Tuesday, September 5, 1871

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 10

Book No. 2

March to Dec.

1871

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 Simla on Tuesday, the 5th September 1871.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P. G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb.
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble H. W. Norman, C. B.
The Hon'ble F. R. Cockerell.
The Hon'ble R. E. Egerton.

LOCAL PUBLIC WORKS LOAN BILL.

The Hon'ble MR. STRACHEY moved that the report of the Select Committee on the Bill to facilitate the construction of works of public utility from Local and Municipal Funds be taken into consideration. He said that though the form and arrangement of sections had undergone considerable changes in Committee, the Bill itself remained, in all its essential particulars, unaltered. There could be no difference of opinion as to the duty of the State to encourage works of utility, sanitation schemes, water-supply, and so forth. For such works loans were often urgently required. At present, however, no municipal bodies throughout the empire, except those on which borrowing powers were conferred by some special Act, had a legal power to borrow, so that, though these bodies had ample means of giving excellent security, they were practically debarred from doing so, and such loans as they did effect were contracted without the authority of law, without any legal security, and consequently on disadvantageous terms. It was undoubtedly desirable that, as a general rule, these bodies should borrow from Government, and not elsewhere; Government being able to lend on cheaper terms than the ordinary capitalist. No risk of public loss would be

incurred, as the security would be in every instance thoroughly good. The measure would, he believed, prove of great value in increasing the efficiency of municipalities and promotion of works of public interest.

The Hon'ble SIR R. TEMPLE wished to state that the present measure had the entire concurrence and support of the Financial Department, and that the cause of municipal improvement in India had been promoted by the efforts of his Hon'ble Colleague Mr. John Strachey and also of Colonel Richard Strachey recently a Member of this Legislative Council. It was clear that there must be public improvements, equally clear that these could not be effected without loans, and that it was desirable accordingly to invest public bodies with borrowing powers. The old arrangement prevented municipalities from borrowing, except at various rates, in the open market. The present Bill would give them the advantage of having the State for a creditor and effecting loans at four and a half to five per cent. rates which, as the Council was aware, could not be elsewhere obtained. The Government of India was always happy to make such advances. The cash balances were high enough to make it easy and safe to do so. No risk of loss to the public would be incurred, but great relief would be afforded to municipalities. It was intended to lend at such rates as would cover any expense incurred by Government in the transaction, and would, in some instances, make a sinking fund possible. He considered that the measure would prove a most useful one, as affording to corporations a comparatively cheap and easy resource for effecting improvements, and this too without imposing even a fraction of burden on the general tax-payer.

The Hon'ble MR. COCKERELL said that with the exception of the municipal corporations of the Presidency Towns, which were specially exempted from the operation of the prohibitory provisions of this Bill, the only municipalities which had borrowing powers expressly conferred by law were those established under the Bengal Local Act III of 1864. As regards these latter municipal bodies, the effect of the prohibitory provisions of the Bill was to suspend, for such time as the Government was prepared to make advances to them, the power of issuing debentures which they possessed under the existing law.

He had commented on this matter, as he did not think it was adverted to by his hon'ble friend the mover of the Bill, and silence on the subject might have given rise to the supposition that the general application of the provisions referred to was inadvertent, or that its full effect had not been considered.

As a member of the Select Committee, he (MR. COCKERELL) advocated the course which had been taken in regard to the Bengal municipalities. He believed that their power of raising money on the issue of debentures had been rarely, if at all, exercised, and he felt sure that the bringing of them within the restrictions as well as the privileges of the present measure, was for their real advantage. As had been so forcibly remarked by both the previous speakers, the Government, from its vastly superior credit, was in a position at all times to lend money on far more advantageous terms than those on which it could be obtained from other sources.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

LAND IMPROVEMENT BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to advances of money by the Government for the improvement of land.

LAND-REVENUE PROCEDURE (PANJÁB) BILL.

THE Hon'ble MR. STEPHEN in introducing the Bill for consolidating and amending the law as to land-revenue procedure in the Panjáb, and moving that it be referred to a Select Committee, with instructions to report in four weeks, said :

"MY LORD,—I fear that it will be necessary for me to detain your Lordship and the Council for some considerable time in introducing this Bill. If this requires any apology, I must find it in the extreme importance of the subject. In a certain sense, the measure may be regarded as one of the most important which could come under the notice of the Legislature. Finance is the mainspring of the Government of India, and the land-revenue is the mainspring of Indian finance. I need not enlarge upon this; but I may observe that important as the subject is, it appears not to have received that degree of attention from the persons charged with Indian legislation, which its importance requires.

"To make this plain, it will be necessary to say a few words upon the history of Indian legislation on the subject of the assessment and collection of land-revenue.

"The earliest legislation upon the subject dates from the year 1793, in which, as your Lordship and the Council are aware, the famous permanent settlement of Lord Cornwallis became law. It is not my intention to say anything on the present occasion upon the effect or the policy of the permanent settlement. It was my duty, when at Allahabad, some months ago, to address your Lordship at considerable length on that subject. In connection with the present question, I may, however, observe that it is impossible to read the papers connected with the permanent settlement without perceiving that its provisions were, to a very considerable extent, affected by the conscious ignorance under which its authors laboured as to the nature of the interests in the land which existed around them. They were aware of the fact that interests of a very complicated and peculiar character, unlike anything known to European experience, affected the land of Bengal; and I feel little doubt that one of the objects which they had in view was to effect an arrangement which might be regarded as cutting the knot in which these interests were entangled. Whether, in point of fact, the knot was actually cut, or whether the difficulties were really avoided, is a question on which I shall, on the present occasion, express no opinion. I mention the fact, merely in illustration of the character of the legislation in question, and to explain its effect on the subsequent course of legislation. From the year 1793 to the year 1822, little or no legislation to which I need direct the attention of your Lordship and the Council, took place upon this subject. The permanent settlement was introduced into the Province of Benares, but not into the other Ceded and Conquered Provinces which were afterwards consolidated into what is known to us by the name of the North-Western Provinces.

"In these territories, summary settlements of short duration appear to have been made for a considerable number of years. It was at last determined to reduce the law upon the subject to a regular system. When this determination was taken, the knowledge which Indian Statesmen possessed of the constitution of Hindú society, and in particular of the constitution of village communities, had been very greatly increased. It was under the influence of this knowledge that the famous Regulation No. VII of 1822 became law. It was the work of Mr. Holt Mackenzie, and subject to certain amendments introduced into it by Regulation IX of 1833, it became, and it still is, the foundation of the whole of the law of Northern India

upon the subject of land-revenue. It may be said to be based upon a recognition of the fact of the existence of village communities.

"In order to explain what follows, it is necessary for me to make a few remarks upon this famous law. I have read it with attention several times, and it has always reminded me of a remark, which was once made by a judge of great eminence as to a certain paper produced before him, 'Take it away, Sir, and make it much shorter and much fuller.'

"The Regulation begins with a long preamble which embodies what we should now call a Statement of Objects and Reasons. It deals with many circumstances of local and temporary interest. It enters into minute detail upon a great variety of subjects, but when you come to look at the enacting parts of the Regulation and to subject its general expressions to the ordinary tests of legal criticism, it is almost impossible to say with any degree of precision, precisely what it means to enact and what it leaves unenacted. It unites, but does not very clearly distinguish, two main objects—*first*, the object of making provision regarding the assessment of the revenue, and *secondly*, the object of instituting a sort of system of registration which has become well known under the name of the 'Record of Rights.' This second part of the Regulation is, when closely examined, singularly vague, and in particular, it leaves practically undetermined the vital question: What is to be the legal effect of the system of registration thus established?

