

Monday, January 11, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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

The Council met at Government House on Monday, the 11th January 1869.

P R E S E N T :

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

His Honor the Lieutenant Governor of Bengal.

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

The Hon'ble G. Noble Taylor.

The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Sir George Couper, Bart., C. B.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay, said that the Bombay Government had asked that the Bill might be introduced into this Council, and had stated the following reason for so doing :—

“The main reason for the passing of the Bill is the unsatisfactory state of the present law on the constitution of our Civil Courts. This law is contained in the unrepealed fragments of Regulations passed in the years 1827, 1830, 1831, 1833, and 1834, which enacted such modifications of the original system as experience suggested. And thus, although the law when ascertained may be simple enough, it has come to be stated in so complicated a way that there are few persons by whom it is thoroughly understood. So much of the old Regulations also has been cancelled or controlled by recent legislation, that they have become unsafe author-

ity. By this Bill the unrepealed portions of seven Regulations, and entire chapters of other Regulations, will be removed from the Statute Book, their essential provisions being reproduced in one convenient law."

The Bill also proposed several amendments in the law, with which, however, he would not trouble the Council, as they had already received the general approval of the Bombay Government and High Court, with one exception. That exception related to the patronage of the Subordinate Civil Courts. The Bill would be so drafted as to give effect to the views of the Bombay Government in this respect, but he would not fail to lay before the Select Committee the views of the High Court, which were to a certain extent opposed to that of the Government. The reason for bringing in the Bill in this Council was that the jurisdiction of the High Court was to a certain extent affected by it, and therefore the local legislature was not competent to entertain such a law.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL introduced the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that when the subject of this Bill was last before the Council he had stated that its main object was the removal of the disadvantage under which parties to suits were at present placed through their practical inability to procure the evidence of prisoners confined in any jail, however material the evidence of such prisoners might be to the issue of those suits. It only now remained to notice in detail the provisions of the Bill by which it was proposed to secure the attainment of that object.

All Courts were invested with authority to direct, subject to certain exceptions, the bringing up of prisoners confined in any jail situated within a hundred miles from the Court in which the evidence of such prisoner was required. The exceptional cases were where, having regard to the personal character or the circumstances attending the imprisonment of any prisoner or class of prisoners, it might appear to the Local Government undesirable to allow the removal of such prisoner or prisoners from the place of his or their confinement, and where, by reason of the sickness or infirmity of any prisoner at the time of the receipt of the order for his appearance in Court, the officer responsible for his safe custody might be unable to comply with the order without serious risk to the prisoner's health. In all such cases the Courts were authorized to procure the prisoner's evidence by commission, and the Bill prescribed the mode in which

all commissions issued by the Courts for taking the evidence of prisoners confined in any jail were to be executed.

An extraordinary power for the bringing up of prisoners confined in any jail situated at a distance of more than a hundred miles from the Court where their evidence was required, was vested in the High Courts.

That there might be some check upon the indiscriminate exercise of the power of bringing up prisoners to give evidence, all orders for such removal made by any Court subordinate to the District Court must, to have effect, bear the countersignature of the Judge of such District Court.

Ordinarily the expense incurred in the bringing up of any prisoner to give evidence, would be borne by the applicant for his production in the same way as the cost of the attendance at Court of any other witness would have to be borne by the party requiring such attendance, but that there might be no risk of the object of the Bill being frustrated owing to the expense of the bringing up of prisoners being more than any suitor was able to meet, special provision was made in the Bill for the payment in advance by the Court, at its discretion, from any funds at its disposal, of the cost of the prisoner's attendance to give evidence; the sum so advanced being made recoverable by the Government in the same way as costs of suit might be recovered under the Code of Civil Procedure.

Lastly, the power of framing rules for regulating all matters connected with the bringing up of prisoners to give evidence in any Court, as also the cost thereof, was vested in the Local Governments.

The Motion was put and agreed to.

OUDH TALUQDARS' BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto, be taken into consideration. He said:—"Sir, About a year and a half has elapsed since the time at which this very important Bill first came before the Council. When I moved for leave to introduce the Bill I explained the objects which were aimed at. I stated that its main object was really a very simple one; it was to confirm by law the arrangements affecting the rights of Taluqdárs and others in Oudh which were made under the orders of Lord Canning after the re-occupation of the province in 1858. I said that those orders had placed the Taluqdárs of Oudh in an altogether peculiar position; that they hold their estates upon a tenure

unknown in any other part of India, and that rights have been created by the British Government which it is necessary to protect by law.

I shall not now repeat in detail what has been stated fully in former debates, but I think it will be well to notice the main peculiarities under which the Taluqdárs hold their estates and which render legislation necessary. After the recapture of Lucknow in March 1858, Lord Canning issued his proclamation under which the whole of the land in Oudh was confiscated to the British Government. This proclamation became the means of redressing the injustice which, as Your Excellency and every one else has admitted, was undoubtedly done to the Taluqdárs at the first occupation of the Province. It gave to Sir Robert Montgomery the power of making his arrangements for the pacification of Oudh unfettered by any thing previously done, and this proclamation, which was originally intended as a sentence of punishment and confiscation against the Taluqdárs, became ultimately in the hands of Sir Robert Montgomery the means of enlisting them on the side of the British Government. The political arrangements then entered into by Sir Robert Montgomery formed the basis of the subsequent policy of Lord Canning, and in October 1859 Lord Canning issued the well known orders on which the rights of the Taluqdárs now depend, and copies of which are before the Council. By these orders the Taluqdárs were not only confirmed in the possession of every thing they held at the annexation of Oudh in 1856, but new rights of a valuable nature were also conferred on them. The orders of the Governor General in Council, dated the 10th of October 1859, in accordance with which sanads were issued to the Taluqdárs, stated that—

“ Every Taluqdár, with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa.

This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamíndárs and village occupants from extortion, and of upholding their rights in the soil in subordination to the Taluqdárs.”

It was the opinion of Lord Canning, and he stated this in his speech just before he left India in introducing the Bill to which I shall presently refer, that these orders which I have just quoted had already received the force of law from the Indian Councils' Act, and there can be no doubt that this has been the general opinion of the best authorities. At the same time it cannot be very confidently assumed that the highest judicial authority, the Privy Council, would take this view, and the matter is one in regard to which it is not right

that there should remain any possibility of doubt. We are clearly bound to consider that if the orders of the 10th and 19th October 1859, and the sanads then conferred, did not actually create the law on this subject, that they at any rate represent that which Lord Canning intended to be the law and that which the British Government is bound by formal promise strictly to adhere to.

As I endeavoured to explain on a former occasion, the Taluqdár who holds a sanad from the Government has strictly a personal and exclusive right to the property in his estate; the Taluqdár, instead of holding his estate as formerly under the obligations of the Hindú or Muhammadan law according to which his power of alienation by sale or gift beyond his life-time was very limited, now possesses the absolute power of disposing of his estates as he likes. Not long after the orders just quoted were issued, other orders hardly less important were given by Lord Canning introducing the rule of primogeniture for regulating the succession to estates; and there can be no doubt that these orders, as well as the former ones, have either received the force of law from the Indian Councils' Act, or that such force ought to be given to them.

It was one of the last acts of Lord Canning before he left India to introduce a Bill to provide for the very same objects which are now contemplated; copies of that Bill and of Lord Canning's speech made when he brought it forward are now before the Council. After his departure from India the Bill was not further proceeded with under Lord Elgin's Government, and the subject was only revived about a year and half ago under your Excellency's instructions. There has been a general, I may say I think universal, concurrence of opinion that the Bill brought forward by Lord Canning was not altogether a satisfactory measure. I think that every one concurred in the opinion stated in a former debate by the Hon'ble Sir Henry Durand and the Hon'ble Mr. Maine, that the Bill was one which, under any circumstances, would have required considerable alteration. Still, independently of details of drafting, that Bill shows very distinctly what were the real intentions of Lord Canning.

