Friday, January 21, 1870

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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

The Council met at Government House on Friday, the 21st January 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
Colonel the Hon'ble R. Strachey, C. S. I.
The Hon'ble Francis Steuart Chapman.
The Hon'ble J. R. Bullen Smith.
The Hon'ble F. R. Cockerell.

HINDU WILLS BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns be taken into consideration. He said—"My Lord, my hon'ble friend Mr. Cockerell proposes to move, as an amendment, that this Bill be referred back to the Select Committee with instructions to report again in six weeks. I shall have no objection whatever to agree to that course, because the Select Committee has made a very important alteration in the draft of the Bill introduced to the Council some time ago, by proposing that that section of the Indian Succession Act, which refers to perpetuities, be extended to the wills affected by the Bill. I understand, also, that the Hon'ble Mr. Cockerell wishes that the Bill should be extended to the wills of the whole Hindú population of Lower Bengal. These two proposed alterations undoubtedly require careful consideration. I have therefore no objection to agree that the Bill should be referred back to the Select Committee, and that they should be instructed to report in six weeks. At the same time, I hope that I shall not be wasting the public time by making a state-

ment in the Council with respect to the character of the Bill in some particulars, and more especially with regard to the alterations now suggested. I do so in the hope that, in the course of the six weeks during which the Bill will undergo further consideration at the hands of the Select Committee, public attention may be directed to the real points at issue; and that the motives which actuated both the original draftsmen and the Committee in bringing the Bill into its present shape, may be properly appreciated. I shall therefore say a few words on the different provisions of the Bill, and enter somewhat more fully into the reasons of the Committee with regard to the clause regarding perpetuities. After the circulation of the Statement of Objects and Reasons, and the statement made by the Hon'ble Mr. Cockerell on a former occasion, I may pass rapidly over the general features of the Bill. I wish, however, to say, that one principle has been recognized throughout every part of this measure. That principle is to combine the utmost possible respect for Native opinions and institutions, with a gradual improvement of those institutions, and their adaptation to changing circumstances.

In the first place, I may say a few words about the history of the measure. A paper was circulated, requesting the opinions of persons well acquainted with the subject, so far back as the year 1865, almost immediately after the passing of the Indian Succession Act. The answers to that paper are most interesting, and peculiar interest attaches to the Native opinions, many of which are very able. One point on which these answers threw light, was the importance of not extending the provisions of the Succession Act to Muhammadans, and this has been recognized in the original draft of the present Bill. The Muhammadans possess an elaborate legal system of their own upon the subject of wills. It is closely connected with all their customs and with their religious belief, and it would be improper to disturb it. An excellent detailed statement of the differences between the Muhammadan law and the Indian Succession Act upon this subject has been supplied by a former Muhammadan Law Officer in the North-West Provinces. It is printed at length at pp. 48—57 of the collection of papers. On the whole, speaking of the contents of the papers generally, I may say that, though the Native gentlemen consulted made some objections to what they supposed to be the purport of the proposed measure, objections which were obviated by the provisoes which have been introduced into it, the papers show that they received the main provisions of the Bill with satisfaction. I will read, as an illustration of this, a few observations made on the Bill by the Rájá of Benares. After quoting some authorities, the Rájá observes—

'At all events, the written will has now come into use, and the reason is that the people have become gradually impressed with the idea that property, whether personal or real, is,

without a written will, liable to injury, and that the disputes of relations burden the estate or property with heavy law-expenses, by which it is eventually ruined and lost.

It being, therefore, apparent that the Natives have followed the example of the English in this respect, and that written wills are being generally adopted, it is expedient to prescribe rules for their execution.

The objections to, and defects in, nuncupative wills, alluded to in the confidential letter of Government, are with few exceptions just and valid. No definite limits can be assigned to nuncupative wills, and although the High Courts of Calcutta, Madras and Bombay admit the legality of nuncupative wills by Hindús, yet the times and the condition and character of the people render the execution of written wills preferable.'

I come now to the objections raised against the measure. They can all be brought under the four following heads:—*First*, that the Bill would interfere with the Native Law of Succession; *secondly*, that it would interfere with the Native Law of Marriage; *thirdly*, that it would interfere with the right to leave property for the purpose of a religious endowment; and, *fourthly*, that it would interfere with the supposed right of Hindús to create a perpetuity. Of these four objections, the first is met by the proviso that nothing contained in the Bill shall enable a testator to bequeath anything which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance which they would have possessed if he had died intestate, and by the omission of certain Parts of the Succession Act, to which I shall refer in their place. The second is met by the proviso that marriage, in the case of Hindú wills, shall not operate as a revocation. The third is met by the omission from the Bill of the 105th section of the Indian Succession Act. The fourth objection proceeds, as I shall show at length, upon a misconception of the Hindú law.

When the effect of the provisoes referred to is considered in connection with the omission from the present Bill of certain Parts of the Indian Succession Act, it becomes apparent that the result of the whole measure will be to preserve to the Hindús the full benefit of every part of their present Law of Inheritance. In order to set this in a clear light, I will go through the provisions of the Bill, and show how they bear upon the subject when taken in connection with the provisoes.

The general object of the Bill is to apply to the wills of Hindús such Parts of the Indian Succession Act as are adapted to their circumstances. I will now point out specifically which Parts of that Act are, and which are not, regarded by us in that light. The first six Parts of the Act relate to domicile, consanguinity, intestacy, the distribution of intestate property, and the effect of

marriage. No part of these provisions would apply to Hindús : to apply them would be to produce a total revolution in the Hindú Law of Succession and Inheritance, and they have accordingly been omitted. The seventh Part of the Act is general, and begins with the forty-seventh section, which is in these words—'Every person of sound mind and not a minor may dispose of his property by will.' This, standing alone, would no doubt affect considerably the Hindú Law of Inheritance, but it must be taken in connection with the proviso to which I have already referred,—that nothing contained in the Bill shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance which they would have possessed if he had died intestate. The effect of section 47, qualified by this proviso, will be that Hindús within the local limits of the Bill will be able to dispose by will of such property as Hindú law permits them to dispose of by deed *inter vivos*, and that their testamentary power will be limited by such rights of maintenance as Hindú law confers upon their families at present. Nothing else in the application of this part of the Act requires notice till we come to Part IX, which relates to the wills of soldiers and sailors on active service. By the Indian Succession Act as well as by the Law of England, such wills may be nuncupative. This Part is not applied to Hindú wills, because the wording of section 50 renders it unnecessary to do so. That section runs thus—'every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will in the following manner.' Therefore, if the Hindú testator is a soldier or sailor on active service, section 50 does not apply to him, and he is still at liberty to make a nuncupative will according to the present Hindú law. The tenth Part of the Act, with regard to attestation, revocation, alteration and revival of wills, requires no notice.

