ABSTRACT OF THE PROCEEDINGS

# COUNCIL OF THE GOVERNOR GENERAL OF INDIA

# LAWS AND REGULATIONS.

VOL 14

Jan to Dec

1875

P L

# ABSTRACT OF THE PROCEEDINGS

OF THE

# Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

# LAWS AND REGULATIONS.

## 1875.

## WITH INDEX.

VOL. XIV.

Published by the Authority of the Governor General.

Gazettes & Debates Section
Parliament Library Building
Room No. FB-025
Block 'G'

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.
1876.

*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 23rd February 1875.

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 B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.

## CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE moved that the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature be re-constituted, and said:—

"The motion which I have to make is one which is usually put without a word of remark. But the position of the measure to which this motion relates is very peculiar, and I must just explain to the Council how it is situated before I can ask them to appoint a fresh Committee.

"The Bill was framed in the year 1864 under the auspices of Sir Henry Harington, a gentlemen who, I believe, took an active part in the passing of the existing Code, and who certainly was one of the first authorities in India on the subject of Procedure. It was published in the early part of 1864 before its introduction, and it was in the month of November 1864 that Sir Henry

Harington introduced it into the Council. He then gave his reasons for thinking that it was desirable to redraw the Code at that time.

"So far as those reasons depend on general principles, there is no need to repeat them at this time of day. So far as they depend on circumstances peculiar to the case in hand, the Council, I am sure, would sooner hear them in Sir Henry Harington's words than in mine, and I will make no apology for reading a somewhat long extract from his speech :—

"'Notwithstanding what he had just said in favour of the periodical revision of Codes of Procedure and of substantive law, he should not have taken upon himself to propose, at this particular time, a revision of the Code which now regulated the proceedings of the Civil Courts throughout the British Territories in India, with exception to the few places which he had mentioned, had the sole object of the Bill prepared by him been to supply omissions or to cure defects brought to light in the working of the Code during the period that had intervened since its introduction, or to remove doubts which had arisen as to the intent and meaning of some of the sections. Were this the only purpose for which legislation was now required, he might have been content to allow the Code to remain in operation for some further time before any general revision was attempted. But during the period that had elapsed since the Code became law, great and important changes had taken place in the judicial agency of the country as well as in the substantive criminal law in its relation to the administration of civil justice. As noticed in the Statement of Objects and Reasons published with the Bill, acts committed in the Civil Courts, or in connection with the processes of those Courts, which before the passing of the Indian Penal Code were not offences, had by that Code been made offences, and were now punishable by the Criminal Courts. It had been found necessary to enact rules showing by what Courts these acts were to be taken cognizance of, and how they were to be brought before the Courts who were to try them. The Supreme and Sadr Courts at the three Presidencies had been abolished, and their places had been taken by High Court, the proceedings of which on the civil side, except in the exercise of their testamentary, intestate and matrimonial jurisdiction, were required to be regulated by the Code of Civil Procedure. The Office of Master, in which a large and very troublesome portion of the business which came before the late Supreme Courts was performed, had been done away with. Courts of Small Causes had been established in many parts of the country beyond the limits of the Presidency Towns, the proceedings of which were also required to be regulated generally by the Code of Civil Procedure. The Code had been extended to many places not subject to the general Regulations—such as the Central Provinces, Oudh and British Burma—the circumstances of which were peculiar, but not being known to the framers of the Code they had made no provision to meet them, and under the operation of an Act recently passed, the offices of Hindú and Muhammadan Law Officers had been abolished, and the Courts would no longer have those officers to apply to for an exposition of the law when questions of inheritance and succession and other questions requiring to be determined according to Hindú or Muhammadan law, arose in suits coming before them.

"'These and other changes had already led to the passing of several Acts to amend the Code of Civil Procedure, and legislation was called for on many points connected with the

procedure of the Courts, particularly the High Courts. One of the Acts passed to amend the Code was to some extent a consolidating Act, but still the laws constituting the Code of Civil Procedure were much scattered, and further legislation, as already noticed, being necessary, it seemed desirable, instead of adding to the number of Acts by which the Civil Courts were to regulate their proceedings, that the opportunity should be taken to pass a single or consolidating Act, which should be complete in itself, and which should amend whatever experience might have shown to be defective in the existing Code.

