elicited from local officers engaged in the administration of the law and best qualified from their experience of its operation both to point out its practical defects and to suggest appropriate remedies. The proposed alterations of the law contained in the Bill were for the most part based upon such recommendations of the Committee as had met with the approval of the local authorities, and the suggestions of various officers; and he (MR. COCKERELL) had much confidence therefore in presenting the Bill to the Council as a measure which was, as regards its main features at least, in complete accordance with the views of the chief administrative officers of the several parts of the empire to which a general law on this subject would apply.

Though there was a general consensus of opinion in favour of the proposed legislation, objections had been raised in some quarters. For instance the expediency of reuniting in one Act the provisions of the law relating to stamp duties, and that by which Court-fees are regulated was questioned. It was said that the present practice of keeping these two subjects distinct had worked smoothly and satisfactorily, and was best adapted to public convenience, inasmuch as the classes of persons who were chiefly affected by, and interested in knowing the requirements of the law in regard to the use of general stamps, were not much concerned in litigation and the liabilities of suitors in the matter of the payment of Court-fees.

Now he (MR. COCKERELL) regarded stamp duties and Court-fees rather as different branches of the same subject than as two distinct subjects. The duties and the fees were both levied by means of stamps the sale proceeds of which were entered under the same head in the public accounts, and both were regulated by the same administrative agency. Nor could he agree with the conclusion that the persons who had to do with general stamps had little or no interest

in the subject of Court-fees; he thought on the contrary that, a few purely commercial transactions involving the use of bills of exchange, bills of lading, &c., excepted, the agency employed for determining the proper stamp duties chargeable on instruments executed in connection with the conveyance of interests in property, or obligations for the payment of money, was generally the same as that to which persons about to engage in litigation would have recourse; for he believed that it was no more the practice to frame instruments evidencing the transfer of any interest in property, than to draw up a plaint in a suit or an application to a Court, without the aid of legal practitioners. On the other hand, there were distinct advantages in the combination of the existing enactments relating to stamp duties and Court-fees as the provisions of the law regarding the description of stamps to be used, the refund of the value of spoiled stamps, the sale of stamps and the general administration of these sources of revenue were common to both, so that a considerable saving in the enacting provisions would be effected by the proposed consolidation.

Then it had been urged that further legislation at the present time on the subject of stamps and Courts' fees was premature, and that these repeated alterations of laws affecting the transactions of a very large number of persons were extremely harassing and detrimental to public convenience. He would read to the Council what had been written by the person who might be said to be the most prominent if not the only exponent of this feeling:—

“I hope that the Government will deprecate the passing of this measure. When the last General Stamp Act was passed in 1869 and the Court Fees Act in 1870, it was hoped that the wearisome and vexatious alterations of the law on these two subjects (of which there have been so many) had come to an end. The law of 1866,* to which the public and the profession were beginning to get accustomed, was completely altered in form, and the system of separating ordinary stamps from Court Fees adopted. I see no reason now for altering this system and re-uniting the Stamp Act with the Court Fees Act.”

The writer of these remarks was a person who might reasonably have been expected to be better acquainted with the facts of the case. If it were true in any measure that the stamp laws did come under the frequent revision of the Legislature, it could hardly be a matter for surprise or reprobation, because the very fact that the law on such a subject affects the transactions of a very large number of persons and is on that account more used and subjected to greater wear and tear probably than any other Act on the Statute-book, indicates in itself the necessity for its periodical repair. But in order to show how much at variance with the real facts was the statement which he had just read, he

(MR. COCKERELL) must crave the indulgent forbearance of the Council whilst he entered into a very brief retrospect of past legislation in regard to stamps.

