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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	36-37	Press Mis.-
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Not to be folded or roughly handled

No. 70. Read the following letter from the Honorable J. B. NORTON, Advocate General, to the Chief Secretary to Government, Fort St. George, dated Madras, 19th December 1867 :—

1. As requested by the Order of Government, Revenue Department, No. 2,877, 4th December 1867, I proceed to make such remarks as I desire to offer as to the "working of the existing Stamp Laws (Act X of 1862 and XXVII of 1867), with "my opinion as to the modifications which should be effected in them, and "additional provisions which appears necessary or desirable."

2. The subject divides itself into two considerations: first, that of Schedule A. to Act X of 1862; and secondly, of the Schedule B., as it now stands, by the provisions of Act XXVI of 1867, in supersession of the original Schedule B. of Act X of 1862.

3. Schedule A. has, I observe, been submitted for observation to several bodies of officers, in accordance with the instructions of the Government of India, 30th April 1867, No. 2,281, by the Order of this Government, 29th May 1867, No. 1,216, in the Revenue Department.

4. The Government Solicitor, Mr. Brockman, has kindly placed at my disposal his observations on Schedule A. I agree in them generally, and would observe that the duties generally leviable under Schedule A. are much higher here than on the corresponding transactions in England, by far the wealthier country of the two. One illustration must suffice. I recently met with a mortgage for Rupees 48,000 of certain landed property in India, which had to be executed as well by certain parties to it residing in England, as by others residing in India; the mortgagee being resident in England. Prior to its execution by the mortgagers resident in England, it was impressed with an *ad valorem* mortgage stamp of £ 6. Prior to its being executed by the parties here, it had to be, and was, impressed with an *ad valorem* stamp of Rupees 125, under Schedule A. This is by no means a singular case. The same thing happens with every conveyance requiring to be executed in both countries. A comparison of the English with the Indian Stamp duties will shew, I believe, that the latter are, about, or rather more, than double the former. If it should be urged that parties in India may execute a Power of Attorney for execution of conveyances in England, as is no doubt often done, this offers no answer to the objectionable height of the Indian duty. It is at best a method by which the payment of that duty may be evaded. Many persons may not be willing to allow others to execute important deeds for them.

5. Schedule B. has also been submitted to very many authorities under the Orders of the Supreme Government, 30th March 1867, No. 3,281, and the Order of this Government, Judicial Department, 6th May 1867, No. 716. The amendment and consolidation of the whole Law of Stamp duties are to come before the Supreme Legislative Council in the next Session. Many of the amendments of the original Schedule B., as they now appear in Schedule B. of Act XXVI of 1867, are of a "tentative" nature. The order of Supreme Government expresses a hope, that the Officers to whom the subject is referred will *carefully*, but *freely* give "their opinion on the working of the new Schedule."

6. It is to this Schedule, as more immediately bearing upon Judicial proceedings, that I desire more particularly to devote my attention; I shall endeavour,

while availing myself of the permission, to bear in mind the injunction of the Government of India.

7. I have carefully perused and considered the provisions of Schedule B., and attentively studied all that has been stated in the Supreme Legislative Council, from time to time, in the various speeches on the subject of this enactment, from its being first brought in to its final passing.

8. I regret that I am unable to concur in the reasonings on which either the necessity or expediency of this piece of legislation has been supported in the Legislative Council.

9. The general authority of Bentham certainly had to be met, and shewn to be erroneous or inapplicable, before such a Schedule as B. could be submitted to the Council, with any hope of acceptance and sanction.

10. This appears to me to have been attempted by putting forward Bentham as antagonistic to law-taxes, mainly, if not exclusively, because of the complexity of the law; for which, as long as the Legislature abstained from the task of simplification, it was not just to make the suitor pay.

11. But Bentham, in his "*Protest against Law Taxes*," deals with their "peculiar mischievousness" on far more general principles. In this paper there is little or no trace of his ordinary sweeping denunciations of the mal-administration of justice. "The other obstacles," he writes, "by which the avenues to justice "have been blocked up, constitute a separate head of abuse, from which I gladly "turn aside, as being foreign to the present purpose." He deals with law-taxes as they affect the individual. So far from the soundness of his conclusions not being now acceded to by the Legislature of England, it was no new thing, even in his day, to find law proceedings taxed. He starts by stating that they are common to England and Ireland, and indeed to most, if not all, nations. An extension of them, he says, is to be found among the latest productions of the budget of the day. Doubtless the principle of imposing a duty has been acted on recently in respect to the English County Courts. State necessity compelled the measure; it would have been far better, on the soundest principles, if the administration of justice could have been provided for out of the general resources of the State, than that the burthen should fall on the suitor, even in part. This, however, has not arisen from any idea that Bentham's principles were in themselves faulty; but as a *pis aller*, because the State could do no better. It is to be remarked, however, that the amount imposed on the suitor in England, by far a wealthier country than India, is a mere flea-bite, when compared with the enormous amounts exacted from the Indian suitor. By 9 and 10 Vict., C. 95 (the County Court's Act) the fee on entering a plaint commenced with 8*d.* (on £ 1) and went gradually *increasing* on to £ 1-6-8 on £ 50, the limit of the jurisdiction. The subsequent amendment Acts have increased the jurisdiction, but practically lowered the institution fee.