In the former debate I endeavoured to explain that there had been much difference of opinion between the Chief Commissioner, Sir Charles Wingfield, and Lord Canning in regard to the conditions under which the Taluqdárs ought to hold their estates. Sir Charles Wingfield, while he entirely approved of the application of the rule of primogeniture to the succession of Taluqdárs, strongly objected to give to them the power of disposing of their estates in contravention of the principles of Hindú and Muhammadan law, and I quoted, in the former debate, passages from letters which he addressed on

this subject to the Government. He expressed his strongest apprehension that the effect of giving to the Taluqdárs a power over their estates not possessed by landholders in any other part of India, which he said was not actually enjoyed by them, which they did not ask for, and which was opposed to the tenets of their religion and to the most authoritative decisions of our tribunals, would result in the breaking up of the great estates in Oudh and in frustrating the very policy which the Government had so much at heart. He said that it was laying down a totally new doctrine to assert that a Taluqdár is free to dispose of his estate in any way he pleases, and that this novelty was opposed to the feelings of the people and to the policy of the Government. But the Governor General did not accept the views of Sir Charles Wingfield. In the orders of the 17th July 1860 he said:—

“ The Governor General in Council will not consent to limit the absolute power over his estate which has been guaranteed to every Taluqdár in Oudh, and is convinced that the existence of such a power is just as essential to the prosperity of the province and to the maintenance of a landed aristocracy on a sound footing, as the extension of the rule of primogeniture in cases of intestacy. As, on the other hand, it will be in the power of every Taluqdár to refrain from making a will, and so to allow his estate to devolve undivided on his nearest heir, or, if childless, to adopt a son who will inherit the whole of his estate, or to bequeath it by will to any one person whom he may wish to designate as his successor, so, on the other hand, it is right that he should be at liberty to bequeath his estate to more than one person, in accordance with Hindú or Muhammadan law, or otherwise as may suit his pleasure.”

These orders were carried into effect and sanads were given to the Taluqdárs accordingly; that is, they received an unlimited power of disposing of their estates either by gift during life-time or by bequest. I ought to have said before, in speaking of the difference of opinion on this subject between the Governor General and Sir Charles Wingfield, that the views of Sir Charles Wingfield were subsequently strongly supported by the Secretary of State for India. In a despatch dated 17th August 1861, he wrote as follows:—

“ I do not perceive why, on grounds either of justice or of policy, your Excellency's Government desire to give the Taluqdárs a more absolute control over their estates than could have been the case if they had inherited them from their ancestors. In such cases the estates would have been subject to the prescribed conditions of such property, and could not have been disposed of in the unrestricted manner in which the proprietors are now declared by you to be competent to give or bequeath them to whomsoever they please. And when I consider the effects of *zanád* influence, the frequency of family dissensions, and the general tendency to intrigue, among these people, it appears to me that this latitude of disposal, against which the Chief Commissioner has respectfully protested, may prove an obstacle to the accomplishment of the object which you most desire to realize, the preservation of property in the hands of the lineal representatives of the great families of Oudh.”

But in spite of all this there can be no doubt whatever of the nature of the tenure under which the Taluqdárs actually hold. As I said before, Lord Canning refused to admit the validity of the objections of Sir Charles Wingfield, and the Taluqdárs were distinctly told that they would possess absolute power in disposing of their estates. Now, I, for my part, entirely agree in the remarks made by the Hon'ble Sir Henry Durand in the debate on the introduction of this Bill, to the effect that no limitation can now properly be put on the absolute rights conferred on the Taluqdárs of Oudh by Lord Canning, unless with the full consent of the Taluqdárs themselves. I gather from my Honorable friend's speech on that occasion that personally he agreed with the opinion which was maintained by Sir Charles Wingfield and which was held by the Secretary of State, that there was reason to apprehend that the effect of doing away with all restrictions of the Hindú and Muhammadan law would result in the breaking up of estates and the frustration of the policy which the Government had in view. This has always been my own view; but having conferred these estates without conditions, I think it clear we cannot now impose fresh conditions without the consent of the Taluqdárs themselves, however much impressed we may be with the belief that the restrictions proposed would be of real advantage to the Taluqdárs. The same view was formerly expressed by Your Excellency, and I believe it has been held by every Member of this Government.

When this Bill came before the Council the Hon'ble Sir Henry Durand expressed a wish that we had as a Member of this Council a representative of the Taluqdárs of Oudh, who would be able to speak with authority on their behalf. Fortunately that wish of Sir Henry Durand has lately been fulfilled, and we have now as a Member of this Council my friend the Hon'ble Sir Dig-Bijay Singh, the Mahárájá of Balrámpúr, who is well known not only to the Council, but I may say to the whole country, as the most eminent representative of all the Taluqdárs of Oudh. I think therefore that I need not say much as to the real wishes of the Taluqdárs themselves in regard to this Bill, because Sir Dig Bijay Singh can speak on such a point with infinitely greater authority than I can speak myself; but I have been assured not only by Sir Dig Bijay Singh but by Mahárájá Sir Mán Singh and the other principal Taluqdárs who are now in Calcutta, and the same thing has been officially reported in a letter now before the Council in the strongest terms by Mr. Davies, the Chief Commissioner, that the Taluqdárs are most anxious that this Bill should become law. Supposing that the amendments which the Hon'ble Sir George Couper intends to propose to-day, to which I hope the Council will agree and which have the entire approval of the Taluqdárs,

are adopted, I believe there will be absolutely nothing in the Bill which is not in accordance with the wishes of the Taluqdárs.

It is proper that I should notice the principal changes made in the Bill since it was introduced. Very nearly every one of the changes have been suggested by the Taluqdárs themselves. The first change which it seems necessary to notice is in the definition of the word "Taluqdár." The difficulties in defining this word were found to be practically insurmountable. The Chief Commissioner, in his letter now before the Council, has stated his belief that no definition could be framed which would not lead to protracted litigation, and that the Taluqdárs are unanimous that this matter must be left in the hands of the Chief Commissioner.

It is proposed, therefore, as the Bill now stands, to entrust to the Chief Commissioner the duty, which is to be carried out within six months, of making a list of Taluqdárs to whom these special provisions of the law will be applicable. Mr. Davies has proposed that the list shall be drafted by the Financial Commissioner and a Taluqdár in whom the others have confidence, and be finally submitted for his approval, and he has intimated to the Taluqdárs that the Government will probably make no objection to this arrangement. The Government will as a matter of course authorize the Chief Commissioner to prepare the list in the way which he thinks best, and in a way which will be consonant with the wishes of the Taluqdárs.

The Chief Commissioner then notices a point which Mahárájá Sir Mán Singh wishes to be laid before the Council. He says :—

"Mahárájá Sir Mán Singh wishes the words 'heir and legatee' added after the word 'person' in the definition of 'Taluqdár.' He thinks that, without this addition, the successors of Taluqdárs will not be considered Taluqdárs. The Chief Commissioner would, however, observe that the Bill leaves it optional with a Taluqdár to choose, before the lists are prepared, whether he will have his estate descend according to the succession laid down in section 19, or whether he will have it follow the law of his tribe and religion. In the latter case the estate would be liable to sub-division, and we might have Taluqdárs with infinitesimal properties, a result which, in the Chief Commissioner's opinion, would not be desirable. It is almost unnecessary to point out that the legatee may be a servant, or a bráhma getting an acre or so as *sankalpa*, and the inconvenience that would arise from calling such people Taluqdárs.

The Chief Commissioner has explained this to Sir Mán Singh, and has assured him that the genuine successor of a Taluqdár will in all cases be recognized; but this is one of the points alluded to in paragraph 2 which he wishes to be laid before the Council."

