

Friday, February 15, 1867

**COUNCIL OF 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 Government House on Friday, the 15th February 1867.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal.

His Excellency the Commander-in-Chief.

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 H. M. Durand, C. B.

The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.

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.

MOFUSSIL SMALL CAUSE COURTS REFERENCES BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to empower Courts of Small Causes in the Mofussil to refer for decision questions arising in the execution of decrees, be taken into consideration. He said that the changes made by the Committee had been announced by him when the Bill was introduced. The Bill had arisen out of a doubt expressed by the High Court, North-Western Provinces, as to whether the word 'trial,' as used in Section 22 of the Small Cause Courts' Act of 1865, was sufficiently extensive to include the whole course of a suit down to the execution of a decree. He had also stated that the Committee would consider whether references should be permitted on points arising in the proceedings previous to the hearing of a suit. The Committee had considered the point,

and the result was the alteration of the 1st Section of the Bill into the following:—

"1. If at any point in the proceedings previous to the hearing of a suit under the said Act, or if in the execution of the decree or order in any such suit, any question of law or usage having the force of law shall arise, the Court, in suits for an amount not exceeding five hundred rupees, may, either of its own motion or on the application of any of the parties to the suit, and in suits for an amount greater than five hundred Rupees, shall, draw up a statement of the case, and refer it with the Court's own opinion thereon to the decision of the High Court, within whose jurisdiction such Court may be situate. If the question has arisen previous to the hearing, the Court may either stay such proceedings, or proceed in the case notwithstanding such reference, and pass a decree contingent upon the opinion of the High Court upon the point referred. If a decree has been made, the execution of the decree shall be stayed until the receipt of the order of the High Court upon such reference."

The Section concluded by enacting that all the provisions therein contained should apply, *mutatis mutandis*, to the stating of a case by a Registrar. MR. MAINE anticipated that the Council would accept these amendments, for it was obviously desirable that as many cases as possible should be referred to the High Courts.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

MURDEROUS OUTRAGES (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH asked leave to postpone his motion that the Report of the Select Committee on the Bill for the suppression of murderous outrages in certain districts of the Panjáb be taken into consideration.

Leave was granted.

CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE asked leave to postpone his motion that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division be taken into consideration.

Leave was granted.

STAMP DUTIES BILL.

The Hon'ble MR. HOBHOUSE in moving for leave to introduce a Bill to amend the law relating to stamp-duties, said that he was afraid that he

should have to occupy the time of the Council considerably that morning, but he trusted that the importance of the measure would be his excuse for doing so. The stamp-law, as no doubt the Council was aware, was divided into two portions; that which referred to duties on bonds, agreements, and the like between parties, and that which referred to duties on judicial proceedings. The amendments he proposed to introduce had reference only to stamp-duties on judicial proceedings. He believed, as far as he could make out, that this Bill owed its origin to a scheme which the Hon'ble Mr. Roberts from time to time had proposed to introduce. As far as MR. HOBHOUSE could understand Mr. Roberts' original scheme, it was this: Mr. Roberts pointed out, first of all, that there were great inequalities in the present scale of institution stamps in civil suits. He showed that, in suits of a very small value, the stamp-duty was in some cases even more than sixty-five per cent. of the value of the suit. On the other hand, in suits of a very large value—above a lách of rupees for instance—the stamp-duty was very small, somewhat less than a quarter per cent. of the value of the suit. He first proposed that there should be a uniform duty of twelve per cent., and afterwards proposed that that duty be charged up to a certain sum, and that beyond that sum a smaller duty be levied, and recommended that the money so obtained should be employed in the improvement of the Courts, calculating that something like a crore and a quarter rupees would be obtained. These recommendations were spread over a period of many years, and the last of them did not reach the Government of India till the end of March 1866. In the mean time, Mr. Strachey had submitted three plans to the Government of India for the improvement of the Courts. He suggested, in the first instance, that the salaries of the ministerial officers of the courts of District Judges and Magistrates, Collectors and Commissioners, should be very materially increased. That was the recommendation made by Mr. Strachey in the beginning of 1865. In 1866 he proposed that the salaries of the lower grades of Judges, such as Principal Sadr Amíns, Sadr Amíns, Munsifs and the like should be increased; and again, that the salaries of the ministerial officers of those Courts should also be materially increased. He would read to the Council some of the reasons which Mr. Strachey gave for proposing these measures. He said—and his remarks were worthy of attention—with reference to the salaries of the officers of the Courts of Commissioners, District Judges, and others—

“ The great rise in prices which has occurred during the last few years, which will doubtless be permanent, and which has probably not nearly reached its limit, makes it evident that it will not be possible to avoid this question much longer. The salaries attached to these offices

have long been so insufficient that it has seemed unreasonable to expect men of honesty and zeal and efficiency to accept them. The wonder has really been that the duties have been upon the whole discharged so well, rather than that there should have been so much reason to complain of dishonesty and incapacity.

But the matter is now becoming far more serious. It cannot be doubted that, at the present time, it is really hardly possible for a large proportion of our ministerial officers to live honestly upon their pay, and the standard of the qualifications which they are expected to possess goes on constantly rising.

The majority of the Native officers employed in the judicial and revenue Courts in the Treasuries, Account Department, and Record Offices, in posts below those of the Sarishtadárs or other principal officers of Departments, now receive only from rupees ten to twenty per mensem."

He then went on to describe what those officers were, and stated how little they received:—

"This is true of all the provinces of this Presidency, although the pay is worse in some than in others. Many of these officers, receiving this wretched pittance, hold posts of no little influence and importance, and their duties require for their proper discharge considerable intelligence and education. Their salaries are often little, if at all, higher than the wages given to common labourers and artizans in some parts of the country, According to the statistical returns lately published by the Bengal Board of Revenue, a coolie in Calcutta gets from rupees eight to twelve a month; a blacksmith and bricklayer from rupees ten to twenty, and a carpenter from rupees fifteen to thirty. No doubt these rates are far above the average for the Presidency generally, and they are not quoted as being commonly applicable; but they serve to indicate the enormous increase of prices which has already occurred in some places, and which is fast becoming general."