12. The English County Court's Acts conferred an immense benefit on the suitor, in bringing a tribunal home to his very door, and enabling him to prosecute speedily and cheaply, claims which he must otherwise have either foregone, or been compelled to sue for through the expensive channel of the ordinary Courts of Law. It was not therefore, perhaps, unreasonable, to call on him to help to bear in some degree the burthen of the machinery provided for his convenience and

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benefit. In the present case, the Act confers no benefit whatever. It simply imposes a burthen. The same reasons justify the imposition of an institution fee in the Presidency Small Cause Courts. There is no stamp on a case referred from the Presidency Small Cause Court to the High Court.

13. Law taxes, according to Bentham's first objection to them, fall on a man just at the moment when he is least likely to be able to afford their payment: "when "a man sees more or less of his property unjustly withholden from him, then is the "time taken to call on him for an extraordinary contribution. When the back of "the innocent has been worn raw by the yoke of the oppressor, then is the time "when the appointed guardians of innocence have pitched upon for loading him "with an extraordinary burthen. Most taxes are, as all taxes ought to be, taxes "upon affluence: it is the characteristic property of this to be a *tax upon distress*."

14. To those who can afford to pay it, it is cruel enough, for the reason which Bentham assigns. To those who cannot, it is simply a *denial of justice*.

15. This is not a case in which he who reaps the benefit ought to bear the burthen. "To throw upon the suitor," says Bentham, "the expense of administering "justice, in addition to the trouble and risk of suing for it, is as if, in case of an "invasion, you were to take the inhabitants of the frontier and force them not only "to serve for nothing, but to defray of themselves the whole expenditure of the war." To my thinking, the present legislation is like charging the cost of the Police to those who have been knocked down, with this additional burthen, that they shall not be entitled to call in the Policeman's aid without first paying him a sum, increasing in proportion to the extent and amount of injury the complainant alleges himself to have sustained.

16. Bentham next deals with the proposition that law-taxes are desirable, inasmuch as they operate as a *check upon litigation*. This is one of the two avowed objects with which Act XXVI of 1867 was brought in and has been passed. The mover of this Bill said he "thought that Stamp duties should be levied not only "to check petty and vexatious litigation, but in some degree to support the Courts." He also declared that the Natives indulge in litigation as a *pastime*, and that it is to them, what the excitement of horse-racing is to many of our own countrymen in England. Without denying that the Natives are much addicted to litigation, I must take leave to except to this rhetorical picture, as overdrawn and exaggerated, though I see it was accepted by the Honorable Financial Member of the Council, who is of course necessitated to lean much on others for information as to the manners and customs of the Natives, as sufficiently accurate and correct to warrant the application of a check.

17. But is the main argument sound? "Litigation" is a word of two significations; it is ambiguous; and in the use of it in one sense only lies the fallacy, a common fallacy enough, and exposed from Aristotle down to Bentham, in his own admirable Essay on Fallacies. In its neutral sense, it expresses "the irreproach-"able exercise of an essential right." No one, I presume, would wish to preclude a person who has sustained in fact an injury to his person, or property, seeking reparation at the hands of the law? In its bad sense, the term means "a mischievous abuse, practised under color of exercising such a right." It is this species of litigation alone which the legislator has a justification for desiring to check. It is this latter kind alone, the "petty and vexatious" litigation, that the

mover of the Act seeks to check. But a stamp, as the *initial* proceeding in a suit, unfortunately confounds both species of litigation. It falls with equal severity on the *bona fide* and the groundless or frivolous litigant, upon the man who has received the deepest injury, and him who brings a suit for the gratification of malice, oppression, or revenge. Like the tower of Siloam, it crushes all alike, the honest and the dishonest: like the command issued in the Albigensian war, it condemns every one to indiscriminate slaughter; with this difference, that there is no hope or prospect of any after segregation of the just from the unjust.

18. The poorer the applicant for justice, the heavier falls the lash on him. The tax levied on the smaller amounts in dispute is out of all proportion to that on the greater. The rate of tax keeps diminishing proportionally as the amount in dispute rises. The ryot may have to pay what to him is a sum of grave importance; the Zemindar, what to him is a trifle. "The characteristic of the tax," writes Bentham, "is to be favorable to the wealthy, and that in proportion to their "wealth." Sound principle would, I conceive, rather increase the tax as the scale rises, as is the case with the English County Court institution fees, instead of diminishing it. On moving to refer the Bill to a Select Committee, the mover said he proposed a uniform duty up to a certain point; that was up to 1,000 Rupees, the duty would be 10 per cent., and on suits on 10,000 Rupees, the duty would gradually "decrease." To increase it would have proved intolerable to the suitor, and have shut up the Courts. "The Legislator," says Bentham, "who on the plea "of checking litigation, or on any other plea, exacts of a working man as a preli- "minary to his obtaining justice, what the working man is unable to pay, does in "a word refuse him justice, and that as effectually and completely as it is possi- "ble to refuse it."

