ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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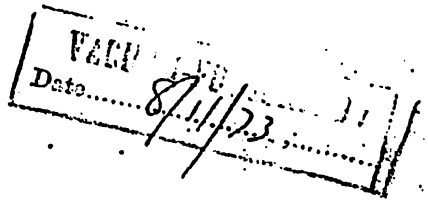

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 24th October, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill for the relief of Indebted Agriculturists in certain parts of the Dekkhan be taken into consideration. He said:—

"My Lord, in making this motion it seems convenient to mention that, while the Bill is being considered, I propose to confine my remarks to the subjects of the several amendments which my deference for the views of the Local Government, no less than my personal convictions, oblige me to move in opposition to certain decisions of the Select Committee, passed by a majority which, but for the absence through illness of the Hon'ble Sir John Strachey, would have been a narrow one. I shall reserve until my motion that the Bill be passed various explanations and comments of, I hope, an uncontentious character, which may perhaps contribute to a better understanding of the measure by those who will have to work it and by the public."

The Motion was put and agreed to.

The Hon'ble MR. HOPE then moved that in section 10 of the Bill the following words be omitted (namely): "except suits of the description mentioned in section three, clauses (*y*) and (*z*)." He said:—

"My Lord, in explanation of this motion, I may remind the Council that paragraph 33 of the Secretary of State's despatch of the 26th December last contains these words: 'I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all Civil Judges in the Dekkhan with great benefit.' In consequence of this suggestion, the draft Bill submitted by the Bombay Government provided that, within certain pecuniary limits, there should be no appeal from the decisions of the Subordinate Courts in cases, including those relating to mortgages, in which agriculturists were concerned, but that the proceedings of the Courts in such cases should be subject to inspection and revision by special officers under the District Judge. The Government of India in its executive capacity, after carefully considering whether the exclusion of mortgage-cases from appeal was desirable, allowed the Bill to be brought into this Council with the exclusion maintained, but substituted, as a further safeguard, the control of one Special Judge for that of the District Judges of the four districts. At the same time, in a letter dated July 26th, calling for the opinions of the Local Government, the High Court and local officers on the Bill generally, it invited attention to the question as still an open one. The reply of the Bombay Government on it was as follows:—

"'His Excellency in Council is of opinion that no alteration should be made in the Bill as it now stands. He considers that, though in some instances advantage may follow on the hearing of a case by an Appellate Court, yet advantage is not likely to result in so large a number of cases as to outweigh the disadvantage of allowing an appeal in all cases; that no distinction need be recognized between appeals in mortgage-cases and appeals in simple money claims; and that, where errors have to be corrected, relief can be afforded on a petition for revision as well as on a regular appeal.'

"The opinion of Mr. Justice Maxwell Melvill on the same point, concurred in by the four other Judges of the Bombay High Court who minuted on the reference, runs thus:—

"'I think that, if the Subordinate Judges and Special Judge be well selected, the system of revision will be an adequate substitute for the present system of appeals. We have had a long experience of the system of revision in the High Court. In cases in which no appeal lies applications for the exercise of our extraordinary jurisdiction are very frequent; and, though we are of course more strict in admitting such applications than we should be in admitting appeals, I do not think that any case of special hardship or injustice ever goes unredressed, or at least without an effort to redress it. Probably, in practice, there will not, under the system proposed in the Bill, be any great difference between the procedure in revision and in appeal. That is to say, every party aggrieved by a decision of a Subordinate Judge will apply to the Special Judge to revise the decision; and if the Special Judge does his duty, he will call for the

proceedings in every case in which he thinks that injustice may have worked. The system of revision seems certainly most in accordance with the general spirit of the Bill, which is to leave everything as much as possible to the discretion of the Judges. I see no practical advantage, if appeals be allowed, in limiting the right of appeal to mortgage-suits.'

"Notwithstanding this concurrence in opinion of the Local Government and five Judges of the local High Court in favour of the Bill as it stood, the Select Committee, by a majority which, but for the reason I have named, would have been a narrow one, have decided to allow appeals under the ordinary law in these mortgage-cases, and to put in the place of section 73 of the Bill as introduced a new section (10) in the Bill now presented, containing the words which I have just read in my motion. As the matter is one of primary importance, likely vitally to affect the success of the whole measure, I feel bound, as I have said, by my own convictions no less than by the obvious propriety of affording full hearing for the views of the Local Government, to request the Council to reverse this decision.

"I will now endeavour to summarize the case. Against the appeal system the following objections are urged :—

"*First*, that it is a tedious process. This is sufficiently notorious; but, as actual proof is forthcoming, I may mention that the Bombay returns of civil justice for the last five years show the average percentage of appeals pending at the end of the year to be 36 per cent., with a maximum of 44 per cent. Again, the proportion of those so pending which had lasted above four months is 57·6 per cent., with a maximum of 66 per cent. How long above four months some of them had gone on, the present forms of return do not show; but by going back to 1872 we learn that, of the 3,191 appeals pending at the end of that year, 615, or about one-fifth, were two years old, 183 were three years old, while 31 were in the fourth, 8 in the fifth, and 5 in the *sixth*, year of their existence! No wonder that sometimes, as stated in an able report on the judicial administration of Khándesh in 1875, written by the Assistant Judge, Mr. Batty, 'after all the worry and expense of a suit, followed by long-delayed decision in appeal, the judgment-creditor finds he has nothing to attach.' To expose the various causes of these delays is perhaps unnecessary; but one important cause may be mentioned, that appeal may be a double process, first to the District Court, and then on to the High Court. About 13 per cent. of the appeals hitherto heard in a year have been such 'second' appeals; and I fear the proportion will be increased by the lately passed amendment of the Civil Procedure Code.

"*Secondly*, appeal is an expensive process. This is obvious, as the parties have to operate at the District or High Court, far from their homes, and where pleaders of a higher class are indispensable. The mere recognized costs of

appeals, such as stamps, process fees, subsistence to witnesses, pleaders' fees, &c., are recorded in 1872 as 13·6 per cent. on the value. The real costs were of course much more, especially for pleaders, who, we are told in the papers before the Council, always exact higher fees than the rate authorized by law.

"*Thirdly*, appeal is a specially uncertain process. Where one Appellate Court sits in appeal upon another, the uncertainty is aggravated; and where this is not so, the natural and proper reluctance of an Appellate Court to interfere with findings on questions of fact, passed in full view of the demeanour of parties and witnesses and in the hearing of the local public, imparts a fictitious and undeserved importance to issues and refinements of law and procedure, upon which opinions may differ greatly. Hence an appeal is too often a gambling or speculative transaction, resulting in the denial of the substantial justice awarded by the Court below. Where, as sometimes happens, the Appellate Court is fond of reappreciating the evidence and meddling with facts, the uncertainty is of course greater still.

"*Fourthly*, appeal is an unsuitable mode of redress; that is, it on the whole suits those least who most need help. As I said in my speech on July 18th, 'the cases which come up in appeal are often not those which deserve to come. Many a man who has a good case cannot afford to appeal; many a man with money needlessly drags his opponent through all the Appellate Courts.' To appreciate the full meaning of this, it must be remembered that appeals lie not merely on the final decision, but on a whole string, lately much lengthened, of intermediate orders of one kind or another. Appeal, in short, is a luxury within the reach of monied litigants only.

"*Lastly*, the process is one of small general application. In 1877 the proportion of appeals to cases disposed of in the whole Bombay Presidency was just 3 per cent. In the four disturbed districts it reached $3\frac{1}{2}$ per cent. in 1876, but fell to $2\frac{1}{2}$ in 1878. But these are appeals in suits of all kinds. If we exclude those as to title, &c., which are known to be numerous, what will be the proportion applicable to our Bill? Yet we are asked by some to believe that by this insignificant check our Courts are kept braced up to high efficiency, and that on its withdrawal they will subside into models of superficiality, incapacity, laziness, precipitation, favouritism, corruption, and I know not what other theoretical attributes of irresponsible power. Nay rather, the truth more probably is that though now, under the existing appeal system, work is so done as to command our confidence, 68 per cent. of decisions appealed against being confirmed, still, as stated by the Bombay Legal Remembrancer, 'Subordinate Judges are left too much to themselves; their work is never sufficiently overhauled and scrutinized; their errors and shortcomings are not pointed out to them,' &c.

"The remarks just made have reference to the appeal system in general. But the majority in the Select Committee only propose that it shall be applied to 'mortgage-cases.' To this I would object that there is no real reason for making a distinction between these cases and others. The theory is that a mortgage-case is something to look very grave about; that it sometimes involves the investigation of difficult questions as to title, priorities, marshalling securities, contribution and rights of maintenance, and always involves the taking of complicated accounts. But the fact is that a mortgage-case, like most other cases, may be easy or may be difficult. Each one of the points named, title, priorities, &c., may present no special feature, and be promptly and safely settled on well-known rules. Questions of title, and curious ones too, sometimes arise about moveable property; and that litigation on them is not inconsiderable may be seen from the statistics of suits arising out of execution of decrees. As to accounts, it may be safely affirmed that they will be found, on an average, to be more complicated in money-suits than in mortgage-suits. An account on a simple money debt, to liquidate which grain, bullocks, cash, personal service, &c., have to be brought to credit under section 13 (*f*) of the Bill, may be complicated indeed. A mortgage account, on the other hand, judging from very full statistics of the mortgages of different kinds customary in the districts of Puna, Násik, Ahmadnagar, Sholapur and Kaládgi, which I lately obtained from the Hon'ble Colonel Anderson, Survey Commissioner for Bombay, must usually contain very simple items, even where an agreement to set off profits in lieu of interest has been set aside. This conclusion, that there is no reason for making any distinction as to appeals between mortgage-cases and other cases, is that which we find given in the papers before us by authorities undoubtedly the best acquainted with the subject. The Judge of Ahmadnagar says that experience shows that any nominal classification of suit is fallacious as a test of intricacy; and Mr. Justice Maxwell Melvill, with whom his four colleagues concur, says he sees no practical advantage, if appeals are allowed, in limiting them to mortgage-suits.

"I must now say a few words about revision. It appears to be in a very great measure free from the evils which I attribute to the appeal system. As the Special Judge and his two assistants will be moving about their charges for nearly two-thirds of the year, parties will be able to come freely before them at the time most convenient to themselves, while cases which they take up *proprio motu* will of course be chiefly taken up at once on the spot, after perusal of the record. The saving to parties in time, trouble and expense is obvious; the long purse will have less advantage over the short one, and the temptations to technicality will be diminished. But, above all, the percentage of cases which will come under scrutiny—scrutiny of a direct, personal and searching character—will certainly be ten times as large as under the appeal

system, and probably more. That Judges who have one-third of their whole work looked into on the spot by picked officers having nothing else to do will not be more careful in it than Judges who have only one-thirtieth, and that of a tolerably defined special class, brought by haphazard before a distant authority, I am wholly unable to believe.

"Against the substitution of revision for appeal what little has been hitherto advanced has mostly been met. But I must invite attention to the utterly insufficient grounds on which the majority of the Select Committee, in paragraph 24 of the report, attempt to justify the conclusion in favour of appeals at which they have arrived. They merely observe that the question whether appeals should be allowed in any cases, or whether we should trust entirely to the powers of superintendence and revision,

'is not so important as might at first sight appear, inasmuch as there can be little doubt that, if the right of appeal were withheld, petitions for revision would take the place of petitions of appeal; and then the chief difference would be that an application for revision not being, like the presentation of an appeal, a matter of right, might be more summarily dealt with by the superior Court.'

Here the whole of the objections to the appeal system, as also the far wider controlling influence of the revision system, are simply ignored; and it is assumed that selected officers of the judicial department will take advantage of the almost imperceptible difference of status between appellants and petitioners for revision in order to deal 'summarily'; that is, I suppose, to leave, as Mr. Justice Melvill puts it, cases of special hardship to go unredressed or without an effort to redress them. Such reasons are a virtual surrender of the case.

"In conclusion, I would beg the Council to bear in mind that the revision system secures whatever advantages the appeal system possesses, but removes the disadvantages which that system involves, and has a far wider beneficial influence; that the abolition of appeals, even without the revision safeguard, is thought desirable by the Secretary of State; that there is no real difference between mortgage-cases and other cases, as far as this question is concerned; that the exclusion of appeals in mortgage-cases is emphatically advocated by the Local Government; and finally, that the five Judges of the High Court have reported officially that revision is an adequate substitute for appeal. In view of these facts, I cannot doubt that the Council will decide favourably on the motion I have brought forward."

The Hon'ble MR. THORNTON said:—"I take the opportunity of the consideration of the first of Mr. Hope's amendments to explain the general principle which will regulate my votes this day. The measure we have to consider is, it appears to me, to all intents and purposes a local one, and, but for certain technical objections, might have been dealt with by the local legislature of

Bombay. This consideration should, I think, induce the Council to accord special respect to the views and wishes of the Local Government. But, apart from this, I look upon this measure as an honest and earnest attempt by the Bombay Government to meet and grapple with a local and exceptional difficulty; and I think, therefore, that their proposals should, wherever possible, receive the cordial support of the Members of this Council, even though some of them may not be in strict accordance with our views of what is best.

"I have said that the difficulty to be grappled with is local and exceptional. I say 'local,' because I desire to protest against the notion, which has obtained some currency, that the condition of the Dekkhan raiyat is to be considered as typical of the condition of the peasantry in all parts of India. At any rate, I can assert that it is not typical of the condition of the people of the province over which my hon'ble friend Sir Robert Egerton presides.

"I say also that the difficulty is an exceptional one; for, although some of the causes which have contributed to the depressed condition of the Dekkhan raiyat—such as the burden of ancestral debt, the *crassa ignorantia* of the kunbí, the absence of a law of bankruptcy or provision for winding-up the estates of deceased persons, the rigid system of collecting the full land-revenue in good and bad seasons alike, the distance of Courts of justice from the homes of the people—were certainly not to be ignored, yet I venture to think the *causa causans* (to borrow an expression from the old logicians) was a sudden and enormous inflation of credit during the American civil war, followed by a terrible contraction of credit. Such an event would bring about in England that state of things known technically as a commercial crisis. It would more or less ruin and demoralize any peasant proprietary in the world, and how much more a simple-minded peasant proprietary in India, where, by laws or custom or from a creditable sense of family honour, it is usual for the son to take upon himself the personal liabilities of his deceased father, even though he may have received no assets from the estate.

"Truly, my Lord, after considering the report of the Dekkhan Riots Commission, my ground of astonishment is, not that 66 per cent. of the Dekkhan raiyats should be insolvent, but that 33 per cent. should be in a position to pay their debts!

"But whatever may be the causes of the situation, there it is, and it *must* be dealt with vigorously thoroughly and practically; and in so dealing with the situation, I, for one, am prepared to sacrifice a large amount of theory.

"Keeping, then, the above principle in view, I proceed to the consideration of the first amendment—that is to say, the amendment which provides that *all*

cases, including mortgage-cases, coming before the small-debt courts shall not be liable to appeal. The statistics relating to appeals in the Bombay Presidency which have just been read to us by the Hon'ble Mr. Hope are certainly not encouraging. But I venture to hope that the facts he has quoted, and the deductions he has drawn, are not applicable to other provinces in India; they are most certainly not applicable to the province with which I am connected.

"Our experience in the Panjáb is that the right of appeal is greatly valued by the people, and it would also appear that the right, though freely used, is not abused; for, although in the Panjáb justice is comparatively accessible,—there being, as a rule, a Court of justice within an easy day's walk of a peasant's home—as many as 82 per cent. of appealable cases are unappealed."

His Excellency THE PRESIDENT:—"Does the Hon'ble Member mean that in 82 per cent. of the cases in which an appeal lies the decisions are unappealed?"

The Hon'ble MR. THORNTON:—"Yes, my Lord. What I am seeking to show is that, though the right of appeal exists, and is highly valued, and can be easily enforced, it is not abused in the Panjáb.

"But, although our experience of the working of an appellate system is not similar to that of Mr. Hope in the Bombay Presidency, yet, as the Local Government of that Presidency considers that the regular appellate system is objectionable in the case of the smaller class of suits by money-lenders, including mortgage-suits, and prefers to substitute and pay for a somewhat costly system of revision, control and superintendence, which is to all intents and purposes an easy, though somewhat uncertain, system of appeal, I am certainly not prepared to vote against the Hon'ble Member's amendment on this point."

His Honour THE LIEUTENANT-GOVERNOR said:—"I have very few words to say upon this amendment. I consider the Bill, as my hon'ble friend Mr. Thornton has remarked, to be a local one, and that it is for technical reasons alone that it comes before this Council. Holding this view, I think that the utmost deference should be paid to the wishes of the Local Government in regard to the details of the measure. The whole chapter in which the section which it is proposed to amend occurs sets aside many of the existing provisions of the Code of Civil Procedure; and I can see no reason why the appeal, for which revision is substituted in regard to the other classes of cases specified in section 3, should be allowed in mortgage-cases only. I consider that the same procedure should be adopted for all the classes of suits specified, as the Bombay Government desire. In their letter on the case they state distinctly that they do not wish any appeals to be allowed in mortgage or other cases; and it seems to me desirable to follow their wishes."

The Hon'ble MR. RIVERS THOMPSON said:—"As a member of the Select Committee which very carefully went through all the details of this Bill, and unfortunately a member who was in a minority on this point, I do not like allowing it to pass with a silent vote. The question before the Council, I would remind them, is not whether there should be no supervision at all as regards the proceedings of Courts in any class of cases, but the simple one whether, in dealing with disputes connected with mortgage-suits, the principle to be adopted should be one of appeal from the Subordinate Judge to a superior Court or one of revision by a Special Judge. Now I trust I shall not be out of order if I remark that, with regard to this particular question about appeals, it depends very much upon whether the next amendment which the Hon'ble Member for Bombay will move—that is, with regard to section 54—will be carried or not. It seems to me that the two sections hang or fall together. If, as the Bill now stands, the Special Judge is excluded, I am prepared to say that some system of appeal ought rightly to be admitted with regard to this particular class of case; but if it is a question whether there shall be appeals, or whether this particular class of cases shall come under the revision of a Special Judge, I am certainly in favour of the amendment proposed by the Hon'ble Member for Bombay, that the latter alternative should be adopted. I would call to the remembrance of the Council that, before even the Bill was introduced, there was a Committee of officers who considered very carefully the provisions of the measure, and it was at that time proposed, and adopted almost I believe with unanimity, that, considering the very exceptional and admittedly tentative character of this legislation, it would be very much better that a special officer should be appointed, not only for the duty of revising judicial decisions of inferior Courts, but for the general supervision of all proceedings under the Act.

"I myself fully accepted that proposal; and as the Bill was first drafted, it contained a provision for the appointment of a Special Judge. This arrangement secured, as I have said, the necessary special superintendence required for the work in the four districts to which the Bill was to apply; and that not only as regards any particular class of suits in Court, but for the whole general administration of the law. I still think that this is a necessity under the circumstances in which this measure is introduced into these four districts. They have suffered from long-standing troubles and difficulties arising from causes in a great measure beyond the control of the Government; and in the embittered relations which now exist between debtor and creditor special legislation has been resorted to for the removal of the evil. Now, when the question of appeals came before the Select Committee, while it was accepted, as a rule, that appeals should not be allowed in simple money claims, it was decided that they should be admitted for those two classes of cases that come under clauses (*y*) and (*z*) of section 3; and stress was laid by the majority of the

Committee on the fact that this class of cases was a very difficult one, and that in consequence of that difficulty Appellate Courts must be provided for securing that no injustice takes place in such litigation. I agree with Mr. Hope in thinking that, considering the class of people for whom we are legislating, and the amount for which the money-value of appeals is fixed in the measure, these mortgage-cases will probably not present greater difficulties than the general class of cases which will come under its provisions; and I am also inclined to say that, whatever these difficulties may be, they will much more advantageously be met by an officer fully vested with the powers of revision, specially selected and reserved for the consideration of these cases, than by the ordinary procedure in civil suits. It seems to me that if a system of appeals is to be allowed, and such appeals are to lie to four different Judges, holding their courts at different places, at long distances from the homes of the people, the long delay that always arises in the disposal of appeals, and the technicalities of procedure that attend such a course, will be fatal to the success of the Act. I would also point to the fact that, as regards the objection taken as to the difficulties and intricacies of such suits, in section 12 of the Bill as it now stands special provisions are made to enable the Courts to go, as it is called, behind the bond; and that in mortgage-suits also it will be in the power of those Courts to analyze the whole history of the transaction. As the general scope and object of the whole measure is to bring the two parties together, and in their presence to try and get to the foundation and origin of the debt, and the whole proceedings connected with it, the Subordinate Judges will have ample power to go into the entire case, and to arrive at a fair decision upon its merits. With these observations, I have only to say that I shall support the Hon'ble Member in his amendment."

