

*Monday,
21st March, 1898*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXVII

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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

1898

VOLUME XXXVII



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Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House, Calcutta, on Monday, the 21st March, 1898.

PRESENT :

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

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

The Hon'ble Sir J. Woodburn, K.C.S.I.

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

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

The Hon'ble Rahimtula Muhammad Sayani, M.A., LL.B.

The Hon'ble Pandit Bishambar Nath.

The Hon'ble Joy Gobind Law.

The Hon'ble C. C. Stevens, C.S.I.

The Hon'ble Sir H. T. Prinsep, K.T.

The Hon'ble H. E. M. James, C.S.I.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble J. J. D. LaTouche, C.S.I.

The Hon'ble F. A. Nicholson.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble Gangadhar Rao Madhav Chitnavis, C.I.E.

The Hon'ble Allan Arthur.

QUESTIONS AND ANSWERS.

The Hon'ble RAHIMTULA MUHAMMAD SAYANI asked :—

“Will Government be pleased to produce statistics showing the respective numbers of men of different nationalities in the service of the East Indian Railway Company employed as station-masters and as assistant station-masters of *roadside stations* and as clerks in the company's various offices, and also showing what educational standards are required for the respective posts ? ”

The Hon'ble SIR ARTHUR TREVOR replied :—

“ The East Indian Railway is worked for Government by a Company which appoints its own employés.

“ The numbers of Europeans, East Indians and Natives respectively employed in the different Departments of the line will be found in statement No. 40 of the Administration Report, Part I, of the Railway Department.

“ The figures given in the last report, that for 1896-97, are as follows :—

| <i>General Administration.</i> | | | |
|--------------------------------|---------------|----------|--------|
| Europeans. | East Indians. | Natives. | TOTAL. |
| 69 | 38 | 2,769 | 2,876 |
| <i>Traffic Department.</i> | | | |
| 408 | 285 | 12,864 | 13,557 |
| <i>Engineering Department.</i> | | | |
| 83 | 51 | 16,605 | 16,739 |
| <i>Locomotive Department.</i> | | | |
| 435 | 285 | 13,862 | 14,582 |
| <i>Total.</i> | | | |
| 995 | 659 | 46,100 | 47,754 |

“ Government have no information as to the educational standard required for the different posts.”

The Hon'ble RAHIMTULA MUHAMMAD SAYANI asked :—

“ 1.—Whether the Government of India in the Military Department has received petitions from certain Mahar petitioners complaining that, though till recently many Mahar soldiers served in the Bombay Army with distinction and some rose to the highest non-commissioned ranks, military service has been closed to sons of these people by recent changes in the orders about selecting recruits from certain classes.

“ 2.—Whether Government is not prepared to extend the application of these orders so as to include these people in the Dekkhani, Maratha and Konkani Maratha classes from which recruiting is permitted under existing rules ? ”

1898.] [Sir Edwin Collen; Sir James Westland.]

The Hon'ble MAJOR-GENERAL SIR EDWIN COLLEN replied :—

“1.—Two petitions were received, one from the Mahars of Satara, and one from a society called the Anarya Dashpariharall Mandali, apparently composed of Mahars or Parwaris, Mochis, and Mangs in the Ratnagiri District, appealing against the exclusion of their caste-fellows from the Bombay Army. The petitioners urged that men of their caste had always served the Government faithfully, and cited, in support of their fighting qualities, the battle of Karigaum, where they state large numbers of their caste had been killed. It was found that half a battalion of the Bombay infantry regiment engaged at Karigaum was apparently composed of low caste men.

“2.—The whole question of the composition of the Bombay Army was considered by a committee of officers of that Army in 1892, and they recommended that the enlistment of certain low castes, among whom Parwaris were included, should be prohibited, excepting such as were required as musicians and buglers. The question was thoroughly discussed by the Commander-in-Chief and the Government of India, and orders were issued prohibiting the enlistment of any but the fighting classes. The only exception to the rule was to be in the case of tradesmen in the Pioneer regiments, and in other regiments writers, bandsmen and mochis.

“The memorials to which I have referred were fully considered, and the question was discussed whether men of the classes named could be formed into a class regiment. This question was decided in the negative, and the Government of Bombay were informed that the orders could not be rescinded.”

FINANCIAL STATEMENT FOR 1898-99.

The Hon'ble SIR JAMES WESTLAND said :—

“The year now closing has been marked by a singular succession of calamities. When it opened, the famine due to the drought of 1896 was becoming more and more intense both in Northern and in Southern India, and plague was raging in some parts of the Bombay Presidency. Before the first three months had expired, the eastern side of India was shaken by an earthquake which caused much damage to the buildings and the Railway works in the districts which were affected by it. During the rest of the year we were engaged in meeting a series of fanatical attacks by the tribes on our North-Western Frontier, and repelling

them by military operations conducted under conditions of very great physical difficulties and necessarily great expenditure.

" 2. These circumstances are necessarily reflected in the Financial Statement which I have to lay before the Council, in which I shall have to declare for the closing year a deficit of larger amount than any since 1859-60.

" 3. But there is also a brighter side in my statement. The harvests of 1897 have been more bountiful than any within recent memory, and the recovery from the effects of famine and scarcity promises to be a very rapid one. The Revenue returns of January were sufficient in themselves to shew that the crisis had passed, and gave hopes of early return of prosperous times. And at the present moment there are signs of peace on our frontiers and of the submission of the still outstanding tribes to the General Commanding our forces. Our financial position for the year that is about to open will therefore, I trust, be a reflection of times of returning peace and prosperity, although as peace is not yet assured to us, I am obliged to include in my estimates of expenditure a considerable provision not only for the return of our troops from the theatre of war, but also for the possible resumption, before their return, of military operations.

"Accounts of 1896-97.

" 4. A couple of months ago I announced that the accounts of 1896-97 had been closed, and that the results, as is usually the case, closely corresponded with, and were slightly better than, the revised estimate presented to Council in March last. The comparative figures are as follows:—

| | Revenue. | Expenditure. | Deficit. |
|-----------------------------------|------------|--------------|-----------|
| | Rx. | Rx. | Rx. |
| Estimated in March 1897 | 93,803,800 | 95,790,700 | 1,986,900 |
| By actual accounts | 94,129,741 | 95,834,763 | 1,705,022 |
| | <hr/> | <hr/> | <hr/> |
| Improvement | 325,941 | —44,063 | 281,878 |
| | <hr/> | <hr/> | <hr/> |

" The improvement in Revenue was mostly due to somewhat short estimates of Land Revenue and of Railway earnings. Under all other heads the estimates

1898.]

[*Sir James Westland.*]

were very closely followed except under Civil Works, under which the short expenditure, being nearly all Provincial or Local, merely gives rise to a cross-entry under 'Provincial adjustment.'

“ Revised Estimates of 1897-98.

“ 5. For the year 1897-98 we have to announce a deficit of Rx. 5,283,100 being greater by Rx. 2,819,100 than that which was anticipated in the Budget Estimates. This result is entirely due to the expenditure on famine being about 50 per cent. in excess of our estimates, and to the outlay involved in the military operations on the North-Western Frontier. Separating out the figures connected with these two subjects, the results of the year compare as follows with the Budget Estimates :—

| | Budget. | Revised. | Difference. |
|----------------------------------|------------|------------|-----------------------|
| | Rx. | Rx. | Rx. |
| Excluding Famine and War— | | | |
| Revenue . . . | 95,676,800 | 96,479,200 | 802,400 Better. |
| Expenditure . . . | 94,499,600 | 92,547,000 | 1,952,600 Better. (a) |
| Famine Relief . . . | 3,641,200 | 5,391,800 | 1,750,600 Worse. |
| Warlike Operations . . . | ... | 3,823,500 | 3,823,500 Worse. |
| | <hr/> | <hr/> | <hr/> |
| Deficit . . . | 2,464,000 | 5,283,100 | 2,819,100 Worse. |
| | <hr/> | <hr/> | <hr/> |

(a) Mostly by reason of improvement in Exchange.

“ It is perhaps worthy of note that the deficit of the year is actually less than we have spent on Famine Relief ; in other words, if we had had no famine expenditure to meet, our ordinary revenue would have been sufficient to meet our War expenditure and to leave a small surplus over. This is important only as indicating our general financial position apart from the calamities that have fallen upon us during the year.

[Sir James Westland.]

[21ST MARCH,

"6. The comparison between Budget and Revised Estimates set out in greater detail in the form I have adopted on previous occasions is as follows:—

" Estimates of 1897-98.

| | Budget. | Revised. | Revised Better. | Revised Worse. |
|---|------------|------------|-----------------|----------------|
| STERLING IN ENGLAND— | | | | |
| Revenue | £ 173,000 | 192,000 | 19,000 | |
| Expenditure | 16,088,500 | 16,291,000 | | 202,500 |
| NET EXCHANGE ON ABOVE. Rx. | 10,504,200 | 9,015,500 | 1,488,700 | |
| | 26,419,700 | 25,114,500 | 1,305,200 | |
| REVENUES IN INDIA— | | | | |
| | Rx. | Rx. | Rx. | Rx. |
| Land Revenue | 25,646,200 | 25,932,300 | 286,100 | |
| Opium | 5,816,200 | 5,242,300 | | 573,900 |
| Salt | 8,734,000 | 8,625,000 | | 109,000 |
| Other Principal Heads of Revenue | 23,578,200 | 23,626,000 | 47,800 | |
| Departmental Receipts (a) | 6,945,800 | 7,208,800 | 263,000 | |
| Railways | 20,682,100 | 21,165,000 | 482,900 | |
| Irrigation | 3,122,500 | 3,591,100 | 468,600 | |
| Military Works | 50,000 | 50,800 | 800 | |
| Army | 814,600 | 820,700 | 6,100 | |
| | 95,389,600 | 96,262,000 | 872,400 | |
| EXPENDITURE IN INDIA— | | | | |
| Direct Demands on Revenues— | | | | |
| Opium | 2,654,000 | 2,364,800 | 289,200 | |
| Other | 8,520,400 | 8,406,700 | 113,700 | |
| Interest (b) | —961,900 | —992,700 | 30,800 | |
| Civil Departments | 19,308,800 | 19,584,600 | | 275,800 |
| Famine Relief | 3,041,200 | 5,389,000 | | 1,747,800 |
| Protective Works | 25,000 | 22,400 | 2,600 | |
| Railways | 13,752,000 | 13,687,600 | 64,400 | |
| Irrigation | 3,110,000 | 3,135,700 | | 25,700 |
| Military Works and Special Defences | 1,207,300 | 1,065,800 | 141,500 | |
| Civil Works | 4,398,200 | 4,172,100 | 226,100 | |
| Army (ordinary charges) | 16,968,900 | 16,430,500 | 538,400 | |
| „ Warlike operations | ... | 3,869,800 | | 3,869,800 |
| | 72,623,900 | 77,136,300 | | 4,512,400 |
| PROVINCIAL ADJUSTMENT— | | | | |
| Deduction made for charges taken to Provincial and Local Balances | —1,190,000 | —705,700 | | 484,300 |
| Surplus (+) Deficit (—) | —2,464,000 | —5,283,100 | | 2,819,100 |

(a) Including Interest and Receipts under Civil Works.

(b) This entry in the Indian portion of the accounts is a *minus* one, as the interest passed to the charge of Railways and Irrigation is greater than the whole amount of interest payable in India.

"7. Of the increase in English expenditure, £161,500 occurs under the head of Interest (including discount on Loans raised), and is due to the increased loan operations which were rendered necessary by reason of our inability, to which I

1898.]

[*Sir James Westland.*]

shall presently allude, to keep the Secretary of State in funds to the extent we anticipated at the time of the Budget Estimates. Another large item, £51,600, is due to stores sent out for military works in India and is met by the corresponding reduction under the same head in the Indian Accounts. And a further special demand for £23,100 worth of stores was made in connection with the military operations on the North-Western Frontier. No other differences in the English Account are large enough to be mentioned here.

“ 8. It will be seen that by the improvement in the rate of exchange at which the English transactions are brought to account, our Revised Estimates shew, even with the somewhat increased expenditure, a result better than Budget by Rx. 1,488,700. The Budget Estimates were drawn up on the basis of a rate of 14·46 pence ; whereas the rate actually realized has been 15·38 pence.

“ 9. In the Account of Revenue in India, the Revised Estimates shew an improvement under Land Revenue of Rx. 286,100 which may be put down as the effect of the excellent harvests ; but there is against this a heavy loss on opium due to the falling-off in prices in China. The price realized for Bengal opium has been ₹1,023 per chest only against ₹1,075 taken in the Budget Estimates, and in Bombay the falling-off in the trade was such that we had to reduce the pass duty from October 27, 1897, to ₹500. The other heads of Revenue produced, as a whole, a very little less than we estimated.

“ 10. The improvement under Departmental Receipts is accounted for by the excess received in the shape of Post Office Revenue, Rx. 42,200, and of Telegraph Revenue, Rx. 219,500.

“ 11. Under Railways we have received Rx. 482,900 more than we estimated, the important items being :—

| | Rx. |
|--|----------------|
| 1. East Indian Railway | Better 600,000 |
| 2. North-Western Railway | Better 500,000 |
| 3. Burma Railways | Better 85,000 |
| 4. Indian Midland | Better 80,000 |
| 5. Rajputana-Malwa | Worse 290,000 |
| 6. Bombay, Baroda and Central India (net earnings) | Worse 180,000 |
| 7. Great Indian Peninsula (net earnings) . . | Worse 330,000 |
| | <hr/> |
| Net of the above | Better 465,000 |
| | <hr/> |

Of these, the first and largest is due to movements of grain towards the famine districts, and the second chiefly to the movements of troops in connection with

the war. Plague and scarcity account for the losses on the three Railways which run towards the Western Presidency.

“ 12. The very high receipts from Irrigation occur mostly in Northern India, and are due to the dryness of the earlier part of the year and the consequent high demand for water. The impressions produced on the people by a year of scarcity, no doubt, tend in themselves to stimulate the use of irrigation-water.

“ 13. Passing to the Expenditure side, we have first a saving under Opium of Rx. 289,200, which for the most part means that the crop for which we had to pay fell short of our expectations; our custom is to assume, in the Budget, an average crop at least.

“ 14. The extra expenditure under Civil Departments amounts to Rx. 275,800, and is caused by plague operations, Rx. 279,900, the head under which it is mostly shewn being Medical. There is an excess also under Jails, amounting to Rx. 84,700, and due partly to high prices and partly to increase of jail population, one of the side-effects of the general scarcity.

“ 15. The saving under Military Works I have already explained as meaning merely a transfer of the expenditure to the English Account.

“ 16. Under Army, apart from the warlike operations, we have a saving of Rx. 538,400. There has been a saving of about Rx. 200,000 on Commissariat and Transport services which would have had to be spent if the troops had not been absent on field service; Rx. 66,500 has been saved in exchange compensation by the rise of rates, and Rx. 77,400 in pay and allowances; the despatch of a British regiment to Natal and a Native regiment to Mombassa brings a saving of Rx. 52,200. Against these savings we have had to meet excess expenditure of Rx. 65,800 arising out of increase of prices, and Rx. 10,900 on account of Jubilee concessions to the troops. The other items of difference do not call for special mention.

“ 17. The excesses of Rx. 1,747,800 under Famine and Rx. 3,869,800 under Warlike operations will be separately dealt with.

“Famine Relief.

“ 18. The effects of the famine upon our accounts extend far beyond the mere cost of famine relief. Even the administration of famine relief, taken by itself, necessitates increase of establishments charged under the heads of District Administration (Land Revenue), General Administration, Police, Medical, and others; but besides that, the high prices which accompany a period of famine increase the

1898.]

[*Sir James Westland.*]

expenditure on jails, on petty establishments, and, above all, on the army. Our revenue, moreover, is seriously affected, the Land Revenue and Provincial Rates and Forests directly, and such revenues as Salt and Excise, by the general pressure on the people.

“19. The total cost, direct and indirect, of the famine is estimated as follows :—

| | 1896-97. | 1897-98. |
|--|------------|-----------|
| | Rx. | Rx. |
| Spent on Famine Relief | 2,079,500 | 5,391,800 |
| Remissions and losses of Land Revenue (independent of suspensions) | 871,600 | 576,400 |
| Loss of Salt and Excise Revenue | 417,800 | 357,600 |
| Loss under other principal heads of Revenue | 337,800 | 391,300 |
| Loss of Railway Revenue | 1,564,100 | 1,477,400 |
| Charges for compensation for dearness of provisions, and other increases due to high prices— | | |
| Under Army | 506,400 | 604,100 |
| Under other heads | 183,000 | 321,000 |
| Other charges arising in connection with famine | 76,700 | 123,400 |
| Total | 5,976,900 | 9,243,000 |
| <i>Deduct</i> —Increase of Irrigation Revenue due to drought | 424,900 | 556,700 |
| Net cost, direct and indirect, of famine and scarcity | 5,552,000 | 8,686,300 |
| | 14,238,300 | |

These figures omit the suspensions of Land Revenue amounting to Rx. 1,856,500 which, if the seasons are good, will be recovered.

“ 20. As regards the direct expenditure on Famine Relief, the following figures shew the general results in Rx. :—

| | 1896-97, | 1897-98, | | Total of |
|-----------------------------------|------------------|------------------|------------------|------------------|
| | Accounts. | Budget. | Revised. | 1 and 3. |
| India | 1,215 | 1,300 | 8,200 | 9,400 |
| Central Provinces | 303,271 | 680,000 | 1,340,000 | 1,643,300 |
| Burma | 55,524 | 66,600 | 62,700 | 118,200 |
| Bengal | 244,208 | 1,004,800 | 889,400 | 1,133,600 |
| North-Western Provinces | 993,330 | 850,000 | 1,069,000 | 2,062,300 |
| Punjab | 86,149 | 167,800 | 125,600 | 211,700 |
| Madras | 56,285 | 200,400 | 928,600 | 984,900 |
| Bombay | 325,659 | 670,300 | 965,500 | 1,291,200 |
| England | 8,360 | ... | 1,800 | 10,200 |
| Exchange | 5,524 | ... | 1,000 | 6,500 |
| TOTAL | 2,079,525 | 3,641,200 | 5,391,800 | 7,471,300 |

“ 21. The great excess of expenditure, as compared with Budget Estimate, has, it will be seen, occurred in the Central Provinces and in Madras. As regards the first of these, it became evident very early in the year that, though the Chief Commissioner had provided a proportionally larger amount than any other province, the people were in a more poverty-stricken condition than even he had anticipated. In some parts of that province there had been a long succession of bad seasons, and the population had nothing whatever to fall back upon. When the time came at which in other provinces the beginning of recovery was apparent, the people of the Central Provinces were as poor and as hardly pressed as ever, and it will be seen that in 1897-98 more money has been spent on famine relief in that small province than in any of the others.

“ 22. As regards Madras, we are still in communication with that Government on the question of its failure to foresee the extent of the demands it would have

1898.]

[*Sir James Westland.*]

to meet. Twelve months ago I stated on the authority of the latest estimates received from the Government of Madras that the province was only slightly affected by famine, that its revenues had suffered very little, and that it would be able to meet, without assistance from Imperial Funds, the whole or nearly the whole of its famine expenditure. It must be remembered that the harvest in that province largely depends upon the rains of December to February, so that, so far as realization of the actual condition of things was concerned, Madras was not until May in the same position in which the other Governments were in January. But the demands of the province in respect of famine expenditure came upon the Government of India in June with a severity which we had not anticipated.

“ 23. The North-Western Provinces spent somewhat more, and Bombay a good deal more, than was anticipated at Budget time; but I explained last year that I could not put forward the estimates of famine expenditure with anything approaching to an assurance that they would prove sufficient.

“ 24. The following figures will be of interest as shewing, both in money spent and in people relieved, the history of famine relief in the several provinces of India. The figures do not include famine operations in Berar, or in the Native States of the Central India Agency :—

| | EXPENDITURE IN R _x . | | | | |
|--------------------------------------|---------------------------------|------------------|------------------|--------------------|-------------------|
| | Quarter ending | | | | |
| | December 1896. | March 1897. | June 1897. | September 1897. | December 1897. |
| India | 200 | 1,000 | 2,100 | 3,700 | 1,800 |
| Central Provinces | 23,100 | 277,200 | 515,800 | 580,800 | 328,900 |
| Burma | 20,500 | 35,000 | 24,600 | 32,400 | 7,800 |
| Bengal | 4,700 | 239,500 | 530,700 | 352,000 | 26,300 |
| North-Western Provinces | 42,800 | 919,000 | 781,200 | 309,800 | 7,000 |
| Punjab | 9,600 | 76,500 | 62,800 | 48,000 | 12,700 |
| Madras | 3,400 | 52,800 | 260,300 | 589,500 | 80,600 |
| Bombay | 26,500 | 299,100 | 314,600 | 456,600 | 174,600 |
| TOTAL | 130,800 | 1,900,100 | 2,492,100 | 2,372,800 | 639,700 |

“ The expenditure in all India in January 1898 was only Rx. 32,000, of which more than half was in the Central Provinces ; famine relief operations had practically come to an end.

“ 25. The following is a statement of the units relieved, stated in thousands, a unit being one person relieved for one day :—

| | THOUSANDS OF UNITS RELIEVED. | | | | |
|--------------------------------------|--|----------------|----------------|--------------------|-------------------|
| | Quarter ending | | | | |
| | December 1896. | March 1897. | June 1897. | September 1897. | December 1897. |
| Central Provinces | 2,105 | 29,190 | 52,458 | 54,404 | 23,483 |
| Burma | 1,489 | 2,524 | 1,472 | 2,208 | 518 |
| Bengal | 1,480 | 36,438 | 68,131 | 32,444 | 287 |
| North-Western Provinces | 21,246 | 112,367 | 110,097 | 39,984 | 716 |
| Punjab | 1,233 | 9,389 | 8,513 | 2,433 | 4 |
| Madras | 1,451 | 5,619 | 32,313 | 53,092 | 1,764 |
| Bombay | 3,135 | 33,179 | 39,924 | 37,742 | 6,061 |
| Total | 32,139 | 228,706 | 312,908 | 222,307 | 32,833 |
| TOTAL | 828,893,000 units, being an average of 1,814,000 per day for 15 months. | | | | |

“ The number on relief was highest in May and June 1897, during which period about 3,650,000 persons were relieved each day.

“ 26. Besides the direct outlay upon Famine Relief, the famine operations affect also another portion of our accounts, as the Governments in India have to meet part of the necessities of the population by a liberal extension of the system of agricultural advances. The ordinary operations under this head of our accounts amount to advances a little in excess of Rx. 250,000 and recoveries somewhat short of this amount, the duration of the advances being only one or two years in some cases (such as advances for seed) to five or ten years and sometimes still longer periods in cases of advances for permanent land improvements. In 1896-97, however, the amount advanced came to Rx. 1,104,335 against recoveries amounting to Rx. 287,095, that is, a net amount of Rx. 817,240 ; and the net advances of the current year are about two-thirds of this amount.