19. I desire as much as any man to see litigation, that is to say unfounded, vexatious, and frivolous litigation, repressed. But the true machinery for effecting this appears to me to be in quite another direction than that of the imposition of law-taxes. The strengthening of the Judicial bench, the training up of a professional sense of duty and honor in the body of Vakeels, the advancing education of the people, the registration of assurances, the invariable punishment of perjury and forgery whenever detected, the imposition of stamps on instruments which are to be used as evidence these: and analogous measures, are what I look to for the check of improper, or what may be generically termed *fraudulent* litigation.

20. Perhaps some power might properly be given to the Judges of fining a party found, by the decision of the Court, to have been guilty of frivolous or vexatious litigation. Whether a suit is unfounded or vexatious, or frivolous, can seldom be ascertained, until it has been tried on the merits. Then would seem the time to impose what, by example, would operate as a check, rather than to impose on all litigants, at the institution of proceedings, a fine which confounds the honest with the dishonest suitor, without any reference to the justice or quality of his claim. This was the law under the old Regulation of 1802, Section 9. It is still the law in Criminal cases.—See Criminal Procedure Code, Section 270. In using the term "unfounded," of course it is used to imply unfounded within the knowledge of the party. It is his guilty knowledge of the want of foundation of his claim or defence, and persisting in it in spite of such knowledge, that renders a man justly liable to mulct. In the ordinary sense, one side or the other in every

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suit must want foundation. Both cannot win: either the plaintiff's or defendant's case is declared unfounded. We must be cautious, too, in not using the term 'frivolous' in a fallacious sense. Bentham indeed contends that there can be no such thing as 'frivolous' litigation.

21. Law taxes, as Bentham shews, are a sword to the oppressor and a shield to the dishonest. But I will not pursue his arguments farther. I shall be glad if what I have written induces others to study them for themselves, before the amendment and consolidation of the present Stamp Law again come before the Legislative Council.

22. But it is said, granted the tax is objectionable, the necessity of the State compels the Legislature to have recourse to it.

23. This is the other reason put forward for the present Act. About thirty lakhs, it is estimated, are required for the better remuneration of the officers of justice.

24. Here again, this reason is dealt with by Bentham. "It is too much," he writes, "to expect of a man of finance, that he should anticipate the feelings of "individuals; it is a great deal if he will listen to their cries. Taxes on consump- "tion fall on bodies of men: the most inconsiderable one, when touched, will make "the whole country ring again. The oppressed and ruined objects of the taxes on "justice weep in holes and corners, as the rats die: no one voice finds any other to "join with it." Suitors for justice "have no common cause, and scarce a common "name, they are everybody and nobody; their business being everybody's and "nobody's. Who are suitors? Where are they? What does the Chancellor of the "Exchequer care for them? What can they do to help him? What can they do "to hurt him?"

25. These observations apply with a hundred-fold more force to a country like India, where there is no public opinion, save to a limited extent in the Presidency towns; no Parliament representing all classes and every shade of opinion; no Press which scrutinizes weekly and daily opinions and propositions, almost as soon as they are uttered, with a fulness and depth, often surpassing that of the original proposer. The people cannot be heard; they do not hear of new laws and new taxes, until the lash falls upon their backs. They have no means of making common cause against measures which vitally affect their welfare. All these are, to my mind, reflections which should make legislation all the more cautious and considerate in the present instance. Yet I find that in the present case there was unwonted precipitation. The Bill was brought in on the 15th February; committed on the 1st March; the Report brought in on the 8th, and the Act passed on the 22nd.

26. It does not appear to have been published for general information, or circulated to the various authorities of the several Presidencies, for their opinion, previous to its being brought up for discussion in the Council. A somewhat similar measure had been rejected by the Legislative Council so lately as the year 1860. The opinion of this Government at least was known to be hostile, except as to stamps on criminal charges. The provisions are avowedly 'tentative'; information is *now* being gathered, it is true, to test the working of the measure. Previous inquiry as to its expediency seems to have been dispensed with. On the passing of the Bill,

the Honorable Mr. Shaw Stewart said he thought "it would have been better to "have made inquiries *before* legislating, than to pass a law to which all local officers "objected, and to promise *revision*, if *after trial* the law seemed undesirable."

27. Finally, Bentham argues that whatever may be urged in favor of continuing *old* law taxes, nothing can justify the imposition of *new*. "But by whatever plea," he writes, "the continuance of subsisting taxes of this kind may be apologized "for, nothing can be said *in favor* of any new addition to the burthen. The "subsisting ones, it may be said, have been acquiesced in, and men are used to "them; in this respect at least they have the advantage of any new ones which "could be substituted in the room of them. But even this immoral plea, which puts "bad and good upon a level, effacing all distinction but that between *established* "and *not* established, even this faint plea is mute against any augmentation of this "worst of evils."

