Monday, October 30, 1871

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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

The Council met at Simla on Monday, the 30th October 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.

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.

INDIAN WEIGHTS AND MEASURES OF CAPACITY BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill to regulate the Weights and Measures of Capacity of British India be taken into consideration. He had stated fully, on former occasions, the circumstances under which this measure was introduced: no alteration had been made in the original Act except to remove from it those portions to which the Secretary of State had objected; and it was therefore unnecessary for him to trouble the Council with any further statement on the subject.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN also moved that the Bill be passed.

The Motion was put and agreed to.

LAND-REVENUE PROCEDURE (PANJÁB) BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill for consolidating and amending the law as to Land-Revenue Procedure in the Panjáb be taken into consideration. He said:—"Although I have on a previous occasion stated at considerable length the reasons which made legislation on this subject necessary, and the principles on which that legislation should proceed, I fear that I shall have to trespass a second time upon the patience of your Lordship and the Council, in order to explain and justify certain modifications which have been introduced into the Bill in the course of its consideration by the Select Committee. That Committee, as I need hardly remind your Lordship, had the great advantage of having amongst its

members the Lieutenant-Governor and the Financial Commissioner of the Panjáb. It had also before it the opinions of all the principal revenue officers of the province, and it has sat almost daily for the greater part of each day ever since it was originally named. I hope, therefore, that the Bill will be found to be complete.

"The alterations introduced by the Committee into the draft originally laid before them and printed in the Gazette involve some important questions of principle, and I will examine them in succession in the order in which they stand in the Bill. The first of these modifications consists of the addition of section nine to the original draft. That section is as follows:—

"'The Local Government shall, with the previous sanction of the Governor General in Council, give written instructions to the officer in charge of a settlement, stating the principle on which the revenue in such settlement is to be assessed. No Court of Justice shall be entitled, under any circumstances, to require the production, or shall permit evidence to be given of the contents, of such instructions.'

"The object of this provision is to lay down, in the broadest and plainest language, the principle that the assessment of the land-revenue is a matter of imperial concern and of the very first importance; and that though, for administrative reasons the nature of which is sufficiently obvious, it is necessary to leave the management of it to a very considerable extent in the hands of the Local Governments and of settlement officers appointed by and answerable to them, it is equally necessary that the highest authority in India should decide upon and should prescribe the principle on which the amount of revenue to be taken should be assessed. It would be impertinent in me to insist upon the obvious truth that the utility, and even the security, of the British power in this country is mainly a question of finance, or upon the almost equally obvious truth that the land-revenue is the backbone of our financial system. As far as I can judge, it would appear to be the only branch of the revenue to which we can look for permanent and steady, though it must in the nature of things be a very gradual, increase; and it is certainly the only very important branch of revenue in which our constant efforts to increase the moral and material welfare of the community produce an immediate definite money return. This being so, it would certainly appear that the matter had been left in the hands of isolated officers to a degree which can hardly be regarded as expedient. I have been informed that, some years ago, the then Lieutenant-Governor of the North-West Provinces lowered the land-revenue payable by considerable parts of those provinces from sixty-six per cent. to fifty per cent. of the net produce by a stroke of his pen. It is matter of notoriety that all over Northern India, and more especially in the Panjáb, eager

discussion has long been, and still is, in progress, upon the question whether the assessments are too low or too high. I have no right to express, or even to entertain, any decided opinion upon the subject, but of one thing I am very sure. Whatever may be the true principle of assessment, the assessment ought to proceed upon principle, and the highest attainable authority ought to decide what is to be the principle on which the assessment is to proceed. If this is not done, and if security is not taken for it by a deliberate and solemn provision of the legislature, the practical result will be, that every settlement will depend upon the theory which the settlement officer—very probably quite a young and inexperienced person—may happen to hold upon the question of landlord and tenant, the nature of landed property and other kindred topics—topics open to as much discussion, and to as many changes of opinion, as any questions whatever. The object of the Committee in inserting the provision in question in the Bill has been to provide the best security in their power against the evils which might arise, and which had arisen, from allowing individual settlement officers to give such very extensive, and it might be such very mischievous, effect to the views which they might happen to hold upon these subjects.

"The next point on which the draft has been modified is the legal effect of entries in Records of Rights. The Council will remember that I originally proposed that the entries in Records of Rights should become conclusive after five years as to the truth of the matters which they stated, unless they were disputed successfully within that period. This provision, with others, was intended to remedy defects in Regulation VII of 1822, which had disclosed themselves with startling distinctness and with very bad consequences in the controversies which terminated in the enactment of the Panjáb Tenancy Act a little more than three years ago.

"I described Regulation VII of 1822 in introducing this Bill, and I may add to what I then said that it appears to me to have been drawn with singularly little reference to anything beyond the settlements which were then in contemplation. Not only does it fail to say distinctly what is to be the legal effect of entries in the Record of Rights, but it does not provide in any way for the case of a second settlement, or say to what extent the officer in charge of such a settlement is to be bound by the entries of his predecessor, and to what extent he is to be at liberty to re-open questions on which his predecesssor had already made a record. The Bill now before the Council provides for all these matters in the most explicit manner. Its provisions are in substance as follows:—

"Records of Rights are to consist of certain specified documents which are to be prepared, signed and attested in a manner to be prescribed by the Local

Government. They are subject to revision by the settlement officer until they receive the final sanction of the Local Government, which may be given, separately, either to the assessment or to the Record of Rights. The Local Government will have the power, by withholding their sanction for a reasonable time—a year or two if it thinks it necessary—to test the degree of accuracy with which a Record of Rights has been prepared; and it will be in its discretion, if it thinks that the work has been negligently or inaccurately done, to have the record revised from time to time, either by the original officer or by another, until a degree of accuracy has been attained which it considers sufficient to warrant sanction. When, however, final sanction has once been given, the Record of Rights will be unalterable. The Deputy Commissioner will be charged with the duty of making, through the Kánungos and Patwáris, a record of all facts which may occur subsequently to the completion of the record—such as sales, deaths, or the judgments of courts—and these yearly papers, as they are called, will supply the next settlement officer with the materials for the amount of revision which he is permitted to make. His power will be as follows:—He may revise the record by making entries in accordance with facts which have happened since the last settlement, or entries to which all the parties interested consent, or which represent the judgments of courts of law. He may also, if the Local Government so directs, make new maps and surveys and correct the entries affected by them, but not so as to affect any person's share or holding or his status. The Record of Rights will thus be binding on subsequent settlement officers, and such proceedings as produced the controversy which led to the Panjáb Tenancy Act will for the future be impossible.

"So far, the Committee have thought it not only safe and desirable, but absolutely necessary, to go, in the direction of making the Record of Rights final and conclusive. I had suggested, as I have already observed, that we should go a step further, and make the entries conclusive evidence of that which they assert after a period of five years. This proposal was most carefully considered by the Committee, and most of the revenue officers who were consulted upon the Bill expressed their opinions upon it. They were, I may say, unanimously of opinion that such a provision would produce a great deal of injustice; and after very full consideration of the subject and repeated discussions upon it, the Committee determined to adopt the view which is embodied in the Bill as it stands. This view is, that the entries made in the Record of Rights should be presumed to be true, and should thus throw the burden of proof on any person who might be interested in denying them, but that they should not be regarded as conclusive. My individual opinion upon such a subject is obviously unimportant; but looking upon the question merely as a question of evi-

dence, I must say that I was convinced of the wisdom of this modification. The reasons alleged by the various revenue officers in support of their view were shortly as follows:—They said that the people were so inaccurate and unbusiness-like, that they were so anxious to say whatever they supposed themselves to be expected or wished to say, and, above all, that they were so anxious to get rid of the trouble of inquiry and to have done with the settlement officer and his subordinates, that their statements could not be depended upon. To this the settlement officers added, that the lists stating individual rights had in many instances to be made up by subordinate officers, and were verified by the officer in charge of the settlement in a very imperfect manner in the cases in which no dispute arose which had to be judicially determined. These undisputed cases form, of course, the very great numerical majority of the total number of cases recorded. Other considerations besides these must be borne in mind. I do not for a moment depreciate or underrate the value of finality in proceedings of all kinds, and especially in matters like these; but finality is not the one thing needful. It is our English way to be peremptory and decisive. We always like to do a thing and have done with it in all departments of life, and we had rather suffer a good deal of injustice than be exposed to what to us appears the greatest of all inconveniences—delay, suspense and uncertainty. The natives of this country, from all that I have been able to hear, take things of all kinds a great deal more quietly; do not set the same value on time and on decision, and are by no means equally averse to leaving things more or less at a loose end. I do not see why we should not recognize this state of feeling, or why we should try to hurry the people out of their natural pace.