The Parts (XI to XXVIII, both inclusive), which relate to the construction of wills, may require a few words. They consist mainly of provisions which can in no way whatever affect any rights of inheritance. They are merely directions for the guidance of the Judges in settling cases, which, as experience shows, constantly arise as to the meaning of a testator's words. They are of universal application, and will be found of great convenience to all persons having to interpret wills, and, as to most of these rules, I cannot conceive how they should be opposed to Native ideas. There are, however, some of them of which this cannot be said. They are contained in sections 78, 79, 80, 81, 84, 86 and 87, and arise principally out of certain technicalities of English law. I need not trouble the Council even with a slight sketch of these, but any one who possesses any acquaintance with English Real Property Law must be aware that

such words as 'heir,' 'right heir,' 'children,' 'issue' are dangerous in the extreme, and that, if used without the greatest care and the best possible advice, they are nearly sure to produce litigation. This arises, not from the nature of things, but from peculiarities in the English law, especially in the English Law of Real Property, which have nothing to do with the wills of Hindús. The rules relating to the interpretation of such expressions have accordingly been omitted from the Bill. I pass over, for the present, the section relating to perpetuities, which occurs in this part of the Succession Act, and I come to Part XXVIII, relating to what is called in English law the *Donatio mortis causâ*. We have omitted to extend this Part, first, because it has nothing to do with wills, and, secondly, because we do not wish to interfere with the rules of Hindú law in regard to gifts.

The next part of the Succession Act which is applied to Hindú wills is that which relates to executors and administrators with a will annexed. It consists of Parts XXIX, XXX, XXXI and XXXIII to XXXIX, both inclusive. The matters to which these Parts relate are most important, and the change which we propose to effect by applying them to Hindú wills will, I hope, be found most beneficial. Speaking generally, the object of the Bill is to give to Hindús the benefit of definite rules with regard to the duties and position of executors and of administrators with a will annexed; but we have been exceedingly cautious to leave out every section the effect of which would be to vary the course of inheritance. We have effected this object in the following manner:—

By section 179 it is provided that the executor or administrator of a deceased person is his legal representative, and all the property of the deceased person vests in him as such. This would have altered the Hindú law, if we had not qualified it by the proviso that nothing shall vest in the executor or administrator with the will annexed of a deceased person which such person could not have alienated *inter vivos*.

Again, sections 200—207 provide in substance that, if a man dies intestate, administration is to be granted to his next of kin in the order stated in other parts of the Succession Act. If these sections had been applied to Hindús, they would have altered the present practice of granting administration. We have accordingly abstained from extending them. On the other hand, by sections 195, 198, 230 and 231 (which are extended to Hindú wills), administration with the will annexed must be granted to the person who would be entitled to administer in case of intestacy, and we have taken care to add words to those sections to show that we mean the person now entitled, without reference to our Bill or to the

Succession Act. The Court will have to be guided in such cases by the Hindú law. In the language of our Courts, the grant will follow the interest; that is, the letters will be granted to the person or persons who, according to Hindú, Jaina, Sikh, or Buddhist law (as the case may be) are entitled to succeed to the estate of the deceased, or in the case of an undivided Hindú family, to the managing member of the family. These arrangements in my judgment effectually protect the Native Laws of Inheritance from any alteration by this part of the Act. I hope that, with these precautions, this part of the Act will prove to be highly beneficial. It will for the first time define clearly the position and powers of a Hindú executor or administrator, and provide him with distinct and authoritative guidance in the discharge of his duties. This is highly important; for, as matters stand, the position of a Hindú executor is difficult to comprehend. A Hindú will itself is a matter of comparatively modern growth, and a Hindú executor is in a condition even more embryonic than that of a Hindú will. He is at present rather a manager than an executor; but by these provisions he will be placed in very much the same position as an English executor, though the substance of his duties will be regulated by Hindú law.

One or two other provisions of small importance have been omitted. For instance, we do not apply to Hindú executors the provisions relating to executors of their own wrong.

I now come to a matter in which a substantial alteration has been made in the Bill by the Select Committee,—that is, the question of perpetuities. The section which we propose to introduce is this—

'101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.'

That is substantially the rule of the English law, and the Committee propose that it should be applied to Hindú wills. It has been said that this is an alteration in the Hindú Law of Inheritance. I have studied the matter as carefully as I could, and after considerable trouble and consideration I have arrived at the conclusion that it would be difficult to imagine a more total and complete mistake. I am indeed disposed to doubt whether those who make such an objection know what a perpetuity means. If they did, they would see that the power to create a perpetuity, as we understand it, is diametrically opposed to the whole spirit and character of the Hindú law. It may be necessary for public information to say, in a few words, what I understand by this power. It is, in sub-

stance, a power of posthumous legislation for an indefinite period, by which the testator or settlor is enabled to restrain the alienation, and to suspend the possession and enjoyment, of property for such time as he chooses—a power to lock up land and capital for ever, to prevent the free circulation of property, to check the improvement of land, to render its acquisition impossible. The possession of this power has, by a strange peculiarity, by a sort of disease of the human imagination, been ardently desired by a certain number of persons in all countries and at all times. People seem to suppose that they can perpetuate their own enjoyment of property by interfering with other people's enjoyment of it after they are dead and gone. They seem to think that a man can extend his own life by doing something which, hundreds of years after his death, will affect the lives of other people. This delusion invariably springs up in men's minds when the power of making wills is conceded to them. It exists to this day both in England and in India, and has shewn, as it is still showing, itself in the most absurd and mischievous testamentary dispositions. The object sometimes is, as in Mr. Thellusson's case, to accumulate enormous sums of money for the benefit of some distant descendant. In other instances testators have attempted to regulate the succession to property in a manner totally unknown to the law, and others have attached childish and ludicrous conditions to the enjoyment of their property. One man provided that certain furniture should never be taken out of his house during the term of several lives in being, and for twenty-one years afterwards, and had he had power to extend these conditions over many centuries, he would no doubt have done so. That a wish of this kind exists, not only in England but also in Bengal, and that it exists at present as strongly as ever, is proved by a case decided lately—the case of *Kumara Asima Krishna Deb* (Appellant) v. *Kumara Kumara Krishna Deb* (Respondent). The testator in that case provided by his will for the accumulation of his property for ninety-nine years at least, and probably for a much longer period. That is an example of what is meant by the system of perpetuities, and I assert that it is sanctioned neither by the Hindú nor by the English Law, nor by any system whatever, which is based upon common sense even in a small degree. I will add that, under every system of law with which I am acquainted, it has been found necessary to devise means to restrain persons from putting into effect these extravagant and mischievous notions of their testamentary powers.

