ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 9

Jan to Dec

1870

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

The Council met at Government House on Friday, the 18th February 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble D. Cowie.
Colonel the Hon'ble R. Strachey, C. S. I.
The Hon'ble Francis Steuart Chapman.
The Hon'ble J. R. Bullen Smith.
The Hon'ble F. R. Cockerell.

COURT FEES BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to provide for the better regulation of Court Fees be taken into consideration. He said that the Bill as amended by the Select Committee was published in the official Gazettes immediately after the presentation of this report to the Council, and had been before the public for some weeks.

Having regard also to the extreme inconvenience of any considerable delay in the disposal of a measure of this kind, which must necessarily, so long as it remained in abeyance, disturb and unsettle the entire litigation of the country, he thought they were clearly justified in proceeding now to the final consideration of the matter.

The amendments proposed by the Select Committee comprised several additions and alterations, chiefly directed to the removal of all ambiguity in regard to the proper valuation of suits and the more complete consolidation of the various provisions of the existing law, now scattered over several enactments, relative to Court fees.

The main provisions of the original Bill, namely, the rates of fees prescribed by its schedules, had undergone no material alteration. The contemplated distinction between probates and letters or certificates of administration, which followed the English law on this subject, had been abandoned; and it was now proposed to substitute an uniform two per cent. rate on both classes of instruments, for the rates, varying from two to one and a quarter per cent. on probates, and ranging between three and one and three-quarters per cent. in the case of letters and certificates of administration, propounded by the Bill as introduced. But the rates of fees chargeable on the institution of suits and appeals remained unchanged, save as regarded the maximum limit, which it was thought should be reduced from rupees 5,000 to 3,000.

From the general absence of hostile criticism it was to be inferred that public opinion was in favour of the proposed scale.

In two quarters only had the rates been objected to. In one of these, the objections raised went to the extent of condemning the principle of any special tax or charge upon the administration of justice. Now, he was not going to attempt to defend that principle. It seemed to him quite unnecessary to enter into any discussion on that point at the present time. They were not considering a proposal to impose any new tax in this direction, or even to increase any existing charge. The present measure was one of absolute concession. It embraced a reduction, to some extent, of the fees hitherto levied in every case. They had also to consider the facts that a tax not substantially different in amount from that prescribed by this Bill had been in operation for upwards of half a century, and that the State could by no means afford at the present juncture to part with the revenue derived from it.

There was one statement, however, put forward amongst the objections just referred to, which appeared to him to misrepresent the facts of the case on such an important point as to call for some notice. It implied that the rates of fees in operation in the Mofussil Courts were much higher than those levied on the original side of the High Courts and in the Presidency Small Cause Courts; and that, consequently, the suitors in the former were thus placed at a disadvantage with the latter. He believed this assumption to be wholly incorrect.

In 1862, shortly after the constitution of the High Courts by the amalgamation of the late Supreme and Sadr Courts, it was proposed to substitute *ad valorem* rates for the fixed fees which had theretofore been in force in the late Supreme Court, in order that there might be an uniform system on both sides of the new Courts; but the project was abandoned in consequence of the

Government being advised, on the most competent authority, that the change would most probably be attended by a considerable loss of revenue. And as regarded the fees levied in the Presidency Small Cause Courts, he (MR. COCKERELL) thought he was correct in stating that the charge amounted to two annas per rupee, or twelve and a half per cent. on every suit, which considerably exceeded even the highest percentage obtaining under Act XXVI of 1867.

The other objections urged against the proposed rates rested on a comparison which had been instituted between the scale of fees laid down in Act X of 1862 and that contained in the Bill. For the purpose of this comparison, the amounts had been selected on which the incidence of the rates chargeable under Act X was lightest; and the fees chargeable under the Bill on such amounts had been compared with the fees imposed by Act X, to the manifest disadvantage of the former. The radical objection to the scale of fees which obtained under Act X of 1862 was, as he had before stated, the extreme irregularity of its incidence. For example, under that law, the same fee—that is, one rupee—was charged on a suit for one rupee as on a suit for sixteen rupees; so also an uniform institution-fee was levied on every suit the amount or value of which ranged between rupees sixteen and rupees thirty-two.

Under the Bill, the fee was adjusted in gradual proportion to the amount of the suit; so that, in the case of suits of amount ranging between one rupee and sixteen rupees, the fee varied from six annas to one rupee and eight annas; and in respect of suits for any amount between sixteen and thirty-two rupees, from one rupee and eight annas to two rupees and ten annas.

The selection, therefore, of suits of sixteen rupees and thirty-two rupees' amount or value, on which the incidence of the tax imposed by the former law was lightest, as points of comparison, was obviously a fallacious test of the relative effects of the two scales. If the mean or average rates chargeable under either scale were compared, the charges contemplated by the Bill would be found, in the case of suits of small amount, to be more favourable to the suitor than the fees prescribed by the former law; *e. g.*, on a suit for eight rupees the fee prescribed by Act X of 1862 was one rupee; under the Bill it was only twelve annas. In respect of a suit for rupees twenty-four, the fee formerly was two rupees; when the Bill became law it would be one rupee and fourteen annas.

He would not take up the time of the Council with further illustrations of the relative effects of the two scales. It was sufficient to state that a detailed comparison of the average rates in force previous to 1867 with those of the

Bill would show that, as regarded the great mass of the litigation of this country—*i. e.*, suits the amount or value of which did not exceed one thousand rupees—the latter were not materially in excess of the former, and that a substantial concession was made in regard to claims for amounts under ten rupees.

The most important amongst the additions and alterations proposed by the Select Committee were the provisions relating to the valuation of suits, contained in section 7 of the amended Bill.

An attempt had been made to supply an omission common to all previous enactments, regarding fees leviable on the institution of suits. Hitherto, it had been the practice to provide only for the valuation of the property to which the suit had reference, leaving out of account altogether the various litigated claims to something less than the full interest or title in such property.

In the several descriptions of suits specified in clauses iv, vi and vii of section 7, the litigated matter was not the right to the possession of the property to which the suit related. Such possession was not disputed, and the question at issue involved merely some minor interest; yet, in the absence of any provision of the law applicable to such claims, it was probable that they were very generally valued by the parties instituting them as though they involved the entire interest in the property with which they were connected.

The Bill aimed at providing rules for the valuation of every known class of suits, as far as possible according to the interest actually in dispute in each case, by which the suitor would be relieved from his present liability to a self-imposed excess charge; and the uncertainty and want of uniformity of practice on the part of the Courts in determining the proper valuation of suits of this kind would be avoided.

To remove any doubt as to the intended application of the word "estate," which occurred frequently in the 7th section of the Bill, it had been defined to include every description of land-tenure subject to the payment of revenue to the Government. It was doubted whether, in the absence of this explanation, the term could be properly held to include the ryotwárí tenures in the Madras Presidency. It was thought that the valuation of Inám lands should follow the rule applied to land exempt from payment of Government revenue.

The revenue paid to Government on account of Inám land was a mere quit-rent; the market-value of such land was therefore in inverse ratio to the amount of such payment, *i. e.*, in the proportion in which the rent was less, the greater was the margin of profit to the holder, and the consequent market-value of the

land. In such cases the amount of the revenue paid to Government obviously formed no proper criterion as to the true value of the property.

A rather important verbal alteration was proposed in section 8. This section, as originally drawn, followed the provision of the existing law on this subject; but the Committee were strongly of opinion that local investigations for the purpose of valuing a suit should be discouraged as much as possible, as, in effect, they entailed on the parties to the suit all the trouble and expense of an extra suit, merely to determine the question of the amount due to the revenue. They proposed, therefore, to substitute words the effect of which would be to require the Court to determine, in each case, whether such local investigation was necessary or expedient, instead of directing the enquiry to be made as a matter of course on the mere requisition of a party to the suit.

The original Bill contained no effectual provision as to the consequence of the non-payment of the additional fee discovered to be due by the results of the local enquiry as to the market-value of the litigated property. The amended Bill empowered the Court to fix the time within which such additional fee must be paid and to dismiss the suit in default of such payment.

In section 10 an omission of the original Bill and of the existing law had been supplied by the suggested provision for cases in which the amount of the mesne profits claimed was left to be determined in the course of the execution of the decree. It was proposed to apply the same consequence, as in the case just stated, to the non-payment of the additional fee which was found to be due.

In amendment of the existing law, it was proposed to make the decision of the Court in which any suit or appeal was instituted, in regard to the valuation of such suit or appeal, final as between the parties thereto, reserving to the Appellate Court, for the protection of the interests of the revenue, a power of interference of its own motion where the valuation admitted by the lower Court was clearly wrong and had occasioned loss to the revenue. It was thought that the interests of the parties to the cause should in no way be allowed to be affected by the question as to whether the just demands of the revenue had or had not been satisfied, and that the present practice, under which litigation might be protracted on grounds which had no connection with the question on which the parties to such litigation were at issue, was most objectionable, and should be discontinued.

Section 13 was in modification of section 377 of the Code of Civil Procedure. By the latter, on an application for review of judgment presented after ninety

days from the date of such judgment, the same fee was levied as if it were a plaint in a suit; whilst an application made within the ninety days was subject only to the fee chargeable on ordinary applications. In many cases, where the delay had occurred through no laches on the part of the applicant, this rule had been found to entail hardship; and the measure of relief provided by this section, under which a refund of the difference between the amount paid and that which would have been payable had the application been presented within the ninety days might be obtained in such cases, was thought to be called for.

The amended Bill provided for the levy of *ad valorem* fees on applications for a review of judgment, in substitution for the fixed fee now chargeable thereon. This enhanced charge was recommended to discourage the practice, which was said to have become prevalent, of seeking to obtain the rehearing of a suit through an application for review of judgment on the most frivolous grounds, by which the time of the Courts was needlessly wasted.

It was proposed, through the provisions of section 14, to guard against the increased fee working harshly, by allowing a refund of the enhanced amount payable under its operation, where the result of the application was the reversal or modification of the previous judgment, on such grounds as amounted to an admission of the Court's error.

To section 18 it was proposed to add some additional exemptions. In England, the duties on probates and letters of administration relating to property of small amount were remitted. It seemed right that a similar exception should be made in this country, and that the limit within which such duties should not be made chargeable should be one thousand rupees.

Having regard to the relations subsisting between the Government and the agriculturists of this country in the matter of irrigation, it was clearly inexpedient to impose a fee which might operate as a restriction to free communication between the people and the officers of Government in regard to the irrigation of their land. The conditions of the ryotwárí settlement in Madras were also considered to call for the exemption, from any fee, of petitions or applications to extend cultivation or relinquish land.

