Thursday,
2nd October, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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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, Simla, on Thursday, the 2nd October, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

STRAITS SETTLEMENTS EMIGRATION ACT, 1877, REPEAL, AND EMIGRATION ACT, 1883, AMENDMENT, BILL.

The Hon'ble SIR STEUART BAYLEY introduced the Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883, and moved that it be circulated for opinion.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to provide more effectually for the suppression of

certain forms of Gaming in British Burma be taken into consideration. He said:—

"We have not made many alterations in this Bill. The authorities of British Burma do not think it necessary to make the game of *ti* a lottery within the meaning of the Penal Code, and consequently we have omitted the section to which my hon'ble friend Mr. Barkley took exception on the introduction of the Bill.

"The Chief Commissioner has suggested one or two minor amendments, all of which we have adopted with one exception. He suggests that we should extend the meaning of the term 'common gaming-house' by adding to the words 'house, walled enclosure, room or place' the words 'enclosed or unenclosed.' It is difficult to say precisely what the word 'place' would or would not include in this connection. The English Courts, in construing similar expressions in the English Lottery Acts, have given the word a very wide interpretation, and their decisions, though not binding on the Indian Courts, would probably be looked to as a guide. But I think that the addition proposed by the Chief Commissioner would extend the meaning of the term 'common gaming-house' further than we are warranted in extending it, would be inconsistent with the mode in which the expression is used throughout the Act of 1867 and would lead to confusion. Nor is the addition necessary, because under the Bill the professional gambler can be punished wherever he carries on his operations. And there is a section of the Act of 1867 under which light but sufficient penalties can be imposed on ordinary players in places like highways. We have, however, altered the language of this section so as to give it a somewhat wider range in British Burma than elsewhere."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

BURMA MUNICIPAL BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the law relating to Local Self-government in British Burma be taken into consideration. He said:—

"This measure has been for some time before a Select Committee, and it will be seen that there are some considerable differences between the Bill

as introduced and the Bill as now amended. These differences are due mainly to three causes.

"In the first place, we have confined the scope of the measure to municipalities proper. The original Bill contained a provision inserted on the advice of the Chief Commissioner, Mr. Bernard, and of Mr. Crosthwaite when officiating in his place, which enabled the Local Government to include within the limits of a municipality not merely a town but also any tract of country adjoining a town. The object of this provision was to meet the requirements of certain rural tracts until such time as it might be found possible to establish a system of local boards for rural districts.

"But it appears from the papers which have been submitted to us that on fuller consideration the weight of opinion is against the attempt to include in one municipality urban and rural tracts, and that the difficulty of framing provisions suitable both to town and to country is greater than had been anticipated. Accordingly we have adopted Mr. Bernard's recommendation that the Bill be confined, like other Municipal Acts, to urban tracts, the matter of local government in rural tracts being left to be dealt with hereafter.

"In the next place, we have followed the precedent set in the new Panjáb Municipal Act by substituting for a power to make bye-laws about nuisances detailed provisions on that subject. We submitted for the consideration of the Chief Commissioner the clauses for that purpose which had been settled by the Select Committee on the Panjáb Bill; and it is with his full approval that they have been inserted with a few modifications suggested by local circumstances. There is, as in the Panjáb Act, a power to exempt a municipality from such of the provisions as may be considered unsuitable to small places.

"And, lastly, we have further availed ourselves of the labours of the Committee on the Panjáb Bill by adopting several of the modifications and additions which had been suggested and approved in the course of the long discussions on that Bill. Most of these amendments are of minor importance, and, as they are noticed in our report, I need not dwell on them now. I will only say that they have not been adopted without full communication with the Chief Commissioner.

"There is, however, one section to which, as it deals with a subject of some importance, and as it does not follow quite the same lines as the provisions on the same subject in other Municipal Acts, I ought to direct the attention of the Council.

"By a section in the original Bill municipal committees were required to make grants-in-aid to schools in accordance with rules made by the Local Government. For this we have substituted a section specifically appropriating to educational purposes the income from schools and all sums acquired by the committee or board for educational purposes, and further requiring the assignment for educational purposes of such sum annually, not being more than five per cent. of the gross annual income of the municipality, as the Local Government may direct. This section is, in the opinion of Mr. Bernard, indispensable for the purpose of carrying out the educational policy which has recently been established in British Burma, and under which municipalities, whilst relieved of police-charges, are required to provide for the maintenance of local schools. The same policy, as the Council are aware, has been carried out, or is in course of being carried out, in other parts of India, and the way in which it is carried out is usually to strike a bargain with the municipality and not to relieve it of its police-charges except on condition of its undertaking burdens for other objects. It may possibly be that, when Burma municipalities were relieved of their police-charges, sufficient care was not taken to impose a similar stipulation, or to make its meaning clear; but, however this may be, it appears from the papers which were laid before the Committee that in the case of one municipality practical difficulty has been experienced in securing the due appropriation of sufficient funds to educational purposes, and it is to meet difficulties of this kind that this section has been introduced."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of Water in that Town.

PANJÁB COURTS BILL.

The Hon'ble MR. BARKLEY moved that the Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb be taken into consideration. He said:—

"As little more than three months have elapsed since leave was given to introduce this Bill, I need not repeat the explanation I then gave of the

purposes for which it was proposed to alter the law relating to Courts in the Panjáb; but, before proceeding to notice the changes in substance which the Select Committee have made in the Bill, it may be well to mention, as there seems to have been some misunderstanding on this point in some quarters, that the reference in the preamble to the previous sanction of the Secretary of State was not intended to preclude discussion of the principles involved in the Bill, but only to show that, in continuing the jurisdiction of the Chief Court over European British subjects in capital cases, this Council would not be exceeding the limits placed upon its legislative powers by section 22 of the Indian Councils Act, 1861, and section 46 of the Statute of 3 & 4 Wm. IV, c. 85. Possibly the words were not necessary, as the jurisdiction in question was conferred on the Chief Court in 1866; but when the Act constituting the Chief Court, which was passed in that year, was repealed and this jurisdiction continued by Act XVII of 1877, the sanction of the Secretary of State was recited in the preamble of that Act, and we have followed the same course in the present Bill, lest the omission of the words should give rise to misapprehension.

"Coming now to the changes made in the Bill by the Select Committee, the only point I need notice in the preliminary chapter is the power which the definition of 'small cause' gives to the Chief Court, with the sanction of the Local Government, to add for the purposes of appeal other classes of suits to those which are made cognizable by Small Cause Courts by Act XI of 1865. A power of this nature was proposed to be taken in section 42 of the Bill as introduced, the reason being that, while it appeared desirable to divide suits into two classes for the purpose of determining the course of appeal, the definition of the suits cognizable by Small Cause Courts contained in section 6 of Act XI of 1865 did not form an altogether satisfactory basis for this division, and it was therefore thought expedient to provide a means of effecting the division on a different basis. It is probable that, when the Mufassal Small Cause Courts Act comes to be amended, it may not be necessary to retain this power; and in the meanwhile the definition adopted by the Select Committee indicates how the power is intended to be exercised by excluding those classes of suits in which the Presidency Small Cause Courts have not jurisdiction.