The Hon'ble SIR JOHN STRACHEY said :—"The Hon'ble Mr. Hope, in his opening speech, referred to the fact that, although I was a member of the Select Committee on this Bill, I had unfortunately been unable to attend the meetings of the Committee; otherwise I should certainly not only have expressed in the Committee views in accord with the present amendment, but also with the other amendments of which notice has been given. I should have agreed on every point with him and my hon'ble friend Mr. Thompson. I am strongly opposed to the alteration which the Select Committee has proposed to make in the Bill in regard to the question of appeal; and I think the change, if allowed to stand, will be a most unfortunate one. I do not for a moment deny that it is necessary in a great many cases of importance to allow suitors the right of appeal. Nevertheless, I believe it to be true that, among all the causes which have rendered the administration of justice in India slow, expensive and uncertain, the system of appeal has been one of the most serious and the most mischievous. I think it has been clearly shown

that nine-tenths of the cases in which it is now proposed to allow appeals will be of a most simple character, and that there is no more reason for allowing an appeal in them than there is for allowing in the other cases in which an appeal is forbidden by the Bill.

"It seems to me that far greater security for the correction of erroneous decisions, and for ensuring supervision of the Subordinate Courts by competent superior Judges, was afforded by the Bill as it stood before it was altered by the Select Committee.

"As my hon'ble friend Mr. Thompson has just said, the amendment now being considered and the second amendment which refers to the appointment of a Special Judge are closely connected with one another, and they must stand or fall together. As the Bill formerly stood, there was to be a Special Judge, who was to devote his whole time to examining the proceedings of the Subordinate Courts, and to revising their decisions whenever a failure of justice appeared to have taken place. It seems to me that every honest suitor considering himself aggrieved by the decision of the lower Court would have every opportunity under the system formerly proposed by the Bill of getting his case re-heard which he could have under the system of appeal. His petition would be called a 'petition for revision' instead of a 'petition of appeal'; but I cannot see that he would be deprived of any single advantage which under the system of appeal he would have. It seems to me that, taking the first and second of these amendments together, it is now proposed to abolish one of the very best and most essential parts of the Bill as it was introduced. It is proposed to substitute for the provisions under which we should have got security for the constant and personal superintendence by a competent officer over all the proceedings of the lower Courts the altogether illusory and imaginary security afforded by extending the power of appeal. The Bill as it originally stood in respect to this matter was, I believe, approved by the majority of this Council. It was strongly approved by the Local Government; and we know now that it was also approved by the five Judges of the Bombay High Court. Under these circumstances, my Lord, I shall vote for the amendment."

The Hon'ble MR. STOKES said that the effect of the amendment would be to deprive the parties to all suits for foreclosure or redemption of the right of appeal which they now enjoyed, and to substitute for it a system of revision. On the expediency of providing an appeal in cases of this kind he had but little to add to what he had said when the Hon'ble Mr. Hope had introduced the Bill. He had then pointed out that, in the absence of an Appellate Court, the Judges of first instance would have no one to stand in awe of, and that the errors arising from corruption, incapacity, laziness, precipitation, ignorance and love of arbitrary

power would remain uncorrected, and cause hardship and discontent. These general remarks did not pretend to be original, but were founded on the writings of the great master in these matters *di color che sanno*—Bentham—and he had heard nothing here to-day, and did not expect to hear anything, that would lead to a different conclusion. But the matter seemed more complicated than he had supposed. It now appeared that these mortgage-suits were of such importance as to demand a special procedure, or, at all events, to be free from a summary procedure, not merely because of their difficulty, of which he would say a few words hereafter, but because they related to land, and because to the Native of India land was of abnormal importance. Having no manufactories, their livelihood depended solely on the cultivation of their fields; and for that reason, as well as for others—as he understood from persons better acquainted with the subject than he could pretend to be—they attached extraordinary value to the right of appeal in all questions relating to land. The question had, therefore, a political as well as a juristic aspect. Furthermore, the suits referred to in the amendment were mortgage-suits; and, as the Bill was now framed, the number of mortgage-suits would be enormously increased. As far as he could make out, with section 22 forbidding attachments or sales of immoveable property not specifically pledged, no saukár would ever lend money except on the security of land; and, unless the nature of such litigation was different in the Bombay Presidency from what it was elsewhere, no suits could be named in which difficult questions more often arose and which were, therefore, less adapted for a summary procedure. There was always a more or less complicated account to be taken; and questions as to title, priorities, marshalling securities and contribution were certain to arise in almost every case—that is, provided the Judge understood his business, and saw difficulties where they really existed. That Bombay litigation formed no exception to this rule appears from the able paper of Mr. Naylor, the Bombay Legal Remembrancer, who wrote:—

"Suits between mortgagors and mortgagees generally entail questions of considerable importance and difficulty; and, after having given the matter much consideration, I am unable to concur with those who think that when agriculturists are parties to such suits they should be tried summarily. The intricacy of a suit in no way depends upon the social status or occupation of the parties thereto. It is to the subject-matter of an action that we must look in order to judge whether it is likely to involve complicated issues; and those who are acquainted with the usual range of litigation will unhesitatingly affirm that questions relating to mortgage-claims are amongst those which are most prolific of knotty points and legal difficulties. It makes no difference in this respect whether the value of the matter in dispute be small or great, or whether the parties tothe suit belong to one class or another."

It was true that the Hon'ble Mover in his speech on introducing the Bill, and in reply to a question put by the Hon'ble Sir Alexander Arbuthnot, said that "mortgages are usually only difficult if they happen to

involve questions of priorities and the like, or there are several creditors. . . . . Under the Bombay revenue system the name of the owner of every field is entered in the Government books. It would only be in most rare instances that the man whose name appeared was not the real owner; *and so* questions of title are not likely to give trouble." MR. STOKES thought the Hon'ble Member in making the latter statement must have overlooked the fact that the Bombay High Court had decided more than once that the Collectors' books were kept for purposes of revenue, and not for purposes of title (10 Bom. 187); and that the fact that a person's name was so entered did not establish his title or defeat that of any other person (10 Bom. 187, 192). As to the disadvantages in civil cases of the system of revision as compared with the system of appeal, he rejoiced to find that the remarks which he had ventured to make upon this subject, drawn as they were from theoretical considerations rather than practical experience in the Mufassal, were now confirmed by three such men as Mr. Naylor, whom he had just quoted, Mr. Wedderburn, District Judge of Ahmadnagar, and Mr. Justice West.

Mr. Naylor at page 9 of his paper said:—

"The cases in which it would be justifiable to interfere with a decision of a civil matter, except upon the application of one or other of the parties, must be very few. If the Special Judge revises a decision upon the complaint of one of the parties, he will, in effect, hear an informal appeal. But he will do so subject to the following disadvantages over a regular system of appeal (namely):—

(1) that there is no limit to the period within which applications for revision may be made or granted, and the parties can, therefore, never be certain that the decision they have obtained is final;

(2) that the application will generally have to be enquired into at a great distance from the homes of the parties, *i.e.*, wherever the Special Judge may happen to be on tour, and on no fixed date, and must, therefore, be disposed of without hearing the parties or anybody in their behalf;

(3) that the parties will have no absolute right to bring their cases before him, and that it will therefore be in his power to refuse applications without any inquiry at all.

"The right of appeal to a fixed Appellate Court within the district itself is, I think, a far preferable remedy to this; and in mortgage-cases it is most undesirable, not to say altogether inequitable, that the people should be deprived of it."

Mr. Naylor did not seem to be quite correct in saying that there was no limit to the period within which applications for revision might be made. The Limitation Act, XV of 1877, schedule II, No. 178, fixed a period of three years for this and other applications not expressly provided for. But for three years the parties would never be certain that the decision they had obtained was final; whereas now, when the periods prescribed for presenting appeals

under the Code of Civil Procedure (thirty days and ninety days) had lapsed, the decision might practically be regarded as final. As to the disadvantages respectively numbered (2) and (3) he (MR. STOKES) entirely agreed with Mr. Naylor.

Mr. Wedderburn in the fifth paragraph of his note also said :—

"With regard to the efficacy of revision as a substitute for appeal, it appears to me that this method of control is better suited for criminal than for civil business. By examining a criminal return, which gives an abstract of the incriminating circumstances, and states the section under which the accused has been convicted and the amount of the punishment, a superior Court can form an opinion as to the general propriety of the orders passed, and by sending for the record can effectually remedy a failure of justice. But the difficulty of carrying out such a duty would be very much greater in civil suits, where the issues are so much more complicated. And I think it would be difficult to devise a form of return which would, within moderate dimensions, supply to the Special Judge the information necessary to enable him to carry out the revision described in section 54 of the Bill. It must also be borne in mind that, unless such returns are framed in English,* most European officers would, in making use of them, have to rely on subordinate agency, which would, in great measure, defeat the purpose of the legislature in appointing a Special Judge to exercise a vigilant personal control. If, on the other hand, the Special Judge does not rely upon civil returns, but modifies the decisions of the Subordinate Judges upon the complaint of the parties, I do not see wherein this method will materially differ from a system of appeal. To disturb the decision of the lower Court on a mere inspection of the record would be a risky proceeding; and the party to whose detriment the alteration was made would consider himself highly aggrieved if he had no opportunity of being heard in support of the original decree."

* The Subordinate Judges in this district write their judgments mostly in Maráthí.

The Council would perhaps remember that when the Bill was introduced he (MR. STOKES) had suggested that the revising Judge would have neither time nor skill to decipher and translate the records kept, as they would be in a Native language, and that he would therefore have to rely upon some corruptible subordinate, such as the sarishtádár. He was glad to find this suggestion fully supported by the District Judge of Ahmadnagar. To the same effect was the remark made by Mr. Justice West in what he would take the liberty of calling one of the most interesting and statesmanlike papers ever laid before this Council. "The brief notes of evidence and of the judgment," says Mr. West, "will, it is supposed, be nearly always in English. *It is absolutely necessary that they should be, if there is to be any trustworthy scrutiny of them by the supervising officers.*"

But to return to the general question as to the relative advantages of a system of appeal and a system of revision, Mr. Justice West, in the paper he had just quoted, remarked :—

"The power of superintendence and revision is one which in discreet hands may be very usefully exercised; yet, according to my experience, it bears much more frequently upon matters

of form than of substance. If there has been any active departure from the prescribed rules of procedure, the papers recorded will usually indicate the error. Omissions to do this or that thing which ought to have been done are less readily betrayed by the record; and all signs of any total departure from justice or propriety will be carefully excluded from it. If a Subordinate Judge towards the close of a wearying case refuses to take the evidence of certain witnesses or to accept a well-grounded application for adjournment, there will, as a rule, be nothing on record to show this dereliction of duty. If he cuts short the examination of witnesses whose testimony is received, his notes or the substance of their statements will not afford any evidence of his impatience. A smooth and specious surface presented by the written proceedings is quite consistent with a defective, arbitrary and partial investigation in substance. The parties only, and the people who were present in Court, can say how far the record is an actual representation of what took place. It is the interest of the defeated litigant to point out all errors of the Judge through which, as he thinks, justice has been defeated. It is equally his interest not to indulge in misrepresentations, the discovery of which will cause distrust, and probably the dismissal of his appeal. It is thus, and thus only, that material failures of justice arising from indolence, impatience or caprice will, with any reasonable certainty, be brought to light. The record ought to be kept with such fulness and regularity that, except by a conspiracy between the Judge and his principal subordinates, it should by mere inspection of it afford a corroboration or refutation of most of the imputations which a disappointed suitor is apt, rightly or wrongly, to cast upon the Judge who has decided against him.

"It is true that the same disappointed suitor who, under the ordinary system, may make an appeal may, under the system of revision, present his complaints in the form of a petition for review. Some check on absolutely false statements will be imposed by a rule which shall exact a verification on oath of the matters of fact set forth in the application. But whether its assertions as to a defective examination of the witnesses or a perverted note of their statements are true or not cannot really be ascertained, in case of a denial, by means of the Judge's note, which is itself impugned. It is certain that many false or greatly exaggerated complaints will be made, and, under cover of these, a careless or hasty Judge will enjoy impunity in cases in which he has been really and seriously to blame."

He (MR. STOKES) felt it his duty to bring these remarks before the Council; for he had reason to believe that, owing to great press of work, they had not been read by some of the Hon'ble Members. They had, moreover, been made by men who had had very considerable experience in civil judicature—an advantage which, so far as he was aware, the Hon'ble Mover, however distinguished as a Collector and Magistrate, had not enjoyed. Mr. Justice West then proceeded to show that the system of revision would tend to cause deterioration of judicial work:—

"The brief notes of evidence and of the judgment will, it is supposed, be nearly always in English. It is absolutely necessary that they should be, if there is to be any trustworthy scrutiny of them by the supervising officer. But, for the purposes of publicity, of bringing the people in the Court and the Judge into effective and corrective relation, these notes might as well be written in Japanese or Hebrew. It is a rare thing for even one member of the assembly in a Subordinate Court to know English. The Subordinate Judge may take down

Civil Procedure Code, sections 189 to 203.

as much as he likes and in what terms he likes. The reasons he chooses to assign for his decision may be good, bad or indifferent, and no one in Court will be a bit the wiser. If theory and experience both are not entirely at fault, this substantial withdrawal of judicial work from the light of full publicity cannot but be attended with a rapid deterioration of its quality. Few human beings are fit for irresponsibility—Natives of India least of all. From a personal examination some years ago of a large number of unappealable cases disposed of by Subordinate Judges, I became satisfied that the inherent weakness of the Native character (or indeed of human character) showed itself as markedly in judicial proceedings as in any other work. The evidence I found was taken in a much more slovenly manner; the whole business of the Subordinate Judge was performed with far less care and precision than in the cases subject to appeal. And if this was so when the whole record was in the vernacular and open to effective discussion by every one about the Court, how much more may the same laxness be expected to prevail when everything is hidden away in an unknown tongue?"

It was said that the system of appeals led to inordinate delay and expense, to loss of time and to uncertainty, which checked exertion. He (MR. STOKES) had touched on this matter in the remarks which he made when the Bill was introduced, and was not going to repeat himself; but he would read what Mr. Justice West had written on this matter:—

"It is said, however, that this system of appeals leads to inordinate delay and expense, to loss of time and an uncertainty which checks exertion. The raiyat himself, however, does not, in fact, appeal in more than one in a hundred of the suits of small amount that are brought against him. In cases of larger amount, he belongs generally to a class needing no special protection. If he has no means, he may appeal without expense *in formâ pauperis*. If dissatisfied, he may again present his case free of cost to the High Court. His applications are rejected only if it appears that he is in the wrong. If his creditor appeals against an adverse decree, the necessary expense falls on that creditor, at least in the first instance. To be a respondent does not necessarily cost anything: a debtor successful in the Court of first instance is not even called on to appear in the Appellate Court, unless a good *primâ facie* cause appears for reversing the decree in his favour. If the decree was absolutely wrong, it will hardly be contended that it ought not to be set right. Such is the degree of uncertainty produced by the right of appeal; and this itself is controlled and restricted by the power of the Hgih Court. It is not for a moment to be compared with the uncertainty in which people would live with respect to any possible claim that might be trumped up against them under the *régime* of ill-informed, poor and practically irresponsible Judges. The loss of time is as nothing to that which will be occasioned by the enforced double appearance in many cases before Conciliator and Judge, by the necessity of bringing forward unwilling gratis witnesses and getting a presentable statement of defence driven into a stolid brain by a pleader not allowed himself to plead.

"Considered as a means for ameliorating and elevating the condition of the peasantry, this scheme of imperfect investigation, defective record and casual supervision seems as unpromising as any that could be devised. It has not, I think, emanated, and could not have emanated, from any one really acquainted with the working of the Civil Courts in this country. It meets no actual or even fancied need of the people themselves. They do not complain of the Appellate Courts except as they complain of all Courts which enforce the payment of debts,

They have more confidence in the Court of higher than in that of lower rank, and, like the rest of mankind, they are pleased to think that an appeal lies open to them, even if they do not resort to it. What they really complain of about the Courts are the enormous fees, which it is not apparently proposed to reduce; the loss of time in attendance, which will be considerably increased; and the improvident sales of their property, which could as well be prevented under the existing organization as under that by which the legislature is asked to replace it. From 1880 onwards they will have in every case, or almost every case, to sell their farms outright, where now they would but contract a loan. When a suit is instituted, they will lose their patrimonies more rapidly and irrevocably than ever before. Such 'relief' will to some of their untutored minds be hardly distinguishable from a new form of oppression."

After all, on such a matter the only opinions likely to be of much practical value were those of men familiar with the working of the local Civil Courts: to such familiarity he (MR. STOKES) could not pretend; and with these remarks on appeal and revision, which he had studiously refrained from making on his own authority, he begged to state that he would oppose the motion.

The Hon'ble SIR ALEXANDER ARBUTHNOT said:—"My Lord, I intend to vote against the amendment. I had not intended to speak at any length on this question, and the few remarks I proposed to make have been for the most part anticipated by my hon'ble friend Mr. Stokes. But there is one point which has been dwelt on by some of the speakers in favour of the amendment regarding which I should like to say a word. My hon'ble friend Mr. Thornton in his interesting observations, and my hon'ble friend the Lieutenant-Governor and, if I remember right, Mr. Thompson also, dwelt on the importance of our giving the utmost possible support to the views of the Local Government in regard to what they described as an essentially local Bill. Now, my Lord, I quite agree with those Hon'ble Members that in this, as in all other matters affecting the local concerns of a particular presidency or province, we should pay the greatest and the most respectful attention to the views and opinions of the Local Government. But it appears to me that this principle may be carried too far. The Government of India exists, both in its executive and its legislative capacity, for the purpose of directing, controlling and laying down the principles upon which this country is to be administered, both executively and legislatively. It is very desirable that, as far as we possibly can, we should abstain from interference with the Local Administrations in matters of detail; but when we come to important questions of principle, when we come to proposals which are in contravention of the principles which have been laid down by the wisest administrators and legislators who have dealt with such matters, whether in our own country or in India, then I think the Government of India are bound to consider carefully whether it is not their duty to interpose. It appears to me that in this particular matter the supporters of the amendment moved by the Hon'ble Member are ignoring the wisdom and the opinions of the most eminent men who

have dealt with legislation not only in this country, but in Europe. My hon'ble friend Mr. Stokes quoted the opinion on this particular matter of the great founder of nearly all the law reforms which have taken place in England in the course of the present century—the opinion of Jeremy Bentham. It is often said that Jeremy Bentham was a man of the closet—that he was a pure theorist; but somehow or other there are very few of his theories which have not come to be copied, and that have not brought about the most beneficial results. The Mover of the amendment told us that the nominal classification of suits is fallacious as a test of intricacy. Now, it so happens that this particular test is the test which, during the last thirty or forty years, since Courts of small causes—Courts expressly framed for the purpose of exercising prompt and summary jurisdiction—were founded in England, and since those Courts have been established and extended in this country,—this, I say, has been the test which the wisest men among us, the most learned, the most thoughtful and the most practical of our predecessors have deemed it necessary and found it convenient to adopt. It appears to me that on our part it is not wise to ignore the lessons of experience, the teachings which have been handed down to us by men certainly not less eminent than those who are seated round this table. The Hon'ble Member who has moved the amendment has treated a despatch of the Secretary of State, which was the immediate origin of the preparation of the Bill now before us, as laying down that it was desirable that in regard to all suits in which the Dekkhan raiyats were concerned the right of appeal should be abolished. The despatch to which he has alluded is on some points, and certainly on this point, somewhat vague in its wording. But I must express my conviction that the framer of that despatch had no such intention as that which has been attributed to him. It seems to me that all that the Secretary of State intended was that the system of summary, or what we call small-cause, jurisdiction should be extended in these particular districts of the Dekkhan more than they have been generally extended in the Mufassal in this country. I do not for a moment believe that it was his design that in suits of the class of those which, not only throughout the Mufassal but in the Presidency-towns, it has been necessary to provide for and regulate under the ordinary rules of civil procedure, a new system should be introduced. My hon'ble friend Mr. Stokes, and the experienced officers from whose writings he has largely quoted, have, I think, sufficiently shown that the test which the wisdom of our predecessors, which the experience of the past, have pronounced to be adequate and sufficient is one which ought not to be departed from on the present occasion; and I think he might have added that, if the objections which have been advanced against the system of appeal by the Mover of the amendment and by his supporters in this Council are really valid objections, they apply to our whole system of judicature throughout India. If it be the fact that the evils which accompany that system are so great as they have been

described, then I say that those evils are just as applicable to Bengal, the Panjáb, the North-Western Provinces or Madras as they are to the Dekkhan districts of Bombay. It appears to me that in arguing in support of their contention my hon'ble colleagues have somewhat overstated their case.