Up to 1860, the law regarding both branches of the stamp revenue was distinct in the different Presidencies, having been contained in certain Regulations of the Madras, Bombay and Bengal Codes respectively. Previously to that year the law had undergone no alteration in Bengal for a period of 31 years, in Bombay for 33, and Madras for 44 years; in the year 1860, the first general stamp law for all India was enacted; the Council would remember that the period was one of great financial pressure, when the Income-tax was first introduced and the tax-yielding resources of the Empire were being strained to the utmost limit feasible. The gross stamp revenue, which up to that time had not exceeded seventy lakhs of rupees, was in the first year's operation of Act XXXVI of 1860 almost doubled. It was hardly to be expected that such a great and sudden change of the law should be made without some mistakes, and accordingly in 1862 it was found necessary to amend the law for the purpose of remedying certain inequalities of taxation and undue pressure of particular duties caused by the previous Act, but the fresh legislation then adopted was entirely in the direction of the relief of the tax-payer and created no new burdens.

In 1866 there was a demand for strengthening judicial establishments, and it was thought that the cost of the measure might be met by a corresponding increase of the stamp-fees leviable on the institution of suits. A Committee was appointed in that year for the consideration of the subject, and the Act relating to stamp-fees levied in the Courts passed in 1867 was based on that Committee's recommendations. The Act of 1867 related to fees levied in the Courts by means of stamps and left untouched the law relating to general stamps.

In 1868, fresh legislation was commenced in regard to the subject of general stamps and resulted in the passing of the General Stamp Act of 1869. The object of the Act of 1867 had been not merely to provide for the cost of improving and strengthening the judicial establishments, but also to repress to a certain extent litigation of a frivolous and vexatious character which was said to have been partly encouraged by too low rates of Court-fees. The decrease in litigation, however, resulting apparently from the operation of the Act of 1867, was found to be so excessive as to justify the apprehension that the tentative rates of fees imposed thereby had over-reached the mark and amounted to a practical prohibition in many cases of legitimate redress of actual wrongs. Accordingly in 1870 a relieving measure was adopted, designated the "Court-fees Act," by

which the fees theretofore chargeable on the majority of suits were reduced to the extent of about $2\frac{1}{2}$ per centum. The Stamp Act of 1869 and the Court-fees Act of 1870 contained the law in force on these matters up to the present time. It would be seen therefore that the sum total of stamp-legislation during the last half century consisted of three Acts for the imposition of stamp duties and four Acts relating to Court-fees, whilst some of these measures had been adopted exclusively in the interest of the tax-payer. This indicated, in his opinion, the very reverse of a meddling spirit on the part of the legislature in dealing with this important subject, and established the groundless character of the animadversions upon the past legislation in connection with stamps of the writer of the letter which had been read, and the objection to the present measure founded thereon.

With these introductory remarks by way of explanation of the circumstances attending the proposed legislation on this subject, he would now pass to the consideration of the Bill before the Council.

The primary object of the Bill, as had been already explained, was the consolidation of all enactments in force treating of stamp duties or Court-fees. It was designed further to explain and simplify the requirements of the law in regard to these matters by large additions to the interpretation clauses, a clearer and more systematic arrangement of its several provisions, and a simpler classification of the documents liable to stamp duty or chargeable with Court fees enumerated in the schedules.

The most important amendments contemplated by the Bill had for their object the acquisition of a substantial increase of revenue. These provisions were of two kinds and might be described as (1) defensive, and (2) offensive. The former were by far the most important.

There was no branch of the revenue to which the law afforded so small a measure of protection as that of stamps; in the case of the excise, the inland customs, the sea customs and the opium revenue, the law armed the several officers responsible for the administration of those departments with large powers in aid of the realization of the revenue. They might search suspected persons and places for the purpose of discovering contraband practices and evasions of the requirements of the law. But in the case of stamps the revenue officer had no such power; public opinion would not uphold the authorization by law of the entry into houses and search of places where deeds and instruments were deposited, for the purpose of ascertaining whether documents liable to Stamp-duty had been properly stamped. Yet without

some power of this kind the Collector of Stamp Revenue was practically almost helpless in regard to the prevention of frauds, and must wait till the possessor of an unstamped or insufficiently stamped document himself disclosed the breach of the law, by producing it before some Court or public officer.