"Apart from this, it must be carefully borne in mind that, whatever may have been the case at the first set of Panjáb settlements, of which I shall have more to say immediately, subsequent Records of Rights have been, and will hereafter be, made rather in the interests of the revenue than in the interests of the revenue-payers. The people are, no doubt, accustomed more or less to the system, and they do not resent—at all events they submit to—an inquiry which has for its result the preparation of a Record of Rights which stands as evidence of the facts recorded. If, however, we were to go further and make the Record of Rights absolutely conclusive as to those rights, we should inflict a great hardship on the people; no less a hardship than that of making the immediate litigation of every possible question which can be raised upon land compulsory, under the penalty of losing every right which is not then asserted. Let us for a moment consider how such a process would operate in England. Suppose that a settlement officer

were to be sent into an English county with authority to compile an exact account of every right existing over the land, and suppose, further, that notice were given to every one concerned that the record so framed would be conclusive; the result would be a mass of litigation by which the courts would be choked, though indeed the proposition would be so inconceivably and intolerably unpopular that it is impossible to imagine that it should ever be listened to. I do not see why people in this country should consider it less oppressive than it would be considered in England to be called upon to litigate every claim upon which they ever intended to insist at any time or under any circumstances, simply because, at a particular period, the Government was desirous of revising its revenue arrangements.

"This remark brings me to a point on which I am particularly anxious to avoid any sort of misconception—the relation of this Bill to the Panjáb Tenancy Act. The enactments of which I have been describing the effect are capable of being represented as jarring with that Act, and representing a different line of policy. Indeed one of the sections of the present Act expressly modifies section two of the Panjáb Tenancy Act, so as to make its operation retrospective only. I am very anxious to make it as clear as I can that the difference between the two measures is apparent only, and not real; that the present Bill in no way conflicts with the Panjáb Tenancy Act, but on the contrary confirms and carries out its policy, though it does incidentally supersede one of its provisions, by the manner in which it disposes of the whole subject at part of which that provision incidentally glances. In order to explain this, it will be necessary to say a few words on the scope of the Panjáb Tenancy Act, not with any controversial object, but merely in order to show distinctly how these two measures are related to each other.

"It is impossible to read either the Panjáb Tenancy Act or the debates upon it and not to see that it was a measure intended to meet and dispose of a pressing practical question which had arisen in consequence of certain proceedings of the settlement officers, and not a comprehensive piece of legislation upon settlement law. Moreover, it was, and was admitted to be, a compromise between two opposite views of the subject. In a few words, the matter stood thus. In the first Panjáb settlements, which on an average had preceded the Panjáb Tenancy Act by about sixteen or seventeen years, a very large class of persons had been recorded as being tenants with a right of occupancy. At the settlements which immediately preceded the passing of the Act, the officer in charge of the settlement, acting under Regulation VII of 1822, set aside the old settlement records altogether;

re-opened the question whether the tenants recorded as having a right of occupancy were or were not entitled to such rights; and decided that large numbers of them—many thousands, Sir Henry Maine said as many, I think, as 40,000—were mere tenants-at-will. Two views were taken of this proceeding. On the one side, it was considered that this was a wholesale destruction of rights of long standing, which had been created under the guarantee of British Courts of Justice, at a time when there was hardly anything in the whole country which deserved the name of a legal right, proprietary or otherwise. On the other side it was considered that the original settlement records had been negligently made; that in particular they virtually set aside the rights of a class of superior proprietors; rights which had been forcibly held in abeyance during the Síkh rule, but which were still remembered and valued, and which, under our system, had again become valuable and ought to have been protected.

"These were the opposite views, each of which was very vigorously expressed in the debate which took place here three years ago. The Act was a compromise between them. On the one hand it defined, with a precision never attempted before, the relations of landlord and tenant and the rights of occupancy tenants; and on the other hand it contained a provision in Section two, which declared that, as to certain matters connected with that relation, the entries in settlement records should be regarded as agreements. It did not say this quite in so many words, but this I think is the clear effect and meaning of the section in question. Whether it was intended to be prospective as well as retrospective is perhaps open to question. It was at all events intended to be retrospective; and the effect of it, therefore, was to confer a character of conclusiveness on a very great part, at all events, of the entries made in the different Records of Rights then in existence. Whatever may have been the legal purport of the actual words employed, it does not admit of any doubt whatever that the measure was framed with a view to existing facts; that the principal intention of it was to put an end to what was regarded as an extremely serious practical question. The general subject of the effect which ought to be given to Records of Rights in general was not at that time under the consideration of the Council as it is now, and the result is, that the expressions used by the hon'ble members who took part in the debate, as to the judicial character of Records of Rights, must be construed with reference to the particular Records of Rights of which they were speaking, that is to say, those which were made at the first Panjáb settlements.

"With these remarks I proceed, with your Lordship's permission, to read some observations made by my hon'ble friend and predecessor, Sir Henry Maine,

upon this subject; remarks which might possibly be quoted as showing the change of policy of which I have denied the existence. Sir Henry Maine said—

"'At the first settlement of the Panjáb, the officers employed did not merely, as in older Indian settlements, construct a record which was only a *primâ facie* description of the rights therein described. The Panjáb officers were invested with judicial powers, and the Civil Courts were carefully excluded from interference with their decisions, which when given on merits became the decisions of Judges. Of course I do not mean to say that they adjudicated in every case. No court of justice ever adjudicates in more than the minutest fraction of the cases really, though indirectly, affected by its jurisdiction. But it is clear that everybody, landlord or tenant, had an opportunity of coming forward to assert his rights in litigious form, and had power to appeal from decisions which he thought inequitable, and every decision of the Settlement Courts must have indirectly disposed of thousands of cases not actually brought before them. I can scarcely conceive any stronger guarantee given to these rights. A Parliamentary title to property is necessarily somewhat arbitrary; but when a Government sets its courts of justice in motion for the affirmation of rights, bringing them to the very doors of claimants and opponents, it gives a moral guarantee of the highest order.'

"This, it may be argued, is a distinct assertion that an entry in a Record of Rights ought to be regarded as a judicial decision, not to be set aside or contradicted on any subsequent occasion. I do not think that this was Sir Henry Maine's meaning. I think that he meant to say merely that, under the peculiar state of circumstances to which I have already referred, the particular set of entries which had been made in the particular set of papers in question ought to be respected by the legislature as much as if they had been judicial, and deserved to be put by legislation on that footing if legislation was necessary for that purpose. This is obviously quite a different thing from saying that all entries made in all settlement records ought to be regarded as judicial decisions or contracts recorded in an authoritative manner. It was not necessary to Sir Henry Maine's argument to say more than what I have suggested, and I do not believe that he intended to do so. Indeed, I think that what he did say would be open to a good deal of criticism if it was not regarded as being confined strictly to the particular case in question. Upon this, however, I need not enter, as it would be collateral to my main object.

"The justification of Sir Henry Maine's views, thus interpreted, is to be found in the description which was given by himself, and, at the close of the debate, by Lord Lawrence, of the state of things under which the settlements, which immediately succeeded the conquest of the Panjáb, took place. We found the country in a state of chaos. The Síkh Government had so managed its affairs as to render it altogether doubtful whether the notions of legal right and private property existed at all in the country, or had been altogether

