

(1) Number of pages 38
 (2) Date of repair ca 1986
 (3) Initials of the Referencer law

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	487-88	Press.
B.P. No.		Mis.
Dated	20.3.1988	~~1977~~

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*Proceedings of the Madras Government, Judicial Department,
20th March 1868.*

No. 216. Read the following letter from J. G. COLEMAN, Esq., Honorary Secretary, East India Association, to the Chief Secretary to Government, Fort Saint George; dated Madras, 2nd March 1868.

I am instructed by the Chairman and Executive Committee of the Madras Branch of the East India Association in London to lay before Government the following representation on the oppressive working of the Schedule B., appended to the new Stamp Enactment, or Act XXVI. of 1867, with the object of the same being brought under the consideration of the Supreme Council at Calcutta, accompanied by an expression of the views the Madras Government (with the advantage of their knowledge of the circumstances and feelings of the people of this part of the country) may entertain on the subject.

2. The course that the Madras Branch Association would take under ordinary circumstances would be to agitate all questions through the parent Society at Home; but in a matter of the present kind requiring immediate action here, seeing that it is proposed to bring the new Stamp Law under re-consideration at the next Session of the Supreme Legislative Council at Calcutta, it has seemed eminently desirable to depart from the usual routine, and address you at once.

3. The Committee are unwilling to take up the time of Government, or the Supreme Council, by discussing the views and the opinions of the Honorable Members, which led to the enactment in question; but they must, for the purposes of this representation, refer to what appears to be the leading principles that influenced being levied in the introduction of such imposts where no such taxation had hitherto obtained.

4. The Honorable Mr. Sumner Maine, the responsible author of the Bill, endeavours to meet Jeremy Bentham's arguments against judicial taxation, and to uphold the Government in their right to tax the dispensation of justice, by the *prima facie* cogent argument that the foundation of Bentham's doctrine has no application in India. He says that Bentham's idea was that all litigation, or all but a very little, is entirely the fault of Government for not simplifying the laws, and that, therefore, he naturally objected to Government, who caused litigation, profiting by it. In India, proceeds the Honorable Gentleman, the people are so wedded by custom and religious feeling to their complex systems of law, that they would resent any interference with their laws and usages as a breach of the conditions on which the country is governed. But leaving aside the fact that Government have really interfered in some instances with the dearest customs and prejudices of the people by the enactment of special laws, such as the Lex Loci Act, the Association are assured that the only laws, if any, which the people of this country do not wish to be codified or simplified, are those relating to succession; and it cannot for one moment be pretended that all the suits, or the majority even of them brought into Court, are connected with the law of succession.

5. The Honorable Mr. Hobhouse, as the exponent of another set of views in the Council, enunciates two startling doctrines in support of heavy judicial taxation; the one is that "the community of this country is so particularly litigious, that litigation is, with the great majority of the people, something like what an engrossing pastime, such as the ring, is to some persons at Home, and they will pay whatever amount is demanded rather than not litigate;" the other is 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. It is obvious that one doctrine is contradictory of the other. It is doubtless of paramount importance to check groundless and vexatious litigation, but can that be accomplished by stamp duties if it be true that the community of this country are so litigious that they will "pay whatever amount is demanded rather than not litigate." And as to the putting down of vexatious litigation, the Association are assured that the practical result of the new Stamp Act has been rather to encourage than discourage dishonest and gambling litigants, as in their case only a little more is added to the stake of the game they are playing, while *bona fide* suitors are deterred from running the risk of litigation, when the cost of that litigation has been so much enhanced. Of course the Association cannot speak with any certainty of this result from their own experience, they can only repeat what is the general feeling on the subject; but doubtless the Governor, or the Imperial Council, will be in a position to inform themselves of what is really the effect of the new Stamp Act in respect to the diminution of *bona fide* litigation, or the increase of that which is questionable, by calling for returns of suits filed in the various Courts ever since the enactment of Act XXVI. of 1867. Meanwhile, it occurs to the Association that the only effectual mode of repressing vexatious litigation, and of protecting the rights of the honest claimant, is to enact special laws for the punishment, by fine or imprisonment, of those who push forward vexatious and dishonest suits at law.

6. It only remains to the Association to consider the working of the new Act upon suitors at large. Before proceeding, however, to note such examples, they would premise that all taxation in Appellate Courts is to be deprecated. However justifiable moderate taxation may be in Original Courts, in order to supplement the means at the disposal of the State to support the machinery necessary for the dispensation of justice, such taxation is inexcusable in Appellate Courts, whose object and design is simply to amend and remedy the errors committed in the Original Courts of Law. It is obvious that if justice is to be taxed, it should be taxed once and for all; otherwise it amounts to telling the defeated suitor that he cannot have the error of the inferior Court amended, unless he pays an additional tax, equivalent to that which he has already paid, for having had bad law administered to him in the Court of first instance.

7. A comparison of the new Schedule B. with that annexed to Act X. of 1862, will show at once how greatly the rates of taxation on suits have been increased. To take a few examples: On a suit of 800 Rupees, the stamp would formerly be 32 Rupees; under the new Schedule the fee payable to the Court is 80 Rupees, or more than double. On a suit of the value of 1600 Rupees, the stamp formerly levied would be 50 Rupees; now the institution fee is 120 Rupees, or much more than double. On a suit of 25,000 Rupees, the stamp before was 500 Rupees; now it is 1100 Rupees, or more than double. On a suit of one lakh of Rupees, the old stamp was 1000 Rupees; now it is rated at 1850 Rupees, or nearly double. Then again the mode in which suits are valued is open to very serious objection. Take for example suits for land—that constant source of litigation in India. The old rule was to take the rents and profits of one year

as the value of the land, and assess the stamp upon that valuation; but now eight, ten, or twenty times the yearly return is taken as the basis on which to calculate the amount of the stamp, according as the land pays a temporary or a permanent revenue to the Government, or pays no revenue at all. But one instance will suffice to show the hardship of this change. In the case of a piece of land paying a permanent revenue of 300 Rupees a year to Government, the stamp duty formerly leviable was 16 Rupees; but now the value of the suit is taken at ten times 300, and the stamp duty is calculated on 3000 Rupees, and not on 300 Rupees; so that the duty now payable is 200 Rupees against 16 Rupees leviable under Act X. of 1862. It must not be forgotten that this is not all the burden on the suitor; his pleader's fees are proportionately increased, and thus he has to bear an accumulated burden, which can only act as a prohibitive duty on fair and honest litigation.