1898.]

[Sir James Westland.]

“ 27. The figures stated by provinces are as follows, the *minus* sign indicating cases in which the recoveries exceeded the amounts advanced :—

Net Loans to Cultivators and the like.

| | 1894-95. | 1895-96. | 1896-97. | 1897-98, Revised Estimate. |
|---|---------------|---------------|----------------|----------------------------------|
| | Rx. | Rx. | Rx. | Rx. |
| India | —11,818 | —6,809 | —2,939 | —1,500 |
| Central Provinces | 65,840 | 3,311 | 71,365 | 47,900 |
| Burma | —10,187 | 1,104 | 8,606 | 14,100 |
| Assam | 160 | —149 | —78 | 500 |
| Bengal | —10,827 | —6,009 | 42,237 | 138,200 |
| North-Western Provinces and Oudh | 23,452 | —3,453 | 311,956 | 1,100 |
| Punjab | —20,723 | —2,580 | 43,213 | 54,700 |
| Madras | —49,242 | —14,783 | 24,813 | 155,200 |
| Bombay | 43,362 | 42,124 | 318,067 | 153,400 |
| TOTAL | 30,017 | 12,756 | 817,240 | 563,600 |

“ It is worth while to observe that we recently made special enquiries about the punctuality of repayment in the case of these advances to cultivators, and were assured on all hands by the Local Governments and by the Revenue authorities subordinate to them, that the cultivators habitually observed the obligations which they accepted in respect of the advances, and that the outstandings were sound and good debts.

“ 28. The figures which I have so far set out include only the operations of the Government in the matter of Famine Relief; but it would not be becoming in me if I were to pass from the subject of the contest with famine, without reference to the large measure of assistance which was given, in supplement to the operations of Government, by the munificent subscriptions to the Charitable Relief Fund. The Honourable Mr. James who has had much to do with the direction of the operations of that Fund has been good enough to give me, in anticipation of the Central Committee's formal report, the following summary of its appropriation :—

‘ The Indian Famine Charitable Relief Fund was founded at a public meeting held at the Dalhousie Institute, Calcutta, on the 14th January, 1897. Followed up by a meeting at the Guild-hall in London on 16th January, under the presidency of the Lord Mayor, and

by meetings in other parts of the United Kingdom, the Fund grew rapidly till it reached a total of Rx. 1,670,000. Of this, Rx. 300,000 were subscribed in India, and Rx. 1,370,000 were received from countries abroad, principally from the United Kingdom which contributed the splendid sum of Rx. 1,230,000, the exchange equivalent of £773,000.

‘That sum was divided as follows:—

| | £ |
|-------------------------|---------------------|
| Mansion House | 543,000 |
| Lancashire | 131,000 |
| Glasgow | 54,000 |
| Liverpool | 26,000 |
| Edinburgh | 17,000 |
| Miscellaneous | 2,000 |
| | <hr/> 773,000 <hr/> |

‘These contributions from the United Kingdom exceed those made for the famine of 1877-78 by nearly £150,000, and form indeed a signal and beneficent manifestation of national benevolence. Of the balance of foreign subscriptions, amounting to Rx. 140,000, mostly remitted in Indian currency, Canada remitted Rx. 57,000, the Australian Colonies Rx. 15,500, Ceylon Rx. 14,700, China Rx. 14,000, Russia Rx. 9,800, the Straits Settlements Rx. 6,800, Japan Rx. 5,000, and the remainder came in smaller sums from New Zealand, Natal, America, Mauritius, Fiji, and other countries, Indian emigrants to British Colonies sending numerous contributions.

‘The fund was divided, as subscriptions came in, amongst the distressed provinces and the following are the sums which each received, including its own local receipts:—

| | Rx. |
|--|-----------------------|
| North-Western Provinces and Oudh | 518,500 |
| Central Provinces | 370,000 |
| Bengal | 215,000 |
| Bombay | 165,000 |
| Madras | 157,500 |
| Punjab | 122,000 |
| Central India | 42,500 |
| Burma | 30,000 |
| Berar | 20,000 |
| Baluchistan | 2,000 |
| Rajputana | 2,000 |
| | <hr/> 1,644,500 <hr/> |

‘Expenditure is still going on in the Madras Presidency owing to the failure of the north-east monsoon, and in Bombay, where plague has been superadded to famine, but the Central Committee expect to wind up with a balance of between Rx. 40,000 and Rx. 50,000, consisting chiefly of moneys returned by Provincial Committees which will be invested and form the nucleus of a fund against the next famine.

1898.]

[Sir James Westland.]

'Over two-thirds of the fund have been spent in giving a fresh start in life to those who had lost all in the struggle, principally to peasant farmers whose bullocks had died from want of fodder, and who had neither plough-cattle nor seed, nor credit on which to procure them. The bulk of the residue was spent upon doles to *parda-nashin* women and respectable persons or tradesmen, who were unable from social custom to work or accept Government relief, accompanied as that must be by official enquiry into and by some kind of test of the reality of the destitution to be relieved, and a comparatively small amount has been devoted to supplementing the Government ration in poor-houses and on relief works, by small gifts of food and clothing, and to the maintenance of orphans. The Famine Fund has thus distributed in relief nearly one-fifth of the direct expenditure from the State, and as it has in no way displaced Government relief (which was not confined within predetermined financial bonds, but was limited only by certain tests), the Fund has been extremely valuable in softening the sharpness of distress, and it has restored to prosperity a vast number of families. Statistics shew nearly 1¼ million heads of families relieved by grants of cattle, seed and implements, nearly 1 million of respectable persons fed, and 1¼ millions of relief workers assisted, at the expense of the Charitable Fund, while provision has been made for the maintenance and education of about 4,000 orphans whose relatives or friends cannot be found. The Government of India contributed to the Fund by giving an officer for the duties of Vice-Chairman and Honorary Secretary, by a grant of Rx. 1,800 towards office expenses, and by allowing the Committee the free use of the Government Press. Numerous concessions of a similar nature have been made by Local Governments, firms and individuals, so that the total expenditure from the Fund on establishments and offices comes to less than one-half per cent.'

“Military Operations.

“29. The military operations on the North-Western Frontier, which have added so much to the expenditure of the current year, may be divided into four parts, and I may state the facts in a tabular form which I admit to be better suited to a Financial Statement than to a military history:—

| | I. | II. | III. | IV. |
|---|------------------------------|--------------------------------|------------------------------|-----------------------------------|
| | Tochi Field Force. | Malakand Field Force. | Mohmand Field Force. | Tirah Field Force. |
| Origin of the expedition and its date. | Attack at Maizar, 10th June. | Attack on Malakand, 26th July. | Attack on Shabkadr, 7th Aug. | Attack on Khyber Forts, 23rd Aug. |
| Date of formal sanction of expedition | 19th June | 30th July | 2nd Sept. | 8th Sept. |
| Expedition against Buner sanctioned | | 1st Jan. | | |
| Field Force broken up | 18th Feb. | 4th Feb. | 6th Oct. | Still standing. |
| Fighting men engaged* | 7,306 | 10,421 | 10,624 | 32,161 |

* Besides 3,776 in Reserve Brigade at Rawalpindi.

“30. Our estimates of the expenditure on military expeditions are, I may explain, made under three heads,—(1) Initial charges, (2) Monthly charges, and (3) Terminal charges. The second of these is necessarily somewhat problematical; we can say how much any given expedition will cost per month, but the question how many months it will last is determined only by events.

“31. Our estimate of the cost of the above expeditions was made in the beginning of October, and made on the assumption that they would last till the end of December. That estimate amounted to Rx. 3,720,000. This is not the place to explain what events necessitated the prolongation of the expeditions, and chiefly of the largest one, the Tirah expedition. The result, with reference to the estimate above mentioned, is that the total expenditure on account of the monthly charges has exceeded what we anticipated, but there has been a large saving on terminal charges, only however by reason of their passing into the accounts of 1898-99. We estimate now that we shall spend Rx. 3,823,500 in 1897-98 and a further sum of Rx. 1,488,500 in 1898-99. This last estimate has been drawn up on the supposition that there would be a spring campaign lasting three months, followed by what I have called the terminal charges of the expedition. Although preparations continue to be made for that three months' campaign, the prospects of peace being concluded without it are, at the present time, very favourable, and, if so, there will be some saving upon the expenditure now estimated for 1898-99.

“ Loan Operations.

“32. In the Budget Estimate for 1897-98 I announced the intention of the Government of India to raise a Rupee loan of four crores; but when the usual time approached for our entering the market, it became very doubtful whether it was wise to try to borrow so large an amount. The Bank rate in India remained unusually high, having been 10 per cent. for the first $5\frac{1}{2}$ months of 1897. On June 17th it was reduced to 9 per cent., and a week later to 8 per cent.

“33. The price of $3\frac{1}{2}$ per cent. Government Paper was 99, 100 and 101 per cent. during January, February and March, 1897; it rose to 104 about 20th May, and thereafter till the end of July gradually fell back to a little over par.

“34. I took the opportunity of visiting Calcutta at the end of June to make enquiry into the state of matters, and I desire to convey my acknowledgments to my banking and mercantile friends for the advice they then gave me and the information they placed at my disposal. The result of my report to His Excellency in Council was that the Secretary of State sanctioned our reducing the amount of the loan

1898.]

[Sir James Westland.]

to Rs. 3,000,000, and in July we called for tenders for this amount to form part of our ordinary $3\frac{1}{2}$ per cent. loan, the time being unpropitious for a continuation of our 3 per cent. loan of 1895. In the result the loan was taken up at an average rate of Rs 98-5-3 and a minimum rate of Rs 98-1 per cent.

“35. The Secretary of State’s loan transactions were as follows :—

- (1) In accordance with Budget Estimate he raised permanent debt in May to the extent of £3,500,000, namely, India $2\frac{1}{2}$ per cent. stock. This he obtained at an average price of £96-15-11.
- (2) In his Budget Estimate he proposed to pay off £1,000,000 of temporary debt outstanding on March 31st, and to raise new temporary debt to the amount of £2,000,000. The suspension of drawings to which I shall presently allude compelled him to enhance this last amount to £6,000,000, which he obtained as follows :—

| Date. | Amount. | Rate of interest. |
|------------------|-----------|-------------------|
| | £ | £ s. d. |
| September 14 . . | 2,500,000 | 2 11 8 |
| November 30 . . | 2,500,000 | 2 15 2 |
| January 17 . . | 1,000,000 | 2 4 5 |

“ Council Bills and Rate of Exchange.

“36. The rate of exchange at the close of last year when the Estimates were brought before the Council was about 15 pence, and it remained at that rate throughout April. It fell during May, and in the end of that month the Secretary of State drew at $14\frac{5}{8}$ pence. It then rose till the beginning of August, being then above 15 pence.

“37. During July we were obliged to reconsider our position as regards Ways and Means. The suspension of the rains throughout the month of June destroyed our hopes of the early closing of the Famine Relief Works, and at the same time sudden and unexpected demands for money for Famine Relief were made from Madras. In July the position became more difficult as hostile attacks by the tribes on the North-Western Frontier made it obvious that military operations would have to be undertaken. These demands came upon us at the most difficult time of the year, so far as the supply of funds is concerned, for under ordinary circumstances our Cash Balances, even including Loan Receipts, run down

throughout the five months July to November. A careful re-examination shewed that, in the face of the new demands upon us, we would be obliged to ask the Secretary of State to greatly reduce his drawings; and as the military operations became more extensive, he not only stopped them altogether, but remitted back to us a crore of rupees out of the amounts he had already drawn.

“38. With the aid of this crore of rupees which reached us in the beginning of October, we just managed (as we had calculated) to pass through the low-balance period, our Cash Balances being as follows:—

| | R _x . |
|------------------------------|------------------|
| Last day of August | 8,504,300 |
| September | 7,620,000 |
| October | 8,079,300 |
| November | 8,076,400 |

“I ought to add here a word of acknowledgment to Mr. Barrow, the Officiating Comptroller General, who accomplished the extremely difficult task of meeting the demands upon the Government Treasuries throughout this period with such inadequate resources, and that at a time when they included those of a war on the frontier, and of famine relief on an extensive scale in five of the largest provinces of India. I had asked the Local Governments to instruct the District Collectors throughout India to lend their special aid in the management of the Cash Balances; and with their assistance the arrangements worked with perfect smoothness.

“39. The result of the suspension of drawings was to maintain the rate of exchange at over $15\frac{1}{2}d.$ till the middle of November, but it then began to fall through a belief, which turned out to be quite unfounded, that it could not be maintained when the Secretary of State recommenced drawing. It fell just below 15 pence in the middle of December, but as soon as the Secretary of State resumed his drawings, it became apparent that the demand had been quite under-estimated. His last drawing in December was at the rate of $15\frac{1}{8}d.$, and the rate has since that date maintained itself at and above this rate, the average rate of the drawing of the month of January having exceeded $16d.$ The demand for money has recently been much greater than the supply, and the Banks' rate has risen from 5 per cent. in the beginning of December to 12 per cent. in the beginning of March. At one time the tension was so severe that it was deemed prudent to introduce a legislative measure, which would have the effect of enabling gold in England to be placed at the immediate disposal of trade in India. No operations have actually

1898.]

[*Sir James Westland.*]

taken place under it, though we have received about £150,000 in gold in India, but it had the effect, which we intended, of allaying the anxiety of the market.

“40. The drawings for the year necessarily fell far short of the amount estimated in the Budget, £13,000,000, and we estimate that for the whole year they will stand as follows :—

| | £ | Rx. | Rate. |
|------------------------------|-----------|------------|-----------------------------------|
| Council Bills | 9,378,000 | 14,585,400 | 15 ⁴ / ₈ d. |
| Less Re-remittance | 669,400 | 1,000,000 | 16 ¹ / ₈ d. |
| | <hr/> | <hr/> | <hr/> |
| Net Remittance | 8,708,600 | 13,585,400 | 15 ³ / ₈ d. |
| | <hr/> | <hr/> | <hr/> |

“41. This rate of 15³/₈ pence (or rather R15⁶ for each £ sterling) is accordingly taken as that at which the English Revenue and Expenditure are brought to account in the Revised Estimates of 1897-98. And following my usual practice of avoiding any speculations upon the future of Exchange, I adopt the same rate for the Budget Estimates of 1898-99.

“ Budget Estimates, 1898-99.

“42. The result of the Budget Estimates for 1898-99 is that, after providing for the full amount Rx. 1,500,000 of the Famine Grant, and also Rx. 1,488,500 for the continuance of military operations on the frontier, we have a surplus of Revenue over Expenditure of Rx. 891,400.

“43. Except for this provision for possible war, there are no special features in the year’s account. We do not intend to alter our revenue or the rates at which we collect it; we shall have to incur some special expenditure upon the suppression of plague, and the measures, which have been announced in England, for improving the pay of the British soldier, will also involve some expenditure in India. How much this may be it is impossible, in the present inchoate state of the communications on the subject, to say, but we have thought it wise to provide in the Estimates a sum of Rx. 200,000 ‘on account’.

“44. There is therefore little to say but to explain the details of the Estimates; and the following statement shews in the usual condensed form the comparison between the Budget Estimates now presented and those of the preceding two years. I have included, for purposes of comparison, the figures of the Budget

Estimates of 1896-97 as well as those of 1897-98, because the latter were in some respects peculiarly affected by the prevalence of scarcity and famine:—

“ Budget Estimates of 1898-99 compared with those of 1897-98 and 1896-97.

| | Budget, 1896-97. | Budget, 1897-98. | Budget, 1898-99. | 1898-99 Better than 1897-98. | 1898-99 Worse than 1897-98. |
|--|---------------------|---------------------|---------------------|------------------------------------|-----------------------------------|
| STERLING IN ENGLAND— | | | | | |
| Revenue | £ 174,100 | 173,000 | 188,300 | 15,300 | |
| Expenditure | £ 15,909,400 | 16,088,500 | 16,474,800 | | 386,300 |
| NET EXCHANGE ON ABOVE . Rx. | 11,729,900 | 10,504,200 | 9,120,500 | 1,383,700 | |
| | 27,465,200 | 26,419,700 | 25,407,000 | 1,012,700 | |
| REVENUES IN INDIA— | | | | | |
| | Rx. | Rx. | Rx. | Rx. | Rx. |
| Land Revenue | 26,093,300 | 25,616,200 | 27,568,200 | 1,922,000 | |
| Opium | 6,895,300 | 5,816,200 | 5,329,800 | | 486,400 |
| Salt | 8,700,000 | 8,734,000 | 8,728,000 | | 6,000 |
| Other Principal Heads of Revenue | 23,525,600 | 23,578,200 | 24,033,800 | 455,600 | |
| Departmental Receipts (a) | 6,782,900 | 6,945,800 | 7,197,200 | 251,400 | |
| Railways | 21,582,800 | 20,682,100 | 21,823,300 | 1,141,200 | |
| Irrigation | 2,883,300 | 3,122,500 | 3,228,100 | 105,600 | |
| Military Works | 50,000 | 50,000 | 50,300 | 300 | |
| Army | 803,600 | 814,600 | 833,000 | 18,400 | |
| | 97,316,800 | 95,389,600 | 98,791,700 | 3,402,100 | |
| EXPENDITURE IN INDIA— | | | | | |
| Direct Demands on Revenues— | | | | | |
| Opium | 2,593,900 | 2,654,000 | 2,654,000 | | |
| Other | 8,470,700 | 8,520,400 | 8,483,900 | 36,500 | |
| Interest | —960,300 | —961,900 | —1,128,900 | 167,000 | |
| Civil Departments | 19,096,100 | 19,308,800 | 19,629,800 | | 321,000 |
| Famine Relief | 75,000 | 3,641,200 | 85,100 | 3,556,100 | |
| Protective Works and Reduction of Debt | 523,500 | 25,000 | 1,014,100 | | 989,100 |
| Railways | 13,781,500 | 13,752,000 | 14,738,900 | | 986,900 |
| Irrigation | 3,201,700 | 3,110,000 | 3,211,500 | | 101,500 |
| Military Works and Special Defences | 1,254,900 | 1,207,300 | 1,135,800 | 71,500 | |
| Civil Works | 4,757,800 | 4,398,200 | 4,702,100 | | 303,900 |
| Army (ordinary charges) | 17,480,100 | 16,968,900 | 16,625,800 | 343,100 | |
| Warlike operations | ... | ... | 1,458,000 | | 1,458,000 |
| | 70,274,900 | 72,623,900 | 72,610,100 | 13,800 | |
| PROVINCIAL ADJUSTMENT | | | | | |
| | —886,400 | —1,190,000 | —116,800 | | 1,073,200 |
| Surplus (+) Deficit (—) | +463,100 | —2,464,000 | +891,400 | 3,355,400 | |

(a) Including Interest and Receipts under Civil Works.

“ 45. The principal difference in the expenditure in England is an addition of £171,400 to the interest there payable, which is due to the fact that the Secretary

1898.]

[*Sir James Westland.*]

of State has had by borrowing to make up for the short drawings of Council Bills during 1897-98. The real increase of interest chargeable upon the ordinary account of the Government is a good deal less than the amount just named, as it will be found that in the Indian portion of the accounts a considerable portion of the addition is passed on to the charge of the Railway account.

“46. In addition to this increase of English expenditure on account of interest, there are the following which may be regarded as normal increases:—

| | |
|--|----------|
| Superannuation Allowances | £ 41,500 |
| Interest on Railway Companies' Capital | 24,100 |

There is an offset of £11,100 against this on account of reduction of rate of interest.

| | |
|--|--------|
| | £ |
| Payments to the War Office for effective and non-effective charges of British Forces | 12,000 |
| Other non-effective Army Charges | 24,000 |

“There is also a special provision of £38,200 on account of stores required for warlike operations on the frontier, and an increase in the payments of the Indo-European Telegraph Department of £21,900.

“47. Passing to the account of Revenue in India, we first of all expect a large increase of Land Revenue. Last year's estimates were estimates of the revenue of a year of scarcity; the present are estimates of the result of a bumper harvest, in which we expect to receive not only the revenue of the year itself, but something on account of revenue suspended during the famine—suspended, that is, in distinction to remitted. The following figures compare the expected receipts with what I gave last year as the standard of the annual Revenue as it stood in 1896-97,—a standard which has of course somewhat advanced since then:—

| | Standard of 1896-97. R π . | Expected receipts in 1898-99. R π . |
|-----------------------------------|--------------------------------------|---|
| India | 150,000 | 150,500 |
| Central Provinces | 844,800 | 920,000 |
| Burma | 2,571,300 | 2,657,000 |
| Assam | 614,200 | 626,000 |
| Bengal | 3,902,100 | 4,087,300 |
| North-Western Provinces | 6,110,900 | 6,667,900 |
| Punjab | 2,464,000 | 2,614,100 |
| Madras | 5,600,000 | 5,856,100 |
| Bombay | 4,816,400 | 4,961,300 |
| | 27,073,700 | 28,540,200 |

“ This amount is shewn thus :—

| | |
|------------------------------|-----------------|
| Under Land Revenue | 27,568,200 |
| „ Irrigation | 972,000 |
| | TOTAL |
| | 28,540,200 |

“ 48. As the annual increase of the Land Revenue has on the statistics of the last ten years been 31 lakhs, the standard figure for 1898-99 may be stated at Rx. 27,690,000, and the revenue we expect is, it will be seen, Rx. 850,000 in excess of this.

“ The chief advance is in the North-Western Provinces. In that province very liberal remissions and suspensions of revenue were granted during the evil times of 1896-97; and the revenue of the two years 1896-97 and 1897-98 has fallen short of the standard figure of 1896-97 by about Rx. 1,200,000.

“ 49. Under Opium we are unable to anticipate a revenue even equal to that of the current year 1897-98: and the figure is therefore much less than the Budget Estimates of 1897-98.

“ 50. Under Provincial Rates there is a considerable increase for the same reasons as explained in the case of Land Revenue.

“ 51. Under Departmental Receipts the improvement, as compared with the Budget of 1897-98, is mainly under three heads, namely, Interest Rx. 81,200, due partly to the interest on the addition of Rx. 2,000,000 made to the Currency Reserve Investment in December 1896, and partly to the large advances and loans we made during the period of scarcity; Post Office Rx. 65,900, Telegraph Rx. 144,400, due in both cases to expansion of business.