It is by no means easy to see how the opinion that the Hindú law authorizes the creation or existence of perpetuities ever arose. I asked myself this question when I entered upon the consideration of the subject, and the more I studied it the greater became my difficulty; because it was perfectly

clear that, if any law could be opposed to the system of perpetuities, that law was the law of the Hindús; and this I will endeavour to show in a few words. There are two modes in which the devolution of property may be regulated. It may be regulated, either by the provisions of the law as to its descent, or by will. So far as it is regulated by law, it cannot be regulated by will, and so far as it can be regulated by will, it is not regulated by law. In proportion, therefore, as the law of any country regulates the devolution of property, to that extent it excludes testamentary power; and the more any given system recognizes the principle of permanence, the more alien to that system would be the principle of testamentary perpetuities as I have described it. In England a very wide latitude is permitted to the testamentary power. In France hardly any latitude at all is permitted. The French law declares that the whole of a man's property shall descend to his children equally, with certain exceptions. It therefore excludes the power of creating perpetuities by will, and consequently the power of creating perpetuities is more alien to the law of France than to the law of England. I now proceed to consider how the law of Hindústán stands with respect to the power of creating perpetuities by will, and I assert that no imaginable system of law could be more fundamentally opposed to them; for it is a system so unfavourable to testamentary power of any kind at all, that wills themselves are unknown, or all but unknown, under it; and that, in the greater part of the country, the owner, or rather the possessor, of property, is not only unable to leave it by will, but is unable to alienate it *inter vivos*, except with the consent of his sons. The Hindú law upon this subject differs in different parts of the country. It is contained, as is well known, in several authoritative works, the authority of which applies to different districts. The Mitákshará is the great authority for all the schools of law except for that of Bengal, and might perhaps be described as the common-law of Hindústán; though the phrase must not be pressed as it is liable to abuse. There is also the Dáyabhága, which prevails in Bengal, the Vyavahára Mayúkha in Bombay, and there are other authorities which prevail in Madras and other parts of the country. The general scheme of the Hindú law is, that a man's property is to descend to his family. It is indeed hardly an exaggeration to say that the family, and not any one living man, owns the property, and that the father is more in the position of a manager than in that of a proprietor, as appears from the whole purport of the law of partition, the distinction between ancestral and self-acquired property, and the rules which pervade the whole subject as to divided and undivided families. Such being the state of the Hindú law, is it possible to imagine anything more diametrically opposed to the testamentary power, and still more to the power to create a perpetuity by will, which must, by the nature of the case, derogate from the most essential

provisions of the Hindú law ? What can be more opposed to the spirit of the Hindú law than that a man who cannot alienate his ancestral immoveable property without the consent of his sons, grandsons and great grandsons (if he has them), should be able to leave it by will to a stranger for life, and to entail it for ever upon one particular line of that stranger's descendants ?

This being the state of things, it is a curious question how the notion that testamentary perpetuities formed a part of Hindú law can ever have grown up ? As I am most anxious to vindicate fully the course which the Committee have taken, I will try to answer this question, though it will involve a somewhat technical statement. Whatever the precise origin of Hindú wills may have been, it is an admitted fact that they are of very modern origin. My own opinion is, that they came into use after the establishment of British rule in Hindústán, that they grew up by degrees, and that a certain number of obscure texts in Hindú law-books, which in fact apply to a different subject, were used for the purpose of sanctioning their introduction after the practice had been introduced. My opinion on such a subject is of course of little value ; but as far as I can judge I should say that the native texts in question apply, not to the power of making wills, but to the power on the part of a father to make dispositions of his property to take effect after his death, which gifts, when once made, were irrevocable. Now the essence of a will is, that it is ambulatory ; that is, that it is revocable until the moment of death, and becomes irrevocable only upon the death of the testator.

The documents which are now described as Hindú wills antecedent to the establishment of the English power were in fact, as I believe, irrevocable gifts made during the lifetime of the testator. I ought however to add that, in Lower Bengal, where the Dáyabhága prevails, the legal right of alienation on the part of the head of a family has been established, though, in the absence of his sons' concurrence, it is reprobated as immoral. The effect of this would no doubt be to suggest the idea of alienation by will, and to dispose people to find authorities for that practice, when once introduced, which in point of fact have nothing to do with it. Be this how it may, there is no doubt that the power of making wills has been well established in Bengal ever since the famous Nuddea case, which was decided early in the present century. What might have been expected followed. When the Natives of Bengal began to make wills, they soon began to wish to create perpetuities ; and inasmuch as wills had been unknown to the early Hindú laws, those laws contained no rules against perpetuities ; hence they argued that they had the right to create perpetuities. No argument could be more absurd. It might be stated thus :—because it was till very lately questionable whether we had the power to make a will at all, therefore we have now an amount of testamentary power

which no other nation ever possessed. This was fully recognized by the Courts of justice which had to decide upon particular cases; but there is some real and more apparent confusion and indistinctness in the way in which they dealt with the subject; and in order to state precisely the existing state of the law it will be necessary to enter into a certain amount of technical detail. In 1859, a case came before the Privy Council. It was the case of *Sonatun Bysakh* v. *Sreemutty Juggutsoondree Dossee* (8 Moore I. A. C. 66). In that case an attempt was made to create a perpetuity, and the Supreme Court at Fort William had laid down the law upon the subject in the following words, p. 78:—

