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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.

1873.

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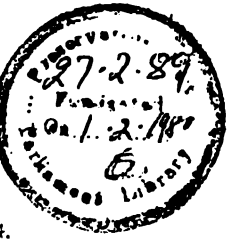

CALCUTTA:
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1874.

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 21st January 1873.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Honour the Lieutenant Governor of Bengal.

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

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble F. S. Chapman.

The Hon'ble R. Stewart.

The Hon'ble J. R. Bullen Smith.

The Hon'ble R. E. Egerton.

His Highness the Mahárájá of Vizianagram, K. C. S. I.

The Hon'ble J. F. D. Inglis.

MINORS' DEPOSITS BILL.

The Hon'ble SIR RICHARD TEMPLE presented the report of the Select Committee on the Bill to legalize the repayment of money deposited in District Savings Banks in the names of Minors.

TRANSHIPMENT OF GOODS BILL.

The Hon'ble SIR RICHARD TEMPLE also presented the report of the Select Committee on the Bill to amend the law relating to the Transhipment of Goods imported by Steamer.

BILLS OF LADING BILL.

The Hon'ble SIR RICHARD TEMPLE also moved for leave to introduce a Bill to authorize the use of adhesive stamps for Bills of Lading. He said the Bill was a very short one, and the Statement of Objects and Reasons showed the grounds upon which the Bill was introduced, and with His Lordship's permission he would read that Statement to the Council:—

"At present, bills of lading are stamped by having an adhesive stamp affixed, and by being then sent to the Collector to have the stamp effaced with a die. This is found to cause delay,

especially at the busy shipping season. It has, therefore, been determined that the stamps to be used for bills of lading shall be adhesive, and shall thus merely require to be affected to such bills."

The Hon'ble MR. BULLEN SMITH did not intend to oppose the motion for the introduction of this Bill, although he could not say that he had ever himself found, or indeed had ever heard of, any practical inconvenience attendant upon the present system. If it was remembered that the stamp affixed on bills of lading bore in each case the small value of four annas, the whole set of three merely implying an item of twelve annas, and that that same value applied equally to large and small shipments, it followed that the lock-up of capital to keep a few sets of bills of lading in hand was not very great; and he therefore could not recognize the practical inconvenience said to be attendant on the present system which rendered the employment of adhesive stamps desirable. He however wished to suggest to the hon'ble member in charge of the Bill, if he considered it necessary to interfere at all, whether he would consent to add the words "and other documents," after the words "bills of lading." He alluded to other mercantile documents used in the shipment of goods, namely, policies of insurance, on which stamps must now be impressed as on bills of lading. The former bore an *ad valorem* duty varying with the extent of the shipment; and therefore, until the shipment was completed—until the shipper had positive knowledge of the extent and value of his goods actually received on board—he could not provide himself with the proper stamped paper. It therefore seemed somewhat anomalous to say that the bills of lading should be relieved from the inconvenience of having impressed stamps put upon them, and that the far greater inconvenience occasioned by the necessity for putting impressed stamps on the collateral documents to which he had alluded, and which required stamps of changing value, should be left unrelieved. He hoped the Council had been able to follow him. He did not recognize the practical necessity for the introduction of this Bill, but if it was to be introduced, he could see abundant reason to afford greater facilities by stamping other documents also with adhesive stamps, and he would be glad if the hon'ble member would add the words which he (MR. BULLEN SMITH) had suggested, and the Council could then consider in Committee the cases which it might be advisable to include in the Bill.

The Hon'ble MR. STEWART took the same view as that which was taken by the Hon'ble Mr. Bullen Smith. He did not think that, practically, the present system had proved inconvenient; and he thought with his hon'ble colleague that, inasmuch as the lock-up of capital was trifling, the practice might remain as it stood. But it appeared to him that, if any alteration was

made, it should be considered, not only with reference to bills of lading, but also with reference to other mercantile documents.

His Honour THE LIEUTENANT GOVERNOR said that, after what had fallen from the hon'ble members who had preceded him, he thought it proper to offer a word or two of advice from his own experience. Until a comparatively recent period, the rule was to use impressed stamps. But in the last two or three years that practice had been much changed, and there was a very large number of cases in which adhesive stamps had been substituted for impressed stamps. He did not know the reasons for that change of policy, and his impression was that they were not known to the public. HIS HONOUR must tell the hon'ble member in charge of the Bill, what he believed the hon'ble member had some idea of, that one result of that change had been that enormous frauds had occurred in the Courts in the immediate neighbourhood of Calcutta. The public revenue had not only been largely sacrificed, but the people had been much demoralized. These stamps were easily stolen, and were easily forged; forged, false and converted stamps had been used in the most wholesale manner in all the Courts. In one Court, no less than 1,495 forged or fraudulent stamps were appended to the documents in one single case. Enquiries had been made, but the judges and ministerial officers said that it was very difficult to detect the use of these counterfeit stamps; that they could not be held responsible; and it was found very difficult to bring home the blame to any one. That being so, if such results had taken place under our noses, and our commercial friends had told us that it was safer to retain the existing practice in regard to bills of lading, it did seem to him a matter for serious consideration whether, unless the hon'ble member in charge of the Bill had good reasons, of which the Council were not aware, we should go one step further in that dangerous path. HIS HONOUR was surprised that the hon'ble members who represented commercial interests in the Council, and who, individually, were such prominent members of the commercial community, had not been consulted previously to resolving on the introduction of this Bill. He would suggest that it was desirable that the matter should be fully considered before the Council proceeded another step in that direction.

The Hon'ble SIR RICHARD TEMPLE was not sure whether he need occupy the time of the Council by replying to the objections just raised by the Lieutenant Governor, inasmuch as these objections applied, not so much to the small Bill before the Council, as to the system of our stamp law in general. This system had very recently been established after great consideration on the part of the Government of India, and on the part of the Legislative Council.

Therefore, he (SIR RICHARD TEMPLE) doubted whether the Council wished to re-discuss this large question at this moment, at the instance of the Lieutenant Governor. However, he (SIR RICHARD TEMPLE) had listened to the Lieutenant Governor's objections as just stated, and would, on introducing the Bill hereafter (should leave for introduction now be given), give such reply, if any, as might seem, on consideration, to be expedient. For the present, it would suffice to say that the points of detail just mentioned by the Hon'ble Mr. Bullen Smith and the Hon'ble Mr. Stewart would be carefully considered in Committee if the Bill should be introduced; and doubtless these hon'ble gentlemen would be good enough to serve on the Committee (if it be appointed) and afford the benefit of their practical knowledge.

The Motion was put and agreed to.

BURMA FERRIES BILL.

The Hon'ble MR. BAYLEY moved that the report of the Select Committee on the Bill to regulate Ferries in British Burma be taken into consideration.

As the majority of the Members of the Council had not been present when this Bill was introduced, it might, perhaps, be convenient if he were to explain the necessity for this Bill and its incidents. At present, the law in British Burma might be said to differ in each division of the province. The province of Akyáb was originally part of Bengal, and the law obtaining in that province was the old law which prevailed in Bengal, and which it had been found necessary to alter here. As to Pegu and Tenasserim, different executive rules had been passed in each of these divisions, varying in details, which rules had, it was believed, attained the force of law under the Indian Councils Act, and even that was not certain. There were, therefore, three different and imperfect systems of law as to Ferries existing in British Burma. But as the civilization of the province was rapidly advancing, and as villages and large marts were rising, and as traffic of every kind was increasing, and as much of it passed over ferries, it had become a matter of some importance to place the law on a satisfactory footing. The Chief Commissioner of British Burma submitted a draft, which was founded on the model of the law as now applied to the different provinces in the Bengal Presidency, and also upon the clauses relating to ferries in the Madras Act on that subject. The draft was slightly altered by the Legislative Department, and was then transferred for the final consideration of the authorities in British Burma. The Council received the Bill back with the remarks of the Chief Commissioner and Judicial Commissioner of Burma and of the Government Advocate at Rangoon, and the Committee had considered all their suggestions and had in a great

measure adopted them. MR. BAYLEY had now only to ask that the report of the Select Committee be taken into consideration.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

MADRAS DISTRICT MUNSIFS BILL.

The Hon'ble MR. HOBHOUSE moved that the final report of the Select Committee on the Bill to consolidate and amend the law relating to District Munsifs in the Presidency of Fort Saint George be taken into consideration.

This was a Bill of entirely a local character. It would, in fact, have been passed by the Madras legislature, had it not interfered with the High Court. It was therefore necessary that the Bill should be passed by this Council. The Council would also observe that the title of the Bill, as it stood, was not the same as that by which it was introduced and by which it was still called. The fact was, that the Bill was introduced by the Hon'ble Mr. Cockerell so long ago as June 1870, and it was then a Bill relating to District Munsifs alone: it consolidated the law, and made only one alteration of importance, namely, extending the jurisdiction of those Munsifs, from the pecuniary limit of rupees 1,000 to the limit of rupees 2,500, and Mr. Cockerell then stated that that was the only substantial alteration effected by the Bill. But, in introducing it, he proposed to extend the measure, or to introduce another Bill which would deal with the District Courts and Subordinate Judges in Madras also. That alteration was made in Committee, and the Bill, as it now stood, was a Bill for the purpose of dealing with the Civil Courts subordinate to the High Court. There had been considerable delay in the passing of this measure, which arose from the circumstance that the Madras Government at one time desired that it should not pass until some fresh arrangements had been made for the better adjustment of work between the Judicial and the Revenue authorities. It was found, subsequently, that the time for doing so was not ripe, or there were other practical difficulties in the way. The Madras Government withdrew that objection, and in the first half of the year the Council proceeded with the Bill at Simla. They had since had a good deal of correspondence with the Madras Government; the Bill had been carefully considered by the civil authorities and by the Judges of the High Court at Madras, and it had met with the approval of the Madras Government.

The alterations effected in the prior Bill, with the exception of slight ones amounting to little more than matters of form, were three. One was the extension of the District Munsif's jurisdiction from rupees 1,000 to rupees 2,500. This was exactly half the limit of pecuniary jurisdiction of Subordinate Judges of the second class in the Presidency of Bombay; and, in the Presidency of Bengal, the jurisdiction of Munsifs had been raised, not to the same absolute amount, but in nearly the same proportion. Here, the jurisdiction was recently raised from rupees 300 to rupees 1,000. With respect to suits which were brought for the purpose of obtaining possession of land the extension was more nominal than real. The Bill provided that the Court Fees Act should be used for the valuation of suits for land; and that Act put the valuation so much higher than the present mode of valuation, that, in point of fact, the limits of jurisdiction in such suits were very little extended by this Bill. That extension of jurisdiction was made with the approval of the local authorities, and of every one who had expressed an opinion upon the point.

The next alteration was that the High Court, instead of the Local Government, were to fix the limits of the local jurisdiction of District Munsifs, and also the places at which they were to hold their Courts. That, at present, was done by the Local Government; but the Committee was told that, in point of fact, the Local Government always left it to the High Court to fix those limits, and the places at which these Munsifs' Courts should be held. So that the Local Government performed that duty ostensibly; but in substance and in essence it was done by the High Court for a number of years past. We were, therefore, only altering the law so as to bring it in accordance with the settled practice.

The third alteration was, the omission of the clause which was in the Bill, as introduced, requiring official oaths or affirmations to be taken by Munsifs on appointment. The reason for this omission was, that several Courts Acts lately passed by this Council had taken the same course. That had been done with respect to British Burma and Oudh; and with the permission of the Council, MR. HOBHOUSE would read to them what had been put upon record in the case of the latter province. He held in his hand the report of the Select Committee on the Oudh Civil Courts Bill, one sentence of which was as follows:—

"We propose to dispense with the taking of oaths or making solemn affirmations on accession to any new office under this Act, as we regard the practice as a mere form devoid of any practical utility."

That report was signed by Messrs. Cockerell, Davies, Strachey, Stephen, Ellis and Egerton.

In moving to pass the Bill, with respect to the Civil Courts in Oudh, Mr. Cockerell made some observations which Mr. HOBHOUSE would read to the Council. He (Mr. Cockerell) said—

"We proposed to omit the provisions of the original Bill on the subject of taking oaths or making solemn affirmations on accession to judicial office. They were introduced as part of the usual furniture of 'Courts Acts.' It was thought, however, that this practice of taking oaths of office was of the number of those ancient customs which were more honoured in the breach than in the observance, and, in fact, there could be little doubt that, since the enactment of the Penal Code, this attempt to get a sort of artificial security for a public officer's honest discharge of his duty was wholly superfluous."

That was accepted by the Council, and the Act was passed in that form. In revising this Bill the Committee proposed to act on the same principle. The Madras Government had been consulted on the point, and they assented.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said, it gave him peculiar pleasure to find that the Government had been pleased to grant the appeal of the commercial community of the town of Bimlipatam which was situated in his own country, and who were the first people to request Government to extend the powers of the District Munsifs throughout the Madras Presidency. The Bill, as now amended, was in all respects precisely in accordance with the views of the Madras Government, and he therefore thought that, when it was passed into law, it would gain its object in every respect, He would therefore give his full concurrence to the passing of it.

His Honour THE LIEUTENANT GOVERNOR said, when he looked over this Bill, it seemed to him that the system of Civil Courts in the Madras Presidency was the same as that which prevailed in Bengal, and that the Madras Civil Courts Bill might have been the Bengal Civil Courts Act with very slight alterations. What occurred to him was that, if the system of Courts was identical, would it not be better to refer the Bill back to the Committee in order that it might be incorporated in one Bill with the Bengal Civil Courts Act? We might then, in fact, have one general Bill on the subject for all India, as one general form of Criminal Courts was provided for in the Code of Criminal Procedure. If this Bill was a final Bill, he should certainly have recommended that course; but he did not do so, because, in his opinion, the system of Civil Courts both in Madras and Bengal was a bad system; and he wished to guard against the idea that he thought this Bill was a

good Bill, or that he thought the system was a good system. If the Council revised the Code of Civil Procedure, the opportunity might be taken to revise the system of Civil Courts, making it one Code of Civil Courts and Civil Procedure, corresponding with the Code of Criminal Procedure, which was one Code of Criminal Courts and Criminal Procedure combined together. It appeared to HIS HONOUR that, when we looked to the Courts of original jurisdiction and compared them with the English Courts, the procedure in this country was found to be most dilatory and expensive, and the District Appellate Courts were not strong enough and experienced enough, and not worthy to exercise appellate jurisdiction. If we looked to the High Courts, they were no doubt worthy in all respects; but the judicial officers under them were given to the most unfortunate system of being guided by precedents. There seemed to be a preference for hunting up unfortunate precedents which had been created by the judgments, or mis-reports of judgments, of any Judge of the High Court, and making them the rule of decision, instead of looking to the ninety-nine cases out of a hundred in which the Judges had announced just, righteous and good doctrines of law. The whole system of our Civil Courts was, in HIS HONOUR'S opinion, rotten to the core, and he should vote for this Bill merely as a measure that had gone so far; but he still hoped that the whole system would be re-considered at some not distant time.

The Hon'ble MR. BAYLEY said, that the question of the constitution of the Civil Courts all over India had been for a long time under consideration. That question had not escaped the consideration of the Government of India; on the contrary, they were seeking to do everything which His Honour the Lieutenant Governor wished to be done. But the reason for passing this Bill separately was that it was regarded as a necessary measure at the present time. The other and more general subject was a very large and difficult one, and it was impossible to say in what space of time it could be dealt with. It was therefore thought proper not to delay the passage of an Act of this much smaller scope for a measure of a much more comprehensive nature, the consideration and determination of which must occupy an indefinite space of time.

The Hon'ble MR. HOBHOUSE was glad to observe that His Honour the Lieutenant Governor did not find it his duty to oppose the passing of this Bill. It was a small piece of consolidation that cleared the Statute-book, and, to some extent, cleared the law on the subject in the Madras Presidency, and was of a character similar to the Acts passed for the purpose for various parts of India. His Honour was kind enough to assign

to him a work which he justly said would give Mr. Hobhouse occupation for a long time to come. Mr. Hobhouse feared that, instead of his seeing that work completed, the work would see him out. The same sort of controversy had gone on for the last forty years. A special Committee sat upon it at Simla in the year 1831. That Committee made recommendations which gave rise to very animated discussions, and the same sort of thing had been going on from time to time ever since; and if he was the lucky man to settle that question, he should have more good fortune than all his predecessors and the various Governments had for the last forty years. His Honour did not appear to hold out to him a very hopeful case, for he said the system of the Civil Courts in this country was "rotten to the core," and, in support of that assertion, he pointed out certain things which prevailed universally wherever law was administered, and, indeed, in every department of life. Most people preferred to inform and guide themselves by example and precedent, instead of trusting to what the Lieutenant Governor was pleased to call 'equity,' but which Mr. Hobhouse called unguided guessing.

The Hon'ble Sir Richard Temple said, as a member of the Executive Government, he felt called upon to say that the expression which was used by His Honour the Lieutenant Governor "rotten to the core" was an exaggeration. However important this discussion might be, and however free and unreserved it ought to be, he confessed, he thought, the interests of public justice would not be upheld by the use of such a very strong expression. Of what was civil justice composed? It was composed, *firstly*, of substantive law; *secondly*, of procedure; and, *thirdly*, of administrative machinery. As regards substantive law, he thought the Council would bear him out in saying that the exertions of the Government of India and the legislature had been great in this country, and that great assistance had been received from some of the most eminent authorities in England. As regards procedure, he admitted that the law might be capable of improvement; but still, in that respect the law here was generally supposed to be amongst the best systems in the world, and immense improvements had been made upon the procedure which formerly obtained in this country. And as regards administrative machinery, the Department over which he presided was witness to the fact that no expense had been spared to improve its efficiency. Larger salaries had been sanctioned to the judiciary, and great expense had been incurred from time to time to make it more and more efficient. He appealed to the Council to say whether that general statement of facts was not correct, and if was correct, whether it was right to apply to the judicial system in this country the expression which His Honour had thought fit to use, "rotten to the core."

His Honour THE LIEUTENANT GOVERNOR wished to explain that he was not aware whether the expression he had used, and to which objection had been taken, was Parliamentary or un-Parliamentary; but he might say that he did not intend to apply it to the law of procedure or to any defects due to financial restrictions. On the contrary, he was ready to acknowledge that the Government of India in the Financial Department had been most liberal in the provision which it had from time to time made for the improvement of the Courts. He applied the expression to the constitution and practice of the Courts themselves, and not to the procedure under which they worked.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

NORTHERN INDIA IRRIGATION BILL.

The Hon'ble MR. EGERTON moved that the final report of the Select Committee on the Bill to regulate Irrigation, Navigation and Drainage in Northern India be taken into consideration.