subverted in it. The first object of our rule was to provide some sort of order, and to revive, if not to create, those elementary ideas which form the necessary basis of anything like a stable or prosperous state of society. The first Panjáb settlements were made with a view to this state of things. They were no doubt intended by their authors to form a sort of Doomsday Book for the Panjáb; to supply what an English lawyer would describe as a root of title. They were meant to settle—and practically they did settle—a vast mass of questions incapable of being settled by any other process than the one adopted. What the rights of the parties were before the first Record of Rights was formed would seem to have been an indeterminate problem, one which might have been solved in a variety of ways, according to the views and policy of the persons by whom it had to be solved. However this may have been, it was solved in one particular way by the formation of the Record of Rights, and it appears to me obvious that Sir Henry Maine was perfectly right in maintaining that, after that settlement had remained undisturbed and had formed the basis of all property in land throughout the Panjáb for sixteen or seventeen years, it would have been monstrous to permit it to be disturbed. The Panjáb Tenancy Act gave to it such a measure of validity as it appeared on the whole advisable to give, and nothing can be further from the intentions of the Committee in general, or from my own intentions as the member in charge of the Bill, than to interfere in any way whatever with the settlement then made, or to re-open the questions then decided. Our position is simply this: on reviewing the whole subject of settlement law, we do not think that it would be either safe or just to attach to all entries in Records of Rights any greater degree of importance than is assigned to them by the Bill. We do not think that every entry made by every officer whose duty it is to contribute to the preparation of a Record of Rights ought to be treated as a contract for the future; but we do not propose to re-open the questions settled by the Tenancy Act as to the past. It must be remembered that the very object which the authors of that Act, and Sir Henry Maine in particular, had most clearly in view was to give a fixed and permanent character to the rights guaranteed or created by the first settlements. But if we were to permit such rights to be taken away without remedy by an entry in a subsequent settlement, we should considerably diminish their value. Every argument, in fact, which can be used to show that some of the entries at the first settlements ought to be held sacred, is an argument against attaching an excessive artificial importance to entries made at subsequent settlements. Whatever may have been the case twenty-two years ago, rights of property are now in existence without any sort of doubt; their value is universally recognised; the proper means of preserving and vindicating them—resort to Courts of Justice—is universally under-

stood; and to have a universal re-settlement of rights, with compulsory litigation of every conceivable outstanding claim once in every generation, would be as absurd as to go on pulling out the teeth of a grown-up man at intervals of fifteen years, because, when he was fifteen years of age, it was necessary to pull out some of his teeth to make room for the rest.

"I now come to consider that part of the Bill which relates to the sale of lands for arrears of revenue. The Acts which regulate this procedure in the North-West Provinces are long and intricate. When they were passed, the Code of Civil Procedure was not in existence; but the provisions for the sale of land contained in the Code are, with very few exceptions, identical with those of the revenue sale law. In order to avoid needless intricacy in the law, we propose that the process of sale provided in ordinary cases by the Code of Civil Procedure should also be employed in the sale of lands for arrears of land revenue, with certain modifications of detail. In order to avoid the oppressive use of these powers, we propose that no sale should be allowed to take place without the special sanction of the Financial Commissioner. The subject is not one to which much importance can be attached, as sales for revenue are practically unknown in the Panjáb, and will, I hope, continue to be so. As to the method of procedure, there is really very little to choose between the North-West Provinces sale law and the Code of Civil Procedure, and I do not myself see that what little difference there is, is of any particular importance to the defaulter.

"The next point to which I have to refer is section sixty-five, which provides that no Civil Courts shall take cognizance of various matters specified therein, but that they shall be decided by the revenue authorities, amongst whom a regular course of appeal is provided, from the Deputy Commissioner to the Commissioner, and from the Commissioner to the Financial Commissioner. The matters from which the Civil Courts are thus excluded may be described shortly as being all matters connected with the formation of the Records of Rights, the right of particular persons to be settled with, the collection of the revenue, except in specified cases, and the decision of claims, as against the Government, though not as between individuals, to village offices. The effect of this section will be to avoid what I think must be felt as a great difficulty by every person who tries to understand the revenue system of the North-West Provinces.

"The difficulties of the subject may be summed up in the phrases, 'summary decision,' 'revenue courts,' 'revenue cases.' As far as I can understand the matter—and I am by no means sure that I do understand it—a summary deci-

sion is not, properly speaking, a decision at all; a revenue court is not a court, and a revenue case would not be a case, if it were possible to find any state of things to which that vaguest of words does not apply in some sense or other. At all events, this section will make matters quite clear in the Panjáb. There are certain specified matters which are to be disposed of by the revenue officers, and certain others which will be left to the ordinary civil courts or to the settlement officers in their judicial capacity, whilst their judicial powers remain in force. The section to which I have referred specifies distinctly what those matters are. One anomaly which I am told exists in the North-West Provinces will be completely avoided by this method of proceeding. An appeal may be brought from one revenue official to another, till the matter is disposed of by the Board of Revenue. Their decision may then be contested in the civil courts, and the parties may thus go on appealing till they get up to the High Court. There may thus be as many as five or six appeals in one case.

"The last provisions to which I have to refer are sections sixty-six and sixty-seven, which authorize the Local Government to make rules on a variety of matters connected with the working of the Act; give them six months to make such rules, and direct that the rules, when made, shall be annually re-published, arranged in the order of their subject matter, and amended up to date. These provisions relate to those rules only which are to have the force of law.

"Upon these provisions I have several remarks to make. In the first place, I may refer to a criticism made on the draft Bill by an eminent Panjáb revenue official to whom it was referred for opinion. He said that, like Mr. Thomason's *Directions to Settlement Officers*, the Bill might be described as a 'set of affecting common places.' There is a freshness about this which it is impossible not to envy. The old lady who wept over the sweet word Mesopotamia was hard-hearted in comparison to a veteran settlement officer who is affected by a common place about a wájib-ul-arz; but I suppose that the meaning of the criticism (and, by the way, I wish publicly to thank the author of it for several valuable suggestions) was this—The Bill is too general in its terms. It does not enter sufficiently into detail, and it leaves unsettled many matters of great practical importance. I admit the fact, but I deny the inference that the Bill is defective. It is, and it was meant to be, very general in its terms. It does avoid detail. It does leave many important points to be settled by the Local Government. The reason of this is, that the operation of making a settlement is essentially an executive operation. It is not a matter which can be provided for beforehand by legislation in every minute detail. All that the legislature ought to attempt to do is, to lay down in a

plain and distinct manner the general outline and frame-work of the operation and the principles on which it is to proceed, leaving the Local Government to fill in such details as experience may show to be necessary. Of course, a person who, by many years of labour, has acquired a technical familiarity with all the minute details of settlement operations may see little importance in such an undertaking; but I think that it is possible to have too much, as well as too little, practical experience. A man may know each particular tree in a plantation so well that he forgets that there is such a thing as a general plan of the whole plantation. To those, however, who come fresh to the subject and wish to learn it; to those who have to superintend the administration of the system, to see whether it is working well or ill, and to amend its defects; to those who are responsible for its general results, and who have to see, on the one side, that the revenue gets its rights, and on the other, that the people are not oppressed—in other words, to the student, to the Local Government, and to the Legislature—such a scheme, if properly drawn out, may be of the very greatest value. I have no doubt that the excessive confusion into which the whole subject of land revenue law has from one cause or another been allowed to fall has had very bad practical effects upon the financial and social policy pursued by successive Governments in India. The law has been allowed to contract something of that character of an occult science, known only to experts, which attaches, for instance, to real property law in England.

"The minor legislation on this subject we propose to make over to the Local Government, subject to the provision that a new edition of such of their rules as are to have the force of law shall be published annually, amended up to date. The effect of this will be to prevent the growth of one of those anomalous masses of rules, circulars, explanations and so forth which have hitherto been such blots upon the administration of the land revenue. I hope your Lordship and the Council will observe that the provision to which I am now referring relates to those rules only which are to have the force of law. Nothing can be further from the intention of the Act than any interference with the ordinary authority of the Local Government over its own officers. This we propose to leave as we find it. Executive instructions will of course continue to be issued on such occasions, and in reference to such subjects as may from time to time appear desirable, and it would, I think, be natural and desirable that these instructions should enter upon a variety of topics which would be out of place in a law.

"I would suggest, for the consideration of my Hon'ble friend the Lieutenant-Governor, the importance of causing a new edition of the *Directions to*

Settlement Officers and Collectors to be prepared, or, rather, of having those works re-written with a view to the various changes which have taken place since their original publication. Such a work would, in my opinion, be of the highest importance, and I think that an officer of high standing and position might properly be employed upon the work. Good law-books are almost as necessary for the proper administration of the law as good laws. By a good law-book I understand, not one of those shapeless masses of ill-arranged detail which are commonly produced by English lawyers who wish to connect their names with a particular branch of the law; but books showing the principles on which a law is founded; giving that collateral knowledge, the existence of which the legislator assumes; describing the object which the legislator had in view in enacting particular provisions, and the means by which he hoped to attain them. I mean, in short, a work like those books of Mr. Thomason's to which I have so frequently referred, and not a shapeless mass of cases like somebody's edition of somebody else's edition of *Williams's Notes upon Saunders's Reports*, or a monument of ill directed ingenuity—as worthless intrinsically as a Chinese puzzle—like *Fearne's Contingent Remainders*. It appears to me that such a book as I suggest might be made with perfect propriety to combine an amount of information upon matters connected with the laws and customs of the Panjáb relating to land, and with the past and present administration of that and the adjacent provinces, which would be of the highest and most permanent value, not merely to those who have practically to administer the province, but to every one who is interested in understanding the nature and principles of our rule in India.

