COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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

The Council met at Government House on Tuesday, the 8th April 1873.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble B. H. Ellis.
Major General the Hon'ble H. W. Norman, C.B.
The Hon'ble A. Hobhouse, Q.C.
The Hon'ble R. Stewart.
The Hon'ble J. R. Bullen Smith.
His Highness the Mahárájá of Vizianagram, K.C.S.I.
The Hon'ble J. F. D. Inglis.
The Hon'ble Rájá Ramánáth Tagore.

OATHS AND AFFIRMATIONS BILL.

The Hon'ble MR. HOBHOUSE presented the final report of the Select Committee on the Bill to consolidate the law relating to Oaths and Affirmations. He said, it would be unnecessary, as this matter had been explained on the last occasion very fully, to notice any other parts of the present Bill except those passages by which some alteration or modification of the existing law would be effected. The first of these was in section 5, where it was provided that oaths or affirmations should be made by such and such persons, and among them, under head (*c*), were jurors. At present, in India, jurors in the Presidency towns, and he thought also jurors in Rangoon and Maulmain, were all sworn. But jurors in the Mofussil it had not been the practice to swear. We had been recommended by a great many authorities in different parts of the country, the most important of whom was the Madras Government, to put all jurors on the same footing. We saw no reason why that should not be done, especially considering the extreme simplicity of the present law, which provided that, if any person objected to taking an oath, he would only be required to make a simple affirmation. In section 7, it would be found that oaths and affirmations would be administered in such forms as the High Court

should prescribe, and, until forms were so provided, the forms now used would continue in force. He was not sure whether that was an alteration of the law or not. There was no particular form prescribed by any general law, and whether or no the High Court could by its general authority prescribe the form of oath, he did not know. Nor was it worth while to enquire. It was obviously a matter of convenience that the power of moulding such formulæ should exist, and should be in the High Court; until the power so vested in the High Court was exercised, the existing practice would prevail.

There was no other alteration of the existing law until we came to clause 9, to the proviso at the end, the meaning of which was fully explained in the preliminary report of the Committee, and also by himself orally in Council. It was simply intended to prevent an abuse of this section. It would not interfere with the free use of the provisions of the section, and it had the assent of His Honour the Lieutenant-Governor, who was more the author of the sections relating to peculiar oaths than any other man.

Clause 13, it would be found, was a reproduction of section 5 of Act VI of 1872, except that we had added the words "or shall affect the obligation of a witness to state the truth." We thought it somewhat doubtful whether the clause, which very rightly provided that irregularity in the mode of taking evidence should not affect the validity of the proceedings, would save the whole liability of witnesses to be prosecuted for giving false evidence. The definition of false evidence in the Penal Code was somewhat precise and artificial, and to meet it we provided that such irregularities should no more affect the liability of a witness to be prosecuted for giving false evidence, than they should affect the validity of the proceedings. The Council would observe that, in clause 14, we had provided that a person giving evidence should be bound to state the truth. To anybody who did not know the language used in the Penal Code in the definition of false evidence, it might seem to be a solemn trifling with the Council to write down in this Act that a person called for no other reason than that he should state the truth should be bound to state the truth. The necessity of such a provision arose from the peculiar definition of false evidence. The definition was that the witness must either be legally bound by an oath to state the truth, or be so bound by some express provision of law; if then he stated what was false, he was guilty of the offence of giving false evidence. The only express provision of law was to be found in the form of the oath, and when you were dispensing with forms, it was advisable to have a general provision of law fitting exactly into the language of the Penal Code. That was the only reason for the introduction of clause 14. There was also another clause in the Bill that fitted into

two sections of the Penal Code, namely, sections 178 and 181. Section 178 related to the case of a man who, being bound to take an oath, refused to do so, and thus subjected himself to a penalty. That would be rendered nugatory by providing that a witness may make an affirmation instead of an oath at his option. It was provided by the Bill that the refusal to take an affirmation should be placed on the same ground as the refusal to take an oath. And in section 181 of the Code it was provided that, where a man who was legally bound by an oath to state the truth gave false evidence under certain circumstances, he should be liable to a certain punishment. But under this Bill he might not be legally bound to give evidence under an oath, but only under an affirmation: consequently the penalty imposed by the Code would not attach to such cases. Those were the only points in which the Bill was not an exact expression of the existing law.

The Hon'ble MR. HOBHOUSE also moved that the final report be taken into consideration.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR moved the following amendment:—

"That the last clause of section 6, namely, 'In every other case the witness, interpreter or juror shall make an oath,' be omitted."