"'Immediately after the establishment of the High Court of Judicature at Calcutta, it was found necessary to introduce a temporary Bill to provide for the levy of fees and stamp-duties in proceedings before the Court, and to suspend the operation of some of the sections of the Code of Civil Procedure in their application to the Court.

"'It was pointed out at the time of the introduction of the Bill, that when the Indian Legislature passed the Code of Civil Procedure (from the operation of which, as he had already mentioned, the late Supreme Courts had been expressly exempted), it contemplated that a separate Code of Civil Procedure would be prepared for the High Courts whenever they should be established; and further legislation was promised as soon as the High Courts had been established a sufficient time to admit of an opinion being formed as to whether any, and what other, alterations of the existing Code were necessary. The present seemed to be a fitting time for fulfilling the promise thus given".

"Well, these reasons appeared satisfactory to the Council, and the Bill was referred to a Select Committee. The publication of the Bill produced an enormous volume of commentary, which the Committee proceeded to examine, and the result of their labours was, that they altered the draft in a number of particulars and had it republished in the month of April 1865. That draft of April 1865 is the draft which is still lying before the Council.

"It so happened, however, that the Indian Law Commissioners, from whom the existing Code originally proceeded, took a different view from this Council regarding the expediency of redrawing the Code at that time. They thought that the time was too early for so large an operation, and that for some time to come it would be better to amend particular points as occasion required. The Secretary of State concurred in that view, and so no further step had been taken from that day to this.

" Well, now nearly ten years have gone by, and the reasons for redrawing the Code which existed in 1864, have been considerably augmented. Although it was said that the amendments contemplated by Sir Henry Harington might be effected by separate Acts, yet in point of fact very few have been so effected. Where, however, they have been effected, so much of the Code enacted in 1859 has become obsolete. Again, besides the Acts passed for directly amending

the Code, a number of Acts have been passed bearing on it indirectly, each of which renders some alteration desirable. Amongst such Acts I may enumerate the following :—

The General Clauses Act of 1868.
The Prisoners' Testimony Act of 1869.
The General Stamp Act of 1869.
The Court Fees' Act of 1870.
The Limitation Act of 1871.
The Evidence Act of 1872.
The Criminal Procedure Code of 1872.
The Oaths Act of 1873.

"Each of these Acts has the effect of rendering some portion of the Code inapplicable to present circumstances, and it therefore becomes desirable to strike away those dead portions, so that the reader of the Code may not be distracted or misled by finding on the face of the written law that which is not law, or which is expressed elsewhere in some different shape.

"Again, there has been a much larger number of decisions which point to some shortcoming in the Code as it stands; perhaps it may be some defect of expression; perhaps some absence of direction on a point on which the need of direction has been felt; or it may be something in which the best rule for the suitors has not been laid down. Of course it is quite out of the question to embody all decisions into the written law, or even any large portion of the decisions; but it is desirable to embody those which are of a broader scope and are applicable to cases likely to recur frequently.

"For the foregoing reasons, it is proposed to take up now the work which was broken off in the year 1865, and we have for some time been employing ourselves on that business in the Legislative Department. I will explain to the Council the main features of what we have done, and also what I shall ask the Committee to do if it is appointed.

"In the first place we have attempted to make a rather more methodical arrangement of the various parts of the Code. The present arrangement of the Code is so good that I should not wish to recast it for the sake of re-arrangement alone; the gain of such a process would not be worth the disturbance. But when we are making a number of other alterations, the disturbance is already created; people will have to learn the Code in its altered shape; and then something more or less of alteration signifies little. Therefore, we propose to take the opportunity of making those improvements in form which

hose who come afterwards can always make even in the very best of first attempts.