28. I have been thus particular in alluding to Bentham's "*Protest*," (although I am very far from having exhausted the arguments he uses,) not because I suppose that I am bringing to light anything that is new, but because in the "anticipative" reply to objections which were never made in the Legislative Council, but which were obviously likely to be raised when the matter was once fairly before the public; all these weighty arguments employed by Bentham to demonstrate the injustice of taxes on law proceedings have not been met, or even brought forward; while he has been represented as founding his objections on the idea that "all litigation, or "all but a very little, was entirely the fault of Government, and therefore he "naturally objected that Government, which caused litigation, should profit by it." Bentham believed "that litigation was owing to the complexity of the law, and "that as litigation might be almost entirely removed by legislation based on true "principles, he thought that litigation, and therefore the expense of litigation "might be reduced to a minimum, if it were not for the blindness, the stupidity, "or the cupidity of the Legislature in not simplifying the laws."

29. In support of this view of Bentham, a passage was cited from his "*Principles of Judicial Procedure*," but no allusion whatever was made to his "*Protest*," in which he exhausts the subject, after a fashion which has ever since been deemed irrefutable, and in which he does not refer to the complexity of the law, but carefully and expressly excludes it as foreign to his argument.

30. If, it was urged, this complexity of the law is at the foundation of Bentham's argument, (which I conceive I have shewn it is not,) that doctrine collapses, the moment it appears that the Natives of India, Mahomedan and Hindu, resent and prevent all attempts at simplifying their laws.

31. I cannot admit that the Mahomedan and Hindu Laws are more complex than our own. Indeed, when I reflect on the unpretending little volumes of Mr. Justice *Strange* and *Sadagopah Chariar* on the one hand, and call to mind the innumerable text books on English Law, growing bulkier and bulkier in each succeeding edition; the conflict of cases; the array of Judge against Judge; and division of Court against Court; the state of the Statute Book; the exceeding difficulty which most learned Judges frequently confess to in arriving at a reasonable construction of the legislative intention; the many cases which are yearly "overruled and impeached;" and which now appear under a separate heading in our

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annual Indices, I confess that I am inclined to regard the laws of the Natives as simplicity itself in comparison with the law of England. Let Bentham, or rather Bentham's arguments, be fully and fairly met in front, and face to face. Do not let us flatter ourselves that by marching on his flank by an echelon movement, and assaulting a mere outlying fieldwork, which there was no one present to defend, we have turned his position. His citadel, nay his fortress, has not yet been attacked, or even summoned to surrender. *John Stuart Mill* entirely corroborates and endorses the earlier view of Bentham. In his "*Political Economy*," Book V., Chap. VI, Sec. 3., he says of Law taxes, that "they are a tax on redress, and therefore a *premium on injury*."

32. The principle on which it has been determined to levy the tax is not by per-centage, but in reference to the machinery the suit would "bring into operation." If this be so, I cannot understand why no duty has been levied on suits instituted before the High Courts of the several Presidencies, on the Original Side, or on appeals from decisions in such suits to the High Court; since these are fitted with by far the most complex and expensive machinery of any Courts in the country. Had such a measure been attempted, the outcry against it would have been instant, loud, and unanimous enough. I venture to say it could not have been carried. If it be unjust and impolitic, so far as the Presidency capitals are concerned, I fail to see how its application is more just to the Mofussil; though the inferior power of self-defence possessed by the up-country suitors may, in one sense, make the passing of the Act less impolitic so far as they are concerned.

33. Sufficient time has not yet been given for returns of a conclusive or really valuable nature as to the working of the Act. In my opinion, the taxes now levied are so exorbitant, that they will be found to be practically, in a great measure, prohibitory to all suitors; and if so, that these taxes substantially amount to a denial of justice. Just so far as the Act represses litigation, will it defeat its object as a measure of finance.

34. I have since my return to this country (only a few weeks ago) heard of many cases in which suitors have come up to the High Court at Madras for the purpose of presenting their Appeals, who have given up their intention and their Appeal on learning the amount of stamp they are *now* called upon to pay. It is no answer to say that the Appeal was probably unfounded, vexatious, or frivolous. It might be so, or it might not. That point could not be determined till the cause was heard. We have no right to assume that the Appeal was frivolous. It is just as reasonable to suppose that the appellant resigned himself to submit to what he deemed an unjust decree, because he could not afford the amount *now* demanded from him before he could put in motion the "machinery" for setting it aside. There can be no doubt that he was prepared to pay the old stamp, whatever it was, or he would not have left his country and occupation and travelled up to Madras. I feel confident that if the present law be held by, future returns will shew by the vast and sudden falling off of Suits, Original and Appellate, that the Act is prohibitory to a degree probably never contemplated when it was passed. Such a consummation must not, however, be vouched as a proof of its success, even if the difference between the old and new scales of fees should in part make up for the loss

occasioned by the diminished number of suits. In a Revenue point of view, as I have already pointed out, it will be just so far as it represses litigation, a failure. From a Judicial point of view, we must not lose sight of the fact, that the diminution of litigation represents denial of justice to the poor but honest suitor, as well as the suppression of the vexatious litigant. '*Solitudinem faciunt pacem Appellant*,' may well be said of excessive law taxes.