"With these observations, my Lord, I have the honour to move that the report of the Committee be taken into consideration."

His Honour THE LIEUTENANT GOVERNOR wished to say that, regarding the Bill from the point of view of the Local Government, he felt the utmost satisfaction at the prospect of its speedily becoming law. The present was the first attempt to put the collection of land-revenue on a distinct footing of legality since Regulation VII of 1822. That measure was, as was well known, the result of a tour made by Lord Hastings with Mr. Holt Mackenzie, in the course of which it was discovered that, in consequence of the intricate and obscure nature of our judicature, the numerous small holdings and interests in land could not be satisfactorily adjusted. Consequently, Regulation VII of 1822 was enacted; but it was framed on an imperfect knowledge of the country and people, and had to be supplemented by a large number of detailed instructions from the Local Governments before settlements could be effected by

the machinery it provided. One of its main defects was that it gave no judicial powers to the officers engaged in a settlement. Such officers had the power to pass what were called "summary" decisions, which could subsequently be contested in the Civil Courts. When the Panjáb was annexed, judicial powers were conferred on settlement officers, and consequently some of the entries made by settlement officers were no doubt of the same effect as judicial decrees, and the people who did not at that time bring forward their claims for adjudication created a presumption against the validity of their claims, which the Panjáb Tenancy Act had, as regarded several topics, rendered conclusive. But HIS HONOUR was satisfied that it was not desirable for the future to invest mere entries, arrived at without judicial investigations, with any technical effect: they raised a presumption of the truth of what they stated, but they were not conclusive proof of it. HIS HONOUR entirely concurred in the propriety of the principle of assessment being definitely settled on the occasion of each settlement by the Local Government in concert with the Government of India. It was highly desirable that a question so materially affecting imperial finance should be considered and determined by the same authority as was responsible for the financial equilibrium of the country.

As regarded what was sometimes called the "compulsory litigation" occasioned by settlements, HIS HONOUR was satisfied that some such process was inevitable. He remembered how in Oudh it had been originally proposed that no alteration in the record of rights should be recognized, except when made on a judicial decision; but it was found that the parties would not come into Court, and that the record would accordingly be very imperfect; the scheme had in consequence to be abandoned. The Bill, as now amended, would, he hoped, be of great usefulness to the Government of the country, and prove a new starting point for the revenue law of India. He considered that his hon'ble friend (Mr. Stephen) had laid the Panjáb under a deep obligation by the industry and skill with which this difficult measure had been conducted to so satisfactory a conclusion.

The Hon'ble SIR RICHARD TEMPLE said:—"My hon'ble colleague Mr. Stephen, who has just spoken, is quite correct in saying that I have given a very reluctant assent to that portion of this Bill which relates to the record of rights (see sections twenty-one—twenty-four), and I now desire to explain the reasons for the views which I have held and still hold.

"It seems to me that a record of rights at a regular settlement must belong to one or other of three categories,—firstly, it may be a register having no judicial effect whatever, being simply evidence *quantum valeat*, as is the case in the

North-West Provinces, under Regulation VII of 1822; or, secondly, it may have absolute judicial effect, being conclusive, conveying a valid title by its entries throughout, not liable to alteration, save for correction of clerical mistakes or errors admitted to be such by the parties concerned, or under peculiar and exceptional circumstances; or, thirdly, it may be a compromise between the above two categories; that is, those entries which depend on a judicial decision shall be final, while all other entries are presumptive evidence only, which will be the effect produced by the present Bill.

"Now, I say that, according to the original intention of the Panjáb Administration, the record of rights was to come under the second of the above categories, that is to say, that the entries of all sorts were to be valid and conclusive; that the record, as a registration, was to have judicial effect; and that there was to be no alteration subsequently, save for the correction of mistakes acknowledged by all concerned or under extraordinary circumstances.

"In 1849, the Board of Administration declared their view thus (Circular 122 of 30th May)—'The Board are of opinion that disputes regarding rights in the soil can be satisfactorily disposed of in a new country by the settlement officer only * * * * in a settlement office, where less regard is paid to forms, and an arrangement by compromise or arbitration can generally be made.' Later in the same year the Board obtained regular judicial powers for the settlement officers. Then, in 1852, the Board in their first Administration Report thus described the scope and intent of the measure. They said (Panjáb Report, 1850-51, paragraph 293)—

"'One of the first acts of the Board was to obtain the sanction of Government to confine the decision of all questions connected with the landed tenures to the Settlement Courts. * * * * * * No settlement officer ever thinks of limiting his knowledge to formal proceedings placed before him; he is the umpire as well as judge in the question at issue, and it is his duty to search out and ascertain its real merits. He confronts the litigants; he closely and judiciously cross-examines; then places the point at issue, when necessary, before a jury of village elders, and even adjourns to the village and to the disputed spot, in an intricate matter, for the purpose of eliciting the truth. In this way a mass of cases will be disposed of, which, if brought before a more formal tribunal, would occupy the time of many Judges.'

"Then the Board annex a copy of the Jullundur Settlement Report, which they had caused to be 'printed for circulation amongt he officers in the Panjáb, as it clearly elucidates the system now in force.' Now, that Report termed the record of rights 'judicial registration,' and among other things went on to say—

"'During the latter portion of the settlement, endeavours have been made to dispose of all the minor disputes simultaneously with the preparation of the Khewat and Terij. When

the rough copy of the Terij had been drawn up, and sent for attestation to the judicial officer, and the whole village was in attendance, a number of cases were summarily decided by the arbitration of Lumberdars or others on the spot, and in the presence of the people. The result was recorded in a single Roobakaree, setting forth the circumstances of the claim and the manner of its decision, which in the ordinary course of litigation would have been expanded into a lengthy record, have taken up some time, occasioned the summoning of several parties.'

"Full effect was given to these principles in the Judicial Department by the Panjáb Civil Code in 1854. In Section I, Clause 4, it laid down that Civil Courts might not entertain a suit 'for any matter that may have been decided by any authority competent to try it. This clause will apply to decisions passed at a regular settlement.' The commentary attached to the Code explained that this ruling was founded 'on the principle that what has been done by one competent department need not be re-done nor re-considered by another.'

"All this appears to me to show that not only were the judicial decisions of the settlement officers to be respected by all other authorities, but also that the entries generally in the record of rights were to be accepted as valid and conclusive. Besides the wording of the intention which was sufficiently explicit, it followed from the nature of the case that such must be the effect. If only those entries on the record were to have conclusive validity which depended on regular judicial decisions by settlement officers, then many of their most important proceedings would be without such validity. Many of their largest decisions, most deliberately arrived at, and most assuredly intended to have permanent effect, and most formally attested, did, nevertheless, not take the shape of judicial proceedings as ordinarily understood; that is, the judgment might have been made without the filing of plaints and drawing of issues and writing of depositions. For instance, some coparceners in a village community, having been dispossessed during Sikh revolutions, apply to the settlement officer for restitution. The settlement officer arranges with the village community that they shall be restored; but as their holdings had passed into possession of the brotherhood, the restoration would involve some redistribution of lands and shares throughout the village. After much trouble this is done; the dispossessed sharers are restored; the new arrangements of shares and possession are formally agreed to by all the shareholders and attested by the settlement officer. Now, certainly, it was intended that such a proceeding should be judicially valid. But, strictly speaking, there was no judicial decision on record; it might not have been deemed necessary to record all the claims

and counterclaims, and all the disputes which the brotherhood by this large compromise had settled among themselves.

"Again, it was not uncommon for village communities to find that actual holdings of land by the sharers did not quite coincide with the ancestral shares; the land measurements helped in bringing out such discrepancies. The community, after much disputing before the settlement officer, agree to modification of the holdings. This is done and attested. Here also it was certainly intended that the settlement orders should be judicially valid, although there was no judicial decision in the ordinary sense, with plaints and rejoinders and depositions, on record.