"The general features of the proposed arrangement are as follows:—

"After a few preliminary sections, we take a suit of the most ordinary description from its commencement by the plaintiff, and we follow it through its chequered career up to its triumphant goal in the execution of the decree That takes up some 350 sections of our draft; about half of our draft it occupied with the ordinary incidents of an ordinary suit. Next we take events which may or may not happen; what I may call the extraordinary incidents of an ordinary suit; for instance, a party may die or may be married, a witness may be abroad, a local investigation may be wanted, and so forth This part of the Code shows what is to be done in those cases. Then we dea with particular classes of suits, such as suits by paupers or by mere stake holders, a suit by or against Government, a corporation, or a lunatic. Then come some chapters on Provisional or Interlocutory Remedies, which are wanted in order to prevent property from disappearing or from being injured pending litigation, such as Injunctions, and Receivers; and then some on special modes of proceeding which are not of the nature of regular suits, such as references to arbitration, and the summary procedure provided for a particular kind of mercantile contract, the contract by negotiable instrument. Having thus exhausted the various kinds of action wanted from the Courts of firs instance, we proceed to the important subjects of Appeals, Reviews, and References to the High Courts; we devote a separate part to the High Courts established by Royal Charter; and we complete the body of the draft by a few sections comprising some miscellaneous matters which it is not convenient to classify under any of the other heads.

"We have also taken a considerable number of decided cases, and have attempted to interweave the decisions into the Code, sometimes by inserting a few words in the body of a section, sometimes by adding an explanation, and more often by way of illustration. To some extent this is done by Sir Henry Harington's draft of 1805, but it is done only to a small extent, and the progress of time has enabled us to do it now on a larger scale. We have in some instances added provisions on points of practice which appeared to us to be useful, borrowing them mostly from rules or circular orders issued by one of the High Courts, and occasionally from the New York Code of Procedure, or from the practice of the English Court of Chancery. And finally we have appended a large quantity of forms of proceedings likely to be useful to country practitioners, and which will tend, as we believe, to make practice more simple and more accurate.

"Of course it would be quite idle for me to attempt to explain here all the alterations which we have introduced into the draft, for though most of them are small and involve no important principle, they are very numerous. But numerous as they are, I can say with truth, as Sir Henry Harington said before, that the main principles of the Code are unaltered, and, indeed, that the bulk of its matter remains substantially intact. I will, however, mention two points on which we have introduced alterations of some importance.

"One alteration relates to the subject of Executions, and it originated in some suggestions made by the High Court of Calcutta. At the present time a decree is treated by many creditors as a rather eligible mode of investing their money. The interest is good and the security very good. It is true that, under the Limitation Act, the creditor cannot enforce his decree if three years have elapsed since some step taken to enforce it; but the only result of that provision is, that some formal step is taken every three years, and, practically, the decree runs on unsatisfied and hanging over the debtor, it may be for fifty years or more. On receiving suggestions from the High Court of Calcutta on this subject, the Government of India consulted the Local Governments, and the result was a very general agreement (of course I do not mean an universal one) that the present state of things was highly inexpedient, and that a change of law should be made in the direction suggested by the High Court for the purpose of checking the practice. It was then decided to propose a modification of the law as follows. We propose to keep the present rule that a decree shall become extinct if unused for three years, and to graft on it two important additions, one being that, on every application for execution after the first, the creditor shall be bound to show that he had really tried to obtain execution, but had failed to do so; and the other being that, however many applications may be made, a decree shall not remain in force more than twelve years, unless the creditor has been prevented from reaping its fruits by some wrongful conduct of his debtor. Then it is proposed to provide that, in the case of decrees for land, mesne profits shall be recovered for only one year after the date of the decree, and that, in order to make a decree operative after a man's death and against his heirs, the creditor must give a written notice to the heirs within a year after they have come into possession of their inheritance. These alterations we have woven into that part of the Code which relates to the subject of execution of decrees.

"The other alteration which I mentioned as being of importance relates to a kindred subject, that of the debtor's inability to answer the decree against him. At present the Code contains the germ of an insolvent law,

but it is nothing more than a germ. By section 271, when a sale takes place under a decree, the proceeds are first to be applied in paying the holder of that decree, and then are to go rateably, and without any priority amongst the holders of other decrees. That provision for rateable distribution is a very rudimentary law of insolvency. Then follow, in section 273 and some subsequent sections, some provisions for the discharge of arrested debtors; but they are very meagre and not very consistent with one another. Their general effect is this, that an arrested debtor may apply for discharge on giving up all his property; that if the Court discharges him his person is not to be arrested again under the same decree; and the decree-holder is to be paid out of the proceeds of his property. But his person is not protected as against any debt other than that for which he has been arrested: his property is not pro. tected at all; and no directions are given to the Court what to do with his property after paying the decree-holder. I believe that those sections have been used very little; and if that be so, it is not surprising, for there is very small inducement to the debtor to avail himself of them.