Applications for compensation made under any law relating to the acquisition of property for public purposes were rendered necessary by the acts of the Government, and, consequently, could not justly be subjected to any fee.

The uniform fixed rates of fees chargeable for the service of processes, contemplated by the Bill as introduced, had been abandoned, and it was pro-

posed at present simply to transfer to this Bill, with some slight modification, the provisions of Act XI of 1863, and the Bengal Act V of 1863; the effect of which would be to extend the operation of those provisions to the whole of India and to make process-serving charges payable by means of stamps.

The statistics obtained from the several Local Governments, as to the charges for the service of processes now in force, showed a very striking diversity of practice, and the Committee, though recognizing the soundness of the principle of an uniform rate, were forced to the conclusion that the time for the general adoption of such rate had not yet arrived; that further local enquiry was needed, and a longer notice of the proposed change must be given ere its operation could be safely extended to the whole country.

By section 30 provision was made for compelling the repayment, to the complainant, of the amount of the fee paid by him on he institution of a complaint in the Criminal Court, when such complaint was substantiated and resulted in the conviction of the offender. In the opinion of the Committee, where a complaint resulted in the conviction of the accused person, and the complainant was thereby shown to have sustained a *bonâ fide* injury, he was entitled to be re-imbursed in the amount which he had been compelled to pay to obtain the Magistrate's interference in his behalf. The policy of levying any fee in cases of this kind was strongly impugned in some parts of the country. Nevertheless, the Committee were agreed that it should be retained at the reduced amount fixed by the Bill, subject to the provision for repayment in certain cases. The fact that this result might be obtained by the operation of the provisions of the Criminal Procedure Code (section 44) had not been overlooked. But, under that provision of the law, the action of the Magistrate was purely discretionary, whereas, in these cases, it was thought that the complainant should recover his disbursement in the prosecution of his charge as a matter of right.

It was proposed to reduce the maximum fee leviable on the institution of suits and appeals from rupees five thousand, the amount fixed by the original Bill, to rupees three thousand. It had been urged in some quarters that, although the return to the principle of a maximum limit conceded a substantial measure of relief, as compared with the unlimited and consequently prohibitory rates of the present law, even rupees five thousand was a heavy sum to be paid ere the Court could be put in motion in regard to claims of very large amount. The limit under Act X of 1862 was rupees two thousand, and the propriety of recurring to that limit was strongly urged. As a sort of compromise, rupees three thousand had been fixed as the maximum fee in the amended Bill.

For his own part he could not say that he concurred as to the propriety or expediency of this conclusion. Its effect was to place all claims, the amount or value of which exceeded rupees 4,05,000, on the same footing, which was inconsistent with the principle of making suits of large amount bear their fair share of taxation.

He had already adverted cursorily to the change proposed in the case of probates and letters of administration. The rates fixed by the Bill as introduced were in general accordance with the provisions of the English law. It was thought, however, that the distinction there made between these two classes of instruments was not only unsupported by, but was altogether opposed to, equitable considerations. The levy of a higher rate of duty upon letters of administration than upon probates, was equivalent to the imposition of a heavier tax upon the property of a person who had died intestate, than was leviable on the property of a person who had left a will; and this, in effect, constituted the infliction of a penalty upon the innocent inheritor of the former class of property for the negligence of his predecessor, although, presumably, such heir had already suffered to some extent through this neglect. On these considerations the Committee rejected the English scale as a model for the adjustment of these duties, and proposed the substitution of an even rate of two per cent. on the amount of the property affected by the probate or letters or certificates of administration. That rate represented, approximately, the average of the sliding scale projected in the original Bill, and was moreover the same as the present income-tax rate. A tax upon instruments of this description was in fact of the nature of an income-tax, and one moreover of the least objectionable kind.

The third or repealing schedule of the amended Bill had been greatly enlarged, the provisions of the enactments or portions of enactments which it was proposed to repeal being transferred to the Bill, so as to bring the entire law regarding fees leviable in judicial proceedings into one Act. The Bill, with the further amendments which he was about to propose, would effect a thorough consolidation of the law on this subject.

The original Bill provided for the entire repeal of Act XXVI of 1867. That Act exempted, by a special rule, any person who had been enrolled as an advocate of a High Court from the obligation of presenting a written authority empowering him to act in any Court. He stated, as the reason for discontinuing that rule, that such a provision, relating as it did to procedure and constituting in fact a modification of the provisions of the Code of Civil Procedure, was quite out of place in, and foreign to, an enactment on the

subject of Court fees. The Committee, whilst entirely recognizing the correctness of that view, held that, although that consideration justified the omission of such a provision from the Bill, as there was no reason for disallowing the exemption on other grounds, the existing law on this matter should be retained; and that so much of Act XXVI of 1867 as related to this subject should continue in force. The effect of this proposal was to constitute the provision referred to a special enactment for continuing the exemption in favour of the enrolled advocates of any High Court.

He had now explained all the material changes and additions that had been suggested. On the report being taken into consideration, he would proceed to move the adoption of the further amendments of which he had given notice.

The Hon'ble SIR RICHARD TEMPLE said that section 7, in respect to the valuation of land forming the subject of suits, provided that, in permanently settled estates, the value of the land should be assumed at ten times that of the Government revenue; that in estates not permanently settled, the value of the land should be assumed at five times the revenue; and, thirdly, that in estates which were not settled at all, where the ryot did not pay revenue at all, the value should be assumed at fifteen times the nett profits. He thought that the operation of these clauses of section 7 would lead to under-valuation, and sometimes to unjust valuation, of certain classes of estates which existed more or less in every province of India; for there were some estates which, though not exactly Inám, or free from the payment of revenue, nevertheless were subject, either to the payment of a lump-sum in the nature of a quit-rent, or to the payment of rates very much lower than the ordinary rates of revenue. Such estates would, under the Bill, be valued at fifteen times the nett profits. That would be found objectionable. He proposed to remedy it by adding to clause 5, paragraph *(c)*, of this section, the following words:—

"or is otherwise exempt from the ordinary rates of revenue."

That, he believed, would rectify the defect which had been brought to his notice.

The Hon'ble MR. TAYLOR said that what had just been stated by Sir Richard Temple merely confirmed the explanation which Mr. Cockerell had given of the meaning of the word "Inám" in the Madras and Bombay Presidencies: it merely explained in greater detail the meaning of that term. An Inámdár paid a quit-rent, which constituted a certain proportion of the ordinary assessment.

The Hon'ble SIR RICHARD TEMPLE said that, in many parts of India, the signification of the word 'Inám' would be doubtful; in some places it would mean land altogether exempt from the payment of revenue.

The Hon'ble MR. COCKERELL said that it seemed to him that there was some inconvenience in considering amendments of which the Council had had

no notice. It struck him that the words employed by the Hon'ble Mover of the amendment were so vague as to convey no definite idea of the description of land to which they were intended to apply.

The term Inám was very generally understood and had an extensive application in the Madras and Bombay Presidencies, but it was by no means clear in his (MR. COCKERELL'S) opinion to what class of tenures his hon'ble friend's proposed amendment was intended to apply.

His Excellency THE COMMANDER-IN-CHIEF said that he would bring to the notice of His Excellency the President that this Bill, as now presented to the Council, came before it in a very inconvenient shape. There were several amendments, which involved not only matters of detail of considerable importance, but also matters of principle. The amendment just moved also seemed to present considerable difficulty. Sir Richard Temple attributed great importance to the amendment, and Mr. Cockerell, who was in charge of the Bill, said that the words appeared so vague, that he could not accept it. Under these circumstances, it was almost impossible for the Council to proceed with the consideration of the Bill in its present shape, and it would be very convenient if the Bill and the amendments proposed were referred back to the Select Committee with the view of their presenting a further report.

The Hon'ble SIR RICHARD TEMPLE supported the suggestion of His Excellency the Commander-in-Chief.

The Hon'ble MR. STEPHEN said that, owing to the temporary absence of Sir Richard Temple, he was not appointed a member of the Select Committee, and the Committee had therefore lost the advantage of the valuable suggestions which they would no doubt have received if the Financial Member had been present. It would be convenient that the Bill should be recommitted, and that Sir Richard Temple should be added to the Select Committee.

His Excellency THE PRESIDENT said that he thought that it would further the convenience of the Council if the Bill was recommitted. It would be better that the Select Committee should take the proposed amendments into consideration, and submit a further report for the consideration of the Council.

His Excellency THE COMMANDER-IN-CHIEF then moved that the Bill be referred back to the Select Committee with instructions to submit a further report within a week.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN moved that the Hon'ble Sir Richard Temple be added to the Select Committee.

The Motion was put and agreed to.

PRISONS BILL.

The Hon'ble MR. STEPHEN introduced the Bill to amend the law relating to prisons in the Panjáb and the Provinces under the immediate administration of the Government of India, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that he thought that he need not occupy the Council to any extent in introducing this Bill, but he would state generally what its nature was. The operation of the Bill in the first place was confined to the Panjáb, Oudh, the Central Provinces and British Burma. He thought that, when the matter was referred to a Select Committee, they would probably take into consideration whether or not it might not, with considerable advantage, be made to apply to some of the other Provinces, especially the North-Western Provinces. The occasion on which the Bill was brought in was, that it was found that, in carrying out proper discipline in some of the prisons in the Panjáb, there was considerable difficulty arising from the absence of any law enabling the Lieutenant Governor of the Panjáb to issue rules for the maintenance of discipline, and to provide penalties for their breach. The Bengal Regulation II of 1834, section 7, authorised the Governor General in Council to introduce a system of prison-discipline, but there was no power to prescribe penalties for its infraction, and the Penal Code did not provide for such offences as the abetment, by prison-officers, of violations of prison-rules. Moreover, the power in question clearly did not apply to the Panjáb: there was some doubt as to its application to Oudh and the Central Provinces; and, as regards Burma, it seemed to extend only to the Arakan Division. The difficulties experienced in the Panjáb would apply equally to other Provinces in India, and it would be for the Select Committee to say whether the local extent of the Bill should not be considerably enlarged. The Lieutenant Governor of the North-Western Provinces had expressed an opinion that in his Province no change was required. MR. STEPHEN, however, felt considerable doubt whether this opinion was not founded upon a misapprehension as to the state of the law. With regard to the substance of the Bill he need not at the present moment say much; it was principally taken from the Prison Rules actually in force in different parts of the country, and from the Act of Parliament (28 and 29 Vic., cap. 126) relating to the subject. The Bill consisted of twelve chapters, the provisions of which were not such as to require any statement from him, and he might observe that all of them referred to matters which must necessarily arise in the administration of all Prisons, wherever they might be situated. Local experience would add considerably to the knowledge of the subject, and he hoped that the Committee would obtain full information from the local authorities. The measure was essentially one of detail.