"Then, as it appears to me, there is another objection to the amendment which has been moved with reference to the section now under discussion.

"I quite agree with Sir John Strachey and Mr. Thompson that the question of appeals and the question of a supervising Judge hang together. If a majority of this Council shall this morning decide that the right of appeal in these cases shall be abolished, and shall also decide, as I have no doubt in that case they will, that these suits shall be withdrawn from the cognizance of the established District Judges, and shall be brought under the supervision of a special officer, the result will be that the Subordinate Judges by whom the suits will be tried will be serving under two masters. The District Judges before whom appeals from all their decisions will lie in all cases other than those provided for in this Bill, not excluding cases above the value of Rs. 500 in which agriculturists are concerned, will be deprived of the opportunity of observing the working of the Judges subordinate to them in that which will form a very large portion of their jurisdiction. The Subordinate Judge will be receiving from one master that description of instruction which may be afforded by the exercise of the powers of revision; he will be receiving from another master the instruction which is afforded by the trial of appeals from his decisions. It seems to me that such a system will give rise to a great deal that is unsatisfactory in the practical working of our Courts, and will end in all sorts of complications. Sir John Strachey observed that the honest suitor under a system of revision would have every opportunity of having his appeal heard if he had a real grievance; but he omitted to remark that the application for revision might very often be preferred by dishonest suitors; and in such cases the system, it appears to me, will be open to all the objections which have been advanced against it by Mr. Naylor and by Mr. Justice West. 'Mr. Naylor points out,' as Mr. Stokes has told us, 'what a serious grievance it will be that these suits should be heard in the informal manner in which they may be heard under the Bill as it is proposed to amend it.' Taking the case which I have just suggested—the case of a dishonest suitor who prefers what will really be an appeal to the revising Judge—suppose the revising Judge does not think fit to call upon the opposite party to hear what he has got to say on the other side, then a grievous injustice may be committed. It appears to me that this is a point and an aspect of the question which ought not to be left entirely out of consideration.

"Lastly, I would remark that in depriving the people of these districts of the right of appeal in that class of cases in which it is now given in every

district throughout the country—a right which elsewhere it is proposed to maintain—we shall be depriving the people of the Dekkhan of what to them, as to other Natives of India, is a valued and cherished privilege."

His Excellency THE COMMANDER-IN-CHIEF said:—"I have no intention of saying a word on this Bill, as I believe I come more strictly under the category of those referred to by my hon'ble friend Mr. Stokes who have not read all the papers. But I have listened with great interest to my hon'ble friend Mr. Thornton's speech; and if anything is clearly stated by him, it is the immense value attached by the raiyats of the Panjáb to the privilege of appeal. I must say I was rather astonished at the conclusion arrived at by the Hon'ble Member and the vote which he proposes to give. I assure you that his speech has quite convinced me of the propriety of taking a directly opposite course to that which he himself has taken. I have not altogether omitted reading a portion of the papers concerned and the Bill itself; but it appears to me that, if the Bill is intended for any purpose at all, it is for the relief of the raiyat; and it seems to me a very strange method of relieving the raiyat that we should at the very first discussion that occurs on the Bill withdraw from him his most valued privilege. I have only to say, my Lord, in conclusion that I shall vote in opposition to the amendment."

The Hon'ble MR. HOPE said:—"My Lord, I trust that the Council will extend to me some sympathy in the difficult task which I am called upon to perform, at a moment's notice, of replying to two such long speeches as those we have just heard, adverse to my amendment, and which go into such an enormous number of petty details; and I must only ask it to accept my assurance, by way of covering any omissions which I may inadvertently make that there is not a single phrase, or a single allegation, used in either of these two speeches which is not capable of being effectively contradicted.

"In the first place, the Hon'ble the Law Member led off by saying that the objections which he put forward were not original. This I can well believe. He proceeded further to base them upon the authority of Bentham; and the Hon'ble Sir Alexander Arbuthnot also enlarged upon the same and other authority. We were told that we were committing a great crime in ignoring the wisdom of eminent men, who were considered to be the very first authorities not only in Europe but, in fact, throughout the world. Now, in the first place, I beg to deny the premises. We are not ignoring the authority of Bentham at all; and Bentham is simply a very great name, brought in under perhaps the erroneous impression that it would frighten or persuade somebody. The mention made of Bentham by the Hon'ble the Law Member in his speech on the 18th July was that, 'in the absence of an Appellate Court, the Judges of first instance will have no one (as Bentham says) to "stand in awe" of.' Well, the whole

point in this simple question is, whether the Courts will have any one to stand in awe of or not; and, therefore, all that we have got to do, in order to carry out to the full Bentham's theory, and to defer to his authority, is to take care that we keep a proper authority for Courts 'to stand in awe' of. Now, the argument in this matter, which I am glad to see neither of the Hon'ble Members has ventured to allude to, that the system of revision is much wider in its application than the system of appeal, effectively disposes of this question; for it stands to reason, except, perhaps, in the minds of persons of such very uncommon sense that I should be loth to recognize it as sense at all, that Courts which have 30 per cent. of their work carefully looked after by special officers are likely to stand a little more 'in awe' than Courts which have only 3 per cent. of their work looked after. Therefore, I entirely deny that we go against the authority of Bentham or any other of the great experiences which are held up to frighten us."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"I should like for a moment to interrupt the Hon'ble Member. I wish to remark that, if the Bill should be left as it is at present framed, there will still be a system of revision under Act XIV of 1869, which I believe is a Bombay Act."

The Hon'ble MR. HOPE:—"I am much obliged for the Hon'ble Member's interruption, which I will make a note of, and deal with in due course. Well, to continue regarding this matter of our old experiences, having answered with reference to Bentham, I may notice that it has been urged that we ought not to abandon a system which has stood a test thirty or forty years old, and that we should not cast aside the experience of the past. To that I reply, that the experience of the past is exactly what brings us to our present position; because the experience of the past has shown us that this system of appeal is *not* efficient, and that the system of non-appeal has been gradually coming round into favour, first of all in England, and now in India, where at last a little ray of light has come to us. In India even, in money cases, within the last thirty years appeals have been cut off in the Small Cause Courts; and in England the system had been much more largely extended. Therefore, the practical experiences of the past are entirely in favour of our measure.

"Next, we were told by the Hon'ble the Law Member that it was not only because mortgage-suits were difficult that he thought they should be subjected to appeal, but because they also related to land, and that land is a very important thing, and a thing to which the people of this country attach an extraordinary value. This is a change of ground from that previously taken up by the Hon'ble Member; but at the same time it is a perfectly fair and reasonable ground to occupy, and I have only to remark with regard to it that the observation seems to me to be totally irrelevant. Nobody ever said that the

people do not attach value to the land. The question here really is, whether the cases which relate to land will be a bit less carefully tried under the system proposed than under the system it is proposed to abolish."

The Hon'ble MR. STOKES:—"The point, I may remark, was that the people attached an extreme value to the right of appeal in suits relating to land."

The Hon'ble MR. HOPE:—"I am much obliged to the Hon'ble Member. Now, to come to the value which people attach to the right of appeal, I cannot but think that His Excellency the Commander-in-Chief—although no doubt he will pardon me if I am in error—may possibly have misunderstood, as I myself did at first, the manner in which the Hon'ble Mr. Thornton expressed his view regarding the appreciation of the people of the Panjáb of the system of appeal. He put it—if I correctly took it down—that of the cases which might be appealed against, 82 per cent. were not appealed against. That statement, inverted, means that the people only appeal in 18 per cent. out of all the cases."

His Excellency THE COMMANDER-IN-CHIEF:—"That is exactly the view I took of it, and it only shows the appreciation the raiyat has of his position in not making futile appeals; and I suppose the Dekkhan raiyat is as sensible a man as the Panjáb raiyat."

The Hon'ble MR. THORNTON:—"Perhaps I had better explain that what I wished to say was that, as a matter of experience, in which I think my hon'ble friend the Lieutenant-Governor concurs, the peasant of the Panjáb does, as a matter of fact, attach the greatest importance to the power of appeal, and also that he does not abuse that power. I therefore adverted to the statistics to which the Hon'ble Mr. Hope has referred."

His Excellency THE COMMANDER-IN-CHIEF wished it to be understood that he had fully and rightly comprehended the remarks of his hon'ble friend Mr. Thornton.

The Hon'ble MR. HOPE:—"I am glad to find that my surmise was incorrect; but, as I did not at first fully understand the matter through the way it was put, I thought there might have been a misapprehension. But with regard to this I have only to say that, greatly as I respect the knowledge my hon'ble friend Mr. Thornton possesses of the Panjáb, and fully prepared as I should ordinarily be to accept any inference which he might draw from it, I somewhat hesitate to infer from the simple fact that the people do not appeal in 82 of the cases in which they might do so that they abstain from appealing solely through moderation. I should require a great deal more proof than those

statistics afford before I should be inclined to admit that. But I do say that it appears to me that the large proportion of appeals may be very easily accounted for on one of the grounds which he assigns for it, namely, that the Courts are nearer to the homes of the people, which is one of the great things we find the Dekkhan Courts are not. Whether, if the Dekkhan Courts were situated as those of the Panjáb are, the people would appeal in the same number of cases I am not prepared to say; but I do not think that any sound generalization can be drawn from one province in India as compared with another, since we find that, with regard to all these provinces, the most essential differences exist between them. As a matter of fact, we find that the people in the Dekkhan do not appeal in cases above the proportion which I have stated, and that there is an enormous mass of evidence in the Dekkhan Riots Commission Report all telling us why they do not appeal. It was *not* found there that they do not appeal because they enjoy and value their right of doing so; but it *was* found that they do not appeal simply because, for the various reasons already stated in my introductory speech on this motion, and which I will not now weary the Council by recapitulating, they find that they *cannot* appeal.

"But even as regards the matter of the people valuing this right, we are told that they do, upon the strength of a statement, if I recollect rightly, of Mr. Justice West.

"Now, I wish, with the permission of the Council, to read to it the statement of an officer—whose name, unfortunately, I am not at liberty to mention—who has not, like some of our critics, never been in the Dekkhan at all, but who has spent a large portion of his Indian service in Mufassal work of the most arduous and searching character. What he says is this"—

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"Has this officer been in the Dekkhan?"

The Hon'ble MR. HOPE:—"Yes; and he was for some time Collector of one of the four districts for which we are at present legislating. He writes:—

"'Another argument is, that "the people" value the power of appeal. If by "the people" is meant the plaintiff class—the saukárs—I do not doubt this at all, since the more lengthy, dilatory and costly are legal processes, the greater advantage has the rich and intelligent suitor over a poor and ignorant opponent; but I deny it altogether as regards the more numerous class of defendants.'

"The Hon'ble the Law Member next said that no suits could be named in which such difficulties occurred as in mortgage-cases; and that Bombay was no exception Mr. Naylor was called in to prove. Mr. Naylor, so far as I can

see, states very little more than, and that not in a very different manner from, that which I stated myself. He says, which is a truism I suppose, that—

'the intricacy of a suit in no way depends upon the social status or occupation of the parties thereto';

and he goes on—

"'It is to the subject-matter of an action we must look in order to judge whether it is likely to involve complicated issues; and those who are acquainted with the usual range of litigation will unhesitatingly affirm that questions relating to mortgage claims are amongst those which are most prolific of knotty points and legal difficulties. It makes no difference in this respect whether the value of the matter in dispute be small or great, or whether the parties to the suit belong to one class or another.'

"In this he furnishes no answer whatever to the statement which I make, that the mortgage-cases may some of them be easy and others difficult. As to looking at the subject-matter, he is at variance with the other judicial officer, Mr. Wedderburn, who tells us that 'experience shows that these tests are fallacious.' There is nothing in this quotation from Mr. Naylor to controvert what I have said, that even these matters of priorities, &c., may not often all be settled on very ordinary rules. In fact, if it was not so, it would not be possible for our Subordinate Judges to deal with them so satisfactorily as we see they do, from the fact that only about 16 per cent. of all their decisions are reversed in appeal.

"The Hon'ble Mr. Stokes next passed a criticism upon an answer which I gave at the time of the introduction of the Bill to a question put by the Hon'ble Sir Alexander Arbuthnot. I was saying that 'mortgage-cases are usually only difficult if they happen to involve questions of priorities and the like, or there are several creditors'; and Sir Alexander Arbuthnot enquired 'whether there might not be questions of title.' I answered that 'under the Bombay revenue system the name of the owner of every field is entered in the Government books. It would only be in most rare instances that the man whose name appeared was not the real owner; and so questions of title are not likely to give trouble.' That is every word of it absolutely correct. The ruling of the Bombay High Court which the Hon'ble the Law Member produces is a ruling perfectly well known to every revenue-officer in the Bombay Presidency. I did not say that the entry of a man's name in the books was absolute evidence of his being an owner of a field. I did say that, owing to the system of so entering names,—and I repeat it now in more detail—in nineteen cases out of twenty it is the man to whom the field really belongs that will get his name entered, and that, therefore, if you take up a name in the books, the chances are that in nineteen cases out of twenty the person is the owner; and therefore, finally, questions of title will give a great deal less trouble

where there is this system of entry than they would do if it did not exist. Questions of title are not likely to give special trouble; and I defy any one to contradict the statement."

The Hon'ble MR. STOKES:—"I wish to explain that the remark of the Hon'ble Mr. Hope was intended to convey the impression that difficult questions as to title could not arise, inasmuch as the Collector's record would serve as evidence of the title."

The Hon'ble MR. HOPE:—"I have only to say that I usually endeavour to speak with great care; that my words are carefully weighed; that what I have said is exactly what I mean, and that I neither said what the Hon'ble Member attributes to me, nor did I mean to say it. What I did say was that 'questions of title are not likely to give trouble'—and no more they are.

"I must now, before going into one or two matters with which I propose to finish my unavoidably long reply, refer to the remarks of the Hon'ble Sir Alexander Arbuthnot in reply to the observations of the Hon'ble Messrs. Thornton and Thompson and Sir Robert Egerton, who had been urging the necessity of supporting the Local Government. The Hon'ble Sir Alexander Arbuthnot reminded us that it was very well to support the Local Government on matters of detail, but that when we come to matters of great principle we must judge for ourselves, and interpose if necessary. That struck me as a very singular argument, because, if my memory does not deceive me, the hon'ble gentleman is one of those who have been distinguished for arguing hitherto that this question of appeals was a matter of detail, and one which might fairly be left open, and not considered as a matter of principle. In the original consideration of the Bill by the Government of India the question was left open as one of detail; and in consequence of this, the question of 'appeals *versus* revision' was not mentioned as one of the seven great matters of principle which His Excellency the President enumerated in his concluding speech on the last occasion. It may perhaps be convenient to the Hon'ble Member to argue at one time that a thing is a matter of detail, and at another time that it is a matter of principle; but I can only say that I cannot follow him to that extent."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"I beg to remark that I am not at all conscious of having ever argued that this question of appeal was a matter of detail. I used no argument before to-day on that subject at all in this Council. If my memory serves me rightly as to what passed in the Executive Council, my view was—and it was the view concurred in by the Viceroy—that it was a point that might fairly be treated by the Executive Government as an open question.—Still I regard it as involving an important principle."

The Hon'ble MR. HOPE :—"I do not understand, even with the explanation now given by the Hon'ble Member, how the matter can at one and the same time be so important in principle that it is necessary to overrule the Local Government on it, and yet of such minor importance that it may be left entirely an open question.

"It has next been objected by the Hon'ble Sir Alexander Arbuthnot that I have treated the despatch of the Secretary of State as advocating the abolition of appeal. The Hon'ble Member points out that the words of the despatch are somewhat vague, and that he believes the framer had no intention to extend the system of appeal—if I have not correctly taken down his remarks I hope he will point out my error—that the framer of the despatch had no intention to extend the system of appeal to mortgage-cases. Of course, what may have been in the inner consciousness of the framer of this despatch I am unable to affirm; but, reading the despatch on the broad lines on which it seems to have been drawn, it appears to me perfectly clear that what the Secretary of State did intend was that there should be Courts, without an appeal, for the relief of the Dekkhan raiyat in the mass of those troublesome cases in which he finds himself involved. The Hon'ble the Law Member tells us that the mass of the cases will be mortgage-cases; it, therefore, seems to follow that either we must exclude appeals in mortgage-cases, or, if we admit them, we shall be going directly contrary to the intention of the despatch of the Secretary of State.

"The Hon'ble Sir Alexander Arbuthnot has also remarked that Sir John Strachey and others of us have overstated our case in this matter, because, if this abolition of appeal is necessary in Bombay, then it must be good and necessary for all India. I do not at all follow the inference, for my own part. The Hon'ble Mr. Thornton, for instance, has very strikingly pointed out to us that in one province in India—the Panjáb—appeals in certain cases are largely resorted to, whereas in another province—the Dekkhan—we find that the people appeal in only 3 per cent. of the cases. There is, therefore, no ground for drawing any such inference as that of the Hon'ble the Law Member. Whether appeals are good in other provinces or not is a question not now before us, and on which we must now reserve our opinions until a proper time arrives for forming and expressing them.

"Then, again, it was urged by the Hon'ble Sir Alexander Arbuthnot that the Hon'ble Sir John Strachey had omitted to say that an application for revision might be preferred by a dishonest suitor, and that the revising Judge might not call on the opposite party for a reply; in which case grievous injustice might possibly be done. Now, unless my memory deceives me, we were told by the Hon'ble the Law Member at the time the Bill was introduced that one of the great advantages of the system of appeal was that the Judge could, if he thought

fit, dispose of the appeal at once, without calling on the other side for a reply. I confess myself somewhat perplexed whether to follow the pleading of the Hon'ble the Law Member or of the Hon'ble Sir Alexander Arbuthnot. It seems to me that on this particular point they have placed themselves on the horns of a dilemma; and I think I had better leave them there.

"Now, as to the difficulty alluded to by Sir Alexander Arbuthnot of the Subordinate Judges having to serve two masters, I think that is very greatly exaggerated by Mr. Naylor and others. The only occasion on which the work could possibly overlap is, as Sir Alexander Arbuthnot has very correctly said, when a Subordinate Judge in his capacity of an ordinary Sub-divisional Judge of the district had tried a suit of the value of over Rs. 500 in which an agriculturist was concerned: I admit that under those circumstances the District Judge might take one view of points in chapter III of the Bill and the Special Judge another. If, however, the Hon'ble Sir Alexander Arbuthnot had pointed this out in committee, perhaps there would have been no objection to providing that cases in which agriculturists were parties should come under the control of the Special Judge, even when they exceeded Rs. 500, although I must say that I do not think it necessary. But the main answer to the objection is that cases of this kind are so few that for one case of over Rs. 500 in value there will probably be fifty on the other side; and the rulings of the Special Judge in the larger work will practically prevail.

"The Hon'ble Mr. Stokes told us, in concluding his remarks, that in making them he had studiously abstained from statements on his own authority. I think that, considering the high position the Hon'ble Mr. Stokes holds in this Council, we might have hoped, for our own guidance, that he would have been able to come forward and state to us with some authority his own personal views and opinions, to which no doubt the Council would have deferred as far as possible. I will not pursue that question by noticing the remark he was pleased to make regarding what he considers the absence of judicial experience in myself. I consider that such a remark was uncalled for, and that I cannot do better than leave it, as a specimen of good taste, upon the records of this Council.

"I regret having to detain the Council by speaking at such length; but, at the same time, I feel it my duty to meet, as far as I am able, the various points brought forward against the proposed amendment; and I must therefore notice very briefly the allusions to the three Bombay officers upon whom, it would appear, the Hon'ble the Law Member relies. Mr. Naylor, first of all, is quoted as showing that the Special Judge in revising the decisions will do so under three disadvantages. The first one out of the three read out by the Hon'ble the Law Member he had himself to confess was partially wrong. Then with regard to the second, that the application would generally have to be inquired

into at a distance from the homes of the parties, I can only say that it appears to me a complete misapprehension; but as I shall have on the next amendment to say a few words upon that point, I will not detain the Council with it now. Then as to the third, that the parties will have no absolute right to bring their cases before the Special Judge, and he may refuse their applications without any inquiry at all, I have already met that by saying that it was absurd to suppose that a selected officer, such as a Special Judge, would not do careful and equal justice, although there might be an infinitesimal difference of status between appellants and applicants for revision. Again, in connection with Mr. Naylor's remarks, if I correctly took down the Law Member, he said that the system of revision would produce uncertainty in decisions for a period of three years, within which a petition might be brought forward; whereas under the system of appeal a certain number of days—ninety I think—would render a decision unappealed against final, and dispose of the whole matter.