8. While on the question of suits for landed property, the Association would point to another and most embarrassing difficulty which presents itself in consequence of the definition given in the new Act of immoveable property. It includes "land and every benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth." In illustration of this difficulty the Association would point to a case which was not long ago brought before the High Court of Madras. A party sued to establish his right to an earthen bund and to recover loss of produce for one year to the extent of 970 Rupees, which accrued in consequence of the removal of the bund by the defendant to receive the petition of appeal, under the new Act, and was grossed on a stamped paper of the value of 1000 Rupees. He held the bund to be immoveable property under the definition of the Act, and calculated the stamp on $970 \times 20 = 19,400$ Rupees, whereas all the litigated amount was 970 Rupees, or less than 1000 Rupees, the stamp duty demanded by the Registrar. The Association, however, are informed that the embarrassing difficulty was in this case got over by two Judges to whom the matter was referred, simply by their choosing to hold that the action was one of trespass. There are many other difficulties which would arise, productive of extreme hardship to the suitor, such as in cases of mortgage; but the Association deem it sufficient to point generally to this part of the subject, having given one specific illustration of the harsh working of the Act.

9. Another serious objection to the new Schedule is the removal of the limit of 2000 Rupees, beyond which stamp duty was not leviable under the old Schedule. In any question at law in which property may be involved, no matter how remotely, the stamp would be calculated on the amount of property mentioned. The Association are informed that an appeal from Tanjore was recently presented to the High Court, in which the appellant had to pay a stamp duty of 6000 Rupees, and that the Chief Justice thereon remarked that Government had passed the new Act to increase the revenues, but that he was afraid it would have a tendency in the opposite direction. There is now another case exactly in point which will serve to illustrate the views of the Association. A wealthy Hindoo, of an ancient and honorable family in the Northern Circars, had reason to believe that the daughter of his deceased brother and her husband having been disappointed of natural offspring, had surreptitiously taken into their house the child of a Mahomedan Peon, whom they gave out as their

Proceedings of the Madras Government, Judicial Department,
20th March 1868.

son. He brought a suit to have this child declared a supposititious child, and himself the reversionary heir of the property his niece had inherited from her father to the extent of twenty lakhs of Rupees. The Judge below has decided in favor of the defendants, but the plaintiff is about to appeal to the High Court. His main object, he affirms, is to vindicate the honor of his family, which he feels has been insulted if a base born child has been introduced into it; but in order to obtain an appeal upon this point, he must pay a stamp duty of not less than 11,350 Rupees, exclusive of all other costs, or twenty lakhs of Rupees, the property in which he possesses a reversionary interest, that may not fall in for the next forty or fifty years, and may never accrue to him as his niece, far younger than himself, may, in the natural course of things, survive him by many years, or she may give birth to a son who would inherit in supercession of his uncle.

10. But the feature which is to be most deprecated in the new Act, is the imposition of an institution fee on all criminal complaints. The Association, as the exponent of a large portion of the public, cannot feel too strongly on this point. It is, in their opinion, the worst realization of the object of Bentham's reprobation. Taxes on justice such as this are, to use his language, "equivalent to refusing the protection of the law to all those who cannot pay for it, they consequently offer a hope of impunity to crime; it is necessary to choose objects of injustice, individuals who cannot afford the advances necessary for prosecution, or who are not rich enough to run the risk." the poor with impunity.

11. There is no doubt that the new Act is generally obnoxious, and that a great feeling of discontent has been by it engendered in the minds of those who are obliged to resort to the Courts of Law to vindicate their rights. Already have many intending appellants been compelled to return to their native towns and villages without presenting their appeals, on learning the costly nature of the undertaking or have been compelled to entrust their cases to a lower class of pleaders who take a lower rate of remuneration than the regulated fees. The Association, however, are induced to hope that, in deference to public opinion, the Imperial Legislature will, at the next Session, re-consider the new Stamp Act, and either repeal it, or substitute in its place an enactment that would impose a more equitable burden on the people. There is no doubt that in framing laws the Legislature ought not, in providing for the necessities of the State, forget the requirements of the people, whose high Trustees they are, with added responsibilities, in that the people are not represented by an elective body by whose advice and acts they would of necessity be bound.

No. 217. ORDER THEREON, 20th March 1868, No. 487.

Ordered to be forwarded for the consideration of the Government of India, in continuation of the previous correspondence on the subject of the Stamp Act.

(Signed) R. S. ELLIS,
Chief Secretary.

Proceedings of the Madras Government, Judicial Department,
20th March 1868.

No. 218. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 20th March 1868, No. 488.

In continuation of a letter from this Department, dated the 27th ultimo, No. 331, I am directed by the Governor in Council to forward, for the consideration of the Government of India, a letter* from the

* Dated 2nd March 1868.

Honorary Secretary of the East India

Association at Madras, relative to the working of Schedule B. of the Stamp Act XXVI. of 1857.

2. I am directed to take this opportunity of requesting the attention of the Governor General in Council to the opinion expressed by this Government in the 9th paragraph of Mr. Arbuthnot's letter of the 10th June 1863, No. 904, in support of a proposal submitted by the late Advocate General, Mr. T. S. Smyth, that the institution fees then levied under Act 2 of 1862, should be superseded by a scale of duties distributed over some of the more important processes in the suit. A copy of this letter is enclosed for convenience of reference.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 488.