He said the Council were aware that he had been somewhat averse to the consideration of this Bill by the Council at the present time. He had been fully persuaded that it would be totally impossible to pass a modern Act with such an *omnium gatherum* as would be contained in an Act which was intended to be literally and simply a consolidation measure. He felt sure it would be necessary, before a modern Act was passed, that some changes should be made: and the hon'ble member in charge of the Bill had told us that some changes had been made; some very beneficial changes, some very material changes—such as that regarding the administration of oaths or affirmations to jurors—and other changes apparent on the face of the Bill as now brought up. And so the present Bill had, in that respect, been very much improved; so much improved that, in HIS HONOUR'S view, the Bill was altogether unexceptionable, except in one particular which stood somewhat minor in prominence, but still, in his view, a particular which was of very considerable importance—he meant the clause of which he moved the omission. The effect of the section was that Hindús and Muhammadans were exempted from the

taking of oaths, and also all persons who objected to taking an oath. Nevertheless, to a witness, interpreter or juror, who was not a Hindú or Muhammadan, an oath must be tendered. He might, it was true, object to take an oath, but the oath must be tendered. HIS HONOUR had, on a former occasion, reminded the Council that the great mass of witnesses and jurors in the country were Hindús and Muhammadans, and that people who were not Hindús or Muhammadans were a very small fraction. Yet, while to Hindús and Muhammadans an oath would not be tendered, to Christians and other persons who were not Hindús or Muhammadans—that small and heterogeneous class of people who were not either Hindús or Muhammadans—an oath must be tendered. He ventured to believe that that was not so much a real consolidation of the law as the preservation of a fossil of ancient English superstition. That superstition was that nothing was evidence which was not given on oath. The Bill proposed to do away with that superstition, in so far that it provided that no person who objected to take an oath should be required to take an oath, whether he were a Christian or anything else; but it retained the rule that an oath must be tendered to a very few people. It was a mere fossil; a very ancient antediluvian fossil. That, he considered, was a very serious blot in the Bill, and he was at a loss to see why it should be retained. He believed that, as a rule, Muhammadans had no religious prejudices to the taking of oaths; whilst Christians and others who were not Hindús or Muhammadans might have religious scruples to take an oath. It seemed utterly unreasonable that if he and his *khidmatgár* were required to give evidence, he should be sworn because he could not offer a conscientious objection to take an oath, and his *khidmatgár* should not be called upon to take an oath, because he was a Muhammadan. He did not understand the nature of such a distinction. Was it that the oath would be more effectual in eliciting the truth from him, or that he was not to be believed unless he took an oath, while the Muhammadan was to be believed without one? It seemed to him that the distinction was an unreasonable distinction, and that it was a blot in the Bill. Therefore, he proposed to remove that distinction, and make the Bill a reasonable Bill. It was not only a matter of principle. It was not only a question why he should be sworn, and a Hindú or Muhammadan should not be sworn. It was also a matter of extreme practical inconvenience to insist on the tendering of oaths to the rare persons, not either Hindús or Muhammadans, who should come before the Courts. By thus providing, we insisted that every Court should keep a sort of swearing-armoury. They must provide themselves with a Bible, a Zendavesta, a Confucius and other means of swearing persons of various religious persuasions, and must tender to those rare people those oaths which the persons who were to take the oaths might or

might not take at their option. Munsifs in remote parts of the country must be provided with this swearing-armoury. He submitted that, if it was expedient that the great majority of the people, Hindús and Muhammadans, should be exempted from the taking of oaths, why should the small minority, the rare persons who were not either Hindús or Muhammadans, be placed under this peculiar law, this ban if he might so term it? The result of the omission which he proposed would in practice be this, that in the Courts and parts of the country where the great majority of the people were either Hindús or Muhammadans, oaths, as a rule, would not be administered, except under the special provisions in the latter part of the Bill. But it would be possible that any person of swearing races called to give evidence, either in the original jurisdiction of the High Court, or in those parts of the country or in those Courts where oaths were the fashion and habit, under the direction of the High Court, might be offered an oath. That being so, His Honour thought that the omission of the clause to which he objected would leave the law in a state of which no body could complain. There would be no necessity to tender oaths, but nevertheless the discretion of the presiding Judge would not be affected in regard to those Courts in which it was considered desirable to tender oaths. That being the case in regard to what he might call normal oaths, we should have this state of things, that oaths, as a rule, would be abolished. We should have no ordinary oaths; but the administration of oaths would be reserved as a special, solemn, and peculiar sanction, to be applied in peculiar cases, under what he might call the voluntary provisions in the latter part of the Bill. For these reasons, he moved that the rule compelling oaths to be tendered to certain persons should be omitted, and that it be left optional to the Courts to tender oaths or not to persons not being Hindús or Muhammadans.