"Now, in the first place, ninety days would not dispose of the whole matter. In any case where there was a double appeal, and through the delays which I have already pointed out, it might so occur that the whole matter, instead of ending in ninety days, could not be disposed of in less than six years. But, besides that, I should like to ask the Hon'ble Member whether there is any limit to the period of time within which the High Court may exercise its own power of revision under section 622 of the Civil Procedure Code."

The Hon'ble MR. STOKES:—"There is no limit."

The Hon'ble MR. HOPE:—"I am aware of the fact. Therefore, in this matter, the appeals stand upon exactly the same footing as the revision does; and the argument that under the appeal system there would be a finality obtained in a short time instead of a long one is not worth the breath expended on it.

"Next as to the observations of Mr. Wedderburn. Mr. Wedderburn, be it remembered, should, in fairness I think, be counted, when he speaks, on our side as well as against it; for he says 'experience shows that these tests (of making appeal depend on the class of suit) are fallacious.'

"As to revision, Mr. Wedderburn's remarks are evidently based upon a total misapprehension of the sort of revision intended. Mr. Wedderburn writes as if it was intended that the revision should be merely carried on upon returns. I have never said anything which could have given countenance to that supposition. The revision will, as it has been shown, and as the Bombay Government say, be mainly conducted by reading the record. As to that record, and to the remarks of the Hon'ble the Law Member regarding it, in which he considers that he has the support of Mr. Wedderburn, I have only to say, if we are to suppose that the Judge will be unable to deal with these

cases because they are written in the vernacular, then it is obvious that the executive officers who conduct the whole administrative work of this great empire are in ninety-nine cases out of a hundred equally unable to dispose of the matters before them. Any person who has had any executive experience—to which perhaps I may pretend—knows that three-fourths or five-sixths, and in some districts ninety-nine-one-hundredths, of his time is taken up in disposing of work in the vernacular. Now, if these officers can do their work in the vernacular efficiently—and I do not think any one doubts that they can so do it—then the Special Judge will be able to do his work too. But if they cannot, then all I can say is, that I am very sorry for British India!

"In conclusion, I have to turn to a subject which I enter upon with great reluctance; and that is a criticism of the Hon'ble Mr. Justice West's paper which is before us. I myself was in hopes that that paper would only have been quoted where it could have been quoted without provoking any adverse criticism; because it seems to me to be somewhat invidious and ungracious to bring into court the writings of an officer who has kindly volunteered to give us his opinion, to criticize that opinion, and still more to criticize it in a place where he is unable to reply. At the same time, so much has been said in praise of this paper, and so much weight has been attributed to it by the Hon'ble the Law Member, that I cannot but advance upon the task, however distasteful to me.

"I hope I do not imply any disrespect to Mr. West when I say that the paper is a very diffuse and a very involved document. As far as I can make out, and I shall, I hope, do my friend Mr. West no injustice, his argument appears to be this. In the first place, he assumes the Subordinate Judges to be 'ill-informed,' 'poor,' 'half-educated,' of 'weak moral natures,' if not corrupt, still open to 'influence leading to partiality,' of 'exuberant ingenuity,' 'well crammed with English legal formulas but unimbued with the animating spirit of English institutions,' and hence liable to 'very wild notions,' and subject to fits of 'capricious harshness' and 'ill-judged benevolence.' These are all Mr. West's own phrases. The Subordinate Judges of Bombay will no doubt be extremely interested to hear the opinion held of them by one of their own High Court Judges, and will assume that Mr. West himself will not be disposed to promote them to the post of District Judge, to which they probably hope to attain under the new regulations for admitting Natives to offices held by the Civil Service. In the second place, he assumes that there will be no more than 'casual supervision,' though on what ground does not appear, since the supervising staff will be large, they will spend above half the year in travelling about the districts, supervision will be their sole occupation, the provisions of the Bill as to their powers are stringent, and they will be picked men. From these two premises he makes the deduction that there will be 'imperfect investigation' and 'defective re-

cord,' and that the scheme is 'as unpromising as any that could be devised.' Now both of these premises are erroneous. The Subordinate Judges are *not* as black as they are painted; and I do not think that any elaborate argument from me is necessary to substantiate that. We find that, as a matter of fact, in these appeals nearly 68 per cent. of the decisions of these Subordinate Judges are upheld, and only 16 per cent. are reversed. Therefore, upon what grounds they are held to be so worthless as they are represented I cannot comprehend. And, as I said before, the second premise is also defective. Still, even if this were not so, the deduction which is drawn can only be drawn, firstly, by attributing to all suits, with reference to the record, what can only apply to ten-rupee suits; and secondly, by ignoring the fact that many of the remarks made apply just as much, if at all, to the appeal system as to the revision system.

"But even if the two premises were not incorrect, and if the deductions, even supposing the premises correct, were not unsound, Mr. West entirely demolishes his own case by one statement, which will be found in paragraph 31, which is as follows: 'The raiyat himself, however, does not, in fact, appeal in more than one in a hundred of the suits of small amount that are brought against him.' Where, then, is the security offered to him? Where is his alleged appreciation of the appeal system of which we have been told so much? And why does he not appeal? Is it because he is always wrong, poor fellow, as the Hon'ble Sayyad Ahmad says? Is it really true, as Mr. West would have us believe in another place, that in 'nine out of ten of the suits that now come before the Dekkhan Courts' the 'claim is a just one'? Nay rather, he sits quiet in his ignorance, his poverty, his despair of contending successfully with those who are in every way his superiors. Who *do* appeal then? Those who are always right? Or those who know they are most likely to win? But the Hon'ble Mr. Stokes would endeavour to persuade us that it is the *raiyat* who is right, and that it is he who gains by the appeal system. All I can say is that, if he gains by it, he abstains from what is to his advantage in a very singular manner."

The Hon'ble MR. STOKES:—"It is the benefits arising from the existence of the system upon which his appreciation of it depends."

The Hon'ble MR. HOPE:—"Well, I can only say that he shows very great self-denial. But with reference to all this I will only add that, depend upon it, the truth really is that, while the appeal system may sometimes be a remedy for the rich, it is usually nothing but a mockery for the poor. As to Mr. West's paper in general, I must say—and I trust this is the last occasion on which I may be called upon to criticize it—that, while I have read it with pleasure, as one must read everything proceeding from his brilliant and facile pen, I cannot shut my eyes to his obvious tendency to mistake assertion for argument,

and to cover fallacy by sarcasm. Opening, as it does, with the vision of 'a kind and impartial authority' sitting up aloft and dealing out to the raiyat the 'minimum of land' 'requisite for his decent subsistence,' and at the same time dispensing the rest of his worldly goods to his honest and satisfied creditors; and closing, as we see it, with a tableau of this same raiyat become wealthy—one does not quite know how—with his cheque-book sticking out of his coat-tail pocket (he will have a coat by then), we cannot but look upon it as a pleasing work of fiction, rather than as a serious contribution towards a useful solution of the difficult question we are dealing with. In conclusion, I have only to add that it should be borne in mind that, when the Bill was introduced, the Hon'ble the Law Member found great fault with the Bombay Government for not having, in the first place, consulted the Bombay High Court. The Bombay Government have now consulted the High Court; and we know what the High Court have said. Why the Hon'ble Member objects to follow the authority which he has invoked it is difficult to perceive. He has appealed to Cæsar, and Cæsar has decided against him. He has called upon the High Court to curse his enemies; but it seems to me that they have blessed them altogether."

The Hon'ble MR. STOKES said that no one who read the opinions of the Bombay Judges between the lines—especially the remarks of Mr. Justice M. Melvill—could fail to see that they were laughing at the whole thing.

The Hon'ble MR. HOPE:—"I have no such powers of penetration as the Hon'ble Member; but I can see no irony in it, except the irony of fate, which has led to the reference he desired ending in the manner it has done."

His Excellency THE PRESIDENT said:—"I have felt in the course of this very protracted discussion that the first and second amendments placed on the notice paper by my hon'ble friend Mr. Hope are virtually and substantially interdependent parts of what for all practical purposes is the same motion, and that it is difficult to consider them with convenience or advantage separately for that reason. But, assuming that the Bill as eventually passed will be so far replaced in harmony with the original intentions and purpose of the framers of it and of the Local Government as not to exclude mortgage-cases from that supervising authority which the Bill provides for all other cases mentioned in it, I must frankly say that, after having read with care the Report of the Select Committee, and after listening with great attention to the remarks of my hon'ble colleagues the Law Member and Sir Alexander Arbuthnot, I have not heard any argument which satisfies my own judgment that there are sufficient grounds for separating mortgage-cases from all the other cases referred to in the clause which the Hon'ble Mr. Hope proposes to amend, and applying specially to those cases the system of procedure which, as I understand, the majority and the minority of the Committee have, both of

them, agreed to exclude from all the other cases—a procedure which the Local Government and those who framed the measure regard as absolutely incompatible with the attainment of one of the main objects of the measure, which is to simplify and to cheapen the administration of the law to a helpless and poverty-stricken portion of the population. It appears to me that all the arguments used in favour of admitting appeals in mortgage-cases would equally apply to the extension of appeals to all the other cases referred to in this clause; and as the whole of the Committee have agreed in excluding the right of appeal from these cases, I fail to recognize that any sufficient case has been made out for applying it to mortgage-cases. With reference to the remarks of my hon'ble friend Sir Frederick Haines and my hon'ble friend Mr. Thornton, it appears to me that they wandered a little away from the practical subject we have to deal with. I have no doubt that nobody is in a better position than my hon'ble friend Mr. Thornton to tell us what are the feelings of the peasantry of the Panjáb, and what are the facts of the experience derived from the working of the appeal system in that province. But we are not legislating for the Panjáb; we are legislating for a peasantry of the most poverty-stricken, depressed, and miserable portion of the Dekkhan, and with the object of ameliorating their condition. The case which we are legislating for is avowedly an exceptional case; and it is because it is exceptional that we are called upon to legislate for it. I think we must all hope that the condition of the peasantry in the Dekkhan is not the condition of the peasantry in other parts of India; and that this exceptional and, as we are obliged to acknowledge, discreditable state of things has notoriously grown up unchecked, if not encouraged, by the practical operation in certain localities of our existing Civil Code, and the application of those legal conceptions which govern the procedure and lead to the decrees and judgments of our civil tribunals. That being the case, I must say that my own vote will be given without hesitation in favour of this amendment."

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble T. C. Hope.	The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton.	The Hon'ble Whitley Stokes.
The Hon'ble Faiz Alí Khán.	The Hon'ble Sir Andrew Clarke.
The Hon'ble Rivers Thompson.	The Hon'ble Sir A. J. Arbuthnot.
The Hon'ble Sir E. B. Johnson.	His Excellency the Commander-in-Chief.
The Hon'ble Sir J. Strachey.	
His Honour the Lieutenant-Governor.	
His Excellency the President.	

So the Motion was carried.

The Hon'ble MR. HOPE next moved that for section 54 of the Bill the following section be substituted (namely):—

"54. The Local Government from time to time may, and if the Government of India so direct shall, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village-Munsifs and Conciliators, and may cancel any such appointment.

Special Judge.

"Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function except those which he is empowered by this Act to discharge.

"If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

"No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section fifty-two, or by a Bench, in any suit or proceeding under this Act."

He said:—"My Lord, I have already mentioned that the Government of India, while fully approving of the proposal of the Bombay Government to accompany the curtailment of appeals by inspection and revision, thought it desirable to strengthen the staff by a Special Judge.

"'The Governor General is of opinion,' it was said, 'that, looking to the arduous nature of the duties which the Act imposes on the Subordinate Judges, and the large discretion it confers on them, the appointment of a special officer of this sort, who would ordinarily be chosen from the more experienced District Judges, is essential to the proper working of the system proposed.'

The Local Government readily acceded to this.

"The majority of the Select Committee have now held that their admission of appeals in mortgage-cases which, they say, 'form a very large class, and the most important class, of cases to be heard under the Bill' renders the Special Judge unnecessary."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"If the Hon'ble Member will excuse my interrupting him, I wish to say that, as the first amendment proposed by him has been passed, I for one, and I think also my hon'ble colleagues who voted with me on the first amendment, are not disposed to oppose the second amendment, and therefore I think the time of the Council might be saved by my mentioning this at once."

The Hon'ble MR. HOPE:—"With reference to that, I have only to say that in that case I shall be most happy to save the time of the Council and myself; but as some objections have been made with reference to the question of a Special Judge which I intentionally left unanswered, perhaps I may be allow-

ed to read my remarks on the subject, or, if that is not convenient, perhaps they might be taken as read and placed on record."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"Cannot the Hon'ble Member speak on the points on which he wishes to reply? I for my part have the strongest objection to written speeches; and I think that written speeches not delivered in Council, but placed on record, are especially open to objection."

The Hon'ble MR. HOPE:—"I quite agree with the Hon'ble Member. For reasons well known to him, however, I have found it necessary to prepare written speeches in this instance."

His Excellency THE PRESIDENT said it was desirable to save time, if possible.

The Hon'ble MR. HOPE having then waived his objection, the motion was put and agreed to.

The Hon'ble MR. HOPE then moved that for section 68 of the Bill the following section be substituted (namely):—

"68. No pleader, vakíl or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif, or to any case cognizable by a Subordinate Judge under this Act, the subject-matter whereof does not exceed in amount or value one hundred rupees:

Pleaders, &c., excluded in certain cases.

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator, Village-Munsif or Subordinate Judge, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party:

"Provided also that a Subordinate Judge may permit a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear before him on behalf of any party to any case of the description aforesaid in which, for reasons to be recorded by him in writing, he deems it desirable that the party should have such assistance.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act."

He said:—"My Lord, the whole essential difference between this and the section now in the Bill lies in the third clause. This question of pleaders originated in a suggestion of the Secretary of State in paragraph 31 of his despatch already alluded to, that possibly the exclusion of professional pleaders from the 'Courts with summary jurisdiction and without appeal up to a limited amount,' which he recommended, would be desirable. The Bombay Government's draft Bill accordingly contained a section substantially similar to that which I am now proposing. From Conciliation and Village-Munsifs' Courts the exclusion, follow-

ing in the case of the latter the Madras law, was absolute; from cases before a Subordinate Judge it only extended up to a limit of Rs. 100, and was subject to a proviso allowing the Court to admit a pleader in any case in which professional assistance seemed to it to be really desirable. This proviso remains as section 69 of the Bill now before us. The limit of Rs. 100 was carefully chosen, in order to check evasion by slight exaggeration of the claim in the petty suits which form the bulk of litigation. The Bill as introduced maintained, as does also the Bill now reported, the exclusion from Conciliation and Village Courts; but, as a sort of compromise between conflicting opinions regarding exclusion from Subordinate Judges' Courts, it adopted the expedient of empowering the Judge to refuse costs, which was said to work well in the Small Cause Courts of the Presidency-towns. To this the Bombay Government emphatically object, in the following terms:—

"'This Government fear that the compromise which has been adopted with respect to section 69 of the Bill will render the provision for the exclusion of pleaders in cases before Subordinate Judges altogether futile. The amount to be allowed in the costs of a suit on account of fees of pleaders is fixed by law (Act I of 1846, section 7; Regulation II of 1827, section 52, and Appendix L); and in the case of suits for not more than Rs. 2,000 it amounts to 3 per cent. only of the value of the suit. The amount of the fee at stake in any case contemplated by section 69 of the Bill could thus never exceed Rs. 3; and it is obvious that the possible loss of so small an amount as this will not deter either suitors from engaging or pleaders from giving professional assistance. The latter will of course depend, as they do now, for the most part upon the remuneration privately agreed upon, and when possible will take care to be paid beforehand. The Governor in Council trusts, therefore, that it will be found practicable substantially to restore the provisions of the draft Bill submitted by him,' &c. As to the futility of the expedient about costs all parties seem now agreed, and the Select Committee unanimously struck out the section (69) regarding it. But the majority have gone further, and would get rid of a difficult question by substituting no provision at all, and leaving pleaders to appear in all cases, as at present. Now, I submit that on its merits, no less than in view of the decided opinion of the Bombay Government, the question cannot be thus passed by. As to the remarks in section 27 of the report, they seem to me to be altogether beside the mark. No one has denied, as far as I can see, that 'well-qualified pleaders are a material aid to the Judge in dealing with a case of any complication or difficulty,' nor does anybody that I know of allege that 'in suits under Rs. 100 in value the aid of pleaders cannot be required,' or that 'the difficulty of a case' depends 'on the amount at issue.' What *is* affirmed is, that well-qualified pleaders are of little use, that ill-qualified or unprincipled pleaders cause much harm, and that both are a needless expense, in cases which are *not* of complication and difficulty; and that from these alone they should be excluded. This, and no more, is accordingly what my amendment provides for. It may be added that the fees which parties can afford to pay in these

petty suits are not, even when they exceed the legalized limits, sufficient to afford a livelihood to the best class of pleaders. As for the idea, to which the remarks also allude, that the saukár will get behind the exclusion of pleaders by employing as his servant and sending to Court in his behalf 'some man who, though not a professional legal practitioner, would have a considerable knowledge of law and of the ways of the Court,' it seems to me to bear a strong family likeness to certain other devices, more ingenious than practical, by which we have already been told that other provisions of the Bill may be defeated. Page 338 of Appendix C to the Commissioners' Report shows that the largest number of suits filed by one money-lender in a year in a Court taken as a test was 31. It, therefore, certainly would not pay any except the great money-lenders, who, we are told, are the most respectable, and probably would not pay even them, to employ a separate servant of the class indicated solely to carry on suits. It would also be the duty of the Court to put down, by means of the discretion allowed it, any palpable evasions of the spirit of the law, and in doubtful cases to give the defendant, under section 69, proper professional assistance. And finally, the cases in which the device could be used at all would, by the hypothesis, be only those simple ones in which knowledge of law would give no great advantage.

"But I find in the weight evidently attached by the majority of the Select Committee to 'knowledge of law and of the ways of the Court,' as I did in the remark of the Hon'ble Sayyad Ahmad when the Bill was introduced, that 'the Courts receive considerable assistance from vakíls, and that the more ignorant the suitor is, the less probability is there that he will be able to explain his case in the confusion he experiences in a Court of justice as well as he can to his adviser outside the Court'—I find, I say, in both these the traces of false ideas and practices which this Bill, by one of its fundamental provisions, aims at destroying, root and branch. What I refer to is the view of the mere lawyer, that a Court of civil justice should be a place where a man sits on a high seat, in gown and bands, to manufacture decrees out of materials laid before him, rather than the view of the practical statesman, so well set forth by Sir James Stephen, that the Judge should confront the parties, note what they say, see the facts sifted to the bottom, and pass order accordingly.

"To sum up: I am making no attack upon pleaders either in general or in particular. I say nothing whatever as to the character and qualifications of the pleaders to be ordinarily found at Subordinate Judges' Courts. I merely affirm that in all simple cases they should be excluded, because they are a heavy expense to the parties, while the Court can follow the law and ascertain the facts as well, if not better, without them, but that, on the other hand, they should be admitted wherever it is clear that they can really be of use. This is all my amendment

provides for. To the objection that to give to Judges a discretionary power of exclusion will lead to subserviency on the one hand and favouritism on the other, and will destroy the independence of the Bar and the efficiency of the Judge, I reply that none of these consequences have followed the discretion, as to the costs of even advocates, which Presidency Small Cause Court Judges have for nearly thirty years enjoyed. The objection that many pleaders may be driven to seek other employment I meet by saying that, if the profession be weeded of inferior members, so much the better for those really competent and for suitors, as also that, after all, Courts and suitors are not made for pleaders. In conclusion, what I advocate is merely what is the law in France; what is aimed at by the denial of *all* costs in cases up to Rs. 100 in the Presidency-towns; what has not been objected to by the Judges of the Bombay High Court; and what is deemed essential by the Local Government."

The Hon'ble MR. THORNTON said:—"In accordance with the general principle I have already explained, I shall not vote against this amendment; at the same time, while fully sympathizing with the object of the Bombay Government, yet, judging from my own experience, I strongly doubt whether this extensive exclusion of pleaders, vakíls, mukhtárs and others from practising in the Courts will have the effect that is intended. I strongly doubt it; because, although such exclusion might be possible and beneficial in a newly-acquired province, it is questionable whether it can be beneficially introduced in a locality where people have been for years accustomed to the assistance of the legal practitioners. I very much fear the practical result will be that, while the respectable pleaders and mukhtárs will be excluded from the Courts, a class of legal practitioners will continue to practise outside the Courts, and will be all the more unscrupulous for being unrecognized and uncontrolled.