Mr. Strachey had pointed out above that the salaries of the ministerial officers averaged, in a great many instances, from ten to twenty rupees a month. He then went on to say:—

"The insufficient pay of the higher grades of the establishments attached to our Courts is a still greater evil, because the officers who fill them hold positions of much responsibility and influence, and are constantly liable to great temptation to prefer their private gain to their public duty. It is not too much to say that there are hardly any Native officials employed under our Government whose integrity is a matter of greater importance. Every one who has had any practical experience of the working of our Courts, whether those of the Judges, of the Magistrates, or of the Collectors, knows how much depends upon the character of the Native officers, through whom almost every order has to be issued, and through whose hands the whole business of the Courts must pass. The Sarishtadár, or chief ministerial officer of the principal Courts presided over by European officers, holds a position which, although nominally of inferior responsibility and dignity to those of the Native Judges and Deputy Collectors and Tahsildárs, gives notoriously very often to its holder far greater actual

influence, and offers greater opportunities for irregular and dishonest gains. The difficulty of obtaining men with the necessary qualifications for posts of this kind is rapidly increasing. A knowledge of English is becoming essential in every office of importance, and this fact is alone almost sufficient proof of the necessity of increasing the salaries of this class of public servants.

The Sarishtadárs and other Native officers holding higher appointments in our Courts do not, at present, as a general rule, get half the pay which is given to the higher grades of clerks in the English offices of the Commissioners and Collectors, although the former hold a position of incomparably greater real importance, and although their duties demand incomparably higher qualifications.

There are few measures which would have a greater practical effect towards improving the reputation of our Courts, and increasing their actual efficiency, than measures which would enable us to obtain, for the principal ministerial posts, men in whose knowledge and in whose integrity and zeal we could reasonably place confidence."

The remarks of Mr. Strachey applied to the salaries of the ministerial officers of the Courts of Commissioners of Divisions, District Judges, and so on. Mr. HOBHOUSE need hardly say that they applied equally to the entire Civil Courts of which he was speaking. But he should also like to quote to the Council certain remarks which emanated from the High Court on the subject of increases to the salaries of the Judges of the inferior Courts. Mr. Strachey remarked :—

"The High Court, in their report upon the administration of civil justice for 1864, have strongly urged upon the Government the necessity for improving the position of the uncovenanted Judges of the regular Civil Courts, and have pointed out the disadvantages under which they are placed in comparison with officers in other departments, whose duties are certainly not more important. Thus, in Bengal, there are twenty-five Small Cause Courts. Eleven of the Judges of these Courts receive salaries from rupees 1,000 to rupees 2,000 per mensem; one Judge receives rupees 750; and the remaining thirteen receive rupees 700. In the North-Western Provinces, the salaries of Judges of Small Cause Courts are rupees 1,200 and rupees 800."

He then proceeded to speak of what the salaries were of Deputy Collectors, and showed that their salaries ranged from 700 to 200 rupees a month. After that he went on to say :—

"In Bengal, the establishment of Deputy Collectors is as follows :—

10 Deputy Collectors on	...	...	Rs. 700 per mensem.
15 " " "			" 600 "
28 " " "			" 500 "
40 " " "			" 400 "
48 " " "			" 300 "
49 " " "			" 200 "
14 Probationers "			" 200 "

It will be seen that even the salaries of *Probationers* in the Revenue Department are equal to those of Munsifs of the higher grade. Yet, as the High Court observe in their report, the Munsifs even of the lower grade have been required, not only by an entrance examination, but generally by a B. L. Degree in the Calcutta University, to show themselves qualified for judicial employment, and they have further, by actual work, shown themselves to be officers of promise and deserving of preferment. 'It cannot,' the Court observe, 'be contended that appointments in the more favoured services are more important in respect to their duties and responsibilities than those of the subordinate civil Judges, and the inequality is the more striking when it is found that, in the one department, probationers are placed on the same footing with officers of distinguished merit and at least two or three years' service and experience in the other.'

That referred to Munsifs, whose salaries varied from 200 to 100 rupees a month. He further said :—

"The difficulties with which the Court have to contend in making appointments to the judicial service are further increased by the emoluments enjoyed by successful legal practitioners, which naturally deter the more ambitious from becoming candidates for employment in an ill-paid service."

On this same subject Lord Dalhousie some years ago made the following very terse remarks :—

"But there are no demands of greater primary importance than the increase of the salaries of Native Judges ; for the longer continuance of the poor pittance to which we have heretofore been compelled to limit them, would convert an avowed imperfection into an open and deserved reproach."

And His Honour the Lieutenant Governor of Bengal, when he was Secretary to the Government of India, made the following remarks with reference to the pay of the Amlah of Courts. He said :—

"The question of giving sufficient allowances to the Amlah is almost more important than that of increasing the pay of the Native Judges."

It is exceedingly doubtful whether these Courts, however high the character of the Judge, can ever gain the full confidence of the people, or be free from corrupt action on the part of the subordinates, until higher allowances are given than those now mentioned. A salary of rupees six to men who must be persons of some education, and who are surrounded by temptation to corrupt practices, is less than that of menial servants. The proposed pay of the Sarishtadar (rupees sixteen) is equally insufficient for the due respect and responsibility attaching to the head officer of the Court, and insufficient to place him above all suspicion of being amenable to corrupt influence. Even this allowance is little more than what many gentlemen in this country pay their kitchen servants."