The Council would recollect that, in 1871, an Act was passed for the regulation of Irrigation, Navigation and Drainage in the Panjáb. That Act contained certain provisions to which exception was taken by the Secretary of State regarding rates on land which was irrigable but not irrigated. It was partly because those sections were accepted by the Government of the Panjáb and objected to by other Governments in Northern India, that the Act was made applicable to the Panjáb only. When the Secretary of State desired that the Act should be re-considered and if possible made applicable to the whole of Northern India, a Bill was introduced by Sir John Strachey, omitting the clauses to which exception had been taken, and the Local Governments of the North-Western Provinces, the Central Provinces and Oudh were consulted regarding any clauses which they thought it advisable to insert in the Bill. It would be seen that the subject had been narrowed down a good deal by the discussions which had taken place before the Act of 1871 was passed, as the measure was originally proposed for the whole of Northern India; but, when passed, its operation was restricted to the Panjáb alone. The papers received upon the present Bill were again considered in Select Committee at Simla, and the report of the Committee was presented by Sir John Strachey in October last. The Committee recommended that the Bill, as amended, should be again published in the Gazette, and the opinions of the Local Governments again invited.

That had been done. The replies of the Local Governments had been received; the Committee here had considered those communications, and had embodied in the Bill the suggestions made, submitting their final report which was now before the Council. It would thus be seen that there had been three stages of discussion upon this measure. *First*, the stage which preceded the passing of Act XXX of 1871; then the discussion which preceded the report of the Select Committee at Simla on the Bill; and, *thirdly*, the discussions on the opinions of the Local Governments on the Bill as amended by the Select Committee, the result of which was embodied in the report now under consideration.

The alterations made since the Bill was prepared at Simla were very few. In section 8, modifications had been made in accordance with the suggestions of the North-Western Provinces Government, the effect of which was to admit claims for compensation on account of the stoppage or diminution of water-supply to or through works or channels constructed after the passing of the Act. These claims were excluded in the Bill as formerly amended, and that was a considerable concession to the persons who would have to be compensated.

The second alteration was of less importance. By section 35, the Divisional Canal Officer was empowered to decide questions as to liability to charge when water supplied through a water-course was suffered to run to waste, and in a later part of the Bill, section 48 had been altered so as to enable the Local Government to remunerate Collectors of canal-dues, or indemnify them against expenses incurred in the collection of those dues.

The Bill was now subtantially in accordance with the wishes of the Local Governments to whose administrations it would apply; and considering the length of time during which it had been under consideration, and how much discussion it had received, it was unnecessary for him to enter into any recital of the principles upon which it was framed. The Council had received notice of several amendments, but he would not allude to them until they had been proposed.

The Hon'ble MR. BAYLEY moved that, for section 8, clause (*a*), the following be substituted:—

"(*a*) stoppage or diminution of percolation, or of floods, except so far as such stoppage or diminution is provided for by clause (*c*) of this section."

He said the amendment, although apparently a mere verbal one, was of a really practical character, intended to make more clear the intention

of the Bill, and of some importance as making misconception impossible on a somewhat serious point. As the section (8) to which his amendment referred now stood, clause (*a*) declared that no compensation should be given for the stoppage or diminution of percolation or floods; but by the subsequent clause, (*e*), compensation was declared claimable for injury done to irrigation-channels. In the Panjáb there were several classes of irrigation-channels, and one very large class were termed "inundation-canals." They were canals, the head-works of which were cut in the river bank above the cold-weather level of the rivers. These canals were supplied only when the river swelled, either by the melting of the snow in the hot weather, or during the rains. As to the question of the supply of water to these canals during the rains, no works likely to be undertaken could possibly diminish the supply; but in regard to the supply to these canals which depended upon the rise of water in the river from the melting of the snow, the case was different. In some works which had been lately executed, the hot-weather supply to such canals was entirely cut off, and it was quite possible that that might be the case in other instances. These canals were more important than other irrigation-channels, because they supplied water in that part of the year when it was most valuable. It appeared to MR. BAYLEY that the intention of the Bill was, that the owners of these canals should not be excluded from compensation in cases where their supply was destroyed or diminished, and he understood the honourable mover to be of opinion that no misconception could arise because these channels were filled, not by floods, but by the normal rise of the river; but, as the Bill stood, it might be held that these canals were supplied by flood, for it was impossible to define exactly what was the normal rise of a river, and what was a flood, or to distinguish between what was an exceptional, and what a natural, rise of the river. In these cases the river had a broad, low-lying bed between high banks. In no case, he believed, did the rivers ever overtop the high banks, but covered more or less the broad bed between these banks, and within these limits the waters rose much more in some years than in others. It was to prevent all misconception, and any untoward decision declaring against claims for compensation for the stoppage of these irrigation-canals, which would have the effect of destroying very large works and very wide results of private enterprise, that he proposed the amendment. He understood that the hon'ble member in charge of the Bill, although not convinced that the amendment was necessary in order to make the meaning quite clear, was willing that it should be adopted.

The Hon'ble MR. EGERTON said, if this were understood, and allowed to pass, as a mere verbal amendment, and if it were taken as merely rendering more plain the meaning of section 8, that compensation for loss or diminution

of water-supply to inundation-channels was not excluded by the use of the word "flood" in clause (*a*), he should have no objection to the use of such words as would make that meaning clearer. But he did not assent to the amendment, because he thought it unnecessary, and because he thought that, according to the Bill as it stood, the meaning was sufficiently clear. The use of the word "flood" in clause (*a*), did not, to his understanding, exclude the question of loss or diminution of water-supply to any natural or artificial channel under clause (*c*), because an inundation-canal was supplied, not by floods, which he took to mean a general uncontrolled rise of a river in which the water overflowed its banks, but by the normal rise or fall of the river, which took place with regularity, and was under control, by being passed into the channels of inundation-canals through which water was generally supplied for irrigation. If every rise of the river was to be considered a flood, then he thought the proper meaning was not assigned to the word. He did not think any Collector or Divisional Canal Officer, authorized to grant compensation under this Act, would have any doubt as to what a person should be compensated for under clause (*c*); and as he thought the meaning was not doubtful, he must oppose the amendment.

His Honour THE LIEUTENANT GOVERNOR said, it seemed to him that, on the face of it, the amendment was verbal; and if there should be any doubt upon that point, then he should be inclined to accept the solution suggested by the Hon'ble Mr. Bayley, rather than that suggested by the hon'ble member in charge of the Bill. HIS HONOUR knew that, in the Panjáb, there were a number of inundation-channels of the kind which had been referred to, and which were supplied from the water of rivers and streams in times of flood. The benefits derived from those floods were very valuable, and he should think it extremely unjust and unfair that canals should be supplied with water from those sources, and that no compensation should be made for the stoppage or diminution of supply to those artificial channels.

The Hon'ble MR. HOBHOUSE had not the smallest objection to the Hon'ble Mr. Bayley's amendment in substance, because it seemed to him that it expressed that which the Bill as drawn already expressed. He understood that the hon'ble member was not afraid of the effect of the Bill as far as it related to percolation. But as far as it related to floods, he thought, although it was quite right to prevent compensation being given for those floods which, at uncertain intervals, overspread the country, and might do good or might do harm, yet there were other species of floods which filled the channels of rivers with regularity, and thereby

enabled the people to get water through artificial channels which they otherwise could not get at the dry times of the year. As the Bill stood, he thought that was the meaning of it. In the first place, MR. HOBHOUSE understood by the word "flood"—and probably all would understand by it—that which caused rivers to break from their natural or defined channels and to overspread the country; he did not think it meant merely an increase in the amount of water, which still flowed in its proper channel, but which only rose more or less so as to enable persons to take water which they could not get at other times of the year. If there was any doubt as to this being its meaning, the doubt would be solved by looking at clauses (*a*) and (*c*) together, and it would then at once be seen that they could not mean to say that every increase of water was a flood for which a man was not to receive compensation. Therefore, on the simple construction of the word "flood," the case appeared to be clear enough. But if there was any conflict between the two clauses, then the universal rule of construction in such cases would apply. If you had one set of general expressions ordering one thing, and then a set of particular expressions ordering a different thing, the particular expressions would prevail. Here, you say generally, that a man shall not claim compensation for stoppage of floods, and then provide another rule that he shall be compensated for stoppage or diminution through any natural channel. In such a case, the Judge would consider that the second of those provisions was an exception from the first, and that compensation should be given in all the cases there provided for. MR. HOBHOUSE therefore thought the amendment unnecessary. But he always felt that, when a gentleman of experience and acuteness, such as the Hon'ble Mr. Bayley, thought that language was obscure, it was advisable to make it clearer, if that could be done without undue inconvenience; but if making such an alteration was to delay the passing of the Bill, MR. HOBHOUSE thought that such delay was unnecessary. He feared there was little hope of passing the Bill to-day, because he saw a whole phalanx of amendments to be moved by His Honour the Lieutenant Governor. But he wished to explain what his view was as to the meaning of the Bill, as it stood, on the point under consideration.

The Hon'ble SIR RICHARD TEMPLE having had much the same experience of those canals as the Hon'ble Mr. Bayley, thought it right to add his testimony and to express his concurrence with what had fallen from the Hon'ble Mr. Hobhouse. He thought the Bill, as it stood, did provide means for compensation in the case alluded to by the Hon'ble Mr. Bayley. A man said that, by the execution of certain works, the supply of water was stopped from his artificial channels. Those channels were channels within the meaning of

the Bill, and therefore if the supply of water to the channel was stopped or diminished, compensation would be given. He thought the reply given by the Hon'ble Mr. Hobhouse was quite sufficient.

His Excellency THE PRESIDENT hoped that his hon'ble friend, after having heard the explanation given by his hon'ble friend, Mr. Hobhouse, would not press the amendment. When the Bill was under discussion at Simla, the Legislative Council took very great pains to weigh as carefully as they could all rights to compensation, and inserted a provision to meet some cases which appeared to have been omitted.

The Hon'ble MR. BAYLEY said, as he had explained in moving the amendment, he still thought that it would be very difficult for any one person to lay down any distinct rule as to what was an abnormal rise of a river, for, having some experience in the matter, he had seen a normal rise of water fill a river's bed to the extent of several miles. But in the face of what had been said by the hon'ble member in charge of the Legislative Department, and by His Excellency the President, he was not prepared to press the amendment, especially if it would have the effect of weakening the subsequent clauses of the same section, as His Excellency had suggested. He might, however, mention that the present form of his amendment was adopted on the suggestion of the Hon'ble Mr. Hobhouse: MR. BAYLEY himself would rather have wished to have put it in other terms, in which no reference to the other clauses of the section would have occurred. But he hoped, after the discussion which had taken place, and the expression of hon'ble members' opinions as to the intention of the Bill, that there would be no real danger of injury from a misconception of its meaning. And if, in any case, by any mistake of any officer of Government or Court of law, a decision should have the effect of depriving the owners of these canals of their right to compensation, the matter would, MR. BAYLEY trusted, after the opinions now stated, be at once set right on an appeal to the Executive Government.

The amendment was, by leave, withdrawn.

His Honour THE LIEUTENANT GOVERNOR would ask the permission of His Excellency the President to begin with the amendment which he proposed to move in section 35, as several of the other amendments of which he had given notice depended upon the amendment in section 35.

His Excellency THE PRESIDENT observed that it would be better to take the amendments in the order of the sections to which they related.

His Honour THE LIEUTENANT GOVERNOR said, the amendments which were numbered in the notice paper as Nos. 1, 2, 3 and 5 hung together, and were practically very nearly one amendment. Therefore, with His Lordship's permission, he would address himself to the whole of that part of the subject before going into the details of his first amendment. This Bill, HIS HONOUR had no doubt, was a very good Bill in the main, having been elaborated by so many able men. Of this Bill, referring as it did to certain provinces of Northern India, he, for his part, would not have complained, if the Bill had been passed by the Council at Simla. But as the Bill had not been so passed, and as it had been brought down for consideration by the Council at Calcutta, which was practically another and a very differently constituted Council, he might say, with reference to the arrangements for the consideration and passing of the Bill made by the honourable member in charge of the Legislative Department, that it did seem to HIS HONOUR to be a very short and sharp practice to give notice to honourable members on one day, and to ask the Council to pass it on the next day. Having given this subject of irrigation much consideration, he had felt himself in a somewhat difficult position, inasmuch as much labour in constructing and moulding the Bill had been gone through, and the Bill now came before the Council in this complete shape. Although this Bill did not apply to Bengal, the country the government of which he administered, HIS HONOUR felt himself in the position of the man who lived in the next house, and when one found that his neighbour's house was on fire, or that his neighbour was about to arrange for a supply of water, to take a more fitting simile, one looked to one's own house, because one's own turn might come next. Not only did HIS HONOUR live in the next house, but its rule in regard to this particular subject had given him much anxious care during the last two years.

In a former period of his service, he had had a great deal to do with canals, in the Northern countries affected by this Bill, and during the last two years he had a very great deal of anxiety on the subject of canals in Bengal. Therefore, taking the Bill in the main as a good Bill, he was anxious to draw the attention of the Council to one or two points which his experience enabled him to suppose might be capable of improvement in this Bill. The gist of the sections to which HIS HONOUR'S first amendments referred was, to make the Divisional Canal Officer the judge and jury in his own case. That had always struck HIS HONOUR as a mistake, which he had observed in different parts of India, and also in Bengal. It had at first sight seemed very strange that the Department of all Departments of the Government which was supposed to be most especially designed for the benefit of the people of the country,

was the most unpopular in its administration. Wherever canals were under construction, and certainly in the first years of their administration, if not always, it was found that the Canal Department was unpopular. If he was asked what was the reason of that unpopularity, he was obliged to come to the conclusion that the reason was that the Canal Officers had been too much made the judges in their own cases. They were no doubt a very zealous and energetic body of men, but their experience was generally limited to their department. They were departmental officers who looked to the interests of their own department. They were no doubt thoroughly convinced of the benefit of their canals, which, unfortunately, was not always the same view that the people took. They could not be brought to believe that, when the matter for decision concerned the canal, it was quite fair to decide it by the departmental officers. Therefore, the portion of the Bill to which HIS HONOUR very much objected, was that which sought to make the Canal Officer wholly and entirely judge in his own case. This was the case, not only in regard to revenue due under contract or agreement, or custom or rule, but also in regard to other cases. Notwithstanding that, under the order, and HIS HONOUR thought a very proper order, of a high authority, the compulsory portion of the Bill had been excised, still there remained a certain class of cases which were in their nature compulsory, to which the same rule of decision applied. It was in regard to those cases that, in HIS HONOUR'S opinion, having regard to their compulsory nature, Canal Officers ought more especially not to be judges in their own cases.

By sections 33 and 34 of the Bill, it was provided that persons who had not consented to take water from canals or who had not willingly taken the water; and, again, by section 45, persons who had not obtained water, whether willingly or unwillingly, were, nevertheless, charged a water-rate, if, in the opinion of a certain authority, they had benefited by the vicinity of the water. He even learned, from the speech of the hon'ble member in charge of the Bill, and he learned with some surprise, that a new importation had been made into the Bill at the very latest stage, namely, that, by section 35, the Divisional Canal Officer had been invested with final powers in the cases to which he had referred. As the Bill now stood, in any question which arose in regard to the accidental or occasional overflow of water, or benefit derived from percolation, in which case the rate for the use of such water was to be compulsory, the judge was to be—no impartial officer, but the Canal Officer himself, and there was to be no appeal from his decision. Hitherto, it was, he believed, the practice that the Canal Officer was invested with the powers of a Collector, and, as such, HIS HONOUR presumed an appeal would lie from his decision to the higher revenue authorities. Now, the Canal Officer was not to act as a Collector, but as a Canal Officer,

and no appeal would lie from his decision to the revenue authorities; and the only appeal that could be made, was an appeal to the Local Government. An appeal to the Local Government would be all very well if it was possible that the Local Government could deal with all these petty cases. His Honour said, as the result of practical experience, that, as to any matter of this kind, an appeal to the Local Government was a mere farce. The Local Government was overwhelmed with a multitude of business, and it was impossible that it could deal with every petty case of this kind. He had the most painful experience of such a state of things in the Province of Orissa; and he thought he should bring more prominently to the minds of hon'ble members the practical character of the objection he entertained to section 35. It might be that, in the dry season, the overflow of water into the lands of cultivators who had not asked for it might be a comparatively rare matter in Northern India, and might result in benefit to the cultivators. It was far otherwise when you came to deal with the rainy season irrigation. In consequence of the abundant water of the rains, overflows were constantly apt to occur, and sometimes the water could hardly be said to be beneficial on account of the damage that was liable to result from the overflow. That could hardly be avoided in Bengal. The Government of the day in the Public Works Department, however, told the Canal Officers who were judges in their own case, that, in cases in which, in any manner or by any means, the cultivators had enjoyed the benefit of the water, they were to levy the water-rate. The result of that state of things was this, that a very zealous Canal Officer found that water had escaped from a canal and had run all over the country, and he said that the cultivators had benefited from the overflow, and, accordingly assessed a heavy canal rate. The people, however, took an entirely different view of the case. They said—"We did not want the water; it was immediately followed by rain; it has done us no good at all, and the rate ought not to be assessed on us." The Canal Officer notwithstanding proceeded to assess the rate. He informed the Government that an enormous extent of land had been irrigated, and that a large revenue was expected. The Government never discovered the true state of things: it had not the least idea of the circumstances of the case. It was only when the Canal Officer proceeded to collect the rate that it was found he had gone too far, and that, in truth and in fact, the people had revolted against his proceedings: they refused to pay the rate and had not paid it. The result had been that the Government had not got the revenue they expected, and His Honour had no hesitation in saying that the progress of irrigation had been thrown back for years in Orissa on account of the injudicious proceedings of this unfortunately over-zealous Canal Officer. It seemed to His Honour, in conse-

quence of these disputed cases, that when the question arose whether a water-rate was justly leviable or not, the decision of the matter ought to rest with some impartial person and not with the Canal Officers. It seemed to him that the natural person to be invested with this power was the Collector, or Deputy Collector, or other officer in the Revenue Department, acting under the orders of the Local Government.

The Bill had been necessarily considered by HIS HONOUR in a very hurried manner; but he thought the amendments which he had placed before the Council would sufficiently explain to them the principle of the change which he wished to introduce, namely, that those disputed questions should be decided, not by the officers of the department interested in the matter without appeal, but by the revenue officer in charge of the district.

His Excellency THE PRESIDENT said that, after the general explanation which His Honour the Lieutenant Governor had given of his intention with respect to the amendments numbered 1, 2, 3 and 5, he thought it would be more convenient if the Council first considered the amendment in section 35, which raised the question as to the decision in the cases referred to resting in the Canal Officer without an appeal. He would therefore first put to the Council the amendment which was numbered 5, and the question therefore was that, for the words "Divisional Canal Officer" in that section, should be substituted the word "Collector."

