Thursday,
25th October, 1888

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVII

Jan.-Dec., 1888

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

VOLUME XXVII

Published by the Authority of the Governor General.

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1889

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 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 25th October, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble G. R. Elsmie.

PUNJAB COURTS BILL.

The Hon'ble MR. ELSMIE moved that the Report of the Select Committee on the Bill to amend the Punjab Courts Act, 1884, be taken into consideration. He said:—

"The amendments which have been suggested do not affect the principles of the Bill. The Committee propose that the periods of limitation for appeals should be assimilated to those prescribed for appeals under the Punjab Tenancy and Punjab Land-revenue Acts, namely, thirty days where the appeal lies to the District Court, and sixty days and ninety days respectively where the appeal lies to the Divisional or Chief Court.

"The Committee recommend that a special period of limitation, namely, thirty days, should be prescribed for applications to the Chief Court for the revision of orders refusing applications for certificates under section 40 (*2*), and also that the Act should not come into force until the 16th November next. It is not likely that Your Excellency's Council will be inclined to take exception to any of the amendments suggested by the Select Committee. I may, therefore, pass on at once to offer a few remarks on certain criticisms of the proposed law which have come to my notice.

"It has been said that the civil appellate system introduced into the Punjab by the Act of 1884 was a harsh measure which entailed great hardship on the people by the restrictions on appeal which it imposed, and it is

argued that, if any change is to be made, it should take the form of increasing rather than of further restricting the right of appeal to the highest Court. In opposition to this view I have heard it stated that the Bill does not go far enough in the way of restricting appeals and thereby preventing the peasantry of the province from ruining themselves by the expense of unnecessarily protracted litigation. The first of these arguments no doubt mainly takes its rise from the fact that in the early days of British rule in the Punjab very great liberty of appeal was permitted in civil cases. During the last 22 years that liberty has by degrees been considerably curtailed, but its tradition remains, and every fresh restriction has not been welcomed by the legal practitioners—a body which was virtually non-existent in the Punjab a quarter of a century ago but which has now become numerous. My own personal experience extends from the year 1858, and I can remember that until the establishment of the Chief Court in 1866 the pettiest decree in a small cause case could be appealed both on facts and law, first, from an Assistant Commissioner to the Deputy Commissioner, then from the Deputy Commissioner to the Commissioner of the division, and, lastly, from the Commissioner to the Judicial Commissioner sitting at Lahore. I have still a vivid recollection of a suit for the division of some seventy or eighty rupees on account of priests' fees brought by certain Brahmans against their rival co-sharers, which cost me considerable trouble to decide, and which excited so much party feeling that it was carried by the litigants themselves, without the aid of lawyers, through the various Appellate Courts I have mentioned, to the Judicial Commissioner. The justification of this liberal system of appeal lay in the inexperience of subordinate Courts, both original and appellate. When I arrived at my first station I had never been in a Civil Court in my life, but my Deputy Commissioner told me that I must immediately prepare to decide about a hundred civil suits a month, as there was no one else to dispose of them. Two or three days were given me to look through the records of cases decided by my predecessor and to study Sir Richard Temple's *Punjab Civil Code*, and I was then ordered to set to work and to make the best of it. In many instances Appellate Judges had to begin without much greater experience. Military officers were appointed direct from their regiments to be Deputy Commissioners, and Civilians from the North-Western Provinces, who had never tried civil suits, either original or appellate, were appointed to be Deputy Commissioners and Commissioners in the Punjab, and were required to dispose of the work of Civil Courts, to which they had been previously unaccustomed. At this period the description of the appellate system quoted in this Council by the Hon'ble Mr. Ilbert, namely, that it was 'a sifting of cases through a succession

of bad Courts in the hope that they will come right in the end', was perhaps not altogether inappropriate, and it is easy to understand how the people of the country became thoroughly accustomed to the system of three appeals,—first, to the head of the district; secondly, to the head of the division; thirdly, to the Judicial Commissioner at the provincial head-quarters,—and have been somewhat unwilling to part with a privilege which they valued.

"Improvement in the work of the Courts however rapidly took place, and soon after the constitution of the Chief Court in 1866 it was found possible to extend, with certain modifications, the appellate provisions of the Indian Civil Procedure Code to the Punjab. From that time until the passing of the Punjab Courts Act of 1884 second appeals to the Chief Court were allowed on points of law and custom where a District or Divisional Appellate Judge confirmed the orders of the Courts below, while further appeals on law and fact were permitted where subordinate Appellate Courts varied the decrees of the original Courts.

"This system was eventually superseded by the Act of 1884—a measure based upon lines suggested by the Government of India and which were fully discussed in the correspondence and in the debates of this Council.

"I have already shown in the remarks made by me on the 2nd instant the reasons which, in the opinion of Government, have made the further amendment of the Punjab system imperative; but I think it may be useful if, in reply to critics who think too much is being done in the way of restriction, I attempt to show what will be the actual difference if this Bill is passed between the civil appellate system in the Punjab and that existing in the regulation provinces.

"In regard to small cause suits not exceeding five hundred rupees in value and in regard to all suits exceeding five thousand rupees in value the law of appeal will be precisely the same in both territories. In all suits from one thousand rupees to five thousand rupees in value, and in all suits relating to agricultural land where a first Appellate Court has varied the original decree otherwise than as to costs, the law of appeal in the Punjab will be far more liberal than in the North-Western Provinces. In these cases a second appeal on law and facts will be allowed to the Chief Court in the Punjab; whereas in provinces where the Civil Procedure Code is in force the limited second appeal on points of law only is allowed. In regard to these cases then, in the Punjab, it would obviously be impossible to make greater concessions to the advocates of free appeal, and the apology, if any, is due to the critics who cannot see why Punjab litigants should have greater freedom of appeal than litigants in other provinces.

"The answer given to this objection is contained in the Government of India, Home Department, despatch No. 1461, dated 10th September, 1882, an answer which has been emphatically accepted more than once by the Chief Court and the Government of the Punjab, namely, that 'no appeal can be satisfactory in which the upper Court is unable to go into the whole case.'