"I may illustrate the great obscurity of this famous Regulation by reading, with your Lordship's permission, one or two passages from a work from which much information is to be derived about Indian affairs, though it is conveyed in an exaggerated and vehement shape, and is deeply coloured by the strong opinions of its author. I refer to Shore's notes upon Indian affairs. That author describes the Regulation as follows:—'First, for the far-famed Regulation VII of 1822, whose mazes and intricacies have so bewildered the intellects of those Collectors who have attempted to put them in practice. Every extraordinary production of this nature has generally some primary moving principle, or mainspring, which, when divested of its outworks or external causes, will give us some insight into the nature of the effects it is intended to produce. The Regulation in question was the work of a very clever man, who was mainly guided by theory, but who was unfortunately deficient in that local knowledge and matter-of-fact experience, without which the fairest theories have failed. * * * * * * This famous Regulation is, in fact, a provision for introducing into the country a ryotwarree settlement, and a ryotwarree settlement is, when divested of its mystification, simply a plan to get rid of the principal farmers of the different

estates, and by making those settlements directly with the subordinate owners and cultivators, to realize to the Government the share which the principal farmer formerly received.' Elsewhere, he says of the same Regulation, that its 'fundamental principle is to destroy whatever good did exist under the ancient customs of the people without supplying its place with anything else, and in order to raise a still higher revenue for the Government. I repeat, again, the principle of it is to get rid of the manager of the estate and head of the farm, and assess each portion separately, by which proceeding Government hopes to realize his share for itself.' I think that this is unjust to Mr. Holt Mackenzie. It appears to me perfectly clear, on reading the Regulation, that its principal object was to protect subordinate rights, instead of making the zamíndar the absolute owner of the soil, as he became in Bengal, under the provisions of the permanent settlement; but the fact that the Regulation admitted of such a construction is sufficient proof of its extreme obscurity. This is further shewn by the amendments which were made in it by Regulation IX of 1833. The most important of these amendments, was that the Regulation was not to be considered to mean that the record of rights and the assessment of the land-revenue should take place at the same time. It is obvious enough that if this had been the law, the making of settlements would have been indefinitely prolonged. Whether this arrangement was, or was not intended by Regulation VII of 1822, is, perhaps, open to question; but the fact that such a question should have arisen respecting it, is an additional proof, if any such proof is required, of the extreme obscurity of the Regulation itself.

"The system established by Regulation VII of 1822, was in subsequent years very considerably modified by certain instructions issued to Settlement Officers and Collectors of Revenue by the authorities of the North-Western Provinces. After some changes, these instructions were consolidated into two books, the directions to Settlement Officers, and the directions to Collectors. The author of these works was, I believe, the late Mr. Thomason, and I may observe in passing, that of all the law books that have come under my notice, I should be inclined to say that they are very nearly, if not quite, the best.

"With some exceptions, to which I need not now refer, they are arranged and expressed with a degree of precision and clearness, which I do not think can well be exceeded. They were not, however, law, but merely commentaries upon the law.

"I have noticed that there is an all but insuperable tendency amongst persons who have to acquaint themselves with the law, to prefer hand-books to Acts. This probably arises from the fact, that Acts whether passed by Parliament

or by local Legislatures, have usually, till very recently, been drawn in a form as difficult, cumbrous, verbose, and repulsive as the perverted ingenuity of draftsmen could devise. The old Bengal Regulations were, I think, better drawn than contemporary Acts of Parliament; but that is about the only praise that can be bestowed upon their drafting, and it is not high praise. The hand-books drawn up by Mr. Thomason were infinitely superior to the Acts which they were intended to explain, and the natural consequence was that they superseded them.

"In the year 1849, the Panjáb was conquered and annexed, and the system which then prevailed in the North-Western Provinces was introduced into the Panjáb in a manner to which I will now proceed to direct your Lordship's attention.

"The Province was placed, as you are aware, under a Board of Administration consisting of Lord Lawrence, his brother, afterwards Sir Henry Lawrence, and Mr. Mansel. Their powers were defined in a despatch from the Government of India, dated the 31st March 1849. I have not the least doubt that the intention of those who drew up that despatch was to say to the Board of Administration—'Govern these Provinces as well as you can and according to your own discretion, and take for your guide, generally speaking, the system already established by law in the North-Western Provinces.' This, however, was not precisely what they did actually say. Part of the despatch to which I have referred is in these words: 'The Governor General would wish to uphold Native institutions and practices, as far as they are consistent with the distribution of justice to all classes; but he is persuaded that except in some of the wild districts of the Trans-Indus, or the Alpine country of the Sind Saugor Doab, there is no portion of the country which will not be benefited by the gradual introduction of the British system, at the earliest possible period.

* * * * With the knowledge now generally prevalent respecting village co-parcenaries, there is no apprehension that our officers will not exert themselves to maintain those important bodies in all their integrity.

* * * * The popular institutions will be improved and consolidated by our measures, and the native system of accounts and reports will be adhered to without any great or radical deviation.'

"In another part of the despatch, the following passage occurs: 'The four short printed circulars of the Sudder Board of Revenue of the North-

Western Provinces, and the pamphlets published under the orders of the Lieutenant-Governor, form an admirable body of instructions, adapted to any Province where the village system obtains, and explain so lucidly the structural and functional divisions of our complicated revenue machinery, that they should be largely indented for and circulated amongst our officers.' Under these instructions, the Board of Administration conducted the government of the country. It would be an impertinence in me to venture to praise the manner in which they did their duty. The success of the Administration of the Panjáb by Lord Lawrence and his colleagues must always form one of the brightest of the many bright pages in the History of British Rule in India. I may, however, observe that good as was the work done, it was performed with singularly blunt tools. So long as the government of the country was substantially a matter of military occupation and personal discretion, questions as to the precise meaning of the instructions under which the Board of Administration acted, did not, and indeed, could not, arise before Courts of Justice. This, however, was a state of things which could not last. The very object for the attainment of which Lord Lawrence and his colleagues laboured was the introduction of a regular legal system of government; and when Courts of Justice were established, and questions of right arose before them, it became obvious enough that the instructions originally given to the Board of Administration were vague in the extreme, and left open innumerable doors to questions affecting the whole administration and government of the country. A somewhat singular incident invested these matters with peculiar importance. The theory upon which conquered Provinces had long been administered by the Governor General in Council was that the Government of India possessed, as Agents for the Queen of England, the right, which Her Majesty undoubtedly possesses, of legislating for conquered territories. They treated, in short, conquered Provinces as being, what in English law would be described, as 'Crown Colonies.' Whether the constitution of the East India Company, and the various Acts of Parliament which had been passed with relation to the Government of India, justified them in this view, is a question upon which a good deal might be said, if the discussion were now of any practical importance. I refer to it only for the purpose of explaining the course of legislation. My distinguished predecessor, Sir Barnes Peacock, wrote a minute upon this subject, in which he expressed his opinion that the Government had no right to make laws for the Non-Regulation Provinces by a mere executive order, or in any other manner than by laws duly made in the Council of the Governor General assembled for that purpose, under the provisions of the Acts of Parliament which were then in force.