The Motion was put and agreed to.

EMIGRANTS' REGISTRATION FEE BILL.

The Hon'ble MR. CHAPMAN moved that the Bill to enable the Governor General in Council to increase the fees payable under section 31 of Act No. XIII of 1864 (to consolidate and amend the law relating to the Emigration of Native Labourers) be passed.

The Motion was put and agreed to.

NORTHERN INDIA CANALS AND DRAINAGE BILL.

Colonel the Hon'ble R. STRACHEY moved that the Bill to regulate the construction and maintenance of Public Works for Irrigation, Navigation and Drainage be referred to a Select Committee with instructions to report in a month. He said that the proposal to refer the present Bill to a Select Committee, which he was about to make to the Council, implied that they were asked to accept the principle of the measure.

In the present case it was, he thought, the more necessary to give some explanation of the principles that had governed the measure now before the Council, because it, in fact, for the first time proposed to declare and fix in an authoritative manner many very important matters relating to the practice of irrigation in Upper India. These had, till now, been left to be dealt with in a discretionary way, in accordance with certain customs that had grown up and had been generally recognized as proper, but in many cases not under any legislative sanction.

The first point to which he would refer was the declaration contained in the preamble of the Bill, that the property of the water, &c., in India was vested in the State, but subject to rights acquired by usage or grant. This was the view that had been, he thought he might say universally, accepted by the best authorities on such subjects; and, as Mr. Maine stated, it was in conformity with the custom of Europe in those countries in which irrigation was practised. There could be no question, however, that private rights had in many cases been acquired, and there was nothing in the Bill that tended to question or disturb them, excepting under those circumstances in which private rights must always give way; that was, when the public advantage rendered it necessary to extinguish them. In such a case, of course, it was quite essential that full compensation should be given to any individual who suffered from the deprivation of an established private right in a water-supply, and one portion of the Bill was specially designed to deal with these cases.

The Bill, so far as it related to irrigation-works, proceeded, then, on the presumption that the water appropriated was the exclusive property of the

State; it being understood that, when any previous private rights had existed in the water-supply, they had been extinguished, proper compensation having at the same time been given. The canals referred to were consequently only those constructed by the Government at the public expense, and the water-courses were only those fed by such canals; that was, with water which was exclusively the property of the State.

Before proceeding further to comment on the details of the measure, it would be convenient if he (COLONEL STRACHEY) said a few words as to the general position which the Government accepted, in carrying out irrigation-works, in relation both to the general community of tax-payers and the particular community for the special benefit of which the works were constructed. The water, as already said, had become the exclusive property of the State. But, in the nature of the case, this property could only be utilized in one way, and in a special locality. It was apparent, therefore, that the State could only act in the management of the property as a trustee for the community residing in this locality, and that this community in fact possessed, in its collective form, the right to enjoy whatever advantages could be obtained from the water. This indicated the first obligation on the Government in relation to canal-management, that the water should be, as far as was practicable, so distributed as to give the greatest general benefit to the agricultural population in the districts to which it could be taken. This distribution, however, should be so regulated as to produce on the whole the best results in the aggregate; and it might quite possibly be necessary to limit the sub-division of the water, or the extension of its use, so as to avoid waste, which, otherwise, must arise to an objectionable amount. Further, it was to all persons who might benefit by the use of the land that could be irrigated, that attention must be paid, whether they were proprietors or only occupiers.

Next, it appeared that the Government undertook the works either with funds supplied from the general revenues of the country, or with money borrowed on the general credit of the country. For the use of these funds, it was clear that the particular part of the community that benefited by the works should make a suitable contribution, in the shape of interest and profit, to the general revenues. The precise amount of this contribution it would not be easy to define, but it should apparently be sufficient to cover the direct outlay of the State, in connexion with any loan specially entered into to admit of the works being carried out, and should not be in excess of the sum which could be paid without placing the locality

benefited by the works in a worse position, as regarded the aggregate demands made upon it by the State, than that in which other districts were placed. The State might properly assist any section of the community in obtaining special advantages, subject to the condition that the ultimate burdens on all classes of the tax-paying community might as nearly as possible be equalized.

He (COLONEL STRACHEY) was aware that this did not give a very valuable practical criterion of the limits that should be placed to the charges made by the State for the use of irrigation-works constructed at the public cost and risk. But it at all events indicated that the idea of working such undertakings so as to give the greatest possible mercantile profit, was not to be accepted without many large reservations. On the whole, however, there was no great risk of the Government ever attempting to strain its powers of extracting too large profits from irrigation-works. Moderate charges, with a wide diffusion of the benefits of irrigation, would certainly give the results which would be most satisfactory to the Government and the people, and be most conducive to such financial success as the conditions of the undertakings required.

He would now pass on to consider some of the principal provisions of the Bill, on which comments seemed to be desirable.

The first point that might be noticed was the system under which the powers given by the Bill were to be exercised. On this, there had been some misapprehension, arising, no doubt, from the assumption that, in many cases, these powers would be vested in Engineers who had not the sort of qualifications that fitted them for dealing with questions requiring a judicial or quasi-judicial method of treatment. The reply to such an objection was simple. There was no part of the law of this country the administration of which was not left to the officers to be selected for the purpose by the Executive Government. The power and responsibility of appointing proper officers was left to the Government, and there was no greater reason for fettering this responsibility in the case with which the Council was now concerned than in any other. The powers under this Bill, if it became law, would be entrusted only to such persons as the Local Government thought qualified to exercise them; and it would be an obvious duty of those Governments to take all needful precautions in making the selection. It would naturally become a part of a properly regulated system of canal-management, as of the administration of civil or criminal justice, to prescribe certain qualifications as essential before officers were vested with certain powers. The exercise of all powers under this Bill would be subject to suitable control by superior authority; and whatever precautions were deemed necessary to secure

regularity and prevent oppressive action of individuals might, and no doubt would, be applied. So far as the Bill extended the criminal law, the rules of criminal procedure would still apply to the administration of such law, and in this respect the Bill would not in any way alter or diminish the checks against the improper exercise of authority.

The objection taken in some quarters to giving canal engineers any administrative functions or powers was one to which he (COLONEL STRACHEY) need not refer at much length.

It was natural that there should be differences of opinion on the subject of canal-administration, and this was one of the moot points. The fact, however, remained, that the experience of the past thirty or forty years had developed the existing system, which the responsible Executive Governments were not at all disposed to set aside in a summary way. The tendency of late years had been to make the canal-management more, and not less, separate from that of the ordinary land-revenues, and it seemed to him that this was a necessary consequence of improved administration, which, in all branches of the public service, tended to develop more completely the distribution of labour and the formation of special services. He had little doubt that the remedy for the evils, which to some extent, no doubt, were real, seen by the opponents of the present system of canal-administration, was to be found in strengthening and improving the existing administration, and not in destroying it and handing over the duties to the district officers. Personally, he (COLONEL STRACHEY) was inclined to think that a greater separation of the engineering and fiscal and administrative duties of the canal-administration would be beneficial, and would hereafter be adopted; but it would be quite impossible to introduce any sudden changes of system without very great inconvenience. So far as the present Bill was concerned, it sufficed to say that it did not enter upon questions of this sort at all. It merely contemplated the necessity for certain things being done, and gave powers for their being done by the proper officers, leaving it entirely to the Executive Government to determine who those officers should be.

The second chapter of the Bill dealt with the procedure under which private rights in a water-supply might be taken possession of. The whole of the proceedings were to be taken by the Collector, an appeal being allowed to the higher Revenue-authorities, and the compensation would be given partly by a revision of the revenue of land deprived of the means of irrigation, to be made by the Collector in the ordinary manner, and partly by a money-payment, all money-compensation being settled in the way in which compensation was

given when land was taken for public purposes. The proposed provisions had been generally assented to, the objections being confined to matters of detail.

The third chapter of the Bill dealt with the administrative powers of Canal-officers. In respect to these, the differences of opinion were also almost entirely confined to points of detail. On one subject only of any special importance had objections been raised, and this was the power of stopping the admission of water into water-courses. There had, he (COLONEL STRACHEY) thought, been some misconception as to the precise scope of the provisions of the Bill that referred to this. All that the Bill declared was that, in certain cases, the Canal-officer might stop the supply of water in water-courses without giving rise to any claim for reduction of the charges that would otherwise have been made. It was, as it seemed to him, essential for the canal-administration to have the most complete discretion in dealing with the water-supply in Government canals, as was deemed most suitable, whether for the proper distribution of the water, or to secure the works against accident. This must be an implied condition when water was supplied to any individual, and it was specially provided for in a subsequent part of the Bill (section 66), in which it was declared that no claim for compensation would be admitted against the Government for what might be termed unavoidable stoppages of the water; and that all that would be done in such cases was to remit the water-rate that would otherwise have been chargeable.

Section 43, which authorized the stoppage of water in case of certain breaches of discipline as they might be termed, waste of water, and refusal to allow water-courses to be dealt with in conformity with the law, merely said that, in those cases, the claims of Government for payment of water-rates might be enforced as though the stoppage had not taken place. It was not intended to relinquish in any way the full power of control over the water, which, as he had said, must be kept intact; but merely to declare what would be the result of a stoppage of water made under certain circumstances. The result of this section (43), which gave power to stop the water in certain cases, and of the other section (66), which declared that no compensation should be claimable in certain other cases, would be to leave it open to a person who was deprived of his water, otherwise than under those sections, to claim compensation for any injury he received by such stoppage. This appeared to give quite a sufficient safeguard against the arbitrary exercise of a power which it was certainly necessary to retain, and which would remain even if section 43 were removed from the Bill.

A desire had been expressed by the Government of the North-Western Provinces that power should be given to the Government to obtain possession

of water-courses supplied from Government canals which are the property of private persons, when it is considered desirable for the general advantages of the irrigating community that this should be done. The experience of the canals in those provinces had shown that such a power might be necessary. It might happen that a water-course was constructed by a person who had only a temporary interest in the land which it was intended to supply, or that such person had parted with his interest in the land, and thus only kept the water-course as a middleman between the Government which supplied the water and the cultivator who used it. This state of things was inconvenient in many ways. The remedy that was proposed was to extend the power given under the Bill, as it now stands, for taking land for the construction of new private water-courses—a power evidently necessary and proper—so as to make it include the taking of an existing water-course. In such a case compensation would, of course, have to be given to the former possessor of the water-course at the expense of the person to whom the water-course was transferred. This modification of the Bill would be submitted for the consideration of the Committee.