'If the question were untouched by authority, we should be of opinion that the testamentary power engrafted upon the general Hindú law by the custom of Bengal, which has been recognized and established by repeated decisions, must be taken to exist, subject to those restraints which the general policy of the law imposes on the exercise of testamentary power in general; and in particular, that it cannot enable a Hindú testator to alter, perpetually, the legal course of succession to his property by making it pass for all time to those who, taking not as legal, but as substituted, heirs would, according to our phrase, take, not by descent, but by purchase. But in truth we are bound to hold this, unless we are prepared to overrule the decision of the Court when presided over by the late Chief Justice in *Luckunchunder Seal* v. *Koroonamoney Dossee*, Boulnois' Reports, 210. Therefore, some time before 1859, the Supreme Court ruled against the doctrine of perpetuities. The Privy Council, in their judgment in that case, passed over the subject of perpetuities; but they varied the decision of the Supreme Court on other grounds, and the effect of that was, that it seemed doubtful whether the ruling of the Supreme Court as to perpetuities was correct. That doubt would appear to have been considerable, inasmuch as a case (*Ramdhone Ghose* v. *Annundchunder Ghose*, 2 Hyde, 93) was decided in the year 1864, by Mr. Justice Levinge, in which he not only held that a devise creating a perpetuity was valid, but referred, as the ground of his decision, to certain remarks made by Sir Barnes Peacock in a case (*Goberdhun Bysack* v. *Shamchund Bysack*) decided by him some time before and now reported in Bourke, 282. The effect of this decision, so far as it went, was to prove that perpetuities were valid according to Hindú law. However, the subject again came up for decision in a later case (reported in 2 Bengal Law Reports, O. C. J. 11), and with reference to a will which attempted to create a perpetuity for ninety-nine years. In that case, Sir Barnes Peacock strongly pronounced against the power of creating a perpetuity. I shall not give the very words used by Sir Barnes Peacock on these occasions, because to do so would occupy too much time, and require the statement of too many facts of no general interest; but

the substance of his explanation of the apparent inconsistency between his two judgments was, as I understand it, as follows—'I said then, and say now, not that by Hindú law perpetuities were good, but that the remedies against perpetuities adopted by English law did not apply to Hindús,' which was quite a different proposition. At all events, in the second case, he expressly laid down, in the clearest way, that perpetuities were not only not valid by the law of the Hindús, but were on the contrary opposed to the whole spirit of the Hindú law. Besides these cases, certain expressions fell from the Judicial Committee of the Privy Council, in giving judgment in another case (*Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick*, 9 Moore, I. A. C. 123) which I could imagine might favour the notion that perpetuities were valid by the Hindú law. Lord Justice Knight Bruce said—'We are to say whether there is anything against public convenience, anything generally mischievous, or anything against the general principles of Hindú law, in allowing a testator to give property, whether by way of remainder, or by way of executory bequest (to borrow terms from the law of England) upon an event which is to happen, if at all, immediately on the close of a life in being. Their Lordships think that there is not.'

Now those words 'remainder' and 'executory bequest' are words with regard to which there is a very long history, and a person who reads the judgment quoted carelessly, or with a strong wish in his mind to find in it an authority for perpetuities, might perhaps argue that the Court meant to say that the Law of Remainders and Executory Devises, as it exists in England, is in force in Hindústán without the restrictions to which they are subjected in England, and of which the judgment says nothing. That is not, as I need hardly say, the true construction of the judgment; but it is a construction which might be put upon it by a prejudiced mind. This, however, is more or less speculative; but whatever may have been the particular phrases or cases which gave rise to the notion of the legality of perpetuities, I do not think I can be wrong in saying, in general, that it was due to a want of perception of the leading idea which runs through all these cases, which is this:—The Judges were anxious, from first to last, to condemn perpetuities on the one hand, without introducing, on the other, the remedies against them provided by the English Law of Real Property; and the language which they employed for the second purpose may have appeared, or may even have been, to some extent, inconsistent with that which they used for the first purpose. I do not think, however, they should be blamed for an anxiety which may have led them a little astray in their language in one or two instances; for the introduction of the English Law of Real Property into this country would be a worse remedy than the disease. The difference between the laws of the two countries is this:—In India, wills and perpetuities alike were altogether unknown until quite lately, and the absence of express rules against perpetuities arose from the

absence of any law about wills. In England, both wills and perpetuities are comparatively ancient, and the safeguards provided by the judges and the legislature against the abuse of the one, by the introduction of the other, are to the last degree intricate and technical. I need not trouble the Council with a history of them; but by way of giving a faint notion of what India has escaped by the refusal of the Courts to introduce them, I may mention in a very few words the leading points of that history. It begins with the Statute *De donis* (13 Edw. I). It goes on to the invention of fines and common recoveries. Its next stage is the Statute of Uses. Then we come to the rule in Shelley's case; the *Scintilla Juris*; the learning of contingent remainders; shifting and springing uses, and executory devises; the doctrine of powers, which cannot be understood without a full appreciation of the nature of estates and tenures and of the distinction between law and equity; and many other matters which I do not at this moment remember, and of which it would not interest you, My Lord, to hear. The result no doubt is, that the English law has settled down into a definite form. But those who argue that, because these doctrines—intricate, complicated, all but unintelligible as they are—do not apply to the wills of Hindús, therefore perpetuities do exist by the law of Hindústán, argue as absurdly as if they said that a man does not recognize a painful disease as such, because he is not prepared to undergo, for its cure, some strange series of intricate operations which happen to have been inflicted centuries ago on another patient of a totally different constitution. The conclusion from all this is, that the Hindú law does not sanction perpetuities, and that its spirit and temper are entirely alien to them.

As I wish to put this matter beyond dispute, I may add that the same proposition may be collected from the judgments of Chief Justice Scotland in the case of *Arumugam Mudali* v. *Ammi Ammál*, 1 Madras High Court Reports, 400, and of Mr. Justice Macpherson in the recent case of *Sreemutty Kistomoney Dossee* v. *Anund Krishna Bose*, and that it is assumed on appeal by the Judges in the late case of *Tagore* v. *Tagore* as one of the grounds of their decision, although the case did not expressly turn upon it.

We now come to the question of legislation. The long review of decided cases which I have been obliged to give, proves clearly that legislation is necessary. If we do not legislate, the courts of justice will; and inasmuch as they will have to legislate *ex post facto* on each particular case as it arises, and no further than that case will warrant, it is probable that, if the matter is left to them, we shall get, at an immense expense to litigants, and after the lapse of generations, a system as complicated as that of the English Real Property Law. We must therefore lay down some rules. What are they to be? Our answer is, the 101st section of the Succession Act. Apply those three lines to Hindú

wills, and you settle the question. If we do not do that, we must make perpetuities legal by express words, and I think no one would propose so monstrous a system. The reason on which the rules of the Succession Act are founded is obvious enough. They enable a person to provide for all contingencies as to which ordinary human prudence can form reasonable anticipations. The owner for the time being can say to a particular man—'I think you should have a life-estate in my property, and after that it shall go to your son, then living, when he attains his majority.' Such a period is one over which a man's interest in the affairs of the world would naturally extend, and as to which he can form rational anticipations. To enable a man to legislate as to the employment of what once was his, centuries after his death, is to sacrifice the living to the dead for no other purpose than that of gratifying a diseased and mischievous appetite.