MR. HOBHOUSE thought that he had shown sufficient reason to the Council why the salaries of the civil Judges and of the ministerial officers he had been speaking of should be increased. Whilst the first scheme of Mr. Strachey, which had reference to the ministerial officers of the Courts of Commissioners of Divisions, District Judges and the like, was still under the consideration of the Local Government, he might mention that the two other schemes for the improvement of the salaries of the officers of the lower Courts and of their ministerial officers had been submitted for the consideration of the Secretary of State, and His Excellency the Viceroy had just informed him that those schemes had received the sanction of the Secretary of State. These three schemes taken together involved an increase of expenditure of something like fifteen lakhs of rupees per annum; and similar schemes, he had been told, would be proposed for the Presidencies of Bombay and Madras, involving an expenditure of about the same amount; so that, altogether, there would be an increased expenditure for the Courts of thirty lakhs of rupees per annum. He had also himself some remarks to make on the Courts. The present salaries of Munsifs ranged from 200 to 100 rupees per month; yet he found that, out of something like 800,000 suits that were instituted throughout the Courts of India, no less than upwards of 700,000 of them were instituted in the Munsifs' Courts, because they were for sums under 300 rupees, which was the limit of the jurisdiction of Munsifs. From the experience he had had, he believed that the officers of the Courts of which he had been speaking were of a much higher character than they formerly were, and he believed that they were becoming every day of a higher character. He regretted that he could not speak so favourably of the ministerial officers of these Courts, because there was no doubt that much peculation was practised by them, and he believed that nothing could go on in these Courts without the giving of fees and *douceurs*. But nothing could be done in the way of improvement with regard to those officers while they were badly paid. He had said that an increased expenditure of thirty lakhs of rupees must be incurred. With this view His Excellency the Viceroy in Council had appointed a Committee for the purpose of enquiring into the present condition of the stamp-law. The Committee was appointed with this object. It was, if possible to derive out of the stamp-duties levied on judicial proceedings a sufficient revenue not only to meet the increased expenditure to be incurred for the Courts, but also to make the Courts, to a more considerable extent than they did, pay for themselves. The Commission consisted of the Hon'ble Mr. Justice Louis Jackson as referee, and of Mr. Cockerell and himself as working members, and subsequently of Mr. Prinsep and himself. They had called for information from all parts of India, by issu-

ing questions in a circular to selected officers throughout India. They had also called for returns of a very voluminous nature, and collected what information they could from the returns available in Calcutta. Before he said any thing more with reference to the scheme which the Stamp Commission submitted, and which had been accepted by the Executive Council almost in its entirety, he wished to say something on the subject of levying stamp-duties on judicial proceedings generally.

He was aware that there was an opinion among certain writers in England that justice should not be taxed, but as far as he knew, that theory did not meet with entire approbation in England; for he found that, according to the returns of the year 1862-63, in the County Courts, the amount of fees averaged something like fifteen or sixteen per cent. of the value of the property litigated: he feared, therefore, that the theory could hardly answer even at home. But he was sure that it could not be applied to this country. The community of this country was so particularly litigious, that litigation was, with the great majority of the people, something like what an engrossing pastime, such as the ring, was to some persons at home, and they would pay whatever amount was demanded rather than not litigate. On looking into the history of the levy of duties on the institution of suits, he found that they had always been levied with the object of repressing the amount of petty and vexatious litigation with which the Courts would otherwise have been flooded. He found, about the year 1795, up to which time no duties were levied, the state of things thus described in (Bengal) Regulation XXXVIII of that year:—

“ Many groundless and litigious suits and complaints have been instituted against individuals, and the trials of others have been protracted by the filing of superfluous exhibits, or the summoning witnesses whose testimony was not necessary to the developement of the merits of the case. The business in many of the Courts of judicature has in consequence increased, so as to prevent the judges determining the causes and complaints filed with that expedition which is essential for deterring individuals from instituting vexatious claims, or refusing to satisfy just demands.”

And the consequence of this was that a fee was imposed on the institution of all suits in the Civil Courts. That Regulation extended, in the first instance, only to the province of Lower Bengal, but was subsequently extended to Benares; and then, only two years after the Regulation had been passed, another Regulation was enacted, increasing the amount of these duties on the same grounds. Thereafter, in 1803, fees were levied all over the country. These fees were afterwards merged into stamp-duties, and these duties had been levied throughout the country ever since, at very nearly the same rates as

those now obtaining. Now he found from returns made, that there were something like from sixty to seventy thousand suits instituted throughout the country for sums averaging about two rupees twelve annas. It seemed to him that, if people would quarrel about such petty matters, they should not be allowed to use the agency of the Courts at a trifling expense, but be made to pay heavily for it. However that might be, he thought that stamp-duties should be levied, not only to check petty and vexatious litigation, but in some degree with a view to support the Courts.

He would now proceed to consider some of the propositions that had been made by the Stamp Commissioners. The first had reference to the scale of stamp-duties for the institution of suits. In that scale, the Hon'ble Mr. Roberts calculated that a very large percentage was levied on suits of the lower value, and a comparatively very small percentage on suits of the higher value. MR. HOBHOUSE'S own idea was that percentage was not the proper principle on which to consider how these duties should be levied. We should consider what the machinery was that was brought into action by the person who set the Courts in motion, and then what he should pay for it. He would take the case of, first, suits of low value in the Courts of Munsifs. In such cases, the machinery of those Courts was first brought into operation; then there was an appeal to the District Judge, who again might refer the case for the opinion of the High Court. Therefore, in suits of the very smallest value, the machinery of two Courts, and possibly of three, might be brought into operation. What was the case when you took a suit of the higher value? Very much the same. If you took a suit for 10,000 rupees, that suit was tried first in the Court of the Principal Sadr Amin, and then it would go to the High Court, and possibly to the Privy Council in England. But if the suit were for less than 10,000 rupees, it could not be taken to the Privy Council. Therefore, it seemed to him that the way to ascertain the stamp-duty on the institution of a suit was, not to calculate the percentage, but to fix the stamp-duty according to the machinery the suit would bring into operation. The first question that suggested itself to the Stamp Committee was whether there should be any reduction of stamp-duty on suits of small value. Their unanimous opinion was that there should not be any such reduction. It was not thought desirable that persons should be encouraged to bring their quarrels into Court on every trifling matter, and, moreover, it was the unanimous opinion of the Committee, and of almost every person whom the Committee had consulted, that, if there was any reduction, the consequence would be that the Courts would be overwhelmed with the number of petty suits that would

be instituted, and it was actually found that even an institution-fee of twelve per cent., which was about the amount of stamp-duty *plus* the service fees levied in the Panjáb, did not prevent litigation of this sort being brought into the Courts, but that, on the contrary, this litigation was on the increase. The Committee therefore resolved that no suits should be instituted on a duty less than one rupee.