35. One of the first Appellate suits in which I was engaged was from Tanjore. The plaintiffs had paid 2,000 Rupees institution fee, in the shape of stamp duty on the Original Suit, under the old law. They had paid 6,000 Rupees more on their Petition of Regular Appeal. The respondent, for whom I appeared, had been fortunate enough to get in his own appeal on a stamp of two Rupees. The full amount of 6,000 Rupees was demanded from him, but after considerable argument the Court held that the appointment of a receiver (against which he appealed) might be treated as a temporary measure pending the taking of the accounts; and that, therefore, as against my client, the decree of the Original Court was not "final;" though as against the plaintiffs it had finally disposed of their rights. My client was, therefore, permitted to treat the decree as one against which he could appeal summarily. Had the Court, which I thought was somewhat astute in its construction, considered the decree as "final" against my client as against the plaintiffs, the result would have been, that he too would have had to pay a stamp duty of 6,000 Rupees.

36. But to me it appears that to call on any suitor to pay so large and heavy a tax as 6,000 Rupees before he can be heard, be the amount in dispute what it may, inflicts a grave hardship on him, a hardship of a kind which increases according to the "machinery" of the law which he has to call in aid before he can obtain a final decision on his claim. In the present case the plaintiffs had to pay no less a sum than 7,000 Rupees, which, if the suit had been brought after Schedule B., would have been 12,000 Rupees, before obtaining a decision, which after all may not be final, as an appeal to the Privy Council is still open to them. Their case was very far from being unfounded, frivolous, or vexatious, although they did not obtain the full measure of relief they prayed. The case may easily be put of a person claiming an estate as large as this, on a perfectly good title, yet so poor as to be utterly unable to contest his rights, or carry a manifestly erroneous judgment to an Appellate Court. Nevertheless, he is to be denied justice, because it is desirable that others, the frivolous, vexatious, dishonest class of litigants, should be checked and repressed.

37. In Special Appeals, although the amounts in dispute cannot be so large as in case of Regular Appeals, the Appellant may have to pay stamp duty three times over, instead of twice, or thirty per cent. on his claim, before he can obtain the Judgment of the High Court. By far the greater number of suits are for amounts under 10,000 Rupees, and therefore specially appealable.

38. I think that, as under the old law, there ought to be a limit, beyond which no further duty should be demanded. The old limit was 2,000 Rupees, high enough, in my opinion, as a general rule, to repress dishonest litigation, though it may sometimes operate to bar an honest claim.

39. The papers submitted to me furnish an instance of the working of Schedule B:—Lease for a year, at 18 Salaghays of paddy, value 90 Rupees. Tenant refuses to deliver possession at expiration of term. Stamp duty on suit to recover the land Rupees 140.

See Proceedings of Board of Revenue, 2nd November 1867, No. 6,177.

40. The following cases within my own knowledge will also assist in illustrating the working of Schedule B. Hitherto we can scarcely do more than test it by *Appeal* Suits; hereafter, we shall know more about its operation on Original Suits, when fresh intending suitors seek to file their plaints under the law as it now stands.

In Original Suit No. 2 of 1867, on the file of the Nellore Court, a stamp of 50 Rupees was paid under the old law on a plaint claiming land paying annually to Government the sum of Rupees 570, and yielding a net annual profit of Rupees 120. *Then*, the computation was made on the income. On Appeal to the High Court, a stamp of Rupees 350, seven times the amount of the stamp on the original plaint, was paid; because now the calculation is based on the annual aggregate produce of the land computed as payable to Government for the year in which the suit may be preferred.—See Note B., under the head of Plaint Appeal in Schedule B.

Now this case was of an amount admitting a Special Appeal. Supposing the suit had been instituted after Schedule B. became Law, and the suitor had to carry his case to the High Court on Special Appeal, before he obtained redress he would have had to pay Rupees 350, three times over; a total of Rupees 1,050 to recover land yielding an annual income of Rupees 120, or, in other words, the full value of the land.

In Original Suit No. 15 of 1865, on the file of the Guntoor Court, for the recovery of Rupees 25,000, the plaint was put in on 500 Rupees paper. On appeal to the High Court, the stamp was Rupees 1,181.

In Original Suit No. 2 of 1865, on the file of the Nundial Court, the plaint for recovery of land paying rent to Government was put in on a stamp of 50 Rupees. Now, according to Schedule B., the stamp paid on Appeal was Rupees 330.

In Original Suit No. 12 of 1867, on the file of the Civil Court of Bellary, for an account of partnership transactions, the stamp was 250 Rupees; on Appeal it is Rupees 550. The amount claimed is Rupees 9,999-15-5. I think the original decree manifestly wrong, but doubt if the parties can afford to pay to get it reversed.

41. Other practitioners, if applied to, could no doubt swell this list with illustration of an equally striking character.