In these circumstances it was only to be expected that the evasion of the payment of stamp duties and the loss of revenue resulting therefrom would be very great; and it should be the especial aim and object of a stamp law to render the available agency for the detection of evasions and securing their due punishment as effective as possible. The existing law as well as that which preceded it, contained express directions to Courts and public officers not to admit in evidence or in any way act upon documents which being liable to stamp duty were produced before them unstamped or insufficiently stamped; but in order to prevent undue harshness and excessive injury to individuals where the omission to use the necessary stamp arose out of ignorance rather than an attempt to evade the requirements of the law, it was enacted that the Collector or Civil Court—

“If satisfied that the omission to execute the instrument on properly stamped paper did not arise out of any intention to evade payment of the duty prescribed by law,”

might, on payment of the amount required to make up the full duty, together with the fixed penalty, which varied according to the circumstances of the case, cause the instrument to be stamped and thereafter treat it for evidence or other purposes as a valid instrument.

This in substance had been the law on this subject, with some unimportant variations as regards the amount of penalty to be levied in such cases, from the year 1860 up to the present time, and the only substantial difference in dealing with improperly stamped documents was that whilst the earlier acts, although they prescribed the punishment to be awarded for the offence of under-stamping, made no provision as to the action to be taken by Civil Courts when they were not satisfied that the omission to use a proper stamp was otherwise than wilful, there was in the present law, which had been in force since 1860, an express direction to these Courts to impound the unstamped or insufficiently stamped document in such cases, and send it to the Collector in order that the offender might be criminally prosecuted.

Now these provisions had wholly failed to secure the object in view. There was abundant evidence to show that the Civil Courts before which instruments liable to stamp duties were most commonly produced, habi-

tually ignored the obligation imposed upon them by the law to exercise due vigilance and discrimination for the protection of the interests of the revenue in this matter; he could cite numerous opinions which had been expressed by executive officers to this effect; but, inasmuch as the evidence of persons who were in some degree specially responsible for the due realization of the revenue might be open to the objection that it was interested and one-sided, he would merely bring before the Council, in support of the statement which he had made above, what judicial authorities of large experience had themselves to say on this subject.

A Judicial Commissioner in submitting his opinion in regard to needed amendments of the stamp law recommended the abolition of the power vested in Civil Courts to admit in evidence unstamped or insufficiently stamped documents, if satisfied that the default did not arise from an intention to evade payment of stamp duty. He said :—

“I am satisfied that this power entails on Government a very serious loss of revenue. As a rule, documents are admitted or rejected without any enquiry as to the intention to evade payment of stamp duty; and although the Civil Courts are bound, on the admission of such documents, to levy the duty and penalty prescribed by the law, as a fact a great number of documents are admitted without payment of either duty or penalty. The Civil Courts should be bound to send all such documents to the Collector, and in the event of the Collector intimating that the requisite duty had not been paid within a time to be specified by the Court, the document should not be admitted in evidence.”

He would next read to the Council the opinion expressed by a very experienced and able District Judge in the Madras Presidency. That officer reporting on this subject said :—

“With regard to the alterations of the stamp law proposed in paragraph 19 of the Committee's report, I have to observe that as far as my experience goes the Courts of this country are not to be trusted with discretion in admitting in evidence improperly stamped or unstamped documents. Under the old law the Courts could admit such documents unless fraud was patent, and in practice I believe such documents invariably were admitted. The natural consequence was that almost every merchant and money-lender was willing to run the remote risk of having to pay a penalty in consideration of the present certain gain of cheating the Government.”

A Chief Commissioner also reported as follows :—

“The Judicial Commissioner discusses at some length the provisions of the law regarding the admission by the Civil Courts of unstamped or insufficiently stamped documents, the levy of penalties, and the institution of criminal prosecutions. He says that the Courts are unduly lenient in admitting as evidence unstamped or insufficiently stamped documents; that as a

rule such documents are admitted without enquiry and without payment, and that frequently a document which has been produced in a Civil Court is withdrawn when the penalty is demanded."