The Hon'ble MR. INGLIS said that the questions that would arise under sections 33 and 34 related to the unauthorized use or waste of water supplied through a water-course, which was defined in section 3 to mean a channel supplied with water from a canal, but which was not maintained at the cost of Government. It was impossible, therefore, that charges such as His Honour said were made on account of water allowed to escape from the canals in Orissa, could be made under these sections. The income derived by Government from the canal from which the water-course was supplied would not be affected by the order given in any way; the only persons affected being, either the owners of the water-course, who were jointly responsible for keeping it in good order, and for preventing waste or misappropriation of the water, or some third party who had benefited by taking water improperly. In the decision of such questions, the Canal Officer was not likely to be biassed any more than the Collector would be, while he was in every way more competent to determine them, being on the spot and

able to come to a conclusion as to whether the water had been wasted or improperly used, from his own observation.

His Honour did not say whether he would confine the decision in these cases to the Collector of the District, or whether he would allow any subordinate officer vested under section 3 with all or any of the powers of a Collector to try them. There were many objections to making these cases over for decision to any Collector of lower rank than the Collector of the District; but if the Collector of the District was alone to have power to try them, it would be impossible for him to take them up on the spot. He would be compelled, either to have all the parties to the case brought before him, to their great inconvenience, or he would be obliged to make over the case to some subordinate for investigation and report.

He (MR. INGLIS) would let the section stand as it was, and would therefore vote against the amendment.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM observed that he had, from his own experience during the last twenty-five years, found, in rating land on his own estates and also in the districts bordering on the Godávari, that, if the Collectors had not the full powers which His Honour the Lieutenant Governor suggested should be given to them, the interests of the irrigation-works would be thrown into some difficulty. As the Collector was the officer who had the full revenue charge of the district, and had more experience than the officers of the Canal Department, HIS HIGHNESS thought it very advisable that the power of assessing the water-rate should be vested in the Collector, and not in the Divisional Canal Officer. The Canal Officers were no doubt excellent officers, and had always been most valuable in every respect as far as their own Department was concerned; but he believed that, if the Collector was vested with power in the important matters which had been alluded to, the object in view would be much facilitated.

The Hon'ble MR. EGERTON said, with reference to the proposed amendment in section 35, he would remark that, under the provisions of a subsequent section (76) of the Bill the Local Government was fully empowered to make rules for regulating the powers of Canal Officers in these cases, and the appeals that might be preferred from their orders. Many of the objections which had been urged in support of the amendment were taken away by the provision to which he had referred; and although the instances which His Honour the

Lieutenant Governor quoted might be very fitting in reference to the Province of Orissa, they did not apply with the same force to irrigation in the country in which this Act would apply. MR. EGERTON thought the provisions of section 76 sufficiently met the objections which had been taken to investing Canal Officers with the powers proposed to be given to them, and would prevent any such abuse of power or any such failure of justice as His Honour seemed to anticipate.

The Hon'ble MR. CHAPMAN said that, looking to the position of the Divisional Canal Officers, and to the nature of their duties, they were the proper persons to exercise jurisdiction under the Bill.

Major General the Hon'ble H. W. NORMAN agreed with His Honour the Lieutenant Governor that it would be preferable that the Collector of Revenue should be invested with the power of the deciding officer; but as he admitted the practical difficulty arising from the Collector being unable promptly to attend to all these cases, and as he concurred with the Hon'ble Mr. Chapman that these powers should not be vested in Revenue Officers of a lower grade, he could not support the amendment.

The Hon'ble MR. ELLIS could not leave unchallenged the sweeping remarks which had fallen from His Honour the Lieutenant Governor on the character of Canal Officers generally. According to His Honour, the Canal Officer was a very wolf in sheep's clothing, who went professing to do good to a district, but, at the same time, acted in a grasping and arbitrary manner and used all the means in his power to injure the cultivators. MR. ELLIS' experience was by no means the same as that of the Lieutenant Governor; for he had known many Canal Officers of high ability who had won the confidence of the people, and who had, in the discharge of their duties, enjoyed that confidence as fully as any of the Revenue Officers around them, and therefore, bearing in mind the many examples of that kind in his (MR. ELLIS') experience, he must beg leave to challenge the very sweeping accusation which His Honour had made against that class of officers. He believed that, very often, accusations against Canal Officers proceeded from subordinate Native officials, whose vested right of being the sole medium of communication with the people was interfered with.

On the point—probably the main point—of the amendment before the Council, which was that Canal Officers ought not to be the judges in their

own cases, MR. ELLIS was equally at issue with His Honour. As to matters in which the Canal Officers must be, by the nature of things, the best judges, you must give them some amount of discretion; and when you appointed men of undoubted position and character, you must have some belief in their endeavours to do their duty to the people. If you divested them of the powers which this Bill proposed to give them, and vested those powers in the District Executive Officers, you would do no good, but rather an injury to those whom it was desired to benefit: for the effect would be to impose on the Collector the determination of a mass of petty details, with which no one man in that position could deal. MR. ELLIS agreed with the Hon'ble Mr. Inglis that, if you burdened the Collectors with details to the consideration of which they had not time to give, you would defeat your own object, and cause injury and not benefit to the people. At the same time, as no mortal was infallible, MR. ELLIS thought it was very advisable to have some amendment in the direction which His Honour desired, without incurring the difficulties and mischief which the adoption of the present amendment would cause. With His Excellency's permission, MR. ELLIS would propose, at a future stage, to insert a section for the purpose of securing a revision of the Divisional Canal Officer's orders by the Collector. The amendment would make the Divisional Canal Officer the deciding authority, with a power of appeal to, or revision by, the Collector. He was quite aware, as the Hon'ble Mr. Egerton had pointed out, that the Local Government had the power to make rules, which might provide that the Divisional Canal officer's decision should be open to appeal; but he thought it would be better, in a matter of such importance, that the Bill should provide specifically that the decision of the Divisional Canal Officer should be subject to revision by the Collector, and that the Collector's decision should be final, unless the Local Government otherwise directed. MR. ELLIS had not had time to consult the hon'ble member in charge of the Bill; but he did not think that any objection would be taken to such a provision. Meanwhile, he must oppose the amendment before the Council.

The Hon'ble MR. HOBHOUSE must also challenge the observations of His Honour the Lieutenant Governor in one little matter, because he said that there had been "sharp practice" in bringing on this Bill without sufficient notice. He knew that His Honour did not really mean to say there had been sharp practice on anybody's part. At all events there was none on his (MR. HOBHOUSE's) part, because he had nothing to do with the pressing on of this Bill. He had had no more to do with it than His Honour himself. The reason for pressing on the Bill was in order to consult the convenience of the hon'ble

member in charge of the Bill. It was very desirable to settle all its details while the hon'ble member was here, because he had had the management of it in the Council, and he represented the interests of the Government of the Panjáb. The hon'ble member had attended here at very grant inconvenience to himself; he was desirous of going back to his work in the Panjáb, and MR. HOBHOUSE thought it quite right to strain a point to consult his convenience. Moreover, the Bill before them had been published by the Council at Simla, and, in the respect under consideration, was based on the same principle as the Act already passed in 1871.

As to the amendment before the Council, MR. HOBHOUSE thought that, in dealing with it, the Council ought to look to the fact that they had not got before them a Bill containing purely original matter. They were dealing with an Act in the Statute-book, of which the Secretary of State objected to one set of clauses embodying one principle, and by means of his power of vetoing the Act, ordered the Government here to introduce a new Bill. His Honour said that one particular clause to which he objected, namely, clause 35, was introduced at the last moment. That statement, however, was only partially correct. The clause was in the Act; only it did not apply to such a number of cases as it did now. If any one would look at Act XXX of 1871, that section 33 provided for enforcement of liabilities in case an unauthorized use was made of water, and section 34 provided for liabilities in case water was wasted. The liabilities under section 33 were to be adjusted by the Canal Officer, but there was no provision for adjusting those under section 34. The two sections obviously fell under one and the same principle. All that the recent alteration had done was, to recognize this identity of principle; to shift the place of the clause giving jurisdiction to the Canal Officer, and to make it apply to both clauses of cases instead of only one. Therefore, the Act of 1871, and this Bill in its prior stages, were just as objectionable, and just as open in principle to His Honour's amendment, as the Bill was in its present stage.

With regard to the merits of the amendment, it seemed to MR. HOBHOUSE that gentlemen of local experience were the best judges in such cases, and anybody who read this Bill would see that Canal Officers had a number of duties thrown upon them which would make them very much better acquainted with all the facts of the case than anybody else could possibly be; and he thought the Hon'ble Messrs. Inglis and Egerton had exercised a right judgment in saying that the Canal Officer was the person who should be the judge in these cases. But whether he should be the sole or final judge was a

different question: on that point the Hon'ble Mr. Ellis had informed the Council that he would introduce some amendment. MR. HOBHOUSE had no doubt that, under the provisions of section 76 of the Bill, there would be some sort of appeal provided; and if the Council looked at section 45, by which a similar arbitrary power, also objected to, was given, there would be found a distinct reference to the rules to be framed under section 76, under which the Local Government would provide that there should be some check over the orders of the Divisional Canal Officer. That appeared to him the best way of providing for the object in view, and he would therefore oppose the amendment.

His Excellency THE PRESIDENT thought the principle of the amendment met with the general concurrence of the Council; that was to say, that the decisions of Canal Officers should not be final and conclusive in such cases as those dealt with under these sections. On the other hand, the objection raised to the amendment, that it would be unwise to place the decision of such cases, in the first instance, in the hands of the Revenue Officers required careful consideration. HIS EXCELLENCY was sure His Honour the Lieutenant Governor never intended to throw any slur upon the general integrity and capacity of the Canal Officers, but merely suggested what might happen in certain cases. If His Honour took that view, it would be easy to let the decision rest in the Canal Officer, and to add that an appeal should lie from such decision to the head Revenue Officer of the district, or other officer appointed to hear such appeals under section 76.

His Honour THE LIEUTENANT GOVERNOR wished to put himself right with regard to the expression "sharp practice," to which the hon'ble member in charge of the Legislative Department so much objected. HIS HONOUR was afraid that he was not understood. He began by calling it "short" practice, and falling into the temptation to alliteration, he had called it short and sharp; but he did not mean to use the term in any offensive sense, but merely to indicate the shortness of the notice given. The list of business to be brought before the Council that they did not reach him until Sunday; the only day that intervened was Monday, and he thought he was justified therefore in saying that the notice was short. He should not have noticed the matter at all if it had not been that the hon'ble member, in speaking on the Hon'ble Mr. Bayley's

amendment, said that, if the amendment were carried, it would cause a delay in the passing of the Bill. His Honour thought he might adopt that suggestion, and say that, although he should be sorry to detain the hon'ble member in charge of the Bill, his impression was that, if the Council should be inclined to accept his amendment, it would be necessary that the passing of the Bill should be deferred. He had not had time to put the amendment in a complete and technical shape: he had used the word "Collector" to express a principle. He quite accepted the suggestion that the Collector should be, not the judge of first instance, but the judge of ultimate resort. His Honour's impression was that such a re-construction of the Bill would involve some technical consideration and delay, and that it would not be possible to relieve the Hon'ble Mr. Egerton as soon as he desired.

[His Excellency the President observed that there was a standing rule that a Bill should not be passed on the same day that it had undergone amendment. There would, therefore, be full opportunity for considering the effect of the amendment on the Bill as a whole.]

His Honour the Lieutenant-Governor continued—He hoped the Council would take this matter into consideration, and if it was necessary that the passing of the Bill should be delayed, it would not be necessary for him to say more than to set himself right on one or two points. As respects Canal Officers, he most heartily concurred with the Hon'ble Mr. Ellis that they were, as a rule, a most excellent set of men, and that their aim was to benefit the country. He entirely agreed that there were to be found amongst them men who were as respected by the people as the officers of any class or Department could be. But, on the other hand, he did feel that the Irrigation Department was, in some respects, a peculiar Department. It was the latest-born enthusiasm of the day. The principle laid down by the Government was that irrigation-works were to be undertaken in such a way that they must be made remunerative; the officers of the Department had committed themselves to carry out that principle and to shew that those works would be remunerative, and it was in striving to carry out that principle that they might allow their zeal to override their discretion. It was on that account His Honour thought that they were apt to be so very enthusiastic in their endeavours, that they might not always be the best judges in their own cases. It was in that sense that he wished for an appeal to a more impartial officer. The Hon'ble Mr. Inglis was not quite correct when he said that the decision of the Canal Officers would be a decision between third parties.

The questions which would come before them would be questions for decision between the Canal Department and the people.

Then, with regard to the question of the insertion, at the very latest stage of the Bill, of a clause giving enlarged powers to these Canal Officers, it seemed to HIS HONOUR that the addition made to the Bill was exactly an addition of that sort to which he especially objected. It was a provision which involved a decision upon questions at issue between the Department and the people. It was precisely one of the classes of cases which he thought Canal Officers should not be allowed to decide without appeal. He thought the real answer to his amendment was that suggested by the hon'ble member in charge of the Bill, that the Bill enabled the Local Government to frame rules with the object of putting a control over the proceedings of the Canal Officers. No doubt it was in the power of the Local Government to frame rules for that purpose, and HIS HONOUR'S object in moving the amendment was, to strengthen the hands of the Local Government in that respect. The Canal Department, as every one knew, was a very strong Department, and great pressure was put upon the Government by that Department. In regard to the canals in the Province of Orissa, the Local Government had the power all this time to frame rules of the nature alluded to; but the fact was that the power had not been exercised, and the Canal Officers had been allowed to be the judges in their own cases. It was the same in the North-Western Provinces and in the Panjáb, where also, although the Local Government had that power, it had not been exercised. If it were proposed to place a control over the proceedings of the Canal Officers, they would say "how can we collect our revenue if these checks are put upon our proceedings?" and all sorts of other objections would be raised. Therefore, it was very much to strengthen the hands of the Local Governments that HIS HONOUR proposed to put a provision in the Bill to the effect that some superior Revenue Officer should be appointed to control the proceedings of the officers of the Canal Department.

The amendment was, by leave, withdrawn.

The Hon'ble SIR RICHARD TEMPLE said, after all that had passed, it appeared to him that the views of the Council would be met by the following amendment, which he would beg leave to move:—

"That, in section 35, the words at the end, 'and his decision shall be final unless the Local Government otherwise directs,' be omitted, and that the words 'subject to an appeal to the

head Revenue Officer of the district, or such other appeal as might be provided under the provisions of section 76' be substituted for them."

The Hon'ble MR. ELLIS observed that, in the amendment proposed, the word "appeal" did not quite meet the case of a Collector desiring to revise the proceedings of the Divisional Canal Officer without an appeal. The Collector might go into his district and find that injustice had been committed, and the people might not be aware that there was an appeal from the decision of the Divisional Canal Officer. MR. ELLIS also thought that the amendment should be so framed as to give an appeal to the Collector absolutely, and not in a form which left, as an alternative, an appeal which might not be sufficient. If, for instance, under the rules framed in accordance with section 76, it should be decided that the appeal should lie to the Inspector-General of Irrigation, and not to a Revenue Officer, His Honour the Lieutenant Governor would be much shocked; because, in that case, the appeal to the Collector would be superseded, and the appeal would lie to an officer of Irrigation.

The Hon'ble MR. HOBHOUSE said, it seemed to him that, under the words proposed, the Local Government might institute any system of appeals it thought proper: he thought the matter had better be left to the discretion of the Local Government.

His Excellency THE PRESIDENT observed that the Local Government could only exercise the powers given under section 76 with the previous sanction of the Governor General in Council.

His Honour THE LIEUTENANT GOVERNOR would support the suggestion that a power of revision should be included, and he would suggest that, instead of leaving a discretion to the Local Government, there should be inserted the words "or other revenue authority."

The Hon'ble SIR RICHARD TEMPLE'S amendment was put and agreed to.

His Honour THE LIEUTENANT GOVERNOR moved—

"That the third paragraph of section 33, beginning with the words 'or if such' and ending with the words 'such water-course,' be omitted."

He was not able to understand the object of this clause in section 33, while section 34 stood in the Bill. Section 34 appeared to provide all that could be desired in regard to water running to waste. The greater was said to contain the less, and therefore section 34 seemed to him to cover every case of water running to waste. Section 34 would seem to be a very simple section,

and it seemed to His Honour a very reasonable provision, if there be proper tribunals to decide such cases. If water supplied by means of canals was used in an unauthorized manner, or unlawfully suffered to flow on land, and the person through whose act or default such unauthorized use or such waste occurred could not be discovered, then the procedure would be applicable to such lands as benefited therefrom. He did not see the object of the third clause of section 33: it appeared to him that the whole question was raised by section 34.

The Hon'ble Mr. Egerton observed that section 33 applied to the unauthorized use of water, and section 34 to waste, and the principle on which both those sections were framed was this, that the persons taking the water were bound to keep the outlets in such order that the water should not be wasted. The places in which water could do damage were, in that part of the country with which he was best acquainted, comparatively rare. Water was like money there; it was highly valued, and the presumption was that, where a water-course was cut, the land on which the water flowed would be benefited. It was possible that the land might not be benefited, and then the persons who were damaged were the public generally, as the supply of water for irrigation was lessened. Therefore, the principle was this, that where the persons taking water from a water-course suffered an unauthorized person to use it, they were jointly liable for the water which might be used in an unauthorized manner; or if it was suffered to run waste, they should be held responsible, unless the person who used the water unauthorizedly, or the person who committed the damage, could be identified. Mr. Egerton thought that, generally speaking, that was a right principle in respect of certain parts of the country where it would mainly apply. Where, as in Orissa, water did damage when allowed to flow out of its course, and where, consequently, it should be kept within its proper bounds, it might, perhaps, be necessary to alter the provisions of this section. But as this Act would not apply to that part of the country, and as the water was always valuable in the parts of the country where it would apply, he thought the section had been properly drawn.

The Hon'ble Mr. Bayley wished to point out, with reference to what His Honour the Lieutenant Governor observed about a canal bursting its banks, that the provision only applied to canals kept up at the expense of persons other than the Government. He would take that opportunity of saying that he believed that, in the particular case to which His Honour had referred, the officer who was so absurdly over-zealous, was not what was strictly called a Canal Officer, that was to say, he was not one of the officers responsible for the construction or maintenance of the canal, but a civil officer specially deputed to

the Canal Department who, *Hibernis ipsis Hibernior*, became more zealous even than the Canal Officers themselves, and, consequently, the Lieutenant Governor had most properly exercised, in this case, his power of removal.

The Hon'ble MR. ELLIS said the only point which occurred to him was this—if the water which overflowed its course would necessarily benefit the land on which it flowed, he could hardly see how the case could arise in which it would be requisite to provide for water spreading over the land without conferring benefit. If no benefit had accrued to the land, His Honour the Lieutenant Governor said that it was not fair to make a charge for the water; but, on the other hand, the contention of the hon'ble member in charge of the Bill was, that no water could flow on land without conferring benefit.