"In the chapter relating to the Chief Court, the principal change is that the proviso to the first sub-section of section 8 is now framed so as not to restrain the Chief Court from making rules allowing one Judge of the Court sitting alone to reverse any order within the meaning of the Civil Procedure Code.

This was thought more convenient than to specify in the Bill the classes of orders which a single Judge might or might not be allowed to reverse.

"Section 19 of the original Bill has been omitted, as it appeared to be sufficiently provided for by sections 25 and 647 of the Civil Procedure Code, and a change in the language of section 12 has made it unnecessary to retain section 32, while it was thought that section 33 and a part of 31 would find a more appropriate place in a Bill amending the Civil Procedure Code than in that now before the Council.

"In the chapter relating to the Subordinate Civil Courts, the designations of those Courts have been changed so as to meet the wishes of the Local Government and give effect to the suggestions of a number of the officers whose opinions on the Bill were invited. The District Judge appeared to be a more appropriate title than the Assistant Judge for the officer whose Court will be the principal Court of original jurisdiction in a district, and who will control the other Courts of the district and hear appeals from them in certain cases; and it was thought better to retain the title of Munsif, which is borne by a large number of the officers who preside over Courts of first instance, than to designate the Courts of these officers as Courts of Subordinate Judges of particular grades.

"With regard, however, to the importance of some of the functions which the legislature has vested in the District Court, which in other Provinces is the highest Court subordinate to the High Court, section 23 makes the Divisional Court for the purposes of the Indian Divorce Act the District Court for all districts comprised in the division, and enables the Local Government to direct that any other functions of the District Court of any district should be exercised by the Divisional Court. The Bill as introduced made the Divisional Court the District Court, but provided for cases in which the powers of the District Court might more conveniently be exercised by a local Court by enabling the Local Government to confer any of the powers of a District Court upon a Deputy Commissioner or Assistant Judge. Under the section as now framed the same result may be attained, though it will be reached by a different route.

"A more important change is that the Divisional Court may consist of one or more Judges, the Bill as introduced having provided for its consisting in all cases of two Judges at least. The constitution of Appellate Courts subordinate to the Chief Court and consisting of more than one Judge is an experiment to this extent at least that we have hitherto had no experience of how such Courts

may be expected to work; and, in addition to this, the sanction which has been given for the appointment of 13 Divisional Judges would not admit of the constitution of more than six Courts of two Judges each, unless some of the Judges are appointed in addition to other duties—an arrangement which may not always be found convenient. It therefore seemed desirable to give greater elasticity to the Bill by allowing a Divisional Court to consist of one Judge if, with reference to the circumstances of the case, the Local Government thinks this expedient or necessary. When it consists of more than one Judge, the Chief Court is enabled by section 21 to make rules for the exercise of the powers of the Court by one or more of the Judges, subject to a proviso similar to that which limits the exercise of the powers of the Chief Court by one Judge of that Court.

"As in the case of the Divisional Judges, the District Judge may be an officer holding that appointment in addition to other duties; for instance, the Deputy Commissioner of the district. This is necessary, as, while the scheme sanctioned by the Secretary of State for India provides 23 officers, any of whom, if considered fit to control the Subordinate Courts, might be appointed District Judge of one or more districts, some of the officers at present available for these appointments have not the training and acquirements which would admit of their being entrusted with advantage with the control of Subordinate Courts; and there are also some districts the judicial work of which is not enough to employ a separate District Judge, while they are not favourably situated for union with neighbouring districts for judicial purposes. As an instance of districts of this class I may mention Kohat, which is separated from Peshâwar, the district with which it has most affinity, by a pass situated in independent territory.

"The officers who could not be invested with controlling powers over all the Courts in a district will still be available as Subordinate Judges, and in addition to their original jurisdiction, which will be without limit as to value or amount, unless the Local Government thinks fit to impose a limit, they may be invested with the appellate jurisdiction of a District Court.

"The Chief Court is also enabled, by section 29, to authorize any District Court to transfer certain classes of proceedings which must be instituted before a District Court to a Court subordinate to it, and to withdraw them from such Court. The largest of these classes is that of applications for certificates for the collection of debts due to the estates of deceased persons—applications

which are very numerous in some districts and which in most cases relate to comparatively small amounts of money. A more important class, however, is that of applications relating to the guardianship of minors, which numbered 375 in 1883, more than one-third of this total occurring in four districts.

"A power has also been taken, which may be convenient in outlying tracts, such as Kulu, where sub-divisional officers are posted, for District Courts, with the sanction of the Local Government, to delegate to a Subordinate Judge certain powers of control and transfer of business.

"While we have abstained from dealing with the mode of determining the value of suits for purposes of jurisdiction, which, in cases relating to land, is often very different from the value assessed for the purposes of the Court-fees Act, we have added a definition of 'value,' declaring it, in accordance with what has always been held by the Superior Courts where the pecuniary limits of jurisdiction are in question, to be the amount or value of the subject-matter of the suit; and we have by section 32 enabled the Chief Court, with the previous sanction of the Local Government, to regulate the jurisdiction over suits the subject-matter of which does not admit of being valued in money, such as suits relating to marriage or divorce, and suits for injunctions and for some other kinds of specific relief. This will provide a means of preventing Courts of the lowest grades from adjudicating upon suits the question involved in which is really of great importance, though, as no money-value can be fixed, they cannot be said to be beyond the pecuniary limits of the jurisdiction; and, as is pointed out in the Report of the Select Committee, the course of appeal will also in some measure depend upon the directions which may be given under this power.