"The effect of this opinion was to render it altogether doubtful, whether or no, any law at all could be said to exist in the Panjáb, and whether the whole government of that country under the Board of Administration had not been one continuous series of illegal acts. The attention of Government was at that time engrossed by other matters. It was considered, and I have no doubt rightly considered, practically impossible to enact a special Code of Laws for the Panjáb. It would have been equally, if not more, objectionable to extend to the Panjáb, in the mass, the Regulations and Acts which had been passed for the government of other parts of India. Under these circumstances, the course actually taken was to introduce into the Indian Councils' Act in the year 1861, a provision to the effect that all laws, orders, and regulations hitherto made for the government of the Non-Regulation Provinces, should be confirmed.

"This enactment has, since that time, been regarded by the Government of India as a declaration by the Legislature that the Government possesses no other legislative powers in the Non-Regulation Provinces than it possesses in other parts of the country. This was one effect of the enactment in question, another effect of it was to stereotype the existing orders and regulations of the Government, and to give to them a degree of legal importance which they most certainly were never intended to have. It was enacted that existing orders and regulations should have the force of law, and lawyers were set to put a legal construction upon the despatches and correspondence which constituted these orders and regulations.

"It became at once apparent, as indeed it is apparent upon the most cursory inspection, that they left open questions of the very utmost importance.

"Take for instance this question: Does Regulation VII of 1822 extend, or does it not extend, to the Panjáb? The despatch to which I have already referred says that the 'Governor General would wish to uphold Native institutions and practices, as far as they are consistent with the distribution of justice to all classes.' Now, the Regulation in question was obviously drawn with reference to the existence of a set of Native institutions and practices which differed in many important respects from those which prevailed in the Panjáb. Regarding this despatch as a law, which is to prevail—the practices and the institutions on the one hand, or the words of the Regulation on the other? Again, the despatch says, that 'there is no apprehension that our officers will not exert themselves to maintain village co-parcenaries in all their integrity.' The effect of the provisions of Regulation VII of 1822, if introduced

into the Panjáb, would certainly be to render possible the destruction of these village communities. Did the despatch in question introduce these provisions, or did it not?

"I believe I have the authority of Sir Richard Temple, who having been Secretary to the Panjáb Government in Lord Lawrence's time, is better qualified than most persons to offer an opinion on this subject, for the assertion that Lord Lawrence and the Board of Administration never believed that it was the intention of the Government to introduce the Regulation in question in its entirety into the Panjáb. They considered—and it appears to me that there can be no doubt that they were right in considering—that their instructions were to take this Regulation as a general guide, but not to consider themselves bound by all its provisions in detail. The Chief Court of the Panjáb, on the other hand, when the question arose about three years ago, decided distinctly and recorded its decision in a minute which it wrote upon the subject, that Regulation VII of 1822 was in force in the Panjáb. I may remark that the whole of the violent, most acrimonious and unfortunate discussion which occupied the attention of Government upon the subject of Panjáb tenancy in 1868, arose out of this question.

"I may mention one further fact upon this matter. Mr. Robert Cust prepared a hand-book of revenue law for the Panjáb. This was issued to the various revenue officers; and questions might easily be raised as to the extent to which the contents of that book could be regarded as law. They differed in several respects both from Regulation VII of 1822 and from the instructions to settlement officers which were issued to explain it. Here, therefore, is a fresh source of difficulty upon this subject.

"Such, stated shortly, is the actual condition of the law relating to land-revenue in the Panjáb. The extremely unsatisfactory condition in which it stands has long been notorious, and, having been brought to the attention of the Secretary of State some time ago, Mr. Robert Cust received instructions to draw up a revenue code for Northern India. This work he accordingly undertook, and, about a year since, his draft was forwarded to the Government of India for its consideration in the Legislative Department. Our simplest course in some ways might have been to accept and to adopt Mr. Cust's draft code, but reasons, which I will now proceed to state in general terms, led us to the conclusion that this would be inexpedient. Mr. Cust's work, which I hold in my hand, has, beyond all question, very great merits. His great experience and industry no doubt enabled him to collect together all that

was to be said on the subject, and I think we may feel pretty confident that, if we succeed in extracting from Mr. Cust's draft all its material parts, we have omitted nothing essential to the completeness of the system.

"I will read a few lines from some observations which he has appended to the code itself, in order to confirm what I have already said in regard to the existing state of confusion in the law upon these matters: 'The law relating to the collection of land-revenue still remains in a state of lamentable and, except to those who are trained to its study, unintelligible confusion. Regulation upon Regulation, Act upon Act have been passed upon this most important subject between the year 1793 and the present time, rescinding parts or whole, modifying, contradicting, or reiterating. It has come to this in Northern India that no one pretends to study the law on the subject, but each man contents himself with the knowledge of the text-books and circulars of the executive authorities.'

"This description, I believe, to be perfectly correct.

"I will now say a very few words on the reasons which have led us to the conclusion that it would be practically impossible to accept and enact into law Mr. Cust's draft.

"It contains 1,281 sections and fills no less than 216 quarto pages printed in somewhat small type. A very large—I may say, indeed, by much the largest—part of it consists of matter which it is altogether unnecessary, and much of which it would, in my opinion, be dangerous, to put into the form of express law. Great masses of it are of the nature of mere executive orders, and enter, as it seems to me, into altogether needless detail. There is, for example, a section—chapter IV, section 25—which provides for discipline as follows; 'Discipline shall be enforced in the following manner: *A.* Reproof by word of mouth, or letter,' and then follow six other forms of administering discipline amongst revenue officials lettered up to '*G.*' It contains elsewhere an enactment that Collectors are to maintain rain-gauges in order to ascertain the amount of the annual rain-fall. I have no doubt that the rule is an excellent one, but it is one for which no law can possibly be needed. The effect of regulating matters so very minutely by express law would be to deprive the officers of the administration of all personal discretion, and to encumber them with a mass of intricate rules which it would be utterly impossible either to remember or to understand. In addition, however, to this, it must be observed that Mr. Cust's draft contains a very great

number of declarations of policy on the part of the Government. For instance, section 55 of Chapter III is in these words: 'It is declared to be the policy of the State, not to retain property in land, but in all cases to recognize and fortify indications of private property, whether undeveloped or partially obsolete, and, where absolutely non-existent, to create such property by grant to the person best qualified to make a good use of the land, and expand the resources of the Province.' It appears to me that it would be on every account most undesirable to insert into a law matter of this description. Mr Cust's code contains, moreover, a large number of provisions which lay down the principles, so to speak, of a system of real property law, and, in particular, it defines in many sections of very considerable length, the different kinds of interests which may exist in the land and its produce. It also lays down the rights of the State to land. I think that it would be more bold than wise to undertake, in the present state of our knowledge of local customs and institutions, to lay down principles so wide, and to invite such numerous and difficult controversies as would, beyond all doubt, be involved in their announcement.

"I may add that the draft code in question is intended to apply to the whole of Northern India, including the North-Western Provinces, the Panjáb, Oudh, and the Central Provinces. The circumstances of these various Provinces differ in many important respects, and, as I have already shewn, the existing provisions of the law in force in them are by no means identical.

"It seems to me, therefore, that it is not a wise course to attempt to have a single code for the whole of Northern India, but that it would be far better to have separate Acts for each Province, embodying their peculiar characteristics and providing for their various wants.