"Now it seems to be the prevailing opinion that the judicial machinery in the Mofussil is hardly adapted to the working of any general and complete law of insolvency. At all events, such a law should be treated as a separate measure and not as part of this measure. But it will probably be better for the present, and be likely to pave the way to some more complete measure for the future, if we were now to make our law a little less rudimentary than it is at present, and at all events to supplement it where it now seems to be broken off in its natural course. We have therefore framed some sections for the following purposes—to provide that, when a man is tried and finds himself unable to pay his debts, he may apply to be declared insolvent; that the Court may declare the applicant an insolvent and appoint a receiver of his property; that it shall frame a schedule of creditors; that the insolvent's property shall be distributed rateably and without any priority amongst all his creditors; that when the insolvent gets his discharge, he shall be protected from imprisonment in respect of all the scheduled debts; and that his future property shall also be protected unless by order of the Court. There must be some provisions against a fraudulent use of the protection given by the Act. Those provisions should be partly preventive, by way of giving notice to creditors and enabling them to oppose the applicant; and partly punitive, by way of depriving him, whenever he is guilty of bad faith, of the protection which otherwise the Act would afford him.

"There is another subject of great importance, which, under other circumstances, it might have been very difficult to know how to deal with at this stage;

I mean the subject of second appeals. But, however much we may hope ultimately to introduce amendment on that subject, under the present circumstances, with which the Council is familiar, we have no option but to abstain from proposing any alterations.

"I have only now to state what I propose that the Committee shall do if appointed. Of course the Committee will be masters of the situation, and will deal with our draft exactly as they think right. But I do not myself intend to ask them to go through it clause by clause and word by word, as we go through Bills the next stage of which may be that they will pass into law. That is a process which would take many weeks of continuous sitting, and it would probably be found that the labour was premature, and to a great extent wasted, because it is certain that very numerous alterations will be required when criticisms come in. What I shall ask the Committee to do is to examine the proposed re-arrangement; to pay attention to the points in which we have been altering the draft of 1865; to adopt or reject them as they think right; to make such new suggestions as occur to them, and to decide whether the draft as they settle it shall be republished. If then it is republished, many months must, in a matter of such magnitude, elapse before we shall have received the necessary comments and criticisms, and we shall then, and not till then, be in the best position to give to the Bill that thorough examination in every detail which is necessary for the detection and avoidance of the errors that have been made in the drafting."

His Honour THE LIEUTENANT-GOVERNOR was not quite sure whether he understood correctly what had fallen from his hon'ble and learned friend regarding the judicial machinery in the Mofussil not being equal to the working of the law of insolvency. HIS HONOUR was not quite sure whether the hon'ble member meant that no cases of insolvency were decided in the Mofussil. In some parts of India, HIS HONOUR was certain they had an insolvency law, but as regards Bengal he ventured to remark that, if cases of insolvency arose in the Mofussil at a distance from Calcutta, the interests of the creditors required that, as far as possible, these cases should be decided on the spot by the authorities and Courts in the districts where they arose, and that the adjudication of such cases entirely in Calcutta was very much to be deprecated in the interests of the people. It might be that the Mofussil Courts were not strong enough, but that would be the most cogent argument for making them stronger on the earliest opportunity, so that they might be able to decide these important cases on the spot to the satisfaction of the people and the local interests concerned.

The Hon'ble MR. HOBHOUSE said the law did not at present provide that a person might become an insolvent in the Mofussil and his insolvency adjudicated on in Calcutta; the fact was that there was no insolvent law applicable to the dwellers in the Mofussil. Setting aside the recent law enacted for the Panjáb, it was only the dwellers in the Presidency Towns who had an insolvency law applicable to them. The alteration proposed did not tend to concentrate business anywhere. It was intended to give the Courts in the Mofussil somewhat larger powers and clearer directions than the present Code gave, so as to enable them to work out the remedy which apparently was contemplated by the framers of the Code of 1859.