I need only say that the Committee agreed with the Chief Commissioner; and I need not make any further remarks on this point, because, as the Council

knows, the Taluqdárs themselves expressed their wish to abide by the opinion of the Committee, and it is not a point on which they have laid any stress.

In section 3, which is one of the most important sections of the Bill, some additions have been made. The first addition was proposed by the Chief Commissioner; it provides for cases in which, subsequently to their issue, it was found necessary to make alterations in the sanads, and to provide against claims being set up to estates which had been originally settled with one party, but which were subsequently resumed and made over to another person. For example, in one case, a taluqá was settled in the name of a man who was afterwards discovered to have been a notorious rebel and who was killed in fighting against our Government; the estate was subsequently given to a loyal Taluqdár; but as the summary settlement was not made with him, he would not, as the Bill was originally drawn, have been entitled to the privileges of a Taluqdár. The additions made to the section at the suggestion of the Chief Commissioner have provided for this difficulty.

The next addition has been made at the wish of the Taluqdárs themselves; it extends the privileges given under Lord Canning's sanads to estates subsequently decreed to the Taluqdárs by the Court or Officer engaged in making the first regular settlement of the Province. This will be an important additional boon to the Taluqdárs.

It will be observed that there is an important change at the end of section 3. As the Bill originally stood, it provided that the estate should be held subject to all the conditions affecting it in the form of sanad contained in the orders passed by the Governor General of India on the 10th and 19th of October and republished in the schedule of the Bill. It was subsequently pointed out that all the sanads are not in that form, but that several other forms had for some reason or other been adopted. As it would be evidently inadvisable to invalidate those sanads, it was thought proper to insert the words "subject to the conditions under which the estate was held," and the form of sanad has consequently been omitted from the schedule.

An important alteration has also been made in section 4. It was pointed out by the Chief Commissioner that, as the Bill was drawn, the Taluqdárs whose property on account of their special loyalty was exempted from confiscation, would be really on a worse footing in regard to the title to their estates than the Taluqdárs who took part in the rebellion, for it would be necessary for them to show that they had possessed before the annexation of

Oudh the proprietary right in their estates, while in other cases it would be sufficient that the summary settlement was made with the Taluqdár. This error has been corrected by the Select Committee.

An important section (6) has been added, which it is necessary that I should explain; it refers to the redemption of mortgages in taluqás. The Council will remember the circumstances under which Act XIII of 1866 was passed. The principal object of that Act was to permit the redemption of mortgages in taluqás executed after the 13th of February 1844, the terms of which had not expired at the date of the annexation of the Province, the equitable rights of mortgagors having been unintentionally confiscated and transferred to the Taluqdárs under the orders of October 1859. The Taluqdárs, admitting the justice and propriety of affording a remedy in such cases, agreed to waive the objections they might legally be entitled to make to the redemption of mortgages. The Act was passed, and the Taluqdárs were publicly thanked for their liberality by the Government and the Secretary of State. But unfortunately no reference to these claims of mortgagors was made in the Act itself, and it is now said on high legal authority that it is very doubtful whether, notwithstanding the notorious circumstances under which the Act was passed, a suit to redeem a mortgage in a taluqá is not legally barred; and the Chief Commissioner has lately reported that a Taluqdár who took a prominent part in making the concessions for which the Taluqdárs obtained so much credit, has actually pleaded in Court that redemption of a mortgage in his estate is barred by his sanad. There is not the slightest doubt that the Taluqdárs generally would entirely repudiate any such dishonourable conduct as this, but they themselves are of opinion that it would be very desirable to add to the present Bill a section which will remove all doubt on the subject. All that I need further say on this point is that there is no novelty of any kind introduced by this section; it merely repeats the provisions of the existing law, Act XIII of 1866, and removes the legal doubts which I have just noticed.

Section 7 has been added at the request of the Taluqdárs. It is taken from the draft Bill of Lord Canning, and provides that certain articles shall be treated as if they were heir-looms, and shall descend with the landed property. I do not suppose this will be objected to.

In section 8, it is proposed to give to Taluqdárs or Grantees the option of declaring for succession according to the rules of primogeniture, at any time within six months after the passing of the Bill. If any Taluqdár to whose family the rule of succession according to primogeniture does not

already apply wishes it so to apply, he will now be able to carry out his wish. The Chief Commissioner writes :—

“ Originally the Taluqdárs stood out for the right to choose at any time, alleging Lord Canning’s Bill to that effect. The Chief Commissioner, however, thought this undesirable, and he thinks the language of Lord Canning’s Bill, though not clear, does not possess the force the Taluqdárs would ascribe to it. The compromise contained in the Bill now submitted has, however, satisfied them, and the Chief Commissioner trusts will be approved of by Government.”

I think that this proposal to which the Taluqdárs have agreed is reasonable, and I do not think it would have been right, in the absence of a distinct promise, on the part of the Government, to extend the option of introducing the rule of succession by primogeniture further than the Bill now contemplates.

Section 11 has received an addition making the provisions of the Indian Succession Act in certain particulars regarding the execution of wills, applicable also to gifts; to the effect that persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest if they are able to know what they do by it; that one who is ordinarily insane may make a transfer during an interval in which he is of sound mind, and other provisions of a similar sort. No one can doubt that this is proper.

In section 13, clause 2 has been added at the express request of the Taluqdárs. As the Bill originally stood, a Taluqdár desiring to leave his estate to a younger son instead of to the eldest son, would only be able to do so by will executed twelve months before his death and registered. The Taluqdárs, although they accepted, with the exceptions presently to be noticed, the proposed restrictions on the power of gift and bequest to persons not belonging to their own families, desire that they should retain the power of setting aside the eldest son in favour of a younger son. There is no doubt that this is quite in accordance with the former custom of the country; and as the Taluqdárs propose it, I do not see any reason why the Government should object to it. I will here notice also the section which places restrictions on the power of the Taluqdárs to give or bequeath their estates for religious or charitable purposes. As the Bill originally stood, following the provisions of the Indian Succession Act, no Taluqdár or Grantee would have had the power of bequeathing his estate for religious or charitable purposes except by will executed and registered twelve months prior to his death; that period has, in the Bill as it now stands, been reduced to three months. The Taluqdárs alleged it was the custom of the country to make such gifts on the death-bed; and they requested that gifts or bequests of this nature should be permitted to be made up to a limit of two thousand rupees. I think this is a reasonable com-

promise, for although the checks on the exercise of improper influence will not be so circumscribed as by the Succession Act, they will, I think, for all practical purposes be sufficient, and it is to the credit of the Taluqdárs that they have seen the propriety of applying checks on mortmain alienations similar to those which have been found necessary in all civilized countries.

Regarding the 14th and 15th sections I need not say much, because the Hon'ble Sir George Couper will propose to amend them. The Taluqdárs originally wished that these sections should be simply omitted. The Select Committee found it impossible to agree to that proposal, and this was really the only point on which there was any difference of opinion between the Committee and the Taluqdárs. The Committee thought—and I think there can be no question that they thought rightly—that the result of agreeing to what the Taluqdárs originally wished would be inconvenient to the last degree, although there can be no doubt that it would have been in accordance with the provisions of the Bill introduced by Lord Canning. The result would eventually have been that there would often have been two different laws of succession applicable to the property of the same person. This is not a question falling within the engagements of Lord Canning. Those engagements were made for special political purposes, and they were intended to give certain exceptional privileges to certain selected individuals; not only did Lord Canning not desire, but it would have been contrary to his policy to make these privileges separable from the families of the Taluqdárs themselves. If these sections had been omitted, and a Taluqdár to whose family the rule of primogeniture was applicable, had sold a patch of land to a shop-keeper, the succession to that field would have been forever governed by the rule of primogeniture, although the succession to all the rest of the owner's landed and other property would be governed by a different rule. I will not say more on this subject, because Sir George Couper will propose amendments to which the Taluqdárs have expressed their assent.