42. Time will no doubt furnish far more ample materials for determining on the quality of Schedule B. At present, the Collectors "complain that it is difficult "to form any estimate of the working of "an Act within such short period of its "introduction, and before its somewhat "intricate provisions have become by "any means generally known."

Letter from Secretary to Board of Revenue, to Secretary to Government, 24th September 1867.

43. I do not feel disposed to offer any detailed remarks with reference to the several items contained in Schedule B; because I think the whole is wrong in

principle, and that the best amendment would be to revert to the old law as it stood before the passing of Act XXXI. of 1867. I see it stated that the imposition of a small duty on Criminal complaints has worked well. No doubt it has checked complaints, and I think it very probable that some of the complaints made before the Criminal Courts are rather for vexatious purposes than for the redress of any real injury. A small tax may be an expedient measure in respect to Criminal complaints, but the complainants are generally poor, and the sum may be large to them. I am not, however, prepared to express an opinion on this point, without far more materials and information than are at present at my disposal. The remarks made by the Honorable Mr. Shaw Stewart, in his speech of the 22nd March 1867, on this branch of the subject, appear to me to be pregnant with matter for reflection. If they are well founded with reference to the imposition of a petty stamp of one Rupee on Criminal complaints, how much more forcible is their application to the very heavy duties levied on suitors in Civil Suits?

44. The "Jumps" on the old scale might be judiciously rectified, without the rate of tax being increased. It may not be out of place here, *en passant*, to call attention to the extraordinary jumps in Schedule A., which may well call for rectification and re-adjustment, when the whole question is before the Legislative Council. Let me illustrate this by referring to the case of mortgage which I have already noticed. The English Act imposes a duty of 15*s.* up to £ 600, and then proceeds by easy stages *ad valorem*, so as to fit every amount pretty closely. The Indian Stamp Act (Schedule A., Mortgages) jumps from Rupees 40,000 to 60,000, so that although this mortgage was only for Rupees 48,000, the borrower had to pay a tax on an amount of Rupees 12,000 which he had never borrowed, a disagreeable "jump," and one which if he could, he would have refused. The same objection will be found to pervade the scales in Schedule A.

45. The subject will now doubtless receive far fuller consideration than it did before the Act was passed. The Honorable Mr. Taylor appears not to have been well founded in his statement in the debate of the 22nd March, "that the "opinions received from the Madras Government were entirely in favor of the "Bill." This Government in its Order (Revenue Department, 18th June 1867, No. 1,355,) points out that this can apply only to stamps on complaints before the Criminal Courts. The Secretary to the Board of Revenue, in his letter to the Chief Secretary to Government, 30th April 1867, No. 2,632, states that the "Board think "it is much to be regretted that the Act was so hurriedly passed." He also points out that this Government "was not consulted as to certain important changes "which it introduces into this Presidency, although it was known that they had "been opposed to them when suggested on a preceding occasion." This Government, in its Order of 18th June 1867, No. 1,355, states that "no opportunity was "afforded of offering any opinion on the framing of the Act, prior to its enactment, "on any point, except one referred by telegraph as to stamps on Criminal com-"plaints." The various papers before me shew how serious would be the consequences of insisting on enforcement, under Schedule B., of stamps on Revenue petitions, complaints, and the like, before the Revenue authorities in this Presidency, though the ruling of Government, under date 8th June 1867, No. 1,355, "has removed the most objectionable features in this portion of the enactment."

Proceedings of the Madras Government, Revenue Department, 7th January 1868.

46. The Government of Madras was quick enough to see where and how the shoe would pinch in respect to Revenue complaints. Overruling the opinion of its Revenue Board, it put a construction on the Act which at once and effectually shut out its operation on all complaints before Revenue authorities within this Presidency. The tax will not, however, fall a whit the less heavily or oppressively on a suitor, because it happens to be levied in a Court of Law, instead of before a Revenue officer.

47. The precipitation with which this important measure was carried forward and passed, no doubt accounts for the *form* in which it has been given to the public. Observations to this effect have been made in the Supreme Legislative Council. The Chief Justice of Madras designates it a "somewhat involved piece of legislation." The Collectors speak of it as a "somewhat intricate provision." The Board of Revenue points out that to carry out the requirements of the Act, *six thousand and ninety-nine* different values of stamped paper (and therefore as many dies) will be necessary, up to six lakhs of Rupees. The whole frame of the Schedule appears to me very complicated and difficult of reference, an objection which seems to have struck the Honorable Sir Henry Durand. This probably would not have occurred, but for the haste with which the measure was passed. The Schedule will no doubt be re-modelled, if it is determined to continue its provisions. But the publication of a law in such a form recalls to mind the Emperor who complied with the exigency of promulgation, but had his edicts written in characters so small, and hung on pillars so high, that the public could not read their contents.

48. I think that to legislate in this way, in a matter where more than ordinary inquiry, caution, and forbearance were necessary, is very little likely to be attended with beneficial results. I fear that it may sow broadcast the seeds of discontent. I wish only I could think that such discontent would have no legitimate foundation.