"One of the greatest changes in the law which was proposed in the Bill as introduced consisted in the restrictions which it put on the right of appeal; and no part of the Bill has given rise to more discussion both in the public Press and in the opinions which have been received through the Local Government. The effect of the provisions of the chapter relating to appellate jurisdiction, as it originally stood, was that both the second appeals allowed by the general law, and the further appeals given in certain cases by the Panjáb Courts Act now in force, were taken away, while the Judges of the Divisional Court were empowered to permit a further appeal to the Chief Court when they were unable to concur in the decree to be passed, or when some question of law of custom or of general interest was involved, if they thought the case of sufficient importance

to justify a further appeal. After considering the objections raised in various quarters to these restrictions upon appeals from appellate decrees, the Select Committee has come to the conclusion that a further appeal must be allowed as of right in certain cases, one of which, that of a Divisional Court consisting of a single Judge, was not contemplated in the original Bill. In this case a further appeal is given if the decree in the original suit is varied or reversed by the Divisional Court, unless when the original suit was a small cause not exceeding Rs. 500 in value. This differs from the present law only in fixing a higher limit of value than Rs. 50 for the small causes, in regard to which no further appeal is admitted. The further appeal when the Judges of the Divisional Court differ as to the decree to be passed is also given as of right, and not made subject to the permission of that Court; and a further appeal is also given in all suits exceeding Rs. 500 in value or which directly involve claims to property exceeding that value. In cases of smaller value, not being small causes, a Judge of a Divisional Court is still enabled to permit a further appeal to the Chief Court, when he can certify that a question of law or custom or of general interest is involved, and that the case is in his opinion of sufficient importance to justify a further appeal. A period of thirty days has been prescribed within which this certificate must be applied for, unless sufficient cause can be shown for not presenting the application within that period.

"The next chapter, which transfers to Revenue Courts the jurisdiction now possessed by the Civil Courts in certain classes of cases, has been objected to in some quarters, especially by members of the legal profession. This transfer was, however, recommended by a Committee which sat at Lahore in 1882, of which one of the Judges of the Chief Court was president, and several other officers of great experience, including another Judge of the Chief Court and the Financial Commissioner, were members; and they made this recommendation 'after careful consideration of the agency in the Panjáb best fitted for the disposal of suits relating to land.' Of the many Judicial and Revenue Officers whose opinions have now been obtained, only one has objected to the proposed transfer; and as the classes of suits specified are those which can be most satisfactorily dealt with by officers possessing revenue experience, and exercising authority in revenue matters, and the procedure will be the same as if they were tried in the ordinary Civil Courts, unless so far as the Local Government, with the previous sanction of the Governor General in Council, may by rule prescribe any modification of that procedure, the transfer of jurisdiction does not appear to be open to any serious objection, but on the contrary has a good deal to

recommend it. It is to be remembered also that it has not been proposed to deprive Tahsíldárs or Assistant or Extra Assistant Commissioners, by whom these cases will ordinarily be decided in the first instance, of their civil jurisdiction; and the officers trying the cases will therefore be officers who could have tried them if they had continued to be cognizable by the Civil Courts. The main difference then will be that the trial of these cases by officers possessing revenue experience will be secured, and that the appeals will lie to the superior Revenue authorities and not to Civil Courts of appeal.

"We have added one class of cases, namely, suits relating to boundary-disputes where the boundary has previously been determined by a Court or Revenue-officer, to those transferred to the Revenue Courts, as a local inspection is often necessary before such suits can be properly decided, and Revenue-officers in the course of their ordinary duties would have greater facilities for such an inspection than the more stationary Civil Courts.

"We have, however, qualified the transfer of jurisdiction by adding a power to the Local Government, after consulting the Chief Court, to direct that suits of any of the classes specified arising in any local area should be heard by the Civil and not by the Revenue Courts.

"We have also empowered the Local Government to bar appeals from the decrees of Assistant Commissioners in suits of certain of the classes specified when the claim is of a pecuniary nature and does not exceed one hundred rupees in amount, and no question of title or question the importance of which extends beyond the subject-matter of the particular suit is involved.

"Instead of section 49 of the original Bill, which provided for staying proceedings when a question of proprietary title or of the existence of the relation of landlord and tenant between the parties was involved, to enable the decision of a Civil Court upon the question to be obtained, as, on considering the criticisms which have been made on that section, there appeared to be objections to the course proposed, we have adopted a section (54) founded on section 208A of the North-Western Provinces Rent Act, 1881, but differing from that section in requiring the sanction of a superior Revenue Court to be obtained before a party is directed to sue in a Civil Court, and in not obliging the Revenue Court to decide the question against the party directed to sue if he fails to institute the suit within the time allowed for the purpose, though it is enabled to do so if it thinks fit. The first of these changes will furnish a check upon improper orders being passed under this section, such as an order directing a

civil suit to be brought to decide a question which the Revenue Court might properly decide for the purposes of the suit before it, or directing a party to sue to establish his title to property when he might safely rely on his possession and leave any person contesting his title to sue him. The second leaves to the Court a discretion similar to that which it has under section 158 of the Civil Procedure Code. If, for example, the person directed to sue is advised that it would not be advisable for him to institute a civil suit within the time allowed for the purpose, he may apply for leave to withdraw the suit pending before the Revenue Court with permission to sue again, and that Court may then refrain from deciding the question and pass an order under section 373 of the Code. These changes to a great extent remove the objections which I felt to adopting the section as it stood in the North-Western Provinces Act, and there may be some cases, for instance, where a question of the fact or the validity of an adoption incidentally arises in a rent-suit, in which the power given by it will be useful.

"We have added another section (55) enabling the Financial Commissioner to make a reference to the Chief Court of the same nature as that which a subordinate Civil Court whose decree would be final may make under section 617 of the Civil Procedure Code. He will thus have the means of obtaining the decision of the Chief Court on difficult questions of law or usage having the force of law or of the construction of documents arising before him.

"We have not thought it necessary to retain section 58 of the original Bill, relating to the revisional jurisdiction of the Financial Commissioner, as he will have the powers of revision given by Part VII of the Civil Procedure Code in all cases falling under this chapter. It must be remembered that this chapter does not deal with all revenue jurisdiction, but only with jurisdiction in cases transferred by it from the Civil to the Revenue Courts; and, therefore, though a more extensive revisional authority may be required in some revenue-proceedings, it is not necessary to provide for this in the Bill now under consideration.

"Section 52, which provides for the appointment of a second Financial Commissioner and the distribution of business between the persons appointed to that office, is the only one which applies to any other business than what is cognizable by Revenue Courts under this chapter, it being necessary to arrange for the distribution of all the business of the Financial Commissioner when two officers are appointed to that office.

"We have not thought it necessary to retain section 63 of the original Bill, relating to consultations between the two Financial Commissioners, as, though such consultations may be useful to prevent the risk of conflicting decisions, there is no legal difficulty in the way of their being held when it appears advisable.

"The sections relating to special Settlement Courts, which have been placed in a separate chapter, as they provide for the transfer of the jurisdiction both of Civil and of Revenue Courts, are substantially unchanged.

"In the concluding chapter, the first section which calls for notice is section 70, which in part takes away the wider revisional jurisdiction given by section 622 of the Civil Procedure Code as amended in 1879 and re-enacted in 1882. No such restriction was contemplated when the Bill was introduced, it having then been thought that the extension of the revisional jurisdiction went far to render the second appeals given by the Code of Civil Procedure unnecessary, and that the main question was how far the further appeals given by the local law could be restricted. The effect of the Bill as introduced, so far as second appeals under the Code were concerned, would therefore have been to substitute a power of revision in the discretion of the Court for a second appeal as of right, and the only restriction which it was proposed to place on applications for revision, which, as had been pointed out by the Committee which sat at Lahore in 1882, were often unnecessarily made, was to increase the court-fee chargeable on the application when the value of the matter in dispute exceeded twenty-five rupees.

