

1875.

NEW ZEALAND.

# THE WORKING OF THE PRESENT STAMP ACTS, &c.,

(REPORT OF THE BOARD ON).

*Presented to both Houses of the General Assembly by Command of His Excellency.*

(No. 166.)

Office of the Commissioner of Stamps, Wellington,  
11th March, 1875.

SIR,—

The Government having thought it desirable to appoint a Commission to inquire into the working of the Stamp Acts, and as to amendments that may be found necessary therein, and further as to the advisability of collecting revenue by means of stamps in other departments than those in which stamps are now used, I have the honor to request that you will serve on a Commission to inquire into and report on these questions.

You are requested to act as Convener and Chairman of the Commission, which will consist of the following gentlemen:—Messrs. Knight, FitzGerald, Reid, Batkin, Grey, McKellar, Lemon, and Hammerton.

J. E. FitzGerald, Esq., C.M.G., Wellington.

I have, &c.,  
CHARLES C. BOWEN.

SIR,—

Wellington, 7th July, 1875,

The Board appointed under your letter of the 11th March have given their best attention to the subject submitted to them, and have the honor to report as follows:—

Two questions were presented for their consideration,—

- (1.) The working of the present Stamp Acts.
- (2.) The policy of introducing the use of stamps as a means of collecting the revenue in other departments.

On the first of these questions the Board found, at an early stage of its inquiry, that nothing short of a complete revision and consolidation of the existing Acts would comprise the amendments which it would be their duty to recommend. They have therefore drafted a new Stamp Duties Act, which they beg to submit herewith. As this Bill sufficiently explains for itself the views of the Board as to the alterations which in their opinion it is desirable to make in the present law, it is only necessary for them to point out the general principles on which the Bill is constructed, and the main points in which it differs from the law at present in force.

1. The general scheme of the bill is based on the English Stamp Duties Act, and the Stamp Duties Management Act, passed in 1870. These two Acts have been incorporated into one in the draft now submitted; and while such modifications have been made as were necessary to suit the somewhat different machinery and the different scale of taxation in force in this colony, the wording of the English Acts has been preserved so far as possible, in order to render the decisions of the English Courts of use in the interpretation and administration of the law in the colony.

2. In the management of the department, the Board recommend that the Commissioner should be a permanent officer, corresponding to the Commissioners in England, instead of, as at present, a member of the Government. Indeed, it is clear from several clauses of the Act of 1866 that such was the original intention of the framers of that statute. The Board submit that the increase in the business of the department, especially if stamps are introduced into the collection of revenue in other departments, will demand the undivided attention of a permanent head; and that the duties of this officer in assessing the charges on instruments and determining points in the interpretation of the law are of a *quasi* judicial character, demanding an accurate acquaintance with the Act and the interpretation it has been ruled to bear, which can hardly be looked for in the political head of a department, who may have no special or technical acquaintance with the subject, and whose liability to change may tend to destroy that uniformity and continuity of administration so desirable in matters of revenue.

3. The Board have not thought it part of their duty to recommend any alteration of the scale of duties now in force, except in cases where the existing law is of doubtful meaning, or where inconsistency appears to have crept in owing to the several Acts having been passed at different times. The one exception to this appears in the introduction of mortgages into the Schedule as a source of revenue. The Board, however, have introduced these clauses, understanding that it is the wish of the Government to take the sense of Parliament upon the imposition of the duties on mortgages, and make no recommendation on the subject.

4. But for the above rule, by which the Board have been guided, they would have excluded several items from the Schedule, under which experience has shown that very little revenue can be collected, while the means of enforcing payment of the duties is very imperfect. These remarks would apply to such items as "Appraisements," "Apprenticeships," "Appointments," "Awards," "Exemptions." A return is appended, showing the amount of duties collected under these heads in 1874. The Board would also submit whether the duty on appointments to offices under the Government or Municipalities—whilst all appointments, frequently more lucrative and equally permanent, in mercantile houses and companies, banks and professions, are free from duty—does not press with unequal severity on the special class on whom it is levied.