Here then was complete evidence of an indisputable kind, not only as to the fact of the habitual reception by the Civil Courts exercising original jurisdiction of documents not bearing a proper stamp without any attempt at discrimination as to the character of the evasion of the use of a proper stamp, but also to the effect that the Courts wilfully defeated the intention of the law in constituting them agents for the discovery of offences against the revenue, by allowing persons who had committed such offences to withdraw the proofs of their criminality, without any determination of the question as to their liability to punishment.

The law directly prohibited the admission of unstamped documents in evidence as a means of discovering the omission to pay the proper stamp duty, but an offence was committed whenever an instrument was executed without the use of a proper stamp, and it was difficult to believe that the Courts could in good faith so misapprehend the object of the law as to suppose that the person producing an unstamped or insufficiently stamped instrument was not punishable for the omission to use a proper stamp so long as he did not elect to put the instrument in evidence.

To obviate as far as possible these causes of failure in the prevention of the evasions of the payment of stamp duties, a new course of procedure for dealing with unstamped documents was provided by the Bill. The Courts must still be used as the discovering agency; this could not be avoided as instruments liable to stamp duty were necessarily produced before them in far greater numbers than before any other authority. The Bill (section 30) required the Courts to examine every instrument produced before them liable to stamp duty and determine the question of it being properly stamped, whether it was required to be put in evidence or not. The subsequent sections of chapter IV of the Bill laid down the course to be followed in the case of documents not properly stamped; they must be impounded and sent to the Collector, but to prevent miscarriage of justice through the suppression of good evidence, such documents might be received in evidence on payment of deficient duty with interest and a certain amount by way of additional duty: in such cases a copy of the document would be sent to the Collector instead of the original and the liability to a criminal prosecution in respect of the under-stamping would be in no way affected by the circumstance that the instrument had on certain conditions been allowed to be put in evidence.

The prevalent disinclination of the Courts to presume fraudulent intention where an instrument not properly stamped was produced might, it was thought, be in great measure due to those provisions of the law which tended to invalidate wholly an instrument which had been wilfully under-stamped, and the consequent destruction of evidence involved in the finding by the Court that the under-stamping was fraudulent; it was perhaps natural that the Courts responsible for the administration of justice between litigants should manifest great reluctance to do any thing by which good evidence would be destroyed; the new provisions of the Bill would relieve them of any embarrassment on this ground.

The aim and object of legislation in this direction was to give a deterrent rather than a vindictive power to the penal provisions of the law; and it was thought that the fear of a prosecution before the Magistrate and the infliction of criminal penalties would, if the contingency of such consequences of the evasion of the payment of stamp duties could be established as a potent factor in the calculations of the executants of instruments liable to such duties, be sufficiently repressive, and that there need be no recourse to the extreme measure of the invalidation of documents not properly stamped in ordinary cases.

The other provisions designed to secure an increase of revenue had been described as "offensive," by which he meant that they involved an enhancement of existing rates of duty in certain cases—a direct attack in short upon the pocket of the tax-payer!

As the most important amongst the changes of this kind, he might mention the increased duty which it was proposed to levy on bonds, conveyances and the like, where the amount involved exceeded Rs. 1,000, on all bills of exchange, policies of insurance and instruments evidencing a contract for the repayment of loans made for short periods on the deposit of valuable securities, the abolition of the minimum rate now chargeable on bonds and the reduction of the limit of exemption from the payment of the one-anna duty on receipts for the payment of money in satisfaction of a debt.

The enhancement of the rates now chargeable on bonds, conveyances and similar instruments involving a large amount, bills of exchange and policies of insurance generally, could be justified on grounds of equity; for the alteration involved no more than the equalization of *ad valorem* rates generally; it would simply have the effect of bringing the rate of duty heretofore imposed

on these documents up to the general standard of rates which had long been in force in regard to the large majority of instruments liable to *ad valorem* stamp duties.