In sections 21 and 22, which are sections of great importance, containing special rules of succession to the estates of Taluqdárs, considerable changes have been made in the Bill as it originally stood, and the provisions of which were taken, I believe without any alteration at all, from the Bill of Lord Canning. These changes have been made solely at the request and in accordance with the wishes of the Taluqdárs. I will read what the Chief Commissioner has said about them :—

“ The Taluqdárs are, it is needless to say, the authors of these changes, which are approved of, and agreed to, both by Hindús and Muhammadans. The Taluqdárs expressed very strong objections to clause 5 as it stood in the draft Bill, as they said, and said truly, that the introduc-

tion of the whole body of male collaterals in that place would exclude the widow and her adopted son entirely, though looked upon in the country as having the best title. They have therefore confined the collaterals to the brothers of the Taluqdárs and their descendants, and relegated the rest to the last clause and the protection of the ordinary law of the land. They have, moreover, introduced daughters' sons before adopted sons, and drawn a marked distinction between the issue of marriage and inferior marriage, a point upon which they have always laid much stress. Finally, they have desired to provide that the estates shall in no case undergo partition by the mere action of intestate succession. As the Bill has been drawn up at the request of the Taluqdárs for the security of themselves and their families, and Government had reserved no point in regard to this section, the Chief Commissioner considers it best to yield to their general wish, especially as he sees no reason for adhering to Lord Canning's draft Bill if the Taluqdárs wish it altered in a direction which, as far as it goes, is in accordance with the ordinary law of the land."

I do not think any one need object to meeting the wishes of the Taluqdárs in this respect, and I think that as these changes are not only in accordance with the unanimous desire of the Taluqdárs, but are also as far as they go in accordance with the Hindú and Muhammadan law and the custom of the country, we may fairly suppose that they will be beneficial.

Sections 24 to 28 regarding the maintenance of widows and children have been substituted for section 21 of the original Bill. That section was specially noticed with approval by my Hon'ble friend Sir Henry Durand when I introduced this Bill, and he said that if it had the consent of the Taluqdárs, or of a large majority of them, he thought that it would remove what was the essential blot in the Bill of Lord Canning. I am glad that the Taluqdárs have admitted the justice of what was proposed. Sections 24 to 28 as they now stand contain the proposal of the Taluqdárs themselves; they objected to some words which were indefinite in the original Bill and desired that the relatives who were entitled to maintenance should be distinctly specified, and they also proposed that a scale should be laid down beyond which the Courts should not be permitted to go. The persons, and conditions under which these persons should receive maintenance, have accordingly been specified. The Chief Commissioner thought, and the Committee also thought, that the maintenance proposed by the Taluqdárs was fair. I hope, as the Chief Commissioner has said, that it may be anticipated that there will really come before the Courts very few cases of this kind.

There is one point which I have omitted to notice. This regards section 10 by which it is proposed to apply to the wills of Taluqdárs certain sections of the Indian Succession Act. The Taluqdárs originally felt some doubt about this, as the Council will see from the Chief Commissioner's letter. The select Committee, however, was very strongly of opinion that there was hardly any

part of the Bill more valuable to the Taluqdárs themselves, and it was therefore unwilling that, in consequence of what seemed to it a misconception on the part of the Taluqdárs, they should lose the very great advantages which the Committee thought would be bestowed on them by the introduction of this section. I am glad to say that the Taluqdárs on further consideration have agreed to the recommendation of the Committee that the section should be restored. The Chief Commissioner in his letter said :

“ They are under some fear, however, that the stringency of the provisions concerning the registration of wills may militate against their interests, as they conceive that the Act requires the registration of a will within the district of the testator’s residence, and that if they happen to die at a distance from their homes their wills may be invalid.”

These fears of the Taluqdárs arose from a misconception of certain sections in the Succession Act. They had confounded probate of a will with previous registration, and in the sections of the Succession Act which it is proposed to extend to the wills of Taluqdárs, there is nothing referring either to probate or registration. The provisions of that Act regarding the execution of wills which it is proposed to make applicable to the wills of Taluqdárs are, I think it may safely be asserted, as good and simple as any provisions can possibly be.

The Chief Commissioner in his letter regarding the Bill wrote as follows, and I think it right to read this to the Council :—

“ Mahárájá Sir Mán Singh wishes certain letters (specified in the margin) appended to the schedule of the Bill in addition to those of the 10th and 19th of October. But the Chief Commissioner is strongly opposed to complying with this request ; first, because the language of these letters is either irrelevant or redundant as regards the subject-matter of the Bill ; secondly, because it is in part extremely general and vague, and certainly not intended for legislative purposes.

1. The orders and promises of the Special Commissioner, passed and made under the sanction of the Chief Commissioner.

2. Para. 4 of Government letter dated 16th October 1858.

3. Para. 4 of the Viceroy’s speech in Durbar at Lucknow in October 1859.

4. Para. 10 of the Secretary of State’s despatch dated 10th February 1865.

5. Para. 22 of the same despatch.

Moreover, as these letters were in existence when the draft of the Bill introduced by Lord Canning was made, the absence of all allusion to them in it is decisive as to His Excellency’s not considering them as any necessary part of the deliberations of the Government, resulting in the grant of proprietary rights in their taluqás to the Taluqdárs. The reason which the Mahárájá gives for bringing forward the matter is lest he may hereafter be charged with neglect for not having done so at the present time.”

The Committee carefully considered this point, and came to the conclusion, which I think the Council will agree was the only conclusion which could be come to, that it was impossible to include these letters amongst the orders to which it is proposed to give the force of law. The letters in question

have been circulated, and I think there is not likely to be any difference of opinion on the subject. I need only add that Sir Mán Singh has said to me that although he thought it his duty towards his brother Taluqdárs that the existence of these letters should not be forgotten, he is aware there would be great difficulty in actually turning them into law. Any legal force which these orders of the Governor General may possess will not be affected by the present Bill if it becomes law.

There is one other point of importance in sections 5 and 6. These sections give to grantees the same rights and privileges which are held by Taluqdárs. There is no doubt that this is in accordance with Lord Canning's intentions; there are orders of his which show this quite plainly. But a difficulty has been suggested in regard to the redemption of mortgages in the estates of grantees. When the Taluqdárs agreed to allow the redemption of mortgages on their estates, nothing was said regarding grantees, and Act XIII of 1866, although passed with the consent of the Taluqdárs, cannot be said to have been passed with the consent of the grantees. The Chief Commissioner says:—

“The Courts may therefore any day be placed, as regards the grantees' estates, in the dilemma of having to decide whether the unconditional grant of the Governor-General or the Statute Law is to prevail. Under these circumstances, the Chief Commissioner is of opinion that the Government should, following the plain intention of Lord Canning, enforce the same law for the preservation of under-proprietary and occupancy rights and for the redemption of mortgages in respect of the granted estates as of the taluqás acquired by summary settlement, but that at the same time it should announce its intention of compensating the grantee for any losses which he may sustain through the operation of that law.”

I am authorized by Your Excellency in Council to say that the Government accepts this responsibility, and that if in any case, in consequence of the application to grantees of the rule which is applicable to taluqás, it should be found that a grantee is involved in loss, the Government will be prepared to make compensation.