5. The Board call special attention to one provision in the Bill, in which they recommend a departure from the law in force both here and in England. It is held that when a person brings an instrument to be stamped, it is not the duty of the Stamp Office to insist on the payment of the proper duty, but only to place on the instrument such duty as the person requires. The inducement to pay the right duty is sought in the provision by which an instrument insufficiently stamped is rendered unavailable in a court of law: thus, on the one hand, the Crown loses part of its just claim, unless necessity arises for producing the instrument in Court; and on the other, a doubt is raised as to the validity or utility of an instrument affecting private rights, which may only come to light at a remote period, and may possibly become the occasion of future litigation. The Board submit that all sound policy requires that on the one hand, in a matter of revenue, the Crown should make a distinct claim for its dues; and on the other, that no obstacle should be incidentally placed in the way of ascertaining private rights by the operation of a law whose sole object is the collection of the public revenues.

The bill has therefore been so worded that the proper duties shall always be assessed by the Stamp Office, subject to an appeal to the Supreme Court, and that an instrument stamped with the Commissioner's stamp shall be available in law whether the right duty thereon has been paid or not.

6. In respect to the duties on the estates of deceased persons, the Board recommend a fundamental change in the present law. It appears on inquiring, and particularly by a return annexed hereto, that the succession, legacy, and residuary duties are evaded to an immense extent in this colony; and that, notwithstanding that a large and complicated system of registration and book-keeping has been elaborated for their collection, the main cause for this loss of revenue lies in the long time allowed to elapse before the accounts of the estates of deceased persons are wound up, and by the fluctuating nature of the population, which enables persons to realize the estates, and disappear beyond the trace of the Stamp Office.

The Board are satisfied that no dues on these estates can be successfully collected unless the payment is required before the issue of administration.

7. This is the principle on which the Act of the Colony of Victoria is based, and it is incorporated into the Bill now submitted. The duties are regarded as a debt due by the deceased to the Crown, and are made payable out of the estate before all other debts or claims. The share of the duties borne by the several persons to whom the property descends is settled by the administrator in the distribution of the estate. It is worth while pointing out, in evidence of the great simplification of which the law was capable, that fifteen clauses have been sufficient to deal with a subject which occupied eighty-seven clauses of the Act of 1866.

The Board recommend that probate, legacy, succession, and residuary duties be abandoned, and replaced by one duty on the estates of deceased persons. As regards the amount of this duty, it has been attempted to accommodate in one table the two principles expressed in the New Zealand and the Victorian laws. By the former, the rate of duty is made to depend on the relationship of the person to whom to the person from whom the property descends. By the latter, the rate depends solely on the amount of the property, without regard to relationship, except that widows and children pay only half duty. The Schedule submitted relieves widows, as at present, from all duty; charges direct descendants and strangers in blood with a uniform duty nearly the same as at present, without respect to the amount of property; and charges persons of intermediate degrees of consanguinity in proportion both to the amount of property and to relationship to the deceased. The reason of making the highest and lowest rates of duty uniform as regards amount of property is, that while direct descendants and strangers in blood can hardly be charged with heavier duties than those at present imposed, the remission of any part of those rates on smaller amounts of property would result in the sacrifice of a considerable portion of the revenue.

II. (1.) On the second matter submitted to the Board, that of extending the use of stamps to the collection of revenue in other departments, the Board recommend the passing of a Bill, of which a draft is submitted herewith, enabling the Governor to introduce stamps into any revenue department as it may be found expedient to do so. It will probably be desirable to extend the use of stamps gradually, watching the operation in one department before applying it to another.