"In regard to small causes ranging in value from five hundred to one thousand rupees, and to all other suits save land-suits in which the first Appellate Court varies the original decree, certain restrictions, not without compensating qualifications however, will be found in the Punjab system. In cases of this description a second appeal on points of law only is allowed in the regulation provinces, but in the Punjab no second appeal will ordinarily be allowed unless the first Appellate Court shall certify that a question of law or custom is involved and that the case is of sufficient importance to justify a further appeal. In the event of the first Appellate Court declining to grant such certificate, the Chief Court may nevertheless admit an appeal and proceed to deal with the whole case. Now it is clear that, in all cases in which an appeal on certificate is allowed, the Punjab appellant has a much wider field than an appellant under the ordinary Civil Procedure Code; and it is only in the cases in which a Divisional Judge and the Chief Court hold that no point of law or custom or of general interest is involved, and that the case is not important, that further appeal will be denied. This being so, I think it will be difficult, speaking generally, to maintain the position that in the classes of suits with which I am now dealing the right of appeal in the Punjab will be more restricted than in regulation provinces. May it not be argued that the 'complete justice' which the Chief Court will be able to administer in certificate appeals taken as a whole may equal or more than equal the limited justice which the High Courts can at present dispense in second appeals in these cases? In connection with this matter I have the express authority of His Honour the Lieutenant-Governor to state on his behalf that he would be strongly opposed to the extension to the Punjab of the Civil Procedure Code system of second appeals on points of law in all suits other than small causes not exceeding five hundred rupees in value. Sir James Lyall believes that this system has been much abused in other parts of India, so much so that high authorities have proposed to abolish it, and His Honour is certain that it would be greatly abused in the Punjab, where it would lead to the institution of a vast number of infructuous appeals ruinous to the appellant and profitable only to legal practitioners and to the stamp-revenue. The requisites of the case are, Sir James Lyalls thinks, amply met by the certificate appeal on points of law and custom allowed by the Punjab Act, and sub-section (*2*) of section 40 of the present Bill

much strengthens the power of the Chief Court in this direction by giving power to revise an order refusing a certificate. In all other respects the Lieutenant-Governor considers that the existing Punjab law, instead of being more stringent, allows a far greater license of appeal and will do so also when amended by the present Bill, and he thinks that the restrictive amendments now proposed are so moderate and so much required for other reasons besides those of a financial nature that they may be safely passed without delay.

"There is, however, one description of suits in which in my own opinion the Punjab litigant will certainly be worse off than his North-West brother, and these are the 'unclassed suits' not exceeding one hundred rupees in value. In such cases a second appeal on points of law is allowed in the regulation provinces. In the Punjab under the Bill no second appeal of any kind will be permitted. I confess that this provision in the proposed law hardly commends itself to my personal judgment, and I should have been glad had it been deemed practicable to allow a certificate appeal in these cases. The Chief Court and the Local Government are, however, of opinion that the proposed restriction may safely be imposed. The Lieutenant-Governor considers that a law which takes litigants to a distance from their homes and encourages them to institute further appeals in suits of small value up to the highest Court of the province, where lawyers' fees are of course heavy, is a law which on the whole does much more harm than good.

"Before I conclude I am anxious to say a word or two in regard to the Punjab law of revision in civil cases as contained in sections 70 and 71 of the Punjab Courts Act. It is asserted by critics that this law as compared with the revision law in other provinces is, by reason of its narrowness, little better than a farce, while the fact that full appeal stamps are chargeable on applications for revision presses very hardly on poor litigants. The first objection may be satisfactorily met by a reference to a recent judgment of the Privy Council—*Rájá Amir Hasan Khan* v. *Sheo Baksh Singh* (L. R. 11 I. A. 237)—which has virtually limited the civil revision law for India to that which was introduced into the Punjab in 1884. In regard to the second objection I think there need be no hesitation in exacting the full stamp in a province where applications for revision are still so recklessly made that the Chief Court finds it necessary to reject 88 per cent. of them *in limine*. If we could ensure that applications for revision should only be presented upon the advice of good counsel who would dissuade their clients from persevering in hopeless cases where no shadow of a legal ground for revision exists, there might be little hesitation in reducing the stamp;

but so long as ignorant litigants insist upon venturing a last stake in what they regard as a judicial lottery, and so long as they are encouraged in this course by some unscrupulous legal practitioners, who must surely be aware of the futility of the attempt, the question seems to be not whether the existing stamp restrictions on applications for revision should be relaxed, but whether they should not be increased.

"On the general question of revision I may say that for myself I look forward with hope to a time when in the Punjab as well as in other parts of India it may be possible to act on the suggestion of the present Chief Justice of Bengal, referred to by the Hon'ble Mr. Scoble in a speech made in this Council on the 10th March last, namely, to do away with second appeals altogether and to substitute for them a right of application to the High Court in all cases in which it could be shown that a failure of justice had taken place. *Primâ facie*, I am strongly in favour of a system which would give the highest Court complete power of interference in every case, but which would expect the Judges to refuse to correct minor and technical errors of the lower Courts where substantial justice has been done."

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that in the second proviso to section 40, sub-section (*1*), of the new Chapter to be substituted for Chapter IV of Act XVIII of 1884 by section 5 of the Bill, the words "not amounting to one thousand rupees or upwards" be substituted for the words "not exceeding one thousand rupees".

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that in section 43 of the new Chapter to be substituted for Chapter IV of Act XVIII of 1884 by section 5 of the Bill, after the figures "40" in the third line of sub-section (*1*), the words "and for an appeal from an order from which an appeal lies", and after the word "decree" in the fourth line of the same sub-section, the words "or order", be added.

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that in section 44 of the new Chapter to be substituted for Chapter IV of Act XVIII of 1884 by section 5 of the Bill, the words "is one thousand rupees or upwards" be substituted for the words "exceeds one thousand rupees".

The Motion was put and agreed to.

1888.] [*Mr. Elsmie; Mr. Scoble.*]

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

The Hon'ble MR. SCOBLE said:—

"Before this Motion is put I should like to say a few words with reference to one objection to the proposed legislation to which my hon'ble friend Mr. Elsmie has not adverted. It is said that this Bill is being hurried through Council. It is no doubt true that it was introduced only three weeks ago, and that this is a shorter time than is usually allowed for measures of such importance. But the quick passage of a Bill through Council by no means implies hasty legislation. It certainly does not in this case: the time spent in discussing and settling the details of the Bill has been long, though the interval between its introduction and its enactment may be short. The subject-matter of the Bill has been under consideration in the Punjab for years. An attempt was made to settle the question in 1884, when an Act was passed to amend the law relating to the Courts in this Province. The system prevailing at that time with regard to appeals was of the happy-go-lucky character described by my hon'ble friend, and loudly called for the amendments of the law then introduced. As my hon'ble friend has told us, the attempt made in the Act of 1884 to remedy the evil has not succeeded, and those responsible for the administration of the law have had to devise other means for dealing with the congestion of appellate business in the Courts. Last year it was hoped that the appointment of two additional Judges to the Chief Court would bring relief; but no such result has followed. The arrears show no sign of diminution in spite of the labours of the increased numbers of the Bench. The question is not a question of expense, but a question of obviating delays which, in many cases, are tantamount to a denial of justice.