49. On this point I beg to refer to certain observations which I made when writing on the extension to Mahomedans and Hindus of a portion of the Indian Succession Act.

50. These observations will be found in paragraphs 25, 26, and 27 of my letter to the Acting Chief Secretary, under date the 5th October 1865. To my then expressed opinions I still adhere; and feel their force more than ever with reference to the matter and the manner of Act XXVI of 1867.

51. But money is wanting, and must be had. It is only proper that he who objects to a tax should be prepared to suggest a better in its place. This, however, applies with more force to one who seeks to abolish an old tax already existing, than to him who proposes the imposition of a new tax. It is rather for those who propose the new tax to find a substitute, if that which they advocate should be proved to be impracticable or inexpedient. However, if I am asked the question, I reply in the language of Bentham: any tax rather than this. "My letter tax," he writes, "is any other than that named."

52. An Income tax would be far preferable: and except for the purpose of keeping faith with the Natives, it is difficult to see why the late Income tax was ever abolished. It might be better to revert to it, than adhere to the present increased scale of law-taxes. A duty on succession appears to me one of the most

legitimate sources of revenue. The people of India are accustomed to it in the shape of *Nuzzerana*. It would probably be a highly productive tax. It has often been suggested. I have never seen the reasons which prevail against its adoption. I do not myself know of any which would suffice to prevent its becoming law. There are several transactions on which, at present, no duty is levied, on which, I think, it might be fairly leviable. On articles of legal Clerkship a considerable stamp duty is paid in England. I do not see why such a duty should not be leviable here. I think, however, that practising as Attorney or Vakeel without a license should be made *specially* penal. Such a measure while it returns a fair equivalent to the man who pays duty, would get rid of a most objectionable class of practitioners who in Madras, at any rate, infest our Courts. A similar tax prevails in England. A duty on Moochilkas, or submissions to arbitration and on awards, seems to be highly proper, and would probably bring in a considerable amount of revenue. The duty may be increased on Charter Parties and Composition Deeds without hardship to the contractors.

53. Finally, admitting fully that if better administration of justice is requisite, the means must be found to pay for it, I think it well worthy of consideration whether the more legitimate, and safer sources of accumulating the necessary funds, do not lie rather in the direction of checking expenditure in other departments, as was proved to be possible by General Balfour, or in prosecuting productive works for which capital might be safely borrowed, as advocated by Sir Arthur Cotton, or in both, rather than in saddling the people with additional taxation, especially when that taxation assumes the form of additional stamp duties on legal proceedings.

54. New direct taxes have been very rapidly called into existence, and multiplied within the last few years in India. We have had an Income tax, License tax, Municipal tax, tolls, Police taxes, road cesses, wheel taxes, voluntary Education taxes, and the like. The Natives fancied that Her Majesty's direct administration of the Government of India would inaugurate a new golden age. They have found the little finger of their Queen press more heavily upon them than the loins of the Company. Formerly, the cost of administration was principally borne by the Land Revenue, aided by that derivable from Opium, Salt, and a few other sources. There was indeed an antiquated pledge that these sources would be sufficient for the cost of good and efficient Government. The Natives are harassed and flurried by the rapidity with which tax after tax is now imposed upon them. They suspect that we are trying how far we may go; that the point of the wedge having been introduced, the body is gradually being driven home. The effect of this increase upon the old law-taxes, will, I feel convinced, be widespread discontent. I am well aware that the better administration which the advancing state of India requires, cannot be given without increased pecuniary means at the disposal of Government. But feeling as strongly as I do what I believe to be a dangerous tendency of such an Act as that now under review, I cannot honestly shrink from expressing candidly my opinion concerning the "working of the new Schedule." To borrow one of Sir Arthur Cotton's numerous felicitous illustrations, it may be wiser to begin by strengthening a man to bear his existing burthen, or even to carry an additional load with ease and cheerfulness, than to clap weight after weight upon him till the last fairly breaks his back.

55. The Financier is, I know, hard put to it in this country to find whereon to lay his hand for the increase of the Imperial revenues. But justice is the worst subject in the world for taxation. Taking the law into one's own hands is what the individual gives up when he becomes a member of the social state, on the express faith that the Government will find him the amplest equivalent for the personal right which he relinquishes. The question affects every one of the 150 millions of subjects in India. A plaintiff may, and in all countries often does, give up the prosecution of his claim, if it be relatively small, rather than submit to the delay, the uncertainty, the vexation, and the expense of law. Still he has a right to litigate, if so advised. A defendant is often in a worse position. He cannot afford to submit to an unjust claim, which, if he does not appear to resist it, may sweep away his entire means by an execution. He may, in case of special appeal becoming necessary for the vindication of his defence, have to pay two stamp fees, or twenty per cent. on a mere money demand made against him. The free and open distribution of justice lies at the very root and foundation of the State's duty and obligation to the subject. That State which opens Courts, and then bars their doors by the imposition of law taxes, only in fact *sells* to discharge its implied undertaking, for it does but give with one hand what it takes away with the other.