One very important section has been added to the Bill which requires explanation. This is the last section of the Bill. When I introduced the Bill, I pointed out that in certain cases very injurious consequences had followed from the operation of Lord Canning's orders, and that in some cases great injustice had resulted. I gave as an example the following hypothetical case:—

“Before the annexation of Oudh there may have been two brothers in joint possession of an ancient family estate. One brother had the management of the whole, and gave to the other brother the share of the profits of the estate to which he was entitled. In 1858 a summary

settlement was made, to determine the amount of the revenue that was to be paid by each estate to the Government. It was supposed when this settlement was made that it would last only until a regular settlement could be made in the usual way. In consequence of some accident or other, one of our two brothers did not appear when the summary settlement was made. The other brother appeared before the settlement officer, and a summary settlement for the revenue was made with him accordingly. The other brother shortly afterwards came back, and reassumed, without objection, the position in the estate which had formerly belonged to him. A year or so afterwards he found, to his astonishment, that every right which he had possessed had ceased to exist, and that his brother had become the sole owner of the estate, with absolute power to give away, or sell, or bequeath, the whole or any part of it as he pleased. And on the death of this brother, unless he makes some other disposition of the property, the estate, supposing it to be one to which the law of primogeniture has been made applicable, will descend to his eldest son to the exclusion of the rest of the family."

There were many cases in which the rights in taluqás of persons who had interests co-equal but not subordinate to the Taluqdár had been swept away by the operation of Lord Canning's orders. I said in the last debate that I had no doubt that this result had never been intended. I did not propose it as a matter with which the legislature should deal, but I noticed that the matter was one which the Taluqdárs themselves had taken up, and that they were very anxious, without any interference on the part of Government, to make such arrangements for their less fortunate relations as were equitable. The Government has lately received, through the Chief Commissioner, a report of the proceedings of the Taluqdárs in regard to this matter. The Chief Commissioner's letter, and the report of the Financial Commissioner Colonel Barrow, have been circulated to the Council. The Chief Commissioner writes as follows:—

"It will be in the recollection of His Excellency in Council that the Courts have decreed that, under the sanads given under the late Lord Canning's authority to the Taluqdárs, the person named in the sanad, and he alone, has the right granted by the British Government, and that no other equal or superior right exists except that of the Government to its revenue. It is plain, therefore, that in the present state of the law the claimants in these so-called suits can get nothing from our Courts but that which the defendants, acting under the influence of the principal Taluqdárs, consent to give them."

It was thought by the Special Committee that this suggestion of the Chief Commissioner, which was in entire accordance with the wishes of the Taluqdárs, should be adopted. It was thought highly important to avoid the possibility, I may say certainly, of future most harassing litigation on the subject. The Chief Commissioner and Financial Commissioner have given a satisfactory report regarding the arrangements which have been voluntarily proposed by the Taluqdárs for their relations who are in the unfortunate position which has

been described. The Chief Commissioner states that the great majority of claims which had been made against the Taluqdárs have been voluntarily adjusted, and I have been told that in most instances the arrangements have been accepted by the relatives of the Taluqdárs themselves. If in any cases completely satisfactory arrangements have not been made, all that one can say is that as these unfortunate people have now no legal rights whatever, we must be satisfied that they have received even this meed of justice. The Chief Commissioner has said that he—

“ considers that the leading Taluqdárs mentioned by Colonel Barrow, and especially Mahárájá Sir Mán Singh, deserve great credit for the time and trouble which, in compliance with the Viceroy’s desire expressed in the Darbar held last year at Lucknow, they have bestowed upon these complicated investigations. In some cases the maintenance awarded is on a very liberal scale, and the Chief Commissioner considers the general result as satisfactory as can possibly be attained under the circumstances.

As regards Colonel Barrow himself, the Chief Commissioner would observe that it is mainly to his energy, tact and personal influence with the disputants that a settlement has been made of these difficult cases. He will be glad if His Excellency in Council shall see fit to acknowledge the patient and unremitting exertions with which they have brought these vexed cases to a conclusion.”

This recommendation of the Chief Commissioner has been acted upon in accordance with Your Excellency’s orders.

There is nothing more in the Bill on which the Taluqdárs have made any remarks: consequently I need not take up the time of the Council any more. I however think it desirable to read to the Council the last portion of the Chief Commissioner’s letter of the 3rd instant, though it refers to a subject on which, as I said before, the Hon’ble Sir Dig-Bijay Singh can speak with greater authority than I can. Mr. Davies writes :—

“ Mahárájá Sir Mán Singh has repeated in strong terms to the Chief Commissioner the anxious wish of the Taluqdárs generally, that the Bill may be passed before the departure of His Excellency the Governor General. He professes himself, and the Taluqdárs generally, sensible of the advantage of having their titles to their estates affirmed by legislative enactment, whether they be already good under the Indian Councils’ Act or not. He further states that the Taluqdárs now in Calcutta, whom the Chief Commissioner esteems to be among the most astute and tenacious of the body, have in no way exceeded their delegated powers in expressing their common assent to the provisions of the Bill, which have been discussed with the Financial and Chief Commissioners in repeated and lengthened interviews, which have been most carefully translated for their information and criticism, and to which they have categorically agreed. In the event of any doubts being felt on this head, the Chief Commissioner begs that the Taluqdárs themselves may be personally consulted, and, as he has not allowed his private opinions as to the tenor of the Bill to prevent his giving an undue share of his attention to the reflection

of the ideas of the Taluqdárs in the provisions of the Bill specially affecting their supposed interests, he trusts that the Government will concur with him in thinking that any further avoidable postponement of legislation can only result in injury and disappointment to the Taluqdárs themselves."

I will only add that Sir Mán Singh has stated to me personally exactly what he stated to the Chief Commissioner, and that I hope that this Bill may pass into law to-day.

The Hon'ble Maharájá SIR DIG-BIJAY SINGH spoke in Hindústání to the following effect:—"The popular and useful Rules and Regulations passed by His Excellency the late Lord Canning and brought into action by Sir Charles Wingfield, together with the sanads imbued the minds of the Taluqdárs and the tenantry of Oudh with a feeling of peace and security, and the prosperity which resulted needs no comment. Similarly when, during the course of the Regular Settlement of the different taluqás, this feeling was in a measure disturbed by the institution of a vast number of cases by the near kinsmen, the sub-proprietors and the cultivators of the soil, all desirous of having their rights justly defined, the Hon'ble Mr. Strachey, Mr. Davies, and Col. Barrow spared no trouble in preparing, according to Your Excellency's suggestions, and with the concurrence and assistance of the Taluqdárs, the Bill now under Your Excellency's consideration. This in my humble opinion, and in that of the Taluqdárs generally, is fully calculated to establish with greater precision and clearness our rights over our estates, and by setting aside all doubt and cause of dispute to place us in more substantial security. Being thus blessed, I beg herewith to tender to Your Excellency my warmest thanks on behalf of the whole community, who will for ever pray to the Almighty for Your Excellency's long life and daily increasing prosperity."

The Hon'ble SIR GEORGE COUPER said, that with the permission of His Excellency he would say a few words regarding the provisions of this Bill, although, in so doing, he would have to traverse to a certain extent the same ground which had already been gone over so fully and so ably by his Hon'ble friend the mover, and might perhaps be repeating arguments which had already been heard by the Council during the progress of debates which took place a year and a half ago when he was absent from the country, and which he had not had an opportunity of perusing. In fact he was not previously aware that there had been any debates on the subject since the departure of Lord Canning. In such case, if what he had to say was a mere repetition of arguments which had already been heard, he could only throw himself on the forbearance of the Council.

The late Lord Canning gave the Taluqdárs of Oudh the absolute right of alienation in their estates, that is, he gave them the right to alienate their estates

by gift or will or sale, or in whatever manner they pleased, and at whatever time they pleased.

Sir Charles Wingfield, who was then Chief Commissioner of Oudh, and who certainly could not be accused of any undue bias against the Taluqdárs, represented to Lord Canning that he proposed to give them more than was allowed either by the Muhammadan or by the Hindú law, and more than was enjoyed by any other landholders in any other part of India. In spite, however, of Sir Charles Wingfield's remonstrances, repeated over and over again in language as strong as an officer in the position of a Chief Commissioner could venture to use when addressing a Viceroy, Lord Canning adhered to his original determination, and the letters to the Chief Commissioner in which he invested the Taluqdárs with the right to alienate their estates how and when they would, were believed, under the Indian Councils' Act, to have the force of law, although, as pointed out by his Hon'ble friend the mover, the highest legal authority thought it not impossible that the Judicial Committee of Her Majesty's Privy Council might be of a different opinion.