FROM THE HONORABLE R. S. ELLIS, C. B.,
Chief Secretary to the Government of Fort Saint George,

TO THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

Sir,

In continuation of a letter from this Department, dated the 27th ultimo, No. 334, I am directed by the Governor in Council to forward, for the consideration of the Government of India, a letter* from the Honorary Secretary of the East India Association at Madras, relative to the working of Schedule B. of the Stamp Act XXVI. of 1867.

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I have the honor to be,

Sir,

Your most obedient Servant,

FORT SAINT GEORGE,
20th March 1868.

Chief Secretary.

From J. G. COLEMAN, Esq., Honorary Secretary, East India Association, to the Chief Secretary to Government, Fort Saint George; dated Madras, 2nd March 1868.

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2. The course that the Madras Branch Association would take under ordinary circumstances would be to agitate all questions through the parent Society at Home; but in a matter of the present kind requiring immediate action here, seeing that it is proposed to bring the new Stamp Law under re-consideration at the next Session of the Supreme Legislative Council at Calcutta, it has seemed eminently desirable to depart from the usual routine, and address you at once.

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this representation, refer to what appear to be the leading principles that influenced the Council in the adoption of enhanced rates of stamp duties, where stamps were being levied in the introduction of such imposts where no such taxation had hitherto obtained.

4. The Honorable Mr. Sumner Maine, the responsible author of the Bill, endeavours to meet Jeremy Bentham's arguments against judicial taxation, and to uphold the Government in their right to tax the dispensation of justice, by the *prima facie* cogent argument that the foundation of Bentham's doctrine has no application in India. He says that Bentham's idea was that all litigation, or all but a very little, is entirely the fault of Government for not simplifying the laws, and that, therefore, he naturally objected to Government, who caused litigation, profiting by it. In India, proceeds the Honorable Gentleman, the people are so wedded by custom and religious feeling to their complex systems of law, that they would resent any interference with their laws and usages as a breach of the conditions on which the country is governed. But leaving aside the fact that Government have really interfered in some instances with the dearest customs and prejudices of the people by the enactment of special laws, such as the Lex Loci Act, the Association are assured that the only laws, if any, which the people of this country do not wish to be codified or simplified, are those relating to succession; and it cannot for one moment be pretended that all the suits, or the majority even of them brought into Court, are connected with the law of succession.

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demand by the Registrar. The Association, however, are informed that the embarrassing difficulty was in this case got over by two Judges to whom the matter was referred, simply by their choosing to hold that the action was one of trespass. There are many other difficulties which would arise, productive of extreme hardship to the suitor, such as in cases of mortgage; but the Association deem it sufficient to point generally to this part of the subject, having given one specific illustration of the harsh working of the Act.

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Edw. F. B. Sandeman.

487

Proceedings of the Madras Government, Judicial Department,
20th March 1868.

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Home 1868 Dept.

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From Government of
Fort St. George.

To
The Government of India.

No. 488.

Enclosures

spare copies.

Dated 20th March.

R.

D. No.

Progs. { D.
J. No. { No.

SUBJECT.

Forwarding, for consideration of the Supreme Government, a letter from the Honorary Secretary of the East India Association at Madras, relative to the working of Schedule B. of the Stamp Act XXVI. of 1867.

Proceedings of the Madras Government, Judicial Department,
20th March 1863.

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6. It only remains to the Association to point out a few examples of the harsh working of the new Act upon suitors at large. Before proceeding, however, to note such examples, they would premise that all taxation in Appellate Courts is to be deprecated. However justifiable moderate taxation may be in Original Courts, in order to supplement the means at the disposal of the State to support the machinery necessary for the dispensation of justice, such taxation is inexcusable in Appellate Courts, whose object and design is simply to amend and remedy the errors committed in the Original Courts of Law. It is obvious that if justice is to be taxed, it should be taxed once and for all; otherwise it amounts to telling the defeated suitor that he cannot have the error of the inferior Court amended, unless he pays an additional tax, equivalent to that which he has already paid, for having had bad law administered to him in the Court of first instance.

7. A comparison of the new Schedule B. with that annexed to Act X. of 1862, will show at once how greatly the rates of taxation on suits have been increased. To take a few examples: On a suit of 800 Rupees, the stamp would formerly be 32 Rupees; under the new Schedule the fee payable to the Court is 80 Rupees, or more than double. On a suit of the value of 1600 Rupees, the stamp formerly levied would be 50 Rupees; now the institution fee is 130 Rupees, or much more than double. On a suit of 25,000 Rupees, the stamp before was 500 Rupees; now it is 1100 Rupees, or more than double. On a suit of one lakh of Rupees, the old stamp was 1000 Rupees; now it is rated at 1850 Rupees, or nearly double. Then again the mode in which suits are valued is open to very serious objection. Take for example suits for land—that constant source of litigation in India. The old rule was to take the rents and profits of one year

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as the value of the land, and assess the stamp upon that valuation; but now eight, ten, or twenty times the yearly return is taken as the basis on which to calculate the amount of the stamp, according as the land pays a temporary or a permanent revenue to the Government, or pays no revenue at all. But one instance will suffice to show the hardship of this change. In the case of a piece of land paying a permanent revenue of 300 Rupees a year to Government, the stamp duty formerly leviable was 16 Rupees; but now the value of the suit is taken at ten times 300, and the stamp duty is calculated on 3000 Rupees, and not on 300 Rupees; so that the duty now payable is 200 Rupees against 16 Rupees leviable under Act X. of 1862. It must not be forgotten that this is not all the burden on the suitor; his pleader's fees are proportionately increased, and thus he has to bear an accumulated burden, which can only act as a prohibitive duty on fair and honest litigation.