The next question was, from what sum you should begin to raise the duty, and what the duty should be. It was quite clear that the present scale of stamp-duty was founded on no sort of principle. He found, on looking over that scale and certain tables prepared by the Financial Department, that there was this result : that in suits of ten rupees, the duty was at the rate of ten per cent : in suits of fifteen rupees, it was over six per cent : in suits of sixty-five rupees in value, it was twelve per cent : in suits of sixty rupees, only a little over six per cent : and so on, jumping backwards and forwards, without any sort of principle, all through the scale. What suggested itself to the Committee was this. They had before them the fact that, in suits in the Small Cause Courts in the Presidency towns, an institution-fee of two annas on the rupee, or something over twelve per cent., was that levied in all the Presidency towns at present, up to 1,000 rupees in value. It did not seem to the Commission that exactly that amount of duty should be levied in suits in the Mofussil, because the agency in the Presidency towns was much more expensive and also much better, and therefore, to make Mofussil suitors pay the same duty as suitors in the town, did not seem fair. But something very little less than twelve per cent. was actually rendered necessary by the present scale. The Committee therefore recommended that, in suits up to 1,000 rupees, a uniform duty of ten per cent. should be taken, and in suits above, something gradually less and less. So as that, in a suit of six lákhs of rupees, for instance, the duty should be about half per cent., and in no suit would the duty be more than ten per cent. Another point had to be considered. In referring to the present scale, it would be found that the rate of stamp-duty jumped most arbitrarily, and in a way most inequitable to the suitor ; suits of 801 rupees, for instance paying as much as suits of 1,600 rupees ; and suits of 50,001 rupees, as much as suits of 1,00,000. This was inequitable, and had a very bad effect. If a person sued another for mesne profits and the mesne profits exceeded 50,000 rupees, he found it quite as easy to put down the mesne profits at a lák of rupees, as to put them down at what they really were ; and this not only gave a great deal of trouble to the Court in execution of decree, in order to

discover what the mesne profits were, but it also tended to injury in a moral point of view. To sum up, then, what the Committee proposed was, that no suit should come into Court on a lower stamp-duty than one rupee; that up to 1,000 rupees, the duty should be at the rate of ten per cent.; that above that sum, the duty should gradually decrease; that from ten rupees to one hundred rupees, it should jump only by five rupees at a time; that in suits from one hundred rupees to one thousand rupees, it should jump only by ten rupees at a time, and that in suits above one thousand rupees, it should jump only by a hundred rupees at a time. That the values should jump somewhat seemed necessary for the purposes of the Stamp Office, as otherwise it would be very difficult for that office to fulfil the requirements of the law. He should mention that, by the increase of duty which the Stamp Committee proposed, there would probably be a gain of about twenty-seven lakhs of rupees, more or less. The increase could not be very accurately estimated, as the figures before them were not very correct.

The next subject to which he would call attention was the valuation, in order to the assessment of stamp-duty: in suits for land paying revenue to Government. Where the land was permanently settled, as in Bengal, the principle was this:—You found the assessment annually taken by Government, you multiplied that by three, and the product was supposed to be the value of the land in suit. Where lands were temporarily settled in Bengal, or where the lands were situated in Madras or Bombay, there you found the sum annually paid to Government, and took it as the actual value of the land. But, in fact, that was not the actual value of the land. In order to arrive at that actual value, the legislature took what was the average in the year 1829, of land put up for sale for arrears of revenue, and assessed the stamp-duty accordingly. But the average of sales in 1829 was no longer that average, and when in subsequent years the Stamp Act was amended, the legislature entirely overlooked this provision of the law, or otherwise it must have seen that landholders were placed in a much more favourable position than any other kind of suitors. The Stamp Committee called for returns on the subject of these suits, and they found that, taking the average of sales for arrears of revenue, it showed that, in Bengal, land fetched between eight and ten times the amount of the Government assessment, and that the same or nearly the same was the case in Bombay and Madras; that in the Panjáb, land fetched about six times the value; and that when lands of the same description were sold by private sale, the value immediately doubled, and became twelve times the annual assessment. It seemed, therefore, that the

market-value of land paying revenue to Government was between eight and ten times the amount of the yearly assessment. Properly speaking, the market-value should be the value on which the stamp-duty should be levied ; but if you were to say that the market-value should, without some other provision, be the value for the purposes of assessing stamp-duty, you would not arrive at that value without putting suitors to much trouble and delay. No doubt the present system was a very inaccurate one. He believed the Hon'ble Mr. Taylor would, from his knowledge and experience of the subject, be able to bear him out in the assertion, that what were called Inám lands at Madras were, when resumed, assessed at about one-eighth of the sum at which ordinary land was assessed. When those lands were made the subject of suits, what was it that they paid in the shape of stamp-revenue ? You took the profits of the Inámdár ; you multiplied these by eighteen, and on the product was calculated the amount of the stamp-duty. But the moment those lands were resumed, that duty fell almost to a minimum. Supposing that the annual profits of a rent-free holder were one thousand rupees, then, in order to ascertain the stamp-duty, you would multiply that sum by eighteen, and the stamp-duty would be calculated on that sum, and would be five hundred rupees. But suppose that that land was resumed, and that on resumption three hundred rupees was the sum payable as Government assessment on that land ; from that moment, supposing the land were in suit, the value assumed was three hundred rupees, and the stamp fell to sixteen rupees, and it followed from the mode in which the value of revenue-paying land in suit was arrived at, in order to the assessment of the stamp-duty thereon, that where land was lightly assessed, it paid a light stamp-duty ; and that where the assessment was heavy, the duty was proportionately heavy also. That principle of assessment for purposes of stamp-duty was, when it was remembered in what an arbitrary manner the assessment had in early times been put on, most inequitable ; and the only fair principle of assessment, and that therefore which the Stamp Committee proposed to lay down as a principle, was that lands should be assessed for stamp-duty at their market-value. But still, in order to arrive at that value, some standard must for convenience of suitors be laid down, and the only satisfactory way out of the difficulty that the Commission could hit upon, was to provide that eight or ten times the amount of the revenue paid to Government should be taken to be the market-value of the land in suit, until the contrary were proved. If the lands in suit were permanently settled, then eight times the annual assessment would be taken to be the market-value of them ; if temporarily settled, then ten times the assessment would be so taken in the first instance ; but if the actual value of the land were less,

then it would lie on the person suing to prove that it was less, and he would get a remission of stamp-revenue. That seemed to him to be the only way to get out of the difficulty. He should mention that there was a difference between land temporarily settled and land permanently settled, the former being, for obvious reasons, more valuable in the market.