"Further, there might be a question between a proprietor and a number of his subordinates as to whether they were occupancy-cultivators or sub-proprietors. The cases being many, but all alike, they begin by trying one case. That ends in the subordinate being declared a sub-proprietor and not an occupancy-cultivator. The proprietor, seeing this, ceases to dispute with the others, and allows them to be entered as sub-proprietors. The settlement officer, aware of all this, contents himself with attesting the proprietor's acknowledgment. It was certainly intended that this record should have judicial validity. Still, in most of the cases, there would be no regular judicial decision on record.

"Countless instances to the same effect might be adduced as to the relations between landlord and tenant; but I forbear from adducing them, because, as regards them, the Panjáb Tenancy Act has expressly given validity to the entries in the record made at settlement.

"Thus I show that the record of rights was clearly intended to have conclusive and judicial validity. In attempting to make such a registration, the Panjáb Administration undertook an arduous task in the interests of the people, in order that landed tenures might, in a country distracted by revolution, be settled on a permanent basis; that finality might be attained, not after a long period of disputes and troubles, but at an early period, that is, as soon as the settlement work could be carried out. The registration was to finally decide all things as they then stood. Whatever disputes might in after times arise were to be decided by the Courts on the basis of that registration. But the registration itself, so far as it went, was to be respected as conclusive. This was a policy, practically excellent and beneficent in design, though difficult of execution. It was partially executed; and, so far, it has contributed to that signal prosperity which distinguishes the Panjáb. Subsequently, events have shown indeed that its full and perfect execution was somewhat beyond our

power at the time. But I, for one, maintain that the policy was in itself the best possible, that it ought still to be followed, and that whatever remains undone in respect to its perfect execution might well be done now.

"But, as I shall show presently, the present Bill falls short of that policy, and this is the reason why my assent is so reluctant.

"I must first, however, trace the steps whereby this policy was departed from, until the record of rights wholly lost the status intended for it by the founders of the Panjáb Administration.

"Shortly after the first settlements were completed, many entries in the record of rights were found to need rectification. Wherever disputants tried to re-open matters in any way decided, on consideration, at the settlement, they indeed met with refusal. But it was often found that the people had made mistakes and oversights, regarding which mistakes all parties concerned were agreed; that errors had sometimes crept into figured abstracts of holdings and shares, which errors nobody denied.

"The occurrence of these errors was much regretted. No pains were spared by the Government of the day in selecting the best officers, both European and Native, for the work. The European officers have since proved their capacity in many other fields besides the Panjáb; the Native officials have since risen to the highest posts accessible to them in the public service. Neither was expense spared; for large and costly establishments were organized. The causes of error, no doubt, consisted in the novelty of the operation, in the unpreparedness of the people, in the extensive character of the amendment and redress needed after the troubles through which the landed tenures had passed. Mr. Stephen quoted incidentally passages from past debates—though not at all giving it as his own opinion—which stated, among other things, that the settlements had been negligently made, and that the attestations had been imperfectly carried out. I say, however, without the least disrespect to my hon'ble friend, who does not at all say that he believes these statements, that these expressions are wholly absurd and only show to what lengths people will sometimes proceed when speaking in the heat of discussions. The settlements were never negligently made; on the contrary, neither ability, nor labour, nor expense was stinted. The absurdity of the charge of negligence will be patent on the barest mention of names. Was, for instance, Mr. Prinsep, one of the officers engaged, ever negligent? Never; his high character for unremitting and assiduous thoughtfulness forbids the supposition. Were our hon'ble colleagues sitting here today, the Lieutenant Governor, Mr. Davies, and the Financial Commissioner, Mr. Egerton—both

among the officers engaged in these first settlements—ever negligent? The mere asking of the question, regarding such eminent persons, supplies the negative. I might easily extend the list of distinguished names, but forbear to trespass on the time of the Council. As for the attestations being imperfect, I have to say that in those villages of which I have cognizance, the attestations were made most carefully, man by man, holding by holding, by firstrate Native officials of judicial status; often there was re-attestation, by way of check, by an European officer. I have myself re-attested the records in many villages. No doubt the same precautions were taken in other settlements. Still, unfortunately, errors in detail became afterwards apparent.

"In such cases rectification became desirable, and accordingly instructions were issued in October 1856, see Circular No. 55. Shortly afterwards it was found that the wording of these instructions was too broad and general and might be construed to comprise more than was intended, and to admit of matters once settled at the settlement being afterwards re-opened. This tendency was, however, checked. For in 1858 (Circular No. 89) it was ordered that no alteration was to be made in the record without the express sanction of the Commissioner, and a procedure was laid down whereby the district authorities were to proceed before making any such reference to the Commissioner. It was reiterated that under no circumstances was a regular judicial decision passed at settlement to be interfered with. Thus the entries in the record, even though unsupported by judicial decision, were protected from alteration save with the Commissioner's sanction. Now the Commissioner had from the first been the appellate authority in all settlement affairs. He might on appeal, or other reference, have altered anything in the record, though by 1858 the period within which such appeal might be made had, in most cases, past. The effect of the order of 1858 was in some respects little or nothing more than the extending of the period of appeal. Thus the entries in the settlement record remained valid and conclusive, save in those cases where, on special reference, the appellate authority in settlement affairs might otherwise direct. Thus the original policy of the Panjáb Administration was really maintained and so continued till 1860.

"In 1860 a virtual change was made (Circular XXXIII of that year); the district officers were empowered to take up claims to rectification of record. One category of cases open to rectification was thus described in perhaps somewhat remarkable language—

"'The second class of cases will refer to omission of right not thought of or wilfully left out at settlement'.

"Now, really, these words appear to me to afford scope for the re-opening of matters deliberately and intentionally settled at the settlement, and to trench on the principle of the registration having been valid and conclusive. The wedge was introduced for the invalidation of the authority of the record. In justice to that circular, however, I must note that it set forth that 'changes should be made only on the clearest proof of error, within a fixed period and under competent guarantee and check.' Further, if the district officer thought an alteration desirable, he was first to make a summary enquiry, then to obtain sanction of the Commissioner to try the case regularly. Also I should clearly infer that, until an entry was altered with these formalities, it remained valid and conclusive. On the whole, I should say that the original authority of the record, though deviated from, was not abandoned.

"The author of this circular was Mr. Robert Cust, an old friend, for whom I entertain respect and admiration; and I naturally look to his other writings in order to understand his views. At page 82 of his Manual published in 1866, he adopts, for the record of rights in the Panjáb, the very definition in force in older provinces where the record is not valid nor conclusive, and is nothing more than evidence. It is in this passage described to be 'a basis of information regarding the precise subject of litigation,' as 'not to be taken as grounds for the decision of suits respecting land.' He then goes on to say—

"'This guarantee to the correctness and stability of the record is entirely wanting in the Panjáb, where vesting the settlement officers with powers of Civil Court, and the reservation of all decisions regarding land to the Revenue Courts, has greatly impaired the stability of landed titles.'

"Further on (page 119), he considers that Regulation VII of 1822 was in force in the Panjáb (though whether it was really in force became soon a moot point) and he recognises fully that this Regulation authorized indefinite revision of the record from time to time and the re-opening of questions as might seem proper to the authority of the day.

"Now, this view may or may not be correct, and I, for one, dissent from it. But at all events it is in direct variance with the views of 1849, of 1852, of 1854, of 1858, which I have been citing today. I think that the variation is to be regretted, and shows the necessity of legislation in order to preserve stability of purpose, evenness of course, and uniformity of design in Non-Regulation Provinces.

"And further, whatever might have been the intent of these orders, I believe that they did in effect contribute to what shortly afterwards happened,

when a very extensive revision was attempted of matters relating to landlord and tenant, which certainly had been intentionally decided at the settlement. That particular attempt at revision was, however, ultimately disapproved and stopped by the Government and the Legislature of India.

"After that came (the late) Mr. A. A. Roberts. I turn to his Minute at page 516 of the volume on tenant-right. He evidently considers that the whole record is open to revision from time to time, and so far he affirms the variation which had occurred. This was in 1868.

"Meanwhile, in 1865, the Panjáb Courts' Act was passed, which confirmed the power of settlement officers to regularly try and decide contested suits and nothing more. This, of course, must have precluded the notion of conclusive validity attaching to any entry in the record, not based on a regular decree.

"In 1868, the Chief Court of the Panjáb, writing about revised entries in the records, considered them to be 'nothing more than a superior description of registration,' and 'nothing more than revised records affording evidence, but not conclusive proof, of the title set forth.'