The Hon'ble Mr. Inglis said that the amendment proposed by His Honour the Lieutenant-Governor would, it seemed to him, if carried, throw the law relating to the administration of oaths in this country into utter confusion. If the words in clause 6 to which His Honour objected were struck out, there would then be no direction as to the course to be pursued in the case of persons who were not Hindús or Muhammadans, and who did not object to taking an oath; so that it would be in the power of every Judge or Magistrate to administer to such persons either an oath or an affirmation according to his fancy. A law allowing such diversity of practice would, it appeared to him, be extremely objectionable. But however this might be, Mr. Inglis objected to the amendment on the ground that it was contrary to the express understanding under which this Bill was introduced, and under which it had been discussed in Committee. This was that the Bill was a purely consolidation measure, and that no change in the principles of the existing law should be made. The

Committee had acted in accordance with this understanding, for the alterations noticed by the Hon'ble Mr. Hobhouse just now were not alterations in principle, but related to mere matters of detail, or had been adopted to make the existing law clear on doubtful points. When this Bill was before the Committee, MR. INGLIS proposed that section 8 and the following sections, which authorised the administration of all kinds of queer oaths, should be struck out. He did so, because he was certain that these sections were dangerous and mischievous, and because he believed that they were admitted into the Bill last year without sufficient consideration. As the Hon'ble Mr. Chapman said the other day, this Bill was brought forward last year at a time when we were fully occupied with the Criminal Procedure Code, the Evidence Bill, and the Contract Bill, and when we had neither leisure nor opportunity to consider carefully the way in which these sections might be worked. But cases had already occurred which showed that the apprehensions then expressed by the Hon'ble Mr. Robinson were well founded; which showed that these sections would certainly be used by unscrupulous persons to defeat the ends of justice, to extort money, or to evade payment of debts justly due by them, by taking advantage of the extreme repugnance felt by all Natives to take oaths of the solemn nature that might be tendered to them under the provisions of these sections. MR. INGLIS believed that, as the Act became more generally known, such cases would be numerous, and that no long time would elapse before the repeal of these sections would be urgently called for. He therefore thought that it would be wise to get rid of them at once before much harm had been done. He believed that this was the opinion of the majority of the Committee, and that these sections would have been struck out had it not been urged that to do so now would be contrary to the express understanding under which the Bill had been brought forward and had been referred to the Committee; that they were bound to confine themselves to the consolidation of the existing law, and that they were not at liberty to make any alterations or improvements in it affecting any principle. The Committee accepted this view of the case, and reported accordingly. MR. INGLIS objected to any alterations being made in the Bill now, and to any departure from this understanding in the absence of some of the members of the Committee who signed that report, and who, he believed, were strongly opposed to the retention of these sections. He thought that the Council should either pass the Bill as it stood, or that, if any alterations in principle were contemplated, the Bill should be referred back to the Select Committee, in order that the very important questions involved i the retention of sections 8 to 12 might be carefully considered, as well as any amendments His Honour the Lieutenant-Governor might have to propose.

The Hon'ble MR. HOBHOUSE could not assent to His Honour's proposal, not only on the ground that it altered the existing law, but that it was an amendment in the direction of greater instead of less inconvenience. With respect to the changes made in the law by the Bill, they were not only very slight ones, some of them being mere matters of course in order to adapt the law which now existed under the Act of 1872 to the Penal Code, but they had been changes in regard to which no difference of opinion had been expressed. They had been unanimously assented to in Committee, and there was no difference about them now. But the change proposed by the Lieutenant-Governor was certainly one which would call forth considerable difference of opinion. There was a great deal in His Honour's speech with which MR. HOBHOUSE entirely sympathised; and if we were now considering the foundations of the law, and considering whether we should change them for the better, it was possible that he might agree with His Honour's views. No doubt it was correct to say that the clause requiring an oath was a remnant of the law of England. MR. HOBHOUSE would not himself call it a fossil law, because it was actually living and operating. There were a number of persons who were influenced by the solemnity of an oath, and believed in its superior sanctity. As education and civilization advanced, that belief tended to decay. So far as his own mind was concerned being disposed to tell the truth, he should not be more disposed to do it under the sanctity of an oath. And if he wished to tell a lie, he should fear only the temporal penalties attached to the giving of false evidence, and not any greater sin in telling a lie under oath than in telling one without oath. We might find a large section of our own countrymen, especially the Irish Roman Catholics, who did still attach importance to the form in which they gave their evidence and to the nature of the oaths they took; and he had no doubt that, in many parts of India, it was the same. We had recently been informed that in British Burma oaths were administered with great solemnity, and that great importance was attached to them.