(2.) The departments into which stamps may be usefully introduced may be divided into five classes, for each of which they recommend a distinctive set of stamps to be used. These classes are as follows:—

#### *Law Court Stamps.*

Comprising—The Court of Appeal, the Supreme Court, District Courts, Resident Magistrate's Courts, Petty Sessions Courts, Native Land Courts, Bankruptcy Courts, Sheriffs', Coroners'.

#### *Land and Deeds Stamps.*

Comprising—Land Transfer, Registration of Deeds, Crown Grants, Land Claimants Settlements, Lost Land Orders.

#### *Postage Stamps (at present in use).*

Comprising—Post Office, Telegraph.

*Gold Field Stamps.*

Comprising—Wardens' Courts, Miners' Rights, Leases, Licenses, Lost Leases and Licenses.

*Inland Revenue Stamps (at present in use).*

Comprising—Stamp Duties, every description of Miscellaneous Revenue.

3. The Board are unable, with the evidence before them, to recommend the introduction of stamps into the revenues collected through the Custom House.

4. They recommend the collection of the revenues in the Law Courts by means of stamps with the least possible delay. It is apparent that the means of checking the collections by officers of the Supreme Court are very imperfect; there can, indeed, be said to be no efficient audit whatever over this branch of the revenue. But by making the stamp a necessary adjunct to give validity to every form used in the Court, complete security is afforded for the collection of the revenue. The same reasons urge the adoption of stamps in all legal proceedings, although the certificate of the Resident Magistrate, appended to the accounts of the Clerk of the Court, affords some additional security to the correctness of the collections in this branch of the revenue.

In the revenues arising under Lands and Deeds, no difficulty presents itself in the introduction of stamps; but the Board remark, although the subject is somewhat beyond the scope of their inquiry, that it may be a subject for future consideration whether great simplification of the law might not be effected if the duties collected under the Stamp Act, and under the several Acts under which fees are payable to which it is now proposed to apply stamps, were consolidated, so that the public might have but one duty to pay on each instrument passing through the Land Transfer or Registration of Deeds Office.

As to the Telegraph Offices, the Board recommend that the experiment should be tried of requiring the public to place stamps upon all messages before placing them in the office for transmission. They believe that whatever slight inconvenience might at first be felt by the public, it would, as in the case of postage stamps, ultimately be accepted as offering increased accommodation. The only difficulties which have been mentioned to the Board lie in matters of minor departmental concerns, such as the payment of portrages and the mode of dealing with the newspapers, which the Board are satisfied may readily be met by departmental regulations.

It should, however, be a rule that, where stamps are introduced in the collection of revenue in any department, payment in money should cease altogether.

The Board are satisfied, on due inquiry, that one main advantage to be derived from the use of stamps will be the large reduction which may be effected in the accounts now required to be kept by all the Receivers of Public Revenue.

The Board regret that they have been unable to present their report at an earlier period, but they hope that the labour of consolidating so many Acts into a new Bill, and the careful inquiries necessary to that work, especially in the midst of their ordinary duties, may be deemed sufficient excuse for the delay. They have held forty-two sittings of from two to three hours each, and have examined several witnesses. They have also applied to and received reports from most of the Australian Colonies as to the working of the various Stamp Acts in force.

They now submit this report, with great respect, to the Government, in the hope that it may prove of some use in effecting an improvement and simplification of the law.

By resolution of the Board.

JAMES EDWARD FITZGERALD,

The Hon. the Commissioner of Stamp Duties, Wellington.

Chairman.

APPROXIMATE AMOUNT of DUTY collected on DEEDS as under, for Year 1874.

	£	s.	d.
Apprenticeships ... ..	20	0	0
Appointment in execution of a power over any property ... ..			
Appointment of new trustees ... ..			
Awards ... ..	10	0	0
Exemplification ... ..	10	0	0
Memorial ... ..	5	0	0
Partition ... ..	2	0	0
Release, renunciation, or disclaimer ... ..	5	0	0
Appraisement or valuation ... ..	2	0	0

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