"I cannot better describe the existing state of things than by quoting what was said on the same subject by my hon'ble friend Mr. Ilbert in 1884. 'It must be borne in mind,' he said, 'that the great mass of the cases which come before the Court—a large proportion I believe of those which under the existing system find their way up to the Chief Court—are of the most petty and simple description, involving no important question of law or custom whatever, and requiring for their disposal nothing more than a little commonsense and patience. Having regard to the means at our disposal, are we justified in allowing the time of the most expensive Courts to be occupied with cases of this description? As has been often said, no man has a right to unlimited draughts on judicial time and judicial power. To grant an unlimited

right of appeal is not fair to the general taxpayer, and is a cruel kindness to the suitor himself. I am told by those on whose authority I am entitled to rely that among many classes in the Punjab it is a point of honour to prosecute an appeal, however hopeless may be the case and however trifling may be the stake, to the utmost, and notwithstanding the knowledge that, even if the appeal is successful, the costs to be paid will far outweigh the stakes. The unsuccessful suitor feels himself disgraced if he does not carry his appeal as far as the law will allow him to go, and it is not until recently that he has, with the help of his legal advisers, found out how very far that is. If the law would, in such cases, interpose a friendly obstacle to his further progress in the path of appeal, his honour would be satisfied and his pocket would be benefited. I hold then that we are justified, both in the interest of the general taxpayer and in the interest of the particular suitor, in placing some limitation on the right of second appeal, and that this limitation may reasonably be framed with reference both to the nature of the suit and to the value of its subject-matter.'

"It will thus be seen that, in the Bill now before the Council, we are taking no new departure, but are merely carrying out principles which were laid down four years ago as not only right in themselves but appropriate to the circumstances of the Province. The measure comes before us, moreover, stamped with the approval of the executive Government and of the Judges of the Chief Court of the Punjab. The further limitation of appeals which it proposes is not unreasonable. While petty cases are left to be decided by the tribunals of first instance, a clear distinction is maintained between suits relating to land and other suits, and greater latitude is allowed in cases of the former class, which involve stronger feelings, and as to which the decision of a single Court might not be accepted as satisfactory. In other cases the value of the subject-matter becomes the test; and, in order to secure that all really important cases may find their way up to the Chief Court, it is provided that an appeal to that tribunal shall lie, not only upon the certificate of a Judge of the Divisional Court that there is a question of law or custom involved, and that the case is of sufficient importance, in his opinion, to justify a further appeal, but also when such a certificate has been refused, if the Chief Court is of opinion, upon an application made by one of the parties, that a further appeal ought to be allowed. These proposals are the result of careful thought and large experience; and the concurrence of opinion of both the executive and judicial authorities of the Province may surely be accepted as a guarantee that this is no hastily devised scheme for the relief of the Exchequer but a well-matured effort to improve and facilitate the administration of justcie.

"As His Honour the Lieutenant-Governor is unable to be present to-day, I venture to quote a few paragraphs from a letter which he has addressed to the Government of India with reference to this Bill:—

'Though, no doubt,' he writes, 'the present Bill has been brought forward as an urgent measure because it has been found that even a Chief Court of six Judges is unable to cope with the appellate work imposed on it by the law of appeal as it stands, yet personally Sir James Lyall would have been unwilling to recommend legislation to restrict appeals from financial reasons only. It is mainly because His Honour is himself convinced that the law as it stands allows a license of appeal which is unnecessary, and on the whole injurious to the people, that he has recommended the amendment of the law; and he is aware that this view is shared by some at least of the Judges and by many experienced officers of the Punjab Commission. And among the peasants who form the great bulk of the population of the province it is a common saying that they are being ruined by the length of litigation and by the inordinate cost of legal practitioners' fees.'

"Speaking for myself, I entirely agree with His Honour that the curtailment of appeals will not only relieve the congestion of the Courts but promote the prosperity of the people. It is no doubt satisfactory to find that the Punjabi cultivator is turning his sword into a reaping-hook and his spear into a ploughshare, but the satisfaction is lessened by the discovery that he has only changed the arena of conflict, and that, instead of meeting his enemy in the battle-field, he encounters him in the Law Courts. The passion for litigation is not unnatural, and may be in some degree commendable; but, if left unchecked, it conduces mainly to the benefit of the *vakil* and the *sahukar*—two classes whose growth in influence is not an unmixed advantage to the community at large. The nice adjustment of a boundary is dearly purchased at the expense of mortgages on both the conterminous properties; and it is scarcely worth while to fix whole families or localities in the grip of the usurer in order to establish a custom which would probably be 'more honoured in the breach than in the observance.' To the speculative or vindictive mind there is a pleasure in pursuing an antagonist from Court to Court and taking advantage of what is called 'the glorious uncertainty of the law'; but my experience has satisfied me that appeals are more favoured by lawyers than by litigants, and that many a suitor would be content with the judgment of the original Court if his legal adviser did not lure him with the bait of possible success in the Court above. Such advice is very apt to be given on very insufficient grounds, and to be attended with very disastrous consequences to all but the giver. If one of the effects of the Bill is to relieve legal practitioners from this temptation and to make them more careful in their conduct of suits in the original Courts, an immense advantage will be gained.

"For these reasons I support the Motion of my hon'ble friend that this Bill be now passed."

The Motion was put and agreed to.

KING OF OUDH'S ESTATE BILL.

The Hon'ble MR. SCOBLE moved that the Bill to make further provision for the administration of the estate of His late Majesty the King of Oudh be taken into consideration.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

SHAN STATES BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to supplement the provisions of the Upper Burma Laws Act, 1886, with respect to the Shan States, and applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. SCOBLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed. He said:—

"The amendments which the Select Committee has made in the Bill have been made on the recommendation of the Chief Commissioner. Sir Charles Crosthwaite advises, in the first place, that the whole Act should come into force on such date as the Chief Commissioner may prescribe, in order that he may have time to frame the necessary rules and orders for the conduct of the administration in the various States. Secondly, he submits that, as there are many Shan States, and there may be frequent changes in the personality of the Chiefs, it would be very inconvenient if it were necessary to report every change of administration (however insignificant) in any State for the approval of the

Government of India, and if every officer appointed to a share in such administration were debarred from exercising his powers until such approval had been signified. In the third place, he suggests that it is desirable to give power to the Chief Commissioner to declare that certain cases or classes of cases, either civil or criminal, as, for instance, cases in which soldiers of Her Majesty's Forces or European British subjects are concerned, should be tried by British officials and not by the Sawbwas or their deputies. Fourthly, he thinks it necessary that the Superintendent of the Shan States should have power to withdraw particular cases from the jurisdiction of a chief and to deal with them himself or by one of his subordinates, and that he should also have authority to modify or annul orders or sentences which he considers contrary to justice or to the spirit of the law in force in the rest of British India. And, finally, he suggests that cases may arise in which it may be incumbent on the Government to undertake temporarily the entire administration of a Shan State, and that this contingency should be provided for.