The Motion was put and agreed to.

## INLAND CUSTOMS BILL.

The Hon'ble MR. ELLIS presented the Report of the Select Committee on the Bill for regulating Inland Customs' Duties on Salt and Sugar, and for other purposes. He said that several alterations had been made of a verbal character, but not such as to require the republication of the Bill, and accordingly he proposed at the ensuing meeting to proceed to the next stage.

## SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS also moved that the Bill to secure the repayment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet, be taken into consideration. On a former occasion he had fully explained to the Council the object of the Bill and the mode by which it was proposed to effect that object. The Bill was not referred to a Select Committee and was now the same Bill as had been originally presented to the Council. No objection had been taken in the Council or outside of the Council to any of its provisions, and therefore he need not detain the Council with any further remarks.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS then moved that the Bill be passed.

The Motion was put and agreed to.

## MAJORITY BILL.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM presented the Report of the Select Committee on the Bill to establish a uniform age of majority of persons domiciled in British India.

## BURMA FISHERIES BILL.

The Hon'ble MR. EDEN moved that the Report of the Select Committee on the Bill to regulate Fisheries in British Burma be taken into consideration. He had explained the other day that the Bill did not attempt to regulate in any way the precise details of the system in managing fisheries in British Burma, but simply declared the rights of the Government in respect of these fisheries, and enabled the Local Government, with the previous sanction of the Governor General in Council, to make such rules as might from time to time appear necessary for all purposes of assessment and collection of revenue from fisheries. The fisheries, as he had said, were all along, from the first occupation of the country, subject to the payment of revenue, but hitherto only under rules passed by the Executive Government. The Bill gave those rules, after sanction by the Governor General in Council, the force of law.

The only question ever raised was the question to which he had already alluded, namely, the right of the Government to raise a revenue from this source. He hoped the explanation given in the Select Committee to the hon'ble members who raised that objection, together with the explanations offered in Council on former occasions, had removed the doubts that existed as to that right. The right was declared in the preamble of the Bill, and he thought that any private rights, if they existed, were sufficiently protected by the Bill, that was to say, that all grants of land which happened to include fisheries already made, and all such grants which might hereafter be made, would not be interfered with by the rules laid down in the Bill. With the exception of this declaration of right, there was nothing in the Bill to which he need now call attention. The details of the system for managing and controlling the fisheries were not contained in the Bill, but were left to be regulated by rules.

The Hon'ble MR. DALYELL had, when this Bill was first introduced, stated his concurrence in certain doubts which had been thrown out by his hon'ble friend Mr. Sutherland as to whether the State did possess exclusive rights in all the Burmese fisheries, and had expressed an opinion that it was of somewhat doubtful expediency to subject to taxation an article which entered so largely into the food of the poorest classes, as did fish in British Burma. More than a year had since elapsed, the report of the Council's proceedings had been made public, and the Bill had been made generally known throughout the province to which it related. As no representations had been received from any private quarters, the Council might conclude, as the hon'ble mover of the Bill had told them, that no private rights would be interfered with,