"It was pointed out, however, that very different views of the scope of section 622 as amended in 1879 had been taken by the High Courts of Bombay and Allahabad, and that, as the Bill would increase the number of possible applicants for revision, not only by the number of persons deprived of a second or further appeal to the Chief Court, but also by the number of persons deprived of a further appeal to a Commissioner's Court, there were serious objections to relying upon section 622 as a substitute for the second appeals now allowed by law, while any modification in the direction of the wider interpretation might have the effect of giving what would be practically equivalent to a second appeal in cases where the law does not at present allow a second appeal.

"The result, indeed, of the modification made in 1879 had been greatly to increase the number of applications for revision, which rose to 707 in 1883,

from about half the number in 1878, and are, it is understood, still continuing to increase.

"It was suggested by Mr. Justice Plowden, the Senior Judge of the Chief Court, with, I believe, the concurrence of his colleagues, that it would be better to cut down section 622 to its original dimensions by omitting the words added in 1879, and to give further appeals in most of the cases in which an appeal from an appellate decree is now allowed, refusing them only where a Divisional Court had heard the appeal in a suit of the small cause class not exceeding Rs. 500 or at most Rs. 1,000 in value.

"The Select Committee, however, while it decided to give a further appeal in all cases exceeding Rs. 500 in value, was unwilling to allow appeals from appellate decrees in other cases as freely as at present; and, as the principal source of difficulty in interpreting section 622 was found in the power given to the High Court to interfere on the ground that the Lower Court had acted illegally, it determined to withdraw this power, without further amending that section. The result of course will be that, when a Court whose decree is final has decided contrary to some positive rule of law, but cannot be said to have erred as to a question of jurisdiction, or to have acted with material irregularity, there will be no power to interfere; and the section, therefore, can no longer be held to cover the same ground which is at present covered by the law of second appeal.

"The increase in the court-fee on applications for revision has been objected to in some quarters, but this was recommended by the Lahore Committee of 1882, and was approved by all the Judges of the Chief Court last year; and, though there may be something to be said for reducing the court-fee now charged on particular classes of suits in Courts of first instance, there seems to be no good reason why a person applying to the highest Court of the Province for an order varying or setting aside the final decree of a lower Court should be allowed to do so without paying more than the fee prescribed for an ordinary petition to the Court. The increased court-fee may be some check upon applications which are often made without sufficient grounds, and is unlikely to have the effect of preventing applications when a real grievance exists which a Court of Revision can redress. When the application is successful, the Court is also empowered to direct a refund of so much of the fee as it thinks fit.

"I may now proceed to refer to a few of the suggestions put forward by critics of the Bill with which we have not dealt.

"It has been suggested that power should be taken in the Bill to appoint a qualified native of India to the Chief Court. This suggestion must have been made under a misapprehension of the effect of the present law, which the Bill follows in this respect. The only qualification prescribed by law is that one of the Judges must be a Barrister of not less than five years standing, and there is no legal obstacle to the appointment of a Native Judge either to the Chief Court or to any other Court under the Bill when a vacancy exists. But the passing of the Bill will not create any vacancies. It will merely enable a certain number of existing appointments to be replaced by a similar number of new appointments, while the same officers must be employed.

"It has similarly been suggested that what ought to have been aimed at was an improvement of the Courts of first instance. That this is an object to be aimed at no one will be disposed to deny, though the defects of these Courts have certainly been exaggerated. But the improvement of these Courts, as of Courts of any other grade, must be gradual, and it has not been shewn that any legislation is needed for this purpose. What is required is strict supervision by controlling authorities and care in selecting fit persons for new appointments or for promotion to higher grades, and this no legislation can secure. So far as my own experience goes, I have reason to believe that improvement in these Courts has been going on and is likely to continue, and that for the last ten years there has been more reason to doubt the competency of some of the Courts of a superior grade for the functions which they are called upon to exercise than there has been to doubt that of the great majority of the Courts of first instance.

"Another suggestion has been that an appeal should be given from the order of one Judge of the Chief Court rejecting an appeal to the Court; but, though apparently any order of a single Judge of one of the High Courts may be appealed against, a Judge of one of those Courts may be empowered by rules not merely to reject appeals but to exercise any appellate jurisdiction vested in the Court, and there is no reason to believe that appeals from orders rejecting appeals are often preferred or entertained. And it would be by no means consistent with the restrictions we are putting upon appeals in other cases to give an appeal from the order of a single Judge of the Chief Court where no appeal has hitherto been allowed by law.

"When I explained the provisions of the Bill on moving for leave to introduce it, I did not think the occasion an appropriate one for expressing any opinion of my own on the various changes in the law which it

was proposed to make. Apparently this has led some of the critics of the Bill to assume that it was entirely in accordance with my own views. The Bill, however, was, as I stated at the time, based upon recommendations made by your Lordship's Government to the Secretary of State for India; and I think I may now properly mention that, before those recommendations were sent home, I had recorded my dissent from some of the proposals relating to the appellate system on which they were based. Though the provisions of the Bill on this subject have been modified in Select Committee to a much larger extent than under the circumstances I could have anticipated, and the changes made are in my opinion almost all for the better, I cannot say that it is even yet all that I could wish.

"I am aware of course that no member of a legislative body can expect to be able to get every portion of a large measure settled precisely in accordance with his own views, but at the same time I think it necessary to guard myself against being supposed to approve of all the changes in the law which this Bill will effect.

"I have never concealed my opinion that the constitution of the Divisional Benches proposed by this Bill involves a waste of power, and, though I look upon the greater liberty of appeal from their decisions now allowed as an improvement, this only makes the waste of power more apparent. As the Bill now stands, however, the Local Government will be at liberty to appoint a single Judge to the Divisional Court instead of a Bench, in any case in which it thinks proper to do so.

"A more serious objection to the Bill is that, having regard to the nature of the duties of the District Courts, whose appellate decisions are in cases of the nature of small causes made final, these Courts are at present as a class, notwithstanding individual exceptions, the weakest Courts we have, and any improvement in them must necessarily be gradual. Most of the Judges of the Chief Court had agreed to the proposal of the Lahore Committee that their decisions should be made final in small causes not exceeding Rs. 100 in value; but they are now made final in small causes not exceeding Rs. 500 in value. This, however, was agreed to by the Local Government last year after ascertaining the opinions of the Judges, and there was therefore no ground to hope for any change on this point, especially as second appeals in small causes not exceeding Rs. 500 in value are not allowed elsewhere in India.