"The Select Committee considered these proposals reasonable and judicious, and the Bill has been recast so as to carry them into effect. They involve no change of principle in the Bill as introduced, and I hope they will meet with acceptance by the Council, as it is important to bring the Act into operation without unnecessary delay."

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to consolidate, amend and add to the law relating to Railways in India. He said:—

"It is now just four years since my hon'ble friend Sir Theodore Hope obtained leave to introduce a Bill to amend and consolidate the railway law of India, explaining that the provisions of his proposed measure were only in rough draft, and would need to be referred to Local Governments, Chambers of Commerce and Railway Administrations throughout India before its introduction into Council. The period that has since elapsed, though undoubtedly long, has not been altogether unprofitably spent, for it has enabled those charged with the preparation of the Bill which I now submit to avail themselves not only of the criticism to which my hon'ble friend referred, but also of recent discussions and legislation in England, and of the practical experience of the Railway Conference which assembled during the present season at Simla.

"When the first Indian Railway Act was passed in 1854, only 20 miles of railway had been opened in this country. Twenty-five years later, when the consolidating Act of 1879 was passed, there were 8,216 miles of open line and 48 junctions. There are now 14,191 miles of open line and 118 junction stations. A traveller can now book through north to south from Kila Abdulla in Baluchistan to Tuticorin, a distance of 3,033 miles; or west to east from Karáchi to Darjeeling, a distance of 2,397 miles; while the passenger landing from Europe at Bombay will next year have the choice of four alternative lines to Agra, two to Madras, and two to Calcutta. The number of separate lines has increased from 26 in 1879 to 50 in 1888. The capital expended on Indian railways has grown from 131 millions in 1879 to over 183 millions sterling in 1887; the number of passengers carried has swelled from 44,261,227 in 1879 to 96,082,121 in 1887; the aggregate tonnage moved amounted last year to 20,195,677 tons as compared with 8,773,739 tons in 1879; and the gross receipts have risen from £11,952,590 in 1879 to £18,450,622 in 1887.

"This vigorous expansion of business, developed by the establishment of through routes and (in some cases) of competing lines, renders it necessary to adapt the railway law of India to the new condition of things. Statutory provisions which worked well enough when each railway had its own field of operation prove insufficient when competing interests come into play; and facilities for through booking raise questions between railway administrations which could scarcely arise when each was practically the master of its own traffic. Further difficulties spring from the relation of the State to railway enterprise—a relation which it is desirable to regulate by legislation, so as to establish a clear distinction between the State as a railway proprietor and as the guardian of the interests of the community at large.

"Existing railways in India may be arranged in five classes:—

(1) State lines worked by Companies, with a mileage of 4,762 miles and a capital expenditure of £62,415,925;

(2) State lines worked by Government, with a mileage of 4,059 miles and a capital expenditure of £49,820,168;

(3) lines worked by Guaranteed Companies, with 4,144 miles open and a capital expenditure of £61,712,358;

(4) lines worked by Assisted Companies, with a mileage of 543 miles and a capital expenditure of £3,722,515; and

(5) lines owned by Native States, with a mileage of 791 miles and a capital expenditure of £5,208,300.

"It is necessary to bear these figures in mind in order to realize the immense interest which the Government of India, as proprietor or partner or guarantor, has in the entire railway system of the country.

"The power of the Government of India in regard to some of these railways is limited, to a greater or less extent, by the contracts made with the various Companies by which the railways have been constructed or are worked. In framing the present Bill care has been taken to maintain the provisions of these contracts so far as they are consistent with a due regard to the public interest.

"The Bill is a Bill of consolidation and amendment. So far as it consolidates, the existing law has been reproduced. Minor amendments are sufficiently noticed in the Statement of Objects and Reasons annexed to the Bill. I need only now refer to those of greater importance.

"These will be found principally in Chapter V, and are aimed at securing proper and impartial facilities for traffic. Under contract and otherwise the Government has power to fix maximum and minimum rates and fares for the carriage of passengers and goods, and Railway Administrations are allowed to alter their charges, within the prescribed maxima and minima, so as to suit the varying conditions under which their business is caried on. But although Government, in the exercise of a wise discretion, ordinarily abstains from direct interference with rates, there are certain ruling principles with which it is bound, on behalf of the public who use the railways, to require compliance. There should be no undue preference; in other words, Railway Administrations ought not to be permitted to make preferential bargains with particular customers, such as granting them scales of charges more or less favourable than those granted to the public generally. Again, in cases where the traffic offering is sufficient to justify this arrangement, Railway Administrations ought to give reasonable facilities for public traffic between any two railway stations, each Administration being contented to receive for its share of the through rate less than its ordinary local rate. The justice of this is evident when it is considered that all traffic can be carried for long distances at lower rates than for short distances; so that, if each Railway Administration were to charge its full

local rate over its own comparatively short length of line, the aggregate would be so great as to restrict the traffic. Sir Bradford Leslie has laid down the true principle in the following words :—

'The various railway systems should, as far as possible, serve the country as if they were under one management, and the dealer in country produce should not be hampered in his operations by the necessity to base his calculations on as many different scales of rates as there may be railways between the starting point and destination.'

"These reasonable advantages are secured to the British public by the Railway and Canal Traffic Acts. Closely following the law in England, the Bill imposes on Railway Administrations the general duty of arranging to receive, forward and deliver traffic without unreasonable delay and without partiality or undue preference, and the special duty of so treating through traffic at through rates. If the Governor General in Council is satisfied that any person has just ground of complaint against a Railway Administration for breach of either duty, he may refer the case to a Railway Commission for decision. Such a Commission is to be appointed only when there are cases to be referred to it, and it will be deemed to be dissolved as soon as it has decided those cases. It is to consist of a Law Commissioner, who is to be a Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Governor General in Council has ordered the Commission to sit, and of two Lay Commissioners, of whom one must be an expert in railway business, and one may be a representative of the mercantile community or any other person whom the Governor General in Council sees fit to appoint. The Commission so constituted may in any case referred to it make any order, by way of injunction, which may in the circumstances appear to the Commissioners to be suitable. If two of the Commissioners concur upon a question of fact, their decision on that question is to be conclusive. From other decisions of the Commissioners an appeal will lie to a bench of not less than three Judges of the High Court of which the Law Commissioner was a member or, from a decision of a Railway Commission in Burma, to such a bench of the High Court of Judicature at Fort William in Bengal. Orders made by a Railway Commission are to be enforced by the High Court of which the Law Commissioner was a member as if they were orders made by the High Court in the exercise of its original civil jurisdiction.