"Mr. Cust himself appears to have felt this, for the sixth section of his code, with reference to the peculiar circumstances of any Province in which this code may come into operation, enables 'the Government of India, on the motion of the Local Government, to intercalate into this code, additional sections and chapters which shall apply solely to such portions of the provinces, and suspend such portions of certain sections and chapters of this code, in such portions of the province, and to modify and rescind such intercalations and suspensions from time to time, so as to bring the law into harmony with the diverse and changing requirements of each province, and yet preserve the symmetry of the code.' The effect of such a provision as this would be to destroy the value of the code entirely. The Government might

alter it as they pleased, not only for every Province, but for every part of every Province; but all our experience shews that, in a very short time, a jumble of rules, circulars, and executive orders, having reference to various districts, or divisions, or provinces, would grow up which would render the new code ten times more difficult to understand than the existing system which it is intended to replace. For all these reasons we felt that it would be impossible to accept Mr. Cust's draft.

"We also felt that the opportunity for legislating for the Panjáb, afforded by our peculiar position during the present season, was one which ought to be seized, as it might not easily recur. We have been so fortunate as to have sitting in Council the Lieutenant-Governor of the Panjáb, my hon'ble friends Mr. Egerton, the Financial Commissioner, and Sir Richard Temple, whose early connection with the Province is so well known. Under these circumstances, it seemed to me that we might, during the present summer, prepare a Code of Revenue Procedure, which, though intended primarily for the Panjáb, might, if it were found successful and thought desirable, be readily adapted to the wants of other parts of Northern India. This Bill has accordingly been prepared; and in moving that it be referred to a Committee with instructions to report in four weeks, I wish to direct particular attention to the fact, that although the time may appear short, the measure has in reality been most maturely considered and not hurried in the slightest degree. The Bill has been drafted, I may say, under the superintendence of, and in daily concert with, the revenue authorities of the Province, and I trust that the effect of their advice and instructions upon the subject has been, that the Committee will be perfectly able to dispose of the measure within the time which I have mentioned.

"Before I enter upon the provisions of the Bill, I will say a few words upon the authorities from which it has been framed. In the first place, I consulted Mr. Cust's draft. In the next place, I carefully examined the sixty-five regulations which are supposed to have been introduced into the Panjáb by the despatch to which I have already referred, and of which my hon'ble friend Mr. Cockerell was good enough to supply me with a complete list. I have also consulted Mr. Thomason's instructions to Settlement Officers and to Collectors, and the whole work has, as I have said, been carried on under the eye of the Lieutenant-Governor and the Financial Commissioner of the Province. I hope, therefore, that the Bill will be found to be moderately complete. I may say a few words upon the sixty-five regulations to which I have referred. The list of them looks extremely formidable;

but when the matter is closely examined, they turn out to be a mere ghost, dressed up as it were in a white sheet. Some of these regulations re-enact others, some extend regulations already enacted to particular districts, which had then been recently conquered. Many of them refer to particular transactions long since past. Many others vary the procedure of the Courts in some insignificant detail; and, in fact, after fully examining and looking into every one of the sixty-five regulations in question, I arrived at the conclusion that Regulation VII of 1822 and Regulation IX of 1833 are the only ones relating to the subject which are of any serious importance. The matter, therefore, is not in reality by any means so difficult as at first sight it appears to be. The Bill, as drawn, will replace the whole of the existing Bengal Regulations upon the subject, and will condense into about eighty sections the 1,281, which have been drawn by Mr. Cust. I have said that it does not alter the existing law, but it fills up certain gaps which are left by the existing law, and it settles certain points which have been much discussed in connection with its provisions. It does not interfere in any degree with the Panjáb Tenancy Act of 1868, which regulates the rights of the parties interested in the land, as between each other. Neither does it interfere with section twenty-one of the Panjáb Courts' Act of 1865, which empowers the Local Government, whenever a settlement is in progress, to invest the settlement officers with whatever judicial powers they think fit in relation to suits connected with the land.

"After this long and, I fear, tedious preface, I come to state in general terms the provisions of the Bill which I have now the honour to introduce.

"The natural division of the subject is as follows:

I.—Officers.
II.—Settlement.
III.—Collection of Revenue.
IV.—Miscellaneous.

"On the subject of Revenue Officers little need be said. It is proposed merely to enact in very general terms the system as it exists.

"A settlement includes two great operations: the assessment of the revenue, and the formation of a record of rights.

"The assessment includes also two operations: the determination of the amount of the revenue which is to be paid in respect of particular pieces of

land, and the making an engagement with the person whom the Government permits to be answerable for the payment of that revenue.

"The record of rights must be considered with reference to three operations,—*first*, its formation; *secondly*, keeping it up; and *thirdly*, its revision.

"Further, it is formed *first*, by judicial decisions; *secondly*, by statements of individual rights and statements as to matters of fact recorded by the settlement officers. It is composed of the following documents,—*first*, measurement papers, one of which is an index map showing all the fields in each village in which the settlement is to be made; *secondly*, what is called the *khuteonee*. This is a list of the occupiers and owners, and a specification referring to the index map of the lands occupied and owned by them. *Thirdly*, a tender on behalf of the persons with whom the settlement is to be made to take the land for a certain time at a certain rate of revenue. *Fourthly*, the *khewut*, which, as I understand it, is a paper showing the shares in which the land is held and the persons who hold land-revenue free, and showing also the shares of revenue for which each holder is liable as amongst themselves, although there is also a joint and separate liability on every member of the village for the whole revenue due from it. *Fifthly*, the *wajib-ul-urz*, which is a record of the village customs, and forms a sort of village manual of real property law. *Sixthly*, what is called the final *rubikaree*, which is a record of the whole history of the settlement, and contains, amongst other things, a list of all law suits which have taken place before the settlement officers. These documents taken together form a record of rights; and I may observe first that, in enacting that the record of rights shall contain these documents, we merely give the force of law to an arrangement which has been found by experience to be convenient. The documents which I have mentioned are well understood by every settlement officer, and are prepared on every settlement with the greatest possible degree of care and precision. I am told that the practice with regard to some of them is, to cause all the landowners in the village to sign them, and to append to them a note of the absence of those who, for any reason, are unable to sign. Such are the operations of a settlement. But I must observe that settlements themselves are of four different kinds, and that these operations are performed in different ways, and under different circumstances, according to the nature of the settlement of which they are to form a part. A settlement may be, *first*, a summary settlement, that is to say, a settlement in which no record of rights is formed, but the engagements for the revenue assessed are taken from the parties in possession. *Secondly*, a first regular settlement. A first regular settlement is a

settlement in which a complete record of rights is made for the first time, and in which engagements for the amount of revenue assessed are taken from the persons who, according to the principles of settlement law, are held to be entitled to make such engagements. *Thirdly*, a re-settlement. This occurs, when, upon the expiration of the term of the first regular settlement, the amount of revenue is re-assessed, and the record of rights revised to a greater or less extent, according to circumstances. *Fourthly*, there may be a revision of the record of rights without any alteration in the revenue.

"Now, such being the operations which take place at a settlement, and such being the kind of settlements at which these operations are performed, I proceed to notice what I think ought to be one of the main features of this Act—a feature which is intended to remedy one of the principal gaps left open, by Regulation VII of 1822.

"That Regulation nowhere expressly decides what is to be the precise legal effect of the entries made in the record of rights. We propose that that effect should be as follows: All entries made in consequence of judicial decisions should have the effect of other judicial decisions. All entries made, as to matters of fact or matters of individual right, are to be presumed to be true in all cases, and as against persons who have the opportunity of dissent when they are made, are to become conclusive after five years.