“ 52. Under Famine Relief and Insurance the figures necessarily entirely differ from those of the Budget Estimates of 1897-98. We restore the Famine Grant of Rx. 1,500,000, distributing it as follows :—

| | Budget, 1897-98. Rx. | Budget, 1898-99. Rx. |
|--|----------------------------|----------------------------|
| Famine Relief | 3,641,200 | 85,100 |
| Famine Insurance | ... | 325,800 |
| Protective Railways | ... | 668,300 |
| Protective Irrigation | 25,000 | 20,000 |
| Add—Interest on Indian Midland and Bengal-Nagpur Railways under ‘State Railways’ | 456,500 | 400,800 |
| | TOTAL | 1,500,000 |
| | 4,122,700 | 1,500,000 |

1898.]

[Sir James Westland.]

“The expenditure in the second line is the amount available for famine insurance after meeting the prior claims on the grant and the portion of the Railway construction expenditure charged against it.

“53. The difference under Railways it will be convenient to explain along with the difference under the same head on the Expenditure side, and the remaining heads require no remarks.

“54. On the Expenditure side the first difference calling for notice is under ‘Interest,’ and this has, as mentioned above, to be considered along with the same entry in the English part of the accounts. The English estimates provide, as already stated, for an additional interest charge of £171,400, say Rx. 267,000; but as in our Indian accounts there is an additional transfer of Rx. 167,000 from the ordinary account of Interest to the Railway and Irrigation accounts, the net burden of interest is enhanced by only Rx. 100,000.

“55. The principal portions of the increase under Civil Departments (Rx. 321,000), are Medical Rx. 149,800, due to provision for plague expenditure which, though not sufficiently provided for in the Estimates of 1897-98, had nevertheless to be incurred; and Superannuations Rx. 46,200, a continually increasing charge.

“56. The statistics of the Revenue and Expenditure of Railways in India may conveniently be thus stated:—

| | Budget, 1897-98. Rx. | Revised, 1897-98. Rx. | Budget, 1898-99. Rx. |
|--|----------------------------|-----------------------------|----------------------------|
| STATE RAILWAYS— | | | |
| Gross Earnings . . . | 18,023,400 | 18,994,700 | 19,382,600 |
| Working Expenses . . . | 9,027,300 | 9,299,100 | 9,770,500 |
| Net Earnings . . . | 8,996,100 | 9,695,600 | 9,612,100 |
| Interest Charges . . . | 4,089,600 | 4,089,200 | 4,319,800 |
| Net Return . . . | 4,906,500 | 5,606,400 | 5,292,300 |
| GUARANTEED RAILWAYS— | | | |
| Gross Earnings . . . | 5,740,000 | 5,360,000 | 5,690,000 |
| Working Expenses . . . | 3,110,000 | 3,200,000 | 3,266,000 |
| Net Earnings . . . | 2,630,000 | 2,160,000 | 2,424,000 |
| Payment of Profits, Interest, etc. . . . | 310,200 | 154,600 | 321,600 |
| Net Return . . . | 2,319,800 | 2,005,400 | 2,102,400 |
| Land and Miscellaneous Charges . . . | 296,200 | 134,400 | 310,300 |
| Net on the whole account | 6,930,100 | 7,477,400 | 7,084,400 |

“Under State Railways it is mainly on the following lines that the traffic is expected to be better in 1898-99 than it has been in 1897-98:—

| | Budget, 1897-98. Rx. | Revised, 1897-98. Rx. | Budget, 1898-99. Rx. |
|------------------------------|----------------------------|-----------------------------|----------------------------|
| Rajputana-Malwa | 2,250,000 | 1,960,000 | 2,200,000 |
| Bengal-Nagpur | 650,000 | 590,000 | 680,000 |
| Bengal-North-Western | 620,000 | 620,000 | 675,000 |
| Oudh and Rohilkhand | 880,000 | 900,000 | 1,000,000 |

Provision is made for larger working expenses corresponding to the increasing traffic and for special renewals of permanent-way and rolling-stock.

“Under Guaranteed Railways, the Great Indian Peninsula and the Bombay Baroda and Central India are both expected to recover from the low figures of the current year.

“57. The Army expenditure in India, excluding the account of military operations, is estimated at Rx. 343,100 less than the Budget for 1897-98. The better exchange brings a saving of Rx. 228,300 and the fall in prices Rx. 272,600. There is also less provision for ordnance stores to the extent of Rx. 41,200, and a further deduction is made in India of Rx. 64,900 for certain demands provided for in the English Estimates, but not now required. Against these savings, of which the total is Rx. 607,000, we have to provide for an increase of Rx. 27,400 for pensions, the addition being larger than usual owing to the grant of extra pensions in consequence of the military operations of the year, and Rx. 11,500 for providing medals. We have also, as already mentioned, provided Rx. 200,000 for possible improvements in the British soldiers' pay.

“ Railway Construction.

“58. I referred last year to a systematic programme of Railway construction which had been sanctioned by the Secretary of State. It amounted to 28 crores (afterwards extended to 29 $\frac{2}{3}$ crores), and was intended to last over three years, 1896-97 to 1898-99. I divided it, for convenience sake with reference to our accounts, into four categories, namely:—

First.—State Railway Construction; money found by Government, but also by debentures in the case of the East Indian and Assam-Bengal Railway Companies.

Second.—Construction by Companies, out of funds raised by them or advanced by Government to them (including a small advance for a Native State Railway).

Third.—Construction by Companies outside the accounts of the Government, and also construction by Branch Line Companies.

1898.]

[Sir James Westland.]

Fourth.—New construction by the old Guaranteed Companies.

“ 59. The programme of 29 $\frac{2}{3}$ crores did not include the Railways of the third category, and no arrangements had yet been made for any construction under the fourth category. The estimate for expenditure under the first and second categories, that is, the expenditure falling within the ‘programme’ during 1897-98, came to Rx. 10,130,000. But the revision of Ways and Means imposed upon us by the difficulties which began in June and July, alluded to in paragraph 37 above, compelled us to reduce the amount by one crore, and it stood therefore at Rx. 9,130,000. For similar reasons the Government of India have thought it advisable to curtail the intended expenditure of 1898-99, as the strain through which the country has passed during the past two years, renders it inadvisable to raise money at the rate which was contemplated before the Famine and the Frontier war were within our calculations. The expenditure for 1898-99 was therefore at first fixed at Rx. 10,121,300; but as for various reasons, including the engineering strike in England, even the Rx. 9,130,000 will not be worked up to in 1897-98, these two amounts are now redistributed between the two years, and thus the estimates now stand at Rx. 8,414,400 for 1897-98 and Rx. 10,836,900 for 1898-99.

“ 60. The details are as follows :—

| | Revised Estimate, 1897-98. Rx. | Budget Estimate, 1898-99. Rx. |
|---|--------------------------------------|-------------------------------------|
| FIRST CATEGORY— | | |
| Funds available by Famine Grant | | 668,300 |
| Grant under— | | |
| 48.—State Railway Construction | 3,903,400 | 4,951,300 |
| 50.—Miscellaneous Public Improve- ments(a) | 8,400 | 48,000 |
| East Indian Railway Company's Debentures | 980,700 | 944,300 |
| Assam-Bengal Company's Capital and Debentures | 498,200 | ... |
| TOTAL | 5,390,700 | 6,611,900 |
| SECOND CATEGORY | 3,007,400 | 3,475,000 |
| FOURTH CATEGORY | 16,300 | 750,000 |
| TOTAL “PROGRAMME” | 8,414,400 | 10,836,900 |
| Add—THIRD CATEGORY | 2,160,200 | 2,360,700 |
| TOTAL | 10,574,600 | 13,197,600 |

(a) Chittagong Port Works in connection with the Assam-Bengal Railway.

"61. The following are the principal entries under the first category :—

| | Revised, 1897-98. Rx. | Budget, 1898-99. Rx. |
|---|-----------------------------|----------------------------|
| East Indian | 1,200,000 | 1,626,500 |
| Assam-Bengal | 1,209,400 | 1,152,000 |
| Bezvada-Madras | 696,600 | 634,400 |
| Rae Bareli-Benares | 442,500 | 30,000 |
| Mari-Attock | 264,900 | 150,000 |
| Southern Punjab Rolling-stock | 228,000 | 216,500 |
| Hajipur-Katihar | 500,000 | 500,000 |
| Godavery Bridge | 138,700 | 210,000 |
| Eastern Bengal | 393,300 | 411,700 |
| Other Lines | 317,300 | 92,600 |
| Reserve | ... | 728,200 |
| TOTAL | 5,390,700 | 6,611,900 |

"62. The principal items in the second category are :—

| | Revised, 1897-98. Rx. | Budget, 1898-99. Rx. |
|--|-----------------------------|----------------------------|
| Bengal-Nagpur | 1,940,000 | 2,070,000 |
| Indian Midland | 291,100 | 200,000 |
| Burma Railways | 551,600 | 1,000,000 |
| Bengal Central | 67,900 | 40,000 |
| Lucknow-Bareilly | 44,800 | 15,000 |
| Southern Mahratta | 74,300 | 115,000 |
| Mysore | 17,700 | 35,000 |
| Advance for Native State Railway (Kuch Behar) | 20,000 | ... |
| TOTAL | 3,007,400 | 3,475,000 |

1898.]

[*Sir James Westland.*]

“63. The principal projects classed under the third category are :—

| | Revised, 1897-98. Rx. | Budget, 1898-99. Rx. |
|--|-----------------------------|----------------------------|
| Southern Punjab | 509,100 | 200,400 |
| Bengal and North-Western Railway Exten- sions | 726,700 | 620,400 |
| Tapti Valley | 235,000 | 810,000 |
| South Behar | 276,000 | 250,000 |
| Hardwar-Dehra | 38,000 | 174,500 |
| Smaller Branch Lines | 375,400 | 305,400 |
| TOTAL | <u>2,160,200</u> | <u>2,360,700</u> |

“64. The estimate under the fourth category provides mainly for the Calicut-Cannanore, Amalner-Jalgaon, and Chalisgaon-Dhulia Railways.

“Irrigation.

“65. The usual annual amount of Rx. 750,000 is provided for expenditure on Irrigation in 1898-99. The similar grant for 1897-98 has not been fully worked up to, owing chiefly to certain recoveries and writes-back not provided for in the Budget.

The principal works under this head are at present—

| | Revised, 1897-98. Rx. | Budget, 1898-99. Rx. |
|---|-----------------------------|----------------------------|
| Mandalay Canal | 63,100 | 110,000 |
| Fatehpur Branch of the Lower Ganges Canal | 95,700 | 71,100 |
| Chenab Canal | 215,400 | 193,300 |
| Jhelum Canal | 5,800 | 50,000 |
| Kistna Delta System | 38,600 | 19,800 |
| Jamrao Canal | 127,900 | 134,400 |
| Other Projects | 146,300 | 171,400 |
| | <u>692,800</u> | <u>750,000</u> |

“Remittance and Debt.

“66. The following account shews in a shortened form the requirements of the Secretary of State ; the figures are drawn up so as to shew separately the

transactions on account of Government, and the transactions arising out of the operations of Railway Companies :—

| | Revised, 1897-98. £ | Budget, 1898-99. £ |
|--|---------------------------|--------------------------|
| <i>Requirements on Government Account—</i> | | |
| Excess of expenditure on Revenue Account | 16,069,000 | 16,286,500 |
| Expenditure not charged to Revenue | 834,600 | 1,119,900 |
| Net payments on Remittance Accounts, etc. | 187,700 | 191,300 |
| Total Requirements | 17,121,300 | 17,597,700 |
| <i>Transactions of Railway Companies—</i> | | |
| Net receipts on account of Capital | 1,170,300 | 1,676,000 |
| Payments for Stores, etc. | 1,919,000 | 2,619,000 |
| Net Outgoings | 748,700 | 943,000 |
| Net Funds required | 17,870,000 | 18,540,700 |

“67. The following figures shew the manner in which the above requirements have been or are to be financed :—

| | Revised, 1897-98. £ | Budget, 1898-99. £ |
|---|---------------------------|--------------------------|
| By Council Bills (net Remittance) | 8,708,600 | 16,000,000 |
| By addition to Permanent Debt | 3,497,300 | 2,615,300 |
| By addition to Temporary Debt | 5,000,000 | <i>Nil.</i> |
| By reduction of Cash Balance | 664,100 | ... |
| <i>Deduct—</i> Addition to Cash Balance | ... | 74,600 |
| | 17,870,000 | 18,540,700 |

“It will be seen that the Secretary of State opens the year with outstandings of temporary debt to the extent of £6,000,000, and this he intends to renew. Under the head of Permanent Debt he intends to discharge India Debentures to the extent of £3,000,000 and Oudh and Rohilkhand Debenture Stock to the extent of £384,700, giving a total of £3,384,700. For the discharge of this amount, and for generally supplementing his resources, he intends to raise permanent debt to the extent of £6,000,000. His further requirements will be met by drawing Council Bills to the extent of £16,000,000.

“68. We propose in India to raise a Rupee Loan of Rx. 3,000,000.

“69. These announcements of the amounts of Council Bill drawings and of debt to be raised are made with the usual reservation of entire liberty to the Secretary of State to vary the amounts as he may find occasion.

1898.]

[Sir James Westland.]

“Currency Policy.

“70. I regret that I am not in a position to make any further pronouncement on the part of the Government, on the subject of the Currency Policy. Since the date, January 14th, on which I informed the Council that the matter was having the anxious consideration of the Government of India, we have communicated to Her Majesty's Secretary of State our views on the present position. We are now also sending home to him a copy of the Honourable Mr. Arthur's address to the Bengal Chamber of Commerce and of an important communication we have received from the Bombay Chamber. We are confident that Her Majesty's Government will give the subject their early attention.

“Review of twenty years' Finance.

“71. I conclude my statement with a short review of twenty years of Indian finance, 1878 to 1898.

“72. Twenty years ago the experience of a severe famine in Northern India, followed after a short interval by another in Southern India, brought home to us the effect upon our finances of such periodically recurring disasters, and obliged us to lay down a financial policy intended to have the effect of increasing our capacity for dealing with similar calamities in the future. We have now passed through another and a severer famine, and it will be useful to look back over this period and to see whether our financial policy has, as a whole, been successful, and whether, taking the twenty years together, a period covering both the financial preparation for, and the actual experience of, disaster, we have paid our way and can give a good account of what financially we have accomplished. These twenty years include, it must be remembered, the war in Afghanistan, the annexation of Upper Burma, and the recent wars in Chitral and on our North-Western Frontiers. They include the outlay entailed by a programme of expenditure on 'special defences' which began in 1886-87 and is only now being closed, and they include the large increase of the army effected after the occupation of Upper Burma.

“73. I present on the next two pages a statement in a compressed form, which includes every transaction which during the period in question has passed through our accounts. I think the form is as devoid of technicalities as a statement of so complicated and comprehensive a subject can be, and is such as to be easily followed. I summarize the result as follows.

" 74. Taking first the Revenue Account, and reckoning as ordinary expenditure everything except the cost of our large wars, of the 'special defences' just alluded to, of actual famine relief and of Railway construction so far as met out of revenue, the result is that our revenue has exceeded our ordinary expenditure by Rx. 50,988,294. Distributed into four quinquennial periods this figure is made up as follows:—

| | Rx. |
|--------------|-------------------|
| 1878—83 | 22,294,539 |
| 1883—88 | 5,513,331 |
| 1888—93 | 13,472,520 |
| 1893—98 | 9,797,904 |
| TOTAL | 50,988,294 |

" General Statement of the Transactions of the Government of India in England and in India for the twenty years ending March 31, 1898.

| RECEIPTS. | | Revenue Account. (Stated in Rx.) | OUTGOINGS. | |
|-----------------------------|-------------------|--|-----------------------------|------------|
| In England. | In India. | | In England. | In India. |
| £ Shewn as Rx. in India. | Rx. 50,988,294 | | £ Shewn as Rx. in India. | Rx. |
| | | I.—Excess of Revenue over Ordinary Expenditure | | |
| | | II.—Extraordinary Expenditure on War, Famine Relief, and Railway Construction | | 47,611,433 |
| | | Details— | | |
| | | (a) Wars and Expeditions, each costing over Rx. 500,000 (net) | | 21,223,424 |
| | | (b) Famine Relief, excluding years in which expenditure did not exceed Rx. 25,000 | | 8,138,478 |
| | | (c) Railway Construction charged to Revenue | | 13,659,867 |
| | | (d) Special Defence Works | | 4,589,664 |
| | | III.—Charged to Revenue and credited <i>per contra</i> for Reduction of Debt (see head VIII) | | 5,327,999 |
| | | Account of Borrowing, Lending and Capital Expenditure. | | |
| 64,243,582 | 48,815,586 | IV.—Borrowing by Government— | | |
| | | Details— | £ | Rx. |
| | | (a) Permanent Debt | 58,243,582 | 37,722,429 |
| | | (b) Temporary Debt | 6,000,000 | —37,221 |
| | | (c) Savings Banks | ... | 8,632,573 |
| | | (d) Service Funds, etc. | ... | 2,497,806 |

FINANCIAL STATEMENT.

411

1898.]

[Sir James Westland.]

"General Statement of the transactions of the Government of India in England and in India for the twenty years ending March 31, 1898—continued.

| RECEIPTS. | | | OUTGOINGS. | |
|---|------------|--|-------------------------------------|-------------|
| In England. | In India. | | In England. | In India. |
| Account of Borrowing, Lending and Capital Expenditure— | | | | |
| <i>continued</i> | | | | |
| (State in Rx.) | | | | |
| | Rx. | V.—Capital Outlay of Government not charged to Revenue | £ | Rx. |
| £ Shewn as Rx. in India. | 2,688,099 | | 52,091,792 | 53,528,703 |
| | | <i>Details—</i> | | |
| | Rx. | (a) Railway Construction | £ | Rx. |
| | 2,688,099 | (b) Credit on account of Debentures of East Indian Railway Company (£1,542,500). | 17,572,810 | 41,479,959 |
| | | (c) Irrigation Works | 1,875,700 | 12,038,074 |
| | | (d) Purchase of East Indian Railway and other Companies' Undertakings | 33,542,776 | 10,675 |
| | | VI.—Loans at interest to Municipalities, Port Trusts, Cultivators, etc. | | 16,473,480 |
| | 11,211,096 | Repayments of the same. | | |
| | | VII.—Capital raised and expended by Companies under Contract with Government. | | |
| | 1,527,904 | Net Receipts on account of Capital raised. | | |
| | | Net Issues for Expenditure | 28,869,077 | 17,237,677 |
| | | <i>Details—</i> | | |
| | England. | India. | <i>Sterling Figures</i> | England. |
| | 4,542,257 | 110 | (a) Companies now extinct | 5,039,370 |
| | 5,649,953 | 74,371 | (b) Guaranteed Companies | 13,803,324 |
| | 21,455,215 | 169,331 | (c) Assisted Companies | 10,026,383 |
| | | | (d) Branch Line Companies | 19,557,758 |
| | 31,647,425 | 243,812 | <i>Total Sterling</i> | 28,869,077 |
| | ... | 87,292 | Exchange on ditto | ... |
| | ... | 1,196,800 | Branch Line Companies | ... |
| | | | | 10,789,150 |
| | | | | 5,350,382 |
| | | | | 1,098,145 |
| | | The overdrawals of the Assisted Companies were provided for by raising £6,734,900 permanent debt (included under head IV (a)), and passing the amount to their credit. | | |
| Deposit and Advance Accounts. | | | | |
| | | VIII.—Appropriation for Reduction of Debt. | | |
| | 5,327,999 | Credited by charge to Revenue (see above). | | |
| | | Purchase and cancellation of debt | | 1,991,529 |
| | 115,171 | IX.—Suspense Account of Balances of Provincial Governments. | | |
| | 1,892,328 | X.—Net receipts on account of Deposits, Advances, and Local Remittances. | | |
| | | XI.—Net debits in remittance account between England and India | | 567,544 |
| Balances. | | | | |
| | | XII.—Adjustment on account of Remittances to England, being short of Home Expenditure | | |
| | 13,086,446 | XIII.—Adjustment on account of charge for Exchange. | | 13,086,446 |
| | 9,309,497 | XIV.—Cash Balances in England and in India— | | |
| | | On April 1, 1878 | | |
| | 1,076,657 | On March 31, 1898 | 2,108,254 | 16,722,332 |
| | 14,498,302 | | | |
| | | GRAND TOTALS | 97,115,069 | 159,460,022 |
| | 97,115,069 | | | |

[Sir James Westland.]

[21ST MARCH,

"75. Of this excess of revenue, we have spent Rx. 21,223,424 on War (our smaller military expeditions are not included in this term; but are taken as ordinary expenditure); we have spent Rx. 4,589,664 on special defence works; we have spent Rx. 8,138,478 upon Famine Relief, and we have spent Rx. 13,659,867 upon Railway construction. The balance of Rx. 3,376,861 remains over, to the good, on the whole account. We have, in the twenty years, by this amount more than paid our way.

"76. On our borrowing and investment account we have raised debt to the extent of £65,786,082 sterling (including £1,542,500 East Indian Railway Debentures) and Rx. 48,815,586. This is mostly increase of permanent debt, but it includes Rx. 8,632,573 obtained by extending the advantages of Savings Banks all over India. Of this large sum, it will be seen, we have spent £19,448,516 and Rx. 53,518,033 mostly on the construction of Railways, but partly also on Major Irrigation works (Minor Irrigation works are paid for from Revenue); we have used £33,542,776 and Rx. 10,675 to buy up the undertakings of the East Indian Railway and other similar Companies, as they fell in under the purchase clauses of their contracts. We have lent Rx. 16,473,480 to Port Trusts for the construction of Docks and Harbour works at Calcutta, Bombay, Madras and elsewhere, to Municipalities for expenditure on projects of water-supply and drainage, and to cultivators for promotion of agriculture. But as Rx. 11,211,096 has, during the same time, been repaid to us by our debtors, the net burden upon us in respect of these lendings has been only Rx. 5,262,384.

"77. A further sum of £6,734,900, included in our borrowings, has been placed at the disposal of Railway Companies for expenditure on Railway construction under their contracts with us.

"78. Passing to the accounts of these Railway Companies, we find that, in addition to the sum of £6,734,900 just mentioned as lent to them by us, they have raised, either under our guarantee or under pledges of assistance from us, capital to the extent of £31,647,425 sterling plus Rx. 1,527,904. Their capital expenditure, during the twenty years amounts in sterling or its equivalent to £39,658,227 besides Rx. 1,098,145 on account of Branch Line Companies.

"79. As to the effect on our revenues of all this expenditure on Railway Construction, it may be stated in this way. At the beginning of the twenty years' period the annual loss on Railways after meeting all interest charges was about Rx. 1,500,000, whereas it is now, except in good years, nearly Rx. 2,000,000. This is an apparent loss of Rx. 500,000 a year; but it has to be remembered that

1898.]