"I infer that the Court would not have attributed any different or higher character to the original entries in the record. Though I should regret that such views were entertained as to the want of authority in the record of rights, yet I could not be surprised at the doctrine as laid down by the Court after all that had occurred.

"Thus, as I conceive, the original declaration and intentions of the Panjáb Administration were lost sight of, the authority of the record of rights was lowered, and the record in the Panjáb reduced to the inferior status accorded to the record in the North-Western Provinces.

"To some extent (and as I think beneficially) the authority of the record was restored by the Panjáb Tenancy Act passed in October 1868 in respect to one important division, namely, the relation of landlord and tenant. By that enactment an entry in the settlement records was (except under certain specified contingencies) to constitute a title to occupancy right; also entries when duly attested were to constitute, legally, agreements, and to have the force of contracts. In all this there breathed the very spirit of the original Panjáb policy. Further, the Circular XXXIII of 1860, which opened the door to revision more widely than before, and which had acquired the force of law, was repealed by this Act.

"I certainly think that further legislation is now required to declare whether the record is or is not to be valid and conclusive; or if it is not to be

wholly valid, then how far it is to be valid. If not, we shall have the authorities in one decade of years declaring one thing, and the authorities in the next decade declaring another. The Bill today before the Council does supply indeed the requisite definition, and so far I support it, although the definition is not all that I could desire.

"In regard to change of opinion in these matters, I will quote the passage from Sir H. S. Maine's speech (in October 1868) already alluded to today. It runs thus:—

"'The land in India is the foundation of society, and it is asserted that every ten or fifteen years a number of gentlemen may go in and reconstruct society ..... There is not the smallest security for the principles on which such readjustment would take place ..... if these pretensions be allowed, and if the whirligig of Indian opinion goes round as rapidly as it has done in my time.'

"Again,

"'There is this further element of suspicion; of course, the word is not meant in any injurious sense. The old settlement reflected the ideas of property and tenant-right, which were then all but universal in India, and which nobody of much credit desired. .....The present proposals on the other hand fall in with the views which have recently become prevalent, and which have the support of great ..... interests in lower Bengal.'

"Again, in regard to the superior value of original records over revised records, I will quote a remark by Sir H. S. Maine—

"'In the Panjáb, as elsewhere, evidence grows weaker in proportion as it gets older ..... The motives to false testimony had vastly increased. Property in land, which had little or no value before annexation, has now a great and distinct value.'

"As practical legislators we are bound to recollect that a spirit of interference might easily actuate (I do not say that it does always actuate) even meritorious officers. The doctrine of finality in a record once made does in some degree preclude action on the part of those who come afterwards. The idea of actively potential authority to be exercised from time to time, without ever lapsing, is attractive often to the ablest minds. Indeed, the higher the zeal, the greater the public spirit of our officers, the firmer their faith in their own power of doing good, the more will the above view impress itself on them.

"I turn now to the Bill before the Council today. In the first place, I acknowledge fully, as just stated by Mr. Stephen, that it upholds and does not at all interfere with the Panjáb Tenancy Act. I am happy to acknowledge this having myself been, under direction of the late Governor General, the mover and defender of that Act.

"As regards the record of rights, in the first draft of the Bill now before us it was proposed that the Judicial decisions at the settlement should be as good as decrees in the Civil Courts; that a record of rights once made should not be liable to revision at any subsequent settlement save to record intermediate alterations by death, transfer and the like, or to make alterations agreed to by parties concerned; and that, with one reservation in favor of absentees, the entries in the record, after a moderate period of limitation, proposed to be five years, should be valid and conclusive.

"This proposal emanating from the Legislative Department was worthy of the breadth of view and the root-and-branch grasp of the subject, which always distinguishes our Hon'ble Colleague Mr. Stephen. On being referred to the local authorities, however, the proposal was objected to by the settlement officers, on the ground, mainly, that they found they could not in fact make an absolutely reliable record. I understand that they say, in effect, that the people are so careless and apathetic, so ready to say anything however inaccurate in order to be rid of the enquiry, so improvident as to the effect of what they may accept, so inefficient in aiding the investigation, that, despite all efforts, the settlement officers cannot prepare an entirely trustworthy statement of rights. I should, however, consider any such description to be one-sided and incomplete. The people may, no doubt, have these characteristics; but they have opposite and better qualities. Their tenacity, their long memory as to their rights, their regard for ancestral descent, their exact comprehension of coparcenary status, their respect for title to land undiminished by distance of time, by prolonged absence—are proverbial and notorious. Therefore, although they may be in some respects inapt and unfitted to help in forming a good record, yet in other respects they must be peculiarly apt and fitted. Although at first we failed in getting a comparatively perfect record, we may be capable of succeeding now, after more than fifteen years' experience, after availing ourselves of the work done in the first record, and considering that in the meantime the people have advanced so greatly in intelligence and education. I therefore must regard the admission which the settlement authorities now make, to the effect that they cannot make a perfect record, as an unfortunate one, not easily to be understood. I should have thought that they could now make a record virtually almost perfect.

"However, the contrary view has so far carried weight with the Select Committee of this Council that a revised proposal has been adopted. The judicial proceedings of the settlement by arbitration or by formal enquiry will be as good as decrees of Civil Court. The record once made at a regular

settlement cannot be revised at subsequent settlements save for insertion of facts which have subsequently occurred,—death, transfer, and the like. The entries in the record shall be presumed to be true until proved to be otherwise: and no alteration can be made save by order of Civil Court. No doubt these provisions which will pass probably into law today do afford important safe-guards to raise the record from the status to which it has of late years descended, and to remedy the defects incidental to the old system established by Regulation VII of 1822. So far I cordially concur. Still, however, an ordinary entry in the record is only to be presumed to be true. It may therefore be disputed in a Civil Court by any party who brings evidence to rebut that presumption. And in this country it is seldom difficult to procure some sort of evidence against even matters which have been carefully settled. Thus I fear that there remains a defect in the Bill as amended by the Select Committee. On the other hand, it is not easy to successfully rebut a presumption established by law, and this much of presumption will do good. We must be thankful even for that.

"*Actual* finality to the record, however, will only be obtainable by a Judicial decree. Therefore a settlement officer who wishes his work to stand and to be placed beyond the chances of dispute and the reach of litigation, should instruct claimants of all sorts to file their suits regularly and never to be content with compromises, or settlements, or promises. This will lead to increase of formal litigation at the time of settlement, but the consequence is a necessary one. Or if on a claim being made the parties shall agree, then the settlement officer should advise the parties to enter an agreement so formally and attest it so fully that it shall have in law the force of a contract. Failing all this, there is nothing left to the settlement officer but to surround his record with so many attestations that when hereafter in a Court of Justice the legal presumption of its truth shall be questioned, the said presumption shall be very hard to be rebutted. I earnestly hope that in this respect the settlement officers will be imbued with the same spirit as their predecessors; that they will strive to secure permanency and stability to their work, remembering that a registration of land tenure and title, which is liable to be disputed in the Courts, is an evil to the country. A registration which is not thus liable to be interfered with is a real blessing to the agricultural population.

"My own experience, now extending more or less over many provinces of India, convinces me that such a registration which cannot be interfered with, and which is from its merit worthy of that high status, would be one of the greatest benefits which the British Government could confer on an Indian population.

Its due preparation would be worth any trouble or expense within reason. I consider that it was (as is acknowledged) undertaken originally by the Panjáb Government, not so much in the interest of the State as in the interest of the people. If that undertaking be now persevered in, it will still be in the interest of the people and mainly in no other interest. I am not sure whether I rightly apprehend what fell from Mr. Stephen on this point, but it seemed to tend somewhat in a different direction. Be this as it may, however, I wish to say that the valid and conclusive registration is as much needed in the interest of the people now as it ever was, and our State interest in the matter is no stronger now than formerly. The fiscal interest, that is, the collection of the land-revenue, does not absolutely depend on such registration. That revenue is fixed on the land which is hypothecated for the payment. The collection is made from the actual possessor. Whatever other rightful claimant there may be, if there be an arrear of revenue due from a parcel of land, that parcel can be sold in recovery (however rarely such process be resorted to) whatever be the questions as to title.