"These are the general principles which we propose to lay down with regard to settlements.

"I now pass to the manner in which they are to be applied to the settlement of particular districts, and we propose that when a particular district is to be settled, the Local Government should, with the previous sanction of the Government of India, issue a notification which would bear to the Act that I am now introducing, the same sort of relation, that a special Act, about a particular railway, bears to the Acts of Parliament, well known to your Lordship, as the Land Clauses Act, or the Railway Clauses Act.

"The notification will state specifically the district under settlement, the nature of the settlement proposed to be made—as it falls under one or other of the four heads to which I have referred—the judicial powers, if any, with which the settlement officers are to be invested; the details, if it is thought desirable to specify any details, with regard to the record of rights, and in the case of a re-settlement or a revision of a record

of rights, the particulars as to which any existing record of rights is to be subjected to revision. It is, however, provided that no entry affecting any proprietary or other right shall be altered except by the consent of the parties or after a judicial proceeding. The effect of this will be, that the settlement officer will know precisely what he is to do, and the Courts of Justice will know precisely afterwards what he actually has done.

"Such is the machinery by which we propose that settlements should be made. I may pass shortly over the other provisions connected with them. We propose to determine in terms nearly resembling those of Regulation VII of 1822, though not identical with them, with whom the settlement is to be made. We further propose to lay down provisions for handing over the record of rights, when completed, from the settlement officer to the Deputy Commissioner, in whose charge it will be kept; and the Local Government will lay down rules by which the necessary alterations caused by death, sale, or decrees of Court, may, from time to time, be made in it by the person who has charge of it.

"This concludes what I have to say as to the provisions of the Act as to making settlements.

"The next subject with which it deals is that of the collection of revenue. It is very difficult to say what the existing law upon this subject is. I believe that sales for arrears of revenue are practically unknown in the Panjáb. Whether they are legal or not, is a question on which I can imagine a dispute being raised in consequence of the terms of the despatch to which I have already referred. It is at all events perfectly clear that whether legal or not, they ought to be introduced. They are the *ultima ratio* for the collection of revenue; and, though the power should be exercised in the most sparing manner and with the greatest possible caution, it seems to those who are the highest authorities on the subject, that it is one which cannot be dispensed with.

"I may say a few words upon the subject of these revenue sales. The practice, I believe, was entirely unknown to the Native Governments, although the process of forfeiture was not unknown to the Síkhs in the Panjáb. They were introduced into Bengal shortly after the permanent settlement, and, in that part of the country, if a person did not pay his revenue to the day, subordinate revenue officers had a right, which was most freely exercised, of bringing his land to the hammer immediately. From Bengal the practice

passed into the North-Western Provinces. It excited, as I have been told, the greatest indignation, and the worst possible feeling on the part of the natives, and I have frequently heard it asserted that, during the mutinies of 1857, the only popular movements which took place at all in the North-West, were movements for the purpose of taking possession of lands which had been sold either for arrears of revenue or under decrees of Court. The evils which this state of things produced were keenly felt; and, in order to avoid them, a device was resorted to, which has frequently been tried in England, but which, I am inclined to think, proceeds upon altogether a wrong principle. Sales were maintained, but they were surrounded with a variety of formalities which made it exceedingly difficult for the Collector to sell without falling into some error which would vitiate his proceedings.

"This is, in principle, very like the practice that obtained in England, of attempting to mitigate the extreme severity of the old criminal law, as it originally stood, by excessive scrupulosity in regard to indictments. You might hang a man for stealing five shillings, on condition that you drew up your indictment in such terms that the most astute lawyer could not pick a hole in it. I do not think this system of trumping tyranny, by quibbles and nibbling at a law, which you do not choose either to repeal or to enforce, can ever be a good one. Legal procedure ought in all cases to be clear, short, and decisive. If there is a danger that it may be used oppressively, the proper remedy is to require that it should not be put in force at all without the sanction of those who are not likely to abuse it. We propose accordingly that no sale of lands for arrears of revenue shall be valid without the previous sanction of the Lieutenant-Governor of the Province.

"This is the real security against abuse; and I sincerely hope that, as it never has as yet been found necessary to sell land in the Panjáb for arrears of revenue, it never may be found necessary in the future. It will be for the consideration of the Committee, whether, having regard to this sanction for sales, it may not be possible to simplify the present procedure in respect to them.

"I need not detain the Council with many words upon the miscellaneous provisions of this Bill.

"They refer to certain duties which are thrown upon revenue officers, and which have no relation to the general subject of the assessment or collection of the revenue. I may pass them over with this observation. As I have

already remarked, the land-revenue system of the Panjáb, though not identical with, is very similar to, the land-revenue system of the North-Western Provinces.

"I trust that this Bill may be considered by the North-Western Provinces Government, and that, if that Government think it can be adapted to the purposes and wants of those provinces, it will make such suggestions to us on the subject as it may think desirable."

His Honour the LIEUTENANT-GOVERNOR of the Panjáb said that, after the elaborate statement just made by the Hon'ble Mr. Stephen, it was unnecessary for him to do more than express the entire concurrence of the Panjáb Government in the views expressed and in the policy of the proposed measure. Mr. Stephen's explanation would show that the task which he had undertaken was no easy one. The law now about to be superseded was about fifty years old, and, within a few years of its enactment, its imperfections had begun to be perceived and criticized. No one, however, had hitherto undertaken its reform; the consequence had been great indistinctness, frequent mistakes, and no small public inconvenience. The Panjáb would, His Honour was sure, not be slow to recognize the advantages of such a Bill as the one now introduced, and, should it be passed, it would, he believed, be amongst the enactments most creditable to the energy and skill of His Excellency's administration.

The Hon'ble SIR R. TEMPLE said—"I have but one remark to make in corroboration of what has fallen from my hon'ble colleague, Mr. Stephen, regarding the introduction, or rather the non-introduction of Regulation VII of 1822, into the Panjáb. I, for one, share his belief that this Regulation was never formally introduced into the Province. What was done at the outset, was to introduce in the most general terms the North-West system. That system embraced the main substance of that Regulation, but nothing further. It was also a common instruction in those days to act in the spirit of the Regulations. Thereby it was meant to leave a wide margin, within which that Regulation might be modified by executive authority from time to time. As for any particular section, or clause of that Regulation being adduced to check or to contravene the proceedings of the executive, no such idea was present to the minds of those who founded the administration of the Panjáb.

"I have one thing more to say, which is to express my satisfaction at the honourable tribute which Mr. Stephen has paid on this, as on a former occasion,

to the memory of Mr. Thomason, who certainly was one of the greatest administrators that ever adorned the services of India. I observed this tribute paid by so impartial an authority as Mr. Stephen, with the more satisfaction in that I have often seen with sorrow of late years—an unreasonable depreciation of the statesman who illustrated that period of Indian history. Perhaps while on this topic, and while adverting to the celebrated circulars of the Board of Revenue, Mr. Stephen might have mentioned the name of one even as great as Mr. Thomason, namely, Mr. Mertins Bird. Indeed, the Lieutenant-Governor now present, will bear me out in saying, that under Mr. Bird and Mr. Thomason, were trained the men now known to history, who made the Panjáb what it is, whose labours are attested by the present prosperous condition of the Panjáb, which indeed constitutes a living monument to their fame—a monument that will be durable as the Province advances in prosperity from generation to generation."