[*Sir James Westland.*]

by reason of the depreciation of the rupee, it requires now more than Rx. 1,000,000 net earnings to pay the interest charge on the sterling capital as it stood in 1878; so that our Railway Revenue account has, after the expenditure of the twenty years, so far improved that it not only provides the whole of the interest charge which that expenditure has imposed, but meets in addition thereto Rx. 500,000 of the burden which the fall of the rupee has intermediately added in respect of the capital as it stood in 1878.

“80. Stated shortly, therefore, the result of twenty years’ finance is this. So far as Revenue goes we have, even after charging off Rx. 13,660,000 spent from Revenue account on Railway construction, more than paid our way, including all expenditure on war, special defences, and famine. So far as capital transactions go, we have raised under various conditions and spent upon Railways, Irrigation, Harbour Works and Docks, Municipal projects, and Agricultural Improvements, a sum equal (at 16 pence the rupee) to Rx. 198,820,000; and we are after all this expenditure better off by Rx. 500,000 a year than before we undertook it. I am dealing, it must be remembered, with direct financial returns only; the effect of all this expenditure on development of Revenue and its economic and administrative aspects lie outside my present purposes. As mere episodes in these transactions, we have spread Savings Banks and Money Order offices over the country; we have received in the former a net sum of Rx. 8,630,000 in deposit, and we carry out remittances in the latter to an annual extent of about Rx. 25,000,000.

“81. One of my objects in setting out this general review of our finances is to point out how little occasion there is for our seeking assistance from Her Majesty’s Government in aid of our revenue account. This course has been suggested in many quarters, both in England and in this country, but the Government of India have never wavered from the position taken up by Sir John Strachey in his Financial Statement for 1880-81, from which I quote the following paragraph:—

“43. I can imagine few greater misfortunes to India than the loss of her financial independence, and the acceptance by England of financial responsibility for her Indian Empire. It would signify to India the loss of control over her own affairs in every department of her administration, the possible subordination of her interests to those of a foreign country, and the substitution of ignorance for knowledge in her Government. Although some rare instances may be quoted in which, when there seemed to be a conflict between English and Indian interests, it may perhaps be doubted whether India has been treated with perfect fairness, there can be no question that, on the whole, the Government of India has been carried on with as honest and thorough a regard for Indian

[*Sir James Westland; Sir John Woodburn.*] [21ST MARCH,

interests as if India had a separate national existence of her own. England may rightly be proud of the way in which she has treated her great dependency. These fortunate results have, however, been due not only to her justice, but also to the wisdom with which she has left to India a separate financial responsibility. England has felt that it would be no kindness to take upon herself burdens which India now bears, to guarantee Indian debts, pay for Indian wars, and relieve Indian famines. England has also felt that it was wise, in her own true interest, to refuse to take into her own hands the control of the £67,000,000 which now constitutes the revenue of India. England does not choose that there should be grounds for even a suspicion in regard to the purity of her motives. I say this in the belief that India has before her a future of increasing wealth and prosperity; but if this anticipation should not be verified, and her future should be one of financial embarrassment, the loss of her financial independence would bring with it other misfortunes. I trust that the people of England may never find cause for believing that the maintenance of their Indian Empire means the imposition of heavy burdens on themselves.

"82. The record of twenty years' finance which I have displayed in the above figures is a better one than can be shewn by almost any country in the world but the United Kingdom. As Sir J. Strachey said, we ask for no charity from England. As a mere matter of our financial credit, we consider it infinitely more profitable to us to shew that we are able with our own resources to rise from our accumulated misfortunes of last year to new energy and new prosperity, than to present ourselves before England as a poor relation seeking help out of her abundant wealth. We have every prospect, as the Budget Estimates for next year have shewn, of wiping out, within a single year, so far as our financial condition is concerned, the evil effects of the year of calamities through which we have just passed.

"Appended Minutes.

"83. The Honourable Major-General Sir Edwin Collen and the Honourable Sir Arthur Trevor append to the Financial Statement separate Minutes,* dealing respectively with the subjects of Military Expenditure and of Railway Extension.

MEMON BILL.

The Hon'ble SIR JOHN WOODBURN presented the Report of the Select Committee on the Bill to render it permissive to the members of the Memon community to declare themselves subject to Muhammadan law. He said: "As the Report of the Select Committee is a somewhat exceptional one I think it is advisable to explain that Report in a few words. The Memons of Bombay are a small

* Not printed in these Proceedings.

1898.]

[*Sir John Woodburn.*]

community of about 8,000 souls who have been governed up to the present time in the matter of their inheritance by a customary law which has been expounded in a series of decisions of the Bombay High Court. The question of defining and specifying the law by which their inheritance should be guided has been before the Local Government and the Government of India for many years. Two years ago we were advised by the Bombay Government that the general feeling of the Memon community was that this customary law should govern the inheritance of members of the community as a general rule, but that power should be given to particular members of the community who so desired it to differentiate themselves and by a formal registered declaration pronounce themselves and their families subject to the ordinary Muhammadan law of inheritance. On that understanding a Bill was prepared and introduced into this Council. When the Select Committee sat upon that Bill last year we were informed that the Memon community, if it had originally possessed those desires upon which the Bill had been framed, had now altered their opinion, and that the desire of the great body of the community now was that it should be altogether governed by the Muhammadan law and not by the customary law which had previously governed it. On this it was considered necessary to consult the community in a very formal way, which has been done through the Bombay Government, and the community has now by a very large majority indeed declared its desire that the general law of inheritance to govern them shall be the ordinary Muhammadan law and not the customary law. In a matter of this kind Government only seeks to give effect to what is the general wish of a community of the kind, but the Committee felt that it was impossible to change the Bill round so completely as the new expressions of their desires would have compelled us to do. Under the new statement of the opinion it was no longer to be a special act of a special member of the community that he should declare himself subject to Muhammadan law, but it was to be a specific and individual act of a member of the community that he should declare himself subject to the customary law. Now in framing a fresh Bill upon these new lines the difficulty presented itself to us that, if the general body of the community was to be subject to the Muhammadan law any dissenter from that proposition making a declaration that he wished his family to be subject to the customary law would have practically to write himself down a dissenter from the general Muhammadan law, to proclaim himself unorthodox, and in other words an infidel. This was a position so serious that the Select Committee considered for some time what possible alternative might be suggested to overcome the natural unwillingness of the dissenters of the community to carry out what they felt to be most suited to the circumstances of their own families. The

[*Sir John Woodburn; Mr. Chitnavis.*]

[21ST MARCH,

suggestion which was eventually made is a very important one, and that is that the Bill should take the shape of giving the Muhammadan law to the whole community, but allowing anybody who wished to remove his own particular family out of the general law to carry out his purposes by a testamentary disposition. Testamentary dispositions under the strict Muhammadan law are very limited, indeed, and it is a proposition which we felt we could not carry through without once more consulting the Memons of Bombay. This is the purport of the advice that has been given by the Select Committee, and we now recommend that the Government of Bombay should be once more formally consulted in the matter."

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble SIR JOHN WOODBURN moved that the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces be referred to a Select Committee consisting of the Hon'ble Mr. Chalmers, the Hon'ble Sir Arthur Trevor, the Hon'ble Pandit Suraj Kaul, the Hon'ble Mr. Chitnavis and the mover.

The Hon'ble MR. CHITNAVIS said :—" My Lord, with Your Excellency's kind permission I beg to offer some remarks on the principles of the Tenancy Bill of the Central Provinces. The Bill vitally affects the interests of the whole agricultural population resident therein, and as such I crave the indulgence of the Council if I dwell a little too long upon a subject which is so very technical in its character and which is so peculiarly important to my own province.

" My Lord, before I come to the discussion of the Bill, I have a duty to perform, and that is to express gratification on behalf of the people I represent that the Bill is in the hands of the Hon'ble Sir John Woodburn whose long and varied experience in matters of administration and knowledge of local circumstances, and whose sympathy with the people he once ruled with such marked ability, it would be impossible to question. The people of my province hope great things from him. They believe that in the Hon'ble Member they have a gentleman so thoroughly acquainted with all the circumstances of the province which he has ruled for a long period with so much distinction to himself and benefit to the people that they can fully trust him to apply the Bill in a cautious, wise and judicious spirit. Now, as to the Bill itself, my Lord, it is a matter of congratulation that Your Excellency's Government does not intend to go behind the arrangement under which the malguzari system of land-tenure was introduced in the Central Provinces. I do not therefore propose to take up the time of the Council by a detailed account of the revenue-system as it existed under the old Bhonsla Kings and of the way

1898.]

[*Mr. Chitnavis.*]

in which it developed into the present proprietary system under the beneficent policy of the British Raj. It will be sufficient for my purpose if I say that the essence of the Maratha revenue-system consisted in constant revision of the revenue-assessments with the view of maintaining them at the highest possible level and thus preventing the growth of middlemen with rights and interests intermediate between the Government and the cultivator.

“ But the evils of a system which recognised no property in land and had no fixity of any description whatsoever were seen in a declining revenue, in an increasing amount of fallow uncultivated land, in the involved and embarrassed condition of both the patels and the raiyats, and in the general negligence and indifference with which agricultural operations were carried on under it. Things continued in this state till the year 1818, when the northern half of the province was ceded to the British Government, and the Nagpur State, which, roughly speaking, formed the southern half, came under British management owing to the minority of Raghoji III. The former districts, designated the Saugor and Nerbudda territories, were later on brought under the authority of the Agra Government, and afterwards under that of the North-Western Provinces ; while the Nagpur State was temporarily managed by the Resident, Sir R. Jenkins, who thus became fully cognisant of the evils under which the land-administration then suffered. To remedy these evils, Sir Richard Jenkins thus advised his officers :— ‘ In the conduct of the assessments the attention of all must be specially directed to revert to the regular principles of the ancient system, to guarantee to the patels the just and faithful observance, on the part of the Government, of the engagements which might be concluded, to remit balances which appeared irrecoverable, to make the assessments light and moderate, to provide for restoring waste-lands by cowles (*i.e.*, *agreements*) granted according to the former practice, and for the resuscitation of capital in the hands of the agricultural classes and to prolong the terms of leases.’ He further said : ‘ It is required to touch with a tender hand the relations between the patels and the raiyats, to avoid unnecessary interference and discourage litigation, to redress well-founded complaints, but mainly to rely on the effects of moderate demands on the part of Government and equitable conduct in its operations for realizing them ; as well as on the consequent excitement of competition in the patels for agricultural labour to produce a gradual amelioration in the condition of the raiyats.’ For a considerable period these principles guided the land-revenue policy of the province ; but unfortunately, during the time the government of the country underwent many changes, and the revenue-system, though it worked well for a while, was found by experience to contain all the evils of the old system, was devoid of

permanency or fixity, and became, in the course of time, an instrument of evil in the hands of unscrupulous officials. Things continued to drift in this state until 1853 when, on the death of Raja Raghoji III, the province was annexed to British territory. For a short time the old Maratha revenue-policy was pursued in the newly-acquired province. But it was soon realized that, owing to heavy oppressive assessments, it had resulted in distress and ruin to thousands, in the desertion of villages, in a general deterioration of the whole tract called the Saugor and Nerbudda territories, and in a considerable falling off of the Government revenue. The first to draw attention to this deplorable state of things was Mr. Bird, who was deputed by the Supreme Government to enquire into the state of the country. The Chief Commissioner of the time, Mr. (now Sir) Richard Temple, after a careful perusal of the reports of Mr. Bird and other officers, and after giving full and anxious consideration to the evils arising from the revenue-system in vogue at the time, determined in the interests of the country and the Government to recommend a proprietary system of land-tenure for the province.

“Accordingly proprietary right was conferred on the patels of the Central Provinces. I need scarcely say that this grant was a free, generous and unconditional gift of the Government; and as such was received by the people with feelings of the deepest gratitude. At the same time that proprietary right was conferred upon the patels, the rights of the tenants were also defined and recognised. This resulted in what is known as the first proprietary settlement made between the years 1862 and 1868, which guided the revenue policy of the province till the year 1883, when it underwent another change, and the ultimate result of that change was the existing Tenancy Act of 1883 which the present Bill proposes to amend.

“I may be permitted to observe that the broad result of the Act of 1883 was to strengthen the hands of the tenant against the landlord—to protect him against capricious eviction and to secure him in the possession of his holding as long as he paid a fair rent. The Act did more. It conferred on the tenants (says the Hon’ble Mover of the Bill) powers and privileges very much in excess of the privileges given to occupancy-tenants in other parts of India. I would, even at the risk of some repetition and tediousness, call the attention of the Council to these privileges. They are, to quote the words of the Hon’ble framer of the Bill, as follows :—

‘The absolute occupancy-tenant has been declared practically a proprietor. He is entitled to transfer his rights in his holding without reference to anybody. His rent has been fixed for the period of settlement.

1898.]

[*Mr. Chitnavis.*]

'The occupancy-tenant has been endowed for the first time in the history of the province with the power of transfer subject of course to some limitations. His rent has also been fixed for a period of ten years at least.

'The ordinary tenant has been given the right to have his rent fixed for seven years. In cases of disturbances the *malguzar* has to pay him compensation for the improvements made by him in the *soil*. He has been given the power of protecting himself by purchasing the right of occupancy at a sum equal to $2\frac{1}{2}$ times the amount of his rental. His rights have been made heritable and transferable under the same restrictions as those which apply to the occupancy-tenant.'

"My Lord, if these concessions have already been made to the tenant, I find it hard to imagine that there can still exist any cause for complaint or dissatisfaction on his part against the landlord. I, for myself, believe that there can be none. Nay, I would go a step further and say that the present Bill is not the result of the complaints of the tenants against their landlords, for it is admitted on all hands that very healthy relations exist between the two. As a proof of these good relations I would beg leave to quote the opinions of some of the most distinguished and experienced officers who have conducted the administration of the province.

"Mr. Venning, Commissioner of the Jabalpur Division in the year 1893-94, says :—

'I agree with Mr. Cook (the Deputy Commissioner) that the small use of the section (section 62) that has been made is a sign of the good relations subsisting between landlords and tenants. If the former habitually treated the latter in a high-handed way, ejecting them and enhancing rents in contravention of the law, it is difficult not to believe that a much larger proportion of tenants would have availed themselves of this simple means of improving their status.'

"Mr. Anderson, Commissioner of the Nagpur Division, writes :—

'So far as the reports submitted and my information go, the majority of landlords in this division are considerate to their ordinary tenants, and they all know well enough, I believe, that they have no legal power to eject them at their pleasure. The ordinary tenant is no longer a tenant-at-will, and his lot is not to be specially pitied, provided his position under the law is respected by his *malguzar*, and that his own extravagance or misfortune has not landed him in excessive debts.'

"Only two years ago, Colonel Bowie, Commissioner of the Nerbudda Division, thus wrote to the Revenue Secretary to the Chief Commissioner of the Central Provinces :—

'One of the chief reasons why the tenants show so little inclination to purchase the right of occupancy is that their position is so secure that they do not think it worth while to pay for such rights.'

“Colonel Thomas, Commissioner of the Chhatisgarh Division, writes :—

‘As a rule malguzars are not on the whole hard upon their tenants. Many of them realise fully that their own property depends upon that of their tenants, and it is altogether to their advantage that the tenants of the villages should, as a body, be in a position to cultivate all their lands fully each year, and to this end the aid that many tenants receive from their malguzars is by no means inconsiderable.’

“In view of this testimony there would seem to be no justification for undertaking fresh legislation to improve the position of the tenant at the end of every few years. Such a course can only unsettle the rural equilibrium, arouse jealousy and suspicion in the minds of the malguzar, raise unreasonable expectations in those of the tenants and plunge them both into needless litigation.

“As regards the necessity of legislation at the present moment, public opinion in my province is decidedly against it. In expressing my own individual opinion on the subject I most respectfully beg to submit that statistics might have been usefully employed to prove the necessity of the present measure. For instance, we might have been told how many suits have been instituted for enhancement of rent in the case of occupancy-tenants and ordinary tenants, and with what results; in how many of these cases the Government considers that the landlord has exercised his right of enhancement unfairly towards the tenant and beyond what is justified by the circumstances of the case; whether there has been any general tendency in many districts on the part of the malguzars to raise the rents of their tenants beyond what is fair and reasonable; in how many cases the Settlement-officers have characterized the existing rents as more than the land can bear; in how many instances decrees for ejectment have been passed and carried into effect; what statistical evidence is there to show that the money-lending classes have practically secured the privileges of tenants to a considerable extent.

“My Lord, I regret that my information on these heads is meagre and scanty. All that I have been able to gather from a study of annual revenue reports is that in ten years, from 1885 to 1894, there were only 319 cases instituted for enhancement of rent in the whole of the Central Provinces. When this number is divided between 18 districts, it comes to this—that in ten years there were on an average 18 such cases in each district—(*i. e.*) about two cases each year—a wholly insignificant number.

“I have also gathered that the number of decrees executed for ejectment in eight years, from 1887 to 1895, was 1,713; *i. e.*, there were, on the average, about 12 eviction cases per year in every district.

1898.]

[*Mr. Chitnavis.*]

"I consider these numbers far too small and insignificant to call for any alteration in the substantive law of the land.

"My Lord, the history of the Central Provinces may be very appropriately said to be marked by periodical fits of anti-landlordism. Every few years a cry is raised on behalf of the tenant and rights and privileges are showered upon him. So numerous had these rights become, and so strong, in consequence, was the position of the tenant, that in 1888-89 the Local Government discovered that it was the landlord and not the tenant who required protection. In writing to the Government of India for an abrogation of the half assets rule, limiting the Government revenue to 50 per cent., which had been until then regarded as the recognized principle of the settlement, Mr. Fuller, the then Junior Secretary to the Chief Commissioner, remarks as follows:—

'The enquiries which have been made in course of the settlement now in progress and the more accurate agricultural statistics which the administration is now receiving, have made it clear that, except in a few well-marked tracts, there has been very little general enhancement of rent since settlement, and that what increase has taken place in rent-rolls is due for the most part to extension of cultivation, not to rent enhancement.

'The tenants have in fact been too strong for the malguzars, and have been able to keep to themselves the advantages arising from the opening of the province by railways and roads, and the general rise in the price of produce.'

"My Lord, this was the opinion of the Administration in 1888, when the principles of assessment for the revised settlement were under consideration. The malguzar then had to be propitiated; accordingly the Government thought it politic to declare that it was the malguzar who required protection. But the year 1888 is gone. The settlement is over. In the interval, brief as it is, the opinion of the Government also has undergone a revolution. The cry is now for the tenant. Should this game of 'see-saw' be kept up, we may at the time of next settlement, when rents have to be raised, expect to hear a cry for the malguzar again. In accordance with the law of periodicity, a new set of experiments in legislation in favour of the malguzars will then be suggested. My Lord, these constant changes in the policy of Government, followed by a fresh instalment of legislation every few years, cannot be too strongly condemned. The people look upon any change in the land law with the greatest suspicion and anxiety, for it means the dislocation of existing relations and the filling of lawyers' purses. Just as the people are beginning to understand the old law, a new law with radically different principles is thrust upon them. We may create rights and privileges in favour of the tenant; but it will take years before he will come to know

[*Mr. Chitnavis.*]

[21ST MARCH,

of them, and in the meanwhile money-lenders, malguzars and tenants will go on upon the footing of the old law, till some tenant bolder than his fellows, and probably living near the head-quarters, goes to a pleader and discovers a means of evading the tie of moral obligation. The new discovery will probably puzzle him at first and he will be sceptical as to its truth, till a Court of Justice decides in his favour. For a time the result will entail considerable hardship on the small money-lender and the impecunious malguzar. But after the period of transition the money-lender will devise some means of evading the law or making up for his losses by imposing harder terms on the borrower; and the sanction of public opinion, which has hitherto acted to some extent as a check on him, will cease to have any force. These observations apply with peculiar force to the Central Provinces, and in support of them I would crave Your Excellency's permission to quote what Mr. J. W. Neill, our late Judicial Commissioner, a gentleman who knew the Province much better than probably any other officer, has said on the subject:—

'So far as I know, there is no need to amend the law as yet, and it will be much better to wait for some years longer and see how things go. The present law has only been in operation for eleven years and was amended in 1889. The papers which I have seen do not, in my opinion, make out a cause for immediate legislation.'

"It has been well said by the Hon'ble Mover of the Bill that measures, however excellent, often take a long time to reach the understanding of the people. But will a wise Legislature accept this ignorance of the law as a ground for further legislation? What is wanted now is not fresh legislation, but that pains should be taken and time given to make the people understand the nature and the meaning of the existing law.

"It has been further said that—

'For fourteen years this (that is, the Tenancy Act of 1883) has been the law of the land, yet it has never sunk into the mind of the ordinary tenant that he can protect himself by purchasing the right of occupancy or by claiming compensation for disturbance.'

"This is considered by my Hon'ble friend the Mover of the Bill a sufficient ground for further changes in the law. My humble opinion is that it leads to a different conclusion, *viz.*, to the fact that the existing law has done all it is possible for law to do to promote healthy relations between landlord and tenant, and that therefore further changes are unnecessary. The ordinary tenant has not bought the right of occupancy, for the simple reason that he is content with his present position, because he enjoys very nearly the same rights and privileges as the occu-

1898.]

[*Mr. Chitna:is.*]

pancy-tenant. He is well aware that the difference between his position and that of the occupancy-tenant is one merely of sentiment, and that it is not worth his while to buy a mere name or a title with his hard-earned money. In support of this statement I would beg leave to quote what Mr. Venning, late Commissioner of Jabalpur, says on the subject: 'Ten years' experience,' writes Mr. Venning, 'has shown that the provisions of section 62 of the Act, which it was hoped would allow a sufficient means of acquiring occupancy-rights, are almost wholly inoperative. No evidence on this point could be much stronger than that of Khan Bahadur Aulad Hussein, who states that at the time of the recent revenue and rent announcements in the Jabalpur District great pains were taken by the Settlement-officer to explain the provisions of that section, only 22 tenants in some 1,750 villages came forward to purchase occupancy-rights.' This shows that it is not ignorance of the law that has deterred the tenant from acquiring occupancy-rights from the malguzar, but the fact that he finds his position safe and that the malguzar is kind and considerate to him. Then, again, cases of compensation for disturbance have been few, not because the tenant is not aware of the extent and value of his rights, but because he has been very seldom disturbed by his landlord, because the cases of ejectment or enhancement have been few. It is naturally impossible for a tenant to claim compensation when he is left in the undisturbed possession of his land. The Hon'ble Member in charge of the Bill has also been good enough to observe that, in some instances, the greatest credit is due to the landholders, that when the oppressiveness of the rent was brought to their notice, they have invariably accepted the recommendations of the Settlement-officers. I would request Your Excellency's Council to consider whether the way to recognise the services of this body of men, who, according to the Hon'ble Mover of the Bill, have shown so much consideration for the well-being of their tenants, is to curtail their powers, to make their position more uncertain and embarrassing, and to place them more and more under the thumb of the Revenue-officers.