The next chapter of the Bill, the fourth, was that which had led to the most discussion, and which had a special interest to the general community, as it declared the manner in which payment was to be made for the use of canal-water. There were two important alterations of the existing practice proposed in this chapter, to which it would be right that he should direct the special attention of the Council.

The system of charging for canal-water, at the present time in force in the Government canals of Upper India, was entirely one of voluntary sale. Certain acreage rates were fixed for the ordinary crops raised, which a cultivator had to pay if he used the water, it being left entirely optional whether he did this or not. The Canal-officer only dealt with the occupier of the land, and he alone was responsible for the payment of the water-rate.

The result of this system, combined with the fact that the water-rates had been fixed at a very low rate, was, that the rents of canal-irrigated land were found to have risen considerably above those of unirrigated lands, showing that, in truth, the proprietor had, to an important extent, benefited by the increased production due to the irrigation. Speaking in general terms, it might be said that the average water-rate charged to the cultivator by the Canal Department being about two rupees per acre, the rents, after meeting this charge, had risen about two rupees per acre. This advantage was, of course, obtained by the owner of irrigated land altogether in consequence of the outlay of the State funds on the canals. In some cases the owner would,

no doubt, have assisted in the construction of the water-courses which brought the water from the Government distributing channels to the land. But this was not always the case, and, anyhow, the largest part of the increase of the rents of irrigated land might be safely said to be an increment not due to any outlay or exertion on the part of the owner, but to the application of Government capital to the construction of the canals.

Under the present system, the owner was left in possession of the whole of this increase of his rents until a revision of the land-revenue took place, if, indeed, it was subject to revision; then, the Government, under the ordinary revenue-law, took a share of the rents, and thus indirectly took a part of the advantage due to the irrigation.

The first change in this system which the Bill contemplated was, that the Government would be authorized to charge directly a water-rate, not only on the occupier of irrigated land, but also on the owner of it. The Government would do this in its position of canal-proprietor, which it was intended hereafter to distinguish clearly from the position in virtue of which it shared in the rents of land in the form of land-revenue. A little reflection would, he (COLONEL STRACHEY) thought, show that there was exactly the same justification for the Government charging a water-rate on the owner of land, as there was for charging it on the occupier. He who benefited should pay. If both tenant and landlord benefited, both should pay.

The propriety of some such general plan as this was admitted by all the authorities that were consulted, and, in the revision of the land-revenue which was now going on in the Panjáb, a system had been actually adopted on the recommendation of Mr. Prinsep, which was very little different from what he had just explained. A somewhat different plan, leading, however, to very similar results, had been suggested some years ago by Sir William Muir. Where difference of opinion had arisen, it was entirely in respect to the manner of dealing with what he had spoken of as the landlord's water-rate in relation to the land-revenue, which, under the existing system, had become to some extent confounded; the distinction between the position of the Government as canal-owner, and as sharer in the rents of the land, not having been properly kept in view, under the practice that had arisen in the Upper Provinces, in making charges for canal-water.

The object of the Bill had in this respect been to provide that a canal water-rate should be assessed on the owner of irrigated land at a fairly moderate amount, in such a manner as to avoid all interference with the prac-

tice under which the land-revenue was now assessed and realized, so that the land-revenue should continue to be regulated in accordance with existing custom. The necessity for providing for the case of lands on which the land-revenue assessment now virtually included what would be a landlord's water-rate, would require attention, but there was nothing to indicate that the intention he had above stated might not be carried out with perfect facility.

Before passing on from this part of the subject, he (COLONEL STRACHEY) would explain that it was no doubt true that the Government could secure all the return it could properly desire to obtain from its irrigation-canals, by a single water-rate charged either on the occupier alone, or the owner of the land alone. But there were great practical objections to either of these courses. *First*, the charge was now virtually divided, and the system under which it was so divided had continued for many years, and had grown up and become the established custom of the irrigated districts of Upper India. *Second*, if the whole charge were placed on the owner of the land, and the entire responsibility of payment rested on him, it would necessarily follow that he must have a control over the water and its distribution. This would involve a power of interference with the cultivator in the crops grown by him, for the nature of the crop would depend on the supply of water. Such an interference was clearly objectionable, to say the least of it; and, in the case of tenants having occupancy-rights, it could not be tolerated. *Third*, if the whole charge were placed on the occupier, it would force the party least able to do so to advance the whole sum payable to the Government for the water-rates, and the occupier of the land would commonly be in a position in which he would not be able to pass on to the owner of the land the full and proper proportion of the charge which the owner should in equity bear.

On the whole, in this, as in many other matters of administrative practice, the safest and best course to follow was to work on the existing system as far as practicable, introducing such modifications as were necessary to remove defects as they arose. The Bill in these respects was permissive, and left a full power of selection to the Executive Government, among several plans of charging for the water, that were all equitable and might be found suitable, one in one place and one in another.

He (COLONEL STRACHEY) should not omit to notice that the existing system of charging for irrigation in the North-Western Provinces and the Panjáb virtually gave the advantages of irrigation to the proprietors of estates on which the land-revenue was fixed permanently, or in which the land-revenue

was alienated, without any charge. In these cases the power of adding to the land-revenue on the revision of the settlement could not operate, and this class of proprietors might often be placed in the position of having their rents doubled or still further increased, without any corresponding contribution on their parts, by the results of works for which the general body of tax-payers had paid originally, and for the maintenance of which they continued to pay year by year. It was manifestly monstrous that the result of a permanent settlement, or of an alienation of the land-revenue of an estate, should indirectly be that the proprietor should receive, at the entire expense of the general body of taxpayers, the great advantages of irrigation. The Bill, as framed, would give a complete remedy for this anomaly.

The second important change which the Bill proposed was to permit of a compulsory rating of land which was irrigable from a canal, but not irrigated, if, after the lapse of a certain period, the nett income was not sufficient to cover the charge for interest on the capital expended on the works.

The object of this part of the Bill was evident, and all that he need say on the subject was to explain more fully the considerations which had appeared to justify the proposal and to meet the objections that had been made to it.

The events of the last few months would, he should imagine, have satisfied every one in the Council that the greatest caution would be necessary in carrying out the extensive systems of public works on which the Government had recently embarked. The financial consequences depending on the expenditure of the very large sums of borrowed money that would be applied to the irrigation-works and railways which the Government was about to undertake, were extremely serious, and financial disaster and collapse of a very alarming character might readily follow an inconsiderate line of action in such operations. The necessity for giving attention to these financial considerations could not be too strongly insisted on.

The character of the public administration in India tended, he ventured to think, to exalt unduly administrative requirements at the expense of financial possibilities. It was the natural, and almost the necessary, result of a Government like that of the British in India, to be oppressed, if he might use the word, with a sense of the obligation to carry out moral and material improvements, and it was to this really healthy tendency that the excellence of our rule—for it was in all essentials excellent—was to be attributed. But the great body of administrative officers was not concerned in any important degree with the duty of finding the means for meeting the necessary cost of the measures

they proposed; nor was there, in the form of our administration, any corrective or compensating check to this. The great body of the tax-payers was not able to influence in any way the financial arrangements of the Government. But more than this, there was hardly any real or effectual criticism brought to bear on those arrangements from without, and the financial administration had been left to contend with a pressure for supplying the means of improvement which it had too often found difficult to resist, though the consequences should be serious ultimate embarrassment.

Perhaps he (COLONEL STRACHEY) might feel rather more than others the weight of such a responsibility as that of which he had spoken. He had for many years past advocated the policy of extending, within the bounds of prudence, the means of irrigation to all parts of India where there was danger from drought, and there were very few parts of the country to which this description would not apply. He had strongly supported the proposal that the needful funds for the construction of these works should be obtained by borrowing, and he had affirmed that, with due care, there need be no cause for anxiety as to the financial consequences of following this course. He felt, therefore, that, so far as his own voice had had any influence in bringing about the acceptance of the policy that he had advocated, he specially shared in the responsibility that rested on the administration of the Irrigation Department, that the great operations which they had in hand should be carried out to completion without detriment to the credit of the Government. It was in this sense that he personally claimed attention to the important aspect of the question of the extension of irrigation to which he had just been alluding, and it was in this sense that the Government of India had deemed it necessary to take special precautions to provide against possible future difficulties arising from the obligations it accepted in applying these very large sums to the protection and improvement of the country by means of irrigation-works.

If the outlay on the works to which he had referred on a former occasion, as now contemplated in the Panjáb, North-Western Provinces and Oudh, were completed in eight or ten years, the Government would, at the end of that period, be liable to a yearly charge for interest of not less than £600,000, and a yearly charge of at least equal amount for maintenance and management; in all, nearly one and a quarter millions sterling. And this, it must be remembered, represented the liabilities on a part only of the undertakings on which the Government had embarked. Very large works were in progress in Bengal, and very large projects had been prepared, and only awaited a final removal of financial doubts to admit of their immediate commencement. In Bom-

bay the position was the same, and Madras also would, without doubt, add to the drain in an important degree. He need not attempt to estimate in precise figures the full extent of the whole of the liabilities which were thus being permitted to arise, but it was certain that they would amount to an annual charge of several millions sterling.

The Goverment of India had accepted the responsibility of carrying out to its legitimate end the policy of providing this country with the best, nay the only, security that could be obtained against the recurrence of those terrific calamities in the form of general famine, produced by general drought. But in doing this it was bound so to take its measures as to prevent the contemplated benefits turning out causes of injury by reason of financial disorder arising from them.

In thus dwelling on the necessity for caution in prosecuting these works, he would distinctly guard himself against being understood to suggest that there was reason to think that they were likely to prove financially unsuccessful. He had no such fear. But as a prudent banker required certain forms to be complied with, and certain securities to be given, in dealing with his most trusted customer, and as, in the great majority of cases, such forms and securities might not be found to have been really important causes of the final satisfactory settlement of accounts; so the State, in entering on great financial operations, would do well to satisfy the community from which it derived the funds to be laid out, that there was in fact a substantial source from which the liabilities of the State in respect to its loans could without doubt be made good, however firm its own convictions might be of the prudence of its investments.