"The finality in these cases in other provinces has, however, since 1879 been subject to a wider power of revision than will hereafter exist in the Panjáb; and the one respect in which I think the Bill has been altered for the worse is that, in amending section 622 of the Civil Procedure Code, that section was not made to cover cases where any substantial portion of the appellate decision is opposed to law or to any usage having the force of law. I presume that, where the Appellate Court has failed to determine any material issue of law properly raised before it, it will be held to have failed to exercise a jurisdiction vested in it, or to have acted with material irregularity. At the same time it is only because the right of appeal has been so largely restricted that I do not like the simultaneous restriction of the power of revision. I think that, if the suggestions for the improvement of the system of appeal made at a late stage by the Chief Court could have been accepted, section 622 might properly have been cut down to its original dimensions.

"It is no secret that one object of the recommendations made by your Lordship's Government last year was to reduce the work of the Chief Court. There seems to be an impression in some quarters that the Judges of that Court were opposed to this being done, and not merely to the particular plan which has been devised for the purpose. That this impression is mistaken is shown by the fact that the Judges in 1882 made proposals to effect the same object, which have been only partially accepted.

"I may be asked what the effect of the Bill as it now stands upon the work of the Chief Court is likely to be. My answer is that this cannot be foretold with much precision, but that the transfer of certain classes of cases to the Revenue Courts, which was originally proposed by some of the Judges, will certainly effect a considerable reduction. Of the appeals disposed of in 1883 nearly 12 per cent. related to occupancy-rights, one of the classes to be transferred, but nearly half of these belonged to a large group of cases from a single village. From information collected by Mr. Rivaz as to the classes of cases in which appeals were preferred to Commissioners and Deputy Commissioners in 1883, I gather that in 30 per cent. of the cases which, if the appellate system established by the new law had been in force, would have been appealable to Divisional Courts the appeal will now lie, if at all, to Revenue Courts. This may be above the average, and the same proportion may not apply to the appeals to the Chief Court after deducting those which will no longer lie, especially as most of these cases would be under Rs. 500 in value; but there will clearly be a

substantial reduction from this cause of the number of cases in which an appeal would lie on certificate.

"Only 3 per cent. of the appeals decided by the Chief Court in 1883 were for money or moveable property not exceeding Rs. 500 in value, but there were at least 1,326 other cases (including of course a large proportion of the revenue cases) in which under the provisions of the Bill no appeal would lie to the Chief Court unless on certificate or when the Judges differ. This leaves at most 1,462 cases in which an appeal would lie as of right under the provisions of the Bill, and, as in 1883 disposals exceeded institutions, the number of appeals as of right in the course of a year would fall short of this. Some addition would be necessary for first appeals over Rs. 5,000 in value which would lie direct to the Chief Court instead of, as at present, to Commissioners, but many of these cases have hitherto come before the Chief Court as second or further appeals. On the other hand, there will no doubt be some increase both in references under section 617, Civil Procedure Code, and in applications for revision, as the number of final appellate decrees in the Lower Appellate Courts, and therefore the number of cases in which these references or applications may be made, will be largely increased by the provisions of the Bill.

"On the whole, while there is more certainty of a large diminution of work in the Chief Court owing to the transfer of jurisdiction in certain classes of cases to Revenue Courts, than there is of much diminution of work owing to the changes made in the law of appeal and revision, it may fairly be anticipated that there will be some decrease arising from each of these causes, and that the civil judicial business will be considerably reduced."

His Honour THE LIEUTENANT-GOVERNOR said:—

"This is now the third time within ten years that extensive and radical changes have had to be made in the general administration and the judicial machinery of this province. With the restoration of peace and good order after the mutiny, the rapid development of the country and the enormous increase of material wealth and prosperity that followed, it very soon became evident that the old non-regulation machinery was no longer able to cope with the demands upon it. From that time to the present day there has been a growing and recognized necessity, arising on the one hand from the general progress of the province and on the other from the ever-increasing elaborateness and precision of our laws, for a more complete separation of judicial from executive functions, and for a closer approximation of our general administration to the system prevailing in our older provinces.

"Unfortunately, every time the much-needed reforms in this direction have been attempted, financial difficulties have intervened to prevent the complete acceptance of measures which experience had shown to be desirable, and to preclude the establishment once for all of what the Secretary of State described as 'a vigorous executive and an efficient judicial service in one of the most important Provinces of India.' The consequence has been a resort to makeshifts and temporary expedients, with the result that, as I have said, we are now for the third time within ten years forced to review our whole judicial and administrative arrangements, and to make extensive and very important changes. I need not, in this Council, point out how detrimental to the welfare of the people, to the interests of the province and the Government, and to the efficiency of the Courts of Justice, the unsettlement and uncertainty of law, procedure and agency caused by such recurring changes must necessarily be.

"The measures recently sanctioned by the Secretary of State to which this Bill is intended to give effect, so far as the sanction of the legislature is necessary for the purpose, are a greater advance than has ever been made before. But it would be sanguine to expect they will effect all that is needed. On the face of them they are incomplete. The financial grant has on this occasion been very liberal. Still we must, I fear, admit in the present case also that the financial and administrative conditions, necessarily imposed, have once more forced us to be content with measures which, though on the whole a great improvement on the existing state of things, are not free from objection, and are not acceptable to many to whose opinion the greatest weight is deservedly attached both by Government and the public.

"While therefore I welcome this Bill and the executive measures out of which it has arisen as a great boon to the province, I think it inevitable that, ere very long, further steps will have to be taken to improve the Subordinate Courts and to effect a more complete separation between the judicial and executive agency than we have been able to attempt under existing conditions. I by no means concur in the sweeping condemnation of the Lower Courts in which some critics of this Bill have indulged. At the same time I am too well aware how much they need to be reformed and improved. Hitherto the Judges of these Courts, on whose shoulders the bulk of the judicial work of the province falls, have had no adequate career opened up to them; and of this one thing I am sure, that no great improvement in the quality of the Subordinate Courts is to be looked for until all obstacles are removed which intervene to bar the advancement of the Judges of these Courts from the lowest

to the highest judicial offices, from the humble but honourable post of Munsif to the Bench of the Chief Court itself. It is in my estimation one of the merits of this Bill that it creates no obstacles to such a career, and that, so far as its provisions are concerned, there is nothing to prevent Native Uncovenanted Judges who distinguish themselves by knowledge of law and by skill and intelligence in the interpretation and application of it from rising to the highest judicial offices in the Province. For reasons which it would be out of place to enter upon here, it has not been possible at present to do all in this direction I could have wished. But it is matter for congratulation that, in connection with the present measures, the Secretary of State has declared it to be competent to the Lieutenant-Governor, with the approval of the Government of India, to appoint to district judgeships Natives in the Uncovenanted Service who show such eminent merit as to warrant giving them special promotion; and it is my intention to make a recommendation to the Government of India accordingly shortly after this Bill becomes law.