8. While on the question of suits for landed property, the Association would point to another and most embarrassing difficulty which presents itself in consequence of the definition given in the new Act of immoveable property. It includes "land and every benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth." In illustration of this difficulty the Association would point to a case which was not long ago brought before the High Court of Madras. A party sued to establish his right to an earthen bund and to recover loss of produce for one year to the extent of 970 Rupees, which accrued in consequence of the removal of the bund by the defendant. On appeal to the High Court, the Registrar of the Court declined to receive the petition of appeal, unless it was engrossed on a stamped paper of the value of 1000 Rupees. He held the bund to be immoveable property under the definition of the Act, and calculated the stamp on $970 \times 20 = 19,400$ Rupees, whereas all the litigated amount was 970 Rupees, or less than 1000 Rupees, the stamp duty demanded by the Registrar. The Association, however, are informed that the embarrassing difficulty was in this case got over by two Judges to whom the matter was referred, simply by their choosing to hold that the action was one of trespass. There are many other difficulties which would arise, productive of extreme hardship to the suitor, such as in cases of mortgage; but the Association deem it sufficient to point generally to this part of the subject, having given one specific illustration of the harsh working of the Act.

9. Another serious objection to the new Schedule is the removal of the limit of 2000 Rupees, beyond which stamp duty was not leviable under the old Schedule. In any question at law in which property may be involved, no matter how remotely, the stamp would be calculated on the amount of property mentioned. The Association are informed that an appeal from Tanjore was recently presented to the High Court, in which the appellant had to pay a stamp duty of 6000 Rupees, and that the Chief Justice thereon remarked that Government had passed the new Act to increase the revenues, but that he was afraid it would have a tendency in the opposite direction. There is now another case exactly in point which will serve to illustrate the views of the Association: A wealthy Hindoo, of an ancient and honorable family in the Northern Circars, had reason to believe that the daughter of his deceased brother and her husband having been disappointed of natural offspring, had surreptitiously taken into their house the child of a Mahomedan Poon, whom they gave out as their

*Proceedings of the Madras Government, Judicial Department,
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son. He brought a suit to have this child declared a supposititious child, and himself the reversionary heir of the property his niece had inherited from her father to the extent of twenty lakhs of Rupees. The Judge below has decided in favor of the defendants, but the plaintiff is about to appeal to the High Court. His main object, he affirms, is to vindicate the honor of his family, which he feels has been insulted if a base born child has been introduced into it; but in order to obtain an appeal upon this point, he must pay a stamp duty of not less than 11,350 Rupees, exclusive of all other costs, or twenty lakhs of Rupees, the property in which he possesses a reversionary interest, that may not fall in for the next forty or fifty years, and may never accrue to him as his niece, far younger than himself, may, in the natural course of things, survive him by many years, or she may give birth to a son who would inherit in supersession of his uncle.

10. But the feature which is to be most deprecated in the new Act, is the imposition of an institution fee on all criminal complaints. The Association, as the exponent of a large portion of the public, cannot feel too strongly on this point. It is, in their opinion, the worst realization of the object of Bentham's reprobation. Taxes on justice such as this are, to use his language, "equivalent to refusing the protection of the law to all those who cannot pay for it, they consequently offer a hope of impunity to crime; it is necessary to choose objects of injustice, individuals who cannot afford the advances necessary to a judicial prosecution, or who are not rich enough to run the risk." A tax such as this is tantamount to a denial of protection to the poor, and can only tend to give the rich a larger latitude to oppress the poor with impunity.

11. There is no doubt that the new Act is generally obnoxious, and that a great feeling of discontent has been by it engendered in the minds of those who are obliged to resort to the Courts of Law to vindicate their rights. Already have many intending appellants been compelled to return to their native towns and villages without presenting their appeals, on learning the costly nature of the undertaking or have been compelled to entrust their cases to a lower class of pleaders who take a lower rate of remuneration than the regulated fees. The Association, however, are induced to hope that, in deference to public opinion, the Imperial Legislature will, at the next Session, re-consider the new Stamp Act, and either repeal it, or substitute in its place an enactment that would impose a more equitable burden on the people. There is no doubt that in framing laws the Legislature ought not, in providing for the necessities of the State, forget the requirements of the people, whose high Trustees they are, with added responsibilities, in that the people are not represented by an elective body by whose advice and acts they would of necessity be bound.

No. 217. ORDER THEREON, 20th March 1868, No. 487.

Ordered to be forwarded for the consideration of the Government of India, in continuation of the previous correspondence on the subject of the Stamp Act.

(True Extract).

Secretary to Government.

To the Committee of the Madras Branch of the East India Association.

Ed. F. R. Bantleman.

*Proceedings of the Madras Government, Judicial Department,
20th March 1868.*

No. 216. Read the following letter from J. G. COLEMAN, Esq., Honorary Secretary, East India Association, to the Chief Secretary to Government, Fort Saint George; dated Madras, 2nd March 1868.

I am instructed by the Chairman and Executive Committee of the Madras Branch of the East India Association in London to lay before Government the following representation on the oppressive working of the Schedule B., appended to the new Stamp Enactment, or Act XXVI. of 1867, with the object of the same being brought under the consideration of the Supreme Council at Calcutta, accompanied by an expression of the views the Madras Government (with the advantage of their knowledge of the circumstances and feelings of the people of this part of the country) may entertain on the subject.

2. The course that the Madras Branch Association would take under ordinary circumstances would be to agitate all questions through the parent Society at Home; but in a matter of the present kind requiring immediate action here, seeing that it is proposed to bring the new Stamp Law under re-consideration at the next Session of the Supreme Legislative Council at Calcutta, it has seemed eminently desirable to depart from the usual routine, and address you at once.