The next point which he would mention had reference to an exemption under Article 10 of Schedule B of the present stamp-law. That exemption embraced all complaints before the criminal Courts, and exempted them entirely from stamp-duty. He thought it would be a very dangerous matter if no duties at all were levied for the institution of civil suits, and he could now prove that since the time when stamp-duties had ceased to be levied on complaints before the criminal Courts, the most dangerous results followed. Those duties were levied originally in the year 1797. It was then found that there were no means of checking litigious complaints in trifling matters before the Magistrate, and therefore a fee of eight annas was directed to be paid on all complaints of a petty nature before the Magistrate; but subsequently it was found that such complaints were brought, not only before the Magistrates, but before Darogahs, Kotwáls, and other head officers of Police. Therefore, subsequently, the same stamp-duty was also levied on all complaints of such nature before such officers of Police. But it was found also that those vexatious complaints were not confined to petty offences, but that they included some of a heinous nature, such as adultery, rape, and the like. On these, a fee of one rupee was levied. That was the state of the law up to the year 1829. In that year an alteration was made: the stamp-law was amended, and a duty of eight annas was imposed on the institution of all complaints of offences of a bailable nature—offences as well of a heinous, as of a trivial character. That was the law up to 1860. In that year it was proposed by the Hon'ble Mr. Harington, who introduced the Stamp Bill to extend the provisions of the law of 1829 to the Presidencies of Bombay and Madras; but some opposition was raised by the Members for those Presidencies, and Sir Barnes Peacock and other members of the Council objected generally to any stamps being taken at all on judicial proceedings. No detailed discussion followed, as far as he could discover from the published proceedings of the Council, yet it appeared that the provision of the law of which he was speaking was altogether done away with, and in its place there was the provision which exempted all complaints before the Magistrate from any sort of duty. He would now endeavour to show the results of that alteration of the law. Shortly after the stamp law of 1860

was passed, there was another alteration of the law, namely, a provision in the Code of Criminal Procedure, which very much affected these complaints in the criminal Courts. Up to that time, not only had there been a stamp-duty of eight annas on all complaints before the Magistrate, but certain fees were levied on the issue of the summons on the defendant and on the witnesses of the complainant. Those fees and stamp-duties taken together were, no doubt, a very severe tax on complainants. But by the laws of 1860 and 1861, they were entirely done away with: a person who wished to make a complaint before a Magistrate could do so on no petition at all, or on a petition on plain paper. The present procedure then was this. The Magistrate summoned the defendant at the expense of the State, and either told the complainant to bring his witnesses with him, or, if the complainant wished it, summoned the witnesses also at the expense of the State, and something like this state of things seemed to him to follow on that state of the law. If a person had an enmity against his neighbour, he went to some wretched Mukhtár plying his trade outside the Court House. This Mukhtár for a few annas drew up a complaint of probably some trifling, but it might be of some heinous offence: the Magistrate examined the complainant, and if a *prima facie* case was made out,—and every body knew that it was not very difficult to do this—the Magistrate fixed a day on which the complainant and his witnesses should be present, and summoned the defendant and his witnesses. The defendant and his witnesses came in on the day appointed, and, as a rule, the complainant was *non inventus*; he had done all that he wished to do; he had dragged the defendant from his field, and put him to expense; and then had never appeared at all. There were, it was true, certain ways in which persons making such false and vexatious complaints might be punished, but it was very difficult, and in some instances dangerous, to do so. The complainant might either be charged with making a false complaint and punished summarily by fine, or he might be charged with an offence which amounted to perjury, and committed to the Sessions for trial. But the Courts had found great difficulty in convicting such persons under the Penal Code, and were very averse to put those provisions into force; and although the lower Courts had had their attention repeatedly called to those provisions, they could not be induced to act on them, owing to the very great difficulty experienced in procuring convictions. He believed that His Honour the Lieutenant Governor could bear him out on that point.

He would now show, from certain returns which he had himself collated from the reports in the Bengal office, what extraordinary results had followed the procedure by which complaints before the criminal Courts were made duty-

free. That procedure first came into force in 1861. In that year, there were 34,000 complaints of a petty nature: in the next year the number rose to 44,000: in the next to 58,000, and so on. Out of the Police returns he had gathered much more important data. He took at hap-hazard some of those offences which, from his own experience, he believed to be those in which the majority of petty, vexatious or false complaints were instituted. He took the offences of contempt of the lawful authority of public servants, offences against religion, criminal trespass, cheating, simple mischief, criminal breach of trust, defamation, criminal intimidation, simple hurt, wrongful confinement and wrongful restraint. These seemed to be the cases in which he was likely to find petty and false complaints; and the result was that his anticipations were fully justified. In 1863, there were 167,000 persons charged with those offences in Lower Bengal; of these 95,000 were never brought to trial at all, and of the rest more than one-third were acquitted, and in 1864 the results were still more disastrous and decisive. In that year, some 177,000 persons were charged with these offences; of these 105,000 were never brought to trial at all, and of those brought to trial, more than half were acquitted. From these results it seemed that some check other than that provided by the present law must be put on complaints of that nature. And he would extend a provision of the law to which he would presently refer also to the Presidencies of Bombay and Madras. In Madras, according to the returns of 1863-64, which were the only returns to which he had had access, he found, taking up the returns hap-hazard, and picking out of them the offences he had above mentioned, that something like 90,000 persons were charged with offences of a similar nature to those which he had taken as his guide with reference to Bengal, and of those very nearly two-thirds were acquitted. He believed the Hon'ble Mr. Taylor would support him in his assertion, that some better provision of the law on this point was as much wanted in Madras as in Bengal. Of Bombay he could not speak with the same confidence. All he could find was, that the percentage of acquittals to convictions was something like thirty-seven per cent. In Madras it was thirty-four per cent., and when he found that, in that Presidency this percentage was made up so largely of petty offences, he thought that the thirty-seven per cent. in Bombay would be found to be made up in the same manner. For these reasons he thought that, if persons would come into Court for every petty matter, it was no hardship to make them pay to a certain extent for the machinery which they put in motion for the trial of their complaints. There were two sorts of expenses which should be paid by complainants; first, the institution-stamp, and then the service of summons on the defendant. The institution-stamp was eight annas; the summons