I now come to a very important matter, which, however, may be very briefly dismissed. This is the omission from the Bill of section 105 of the Succession Act, which relates to religious endowments. With regard to this, a very strong expression of opinion has been given by many of the Native gentlemen who were consulted. The Committee have thought it best to permit the existing state of things to continue, and not to interfere in a matter which affects native religious feelings, and as to which we are not the best judges. Lastly, there is section 104 of the Act, which it is proposed to leave out of the Bill; it is a section relating to accumulations. It prevents accumulations of income for a longer term than one year. In England, accumulations are permitted for twenty-one years, and I could mention many purposes for which that period is not excessive. I must add that I do not understand on what grounds accumulations were restricted to one year by the Succession Act. Whatever the reason may have been, the Committee have thought it best not to apply this provision to the wills of Hindús, but to leave the matter as it stands.

I have thought it right to make these observations on the Bill, because it is one which has attracted considerable attention amongst the Native community, and because it involves what every one must allow to be a matter of the most essential importance, namely, the charge against Government of having wished to interfere with those Native feelings and institutions which we are bound to respect. I have thought it necessary to refute that charge as strongly and fully as I could, and to show that, on the contrary, the most scrupulous attention has been paid to the opinion of the Natives; that is my excuse for taking up so much of the time of the Council.

With regard to the proposal that the Bill should extend beyond the Presidency Towns, I think that that question can be considered when the Hon'ble Mr. Cockerell brings forward his motion."

The Hon'ble MR. COCKERELL thought that, looking to the important character of the alteration which this Bill had already undergone in Committee, there was certainly some advantage in allowing some further time to elapse ere we proceeded to confirm the measure and render it irrevocable by passing the Bill in its amended form. For it must be borne in mind that there was this important difference between the Bill as introduced, and as it came up from Committee, that whilst, in the one case, its provisions did not, as so minutely explained by his Hon'ble and learned friend (the mover), overstep in any single matter the limits within which its scope and object had been entirely approved by the many intelligent Native gentlemen who were consulted on the subject, in the other, a certain degree of restraint on the free action of the testator was contemplated, which, in some quarters at least, had been represented to be repugnant to the feelings of the people of this country.

For his own part he entertained no doubt as to the expediency of the addition to the Bill of those sections of the Indian Succession Act which comprised the rule against perpetuities; but after the very forcible justification of the action taken in this matter by the Select Committee, which they had just heard from his Hon'ble and learned friend, he should be unnecessarily taking up the time of the Council if he were to dwell further on this subject. He would merely add that he thought no one who had marked the various decisions of their Courts in Will cases during late years, and more especially the decisions regarding the will of their former colleague, the late Bábu Prasanna Kumár Thákur, could come to any other conclusion than that the time had arrived for the interposition of the legislature for the purpose of placing some restraint on the abuse, by the Hindú testator, of his testamentary powers, and removing the uncertainty which now prevailed as to the extent to which such testator might controul the devolution of his estate: the only point which could be said to have been clearly established hitherto was that the creation of perpetuities was not only supported by no express authority of Hindú law, but was even alien to its principles.

The amendment which he was about to move, however, rested on other grounds. He was strongly of opinion that the proposed local limits of its operation were unnecessarily and even unreasonably restricted. The principle of the Bill was that a Hindú proprietor's legal power of disposing of his property by will being an established fact, it was expedient to secure the effectual exercise of that power by such safeguards as experience had shown to be necessary in countries where the devolution of property was largely influenced by the practice of testation. And the natural corollary to this

proposition was that the application of those safeguards should follow the prevalence of the practice. If then it was a fact that the exercise of the testamentary power was confined to persons residing within the Presidency Towns, the Bill, as it stood, would provide all that was desirable in the way of present legislation. But had they any good grounds for the assumption on which the present limitation of the Bill avowedly rested?

It should be remembered that the Courts had established, by a long train of decisions, that the testamentary power of disposition of their property amongst Hindús was co-extensive with their rights of alienation of such property by gift or sale; that this conclusion was now universally accepted, and was, in fact, the basis of the proposed legislation. Such being the case, they would naturally expect to find the prevalence of the practice of testation in proportion to the area of the testamentary power; and, consequently, greater in Lower Bengal—where, under the tenets of the Dáyabhága interpretation of the sástras, the dominion of the Hindú over every description of property vested in him was absolute—than in other parts of India (not excepting the Presidency Towns of Madras and Bombay which were included in the Bill) in which the proprietor's rights were far more limited. This expectation seemed to be justified by such facts as were within their reach. As regarded nuncupative wills, they had the evidence of the Judges of their Courts, and of those Native gentlemen who had been consulted in the matter, that such wills were not unfrequent in Bengal; and, as to written wills, they had the clear evidence of the records of the registration-offices that, in Lower Bengal, the practice of testation was by no means confined to Calcutta. He found from the records of the registration-offices in Lower Bengal that, in the year 1867-68, about four hundred wills were registered, of which fifty-four only were registered in Calcutta.

In the year 1868-69, out of a total number of five hundred registrations of wills in the Lower Provinces of Bengal, about seventy-nine were effected at the Calcutta office. The registration of wills was not compulsory, and therefore the number of wills registered did not of course represent the number of wills executed; but the statistics which he had just cited might be fairly held to indicate the relative extent to which the testamentary power of disposition of property was exercised by the Hindú owner of property residing within Calcutta and such owner in other parts of Lower Bengal. And the reasonable conclusion was that not only was the practice of testation in Bengal Proper unrestricted to the inhabitants of the Presidency Towns, but that—having regard to the relative numbers of the Mofussil and town population

possessing property which could be disposed of by will—the practice of testation was scarcely less common amongst the former than the latter class.

On these grounds, when he had temporary charge of the Bill at the time of its introduction into this Council, he expressed the opinion that the measure was as applicable to Lower Bengal generally as to the Presidency Towns, and again, in Committee, he advocated the extension of the local limits of its operation.

The majority of the Committee, whilst not dissenting from his opinion on this point, considered that the action of the legislature was in a measure fettered by the correspondence which had taken place between the Government of India and the Secretary of State on the subject of the proposed legislation. It was held that, as the Government had expressly drawn attention to the intended narrow limits of the Bill's operation and its consequent experimental character, the sanction of the Secretary of State should be construed as upholding only the application of the provisions of the Bill to its original local area.