The large majority of documents, contributing the bulk of the revenue derived from "General Stamps," consisted of bonds, conveyances and other instruments similarly chargeable the amount involved in which did not exceed Rs. 10,000. They were charged at an average rate of half and one per centum respectively on the maximum amount of the classes or ascents by which the assessment of the rate was regulated, but when the amount involved in the transaction in reference to which the instrument was executed, exceeded Rs. 10,000, the rate of percentage of the duty on the amount taxed became gradually less. Now that was not the principle of the mode of assessment adopted under the stamp laws of England; there the rate of duty maintained the same proportion to the amount involved in the instrument subjected to the duty-charge without limit or reserve, and it was proposed to adopt a similar rule in this country. The change would cause a considerable increase in rates of duty charged on amounts exceeding Rs. 10,000. As regards amounts exceeding Rs. 1,000 and not exceeding Rs. 10,000, some increase of rates would be entailed by the substitution of classes or steps of Rs. 1,000 in lieu of those of 500 each on the maximum amount of which the percentage rate of duty was levied. This classification for the purpose of assessing the duty was also in conformity with the scale obtaining under the English law.

The proposed increase in the case of all bills of exchange and policies of insurance rested on the same grounds; those instruments had hitherto been taxed relatively to other documents subject to an *ad valorem* duty below English rates; the proportion which the Indian rates of duty chargeable on the general class of bonds and conveyances to the rates levied in England on similar instruments was not maintained in the case of bills and policies. He did not wish it to be supposed that the fact of the Indian rates being thus made, as regards all instruments subject to the *ad valorem* mode of charge, generally higher than the English rates, had been overlooked, they were intentionally made higher, because the former rates, though calculated to work satisfactorily where the transactions affected by the stamp law were numerous, would be wholly inadequate to the production of the required amount of revenue under the conditions of a far less extensive trade and commercial activity and the higher rates therefore had been necessarily adopted in this country.

His argument in support of the amendments of the law in regard to these duties was simply this, that, whereas the large mass of documents sub-

jected to an *ad valorem* duty had borne the higher rates without objection from any quarter since the year 1860, the proposed enhancements were consistent with past legislation and based on equitable considerations; for they involved nothing more than an equalization of *ad valorem* rates in accordance with the heretofore generally prevailing standard and an increase only in respect of those instruments which tested by that standard had up to the present time been too lightly assessed. As regards policies of insurance he might add that the rates now proposed were in force previous to the passing of the Act of 1869.

The exemption of life policies which had been introduced by that Act with the view, he believed, of encouraging such insurances in this country as a provision for families, would not be continued. Insurance on lives was more commonly effected by way of security for loans, and there was no reason why such transactions should be protected from special taxation more than other commercial transactions.

The changes of which he had next to offer some explanation were in a contrary direction. In extenuation of the proposed abolition of the minimum rate of duty levied on bonds the equalization principle could not be pleaded. The increase of that rate from two to four annas was based on the consideration that as the transactions requiring the execution of instruments of that class, and involving very minute amounts were so numerous, a large increase of revenue would be obtained by the change without imposing an undue burden on the tax-payer. The four-annas rate was not now proposed for the first time; it was the minimum rate under the Act of 1860, but reduced by the Act of 1862. He could not find that any substantial reason had been adduced for such reduction; it was stated during the discussion in Council of the details of that Act, that the higher rate was too great and likely to induce evasion, but no grounds were assigned for this conclusion, and he could not see how a duty of four annas only could have any prohibitory influence on transactions of this class when a fee of double the amount was readily forthcoming in the case of every petty application to a Court of justice. As to the greater risk of evasion he entirely disbelieved that within certain moderate limits the rate of duty chargeable had anything to do with the matter. There could not be a lower rate of duty than the one anna chargeable on receipts and yet no duty probably was so constantly evaded.

The proposed reduction of the limit of exemption from the payment of duty in the case of receipts was dictated by similar considerations to those just stated in regard to bonds for small amounts. It was designed to obtain a substantial increase of revenue by the imposition of a very small rate of duty on a very large number of transactions.

The other proposed amendments were hardly of sufficient importance to justify his further detention of the Council by any detailed explanation in regard to them. He would only mention the suggested substitution of an *ad valorem* charge for the present low rate of fixed duty imposed on instruments contracting for the repayment of loans made on the deposit of valuable securities for short periods, and the new tax on certain members of the legal profession. It seemed clearly equitable and consistent with the general principle governing the imposition of stamp duties that these transactions should be taxed in reference to the amount of the accommodation obtained.