he would represent by an equal sum of eight annas, and he would insist that every person coming into Court, who came before the Magistrate, should institute his complaint on a stamp of one rupee. But he would at the same time provide a safeguard. Under the present law, Section 44 of the Code of Criminal Procedure, whatever a man's expenditure was in prosecuting a just complaint, he could be reimbursed by a fine imposed on the defendant. As a matter of fact, some seventy-five per cent. of fines imposed were realised; therefore, in all probability, a fine imposed to reimburse a complainant would be realised. If a complaint seemed a just complaint, and if the Magistrate should think that it was not of a petty or vexatious nature, or if, for any other reason, he should think that the complainant's expenses should be repaid, he might reimburse them under Section 44 of the Criminal Procedure Code, by a fine on the person convicted. There might, however, be some persons who, from extreme poverty, might be unable to pay even so small a sum as one rupee for the institution of what might be a very true complaint. He would therefore put another provision in the Bill, a provision giving the Magistrate a discretionary power to remit the stamp-duty for good reasons. With these safeguards, he hoped there would be no objection to re-impose the stamp-duty on complaints before Magistrates, and to raise it from eight annas to one rupee. The financial result would, he believed, show an increase of stamp-revenue of about five lakhs of rupees.

The last point to which he should call the attention of the Council, was the provision of note *g* to Article 11 of Schedule B of the present stamp law. By the provision of that note, when any person sued in a revenue Court constituted under Act X of 1859, for arrears of rent or for money in the hands of an agent, he was privileged to sue on a stamp of one-fourth the value of the stamp-duty which could be levied in an ordinary Civil Court; and under another provision, in Courts so constituted, suitors for any matter other than the above could sue on a uniform stamp-duty of eight annas. He was afraid he must take up some time in explaining how it was that that provision came to be found in Act X of 1862. As far as he could make out of what had happened in former years, this appeared to be the history of the levy of stamps on suits in the revenue Courts. At first no stamps were levied at all; then certain Courts were constituted under Regulation VII of 1799 for the trial of suits for arrears of rent of the current year, and for the recovery, on the part of ryots, of damages for illegal distraint. If a person were to sue in those Courts for arrears of revenue or the recovery of damages for distraint, he sued on a stamp of eight annas. This law obtained till

1831. In that year a different rule was established. If a person sued for arrears or damages, either, in the first instance, in the Revenue or in the Civil Court, he sued on a stamp-duty of one-fourth the ordinary duty. But if he sued, in the first instance, in the Revenue Courts, and then sued in the Civil Courts to set aside the decision of the Revenue Court, he had to pay, not only the one-fourth duty in the Revenue Court, but also the full duty in the Civil Court. The reason of that law was, to induce persons who had a dispute in the matter of rent to come for a speedy decision to one Court or the other. If they chose to protract their litigation, they had to pay one-fourth the ordinary stamp-duty, *plus* the whole duty: but if they chose the one or the other, they then had to pay only the one-fourth duty. The law of 1831 was continued up to 1859. In that year Act X of 1859 was introduced, and it was on the introduction of that Act that this note *g* in the stamp-law was made to appear very much in the form it now obtained. As far as he could make out, there was no very great discussion on the point, but Mr. Cowie insisted that the ryots and zamindárs should have that privilege. On the other hand, Sir Barnes Peacock and those who thought with him, insisted that the privilege should not be conceded, and after some little debate the law was carried. MR. HOBHOUSE would call attention to a provision in Act X of 1859, which made the provision of which he had been speaking one of very great importance. He had remarked before, that the privilege up to the year 1831 was only given to two classes of suitors; to suitors for arrears of rent of the current year only, and for damages on account of distress. But when Act X of 1859 was introduced, those two were not the only classes of suitors who were privileged; there were then created no less than twenty-seven or twenty-eight classes of suitors to be so privileged. He would read to the Council what suits were now cognizable in the Revenue Courts. They were—

“Suits for the delivery of pattás or kabúliyats, or for the determination of the rates of rent at which such pattás or kabúliyats are to be delivered; all suits for damages on account of the illegal exaction of rent or of any unauthorized cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress; complaints of excessive demand of rent, and all claims to abatement of rent; suits for arrears of rent due on account of land either *khiráji* or *lákhiráj*, or on account of any rights of pasturage, forest-rights, fisheries, or the like; suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment or a lease may be liable to be cancelled; suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same; suits

arising out of the exercise of the power of distraint conferred on zamíndárs and others by Sections CXII and CXIV of this Act, or out of any acts done under color of the exercise of the said power as hereinafter particularly provided."

So that, in fact, something like twenty-seven classes of suitors, who had never been privileged before, were by this law privileged. But they were not only privileged in the matter of stamp-revenue, but also as to the Courts; for by the Act of 1859, suitors who had sued on one-fourth stamp-duty could only be taken into one Court once for all. The provision of the old law was therefore not only considerably extended, but the parties were confined to one Court only.