His Excellency THE PRESIDENT said, perhaps the hon'ble member in charge of the Bill would explain how far it was possible that water could escape from its proper course without producing benefit.

The Hon'ble MR. EGERTON explained that water might flow on land not under cultivation; in such a case the people would be deprived of the use of water the benefit of which they would have enjoyed. The supply of water being limited, and the amount of land pratically unlimited, if water was used unauthorizedly, or allowed to flow on land which could not be benefited by the water—such, for instance, as land impregnated with salt—then the persons who would have been benefited by the use of that water were deprived of the benefit of that water; therefore, the person through whose water-course water was allowed to flow should be held responsible, if the person who let the water escape could not be discovered.

The Hon'ble MR. HOBHOUSE said, His Honour the Lieutenant Governor was of opinion that the existence of section 34 was a reason why this clause in section 33 was unnecessary. The two clauses, however, related to two wholly different classes of acts. Section 34 related only to cases in which water was suffered to *run to waste*. Section 33 contemplated a different class of events, where a person was designedly taking water by a wrongful act. He did not see how section 34 could be supposed to cover the acts mentioned in section 33. If you said it was not right to charge a person who had not benefited because some one else had committed a wrongful act, that was an objection which raised the question of joint liability, a principle which was carried throughout this Bill; and he believed the principle of joint liability was always insisted on land-revenue cases, and those cases, one of which they had before them, which were assimilated to land-revenue cases. The principle he understood to be this: that Indian communities knew so much of one another's actions, had so much

interest in, and control over, one another, were so bound up together for weal or for woe, that it was both just and expedient to make the whole answerable for the acts of each. If that principle applied in other cases mentioned in the Bill, it was clear that it applied equally in the cases falling under section 33. If the clause under consideration were struck out, you would establish a different principle.

The Hon'ble SIR RICHARD TEMPLE said, with reference to the Hon'ble Mr. Ellis' remark, he would observe that the case for which it was supposed no provision was necessary was one which, unfortunately, happened to a large extent. Many cubic yards of valuable canal-water went weekly, almost daily, to land which did not enjoy any benefit from it. He submitted that the clause under consideration was perfectly just. The point appeared to him to be this. He did not know whether His Honour the Lieutenant Governor bore in mind that this provision applied to private water-courses. Bearing that in mind, how did the case stand? There were certain gentlemen in possession of a water-course. From that water-course a theft was committed. The water had been furtively and designedly taken, to the damage, not only of themselves, but of the community at large. They were bound, and were able, to prevent the theft; they had not done so, and mischief had accrued. They were the persons who were bound to point out the person who had committed the theft, or who had benefited from it. If they could prove either of those things, their responsibility was absolved: if they could not do so, *they* must be held responsible for the person in default. It was on that principle that this provision was drawn; and SIR RICHARD TEMPLE submitted that it was perfectly just.

His Honour THE LIEUTENANT GOVERNOR observed that his observations in reply would be short, for he was of opinion that, as far as his amendment was concerned, it was really only a matter of drafting. He did not in the least object to the principle of joint responsibility. He had to some extent already admitted that; but he did not understand how a distinction could be drawn between water which flowed on land so as to benefit no one, and water that ran to waste. If the hon'ble member in charge of the Legislative Department thought that there was a difference between the two clauses, HIS HONOUR had nothing farther to urge in the matter.

The motion was, by leave, withdrawn.

His Honour THE LIEUTENANT GOVERNOR said, to his next amendment he did attach some importance. The amendment was—

That, at the end of section 34, be added the words "if it appear that they are equitably chargeable with the same."

HIS HONOUR'S only objection to the section was, that it seemed to lay down the rule that, whether the parties were guilty or not, they were to be charged for water which went to waste. He therefore proposed to add the words "if they are equitably chargeable."

The Hon'ble MR. EGERTON did not understand the meaning of the word "equitably" in the amendment. The principle asserted in this section was, that the persons through whose water-course water was suffered to run to waste should be held to be liable for such waste if they could not prove that they were not liable. That was the only way in which the great ramifications of water-courses in the irrigated districts could be kept in order. The burden of proof must be thrown on the persons who benefited by the overflow of water from these water-courses. If in every case they were assumed to be innocent, and if it must be proved who was responsible for the waste of water, then every water-course in the country would be kept up in a slovenly manner, and the waste of water would be very great. Water, then, would be wasted, and the full benefit of it would not be enjoyed by those who required it. He thought it was not desirable to introduce the words proposed, as they would lead to uncertainty and differences of practice in regard to the provision regarding water-courses which were private channels of irrigation.

The Hon'ble MR. HOBHOUSE thought the words proposed to be introduced would strike at the root of the principle of joint liability. He did not know for certain what construction would be put on the word "equitably" in the amendment. But he imagined that, finding the principle of joint liability affirmed without qualification in various parts of the Bill, and finding that principle affirmed with qualification in this section, no Judge would say that the pure principle of joint liability applied in the cases under this clause. It would be impossible to say what equitable limit would be put upon this section by a Judge deciding according to English law. He confessed that he understood the principle of joint liability in the case of land-revenue so little, that he could not be considered an authority on that point; but, as at present advised, he thought it would be a dangerous qualification to put in the words proposed. In other respects, he felt that some of His Honour's strictures on this section seemed to be well founded. He thought the Secretary might revise these sections, not for the purpose of importing the principle of equitable liability, but with the object of improving the draft.

The Hon'ble SIR RICHARD TEMPLE quite agreed with the hon'ble member in charge of the Legislative Department, not only that it was very important that nothing should be done to strike at the principle of joint

responsibility in cases of land-revenue, but that, in these cases, there was another joint responsibility, namely, that of a certain number of Native gentlemen in the position of proprietors of water-courses. That was a responsibility independent of the responsibility which applied to the canals of the Irrigation Department. They were, in those particular cases, necessarily liable. The water-course ran through their fields, and they must be responsible for its preservation and good order. Therefore, in these cases, they would be jointly responsible in whatever part of the country they were. Independently of that consideration, when the question was as to the responsibility of the proprietors of land-tenures in the North-Western Provinces, it was perfectly necessary that their joint responsibility should be practically maintained for the preservation of these particular works.

His Honour THE LIEUTENANT GOVERNOR said, with His Excellency's permission, he would alter the wording of his amendment, and substitute, for the words proposed, the following:—

"unless it appear that they are not equitably liable for the same."

The Hon'ble MR. EGERTON remarked that it was perfectly competent for a man to prove that he was not liable, and there was nothing to prevent his contention being entertained.

The Hon'ble MR. HOBHOUSE observed that the alteration of the wording would shift the *onus probandi*. It would lay the proof on the man on whom the liability was charged, instead of on the Judge. But the question for decision would be still the same. We knew what joint liability was; but we did not know what was meant by the word "equitably."

His Excellency THE PRESIDENT understood, generally, that those proprietors of land, or occupiers, who undertook jointly to construct a water-course, were equitably liable, jointly, for the maintenance of that water-course. Therefore, if we put in words which declared that that joint liability did not obtain, we should be raising a great difficulty: he thought that the amendment raised the question whether these persons were equitably liable for the maintenance of that water-course.

His Honour THE LIEUTENANT GOVERNOR said, his amendment did not refer to liability, joint or separate. The question was whether or not the persons charged were liable. Suppose a storm burst the banks of a water-course, who was to be held responsible in such a case? It seemed to him that section 34 laid down a hard and fast rule, that the persons over whose land water overflowed should be liable. He was quite willing to concede that, in a country where, as remarked

by the hon'ble member in charge of the Bill, every drop of water was worth its weight in gold, the *onus probandi* in such cases should be thrown on the persons charged; but that should not be held to prevent the principle of equitable exemption.

The Hon'ble MR. HOBHOUSE pointed out that, under this section, there was to be no charge for waste, unless it was a waste that happened from the act or neglect of some person.

The amendment was, by leave, withdrawn.

His HONOUR THE LIEUTENANT GOVERNOR said, the next amendment, that sections 38 to 44 be omitted, he had put on the paper more with the view of obtaining information than with any very definite views of his own. The truth was that he had read over sections 37 to 44 of the Bill with great care and attention two or three times, and the conclusion to which he came was, that no person of his humble understanding could understand them. He should therefore like to have it cleared up to him what was the real object and intention of those sections. He could not quite understand why, when the assessment on land had been permanently settled, or had been settled for a term of years, on the introduction of irrigation, a reduction of revenue should be made. It was a distinct and clear principle that, when the value of land was enhanced by improvements effected otherwise than by the owner, an assessment should be made on the increased value of the land, and if that principle was laid down by these clauses, he should not contest them. But he should like to have it made very clear what would be the effect of that principle upon lands permanently settled. That was a point of some importance as respects this Bill, and of enormous importance if you went beyond the limits of this Bill. He understood the meaning of section 37 to be this. In addition to the occupier's rate, there was to be an owner's rate in canal-irrigated lands in respect of the benefit which the owners derived from irrigation. If HIS HONOUR was to understand that that section proposed one simple unqualified principle, whether the land was temporarily or permanently settled, then the owner's rate might be imposed on all land deriving benefit from canal-irrigation. He would ask whether that was the correct interpretation of section 37. Then, when he came to sections 38 to 44, which, as he had said before, he had not been able to understand, he would like the hon'ble member in charge of the Bill to explain whether it was contemplated that, in addition to the occupier's rate on land, an extra rate should be charged in reality, or as a mere matter of account between the Canal Department and the Land Revenue Department. If it was a mere matter of account, HIS HONOUR thought it necessary that there should be a modification

of the wording. We could not estimate the indirect benefit derived from irrigation; he thought we should leave it alone, and there should not be an attempt, as a mere matter of account, to impose a distribution between the owner and occupier. You might either assess the owner or leave him alone; but it appeared to HIS HONOUR a difficult thing to say that, as between owner and occupier, there should be a certain division of the rate.

The Hon'ble MR. INGLIS said:—"His Honour the Lieutenant Governor says that his object in proposing this amendment is to obtain some information of the reasons on which this proposal to charge an owner's rate in addition to the occupier's rate is based.

"The occupier's rate is paid by the cultivator, and is a fixed charge at so much per acre watered, except for sugar, garden-crops, &c., for which a special rate is charged. If canal-water is given to land previously unirrigated, the landlord at once raises the rent paid by the tenant to the rate paid in the neighbourhood for irrigated land of the same quality. The object of the owner's rate is to enable Government to get the share of this increased rental to which it is clearly entitled; the increase in the annual value of the land being due solely to the canal constructed at the cost of Government, and not to any expenditure incurred by the landlord.

"If the levy of an owner's rate is disallowed, Government must either give up its share of this increased rental, and leave the whole to the owner, or it must attempt to intercept some of it by charging a higher occupier's rate on land previously unirrigated, than that charged on land already irrigated.

"There are many objections to this course; one being the opportunities for extortion that would be given to the Native subordinate canal official, were varying rates for water charged, not only in neighbouring villages, but also in parts of the same village.

"The question is, without doubt, a difficult one. The levy of an owner's rate was recommended by Sir William Muir in a Note on the permanent settlement of the North-West Provinces, recorded in 1865, and has, I believe, been since accepted as the best solution of the difficulty by all who have considered the subject; every one being agreed that the arguments against a differential occupier's rate are unanswerable.

"By the levy of this owner's rate, Government, while charging a fixed price per acre for its canal-water to the occupier, will, when the rent of any land is increased in consequence of the extension of canal-irrigation to it at the cost of

Government, obtain its fair share of this increased rental; while, in those cases where no increase in the rent previously paid is caused, no extra charge will be made on the owner."

The Hon'ble MR. EGERTON concurred in all that had fallen from the Hon'ble Mr. Inglis. He did not think it necessary to enlarge on any point in connection with the principles embodied in this Bill, as he considered they had already been fully discussed during the many years in which the Act of 1871 was under discussion. The question how the land-revenue or the rent of lands which were newly brought under irrigation were to be dealt with had been fully discussed in the papers which were circulated when the Act of 1871 was under discussion. In the Panjáb, the question would apply only to lands temporarily settled. It had been the practice, formerly, when assessing land to the land-revenue, to apply what were called irrigated-rates to the area irrigated at the time of settlement. In cases of land irrigated by canals, where such irrigation-rates applied, although at the time of the settlement the assessment was fair, yet, during the changes which took place after the settlement, the distribution of the irrigation-revenue did not continue to be so fair as it was in the beginning, when the Settlement Officer carried on his operations. Suppose a certain area in an estate was irrigated at the time of the settlement, it did not follow that that area would always remain under irrigation, or that only that quantity of land would remain under cultivation. The area under cultivation might increase; other lands might be brought under cultivation, and the land which was irrigated at the time of settlement might cease to receive water. Under the method provided in the Bill, each acre irrigated would be charged, each season, with the full amount due for irrigation, and the assessment would be distributed more fairly than was otherwise possible.

His Honour THE LIEUTENANT GOVERNOR did not understand what would happen if the parties did not agree as to the need of irrigation. Was the landlord to be allowed to object to the introduction of irrigation on his lands?

The Hon'ble MR. EGERTON observed that this Bill did not provide for the adjustment of disputes between the landlord and his tenants.

The Hon'ble MR. BAYLEY observed that, as the owner of the land was allowed a reduction in the revenue equal to the amount of the irrigation-rate, he was not likely to object to the tenants using the water.

The amendment was, by leave, withdrawn.

His Excellency THE PRESIDENT observed that, as the principle of the amendment to section 35 had been agreed to, the same course might be followed as regards His Honour's amendment to section 45.

The motion was put and agreed to.

His Honour THE LIEUTENANT GOVERNOR then moved that, in section 46, for the words "Divisional Canal Officer" be substituted the word "Collector." The principle of this amendment was the same as that which had been discussed in reference to section 35. The question whether the revenue was due or not due was to be decided by the Canal Officer. As the clause stood, it enacted that—

"Any sum certified by the Divisional Canal Officer to be lawfully due under this Act, which remains unpaid after the day on which the same becomes due, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land-revenue."

As HIS HONOUR understood it, by this clause no discretion was allowed to the Collector. The Collector was bound to recover the sum certified to be due by the Canal Officer. HIS HONOUR hoped that the principle which the Council had been good enough to accept in respect to section 35, would also be accepted in regard to the section under consideration.

The Hon'ble MR. EGERTON thought that the adoption of the amendment before the Council would lead to a great deal of unnecessary complication, and would burden the Collector with a mass of details. The Canal Officer was as much responsible to the Government as the Collector. He was bound down by rules, and it was not to be supposed that he would wantonly and recklessly impose rates upon persons from whom they were not due. MR. EGERTON thought that the Divisional Canal Officer was responsible for the proper working of the law under which the revenue due from water was recovered; and he thought it quite unnecessary to make the Canal Officer's decision appealable to the Collector. The Local Government had the power to make rules for the proper working of the law, and as the circumstances of different parts of the country varied, it would be more advisable to leave the proceedings of the Canal Officers to be regulated by the rules to be prescribed by the Local Government, and not to make their proceedings *in such matters* subject to the control of the Collector.

His Honour THE LIEUTENANT GOVERNOR thought that the amendment in section 46 necessarily followed the amendment which had been adopted in section 35. If the Collector was to decide whether the money was due or not,

the Canal Officer ought not to have the power of certifying finally that a certain sum of money was due.

The Hon'ble MR. ELLIS thought the object of the clause as it stood was that the Collector should be compelled to take the certificate of the Canal Officer as conclusive proof that a certain sum of money was due, and that no rules that the Government could make would set aside the declaration in the Act that the decision of the Canal Officer was to be final. Therefore, he should propose, at the next meeting of the Council, an amendment which he thought would meet the objection taken to this section, and which would not have the injurious effect which the hon'ble member in charge of the Bill apprehended, namely, to leave out the words "any sum certified by the Divisional Canal Officer to be lawfully due under this Act," and to insert instead "any sum lawfully due," leaving the fact of its being due to be decided in the same way as other Revenue demands.

This would not necessitate every petty matter of assessment coming before the Collector. MR. ELLIS thought the addition of some such words would leave it to the Local Government to say how far the Canal Officer was to assess the rate, and would not prevent an appeal to the decision of the Collector in such cases.

The Hon'ble MR. HOBHOUSE did not think the Local Government could make rules in these cases; but, at the same time, he felt with His Honour the Lieutenant Governor that, as the Council had assented to the amendment in section 35, it would be inconsistent not to import the same principle in section 46.

His Excellency THE PRESIDENT thought the precise wording of the amendment should stand over for consideration, it being understood that some words would be introduced to prevent the clause being interpreted to mean, that the simple certificate of the Canal Officer is final in respect to the legality of the charge. As to the precise words, it would possibly not be desirable to insert them now. The Canal Officer should be responsible for fixing the amount of the rates, therefore you could not take away that responsibility from him.

The amendment was, by leave, withdrawn.

His Honour THE LIEUTENANT GOVERNOR moved that section 66 be amended in the same way as section 35. He said that this amendment was an amendment of a different kind, and on a different matter. It was on the question of forced labour. He did not say that the power of obtaining compulsory labour should not be exercised on extreme necessity; but it seemed to him

that it was a power which should be exercised with great care, and he would not leave the decision of the question whether it was necessary to enforce compulsory labour to the Canal Officer, unchecked and uncontrolled. His Honour would therefore purpose to impose a similar check in such cases as in the collection of revenue. He thought that this power should be subject to control by the Collector.

The Hon'ble Mr. Inglis said that, if the power to impress labour was given to any one, the Canal Officer, and not the Collector, was clearly the person who should exercise it. He would be on the spot, and could judge for himself of the exigency of the case. If the Lieutenant Governor's amendment was carried, he would have to write off to the Collector who might be fifty miles away. The Collector, on receiving the Canal Officer's report, must either at once sanction the impressment of labour asked for, or take upon himself all the responsibilities involved in a refusal; or he might go to the place himself. Long before his reply could reach the Canal Officer, or before he could get to the spot, the damage sought to be prevented would probably have been done. The power given in these sections was intended to be exercised in cases of emergency only, and must be entrusted to the officer who was in a position to judge for himself of the necessity, and this was, Mr. Inglis had no hesitation in saying, the Canal Officer, and not the Collector.

The Hon'ble Mr. Egerton said the power to be exercised under section 66 was quite exceptional, and as the list of persons who were to suply labourers in such cases was entirely prepared by the Collector beforehand, and as only those persons who were named in such list could be called upon to supply labourers, Mr. Egerton thought there was no need of any further reference to the Collector on this question.