No. 71. ORDER THEREON, 7th January 1868, No. 36.

Separate Revenue, No. 2.
Stamps.

Ordered that the above letter be forwarded for the consideration of the Government of India, with reference to their Financial Secretary's letter dated 30th April 1867, No. 2,281, to which the detailed reply will shortly follow.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Honorable J. B. Norton.
" the Board of Revenue.

Exd. S. T. Augustin.

REVENUE DEPARTMENT,
FORT ST. GEORGE,
7th January 1868.

No. 37.

No. 72.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCIAL DEPARTMENT.

Separate Revenue, No. 3.
Stamps.

SIR,

With reference to your letter dated 30th April 1867, No. 2,281, I am directed to forward herewith, for the consideration of the Government of India, copy of a letter from the Honorable J. B. Norton, Advocate General at this Presidency, dated 19th December 1867, containing his remarks on the Stamp Law. The detailed reply to your letter above alluded to will shortly follow.

I have the honor to be,
Sir,
Your most obedient servant,

(Signed) W. HUDLESTON,
Secretary to Government.

Exd. S. T. Augustin.

19. I desire, as much, as any man, to see litigation, that is to say unfounded, vexatious, and frivolous litigation, repressed. But the true machinery for effecting this, appears to me to lie in quite another direction than that of the imposition of Law Taxes. The strengthening of the Judicial Bench, the training up of a professional spirit of duty, and honor in the body of Vakeels, the advancing Education of the people, the registration of appearances, the invariable punishment of perjury, and forgery whenever detected, the imposition of Stamps on instruments which are to be used as Evidence; these, and analogous measures, are what I look to for the check of improper, or what may be generically termed fraudulent litigation

20. Perhaps some power might properly be given to the Judges, of fining a party, found by the decision of the Court, to have been guilty of frivolous or vexatious litigation. Whether a suit is unfounded or vexatious, or frivolous, can seldom be ascertained, until it has been tried on the merits. Then would seem the time to impose what by example would operate as a Check, rather than to impose on all litigants, at the institution of proceedings, a

fine

fine which confounds the honest with the dishonest suitor, without any reference to the justice or quality of his claim; This was the Law under the old Regulations, ~~See Regulation~~ 2 of 1802, section IX. It is still the Law in Criminal Cases. See Criminal Procedure Code, Section 270. In using the term "unfounded", of course it is used to imply unfounded within the knowledge of the party. It is his guilty knowledge of the want of foundation of his claim or defence, and persisting in it in spite of such knowledge, that renders a man justly liable to mulct. In the ordinary sense, one side or the other in every suit must want foundation. Both cannot win: either the Plaintiffs' or Defendants' case is declared unfounded. We must be cautious, too, in not using the term 'frivolous' in a fallacious sense. Bentham indeed contends that there can be no such thing as 'frivolous' litigation.

21. Law taxes, as Bentham shows, are a sword to the oppressor, and a shield to the dishonest. But I will not pursue his arguments further. I shall be glad, if what I have written induces others to study them for themselves, before the amendment

an unjust claim, which, if he does not afford to resist it, may sweep away his entire means by an execution. He may, in case of special appeal becoming necessary for the vindication of his defence, have to pay two stamp fees, or twenty percent on a mere money demand made against him. The free and open distribution of justice lies at the very root and foundation of the State's duty and obligation to the subject. That State which opens Courts, and others bars their doors by the imposition of Law-taxes, only in fact seems to discharge its implied undertaking: for it does but give with one hand what it takes away with the other.

I have the honor to be
Sir
Your most obedient Servant
John Bruce Norton
Advocate General

Madras
December 1867

Revenue Department

7th Jany 1867.

37
No 37.

To

The Secretary to the
Govt of India
Financial Department

Sir,

With reference to your letter dated 30th April 1867, No 2281, I am directed to forward herewith for the consideration of the Government of India, copy of a letter from the Honorable J. B. Norton, Advocate General at this Presidency, dated 19th December 1867 containing his remarks on the Stamp Law. The detailed reply to your letter

Rec'd 1867 Jany 15
No 3446

From
The Advocate Genl
Madras

Date 19th } Decr 1867.
Recd 20th }

Submitting his remarks on the working of the Stamp Law (Act I of 1862 + XXVII of 1867) and his opinion as to the modifications of which it is capable.

Read 1866 Jany

Rec'd from the Advocate Genl Madras 19th Dec 1867 in reply to Govt letter No 2281 dated 30th April 1867 on the working of the Stamp Act.

Submitted for the orders of Government.

Sd/ J. D. Sim
Secy to Board of Revenue

Sd/ 70-71.

Recd from the Secy to the Board of Revenue 7th January 1868.

Submitted for the orders of Government.

Sd/ J. D. Sim
Secy to Board of Revenue

Sd/ 70-71.

C 21 Dec/73 R 25

Revenue 1868 Deptt
Pro of Govt of Ind Jany

No 37

To
The Government of India
Financial Deptt

Dated 7th January 68

Letter
6 Jany 68