Now this Bill, while confirming the Taluqdárs in the rights of alienation vested in them by Lord Canning, imposed certain restrictions on the exercise of those rights. At present, a Taluqdár, actuated by the freak of the moment, or actuated by the fright of the moment, as the case might be, could disinherit his whole family in favour of a clever dancing girl, or of a designing priest. The power of acting in this manner would not be taken from him, but, before doing so, he would have to observe certain formalities regarding which it was unnecessary for him (Sir George Couper) to enter into fully, seeing that they had been touched upon by his Hon'ble friend the mover, and must be apparent to every one who had read through the sections of the Bill. It seemed to him that nothing could be more just and equitable in themselves than these restrictions on an arbitrary power to alienate. Still, however, they *were* restrictions, and as such under ordinary circumstances he would oppose them. For, he submitted, any restriction by the legislature, under ordinary circumstances, on a promise formally and deliberately made by a Viceroy ten years previously, whether that promise in itself was right, or whether it was wrong, could not be too strongly deprecated.

For it was with the view to pacification after the mutiny that Lord Canning conferred this right to alienate on the Taluqdárs of Oudh. At the same time he conferred certain other privileges, notably the right of adoption, on the Chiefs of Central India and other feudatories, and if those Chiefs under ordinary circumstances were to see the right so bestowed on the Taluqdárs of Oudh restricted in its operation ten years afterwards by legislative enactment, it

stood to reason that they and everybody else would lose all confidence in the integrity of Lord Canning's promises and would naturally regard them as so much waste paper. Moreover, in the event of troublous times recurring, the best inducement which a Viceroy would have to offer influential Natives to espouse our cause would be the prospect of preferment or reward in land in the shape of a *jágír* or otherwise; and this, which as far as he knew was the most powerful instrument, if it would not indeed be the only instrument, in the hands of a Viceroy, under such circumstances as happened in 1857, would be rendered of no avail if it once got abroad that the solemn and deliberate promise of a Viceroy was liable to be subjected to restrictions, at a subsequent period, by an Act of this Council or of any other authority.

SIR GEORGE COUPER would ask His Excellency, who was in the most trying position of them all in 1857—he would ask His Excellency, he said—to conceive a repetition of 1857 without the godsend of the China Contingent, and with the route through Egypt stopped, and the Viceroy, in his desperate need, offering, say, Sindiah one or more districts in the Province of Bandelkand, or Holkar the restoration of one or more of his Ceded Districts. He did not mean, for a moment, to say that it would be right to adopt such an extreme measure, still less that it would be necessary. That, of course, would depend upon the exigency of the circumstances. But if the Viceroy did take such a step, what would his feelings be—what would the feelings of every other Englishman be—if either of those feudatories were to reply that the promise would suffice to induce him to cast in his lot with us if it could only be trusted, but, as he had no security that the legislature would not, at some future date, impose restrictions on the grant, he preferred to try his fortunes elsewhere, that is, he preferred to see whether he could not get all that the Viceroy offered, and perhaps more besides, by ranging himself on the side of our enemies.

In short, SIR GEORGE COUPER did not think it too much to say that if, under ordinary circumstances, that Council, or any other authority, were to take it on themselves to set restrictions on a gift or privilege conferred by the representative of Her Majesty during time of need, or for the matter of that at any other time, the only hold which we still possessed on the Natives of this country would be lost, and we should have absolutely nothing left to trust to except the sword.

It was, therefore, only under the most special and exceptional circumstances that SIR GEORGE COUPER would vote for the passing of this Bill. Such circumstances, however, really did exist in this instance. They had been stated by his Hon'ble friend the mover, they had been confirmed by his Hon'ble friend the Maharájá of Balrámpúr, and might be summed up in the fact that, in con-

sideration of the benefits which they will otherwise derive from the Bill, the Taluqdárs of Oudh have formally expressed their wish and desire that the restrictions which it imposes on their original right to alienate may be made.

This seemed to him (SIR GEORGE COUPER) sufficient to satisfy the most jealous guardian of our national good faith as represented by the promises of a former Viceroy. For the Chiefs of Central India will know that, unless they themselves request that restrictions may be imposed on their right of adoption, Lord Canning's promises to them in that regard will be respected. Nor will any other past or future recipient of a Vice-regal gift or privilege be disposed to distrust its validity, if he knows that he can only be restricted in its exercise with his own free will and consent.

SIR GEORGE COUPER had ventured to trespass at this length on the patience of the Council for two reasons: *First*, because, bearing in mind the fact that the Bill will impose restrictions on the right to alienate bestowed by Lord Canning and hitherto enjoyed by the Taluqdárs, he thought it highly desirable that the public in general and the Native community in particular should fully and thoroughly understand that the Bill had been introduced and would be passed, if it were passed, with the full consent and approbation of those whose interests were most immediately affected. *Secondly*, because he thought His Excellency and Hon'ble Members might perhaps like to hear from the lips of a man who was at Sir Charles Wingfield's right hand during his advocacy of the cause of the Taluqdárs in 1864 and in 1865, and who might therefore fairly claim to have their interests at heart, that he believed the provisions of this Bill would be conducive to those interests in the fullest and truest meaning of the words, so much so, that, unless it were passed, the original object which Lord Canning declared himself to have in view, the creation of a powerful landed aristocracy in Oudh, would, in the course of a generation, be completely defeated.

HIS EXCELLENCY THE PRESIDENT said:—"The Hon'ble Sir-Dig Bijay Singh has expressed his satisfaction at the prospect of the Bill before the Council being passed to-day; I am also glad to be able to participate in that satisfaction. The Bill has been drawn with the view of giving the Taluqdárs of Oudh as complete rights as they wished over their estates, and I may venture to say as full powers as can reasonably be desired. I think with the Hon'ble Mr. Strachey that the limitations proposed on the power of alienating estates are wise and judicious. I can only desire further to add that I trust that the policy which, I hope, will this day receive the sanction of the Council, will be so worked by the Taluqdárs and their descendants that we never shall have cause

to regret that policy. It is in the hands of the Taluqdárs themselves to make their privileges a blessing or a misfortune to their relatives, to the subordinate proprietors, and to the cultivators of the soil, and I trust that they and their descendants will so discharge the duties which are bound up with their rights that the British Government will be satisfied that the policy which is now being declared is sound. I understand from the Chief Commissioner of Oudh and from the Hon'ble Mr. Strachey that a certain number of the Taluqdárs of Oudh are in circumstances of difficulty, partly owing to the events which occurred during the mutiny; and it is hard for any man placed in the position of a Taluqdár to be just and generous where he has difficulties in his own home. Within the last few years a very excellent Bill was introduced in the Council of the Governor of the Bombay Presidency, which eventually became law, enabling the Government to make advances to certain proprietors of land situated in a very similar position to that of the Taluqdárs of Oudh. These Native gentlemen were many of them in great distress; many had been sued in the Civil Courts, and decrees had issued against them: I believe also that in some cases their estates had been attached and were under the management of the Civil Courts. The measure introduced by the late Governor of Bombay had for its object to relieve these Native gentlemen from their difficulties and to place them in a satisfactory position. Under the provisions of that Act the Government of Bombay made advances to these Chiefs at moderate rates of interest (I think about five per cent.) with the view of enabling them to pay their debts. On the other hand the landed proprietors bound themselves to repay the money in suitable instalments, and also to adopt a proper mode of managing their estates, so that they should gradually retrieve their former position. By a late report from the Government of Bombay I perceive that this Act has worked satisfactorily, and even in the short period which has elapsed since it was passed, a number of the proprietors have retrieved their position, and most of the others are in a fair way of doing so at no distant period. I propose that the Government of India should act in a like manner towards the Taluqdárs of Oudh. I propose that a letter should be addressed to the Chief Commissioner of Oudh, bringing to his notice what has been done in Bombay, and that he should take the matter into his consideration, and submit a list of those Taluqdárs who he thinks ought to receive subventions from the Government. I think that under good management all those Taluqdárs who are really desirous of retrieving their position can do so if they pursue the course it behoves them to follow, and thus prevent their descendants from arbitrarily selling their estates to meet their necessities. If they fail, they will have no one to blame but themselves, and their descendants will be deprived of all means of maintaining their former position. The measure I propose

appears to me to be justified by sound policy, and I trust that it will also have the effect of showing the Taluqdárs of Oudh that the British Government really desires that they should be maintained in prosperity in their present position."