"The Hon'ble Sir John Woodburn has also said that in certain cases the landlords enhance rent by means which have been accepted by the ordinary tenant without complaint. Now, I have already shown Your Excellency's Council that in the early nineties the position of the tenant was much stronger than that of the malguzar, and have quoted the testimony of the administration of the then Chief Commissioner, Sir Alexander Mackenzie, to this fact. The settlement was then in progress. After the settlement revised figures of rent were announced to the malguzars, who received instructions from the Revenue-officers not to raise the rent for seven years, and to these instructions the malguzars have so far faithfully

[*Mr. Chitnavis.*]

[21ST MARCH,

adhered. If any of them have been guilty of violation of these orders, will the Hon'ble Member in charge of the Bill tell us in how many instances the malguzars have found it possible to raise rents in spite of successive bad seasons from which the province has since then been suffering? As the Government, with its unlimited sources of information, has not thought fit to furnish us with any statistics on this point, we may presume that the number of those who have been guilty of enhancement is few. Will a change in the law be justifiable to punish these few? Will it be right to visit the sins of the offending few on the unoffending many?

“What, then, are the facts which justify the present Bill? It is said that tenant holdings have changed hands to an alarming extent and that this power of alienation should therefore be curtailed. But the number of transfers which have already taken place does not appear to be large. Moreover, the Settlement-officer of Nagpur has found that during the last thirty years 50 per cent. of these transfers were in favour of agriculturists. This healthy circulation of land, as some of our local officers have pointed out, ought not to be checked. In the Revenue Administration Report for 1895-96, Sir Charles Lyall, the present Chief Commissioner, observed that—

‘he had been giving his attention to the subject of transfers, and the results of the year were in full accord with his general conclusion that a large proportion of voluntary transfers are productive of good.’

“If that is granted, why has it been thought desirable to restrict the right of a tenant to borrow money on the security of his holding? What changes have taken place in the province within the last twelve years, in the condition of the agricultural classes, which call for such a stringent measure? A tenant borrows, and must borrow, till, by a process of natural selection, a better class of agriculturists come into existence, and in the meanwhile the problem is how to accelerate this natural process. The landlord, moreover, has the right to say that an improvident tenant ought not to be forced upon him when half the transfers take place in favour of agriculturists presumably better and more thrifty than the outgoing tenants. I confess that I for some time thought that it would be better to restrict the tenant's power of mortgage or sale, by law, but recent experiences have caused me to change my opinion. The necessity of resorting to the money-lender has been so forcibly brought home to one's mind by the famine and the continued scarcity of the last three or four years, that one must pause before giving support to any measure restricting the borrowing power of our tenants. That even the most deserving and thrifty tenant must borrow in such a year

1898.]

[Mr. Chitnavis.]

has been shown by almost every officer in the province, whose opinion was invited in 1894. Though many of these officers recommended some restriction of this power, their unanimous opinion was for the retention of some form of alienation by which the tenants with the help of the malguzars could borrow the necessary funds for cultivation, maintenance of their families and other necessary purposes. It has been said that this opinion of the officers has since 1894 undergone a change. It is alleged that opinion has 'advanced' in favour of total prohibition of all forms of alienation. My Lord, I am at a loss to understand how it could have been possible for the officers in question to change their opinions in the manner stated, when the experience of the last four years has forced on us the conviction that the saukar is a necessary element in the village economy.

"The opinion of Mr. Carey, our Settlement Commissioner, on this point deserves careful consideration :—

'The experience of the past few years in Saugor and Damoh,' says Mr. Carey, 'has forced on me the conviction that the much-abused saukar is a necessary institution in a country such as India, with its insecure agriculture. We must have Josephs to store in years of plenty for seasons of deficient crops. In these districts during the three last years (I do not allude to the present year 1896-97) most of the land has been sown with the aid of the saukar, though each season brought increasingly heavy losses. The interests of the saukar are in this particular matter identical with those of the raiyat. If the land remains unsown, the money-lender loses all his venture. Is it to be accepted that the money-lenders would have done as much had the security which the cultivators had to offer been less? Possibly they would, as the last chance of recovering their past loans. But will they be so ready to do so in future when the law of the land enables the cultivator to repudiate his liabilities, pocket the swag and retain his land?'

'It takes,' he adds, 'lakhs of rupees a year to sow any particular district, and it is impossible for Government to fill the place of the *banya* unless a grand system of Agricultural Land Banks was introduced. The present aid afforded by Government in the shape of the Agricultural Loans Act, beneficial as it is, really represents but a drop in the ocean.'

"To this statement of Mr. Carey I would add that the capital necessary to keep the tenant's family in food and clothes till the crops are sold in the market is also a heavy item, which cannot be overlooked. Now, how can the tenant borrow all this money in a bad year? Under the proposed law he will be able to do so only at a rate of interest which will make it practically impossible for him to free himself from his embarrassments in the future. But the theorist will very likely rejoin and say 'Oh! the tenant can borrow under the Agricultural Loans Act at a very low interest.' The State, I take it, is not going

to start an Agricultural Bank or become lender of money to the agriculturists on a large scale. I have the authority of the present Chief Commissioner himself for this statement. 'The Government,' says he, in his Revenue Administration Report of the Central Provinces for the year 1895-96, 'can never entirely supplant the natural and traditional agencies for the supply of seed to tenants who are not provident enough to store it for themselves, and it would be most injudicious to attempt to interfere with those agencies by too frequent advances, which can only have the effect of making terms harder for those whom Government cannot afford to assist.' Moreover, the formalities which must be gone through under the Loans Act are so elaborate that a simple peasant prefers his village-saukar, though his terms are less favourable than those of the Government. The very fact that the tenants have not largely availed themselves of the Act shows either that it is unsuited to the conditions of agricultural society in India, or that those entrusted with its working have been unable to satisfy those for whose benefit it is intended that in the long run, and taking everything into consideration, it is better to have the Government as their creditor than the village-saukar.

"Then, again, it has been said that the registration statistics show that 90 per cent. of occupancy and ordinary tenants continue to cultivate their land without pledging their holdings, and they will therefore in future be able to borrow, even in bad years, what is absolutely necessary for them. I regret that those who have made such statements have overlooked one or two broad facts. The reply to them is that the present law enables a tenant to sell or mortgage his land with the consent of the landlord, and, as landlords are interested in promoting cultivation and securing rents in their villages, and in helping their tenants for this purpose, it is generally from the malguzars, or with the security of the malguzar, that tenants have obtained money for the purpose of cultivation, maintenance of family and the like. Again, the power which the tenant has hitherto possessed of subleasing his holding for a number of years, with the consent of the malguzar, has enabled him to tide over times of scarcity and distress. My Lord, these are the two rights, coupled with the supposed power of the landlord over the land, which have often enabled the tenant to surmount his difficulties and embarrassments, and both these rights the present Bill proposes to take away.

"My Lord, I have said that tenants must borrow, for they must, at all cost, have necessaries of life. But what would be their position under the proposed law? Every year they would see their crops attached in lieu of their debts. Nothing would be left to them to maintain themselves or to spend for the improvement of their lands. They would, in the course of time, grow fraudulent. Driven by

1898.]

[Mr. Chitnavis.]

necessity, they would try and conceal their crops or make them over to another under a *benami* transaction. Failing this, they would pawn the last thing they possess. Their credit would be gone. The security of the *malguzar*, which has all these years helped the tenant to tide over times of want and scarcity, would also be gone, for the *malguzar*, having lost his hold on the land, would no longer go out of the way to help his tenants. The seed-grain and the food-grain which the *malguzar* has hitherto supplied would not be forthcoming, for he would have no remedy for the recovery of his money for the grain advanced by him as a loan. Besides this, the system of *laoni*, *i.e.*, the selling of prospective produce at excessively low prices, would spring up and complete the ruin of the tenant. I would beg leave to quote here some very interesting observations from Sir Richard Jenkins, which give us a glimpse of the state of things in pre-British times when the tenant had no power of alienation.

‘The patels,’ says Sir Richard Jenkins, ‘were in the habit of collecting the twelve annas of the rent on the first demand from the raiyats. Those who were able paid in cash, others borrowed from the patel or gave bonds on his security to *saukars*, who paid for them, the patel keeping the property of the borrowers under restraint until they liquidated their debts. These transactions often ended in the ruin of raiyats, who, when once involved, could seldom extricate themselves again.’

‘The following were the modes of borrowing and repayment of debt in general use :—

first, the *laoni*, which consisted in making over to the creditor the grain of the crops on the ground at a rate considerably under the bazar price ;

secondly, a simple loan, which the borrower agrees to repay.

‘When a raiyat failed in his agreements he was frequently obliged to obtain another advance by pledging his cattle and implements of husbandry as well as the produce of the fields. Should he still continue insolvent, the patel seized everything the tenant had and took a deed of sale from him, specifying the particulars of the property and declaring that the transfer had been voluntary and that he would never reclaim it.

‘Patels to whom raiyats were indebted were permitted to place the property of the defaulters under restraint, but not to sell it without authority from the Superintendent. If a raiyat left a village in debt to his patel, he was obliged to return and settle all revenue-demands before he was allowed to become a cultivator elsewhere.’

“I would leave it to Your Excellency’s Council to consider if this state of things which existed prior to the annexation of the provinces to British territory, and to which the Government now wants to revert by taking away the landed power of alienation, was a particularly happy one.

“It is said that an occupancy-tenant in the North-Western Provinces has no power of transfer, and nevertheless is able to procure all the capital that is necessary. I am unable to understand how it is possible for him to do so. I would like some Hon'ble Member to tell me whether the law of the North-Western Provinces really prevents an occupancy-tenant from sub-letting the land for a term of years; so far as I have been able to gather from a cursory glance at the North-Western Provinces Rent Act of 1881, I do not think that there is any restriction in the North-Western Provinces on the tenant's power of sub-letting, or any provision to the effect that a tenant can only sublet from year to year, so that the tenants of the North-Western Provinces enjoy the right of transfer in substance, if not in name.

“The Bill proposes to allow a sub-lease for one year. In my judgment this is wholly inadequate, for it will place the new occupant in a precarious position; for without an ascertained interest in the land for a sufficient number of years, no one can have any inducement to venture his capital on cultivation. The fixing of an arbitrary limit to a sub-lease is always open to objection. But if the Council is not prepared to leave the law as it stands,—if, in fact, a choice has to be made between one and any other number of years,—I would prefer to take ten years as the maximum limit for the occupancy and seven for the ordinary tenant, which corresponds with the period for which his rents remain practically unchanged. In the present state of the Central Provinces, an agriculturist will hardly ever find it profitable to sublet an ordinary, or, for the matter of that, an occupancy, field, for the obvious reason that the demand in these days of distress is, as the Chief Commissioner very rightly observes in his Resolution on the Courts of Wards' Report, dated 20th February 1898, for tenants and not for land.

“The great objection to an annual sub-lease is that the tenant who wished to sublet part of his holding to pay off his debts would be unable to get as much by the annual sub-lease as by one sub-lease for ten years. In other words, one year's sub-lease of a part of the holding would hardly ever save a tenant, whereas a ten years' lease would often help him out of his embarrassments. This, I think, is the period for which subletting should be allowed with the consent of the malguzar, and to prevent this being abused a right of pre-emption should be given to the malguzar such as he enjoys in the case of absolute occupancy-tenants, except where the subletting has been caused by disabilities on the part of the tenant, such as minority, old age, etc.

“It is said that in Native States tenants can do without the right of alienation and can get enough money for the cultivation of the land. The

1898.]

[*Mr. Chitnavis.*]

answer to this argument is that in Native States subletting is allowed, so that the tenants, like those of the North-Western Provinces, have the right of alienation in substance, if not in name. Again, the facilities for the realization of the money advanced are more numerous in Native States than in British territory. A well-to-do man has not the same restraint and limitations put upon his power of realizing his dues as he has in British India. Owing partly to the comparative absence of legislative interference and partly to the imperfect way in which existing laws are executed, the raiyat in the Native States has not yet learnt to disregard the ties of moral obligation. There is not to be found in the Native States that disregard for persons of rank which is seen in British territories, where all men are equal in the eyes of the law. There are not so many lawyers there to teach the raiyats the fine distinctions of law. My Lord, there are so many radical differences in the economic conditions of the Native States on one hand and British territory on the other, that any argument by way of analogy is likely to be fallacious.

“It would have been wiser, my Lord, if the experimental measure now before Your Excellency’s Council had been first tried in tracts where the raiyatwari system of land-tenure obtains. The Government is the sole landlord in such tracts. Had the experiment failed, the loss would have been the loss of the Government, but the Government, probably, is rich enough to bear many such losses. The case, however, would be very different in the Central Provinces. Here, if the experiment failed to achieve the desired results, the poor malguzar would suffer heavy loss. It would add to the misfortunes he is already labouring under on account of successive bad seasons and heavy assessments. The Dekkhan Agriculturist Commission, while admitting that the evil of transfer is more prevalent in the raiyatwari tracts than in the parts of the country where the proposed legislation is to be applied, declared in their report of 1892 that there were several serious objections to an absolute prohibition of alienation, and that they would rather help the circulation of land amongst agriculturists. An experienced writer, well conversant with the system of land-tenure that obtains in Madras, says :—

‘The absolute power given to transfer land by gift or mortgage is in itself excellent, and had the assessment always been moderate could not have worked harm. But, owing to heavy assessments and consequent inability to meet the Government demands, the raiyats have been obliged to exercise this power to such an extent as to place a large portion of the land in the hands of the saukars. The latter have enabled the raiyats to live on somehow. Had the land been tied, the raiyat would no doubt have been placed more speedily in an embarrassing position.’

“ My Lord, I would here request my Hon'ble friend Mr. Nicholson, the official representative of Madras, to tell us what his experiences are on the subject, and whether, in his opinion, the proposed legislation would work smoothly in raiyatwari tracts.

“ My Lord, I would bring this part of the discussion to a close by a quotation from Mr. Fuller, Commissioner of Settlements and Agriculture, one of the ablest Revenue-officers who have served in the province. He says :—

‘ I believe that the mortgage and transfer of raiyats' tenures have their origin in ideas which arose long before the British supremacy in India, and that in dealing with the question we are laying hands not on a recent custom of our own creation but on a custom which has its roots in the circumstances of long past years. If this view be correct, it will be exceedingly difficult to put a stop to all transfers by legislation, and I think that experience of these provinces bears out this view. Occupancy and ordinary raiyats have no statutory powers of transfer, but transfers are exceedingly common amongst both classes.’ ‘ I am by no means persuaded,’ continues Mr. Fuller, ‘ that the practice of transfer is as injurious in the agricultural interests of the country as it is commonly supposed to be. It is generally assumed that transfers of raiyati right admit the money-lender to the cultivator's heritage, and this is of course true in a large proportion of cases. But we must not lose sight of the very numerous transfers which merely substitute a good cultivator for one who is indolent or imprudent. The Settlement-officer of Nagpur, who has made inquiries into the question, has concluded that about half the number of transfers which have taken place in that district during the past thirty years have merely shifted from one cultivator to another. The Government is hardly in this matter concerned with individuals, and a transfer under which a man who cannot farm successfully gives place to one who can is in my opinion of much benefit to the country. It would be very risky to put a stop to all transfers of the kind simply in order to prevent those which bring in the money-lender.’

“ My Lord, a provision exists in the present Bill making tenants' lands saleable for money advanced by Government. I do not see what difference the Government can possibly make between money advanced by Government for improvements and money advanced by saukars to tenants in times of distress, with the consent of the malguzar and *at the same rate of interest* as charged by the Government, either to pay off the Government revenue or to keep tenants upon the land. If money has been lent to the people by the saukars to pay the Government in times of famine or scarcity, is it not fair that the Government should protect these saukars in order that they may secure the money they have already advanced ?

“ Your Excellency's name will ever be cherished with gratitude by the people of my province for the able and sympathetic manner in which you have ruled over

1898.]

[*Mr. Chitnavis.*]

the Empire in its days of dire calamity, and I believe no one could better appreciate the difficulties which a future Administration will experience, in case of a similar visitation, if the powers of the tenant be reduced to a minimum by the proposed law.

“The elaborate provisions laid down in the Bill for preventing an illegal transfer seem to be unsuited for the Central Provinces. When the law has declared transfer illegal and has prevented registration of the document evidencing such transfer, I think as much has been done to deter people from lending money as is possible—a great deal more, in fact, than has been done in the North-Western Provinces. To invite distant collaterals to join in the fight for the land and to put it in their power to exercise this privilege at any distance of time, not later than the next following settlement, which may not take place for another fifteen years, would be necessarily increasing litigation and complicating the procedure by constantly changing plaintiffs and defendants in the course of a suit. If anybody is to get back the holding from the transferee, I think it should be either the landlord or the tenant. The wider circle of heirs now let in by the present Bill would lead, as Sir James Caird has observed, to increase of litigation, a great deal of land administration by an ‘unrestrained subdivision of holdings amongst the male members of a family.’ Sir James Peile also holds the same view. I may remark in passing that even the most ardent advocates of the proposed legislation have doubted the efficacy of the sections regarding collaterals. My Lord, the ultimate effect of all these changes would be that landlords would find it difficult to realise their rent, and would be constantly involved in law-suits. Nor would the tenant benefit; but the lawyer would be greatly enriched. I have the highest possible respect for lawyers, and I always desire that they may get rich and prosper, but I would prefer their doing so at anybody’s expense but my own.

“My Lord, the position of the *malguzars*, as it is, is not altogether an enviable one. There are cases, when tenants in bad years leave their lands fallow and surrender them to the landlord. The latter, in order to secure rents for such lands, gives them over to other tenants. This necessarily means a great deal of trouble and expense on the part of the landlord as well as the tenant, for cultivation of fallow land means extra cost. The present Bill will enable any heir of the tenant to claim the land without paying any compensation whatever to the ordinary tenant, and all the money which the latter, or the landlord, has spent on the land will then be entirely lost to them. It is needless for me to point out that this will

[*Mr. Chitnaois.*]

[21ST MARCH,

inflict heavy loss on the malguzar, and when once the fact becomes known to the tenant it will be an instrument in his hand for the oppression of the malguzar. And, in all cases when the Revenue-officer would dispose of lands, it will also make it impossible for him to secure tenants for his land. No enquiry will be made as to whether or not the applicant has the capital or stock necessary for cultivating the land. No security of any sort will be taken, and there will be no penalty for early abandonment. Consequently, creatures of straw will take up land and live from hand to mouth, cultivating one or two acres in a miserable way, and absconding on the approach of the first bad season. This will necessarily in many cases throw obstacles in the way of those who, by reason of superior capital and enterprise, would make most out of the land and effect the greatest improvements. The malguzar has already to pay heavily on account of the revised assessments. And it is to his situation that the Bill contemplates adding further embarrassments.

“My Lord, I now come to another point. I allude to the provision for making the cultivating right in the sîr-land absolutely inalienable. This is a radical innovation in the law of the province and the justification for such an innovation is that it is in the interests of the proprietors themselves. But any measure, however beneficent in its intention, can scarcely be said to be welcome when it proposes to take away an important privilege. The settlement of 1863 conferred full proprietary rights on the malguzars of the Central Provinces without any reservation whatsoever. The Local Government of the time suggested that certain restrictions on the alienation of malguzari villages should be insisted on. But the Government of India rejected this suggestion, and, in its letter dated 28th June, 1860 (cited in page 83 of Mr. Nicolls’ Digest of the Laws of the Central Provinces), the right conferred is described in the following words:—

‘In regard to the admission or creation of a proprietary right in malguzars, I am desired to state that the Governor General in Council is strongly in favour of the measure, so far as it can be carried out without prejudice to the rights of others. But His Excellency in Council is in favour of giving the proprietors thus created as large and absolute a control over the property vested in them as is consistent with local usages or feeling.’

“It will thus appear that, in sanctioning the bestowal of proprietary rights on the patels of the Central Provinces, the Government directed that, subject to the condition of payment of the land-revenue, and subject to that condition only, every farmer should receive as nearly as possible a fee-simple in his estate with full power to dispose of his interest in the land by sale, gift, mortgage, bequest

1898.]

[*Mr. Chitnavis.*]

or otherwise, as he might think fit. The Bill now proposes to lay a rude hand on this arrangement, and it rests with Your Excellency's Government to consider whether, in spite of all the teachings of political economy, it would be a wise policy to take away a right already recognised and sanctioned by a codified Act of Legislature. Had this right of alienation never been conferred, it is possible that malguzars would never have felt the want of it. But once you have recognised the rights, once you have codified the law and allowed the legitimate expectations of all parties to be based on that law, a wise Legislature, I think, will hesitate to take the right away unless a very strong case is made out for such a drastic change.

"The question is, has a strong case been made out for taking this important privilege away? It is possible, my Lord, that a few foolish and improvident proprietors have been found who have not scrupled to sell their birth-right for a mess of pottage—who have parted with their village without leaving any means of subsistence for their family; but would Your Excellency's Government consider it right to take away a privilege from a whole body of men because a few have been found thoughtless? Would it be consonant with the principles of justice to deprive malguzars as a class of a much-prized right because half a dozen of them have been found guilty of abusing it? Moreover, I am by no means inclined to believe that the present body of malguzars, who have come into existence after a process of elimination has taken place, and who, it may be hoped, have profited by the lesson which the fate of their improvident brethren has taught them, stand in need of protection to such an extent as to justify this interference with a vested right? It must not be altogether overlooked that education has made some progress in the Central Provinces, and that, in the course of a few years, we shall have a body of malguzars who will at least have the benefit of 'the 3 r's.' The conduct of the old proprietors can hardly furnish a safe guide to an inference as to the conduct of a generation that has but recently succeeded them, or is about to succeed them, in the course of a few years. The Government ought at any rate to wait and see how these men behave before it proceeds to punish the innocent with the guilty.

"There is another point in this connection to which I would beg leave to draw Your Excellency's attention. It is that rendering the cultivating right in *śir* inalienable will tend to create two distinct communities in the village economy, namely, one that may be called rent-collecting, and the other cultivating, the former having no interest in the land—a state of things very severely condemned by all experienced Revenue-officers.

[*Mr. Chitnavis.*]

[21ST MARCH,

“ There is another aspect of the question which deserves Your Excellency’s careful consideration. If a man, as Justice Stevens, the late Judicial Commissioner of the Central Provinces, happily puts it, has bought an estate with the object of afterwards selling it at a profit, or if he wishes to part with one estate in order to secure another more profitable or situated more favourably for him, how does the proposed law help him? Will it not force him against his will, and to his inconvenience, to retain the cultivating rights in the *sir* land of the estate he is anxious to sell, and make it impossible for him to acquire the same rights in the *sir* land he is anxious to buy ?