That being so, he was sure we should find great difference of opinion, when we proposed to do away with the ordinary rule of tendering an oath, except to those classes of people who were excepted. The Lieutenant Governor said, "how absurdly you act; you except the greater number of the inhabitants of India." That might be so. But MR. HOBHOUSE did not see any absurdity in the law accommodating itself to the state of things. Now, the state of things was found to be this. So many Hindús and Muhammadans objected to the taking of an oath at all that it was found that they would, even at the risk of penalties, absent themselves from the Courts

of justice when called upon to give evidence; that was why Act V of 1840 was passed, which provided that the Courts of justice should not allow oaths to be administered to Hindús and Muhammadans. That Act had been in operation for thirty-two years; and he did not find that anybody had complained at all that oaths were not administered to Hindus or Muhammadans; or that anybody felt injured or had his self-respect diminished because he was called upon to take an oath, while others were not. At all events, there was no ground for any such complaint now, for since the passing of the Act of last year, it was open to any witness simply to say—"I object to take an oath," and on his so objecting, he was put to make a simple affirmation. MR. HOBHOUSE could not conceive that that would involve hardship to anybody. But what would be the practical effect of the amendment proposed? It seemed to him that it would throw on the Judges, in every instance, the onus of deciding whether they would ask the witness to swear or to affirm. How was the Judge to decide the question? It would be a very invidious position to place a Judge in, and much more likely to bring the Judge and witness into collision; much more likely to lead to unseemly disputes than the provisions of the Bill as it stood. If the witness objected to take an oath, he had only to say so; and he would be relieved from the necessity of taking an oath. But if you left the Judge to decide the matter, one of the parties might complain that the Judge had not subjected the witness to that test which the witness himself most valued, and which was most likely to elicit the truth from him. He was quite sure that we should have a great many complaints; and probably every Judge in the country would ask to be relieved of the duty thrown on him. It was on these grounds that MR. HOBHOUSE objected to the amendment.

With regard to the remarks which fell from his hon'ble friend, Mr. Inglis, respecting the clauses of the Bill which provided for the administration of peculiar oaths, MR. HOBHOUSE must say that he had not examined the subject with any care, and did not profess to have formed an opinion upon it. But it seemed to him that provisions of law passed so short a time before ought not to be altered, unless we had before us evidence that they produced some ill effect on such a scale as called for legislation. The clauses may have been passed hastily, but they were passed deliberately; there was discussion on them. MR. HOBHOUSE had read the whole proceeedings and knew what pains had been taken about them by the Lieutenant-Governor, who was more their author than any other man. MR. HOBHOUSE was not prepared to assert at present that there was a case for altering those sections. There might be such a case hereafter. He knew that many persons objected to them, but he could not find that they did so on actual evidence of mischief.

His Honour THE LIEUTENANT-GOVERNOR was aware he was somewhat weighted in this amendment on account of the indisposition of the Council, at this period of the session, to make a change in this Bill of considerable importance. But he had thought it his duty to submit his amendment, in order that the Council might say yea or nay, as he strongly objected to the clause which he proposed to omit as a blot in the Bill, and he was anxious that the Bill should not be passed with that blot in it, without the opportunity being given to remove that blot if the Council thought fit to do so. It seemed to him that his hon'ble friend, Mr. Inglis, who had consistently opposed the present Bill throughout, had entirely misconceived the effect of the amendment. His HONOUR understood his hon'ble friend to say that the effect of the amendment would be, that there would be no direction in the Bill with regard to tendering oaths to Hindús and Muhammadans. On the contrary, his hon'ble friend would find that, if the amendment were accepted, the words of the section were most distinct. The section would then stand thus:—

"Where the witness, interpreter or juror is a Hindú or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation."

His HONOUR did not propose to alter that. Oaths would not be tendered to Hindús or Muhammadans, but only an affirmation. The hon'ble member had entirely misconceived the scope of the amendment. His HONOUR'S amendment referred solely to the case of persons who were *not* Hindús or Muhammadans.

With regard to the rest of his hon'ble friend's speech, His HONOUR might repeat that his hon'ble friend had throughout been a consistent opponent of the provisions at the end of the Bill. He now said that those provisions were hurriedly considered and accepted by the Council at the close of the session of the last year. But His HONOUR did entirely protest against the light which his hon'ble friend had put the matter. So far from the Council having hurriedly accepted the Bill of last year, it was more fully considered, and the discussions occupied more time than any other measure then before the Council. The Bill was more tossed about in Committee than any other measure. It had been for years before the Council, and last year it was some months before the Council. It was turned inside out. It was thrashed out most fully; and His HONOUR was sure that the decision they came to saved the Council from a very great dilemma. Therefore, he wholly objected to the hon'ble member representing the Bill of last year to be a Bill passed by the Council from want of leisure and opportunity to give it full consideration. He also objected to the hon'ble member springing a mine upon us in

asserting that the majority of the Committee of the Council were now opposed to those provisions. His Honour had no evidence before him to enable him to controvert or deal with that assertion. But he must say that it was not supported by any evidence before the Council. None of the members of the Committee had now expressed that opinion. The hon'ble member in charge of this Bill had told us that he had no such opinion. The hon'ble member alluded to those who had signed the report but who were now absent from the Council. His Honour had referred to the names attached to the report, and found that there was only one member, Mr. Chapman, who was absent; and he was not aware that Mr. Chapman was opposed to those provisions. He might be opposed to them or he might not. But His Honour did object to the hon'ble member speaking of the majority of the Committee being opposed to the provisions introduced in the Bill last year, when they reported no such thing and said no such thing.