Advocates and attorneys were required in England to pay duty on the documents entitling them to practise their profession in the Courts of law, so also in this country Vakils and Mukhtárs had for a long time been subject to the payment of stamp duty on their licenses or certificates which had to be renewed annually. There could be no reason consequently for continuing the exemption now enjoyed by advocates and attorneys of the High Courts, and it was proposed to tax them accordingly. The rates fixed by the Bill were not higher than those paid under analogous circumstances in England.

In regard to Court fees no changes were proposed except in the case of processes, to which he had already referred, and fees leviable on the institution of suits in Courts of Small Causes, and on probates and letters of administration. It was proposed to assimilate the Presidency Towns' rates in these last cases to those levied in the Courts of this class situated outside of the towns, by a depression of the former, and a corresponding elevation of the latter rates. The town-rate of institution-fee had hitherto been two annas per rupee, or 12½ per centum, whilst the mufassal rate was the same as that levied in other Civil Courts, namely, 7½ per centum on the amount sued for.

It was proposed to substitute an even 10 per centum as a mean rate for all Small Cause Courts. As he had spoken of the general provisions of the Bill as in accordance with the views of the local authorities, he should mention that their concurrence did not extend to the alteration of the rates of fees leviable in Small Cause Courts, or to the particular amount of fees to be charged for the service of processes, as provided by the Bill. These amendments of the existing law were inserted in the Bill at a late stage of its preparation and without consultation of local officers; they would need especial consideration; if the reduction of rates in the Presidency Town Courts was adopted in respect of institution-fees, those relating to the service of processes issuing from the same Courts would also need revision, and corresponding amendments of Act IX of 1850 would have to be made.

The duty leviable on probates and letters of administration had been introduced by the Act of 1870, and the rate then fixed, two per centum on the assets of the estate, was a purely tentative limit. It was thought that an additional half per centum might fairly be imposed, as compared with the rate at which these duties were levied in England, where legacy and succession duties were also in force; the estates of deceased persons in this country would still be most favoured. The annual income from these fees had now reached about five lakhs and might under the more developed operation of the Hindú Wills be expected to show a steady progressive increase.

It only remained to state his anticipations in regard to the increased revenue from stamps and Court-fees in the event of the adoption of the changes of the law provided for by the Bill. In regard to the results of the more stringent provisions of the Bill for the prevention of evasions, his estimate could only be in great measure conjectural; the present annual income from general stamps was under ninety lakhs; he thought therefore that he might take credit for eight lakhs or ten per centum on this head; the improved returns from the abolition of the present minimum rate on bonds would be about eight lakhs; the increased rates on bills of exchange might be expected to yield an additional income of about four lakhs, and that on bonds and conveyances involving amounts in excess of Rupees 1,000 about two lakhs.

The increase to be expected from the reduced limit of exemption in the case of receipt stamps, and from the additional duty to be imposed on probates, letters of administration and certificates, together with the alteration of the institution-fees in Courts of Small Causes, amounted to about five lakhs.

He trusted that these proposals would be regarded as moderate, and that they would be accepted by the public as providing for a substantial progressive increase of the stamp revenue, without imposing an undue burden upon the tax-payer.

He did not propose to refer the Bill at present to a Select Committee. It was one of those measures which would not ordinarily be brought forward at Simla, and his only object in introducing it now was to secure its early publication and give as much publicity as possible to the proposed amendments of the law ere the Bill came under the consideration of a Select Committee in Calcutta.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill be published in the *Gazette of India* in English, and in the local Gazettes in English and in such other languages as the Local Governments should direct.

The Motion was put and agreed to.

MADRAS DISTRICT JUDGES BILL.