The Hon'ble Mr. Egerton wished to remark, with reference to his hon'ble friend's (Mr. Stephen's) observations on the backwardness of the Indian Government to legislate on land-revenue, that there had been in the Panjáb excellent reasons for the hesitation which Government had shown in dealing with that difficult and important subject. Legislation had not been postponed without a cause. When the English took possession of the Panjáb, they found a country inhabited by village communities—institutions characterized by remarkable fixedness and vitality. The officers entrusted with the administration of the conquered province were expressly instructed to respect the existing institutions of the country, and no one could doubt the policy of such an order. They had been directed, moreover, not to assess severely, but to limit the Government demand to a moderate proportion of the profits of the soil. Both those orders had been carried out; the village communities remained in unimpaired vigour, and the agricultural classes had been raised by moderate assessments from the prostration to which the exactions of the Síkh Government had reduced them. Property in land might be said to have been created, and agricultural improvements had received a stimulus which had brought the prosperity of the proprietory body in the province to a very satisfactory level. There could be no doubt as to the general prosperity and content of the agricultural classes. They fully realized the advantages of a regular and indulgent administration of land-revenue law; no difficulty was experienced in collecting the tax, the arrears were altogether insignificant; compulsory process against defaulters was very exceptional, and the sale of land for arrears of revenue might be said to be unknown. This state of things was one which of course conduced very materially to the stability of the Government, as the experience of the mutiny had shown. And this accounted for

the fact that the Government had been content to go on for a long time with a land-revenue law which was perhaps not very clearly defined by written enactments, but which was at any rate sufficiently distinct to be administered with results which were, on the whole, so eminently satisfactory. The time had now, however, come for substituting more distinct enactments for a system avowedly tentative and temporary. The very fact of our system having added so largely to the value of land, resulted in there being many claimants for it, and it was necessary that such claims should be investigated and adjusted by a strictly defined rule of law. He entirely concurred in the advisability of the legislation now contemplated, and was glad that the matter had fallen into the hands of one who had not allowed the many technical difficulties which beset it, and which persons not practically acquainted with the details of revenue law naturally found so repulsive, to deter him from thoroughly mastering it and reducing it to an intelligible and systematic arrangement.

The Motion was put and agreed to.

INDIAN WEIGHTS AND MEASURES OF CAPACITY BILL.

The Hon'ble MR. STEPHEN also introduced the Bill to regulate the weights and measures of capacity of British India, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said that he had, on asking leave to introduce the Bill, informed the Council of the circumstances under which this Bill was being proceeded with. It was unnecessary again to trouble the Council with a statement of those circumstances. The present Bill was merely a re-enactment of the disallowed measure of last year, with the omission of those provisions to which the Secretary of State had taken exception, and of certain powers of making the act obligatory, with which it did not appear desirable that Government should be invested.

The Hon'ble MR. STRACHEY said, that he wished, with His Excellency's permission, to make a few remarks on this Bill, because he had seen signs of considerable misconception on the part of the public in regard to what had occurred, and he thought it was important that it should be distinctly understood that, although the Secretary of State had disallowed the Act passed by this Council last year, there had never at any time been, nor was there now, any difference of opinion between the Secretary of State and the Government of India, regarding any principle involved. The only difference had been, how the principles on which all were agreed should be carried into practice. The question at issue had been one of procedure only.

Mr. Strachey thought it might be useful to recall to mind very briefly the history of this measure. The memory of public matters in India was short, and a good deal had been stated on the present subject, which showed complete misapprehension of the facts. It seemed to be supposed by some people that the Government had an intention of forcing upon India the metric system of France, or he ought rather to say, of Europe, for with the exception of England, it was the stysem of almost the whole of civilized Europe. The Government never had, and never would have, any such insane idea. The truth was this—There was, at the present time, no system of weights and measures in India recognized by law. People often talked of British Indian maunds and seers, but these weights had no legal existence. There was probably no other country in the world with a Government calling itself civilized, of which this could be said, and it had long been admitted to be a matter of essential importance, that some definite system should be adopted. The only doubt had been what that system was to be.

There had been a general agreement that the most convenient unit of weight for India would be a *seer*, because this was the weight more commonly known to the people than any other. The average weight of Indian seers was found to be about 2¼ lbs. avoirdupois—2 lbs. was decidedly below the average, and so was the old British Indian seer which weighed 80 *tolas*. The kilogramme of the metric system was equal, within an almost inappreciable fraction, to 2¼ lbs. avoirdupois; and, looking at the question from a purely Indian point of view, in the interests of the people of India alone, and apart from all theoretical considerations, the Government of India came to the conclusion, that this was the most convenient unit of weight that could be chosen. This fortunate accident of the practical identity between the kilogramme and the average Indian *seer*, gave us the great advantage of placing our official system of weights in correspondence with that which already existed in the greater part of the civilized world, and which might probably be ultimately introduced into England. This conclusion had been adopted by the Secretary of State and by the Government of India, and it was approved last year by this Council, which had then the advantage of the presence of commercial gentlemen of much eminence, without a dissentient voice. It had always been agreed, that the new system ought not, in regard to private trade and dealings, to be forced upon any section of the public, until the public was really prepared to receive it with approval. The Government of India and the Secretary of State, agreed in the first instance, that it was desirable to deal at present with weights only, and not with measures of length. The Government of India, afterwards thought it desirable to take the opportunity of defining also

in the new law the future standard of length, but the Act was so worded that no compulsory powers for its introduction could, under any circumstances, be taken. The metre was declared to be the official unit of length, because it was the opinion of the highest engineering and other authorities, that the unit of weight being that of the metric system, the unit of length of the same system, would be the most convenient that could be chosen for official purposes. But it was never proposed to force it on the public. The Secretary of State thought, that the original conclusion was the best, that no reference to measures of length should be made in the Act, and that certain sections containing compulsory powers in regard to weights went further than was desirable. But, in regard to the essential questions at issue, there never had been any difference of opinion, and he (MR. STRACHEY) desired to repeat, that the Bill which his hon'ble and learned friend Mr. Stephen proposed to introduce to-day, represented in reality the views which the Government of India had always held, as exactly as that which had been disallowed by the Secretary of State.

His Honour the LIEUTENANT-GOVERNOR observed, in confirmation of what the Hon'ble Mr. Strachey remarked, as to the impropriety of calculating the seer at 2 lbs. avoirdupois, that he remembered in Lucknow serious discontent being occasioned by the introduction of a seer, which weighed only 2 lbs. The local seer weighed a fraction over that amount. The dealers took advantage of the fact of a new seer being introduced, and charged the same price for the new seer, as they had for the old, and so got the advantage of the difference between the two seers. Every purchaser accordingly found himself mulcted to a corresponding amount, and serious dissatisfaction resulted.

The Motion was put and agreed to.

PANJÁB REGULATIONS' BILL.

The Hon'ble MR. STEPHEN applied to His Excellency the President to suspend the Rules for the conduct of Business.

The President declared the Rules suspended.