The Hon'ble Major General SIR HENRY DURAND said :—"Sir, I think that the proposal which Your Excellency has just made in favour of embarrassed Taluqdárs of Oudh is one of a financial character which if ultimately submitted, after the reference announced and after mature consideration of the reply to that reference, is a proposal not unlikely to meet with a favourable reception and consideration by the Council. As a Member of this Council I can only say that there would be every disposition on my own part to entertain favourably a well considered measure of the kind indicated, because I feel that the conduct of the Taluqdárs has throughout, both in the consideration of the previous Oudh Bill and of the present Bill, been, for many reasons which I shall not enter upon, really admirable.

Having on several occasions, when the opportunity occurred, remarked upon the difficulties which beset a Bill which aims at combining conflicting principles of law, I shall only now very briefly advert to these inherent difficulties. It is impossible not to foresee that much litigation may arise under the provisions of this Bill, but still I am in favour of not delaying the passing of the Bill; for until some measure of the kind passes this legislature and gives legal validity to the status and tenures of the Taluqdárs, there must remain more or less of uncertainty as to their titles and estates. My hon'ble and learned friend opposite will correct me if I am wrong, but in the absence of a legal sanction such as this Bill confers, questions might arise when cases were appealed to Her Majesty's Privy Council, which might, according to the mode in which they were viewed by that high tribunal, endanger or prove detrimental to the rights of the Taluqdárs. I am therefore in favour of passing this Bill, if only to secure a substantial and legal foundation for the titles and tenures of the Taluqdárs—a basis which neither in this country nor before the highest tribunal, namely, Her Majesty's Privy Council in England, can be shaken. I am desirous of a formal legislative enactment being passed which gives the authoritative sanction of law to rights and titles and tenures not as yet confirmed by such additional security, and renders it difficult to contest them hereafter."

The Motion was put and agreed to.

The Hon'ble SIR GEORGE COUPER moved the following amendments :—

1. That, to section 7, the words 'otherwise than as mortgagee or lessee' be added.

2. That, for sections 14 and 15, the following be substituted :—

14. If any Taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdár or grantee, or to such younger son as is referred to in section thirteen, Transfers and bequests to taluqdárs or heirs. clause two, or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession, as the transferor or testator.

15. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee or his heir or legatee shall hereafter transfer or bequeath to any person not being a taluqdár or grantee the whole or any portion of his estate, and such person would not have succeeded, Transfers and bequests to persons out of line of succession. according to the provisions of this Act, to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property, if the transferee or legatee had bought the same from a person not being a taluqdár or grantee.'

3. That, in section 24, lines 4 and 7, the words 'and concubines' be omitted, and that in lines 13 and 15 the words 'or concubine' be omitted.

4. That, in section 25, line 29, the following words be omitted :—

'where the said revenue is such as is mentioned in clause (a), (b), (c), or (d), be one-fourth of the amount to which a senior widow is entitled under such clause, and where the said revenue is such as is mentioned in clause (e), (f) or (g), it shall'

And that, at the end of section 25, for the words 'is entitled under such clause' the following be substituted: 'of the deceased would be entitled under the former part of this section.'

5. That, in section 27, line 3, the word 'and' be inserted before 'his,' and in line 5 the words 'and his concubines' be omitted.

6. That, in section 28, for clause (b), the following be substituted :—

'(b) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance.' "

As to the first amendment, he said the section as it stood enabled the Taluqdár to cause certain moveable property to devolve like heir-looms with his estate: the property so devolved to be enjoyed by the person in possession of the estate. But it was not the wish of the Taluqdárs nor the intention of the Select Committee that these concessions should extend to any person who might happen to get into possession of an estate under a mortgage or lease, and having no other right or interest whatever in the estate or property. The fact was that the omission of the words "otherwise than as a mortgagee or lessee" from the original Bill was a pure oversight, and it was the object of the amendment to replace them.

With regard to the second amendment, it was perhaps unnecessary for him to take up the valuable time of the Council in reading sections 14 and 15 as revised, seeing that they were rather lengthy.

It would be seen that, although the sections as they stood referred to transfers, they made no provision for bequests. The three previous sections provided for bequests, and all the five sections were part of the same chapter, which was headed—"Powers of Taluqdárs and grantees to transfer and bequeath," and all five sections should be taken and read together. The omission of the provision for bequests in the original sections was a mistake, which it was the object of this amendment to correct. For the rest, the amendment was in the interests of the Taluqdárs themselves, and had been made at their instance. At present, if a Taluqdár were to transfer his estate to another Taluqdár who would not succeed if the transferor died intestate, the transferee would be regarded in the same light as an outsider, and the succession to the transferred property would be governed by the ordinary rules. What the Taluqdárs wished was that when the transferee was a brother Taluqdár the succession should be regulated by the rules provided in this Bill for the succession to taluqdárf estates; in other words, that the transferred property should be regarded as a portion of the transferee's taluqá. The amendment did but embody their wishes in this respect, and he trusted that it would be agreed to.

The third amendment and the fifth were the same. He was not altogether in a position to state how concubines came to be provided for in the Bill, but the word "concubine" was susceptible of a very broad interpretation, and might be held to include any dancing girl or prostitute who might be in the keeping of a Taluqdár at the time of his decease. The Taluqdárs most strongly objected to any provision being made by law for the maintenance of women of this stamp, and as ample provision had been made for the maintenance of legitimate widows of whatever degree, SIR GEORGE COUPER trusted

the Council would agree to strike out all reference to concubines from the Bill.

The fourth amendment was to correct an anomaly which existed as the words stood. Under them a junior widow of the richer Taluqdárs would receive one-fourth of the amount to which the senior widows would be entitled; and a junior widow of a Taluqdár of the less wealthy classes would receive one-half the sum provided for a senior widow. The result would be that the junior widow of a poor man might receive a larger allowance, not only relatively but actually, than the junior widow of a richer Taluqdár. To illustrate his meaning, he would instance the case of a junior widow under clause (d) and a junior widow under clause (e). Under the former, a junior widow might be entitled to an allowance of 150 rupees per annum, and under the latter to 180 rupees, that was to say, that the widow of the poorer man might get 30 rupees more than the widow of the richer man. This anomaly had been explained to the Taluqdárs, and they fully concurred in the amendment under which *all* junior widows, whatever the value of the estate might be, would receive one-half the amount provided for senior widows.

Clause (6) of section 28 of the Bill as it stood provided that the maintenance of a widow or daughter should continue until she married. What was proposed in substitution was that for clause (b) the following be substituted :—

“ in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance.”