Then, turning to his own amendment now before the Council, and to the observations of the hon'ble member in charge of the Bill, His Honour should like to explain that it was not brought forward by him in any spirit of unbelief in the efficacy of oaths. The hon'ble member in charge of the Bill said that the more civilized people became, the more the belief in the efficacy of oaths decayed. His Honor was not so civilised as all that. So far from believing in the efficacy of oaths decaying, he believed that you would make them much more efficacious by making them more solemn. He believed that, in all parts of the world in which oaths were used, they were used with greater efficacy in proportion to the solemnity of the oath. If you made the taking of an oath a mere formality, to be gabbled over by the witness, you lost that solemn sanctity and that efficacy. The whole object of the amendment which he had been at some pains to lay before the Council last year, was, not to do away with the taking of oaths, but to render them more solemn, more binding, and more efficacious. He was of opinion that oaths should not be used as mere formalities to be gabbled over, but that when they were used in a solemn manner and on solemn occasions, they would be really efficacious. His objection to the provision which he now wished to remove from the Bill was that it was inconsistent with the rest of the provisions of the Bill. The great mass of the people, Hindús and Muhammadans, were not to be asked to take oaths, and he therefore thought it was totally unnecessary to ask the rare exceptions of particular classes to take this form of every-day oath, which was contrary to the custom of the Courts of the country. The hon'ble member in charge of the Bill said that, if this amendment were carried, Judges would be placed

in a difficult and invidious position. But in saying that, the hon'ble member had omitted to notice the system under which the Courts were constituted in this country, namely, the important provision that the Courts were under the general supervision and control of the High Court. If the amendment was accepted, it would not be left wholly to the Courts to determine whether they should or should not tender an oath to the witness; but under the general power of supervision and direction which the High Courts exercised, they would prescribe certain rules for the guidance of the Courts. They would say that, in certain Courts and under certain circumstances, oaths should be administered; but in ordinary Courts and under ordinary circumstances, oaths should not be administered. When that was so, and when moreover it was in the power of a witness to say that he objected to take an oath, HIS HONOUR believed that it was improbable and impossible that the unseemly scenes which the hon'ble member referred to could occur.

The Hon'ble MR. HOBHOUSE explained that, if the words proposed to be omitted were struck out, there would be no direction as to the course to be followed with regard to persons not Hindús or Muhammadans, and also as to those who did not object to be sworn.

His Excellency THE PRESIDENT said—"I cannot think that the consideration of this question is at all prejudiced by its having been introduced so short a time before the Government leave Calcutta, because, as the Council will remember, the same question was brought forward by His Honour the Lieutenant-Governor in his speech on the introduction of the Bill, and the Council then considered it among other questions of principle relating to the Bill.

"The opinion of the Council then was that the Bill should be only a consolidation Bill, and that it would be inexpedient to re-open questions of principle, considering the short time that had elapsed since they had been discussed and decided.

"Amongst those questions, there was, on the one hand, that involved in the amendment which is now moved by the Lieutenant-Governor; and, on the other hand, the propriety of the clauses which, at His Honour's suggestion, had been inserted in the Act of last year, and to which the Hon'ble Mr. Inglis objects.

"The Government, therefore, are not prepared to agree to an amendment of the Bill in either direction."

His Honour THE LIEUTENANT-GOVERNOR explained that the question which was the subject of his amendment was not then before the Council.

His Excellency THE PRESIDENT said—"I believe I am accurate in saying that the general principles of the measure were settled in Council last year; that, although the Act then passed did not consolidate the law, it left the law in what the Council considered to be a satisfactory state."

The amendment was put and negatived.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble MR. INGLIS moved that the Bill to consolidate and amend the law relating to Village Police in the North-Western Provinces be referred back to the Select Committee with instructions to report in a month. He said a letter had lately been received from the Government of the North-Western Provinces, proposing certain alterations and additions in the Bill. It was therefore desirable that the Bill should be reconsidered.

The Motion was put and agreed to.

LAND REVENUE (N. W. P.) BILL.

The Hon'ble MR. INGLIS also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces.