"I cannot see any injustice (whatever may be thought to the contrary) in virtually compelling men to register their titles, on the understanding that the registration is to be valid and conclusive thereafter. A rightful possessor is not hurt thereby; on the contrary, he is benefitted, for his right is by the registration placed beyond the possibility of doubt or question. If a rightful claimant obtains hereby an opportunity of coming by his own again, that is well. Perhaps a possessor who has not right may have to give way to one who has; but here again there is not harm but good. I apply these remarks only to the Panjáb, the province under discussion. Mr. Stephen seems to me to argue to the contrary, relying on English analogy. Well, I will not try to follow him there. But I have understood that England perhaps does not afford the fittest example in this respect, and that in some other countries of Europe the principle of registration is more advanced.

"I have only one remark to add which is this—Mr. Stephen has justly adverted to the section of the Bill which provides that the local Government shall in the settlement of each district obtain the sanction of the Government of India to the particular principle on which the land-tax is to be assessed. This principle will vary in different parts of the country. The necessity for the local Government to obtain such sanction has not before been prescribed by any enactment. But in regard to the importance of the land-tax to the exchequer, it is well to insert a provision in the law. It is not, however, to be supposed that the Government of India does not otherwise possess, or has

not claimed, the power of executive interference in this important matter. Unquestionably we can sanction, or modify, or disallow, and we are always well aware of what is being done by the local Governments; indeed, the main principles on which the land-tax is fixed are usually notorious, even though specific sanction may not have been always obtained, and although the management of the land-revenue is the chiefest of those points wherein the Government of India justly relies on the vigilance and knowledge of the local Governments. Mr. Stephen no doubt correctly alludes to an instance wherein the local Government modified the principle without obtaining specific sanction of the Government of India: Still that proceeding must at the time have been well known to the Government of India as to everyone else; and had any objection been seen, there might have been interference; as there was not, we must presume that the proceeding was virtually allowed."

The Hon'ble MR. COCKERELL said:—"I wish to express my entire concurrence in the anticipation of His Honour the Lieutenant-Governor of the Panjáb, that this Bill is destined to mark a new starting point in revenue-settlement operations, not merely in the Panjáb, to which the measure is directly limited, but throughout the whole of India. The *general* importance of the Bill is the more marked, inasmuch as we are, I trust, on the eve of consolidating the entire Bengal Regulations relating to land-revenue; and although this Bill does not purport to effect anything like an actual re-enactment of those Regulations for application to the Panjáb, it may be said to contain an adaptation of their more important general provisions to the present state of things in that province, and to be consequently fit to take the place of the Regulations where the latter are in force. I know that, in in some quarters, it is accounted little less than rank heresy to suggest that there is anything obscure in the historically great and time-honoured Regulation VII of 1822, or that the style of that enactment is susceptible of improvement. Nevertheless, I venture to express the opinion, that this Bill for the first time sets forth the procedure for the settlement of the land-revenue in a clear and intelligible shape, and that, when its provisions come to be viewed and considered side by side with the Regulations, they will be generally admitted to be a desirable substitute for the latter.

"I feel considerable doubt as to the correctness of the conclusions expressed by my hon'ble and learned friend, the mover of this Bill, in regard to the provision of section two of the Panjáb Tenancy Act. My hon'ble and learned friend assumes, if I understand him rightly, that that provision was intended only

to apply to the records of former settlements. I should say that the contrary is to be inferred from the context of the Act. For, whilst the provisions in regard to occupancy rights are distinctly limited to the records of settlements made before the passing of the Act, no such reservation is made in regard to the provisions of section two; moreover, rights of occupancy are expressly excluded from the category of matters recorded at the time of settlement, which, under section two, were to have the force of agreements concluded between the parties affected by them.

"I at least always understood these provisions of section two of the Tenancy Act to have no limit as to their application to settlement proceedings, and strongly objecting to the affirmation by them of what I conceived to be a monstrously inequitable proposition, I moved their omission when the provisions of that Act were under discussion, and I have heard with no small satisfaction to-day those expressions of my hon'ble and learned friend on this subject which seem to justify the course which I then took.

"However the provisions of section two of the Tenancy Act may be construed, I need hardly add that I entirely acquiesce in the limitation placed upon them by section thirteen of this Bill.

"The hon'ble and learned mover, in referring to the provisions of the Code of Civil Procedure in regard to the sale of land as the latest conclusion of the legislature on this subject, apparently overlooked the later enactment Act XI of 1859, under which sales of land for arrears of revenue in Bengal proper where, probably, greater experience of what is needed in such cases has been acquired than elsewhere, are conducted. I have learned from the discussions which took place in Committee in regard to this subject that recourse to sales of land for the recovery of arrears of revenue in the Panjáb is almost unknown. As regards, therefore, the question of the best form of procedure to be adopted in this Bill, the point is of little practical importance."

The Hon'ble MR. EGERTON said that it would be unnecessary for him to detain the Council by any minute criticism of the Bill. The measure, as now before the Council, had his hearty concurrence. As to the provisions of section 9 there could, he thought, be no doubt as to the policy of putting a matter of such vital importance on the clearest footing. The land-revenue was the mainstay of the income of the country. This section would relieve assessing officers from a very serious responsibility, and would allow of the principle of assessment being varied in different parts of the country; it was most important that variations of this sort should be possible, as no one uniform rule could be devised which would be equally suitable for districts, the conditions of which were as widely different

as those of many of the districts in the Panjáb. What was called "the half assets principle" was extended to the Panjáb in a very informal manner: it was first announced in an order referring, not to the whole province, but to certain resumed muáfis, and was communicated to the settlement officer by the Financial Commissioner by letter, without any formal publication. This principle had been adopted in the Panjáb, simply because it was in force in the North-West, and it was in many respects not well adapted to the Panjáb. The effect of the present provision would be, that the principle of the assessment would, in the case of each settlement, be determined by the Local Government in concert with the Supreme Government, and that definite instructions would be given to the settlement officer as to the principles on which his assessment should be grounded.

As to the force to be given to entries in the record of rights, it would be dangerous, in MR. EGERTON'S opinion, to allow the entries any other effect than that provided by the amended Bill. His hon'ble friend, Sir Richard Temple, considered that, in the old settlements, the Government had intended to give a conclusive effect to the entries, and that the entries had been made with sufficient care to allow of this being safely done; but MR. EGERTON was sure that, whatever might have been the care bestowed on the compilation of these records of rights, it had not, as a matter of fact, been sufficient to avoid mistakes. The agency was an untrained one; the people strange to the subject and not altogether friendly to the making of a record: a record made under such circumstances was under a great disadvantage, and could not fail to have numerous mistakes. Almost all the records of the first settlements in the Panjáb were inaccurate, and, in some instances, so serious was the inaccuracy, that Government had for years withheld its sanction from them, in order to allow of their correction. Even in the new settlements considering the speed with which the records were made, and the large amount of responsibility left to Native subordinates, it was inevitable that there should be mistakes; and if there were mistakes, it was highly undesirable to make the record conclusive, however great might be the advantages of a final adjustment of the rights in land. Finality given to an incorrect record was a far greater evil than the mere absence of finality. With a population such as that of the Panjáb, we could not proceed on the principle that, if a man neglected to get his rights duly recorded, he deserved to lose them: if, indeed, the people had demanded the record, the case would be different; but the record of rights was introduced altogether on the part of Government, without any sort of wish or even understanding on the part of those whose rights were concerned. Taken as presumptive evidence, these entries were most valuable; and it was open

to Government to enjoin such ample formalities, and to hedge every important entry with so many securities, that the presumption raised by it would be practically irresistible; but it was safer, in MR. EGERTON'S opinion, to let the weight to be given to an entry depend on the degree of caution shown to have been bestowed upon it, rather than to attach to it a technical importance, which, though no doubt very convenient, must in frequent instances involve substantial injustice.

The provisions as to sales, in the amended Bill, were, he considered, ample. The sale of land in the Panjáb for arrears of revenue was happily unknown: and if at any time it should become necessary to enforce so undesirable a remedy, the sections of the present Bill would ensure that the law should not be put in action in a rash or oppressive manner.

Finally, the rules which the Local Government was empowered by the Bill to frame would, MR. EGERTON thought, be useful in giving an elasticity to the system, and in enabling the Government to adapt the working of the Act to the circumstances and wants of various districts, and to vary it as occasion might require. On the whole, he was sanguine that the present Act would be found to be a valuable assistance in the administration of the land-revenue of the province.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN moved the following amendment in clause (*c*) of section 19:—

"For the words

'provided that no such amendment shall conflict with the conditions of clauses (*a*) and (*b*) of this section'

"substitute the words

'but not so as to alter any statement as to the share or holding or status of any person, except in the cases mentioned in clauses (*a*) and (*b*) of this section.'"