The Hon'ble Mr. Bullen Smith observed that he could see the force of the objection stated by the Hon'ble Mr. Inglis, that in these cases the emergency was great, and there was no time to collect labourers in the ordinary way. But if it were possible to apply the check which His Honour the Lieutenant Governor proposed to the second class of works mentioned in the section, namely, the clearance of silt, Mr. Bullen Smith thought that, in those cases, a discretion should not be left to the Canal Officer to say that the clearance must be effected on a certain day.

The Hon'ble Mr. Chapman thought the Committee had fenced in the power as much as they could, bearing in mind that the section only contemplated cases of emergency.

The Hon'ble MR. BAYLEY thought it very necessary, in the cases contemplated by this section, that the labourers should be collected at once. In some cases, as, for example, the sudden rush of a hill stream into the bed of a canal, the possibility of averting mischief was a question of an hour or two. Even with regard to the clearing of silt, he would explain that the time within which it could be done was sometimes exceedingly limited, and it would be almost impossible to collect the needful amount of labour in time in any other way.

The Hon'ble MR. ELLIS thought this was one of those cases in which you must enforce the responsibility of the officer on the spot, and if you did not, it was useless to pass the law. It was not possible to put any check on the officer on the spot, who must be held responsible to employ this provision only in cases of emergency. Indeed, MR. ELLIS was not sure that the exercise of the power was not already too strictly fenced in. For instance, when a torrent of water rushed down and breached the bank of a canal, it was hardly possible to say beforehand how long the labourers would have to be employed. Therefore, he thought this provision leant more on the side of stringency than of laxity.

The Hon'ble MR. HOBHOUSE agreed with the Hon'ble Mr. Ellis, and would only point out that the Council were quite consistent when they admitted amendments in sections 35 and 45, but rejected that proposed for section 66.

In the one case, they were dealing with judicial acts with plenty of time for consideration; in the other case, they were dealing with a purely executive act. It seemed absolutely necessary to have some official who had every thread in his hands, and who could judge at any moment whether he should exercise this power or not. The Canal Officer therefore received plenary powers in case of danger arising suddenly and from irregular causes. With regard to silt-clearances, MR. HOBHOUSE would observe that this power was not to be exercised, except in places where the judgment of the Local Government and the Governor General in Council had previously decided that the power should exist.

His Excellency THE PRESIDENT observed that no one could be more opposed than himself to the system of forced labour. But, at the same time, if there ever could be a case supposed where forced labour was necessary, it was in respect of these irrigation-works, where sudden floods were likely to endanger both life and property. In such cases it would be impossible to enforce any responsibility if you took away the power from the officer in immediate

charge of the works. He should oppose any amendment to take away responsibility from the Canal Officer in charge, and place it in any other person in these particular cases.

The amendment was put and negatived.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said, in this section (66) it was provided that the rate paid to labourers impressed for the execution of emergent works, in excess of the highest rates paid in the neighbourhood, should be fixed by the Local Government. He was not sure that he was right in supposing that that meant that the rates were always to be the highest rates paid in the neighbourhood. The custom of impressing labourers was familiar to the Natives in many parts of the country, and he did not think that the labourers would think it oppressive to give their services in cases of emergency even without payment, and he was sure they would be satisfied with the ordinary rates. HIS HIGHNESS would therefore, with the permission of the President, move—

"That for the words 'in excess of' be substituted the words 'the highest maximum rate fixed by the Local Government.'"

The Hon'ble MR. EGERTON understood, from the wording of the section as it stood, that the rates were always to be in excess of the highest rates paid in the neighbourhood for similar work. These rates, he believed, were to be paid in consequence of the inconvenience expected to arise from people being called upon to work without their consent. Although in some parts of the country the custom of calling out labourers in such cases prevailed, in other parts the custom had fallen into disuse, and the enforcement of compulsory labour might excite discontent. Canal Officers, he believed, were of opinion that there should be no such direction in regard to the rate as was contained in the Bill, but that it should be left to the Local Government to fix the rate as His Highness the Mahárájá of Vizianagram proposed. The rate of payment for compulsory labour was fixed by the Act of 1871, and it had been retained in this Bill, the provision being that the rates should be in excess of the highest rates paid in the neighbourhood for similar work.

His Excellency THE PRESIDENT observed that the clause as it stood did not say that the rates should be in excess of the highest rates paid in the neighbourhood, but that the rates to be paid in excess of the highest rates should be fixed by the Local Government.

The Hon'ble MR. HOBHOUSE remarked that the clause imposed the duty of fixing some rate, which should be in excess of the highest rate for labour of the

same kind. He thought that it was just to say the contributors of forced labour should be paid something more than the highest rate. There might be cases in which people might be employed so very close to their own homes that payment exceeding by some mere fraction the highest rate might be sufficient; but, on the other hand, there might be cases in which the excess should be something substantial.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM observed that, in some cases, the expense incurred under this section would come to a considerable amount.

The Hon'ble MR. BULLEN SMITH understood that the Bill absolutely granted to the labourers at least the highest rate payable for similar work in the neighbourhood with as much more as the Local Government might allow.

The Hon'ble MR. STEWART observed that the Bill proposed to confer an extreme and exceptional authority in exceptional cases, and he thought that the section should be allowed to stand as it was.

The Hon'ble MR. CHAPMAN thought the Bill would operate as a check on executive officers in having recourse to compulsory labour.

His Honour THE LIEUTENANT GOVERNOR was of the same opinion.

The Hon'ble MR. BAYLEY observed that there were certain canals the repairs of which were paid out of cesses, and were borne by those who enjoyed the benefits, but the cost was, in the first instance, met by the Government. In some instances, these repairs were effected by the labour of men to whom it was no inconvenience whatever to be called upon for their labour, men, perhaps, whose vocation was day-labour and who lived within a hundred yards from the canal-bank. He thought that, if the rates paid to such labourers were always in excess of the highest rates, the people who ultimately paid the cost of repairs would have a great right to complain. He did not see why an option should not be left to the Local Government.

Major General the Hon'ble H. W. NORMAN remarked that he could conceive many cases in which a man might be engaged in a profitable kind of work and be called upon to leave that work and to labour on canals.

The Hon'ble MR. ELLIS would support the amendment. He believed the provision in its amended form, which rendered it obligatory on the Local Government to give at least the highest rate of wages, was quite sufficient check on officers resorting to this extreme measure. Ordinarily, and without this

pressure, they would be able to get work done for a considerably less sum; but, under this provision, they would have to pay at least the highest rate of wages paid in the neighbourhood. The hon'ble member in charge of the Legislative Department had already pointed out that it was quite possible for the Local Government to fix such a very small amount in excess of the highest rate that this provision would be no safeguard whatever. In many parts of the country it had been the immemorial custom that the people benefiting by the water of the canal should assist in doing the work necessary to keep it in ordinary repair, and with them it had been usual to do the work on receipt of a minimum rate of wages. They had been obliged to work for a bare subsistence, and they were now to be called on only on emergency and were to receive the highest rate of wages. They would view that as a great boon, without insisting on anything more. For these reasons, he thought we quite sufficiently guarded against any abuse, and quite sufficiently provided for a fair and full payment to those called upon to work, leaving it to the Local Governments to declare a higher rate of wages payable whenever the people were called upon to labour out of the ordinary course or under special circumstances.

The Hon'ble MR. HOBHOUSE observed that, when he said the Local Government might fix an insensible amount of excess over the highest rate of wages, he did not mean that they should evade the spirit of the Act. They might make a rule that those who merely did their ordinary work close to their homes should receive a very slight excess of wages, but that other persons should receive a substantial excess.

The Hon'ble SIR RICHARD TEMPLE observed, that, on the whole, he was in favour of keeping the words of the section as they stood.

His Excellency THE PRESIDENT asked whether this clause obliged the Local Government to fix a rate in excess of the highest rates in the neighbourhood? It appeared to him that it did not oblige the Local Government to fix even the highest rate. He considered that the amendment would place the labourers in a better position, as the clause would then declare that the rate should not be less than the highest rate, and should be fixed by the Local Government.

The Hon'ble MR. EGERTON thought the intention was, that the Local Government should prescribe the rates of payment, and if it prescribed the rates they should be in excess of the highest rates. Under the wording of the section, if the Local Government prescribed any rate at all, they must be higher than the current rates.

His Excellency THE PRESIDENT thought the consideration of the question should be postponed, as it appeared to him that the meaning of the clause was not clear.

The amendment was, by leave, withdrawn.

His Honour THE LIEUTENANT GOVERNOR asked leave to amend his next amendment, and would move—

"That after section 71, the following new section be inserted :—

"72. No Canal Officer shall be invested with the powers of a Magistrate of the first class ; but, subject to the control of the Head Revenue Officer of the District, Canal Officers may, under such rules and restrictions as the Governor General in Council may prescribe, be invested with the powers of a Magistrate of the second or third class, or of a tahsíldár."

As the Bill stood, there were a good many special offences which were to be tried by Magistrates, and nothing seemed on the face of it more right and proper. But if it happened that Canal Officers were appointed Magistrates, then the objection he had taken to their exercising the powers of a Collector applied equally here. The hon'ble member in charge of the Bill would correct him if he was wrong. His impression was, that Canal Officers were generally invested with the powers of a Magistrate, and were the judges of their own cases. He would not go the length of insisting that Canal Officers should not exercise magisterial powers ; but he did not think they should exercise those powers without appeal. As the law stood, a first class Magistrate would do so absolutely without appeal. HIS HONOUR had had experience in the canals to which this Bill would apply. Sixteen or seventeen years ago, he found the people complaining against their decisions. On proceeding to enquire into some cases, he had found great difficulty in getting hold of the record of those cases, and at last, when he did trace out the record, he found the proceedings of the Canal Officer thus recorded.—"The Canal Chaukídár reports that so and so's cattle trespassed on the canal-banks. Ordered that a fine of five rupees be imposed." Against a proceeding of that kind, there could be no appeal whatever. HIS HONOUR thought it was most desirable that no Canal Officer should be invested with the powers of a Magistrate of the first class. He would not oppose Canal Officers being invested with the powers of a Magistrate of the second class, and would leave the consideration of that point to the discretion of the hon'ble member in charge of the Bill.

The Hon'ble MR. EGERTON did not see that any provision of this sort could properly be introduced in this Bill. The powers of Magistrates were defined by the Code of Criminal Procedure, and no provisions to alter

the Code of Criminal Procedure could, with propriety, be inserted in this Bill; and he did not see any necessity to limit the discretion of the Local Government in regard to the magisterial powers which Canal Officers might hold. He did not think it was proper to cast a slur on a whole body of men, and to state that they were unfit to be vested with powers of a particular class, if the Local Government were willing to entrust them with those powers. Under this Bill, it was proposed to invest Canal Officers with very large powers, and their action in such matters would affect the people just as much as any of their acts in their magisterial capacity. The whole of the offences for the punishment of which provision was made in this Bill, were such as could be decided by Magistrates of the lowest grade, and he knew no reason why higher powers should be conferred. But he saw no reason to impose any disability

The Hon'ble MR. HOBHOUSE did not think it was desirable that the amendment, even if the principle was correct, should be carried in this form. He did not think that the Council should provide that no Canal Officer should be invested with the powers of Magistrates of the first class. It might be very inconvenient to do so. All the offences under this Bill were petty offences, punishable by a fine of fifty rupees, or imprisonment for one month. Magistrates of the second or third class might try them. What was wanted was, that the decision should be subject to appeal. He thought the object would be met if the section said that persons committing these offences should be liable, on conviction before a Magistrate of such class as the Local Government directs in that behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both, provided that the Magistrate's decision shall be subject to appeal.

The Hon'ble SIR RICHARD TEMPLE observed that the suggestion of the hon'ble member in charge of the Legislative Department would be tantamount to saying 'that the Local Government should not invest Canal Officers with the powers of Magistrates of the first class.

The Hon'ble MR. ELLIS observed that it would be better to provide that cases under this Act should be subject to appeal.

His Excellency THE PRESIDENT thought the amendment imposed a disability to give the powers of a Magistrate of the first class, and would cast a slur on these officers, although he was sure that such was not intended. At the same time, it was a question whether it should be a final decision without appeal.

The amendment was, by leave, withdrawn.

His Honour the LIEUTENANT GOVERNOR said, that any one who had any practical experience would say that the one subject above all others, which was the subject of contention between the people and the canal authorities, was the trespassing of cattle. Canal Officers thought sometimes rightly and sometimes wrongly, that cows should not be allowed to trespass on canal-banks: they said cows injured the banks. On the other hand, the people said, "you have run canals through our grounds, and have left them unfenced. At certain seasons it is natural that cows will run upon the canal-banks, where the grass is always green and fresh; cows will be cows; they will eat grass; and if you grow grass on the banks, it is the nature of cows that they should seek to eat that grass. It is a hard case that we should be subject to confinement and loss, because our cows trespass on the banks of your canals." He therefore suggested that the trespassing of cattle should be one of the things in regard to which the Local Government should be empowered to make rules. The motion he would make was—

"That after clause (4) of section 76 be added the following, as clause (5):—

"(5) the fencing of canal-grounds and the conditions under which cattle may or may not be impounded when the canals are not fenced or are insufficiently fenced."

The Hon'ble MR INGLIS said that, if the intention of the amendment proposed by His Honour the Lieutenant Governor, was merely to give the Local Governments power to frame rules about the fencing of canal-grounds, and the conditions under which cattle trespassing on them might be impounded, it seemed to him quite unnecessary, as the Local Governments could, without this clause, issue any orders they might think requisite on these subjects to their officers. But if the intention of the proposed clause was to compel the Local Governments to fence in all canals to prevent trespass by cattle, MR. INGLIS should vote against its insertion, as this would add a very heavy, and altogether unnecessary, charge to the cost incurred by Government in maintaining these irrigation-works, already quite high enough.

The Hon'ble MR. EGERTON said that the amendment before the Council was a mere suggestion as to what the Local Government might or might not do in respect to the trespassing of cattle. This clause would not oblige the Local Government to make any such rules. It appeared to him questionable whether it was desirable to suggest in the Act every point on which the Local Government might make rules. He thought the subject was one which did not require an express provision of law. The amendment seemed to him to indicate that it was advisable to adopt a particular management of canal-lands, namely, that they should be fenced. That question had been discussed before:

but it was decided that it was not necessary to fence canal-lands any more than to fence in the fields of private owners. As cattle found trespassing on unfenced fields were liable to be impounded under the Cattle Trespass Act, so it was considered that cattle trespassing on unfenced canal-lands should be treated in the same manner; in fact, the canal-lands formed a Government field, and that was why there was no provision for fencing them to prevent cattle trespass.

The Hon'ble MR. HOBHOUSE thought the amendment was undesirable, because the subject of cattle-trespass was provided for by another Act. The Cattle Trespass Act included such works as canal and drainage-works. When cattle trespassed, the officers of Police were to do certain things—impound them, charge fees, sell them if not released, and so forth. And it might lead to confusion if the Local Government had power to make rules under this Bill for the prevention of any offences which were dealt with fully by another Act.

His Honour THE LIEUTENANT GOVERNOR said, it was just because the Cattle Trespass Act existed that the Canal Officers claimed the power to impound cattle under that Act. It was because that Act existed that he was inclined to give the Local Government power to modify the provisions of that Act in regard to cattle trespassing on canal-lands. He had just come from the banks of a canal where the people complained that they were entirely at the mercy of the canal chaukídár. He thought that, under certain circumstances, certain portions of canals should be fenced, and that no cattle trespassing should be impounded, except where they caused injury to the canal. He quite admitted that the Local Government might make rules regarding fencing and pounding, but they never had done so, and therefore he desired to put in this clause as a sign-post.

His Excellency THE PRESIDENT observed that, if it was admitted that the Local Government had power to make rules, it was a doubtful principle of legislation to make an unnecessary enactment to the effect that they should have that power. He thought if the Local Government had power to make rules without legislation, that was a good reason for the Council to decline to legislate.

The motion was, by leave, withdrawn.

The Hon'ble MR. HOBHOUSE moved that the Bill be referred back to the Select Committee for consideration with instructions to report in a week.

The motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Bullen Smith and His Highness the Mahárájá of Vizianagram be added to the Select Committee.

The motion was put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. EGERTON moved that the Bill to consolidate and amend the law for the appointment of Municipal Committees in the Panjáb, as amended, be passed.

The Hon'ble MR. CHAPMAN said:—"MY LORD, I regret to find myself obliged to oppose the immediate passing of this Bill. I would ask the Council, in the first place, to consider the past history of this measure.

"The present law affecting Municipalities in the Panjáb is to be found in Act XV of 1867. The provisions of that law are very summary and arbitrary, and, in fact, empower the Lieutenant Governor to do very much what he likes in the way of constituting municipalities, imposing taxes, and regulating expenditure. If hon'ble members have read the discussions that took place in 1867 when this law was passed, they will see that, even then, very grave doubts were expressed as to the expediency of entrusting such indefinite authority to the executive. It was at last agreed that the Act should be considered as of a tentative character, and its duration limited to a period of five years.

"Well, time went on, when, about a year ago, the Secretary of the Council drew the attention of the Panjáb Government, by telegram, to the fact that the Act was on the point of expiry, and requested them to state what steps they desired should be taken in the matter. The Panjáb Government thereupon replied that all they wished was that the present law should be re-enacted without limitation as to time.

"The Council will remember how this proposal was received, barely ten months ago, and how very strongly certain members expressed their opinion as to the necessity for imposing by law certain limits on the action of the executive. As the Act was about to expire in a few days, it was eventually determined that it should be re-enacted for one year only, and it was understood that, during that interval, the whole question would be fully considered and dealt with.

"Such, my Lord, is the past history of the measure. The present Bill, which my honourable friend wishes to pass at this meeting, was prepared at Simla,

and I have had no opportunity of taking any part in the discussions on it, either in Council, or in Select Committee. It was doubtless a great advantage to have the assistance of His Honour the Lieutenant Governor of the Panjáb, and I mention the circumstance of my not having had the opportunity of before expressing my views, not by way of complaint, but merely as my excuse for now troubling the Council at, I fear, some length.

"After what had taken place, I certainly was in hopes that the present Bill would contain some precise and definite sections as to the constitution of Municipal bodies, and specially as to the limits within which taxes might be imposed. I regret to say that, in my opinion, the Bill is, in these essentials, almost as bald as the present Act. I must ask the Council to bear with me while I endeavour, as shortly as I can, to point out the sections in the Bill to which I chiefly take exception.

"In the first place, I would call attention to the two last clauses of section 2. It is probably right and necessary that we should legalize all past actions; but I do not think we should blindly give the stamp of legislative authority to assessments, as to the principles and limits of which we are quite ignorant; and such, if I mistake not, is the effect of these two clauses.