He observed that, whereas the only reason assigned in the despatch to the Secretary of State for the proposed confinement of the measure to Presidency Towns was the assumption that in such places only was the testamentary power exercised to any material extent, it was stated in another passage of the same despatch that, *in Bengal* and in the towns of Madras and Bombay, the power of making nuncupative wills was for the last twenty years found to encourage fraud and perjury. The previous assumption was clearly weakened if not absolutely controverted by this last statement. The letter of the Secretary of State in reply to this despatch conveyed a general sanction to the proposals of the Government of India, without any reference to the fact that the proposed legislation was to apply only to the Presidency Towns; and when this was considered in connection with the latest despatch of the Secretary of State on the subject of this Bill, he did not think that the sanction of the Home Government should be held to be conditional on the operation of the Bill being confined to the Presidency Town; for in that last despatch, which was dated 30th November 1869, it was expressly remarked that the "principle of the Act seems applicableto all Natives of India except those Mussulmans who follow the strict law of Muhammad."

That remark was, he thought, undoubtedly correct, and the only consideration by which we should be guided in the determination of the limits within which the provisions of the Bill should be applied was the extent to which the practice of making wills prevailed, and the consequent need of providing

securities against its abuse. On these grounds, he begged to move the following amendment on the Motion of his hon'ble and learned friend (Mr. Stephen) :—

That this Bill be recommitted with instructions to the Select Committee to take into consideration the propriety of extending its operation to the territories under the government of the Lieutenant Governor of Bengal and to report again after six weeks.

That the Bill as amended, together with this Motion, be forthwith published in the *Gazette of India* for public information.

The Hon'ble MR. STEPHEN expressed his concurrence in the amendment.

The amendment was put and agreed to.

NORTHERN INDIA CANAL AND DRAINAGE BILL.

Colonel the Hon'ble R. STRACHEY introduced the Bill to regulate the construction and maintenance of Public Works for irrigation, navigation and drainage. He said—" My Lord, the Bill having been published under Your Excellency's order when the Government left Simla, almost three months ago, the Council will have had the means of making themselves fully acquainted with its provisions. It will therefore not be necessary for me to enter at any considerable length into an explanation of its objects.

The Bill is designed to consolidate and amend the law relating to Irrigation Works in the North-West Provinces, the Panjáb, Oudh and the Central Provinces. It deals only with works constructed or maintained by the Government, or with the minor works carried out by private persons in connection with Government works. Its provisions extend to Canals for Navigation as well as to those for Irrigation, and also to Drainage Works, which, as defined in the Bill, include all works having for their object the protection of land from flood or erosion by rivers. It is not the intention that the Bill should apply to town-drainage or sewage, but only to what may be called agricultural drainage.

The existing law on these subjects applicable to the provinces I have just named is contained in two Acts, Act VII of 1845, and Act XII of 1866. The former of these Acts, though originally made applicable only to the North-West Provinces, was, some years ago, extended to the Panjáb under the powers then exercised by the Governor General in Council, and now has the force of law in that province under the provisions of the Indian Councils' Act. In Oudh and the Central Provinces there are still no Government irrigation works, and the

necessity for any irrigation law has not yet arisen. The second Act is applicable to the North-West Provinces and Panjáb, but may be extended to any other part of India by order of the Local Government.

Act VII of 1845, which is the essential law on these subjects, is a very short enactment. It professes, in the preamble, to provide for the levy of water-rent, tolls and dues on canals of irrigation and navigation, and for the protection of the canals from injury. It authorizes the Local Government to make rules for the levy of water-rent and supply of water for irrigation, and the payment of tolls, and admission to the benefit of navigation. These rules may be enforced by the temporary deprivation of the benefits of the canal, by fine to the extent of fifty rupees, or imprisonment for fourteen days. The water-rates may be levied as land-revenue, and the tolls for navigation may be realised by the sale of the boat or other floating body. The officers appointed to levy the rates and tolls may be given powers of Deputy Collector and Joint Magistrate to enforce payments and obedience to rules.

Act XII of 1866 exclusively provides for taking land for the construction of private water-courses, it having been doubted whether such land could be taken as for a public purpose. It is a somewhat complicated law, and I am informed has never been put into operation.

It has been generally recognised by all the authorities concerned that the present law, Act VII of 1845, is at present inadequate for the satisfactory administration of the Irrigation and Navigation Canals of Upper India.

That this should be the case is not surprising when consideration is given on the one hand to the circumstances under which that law was framed, and, on the other, to the circumstances of the present time. Still more obvious does it become that reconsideration of the whole subject is necessary when we look forward to the probable future of irrigation works in Upper India.

It is now nearly thirty years ago since my connection with the administration of irrigation works began on the Western Jumna Canal. At that time—I speak of 1840—there was no law whatever relating to irrigation, and among the earliest professional discussions with which I was concerned was the question of providing a law for the purpose. These discussions, ended in 1845 by the passing of Act VII. Previously to this period the canal administration had been carried on entirely under rules approved by the Government, the only real coercive power at the disposal of the canal administration having been that of cutting off the water supply of persons who did not comply with the orders of the executive canal officers. The gradual progress from what your Lordship

has recently termed discretionary government, to government by law, led in due course to the passing of Act VII of 1845, and the further pressure of the same influence now calls for a reconsideration and large amendment of the first tentative measure, which has carried us on for the last quarter of a century, not without great cause for congratulation at the general results of our canal administration.

To bring more clearly before the Council the relative position of the canal administration of Northern India when this Act came into operation, and that which it now holds, I will briefly state the extent of the transactions conducted by this department as they were in 1840, and as they now are.

In the former year, the whole capital outlay to date was £195,500; the annual income directly realised by the Canal officers was £37,890, and the annual charges for maintenance and management amounted to £22,030. The number of engineers employed was from four to six, and the Canals in operation were the Western Jumna and Eastern Jumna. We had just begun to carry out new Canals on a small scale in the Dehra Doon, and some works of a minor character had also been executed in the vicinity of Delhi. This completes the list of the irrigation works of that period.