The Hon'ble MR. STEPHEN then introduced the Bill for declaring what laws are in force in the Panjáb, and moved that it be referred to a Select Committee with instructions to report in four weeks. He said:—"My Lord, this Bill is so closely connected with the Panjáb Land-Revenue Bill that many of the

observations which apply to the one apply to the other. I have pointed out in reference to the other Bill the peculiar manner in which the Bengal Regulations were introduced into the Panjáb, and I may observe that the laws upon subjects other than land-revenue, which were so introduced, were exceedingly numerous and extremely complicated. The difficulty of saying what law was introduced, and what was not, is quite as great in the one case as in the other; and I may add that questions of great importance have arisen on this subject between the Executive Government and the Courts of Justice. Some years since, a series of Regulations which I believe to have been exceedingly wholesome, were made by the Executive Government for the purpose of confining certain criminal tribes in various parts of the province within the districts in which they resided, and forbidding them to leave those districts without express authorization. These rules, which had been acted upon and proved beneficial for a considerable period, were declared by the Chief Court to be illegal; and the consequence of that decision has been that, for some time past, these tribes have been relieved from the restraint imposed upon them, and have been enabled to pursue the unlawful practices which this restraint was intended to prevent.

"This is one of the many illustrations that might be given of the extreme obscurity in which the law relating to the Panjáb has been involved by the manner in which it was introduced. The obscurity has been, to a considerable extent, cleared up by the Panjáb Government in its answers to a letter which was sent out in the time of my hon'ble predecessor Mr. Maine, calling upon the Local Governments of Non-Regulation Provinces to forward a return of all the laws, orders and regulations in force in those provinces which had acquired the force of law under section twenty-five of the Indian Councils' Act. I hold in my hand the book which was forwarded to us as an answer to these questions.

"It contains 408 closely printed octavo pages, and it also contains three schedules of regulations which are considered to have been introduced into the Panjáb. These schedules fill 17 other pages, in addition to the 408 pages already mentioned. I need not remind the Council of the observations I made on this matter, when I obtained leave to introduce this Bill some time ago. I may, however, say that the Bill is now being prepared with the same object and advantages which we had in preparing the Revenue Bill, and I hope that, when taken in connection with that measure, it will completely wipe away all the rules contained in this book, and all the regulations, with the exception of a few specified, referred to in this schedule.

"I will now shortly go through the Bill and state what its provisions are. It begins by stating what law is to be in force in the Panjáb. First, all Acts of Parliament generally applicable to British India, then, all Acts of the Governor General in Council which apply either to the whole of British India or expressly to the Panjáb; then, such of the Bengal Regulations as we do not propose to repeal. These are contained in a schedule by themselves, and I am happy to say that they will be five in number, and no more. Two of them refer to mortgages, one to the declaration of Martial Law, one to the confinement of State prisoners, one to alluvion and diluvion, and another to a very small matter connected with the arrest of European soldiers who are liable to the jurisdiction of Courts Martial. Of these, those two which relate to mortgages and to the arrest of soldiers will, I hope, be soon repealed by consolidation Acts.

"Those which remain, refer to the subjects of Martial Law, State prisoners, and alluvion and diluvion. In questions regarding inheritance, marriage, female property, adoption, dower, guardianship, minority, &c., the Courts are to administer the Muhammadan or Hindú law with certain modifications. In cases not otherwise specially provided for, they are to decide according to justice, equity and good conscience. These words, though vague in themselves, are pretty well understood throughout British India, and are not likely to lead to any misapprehension.

"These general provisions are followed by specifications of particulars in the Hindú and Muhammadan law, which are to be modified. I need not trouble the Council at any length upon this matter. The principal subjects to which the modifications refer are the law of inheritance, the law of minority, the law of betrothal, and pre-emption. These modifications are contained in the work drawn up by my hon'ble friend Sir Richard Temple, when Secretary of the Panjáb, which has long been known under the title of 'The Panjáb Civil Code.' It is an excellent work, but, having been drawn up by an officer much engaged in other business, and not at the time specially familiar with law, it has been found to give rise to a good deal of litigation and has been made the subject of many doubtful decisions.

"I may observe that, in his preface to the original edition of the work, the author makes the following observations: 'It is not indeed hoped that the first part contains anything approaching to a digest of law or of rights. Omissions and imperfections may doubtless be discovered in every section. Still the principles are believed to be correct as far as they extend, and to merit the

attention of Judicial Officers in the Panjáb in the absence of any other and better treatise.'

"This is a just and modest view of the nature and value of the Panjáb Civil Code, and it deserved more general acceptance than it appears to have gained. The Panjáb Civil Code has been regarded by many authorities as having the force of law, and an enormous number of decisions have been made on various parts of it. It has been swollen from a work of a few pages into one of those enormous receptacles of notes, comments, sections of Acts, and general observations, which pass in England under the name of legal text books. We propose to codify those parts of it which elaborate the provisions of Muhammadan and Hindú law, but altering their wording and arrangement, and adding to them the substance of such decisions as have been given by Courts of Justice in the Panjáb. One point in the Panjáb Civil Code specially requires notice. It contains provisions as to insolvency which I believe are peculiar to the Panjáb, the subject being provided for in other parts of the country by certain sections in the Code of Civil Procedure. These provisions we propose to re-enact with certain additions suggested by experience.

"I now come to the regulation law which has been introduced into the Panjáb. Here, again, I have carefully examined the different regulations referred to in the three schedules which Mr. Barkley has appended to his book. The regulations of the first schedule refer to the subject of criminal justice. They are rendered almost entirely obsolete by the enactment of the Indian Penal Code, which was extended to the Panjáb in 1862. We propose to dispose of the whole of these criminal regulations by enacting that the Penal Code shall have a retrospective operation as to all crimes committed in the Panjáb before it came into operation in 1862. In this there can be no hardship. In the first place, it is very unlikely that any such criminals should hereafter require to be tried, and, in the second place, if the case should arise, the Penal Code merely enacts the substance of the pre-existing criminal law, and adds in no respect to its severity.

"With regard to the regulations in the second schedule, which relate to civil justice, and which are twenty-six in number, I have carefully gone through them, and I am happy to say that, having examined them with considerable attention, I find that the whole amount of law still unrepealed and contained in these regulations may be condensed into about twelve sections, and no more. Of these twelve sections, my friend Mr. Cunningham says we may omit four. Eight sections, therefore, of the old regulations will still be enforced under

this schedule. The regulations of the third schedule relate to revenue law, and these regulations will all be disposed of by the Act which I have already introduced. The Bill will conclude with power to the Local Government to make rules upon a considerable number of local matters.

"I need not enter upon this topic. It is obvious that the Local Government ought to possess powers of this sort, and the particular matters over which they may have power will be hereafter carefully considered in Committee.

"The result of the whole is this: the existing law of the Panjáb, other than the law which is contained in Acts of Parliament and Acts of the Council of the Governor General, will be reduced to two Acts, namely, the Revenue Act, which I have already introduced, and the Act which I am now introducing, which will contain fifty-eight sections and a schedule specifying four or five Bengal Regulations. The effect of this will be to enable the officers to administer the province, to know definitely the law which they will have to administer, and to deliver them entirely from the vast and very obscurely drawn body of laws which, to a certain extent, has been half introduced into the Panjáb from other parts of the empire."

His Honour the LIEUTENANT-GOVERNOR expressed his entire concurrence in the course now proposed. The new law would be of great assistance to the judicial branches of the administration.

The Motion was put and agreed to.

RAILWAY BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill to amend the Railway Act be taken into consideration. He said, that this Bill, it would be remembered, was introduced into the Council nearly six months ago by their late colleague Major-General Strachey, with the object of amending the railway law in certain particulars, two only of which were of any special importance.