"I next come to section 6, and this, taken in connection with section 17, confers, without an attempt at specification, the most absolute power in respect to the constitution of these Municipal Committees. I have no doubt my honourable friend, Mr. Egerton, than whom there is no higher authority in all matters connected with Panjáb administration, will say that, in the state and under the circumstances of the province, it is necessary that this power should be vested in the executive. I venture with much diffidence to think that it is a mistake not to recognize in the law the distinction between great cities and centres of trade, like Delhi, Lahor and Amritsar, and small towns in remote and uncivilized parts of the country. I think a clear and defined difference should be recognized in the case of cities where there is a numerous, wealthy and intelligent population, and where a certain degree of public opinion exists. I think provision should be made by law for giving such places something in the shape of a constitutional self-government. The Council will perceive that, in the section I have referred to, all places are treated alike; that the Local Government may appoint whom they like; a majority composed of three-fifths of the members may be officials; and no qualification whatever is insisted upon, either in respect to residence within municipal limits, or contribution towards municipal taxation. The next section to which I wish to draw attention is section 8. The Council will observe that here, again, the Executive Government has

unlimited power to make rules "as to the persons by whom, and the manner in which, any assessment of taxes under this Act shall be confirmed." In fact, this section simply re-enacts the powers contained in the old law, to which so much exception was, as I think justly, taken in 1867, and again as recently as within the last few months. I should add that two modifications have been introduced: first that the rules are to be made in conformity with the orders of the Government of India; and, secondly, that the proposals for taxation are to originate with the Committees themselves. As regards the first of these modifications, I must state my preference for the authority to levy taxes of any kind being precisely specified in the statute-book, and not left to the judgment and discretion of the Executive Government, which must vary according to the opinions of the members for the time being. Why, it is barely four years ago that some members of the Government of India discovered that octroi duties were wrong in principle, and opposed to sound views of political economy, and forthwith an edict was issued prohibiting their levy throughout Northern India, although it was afterwards discovered that the people paid these duties with less reluctance than they would any other form of taxation which the wit of a Political Economist could devise. Then, as to the privilege of initiating taxation, when it is considered that three-fifths of the Committee are to be officials, and that no member need himself be either a resident or tax-payer, it will be seen that the value of this privilege, as representing popular opinion, is, in a great measure, diminished. I am well aware of the objection your Lordship took to defining too precisely the limits within which taxation should be allowed, and the great danger there would be of the Committee at once working up to the authorized maximum. There is no doubt much force in this objection; but the Executive Government would always have it in their power to withhold their sanction if they considered it unnecessary to have recourse to the maximum. The limitation is wanted more as a check against the Government themselves, and their officials, who will exercise such overpowering authority in these Committees. There is only one section wanted to complete the arbitrary character of this Bill, and that is one to the effect that the Committees should not be amenable to the jurisdiction of any Court of law for their actions. I must give my hon'ble friends who have prepared this measure credit for not having gone so far as this. They have, on the contrary, provided for suits being brought against the Committees; but when I see by the rules that almost all judicial functionaries are *ex-officio* members of these Committees, the value of this safe-guard is much lessened.

"I have now noticed what I conceive to be the chief objections to the Bill. They resolve themselves into these:—first, that there is no provision for popular representation in the constitution of the Committees; and, second, that there is

no limit to the extent to which taxation may be imposed. It may be very desirable to discard all pretence at anything approaching self-government in many towns of the Panjáb; but, as I said before, there are probably cities where such an experiment might be tried with advantage, and at all events it seems to me a mistake in a law of this importance not to recognize this distinction. On the second point I am very decidedly of opinion that it is our duty not to pass any law which will give an unlimited and undefined power of taxation. We have heard a great deal of late of the impatience and irritation which recent and varied fiscal burthens have evoked. I entertain a strong belief that a great deal of this discontent is due to the vexatious and oppressive nature of these so-called municipal and local taxes, and I think we cannot too closely define by law the limits within which they shall be imposed.

"I would beg my hon'ble friend to bear in mind that there is no immediate hurry in this matter, and that a brief declaratory Act can at once be passed prolonging the operation of the existing law. By this means an opportunity will be afforded of dealing with this important question in a comprehensive and satisfactory manner, and with the light that has been brought to bear on it by the discussion in the Bengal Council and elsewhere. Above all, I would beg the Council to consider, that the important principle as to whether undefined and unlimited powers of taxation are to be continued to the Government of the Panjáb is involved in this motion."

The Hon'ble MR. EGERTON said, this Bill was framed with the concurrence of the Local Government. It was duly considered in Select Committee, and again by the whole Council. It had been before the public for about three months. It reproduced the main provisions of Act XV of 1867, and the plan upon which both the Act and the Bill were framed was identical. It was to this general plan, which left so much to the discretion of the Local Government, that the Hon'ble Mr. Chapman objected. This principle had been deliberately adopted as being best suited to the country to which the Bill applied.

In regard to the unlimited powers of taxation which the present Bill granted to the Local Government, MR. EGERTON concurred fully in the remarks made by His Honour the Lieutenant Governor of the Panjáb when the Bill was introduced, and which, with His Excellency's permission, he would read to the Council. They described his opinion on the question of taxation shortly and forcibly. His Honour the Lieutenant Governor of the Panjáb said:—

"The Executive Government was vitally interested in the judicious limitation of local taxation. It must accept all the odium of mistakes and abuses without sharing in the ways and means resulting. But continued peace and prosperity with increased population inevitably created new wants, new difficulties, new expenses. These could be met only by new taxation; and the

problem was, not how to fix this in perpetuity, but to impose it, as far as possible, in harmony with the wishes of the people. This, His Honour contended, could only be done experimentally. It was only within the last few years that octroi duties had, with the sanction of the Government of India, come to form the bulk of municipal resources in Northern India. Theoretically, they were open to many objections; in practice, deviations had constantly to be made from the system regulating such duties in Europe. They had been long and warmly pressed on Local Administrations by the leading inhabitants of towns; they had been reluctantly allowed by the supreme authority. His Honour was under no obligation to defend them in the abstract, but cited their general adoption as an instance of the expediency or the futility of forecasting according to preconceived ideas the future circumstances of a changing society. Neither the Council nor the Executive Government could *a priori* select, adjust or limit, with any reasonable chance of success, municipal taxes. Experiment and discussion were essentially necessary to a right determination of their amount and incidence in so many different places, under circumstances so various."

The question of taxation was probably the most important point in the Bill, and MR. EGERTON'S view entirely agreed with the opinion of Mr. Davies. We had not the knowledge requisite to prescribe a particular kind of tax, or its amount, for each place in the country. The Lieutenant Governor had every facility for doing so in such a way as to meet the varying circumstances of each place. And till our knowledge on the subject was more certain, and our experience greater, it was unadvisable to restrict the Local Government, and take away, in fact, its responsibility.

With regard to another remark made by the hon'ble member, that he would make provision in the Bill for the appointment of committees of various kinds according to the size of the municipality and its importance, and would prescribe rules for electing or appointing the members, and would not leave those matters to the discretion of the Local Government, the Local Government, MR. EGERTON thought, was the best judge of the requirements of each place. Unless a separate enactment was made for each place, it would be impracticable to provide satisfactorily for the requirements of municipal committees in towns of various sizes according to their importance under the system recommended by the Hon'ble Mr. Chapman.

With regard to the limit of taxation, and the provision for popular representation, which the hon'ble member considered necessary, MR. EGERTON thought the Local Government, acting under the general instructions of the Governor General in Council, would make proper provision both for popular representation and limiting taxation. The control of the Supreme Government was a most important provision, and would enable the Government of India to regulate from time to time the proceedings of the municipal committees in all matters connected with taxation. It was much safer and much more

convenient that the matter should rest in that way, than that it should be laid down now authoritatively in the Act with the limited knowledge we possessed. As regards the irritation and discontent to which the Hon'ble Mr. Chapman referred, MR. EGERTON had not observed it in the country to which this Bill would apply. In other parts of the country it might exist; but he could state positively that no such irritation from excessive taxation existed in the country from which he came. Any discontent or grumbling which might be heard arose more from that unwillingness to pay any tax at all, which the inhabitants of this country as well as other countries always felt. He did not at all admit that the statement with regard to irritation being prevalent, and being caused by municipal taxation, was in any way applicable to the Panjáb.

With regard to the proposal to recommit the Bill and postpone its consideration and to re-enact Act XV of 1867 for another year, MR. EGERTON thought that, after all the discussions that had taken place, after the Lieutenant Governor of the Panjáb had been taking a part in fixing the provisions of the Bill, and after the long consideration which the Bill had had, it would be a waste of time to recommit the Bill. And he therefore opposed the amendment.

The Hon'ble MR. STEWART wished to ask a question with reference to clause 3 of section 2 of the Bill. He wished to ask whether that applied to the extent of excluding the control of the Governor General—whether it barred the interference of the Governor General in Council under section 7. Suppose the Governor General in Council should disapprove of some assessments, bye-laws, rules or regulations which had heretofore been made, was it competent to the Governor General in Council to disallow the same?

The Hon'ble MR. HOBHOUSE said that the intention of clause 3 of section 2, was to provide against the necessity of issuing new regulations, or against the risk of there being some gap of time during which there should be no regulations. Practically speaking, the Government would, he thought, have power to annul any regulation found to be injurious.

The Hon'ble MR. STEWART intended to vote against the amendment. He had, on a previous occasion, taken the opportunity to say that, in his opinion, any legislation for purposes of local or municipal taxation, proposed by the Local Governments, should be regarded with extreme care and rigour; and that the power of indefinitely taxing the people, even for purposes in themselves laudable and desirable, should not be lightly committed, or, when committed, lightly continued, to any Local Administration. And he was still of the same mind. But he thought he might consistently hold these views, and yet feel justified in seeing this Bill pass. He saw in it an extremely important qualifica-

tion, which subjected the proceedings of the Local Government to the rules and orders of the Governor General in Council. He thought that there was a good deal to be said in favour of fixing a maximum limit of municipal taxation, and that, as the President said at Simla, there was also a good deal to be said on the other side of the question; and believing, as he did, that the Government of India was fully alive to the necessity of carefully watching the progress of local and municipal taxation, believing also that they would not hesitate to interfere when necessary, he felt justified in voting for the Bill.

His Honour THE LIEUTENANT GOVERNOR said, it would not be for him to attempt to controvert the arguments of the Hon'ble Mr. Chapman against this Bill, because the direction he had pointed out as the direction that ought to be taken in respect to this Bill, was the direction His Honour had himself taken in a similar measure lately passed by the local Council for Bengal. It seemed to him that a Bill for municipal purposes might be of two kinds; first a Bill laying down broad lines, leaving the Local Government to make rules within those lines, or a Bill which attempted to define more minutely the constitution of municipalities, the limits of taxation, the prosecution of nuisances, and other details. He believed the human nature which indisposed people to pay taxes was common to all countries; and you might say, in regard to tax-payers in general, and municipal tax-payers in particular, hit high, hit low, there was no pleasing them. If a Bill was brought in in general terms, they said you should be particular; if in particular terms, they said you burden us with too many details.

His Honour believed there was a good deal of force in the arguments used by the Hon'ble Mr. Chapman, if you supposed that the Local Government was inclined to be oppressive in enforcing the Act. No precaution which you could lay down would really prevent the Local Government from doing mischief enough to set the country in a blaze. Whether you had a general or particular Bill, you must assume that the Local Government was inclined to do its duty. If the Local Government failed to do its duty, the members of that Government should be turned out. You selected and trusted the man and gave him large powers; and trusted to those powers not being abused. Large powers must be entrusted to the Local Government subject to the control of the Governor General in Council. The Bill had been considered carefully and long, and by men who were best acquainted with the character of the people with whom they were dealing. Seeing that municipalities had been more successful in the Panjáb than elsewhere; seeing that the Government of the Panjáb had not abused their powers, he was inclined to support the Bill. He would rather that this Bill should be passed, and that some day a more perfect Bill be, if necessary, brought in for consideration.

His Honour thought the remarks of the Hon'ble Mr. Chapman were a little exaggerated, and he might be permitted to say that the hon'ble member was very particular as regards any measure that came from the Panjáb. He strained at a Panjáb gnat and swallowed a Bombay camel. He asked the Council to accept Bills coming from Bombay as a matter of course; Bills which came from the Panjáb were minutely criticised. His Honour took up a report lately prepared by his orders, to see how the matter stood as between Bombay and other Provinces. He found that, in the Presidency of Bombay, out of a population of fourteen millions, there was 20½ lákhs of municipal taxation; in the Panjáb, out of a population of nineteen millions, only 17½ lákhs; in the North-Western Provinces, out of a population of thirty millions, only 19½ lákhs; and in Bengal, out of a population of sixty-five millions, only 11½ lákhs. With these figures it was evident that, in point of municipal taxation, the Local Government of Bombay had gone far beyond other Governments in the extent of its municipal taxation. He could not say what powers they had in Bombay in respect of municipal taxation. He was informed that very many of the municipalities in Bombay were constituted under Act XXVI of 1850. That was one of the old Acts regarding municipalities, and was very much the same as the Panjáb Act. The material difference between that Act and the present Bill was, that whereas, in the Act used in Bombay, there were no restrictions on the authority of the Local Government, in this Bill the power of imposing duties was liable to limitation by rules to be made by the Governor General in Council. That was a very important limitation. In other respects this Bill was on all-fours with the Act of 1850. The Act of 1850 might be introduced in any town or suburb whatever. The only qualification was, that the Commissioner was to be an inhabitant of the municipality. Then, as regards the power of taxation, it was absolutely without limit, and sometimes the power had been very severely used. There was no maximum of taxation; no limit of assessment; no definition of nuisance. It seemed to His Honour, therefore, that, in Bombay and the North-Western Provinces, there were Acts of this sort, and he did not see why we should deny the same thing to the Panjáb, subject to the limitations provided by the Bill.

Major General the Hon'ble H. W. Norman said, although he could not say he agreed with a good deal that had fallen from the Hon'ble Mr. Chapman, he agreed with him as to the expediency of fixing a maximum of taxation for municipal purposes. General Norman had expressed himself to that effect when this Bill was discussed at Simla. In the Select Committee on the Bill, of which he was a member, various alterations had been made, both with a view to placing taxation under check, and to limit expenditure from municipal

funds to works of real public utility; but the Committee did not see its way to fixing an absolute general limit on the amount of taxation, and, perhaps, the members did not all agree in the propriety of such a measure. If he (MAJOR GENERAL NORMAN) had, at that time, seen the Bengal Municipal Bill, he would have urged the Committee to adopt the plan of limitation therein contained. He could not admit that it would be at all true that, even in the Panjáb, some limit of taxation would not be desirable. He knew that, in one or two cases, the taxes were high. This he understood, arose from octroi-duties, which had in some degree assumed the shape of transit-duties contrary to rule. Possibly, if a maximum of taxation had been fixed, there would have been no resort to such duties. On the whole, however, he would now leave the matter in the hands of the Local Government, subject to interference if found necessary by the Government of India, and he would not support the proposal to re-commit the Bill.

The Hon'ble MR. ELLIS considered the observations of the hon'ble mover of the amendment had been sufficiently met by the speeches of the hon'ble members who had followed him. He would take leave, however, to demur to the accusation of His Honour the Lieutenant Governor, who had charged the Bombay Government with exaction in the matter of municipal taxation. For the charge was founded on figures which did not afford a proper basis for forming a judgment. His Honour took the figures of the whole population, and then showed from them the incidence of municipal taxation. Whereas it was evident that he should have brought figures to show the number of inhabitants in the places where municipal taxation was levied, and then the Council would have been able to compare the incidence and the extent of such taxation in the several provinces. But it was no proof of the heavy incidence of taxation to show that the taxation was heavy in proportion to the number of inhabitants of the whole province, these figures including the agricultural classes, and others not resident within the limits of municipalities.

With regard to the observations of the Hon'ble Mr. Chapman, the only point which required an expression of opinion from MR. ELLIS was Mr. Chapman's objection to the scheme of the Bill for levying taxes, and his demand that we should recast the Bill for the purpose of specifying the sources of taxation. MR. ELLIS considered the procedure of the Bill in every way preferable to such a course. This Council was not the best tribunal to consider the details appropriate in the distant Panjáb, and he was quite certain that the Local Government, subject to the control which was put on it under the provisions of the Bill, was a much better judge of the varying

circumstances of the Panjáb towns and cities, and of the varying modes of taxation which would suit those circumstances. His Honour the Lieutenant Governor of Bengal had, in a recent Bill, adopted a different course of proceeding, and in that Bill had set forth, in great detail, a variety of modes of taxation—

[His Excellency THE PRESIDENT observed that the hon'ble member could not allude to the provisions of a Bill which was not before the Council.]

The Hon'ble MR. ELLIS resumed—He merely wished to say that such details might be desirable in the law-loving Province of Bengal, but were most undesirable in the differently constituted Province of the Panjáb; and therefore the reference made by the hon'ble mover of the amendment to the provisions of the Bengal Bill seemed wholly inappropriate. He would vote against the amendment.

The Hon'ble MR. HOBHOUSE had read the proceedings in connection with the Panjáb Municipal Acts from beginning to end, and they left on his mind the impression that we ought not to discuss the matter further. When the Bill was first introduced, it was keenly opposed and vigourously debated. All the arguments were set forth which the Hon'ble Mr. Chapman had adduced to-day—the danger of municipal taxation, and the danger of giving too much discretion to the Local Government; but, before the Act was passed, every member of the Council was convinced that it ought to pass. It was shown that the Panjáb authorities had been establishing municipalities without any law; that they had been attended with great success; and that they should now be allowed to proceed according to law. The Bill was passed with the expression of Lord Lawrence's opinion that it should be passed for five years, and if there was discontent, he said we should hear an outcry. The five years had gone, and another year to boot. There had been no outcry. On the contrary, the experience of the Government of the Panjáb was, that the working of these municipalities had been very sucessful, and there was not a scrap of evidence to the contrary. If we were now proposing to enlarge the powers previously given, we ought to discuss the matter over again; but we were not enlarging those powers. With one slight exception, the alterations were all in the direction of greater caution. In section 4, there was a clause by which notice must be given of the intention to extend the Act to any town, and provision was made for objections to such extension. In section 6, there was a limitation of the number of official members; not less than two-fifths must be persons other than salaried officers of Government. In section 7, which provided for

the subject of taxation in relation to both persons and things, there was a provision that the Government should give notice of its intention to impose certain taxes, and a provision for the hearing of objections to such taxation. In one section (11), we dealt with the subject of expenditure for works of local improvement. The words "local improvement" were expunged on the motion of General Norman, with the object that the funds should be expended only on works of utility, and that the Act should not contain expressions which might cover expenses on mere ornament. By section 6, again, the Supreme Government had power to make rules under which the Local Government was to act, a restriction which was not to be found in the existing Act. The only provision enlarging powers was one which gave a right of entry on private premises to abate nuisances. With this exception, every alteration had been made in the direction of caution, and he thought the Council might most safely entrust the working of this Bill to the Executive Government.