3. The Committee are unwilling to take up the time of Government, or the Supreme Council, by discussing the views and the opinions of the Honorable Members, which led to the enactment in question; but they must, for the purposes of this representation, refer to what appear to be the leading principles that influenced the Council in the adoption of enhanced rates of stamp duties, where stamps were being levied in the introduction of such imposts where no such taxation had hitherto obtained.

4. The Honorable Mr. Sumner Maine, the responsible author of the Bill, endeavours to meet Jeremy Bentham's arguments against judicial taxation, and to uphold the Government in their right to tax the dispensation of justice, by the *prima facie* cogent argument that the foundation of Bentham's doctrine has no application in India. He says that Bentham's idea was that all litigation, or all but a very little, is entirely the fault of Government for not simplifying the laws, and that, therefore, he naturally objected to Government, who caused litigation, and profiting by it. In India, proceeds the Honorable Gentleman, the people are so wedded by custom and religious feeling to their complex systems of law, that they would resent any interference with their laws and usages as a breach of the conditions on which the country is governed. But leaving aside the fact that Government have really interfered in some instances with the dearest customs and prejudices of the people by the enactment of special laws, such as the Lex Loci Act, the Association are assured that the only laws, if any, which the people of this country do not wish to be codified or simplified, are those relating to succession; and it cannot for one moment be pretended that all the suits, or the majority even of them brought into Court, are connected with the law of succession.

5. The Honorable Mr. Hobhouse, as the exponent of another set of views in the Council, enunciates two startling doctrines in support of heavy judicial taxation; the one is that "the community of this country is so particularly litigious, that litigation is, with the great majority of the people, something like what an engrossing pastime, such as the ring, is to some persons at Home, and they will pay whatever amount is demanded rather than not litigate;" the other is 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." It is obvious that one doctrine is contradictory of the other. It is doubtless of paramount importance to check groundless and vexatious litigation, but can that be accomplished by stamp duties if it be true that the community of this country are so litigious that they will "pay whatever amount is demanded rather than not litigate." And as to the putting down of vexatious litigation, the Association are assured that the practical result of the new Stamp Act has been rather to encourage than discourage dishonest and gambling litigants, as in their case only a little more is added to the stake of the game they are playing, while *bona fide* suitors are deterred from running the risk of litigation, when the cost of that litigation has been so much enhanced. Of course the Association cannot speak with any certainty of this result from their own experience, they can only repeat what is the general feeling on the subject; but doubtless the Governor, or the Imperial Council, will be in a position to inform themselves of what is really the effect of the new Stamp Act in respect to the diminution of *bona fide* litigation, or the increase of that which is questionable, by calling for returns of suits filed in the various Courts ever since the enactment of Act XXVI. of 1867. Meanwhile, it occurs to the Association that the only effectual mode of repressing vexatious litigation, and of protecting the rights of the honest claimant is to enact special laws for the punishment, by fine or imprisonment, of those who push forward vexatious and dishonest proceedings at law—a circumstance to be determined by the experience and acumen of each dispenser of justice.

6. It only remains to the Association to point out a few examples of the harsh working of the new Act upon suitors at large. Before proceeding, however, to note such examples, they would premise that all taxation in Appellate Courts is to be deprecated. However justifiable moderate taxation may be in Original Courts, in order to supplement the means at the disposal of the State to support the machinery necessary for the dispensation of justice, such taxation is inexcusable in Appellate Courts, whose object and design is simply to amend and remedy the errors committed in the Original Courts of Law. It is obvious that if justice is to be taxed, it should be taxed once and for all; otherwise it amounts to telling the defeated suitor that he cannot have the error of the inferior Court amended, unless he pays an additional tax, equivalent to that which he has already paid, for having had bad law administered to him in the Court of first instance.

7. A comparison of the new Schedule B. with that annexed to Act X. of 1862, will show at once how greatly the rates of taxation on suits have been increased. To take a few examples: On a suit of 800 Rupees, the stamp would formerly be 32 Rupees; under the new Schedule the fee payable to the Court is 80 Rupees, or more than double. On a suit of the value of 1600 Rupees, the stamp formerly levied would be 50 Rupees; now the institution fee is 130 Rupees, or much more than double. On a suit of 25,000 Rupees, the stamp before was 500 Rupees; now it is 1100 Rupees, or more than double. On a suit of one lakh of Rupees, the old stamp was 1000 Rupees; now it is rated at 1850 Rupees, or nearly double. Then again the mode in which suits are valued is open to very serious objection. Take for example suits for land—that constant source of litigation in India. The old rule was to take the rents and profits of one year

as the value of the land, and assess the stamp upon that valuation; but now eight, ten, or twenty times the yearly return is taken as the basis on which to calculate the amount of the stamp, according as the land pays a temporary or a permanent revenue to the Government, or pays no revenue at all. But one instance will suffice to show the hardship of this change. In the case of a piece of land paying a permanent revenue of 300 Rupees a year to Government, the stamp duty formerly leviable was 16 Rupees; but now the value of the suit is taken at ten times 300, and the stamp duty is calculated on 3000 Rupees, and not on 300 Rupees; so that the duty now payable is 200 Rupees against 16 Rupees leviable under Act X. of 1862. It must not be forgotten that this is not all the burden on the suitor; his pleader's fees are proportionately increased, and thus he has to bear an accumulated burden, which can only act as a prohibitive duty on fair and honest litigation.