and that the interests of the public would not be injuriously affected by the Bill. Much stress had been laid on this point by the Select Committee on the Bill, and although he had a strong opinion that some clause should be inserted saving private rights in some more specific manner than was done in the section to which his hon'ble friend had just alluded, he had been induced, on these grounds, and on the assurance of the hon'ble mover that no such rights now existed in the province, to affix his signature to the report recommending that the Bill be passed. Since the presentation of the Committee's report, however, his hon'ble friend had placed in his hands the whole of the correspondence which had passed in connection with the measure. He found from these papers that, although there was considerable difference of opinion as to whether certain rights in some fisheries were not conferred on certain individuals by the Native Government in former years, and as to whether any such rights were in existence at the period of the British accession, there was no doubt whatever that these rights were invariably exercised subject to the State's demand for revenue, and that the receipts from fisheries had always formed not a very inconsiderable item of revenue in British Burma both before and after the annexation. It was clear then that the Bill did not inaugurate a new taxation, as MR. DALYELL was at one time disposed to believe, but that it merely gave legal sanction to an existing impost. He used the word "impost" advisedly, because, after reading the correspondence, he was quite unable to concur with the hon'ble Mr. Bayley, who on the last occasion on which the Bill was discussed seemed to think that the only question raised by the Bill was a question of property and not of taxation. He could not believe that any private right had ever been put forward to the deep-sea fisheries, and if such right was ever asserted by the State, it must have been in the exercise of its power of taxation and not of its ordinary rights of property. He also found from these papers that the only public right affected would be the right to take fish for domestic consumption from the State fisheries. The balance of evidence on this point was, however, decidedly in favour of the view that this right was conferred for the first time in 1864, and then only as a privilege under the fishery-rules published by the Chief Commissioner. He could quite understand, as the hon'ble mover had told them, that such a privilege had led to constant quarrels, litigation and crime, and he believed that a wise discretion had been exercised in withdrawing this privilege in the new rules framed three years ago. The Bill merely legalized these new rules, and it was satisfactory to know that, whereas, under the old rules, numerous complaints were made against the settlements, under the new rules but few appeals had been received, and these had referred, not to the provisions of the rules, but to the breach of those provisions. Then, as a mea-

sure of conservation, the Bill would very much improve the fisheries, and he should be glad to see these sections of the Bill put in force throughout the whole of British India. At the same time he still thought that the provisions of the Bill were somewhat restrictive of the growth of private rights, and that any such restrictions were objectionable in a province which, as it was expressed by his hon'ble friend Mr. Sutherland, had a great commercial future before it. MR. DALYELL could not believe that persons would not hesitate to invest capital in land, if they were aware that under the law the Government, or the lessees of the Government fisheries, had a right of property in all tanks, lakes and rivers within the boundaries of their purchase, and of course, also, a right of way over such lands to exercise their right of property. Therefore he should have been glad to see some provision in the Bill to meet such cases as these, and, as he had already stated, to preserve any possible existing private rights. At the same time, although he believed that the powers taken were somewhat more arbitrary than was necessary, he was satisfied that they would be exercised with judgment and moderation by his hon'ble friend, with whom would rest the responsibility of carrying out the provisions of the Bill.

The Hon'ble MR. SUTHERLAND asked permission in one word to concur in what had fallen from the hon'ble Mr. Dalyell. When the hon'ble Mr. Hobhouse introduced the Bill, MR. SUTHERLAND ventured to take exception to the assertion in the preamble, namely, "that the exclusive right of fishing in British Burma by the custom of the country belongs to Government." He was bound to say, however, that he had nowhere seen that assertion disproved. He was therefore now ready to accept the preamble as correct, and he accordingly did not feel justified in offering any opposition to the Bill being passed.

With regard to the restrictions in the Bill, he certainly agreed with the hon'ble Mr. Dalyell, but he hoped that the rules which might be issued would be framed in a liberal spirit, and with due regard to existing private rights.

The Hon'ble MR. BAYLEY wished to add a few words in explanation, in regard to what had fallen from his hon'ble friend Mr. Dalyell; for although he did not think the point was one deserving particular attention at this stage of the Bill, he wished to put himself right with the Council as to what he had before said respecting the right of taxation. The question was a question of name and not of substance. Whatever name might be given it, there could be no question that any private person who had the property would get from the fishery at least the same amount of revenue as the Government

derived. The question was, not whether this impost should form part of the cost of production, but whether it should go into the hands of the Government or to private individuals.

As regards what his hon'ble friend Mr. Dalyell had said of deep-sea fisheries, MR. BAYLEY thought as a matter of fact it would be found that a great portion of these deep-sea fisheries were fisheries requiring the occupation of a portion of the fore-shore, and the proprietors of the fore-shore where the fishery was carried on could levy the same tax as the Government. He had no doubt that the owners of the land would require at least the same sum for this privilege as the Government where it was the proprietary. Therefore, as a matter of fact, it did not signify whether the impost was called a tax or revenue; it did not affect the consumers of the fish who had to pay it in some shape or other.