"My opinion on this point, my Lord, is not a mere surmise, but is based upon practical experience at Delhi, where I was district officer many years ago. That district was formerly attached to the North-Western Provinces Government, and the people were accustomed to employing professional agency in Courts of law. When it was transferred to the Panjáb, the Panjáb system was introduced, which at that time excluded all legal practitioners from the Courts. It soon, however, became apparent that, although legal practitioners were excluded from the Courts, there sprung up outside the Courts a number of most disreputable and unscrupulous practitioners. The result eventually was that in the year 1866 my respected Chief and lamented friend Sir Donald Macleod—a patriarch and philanthropist to the backbone, that is, a lover of all mankind except lawyers—decided to extend the Pleaders Act to the Panjáb. But, though the results of my own experience are adverse to the proposals of the

Bombay Government, it does not follow of a certainty that what happened in the Panjáb will happen in the Dekkhan; and as the Local Government strongly desires to try this measure, I shall not oppose it."

The Hon'ble Mr. Colvin said:—"As I understand the arguments which have been advanced by my hon'ble friend the Mover, he wishes to exclude pleaders in petty cases, on the ground that, even when well-qualified, they are of no use, and that, if ill-qualified, they may do great harm. Now, the first of these two propositions seems to me very questionable. I am not at all disposed to admit that well-qualified pleaders are of no use. On the contrary, I believe that in all cases they are of very great assistance to a Court. It so happens that I have served for some years in a province where no pleaders are, or ever have been, admitted; and I must say that my experience there has not led me to think that the absence of pleaders is an advantage in administering justice. More harm, I believe, results from excluding well-qualified legal practitioners than from admitting them. The apparently simple procedure of leaving parties to conduct their own cases does not tend to simplify justice, even with a practised Judge. With an inexperienced one, it is more likely to pervert it. Ignorant and uneducated litigants are not unlike a pair of the swordsmen that one sees in this country, making feints and flourishes in the air before they cross swords. They are slow to commit themselves to statements of fact, which may hereafter prove inconvenient, but are quite ready to be voluble about their adversary's private character and general misdeeds. The Court cannot arrive at the facts if it refuses to listen to anything that is confused and irrelevant, and is obliged, even in simple cases, to waste much of its time in finding the issues before it can try them. When the points in issue have been ascertained, matters are not much advanced. The parties know very well what they want, but have very confused notions of the way in which it should be proved, and of the evidence which they require. The Judge, if he wishes to do justice, must not only try the suit, but must also in a great measure conduct it on behalf of both parties without losing his impartiality. The labour and responsibility which this throws upon a conscientious Judge is excessive, and with a careless and a lazy one may lead to much injustice.

"The second part of my hon'ble friend's argument is that bad pleaders may do a great deal of harm. I do not deny this; but I doubt whether by excluding pleaders from appearing in Court we shall get rid of any harm which they may be able to do. It is not what unscrupulous pleaders do or say in Court that is usually mischievous, for there they are acting under a sense of responsibility and are subject to control. They can do much more harm out of Court by giving bad advice; and their power to do this will be in no way diminished by prohibiting their appearance in Court.

"A point to be remembered also is that by narrowing the field for legitimate practitioners, more room will be left for a worse class of legal advisers. Litigiousness and chicanery are no monopoly of unscrupulous pleaders. As has been truly said by my hon'ble friend Mr. Thornton, there are always a tribe of petition-writers, stamp-sellers and other such hangers-on of the Courts who are ready to take the place of pleaders when pleaders are not forthcoming. These men, if they do not know much of law, often have a pretty good knowledge of the character and habits of the Court officials, and a familiarity with the forms of ordinary procedure which impose upon novices and strangers to litigation. Suitors prefer the advice of these men to none; and very bad advice they often receive, However bad it may be, the givers of it are under no kind of responsibility for what they do. There is no recognized relation between them and the litigants, and they are neither amenable to the opinion of their fellows nor to the executive control of the Court. I think that anything which is likely to throw more business into the hands of such men as these can do nothing but mischief.

"On these grounds alone I should be opposed to the exclusion of pleaders. But I must also say that Mr. Justice West's argument on this subject has made more impression on me than it appears to have produced on the Mover. It has been objected to that argument that the saukár never has a very large stake in a single case, and that it would not be worth his while therefore to employ a special agent. But a saukár does not lend money to a single individual. He has a number of transactions. It is quite impossible for him whenever he wants to recover money in Court to attend personally on every occasion. He must employ somebody. The Bill allows him to appoint an agent; and naturally he will appoint an agent, if he can procure one, who has some knowledge of the business to be done. Even if the agent has not that knowledge to commence with, the habit of attending the Courts will give him a familiarity with their practice. The raiyat, who is often an utter stranger to them, will be at a great disadvantage in contending against such an adversary. My objections to the present amendment are urged as much on behalf of the raiyat as of the Court and the pleaders—in fact, more so; and I believe, if this amendment should be carried, that the raiyat will be the chief sufferer from its effects."

The Hon'ble MR. RIVERS THOMPSON said:—"As a member of the Select Committee who voted for some such provision in the Bill as the amendment now proposed, I am of course prepared to support that amendment. My hon'ble friend Mr. Thornton has, contrary, I must say, to his usual practice, spoken in one sense and voted in another. I have no doubt the Council, while it enjoyed his speech, will gratefully accept his vote; but I think he makes one mistake. In speaking generally of the benefits of admitting pleaders, and the evil that is done by excluding them, he seems (as also does my hon'ble friend who spoke

last) to have argued rather on the supposition that pleaders were absolutely excluded in all cases; but, as far as I understand the amendment, it goes only so far as to extend the exclusion to cases cognizable by a Subordinate Judge, the subject-matter of which does not exceed in amount or value one hundred rupees. Therefore, in all the larger cases, which are of greater importance, there is no prohibition against the admission of pleaders; and, practically, what the amendment will establish is that pleaders shall be excluded from suits up to one hundred rupees, but that beyond that amount they will have a right to appear; and that, even as regards smaller cases, it will always be in the option of the Court, at its own discretion, and for reasons to be recorded in writing, to admit the pleader where it is thought essential that he should appear. The argument, therefore, against the exclusion of pleaders generally has no place in the present discussion; and taking the general object of the proposed measure, namely, to attempt by conciliation to adjust all petty differences, I question whether the admission of advocates would be beneficial to either side in such cases. We are passing here legislation which is purely exceptional in its character; and in the interesting speeches which we heard on the first amendment, in which the revered name of Bentham appeared frequently, and the legal acumen of Mr. Justice West and other judicial officers was brought forward, it struck me that, had any of these eminent authorities been present here, they would have been the last persons we should have desired to consult with respect to a measure which is one rather of executive and administrative arrangement than of precise legislative requirement and procedure; and admitting, as I do, the force of the criticisms upon which such great stress has been laid, as to the advantages of a qualified Bar in regularly constituted tribunals, I think we are dealing here with a state of things which requires exceptional treatment and on which, on the authority of those best able to advise, we are justified in going out of the beaten track. Indeed, I believe, if Jeremy Bentham had been in this room, and had had to discuss any of the sections which form part of this Bill, he would probably not have remained very long amongst us."

The Hon'ble MR. STOKES said that on the occasion of the introduction of this Bill he had expressed his views with considerable fulness against doing anything calculated to exclude pleaders in assisting Judges in the consideration of the very difficult cases which would come before them under the Bill, even when the value was limited to one hundred rupees. All these mortgage-cases would come before Subordinate Judges; and it seemed to him that the optional power of the Subordinate Judge to refuse to permit pleaders to appear was calculated to cause great subserviency on the part of the pleaders and a great suspicion of favouritism on the part of the Judge. With reference to that point, although the Hon'ble Mover had very wisely, for his own interests, refrained

from a fuller citation of Mr. Justice West's remarks, he (MR. STOKES) would take the opportunity of reading to the Council another short passage from Mr. West's paper. After pointing out that it had been our long endeavour, now approaching complete success, to supply the Courts with an educated, honest and independent Bar, and that every material proceeding, being taken in public, appealed to the moral and legal consciousness of the assembly, Mr. West proceeded :—

"The sense of responsibility thus engendered in the Subordinate Judges the Bill proposes, as far as possible, to destroy. In the first place, as the great majority of suits are for sums of less than Rs. 100, the Court will not be bound to allow pleaders' fees, and certainly will not allow them, except in special cases and for favoured practitioners. The amount of possible business being thus materially cut down, many pleaders will be forced to seek other employment. At present in many of the Subordinate Courts the three, four or five pleaders who only can gain a livelihood are barely sufficient to secure to all litigants who desire it independent assistance. If the numbers are reduced by lack of employment, as has happened in some cases in Sindh, to two, a creditor by retaining both pleaders, or securing them generally to his service, virtually cuts off his adversary from effective professional aid. But what is quite as important is that the pleaders who remain will in practice be entirely dependent on the Subordinate Judge. Any independence of bearing, any troublesome persistence, on the part of a pleader will be subject to punishment by the loss of his livelihood. Thus the salutary constraint of professional opinion will be altogether removed. The Judge's efficiency will sink with his sense of responsibility, with the independence and intelligence of his natural critics and interpreters to the public."

The case of the Presidency Small Cause Courts which had been referred to by the Hon'ble Mover as justifying the discretionary power of excluding legal practitioners did not appear to be in point. In the Presidency-towns the Judges of those Courts performed their functions in the midst of a large and independent society. They were controlled by an educated public opinion ; they were subject to public criticism. Some of them were barristers themselves ; and none of them would for a moment dream of riding rough-shod over any barrister or pleader who appeared before him.

The amended section also went beyond what he (MR. STOKES) understood to be the requirements of the Bombay Government. It put advocates and attorneys of the High Court on the same level as district pleaders and mukhtárs ; but in a letter from the Secretary to the Bombay Government, referring to the provisions of the draft Bill respecting the exclusion of legal practitioners from cases tried by Subordinate Judges, he found the following passage :—

"I am to add that, if such concession would tend to remove the objections of the opponents of those provisions, he [that is, the Governor of Bombay in Council] would not object to their being limited in their operation to district pleaders *so as not to affect pleaders or advocates or attorneys of the High Court.*"

It was a curious fact that might also be mentioned that the Hon'ble Mover had omitted all mention of this passage in the précis of that letter with which he had favoured the Council and which had been printed and circulated as a paper relating to the Bill.

The Hon'ble SIR ALEXANDER ARBUTHNOT said :—" It is perhaps almost useless that I should take up the time of the Council by any remarks on this amendment; for it is already evident what the decision of the Council is going to be. To the very strong, lucid and forcible arguments adduced against the amendment—an amendment, however, which the author of those arguments is prepared to support by his vote—I really have nothing to add that would be worth the attention of the Council. To my mind, those arguments, supported as they are by the arguments advanced by Mr. Colvin and by Mr. Stokes, are perfectly conclusive as to the inexpediency of the amendment now before us. I shall vote against the amendment."

The Hon'ble MR. HOPE said :—" The remarks of my hon'ble friend Mr. Thompson have been so complete and comprehensive with reference to the misconception under which it seemed to him, as to me, that the Hon'ble Messrs. Thornton and Colvin were labouring as regards the entire exclusion of pleaders, that there is very little left for me to say. The paragraph from the letter of Mr. Justice West upon which the Hon'ble Mr. Stokes would rely has already been answered by anticipation; and I do not find anything in it which calls for any further explanation. Mr. West states his opinion, and that opinion is of course entitled to whatever weight each reader of it may consider it to be worth. As to the control which is supposed to be exercised in Presidency Small Cause Courts by the public, I must confess that I think that control is very much exaggerated very frequently, and that all arguments of that kind may to a considerable extent be termed 'clap-trap arguments.' But, as a matter of fact, we happen to know that the arrangement checking employment of pleaders has worked for thirty years with perfect success in these Courts; and I see no reason why it should have worked otherwise.

" Regarding the charge which the Hon'ble the Law Member has made against me, of having omitted, because I supposed it would suit my purpose, a certain paragraph in a letter of the Bombay Government, I have only to say that my summary is as correct as the allegation regarding it is incorrect. Any person who will read the paragraph dispassionately will see that the Bombay Government are exactly of the opinion that they always were. But they say at the end regarding an admission of only pleaders, advocates or attorneys of the High Court that—

'if such concession would tend to remove the objections of the opponents of those provisions, he would not object to their being limited,' &c.

That is to say, the Government of Bombay offer, as a compromise, a concession which they would not mind making.

"If the Hon'ble the Law Member had expressed any desire in Select Committee to accept that compromise, it might no doubt have been considered. The only objection to inserting such a compromise in the Bill would have been that it is so utterly ridiculous, that I myself should have been ashamed of it. If, as the Hon'ble Member has been telling us, and quoting Mr. Justice West to prove, the business in these Courts is so small that only four or five pleaders can get a livelihood from it, and the tendency of our measure is to reduce this further, then I should like to know where is the business to come from which is going to support advocates and attorneys of the High Court? It is simply ridiculous to suppose that the attorneys and advocates will go out into the highways and hedges of the districts of the Dekkhan in order to carry on their business.

"Therefore, whether these words were put in or left out would not make the slightest difference in the section; and being ridiculous, as I take them to be, I think they are better left out".

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble T. C. Hope.	The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton.	The Hon'ble Whitley Stokes.
The Hon'ble Faiz Alí Khán.	The Hon'ble Sir Andrew Clarke.
The Hon'ble Rivers Thompson.	The Hon'ble Sir A. J. Arbuthnot.
The Hon'ble Sir E. B. Johnson.	His Excellency the Commander-in-Chief.
The Hon'ble Sir J. Strachey.	
His Honour the Lieutenant-Governor.	
His Excellency the President.	

So the Motion was carried.

The Hon'ble MR. HOPE next moved that in section 39 the following words be substituted for the words "any of such parties" (namely):—

"or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties";

and that in section 47 the following words be inserted after the word "suit" (namely):—

"and no application for execution of a decree passed before the date on which this Act comes into force."

He said :—" My Lord, the object of this motion is to restore to the Bill the provision for making conciliation precede application for the execution of old decrees, which has been cut out by the majority of the Select Committee. As to its details, I may explain that the words for insertion in section 47 are those which were cut out, but that the alteration in section 39 is new, and intended to meet a mere doubt of drafting, raised by Mr. Naylor, as to whether the section as it stood fully tallied in respect of these old decrees with section 47 of the Bill as introduced.

" The reasons assigned for this excision will be found in paragraph 23 of the report, and are, briefly, that every existing decree must be assumed to be just ; that no influence, however mild, can rightly be applied to induce a decree-holder to forego one jot or tittle of his legal rights ; and that, if the debtor cannot pay, he may resort to the Insolvency Court.

" I may point out, *in limine*, that the statement that this excision is 'adopting the view of the High Court' would seem to be mistaken. The High Court have evidently not understood what was contemplated, and have supposed that it might be intended that the Civil Court should 'ultimately refuse to execute its own' decree. What Mr. Justice Melvill would have said if the scope and grounds of the measure had been explained to him it is impossible to judge. But the High Court cannot now be fairly quoted in the matter. Such explanation I will endeavour to afford.

" I am content to accept the premise that every existing decree must be assumed to be just ; although I might easily impugn it by pointing out that the present Bill, in obliging the Courts in future to go behind the bond, and giving them special powers to reduce claims which they have been in the habit of admitting, proceeds on the very contrary assumption that their decrees made in the past have often been unjust. And I also admit that the debtor *can* obtain full relief from the Insolvency Court. But I maintain that friendly mediation rightly *may*, and under existing circumstances certainly *ought*, to be applied to obtain an early settlement of these old decrees. In the first place, we know that these decrees are very commonly for amounts which the debtor may, indeed, have made himself legally liable for, but which the creditor could not have reasonably expected ever to receive. The Dekkhan Riots Commission and Mr. Auckland Colvin both bring out this fact. Then, again, we know that, owing to frauds in execution, many of these decrees have really been satisfied over and over again. I must trouble the Council to listen to one illustration of the sort of thing which goes on, taken from page 250 of Appendix C to the Commission's Report :—

" ' The Subordinate Judge of Rahuri passed a decree for Rs. 19-9, including costs. In execution of the same he issued a warrant to seize property therein detailed and valued at Rs. 160.

The judgment-debtor appears to have objected; for the Subordinate Judge sent to Mr. Reid (the Magistrate) a sanction to prosecute him for resisting the attachment. Upon examination of the details of the warrant and comparison with the market prices, Mr. Reid found that, for instance, six kandies of bajri were valued at Rs. 51, the market value being Rs. 288, and 8 bullocks were valued at Rs. 32.'

"Thus, if this poor fellow had not had the pluck to stand up in defence of his rights, and even to incur criminal proceedings, he would have been simply plundered in the name of the law. This is what may, and does sometimes, happen when the warrant is duly served and returned. But sometimes it is not so. Here is a case which, for brevity' sake, I will partly summarize in my own words from the same source:—

"'Pemráj and Konirám got a decree from the Subordinate Judge at Sangamner for Rs. 7-5-11 against Bhikaji and Rámji. Execution was entrusted to a peon of the Court, who returned the warrant with an endorsement signed by Konirám stating that he did not wish for execution. Rámji petitioned the Court that his grain, cart-wheels, and silver bracelets had been attached and handed over to Pemráj. Some enqu'ry followed, ending with an order, dated two months after the offence, that as Rámji had not paid the fees, his petition was rejected. The peon died before the District Judge acted in the matter. Pemráj and Konirám were discharged, on accusation of an offence against public justice, by the benefit of a doubt, the Magistrate making damaging remarks. Rámji *never got back his property*, and it is believed that Pemráj has some of it yet.'

That this case is no isolated one we may infer from the fact that, according to the latest returns available, 139,285 warrants were in one year returned unexecuted as the result of 185,293 applications for execution—that is, 75 per cent.!

"Another mode in which these decrees are engines of oppression is through the fraudulent attachment of property of third parties. The civil returns for 1872 (the latest extant with these details) show that out of 4,224 suits arising from execution of decrees, 60 per cent. were decided in favour of third parties. In other words, 2,529 innocent persons were found by the Courts to have been put to the worry and expense of a civil suit in order to defend their property from falsely-alleged liability! The costs of execution, too, are enormous, being shown by the same returns to be about 22½ per cent. on the amount recovered. What with frauds, costs, &c., some decrees are a standing property to the holder; and Mr. Auckland Colvin gives instances furnished by Subordinate Judges where, after *nine* executions, the original sum due was unabated, or even increased! Finally, the Commission ascertained that in eight taluqás only, out of the thirty-six which the four disturbed districts contain, about 3,000 decrees, of above seven years' standing and of 3½ lakhs of rupees in value, were unsatisfied.

"The Local Government are surely right in recognizing the necessity, on political no less than moral grounds, of healing this festering sore, of drying up

this source of fraud and oppression on the one side, and of misery, recklessness and deep discontent on the other. Various methods of doing so have been pressed upon them. It has been suggested that they should provide for the treatment of districts or parts of districts on the principle already applied to encumbered estates of taluqdárs and thákurs, settle the debts, pay off the amount and recoup themselves by various methods, by a rack-rent on the land, by taking produce in kind, by the farming system, &c. They have even been urged to allot an annual sum for charitably discharging the debts of individual needy agriculturists. But the Government of Bombay have rejected all these drastic remedies. 'It would be impracticable in the first place,' says Sir Richard Temple in his Minute of April 14th, 1879, 'and it would be in the second place impolitic, even if it were practicable, for any Government to undertake to deal with the debts of a whole peasantry.' What relief, then, do they wish to provide? For the extreme cases there is the Insolvent Court. But this is an extreme remedy. It involves some expense, some loss of self-respect, and even reasonable current credit, as also the liability of future earnings for a considerable period. A more simple middle path to speedy settlement is most necessary; and this the motion before us provides. It merely requires that, before execution of an old decree can be obtained, the parties shall go to the Conciliator, who will endeavour by friendly mediation to effect some reasonable and practicable compromise. That creditors will not object to this we may infer from their own statements at a public meeting held in Ahmadnagar in March last, as also from no exception being taken to the original provision for it in a memorial received from eleven leading Natives of Satára, nine of whom are saukárs.

"It should, however, be distinctly understood that nothing beyond mediation is intended. The supposition in paragraph 23 of the Select Committee's report, that it is contemplated that a 'decree should be placed on the same footing as an unproved claim,' and that 'the rights of the decree-holder under his decree should be brought in question,' are complete misapprehensions. Nothing of the sort is contemplated, and the words proposed for insertion will have no such effect. What is intended merely is that, if no settlement can be arrived at, the Conciliator shall give his certificate. The law will then take its course, and the decree in all its sanctity will be enforced. In all this I submit that there is nothing but what is reasonable, just and absolutely necessary on political grounds in the present state of the country; and I trust that the Council will uphold the recommendation of the Local Government accordingly. Any other course will rob the Bill of one of its essential provisions for the liquidation of existing debt."