When considering the probable consequences of the works they were now about to undertake, it was proper to expect that the same general results would ensue that had been shown by actual experience to follow the prosecution of like works in past time. The main feature in the financial working of these undertakings had always been that a certain length of time had been required to develop the irrigation to an extent which made it properly remunerative. As to the end, there was no cause for anxiety; but an intermediate period would almost certainly occur, in which a heavy charge would have to be met from the general resources of the State on account of any new works. It was hoped that, under the improved system of management which they might now hope to secure, and in the light of the strict financial returns which would be an essential part of any satisfactory system, the financial operation of the works would receive closer attention than before, and causes of delay in the extension of the irrigation, or

of failure in realizing a proper income, which were removable, might be ascertained and removed. But, after all possible precautions were taken, it could not be at all certainly hoped that a serious charge might not fall on the revenues in consequence of the new works, and it was necessary to consider thoroughly how such charges, if they arose, were to be dealt with.

It was impossible to overrate the importance to the Government of maintaining its credit on an indisputable footing, when it entered on the course of borrowing which was necessarily involved in the operations which it had been recently determined to carry out with a view to the extension of irrigation-works and railways in India. The power of the Government to continue in the course of improvement on which it had embarked, was directly and essentially dependent on the solidity of its credit. If money could not be got cheap, the Government must soon check its operations. Everything which depressed the credit of the Government acted directly as an obstruction to progress; everything that raised its credit facilitated progress. The Government considered that, among the methods by which its credit might be sustained, a very important one was to place a direct liability on those interests which benefited by irrigation-works, to provide any sum which might, after a reasonable period had elapsed, be found to be required to supply the funds necessary to discharge the interest on the capital by means of which the works were carried out, if not to pay off the capital-debt itself. The precise measures by which this end was to be attained would of course require careful consideration, and the proposals that had been made in the present Bill were designed to give the Executive Government the powers which it might be necessary to exercise to secure the object that had just been explained.

The first remark that suggested itself in connection with this discussion—and it was a very obvious one—was that, if the Government carried out works such as these with borrowed money, the burden that might arise must be borne somehow. The real question at issue, therefore, was, should this burden be left to fall on the whole community, and should the form of its incidence be left to be determined, from time to time, as the financial circumstances of the day required, or should it be placed specifically on that section of the community in whose behalf the works were constructed, in a shape now to be settled once for all? Should we, in short, postpone, till the necessity for action arose, all consideration of the means which we should take for meeting the obligations that were incurred, or should we now assign a specific security equitably adjusted?

The Government of India came to the conclusion that the last was, without doubt, the proper course to follow, if it were possible; and the general

plan that was proposed in the Bill would, it was believed, give a satisfactory solution of the problem, when it was properly guarded and explained.

It was always a somewhat dangerous thing to argue from analogies which were necessarily more or less incomplete. In the present case, when we sought an analogy in English practice, we were met by the wide difference of the conditions under which public works for the general improvement of a district were undertaken there and in India. The common argument, that engagements entered into with the consent of the majority of the class interested should be held to bind the minority, could have no operation in India in relation to works such as we now were speaking of. The consent of the persons interested could not in reality be obtained in a form that would give it the slightest real value.

On the other hand, the mere fact that a given numerical majority of the persons for whose benefit works were undertaken had not specifically consented to their execution, could not at all affect the real equity of any arrangement under which such works might be paid for. So long as the essential considerations were respected, which would have guided an intelligent community thoroughly understanding its own interests and able to protect them, the circumstance that the State had acted authoritatively in behalf of a backward community could not make unjust that which otherwise would have been just. The Government in this country had extraordinary responsibilities placed upon it, arising from its extraordinary relation to the people of the country. Very frequently it was forced to act in behalf of the people, or of a section of the people, guiding itself as best it might, by considerations of what was due to interests which the people themselves appreciated very imperfectly, or perhaps not at all.

From such considerations, he (COLONEL STRACHEY) concluded that, if the Government took all those precautions that should and would be taken by an advanced community acting in its own behalf, it might, circumstanced as the British Government in India was, without objection regulate the management of works of public improvement in a manner that it was reasonable to suppose might have been agreed to by such an advanced community. And, hence, he concluded that the principle of establishing a local financial responsibility for works which were in their nature exclusively of local interest and value, was perfectly equitable in India as elsewhere.

In proceeding to apply this principle, the main point to attend to was that the burden which was to be imposed should only fall on those who really could benefit by the works. When, therefore, it was proposed that all lands irrigable from a canal should be liable to pay a rate towards the expenses of such a work,

it should be seen that the lands were those which could, in fact, receive substantial benefit, and not those which might perhaps be benefited. It would be easy to guard the power proposed to be taken under the Bill so as to secure this object completely, and it would be his duty to propose to the Committee, if his present motion was carried, such amendments and additions to the clauses as they now stood in the Bill as would effect this in an unmistakable way. He might add that the first intention of the section was what he had stated; but it had been thought that the needful definition of the lands to be charged as irrigable might be left to the Executive Government.

It would further be for consideration whether it might not be desirable to prescribe some form of preliminary enquiry by which the Executive Government might satisfy itself, in a special manner, that all those measures had been taken by the canal-administration, for facilitating the extension of the usefulness of a canal, which should have been taken before recourse was had to a general and compulsory rate on lands irrigable but not irrigated. He might add that the Government contemplated giving additional facilities for the execution of agricultural improvements, by means of what were commonly known in India as tuccavy advances, and one of the classes of work to which such advances might most properly be applied would be the minor water-courses requisite for the introduction of irrigation.

Another point which would be suggested to the Committee for consideration was, whether it might not be expedient, in the event of a compulsory rate being charged on account of any new irrigation-work, to declare that a certain fixed maximum rate of profit should thereafter be prescribed, beyond which the Government charge for that work should not go; so that, if the locality benefited by the works was held to give a practical guarantee for the financial safety of the operations involved, it should, on the other hand, be secured against any charges in excess of what was necessary to cover all obligatory expenditure for maintenance and interest. As it might be argued that, if no guarantee was given against loss, no pledge should be given against raising the charges to any amount that the real value of the water would justify; so it might be said that, if the general tax-paying community were protected from all loss, they should be ready to waive their claims to all extraordinary profits, and the charges should be fixed so as just to cover the actual outlay, including a fair rate of interest on capital, and no more.

The sole intention of the Government was to place the future of these most important works on a thoroughly satisfactory footing, both as regards the

interests of the agricultural community for which they were primarily designed, and the general financial interests of the State, which could not be endangered or injured without immediately affecting injuriously the interests of all classes. The Government would hope that a satisfactory conclusion might be arrived at on the various points which arose in relation to this proposal, and that the objections that had been made to it might be removed by the consideration it would receive from the Committee.

The fifth chapter of the Bill, regarding navigation, called for no special remark.

The chapter which followed, on Drainage, was new. Its provisions were moulded on the same general principles that had been adopted in the preceding parts of the Bill relating to irrigation-works. Compensation would be given when any operation was undertaken for improving the drainage of any district, which involved the diminution of any advantage which had been enjoyed by any one for a period of twelve years, which had been generally agreed to as a suitable term to establish a right that should be respected. It might be said, generally, that all interruptions of the natural drainage of the country were made to the detriment of the community at large, and that any right to maintain such an interruption should not be too easily recognized. Where the public health or advantage required the drainage of land, it appeared to be no more than reasonable that the proprietors of the land should be primarily held responsible for removing the evils, whatever they were. A limit of charge was proposed to be fixed by the Bill, so as to prevent undue burdens being placed on the land for these purposes. Also, a proviso was made that the removal of artificial obstructions to natural drainage should be made at the cost of the persons who caused such obstructions. This met objections that had been made, that the Government should not be able to charge upon landholders the cost of drainage-works, the necessity for which had been caused by the neglect of the Government itself. On such a point there could be no difference of opinion.

The chapter relating to obtaining labour for canal and drainage-works had been generally accepted as suitable and sufficient. It enacted nearly what was the existing practice in the Panjáb. Under its provisions, an obligation was placed on all landholders to supply labourers according to a certain scale to be fixed by the Collector, and on all labourers to give their labour, when required so to do, in accordance with certain rules to be made by the Local Government, payment being made at the full rates in force in the locality. If these obligations were not complied with, the persons concerned might be fined. There was no power given of direct coercion.

The necessity and equity of provisions such as these seemed to him quite beyond dispute. Good government did not consist in breaking down human society into the individual elements of which it was composed, and removing from all men all obligations that might interfere with their personal advantages. A man, whether he were a labourer or a landholder, was a member of a community which could only satisfactorily exist by the mutual co-operation of all its members; and when an agricultural community had become dependent on works of irrigation or drainage or embankments for its very existence, the necessity for providing for the immediate carrying out of works of a certain class in connexion with the main canals or embankments was one which was absolutely paramount.

The eighth chapter only called for notice as containing provisions by which the jurisdiction of the ordinary courts was barred in respect of matters the cognizance of which was specially provided for under the Bill. These matters might be classed as questions relating to the supply of water, the use of canals and the charges of various sorts made by canal-officers, the use of water-courses, and claims for remissions of charges, or for compensation in the cases which were specifically described in the Bill. In all cases provision was made for appeals, and the reserved matters referred to questions of an administrative nature in relation to the canal-water which was exclusively the property of the State, or to those which were so related to the revenue-administration of the canals or the land as to make it desirable that they should be dealt with by the special Revenue Courts or officers. In this, the analogy of other branches of the revenue-administration had been followed, and he might, he believed, add that the experience of European countries where irrigation was largely practised—Spain and Italy—showed that the propriety of maintaining special tribunals for the cognizance of questions relating to the irrigation of land had been universally recognized.

His Excellency THE COMMANDER-IN-CHIEF said that it was now many years, perhaps indeed more than he cared to count, since, as a member of Government on the other side of India, he was one of what might be called the official minority which pressed on the Government of India and on the Secretary of State the necessity of constructing reproductive works by recourse to other means than those presented by the ordinary resources of the country.

The struggle was a long one, but it was at length pressed to a successful conclusion. Finally the argument prevailed by which the notion was borne home to the Government in this country, to the Council at home, and to the public at large, that for this purpose of reproductive works in India we must

lean on the public credit. But while the minority impressed the value of this policy till at length it came to be triumphant in all quarters, it was not forgotten by them that the public credit would suffer, as so ably explained by his hon'ble friend the mover of the Bill, if means were not taken carefully at the same time to insure financial safety; in short, to extinguish the loans by means of which the reproductive works were to be constructed. Some of the clauses in the Bill before the Council had been designed for such a purpose. This he (SIR W. MANSFIELD) saw with great pleasure. It was evident that, according to the provisions set out for their consideration, Local Governments and Administrations would be required to consider well the necessities of their provinces and districts, with a view to the responsibility imposed on the latter for the expenditure on account of the improvements and works by which they were to profit.