"As regards the details of the Bill, it is perhaps unnecessary that I should detain the Council with any remarks. The hon'ble the Law Member and my hon'ble colleague in charge of the Bill can speak on these with greater weight and authority than I can pretend to do. It will be sufficient for me—with reference to the very strong, and, I may say, for the most part valid, objections raised to the provisions of the original Bill, which largely curtailed the right of appeal—to express my satisfaction that the Bill has been so materially modified as substantially to meet the most important of those objections, and to state my opinion that, in this respect, the Bill as it now stands meets the reasonable requirements of the case."

The Hon'ble MR. ILBERT said:—

"It was hardly to be expected that a measure which reorganizes the Civil Courts of a province, and which affects, or may be held to affect, the interests of a profession which is nothing if not critical, should pass without a good deal of unfavourable criticism; and this Bill has met with its fair share of criticism, favourable and unfavourable. Much of the criticism has been very sound and useful, and we have thankfully availed ourselves of it for the purpose of making alterations in the Bill which I hope and believe will be found to be material improvements. But some of it has been directed not against the detailed provisions of the Bill but against its principles, and has embodied proposals which we found ourselves unable to accept.

"Now this is not the proper stage for discussing the principle of a measure before the Council; but, with reference to some of the observations which have reached us since the date on which this Bill was referred to a Select Committee, I may be permitted to remind the Council what the objects of this measure are, and what were the circumstances and conditions under which the general scheme of administrative reorganization of which this Bill only forms a small part was framed and brought forward.

"The main objects of this Bill are, I take it, two. One is to effect a further separation between executive and judicial functions than exists at present in the province. The other is to improve the machinery for administering justice in the Civil Courts.

"Now, we have been told that in separating executive from judicial functions under this Bill we have not gone far enough, and that we have left to the Revenue Courts classes of business which might more appropriately and satisfactorily be disposed of in the ordinary Civil Courts. To this objection there are several answers. In the first place, we were afraid to heap more work on the Civil Courts, which are already overburdened. In the next place, many of the questions which we leave to the Revenue Courts, such as questions relating to the enhancement of rent, are only of a quasi-judicial character, and all of them require for their satisfactory determination knowledge of a kind which Revenue and Settlement Officers may from their peculiar experience be specially expected to possess, and which the Judges of Civil Courts would not always—perhaps do not as a rule—possess. Then, if we have not gone quite so far as some of our friends would wish us to go, we have at least made a very great step in advance, and have assimilated in principle the system of judicial organization to that which prevails in what are known as the regulation provinces. And, lastly, we have inserted in the Bill a provision enabling a still further step to be taken if it should be found practicable and expedient to take it. I refer to the provision in section 45 which enables the Local Government to transfer certain classes of suits from the cognizance of the Revenue Courts to that of the Civil Courts.

"It must be borne in mind that this process of separating executive and judicial functions is a process which can only be carried out by gradual advances. In the earliest stage of a province like the Panjáb it is, as my hon'ble friend Mr. Barkley pointed out in moving for leave to introduce this Bill, inevitable and indispensable that large powers of various kinds should be

concentrated in the hands of the same officer; as time goes on a further separation of functions becomes practicable and expedient; but even in the most advanced provinces we are hampered by serious financial and administrative difficulties in our efforts to give full effect to a principle which is, and I hope will always be, steadily kept in view.

"I now turn to the proposals for reorganizing the Civil Courts. And, in dealing with this branch of the subject, I must admit that our critics have one enormous advantage over us. They are not tied and fettered as we, the members of the Executive Government, are, by sordid considerations based on money. They are free to suggest and advise whatever they think best, and to criticize unsparingly anything which falls short of their standard of excellence. We are in a much less fortunate position. We are not living in a Republic of Plato, but in a country with limited resources. We have to cut our coat according to our cloth, and in providing an outfit for a province like the Panjáb the material at our disposal is not superfine broadcloth, but homely *patu*, and a scant supply of that.

"Let me remind my hon'ble friend Mr. Barkley and those other gentlemen who did me the honour of attending last autumn a conference on the scheme out of which this Bill arose, and whose valuable assistance on that occasion I take this opportunity of most thankfully and gratefully acknowledging—let me remind them what was the problem which we had to face, and what were the conditions under which we were allowed to approach it. The main fact with which we had to deal was that the Chief Court was hopelessly encumbered with work, and I may add that a very great part of the work with which it was encumbered was of an extremely petty character. And the problem was how to relieve them of their excess of work. But we did not approach this problem as free agents. We did not hold the purse-strings. We had behind us an authority, indeed two authorities, which dictated to us the maximum amount which we were to spend, though they left us considerable liberty within those limits. Those authorities were the Finance Department and the Secretary of State. I may remark in passing that the part which my hon'ble friend Sir Auckland Colvin, or whoever happens for the time being to hold his office, usually plays in the legislative discussions over which I have the honour to preside is the useful but not always popular part of Jorkins. I hope, however, he will not suppose that by ascribing to him this part I wish to shift exclusively on to his shoulders the responsibility for resisting popular proposals on economical grounds. There is no country in the world where it is more

difficult to resist pressure for increased administrative expenditure than India; there is no country in the world where it is more important to resist that pressure. Our principal advisers are energetic and enthusiastic officials, sincerely anxious to do good and honest work, but crippled at every turn by the want of means. But the great mass of tax-payers is unrepresented, and the resources on which we can draw are limited and inelastic. Therefore, when the Finance Minister of the day takes a firm stand on economical grounds, he may always count on my honest support.

"Well, to return to our problem. There were before us two modes of relieving the Chief Court from its pressure of arrears. One was to increase its staff, the other was to reduce its work. A temporary addition had already been made to the numbers of the Chief Court, but we were told that a permanent increase was not under existing circumstances admissible, at all events (for I presume that this qualification may be inserted) not until other modes of relief had been tried and failed. As I have said, I do not wish to cast the responsibility for this decision exclusively on the Finance Department nor on the Secretary of State. There are obvious objections to increasing an expensive structure in its most expensive part. And you do not always add to the efficiency of the controlling authority by increasing its numbers. His Excellency the Commander-in-Chief will bear me out in saying that you may have too much even of that valuable commodity—Generals. I know it has been said that there ought not to have been any financial difficulty in the matter, because the accounts of the administration of justice in the Panjáb show a balance of receipts over expenditure, and that balance was enough to provide an adequate solution of our problem. Now, I do not know how far we can rely on the calculations which have been made as to this excess of receipts over expenditure, but I am quite willing to admit that I do not consider a surplus from court-fees a satisfactory source of revenue; and if my hon'ble friend Sir A. Colvin can see his way to dispense with it or to devise a satisfactory substitute for it, he will earn the gratitude of the country. But the practical question is, under existing circumstances, not whether this particular branch of Panjáb revenues shows a surplus, but whether on the Panjáb revenues as a whole there is such a surplus as would suffice for the extra expenditure which we wanted to meet. And I am afraid that His Honour the Lieutenant-Governor would reply—I see that he does reply—to this latter question with an ominous shake of the head.