His Honour THE LIEUTENANT-GOVERNOR said:—"I intend to vote for this amendment, because it seems to me that, if there are any cases in which concili-

ation is likely to be of any effect, it is in those in which a claim has been already proved, and in which all that remains is to determine the best method of satisfying it with the least trouble to the parties. I understand that the amendment takes away from the decree-holder none of the rights which he possesses under the present law; it merely provides that, before taking out execution, or before the defendant or judgment-debtor is put into the Insolvent Court, a settlement should, if possible, be made by the Conciliator; and I consider that it is perfectly reasonable and justifiable that this provision should extend to decrees which have been passed before this Act was passed, as well as to cases which may arise afterwards."

The Hon'ble MR. RIVERS THOMPSON said:—"I should be sorry to be silent on this amendment, even with the fear of my hon'ble friend Sir Alexander Arbuthnot before me. Whatever be the justice or injustice of the original decree, upon which the Hon'ble Member for Bombay has dealt with some force, the arrangement which this amendment is intended to supply is perfectly harmless and simple to carry out. The principle which permeates the whole of this measure is that, rather than go through a detailed dilatory technical procedure, every attempt should be made, not only for new debts but as regards those particular sections relating to old debts, to bring the parties together, and try by means of conciliation and adjustment to effect a satisfactory settlement of claims. If a creditor holding a decree against a debtor does not accept that conciliation; if he says, 'I hold a decree from the Court which I can execute any day I choose, and I prefer to stand on my rights,' nothing that this amendment provides need prevent or deter him from doing so. It simply means that a man having a claim, say of Rs. 250, against a debtor should come before a Conciliator before he attempts to enforce his decree; and it would be in the Conciliator's power to try and explain to him that, if the man against whom he had got a decree was in difficulties, a compromise could be effected and the matter settled in a friendly way. If the judgment-creditor did not accept this, the case would proceed in the ordinary course; and, therefore, this whole section is perfectly harmless—harmless as regards any interference with the rights of the creditor, but still opening a door for a settlement of some kind."

The Hon'ble SIR JOHN STRACHEY said:—"In regard to the merits of the question involved in Mr. Hope's present amendment I do not wish to say a word. I am perfectly satisfied to leave the case as my hon'ble friends Mr. Hope, Sir Robert Egerton and Mr. Thompson have stated it. I consider their arguments in favour of the amendment to be perfectly unanswerable."

The Hon'ble MR. STOKES said that, although he was under the disadvantage of speaking when the Hon'ble Financial Member had ruled that nothing could

really be said against the amendment, he begged to say that he would oppose it on the broad ground that any legislative provision interfering retrospectively with existing rights was *primâ facie* unconstitutional, and should not be adopted by the legislature, unless it was proved to be, which certainly was not the case at present, an absolutely overruling political necessity or a clear public gain—such, for example, as establishing a general law of Insolvency. If the amendment were adopted, any one who had undergone the expense and trouble of obtaining a decree against an agriculturist before the proposed Act was heard of would find himself precluded from executing it unless he produced a certificate from the Conciliator. Practically that requirement would often prevent him from executing his decree at all; for if the judgment-debtor refused (as he was sure to do in many cases) to appear before the Conciliator, the decree would not be executed till the lapse of a 'reasonable' time. Well, then, the question would be, how much was reasonable? The answer was, as much as the Conciliator (who would, he feared, often be a Government official, with a bias against the saukár and in favour of the raiyat) declared reasonable. The Conciliator might not make any such declaration at all, or, as had been pointed out in one of the papers, he might postpone it till the time for presenting an application for execution had expired. He (MR. STOKES) maintained that any such provision as this would disturb absolute vested rights, against which there was no equity; and he was glad to find himself supported in that view by a gentleman of large experience,—Mr. Naylor, the Legal Remembrancer of the Bombay Government, who said:—

"When the Courts have once passed a decree, their adjudication ought to be, and has always hitherto been, regarded as final. It would be subversive of all recognized principles to allow matters which have been once finally adjudicated upon by the constituted tribunals to be reopened, especially when the functionary before whom the revision is to take place is an illiterate Conciliator. Persons who may hereafter obtain decrees with the knowledge that they will have to take them before a Conciliator before being permitted to execute them will not have so much cause of complaint as the decree-holders who obtained their decrees before the date of the Act. The retrospective effect which it is proposed to give to this section in this respect is, to my mind, altogether inequitable. It is also uncalled-for, because debtors who cannot satisfy all their judgment-debts may, by taking advantage of the insolvency-provisions of the Bill, obtain their discharge on very simple and reasonable terms."

He understood the Hon'ble Mover to say that decrees would not be reopened during the process of conciliation; but it was impossible to suppose that in an informal proceeding of the kind contemplated the Conciliator and the parties would not rake up the whole case from the beginning.

The Hon'ble MR. HOPE said:—"I have very little to say with reference to this amendment in view of the complete statements made regarding it by my hon'ble friends Sir Robert Egerton, Mr. Thompson and Sir John Strachey,

concluding with the remark of the latter, which has been fully verified by the result, that the arguments offered have been unanswerable. As I understand it, an argument is called unanswerable when no sufficient answer can be produced to it. The only answer produced is one which I must confess I heard with very considerable surprise—one which was produced on a previous occasion by the Hon'ble the Law Member. I must say that I felt considerable doubt at the time whether he brought it forward seriously, or whether he only used it on the principle that any stick will do to beat a dog with. The statement or suggestion that the decree will be reopened, made by Mr. Naylor, is simply inaccurate. The decree will not be reopened, as has been well put by the Hon'ble Members who have already spoken. The creditor will simply be asked, 'You have got a decree for one hundred rupees; will you take fifty down or not?' If he does, well and good; and if he says, 'No, I won't,' there is an end of the matter. It is quite impossible to call that a reopening of the whole case. Still less is it possible to apply to it the totally incorrect language in the report, in which it is said that the decree is placed on the same footing as an unproved claim. I cannot see, either, that it has any retrospective effect, any more than asking a man to make the promise I have just alluded to has. But suppose it was retrospective, I would merely remark that the Council must be aware that retrospective measures with reference to debts are not only passed constantly by this legislature, but a retrospective measure by which debts may be cut down by one-third of their amount was actually passed in this Council not two months ago, without a single word of objection from, but on the contrary on the motion of, the Hon'ble the Law Member himself; I refer of course to the insolvency-clauses of the Civil Procedure Code."

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble T. C. Hope.	The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton.	The Hon'ble Whitley Stokes.
The Hon'ble Faiz Alí Khán.	The Hon'ble Sir Andrew Clarke.
The Hon'ble Rivers Thompson.	The Hon'ble Sir A. J. Arbuthnot.
The Hon'ble Sir E. B. Johnson.	
The Hon'ble Sir J. Strachey.	
His Excellency the Commander-in-Chief.	
His Honour the Lieutenant-Governor.	
His Excellency the President.	

So the Motion was carried.

The Hon'ble MR. HOPE then moved that in section 38 the words "other than an officer of revenue or police" be omitted.

He said:—"My Lord, these words are an interpolation of the majority of the Select Committee, intended, they say (paragraph 22), 'to guard against the dangers adverted to by the Hon'ble Sayyad Ahmad in his speech.' What the Hon'ble Sayyad Ahmad said was this:—

"'No doubt, a revenue or a police officer could bring influences to bear on creditors which would induce them altogether to forego their claims; but I need hardly express my conviction that the Government of India would altogether discountenance the exercise of any such influence; and I have no doubt the Council, in order to avoid even the apprehension of its exercise, will see fit to introduce a provision in the Bill prohibiting the appointment as Conciliator of any officer exercising revenue or police functions.'

"Now, although no allusion to this subject was made in the letter addressed to the Government of Bombay on the introduction of the Bill (Paper No. 3), these remarks attracted the attention of that Government; and in their reply they stated that 'it is not desirable to exclude from the office of Conciliator all revenue-officers, some of whom are capable of exerting a very intelligent and beneficial influence in that capacity.'

"Of the interpolated words, I would premise that they are, in the first place, unnecessary. No reasonable persons, either in this Council or out of it, can, I should hope, seriously suppose that the Government of Bombay would not be as anxious as themselves to discountenance all exercise of undue influence by Conciliators, whether they be officials or non-officials. There can be no doubt whatever that any evidence of such misconduct would be promptly followed by deprivation of office, and that, if the offender were an official, he would incur the severe displeasure of Government. The words, however, are not merely unnecessary but offensive. They cast beforehand, without a shadow of proof, an unworthy stigma upon the great revenue or executive department by which the bulk of the administration of this empire is carried on. Revenue-officers have in numerous capacities—as magistrates, as surveyors, as municipal councillors, and what not—to intervene in all sorts of disputes between man and man; and in these their general success and their high character are equally undeniable. The words, again, are unprecedented. There is not, as far as I can remember, any page of the Indian Statute-book containing a deliberate expression of want of confidence and an exclusion such as this. The exclusion, moreover, may be most prejudicial, as the Bombay Government point out. It is not likely that in practice revenue-officers, who have much else to do, will be largely employed as Conciliators; but occasions may easily arise when they alone can effect what is wanted. If, for instance, meetings such as that at Ahmadnagar, to which I have alluded, should result

in leading bankers expressing their willingness to compound with all their debtors, a person of considerable position, intelligence and tact could alone carry the transaction through. Why, then, should the aid of such a person, if the parties desired it, be denied merely because he happened to be a revenue-officer? I have known individuals, both European and Native, whose mere appearance on the scene was sufficient to pacify and give confidence to an angry countryside. Of police-officers I need say nothing, because no one dreams of making them Conciliators. But, finally, I would urge that where a great and experimental measure, such as that before us, has to be introduced, it is not only fair and reasonable, but indispensable to success, to leave the Local Government free to choose its own instruments. The Local Government have expressed their views and wishes very plainly in this instance; and I rely on the Council to support them."

The Hon'ble MR. THORNTON said :—"I shall vote for this amendment, because, assuming that special Courts of Conciliation are to be established, there appears to me to be no reason whatever why the Local Government should be restricted in its selection of Conciliators."

The Hon'ble MR. COLVIN said :—"In speaking upon the amendment which is now before the Council, I cannot help remarking that the statement which we have heard to-day, that the present Bill is only a local Bill, appears to me to require very large qualification. It is true that the Bill will only be of local application in the first instance; but I doubt if its future consequences will be merely local. If the provisions which this Bill contains are considered to be sound and suitable for relieving agricultural distress in the Dekkhan, it is not easy to see the grounds upon which the enactment of a similar measure could be refused, if asked for, in order to relieve a like agricultural distress in other parts of the country. It has been said no doubt that the measure is a purely tentative one, and that the experiment need not be repeated if it is not successful. I should be very glad to think that this was so. It seems to me more probable that the admission that an experiment is being made may be lost sight of, and that the results of the measure will not be waited for, but its success assumed. Before the year is out urgent applications will perhaps be made for a trial of the same experiment elsewhere; and what is now called a local and tentative law may grow into one of general application, and be treated as if it were a certain specific for the difficulties of the agricultural community everywhere.

"The changes of practice, too, which will be made by the Bill, so far from being in matters of mere technical detail, introduce new principles of very great importance. Much stress has been laid upon the necessity of deferring to local experience upon these points. It could easily be shown, I think, that in

the Bill as it stands general experience has been quite sufficiently subordinated to local knowledge. For instance, it is a well-known general principle of law and of common sense that in all suits the best evidence should be obtained. The Bill, on the contrary, insists that the Courts shall go out of their way to look for the worst. It directs them to leave the comparatively safe ground of ascertained and recorded facts, and to trust in preference to the vague, conflicting, and often interested testimony of witnesses deposing to remote and doubtful transactions. They are to do this, moreover, with the express object of discovering fraud where no one has alleged it. Again, it is a matter of almost universal complaint that in India the land is changing hands, or being stripped of all profit to agriculturists by the pressure of their debts. The Bill, if it is passed, will make it almost impossible for the raiyats of the Dekkhan to borrow money at all except on a mortgage of their lands; for it will leave them no other security which a lender can safely accept. It has generally been held, too, that speedy justice is a good thing. Well, under the amendments which have been carried to-day, it is true that the delay caused by appeals has been cut off; but, on the other hand, the Bill will interpose an indefinite delay for the purpose of conciliation before a suit can be taken into court. For, as far as I can judge from its wording, the delay which a Conciliator may cause, if he chooses, has no limit. Further, it has commonly been thought that people should be free to make their own bargains, and that bargains, when made, should be kept. The Bill declares that it is the duty of the Judge, notwithstanding any agreement made by the parties, to alter and arrange the terms of their transaction for them, and, where interest forms part of a bargain, to allow as much or as little as he may think reasonable. The natural effect of this last provision will be to prevent persons from ever foreseeing the result of any transaction in which they may engage. I think that great harm may result from this. I am no advocate for usury-laws; but I would rather have seen a fixed limit to interest prescribed by the law. In that case business could have adjusted itself accordingly, and the borrower and the lender would have been able to make their arrangements. But nobody can foretell what rate of interest may appear reasonable to each individual Judge. The conditions, therefore, on which any loan is made must always remain uncertain; and constant uncertainty is a risk that people engaged in business cannot afford to run. I have enumerated some of the points upon which the Bill makes great changes because we have been charged, by implication at least, with a want of proper deference to local authority. My own doubt is whether we have not gone too far in allowing it to override general experience in such important matters. I believe that we might more justly be charged with having given to it too much weight. No doubt the Bill, taken as a whole, ought to have the effect of diminishing the raiyat's means of obtaining credit, and of curtailing the large powers which the existing law confers upon creditors; and that

these are good ends to aim at. It is true also that the power of the Government in this country is so great that it can hardly ever fail to attain, in part at least, any object towards which it seriously directs its energies. The Judges, too, by whom the law must be carried into effect, and who will be confronted by the practical difficulties of doing so, may be trusted to amend the operation of much in it which (as I believe) is otherwise likely to be purely injurious. Nevertheless I cannot but feel great misgivings as to the prudence of making such very large concessions as have been made to local experience.

"I turn, now, to the particular amendment which is under the consideration of the Council. The question at issue is whether officials should be eligible for the post of Conciliator; and it is a most important question in its bearing upon the probable result of conciliation. I think that there is an excellent reason for not entrusting such duties to any officials, even if they be only revenue-officials. Conciliation by such persons is very apt to degenerate into improper pressure. In France, where, as I understand, the system of conciliation originated, no officer of the Government is allowed to discharge these functions; and it is an avowed part of the system that they should not be so employed. I believe that the intended change of procedure is much more likely to succeed in this country if we follow the French practice on this point. As to selecting police-officers for such a post, I can conceive nothing worse or more objectionable. I suppose that in all countries the subordinate officers in the police force must comprise a good many men of doubtful character. It can scarcely be otherwise; and I do not intend to say that the police force in this country necessarily includes more of them than is the case elsewhere. But I think that a man holding an office which makes him the keeper of the door, as it were, through which every claim must pass before it goes into court will be strongly tempted in all countries, if he is not an honest man, to make money by it. If a police-officer chooses to exert undue influence, there can be little doubt of his power to do so. He can summon, arrest, and search houses. If he is unscrupulous, he can even fabricate a false charge against an innocent man, and possibly have him convicted and imprisoned for years. I think that there can be no Magistrate in this country who has not seen attempts of this kind made, and few Magistrates who would care to affirm that such attempts have never been successful. It should not be possible that men who can bring such influences to bear upon suitors should be appointed Conciliators.

"In conclusion, I have only to say that, as the Bombay Government has never expressed any desire to appoint police-officers as Conciliators, and as we have been assured by my hon'ble friend the Mover that there is no intention of doing so, I cannot see any necessity for amending the Bill in the manner which is proposed."

The Hon'ble MR. STOKES said that he had only one observation to make; and that was that he did not believe that the insertion in the Bill of the words "other than an officer of revenue or police" would be regarded as setting a stigma upon the members of those services. They were not so morbidly sensitive. By the 121st section of the Code of Criminal Procedure police-officers were expressly prohibited from taking confessions; and he had never heard that their feelings were hurt by this suitable prohibition. In this country we all knew how very desirable it was to keep the administration of the law free from any suspicion of executive influence; and he was strengthened in that opinion by the fact that the insertion of words excluding the police was in accordance with the opinion of our wise and experienced Native colleague—the Hon'ble Sayyad Ahmad Khán.

The Hon'ble MR. RIVERS THOMPSON said:—"I am not going to follow my hon'ble friend Mr. Colvin in his interesting review of the principles of this Bill, because it appears to me that the greater portion of those questions have been already disposed of, and in my opinion been rightly disposed of. The principle which I contend for as regards this amendment is that, in carrying out and giving effect to legislation of this kind, the greatest freedom of action must be left to the local authorities, and that the Local Government might quite well say that, if their hands are tied as to the agents by whom the Bill is to be carried out, they had better give up attempting to carry it out at all. In that view I am quite prepared to support the Hon'ble Mr. Hope in this amendment. I think myself that it would be improved as an amendment if we were only to omit from the section the words 'revenue or' so as to make the exclusion run 'other than an officer of police,' because the only evil contended against is that officers of police might abuse their powers of arrest, and intimidate by an official pressure, which would be injurious. I cannot conceive, however, in what way it would be injurious if the Local Government were perfectly free to employ revenue-officers in discharging the functions of a Conciliator. Their ordinary duties amongst the people would especially qualify them for such an office."

The Hon'ble Sir JOHN STRACHEY said:—"My hon'ble friend Sir Alexander Arbuthnot said to the Council just now, and I think with great truth, that, although it was the duty of this Council to carry out its own views in matters in which important principles were involved, it was equally its duty not to interfere in mere matters of detail, on which the Local Government had expressed a strong opinion. Now, in spite of the remarks which have fallen from my hon'ble friend Mr. Colvin, I can conceive no matter which is more plainly a matter of detail than this. We are not now considering whether the establishment of Courts of Conciliation is a good or a bad thing. That

they are to be established is admitted by the Bill as it stands. We are simply asked whether the Local Government shall, or shall not, be at liberty to choose its own agents for this work as it pleases. It seems to me impossible to doubt that the Local Government must be the best judge of such a purely local question as this; it is infinitely more competent to judge than we are.

"In regard to the question of appointing police-officers to act as Conciliators, I understood my hon'ble friend Mr. Hope to say—and I hope he will correct me if I am wrong—that it was really unnecessary to talk about the appointment of police-officers, because it had never entered into any one's head to appoint police-officers as Conciliators. I quite agree with my hon'ble friend Mr. Stokes in not attaching much importance to the consideration that, if we mention police-officers, we shall be placing a stigma upon them. But if we put in words forbidding the Local Government to appoint a police-officer, we throw a stigma on the Local Government. Although it is highly improbable that a police-officer will ever be chosen as Conciliator, still it is conceivable that under some circumstances it will be found desirable to appoint such an officer and if the Local Government should come to the conclusion that it is proper to do so, I think it should be allowed to exercise its own discretion in the matter.

"With regard to the exclusion of revenue-officers from this duty, I should like to say a few words. If these districts of the Dekkhan are similar in this respect to those parts of India with which I am acquainted—and I have seen no reason to suppose that they are different—then I say that, of all the men that could possibly be chosen as Conciliators in the class of cases with which we have to deal, the revenue-officers would frequently be the best. They know far more about the agricultural classes than any other officers of the Government. Their duties bring them into intimate relations with the people; and the amicable settlement of disputes and the prevention of litigation are, I may say, objects which, without any fresh provisions of law, a good revenue-officer already considers to fall within the sphere of his duties. I myself, more than twenty years ago, advocated in the provinces of Northern India the establishment of Courts of Conciliation; and the opinions which I held then I hold still. I believe that Courts of Conciliation might be established in the North-Western Provinces with very great advantage. If, when advocating the establishment of those Courts, I had been asked 'Who can you appoint as Conciliators?' or if I were asked that question now, I should reply we shall be able constantly to find admirable Conciliators in our revenue-officers, who are, I may say, the natural protectors of the people. I am the last person to doubt, or to deny, the immense improvement which has taken place during the last twenty years in the Civil Courts of India. These Courts have been immensely improved, both in the character and in the acquirements of the Judges, and by the very great simpli-

fication of their procedure. We cannot be too grateful to the eminent men by whom these benefits have been conferred upon the country; and I hope that my hon'ble friend Mr. Stokes will not think me impertinent if I add that there is no one to whom we owe a larger share of that gratitude for making the procedure of our Courts simple and rational than we owe to him. But, in spite of this improvement which has taken place in the Civil Courts, it still remains as true as ever that every measure by which we can keep the people out of the Courts will be a great blessing to the country. It will be highly interesting to watch the results of this first experiment in India in establishing Courts of Conciliation, which have proved so highly useful in some other countries. It would be a great pity to interfere in any way with any of its chances of success; and I believe we should be so interfering if we were to put any check on the power of the Local Government to choose its own instruments.