"In thus fixing the constitution and powers of the Railway Commission, and making it a temporary instead of a permanent tribunal, regard has been had to the fact that the existence of such a tribunal in England has had a most potent

effect in inducing railway managers to come to a reasonable understanding on points of difference; and it is hoped that similar results will be attained in this country.

"Chapter VII relates to the responsibility of railway administrations as carriers, and follows the rule embodied in section 10 of the Indian Railway Act, 1879. There have been very few complaints against the practical operation of this rule, which is based upon a judgment of the Bombay High Court reported at I. L. R. 3 Bom. 109; and, though the soundness of that judgment has been questioned, the Government of India, as at present advised, is of opinion that experience does not justify any material modification of existing legislation. But as a railway is defined in the Bill to include all 'ships and boats which are used on rivers and other inland waters for the purposes of the traffic of a railway and which are under the direct control of the authority administering the railway', and as, under this definition, a through rate may cover water as well as land carriage, it would seem only equitable to place Inland Navigation Companies on the same footing as to responsibility with Railway Administrations; and I shall be glad to have the opinion of the mercantile community upon this point.

"It may be convenient, in connection with this question of responsibility, to refer to a proposal to give railway receipts the same effect as bills of lading. This proposal has not been adopted. The two classes of documents stand upon an entirely different footing. The principle upon which the negotiability of bills of lading is based, namely, that for a long period the goods, and the captain in charge of them, cannot be communicated with, does not apply to railway carriage with telegraphic communication. Indeed, it may be doubted whether, in these days of quick voyages, the law as to bills of lading would ever have come into force. If the law were altered so as to place railway receipts on the same footing as bills of lading, and a statutory form of delivery order were prescribed under which Railway Administrations were subjected to the same responsibilities as shipowners, they would become liable for the proper delivery of the goods to the party entitled under the order, whether as endorsee or otherwise. As a consequence of this the railway company would have to take into consideration questions as to irregular and forged endorsements, and, in the event of goods being delivered even to an innocent holder for value when a previous endorsee's signature had been forged, the company would be liable to the right holder whose signature was forged for the goods so delivered. In addition to this, further inconvenience would arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*. At present, when a consignor and

consignee stand in the relation of unpaid seller and buyer, and before the delivery of the goods the consignor finds out that the consignee is insolvent, the former has a right to stop the delivery of the goods to the consignee; but in the case of a bill of lading the consignor cannot stop the goods *in transitu* if the consignee has parted with the bill of lading and it has passed into the hands of a *bonâ fide* holder for valuable consideration. It follows that, if railway receipts were turned into bills of lading, questions of the good faith, and so forth, of the holder would have to be considered when an unpaid consignor attempted to stop goods *in transitu*.

"These are among the inconveniences which would result from the adoption of the proposal, and the Government of India has not deemed it advisable to impose this additional risk and responsibility on the railways in the absence of similar legislation on the subject in England.

"Returning now to the provisions of the Bill, I may advert to the sections which relate to the comfort and convenience of passengers. Sections 63 and 98 are intended to prevent and punish overcrowding; section 64 requires that in every passenger train at least one compartment of the lowest class shall be reserved for the exclusive use of females; and section 118 provides for the punishment of male intruders into carriages, compartments or rooms so reserved. Beyond laying down general rules of this kind it has been considered undesirable that legislation should interfere with the arrangements which an enlightened self-interest is usually sufficient to lead the railway authorities to make for the benefit of their customers. Exaggerated ideas appear to be entertained in some quarters as to the duty of Railway Administrations in this respect, especially as regards the lower classes of passengers. It is no doubt true that these numbered last year 93,445,906, or rather more than 97 per cent. of the total number carried. But, as each travelled an average of only 41 miles, and paid an average fare of 8 annas and 1 pie, it seems clear (apart from sanitary and caste considerations) that bathrooms and latrines need not, and could not economically, be provided in third and fourth class carriages. Lower class earnings, large as they are, are less easily gained than the others; and the accommodation furnished must vary in relation to the fare paid and the distance travelled.

"Two other provisions of the Bill require notice. Section 131 deals with the question of the taxation of railways by municipal committees, cantonment committees, district boards and other like authorities. In the opinion of the Government of India the exemption which guaranteed and State railways enjoy in

some provinces from assessment to local rates on land should be extended to all railways throughout India. As regards municipal taxes, it is considered that such as have been levied hitherto in any municipality or cantonment may generally continue to be levied there, though possibly in a commuted form.

"The other provision relates to the representation of railway administrations in proceedings before Courts of Justice, especially in criminal cases. There have been instances of subordinate Courts objecting to the manager of a State railway appearing before them by deputy, even where the attendance of the representative of the railway is required for purely formal purposes. There have also been many instances of great and unnecessary expense being imposed on railway administrations by reason of subordinate Courts refusing to allow petty prosecutions to be conducted by railway servants. Section 141 of the Bill accordingly authorizes the manager or agent of a railway to depute a subordinate officer or other competent person to act for or represent him, when necessary, in any Court.

"These are the principal enactments of the Bill, so far as it amends or adds to the existing law. In framing it especial care has been taken not to go in any case beyond recognized railway practice at home. I hope it will be found that, while duly solicitous for the public interest, a proper regard has been paid to the rights secured by contract to the pioneers of railway enterprize in India, and that the guaranteed companies, no less than the mercantile community and the public generally, will accept this Bill as a fair solution of difficulties which might become formidable if they were not honestly and promptly dealt with."

The Hon'ble SIR CHARLES ELLIOTT said :—"I wish to add a few remarks to those which have fallen from my hon'ble friend Mr. Scoble in introducing this Bill, chiefly in order to express my concurrence in what he has said and my belief that the Bill, when it is passed with such amendments as shall seem good to Your Excellency's Council, will be of material advantage to the interests of the great railway systems which will be affected by it, both as to their relations to each other and as regards the wants and requirements of the public which they serve.

"There are also a few points respecting which I should like to enlarge on what my hon'ble friend has said, or which have not been noticed by him but seem to me to deserve prominent attention.