NORTH-WESTERN PROVINCES RENT BILL.

The Hon'ble MR. INGLIS then presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Rent in the North-Western Provinces.

LAND REVENUE AND RENT (N. W. P.) BILLS.

The Hon'ble MR. INGLIS moved that the two Reports just presented be published in the *Gazette of India* in English, and in the local Gazette in Urdú and Hindí.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM wished to inform His Lordship and the Council on one point on which he always laid much stress. He found that the word "Urdú" was used as representing the vernacular of the North-Western Provinces, although the language which was known as Urdú was only used in particular places, such as the cities of Delhi, Lucknow, Benares, Faizabad, and some others. The proper vernacular of the North-Western Provinces was Hindústání or Hindí. Urdú was really no language at all. It was a high-

flown part of the Hindústání language generally affected by Muhammadans in those parts, with Arabic and Persian words mixed up in it. If a person spoke the plain Hindústání, he could go all over India and make himself understood. But a person coming from such places as Delhi and Lucknow, with his deep knowledge of Persian, spoke a kind of language, called Urdu, which not only Hindús but the generality of Muhammadans themselves did not understand. It struck him that, if the Bill was translated into Hindústání instead of the high-flown Urdú, and the Hindústání language was encouraged in the Courts, it would be more beneficial to the public at large.

His Honour THE LIEUTENANT-GOVERNOR said, his opinion was entirely in accord with that of His Highness the Mahárájá of Vizianagram. But still, as the hon'ble member in charge of these Bills was good enough to move that they should be published in Hindí in addition to Urdú, HIS HONOUR was not anxious to raise questions as to the difference between Urdú and Hindústání. But he mentioned the point because he found that it was a settled matter that the language referred to should be called Hindústání and not Urdú. He found that one of the recently revised rules of the Council stood as follows :—

"If any of the members are unacquaired with English, he (the Secretary) shall also cause the Bill and the Statement of Objects and Reasons to be translated into Hindústání for their use."

It seems clear from that rule that the Secretary was bound to translate Bills into Hindústání, and we should, to a certain extent, stultify ourselves if we ordered that the Bill should be translated into Urdú as well as in Hindústání. HIS HONOUR would bring that to the notice of the Council.

He would also take leave to make one or two observations in regard to these Bills, which would not, he believed, again come before the Council at its sittings in Calcutta. He had appended to the Reports of the Select Committee a note in which he said that, although he was not responsible for the details of the Bills, not having been able to attend at the discussion of all the details, and was especially not responsible for the spelling of names and omission of the definitions, still he thought it right to place on record that he did most entirely and thoroughly approve of the main principles of the Bills as they had been settled by the Committee. He was very glad to find that the apprehension which he at one time entertained with regard to possible differences of opinion between himself and the hon'ble member in charge of the Bill, who in some respects represented one of the most experienced men in India—the

Lieutenant-Governor of the North-Western Provinces—he was glad to find that, after some discussion, the apparent differences of opinion between himself and the hon'ble member had vanished, and that they were on all material points of one accord, and had been able to place the Bill in a shape in which all the members of the Committee had concurred in regard to those very material points affecting the status and position of the zamíndárs, ryots and other persons interested in the land. By section 75, the law in regard to the enhancement of rent was placed in the shape which he hoped would be successful. He had on more than one occasion expressed his opinion that the Rent Law, Act X of 1859, having been settled by a long course of judicial decisions, it was not desirable to alter that just at present so far as regards Bengal. No great evils had occurred to show that it was necessary to alter that law as affecting Bengal. But he believed the experience of the North-Western Provinces had been somewhat different. Great bickerings, great warring of class with class, had occurred in regard to these enhancement-clauses, in regard to the clauses under which the rents of tenants holding with certain fixed rights of occupancy were regulated. And he concurred in the propriety of trying a new rule for the North-Western Provinces, which he hoped, would prove successful. By the clauses now proposed, we got rid of the complicated clauses of the law of 1859, and left it the officers of Government, under the orders of the Government, to raise the revenue and settle the rent of occupancy-ryots. He was quite sure that, in the hands of the Lieutenant-Governor of the North-Western Provinces, these matters would be regulated with the utmost wisdom and consideration. And, on the whole His Honour hoped it would be found that these questions would be more satisfactorily settled by the officers of the Government under the general direction of the Local Government than by the action of the Courts under a somewhat complicated law. So far he was quite ready to accept the new rules contained in clause 75 of the Bill.