"I have only one other remark to make with reference to an observation which fell from my hon'ble friend Mr. Colvin. He said that he believed that the only country in which this system of conciliation had been tried was France, but that in France no officials acted as Conciliators. Now, I am sorry to tell him that he has made a great mistake. The truth is that no one who is not an official can act as a Conciliator; all the *Juges de Paix* in the country are Conciliators, and nobody else. So my hon'ble friend has given an unfortunate illustration in support of his argument."

The Hon'ble SIR EDWIN JOHNSON said:—"I would merely remark that if this amendment is allowed to stand in its present form, I shall have to vote against it; for the objections which have been assigned to the appointment of a police-officer as a Conciliator will still remain. I quite agree in the remarks of my hon'ble friends Sir John Strachey and Mr. Thompson as to the advantage of having revenue-officers in the position of Conciliators; but I regard it as highly inexpedient to allow police-officers to hold that position, or even to be considered eligible to hold it. I have no doubt that a large number of police-officers would be found perfectly capable of discharging the duties of such an appointment in a very creditable manner; but, irrespective of other considerations, I think that, in justice to the whole body of the police, they should be exempted from the possibility of being placed in a position in which they would be liable to misrepresentation. If my hon'ble friend Mr. Thompson's proposal is agreed to, I shall be willing to vote for the amendment; but if not, I must go against it."

The Hon'ble SIR ALEXANDER ARBUTHNOT said:—"I cannot say that I attach very great importance to the particular words to which this amendment relates. Those words would not have been inserted in the Bill as revised by the Select

Committee, had it not been that our attention was pointedly drawn to the matter by our very able, intelligent and experienced Native colleague—Sayyad Ahmad. It was his remarks that led the majority of the Select Committee to consider it desirable that officers of revenue and police should be expressly excluded from the office of Conciliator under this Bill. I must say that, while I do not agree with my hon'ble friend Mr. Colvin in some of the observations which fell from him with reference to that part of the Bill that relates to the subject of conciliation, which appears to me to be the essence of the reform contemplated in the Bill, and from which, though I am not prepared to say that I am extremely sanguine, I still hope that some benefits may be obtained, and think that the experiment is one which is amply deserving of a trial, still I agree with my hon'ble colleague in all that he has said as to the expediency of excluding officers possessing the great official authority and the great influence in the eyes of our Native fellow-subjects which is possessed not only by our officers of police but by our officers of revenue. As a matter of fact, I have been accustomed to regard all officers of the Revenue Department in the Presidency in which the greater part of my service has been passed as far the most influential and the most powerful officers we have. They have often infinitely more power than the officers of police. The remarks that fell from our Native colleague Sayyad Ahmad about leaving no opening for the appointment of officers of police are, on grounds of principle, unanswerable. I think that, as a matter of fact, the objections to permitting officers of revenue to engage in this duty are very great; but I for my part shall be quite prepared to agree to the compromise which has been suggested by Sir Edwin Johnson, and which, I think, meets the views of some of my other colleagues, to limit the exclusion to the police."

The Hon'ble MR. COLVIN said:—"My Lord, I should be glad to say a few words by way of explanation, if I may be permitted to do so. My hon'ble friend Sir John Strachey has corrected a statement of mine regarding the office of Conciliators in France. I have to thank him for that correction if my remarks were generally understood to apply to judicial as well as executive officers. I know of no objection to the appointment of judicial officers as Conciliators. What I intended to say was that no officer invested with executive authority was ever appointed to be a Conciliator in France; and the fact is so. Such an appointment could not, I believe, be made.

"I may take this opportunity of correcting an error which my hon'ble friend himself has made in speaking of conciliation as a novel experiment in India. It appears that Courts of Conciliation have existed under the law in Madras since 1816."

The Hon'ble MR. HOPE said:—"I need not trouble the Council for more than two or three minutes on this matter. I said that no person, so far as I

was aware, dreamt of making police-officers Conciliators, and therefore while, on the one hand, the Council would be fully justified in omitting the words proposed, on the other I do not see any great objection to leaving them in.

"There is an inaccuracy which seems to me worthy of notice in the remarks of the Hon'ble the Law Member. There is no analogy whatever in the parallel drawn by him between the case of excluding police from taking confessions and the one before us. Originally they used to take confessions; but when in the year 1860 the whole of the police in India were reconstituted—a work with which in my own Presidency I had officially much to do—one of the great things we had to do was to draw distinctly the line between police functions and magisterial functions. At that time Magistrates used to be policemen; but in the course of the reorganization that ensued these two functions were divided. The police were confined to what was strictly their own line of business; the recording of confessions went to the Magistrate. There was of course no stigma in this; but a deliberate exclusion like the present was different. However, I am perfectly willing, if the Hon'ble Sir Edwin Johnson and the Council think my amendment should be limited to the exclusion of the words 'revenue or'; and, with your Lordship's permission, I will alter it to this effect:—

"'That in section 38 the words "revenue or" be omitted.'"

The Motion, as thus amended, was then put and agreed to.

The Hon'ble MR. HOPE next moved that the following clause be added to section 7 (namely):—

"In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do."

Court to examine defendant as witness.

He said:—"My Lord, the Bill proposed by the Bombay Government provided against the hearing of suits in the absence of the defendant—a practice which has reached enormous proportions in the Bombay Presidency, and which is proved by the fullest evidence to be often productive of gross injustice. In my introductory speech I said that the proportions in the four districts ranged from 60 to 74 per cent. in 1876, and from 57 to 66 per cent. in 1878. But this was for all suits. In money suits only Mr. Auckland Colvin shows (Minute, p. 30) that it is from 93 to 97 per cent. The Bombay section was substantially reproduced as section 9 of the Bill introduced; but the Select Committee have cut it out altogether. From paragraph 4 of the Report it would seem that they are impressed by the obvious hardship of forcibly dragging a man away from his home and his cultivation, perhaps at a season when every day is of importance to him, merely with a view to 'compelling him to appear in a suit to which he has no defence.' To this it may be answered

in limine that, as every man is *now* by the law of the land liable to be so dragged, under arrest if necessary, in order to give evidence in the affairs of other people with which he has no concern whatever, there can be no special hardship in obliging him to come up about a matter of primary importance to himself; and as to actual arrest, on the hardships and indignity of which some sentiment has been expended, this penalty is no more likely to be incurred by defendants than by witnesses, of whom arrests are almost unknown. The knowledge that a summons must be obeyed readily ensures attendance. On the other hand, however, the necessity for a defendant's presence is, if possible, greatly enhanced by the present Bill. I do not see how it will be possible for a Judge to comply with the requirements of section 12, to receive the defendant's admission, and weigh it so as to decide whether it is true and made with a full knowledge of his legal rights; to go into the history and merits of the case, to ascertain what defence a man may have, even though he is not aware of it, and to follow up the items of the account, unless the defendant be before him."

The Hon'ble SIR ALEXANDER ARBUTHNOT here said that he, and he believed those who had hitherto agreed with him, would not oppose this amendment.

The Hon'ble MR. HOPE said that in that case he had no further remarks to make.

The Motion was then put and agreed to.

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

He said:—"My Lord, in making this motion I wish, on the one hand, to give certain explanations and comments on what it contains, which I hope may be useful to those entrusted with its execution and to the public, as also, on the other, to make remarks on a few important matters not included in it. I shall do so, as far as may be, in an uncontroversial spirit, and the views I express may be taken simply as my own, and not necessitating any rejoinder from Hon'ble Members who may in any instance happen to dissent from them.

"With respect to section 2, doubts have been expressed by the Puna Sabhá, in an able and comprehensive paper which has on some points been most useful, whether the definition of 'agriculturist' covers the important class of agricultural labourers; but it is held by the Hon'ble Law Member that it does so, as of course it is intended to do.

"To section 9 it has been objected that only a defective record, and in some cases no record, is provided for; that Judges will consequently take down just what they choose, and that superior Courts will have nothing to go upon. This is not strictly accurate, since even in cases not exceeding Rs. 10 in

amount or value a record of the substance of the evidence is obligatory. And it should be remembered that what is here provided merely follows what is the existing law, either in non-appealable civil cases or in summary criminal trials by a Magistrate or Bench of Magistrates, and in certain trials before a Presidency Magistrate. A mode of record which is found not inappropriate for cases where two years' imprisonment and Rs. 1,000 fine may be inflicted is surely sufficient for the civil suits to which our Bill relates. While thus touching on procedure, I would take the opportunity of repeating and explaining what fell from me when introducing the Bill. I then said that, in view of the fact that 85 per cent. of all suits in British India are for sums under Rs. 100, and 44 per cent. for sums under Rs. 20, 'I cannot but feel, and I think the people feel too, that our Civil Procedure Code, with its six hundred and fifty sections, and all that they involve, is in minor cases a burden almost too heavy to be borne. I trust that the day may come when not only Dekkhan raiyats but all India will obtain some relief in this respect.' I do not dispute that our Civil Procedure Code, whenever its six hundred and fifty sections, just amended as they have been in some one hundred and seventy instances, and still requiring amendment as they do in perhaps as many instances more, shall have been recast with patient judgment into one work, fit to take a permanent place beside such Codes as the Indian Penal Code and Code Napoléon, may then be a suitable machine by which to regulate litigation in which great interests are at stake. But for *minor cases*, of which alone I spoke, it is, and ever must be, an intolerable burden. However refreshing to the legal intellect may be the creation and solution of subtle distinctions and dilemmas, and however noble it may seem to argue and judge with the same care whether five rupees or five lakhs of rupees are involved, the world that has to toil and live can neither wait nor pay for such entertainment. That world in England has long since settled the question by establishing County Courts, which give such satisfaction that their sphere has received, and seems likely still to receive, considerable extension. I will repeat my regret that a material simplification of procedure with a view to saving delay and expense has not been found feasible in the present Bill: the rejected sections of the original draft were perhaps not sufficiently thorough to raise the issue with advantage. But, though we seem to have in India an unlucky knack of introducing as improvements what is being abandoned in England as intolerable, I do not despair of the reform I desire being in the end successfully achieved.

"Regarding sections 12 to 15 of the Bill, I also then doubted whether they expressed intelligibly or would secure effectively the action needed for 'going behind the bond.' The objections of the Bombay Government were more fully and emphatically pronounced. In consequence of these I am glad to

say that a very great improvement has been effected. But I much regret the absence of an authorization of the Court to award, with or without the aid of a jury or assessors, an equitable sum to the plaintiff instead of non-suiting him, in cases where the Court is satisfied that some money has been lent, but, through the want of books or other evidence, the actual nature and extent of the transactions are doubtful, and the precise sum due cannot be proved. This power has been shown by experience under the Taluqdárs and Thákurs Acts to be most useful in saving the creditor from unreasonable loss, and would have tended to give confidence to the money-lending class. Still, although in this and in some other points the views of the Bombay Government regarding these sections may not have been fully met, I have every hope that the latter will now be found workable and beneficial, especially if the following wise caution of Mr. Justice Maxwell Melvill be kept in view by our Judges:—

"'I can only express a hope that, in making the experiment, the Government will select men of moderate views, who will not give too loose a rein to the natural feelings of sympathy with the agriculturist and antipathy to the money-lender. These men will, in future, have to determine what rate of interest is reasonable in transactions between the money-lender and the agriculturist; and they will fail to do justice if they forget that the money-lender has many bad debts, that as high interest means bad security, so bad security means high interest, and that the money-lender's security is now more than ever weak, seeing that he cannot touch his debtor's person, nor his house, nor his clothing, nor his cattle, nor (unless the debt be specially secured) his land.'

I may add, incidentally, that it should be observed that chapter III applies to all suits and proceedings to which agriculturists are parties, irrespective of their amount or value.

"To pass on to the question of agriculturists' accounts, it does not seem to have been fully perceived in some quarters that, while sections 65 and 66 ensure to the debtor a statement of his account from the creditor's point of view, section 16 is designed to enable him to get his real liability determined under the provisions for going behind the bond. Section 19 now expresses correctly what was proposed in the Bombay draft Bill: the objections taken to it as it stood when introduced arose merely from accidental oversights in the drafting.

"Considerable criticism has been directed against section 22, which exempts land from attachment and sale in execution of decrees, unless it has been specifically pledged. In my introductory speech I sketched the position of the land-sale question, and explained the reason for the absence from the Bill of any attempt at a final comprehensive settlement of it, and for considering the restriction of sale to specifically-pledged land to be equitable. In the decision of the question I had taken no part, as this restriction had been proposed by the Bombay Government, and accepted by the Government of India

and the Secretary of State, before my connection with the Bill commenced. I ventured, however, to express my views as follows:—

"'I must confess to some misgivings as to how the exemption may work in practice. The money-lender may everywhere make the execution of a bond, laying on the land all his existing unsecured advances, an indispensable condition of further accommodation. At the same time, the exemption rests as to the past upon a perfectly intelligible and reasonable basis, while as to the future the proposed village registration will at least ensure that every raiyat when he pledges his land shall understand what he is doing, and insolvency will open to him a loophole of escape when unreasonably pressed by an extortionate creditor, if he prefers that alternative.'

"My doubts have now been more than echoed by Mr. Justice Maxwell Melvill and Mr. Justice West, the former of whom predicts that loans, excepting on mortgage, will soon be unknown; while the latter, concurring in this, adds that the mortgagee will, by the operation of the Bill, be driven on to become a purchaser, and the raiyat will have no alternative but to acquiesce in sale. Here I would only observe that the most demonstrably correct economic calculations are liable to be defeated by moral and sentimental causes, and that it by no means follows that mankind will do what logically they ought to do. It may be that the affection which the raiyat bears to his land will lead him to defeat his creditor by insolvency; that the competition amongst money-lenders, which the Dekkhan Riots Commission report, will check the exaction of landed security; and, best of all, that the difficulties of borrowing will tend to keep the raiyat's transactions within his means. The issue can only be known upon experiment. But it seems clear that the course which has been adopted was the best under the circumstances. No solution of the land-sale question generally admitted to be satisfactory is forthcoming. Mr. Justice Melvill candidly admits that he has not got one to produce; the reservation to the raiyat by 'a kind and impartial authority' of the 'minimum of land' requisite for 'a decent subsistence,' which Mr. Justice West advocates, has been severely criticized, directly and indirectly, by very competent authorities. To have postponed relief to the Dekkhan till this question was settled for all India would have been little less than criminal; to have made no attempt to check the rapid alienation of raiyats' lands, by a method equitable in itself and offering the chance of even a limited success, would have been neglectful. At the same time, it is also clear that the land-sale question cannot be put off much longer; and I earnestly hope that what has been written, said and done upon this Bill may accelerate its solution.

"I must now notice the important subject of management by the Collector, provided by clause 2 of section 22 and by section 29. In my introductory speech I said that—

'compared with what we mean to compel a man to *pay*, the question of what we shall hold him to owe sinks into insignificance'; and, again, that 'we cannot justly and reasonably

legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in obtaining all that is fairly due to him and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, the destruction of the raiyat's credit or his bondage to secret and extortionate agreements must ensue, and all our well-intentioned interference will do harm instead of good. With such provision, the measure will not injure the raiyat's credit, but improve it.'

"In short, I look upon this provision as the keystone or test-point of the Bill. If it works well, the raiyat's credit will be secured on a satisfactory basis; if otherwise, his borrowing, even for reasonable purposes, within the limits of his true means will become most difficult, while the alternatives of absolute non-transferability of land, or eviction and a poor-law, will stare us in the face. I note, on the one hand, that the Puna Sabhá, Mr. Moore and Mr. Naylor doubt the Collector's power to manage vast numbers of small holdings, while the Commissioner and the other two Collectors consulted express no misgivings on the subject. I myself consider that there need be no fear of failure, provided it be from the first recognized that the duty is important and difficult, not to be performed by mere perfunctory orders, passed on from the Court to the kulkarní through an intervening chain of little-heeding functionaries. Success will, I anticipate, lie most frequently in a pretty close adherence to the system in Native States, and to the provisions for security and recovery still extant in our law, though of late years little resorted to. If the raiyat be retained as cultivator wherever possible,—if a reasonable rack-rent be imposed, personal security exacted, precautions taken against making away with the crop, aid given when wanted in securing a fair price, and payment required at the time means are forthcoming, I see no reason why satisfactory results should not be attained. But careful supervision by Assistant or Deputy Collectors and Mámlatdárs will be indispensable; and possibly the appointment of a special officer for a few months to start the system in the four districts might be advantageous. These, however, are details which will, I doubt not, receive full attention from the Local Government.

"The section which enabled the Court to make over moveable property to the creditor at a valuation has been struck out by the majority of the Select Committee. The fact that attached articles of property are constantly sold by auction for a mere song, and often collusively so bought by the creditor, is established beyond dispute. On the section the Puna Sabhá remark:—

"'We regard the provision as salutary. Forced sales of property under all circumstances prove very ruinous to the debtor classes. We would only recommend that the assessors who are to appraise the property should not be appointed by the Court,' &c.

Messrs. Stewart and Moore approve of it; Mr. Naylor ably defends it; Mr. West apparently objects merely to its present form; and finally, the Bombay Gov-

ernment, after considering the remarks made in Council, are clear for its retention. Under these circumstances, I am wholly unable to comprehend why, instead of being amended, as it easily might have been, it should have been expunged. On a matter of this kind, and considering the strong favourable evidence, I think more deference should have been paid to the views of the Local Government; and in this case, as in that of summary equitable awards to which I have already alluded, I would have moved the insertion of an amended section but that I had, unfortunately, to trouble the Council with so many other amendments of even greater importance.

"I am glad to say that section 35, limiting the powers of Subordinate Judges in the punishment of fraudulent debtors, to which I was opposed, has been expunged. The provision in section 33 for an appeal against their sentences is a step towards the separation of punishment for fraud from insolvency, which I advocated. But the punishment of concealment and fraud in the creditor, for which the Bombay draft provided, is still omitted, and must now await the further improvement of the law of Insolvency throughout India, which cannot be long deferred.

"A consideration of the chapter on Insolvency, together with the sections about going behind the bond, suggests the interesting question as to whether their combined effect may not be to destroy credit, put a stop to money-lending, render the revenue irrecoverable and bring the country to a deadlock. On this point Mr. Justice Maxwell Melvill, who, I hope I may say without offence, has treated the problem forced upon us with equal moderation and statesmanship, makes the following remarks:—

"'I presume that the Government is satisfied that the effect of the measure will not be to destroy the raiyat's credit altogether, or to induce the money-lenders to close their shops. If this should not be the result, but if, on the contrary, it should turn out that after the agriculturists have been relieved of their existing debts on the easiest possible terms the money-lender will go on lending, not on his own terms but on such terms as may, in the uncertain future, be deemed reasonable by the Judge for the time being, it would indeed be a consummation devoutly to be wished. Regard being had (to use the phraseology of the Evidence Act) to the common course of natural events, human conduct and public and private business, I should be inclined to fear that such happy results as I have last contemplated are not likely to ensue; but it must be admitted that Natives often disappoint our most reasonable expectations, and that the consequences of such a measure as that which is proposed can only be determined by experiment.'

"What Mr. Melvill himself anticipates is tolerably evident; though he qualifies any conclusion very much in the way I myself have done when speaking of the possible effects of the restriction on the sale of unpledged land. But, perhaps, I ought to offer some explanation of the grounds on which, subject always to the same qualification, the Government may be held to be justified in

anticipating that the dire results just alluded to may not come to pass, and, consequently, in persevering in the measure before us. It is a truism that a thing is worth what it will fetch, and *per contra* that in the long run, temporary disturbing causes apart, a thing will always fetch what it is intrinsically worth. Now the Bill does nothing to diminish the intrinsic value of land, but rather the reverse. The value of land depends, at bottom, on the net produce, or surplus after three deductions, for the cost of cultivation, the subsistence of the peasant and his family, and the Government demand.* Land is worth as many years' purchase of this net produce as correspond with the current rate of interest. And this rate of interest ultimately depends upon the facility of recovery. Now our Bill does not alter the Government demand or, consequently, the net produce, but it increases the facility of recovery. It must, therefore, increase the raiyat's *sound* credit, instead of diminishing it. I will make my meaning clear by illustration. Suppose a raiyat's holding yielding gross produce worth Rs. 100, of which Rs. 50 go for the three deductions I have just named, leaving Rs. 50 as net produce or margin on which the raiyat may borrow. In view of the provision in the Bill for seven years' management of unpledged lands, the money-lender would be justified in lending on a money bond Rs. 180 if the rate be 20 per cent., Rs. 228 if it be 12 per cent., and Rs. 252 if it be only 9 per cent. Which of these rates he will adopt, or whether he must exact a higher rate still, obviously depends on his chances of getting paid. But these chances are greatly improved by the Bill; for the raiyat will strive to pay punctually rather than come under the management of the Collector, and the Collector's management (if efficient, as it *must be made*) will make loss more improbable still. Notwithstanding all fair allowance for risks, lower rates will thus prove as remunerative as the present high ones. For a loan on mortgage, the principle of calculation and the advantage are the same as for a loan on personal bond; but in the end there is this difference, that in the latter case, if the saukár lends beyond the limits, he will lose his money, while in the former, if the raiyat borrows beyond them, he will lose his land.