8. While on the question of suits for landed property, the Association would point to another and most embarrassing difficulty which presents itself in consequence of the definition given in the new Act of immoveable property. It includes "land and every benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth." In illustration of this difficulty the Association would point to a case which was not long ago brought before the High Court of Madras. A party sued to establish his right to an earthen bund and to recover loss of produce for one year to the extent of 970 Rupees, which accrued in consequence of the removal of the bund by the defendant. On special appeal to the High Court, the Registrar of the Court declined to receive the petition of appeal, unless it was engrossed on a stamped paper of the value of 1000 Rupees. He held the bund to be immoveable property under the definition of the Act, and calculated the stamp on $970 \times 20 = 19,400$ Rupees, whereas all the litigated amount was 970 Rupees, or less than 1000 Rupees, the stamp duty demanded by the Registrar. The Association, however, are informed that the embarrassing difficulty was in this case got over by two Judges to whom the matter was referred, simply by their choosing to hold that the action was one of trespass. There are many other difficulties which would arise, productive of extreme hardship to the suitor, such as in cases of mortgage; but the Association deem it sufficient to point generally to this part of the subject, having given one specific illustration of the harsh working of the Act.

9. Another serious objection to the new Schedule is the removal of the limit of 2000 Rupees, beyond which stamp duty was not leviable under the old Schedule. In any question at law in which property may be involved, no matter how remotely, the stamp would be calculated on the amount of property mentioned. The Association are informed that an appeal from Tanjore was recently presented to the High Court, in which the appellant had to pay a stamp duty of 6000 Rupees, and that the Chief Justice thereon remarked that Government had passed the new Act to increase the revenues, but that he was afraid it would have a tendency in the opposite direction. There is now another case exactly in point which will serve to illustrate the views of the Association. A wealthy Hindoo, of an ancient and honorable family in the Northern Circars, had reason to believe that the daughter of his deceased brother and her husband having been disappointed of natural offspring, had surreptitiously taken into their house the child of a Mahomedan Poon, whom they gave out as their

*Proceedings of the Madras Government, Judicial Department,
20th March 1863.*

son. He brought a suit to have this child declared legitimate as such, and himself the rever-sionary heir of the property his niece had inherited from her father to the extent of twenty lakhs of Rupees. The Judge below has decided in favor of the defendants, but the plaintiff is about to appeal to the High Court. His main object, he affirms, is to vindicate the honor of his family, which he feels has been insulted if a base born child has been introduced into it; but in order to obtain an appeal upon this point, he must pay a stamp duty of not less than 11,350 Rupees, exclusive of all other costs, or twenty lakhs of Rupees, the property in which he possesses a rever-sionary interest, that may not fall in for the next forty or fifty years, and may never accrue to him as his niece, far younger than himself, may, in the natural course of things, survive him by many years, or she may give birth to a son who would inherit in supercession of his uncle.

10. But the feature which is to be most deprecated in the new Act, is the imposition of an institution fee on all criminal complaints. The Association, as the exponent of a large portion of the public, cannot feel too strongly on this point. It is, in their opinion, the worst realization of the object of Bentham's reprobation. Taxes on justice such as this are, to use his language, "equivalent to refusing the protection of the law to all those who cannot pay for it, they consequently offer a hope of impunity to crime; it is necessary to choose objects of injustice, individuals who cannot afford the advances necessary to a judicial prosecution, or who are not rich enough to run the risk." A tax such as this is tantamount to a denial of protection to the poor, and can only tend to give the rich a larger latitude to oppress the poor with impunity.

11. There is no doubt that the new Act is generally obnoxious, and that a great feeling of discontent has been by it engendered in the minds of those who are obliged to resort to the Courts of Law to vindicate their rights. Already have many intending appellants been compelled to return to their native towns and villages without presenting their appeals, on learning the costly nature of the undertaking or have been compelled to entrust their cases to a lower class of plead-ers who take a lower rate of remuneration than the regulated fees. The Association, however, are induced to hope that, in deference to public opinion, the Imperial Legislature will, at the next Session, re-consider the new Stamp Act, and either repeal it, or substitute in its place an enactment that would impose a more equitable burden on the people. There is no doubt that in framing laws the Legislature ought not, in providing for the necessities of the State, forget the requirements of the people, whose high Trustees they are, with added responsibilities, in that the people are not represented by an elective body by whose advice and acts they would of necessity be bound.

No. 217. ORDER THEREON, 20th March 1863, No. 487.

Ordered to be forwarded for the consideration of the Government of India, in continuation of the previous correspondence on the subject of the Stamp Act.

(Signed) R. S. ELLIS,
Chief Secretary.

*Proceedings of the Madras Government, Judicial Department,
20th March 1863.*

No. 218. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 20th March 1863, No. 488.

In continuation of a letter from this Department, dated the 27th ultimo, No. 334, I am directed by the Governor in Council to forward for the consideration of the Government of India, a letter* from the

Honorary Secretary of the East India Association at Madras, relative to the working of Schedule B. of the Stamp Act XXVI. of 1867.

2. I am directed to take this opportunity of requesting the attention of the Governor General in Council to the opinion expressed by this Government in the 9th paragraph of Mr. Arbuthnot's letter of the 10th June 1863, No. 904, in support of a proposal submitted by the late Advocate General, Mr. T. S. Smyth, that the institution fee as then levied under Act X. of 1862, should be superseded by a scale of duties distributed over some of the more important processes in the suit. A copy of this letter is enclosed for convenience of reference.

(Signed) R. S. ELLIS,
Chief Secretary.

... to the enactment in question, but the

Madras 2nd March 1868.

To

The Honble R. S. Ellis. Esq.
Chief Secretary to Government.
Fort St. George.

Sir

I am instructed by the Chairman and Executive Committee of the Madras Branch of the East India Association in London, to lay before Government the following representation on the oppressive working of the Schedule B appended to the New Stamp Enactment, or Act XXVI of 1867, with the object of the same being brought under the consideration of the Supreme Council at Calcutta; accompanied by an expression of the views the Madras Government (with the advantage of their knowledge of the circumstances and feelings of the people of this part of the country) may entertain on the subject.