“ The main objection to this proposal is that *malguzars* themselves, for whose benefit the provision has been introduced, are strongly opposed to such a policy. The Government, it has been shown, did not reserve a right to restrain alienation, when the fee-simple was given to the *malguzars*. Accordingly, villages have been purchased, and capital has been spent on them, under the belief that the *malguzars* are to have an unfettered right of transfer. My Lord, the essence of property is its transferability. Is there any one who doubts that the market-value of property will be sensibly diminished when the sale of a village in its entirety, or at any rate of the most valuable portion of it, is dependent on the will of another? The Bill substantially says that, if it be transferred at all, it must be to one who belongs to the agricultural classes. But the agricultural classes have not been defined. Revenue-officers must, in future, supply this information. An inquisitorial proceeding asking for proofs of such delicate matters as means of subsistence, occupation, etc., will have to be submitted to. An intending purchaser of a village under such conditions would certainly offer much less than its present market-value, because of the risk and annoyance attendant on this new procedure, which, I may at once say, is altogether unprecedented and wholly unsuited to the sentiments, habits and customs of the people of the province. My Lord, I cannot help observing that the tendency of the Bill seems to be to make a man an agriculturist in spite of himself. Proprietors are not to be allowed wholly to sever their connection with the land. Freedom of contract is to be altogether taken away. The relation of landlord and tenant *inter se*, and of both with the money-lender, will hereafter depend, not upon contract nor yet upon definite rules of law, but on the will of Revenue-officers armed with unlimited discretion.

“ It is argued that the old body of proprietors are fast dying out, and are often left without means of subsistence. The Bill therefore proposes to make *sir* inalienable, except with the permission of the Chief Commissioner. The present law merely lays down what rights pass on a sale in the absence of an express agreement.

1898.]

[Mr. Chitnavis.]

In the case of a voluntary sale the proprietor becomes an occupancy-tenant unless he expressly agrees to transfer his right to cultivate the *sír*. In the case of an involuntary sale he is given occupancy-rights unless the sale takes place under a mortgage-decree, and in the mortgage the parties have expressly-hypothecated cultivating rights in *sír*. There is, however, an unfortunate oversight in the Act, which is more responsible for cases of hardship than the money-lender. The favourite form of mortgage in the Central Provinces is called the *lahan gahan*. It is a mortgage by conditional sale followed by foreclosure. Now the Act is silent as to the rights which accrue under a foreclosure decree. The result is that in every case of foreclosure the proprietor loses his *sír* and all, even though there was no bargain for it. The Act was amended in 1889 and in another section the word 'foreclosed' was added after the word 'sold'. I understand that a similar suggestion was made for the amendment of section 42; but I have not been able to discover why it was not adopted. Instead of the drastic measures suggested by the Bill, it would, in my opinion, be wiser if the Government were to extend the principle of section 42 to mortgages by conditional sale, and wait and see how the present body of proprietors use their privileges of contracting themselves out of the Act.

"My Lord, whilst on this subject, I would beg leave to point out that any argument based on an appeal to the experiences of the North-Western Provinces is likely to prove fallacious, because there are radical differences in the economic conditions of the two provinces. *Sír*, it is said, forms a very insignificant portion of the village-area in the North-Western Provinces, whereas it forms a very valuable portion of the villages in my province, having regard to its area and to the peculiar advantages it gives to its possessor.

"In the Central Provinces there are no tenants-at-will paying competition rents under a heavy pressure of population on the land. Even the ordinary tenants there are privileged tenants whose rent is subject to certain checks, and under the Bill they will hereafter cease to pay competition rents. A fair and reasonable rent will be determined for the tenant by the Revenue or Settlement Officer. *Sír*, which may be as extensive as one-quarter of the occupied area, is the only land over which tenant-right is not allowed to grow up, and in respect of which the law gives the *malguzar* full liberty to take what rent he can get, if he chooses to lease it. It is the *sír* which goes to make up for short collection in years of poor harvest, and its loss is a serious loss where the State demands go up to 70 or 75 per cent. including cesses, or even to 80 or 85 when the very small drawback

given for the realization of *malik-makbuza* revenue is taken into consideration. My Lord, the policy of encouraging the sale of our villages without the *sir* is highly dangerous, for the transferee practically becomes the holder of a more or less fixed rent charged very far short of the fee-simple. His ability to pay Government revenue in bad years may be very reasonably doubted. His one object, after buying the villages, will be to create *sir*, and this, I am afraid, will not be done by reclaiming waste-land; for the margin of profitable cultivation seems to have been reached in most districts. It will be done by selling up occupancy and ejecting ordinary tenants as far as the law will allow. What I wish to point out is this, that under the proposed law this motive will be far stronger than it is now.

“If the law of the North-Western Provinces be adopted in the Central Provinces, I have no doubt it will be evaded in many instances by the device of a surrender. In other words, the formality of two documents, with a decent interval between, will do what is now done by one document and with less chance of fraud.

“My Lord, I must take this opportunity of paying a well-deserved compliment to the Government of India and the Local Government for the good work they have done through the Court of Wards. Many an estate which would have been hopelessly in debt has been saved by the timely intercession of this Court. My humble suggestion is that Your Excellency’s Government may be pleased to extend the operation of this Court in cases where the agriculturists are involved in debt. The Government, my Lord, would be conferring an inestimable benefit on the people if, instead of taking away a conferred right from the proprietors, it were to pass an Act framed on the principle of the Incumbered Estates Acts in other provinces.

“I do not see any necessity for section 92, which allows a Revenue-officer to reinstate a tenant illegally ejected. I believe there is ample remedy already provided for the tenant by the law in the Specific Relief Act. Nor do I quite understand why a Revenue-officer under section 34 is allowed to try a question of title, order of succession, etc., involving difficult questions of law, local customs, etc., apparently without his decision being liable to be questioned in a Civil Court.

“The present Bill seeks to afford protection to sub-tenants holding land from tenants *malik-mukbuzas*. I need scarcely point out that this policy which reverses the policy of 1888 has been very severely condemned by the Revenue-officers. I may briefly observe that such a change would tend to make the task of the

1898.]

[Mr. Chitnavis.]

Revenue-officer at once arduous and complicated, and would initiate a policy of excessive interference.

“ My Lord, I now come to the most objectionable portion of the Bill, namely, the part which says that the Bill is to have retrospective effect. Words fail to express the feeling of alarm created throughout the length and breadth of the province by the absence of a saving clause in the Bill in favour of existing contracts. The *sir* land has been made inalienable, and the Bill says that whoever after the commencement of this Act loses his village shall become an occupancy-tenant of his *sir* land, and this though he may have specifically mortgaged his cultivating rights in the *sir* at a time when the law allowed it. In other words, a person who, under the existing law, has advanced money on the security of the *sir* as well as the village will, after the Bill is passed into law, be able to get a decree of the village only without the *sir*—that is, for considerably less than he bargained for. Again, an occupancy or ordinary holding can at present be mortgaged with the consent of the landlord, but after the passing of the Bill no decree whatsoever or sale can be given by our Courts, and this though the mortgage was a valid one at the time it was made.

“ Need I point out the grave impolicy of such a measure? Need I say, my Lord, that this will be a severe blow to those who have advanced money to malguzars or tenants on the footing of the present law—money which perhaps has gone for the payment of Government revenue or has been most religiously employed for the maintenance of the family in these times of universal scarcity and want. Such money-lender will, after the passing of the Bill, be able to get a decree only against the village, or field, as the case may be; in the one case without the *sir* which formed their main security, and in the other without any cultivating rights in the field. Some will say, oh! it is the rich man or the comparatively rich man who is in question, and it is he only who will suffer from the effect of such laws. But is the sanctity of freedom of contract to be violated because it is the rich man who will suffer? Has he no right to claim protection of the law? But is it the rich man alone who will suffer?

“ I would ask the Council to conceive for a moment the position of a minor whose parents in 1895 advanced the great bulk of the money he is heir to on the valuable security of both the *sir* and the village, and let it be supposed that the mortgage was for four years. On the expiry of this term in 1899, the poor minor finds himself bereft of his security, practically shorn of his inheritance, the accumulated wealth of his ancestors, for, in the meanwhile, the present Bill, having

been passed into law, has at one stroke swept away all previous contracts and has deprived him of the security on which his whole fortune was staked? What would be left for him in that case but penury and misery?"

The Hon'ble MR. CHITNAVIS having asked if Government really intended giving retrospective effect to the Bill, SIR JOHN WOODBURN declared that the Government had no intention of giving retrospective effect to the provisions in the present Bill.

The Hon'ble MR. CHITNAVIS thanked His Excellency and the Hon'ble Sir John Woodburn on behalf of the people for coming to this decision and assured them that this declaration would to a great extent allay the anxiety of the public mind arising out of the present Bill, and proceeded with his speech :—

" My Lord, I am afraid I have trespassed somewhat longer upon the patience of this Council than I should have done. The subject under consideration is abstruse and unfamiliar, and there is very little aid afforded as to the true understanding of the question by discussion in the Press. I have tried to show, in as plain a language as I can command, that the Bill before Your Excellency's Council proposes some very important and radical changes in the law of landlord and tenant in the province I have the honour to represent. I have endeavoured to lay before Your Excellency the views and sentiments of the landlords of the Central Provinces in respect of the most serious of the grievances they will have to complain of should the Bill be passed into law in its present form. Some of the sections appear so obnoxious and so far-reaching in their consequences that it appeared to me that I should be failing in my duty to my country and to Your Excellency's Council if I did not respectfully enter my protest against them. My Lord, I am aware that the Bill has not been conceived in a spirit of hostility to the landlord, but I feel bound to say that, under the influence of a laudable desire to strengthen the hands of the tenant, the rights of the landlords have been somewhat cruelly ignored. But let not the Council misunderstand me. I do not grudge the tenant his good fortune. I have no quarrel with him. I would go the length of suggesting that his rent should be fixed for ever, or, that if that is not possible, it should be fixed for the duration of the settlement at least. But in other respects let the law of the land remain as it stands.

" My Lord, whilst submitting the views of the people of my province on the important question that is now engaging the attention of Your Excellency's Council, I should not disguise the fact that a feeling has gained ground that too irreconcilable and antagonistic principles have been brought into conflict by the

1898.]

[*Mr. Chitnavis.*]

introduction of the measure, namely, the principle of the private property in the land and its free exchange on the one hand, and that of State property and monopoly in the land on the other. And that, though inspired in the best of intentions, the Government favours and its policy is drifting towards the latter principle, that it intends to stifle to death, slowly but unmistakably, a child of its own creation. I mean the malguzari land-tenure of my province.

“ My Lord, I have endeavoured to the best of my ability to take a fair and dispassionate view of the Bill both from the landlord's and the tenant's standpoint, but, if in spite of my honest endeavours I have not been able to rise above class-bias, my apology is that common fairness demands some recognition of the claims of other classes of the community than tenants.

“ It is impossible to dispute the grave importance of the measure before Your Excellency's Council. It is the more important that legislation on similar lines will probably be introduced in other parts of India. In the debate on the Agriculturists Relief Act on the 24th January, 1895, the Hon'ble Sir Antony MacDonnell said :—

‘ I had not intended intervening in the debate, but I wish to say with reference to the remarks which have fallen from the Hon'ble Mr. Mehta, in which he expressed his regret that Government has not in connection with the Bill grappled with the great question of agriculturist indebtedness throughout India, that the question has been before the Government. The Government is at present engaged in discussing that question in those parts of India in which it presents its most complex and difficult features, and I trust that before this Council ceases its sittings in Calcutta I shall be able to introduce a Bill in connection with one important aspect of the question in the Central Provinces. The other parts of India will follow in due course. ’

“ My Lord, this is the Bill referred to by Sir Antony. This is the experimental measure which is to be tried in other parts of India, and its adoption or rejection in those parts will depend on its success or failure in my province. This measure, in fact, is intended as the basis of a system pregnant with the most important results for all India in the future, and, as such, I have no doubt it will receive from Your Excellency's Council that careful consideration, that anxious deliberation, which it deserves.”

The Hon'ble SIR JOHN WOODBURN said :—“ I have listened with the very greatest interest to the remarks my Hon'ble friend has made on the question of land-transfers in the Central Provinces. This is a question of such undoubted gravity that it is right and fitting that the Government should have before it,

440 *CENTRAL PROVINCES TENANCY; AMENDMENT OF CENTRAL PROVINCES LAND-REVENUE ACT, 1881; STAMPS.*

[*Mr. Chitnavis; Sir John Woodburn; [21ST MARCH, 1898. Sir James Westland.]*

and as well as the Government the Council, all that can be said against the proposals that have been made by the Government. I cannot say that I have been converted by the arguments used by my Hon'ble friend, but he may rest quite assured that all that he has to say on behalf of himself and the great class he represents in the Central Provinces will be studied and considered by the Select Committee of the Council with the greatest respect. He has said that the Bill which is about to be committed to the Select Committee puts the law in regard to tenants in the Central Provinces on a radically different basis. I think when he comes to consider the Bill again in the Select Committee he will admit that this is an exaggerated expression. Besides this matter of land-transfers there are only two issues which are vital in the Bill. One of these is the right of the tenant to get a fair rent fixed when the landlord puts on an enhancement which the tenant considers unfair, and the other is that the Settlement-officers should have the right of lowering rents which are too high. Upon these two points my Hon'ble friend has offered no remarks, and I am glad to gather from his silence that he is at one with the Government. With these remarks I beg to repeat my motion that the Bill be referred to the Select Committee."

The motion was put and agreed to.

CENTRAL PROVINCES LAND-REVENUE ACT (1881) AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN moved that the Bill to further amend the Central Provinces Land-revenue Act, 1881, be referred to a Select Committee consisting of the Hon'ble Mr. Chalmers, the Hon'ble Sir Arthur Trevor, the Hon'ble Pandit Suraj Kaul, the Hon'ble Mr. Chitnavis and the mover.

The motion was put and agreed to.

INDIAN STAMP BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamps. He said :—" When I had the honour of introducing this Bill, I pointed out that it was a matter which affected very closely the transactions of the daily life of both people of business and people engaged in agricultural operations. I explained a number of the detailed provisions of the Bill as it was then introduced, and I was not surprised that we received a vast body of suggestions with reference to the

21ST MARCH, 1898.]

[*Sir James Westland.*]

amendments of the law which had been made in the Bill, and suggestions for new amendments to be made in the Bill as it was introduced into the Council.

“ I ask the forgiveness of the Council if I take a little time in describing some of the points which have been considered by the Select Committee, and in which they have altered the Bill as it was first introduced. I referred specially, when I introduced the Bill, to some changes which we proposed in the duties levied on certain classes of transactions. I pointed out that it seemed to me that in many cases the stamp-duties imposed by law had been evaded, by advantage being taken in carrying out transactions of forms which were not contemplated by the law itself. We made certain alterations in the existing law. In framing the Bill as it was first introduced, it was intended to meet these cases and to render impossible the evasions which had been commonly practised. When we came to consider the objections offered to our proposals it was shown that besides the respects in which the duties intended by the original law had been evaded, there were certain very legitimate and current business transactions with which our new provisions would interfere. It was from the first our intention to have every respect for current commercial practices, and as soon as it was shown that these provisions, which were intended to prevent evasions of duty, would also interfere with current commercial practices, we gave renewed consideration to the subject in the Select Committee, with the result that the original law has, in some of these cases, been re-introduced, the safeguards now proposed being different from those which were proposed at the time of the introduction of the Bill.

“ The first of these cases is that of acknowledgment. Acknowledgments of debt have, under the existing law, to bear a very small stamp, namely, one anna. Now these acknowledgments customarily go very far beyond the intention of the one anna duty. As long as a person uses an acknowledgment for the pure purpose of acknowledging a sum due by him, we did not wish to alter the incidence of taxation upon the transaction. But when the acknowledgment goes to the extent of being really a bond, then we thought that it was desirable that the duty due upon a bond should be paid. We accordingly distinguished between acknowledgments which were ordinary acknowledgments, and acknowledgments which were attested. This distinction has been shown to us to be a very unfair one, and therefore we have now, in the form in which the Select Committee have reported the Bill, restored the original provisions of the law that a one anna duty is sufficient for an acknowledgment, but we have inserted a proviso that the acknowledgment must be an acknowledgment, pure and simple, and that the one anna stamp will not cover an acknowledgment, if the document

also contains a promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property. A document which contains these stipulations is more than an acknowledgment, and ought to pay the duty due upon another kind of document.

“So in the case of promissory notes. We there provided that a simple promise to pay should bear a duty like a bill of exchange not payable on demand. There also we found that the effect of the new provisions would be far beyond what the Government intended. We have therefore restored the original duty upon promissory notes, and we have simply provided that the duty upon a promissory note as it stands in the existing law and as it remains unaltered will be leviable only on a promissory note as defined in the Negotiable Instruments Act.

“Another peculiar class of instrument which is current in the presidency-towns, and which is specially provided for in the Transfer of Property Act, is what in our present Bill is called an equitable mortgage. We raised the duty upon an equitable mortgage to make it something more approaching the duty levied upon similar instruments in England. But we find that in this class of transfer also it is necessary for us to continue a special privilege which is provided for in the Transfer of Property Act, section 59, in which these peculiar mortgages made in the towns of Calcutta, Madras, Bombay, Karachi and Rangoon by delivery to a creditor or his agent of a document of title to immovable property with intent to create security thereon, are exempted from the common incidents of mortgage, or agreement to mortgage. The existing law, therefore, we propose in respect to these documents will remain unaltered.

“One valuable suggestion has been made to us from Bombay. It is with reference to a new class of insurances which has been recently introduced into this country, but which is now common enough in England, namely, insurance against accident or sickness. This class of insurance has not been specially provided for in the existing law, and the consequence is that it comes under the definition of life insurance, and pays a duty of six annas per Rs. 1,000. It seems to us legitimate to provide that the minor class of insurance policies issued as insurance against accident or sickness shall be relieved of the heavier duty due upon life insurance. We have, therefore, inserted a new provision providing for this class of insurance and levying upon it only one-third part—*viz.*, two annas per Rs. 1,000—of the duty due upon life insurance.

“In another point we have corrected the duties upon insurance: it is provided in the existing law that when a Company having issued a policy of insurance

1898.]

[*Sir James Westland.*]

re-insures with another Company, the duty payable in respect of that re-insurance shall be one rupee. But an examination of the case shows that in some cases the original insurance bears a duty of very much less than one rupee. We have therefore made this alteration, that instead of demanding a fixed duty of one rupee upon every case of re-insurance, we require the duty payable upon the original insurance, but not more than one rupee, so that, in any case in which the duty upon an original insurance is less than one rupee, the duty upon the re-insurance will also be less than one rupee.

“ A difficult question arises in connection with insurance policies. It arises from the fact that the system of the transaction of business in Bombay is different from the system of the transaction of business in Calcutta. The duty upon insurance is by law levied upon the issue of the original policy. We levy no duty upon renewals. The consequence is, when an insurance policy is renewed, that is to say, if the original insurance policy is extended, then it bears no new duty, but if a person cancels his policy, and takes another policy on the same terms from another Company, he has to pay the additional duty. Now in Calcutta the system of insurance is this. The insurers transact their business directly with the offices. The consequence is that the policy is renewed year by year with the same Company, and bears no new duty. But in Bombay the whole of this business is done through insurance brokers. The insurance broker takes out his policy one year from one company, and the next he finds it more advantageous for himself either in respect of commission or by reason of better terms, or for some other reason, to take out the same insurance not with the same company but with another company. It is therefore a new policy, and is not a renewal of an old policy. The consequence is that these transactions have to pay a duty in Bombay which they do not pay in Calcutta. The Bombay Insurance Offices have made a proposal to us that we should reduce the insurance upon the original policy and demand payment of new duty upon renewal. This suits their system of business because they practically pay an annual duty upon their insurance. It does not suit the people in Calcutta because it imposes a duty upon them which they do not at present pay, *viz.*, a duty upon renewals. We have found it impossible to make any alteration in the existing law. We can only say that where one large commercial body has adapted its business to the existing law, we do not wish to interfere with their getting the benefit of it. If another large commercial body pursues a commercial custom which renders them liable to a higher duty than they would otherwise have to pay, we can only say that it is open to them to adopt the practice current in the rest of India, but it is impossible for us by making a change in the law in their favour to subject

the Calcutta practice of Insurance Offices to what would no doubt be a very grave inconvenience, *viz.*, that of being under the obligation of having every renewal of a policy subjected to a new tax.

"I mentioned just now a case of duty on re-insurance being reduced from one rupee to 'one rupee or such smaller sum as may be due in respect of the original insurance.' We have adopted the same principle in respect of two or three other articles of the schedule, such, for example, as the revocation of a settlement, the revocation of trusts and transactions with regard to trust-property. In these cases the duty levied is a fixed one, and being a fixed one it is sometimes a larger duty than that which is levied upon the instrument of which revocation is made, or upon a conveyance of trust-property which is not a conveyance between trustees. In these three cases and in one or two others, we have adopted the same principle of making the present fixed fee the maximum duty, but giving to the smaller transactions the benefit of a smaller duty when the amount involved is that which is appropriate to a smaller duty.

"In the case of partitions we have had to make a somewhat peculiar provision. In the Bill as it was first introduced, the duty payable in respect of partition was a duty levied in respect of the value of the whole property partitioned, but at the same time authority was given to the Revenue-officer or the Court under whose directions the partition was carried out, to relieve from its share of the duty that portion of the property which remained outside the partition, or continued to be held undivided. Well, in this instance the duty is beyond doubt a rather heavy one in the case of the separation of only a small share of a very large estate, and we have assumed, therefore, that the duty should be remitted on the principle under which under section 29 of the Bill we have given authority to the Revenue-officer or the Civil Court to remit it; and we have, therefore, levied the duty not upon the whole of the property, but only upon that part of it which is separated off. The result of the existing law would be that if several partners, holding a 12-anna share agreed to let a 4-anna partner separate off his share, they would have to pay upon the value of the whole 16 annas. If afterwards the 12-anna share again had to be partitioned, that 12-anna share would again have to pay upon the whole of the value of it. By arranging that the duty shall be only levied upon that part of the estate which is partitioned off from the rest, we prevent that which seems to be an injustice, namely, the demand of duty in respect of both of the partitioned and of the unpartitioned portion of the estate. Although we levy duty only in respect of the

1898.]

[*Sir James Westland.*]

value of the separated-off portion of the estate, it must be remembered that the duty as a whole is a burden upon the whole estate, so that the partners who remain undivided have got to bear their share, although the share they bear is a much smaller one than they have to bear under the existing law.