The Hon'ble Mr. STOKES introduced the Bill to enable the District Judges of the Presidency of Fort St. George to suspend and remove certain ministerial officers, and for other purposes, and moved that it be referred to a Select Committee. He said that this Bill, like the rest of the business down in his name on to-day's list, was a small matter, and inasmuch as (to quote Herrick) "a little stream best suits a little boat," he would trouble the Council with a very short speech about it. The first section of the Bill was, as he had already explained, intended to give the District Judges in Madras the power which District Judges possessed in other parts of India of suspending and removing the ministerial officers of Subordinate Judges and Munsifs. The second and last section was copied from the Bengal Civil Courts Act, 1871, section 37, and would enable District Judges to transfer ministerial officers from one Munsif's Court to another in the same district. As had been remarked in a letter which he had received from the late Acting District Judge of Trichinopoly, "It often happens that, while there is not sufficient reason for removal, it is very expedient to break up a set of subordinates who have begun to intrigue."

The Motion was put and agreed to.

The Hon'ble Mr. STOKES also moved that the Bill be published in the *Gazette of India* in English, and in the *Fort St. George Gazette* in English and in such other languages as the Local Government should direct.

The Motion was put and agreed to.

PANJÁB LAWS ACT AMENDMENT BILL.

The Hon'ble Mr. STOKES also moved for leave to introduce a Bill to amend the Panjáb Laws Act, 1872. He said that the North-Western Provinces Land-Revenue Act, sections 193 and 194, provided for the superintendence, by the Board of Revenue as a Court of Wards, of the persons and property of seven classes of persons. Of these the first four classes were disqualified females, minors, idiots and lunatics.

The PRESIDENT asked what, technically, was the difference between an idiot and a lunatic.

The Hon'ble Mr. STOKES replied that an idiot was one that has had no understanding from his birth, a lunatic was one that has had understanding, but has lost the use of his reason. The fifth, sixth and seventh classes were persons incapable, from physical defects or infirmities, to manage their own estates: persons convicted of a non-bailable offence and disquali-

fied, by vice or bad character, from managing their estates; and persons declared by the Local Government, on their own application, to be disqualified from managing their estates. The provisions relating to the seventh class had been found extremely useful in the North-Western Provinces, and had been largely brought into effect. Now the Panjáb Laws Act provided locally for the first four of these classes: but it said nothing about the fifth, sixth or seventh; and inconvenience had recently been felt owing to the inability of the Local Government to comply with the request of a certain eminent but impecunious Sikh Guru, (the head of the Sodhi family, the custodian of what was regarded as the original copy of the Granth), who, feeling himself disqualified to manage his own estates, had applied that Government should assume the administration of his property and arrange for the liquidation of his debts. The primary object of the Bill which MR. STOKES now asked leave to introduce was to supply this defect in the law of the Panjáb.

Another amendment, suggested by section 173 of the Oudh Land-Revenue Act, 1876, was the addition of a clause providing that persons whose property was under the superintendence of the Court of Wards should not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof. It was obvious that there was not much use in trying to settle the affairs of an insolvent landholder if, during the process of liquidation, he was allowed to incur fresh debts and charge his property therewith.

Lastly, the opportunity would be taken to make the correction in the drafting of section 5 of the Panjáb Laws Act, to which he had referred on a previous occasion.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to amend the North-Western Provinces Land-Revenue Act, 1873. He said that the chief object of this Bill was to make in the North-Western Provinces one of the amendments of the law which he had just mentioned as necessary in the Panjáb, that is to say, to render disqualified proprietors incapable of entering into certain contracts save with the sanction of the Court of Wards. The Bill had been framed at the request of the Local Government; and the opportunity would be taken to make a verbal amendment in section 194 of the Act, and to clear up a doubt as to the effect of section 29.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES also presented the preliminary Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

PANJÁB COURTS BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Courts in the Panjáb.

The following Select Committee was named :—

On the Bill to enable the District Judges of the Presidency of Fort St. George to suspend and remove certain ministerial officers, and for other purposes,—the Hon'ble Sir Edward Bayley, the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Wednesday, the 17th October 1877.

A. PHILLIPS,

*Secretary to the Government of India,
Legislative Department.*

SIMLA ;

The 10th October 1877. }