"This then was how matters stood. Our mode of relief was negatived on financial grounds, and we had to make the best we could of the other mode. Not a satisfactory position you may say, but after all not worse than

that of the hard-worked administrators all over this country who are daily engaged in the thankless task of making bricks without straw.

"How then were we to check the flow of petty appeals which was deluging the Chief Court? Few subjects have been more exhaustively discussed in India than the system of appeals, and we were not likely to be able to add much to all that had been said or written on the subject. On one or two matters of principle we were all pretty well agreed. One was that partial appeals were objectionable, and that where an appeal was granted the Court ought to be in a position to deal with the whole case. On the number of appeals which should be allowed in the same case there was less agreement. One appeal we agreed should always lie in ordinary cases, but no one ventured to defend on principle the present system of the Panjáb, which has been aptly described as 'sifting cases through a succession of bad Courts in the hope that they will come right in the end,' though there were some who were sceptical about the possibility of substituting anything better under existing circumstances. But all were agreed that, if greater finality was to be given to the decisions of Courts of First Appeal, something must be done towards strengthening those Courts. How then were they to be strengthened? The only feasible scheme that was suggested was to make provision for enabling an Appellate Judge to call in a colleague to his assistance—in fact, to provide for the constitution of Appellate Benches; and this was the suggestion which was ultimately adopted. The proposal has, as is natural enough, been a good deal canvassed on grounds good, bad and indifferent. Among the latter I may be permitted to class certain arguments which have a false mathematical ring about them. For instance, we have been told that as two negatives do not make an affirmative, so two unsound judges do not make a sound one, and again that the notion that greater aggregate power will result from the adoption of our proposals is almost on a par with the idea that the product of $\frac{1}{2} \times \frac{1}{2}$ is an increased quantity. I have myself far too much respect for Panjáb Judges to speak of them as negative or even as fractional quantities, and I do not quite know what would be the effect of multiplying one Judge by another. But, I suppose, I may safely assume that in the Panjáb as elsewhere the product of $1+1$ is an increased quantity, and, passing from the abstract to the concrete, that for a good many purposes two men are better than one. Do those purposes include the hearing of appeals? There are persons, whose opinions are entitled to much respect,—for instance, as you have just now heard, my hon'ble friend Mr. Barkley,—who will tell you that they do not, and that

if you place two Judges to sit together one of them will content himself with saying ditto to the other. I have often heard this opinion expressed by Indian Civilians, and not the least competent among them; and it may perhaps be accounted for in their case by the fact that the training and experience which form and develope their most valuable qualities, the necessity which they are constantly under of acting alone and on their own responsibility, makes them less inclined to sit and act—perhaps less fitted to sit and act—in consultation with others. They undervalue the assistance with which they have learnt to dispense. There must, one would think, be some special reason for the prevalence of this opinion among Civilians, for there is certainly a very general prejudice among lawyers—a prejudice which I myself share—in favour of having appeals disposed of by a Bench. There may be Judges so strong as to need no assistance from a colleague, or so opinionated as to be incapable of deriving assistance from him, or so weak as to be unable to assert their own opinions against him, or so indolent as to let him bear their share of the work. But, taking the ordinary run of men, say Tom, Dick and Harry, who are neither much better nor much worse than their neighbours, or, I will add, than each other, I believe that an appeal from Tom to Dick and Harry sitting together is more satisfactory than an appeal to Dick or Harry sitting alone. It is more satisfactory to the suitor, who, if the decision is reversed on appeal, feels that the view which has prevailed is at all events that of the majority. It is more satisfactory to the Judge of first instance, who will often think, and may be entitled to think, that his own opinion is as good as the unaided opinion of the Judge above him. It is more satisfactory to the Court of Appeal, whose members have the advantage of consulting each other and clearing their minds by mutual argument before overruling the Court below.

"I believe then that if Benches can be satisfactorily constituted for hearing first appeals, it is desirable to constitute them. Can they be so constituted in the Panjáb? That is a question which it is rather for the Lieutenant-Governor to answer than for me, and it is a question which I understand—he will correct me if I am wrong—he has unhesitatingly answered in the affirmative. The provision under which Benches may be constituted has, as Mr. Barkley has pointed out, been given an experimental form, and I think that the experiment is, to say the least, worth trying.

"Having constituted the Courts of First Appeal, whether by Benches or otherwise, in what cases and to what extent should finality be given to

their decisions? That is an extremely difficult question. I am aware that the Chief Court has won, and deservedly won, the confidence of the people of this province, and that any limitation on the right of access to it is not likely to be popular. I am aware also that the Chief Court is gradually doing a most useful and important work in comparing with each other the numerous laws and customs or alleged customs which come before it from different parts of the country, and in endeavouring to ascertain and formulate the common principles which underly their apparent variety. They are doing in this way the work which was done for England some six centuries ago by the King's Court,—the *Curia Regis*,—and by means of which the common law of England has been developed into a logical and consistent whole. For these reasons I am reluctant to limit the right of appeal to the Chief Court, especially in cases which involve important questions of law or custom. On the other hand, it must be borne in mind that the great mass of the cases which come before the Court—a large proportion I believe of those which under the existing system find their way up to the Chief Court—are of the most petty and simple description, involving no important question of law or custom whatever, and requiring for their disposal nothing more than a little common sense and patience. Having regard to the means at our disposal, are we justified in allowing the time of the most expensive Courts to be occupied with cases of this description? As has been often said, no man has a right to unlimited draughts on judicial time and judicial power. To grant an unlimited right of appeal is not fair to the general tax-payer, and is a cruel kindness to the suitor himself. I am told by those on whose authority I am entitled to rely that among many classes of the Panjáb it is a point of honour to prosecute an appeal, however hopeless may be the case and however trifling may be the stake, to the utmost, and notwithstanding the knowledge that even if the appeal is successful the costs to be paid will far outweigh the stakes. The unsuccessful suitor feels himself disgraced if he does not carry his appeal as far as the law will allow him to go, and it is not until recently that he has, with the help of his legal advisers, found out how very far that is If the law would in such cases interpose a friendly obstacle to his further progress in the path of appeal, his honour would be satisfied and his pocket would be benefited.