2. The course that the Madras Branch Association would take under ordinary circumstances would be to agitate all questions through the press and Society at home; but in a matter of the present kind requiring immediate action here, seeing that it is proposed to bring the New Stamp law under reconsideration at the next Session of the Supreme Legislative Council at Calcutta, it has seemed imminently desirable to depart from the usual routine, and address you at once.

3. The Committee are unwilling to take up the time of Government or the Supreme Council by discussing the views and the opinions of the Honble Members which led to the enactment in question; but they

must for the purposes of this representation refer to what appear to be the leading principles that influenced the Council in the adoption of enhanced rates of Stamp duties when Stamp were being levied on the introduction of such impost where no such taxation had hitherto obtained.

4. The Honble Mr. Sumner Maine, the responsible author of the Bill endeavours to meet Jeremy Bentham's arguments against judicial taxation and to uphold the Government in their right to tax the dispensation of justice, by the *prima facie* cogent argument that the foundation of Bentham's doctrine has no application in India. He says that Bentham's idea was that all litigation, or all but a very little is entirely the fault of Government for not simplifying the law, and that therefore he naturally objected to Government, who caused litigation, profiting by it. In India, proceeds the Honble Gentleman the people are so wedded by custom and religious feeling to their complex systems of law, that they would resent any interference with their laws and usages as a breach of the conditions on which the country is governed. But leaving aside the fact that Government have really interfered in some instances with the ancient customs and prejudices of the people by the enactment of special laws, such as the *Lex Loci* Act, the Association are assured that the only laws, if any, which the people of this country do not wish to be codified or simplified, are those relating to succession; and it cannot for one moment be pretended that all the suits, or the majority even of them, brought into Court are connected with the law of succession.

5. The Honble Mr. Hobhouse, ^{as the exponent of} another set of views in the Council enunciates two startling doctrines in support of heavy judicial taxation; the one is that "the community of this country is so particularly litigious that litigation is with the great majority of the people something like what an engraving pastime, such as the ring, is to some persons at home, and they will pay whatever amount is demanded rather than not litigate"; the other is 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. It is obvious that one doctrine is contradictory of the other. It is doubtless of paramount importance to check groundless and vexatious litigation, but can that be accomplished by Stamp duties if it be true that the community of this country are so litigious that they will "pay whatever amount is demanded rather than not litigate". And as to the putting down of vexatious litigation, the Association is assured that the practical result of the new Stamp act has been rather to encourage than discourage dishonest and gambling litigants as in their case only a little more is added to the stake of the game they are playing, while bona fide suitors are deterred from running the risk of litigation, when the cost of that litigation has been so much enhanced. Of course the Association cannot speak with any certainty of this result from their own experience, they can only repeat what is the general feeling on the subject; but doubtless the Government or the Imperial Council will be in a position to inform themselves of what is really the effect of the new Stamp act in respect to the diminution of bona fide litigation or the increase of that which is questionable, by calling for returns of suits filed in the various Courts ever since the enactment of Act XXVI of 1867. Meanwhile

it occurs to the Association that the only effectual mode of repressing vexatious litigation and of protecting the rights of the honest claimant, is to enact special laws for the punishment, by fine or imprisonment, of those who push forward vexatious and dishonest proceedings at law, a circumstance to be determined by the experience and acumen of each dispenser of justice.

6. It only remains to the Association to point out a few examples of the harsh working of the new Act upon suitors at large. Before proceeding however to note such examples, they would premise that all taxation in Appellate courts is to be deprecated. However, justifiable moderate taxation may be in original courts, in order to supplement the means at the disposal of the State to support the machinery necessary for the dispensation of justice. Such taxation is insensible in Appellate courts whose object and design is simply to amend and remedy the errors committed in the original courts of law. It is obvious that if justice is to be taxed, it should be taxed once and for all; otherwise it amounts to telling the defeated suitor that he cannot have the cost of the inferior court awarded, unless he pays an additional Tax equivalent to that which he has already paid for having had bad law administered to him in the Court of first instance.

A comparison of the new Schedule B with that annexed to Act X of 1862 will show at once how greatly the rates of taxation on suits have been increased. To take a few examples: in a suit of 500 Rupees, the stamp would formerly be 32 Rupees; under the new Schedule the fee payable to the Court is 81 Rupees, or more than double. In a suit of the value of

1000 Rs, the stamp formerly levied ^{was} 50 Rs; now the institution fee is 130 Rs, or much more than double. On a suit of 25,000 Rs, the stamp before was 500 Rs; now it is 1100 Rs, or more than double. On a suit of one lac of Rupees, the old stamp was 1000 Rs, now it is rated at 1850 Rs, or nearly double. Then again the mode in which suits are valued is open to very serious objection. Take for example suits for land, that constant source of litigation in India. The old rule was to take the rents and profits of one year as the value of the land, and assess the stamp upon that valuation; but now eight, ten, or twenty times the yearly return is taken as the basis on which to calculate the amount of the stamp according as the land pays a temporary or a permanent revenue to the Government, or pays no revenue at all. But one instance will suffice to show the hardship of this change. In the case of a piece of land paying a permanent revenue of 300 Rs a year to Government, the stamp duty formerly leviable was 16 Rs; but now the value of the suit is taken at ten times 300, and the stamp duty is calculated on 3000 Rs, and not on 300 Rs; so that the duty now payable is 200 Rs against 16 Rs leviable under Act X of 1862. It must not be forgotten that this is not all the burden on the suitor; his pleader's fees are proportionately increased, and thus he has to bear an accumulated burden, which can only act as a prohibitive duty on fair and honest litigation.

8. While on the question of suits for landed property, the Association would point to another and most embarrassing difficulty which presents itself in consequence of the definition given in the New Act.

of immoveable property. It includes land and every benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth. In illustration of this definition the Association would point to a case which was not long ago brought before the High Court of Madras.