“Some remonstrances have been made regarding our provision of duty upon perpetual leases being based upon the duty due upon the conveyance. The Select Committee have not seen sufficient reason to depart from the proposals originally made in this respect. A perpetual lease is practically a permanent transfer of the property affected, and if a person takes a perpetual lease and agrees to pay, say, Rs. 1,000 a year in respect of his perpetual lease, he is having property conveyed to him subject to the payment of Rs. 1,000 a year. We must take for granted that he is prepared to pay Rs. 1,000 a year as the value of the property. He is afflicted with no greater hardship in respect to the payment for duty than if he had paid a lump sum of, say, Rs. 10,000—ten years’ purchase. The duty proposed has been levied upon this principle. A consideration, if it is a consideration of Rs. 1,000 a year, is equal to a consideration of, say, ten years’ purchase, or Rs. 10,000, and we levied the duty just as if the transaction was that of a conveyance of property for Rs. 10,000. A great part of the objections which have been raised to this demand have been raised on what seems to me a false principle. When property is conveyed from A to B, we levy duty at a certain percentage upon the total amount of the consideration paid. We do not regard in the least degree the question of how much profit B or A is to make out of the transaction. It is possible that the property may not be worth Rs. 10,000 although B consents to purchase it for Rs. 10,000. It may be possible that after he has purchased the property he will find that he is worse off than he was before; his money perhaps was more profitably invested before he spent it in this way. Such questions lie outside the question of the duty to be paid upon an instrument of conveyance, and in a similar manner, the question of the profit B expects to make out of his perpetual lease seems to me to lie outside the question of the consideration that is to be paid in respect of a perpetual lease.

“There have been one or two points on which the remarks which we have received indicate some misapprehension of the intention of the Bill. For example, the Bill introduced contained a provision which levied upon a power-of-attorney in certain cases the same duty that would be levied upon a conveyance. The reason of this was that it was found as a fact that what amounted to a conveyance was sometimes effected by means of a power-of-attorney. A in selling B property, instead of conveying it to him by a regular deed of conveyance, simply transferred

it to him without any conveyance at all, but gave him a power-of-attorney authorising him to sell the property. This, so far as B is concerned, enabled him to dispose of the property to the same extent as if he were the owner of it. We therefore provided that if a power-of-attorney was given for a consideration, and gave authority for the sale of the property affected, the duty should be levied in the same way as upon a conveyance. In the objections that have been made to this provision apparently some persons have thought that we levy this duty upon a power-of-attorney given for effecting a sale, and they fail to observe that it was levied purely upon a power-of-attorney given for a consideration.

“So an objection has been made in respect of our levying a duty upon a deed of adoption. It has been pointed out that adoption is a religious ceremony, and under these circumstances it ought to be free from any duty. We perfectly admit it, but what I desire to point out is that we do not in any way levy a duty upon adoption. So far as adoption is a religious ceremony it goes free, naturally and inevitably, but if a deed of adoption is drawn up which is a conveyance of property, and is to be used as a document of title to property, it is then, and then only, that the duty is levied, not upon the adoption but upon the deed which records it, and which is meant to be effective as an instrument creating a right to property.

“We have had from one or two different quarters some objections raised what is really a commercial practice independent of the Stamp Act, that is to say, the system of transferring debentures and shares by blank transfer deeds. When a person transfers debentures or shares by a deed, a duty amounting to a certain percentage of the consideration is levied upon this deed. The practice, however, is that the deed is filled up blank and passes with the shares or with the certificate of the shares from hand to hand until occasion arises to make use of it, and then the person in whose hands at the time the certificate happens to be, fills up the transfer deed in his own favour, and the transfer deed then becomes effectual. It may thus cover a very large number of transfers. Some objections are made to this kind of transfer, but they are objections which lie outside the purview of the Stamp Act. In the first place Companies make objection to the practice on the ground that if the certificate of the shares is in this manner passing from hand to hand, they do not know who their shareholders are, and they therefore desire that this practice of transfer by blank transfer deed should cease, and that we should impose a limit of time upon such deeds and compel a transfer deed to be executed within a certain time and the transfer to be thus completed. Some persons have raised questions of revenue with regard to this, and pointed out that

1898.]

[*Sir James Westland.*]

it would be desirable even in the interests of the revenue to reduce the duty upon a transfer deed but to limit its operation in point of time, so that it might cover not a dozen or even 50 or 100 transfers, but only cover one. The practice, however, of transfer by blank transfer deed is a common one both in England and in this country, and it does not seem to us possible as a matter of regulation of stamp-duty to interfere with it. We have therefore not made any alteration in the levy of duty upon this class of document, but I intend to make a reference to the Chamber of Commerce and to other commercial bodies in order to find out whether they desire that any legislative provisions should be made either in the Stamp Act or in any other way which would have the effect of altering the practice in respect of transfer deeds. In the meantime, as I say, we shall not interfere with it.

“Another important point which the Select Committee considered was the question of duty to be levied in the case of a sale of property subject to an encumbrance. There have been inconsistent decisions of the High Courts in this respect. In some cases they have said that the encumbrance forms a deduction from the value of the property. In other cases they pointed out, what I think was the original intention of the Act, that if a person bought a property subject to an encumbrance, the consideration he paid for it was not merely the amount he paid down now, but included the amount which he undertook to pay down afterwards for the release of the encumbrance. We have made this point clearer. We have made it clear that the consideration in respect of which duty is levied when a property of this sort is transferred includes not only the amount which is immediately paid, but the amount which is afterwards to be paid before the property completely passes into the hands of the transferee. There is only one case in which this arrangement may seem unfair, and that case we provide for by a proviso, namely, the case where the mortgagee himself buys the property from the mortgagor. In this case the first transaction of mortgage is really part of the final transaction of transfer, and therefore we have provided that in this particular case the duty which would be levied when the property is completely conveyed from the mortgagor to the mortgagee shall be reduced by the amount which has been paid in respect of the first transaction, the first transaction being taken as really a part payment.

“In many cases the operation of the Bill as it was first introduced and as it is now reported by the Select Committee, is a relaxation to some extent of the provisions of the existing law. We have had suggestions for carrying these relaxations still further. For the most part we have not seen our way to carry them further and maintain the law as it at present stands with the relaxation at first introduced

I mention this because some of those who have been good enough to favour us with suggestions may think that their demand for a further relaxation logically follows from the concessions which have already been made in the Bill. I can only express my regret that sometimes it is not possible to carry out in matters of legislation logical consequences of previous concessions. We must stop concessions at some point. Take, for example, the case provided for in section 26, where we give a certain concession in respect of mining leases, and limit that concession by the sum of R20,000. Of course it is impossible to say why R20,000 instead of R15,000 or R19,000 should have been selected. We can only say we have given a concession at the limit of R20,000, and we do not see our way to carrying it further.

“There is one important change we have made which is greatly, I think, to the benefit of the public, and that is that in various cases in which under the law the Collector gives a certificate that the duty is sufficient, that certificate shall not afterwards be questioned in any Court. It seems to us that if a document passes muster formally with the revenue-authorities, it should be considered to be properly stamped even though some subsequent revenue-authority or a Court subsequently dealing with the same matter may think that the first decision is erroneous. It is only fair that when a person has taken all the trouble to have the duty upon the instrument certified by an authority representing the Revenue, he should be secured from any further contention that the document has not been properly stamped.

“Section 37 was a new section which we introduced, of which the object was to give the Governor General in Council power to lay down provisions for properly stamping a document which had been properly stamped so far as regards the amount, but not properly stamped so far as regards the class of stamp used. The section has been remarked on by several officers who have pointed out to us that it is extremely vague in its purport. It was vague in its purport, but it was vague out of deliberate intention. It was merely an enabling section which laid down no substantive law whatever, but only authorised the Governor General in Council to provide for certain cases by a new rule. We have made this clearer in the form of wording that we have now given to the section, and if it is borne in mind that it merely enables the Governor General in Council to make a rule, and lays down no rule or system by itself, it will be seen that it is not liable to the objections which have been made to it.

1898.]

[*Sir James Westland.*]

“In another small matter, perhaps, but one that appears not unfrequently to arise, we have made provision which will give some facilities to people who have the misfortune to draw up documents on insufficiently stamped paper. It is not clear in the law as it at present stands whether it is open to a person who under these circumstances has an entirely new document drawn up upon new paper sufficient in value, to get a refund of the old paper. The practice in two or three provinces is in this respect different, but we have made it clear that a person who throws aside an insufficiently stamped deed, and gets a new deed in the same terms drawn up and properly stamped, is entitled to get a refund made to him of the duty which he first of all paid upon the insufficiently stamped, and now superseded, deed.

“Some of the revenue-officers have in their remarks to us made objections to a class of transactions which not unfrequently take place, and which they apparently think is a fraud on the revenue. It is, namely, that of a conveyance of a large property which consists both of movable and immovable property; a conveyance for example of a tea estate with all the machinery, houses, furniture and various other properties connected with it. The usual form of a conveyance of that kind is to recite that the movable property has been transferred, and the immovable property alone is made the subject of the deed. This is considered by some to be a fraud upon the revenue, because they tell us the document is effective for the transfer of both the movable and the immovable part of the property. We do not take that view. It seems to us that movable property can be transferred by delivery, and it is not necessary that it should be transferred by a deed which has to be preserved in the same way as a document of transfer of immovable property. We have, therefore, not seen our way to make any provision in this respect, and we consider that a document of that sort pays its proper duty if it is regarded purely as a document creating a right in the immovable part of the property, and that it is not necessary to further tax it in respect of its reciting that the movable part of the property, furniture and so forth which happens to go with the estate has already been delivered.

“Some objections also have been made to one of our sections in which it is provided that all the transactions of the revenue-authority are subject to the revision of the chief controlling revenue-authority. It has been pointed out that under these circumstances the Civil Court when it sends a stamped document to a revenue-authority to be properly stamped would have its whole procedure stopped because the person from whom the duty has been levied would intimate to

the Court that he is taking an appeal to the chief controlling revenue-authority. We can only say with reference to this that the conduct of a civil suit is a matter for the Judge of the Civil Court. We cannot reject provisions in the Stamp law which are suitable in themselves, on the ground that they may be made by a weak judge an excuse for postponing his cases.

“I do not think I have any further remarks to make except this; we had hoped to be able to pass this Stamp law during the current session, but there have been considerable modifications in points of detail in the Bill as reported by the Select Committee. The Select Committee considered that in a matter so far-reaching, one in which people are so very largely concerned, it is not desirable that the law should be passed without giving some opportunity for further consideration of the amendments. They have therefore in their Report stated that the measure has been so altered as to require republication, and they recommend that it should be republished in the Gazette of India. The date from which the Act will come into force as shown in the Bill reported by the Select Committee is the 1st of July next. I am afraid it will not be possible to bring it into force by that date, because, even if the measure be passed at Simla, we shall have to put off the date of its coming into force for a sufficient time to enable the Local Governments to publish it and translate it into the various vernacular languages; but I think the Bill as it has been reported by the Select Committee has so largely met the objections raised to its first form that it may be considered to a very large extent a non-contentious measure, and it may possibly be open to the Council even during the Simla session to consider it and to pass it. That, however, is a matter we shall hereafter consider when we see what remarks are made with reference to it as now reported; but inasmuch as we have met substantially all the objections which were raised to it as first introduced, I think it may be possible, even though it is a commercial measure, to proceed with its consideration during the Simla session.”

PETROLEUM ACT (1886) AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN presented the Report of the Select Committee on the Bill to further amend the Petroleum Act, 1886. He said:—
“I have no remarks to make in connection with this Bill. The only amendment we have made is with the object of reassuring the commercial community that there shall be no alteration of the tests for petroleum without previous notice to and consultation with them.”

1898.] [*Sir James Westland; Pandit Suraj Kaul; Rai Bahadur P. Ananda Charlu.*]

POST OFFICE BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Post Office in India be taken into consideration. He said :—“ I have no further remarks to make on the subject of this Bill.”

The Hon'ble PANDIT SURAJ KAUL said :—“ My Lord, in supporting the Post Office Bill, now before the Council, carefully drafted by the learned Member in full detail, I wish to say that it will prove beneficial to the public and the postal administration as well.

“ I have read in certain Vernacular papers that there is a danger to the public in regard to section 6 of the amended Bill, in that the Government having exempted itself from liability for loss, misdelivery, delay or damage to the articles delivered to the Post Office for despatch, will encourage the postal employéés and will be productive of more injury to the public. But to this misapprehension section 52 of the amended Bill is a perfect safeguard.”

The Hon'ble SIR JAMES WESTLAND said :—“ I would only point out with reference to the remarks of the Hon'ble Pandit Suraj Kaul that the law on the subject is not altered by the provisions of this Bill, and I think the public may take it for granted that the Post Office officials will exercise their usual care, for which they have been distinguished hitherto.”

The motion was put and agreed to.

The Hon'ble Rai Bahadur ANANDA CHARLU moved that in clause 26 (1) of the Bill as amended by the Select Committee, for the words “ to be disposed of in such manner as the Governor General in Council may direct ”, in the last two lines, the words “ to be returned to the sender or the addressee, with the words ‘ opened by authority ’ written on the cover ” be substituted. He said :—“ As Macaulay has said, the sole purpose—I may add, the sole justification—of the monopoly given to the Post Office of carrying letters is their safe transmission. Either this object must be carried out or the sender and the addressee must be told that the Post Office declines to be a party to the transmission of this objectionable thing or that. To smother or to spirit away what is entrusted to the Post Office, leaving the sender and the addressee in the lurch, can find no warrant in reason. The object of my amendment is to give the Post Office this full power to decline, and no more.”

The Hon'ble SIR JAMES WESTLAND said:—" I am afraid I must oppose on the part of the Government the proposal which has been made by the Hon'ble Member. I ought to say that the Hon'ble Member, with that commonsense which distinguishes him in considering and giving advice on any question of general principle, told us in the Select Committee that he thought the power given under section 26 to the Governor General in Council to be exercised in cases of public emergency or in the interests of public safety or tranquillity was a necessity to the Government, but I think that in making this amendment he has forgotten that the power which is to be exercised under section 26 is only to be exercised on the occurrence of any public emergency and in the interests of the public safety or tranquillity. It is something entirely apart from the ordinary functions of the Post Office. It is intended to give the Government power to override the ordinary operations of the department in order to prevent the Post Office being used as a method for pursuing designs which are not conformable with public safety or tranquillity. Now, for example, I may give one or two illustrations of the sort of thing which is intended. We have had recently some disturbances on our frontiers, as all Hon'ble Members know. Supposing that the gentleman who is commonly called the Mad Mullah had sent documents to some of his friends in India asking them to rally to his standard or give him assistance of some kind in pursuing his warfare against Her Majesty; are we to understand that he can use the services of our Post Office for purposes of that sort? We are obviously entitled to intercept any communications of that kind, and to say that we do not admit the obligation either to return the documents to the sender or to forward them to the addressees. So also if a packet of cartridges is being sent for use (say) against the public tranquillity, is the Government to be considered bound to deliver that packet of cartridges to the person to whom it has been sent, or if it does not do so to return it? Is it to be bound to return it to the sender and say ' Here, you have tried this on this time but we have prevented you. We have found you out and give you back the packet of cartridges; but of course you can go to-morrow, and post it over again and put everybody to the same trouble all over again?' When the document or article which is being passed through the Post Office can be used by the Government to pursue the offender, that document ought to be used for the purpose of pursuing him, and ought not to be sent back to the sender or to be sent forward to the addressee. It must be taken for granted that the Post Office is being used on these occasions for purposes for which it ought not to be used and for which it is the business of the Government to see that it shall not be used, and the case is probably one in which there is some offence which it is the business of Government

1898.] [*Sir James Westland; Pandit Bishambar Nath; P. Ananda Charlu.*]

as soon as possible, and as effectually as possible, to put a stop to. Under these circumstances I think the section should remain, and that the power should be given in the terms in which it is given, namely, that the document or article which is intercepted ought to be disposed of in such a manner as the Governor General in Council may direct."

The Hon'ble PANDIT BISHAMBAR NATH said :—"The first illustration given by the Hon'ble Sir James Westland supposes an extremely violent case which would be met by any other provision that may be found within the four corners of the Bill, to that effect. The other supposed case, I submit, does not fall under the scope of section 26 (1), but would come rather under the terms of section 20 of the Bill, which we are not discussing now. The amendment is merely a verbal one. It proposes a simpler and rather a lenient course. The words 'disposed of, in such manner as the Governor General in Council may direct' are very comprehensive, and evidently indicate that the procedure contemplated to be pursued generally in dealing with all cases falling within the mischief admits of no qualification. It is desirable, therefore, that the amendment should be adopted."

The Hon'ble RAI BAHADUR P. CHARLU said :—"My Lord, I should like to say one word on the amendment. I did not ask that the thing should be sent to the addressee as a matter of course. I say it should be returned to the sender or sent to the addressee. I have put it that way for this reason. It will be returned to the sender if it is thought inadvisable to send it to the addressee. If upon examination of it, and after a sufficient time has elapsed for the authorities to decide, it is found safe to send it back to the addressee, it may be sent to him, but the parties would receive sufficient notice that the thing contains something which the authorities have thought open to objection and I believe that that guarantee will be sufficient to stop the practice."

The motion was put and negatived.

The Hon'ble RAI BAHADUR P. CHARLU also moved that to the same sub-clause the following proviso be added, namely :—

"Provided that, prior to the issue of any order under this section, a statement shall be prepared under the hand of a Secretary to the Government of India or to a Local Government and placed on record, setting forth the grounds for believing that a public emergency has arisen or that the Act is required in the interest of public safety or tranquillity."

He said:—"The power taken under this section postulates bad men. I venture to think that it is not altogether beyond the range of possibility to conceive of instances of bad Governments exhibiting an abnormal propensity to misuse the power possessed. Possession of power, like the possession of an abundance of everything else, creates the temptation to use it, and such a temptation often leads one to fancy occasion for its exercise, where there is none or none adequate. I may say at once that this is not a mere ideal fear. Instances are not wanting of bubbles, ominous at first, showing a mere vacuum of reasons or a ridiculous paucity of reasons when they burst. This risk is one of the besetting moral dangers of enacting unnecessary laws or laws which admit of being evoked into action with impunity or on an impulse of panic or temper. On such a risk, and on persons liable to a proneness to go astray or to lead astray, the anticipation of publicity and of possible judicial scrutiny will operate as a sobering influence. A strong and just Government, above all others, must not shrink from daylight. The power in question is one which, it seems to me, must be as abhorrent to good Governments as to the public; and good Governments should themselves provide effectual checks and safeguards to render it impossible for bad Governments, that might come after them, to readily resort to arbitrary or high-handed proceedings. They might also need some such preventive to guard themselves against the passion of a moment running away with their judgments, leaving them to repent of their conduct when cooler times return.

"I know that responsible Governments would put forth a power such as this very very seldom indeed. But I know also that instances of the Government being challenged would be rarer still. There is this best guarantee, *viz.*, the guilty conscience of the wrong-doer as his accuser, and as making a coward of him. Such wrong-doers would find it to their own interest to hold their tongues and be only too glad to have their wickedness hushed up and not exposed to the open glare. There may, nevertheless, be an occasional instance to the contrary, but, as the saying goes, one swallow makes not summer. As I remarked in my minute of dissent, the Government would be absolutely impregnable with a *bona fide* case. The Government is fully armed to initiate proceedings. Before it takes action, there must surely be some degree of deliberation and some materials to work upon. Where is the difficulty in embodying those materials and the results of that deliberation in a statement and placing it on record? Such a course will be highly re-assuring and go a long way in enlisting the sympathy of the public and allaying irritating suspicions of all sorts. A mutual confidence, such as this, is an inestimable advantage to the people and

1898.]

[*P. Ananda Charlu ; Sir James Westland.*]

Government alike, and it should be secured, I venture to think, at all cost of personal feeling or personal importance."

The Hon'ble Sir JAMES WESTLAND said:—"I am again obliged to join issue with my Hon'ble friend and to oppose the amendment he has proposed. In the first place, he is under a complete misapprehension in thinking that the Government are proposing to take some entirely new authority they do not possess at present. The Government do possess this authority at present, and if the Hon'ble Member will refer to the last section of the Bill he will see that it is very carefully said :

'Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780, or any enactment amending or extending the same.'

"That is to say, 120 years ago a statute was passed which gave the authority which the Hon'ble Member is now quoting as an entirely new and exceptional one, and one which ought not to be exercised. The difficulty, my Lord, in dealing with the Hon'ble Member's amendments is that sometimes he lives in the pure serene atmosphere of Madras, where no ripples ever disturb the placid surface of political waters. He cannot therefore imagine that any such thing as a public emergency can exist in any other part of the Empire, and the consequence is that he considers, when the Governor General in Council acts on an occasion of public emergency, there is time for a Secretary to Government to sit down and formulate all sorts of reasons, setting forth why Government thinks that there is an occasion of public emergency, and why it is convinced that it ought to take steps in consequence of that state of public emergency. He tells us he does not trust the Governor General in Council in these matters, and that there ought to be an appeal from the Governor General in Council to a village-munsif and a couple of wrangling pleaders in a small Civil Court. It seems to me, my Lord, that the one thing that is wanted in a public emergency is rapid action and not prolonged consideration. We have had some instances of it only within the last week or two when a case of public emergency arose in Bombay. When riots broke out there the Government put aside the ordinary law and called for the military and sent them into Bombay to put down the rioting. The Hon'ble Mr. Charlu would have it that it was necessary in the first place for the Secretary to the Government of Bombay to sit down and indite a long minute telling people generally how he came to suppose that there was a disturbance going on in the city of Bombay, and how it came to be necessary that the military should be called for from a distance, and unless Government are prepared to take all those elaborate red-tape measures, they ought not to be allowed to take effective

[Sir James Westland; Pandit Bishambar Nath.] [21ST MARCH,

measures for ensuring the public safety. It seems to me that one of the primary functions of Government is to ensure public safety, and one of the first things to be done in case of a public emergency is to come down upon it with a strong hand—a hand which should not be restricted by the consideration that some red-tape forms have to be gone through beforehand, and that the Government will have to justify its action afterwards before some petty Court. Under these circumstances, my Lord, I think that the public will concede to the Governor General in Council quite as large a discretion as the Hon'ble Mr. Charlu is willing to concede to his munsif and pleaders, and the Council will, I trust, reject the Hon'ble Member's amendment."