As regards the other provision of the Bill to which exception had been taken, it had been distinctly proved that, if there ever were some ancient grants of fisheries, they were resumed by the reigning dynasty whom we found in Burma; a few grants had possibly been made by that later dynasty, but this was doubtful, and at any rate all those grants were disused, and had become extinct by prescription since our occupation of the country some twenty years ago. As a matter of fact, there were no existing rights except those conferred by grants of the British Government, which were expressly saved by the Bill. And as respects the future, the Government had the full option of making grants in any shape it liked, and of making grants of the fisheries either separately or with the land; whether or not the right to fisheries was included hereafter in a particular grant of land was a question for the grantee to see to when he got his grant.

The Hon'ble MR. HOBHOUSE said, as this Bill was in his charge in the early stages, and as before it went into Committee he had expressed some degree of sympathy with the doubts thrown out by his hon'ble friends Mr. Dalyell and Mr. Sutherland, he wished now to express his entire concurrence with them in thinking that those doubts had been removed. The important part of the Bill was the preamble. If the rights asserted in the preamble belonged to the Crown, then all the rights and powers given to the Government might justly be taken; there was a basis of justice for the whole Bill, and the only remaining question was one of expediency—a question which it must be for the Local Government to decide from time to time as the law was found to work. He considered that the statement contained in the preamble had been

proved as satisfactorily as could be expected on such a subject by both positive and negative evidence. It was most useful that such doubts should have been expressed openly in Council, because the attention of those interested had by that means been called pointedly to the matter. The attention of the local officers had been called to the point, and they had with one accord expressed the opinion that the right to these fisheries belonged to the Crown. The attention also of private individuals had been called to the point and yet not a single person had come forward with any exception to the correctness of the statement in the preamble. MR. HOBHOUSE thought, therefore, that we might safely go forward with this Bill.

The Motion was put and agreed to.

The Hon'ble MR. EDEN also moved that the Bill as amended be passed.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM entirely concurred with the hon'ble Mr. Dalyell that it was always a difficult matter with regard to deep-sea fisheries to limit the exact boundaries of such fisheries, because the fishermen residing at the sea-port were in the habit of going out several miles into the sea for such purpose, where by means of large nets they caught several maunds of fish of all sizes. Therefore, as regards the catching of fish in deep-sea waters and in large rivers, it was difficult for the local authorities and the officers of Government to investigate the rights of private individuals. No doubt the right of the Crown to levy taxation was one of the important rights which the Government must have. If the Council passed this Bill into law, he was sure, from the experience and judgment of his hon'ble friend Mr. Eden and from what had fallen from other hon'ble members, that every justice and consideration would always be shown to the private rights of individuals, and HIS HIGHNESS had no doubt that this Bill would prove effectual in every respect.

The Hon'ble MR. EDEN might venture to remark that the view of the Hon'ble Mr. Bayley as to the general existence of a practice of raising revenue by making demands on fishermen for the use of lands in the neighbourhood of fisheries was quite correct; the right was exercised by landlords and zamíndárs along the whole coast of India. He was in a position to state that it was extensively exercised by the zamíndárs in Bengal. Last year, when coasting along the shore, he went beyond the limits of his own jurisdiction to a portion of the territories under the control of his hon'ble friend Sir Richard Temple, and he heard complaints of extortionate taxes being levied by the zamíndárs in Chittagong upon sea-fisheries: he found that the practice was to levy a

heavy tax in the form of land-rent from persons repairing nets, hauling up boats, and curing fish. Many of the lessees of fisheries in British Burma occupied large pieces of land, and cured fish in such quantities as to supply the whole of Upper Burma, and a great deal of it also went into China, and they paid nothing for the right conferred, beyond the tax on their traps and nets. In Burma, where there were no zamíndárs, the State exercised the right which was recognized elsewhere as belonging to the owner of the land.

Further, as to the fears which had been expressed regarding the discouragement of investments in landed property in consequence of the declaration of the right of the Government to the fisheries in British Burma, he (MR. EDEN) would point out that in all grants of land already made by the Government, that right was distinctly reserved in the Bill, where it was provided that "nothing herein contained shall prejudice or derogate from any express grant of a right to fish heretofore made by the British Government." Consequently, when any person had taken such a grant, his right to fish would not be infringed; and in future a person in taking a grant of land would be in a position to make his own terms. If he desired also to have the right to the fisheries within his land, he could stipulate that his grant should include a grant of all the fisheries. The right to raise revenue from fisheries was not compulsory, but permissive, and it would be in the discretion of the officers of the Government to state that a grant should include the right to the fisheries contained in the land, or otherwise: there was nothing to prevent any person from acquiring the full benefit of all rights to the fisheries in his land.