A party sued to establish his right to an earthen bund and to recover loss of produce for one year to the extent of 970 Rs., which accrued in consequence of the removal of the bund by the defendant. On Special appeal to the High Court, the Registrar of the Court declined to receive the petition of appeal unless it was ingrossed on a stamped paper of the value of 1000 Rs. He held the bund to be immoveable property under the definition of the Act, and calculated the stamp on $970 \times 20 = 19,400$ Rs., whereas all the litigated amount was 970 Rs., or less than 1000 Rs. the stamp duty demanded by the Registrar. The Association however are informed that the embarrassing difficulty was in this case got over by two judges to whom the matter was referred, simply by their choosing to hold that the action was one of trespass. There are many other difficulties which would arise in cases of mortgage, but the Association deem it sufficient to point generally to this part of the subject, having given one specific illustration of the harsh working of the Act.

9. Another serious objection to the new Schedule is the removal of the limit of 2000 Rs. beyond which stamp duty was not leviable under the old Schedule. In any question at law, in which property may be involved, no matter how remotely, the stamp would

be calculated on the amount of property mentioned. The Association are informed that an appeal from Tanjore was recently presented to the High Court, in which the appellant had to pay a Stamp duty of 6000 Rs.; and that the Chief Justice therein remarked that Government had passed the new Act to increase the revenues, but that he was afraid it would have a tendency in the opposite direction. There is now another case exactly in point which will serve to illustrate the views of the Association. A wealthy Hindoo of an ancient and honorable family in the Northern Circars had reason to believe that the daughter of his deceased brother and her husband, having been disappointed of natural offspring, had surreptitiously taken into their house the child of a Mahomedan poor whom they gave out as their son. He brought a suit to have this child declared a supposititious child, and himself the reversionary heir of the property his niece had inherited from her father to the extent of 20 lacs of rupees. The Judge below has decided in favor of the defendants, but the plaintiff is about to appeal to the High Court. His main object he affirms is to vindicate the honor of his family which he feels has been insulted if a base born child has been introduced into it; but in order to obtain an appeal upon this point, he must pay a stamp duty of not less than 11350 Rs. exclusive of all other costs, on 20 lacs of rupees the property in which he possesses a reversionary interest, that may not fall in for the next 40 or 50 years, and may never accrue to him as his niece, far younger than himself, may in the natural course of things survive him by many years, or she may give birth to a son who would inherit in succession of his uncle.

But

But the feature which is to be most deprecated in the new Act is the imposition of an institution fee on all criminal complaints. The Association as the exponent of a large portion of the public cannot feel too strongly on this point. It is in their opinion, the worst realization of the object of Bentham's reprobation - "Taxes on justice such as this, are to use his language - equivalent to refusing the protection of the law to all those who cannot pay for it - they consequently offer a hope of impunity to crime - it is necessary to choose objects of injustice, individuals who cannot afford the advances necessary to a judicial prosecution, or who are not rich enough to run the risk". A tax such as this is tantamount to a denial of protection to the poor, and can only tend to give the rich a larger latitude to oppress the poor with impunity.

11. There is no doubt that the new Act is generally obnoxious, and that a great feeling of discontent has been by it engendered in the minds of those who are obliged to resort to the Courts of law to vindicate their rights. Already have many intending Appellants been compelled to return to their native towns and villages without presenting their appeals, on learning the costly nature of the undertaking or have been compelled to entrust their cases to a lower class of pleaders who take a lower rate of remuneration than the regulated fees. The Association, however, are induced to hope that in deference to public opinion, the Imperial Legislature will at the next Session reconsider the New Stamp Act, and either repeal it, or substitute in its place an enactment that would impose a more equitable burden on the people. There is no doubt that

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in framing laws, the Legislature ought not, in providing for the necessities of the State, forget the requirements of the people, whose high trustees they are, with added responsibilities, in that the people are not represented by an elective body by whose advice and acts they would of necessity be bound.

I have the honor to be

Sir

Your most obedient servant

W. J. M. M. M.

Honorary Secretary
East India Association

Judicial Department.

No. 488.

To
The Secretary to the Government
of India,
Home Department.

Sir,

In continuation of
a letter from this Department
dated the 27th ultimo No. 334,
I am directed by the Governor
in Council to forward for
the consideration of the
Government of India a letter
from the Honorary Secretary
of the East India Association
at Madras, relative to the
working of Schedule B of
the Stamp Act XXVII of 1859.

I am directed to
take this opportunity
of reporting for attention

* dated 2nd March 1868.

W.R.

W.R.

I must add

Re: 27th March 1868

Decide 1868

From

Honorary Secretary
East India Association

1st Dec 1868

W.R. J. Secant

Dec 25/68

Applied against the
affirmance of the
Schedule B of the
Stamp Act 27 of 1859.

continued 27th 2/8.

20 March 1868 No. 488
Forwarded for the
consideration of the Govt.
of India. in continuation
of the previous
communication on the
subject of the Stamp
Act. W.R.

It is to be noted that the Honorary Secretary of the East India Association has signed the letter.

15/4/68

of the Gov. General
in Council & the
opinion expressed
by this Gov. in the
9th paragraph of
his confidential letter
of the 10th June
1883 No 904 in.

support of a proposal
submitted by the late
Advocate General Mr
J. S. Bayle that the
British Colonies as then
listed under Act X
of 1862 should be

represented by a scale of
duties the lowest one
some of the more important
provisions of the Act.

A copy of this letter is
enclosed for your information

N.
Fort St. George
20 March 1883

Ind 1868. Department

51
No. 1868

To
The Secretary to the
Government of India
Home Department.

7th Nov 1868
Dated 20th March 1868.

Reference for
consideration of the
fact, a letter from the
Honorary Secretary of the
East India Association
at Madras, relative to
the working of school
B of the Madras Col
XXVI of 1867.

Ind 1868