He should here state that the note *g* to Schedule B, which was now the law, continued to be the law in Act X of 1859 only up to the passing of Act XXXVI of 1860. In that year, Mr. Harington introduced a Bill to amend the stamp-law, and moved the insertion of this provision in note *g* into the stamp-law, or into a more appropriate place, and then again Sir Barnes Peacock opposed the Section, and opposed it successfully; and consequently, during the whole of the year 1861, and in a part of the years 1860 and 1862, suitors under Act X 1859 had no sort of privilege *quoad* stamp-duties. The only reason for which any sort of privilege had ever been given was said to be this. People said that the payment of revenue depended upon the payment of rents, and that, inasmuch as the State required a person to pay his revenue punctually, practically therefore you should oblige his tenants to pay their rent punctually. If that were the case—if revenue depended so directly on rent—then there must be some way to enable landlords to recover their rents cheaply and expeditiously. But, as a matter of fact, the payment of revenue did not directly depend on the payment of rent, as he thought he should be able very conclusively to show. The payment of revenue no more depended on the payment of rent, than the payment of any other tax did, as far as his experience and the information before him went. Now, if revenue did depend upon rent, then, at any time when rents were not very cheerfully and punctually paid, you would expect to find that revenue was not regularly paid, and that consequently sales of land for arrears of revenue would be numerous. He had taken the returns of the Board of Revenue from 1861 to 1864; and he found that, in 1861-62, there were no more sales for arrears than afterwards, but, if any thing less. If it was necessary to give certain zamíndárs a privilege in suing which others had not, then you would find that, in that year, when they were not so privileged, there would be a reduction in the number of suits. But it was not so. On the contrary, he found that, in 1861-62, there was a very large and manifest increase in the number

of suits. Of course he was aware that something was due to very exceptional circumstances in the year 1860-61. The limitation clauses of Act X were drawing to a close, and there were besides certain well-remembered disturbances between landlords and tenants. But taking those exceptional circumstances into account, and deducting the figures referring to the particular districts in which the disturbances occurred, still he found that, in 1861, there was a very large increase in the number of suits instituted under Act X of 1859. This led to the conclusion, that considerations of stamp-duty had nothing to do with the increase in the number of suits in the revenue Courts constituted under Act X of 1859, and, on the contrary, he had evidence that the stamp-duty levied under that Act was thought so light, that the Act seemed to have been used for purposes of registration only. Suitors who came into the Court should always do so *bond fide* : they should actually be suing for something essential ; there should be some point really in dispute between the parties. But if, in the majority of suits, there was no point in dispute, you must look to other causes for the establishment of those suits. Looking into the returns of Lower Bengal, he found the following facts. He found that, in no less than sixty-three per cent, of the suits on which decree passed in the revenue Courts, there was no dispute at all, but judgment was at once confessed ; and in the execution of decrees, there was no dispute at all in seventy-five per cent. of the cases : people confessed judgment at once, and paid as soon as the decrees were put into execution. He took the reason of such a state of things to be this. There was no sort of dispute at all between the parties, but the agents who stood between the zamíndár and the ryots were not believed or trusted in any way by the latter. The ryots, therefore, would not take receipts for rent from those agents, fearing that the agents would pocket the money and conceal the receipts, and that they would have to pay their rents over again. But if the ryots were taken into Court they knew they would get secure receipts for their rents. The large majority of the ryots preferred, therefore, to keep their money in their pockets until they could pay through the agency of the Courts. Another cause for what appeared to be an unnecessary recourse to the Courts on the part of landlord and tenant might, in the case of substantial ryots, be found in facts of which he had some experience as Collector of Burdwan, as His Highness the Mahárájá would probably be able to inform the Council. On the Mahárájá's estates, there were certain persons called patnídárs, who were his tenants, and there was a special law for compelling them to pay their rents every half-year. In the majority of instances, those patnídárs did not pay their rents. Mr. HOBHOUSE found that nearly every half-year he had to put up for sale no less than eight hundred patní tenures, but when brought to the hammer, the arrear were generally

settled, or, in the few cases which were not so settled, the non-settlement was specially accounted for. He then enquired into the meaning of such proceedings, and found, to the best of the explanation given to him, that the patnidárs were in the habit of lending out their money at about thirty per cent., whilst the costs which they paid under the Regulation, in default of punctual payment, did not amount to more than twelve per cent. It was clearly therefore for their interest to delay payment as long as possible, and therefore they never did pay except under the extremest pressure of the Courts, short of actual sale of their tenures. It seemed to him possible, that what was the case with the Maharájá's patnidárs might be the case with many of the more substantial ryots, some of whom held whole villages; they might also lend out their money similarly, and never pay until the Courts were brought to bear upon them. It therefore seemed to him very mischievous that resort to Courts should be so cheaply obtained. He had been speaking principally about Bengal from his own knowledge; but he would now read a letter from Mr. Thornhill, senior member of the Board of Revenue of the North-Western Provinces, on the subject. He said :—

“I do not see any valid ground for maintaining the distinction between Revenue and Civil suits, and would abolish the privilege.

It is to be supposed that the landlord cannot pay his revenue unless he possesses exceptional facilities for realizing his rents. I would reply that, if with the power of distraint on crops which the law gives him, he cannot pay up his revenue without preliminary suits, he will soon be a hopeless defaulter.

The time for such exceptional privileges, with the view of facilitating the collection of land revenue, has passed away in these Provinces, when it is remembered that nearly four millions sterling are collected in the North-Western Provinces, with about three cases of sale, and five or six of farm or transfer, and a real balance of one and half per cent., there is evidently no necessity for any exceptional legislation.

The agriculturists are all well off. The rent and revenue are both paid easily, and where recourse is had to the Revenue Courts, it is under circumstances which, in my opinion, render special indulgence quite unnecessary.

The ryots up here stand no oppression, and the difference between full and quarter institution-stamps would never interfere with their opposition to what they considered an unjust claim on the part of the landlord to get more than his dues.

The high prices which have prevailed up here for some years past have put immense sums of money into the pockets of the cultivators.

The rents being almost always paid in money, the rise in prices benefits the cultivator much more than the landlord, and I think that Mr. Muir would not now consider the maintenance of the privilege to be advisable.”

Mr. Thornhill here referred to what Mr. Muir had stated to him (MR. HOBHOUSE) in the way of conversation : Mr. Thornhill then went on :—

“ In looking over the annual statistics, I find that the *Ábkárf* fluctuates with the season. With a plentiful crop there is a great consumption of spirits ; with a bad crop the consumption falls off. But the stamp-revenue is not so affected, and during the past year, when there was considerable scarcity in the Benares province at one time, the people could forego the luxury of dram drinking, but they could not give up their lawsuits. So the *Ábkárf* fell off and the stamp-revenue was not affected.