The object was to avoid all reference in the Bill to the marriage of widows. This amendment had been introduced at the special and earnest request of the Taluqdárs themselves, perhaps he might say in deference to their prejudices. But even if this were the case, he trusted the Council would not think it inexpedient to accede to their wishes. The fact was that up to this very moment the re-marriage of a Hindú widow was unknown in Oudh, and such a proceeding would be regarded there with the strongest aversion. Whether such marriages should or should not be encouraged or acknowledged was not at present the question. The Taluqdárs said that, bearing in mind what their feelings and sentiments in this matter were known to be, the contingency of the re-marriage of a Hindú widow should not be expressly provided for in a Bill like this, which was not of a public nature and had been introduced at their request and in their interests; and as the amendment would throw no sort of difficulty in the way of the re-marriage of a widow, Hindú or other, if she thought fit to re-marry, he trusted that the Council would pass

the amendment, and thereby confer on the Taluqdárs what they would regard as a great boon.

The Hon'ble MR. COCKERELL said that amongst the amendments to be moved by Sir George Couper as entered in the notice which had been circulated, was the following:—

“That, in line 6 of section 24, after ‘thereof,’ the following words be inserted: ‘otherwise than as mortgagee or lessee.’”

But this had been omitted by his Hon'ble friend Sir George Couper, as MR. COCKERELL understood, at the instance of the Hon'ble Mr. Strachey. It appeared to him (MR. COCKERELL) that the insertion of these words or something of similar import was desirable, for the Council would observe that in leaving section 24 as it now stood, the effect would be to saddle a mortgagee or lessee of a Taluqdár or Grantee's estate, upon the decease of such Taluqdár or Grantee, whilst the estate remained in the possession of the mortgagee or lessee, with the burden of maintaining, within the limits prescribed by section 25, certain relatives of the deceased so long as the mortgagee or lessee continued to hold such possession. MR. COCKERELL thought such a provision, apart from its anomalous character, was open to objection on the score of the obstruction which it would create to the transfer of the possession of the Taluqdár or Grantee's estate by mortgage or lease, and that it was in this way opposed to the principle of one of the received objects of the Bill, that is, the vesting in the Taluqdár or Grantee an absolute and unfettered right of alienation of his estates. On this account MR. COCKERELL deemed it right to urge the consideration of the effect of leaving section 24 as it now stood on the attention of the Council.

The Hon'ble MR. STRACHEY said that it appeared to him that the amendment to which the Hon'ble Mr. Cockerell objected was right as it stood. If the words now omitted were inserted, the section would not declare, in the case of a mortgage or lease of an estate being made, that any one would be liable to pay maintenance at all. MR. STRACHEY thought the matter could always be provided by a private arrangement between the parties, and it seemed to him that the objection of the Hon'ble Mr. Cockerell was of no weight.

The Hon'ble Sir George Couper's amendments were then put and agreed to.

The Hon'ble MR. COCKERELL then moved the insertion of the words “otherwise than as lessee” after the word “thereof” in line 6 of section 24. The object of the motion, he said, was to exempt lessees from the burden of being

compelled to provide for the maintenance of relatives of their deceased lessor; and as regards what the Hon'ble Mr. Strachey had said that if they were exempted the relatives referred to would be left unprovided for, MR. COCKERELL would observe that the burden of their maintenance would properly devolve on the person receiving the rent of the estate from the lessee in possession.

As regards the mortgagee, though MR. COCKERELL doubted the expediency of imposing on him this liability, still he was in some sense, in respect to his possession of the Taluqdár or Grantee's estate, in the same position as the vendee of such estate, and the Bill avowedly contemplated attaching this liability as a condition of the transfer of the estate by sale; but in the case of a lessee, where the full value of the property leased was given in the shape of rent, the attachment of such a condition to the mere fact of temporary possession of the estate, seemed wholly unreasonable and calculated to lead to untoward results.

The Hon'ble MR. MAINE said that if a man took a lease or mortgage of the whole estate of a Taluqdár (which was the case supposed), the lessee or mortgagee ought, in MR. MAINE's opinion, to be the person primarily liable for the annuities. Indeed Mr. Cockerell's words would leave nobody liable when the whole estate was leased. The annuities were meant to be a real charge on the land, and it was not safe to make any person responsible in the first instance other than the person in actual receipt of the rents and profits. But the matter would be adjusted, as Mr. Strachey had remarked, by private arrangement, and moreover, the lessee would have his remedy against the lessor.

The Motion was put, and the Council divided:—

AYES.

Hon'ble Mr. Bullen.
 Hon'ble Mr. Shaw Stewart.
 Hon'ble Mahárájá Sir Dig-Bijay Singh.
 Hon'ble Sir George Couper.
 Hon'ble Mr. Cockerell.
 Hon'ble Sir Henry Durand.
 Hon'ble the Lieutenant Governor.

NOES.

Hon'ble Mr Cowie.
 Hon'ble Mr. Gordon Forbes.
 Hon'ble Rájá Shioráj Singh.
 Hon'ble Sir Richard Temple.
 Hon'ble Mr. Strachey.
 Hon'ble Mr. Maine.
 Hon'ble Mr. Taylor.
 His Excellency the Commander-in-Chief.

So the motion was negatived.

The Hon'ble MR. MAINE moved that in section 11, clause 2, the words "transfer or" be omitted:

Also that in section 30, last line, the words "twenty-three" be substituted for "twenty-eight."

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed. He said:—"SIR, I will not say anything more than that I think it a cause of great satisfaction that this Bill should be passed into law before Your Excellency's departure. The last important public act of Lord Canning was the bringing in of a Bill to give the force of law to the arrangements which he had made in Oudh. Similarly one of the last public acts of Your Excellency will be to give Your Excellency's assent to the Bill, the avowed object of which is to carry out and confirm the policy of Lord Canning, and which has been received by the Taluqdárs as the complete fulfilment of the engagements entered into by the British Government. I venture to assert that by the passing of this Bill Your Excellency will be remembered hereafter as one of the greatest and truest of the benefactors of the Taluqdárs of Oudh."

The Motion was put and agreed to.

ARTICLES OF WAR (NATIVE ARMY).

HIS EXCELLENCY THE COMMANDER-IN-CHIEF moved that the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Forces, be referred back to the Select Committee with instructions to report in a month. He said that since he had presented the Report of the Committee he had received notice from two very important quarters of what were considered further amendments in the Bill. Those quarters were the Government of Madras and the Judge Advocate General of the Army. And a telegram had also been received from the Government of Bombay expressing a wish that the passing of the Bill should be deferred till certain points had been stated by the Commander-in-Chief of that Presidency. His Excellency did not know what those points were, but it was only right that, whatever they were, they should receive full consideration from the Committee.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY moved that the Hon'ble Rájá Shioráj Singh and the Hon'ble Mahárájá Sir Dig-Bijay Singh be added to the Select

Committee on the Bill to facilitate the improvement of land in the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them—The Hon'ble Mr. Maine, the Hon'ble Sir George Couper, and the Hon'ble Messrs. Gordon Forbes and Shaw Stewart and the mover.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF then said:—"SIR, I take this opportunity on behalf of this Council to express to Your Excellency the deep respect which the Council feel towards Your Excellency. I have not been authorized by any Member of the Council to express their gratitude for the unvarying kindness and courtesy bestowed on them by Your Excellency—I have not had the opportunity of consulting with the Members before addressing Your Excellency—but I am sure that I express the feeling of every Member of the Council when I say that they will never forget the courtesy and the perfect impartiality which they have always received at Your Excellency's hands."

HIS EXCELLENCY THE PRESIDENT said:—"Sir William Mansfield and Gentlemen, I thank you heartily for your consideration and kindness towards me. As the President of this Council I leave India with regret; but for some time I have felt that broken health and long services are beginning to tell on me, and that it is time that I should relinquish the cares of State and place them in the hands of the coming Governor General."

The Council then adjourned till Friday the 22nd January 1869.

CALCUTTA,
The 11th January 1869. }

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).