" The most important portion of the Bill is, as Mr. Scoble has already said, Chapter V, dealing with the creation of a Railway Commission. We have already, since the Bill was drafted and published, received communications, both in writing, and also verbally from the delegates who assembled here last month, which throw an important light on the proposals made in this chapter and which deserve the careful attention of the legislature. The chapter empowers the Railway Commissioners to decide certain classes of dispute which arise between railway companies; and these disputes relate principally to through rates on goods. Now, it is contended by some of the older guaranteed companies that their contracts with Government confer on them an absolute power of fixing and altering the rates they charge, subject only to the limits of maxima and minima which Government has prescribed, and a fear has been expressed lest the appointment of a Railway Commission should prove to be an undue interference with their rights. I fully accept the justice of their contention, but I trust that we may succeed in gaining their consent to the provisions which will to a certain extent restrict their powers. The argument that I would use with them is that they need not fear the introduction in India of a principle which has been adopted in England with such strong adhesion on the part of Parliament and the public, especially when they consider that the powers which it is proposed to give to the Railway Commission by this Bill are far less stringent than those which have been conferred by the Act recently passed in England, and also that in India any unreasonable interference on the part of Government is less to be dreaded than elsewhere, because the Government is not only the principal railway owner in this country but is also itself a partner in all the guaranteed railways, so that nothing can affect their interests injuriously which would not also recoil on its own head.

" Another point of considerable importance which was brought to my notice by the railway delegates last month was this. According to the provisions of the Bill there are to be three Railway Commissioners, whose qualifications have been mentioned in Mr. Scoble's speech. But the Bill does not propose that these Commissioners should sit in permanence or should always be the same. A different Judge would be selected, and probably also a different mercantile man, according as the cause of dispute arose in Madras, Bombay or Upper India. It was natural therefore to fear that these different Commissioners might pass decisions at variance with each other or not in accordance with English precedents; and it was generally felt that it is a most important thing for railway interests that such cases should be decided finally and without appeal. A hope was therefore expressed that at least the special railway officer on the

Commission should be permanent and unchanged; and it was pointed out that the best selection would be made if he were a permanent Government official, who remained constantly in touch with railway work but was unconnected with the direct administration of any State line, so that it might not be suspected that he would be influenced by the clashing of Government interests with those of other and possibly competing railway systems. I think that there is a great deal to be said for this suggestion, and that it deserves the careful consideration of Government. It would be obviously impossible to appoint an official solely to the post of Railway Commissioner, not only on the grounds mentioned that if not brought into daily contact with the working of railways he would soon lose his practical grasp of the matters in dispute, but also on the financial ground that it would be impossible to retain a highly paid officer for such light and occasional work as we expect to arise before the Railway Commission. The end aimed at might perhaps be attained by giving to this officer the statistical work of collecting, checking and collating the returns sent up by the different railway systems, which work is now done in the Director General's office and the results of which are published in his annual report. I do not wish at present to pronounce any definite opinion on the possibility of carrying out this suggestion, and can only pledge myself to give it, or any other plan which would lead to the same end, the most careful consideration.

"The question of the taxation of railway property for local purposes by municipalities or other local bodies, as provided for in section 131 of the Bill, has been touched on by my hon'ble friend, who has stated that possibly it may be decided not to interfere with any amounts at present collected in this way but only to restrict such taxation for the future. Speaking in my personal capacity I confess to a hope that this legislature in its wisdom may see fit to go further than my hon'ble friend proposes. It seems to me that there is something positively unreasonable and unjust in such taxation as is now imposed by some municipalities. The *raison d'être* of municipal taxation is that it should be a payment for services rendered in the shape of sanitation, police, lighting, water-supply, road-making or any other such conveniences to dwellers within municipal limits. Now, a railway administration provides its own sanitation, police, lighting and watering, and it is, in itself, the largest possible contributor to the road communications of the municipality. To tax such an administration therefore on its rateable value just as a house is taxed, the dwellers in which benefit by all the services abovementioned, seems to me preposterous, and I trust that we may be able to remove this anomaly altogether in future.

"I may also allude here to another branch of the same subject. Guaranteed and State railways are by law exempted from the payment of local cesses which are usually imposed on land, but private railways are not. Government has lately had before it the case of the Tarkeshwar Railway, which has been called upon by the local board of the district in which it lies to pay the local cess by which landowners contribute to the up-keep of roads. Here we have the same absurdity which I have mentioned before, but in a heightened form, the best of all possible roads being taxed to keep up other roads; and we have it applied to the detriment of a class of railways that we especially desire to foster—railways owned by private companies and unconnected with the State. I trust that the Bill now before this Council will effectually dispose of such claims to taxation as this.

"The Hon'ble Mr. Scoble has referred cursorily to the provision of latrine accommodation in third class carriages. This provision is perhaps more keenly advocated than any other reform by the Native Press, and a section (74) enforcing this provision was inserted in the first draft of the Railway Bill. The proposal was, however, condemned by every authority to which the draft Bill was referred, and it would appear to be impracticable in the present type of carriage with lateral compartments. The accommodation, if provided, would take up about 20 per cent. of the available carrying space, and would consequently necessitate a corresponding increase in the third class fares. In addition to this not only are there insuperable difficulties in keeping latrines in carriages clean and free from offensive smells and in preventing persons from using the latrines when trains are standing at stations, but there are also serious objections from a sanitary point of view to the pollution of the road itself, especially in the vicinity of towns and stations. The arrangement has been given a fair trial on several of the principal railways, and invariably abandoned for the reasons I have mentioned.

"I need hardly say that I am most anxious to meet all reasonable wishes of that great class who form more than 97 per cent. of the total number of travellers on our railways, but I think it is clear that this wish cannot be gratified without inordinate expense and without other inconveniences which are even a more serious obstacle than expense. We have therefore thought it advisable to omit all reference to this subject in our present draft.

"My hon'ble friend the Law Member in his speech has referred to the impossibility of bringing railway receipts under the law which affects bills of lading given by seagoing vessels. It may be worth while to mention in connection with this that section 81 of the Bill proposes to give one very desirable

convenience to exporters from this country, in that it facilitates the through booking of goods from India to England, and *vice versâ*, and will thus help to remove the difficulties which have been met with in carrying out the arrangements which Colonel Conway Gordon has made between the North-Western Railway and the Hall Line of Steamers for the through booking of goods between England and the Punjab. I hope that the encouragement thus given to this system will tend to its development and spread on other railway administrations.

"I should like in conclusion to draw public attention to a few sections which are, I think, of considerable utility, some of them as protecting the railways against the public and some as protecting the public against the railways. Under the first class I would mention section 60, which is intended to meet a case which is not uncommon now, and might probably become still more common, where a consignor falsely declares his goods to be of lower value than they really are, consigning, for instance, piecegoods under the description of old iron, or writing paper as piecegoods, in order that they may be put in a lower class and pay a lower rate. In the second class I would draw attention to section 46, which declares that the public have a right to a full explanation of all charges made by railways; and to section 75, which lays down that a railway is responsible for the value of any excepted article lost or damaged not exceeding Rs. 100. In Schedule II of the Bill a list is given of these excepted articles which must be declared and insured, such as gold and silver, precious stones, Government securities, paintings and the like. It appears that under the present law if a bundle of clothing were sent by rail, some of which had on it gold embroidery, and this were not declared, the railway might plead exemption from any loss; but in future, as now provided in this Bill, any small omission of this kind will not vitiate the owner's title to compensation up to the amount of Rs. 100.