“ I think that this alone is a proof that there is no necessity for affording any exceptional inducement to bring any class of suits under adjudication.”

That was what Mr. Thornhill said of the North-West Provinces. MR. HOBHOUSE had also made enquiries as to what was the rule in Bombay and Madras, and the Panjáb. In the Panjáb he found that, although there was in some places a rule by which suits for arrears of rent of the current year might be instituted on a stamp-duty of but eight annas, yet that was not the law, nor was it the practice, in all parts of the province, and in some parts the full stamp-duty was levied. He believed the Hon'ble Mr. Brandreth would confirm this statement, and would also agree with him that there should be no privilege in the matter of the stamp-duty charged to suitors of the classes described in Act X of 1859.

In Bombay and Madras there was a different state of things. In those Presidencies, to the best of his information—but he spoke with diffidence—there was no such thing as a suit for arrears of revenue in any Revenue Courts proper. When the tenant was in arrears, the landlord distrained the crop, and if the tenant was dissatisfied, he made a complaint to the Collector, and the Collector adjudicated the dispute between the parties ; that, he thought, was the case in Madras, and also, he believed, in Bombay. But whenever a person was in arrears of rent other than those of the current year, there was no remedy but to go into the Civil Court and pay the full stamp-duty. He would note also that, under Act X of 1859, the zamíndár had almost the same power of distraint as under the Madras Act. It seemed, therefore, that that which was given was a privilege to the zamíndárs of Bengal, the North-West Provinces and Oudh alone, but was not given to zamíndárs in other parts of the empire. If, therefore, no good reason could be shown by suitors under Act X of 1859 should be privileged to a greater extent than others, he thought the fact that they were not privileged in any places except Bengal, the North-West Provinces and Oudh was a further reason why the privilege should not be continued. He would also mention one fact as showing the falsity of the argument that, because

revenue was dependent upon rents, therefore zamíndárs should be privileged. If the privilege were confined to suits for arrears of the current year, he could understand the principle upon which the privilege was given; but when you came to sue for three years' arrears, how could it be possibly said that there was any dependence, in that case, of revenue on rent? and how was there any such dependence in suits on the part of a ryot for possession merely, or for ejectment, and the like?

He would now show how unequally the special stamp provision of the Act of 1859 told, as compared with the general provisions of the Stamp Act; how unfair it was. He would take the case of a man who sued for arrears of rent, and of one who sued on a bond. With regard to the former, the tenure itself was hypothecated for the rent, and he could at once go on that tenure for the rent due. But in the case of a man who sued on a bond, when he got his decree, he had nothing to depend on but any immoveable or moveable property he could find belonging to the defendant, and the zamíndár had always a prior claim on the standing crops, which he could distrain for rent. What was looked for in a decree was, that there should be some security for its execution. Take the case of a tenant dispossessed by the landlord: if he wished to obtain possession, he came into the Revenue Courts, and sued on a stamp of eight annas. You must presume the suit to be true, and the decree to be given against the landlord, and the wealth and property of such landlord was ample security to the tenant for whatever he had expended in his suit. But a ryot dispossessed by a fellow ryot had no such security, and yet he was bound to go into the Civil Court, and the stamp-duty he had to pay must always be as much as one rupee, and might be very much more; yet, in the other case, the duty was never more than eight annas. There were many other ways of showing how great and unnecessary a privilege Act X of 1859 gave to suitors under that Act, who were not privileged under the law generally, but he thought he had already sufficiently shown how inequitably the Act worked.

He would now shortly sum up the recommendations of the Stamp Committee. He found that the total amount expended on the Courts of Justice throughout the Empire came to about the sum of two crores and twenty-five lákhs. To that must be added the thirty lákhs which, as he had said before, it was proposed and partly sanctioned to expend in the improvement of the Courts, amounting altogether to two crores and fifty-five lákhs. The income at this moment derived from stamp-duties was about fifty lákhs, the increase on which, according to the scheme of the Stamp Committee, was about sixty-five lákhs. The increase they hoped to derive by the increase in the scale for the institution

of suits, was twenty-seven lákhs : on suits for land, thirty lákhs : on suits under Act X of 1859, three lákhs ; and on criminal complaints, five lákhs. When it was considered that the whole amount expended on the Courts was two crores and fifty-five lákhs, and that it was only proposed now to provide for about one crore and fifteen lákhs, he did not think it was unreasonable to expect suitors to pay that proportion of the expenditure of the Courts.

The Hon'ble MR. COWIE wished to ask a question. The Hon'ble MR. HOBHOUSE had spoken in a very clear and comprehensive manner of the amendments in the stamp-law which he proposed, but MR. COWIE understood that the Bill would be confined to only one portion of the stamp-law, namely, that by which stamps on judicial proceedings were regulated. He had been on a former Committee on the stamp-laws, and he was quite free to admit that Schedule A was open to much improvement. He wished, therefore, to know if the proposed Bill would be confined to the amendment of Schedule B, or whether it was intended by it to amend the whole stamp-law. He thought that the opportunity should be taken to revise the whole law on the subject.

The Hon'ble MR. HOBHOUSE was quite prepared to answer the question. He had intended to state that the present amendment of the law was only meant to be a partial amendment. He understood that it was in contemplation to amend the whole law, and next year a measure would be introduced for the amendment of Schedule A. He might also mention that, with the permission of the Council, he would in the present Bill modify a clause in Schedule A which he understood very much required alteration, namely, the article under which stamp-duty was charged on instruments appointing proxies for shareholders in Joint Stock Companies.

The Motion was put and agreed to.

PORT DUES (MOULMEIN AND BASSEIN) BILL.

The Hon'ble MR. GREY presented 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.

PRESIDENCY JAILS BILL.

The Hon'ble MR. MAINE asked leave to postpone the presentation of 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. He said that he was in communication with the Hon'ble Sir Barnes Peacock on the subject of the Bill, and proposed to request the Select Committee to sit again.

Leave was granted.

The Council adjourned till the 22nd February 1867.

WHITLEY STOKES,

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

CALCUTTA,

The 15th February 1867.