The Motion was put and agreed to.

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

The Motion was put and agreed to.

BURMA COURTS' BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to regulate the Courts in British Burma. Some re-arrangement of the Courts in British Burma had been found necessary, and it was proposed to take advantage of the present opportunity to deal with the whole subject systematically, as had been already done for other provinces of the empire. If leave were now given, MR. STEPHEN would on a future occasion explain the details of the proposed measure.

The Motion was put and agreed to.

CIVIL COURTS' (OUDH) BILL

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Civil Courts in Oudh be taken into consideration. He said, this Bill, originally designed for the consolidation of the several enactments comprising the law relative to the Civil Courts in Oudh, had developed into a scheme for effecting some very important modifications of the constitution and jurisdiction of those Courts.

As regards their cognizance of original suits, the proposed change was one rather of form than of substance; for, although the existing law provided for eight grades of Courts, there were in fact only six classes of Courts of different jurisdiction, *e. g.* (1) Tahsíldárs' Courts, with jurisdiction up to rupees 100; (2) and (3) Assistant or Extra Assistant Commissioners' Courts of the second and first classes, with jurisdiction up to rupees 500 and rupees 5,000 respectively; (4) Deputy Commissioners' Courts, with unlimited jurisdiction; (5) Commissioners' Courts, and (6) the Court of the Judicial Commissioner. The number of the Courts of the three highest grades remained fixed; but the number of the Courts of the Assistant Commissioners of the first and second classes varied according to the degree of competency and experience in judicial work possessed by the available Assistant Commissioners or Extra Assistant Commissioners in the province for the time being; the several Assistant and Extra Assistant Commissioners being vested with the jurisdiction and powers of Courts of the Assistant Commissioners of the second class or first class, in accordance with their respective qualifications for the exercise of a lower or higher jurisdiction.

The plan of the amended Bill was to treat the Courts of all Assistant Commissioners and Extra Assistant Commissioners as Courts of one grade, whilst, at the same time, power was given to the Chief Commissioner to extend, as occa-

sion might require, the jurisdiction of any of the Judges of such Courts, on the ground of personal qualification, in such a way as to bring the constitution authorized by the law as nearly as possible into accord with the system in force in Oudh at the present time.

In the matter of appellate jurisdiction, very considerable changes were provided for. In the Bill as introduced, the course of appeals was shaped to some extent on the principle of the system which obtained in the Panjáb under Act VII of 1868. A second appeal was to be allowed to the Judicial Commissioner on any ground, whether of law or fact, where the judgment of the Court of first appeal did not absolutely confirm the decree or order of the Court of first instance. But, where the judgments of these two Courts were concurrent, whilst no further appeal would lie on any matter of fact, the special appeal under the conditions of the Civil Procedure Code was to be still open in any case to which those conditions would apply.

But the Select Committee proposed to go a step further in the modification of the appellate system, and to abolish the right of special appeal altogether when the first appellate Court confirmed the decision of the Court of first instance; substituting, for such right of appeal, a power to the lower appellate Court to state a case, where it entertained any doubt in regard to a question of law or usage having the force of law, for the consideration and opinion of the higher appellate Court.

There was nothing new in the principle of this proposed change; it was that which governed the procedure in the disposal of cases cognizable by a Small Cause Court, and although the application of it to the far more important cases to which it would be extended by this Bill was unquestionably a very considerable step in advance, the advance was, MR. COCKERELL felt confident, in the right direction. Indeed, he looked forward to see this change of procedure now about to be experimentally introduced into Oudh very generally adopted at some future period in other parts of the empire.

When introducing this Bill into the Council, he suggested that, as one effect of the proposed changes in the appellate system would be, perhaps, to overburden the Court of the Judicial Commissioner, it would be necessary to consider what means could be devised for strengthening that Court, not only for the disposal of the extra quantity of work that would be thrown upon it, but also in regard to such intricate cases and complex questions as might be expected to come before it occasionally, and on which it might be especially desirable to obtain a decision of greater weight than attached to the opinion of a single officer.

Some provision for such an emergency was the more necessary, in that, up to the time of the abolition of the office of Financial Commissioner and the repeal of Act XXXVII of 1867, the Judicial Commissioner had assistance to fall back upon in any case of perplexity, and that, too, at a time when the pressure of work was not so great as it was likely to become under the operation of this Bill.

It was at first proposed to appoint a Commissioner, as Extra Judicial Commissioner, to undertake the duty which formerly devolved on the Financial Commissioner in such cases under Act XXXVII of 1867, and also to revive the further procedure prescribed by that Act in the matter of references to the High Court of the North-Western Provinces in certain contingencies; and this course found favour with the local authorities.

On mature consideration the Select Committee determined that there would be no special advantage in associating a Commissioner, the subordinate under ordinary circumstances of the Judicial Commissioner, with the latter, for the trial of cases involving points of such difficulty that the Judicial Commissioner, presumably the more competent officer, felt himself unable to decide; and that delay would be avoided and a more practical result attained by the reference of such cases direct to the High Court, in the manner prescribed by Act XXXVII of 1867 as an ultimate measure.

The effect of the provision of the amended Bill, in this matter, was to transfer the appeal in such cases from the Court of the Judicial Commissioner to the High Court of the North-Western Provinces, except that the decision of the latter Court, in respect of the case referred, would be treated in all respects as if it had been passed by the Judicial Commissioner.

For the mere disposal of arrears of ordinary business pending in the Court of the Judicial Commissioner, the Bill provided for the appointment of a Commissioner as an Additional Judicial Commissioner.

There was considerable obscurity in the existing law on the subject of jurisdiction in regard to suits relating to land arising in any district in which a settlement of the land-revenue was in progress. By Act XVI of 1865, all such suits were removed from the cognizance of the ordinary Civil Courts to the 'Revenue Courts,' and the Governor General in Council was empowered to invest any officers with the powers of Courts of first appeal, the final appellate authority being the Financial Commissioner. Now, the remarks of his hon'ble and learned friend (Mr. Stephen) on the subject of Revenue Courts, in connection with the other Bill which had been considered to-day, were singularly

pertinent to the present case; for there were not, and never had been, except for the purposes of the Rent Act (XIX of 1868), any 'Revenue Courts' in Oudh, and it had consequently been left to the Executive to determine what officers should do duty for such Courts, and to assign to them the pecuniary limits of their jurisdiction.

For this state of things, which had no proper legal basis, it was proposed, in section twenty-six of the amended Bill, to substitute a power to the Chief Commissioner, with the sanction of the Governor General in Council, to invest officers engaged in making or controlling settlements with the powers of any Civil Court below that of a Judicial Commissioner, for the trial of suits relating to land in districts under settlement. It was further provided, in case the judicial work thus devolving on the settlement officers should be more than they could dispose of with reasonable dispatch, that the Chief Commissioner should have the power of re-transferring any such suits to the ordinary Civil Courts.

For the purposes of this special jurisdiction in regard to suits relating to land, it was declared that a district should be deemed to remain under settlement until the Governor General in Council should otherwise direct.

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.

The other alterations appeared to call for no special observations; they related to matters of detail and had for the most part been suggested by the local authorities. There was one proposal made by them which we had been unable to adopt; we were asked to apply the method of regulating the valuation of suits prescribed by the Court Fees' Act to the determination of jurisdiction under this Bill.

In the first place, this mode of determining jurisdiction had not yet been fixed by law in respect of the Courts of any other provinces; but the chief objection was, that the plan of the Court Fees' Act, though suitable for revenue purposes, could not be reasonably followed in all cases with the object of determining jurisdiction. There were many suits not susceptible of other than

a purely arbitrary valuation, and for those, an institution fee of fixed but very moderate amount was prescribed by the Court Fees' Act.

If the regulating principle of that Act was adopted for the determination of jurisdiction under this Bill, how could it operate satisfactorily in such cases?

There might be diversity of practice now, but it could hardly be remedied in the way proposed. An almost unlimited general authority over the proceedings of the lower Courts was assigned to the superior Courts, under which they would be fully competent to regulate the dertermination of jurisdiction, and it was better not to attempt to fix by enactment any rule which could not meet all cases.

He (MR. COCKERELL) had only to add that the Chief Commissioner and Judicial Commissioner of Oudh were understood to concur generally in the provisions of the amended Bill.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned *sine die*.

SIMLA,
The 30*th October* 1871.

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

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