"I hold then that we are justified, both in the interest of the general tax-payer and in the interest of the particular suitor, in placing some limitation on the right of second appeal, and that this limitation may reasonably be framed with reference both to the nature of the suit and to the value of its

subject-matter. About the particular limits to be selected there will naturally be much difference of opinion. The Committee have concurred with the view of the Local Government that the limitations on the right of further appeal proposed by the original Bill probably exceed the real requirements of the case, and it will have been seen that we have proposed to make some very important extensions of that right beyond the limits so fixed. In the case of ordinary money-claims, suits of the class called in the Bill small causes, where the value does not exceed Rs. 500, we think that one appeal should suffice, and that there should be no further appeal. In this, as Mr. Barkley has reminded us, we only follow the general law as laid down by the Civil Procedure Code for the rest of the country. In other cases we make the right of second appeal depend on the value of the suit and on the constitution of the Court by which the first appeal is heard. If the value exceeds Rs. 500, there is an absolute right of further appeal. If the Appellate Court consists of a single Judge, and he reverses or varies the decision of the Court below, then, there being one Judge against one, there is a further appeal. If, again, the appeal is heard by a Bench of two and the two do not agree, there is a further appeal. And, lastly, any one of the Judges composing a Bench may certify a case for appeal if in his opinion there is a question of law or custom or of general interest involved, and the case is of sufficient importance to justify a further appeal. We hope that this power will be exercised in such a way as to allow of all really important cases of law and custom finding their way up to the Chief Court.

"But, having settled the limitations on the right of appeal, we had to encounter another formidable difficulty. We were told that any limitation which might be imposed on this right would be illusory, because in cases where an appeal was barred a way would be found to the Chief Court under section 622 of the Civil Procedure Code, which provides for revision of the proceedings of inferior Courts. Now, it certainly was not the intention of the framers of that section that it should simply give a right of appeal in another form; but there is some reason for believing that the words which were inserted in the section in 1879 have obscured the line which was originally drawn between the class of cases in which an appeal was to lie and the class of cases in which the power of revision was to be exercisable. On referring to the Report of the Select Committee which inserted those words I find that they did so with some hesitation, for they remark—'The change is a serious one, and must be understood as made tentatively.' These doubts have been justified by the difficulty which some of the High Courts have found in interpreting the addition.

Thus, the Allahabad High Court has construed the new words in such a way as would, if it were logically carried out, render nugatory any limitation on the right of appeal. The most careful consideration to which they have been subjected has been in the Bombay High Court, where Mr. Justice West in a very recent judgment has gone into the subject with all the thoroughness which characterises his work, and has drawn a useful and instructive comparison between the revisional jurisdiction of the several High Courts and the analogous superintending and visitatorial jurisdiction exercisable by the English Court of Queen's Bench, and its successor the High Court of Justice, under the prerogative writs of certiorari, mandamus and prohibition. Whilst insisting, very properly, on the necessity for such a jurisdiction, he remarks on the tendency which has manifested itself in recent times to confine its exercise within somewhat narrower limits than heretofore.

'In India, as in England,' he says, 'the grant of a rule under the extraordinary jurisdiction is discretional, and the power should be used only to sustain, and not further to disturb, the regular course of judicial administration, to prevent distortious or sham applications of the law, but not to promote uncertainty and restlessness, by an over-nice scrutiny of proceedings that aim at promptness rather than refinement.'

"He wisely abstains from an attempt to define precisely cases in which the power ought to be exercised, for, as he says, 'what is abnormal cannot be provided for precisely by rules'; but he makes it clear that in his opinion the jurisdiction under section 622 of the Code is an extraordinary jurisdiction, to be exercised only in extraordinary cases, and he lays down certain general principles as a guide to the discretion of the Court in exercising it. It is evident, however, that the word 'illegally' as used in the section has been a stumbling-block to him, and that he has found some difficulty in reconciling its presence with what he conceives—and, if I may venture to express an opinion, rightly conceives—to be the general scope of the jurisdiction exercisable under the section. For, as he says, 'in one sense every erroneous decision or order is illegal;' in other words, every slip on a question of law or fact would justify the interference of the High Court, which is very much the view that was taken by the late Chief Justice of the Allahabad High Court.

"Now, of course this judgment is not binding on the other High Courts, but it is the most instructive and exhaustive exposition that is to be found of the section with which we are dealing, and it is certain to be referred to whenever

the meaning and intention of the section comes up to be considered in the Panjáb Chief Court or elsewhere.

"The limitations which we have considered it necessary to place on the right of appeal in the Panjáb make it eminently desirable that we should if possible prevent the revision section from being interpreted in such a way as to make those limitations nugatory. We have very carefully considered whether and how this can be effected; and the conclusion to which we have come is that we ought to strike out the word 'illegally' on which the advocates of the wider interpretation mainly rely. It is impossible to predict how a section which is of necessity expressed in wide and general terms will in practice be interpreted, but we believe that the omission of this word will materially facilitate the adoption of those views as to the scope and intention of the section which are to be found in the judgment of Mr. Justice West.

"I am sorry to have had to detain the Council so long on such a dry and technical subject, but I was anxious to show that we had not overlooked or made light of the serious difficulties which surround the subject with which we have had to deal.

"In conclusion, I will only say that I hope this measure will be accepted as what it is, namely, an honest endeavour to improve the administration of civil justice in the Pánjab to the extent to which our existing means allow us to improve it. It is an essential part, but only a part, of a much wider scheme for improving the administration of the province—a scheme which has been under consideration for many years, which makes reforms that are, and long have been, urgently required, but the introduction of which, if we were to wait until all possible objections to each of its features were removed, would be deferred until the Greek Kalends, or whatever day corresponds in the Indian calendar to that fleeting date."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that in section 48, clause (*b*), for the words "amount or value of the subject-matter of the suit" the words "value of the suit" be substituted.

He explained that no previous notice had been given of this amendment, but that its object was merely to make an improvement in the language of the section which did not affect its substance in any way, the definition of "value" which had been added to section 3 having rendered the retention of the longer expression unnecessary.

The Motion was put and agreed to.

1884.] [*Mr. Barkley.*]

The Hon'ble MR. BARKLEY also moved the following amendments which he explained were necessary to make the law as to the court-fees payable on applications for revision under section 622 of the Civil Procedure Code the same in the Court of the Financial Commissioner as in the Chief Court :—

(1) That in section 71, after the words "Chief Court" the words "or the Court of the Financial Commissioner" be inserted.

(2) That in section 72, the word "Chief" be omitted.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Thursday, the 9th October, 1884.

SIMLA ;
The 9th October, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla,—No. 521 L. D.—10-10-84.—316.