It was but too true that there was a sort of feeling among certain classes of the public, this including not only the ryots and the petty landholders, but even some of our own officers in responsible situations, that there was a kind of bottomless purse, into which all were free to dip their hands at pleasure for local objects, without any local responsibility of reimbursement, this unlimited treasury being what was called the Government.

We could understand the ryot or the petty landholder having this notion of the Sarkár; but it was difficult to comprehend how responsible officers charged with the care of administration, who were aware of the almost infinite demands on the Government, should fall into such errors of reasoning.

Well, this matter seemed to be fairly set right by certain clauses in the Bill. Some alteration in the wording, some modifications, might be required; but the principle according to which these works must be carried out henceforth was described in a manner admitting of no mistake in future.

It could not be too clearly declared that the provinces, the districts, the populations which benefited by the reproductive works must be responsible for the expenditure incurred on account of them, and that this must not be thrown on the country at large or the system of general taxation.

He (SIR W. MANSFIELD) congratulated His Excellency very heartily on the progress made by the policy of reproductive works in India,—a policy which, more than anything else, would tend to great development and prosperity. It was to him a matter of real satisfaction that, at the close of his career in India, he saw that policy triumphant for which in former times he had struggled, and that he was permitted to take a share in affording completeness to it by voting for the measure now submitted to the consideration of the Council.

Major General the Hon'ble SIR HENRY DURAND said that, when permission was asked to bring in this Bill, he adverted briefly to the fact that they had not before them the opinions of the Local Governments upon it, and he would have preferred that the Council should not have entertained the Bill until after those opinions had been laid before it. The Council had since obtained the views of the Local Governments, and he must say that some of them were very hostile to a particular clause of the Bill, which had been made the subject of discussion. He referred to section 56. We had some of the leading men, amongst others Sir William Muir, giving their opinions on that section. Sir William Muir said :—

"*Section* 56 *et seq.*—I earnestly dissent from these sections. The imposition of a rate on lands that might be held open to the benefits of canal-irrigation, but which do not actually share in them, is based on no principle which I can recognize as just and equitable, or (even if practicable) as expedient. If a canal will not prove remunerative by the assessment of those who directly profit thereby, it should not be undertaken at all. If Government makes a mistake, I fail to perceive why third parties, having no special concern or responsibility in the matter, should, any more than their neighbours, be subjected to a cess in order to make good the loss. The demand would create so much discontent, and would be so evidently inequitable, that, even if legalized, I much doubt whether it would ever be put in force: and its effect, if any, would probably be to make the canal advisers of Government less careful in sifting the financial prospects of their designs, because they would have, in the back-ground, the fallacious guarantee of an eventual rating on all the area which they might hold to be open to irrigation from their works."

We had others expressing equally strong opinions hostile to this particular section. The Board of Revenue, composed of able men of the North-Western Provinces, said regarding it :—

"But section 56 is open to very grave objections. It compels the owners of lands adjacent to, but actually deriving no benefit from, a canal to pay water-rate on such land, in order to bring up the proceeds of the water-rate to seven per cent. on the capital expended on the canal, and charges for maintenance, management and working not properly debitable to the revenue-account of the canal. It is notorious that the existing canals run through tracts where they are not wanted.

" Before the canal was made, the land now adjacent to the canal was easily and cheaply irrigated from *kacha* wells, and the advent of the canal has been anything but a boon. The proprietor of such land does not not derive any benefit from the neighbourhood of the canal, any more than his neighbour whose land is not irrigable from the canal. Yet he is to be made to pay, when the other is exempted. The canal may have been constructed at an extravagant outlay. It may have failed to yield a profit to Government from mismanagement, or the entertainment of too expensive a supervising establishment. For all this the proprietor, who is in no way responsible for such results, and who derives no benefit from the canal, is *fined*, for the payment would be simply a fine. The Canal Department must look to economy

in construction, management and maintenance, and to a judiciously adjusted scale of water-rates, and careful administration, to secure a fair profit to Government. We contend that it is most unjust to make the agriculturist pay towards the expenses of a canal from which he positively derives no benefit. The mere fact of his land being irrigable from the canal is immaterial, where it is irrigable by other existing means. If it is not so irrigable, he will irrigate from the canal, especially where his land is close to the canal.

"We think that section 56 should be struck out of the Bill, and with it sections 57 to 60."

There were others, again, equally hostile to it; but he (SIR HENRY DURAND) would not take up the time of the Council by reading their opinions, though some of them were very ably and forcibly expressed. We had also the views of the Panjáb Government, which at one time were extremely adverse to the section; and the Lieutenant Governor of the Panjáb, though he had himself modified his opinion to the following extent, now sent the opinion of the Financial Commissioner, which was extremely opposed to sections 56 to 62 inclusive:—

"The Officiating Financial Commissioner further objects to the provisions of sections 56 to 62, regarding compulsory irrigation-rates: the Lieutenant Governor formerly objected to these provisions; but he has recently, in a letter addressed to the Supreme Government, in the Irrigation Department, withdrawn his opposition, with reference to a proposed modification of the Bill, by which it is ruled the amount leviable from those who do not use canal-water shall never exceed half the full water-rates. His Honour is fully aware of the great advantage which would result from all irrigable lands taking water, but he desires me to state that the adoption of these compulsory provisions renders it all the more necessary, in his opinion, for the Government to be chary of extending canals to tracts largely irrigated from wells."

We had, again, the views of the Chief Commissioner of Oudh, who expressed an opinion as hostile to this particular section of the Bill as did the Financial Commissioner of the Panjáb. He said—

"In an abstract point of view, and apart from the complications of particular provinces, the Chief Commissioner can see no reason for the gratuitous sacrifice of revenue involved in the concession to the proprietor of 'a right to a large share of the increased profits due to the introduction of irrigation by expenditure of public money.' But if it be the pleasure of the Government to make this concession, then the Chief Commissioner thinks it a good reason for adjusting the canal-rates so as to prevent the deficiency which it is proposed to supply by the taxation of irrigable lands. Admitting the necessity for obtaining seven per cent. profit on the outlay on canals, the Chief Commissioner has as yet had no data before him showing that, if the canal-rates are fully assessed, the required amount of profit cannot be raised. The Chief Commissioner would cite the late revision of rates for the Bárí Doáb Canal, as exhibiting the considerations indispensable to the full realization of the revenue due from canals. There is no doubt about a full rate being the form of taxation to which the cultivators of Upper India will most readily assent. The Chief Commissioner feels quite sure that they will not understand a supplementary rate on irrigable land. He holds that the analogy of English circum-

stances spoken of has no existence. It is a very different thing, getting the intelligent assent of English proprietors to the payment of rates in defrayal of the cost of a local improvement; and persuading thousands, or rather millions, of disconnected cultivators, living on a line of country hundreds of miles in length, that it is to their advantage, contrary to old custom, to pay for water which has never reached their fields. There will always be the risk of causing general discontent by the sudden exaction of such an addition to the ordinary fiscal demands. The insertion, therefore, of such a provision into a legislative Act, not professedly a measure of taxation, and not easily repealable, may, the Chief Commissioner fears, lead to practical difficulties, and he ventures to recommend that the subject be further considered, and the necessity for the cess be clearly made out. This will allow of time to test the feeling of parties interested. If this be favourable, no harm will be done; if unfavourable, the degree of its intensity should then be ascertained. The subject would seem to be easily separable from a Bill to amend the administration of the existing canal-law, and to call for the attentive consideration of the revenue-officers."

In the Central Provinces alone, where there was not much experience in these matters, we had an opinion favourable to the principle of the section. SIR HENRY DURAND could not help thinking that the opposition to the policy of this particular clause had been due to the peculiar wording, in this matter, both of the Statement of Objects and Reasons appended to the Bill, and also of the somewhat arbitrary terms in which the section itself was worded. He found that, in the Statement of Objects and Reasons, where it laid down the principle on which the section was based, the principle so laid down was good, and that it could in itself hardly be objected to. It was there stated that—

"The Government constructs irrigation-works out of the funds or on the credit of the general tax-paying community, and, as trustee for that community, it must take the best possible security for the payment, by the districts which are benefited by any canal, of the actual charges to which the State is put by its construction and maintenance. It might be argued that the liability to meet such charges should be extended to the whole tract of country which receives any benefit from the irrigation-works. But it is believed that, under a satisfactory system of management, the needful returns to cover the charges may be obtained from the land which will directly benefit, and it is therefore considered sufficient to limit this liability to the irrigable lands only."

It was rather remarkable that, when you read section 56, you did not find any allusion to what was contained in the Statement of Objects and Reasons, confining the water-rate to lands which will directly benefit:

"56. If, at any time not less than five years after the commencement of irrigation from any canal, the average nett revenue in the three next preceding years, realized by the Government from the use of the water thereof, and including all sources of income dependent on such canal, and deducting all charges for maintenance and management and working properly debitable to the revenue-account of the same, shall not amount to a sum equal to seven per

cent. on the capital expended on the said canal, the Local Government may charge on the lands irrigable by the water of such canal, but not paying any water-rate therefor, such a yearly rate or rates as shall, when added to the nett yearly estimated income, reckoned as aforesaid, produce a total amount, as nearly as may be, equal to seven per cent. on the capital aforesaid."

so that, at the first blush, he (SIR HENRY DURAND) could understand the Local Governments going against this particular section of the Bill; because, whilst there was no uncertainty as to the principle laid down in the Statement of Objects and Reasons, there was nothing to show that, in the section there was a corresponding condition affecting the application of the principle: he could quite understand the alarm of the Local Governments at the section. Then, again, in the Statement of Objects and Reasons the word "district" was used. A district was only an aggregation of villages. It did not always follow that the canal-districts and civil districts were of the same demarcation; nor did it at all follow that the villages which composed either canal or civil districts would all benefit from the construction of a canal. Some might benefit from it; others might benefit partially; some might not benefit at all, and some might even suffer detriment. So that, from the indefinite words used, the Local Governments might well be startled; but he did not think that, after a careful consideration of what the Local Governments had said, they really went against the principle involved. He thought that the financial policy was one which, stated generally, was a principle which would be accepted by every one: the difficulty, and it was the real difficulty, was as to its application. While he was not prepared to say, admitting, as he did, the soundness of the general principle, that that principle was in itself obnoxious to criticism: he was not prepared to say that this Bill, supposing the principle applied as it ought to be, and with some modifications of section 56 as it now stood in the Bill, might not be made a good Bill. If it were not for section 56, hardly any one would deny that the Bill itself was a good Bill: it really did very little more than bring into an improved shape what was now embodied in two or three old Acts and Regulations, and it invested the present practice with legal form. Therefore, excluding that section and some others connected with it, all of which the Hon'ble Mover of the Bill could, he was certain, amend, he thought the Bill was one that should be regarded as unobjectionable. At the same time, there were points in it which he should like the Select Committee carefully to take into consideration, for he was convinced that a good deal of the opposition that had been raised might very easily be remedied. With His Excellency's permission, he would take up those points *seriatim*.