The Hon'ble BISHAMBAR NATH said :—" In spite of the citation of a very ancient statute by the Hon'ble Sir James Westland as an authority for opposing the second amendment, I submit that the introduction of section 26 (1) in its present form into the Bill is open to objection. The provision embodied therein is apparently a new one. It is, I believe, analogous to section 5, Act XIII of 1885, *mutatis mutandis*. Any letter, post-card, newspaper, or a book, which the definition of the expression 'postal article' includes, may be intercepted, detained or delivered to the Government, and disposed of in accordance with that provision. The net result of the measures passed into law in the present session of the Council has, I notice, proved, on the whole, in favour of strengthening the hands of the Executive and Magistracy as regards the suppression or prevention of certain crimes and misdemeanours. Any further attempt at restraining unduly the freedom of action of the people allowed to them with respect to the transmission of communications or papers by post would be regarded as rather arbitrary, unless due publicity were enjoined to be given to the occurrence of any 'public emergency' as contemplated by the section in question. As the amendment moved by my Hon'ble friend Mr. Ananda Charlu practically amounts to a reasonable compromise in so far as it concedes the necessity for exercising the power given by section 26 (1), it is desirable, I submit, that the proviso, for the addition of which he contends, should be adopted. Sub-section (2) provides that 'if any doubt arises as to the existence of any emergency or as to whether any act done under sub-section (1) was in the interest of the public safety or tranquillity, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.' What is required, I think, is a previous warning, or a notification of the 'emergency' after due enquiry, and not a certificate for validating an act done, or removing any doubt that might arise subsequently as to its propriety."

1898.] [P. Ananda Charlu ; Sir James Westland ; Mr. Allan Arthur.]

The Hon'ble RAI BAHADUR P. CHARLU said :—" I don't want prior publication, but only a prior record of such information as the Government acts upon. The position I have taken is very clear from the opening lines in my minute of dissent, which I shall read to the Council—' As to the power taken under section 26 (1).' I recognise the necessity for it to meet an emergency in the first instance, but I do not see why after the action shall have been taken the grounds for it should not see the light or the action itself should not run the gauntlet of a judicial investigation if necessary. Thus it strikes me that the whole of the attempted refutation fails. "

The motion was put and negatived.

The following amendment, of which the Hon'ble RAI BAHADUR P. ANANDA CHARLU had also given notice, was subsequently withdrawn :—that in sub-clause (2) of the same clause, for the word "doubt," in line 1, the word "question" be substituted ; after the word "arises," in the same line, the words "in respect of action taken under this section" be inserted ; and for the words commencing with the words "or as to," in line 2, to the end of the clause, the words "the statement mentioned in the proviso to sub-section (1) shall be *prima facie* evidence on the point," be substituted.

The Hon'ble SIR JAMES WESTLAND moved that the Bill, as amended, be passed.

The motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS ACT (1882) AMENDMENT BILL.

The Hon'ble Mr. Chalmers moved that the Bill to further amend the Presidency Small Cause Courts Act, 1882, be taken into consideration.

The motion was put and agreed to.

His Excellency THE PRESIDENT said :—" I understand that the Hon'ble Mr. Arthur will move the amendment standing in the name of the Hon'ble Sir Griffith Evans."

The Hon'ble MR. ALLAN ARTHUR said :—" If the Hon'ble Legal Member's Bill means anything at all, it means that at some time or another the Government anticipate that in one or other of the Indian Small Cause Courts

[Mr. Allan Arthur.]

[21ST MARCH,

there may be no Subordinate Judge competent to take the Chief Judgeship. Otherwise it is not apparent why Government should wish to take powers to go outside the Small Cause Court for an acting Chief Judge. So far as Calcutta is concerned, the Chamber of Commerce, who have recently been giving particular attention to the working of the Small Cause Court, would much prefer to see the appointment of the Chief Judge confined to the Judges of the Court, and to ensure efficiency every Judge in the Court, who is also an advocate, should be competent to take the important position of Chief Judge. If an advocate, after some experience as a Judge in a Small Cause Court, is not competent to act as Chief Judge, he should never, in my opinion, have been a Judge at all. I am convinced that men who have had a Barrister's training should form at least a large proportion of the Judges of a Presidency Small Cause Court, and I think Government quite recognise this fact. It is also obvious that, unless the pay of a Judge bears some comparison to the income of successful men at the local Bar, Barrister Judges of a Small Cause Court must ordinarily be recruited from the Junior Bar, and a young man with energy and common sense is a suitable person to be appointed a Judge of a Small Cause Court. The remedy for the evil, which the proposed amendment attempts to hide, *viz.*, the incompetency of Barrister Small Cause Court Judges, seems to be perfectly clear. It is to raise the pay of the appointments to such a degree that the Local Government would be able to select their men instead of having to put up with any one they can get. In the Calcutta Small Cause Court all the Judges are advocates, and I am sure that Government has in every instance procured the best men available. This is rather a delicate matter to touch upon, because I do not wish to appear to suggest that the gentlemen who are now acting as Judges in the Court are not competent Judges; but I am convinced that, if the pay of the appointments were raised, the efficiency of the Court would be greatly increased. The Calcutta Court has yielded an annual net profit to Government of over $1\frac{1}{2}$ lakhs of rupees steadily for the past six years—last year the profit was ₹1,81,000—and I think the mercantile community have a right to ask that the efficiency of the Court be raised to as high a state as possible. The present pay of the appointments in the Calcutta Small Cause Court is as follows: Chief Judge, ₹2,000 rising to ₹2,500; Second Judge, ₹1,400; Third Judge ₹1,300; Fourth Judge, ₹1,125; and Fifth Judge, ₹1,000, while the Registrar, who is also an advocate, gets ₹750 rising to ₹900. First, I would remark that I can see no reason why the Third, Fourth and Fifth Judges, who do the same work, should not receive the same pay, and it is inconceivable to my mind that a junior at the Calcutta

1898.]

[*Mr. Allan Arthur ; Mr. Chalmers.*]

Bar would accept any of the ordinary Judgeships unless perhaps there was a reasonable chance of his succeeding to the Chief Judgeship and of earning the Chief Judge's pension.

"The Government seem to show a disposition to effect what cannot but be called doubtful economies in cutting down the privileges and salaries of Judges in the presidency-towns. Under the Civil Service Regulations of 1st of May, 1897, the period of active service which a Chief Judge has to serve before earning his pension of £750 a year has been extended from 11½ to 14½ years. This I think is a mistake. His period of service for pension should be 11½ years as formerly, and it would probably be better in the interests of efficiency that the minimum pay of a Judge of the Calcutta Small Cause Court should be ₹2,000 a month. I have pointed out what seems to me to be the proper remedy to meet the case of the Calcutta Small Cause Court, and, as the Hon'ble Mr. Chalmers' Bill is all in the direction of allowing the present condition of things to continue, I am not in favour of it. The amendment which stands in the Hon'ble Sir Griffith Evans' name has my approval, and with your permission, my Lord, I beg to move the amendment, *viz.*, that for clause 3 of the Bill as introduced the following be substituted, namely:—

'3. In section 8A of the Presidency Small Cause Courts Act, 1882, as amended by the Presidency Small Cause Courts Act, 1895, after the words "Chief Judge," the second time they occur, the words "or if none of the Judges of the Court are duly qualified some other duly qualified person" shall be inserted.'

The Hon'ble Mr. CHALMERS said:—"I am afraid I must oppose this amendment. My Hon'ble friend Mr. Arthur has correctly stated its object. A difficulty arises at times when the Chief Judge goes on leave. The Madras Government has in very strong terms called our attention to that difficulty. The opinion of the Madras Government is that the gentlemen who may be qualified under the Act to act as Chief Judge in the Court are not always fit persons to hold the appointment, and of course it may often happen that you may have a Small Cause Court of five Judges, but the junior Judge would be the person who would have the qualification for the Chief Judge, and it might be very objectionable to put a junior Judge over the heads of all the others when the Chief Judge was on leave. Therefore, on the advice of the Madras Government, the Government of India came to the conclusion that they ought to take power, where there was, so to speak, any personal objection to a junior Judge of the Court acting as Chief Judge, to appoint an outsider. I quite agree that the only proper and ordinary course would

[*Mr. Chalmers.*]

[21ST MARCH,

be to appoint a Judge of the Court to act as Chief Judge. It is far more convenient that the man who knows the practice of the Court should in the absence of the Chief Judge naturally so to speak slip into his place, but as matters stand we have the opinion of the Madras Government that this cannot be done. Well, then, my Hon'ble friend says if it cannot be done it is the fault of the system, and he suggests that Small Cause Court Judges should be chosen with more regard to efficiency, and in order to ensure their being competent that they should be better paid. That is no doubt a matter for careful inquiry. It is one which my Hon'ble friend opposite (Sir James Westland) will take note of. He knows what my opinions on that question are. But on Saturday last my friend Mr. Arthur told me that he might raise this question, and it occurred to me that if it was going to be raised I should like to compare the work and the efficiency of the Presidency Small Cause Courts here with the English County Courts at home, and certainly on comparing the figures of the last year it seems to me that if the Presidency Small Cause Courts here were armed with the English County Court's procedure—with the powers of an English County Court—a smaller number of Judges could get through a great deal more work, and that perhaps, without any increased demands upon my Hon'ble friend Sir James Westland, the ends which my Hon'ble friend Mr. Arthur has in view could be obtained. Now, I find that there were five Judges in the Calcutta Small Cause Court, and that last year these Judges by working very hard—and I am told that they do work very hard—got through about 24,000 cases; that is to say, each Judge would get through about 5,000 cases in the course of the year. Well, I compare those figures with the English County Court figures, and I find there are 15 Judges in England who dispose of more than 20,000 cases apiece. I find, for instance, that in circuit No. 8, the Judge has two Courts in his circuit and two Registrars, and that he disposes of 41,000 ordinary cases and over 200 bankruptcy cases as well. I find also that in circuit No. 21, one Judge with two Registrars disposes of 52,000 ordinary cases, 6,000 judgment-summons, 130 bankruptcies, and a large number of High Court cases besides. It is quite clear that the English procedure is far more summary and far more efficient. You cannot, of course, always compare cases in England with cases in India. On the one hand, no doubt a good deal of time is lost here owing to the necessity of interpreting the evidence, and the practitioners are slower in doing their work than at home; but, on the other hand, you must take into account that the County Courts at home have equity, jurisdiction, jurisdiction in actions of tort and in bankruptcy cases

1898.] [*Mr. Chalmers; Mr. Allan Arthur; Sir Henry Prinsep.*]

and so forth. On the whole, one would think that with an efficient procedure, setting these considerations one against another that the Indian Small Cause Court Judge ought to dispose of nearly as many cases as the English County Court Judge and, if that were so, one Judge and two Registrars ought to be able to dispose of all the business in the Calcutta Small Cause Court. But that is a matter which may stand over for future inquiry. Last night I had various other amendments on the Bill suggested to me which I have not had time to consider—a telegram from Bombay and also a note from Sir Alexander Mackenzie who has been unable to be present to-day. I propose, therefore, not to proceed with the Bill to-day, but to let it stand over in order to have time to consider the various suggestions that have been made.

“As regards this amendment, I certainly cannot accept it to-day.”

The Hon'ble MR. ALLAN ARTHUR:—“I am willing to allow the amendment to stand over, as my Hon'ble friend Mr. Chalmers suggests.”

The Hon'ble SIR HENRY PRINSEP said:—“I have in more than one instance had to consider comparisons between the work done in English Courts, and especially the County Courts in England, and the Courts in this country and I have always realised that the difficulties with which the Courts in this country have to contend have not received proper consideration. When I hear the Hon'ble Legal Member who has had great experience of the County Courts in England, but who has had little or no experience of the Courts in this country, compare the work of the two classes of Courts to the disparagement of our Indian Courts with a view to show that those Courts do not decide a sufficient number of cases, I venture to state that any such comparison cannot fairly be made on mere statistics. The class of legal practitioners in the Courts in England and in Courts of Small Causes in presidency-towns are very different; the habits of thought and the intelligence of the witnesses are also very much against the rapid despatch of business in this country and lastly the fact that all evidence has to be interpreted—both the question put and the answers given—is a most serious drawback, and without any undue disparagement to the Judges of our Small Cause Courts I do not suppose that it will be denied that they are inferior both in experience and in knowledge of their business to those who obtain appointments as County Court Judges. There is a greater area of selection in England, the salaries are higher, and therefore the office is more attractive; while on the other hand, the standard of pay offered in India is so low on comparison with the

[*Sir Henry Prinsep ; Sir James Westland.*] [21ST MARCH,

income of an advocate or pleader in fair practice that it fails to induce those who are at all likely to be successful in the profession of law to become Judges, and this applies even to Judges of the High Court. At the same time I agree entirely with my Hon'ble friend the Legal Member that a great improvement may be made in our procedure here by assimilating it more to the practice of the County Courts in England, but I maintain that in the comparisons that have been made the difficulties of the Indian Courts have been sufficiently taken into account."

The Hon'ble SIR JAMES WESTLAND said:—" I feel almost obliged to intervene in the debate by reason of my having been called upon to do so by the Hon'ble Mover of the amendment and the Hon'ble Member who has answered him. I was not aware that these financial questions were to arise upon the discussion of what seemed to me a pure question of legal procedure. But I would say with regard to them, in the first place, that I have always found hitherto, when examining these questions of the comparative income and the comparative expenditure of the Civil Courts in this country, that the whole of the income, and sometimes more than the income, is taken into account, and that a very large proportion of the expenditure is left out of the account. My Hon'ble friend Sir Henry Prinsep challenged me upon the subject a short time ago, and I was obliged to answer him to the same effect, namely, that the figures he gave left out a very large proportion of the expenditure. I have every reason to believe that the Small Cause Court is a very paying institution in Calcutta, but I hope, if the Chamber of Commerce takes up the question of the paying institutions in Calcutta, they will also have their attention directed to those Courts which do not pay. As a financial question we have in this country to see that the Courts as a whole pay their way. They do so very nearly, taking the whole country together. In Bengal they more than pay their way, but the curious feature is that the higher the Court, the less does it pay its way. The Hon'ble Member has also referred to a question of the pay of the Judges and their privileges. I think he is under some misapprehension if he quotes the date of 1st of May, 1897 as the date from which the extension of the period of service required for pension took place. I believe it took place at a very much earlier period than that, because I do not think that during my tenure of office there has been any change in these conditions. I quite agree that, if we want justice adequately administered, we ought to pay the Judges well. I think some of them we do pay well, but I confess some of them I would be glad to see more highly paid. The difficulty is that unfortunately we have judicial work of very different degrees

1898.]

[*Sir James Westland.*]

of importance done by the same class of Judges, but we are nevertheless compelled to pay them at the same rates. If you take the High Court Judge in this country, you will find that by far the greater portion of his time is occupied in petty work which no Judge of the Supreme Court in England would look at. I have it on the authority of Sir Barnes Peacock that, so far as regards a very large number of the cases which are tried on appeal in the High Court in Calcutta, it would be cheaper for the Government to pay the whole amount of the claim, to pay the costs of both parties, and to give each of them a bonus besides, rather than to maintain such an establishment as the High Court for disposing of these cases. As long as the laws of procedure are as they are, so long will there be difficulties in providing high and adequate salaries for the Judges engaged in the judicial work of the Supreme Court. In the same way, in the case of the Small Cause Court, there is no doubt that there is a large amount of petty work as well as a large amount of important work; if the remuneration given to the Judges could be based in any way upon the proportion or the importance of the cases they try, the matter would be financially a more easy one than it at present is. I think it desirable to mention these things, because the Hon'ble Mr. Arthur has said that these questions are being considered by the Bengal Chamber of Commerce at present, and I would like him to understand that, whatever our general opinions may be on the subject, there are practical difficulties in meeting the claims he has justly put forward on the part of the Judges. The truth is that financially speaking the whole system of civil justice in the country is based upon a wrong principle, that is to say, we make our litigants pay by the piece and we pay our Judges by time; the consequence is that the litigants waste an indefinite amount of time and spin out their cases interminably, because having once paid their institution-fees it is practically of very little importance to them how long the cases take. I believe that according to the English practice the costs of litigation to litigants are in some way proportionate to the length of time the case takes, and in that case the litigants have some interest in pushing the cases on towards completion, instead, as I am afraid is far too much the case in India, of spinning them out over long periods."

His Excellency THE PRESIDENT :—"I understand that the Hon'ble Member proposes that the further discussion on this amendment should be postponed and that the Hon'ble Member who moved the amendment has no objection."

The further discussion of the amendment was accordingly postponed.

INDIAN CONTRACT ACT (1872) AMENDMENT BILL.

The Hon'ble SIR JOHN WOODBURN moved for leave to introduce a Bill to amend the Indian Contract Act, 1872. He said:—"As the Council is aware, the question of the indebtedness of the agricultural community, and whether, in view of what has been so generally alleged as to the ignorant peasantry of this country being at the mercy of the more astute money-lender in their monetary dealings, legislation should be undertaken to give them additional protection, has been for some time under the consideration of Government. The Commission which reported in 1892 upon the working of the Dekkhan Agriculturists' Relief Act of 1879 recommended, in addition to certain amendments of that Act which were duly carried out, the enactment of a general law for the protection of agriculturists capable of being applied to any tract in which a problem similar to that which led to the enactment of the Dekkhan Agriculturists' Relief Act has presented or may present itself. A Bill was drafted with this object and circulated for the opinions of Local Governments and Administrations. The replies which have been received to this reference display a considerable amount of hostility to this Bill, and the question whether it shall be proceeded with is now being discussed by the Government of India. But there is another portion of the recommendations of the Commission which has been separately discussed and considered. These proposals related to modifications of the general law regarding contract. The first point upon which the Commission suggested that the general law should be modified was in regard to section 2 of Act XXVIII of 1855 which repealed the usury laws. The terms of this section, which require the Court to adjudge or decree interest, in any suit in which interest is recoverable, at the rate (if any) agreed on by the parties, and, if no rate has been agreed upon, at a rate deemed reasonable by it, have led to contractual interest being decreed by the Courts when it is exorbitant and crushing. Many instances have come to the notice of the Government of India in which the Courts have, in some cases where the defendant has been a member of the agricultural classes, and in others where he has not, decreed extortionate rates of stipulated interest. The Commission suggested that the Act should be amended so as to make it clear that, in considering the validity of the agreement to pay interest at the stipulated rate, the Courts are bound to take into consideration the possibility of undue influence, coercion, fraud or misrepresentation; and that the definitions of these reasons for holding contracts invalid given in sections 15 to 18 of the Evidence Act might also require some reconsideration so as to include the taking of undue advantage of a debtor's simplicity or necessities.

1898.]

[Sir John Woodburn.]

“They also suggested certain amendments of the Evidence Act in regard to the burden of proof. The intention of these amendments was that no Court should be required to go behind a bond or open up the past history of the transaction until some unfairness or inequality has been established, or at least made probable, and that, where such unfairness or inequality has been established, it should be part of the general law that the party which had the advantage should prove the fairness of the transaction.

“The Government of India have been in communication with Local Governments about these suggestions, and much time and attention has been devoted to discussing them. After a full consideration of the subject, the Government have determined—for reasons which will, I have no doubt, approve themselves to this Council—not to propose any amendment of Act XXVIII of 1855. They fear that any attempt to alter the law so as to enable any Court to decree in any case the rate of interest which it may deem reasonable would lead to endless litigation, interfere largely with legitimate trade, and probably, in the long run, make the state of those who have to resort to money-lenders worse than it is now. They, therefore, determined to look for a remedy not in an amendment of the law regarding interest, but in an amendment of the substantive law of contract.

“It is no part of our intention to interfere with freedom of contract in cases in which both parties enter upon an engagement in equal terms, and there are, of course, frequently cases in which high rates of interest are perfectly legitimate, and should be decreed. What we do propose is to give the Courts more discretion than they have at present in the direction of varying the terms of a contract which appears to them to be inequitable, so that they may not be required, as is not infrequently the case at present, to give a creditor judgment for sums which they actually consider to be unconscionable, and the Bill then empowers a Court, in a case in which a contract is induced by undue influence, either to set it aside absolutely, or upon such terms and conditions as the Court may think just. The definition of ‘undue influence’ in the Indian Contract Act is at present incomplete. It is confined to a statement that undue influence is employed in two specific sets of circumstances. The Bill enlarges the definition so as to make it embody the general principle that a contract is induced by undue influence when the parties to it do not contract on a footing of equality, but one of them is in a position to dominate the other, and makes use of that position to obtain an unfair advantage over the other, or to make him agree to terms to which he would otherwise not have consented. It also adds to the

[*Sir John Woodburn; Mr. James.*]

[21ST MARCH,

specific instances of undue influence which are cited in the existing law words to show that a person is in a position to dominate another when the latter is by nature feeble-minded as well as when his feeble-mindedness has been induced by old age, illness, mental or bodily distress or other special circumstances.

“Provision is made that when a party to a contract was in a position to dominate the other, the burden of proving that the contract entered into between them is fair and reasonable, and was not induced by undue influence, shall lie upon the person who was in the position of superiority.

“We have taken the opportunity of the proposed amendment of the Contract Act to remove doubts as to the construction of section 74 of the Act. Different High Courts have given conflicting decisions as to whether a provision in a bond, that in case of default in payment an enhanced rate of interest shall run from the date of the execution of the bond, is or is not in the nature of a penalty and therefore not recoverable under the section. The section has now been amended so as to provide that in cases in which a sum is named as the amount to be paid in the event of a breach of contract, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach shall only be entitled to receive reasonable compensation, which shall not exceed the penalty named in the contract.

“The changes proposed in the Bill involve matters of great public interest, and we are anxious that the public should be given every opportunity of discussing the Bill. We, therefore, propose not to proceed with it till the next session of the Council at Calcutta. It will meanwhile be circulated to Local Governments and Administrations for their opinions, and other members of the community who may wish to make criticisms and suggestions in respect of it will have full opportunity of doing so. I now beg to ask leave to introduce the Bill.”

The Hon'ble MR. JAMES said :—“I would just like to say one word, my Lord. I wish to congratulate Your Lordship's Government on this Bill, which appears to be the first instalment of the legislation which is necessary to put a stop to a state of things which is extremely unsatisfactory over a very large part of rural India. I hope that the Hon'ble Member will be successful in carrying a good sound measure.”

The motion was put and agreed to.

The Hon'ble SIR JOHN WOODBURN introduced the Bill.

1898.]

[*Sir John Woodburn ; Mr. Chalmers.*]

The Hon'ble SIR JOHN WOODBURN 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.

INSOLVENCY RULES BILL.

The Hon'ble MR. CHALMERS moved for leave to introduce a Bill to make provision for certain matters connected with Insolvency. He said:—"The Bill is a very simple one, and consists of two clauses. Its object is to remove some doubts which have arisen as to the extent of the powers of the High Court to frame rules under section 76 of the Indian Insolvency Act of 1848 and at the same time to confirm certain rules which were made by the Bombay High Court in 1878 under those powers and which have been acted upon ever since, but with respect to the validity of which doubts have arisen from time to time."

The motion was put and agreed to.

The Hon'ble MR. CHALMERS introduced the Bill.

The Hon'ble MR. CHALMERS moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India, the Fort St. George Gazette, the Bombay Government Gazette and the Calcutta Gazette.

The motion was put and agreed to.

The Council adjourned to Monday, the 28th March, 1898.

CALCUTTA ;
The 25th March, 1898.

J. M. MACPHERSON,
*Secretary to the Government of India,
Legislative Department.*