The Hon'ble SIR RICHARD TEMPLE said that, having served as a member of the Committee on this Bill, and also in justice to the Local Government of the Panjáb, he felt it his duty to make a few observations. In effect, this Bill merely continued, with additional reservations, a power long enjoyed. These municipal taxes in the Panjáb had lasted now for many years, and we had actual experience of them, and that experience had been eminently satisfactory. His hon'ble friend, Mr. Chapman, might think otherwise; but SIR RICHARD TEMPLE believed it would be impossible to produce the slightest evidence to prove that these taxes had worked otherwise than with entire satisfaction. We had obtained practical experience, and that test was entirely in favour of the Bill. As to discontent, he believed that the hon'ble member in charge of the Bill had given a correct account of the state of things in that respect. It was to be remembered that, originally, in the Panjáb cities, there were various direct taxes levied for municipal purposes. That did give cause for local discontent. He spoke of times within the recollection of one or two members of this Council. Afterwards, in suppression of the direct house-tax, indirect octroi-duties were imposed; and he believed that in no part of India had such an amount been raised for so long a period, with such absolute content as those duties. They gave great satisfaction wherever they were introduced. And although he could not claim such recent knowledge of the Panjáb as his hon'ble friend Mr. Egerton, yet he once knew those people well, and he was still acquainted with the principal Natives in that part of the country, and, to the best of his belief, the people were quite contented. The system was now to be further regulated by this Bill.

The main point to which his hon'ble friend Mr. Chapman objected was the question of taxation. The point was thoroughly considered by the Committee, and they arrived at the conclusion that it would be impossible for the Council to legislate satisfactorily in detail. Any regulation which should prescribe the details of taxation must provide certain general schedules the effect of which would never be the same in any two cities. The articles of tariff would not be the same. If we were to take that course, as the Act must comprise all municipalities, it must have a schedule comprising all the articles imported or introduced into every town in the Panjáb. It would be a very long and complicated schedule. If such a schedule was to be tacked on to the Bill, the Local Government, in its executive capacity, must exercise immense discretion in selecting the articles for taxation in each particular place. It must proceed to make a special tariff for every single town. It must exercise the very widest discretion, in fact the very kind of discretion to which the hon'ble member objected. Therefore, it would be better not to attempt in this Council to frame such a schedule.

Then as to the kinds of taxation. In some towns they might select a low rate on a large number of articles; in others a high rate on a small number. Then in some towns there was no such thing as an *ad valorem* duty. If a rate of duty was fixed by the Bill, it would be, say, five or ten per cent. *ad valorem*. But *ad valorem* duties were not known in many towns, at least in respect of many articles. Every tax was not levied, as in the Customs, by an *ad valorem* duty; but in some cases the duty was levied at so much per load. It would require local enquiries in every single town as to what the rates per man-load, per donkey-load, or per cart-load, was equivalent to the *ad valorem* duty. So that, if this Bill prescribed the rates of tax, it must be some high *ad valorem* rate, which would be liable to modification by the Local Government in every city. There, again, would be an immense discretion permitted to the Local Government. Therefore his distinct answer to the hon'ble Mr. Chapman's objection was this,—if you objected to any discretion being allowed, you must permit such discretion by prescribing a general *ad valorem* rate of duty in a very extensive schedule. So that SIR RICHARD TEMPLE hoped he made it in some degree clear to the Council that it would be in the nature of the case impossible to avoid giving a discretion to the Local Government.

Then, he understood his hon'ble friend to object that they were not importing more conditions regarding the appointment of members of Committees. He indicated that such appointments ought to be made by the people, who should nominate their own representatives.

[The Hon'ble MR. CHAPMAN observed that he alluded to the qualification of members, and not to their election.]

SIR RICHARD TEMPLE resumed—As a qualification, his hon'ble friend Mr. Hobhouse had pointed out that the Committee had prescribed an important provision, that a certain proportion of members should be non-official. In a country like the Panjáb, non-official members must be native gentlemen residing in or near the town. How could any one else accept the office of a member? The Local Government could not compel people to serve. Therefore it was a matter of common sense and experience that the limitation applied to persons resident on the spot.

Then his hon'ble friend also objected to the European officers in the district serving on these Committees, on the ground that they might be called upon to adjudicate cases in which the Committee was concerned.

[The Hon'ble MR. CHAPMAN remarked that he did not make that objection.]

The Hon'ble SIR RICHARD TEMPLE continued—He understood the hon'ble member's objection to be this, that the European officers ought not to serve on these Committees because they were judicial officers.

[The Hon'ble MR. CHAPMAN explained that what he said was that, in order to make the arbitrary character of the Bill complete, the jurisdiction of the Courts should not have been admitted at all, but that the Bill had not gone to this extent, and the acts of the Committee were liable to be brought within the cognizance of the Courts. He had said that he considered this concession had been a good deal qualified by the fact that, under the rules, all judicial officers were themselves members of the Committee, and, consequently, would have to adjudicate on their own acts.]

The Hon'ble SIR RICHARD TEMPLE resumed—But the hon'ble member remarked, in a tone of seriousness, regarding the fact that all the European officers of the district would be bound to serve on these Committees, notwithstanding that they would be the very persons to decide on disputes between these Committees and the people who had the Committees in order. That was the apparent drift of his hon'ble friend's meaning. Such was the objection taken to the European authorities of the district serving on these Committees. He said, virtually, who was to keep these Committees in order, when the custodians of public right and order were themselves members? That was the real substance of the hon'ble member's objection. If he did not mean that SIR

RICHARD TEMPLE could not understand what he meant. His answer was, that that state of things was a necessary sequence of the system of administration in the Panjáb. In other parts of the country the judicial officers were separate from the administrative officers. But, in the Panjáb, you had the judicial and administrative control in one and the same officer for the whole district; and anybody who knew anything of the country would admit that you ought to have the administrative officers on these Committees. It followed that you could not object to their serving on the ground that they were also judicial officers. When you united the judicial and executive functions in one set of men, you must accept that condition of things in these Committees. It was monstrous to suppose that the head of the District, the Collector, Magistrate, and Civil Judge combined in one person, holding that important and responsible position, would not do justice as between the Committee and the people, and that remark applied with still greater force as regards the Commissioner of the Division. Moreover, that state of things could not be altered until the Government of India, with the sanction of the Secretary of State, altered the system of administration in the Panjáb. It had been truly urged in behalf of this Bill, that the rules to be framed by the Local Government would be subject to the control of the Government of India. One would suppose from the tenor of the hon'ble member's remarks that that control would not be strict and rigid. SIR RICHARD TEMPLE would appeal to the Resolution passed by the Government of India in 1868, which was carefully elaborated by some members of Government still present, as proof of the strict and comprehensive supervision exercised by the Supreme Government. The Government of India had every motive for exercising a strict supervision; for if the Local Governments were irresponsible in the matter of municipal taxation, such taxation might seriously interfere with many sources of imperial revenue: and he believed he might confidently say that neither the present Financial administration, nor those who succeeded him would acquiesce in that. On all these considerations, he hoped the Council would negative the amendment.

His Excellency THE PRESIDENT said:—"This question has been so fully discussed by the Council that I have little to say upon it.

"Some minor points may, I think, be put aside, namely, the objections raised by the hon'ble member to the two last paragraphs of the second clause, which simply confirm the action taken under the former Acts which will be repealed by the Bill; and also his apprehension lest persons unconnected with the municipalities should be placed upon the Municipal Committees. I am

glad to have the opportunity of mentioning that, during my recent visit to the Panjáb, I received from the Lieutenant Governor and other officers assurances that the Native members of the Municipal Committees had performed their duties with zeal and intelligence, and had been of great assistance to the Government.

"The real question raised by the hon'ble member is whether it is more wise to include in this Bill definitions of taxes, and limitations as to amounts which shall be levied, than to leave these particulars to the Municipal Committees, subject to the approval of the Local Government and to the sanction of the Government of India, after due notice has been given to the people, and they have had an opportunity of expressing their opinions upon any tax which the Municipal Committee desires to levy. The circumstances of places in India to which municipal institutions are applied, are very different, especially in the Panjáb. It is impossible, for example, to conceive two places more differently situated in respect to municipal taxation than Simla, on the one hand, and Amritsar on the other. It seems to me that the Legislative Council have adopted a wise course by not laying down any rigid rules in this Bill. Moreover, it must be clear to those members of the Legislative Council who were not present during the discussions which took place on this Bill in the course of last year, after the explanations which have been given by my hon'ble friend, Mr. Hobhouse, that, in several important alterations of the present law, which have been made in this Bill, the Legislative Council have carefully considered the responsibility that rested upon them, and have not entrusted too large powers, either to the Committees, or to the Local Government, in respect to taxation.

"I can assure the Council that the importance of watching over local and municipal taxation is fully recognised by the Government of India.

"The responsibility for all taxation in India, whether local or imperial, must, in my opinion, rest, in the main, upon the Government of India, and, accordingly, the seventh clause of this Bill was introduced for the express purpose of giving to the Government of India full power to direct and control the action of the Government of the Panjáb in this matter.

"I wish to say, in conclusion, that the powers which the Government of the Panjáb have for some years now possessed in respect to municipalities, have, in my opinion, been wisely and carefully exercised, and I have not heard from any quarter any serious remonstrances against, or objections to, the system of municipal taxation which now prevails in the Panjáb, excepting in one solitary instance.

"So far as I am able to judge, the octroi, by which almost all of the municipal taxation in the Panjáb is raised, is in accordance with the feelings of the people.

"The Government will, however, have to take care that the octroi does not degenerate into a transit-duty; and I know that the Lieutenant Governor of the Panjáb is fully alive to this necessity.

"I hope that the expression of opinion which has been given to-day by the members of the Council will satisfy the hon'ble member, that the Bill has already been carefully considered, and that he will not think it necessary to press his amendment."

The Hon'ble MR. CHAPMAN said—"My Lord, as I see the general sense of the Council is against my amendment, it is not my intention to notice, in any detail, the arguments that have been advanced against it. I wish, however, to set myself right on one or two points. In the first place, when I alluded to the discontent that local and municipal taxes had evoked, I did not mean to refer so much to the excessive amount of these burthens as to their fluctuating and ever-varying character. The people never know what to expect next, and are kept in a constant state of hasassing doubt and uncertainty. It seems to me, therefore, most necessary that the principle on which, and the extent to which, taxation of this kind should be resorted to, ought to be precisely laid down in the law, and not left to the will and caprice of the persons in authority for the time being. Take, for instance, a house-tax. Some authorities may consider this the fairest and best means of raising a municipal revenue; but surely it is advisable to place some limit on the lengths to which they may proceed, by fixing a maximum rating. This principle of limitation and specification of amount is recognised in every law that I am acquainted with; for example, in those authorising the levy of tolls, of fees for the maintenance of cattle-pounds and the like, and I cannot see why it should be set aside in the present Bill.

"From the remarks that have fallen from some of my hon'ble friends, it would seem that they consider I have taken upon myself to sit in judgment on the Panjáb administration. It would have been highly unbecoming and improper of me if I had done so, and I beg most distinctly to disclaim the imputation. Excellent and vigorous as the Government of the Panjáb no doubt is, it seems to me that I have a perfect right to express my opinion that it should be guided in the important matters under discussion by law rather than by rules. However honest and excellent the intentions of a Government

may be, I believe it is impossible for it to exercise the same check over its officials by rules as by laws.

"Next, His Honour the Lieutenant Governor has twitted me with the short-comings of the Bombay Government in respect to municipal administration, and has pointed out that, in the Presidency, Act XXVI of 1850, conferring as it does the most vague and in definite powers, is still the only law we have on the subject. I need hardly say that, occupying as I do a subordinate position under that Government, I am not answerable for all its sins and short-comings; but I may state that the subject has not been lost sight of, and that a very carefully prepared measure for regulating our municipalities on the principles which I have endeavoured to advocate, has, for some time past, been under the consideration of the Bombay Government. One of my main reasons for begging the Council would not deal with this Bill in a final way was, because I think it highly expedient that they should have the benefit of the experience and knowledge that would be derivable from the Bengal and Bombay Bills.

"It is not my intention to trespass at this late hour any longer on the time of the Council. It really seems to me that it would be quite as well, instead of the present comparatively long Bill, to pass a brief law somewhat to this effect:—'Whereas it is expedient to invest, under such rules as the Government of India may from time to time approve, the Lieutenant Governor of the Panjáb with full power to raise municipal taxes and to provide for municipal administration, power to this effect is hereby conferred on the said Lieutenant Governor.' I am sure a brief Act will meet with the approval of the learned Secretary, who is so desirous to compress the statute-book into the smallest possible compass."

The amendment was, by leave, withdrawn.

The Hon'ble MR. ELLIS moved—

"That in section 12, line 3, after the word "sum," the following words be inserted, "not exceeding one-half the revenue raised."

Also that, in the same section, line 5, for the word "establishment," be substituted the word "employed on Town duty."

The object of his amendment was to put some limitation on the demand on Municipal Funds for Police purposes. Ample check had been provided in respect of taxation, and of all other matters treated of in the Bill. But in respect of this one item there was no check. Absolute power

was given to the Government to take the whole proceeds of the taxes of any municipality for the purpose of maintaining the Police; not only for the town Police, but to pay the Police stationed in the town, but employed on duties altogether beyond the limits of the municipality. The object of the amendments was to lay down by law some limit to the proportion of funds to be expended for Police. The only objection that he could anticipate to the first of the amendments, namely, that the maximum amount should not be more than one-half, was the general objection that, by prescribing a maximum, you induced the working up to that maximum, and induced the levying of much taxation that was not wanted. That was a reasonable objection to prescribe a maximum of taxation when the decision rested with municipal bodies, but was hardly applicable to the Local Government; for it was hardly probable that they could mistake a prohibition to take more than a certain proportion to be an indication to work up to that proportion. A second objection might be taken, that it was possible that the Government would insist upon taxation being raised to a sufficient amount to produce double the sum required for Police. He believed they would rather find that placing a limit would induce the adoption of wholesome economy, as it would make the Government enquire whether, with such a large proportion as one-half the proceeds of municipal taxation devoted to the maintenance of Police, there was not a superabundance of Police; and further, if the Local Government ascertained that the payment on account of Police was not in excess of the wants of the town, and that the town was sufficiently taxed, it would probably be deemed wrong to fix such a large proportion, and a donation for Police purposes would then be assigned from the grant for Provincial services. Other courses than additional taxation would thus be suggested to the Government in the event of the proportion of one-half being found insufficient for the maintenance of municipal Police.

The second amendment was little more than a verbal one. MR. ELLIS conceived that it was never intended that municipalities should be called upon to pay for anything more than the town Police. In some parts of the country, it was the custom to station, in large towns, a considerable body of Police with highly paid officers required for the care of the district around the town. Where that was the custom, the wording of the Act might have an injurious effect, inasmuch as the municipality might be called upon to contribute to the maintenance of Police which were not required for the town. The second amendment would restrict the contribution to the maintenance of Police required for the town.

The Hon'ble MR. INGLIS hoped the amendment to limit the amount that might be spent on the Police of any town to one-half the sum raised under the Act would not be carried, as he was certain it would only do mischief.

It was impossible to lay down any rule regulating the proportion the cost of the Police of any town should bear to the total income received by the municipality. In large, opulent, compactly built towns, the cost of the Police employed was probably not more than fifteen or twenty per cent. of the income raised by local taxation; while, in other towns, to which the Act might be extended with the sole object of raising a sum sufficient to pay for the Police employed in them by some of the taxes leviable under it more in accordance with the feelings of the people than a house-tax, there was perhaps no surplus left. The result in these cases, if the Hon'ble Mr. Ellis' amendment were carried, would be to compel the Local Government to double the taxation already imposed on such places, in order to obtain a surplus which nobody wanted.

The number and cost of the Police required for any town was a matter which should be left entirely to the discretion of the Local Government.

The Hon'ble MR. EGERTON quite concurred with what had fallen from the Hon'ble Mr. Inglis. The Act would be introduced in many places merely for the purpose of raising money for Police purposes. It was the only Act which empowered the Local Government to raise money by rates and taxes for such purposes, and it was desirable to keep it free from any restriction of such kind as would lead to inconvenience in that respect. The Local Government was not inclined to take advantage of the provisions of the Act in any such way as was anticipated by the amendment. There was no wish to apply the funds raised for paying the Police of towns for the maintenance of Police not belonging to the town. The provisions of the Bill were sufficient to prevent misapplication of funds in this respect as in any other case. And it would not be possible to apply funds raised for Police purposes in the town to the maintenance of Police not employed in the town. For these reasons he considered it unnecessary, either to fix the maximum sum to be devoted to the maintenance of Police, or to provide that the Police so maintained should be employed solely in the town.

His Honour THE LIEUTENANT-GOVERNOR agreed with what had been stated, that there were some towns, in which the municipal taxation was solely, or almost solely, for the maintenance of Police; and if in such towns we had to raise rupees one hundred for Police, it was hard that we should be obliged to raise rupees one hundred for other purposes.

The Hon'ble MR. ELLIS observed, that he did not say that the same percentage should be taken in all places. He wished to fix a maximum, so that Government should not, under the pretext of creating municipalities, raise money merely for Police purposes. It was stated by the Hon'ble Mr. Inglis that this was another mode of doing what was done by the old Chaukídárí Act rather than that Act should be revised. If it was desired to legislate for village Police, let a new Chaukídárí Act be passed, but the present Bill was one for forming municipalities. What MR. ELLIS considered to be the meaning of this clause was, to give power to contribute municipal funds for the maintenance of the District Police stationed within municipal limits for town duty, and it was in that spirit that he wished to limit its operation. If he was wrong, the Hon'ble Member in charge of the Legislative Department would correct him. He must say that, in respect of Police, there had been a pressure put on municipalities in some provinces to an extent far beyond what was necessary or just. It was to check this injustice that he proposed the amendments, and he would press their adoption.

The first amendment was put and negatived.

The Hon'ble MR. ELLIS observed, with reference to his second amendment, that the country was parcelled out into Police-stations. There were stations for the Police of towns, and stations for Police entertained for the prevention of crime in the rural districts around those stations. These latter stations were situated in large towns, and, according to the wording of the Act, the Police establishment in a town would embrace Police employed in duties outside of the town, and therefore he proposed to add the words "employed on town duty," to show that Police stationed in a town, but employed outside of the town, were not to be maintained from municipal funds.