"Lastly, section 133 extends the present law by declaring that every railway servant is a public servant for the purposes of the whole of Chapter IX of the Penal Code, and thus not only makes him liable to punishment for extortion, oppression or any similar offences, but also makes it illegal for him to trade on his own account, and thus secures to the railway, whose servant he is, the whole of his services.

"I have nothing further to say except that I trust that this Bill will receive the most careful consideration both from the railway administrations concerned and also from the travelling and mercantile public, and that with

the help of such suggestions as they may supply we may be able to pass it into law at the next session of Your Excellency's Council in Calcutta."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

BURMA FINANCIAL COMMISSIONER'S BILL.

The Hon'ble SIR CHARLES AITCHISON moved for leave to introduce a Bill to provide for the appointment of a Financial Commissioner for Burma and for the definition of his functions. He said:—

"This Bill requires very little explanation. Hitherto the Chief Commissioner has been the Chief Revenue-authority in Burma. It has been found necessary, however, to relieve the Chief Commissioner of much of the work which falls upon him in that capacity and to appoint a Financial Commissioner who shall stand to the Chief Commissioner in somewhat the same relation as the Financial Commissioners in the Punjab stand to the Lieutenant-Governor. The Bill provides that the Financial Commissioner shall be the Chief Revenue-authority and shall exercise such powers as may be delegated to him by the Local Government with the previous sanction of the Governor General in Council. It also validates the proceedings of the Financial Commissioner since the date of his appointment on 1st April last."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and the Burma Gazette.

The Motion was put and agreed to.

1888.] [*Sir Charles Aitchison.*]

BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR CHARLES AITCHISON also moved for leave to introduce a Bill to amend the Burma Municipal Act, 1884. He said:—

"The necessity for this Bill has arisen out of difficulties experienced in the collection of certain municipal taxes in Rangoon.

"Under section 41 of the Burma Municipal Act, 1884, taxes are imposed upon houses and lands which are recoverable jointly and severally from the owner and the occupier. Under sections 42, 43 and 44 a water-tax, a lighting-tax and a scavenging-tax are imposed; and, as is usual in the case of taxes imposed for services rendered, these are recoverable from the occupier only. Now, in Rangoon many of the houses, especially in the business part of the town, are let in portions generally to poor people on a daily tenancy and for daily rents. The occupants therefore are constantly changing, and the municipality finds the greatest difficulty alike in apportioning and in realizing the occupiers' taxes. It is estimated that out of a total demand of about Rs. 2,50,000 on account of the water, lighting and scavenging taxes, the committee will be unable, as the law stands at present, to collect Rs. 50,000. As the expenditure under the three heads taken together considerably exceeds the total demand, the loss of 20 per cent. of the taxes is a very serious matter. It is therefore proposed to put these three taxes on the same footing as the others, that is to say, to make them payable jointly and severally by owner and occupier. On the recommendation of the Chief Commissioner the change is made general instead of being limited to Rangoon.

"It will be observed that in some respects the Bill exempts Government from the liability of an owner. The main object of this distinction is to avoid raising difficult and inconvenient questions of ownership in respect to certain Government lands on which buildings have been erected or which have been otherwise occupied without sufficient title.

"The Bill has the approval of the Chief Commissioner."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and the Burma Gazette.

The Motion was put and agreed to.

LOWER BURMA RURAL POLICE BILL.

The Hon'ble SIR CHARLES AITCHISON also moved for leave to introduce a Bill to provide for the establishment of a village-system and amend the law relating to Rural Police in Lower Burma. He said:—

"The Bill which I have now the honour to move for leave to introduce is an important one and much needed in order to strengthen the administration in Lower Burma in dealing with violent crime and in maintaining law and order. Its primary object is to establish a system of village-organisation in Lower Burma, or rather to re-establish it. For in Lower Burma, as in Upper Burma, we found on annexation the entire government of the country resting upon a village-organisation, each village having its responsible headman, who exercised police and magisterial powers and acted as arbitrator and judge in civil disputes. The timely introduction of the Upper Burma Village Regulation has checked the disintegration of the system, which had already begun in that part of the country with the introduction of our rule. And it is now proposed in Lower Burma to do something towards the restoration of an organisation to the want of which the Chief Commissioner directly attributes much of the disorder which has of late prevailed and which to some extent still continues.

"So much has this want been felt in Burma even in ordinary times that steps were taken in 1880, by the enactment of the District Cesses and Rural Police Act, to improve the status of the village-headman and to define his duties. The Act imposed a cess of 5 per cent. on the land-revenue for the maintenance of village-police, provided for the appointment of headmen of villages and headmen of circuits, invested them with the powers of police-officers, empowered them to call on the inhabitants of their jurisdiction to assist in the suppression of crime and rendered it compulsory to comply with such requisitions. It also made liable to punishment with fine the inhabitants of places where dacoity and robbery are committed and where dacoits and robbers are harboured with their connivance. The Act, however, was faulty in making the headman the servant of too many masters, and was defective in not giving him sufficient powers to enforce his orders. It has not therefore been able to stand the strain of the crisis through which the province has passed, and it has now become necessary to re-adjust the whole system. In doing so it is proposed to follow the plan which has been adopted with marked success in Upper Burma.

"The principal sections of the Bill divide themselves naturally into two parts, sections 3 to 10 relating to the appointment of village-headmen and the definition of their powers and duties, and sections 11 to 23, which enforce village-re-

sponsibility and are designed to repress crime. The latter will come into force as soon as enacted, the former only in places to which they may be extended from time to time by the Local Government. The reason for this is that the selection and appointment of headmen will require much labour and care, and District-officers will not be able to put the provisions of the Act relating to the headmen into force in the whole of their districts at once. This portion of the Act therefore will be applied gradually.