In 1869, the statement of our undertakings is as follows: The capital outlay has risen from £195,500 to £4,129,300, the income from £37,890 to £412,600, and the charges from £22,030 to £215,700. The number of engineers employed is not less than 110 to 120. The list of Canals is largely increased, the Ganges Canal and the Bari Doab Canal being the principal new works. The Canals in the Dehra Doon have been much extended. Works have been carried out in Rohilkhund, and a large series of Canals derived from the Sutlej, Chenab and Indus also have to be included. Nor do the figures I have mentioned fully convey the idea of the present importance of the canal administration, for the figures I have just given refer only to the income directly managed by the Canal officers, while a large additional revenue is received under the head of Land Revenue, which is, in fact, dependant on the Canals, and the indirect advantages to the country due to them are difficult to estimate, and cannot be reckoned at all by a money standard.

Looking to the future, we have before us the prospect of an expenditure of not less than sixteen millions sterling, which may even now be anticipated with tolerable accuracy in the North-West Provinces, the Panjáb and Oudh alone. A canal taken from the Jumna below Delhi is estimated at about half a million, and is already well advanced; extensions of the old Ganges Canal, and

a second canal for the lower part of the Doáb from the same river, may together cost three millions. The general scheme for this last work has been settled, and the project is now in preparation in detail. A canal on the left bank of the Ganges for Rohilkhund, and another to be derived from the Ramgunga river, and other smaller works in Rohilkhund, will probably exceed one million. The designs for these works are well advanced, and operations have been partially commenced on them. For Bundelkhund, an outlay of half a million is not unlikely. In all, the North-Western Provinces may readily exhaust five millions. For Oudh and the districts of the North-Western Provinces between the Ganges and Gogra, an outlay, in all, of five millions more may be contemplated for canals to be derived from the Sardah, the projects for which have been generally settled, and preliminary operations set on foot. In the Panjáb, extensions of the Western Jumna Canal are contemplated, likely to cost, say, three-quarters of a million; the Sirhind Canal from the Sutlej has just been begun, which will require two and a quarter millions, of which about one-third will be provided by the state of Patiala, which, in return, will receive a corresponding share of the water; the completion and extension of the Bari Doab Canal is in progress at a probable cost of half a million. Surveys have been made for canals to be taken from the Sutlej below the junction of the Bias River, likely to cost about two and a half millions, to supply, in combination with the old existing works, the whole tract between the Sutlej and Ravi, as far down as Multan on the one side, and on the other bank of the river will be carried through the British territory into the state of Bháwalpur. The aggregate of the sums thus named is six millions. Beyond the Indus important works will be carried out, for which the surveys are not yet sufficiently advanced to admit of any, even the roughest, estimate of outlay to be named. Besides these projects now actually in course of preparation or execution, there remain the magnificent rivers, the Chenab and Jhelam, to which our Engineers may turn their attention when the work actually in hand is sufficiently advanced to give a hope of any practically useful result being derived from the commencement of new schemes, the realization of which must, of course, in a sensible degree, be determined by financial considerations.

Further I need only refer to the Central Provinces as not having been lost sight of, though the difficulties there to be overcome have been found so great as to have prevented any project for irrigation works being yet brought into a shape in which it could be sanctioned. Engineers are still employed in maturing designs, and it may be hoped that the means will eventually be found for meeting the real requirements of the country there also.

But without enlarging more on the prospects of these operations, enough, I am satisfied, has been said to prove that the interests at stake in connection

with the construction and management of the irrigation works of Upper India, have already reached a very large developement, and that they must necessarily, day by day, grow, and that, before long, the responsibilities of the Irrigation Department will not be second in importance to those resting on any other branch of the public administration. The time has assuredly come when the law should be placed on a basis which will secure the thoroughly efficient control of the operations of the Irrigation Department, both in relation to the great agricultural community that will be so directly dependent on the satisfactory management of the works, and to the responsibilities that arise from the financial consequences of transactions on so vast a scale as those now in course of realisation or contemplated.

The necessity for a revision of the law relating to irrigation has been felt for many years past, and even as long ago as 1854, the late Colonel Baird Smith was directed by the North-West Provinces Government to frame a new draft. The matter seems to have been lost sight of in the years that followed the mutiny, until it was revived by the Government of the Panjáb in 1867. The present Bill is the consequence of this last movement.

The objects and reasons annexed to the Bill go so fully into its provisions, that it will be hardly necessary for me to explain them at any length. The first object of the Bill has been to place on a satisfactory footing the powers which are now *de facto* more or less commonly exercised under the existing law. It has been the intention to leave such an amount of discretion in the hands of the Local Government in respect to the class of officers who shall carry out the law, and in respect to the details of management, as experience indicates to be expedient. A great machinery exists, which it would be most unwise summarily to set aside, while it is essential, for future progress, to admit of the introduction of modifications of system which shall be shown to be desirable. The time certainly has not come when any attempt shall be made to stereotype by a rigid code the procedure of the irrigation officers in the details of their duties. The power which it is proposed to continue to the Local Government of making rules for the guidance of the canal officers, will give the necessary means of adapting the system of management to the peculiarities of each locality.

It may be a question to what precise extent the specific provisions of the law should go, and how far a discretion may be properly left to the Government to regulate details. This will be for the special consideration of the Council in each particular case that may arise. In framing the Bill, it has been thought preferable to err on the side of defining proposed powers, rather than on that of leaving a discretion, so that as little doubt as possible shall be left of the intentions of the measure.

The experience of the last few years has shown that, if any effectual measures are to be carried out for improving and extending the means of irrigation generally, it is necessary for the Government to possess a power of re-distributing the water supply of districts where irrigation has been going on without Government control for any length of time. Rohilkhund is a province in which the exercise of such a power has become essential as a preliminary for any improvement. The Bill accordingly provides for dealing with private rights in water in a manner analogous to that in which private rights in land may be dealt with under the existing law, when it is necessary to interfere with them for public purposes. The peculiar character of rights and property in water, of course, calls for a special treatment.

The procedure laid down in the Bill to meet this object is as follows:— The existence of the right is to be first ascertained by the revenue authorities and compensation is to be given for any loss arising from a stoppage or diminution of a water-supply, partly by a revision of the land-revenue, and partly by a cash payment when it is held by the revenue officers that such a payment is proper. The amount to be thus awarded will be settled in the same manner as awards are made when land is taken. These provisions have been generally approved by all the local authorities consulted, but they will, no doubt, receive the careful attention of the Council.

Another part of the measure that is new is that which deals with drainage. Here, again, experience has shown that drainage must go hand in hand with irrigation. If the drainage of irrigated tracts be not carefully attended to, not only serious injury is apt to be done to the land, but the health of the population is often affected in an alarming manner. In dealing with this subject the respective obligations of the proprietors of the land, and of the Government as owner and constructor of the canals, have to be carefully regarded, and provision to be made for giving compensation, on the removal of obstructions to natural drainage-channels cleared for purposes of public utility, to proprietors who suffer loss by being thereby deprived of rights of irrigation or otherwise.