The Hon'ble MR. EGERTON explained that there were two separate establishments of Police stationed in some towns; one was the Police of the district, the other the Police of the town. But the District Police were not paid from municipal funds. They were quite separate: there were two stations and two sets of Police, and they were very frequently under the control of one and the same officer. They were to some extent mingled, but there was no such misappropriation of municipal funds as the Hon'ble Mr. Ellis had supposed. MR. EGERTON thought it would be highly inconvenient to limit the employment of the Police of any town to that town. On the occurrence of a disturbance, you might require to transfer large bodies of Police from one town to another; whereas the proposed amendment would ordinarily prevent the employment of the Police of a town in any place beyond the limits of that town.

His Honour THE LIEUTENANT GOVERNOR observed that the practice was as had been suggested by the Hon'ble Mr. Egerton, and he thought it would be a great abuse of power if there were any other practice.

The second amendment was put and negatived.

The Motion that the Bill be passed was then put and agreed to.

LAND REVENUE (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. INGLIS moved that the Bill to consolidate and amend the law relating to land-revenue in the North-Western Provinces of Bengal be referred to a Select Committee with instructions to report in six weeks. He said :—"My Lord, this Bill has, since its introduction last April by the Hon'ble Mr. Stephen, been carefully considered by the Government of the North-West Provinces. Some alteration in the arrangement of the chapters is suggested; the addition of some sections embodying the provisions of certain Regulations, inadvertently omitted from the repealing schedule of the original Bill, is proposed; and some changes in the existing law, which I shall now proceed to notice, are recommended.

"The most important changes suggested are in the chapters relating to Settlement. It being recommended that power should be given to Settlement Officers to determine the classes to which tenants belong; and the rent payable by them according to their class; the order passed by the Settlement Officer in such cases being made appealable to the Revenue authorities instead of the Civil Court; and, also, that tenants cultivating land in an estate in which they formerly possessed the proprietary right should be recognized as a separate class of occupancy tenants, with rights and privileges superior to tenants who may have acquired a right of occupancy by prescription under section 6 of Act X of 1859.

"I will, with your Lordship's permission, read an extract from a Note recorded by the Hon'ble Sir William Muir last July, on the rights and position of these ex-proprietary cultivators. He says :—

"'In the draft Bill now before Government for amending the Rent Law of the North-Western Provinces, the Board of Revenue have introduced a new provision (paragraphs 5, 20 and 21), recognizing ex-proprietary tenants as a privileged class, whose rent should not be liable to enhancement excepting at revision of settlement, and then only at a privileged rate.

"'2. I am in favour of such a provision on grounds of strong expediency and even of justice.

"'3. Ex-proprietary cultivators are described in paragraphs 126 to 135 of *Directions to Settlement Officers*; they may have lost their rights in any of the following ways:—

"'4. First, they may have been reduced to the position of cultivators by reason of their estate having been sold for arrears of revenue. It was held by Mr. Thomason that the effect of such a sale was the loss of proprietary rights only. "If they were cultivators also," he says, the ex-proprietors "retain their rights in that character, and, as regards their own or seer land, are entitled to hold at fixed rates." But no very definite rule is laid down as to what these "fixed rates" should be. They are "liable to an equitable adjustment of the rent, if it was before too low, and should be made to pay the same that other non-proprietary cultivators in the neighbourhood of the same class pay for similar land." The adjustment is admitted to be difficult, and recourse is recommended to a jury. The result practically has been, I believe, that this class (unless too strong for the auction purchaser) has fallen to the ordinary level of the hereditary cultivator, who holds merely in virtue of a twelve years' prescription.

I.—Ex-proprietary cultivators by reason of revenue sales.

Directions to Settlement Officers, paragraph 132.

"'5. The result of a sale in execution of decree of court, on the other hand, was held by Mr. Thomason to extinguish all rights, both cultivating and proprietary. The ex-proprietor "then becomes a mere tenant-at-will, and is liable to be entirely ejected from his land;" he can acquire new rights only by contract or a new prescription. Herein lies the sting of the sale-law, and its inapplicability to the habits and circumstances of Upper India. The immediate possession of the land, as a rule, is not changed. The ex-proprietors cling to their ancestral acres; they have in fact nowhere else to go; no other employment to take up. They remain as cultivators with all the traditions of their ownership, and every infringement of their position by the new proprietor embitters them against him, and against the British Government to which they trace their fall. In Oudh, when proprietors were ousted, or, when they parted voluntarily with their right to contract with Government, they retained, either tacitly or by agreement, their seer or *khudkasht* land. If some arrangement of this kind had been recognized in case of sale under decree, it would have mollified the hardship of the ex-proprietor's new position. And I believe it might have been done on the principle that, by the custom of the country, the cultivating title is not saleable; and that what is sold is therefore the title to proprietary management and profits, not the rights and privileges of cultivating tenancy.

II.—Ex-proprietary cultivators by reason of sale in execution of decree of court.

Ibidem para: 132.

"'6 As it is, the state of the law and the action of our courts have thrown the new proprietors and the old cultivating communities into a bitter antagonism, which ends too often in riot and bloodshed. Mr. A. Colvin writes:—

"'There are villages here, within sixteen miles of the table at which I am writing, where it is as much as the auction purchaser's life is worth to show his face unattended by a rabble of cudgellers. He may sue his tenants and obtain decrees for enhanced rents; but payment of these rents he will not get. A long series of struggles, commencing in our courts, marked in their progress certainly by affrays, and very probably ending in murder, may possibly lead him at length to the position of an English proprietor. But in defence of their old rates, the

Bráhman, or Rájpat, or Syyad community, ignorant of political economy, and mindful only of the traditions which record the origin and terms of their holding, will risk property and life itself." (Memorandum on revision of Land Revenue Settlements, by Mr. A. Colvin, 1872, page 114.)

III.—Ex-proprietors reduced by voluntary sale.

"'Ex-proprietors reduced to the grade of cultivators by the voluntary sale of their estates, may be very similar in condition to Class II. They may have been caught in the meshes of the money-lender. Under the Native system, they would have been responsible only in their persons and their personal property,—their tenure would never have been thought of as a transferable asset. Land being now invested with a saleable value, their evil fortune prompts them, perhaps, first to mortgage their fields under a rash deed of conditional sale; then they prefer to complete the transaction by a voluntary sale, rather than run the chance of a smaller price at a public auction. With the sale, goes the entire right, both cultivating and proprietary. It is seldom that the seller has the foresight to stipulate for the retention of his holding at favourable rates, or at any rate at all. And the general result will often not be very different from that of an enforced sale.'

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"'13. Whatever reasons there may be, in the abstract, for creating or maintaining privileges in respect of the above classes, or of any one or more of them, these are strengthened by the experience of recent years.

"'14. The history of rent in these provinces has been sketched by Mr. A. Colvin with much research and ability in his recent treatise on the Revision of Settlements. His position is that, what, with us, are "rent-rates," were, under the systems preceding us, strictly *revenue*-rates, determinable by custom, or otherwise, at discretion, by Government agency; the head of the community or other person contracting with Government being remunerated by land or by a drawback. Originally, in these provinces, rent continued during the thirty years' settlement to be singularly stationary. But new influences are at work. Prices have risen, and rent is beginning slowly to respond: in so far as the rise is the legitimate result of enhanced prices, and no more, the old classes of cultivators have nothing to complain of,—the increased rent representing simply the increased value of the share of the produce which would otherwise have gone to Government. But there are other causes. Act X, 1859, affords a ready and effective machinery for enhancement, where there was none before. The new settlements, so soon as they are completed, become the signal for enhancement-operations. Wherever the revenue is raised, there the people (true to the old tradition of revenue-rentals) arrange for a corresponding rise in their rents.

"'15. Now, so far as regards the non-privileged classes,—those whose tradition fail to connect them with an original interest in the soil,—the process may be left to work itself to an equilibrium, and the proprietors to push their claims to the utmost. The modern *Maurusi*, whose right of occupancy rests on the simple prescription of a twelve years' tenancy, may be left to fight his battle with the proprietor. But to leave those whose traditions do connect them with the soil at the mercy of the new proprietors, backed by the force of law, will be to

permit a state of things neither just to them nor consistent with the peace of the country. I cannot do better than quote here Mr. Colvin's conclusions:—

"'If the Government raises its demand on the land, the proprietor can only recoup himself by raising his demand for rent. But if the view I have taken of the original nature of what we call his rents is correct, what does this process of raising them entail? It entails a long and bitter struggle between those whom we have made full proprietors, vesting them with powers which none but the Government ever claimed before, and those who believe themselves to be the original occupants of the land. The power of the Government, and the strength of its Courts, must be on the side of the unpopular cause. The process of raising rents introduces and forces into activity a new and most dangerous element of discord. The extent of the change which we introduced into the tenure of land will only be fully known when the proprietors commence to use more freely the powers we have given into their hands. Not only those to whom, at cession or conquest, we gave proprietary rights, but the hundreds who, by sale or mortgage, have since acquired them, will attempt, each in his own way, and each with varying success, to destroy the old traditional rates.' Page 120.

"'16. And again;

'The political aspect of the question does not come within the scope of this paper. But I may repeat, in concluding, that, in the new agency we have introduced, namely, the newly acquired power of our proprietors to enhance their rents, which we have seen so sturdily combated by Mr. Bird, there lie very serious elements of social discord and agrarian discontent. It has been my object to show why, during the last settlement, that power was very little understood. The Rent Law of 1859 first brought it to the immediate notice of those whom we have recognised as proprietors. The progress of the country and the revision of settlements have forced the power into active use. We are now, for the first time, fairly watching its effects; and under the guise of adjusting rents, I believe we are introducing what is little less than a revolution into the *status* of a large section of the agricultural body. For the present, doubtless, Act X of 1859 is not largely used by proprietors to raise rents independently of Government pressure but mainly as an indispensable and necessary complement to the authority exercised by Government in periodically enhancing its revenue. But this is for the present only. The proprietary body have been given the power, and, more recently they have been taught its advantages. Under former Governments, the interests of the proprietary and the mere cultivators were identical. Now they are directly antagonistic. We have an apparent increase in the number of tenants in whom we have recognized rights of occupancy; but, in reality, a violent attack on the only security by which they hold. We have abandoned the exercise of a direct control over the land-rates: and while deriving larger revenues therefrom, can reach them only by inviting proprietors to drag their tenants into Court.

The remedy certainly does not lie in merely enhancing the revenue on the landlords; but, I believe, in recognizing the historical aspect of these so-called rents. The remedy will be found in arranging, at time of settlement, for the fair and full valuation of rents, not by law Courts and vain *formula* of enhancement, but the only officer competent to do it, the Settlement Officer, who stands to-day in the place of Akbar's Amil, and who has, to guide him, a mass of data which he only can effectively handle. During the term of settlement, the

rents so fixed I would, with certain exceptions, maintain. A far larger revenue would be gained with a smaller amount of heart-burning. The treasury would be satisfied, and the people more content." *Ibid*, page 136.

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"'19. I cannot conceive that any impartial person will oppose the protection of these classes as an infringement of the rights of the proprietor. The State has always held itself at liberty to restrain the zamíndár for the benefit of the tenants. No absolute and exclusive right in the zamíndár has ever been admitted or declared. There is nothing in the previous position of the zamíndár that would bar the Government in upholding the rights of any class of cultivators; and in recognizing the zamíndár as proprietor—not merely as the passer on of the rental, but as entitled to all the profit arising from the limitation of the Government demand,—it has nowhere been conceded that he is possessed of any indefeasible power of enhancement. The proprietor cannot, therefore, complain if we limit his power of enhancement in respect of certain asseels possessed of an anterior interest in the soil.

"'20. At the same time, I would create no new rights. I would raise into the privileged class none who are not already, by the feeling of the country and the traditions of the people, entitled to hold at easy rates.

"'21. And, further, there would be no interference with *existing rents*. It is not proposed that, in any case, the privileged cultivator should be empowered to claim reduction of the rent he is paying. Proprietors cannot, therefore, complain that the measure *lowers the assets* upon which the settlement of the revenue was concluded with them.

"'22. The project simply provides that no suit for enhancement will lie against a cultivator of the privileged class during the term of a settlement; and that the rent of such cultivator may be enhanced at the revision of settlement by the Settlement Officer only, and so as that it may be enhanced up to 25 per cent. below market-rates and no higher.

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"'25. The Board propose that privileged rents should not be enhanced above 75 per cent. of market-rates. I am not sure that so great a difference is required. I think two annas in the rupee, or 12½ per cent., which has been fixed in Oudh, would suffice.

"'26. The measure now proposed should be brought before the Committee at present sitting on the Bill for the consolidation of the Revenue Law, North-Western Provinces, with the view of a provision being entered in the settlement-section for the purpose.'

"It is recommended that a section drawn in accordance with the opinion expressed in this Note should be inserted in the Bill. The proposed section runs thus:—

Tenants holding at privileged rates.

"'All tenants in a village who have lost their proprietary rights in such village, or whose ancestors have lost such rights since the introduction of British rule in any of the ways following, namely,

(1) by sale for arrears of revenue;

(2) by sale in execution of a decree of the Civil or Revenue Court;

(3) by private agreement, sale, or mortgage;

(4) by confiscation under Acts Nos. XI and XIV of 1857,

shall be recorded as privileged tenants in any land in such village cultivated by them at the time of the passing of this Act, or at the date of their ceasing to be proprietors, if such date is subsequent to the passing of this Act.

"'If the proprietor make application to the Settlement Officer to enhance the rent of a privileged tenant, the Settlement Officer shall enhance the rent of such tenant to a rate which shall be two annas in the rupee less than the rate fixed by the Settlement Officer for land of a similar quality with similar advantages held by occupancy tenants in the same circle or tahsíl.

Enhancement of rent of privileged tenants.

The rent of all privileged tenants shall be fixed for the term of settlement in the temporarily-settled districts, or, in the permanently-settled districts, for thirty years, at the rate thus determined; or, if no application have been made, at the rate hitherto paid by them.'

Period for which rent of such tenants to be fixed.

"The next section relates to tenants who have acquired a right of occupancy under section 6 of Act X of 1859. It is proposed that the rent payable by this class of tenants shall be determined by the Settlement Officer by the standard of the current rate of rent for similar land, or by the standard of the rent-rate mentioned by the Board of Revenue for the circle or tahsíli in which the holding of the tenant is situated; and that the rent thus fixed should not be liable to enhancement for fifteen years from that date, except—

'(1)—in cases in which land has been gained by alluvion after the date of such order;

(2)—in cases in which the area of the tenant's holding has been added to since the date of such order;

(3)—in cases in which the productive powers of the land have been increased otherwise than by the agency or at the expense of the tenant after the date of such order.'

"The power of determining the rent payable by tenants, which it is thus proposed to give to Settlement Officers, does not differ materially from that which they exercised under section 22 and the following sections of Regulation VII of 1822, before their repeal by Act X of 1859, and so far the proposed measure is merely a return to the practice heretofore existing at time of settlement and is certainly in accordance with the feelings of the people, who think that the time when the Government demand on the landlord is determined is the proper time for fixing the rents payable by the tenants, and that the officer who fixes the one should fix the other also; but as larger facilities for enhancing rents are given to

landlords, it is thought right that tenants should be protected against fresh enhancement for a certain term, except under certain specified conditions, so that the benefit derived by landlords from the long leases granted by Government should be, though to a less degree, extended to tenants with a right of occupancy; and as the data on which a Settlement Officer will determine the rent payable by tenants are mainly identical with those on which he will fix the Government revenue-rate based on those rents; and as the standard of rent for comparison is made the current rate of rent for similar land, or the rent-rate sanctioned by the Board of Revenue for the circle or tahsil, it is proposed that, in cases where the rent fixed by the Settlement Officer is disputed, the appeal shall lie, not to the Civil Court, but to the Revenue authorities, as it is believed that they are in a far better position to pronounce on the applicability of the rent imposed than the Civil Court can be, the issue being one, not of law, but of fact, and resting on considerations coming within the daily observation of Commissioners and the Board of Revenue, though but little familiar to the Civil Courts. The procedure recommended will also relieve both landlords and tenants, to some degree, from the heavy expense they are now put to in re-adjusting the rental of an estate to the revised jama fixed upon it by the Settlement Officer. The revised assessment of an estate is not based on the actual rental received at the time of revision by the landlord, but on the rental the estate would yield were the current rent prevailing in the neighbourhood for similar land enforced. This assumed rental is frequently higher than the actual rental obtained at the time; and, consequently, landlords are forced, in order to get their fair profit after payment of the Government demand, to enhance the rent of those of their tenants who may be holding at rents below the current rent prevailing for similar land in the neighbourhood. They can do this at present only by expensive suits under Act X of 1859, the cost of which is liable to be considerably increased should an appeal be made to the Civil Court, the result being, if the landlord is successful, that the tenants are burdened, not only the payment of an enhanced rent, but with all the heavy costs of the suit in the Original and Appellate Courts. The procedure now recommended will, in a great measure, remedy this evil.

"The other changes recommended by the Government of the North-Western Provinces may be more briefly noticed. In chapter II, it is proposed to define clearly the position of the Collector of the District as the chief controlling authority in the Revenue Department, and also that all Collectors should be divided into two classes, the power to be exercised by each class being laid down in a subsequent chapter.

"In the chapter relating to the Partition of Estates, it is proposed to re-enact the present law in a more concise and simple form, the only alterations proposed being, *first*, that no partition shall be disallowed solely on the ground of incompactness, and, *secondly*, that—

'Rule as to land cultivated for twelve years by one sharer being included in estate assigned to another.

'No land that has been cultivated continuously for twelve years by any co-sharer shall be included in the estate assigned to another co-sharer, unless with the consent of the co-sharer who cultivates it, or unless the partition cannot otherwise be carried out.

'If such land be so included, and after partition such co-sharer continue to cultivate it, he shall be a tenant with right of occupancy in such land, and his rent shall be fixed by the Collector accordingly.'

"In the chapter on the Collection of the Land-revenue, the only alteration requiring notice is in the section which provides that—

'Any proprietor of an estate or portion of an estate that is attached, transferred, held under direct management, farmed, or sold under the provisions of this Act, who may hold seer land in such estate or portion of an estate, shall be recorded as a privileged tenant of such seer land; and the rent to be paid by him for such land shall be fixed by the Collector of the District under the provisions of section of the North-Western Provinces' Rent Act.'

Proprietor of estate attached, &c., holding seer land therein to be recorded as privileged tenant.

"In the last chapter, dealing with Appeals, it is proposed that the order passed by a Commissioner on an appeal from the order of a Collector of the District, or of a Settlement Officer passed on a decision given by an officer subordinate to him, shall be final, a general power of revision in such cases being reserved to the Board of Revenue.

"I have now to move that the Bill be referred to a Select Committee. Should the Committee decide on adopting the alterations recommended by Sir William Muir, I would propose that they submit a preliminary report at an early date, and that the amended Bill be published in the Gazette for general information."

His Excellency THE PRESIDENT then adjourned the debate.

The Council adjourned to Tuesday, the 28th January 1873.

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

CALCUTTA,
The 21st January 1873.

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