One of those amendments related to the fencing of railways. The existing law made it obligatory to fence every railway throughout its entire length. For the reasons stated on the introduction of the Bill, and to which he need not advert now, it was proposed to remove this restriction, and, in substitution therefor, to confer on the Government the power of determining what railways should or should not be fenced.

Without, however, going into the question of the expediency of providing fences for all railways, he might remark, that looking to the only manner in which an obligation imposed in express terms by law in regard to such a matter could be enforced, the enactment of such an obligation was obviously unsuited to the circumstances of railways in this country, which were either, as in the case of guaranteed railways, virtually the joint property of a Railway Company and the State, or wholly the property of the latter. The important question which the Committee had had to consider, in connection with this change of the law, was its legitimate effect upon the special provisions of the existing law in regard to the liability of the owners or persons in charge of cattle trespassing or being driven upon a railway.

As the law now stood, the perfect equity of such provisions admitted of no doubt, inasmuch as every railway being fenced throughout, presumably no cattle could get within the enclosure of the railway except through the gross and culpable carelessness or wilful act of the person who had charge of such cattle. But, under the proposed change of the law, the question arose whether, in the case of unfenced railways, the special penalties (and he had used the word 'special' in contradistinction to the ordinary penalties allowed by the Cattle Trespass Act) for cattle trespassing or being driven upon such railways, could equitably be imposed.

In the absence of the mover of the original Bill, it could not be clearly ascertained whether that measure was intended to bring the special penalties to bear on the owners or persons in charge of cattle trespassing or being driven upon *unfenced* railways. The words used in the sections referring to this matter were—"Any railway duly provided with fences in accordance with the rules applicable to such railway." The last words of the sentence, it would be observed, so far qualified those which preceded them, that without any straining of language, an unfenced railway would come within the legal construction to be placed upon such a definition. In any case it was clearly necessary to place the intention of the legislature in this matter beyond the possibility of misconstruction, and the question which the Committee had to determine was, whether the clauses imposing the special penalties above referred to, ought to apply to unfenced railways. The question was not so one-sided as it might at first sight appear, for the very existence of a law which attached penalties to the trespass of cattle in a country where the enclosure of the property to be protected was quite exceptional, must be taken to be a distinct affirmation by the legislature of the principle that it was justifiable to impose some responsibility on the owner of trespassing cattle in cases in which the owner of the property to be protected had done nothing on his part towards its protection. The question of

the imposition of responsibility for the trespass of cattle under those circumstances now to be settled, was, therefore, merely one of degree, and, after a careful consideration of the subject, the Committee had adopted the safer conclusion that the penalties for the trespass of cattle on unfenced railways should have been confined to those prescribed by the Cattle Trespass Act, so that the more stringent provisions of the law in this matter should have applied only where the railway was properly fenced.

The other important amendment of the law contained in the Bill as introduced, was designed to secure greater efficiency in the maintenance of discipline amongst the persons employed on a railway, which was so essential to the safety of the travelling public. For this purpose it was proposed to empower the Railway Companies, or in the case of a State railway, the officer of Government charged with the control of such railway, to frame subsidiary rules not inconsistent with the general rules sanctioned by the Government, and to attach the same legal consequences to the infringement of such subsidiary rules, as would, under the existing law, apply to the breach of the rules sanctioned by Government.

The consideration of this amendment, led the Committee to the review of those sections of Act XVIII of 1854, which prescribed the conditions under which persons employed on a railway were at present liable to the penalties therein defined. By section twenty-six of that Act, any officer or servant of a Railway Company doing anything which he was by law prohibited from doing, or wilfully or negligently omitting to do any act which he was in like manner bound to perform, and thereby endangering the safety of any person travelling or being on such railway, was made liable to certain punishment; and, further, by section twenty-nine of the same Act, every such officer and servant was declared to be legally bound to do whatever he was required to do by any regulation of the Railway Company which had been sanctioned by the Government.

In the opinion of the Committee, the purport and effect of those two sections might be much more clearly and intelligibly expressed. Moreover, the only object of the provision of the original Bill for empowering the Railway Company or person in charge of a State railway to make subsidiary rules, was to extend the legal consequences of the breach of the general rules referred to in the above sections to the wilful violation of such subsidiary rules.

All this, it was thought, could be as completely and much more simply attained by the substitution for sections twenty-six and twenty-nine of Act XVIII of 1854, and section eight of the original draft, of the new sections twenty-six and twenty-eight as drawn in section two of the amended Bill.

The only alteration of substance originated by the Committee, was the imposition of certain defined penalties of inconsiderable extent for breaches of rules specially sanctioned and allowed by Government, even where such breach did not directly endanger the safety of travellers or persons on any railway.

The existing law provided no penalty in such cases unless some distinct criminal offence was committed. It was, for obvious reasons, desirable, in the interests of the travelling public, as well as for the due protection of railway property, that the Companies and persons entrusted with the control of railways should have some greater power than they have at present for enforcing discipline and obedience to rules.

It might be said that the liability to forfeiture of situation should be a sufficient security for general obedience to orders and rules on the part of the railway servant, but this was a mode of punishment ill adapted to the majority of cases, and, if on no other ground, there would be this strong objection to its general application that it worked both ways, not merely as a punishment to the employé, but also to the injury of the employer.

But it was hardly to be expected, that this provision would completely attain its intended effect unless it could be applied as promptly in the case of the considerable section of the employés on any railway, who were European British subjects, as in that of other persons so employed. It was proposed, therefore, to confer summary jurisdiction in such cases, in respect to European British subjects, on the local Magistrates who were also Justices of the Peace.

Lastly, Mr. Cockerell remarked that the Bill was undoubtedly open to the objection which attached to all patch-work legislation, but this could not under the circumstances of the case, have been avoided.

It would have been more satisfactory to have repealed the whole of the original Act of 1854, and the three or four subsequent enactments on the same subject, and to have re-enacted so much of the entire law as it was desirable to retain in one consolidated Act; but, as was before stated, the Government

was at present unable to undertake any permanent legislation in the matter of railways, as there were many questions connected with the subject on which the Government and the managing Boards of the Railway Companies in England had as yet arrived at no definite agreement.

Fortunately for the attainment of the desired object: the early consolidation of the law relating to railways, the task of adjusting the necessary details and arranging the basis of a permanent legislative measure, was in the hands of Major-General Strachey, now in England, whose well-known energy in carrying out whatever he undertook, was a sufficient guarantee that there would be no needless delay in the matter.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The following Select Committees were named:

On the Bill for consolidating and amending the law as to land-revenue procedure in the Panjáb, His Honour the Lieutenant-Governor of the Panjáb, the Hon'ble Mr. Strachey, the Hon'ble Sir R. Temple, the Hon'ble Messrs. Cockerell and Egerton, and the Mover.

On the Bill to regulate the Weights and Measures of Capacity of British India, the Hon'ble Messrs. Strachey and Cockerell, and the Mover.

On the Bill for declaring what laws are in force in the Panjáb, His Honour the Lieutenant-Governor of the Panjáb, the Hon'ble Mr. Strachey, the Hon'ble Sir R. Temple, the Hon'ble Messrs. Cockerell and Egerton, and the Mover.

The Council adjourned to Thursday, the 28th September 1871.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Governor General for making Laws and Regulations.

SIMLA;
The 5th September 1871.