The existing customs, in some places better, and in others less well, defined, under which the Government may require the proprietors and labouring population of estates supplied with water from irrigation works, to assist in the provision of the labour necessary for carrying out urgent operations essential for the safety or efficiency of the works, have been considered, and sections introduced into the Bill for placing requirements of this description on a clearly defined and equitable basis. Powers of a like nature, but more extensive than

those contemplated in the Bill, have been given in respect to the Madras Irrigation works by Act I of 1858, and of the absolute necessity of some such powers in a country dependent on irrigation there can be no room for doubt. It will be for the Council to see that the real requirements of the case are properly met and not exceeded.

The chapter relating to the manner in which charges are to be made for canal-water, is probably the most important of the Bill, and that which offers the greatest difficulties. Under the existing law the power of the Local Government to determine how charges are to be made for irrigation is not limited in any way, and there can be no doubt, I think, that if the form of the present law had been retained, the whole of the proposed sections relating to irrigated land could have been issued as Rules by the Executive Government. But it has been thought better, for the reasons I have already given, to introduce into the substance of the Bill the main principles which the Government desires to have recognised in the administration of irrigation works, and this has accordingly been aimed at. The most prominent features of this part of the Bill are the provisions for charging the proprietor of irrigated land with a water-rate as well as the occupier, and for preventing such a system affecting unfairly the interests of the proprietor in relation to the land-revenue.

The sections which relate to the imposition of a rate on land irrigable from a canal, but not irrigated, contain the substance of the plan thought most suitable for giving that financial security for the payment of the interest on the capital invested in these works, which the Government considers of the greatest importance. The proposal is that if, after a canal has been open for five years, the average nett revenue does not amount to seven per cent. on the capital, a general rate may be charged on all land irrigable from the canal, though it be not actually irrigated, of such an amount as will bring up the whole nett revenue to seven per cent. on the capital. Such a proposal is novel in this country, and therefore at first likely to be viewed with some hesitation. But the Government has thought it to be the most likely method of arriving at a final conclusion which shall be generally satisfactory, to make a definite proposal in the form which, on the whole, seems best suited to meet the requirements of the case, and to endeavour to remove any valid objections that may be taken to the plan, and to adopt any improvements that may be suggested in course of discussion. These parts of the Bill, no doubt, require, and will receive, special attention from the Council ; and so far as such a course may approve itself, simplicity may be secured by leaving to the discretion of the Local Government, to be dealt with under Rules, matters which are specifically dealt with in the Bill as now framed.

Further, I need only direct attention to the preamble of the Bill, with the comment made thereon by Mr. Maine. 'The Bill,' he says, 'lays down a proposition which is believed to be a correct statement, not only of the existing custom of India, but of a fundamental rule universally recognised in Western Europe, and nowhere so distinctly asserted as in those European countries, such as Northern Italy, which resemble India in their dependence on artificial irrigation. This proposition is that the property in the lakes, rivers, and streams of British India is vested in the State, certain cases, to rights acquired by usage or grant.'

With these remarks, I beg to introduce the Bill."

Major General the Hon'ble SIR HENRY DURAND said that it was not his intention to oppose the introduction of the Bill. His object was to guard himself against its being supposed , as at present informed, he entirely approved of its principles. One o these was an important one, and with respect to it he wished it to be understood that he reserved to himself the right of rejecting or of accepting it. He adverted to the somewhat arbitrary powers taken by the Bill for the imposition to a water-rate upon irrigable lands, whether water be taken or not, when revenue return upon irrigation works fell short, within a fixed period, of a certain percentage on the outlay. This was a principle which would demand a careful scrutiny in its application when the Bill had to be considered in Committee, and he suspended his own decision even as to the admission of the principle until he saw how it was applied and dealt with. For he observed that, under the powers taken, there was no security for the people exposed to the incidence of this water-cess against their being, in fact, made to pay for failures—for projects ill-considered and ill-carried out. At the same time he observed that the Bill was permissive, rather than absolute, on this point. A Lieutenant Governor might levy the water-rate after the prescribed period of short receipts, and the responsibility was thrown upon him of deciding whether or not to impose the cess. The instruction to do so was not positive, but left him a wide discretion. Under these circumstances, he was not disposed to object to the leave asked to introduce the Bill.

He must, however, remark that he should have preferred that the opinions of the Lieutenant Governors upon this point of a water-rate imposable on irrigable land had been before the Council. The Statement of Objects and Reasons informed us "that this proposal had been introduced into the Bill by the Govern-"ment of India since it was submitted to the Local Governments, and that they "have therefore had no opportunity for expressing their opinions on the very "important questions it raised." The foregoing was written on the 21st of last September, and in the interval of four months that the Bill had been before the public, the Local Governments had had the time necessary for the consideration of the provisions of the Bill. He was not aware whether

they had communicated their views or not. But as they had had the opportunity of so doing, the fact that the Council was not in possession of their opinions on this principle, which involved such weighty considerations, did not seem to him sufficient to raise an objection to the introduction of the Bill.

He contented himself, therefore, with guarding by these remarks against its being understood that the admission of the Bill pledged him to uphold this principle and the provisions based thereon. He held himself free to accept or reject them uncommitted by the leave to introduce the Bill.

KULLU SUB-DIVISION (PANJÁB) BILL.

The Hon'ble MR. STEPHEN introduced the Bill to invest the Assistant Commissioner of the Kullu Sub-division in the Panjáb with certain appellate powers, and moved that it be referred to a Select Committee with instructions to report in a fortnight.

The Motion was put and agreed to.

HIGH COURTS (COSTS OF PETITIONS) BILL.

The Hon'ble MR. CHAPMAN presented the Report of the Select Committee on the Bill to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain monies transferred to Government.

EMIGRATION OF NATIVE LABOURERS BILL.

The Hon'ble MR. CHAPMAN asked leave to withdraw his motion to introduce a Bill to consolidate and amend the law relating to the emigration of Native Labourers.

Leave was granted.

The following Select Committee was named :—

On the Bill to invest the Assistant Commissioner of the Kullu Sub-division in the Panjáb with certain appellate powers—The Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Friday, the 28th January 1870.

WHITLEY STOKES,
Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 21st January 1870.

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