The Motion was put and agreed to.

## BURMA LAND REVENUE BILL.

The Hon'ble MR. EDEN introduced the Bill to declare the law relating to interests in land and to regulate the assessment and collection of land-revenue, capitation-tax, and other taxes in British Burma, and moved that it be referred to a Select Committee with instructions to report in two months.

The Bill had now been prepared and submitted to the members of the Council, and it would be seen that there was nothing in it which laid down any new right, or altered in any way the rights of the people in regard to the land, with one slight exception to which he should presently refer. The only question which had arisen in preparing this revision of the land-revenue system was the right of the people to the soil. There was no question as to the real position of the cultivator in regard to his fixity of tenure. Everybody admitted that he had practically, after twelve years' occupation, a full and complete title

without any interference except as to the variation of his rent. But there was a difference of opinion as to what they should be called, whether proprietors, tenants, or occupiers. This difficulty had been got over by adopting a term which was neither the one nor the other, and calling such a cultivator a "landholder." The right given was that which every one agreed they possessed, and which it was desired to continue to them. Sections 6 and 7 of the Bill provided that any person who had been in possession of any culturable land for twelve years continuously became a landholder, and as a landholder obtained a complete right to the land, which he could sell or pass in succession to his heirs, subject to the rate of assessment on the land fixed from time to time.

The alteration to which he had alluded as having been made in the present system was stated in the following sections of the Bill, which related to the relinquishment of his land by a landholder. As MR. EDEN had explained the other day, great difficulty arose from persons leaving their lands and returning after long absence and claiming to be placed in fresh occupation to the exclusion of the temporary owner. Under the Bill as drawn, the right was curtailed so far, that within a certain period after the Act coming into force, any person desiring to leave his land with retention of his right to re-occupy the land, must go through a certain form and give notice of his wish to retain that right to come back to the land at a future time, which must not exceed twelve years from the date of relinquishment. That was the only alteration in the present system made in the Bill. The rest of the Bill was taken up with giving formal effect to the rules at present in force in British Burma. The Settlement Rules were, it would be seen, very simple. Provision was made for the grant of waste-lands and their exemption from revenue whilst they were being brought into cultivation. The procedure had been left in great measure to be determined by rules to be framed under the Act, but in so far as it was defined in the Bill, it gave effect to the procedure now in force, and kept it in as simple a form as it could possibly be.

With regard to the other taxes provided for in the Bill, none of them were new: they were all taxes which had been in force for many years, and were regulated under rules which had not had the full force of law. As the Bill was drawn it met all the requirements of the case, and would give satisfaction to the people and the officers entrusted with the collection of the revenue.

The Motion was put and agreed to.

The Hon'ble MR. EDEN moved that the Bill be published in the *British Burma Gazette* in English and in such other languages as the Chief Commissioner may direct.

The Motion was put and agreed to.

## BURMA LABOUR CONTRACT BILL.

The Hob'ble MR. HOBHOUSE moved that the Hon'ble Messrs. Inglis and Eden be added to the Select Committee on the Bill to regulate the transport of Native labourers in British Burma, and their employment therein.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to consolidate and amend the law, relating to the Procedure of the Courts of Civil Judicature——The Hon'ble Messrs. Bayley, Inglis and Dalyell, His Highness the Maháráj́á of Vizianagram, the Hon'ble Sir Douglas Forsyth, and the Mover.

On the Bill to declare the law relating to interests in land and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma——The Hon'ble Messrs. Hobhouse and Bayley, the Hon'ble Sir W. Muir, and the Hon'ble Sir Douglas Forsyth, and the Mover.

The Council adjourned to Tuesday, the 2nd March 1875.

WHITLEY STOKES,
*Secretary to the Government of India,*
*Legislative Department.*

CALCUTTA;
*The* 23*rd February* 1875.

Government of India Central Printing Office.—No. 183 L. D.—20-7-81.—70.