He was also glad to see that there was a principle introduced in the Bill, which was not known to the existing law for giving compensation to tenants for improvements effected by them. The law in regard to the enhancement of rents sufficiently provided for the case of occupancy-tenants. But it was well known that a great class of tenants-at-will had sprung up, as regards whom there must be the relation of landlord and tenant, and in reference to that relation, he was quite sure that a law providing for compensation for improvements was much wanted. The principle of such compensation had already been introduced in the Panjáb and in Oudh. And he was glad that the hon'ble member in charge of the Bill and the Committee had seen fit to introduce such clauses into the proposed Bill for the North-Western Provinces.

Then, His Honour might allude to a matter, which might seem somewhat minor, in respect to which the Committee had altered the Bill on his representation. He alluded to the time for which leases were to be granted. At one time, the Bill stood in this wise that, under certain circumstances, leases should be granted for a period of thirty years. He persuaded the Committee to alter that provision into one which provided that leases should be granted for such term not exceeding thirty years, as the Lieutenant-Governor should prescribe. His object in introducing the change was that we should not be bound to long leases, which in this country were in his opinion a very great mistake. It seemed to him that a long lease of the revenue, a thirty years' settlement, had the effect of a sacrifice of revenue, whilst the proprietors were in no way benefited by such settlements, but, on the contrary, became poorer and poorer. He saw that this had been agreed to by some experienced settlement officers. From their accounts it would seem that, whilst we were giving a larger share of the rent to the proprietors, they were becoming poorer and poorer, more impoverished and discontented. This alarming feature he attributed to the granting of long leases of the revenue. He believed that the result of the thirty-years' system was this, that, as the incomes of the proprietors gradually increased, their habits of spending increased, and, at the end of thirty years, they found themselves habituated to spending large incomes. Then, if you did justice to the Government revenue, you suddenly decreased the income of the proprietors. It had not been deemed possible to increase the revenue as largely as was required. The proportion of rent taken by the Government as revenue had not been kept up to the standard of former settlements. At every succeeding settlement the Government took a less and less proportion of rent, whilst the increase drawn by the zamíndár was a substantial increase, both of rent and of the proportion of the rent retained by him. And yet the result was that the zamíndárs were extravagant in their expenditure; they were thriftless; they were impoverished; they were sold up; they became discontented: while all the while the increase to the revenue was not at all commensurate to the increase of rents. Take, for instance, the case he had before mentioned, of the ryot who paid twelve rupees of which eight went as revenue. His rent was raised fifty per cent.; but the Government revenue was only increased to nine rupees. This illustration almost exactly fitted the case of the settlement in the North-Western Provinces. The value of land in the North-Western Provinces was greatly increased in the last thirty years. But the Government revenue was likely to be increased only in the proportion of eight to nine, or from four to four and a half millions. This, His Honour thought, had been an inadequate increase of the Government revenue; and yet he could not resist the testimony of qualified and experienced men, who said that the proprietors were getting more and more

impoverished and discontented. The result would be that we must sooner or later come to a permanent settlement. We were increasing the rent and diminishing the proportion taken as revenue, and we must some day come to a stand-still, for it would be impossible to make too sudden changes, and we should inevitably be driven to a permanent settlement of some sort. It was in that view that he sought to induce the Committee to consent to put in words which should not bind the Government to a thirty years' lease in regard to either revenue or rent. He believed that the only means by which you could obtain a progressive increase of revenue, without at the same time causing an entire disruption of the rights in property, was by adopting a system of grain renting, very much on the principle of Act X of 1859, namely, that rent and revenue should be increased in proportion to the value of the produce. The Committee did not carry the matter to that point, but had come to an agreement in regard to the form of the law which would admit of the possibility of trying any other system than very long leases; which would enable the Government, if it thought fit, to lay down rules under which leases of revenue and rent might be granted for a less term than thirty years. He ventured to express his belief and hope that, when this Bill came to be tested by experience, it would be found that the best plan would be to revise the revenues very frequently with reference to the market-value of produce. He believed that the Government officers would be able to do this, and in this manner we should have a gradual rise of rent and revenue, and so we might, without producing discontent, have an adequate increase of the public revenue.

He ventured to say one word more in order, in some degree, to deprecate the course proposed, he understood, to be taken in another cognate Bill.

[His Excellency THE PRESIDENT observed that it was out of order to speak of any Bill not before the Council.]