There had been a great deal said as to the powers proposed to be conferred on canal-officers. Now, as to the particular part of the Bill in which certain powers were conferred on the canal-officers, he did not entertain any objection to its provisions; he thought that they were a body of men who would act carefully and well, both in the interests of the country and of the Government; but there were particular sections which might well be brought under the ordinary action of the civil courts. He could see no harm in their complying with the views expressed by some of the Local Governments and their officers who commented on the Bill, so as to alter the venue in proceedings under certain sections: he particularly alluded to sections 19, 21, 53 and 54. Now, all those sections had reference to rents, and he was not quite sure that they were not out of place in a Canal Act. He did not see that there would be any harm in leaving jurisdiction in this respect unshackled to the Revenue Courts. Such a course would not only prove a very great safeguard to the people, but would also operate as a real check on the canal-officers. It was very natural that the civil officers should entertain such a feeling, and he could see no objection to these sections being treated as he proposed, thus giving the canal-officers the assistance of the decisions of independent courts. It was entirely a rent-question. He was informed that, in the re-settlement of rents, which usually followed the settlement of the land-revenue of a district, there was no provision requiring that the rent should bear any proportion to the revenue-rates fixed by a revised settlement. We were, therefore, introducing a new element, and a new element in questions of rent in a Canal Act. He thought that the Revenue Courts should be required to adjudicate on all claims to enhancement of rent, and to settle them as they did similar claims under the Acts which guided them. This was a point which he ventured to recommend to the consideration of the Committee as likely to remove objections to the Bill.

Section 56 was, as previously observed, a more difficult subject for consideration; but if the Council had paid attention to the somewhat lengthy extracts which he had read from the reports of the Local Governments, they would observe that the gist of their objections was founded on the fact of the powers conferred by this Bill for the levy of the water-rate on people who derived no benefit at all. If the rate was limited to lands in no other way irrigable, and which were within the sphere actually irrigated by the canal, there would be less ground for objections on the part of the Local Governments. But, as the Bill was worded, a village might find itself compelled to pay for no advantage received, or it might be required to discard its wells from which its lands were irrigated, and which were sunk at great cost, in order that it might contribute to the financial success of some undertaking of which it was wholly independent.

Although there was a discretion left to the Local Governments as to the compulsory rate, and the action upon that discretion was subject to the control of the Governor General in Council, yet he thought that this point was one which, though guarded in this manner, had moved the Local Governments very much, and which admitted of an easy remedy in Committee; and he was under the impression that it would, coupled with other financial adjuncts which the Hon'ble Mover of the Bill would be able to add, in a great measure remove the objections entertained to the Bill. If he understood the section rightly, taken in connection with section 61, there was nothing to prevent very considerable practical injustice being done to a village, the lands of which were irrigable but not irrigated by, or requiring irrigation from, a canal which might run twenty-five or thirty miles off, and that village might be made to pay towards the general deficit of the work. That he thought should be carefully looked into.

As connected with this subject, he confessed he entertained great doubts as to the policy of section 62, to which he very earnestly asked the attention of the Council. It would be remembered by his Hon'ble colleagues that, with regard to reproductive works, he had urgently recommended that there should be a strict account kept of each separate work, and that its cost and the revenue and profits derived from such works should be laid periodically before the public at the time of the preparation of the Budget. Now, this section appeared to him really to militate against that which he held to be most important; for, although he himself was not of the opinion which he had heard advanced in that room against the construction of public works by loans, on the ground that loans necessarily led to extravagance—an opinion which he thought rather unworthy of a Government to bring against its own prudence and power of control—still he did think that the credit of the Government and of the country was involved in the results of its reproductive works being laid before the public without any jumbling or mixing up of one work with another.

The accounts rendered of separate works should be so clear and clean, that if any capitalist wished to know the outlay on, and the returns and profits from, such works as the Ganges or Jumna Canals, the Soane Canals, the works taken over lately from the Irrigation Company, the Godavery works, or any other reproductive work in any part of India, he should find no difficulty in ascertaining exactly how the account stood. There should be no blending of successful with unsuccessful reproductive works. Therefore he rather thought that these two sections, if they led to anything of the kind, were open to objection; and he

recommended them to the consideration of the Committee, both in a financial and practical point of view.

Then, again, section 67 was to his mind one which required very careful consideration, for it appeared to him that it struck somewhat at the principles which ruled our settlements. The section provided that—

"67. Whenever any land, the owner of which is charged with a water-rate as aforesaid, or the land-revenue payable in respect of which includes an addition on account of the increase of rents or profits due to irrigation from any canal, shall from any cause be deprived of the use of canal-water, such owner shall be entitled to no compensation on account of such deprivation, other than a remission of such water-rate or reduction of such land-revenue.

"No such remission or reduction shall be allowed, unless it be established to the satisfaction of the Collector that the rents or profits receivable by the owner from the said land have been or will probably be reduced, in consequence of such deprivation, by an amount exceeding one-tenth part of the increase of rents or profits, in consideration whereof the said owner shall have been charged with water-rate, or his said land shall have been charged with additional land-revenue."

The question which arose on this was, Why should any revision be made of revenue, because the profits derived from the land were less than at the time of the settlement? If he (SIR HENRY DURAND) understood the principle of our settlement properly, it was that the people took their chance of loss in one direction, by balancing it with the chance of gain in another. A village might lose a certain proportion, say one-fifth, of its settlement-rate by loss of canal-water, but it did not at all follow that everything else might not increase in value; that prices of all kinds, demands for particular produce, the effect of railways, and a great many things might happen to make that settlement not only very just but profitable. That was a sort of section which should be left to the operation of the Revenue Courts, and it need not come into this Bill at all.

In section 68 there was a very considerable power conferred on the ordinary canal-officers, with the view of levying the water-rate where, by percolation of the water from a canal, benefit was conferred on the whole of the land. He was not sure that that was not right. But suppose there was any mischief committed by the percolation? He adverted to this particularly, because, in the sections headed "Drainage," he did not find in the Bill as it stood that, if a village suffered from damage caused by the canal, there was any provision to exempt the agriculturist from the payment of the rate, and the Bill, as it was generally read, proposed to make villages pay for drainage-works rendered necessary by the canal. We were aware that, in some districts, canals

had done injury. Districts had been named to him of which he had no doubt the Hon'ble Mover of the Bill knew—he would instance Muzaffarnagar—in which the effect of the canal running through it was represented to him as having caused serious injury to the soil; it had raised the spring-level of water very much and had produced an immense deal of fever, so that literally, in those parts, the people had suffered most severely; so severely that, sometimes, in a bad year, the greater number of the people of whole villages were on their backs with fever, and the mortality was great. He thought that the drainage-works necessary for remedying these evils did not form a proper charge on those who suffered the injury. The people had derived no benefit, but were involved in lamentable losses and injury, caused by the construction of canals, and to make them pay for drainage under such circumstances appeared to him not right. He thought that the cost of such works was a fair charge against the profits of the work.

He had no objection to the chapter, which had been a good deal discussed, regarding compulsory labour; he had no more objection to that than he had to the powers proposed to be conferred on canal-officers. Compulsory labour was occasionally absolutely necessary for the welfare of the people, and although it might appear a rather arbitrary and harsh measure, yet he was confident that any one who had had experience of canals, the banks of which were, at particular points, liable to be easily broken through, swamping and desolating the country around in a way from which it took months to recover, could not for a moment doubt the advisability of these sections. Consequently, he entirely agreed with them, and, practically, he thought that, provided the Hon'ble Mover of the Bill and his Committee could effect a modification with reference to section 56, such as he (SIR HENRY DURAND) had suggested, the Bill was on the whole a good and necessary Bill, but it required the amendments which he had ventured to recommend to the consideration of the Committee.

The Hon'ble MR. CHAPMAN said that, as at present advised, he objected to the principle of section 56. It seemed to him to contain an ingenious provision for guarding against the effects of errors of construction or of calculation. Now, the estimates of the Department with which Colonel Strachey was connected were not immaculate. The tendency undoubtedly was to under-estimate the cost of construction and over-estimate the probable receipts. He (MR. CHAPMAN) did not see why the public, who derived no direct benefit from the works, should be made to pay for these errors. As well might they call upon the inhabitants of a district through which an unproductive Railway passed to make good the deficit. You said to them "A beneficent Government has constructed this great work by which you will

secure an outlet for your labour and your produce." Their answer would be, "We are the best judges of our own interests, and we consider your Railway a mistake, and leads to no place in which we have any interest."

His (MR. CHAPMAN'S) belief was, that if irrigation-works were only well conceived and executed, there need be no fear about their financial success.

His Excellency THE PRESIDENT said—"I intend to reserve the greater part of what I have to say upon this very important Bill for its future stage, when, after being amended in Committee, it comes up for final consideration in this Council. I will therefore content myself today with expressing an opinion similar to that which is entertained by my honourable friend, Sir Henry Durand, to the effect that a great deal of the objection that has been taken to some of its clauses can be removed by the amendments that will be proposed in Committee.

"Now, the most formidable objection taken to clause 56 is that stated in the remarks of Mr. Reid and Mr. Inglis of the North-Western Provinces.

"They say that 'it compels the owners of lands adjacent to, but actually deriving no benefit from, a canal to pay water-rate on such land, in order to bring up the proceeds of the water-rate to seven per cent. on the capital expended on the canal, and charges for maintenance, management, and working not properly debitable to the revenue-account of the canal.'

"I believe that, by the insertion in the Bill of a proper definition of the word '*irrigable*,' that objection can be entirely swept away.

"I am informed that it is intended to define the word 'irrigable' in this way; that the land irrigable is not irrigated from a canal; that it is cultivated and situated within such a distance of the canal as permits the irrigation of it by natural flow; that the profits of such irrigation shall increase the annual rent and value of the land to an amount equal to the charge that is placed upon it; and that, not only shall all these precautions be taken, but that the canal-officer shall have offered to construct the minor works necessary for 'conveying the water to the said land under section 29, or (if the said occupier or owner shall so prefer) to permit their construction under section 32 or 33, or shall have tendered an advance of money sufficient to provide for the construction of the said works, such advance to be made and to be repayable in conformity with the rules then in force for making and recovering advances of takkavi, or advances for making improvements in land.'