"The Chief Commissioner strongly recommends, in order to enhance the status of the headman and give him a substantial and permanent interest in his office, that he should receive a small area of land free of revenue to be held so long as he shall remain in office and discharge his duties efficiently. This is a measure which was very strongly advocated in 1879, when the Chief Commissioner of British Burma submitted the Rural Police and District Cess Bill. The provisions in this behalf, however, were struck out of the Bill, as it was considered that the object in view could be attained by administrative arrangement. This was true enough so far as the grant of the land or the exemption from revenue is concerned. But it was difficult without legislation to treat the holding as an appanage of the office and prevent the acquisition of private rights therein. The result is that the measure has been a dead letter, and this is probably one of the reasons among others why the headman in Lower Burma has not had the influence that was expected. The present Bill leaves the question of the grant of land or remission of revenue to be dealt with, as before, as an administrative matter, but provides for treating the holding and emoluments as an appanage of the office when the remuneration of the headman takes that form, and for their tenure and devolution accordingly.

"As the other provisions of the Bill are taken bodily from the Upper Burma Village Regulation of 1887 and from Act II of 1880, it is hardly necessary at the present stage that I should either enumerate them or justify them to this Council as legislative measures. As regards the duties of the headman, these the Chief Commissioner says 'will be similar to those which he now performs. But he will have power to enforce his authority; and owing to his civil and criminal powers he will occupy a position of far greater influence than that which he now holds. The Chief Commissioner considers it essential that the headman should have powers to enforce his orders. The powers given to the headman for this purpose are similar to those enjoyed by patels under the Bombay system. This is the vital principle of the whole scheme, and Sir Charles Crosthwaite earnestly hopes that it may be accepted without material modifications.' With respect to the

provisions of the Bill which enforce village-responsibility and strengthen the hands of the District-officers and Commissioners, the Chief Commissioner says :—

'The recent disturbances in Lower Burma have clearly shown that there is need of measures for strengthening the hands of Deputy Commissioners. The power of promptly punishing villages which afford help and shelter to dacoits or which fail to resist attack, of requiring villages to be made defensible, of moving remote and isolated houses and hamlets which furnish dacoits with supplies, of enforcing village-responsibility for crime, and of maintaining supervision over persons who move from village to village, is much needed. In some places, such as in the Thayetmyo and Tharrawaddy districts, where violent crime is rife, and where the district authorities have been powerless against it, the need is urgent. It is only by the adoption of measures similar to those provided for in the present Bill that any headway has been made in those parts of the country which, since the end of 1885, have been overrun by dacoit gangs. The reports connected with the operations in the Pyuntaza subdivision of the Shwegyin district have been before the Government of India. Similar operations were commenced in the early part of the present year in the Minhla subdivision of Thayetmyo, which was the chief scene of Bo Swè's crimes, and in the Myedè and Sinbaungwè subdivisions of the same district. The results have been attended in the Minhla subdivision with considerable and in the Myedè subdivision with complete success. The Chief Commissioner asks that District-officers in Lower Burma may be placed in the same position as those in Upper Burma in respect of the management of their districts.'

"Lastly, as regards the general necessity for this measure, I quote the following weighty words of the Chief Commissioner :—

'The law as it stands at present does not enable the Magistrate to make the people interest themselves in suppressing crime. It is as certain as anything can be that, if the people chose to assist us even by timely information, there is not a dacoit gang which could survive for a fortnight. They do not assist the Government in any way. On the contrary, many of them feed and shelter the outlaws, provide them with ammunition, warn them of the movements of the police, and when occasion arises furnish them with recruits from the villages. This condition of affairs has long been chronic in Upper Burma and in some parts of Lower Burma. It is the natural outcome of the character of the country, of the people, and of the government that they have submitted to for some centuries. Under such circumstances, and in a country intersected by streams and creeks and full of heavy forest and thick jungle, the ordinary police-force becomes helpless and fresh posts and increased garrisons become necessary. This state of things will go on in Lower Burma as it has for the last six or seven years at least, increased expenditure being incurred without any improvement of a permanent kind either in the efficiency of the police or in the conduct of the people, unless some change in the law is made which will compel the people to act together and to assist the officers of Government. It is believed that a measure of the kind now proposed will secure the attainment of this result.'

"Sir Charles Crosthwaite has been Chief Commissioner of Burma for something over twenty months. During that time he has accomplished great things

under difficulties the magnitude of which can only be fully appreciated by those who, like myself, have had the opportunity of watching his administration from day to day. His government has been characterized by an intelligence, moderation, firmness and vigour from which I cannot withhold in this place my tribute of warm admiration. I believe that, if this Bill is, with the permission of Council, introduced and passed into law, it will in Sir Charles Crosthwaite's hands in time contribute materially to the thorough re-establishment of law and order in every district of Lower Burma, and towards the laying of a firm foundation for the future peace and prosperity of that most important province."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in the Vernacular.

The Motion was put and agreed to.

SOLDIERS' NECESSARIES PURCHASE ENACTMENTS REPEAL BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Bill to repeal certain enactments relating to the purchase of regimental necessaries from soldiers be taken into consideration. He said:—

"I explained, in introducing this Bill into the Council, that its object was to bring the law of India into harmony wtth the provisions of the Army Act, in respect to the penalties involved in the illicit purchase of regimental necessaries from soldiers. The Bill is of a very simple character and has not called for any criticism and is not likely to call for any such, except perhaps from the criminal classes who are engaged in these illegal purchases."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill be passed.

The Motion was put and agreed to.

[*Lieutenant-General Chesney; The President.*] [25TH OCTOBER, 1888.]

INDIAN MARINE ACT, 1887, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill to amend the Indian Marine Act, 1887, be taken into consideration. He said:—

"In moving for leave to introduce this Bill I explained to the Council that its object was simply to amend a technical provision in the wording of certain nomenclature recited in the Bill. It is a matter therefore of a purely technical character and does not call for any further explanation."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill be passed.

The Motion was put and agreed to.

DEATH OF COLONEL A. C. W. CROOKSHANK, C. B.

At the close of the proceedings His Excellency THE PRESIDENT spoke as follows regarding the death of Colonel A. C. W. Crookshank, Commanding the Fourth Column of the Hazara Field Force:—

"I am sure it will be a matter of regret to all of the members of the Legislative Council to have heard the sad intelligence of the death of a very distinguished officer, in consequence of a wound which he recently received during the operations of Her Majesty's troops in the Black Mountain. We were all personally acquainted with Colonel Crookshank, as for a considerable period he served the Government of India in the important capacity of Deputy Secretary in the Military Department. Not only so, but he also has had a distinguished career as a soldier, and he has now lost his life in the discharge of his duties as the Colonel Commanding one of of the four columns that were despatched against the rebellious tribes in the Black Mountain, and in command of the Pioneer Regiment. It is unnecessary for me to add with what deep regret the Government of India has learnt the loss of so gallant an officer and so distinguished a servant of the Crown."

The Council adjourned *sine die*.

SIMLA;
The 26th October, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No. 418 L. D.—24-10-88.—326.