His Honour THE LIEUTENANT-GOVERNOR proceeded—Then, there was only one other point, namely, the mode of spelling vernacular words adopted in the Bill. The Council was aware that, with regard to this matter, there was a good deal of fanaticism in the country. He would not say that this Bill was one which sinned very much against the laws of spelling. But it seemed to him that it did raise considerable questions in regard to the action of the Legislative Department as respects this question of spelling. He need not remind the Council that the question of spelling vernacular words stood in this position, that the Government of India and Her Majesty's Government in England had sanctioned certain rules of spelling, rules from which several of the local administrators, amongst whom he was one, ventured to

differ, but which we were nevertheless bound loyally to carry out. But those rules were materially modified by the injunction that the common names, names the spelling of which was well-known, were not to be altered. It was made an exception that the spelling of common and well-known names was not to be altered. Moreover, it was particularly enjoined by the Secretary of State that the widest possible meaning should be given to the exception in regard to the way of spelling common and well-established names. That being so, it remained to a certain extent a matter of discretion for each authority to judge what was a common or well-established name. His Honour did not know whether the hon'ble member in charge of the Legislative Department was an extreme fanatic in regard to the extreme mode of spelling. It seemed to His Honour that the hon'ble member did depart from the spelling of the most common and well-known names. Moreover, the hon'ble member was guilty, he thought, of a great breach of the privileges of this Council. His Honour really did not know on what authority it was laid down that the members of this Council were not to spell their own names as they chose. The hon'ble Member Rájá Románáth Tagore spelled his name R-o-m-a-n-a-u-t-h T-a-g-o-r-e, but His Honour found that in the Report of the Select Committee the name was transformed to R-a-m-á-n-á-t-h T-h-á-k-u-r.

[His Excellency the President observed that the question before the Council was whether the Bill should be published. Therefore any remarks with regard to the spelling adopted in the Report of the Select Committee were out of order. His Honour could address the Council in regard to anything contained in the Bill.]

His Honour the Lieutenant-Governor resumed—Well then looking to the Bill itself he would give an instance of the alteration of the spelling of a well-known word, the spelling of which had been long established by a series of laws. He alluded to the word "Canoongoe." If they turned to the schedule of the Bill, the Council would find that the word was used in the Regulation I of 1819, which was only one of the many Regulations and Acts which referred to Canoongoes. The Council would find from those Regulations that the Canoongoo was a very well-known and ancient officer—an officer well-known to our predecessors. They would find that it was a word the spelling of which of all others was best established both by law and custom. They would find that the word was spelt C-a-n-o-o-n-g-o-e. It seemed to him that that was a very rational, phonetic, and common-sense way of spelling the word. But that word had been transformed in the Bill into another word of a very different appearance, spelled K-á-n-ú-n-g-o. Not only was that a departure from the established spelling, but it was a departure from what he believed to be the derivation of the word,

It had the same root as Canon, a law, and it was always spelled with a C and an a and an n and an o in all modern European languages. His Honour said that if we were to transform a well-known word of that kind into Kánúngo, we might as well transform another well-known word "Collector" into K-a-l-e-k-t-a-r. It seemed to him that the hon'ble member in charge of the Legislative Department should somewhat restrain his fanaticism in regard to spelling within the bounds set by the Secretary of State.

His Excellency THE PRESIDENT said:—"The Council will, I am sure, be glad to hear that His Honour is, on the whole, satisfied with the provisions of these two Bills that have now come from the Committee, and if, as is probable, we shall have to consider these Bills further in the North-Western Provinces, where the Lieutenant-Governor of those Provinces will be present, and able to assist us by his valuable counsel, it will be a great satisfaction to us to feel that we carry with us the general approval of His Honour the Lieutenant-Governor, and the advantage of the criticisms which he has now had the opportunity of making. With respect to the points that have been raised as to the spelling of words, and the languages in which these Bills should be published, we shall have an opportunity of deciding them on the spot, with the aid of those who are most competent to judge in these matters.

"I did not wish to interrupt His Honour in his observations, but I think that there is some inconvenience in discussing in connection with this Bill, as His Honour has done, larger and more general questions relating to land-revenue, which are now before the Council. I shall not enter into those important questions further than to say—and to say emphatically, in order to prevent any misapprehension upon the subject—that it is not the opinion of the Government of India that it would be politic to diminish the rights of property in the soil, and that we do not desire to make any changes in the settlement of the land-revenue, such as His Honour has indicated, with the object, so far as I understand him, of establishing a system under which land would be held from Government from year to year on very short terms of engagement."

The Motion was put and agreed to.

CENTRAL PROVINCES MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to provide for the appointment of Municipal Committees in the Central Provinces. He had only one observation to make. The Council would observe that the Bill as it now stood looked very different from the Bill as it

was introduced. But it was in fact the same Bill. This was one of those cases in which when we came to look into it we found that the longest way round was the shortest way home. It was better for the Central Provinces to have one Bill than two. We were looking forward to a revised edition of the Indian Statute-book, in which there would be one volume for Oudh, one for the Panjáb, one for the Central Provinces, and so on; so that in point of fact what was done by reference to another Act was now introduced into the Bill. It was a shorter course to have a separate enactment for the Central Provinces complete in itself.

The Council then adjourned *sine die.*

CALCUTTA,
The 8th April 1873.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

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