"I am in hopes that, if these definitions are inserted by the Committee in the Bill and adopted by this Council, many of the objections taken will entirely fall to the ground. I believe also that it will be possible to give to all these definitions practical effect.

"It might be said, and I think with truth, that irrigation-works in India cannot be constructed without conferring great benefits upon the whole population of a district, and, speaking generally, without adding increased value to all the lands in the neighbourhood of those works.

"I believe that to be a sound axiom; but it is not the principle that is acted on in this Bill, which is more limited.

"The principle upon which the legislature in England has acted in respect to the prosecution of works of local utility is this—it has always considered it right to charge upon a certain district the repayment of capital and interest, and the cost of maintenance, because it is held that the construction of such works confers extensive advantages upon the whole neighbourhood. But this principle is only found to a limited extent in the Bill now before us, and it will be so guarded, that no people can be made to pay for this water who are not directly benefited thereby, unless their land is actually increased in value, and unless the water is actually brought upon the farm. And, here I think it right to say that, unless such a principle as this guides the future of our great operations of improvement in India, we are likely, at no distant time, to find ourselves in serious difficulty; and I believe that, unless the principle is adopted which was so well described by His Excellency the Commander-in-Chief, unless the whole of our loan-finance—the whole expenditure of a remunerative character for improvements to the land and other like objects in India—is removed from the ordinary finance of the country, you will find that it will be difficult to continue these most necessary works on a scale at all commensurate with the requirements of the country.

"I therefore think that those who argue against this principle argue against that upon which all security for the continuance and certain completion of these works is actually based.

"I will not now take up the time of the Council to go into details in proof of this axiom. On some future occasion it will probably be my duty to do so; but when we see that the cost of the ordinary administration of this country is such as can hardly be defrayed out of ordinary revenue, and, when we look to the increased cost of that administration which improvement must necessarily bring, I say that it must be plain that it is impossible to add indefinitely to our payments of interest in regard to these reproductive works

without dangerously crippling our power in respect to military defence, the administration of justice, the spread of education, and many other objects which are so essential to the safety and progress of the country.

"I hope that these truths are now beginning to be recognized throughout this land, and it behoves us to look upon these questions, not from a provincial or a local point of view, but to ask ourselves the simple question, if these works are to go on, who is to pay for them; and can they go on if their cost is to be defrayed from the ordinary revenue of the country?

"This consideration has certainly not presented itself to the minds of those who object to this Bill.

"It is said that it is unfair that certain persons should pay for certain works; but if they are not to pay, who is to pay?

"There is no unlimited fund at the disposal of the Government of India which is available for such a purpose.

"If a work is not sustained by local resources, it can only be sustained by the contribution of the general tax-payer, and I ask, is it fair or right that works constructed for the exclusive benefit of the people in the Panjáb or the North-West should be paid for out of the pockets of the people of Madras or Bombay?

"It was the early adoption of the principle to which I have been referring that has led to the successful expenditure of the enormous sums which have been borrowed from the State or from private sources, for agricultural, municipal, maritime, and other objects at home; and I do believe that, had it been attempted thirty or forty years ago in England to carry into effect the principle that has hitherto been adopted in India, that is, that the general revenues of the country were to be made liable for works of improvement of a limited and local character, not only would the expenditure on those works have been most extravagant (being conducted without that local control which is so necessary), but that the charge thrown upon the revenues would have been so enormous, that the construction of all such works would have long ago been arrested.

"When it is also said that, because engineers make mistakes, and that errors may be committed in the construction of these works, therefore, the loss occasioned by these errors, and the result of these mistakes, are to be thrown upon the general tax-payers of the country, it seems to me to be an objection that is wholly unsustainable.

"These works are not undertaken on the understanding that mistakes are not to be made; mistakes will occur, but to say that a great principle of this kind is unjust, because occasional mistakes, blunders, and errors may be made by persons occupied in the construction of these works, is, to my mind, an argument that can hardly be deemed serious.

"I believe that, in the interests of the thousands whose life (I may almost say), and certainly whose welfare, depend upon the early completion and construction of these works, this principle ought to be adopted; and I do believe that, when it does come to be thoroughly understood that those localities which are to be most benefited undertake to bear the other tax-payers of the Empire free from burden and cost; when the inhabitants come to understand what the object really is, and that in return they are to be guaranteed by Government that the profit of those works—above that which is absolutely necessary to defray the cost of payment of interest, repayment of capital and maintenance—is to be all their own, they will find that, so far from the present Bill being likely to throw unfair, unnecessary and burdensome charges upon them, it will cause these works to be constructed and completed with far more economy and care than they have been hitherto; that in their construction they will be subjected to much more accurate criticism than they have been before; that the whole claim of the Government in their respect will be greatly limited. I believe that, when people come to consider all these points, they can arrive at no other conclusion than that the principle of the Bill is just and fair, and calculated to secure the speedy completion of the works, and at the same time leave to the proprietors and occupiers of the land a larger portion of the profit.

"I am not surprised that objections are taken to this Bill. Everything that is new is liable to suspicion; but I think that the solid objections which have been made can be removed, and that, on further consideration, it will be found that this Bill, if it be properly worked, will confer lasting and immediate benefit on thousands, by securing to them, at the least possible cost, all the blessings of irrigation."

Colonel the Hon'ble R. STRACHEY said that he wished in reply to offer a very few remarks on some of the comments that had been made by Sir Henry Durand on certain sections of the Bill, which he (COLONEL STRACHEY) thought had been somewhat misunderstood. As to the general questions that had been discussed, he had no wish to add anything, as he considered that the observations of His Excellency had so completely met all the points that had been raised as to make further comment unnecessary.

The first point to which Sir Henry Durand had referred, was the extent of the powers to be given to the canal-officers. His Hon'ble friend had said that the matters proposed to be dealt with under sections 19 and 21, and 53 and 54 of the Bill would have been better left to the ordinary Civil or Revenue Courts, and that it was doubtful whether questions relating to the rent of land should find a place in this Bill. But sections 19 and 21 could not possibly be dealt with except by the Revenue Courts, and the Bill distinctly provided that the whole of the proceedings taken under Part II, in which sections 19 and 21 were, should be before the Collector, whose orders would be liable to appeal in the manner prescribed by the Local Government. The canal-officers would have no share whatever in such proceedings. As to sections 53 and 54, the same general remarks would apply.

As to the propriety of referring in this Bill to questions relating to the rent of irrigated land, the sections 19 and 21 had been specifically approved by the Board of Revenue of the North-Western Provinces. Section 54 was open to more discussion, but the propriety of it was strongly advocated by Mr. Elliott, one of the most able Civil officers employed in settlement-operations in the North-West Provinces.

Next, section 61 was objected to as giving an arbitrary power to group together several canals in reckoning the nett profits which would determine whether a rate might be levied in certain cases on irrigable land not irrigated. But some such power was essential, because the term 'canal' was necessarily very aribitrary, and, in many cases, the irrigation of a district was provided from a number of small works, which might, in fact, be little more than large water-courses, to keep separate accounts of which might be inconvenient or even impracticable.

Section 62 was also noticed as naming the accounts of the local Public Works Department, as affording the standard from which the profits before referred to should be ascertained, and a remark was made by Sir Henry Durand to the effect that the proper standard would be the accounts as audited by the Government of India or its officers. But, as a fact, the local Public Works accounts were drawn up and corrected under the orders of the Governor General in Council, and the system to be followed in keeping the accounts of all irrigation-works would be entirely within the control of the Government of India, so that there would, in fact, be no difference between the local accounts and those of the Government of India.

Objection was taken to section 67 as interfering with the system under which remissions of land-revenue were allowed, which, it was said, should not

be changed by this Bill. But, in fact, the remissions referred to in this section were not remissions of land-revenue, properly so called, but of canal water-rates charged on the owner of land, which, under the existing practice, had become confused with, or combined with, the land-revenue. If an owner's water-rate was to be charged, provision must be made for remitting it in case of failure of the canals. To what extent, if any, modifications of the precise terms of the section as it now stood might be desirable, was a question that might be properly dealt with in Committee; but some such provisions as those which it contained were essential.

The power given under section 68 to rate land not actually irrigated, but situate within a certain distance of the canal, and benefiting by percolation, was noticed as excessive. But the section plainly said that, to admit of the land being charged, the advantage to be derived from the canal must be equivalent to that which would be given by a direct supply of canal-water. This seemed quite sufficient.

The next point noticed had reference to the drainage of lands, and objection was taken that, under the Bill, a proprietor might be required to pay for the removal of evils which were caused by the errors of the Government Engineers, and were directly due to defects in the construction of the canal-works. COLONEL STRACHEY pointed out that the proviso at the end of section 84 distinctly stated that no charge should be made under the Bill for removing obstructions to drainage due to artificial causes, and that the persons who had caused such obstructions should be responsible for their remedy or removal. He added that, although no doubt there were many instances in which the Government works had caused evils of this sort, the main cause of the worst cases was the neglect of the small water-courses, which, not being properly maintained, allowed the escape of water into hollows where it formed swamps of a most objectionable nature.

As to the means of obtaining compensation for injuries done by Government canal-works to adjacent lands, to which allusion had also been made, COLONEL STRACHEY observed, that he supposed that any proprietor placed in such circumstances could bring an action for damages against the Government, though he did not remember ever to have heard that such a thing had been done. But however this was, the present Bill provided a distinct remedy for all such cases. Section 24, read with section 106, provided that, in all cases in which injury was done to land by the escape of water from a canal or drainage-work, or from the failure of any drainage-work, or from the interruption

of the drainage of lands, by canals or drainage-works, should be compensated, as though the loss had been caused by the interruption of a water-supply. Thus, in fact, the present Bill, so far from placing proprietors or occupiers in a worse position than before in these respects, for the first time prescribed a specific remedy for such cases.

The Hon'ble SIR HENRY DURAND asked permission to say that the explanations offered had not satisfied him, and that he would leave the Select Committee to deal with the objections he had raised.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend the law relating to prisons in the Panjáb and the Provinces under the immediate administration of the Government of India—The Hon'ble Messrs. Chapman and Cockerell and the Mover.

On the Bill to regulate the consolidation and maintenance of Public Works for Irrigation, Navigation and Drainage—The Hon'ble Mr. Strachey, the Hon'ble Sir R. Temple, and the Hon'ble Messrs. Stephen, Forbes, Chapman and Cockerell and the Mover.

The Council adjourned to Friday, the 25th February 1870.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 18th February 1870.