"All this, it may be said, is very well in theory, but in practice the conditions of advances depend far more upon 'the degree of simplicity in the borrower and of rapacity in the lender than on anything else'; and to this existing uncertainty you have added the fresh one as to what rate of interest each individual Judge will think reasonable. I reply that the former uncertainty will be diminished by the Bill; and that the second will prove more imaginary than real. There will be far less temptation to extortionate bargains

* I of course ignore such extraneous value as the land may now possess through the means a hold on it now gives the creditor of commanding the labour of the debtor and his family and other illicit advantages.—(*Dekkhan Riots Commission Report, page* 60.)

and frauds, and far more risk in them, now that the whole history and merits of the case are to be laid bare in Court. And the provisions for management and recovery by the Collector, standing behind all agreements, will reduce the factor of uncertainty in credit which arises from individual character, and will assist the Courts in gradually establishing rates of interest varying within but a moderate range. Their decrees will thus in time afford the advantage, without the well-known evils, of usury laws, of which Mr. Justice West has well observed in his pamphlet on 'The Land and the Law,' that 'they set up a standard, and gave fixity to men's vague ideas of what might reasonably be asked for the use of money in those numerous cases in which the loan partook but slightly of the character of a true mercantile transaction.'

"While thus contending that the Government are justified in believing that the ultimate effects of the Bill will prove beneficial, I do not conceal from myself for a moment that a trying time of transition must intervene before all parties have understood and settled down to their new relations. It is to be fully expected that difficulties between debtor and creditor will arise in many individual cases, and even in villages or taluqás generally, and that their effects may appear in the recovery of the land-revenue. But if judicial and revenue officers alike strive to remove misconceptions and fears; if the former are even-handed and temperate in their judgments, and the latter efficient in their management of attached land; and if, I venture to add, the revenue demand can be so timed and adjusted as not to drive the raiyat to the saukár, even temporarily, in order to meet it—then I believe that all trouble will be soon and safely tided over. That the saukár will permanently cease to lend, there need be no fear whatever. The raiyat is just as likely to cease to cultivate. The raiyat is as necessary to the saukár, who can only employ his capital in agricultural dealings and banking, as the saukár is to him. The pair will not sit down and starve together, with a bag of money between them!

"Another large question, which I cannot pass over without remark, is that of the novel provisions for Village-Munsifs and Conciliators. It has two branches—the one relating to their *personnel*, and the other to their functions. I will first speak of the *personnel* available for each office. As to Village-Munsifs, it will have been gathered from what I said in my introductory speech that I did not expect that more than a patel here and there would be found qualified to be a Village-Munsif. If the suggestion which I put forward in 1863, in 1867, and again in 1871, that after a reasonably distant future date no person should be appointed patel who had not received a suitable education, had been adopted, the class would now have stood higher in education and intelligence than they do. But a knowledge of reading and

writing is not, after all, indispensable to successful disposal of petty suits, though absence of interest is so ; and this is just what will be in patels so rare. Now, however, that the restriction of Village-Munsifships to patels has been removed and the proposal in the Bombay draft assented to, any person of local influence will be eligible, and the field of selection will be advantageously enlarged. Virtually, it will become nearly the same as that from which Conciliators are to be drawn. As to whether competent persons can be found for the two offices, especially the latter, I observe some striking differences of opinion. On the one hand, the Puna Sarvajanak Sabhá, Mr. Byramji Jijibhai in his clear and representative memorial, and a portion of the Native Press appear to have no misgivings. On the other hand, the Collectors of Sholapur and Satára seem to be pretty much of the opinion of the Commissioner (Mr. E. P. Robertson) that 'too much power will be thrown into the hands of a class *quite incapable* of exercising impartiality, or of resisting local or personal influence and acting independently and uprightly.' One of the principal Native newspapers, too, the *Dnyán Prakásh*, which has produced several very able articles on the Bill, thinks that, though the experiment may well be tried, the difficulties in the way of obtaining proper Conciliators are insuperable. Finally, Mr. Justice West appears almost to question whether half a dozen men of integrity and intelligence can be found for Conciliators in the whole Dekkhan tract. Such an opinion, even if not meant to be taken literally, cannot but arrest our serious attention, coming, as it does, from one who is not only a Judge of the High Court but Vice-Chancellor of the Bombay University. I do not ignore the probability that men qualified in all respects will not be easily met with; but I must confess scepticism as to a population of even three millions and a half (which the four districts comprise) being in a condition verging on that of Sodom and Gomorrah. If it be so, notwithstanding all our education, civilization and vaunted progress, then the inference seems difficult to resist, that our measures for the advancement of Natives to higher positions in the public service are premature. If the population, as a whole, are thus tainted, can our Subordinate Judges, our Deputy Collectors and our Mámlatdárs be utterly different from their caste-fellows and kinsfolk? Without pursuing this interesting dilemma, I will only say that, having spent a large share of my time in the Mufassal, and having always mixed freely and confidentially with the people of all classes, I should have no difficulty in finding a sufficiency of competent men in the districts with which I am best acquainted. It is now for those who think similarly to bestir themselves, lest the Native community lose the honourable and beneficent sphere which the legislature lays open for them, and to make good their opinions by presenting suitable persons to the notice of the authorities. And it is for the latter to strive without prejudice to give the experiment a fair trial, remembering that a knowledge of law is unnecessary, and even reading and writing are not indispensable to a suc-

cessful discharge of the functions in question, in which the layman of age, influence, shrewdness and good temper may easily surpass the highly-trained judge. After all, if a competent Conciliator cannot be found for any particular local area, no one will be appointed, and the requirement of conciliation before suit will not apply there.

"Turning from *personnel* to functions, I observe considerable confusion and misapprehension of those of Conciliators. A Conciliator is neither an arbitrator nor a judge, either in our Bill or in France, whence the institution is derived. He is simply a disinterested third party, who is charged to endeavour to bring disputants to an amicable settlement. It so happens that in France the Conciliators are *Juges de Paix*, and so have a jurisdiction to try the more petty of the cases (within, say, Rs. 50) in which it is their duty to conciliate. But they conciliate in all the superior cases which they have no power to try. The functions of conciliating and trying are distinct, and have no necessary connexion with each other. Appoint our Village-Munsifs or Subordinate Judges to be Conciliators (there is nothing in the Bill to prevent this), and they will be the exact counterparts of the *Juges de Paix*, except in one particular, to which I will presently allude. Some authorities, including Mr. Justice Green of the Bombay High Court, think that they ought to be so appointed. But others, and especially the Local Government, consider that judicial functions might impart to their recommendations a weight amounting to undue pressure, which parties, and especially the ignorant raiyat, might be unable to resist. The one particular of difference from *Juges de Paix* to which I referred is the absence of power to compel attendance. Considering the doubt whether competent Conciliators can even be found at all, the Bill follows the opinion of the Bombay Government, thus expressed in Sir Richard Temple's Minute of April 14th, 1879:—

"'Though he (the Conciliator) would not have the power of deciding, or enforcing his decision if he formed one, still he would, by compelling attendance, be able, if so disposed, to put great pressure on the raiyat to admit or to compromise the claim. Such power of applying pressure by an educated man of position upon an uneducated and humble man on a claim preferred by a man generally of some education and wealth is a power that ought not to be conferred upon Honorary Conciliation Judges in the present state of society in the Dekkhan.'

I myself doubt whether the want of this power will affect the *status* of Conciliators, as some apprehend. If they can settle disputes equitably, the people, debtors as well as creditors, will readily resort to them. But here, as in the case of giving powers of conciliation to Judges, the Bill presents no obstacle to a change hereafter. The Local Government can, under section 37, give power to compel attendance whenever they think fit.

"In connection with chapter VII, some exception has been taken to the cost of the extra Subordinate Judges' Courts to be constituted, and of the

supervising officers. The object of bringing the Courts nearer to the homes of the people might, it is said, be as well, or even better, attained by making the Courts move about. The existing Judges, it is added, have not got too much to do as it is; and the new summary procedure, with the temptation to refer difficult points to arbitration, will lead to their having still less. That the Courts should move about to some extent would certainly be advantageous; and I hope that the hitherto dormant powers of section 23 of Act XIV of 1869 will now be exercised to enable them to do so. But this can never be more than a limited benefit. There are rarely above two or three villages in a taluqá containing suitable accommodation for a Subordinate Judge and his clerks, to say nothing of parties and their witnesses; and even these are often not conveniently accessible in the rains. The presence of a considerable body of strangers, too, is always a source of annoyance and expense to the villagers, even if the calls on them do not exceed those of hospitality. Time would likewise be lost in travelling and settling down at each place; pleaders in non-agriculturists' cases would be inconvenienced, and minor practical difficulties would crop up. It is questionable whether, between waiting till the next visit to the locality to begin and adjourning till the next visit to complete, any saving in time would result; while, finally, the raiyat would in very many cases be living no nearer to the selected village than to the Court's head-quarters. As to the other statement, it remains to be seen whether the duty of going more fully into cases will not neutralize any saving in time obtained in other ways. But however this may be, I can see no good reason why the judicial unit of administration should be larger than the executive unit. Every taluqá ought, in my opinion, to have its Subordinate Judge as well as its Mámlatdár. If the civil work proved insufficient to occupy the Subordinate Judge's full time, he should be invested with criminal powers. The Mámlatdár and his first karkún, being proportionately relieved, could then better overtake the multifarious and increasing duties heaped on them, besides taking back, at a great saving of expense, the registration work, of which they were a few years ago relieved.

"As to chapter VIII on Village-Registrars, I have only to say that I doubt whether kulkarnís, as a class, deserve the abuse which is bestowed upon them by some revenue-officers, and even by one Native newspaper. They perform faithfully a large amount of public business, and their hereditary service emoluments are a security for their conduct. But as to this, and also the objection that they are not sufficiently numerous to save the raiyat all trouble in resorting to them, I would point out that many other persons (among whom I may specify village schoolmasters) are eligible, and that clause (*b*) of section 55 will in many cases enable raiyats to register their deeds at the places where their saukárs reside, instead of at their own villages, if they

prefer to do so. About chapter IX I have only to point out that the giving of receipts has been made obligatory; and of chapter X to say that the provisions regarding appearance by a relative, servant or dependent are copied from the Madras Village-Munsifs Regulation, IV of 1816.

"I will now notice three subjects, the entire omission of which from the Bill has been the cause of much adverse comment. The first is that of a modification of the rigidity of our land-revenue system. The Anglo-Indian Press, and seven out of the eleven vernacular newspapers of the Bombay Presidency which have noticed the Bill, have commented more or less emphatically on the absence of provisions in this direction. On the merits of the question in the abstract, it is unnecessary for me to add anything to the few remarks which I had to make, for the completion of my argument, in my introductory speech. But as to its omission from the Bill, I may say that it is held that for whatever action (if any) which may be necessary no legislation is required, but that if the fact were otherwise, the Bombay and not the Governor General's Council is the place where it should be undertaken. Legislation is unnecessary, because the question is an executive one. The power of fixing the rates of assessment, original or revised, is given to the Bombay Executive Government by sections 100 to 107 of the new Bombay Revenue Code, as it was by the previous law; the power of fixing instalments is so given by section 146; the granting of remissions is equally an executive matter. The regular mode, therefore, of securing all that the advocates of a change of system desire is by executive order, or by rules made by the Local Government under section 214 of the Code. Supposing, however, that it were thought proper to tie down the Executive Government in these matters more than it is now tied, then the proper course would be to amend the Bombay Revenue Code; and that is the function of the Bombay Legislative Council, which passed it, not of the Governor General's Council. Our present Bill, I need scarcely say, would not be before this Council at all but that it modifies the Civil Procedure Code, which the local legislatures are precluded by Act of Parliament from touching.

"Another omission which has been censured is that of any reduction of stamp or court-fees, process-fees, batta, &c. Here, again, legislation would have been superfluous. In Act VII of 1870 the Governor General in Council is empowered by section 35 to reduce or remit any of the court-fees mentioned in the schedules; and the High Court, with the sanction of the Local Government, may under chapter IV fix process-fees as it thinks proper. Act I of 1879, section 8, contains a similar power to reduce the stamps to which it applies, among which arbitration awards are included. I am not authorized to announce any decision on this subject; but it will be seen from paragraph 16

of the letter of the Bombay Government, No. 2056 of April 15th, 1879, which was published in the *Bombay Government Gazette* of the 30th of July last, that some reductions are looked upon generally with favour. I may add] that the regular inspection of Courts under section 9 of Act XIV of 1869, which is now, as Mr. Naylor remarks, so little practised, is needed, *inter alia*, to check abuses connected with these charges. In 1876 the Judge of Khandesh brought to light a custom of enhancing the amount payable for stamps by requiring, in certain cases, an application on stamped paper before a witness was examined. He also found that in process-serving 'in one Court alone as much as 96 days' pay was obtained for 24 days' work, and 102 days' pay for 26 days' work, of the serving establishment.'

"The last omission I have to explain is that of any legalization of panchâyats or arbitration courts—a subject which I mentioned in my introductory speech as still under consideration. A proposal for the definite incorporation of such courts into our judicial system has been put forward by the Judge of Ahmadnagar, Mr. Wedderburn, with the concurrence of a body of Native gentlemen, including some judicial officers, whose position and attainments entitle their views to the fullest consideration. I must say frankly that I look upon as wholly visionary the idea that it is possible now-a-days to find in every village, or even in every small circle of villages, body of men sufficient in number to allow selection from them by litigants for the formation of a panchâyat, and at the same time qualified to be arbitrators by influence, intelligence and absence of interest. And even were this otherwise, I should expect that the strict regulations, involving checks and delays, which the proposal just referred to comprises, would practically destroy the freedom, simplicity and promptitude supposed to be the chief recommendations of the panchâyat system. That the provisions for arbitration in Bombay Regulation VII of 1827, which succeeded the even more efficient ones of Regulation VII of 1802, had fallen entirely into disuse before their repeal in 1861, and that the present new 'arbitration courts' are kept at work chiefly by the exertions of a very small number of disinterested and impartial individuals, are facts not very encouraging to a new departure. At the same time, as there undoubtedly is a popular sentiment, originated probably by aversion to our Courts as now conducted, running in favour of voluntary settlements, I personally can see no harm in aiding them by legislation of a purely permissive kind. We might safely revert to pretty much the position of Regulation VII of 1827. Persons whom the Government deemed of good character and competent, as also the members for the time being of any well-conducted local arbitration court, might be officially recognized as arbitrators. Such recognition should have the effect (1) that they should be entitled to the aid in their proceedings of issue of process by the Subordinate Judge of the division; and (2) that any reference for arbitration to them

might provide that in the event of any party thereto giving notice, within fifteen days of the date of the award, to the Subordinate Judge of the division that he was dissatisfied with the same, the matter in dispute should be referred back to the same court or arbitrator, sitting with such Judge as president. This would supply the recognition and control for arbitration which its advocates seem to desire, without putting any pressure on parties to resort to it. But even thus much is considered by the Local Government to be undesirable and likely to lead to prejudicial results. As they are, of course, the best judges of the state of affairs in the Dekkhan, the law will remain as it is. I may, however, point out that there is nothing to prevent parties appointing Village-Munsifs and Conciliators to be their arbitrators, and that an explanation making this clear has been added to section 43.

"In conclusion, I must observe that it would be premature to indulge in any congratulations upon the passing of this measure, and still more so to attempt to appraise its several parts, to distinguish the several sources whence they may have been derived, and to distribute praise or blame accordingly. It will be time enough to do that, if it need be done at all, when the Act has become an acknowledged failure or success. At present it is the measure of the Government of Bombay (and I am glad to think that through many vicissitudes it has substantially remained so), prepared in general consultation with myself. But I hope that we may augur well for its future from the fact that it not only has the approval of the highest official authorities but has secured, in a degree quite unprecedented, the substantial support of the Press and the public. It is a sincere and carefully matured attempt to solve a difficult problem and to meet a great emergency. If the course of events should prove that we have erred, we shall have erred in good company, and after all possible precautions to ensure success."

The Hon'ble MR. THORNTON said:—"Having been taunted in the course of this debate with having spoken one way and voted another, I think it due to myself to trouble the Council with a few more words of explanation regarding the course I have pursued. It is true that I have voted for certain provisions in this Bill of the propriety of which I am extremely doubtful; but I have done so on the distinct understanding that the Bill is local, and the measure strictly tentative and experimental. Thus, as regards the abolition of appeals in small-debt cases and the substitution of a revising agency instead, my experience in the Panjáb tells me that in that province such a measure would be exceedingly unpopular; but, while I am not prepared to admit the abolition of appeals in small-debt cases to be a universally appropriate and effective remedy for the misfortunes of the raiyat, I am not prepared to object to the experiment being tried in a portion of the Bombay Presidency. Again, my experience

tells me that any attempt to exclude legal practitioners from the Courts of a locality where the people have for years been accustomed to forensic agency will positively fail or produce greater evils than those it is sought to remedy. But my opinion, though true of the Panjáb, may not be applicable to the circumstances of the Dekkhan; and I should certainly hesitate to force the results of my imperfect experience upon the Bombay Government. But it may be urged—'If you are not going to act on your Panjáb experience, why drag it in at all? Why advise the apparently inconsistent course of damning an amendment from your experience, and then voting in support of it?' I answer that I have adopted this course in order to indicate clearly and unmistakeably that, though I am prepared to vote for the measure as a local and experimental one, I do not approve of all its provisions, and am not prepared to adopt it as a triumph of statesmanship, or to advocate its extension to other localities until is success has been practically proved.

"There are, moreover, other provisions in the Bill to the success of which my own experience is adverse. Thus, it has been found in the Panjáb that the procedure of Small Cause Courts is quite unsuited for a rustic population; that the system of forced arbitration provided in section 15 of the Bill is a mistake; and that the system of official interference with the terms of contracts contemplated in chapter III—a system which prevailed, and still prevails to some extent, in the Panjáb—has a demoralizing effect upon the people, raises the rate of interest on money lent, and yet fails to teach prudence to the improvident. It is also my opinion that the extension of the period of limitation in suits on account, besides being based upon a misconception of the present law, will only stave off, and ultimately intensify, the evil it is sought to remedy, and that, while the procedure of all small-debt courts should be conciliatory, the appointment of special courts of amateur Conciliators will lead only to dissatisfaction and delay. But while I should, for the reasons above stated, object to the extension of these provisions of the Dekkhan Raiyats Bill to the Panjáb, at any rate at present, I should not feel justified on those grounds in refusing to allow them a trial in a locality upwards of a thousand miles away.

"The above explanation will, I trust, remove from the minds of Members of this Council any impression any of them may have received that in the course I have adopted I have acted with inconsistency. I would add that, so far from grudging the Bombay Government its experiment, I shall, whether in India or in England, regard it with the greatest interest, and with the earnest hope that it may work some benefit at least for the much-vexed raiyats of the Dekkhan."

His Excellency THE PRESIDENT said:—"I have no doubt that the votes given on these amendments by my hon'ble friend Mr. Thornton were influenced,

as my own were, by the importance he attached to the fact that this Bill only comes before the Council at all because it happens to modify the Code of Civil Procedure, which the local legislatures are not competent to deal with. In point of fact, therefore, the Bill, though now about to be passed in this legislature, was, and is, a Bombay measure. As a Bombay Bill it came into our hands, and to me personally it is a cause of no small satisfaction that, notwithstanding the long and careful discussion given to it both in Committee and in this Council, and,

> 'In spite of all temptations
> To belong to other legislations,'

it still remains a Bombay Bill."

The Hon'ble SIR ALEXANDER ARBUTHNOT said :—" The explanation just given by my hon'ble friend Mr. Thornton was, I think, partly elicited by a remark of mine. I am sure that there is no Member of this Council who values more than I do the services and the assistance which have been invariably rendered to us by my hon'ble colleague since he became a Member of this Council; and no one who deplores more than I do the early prospect of his retirement from this Council. I quite see from the explanation with which the Hon'ble Member has now been so good as to furnish us that his course in this matter has been as consistent and straightforward as his course has always been throughout his long and distinguished official career."

The Motion was put and agreed to.

LEGAL PRACTITIONERS BILL.

The Hon'ble MR. STOKES moved that the Reports of the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865, be taken into consideration. He said that, since the Bill as amended by them in August last was published as recommended in their report of the 21st of that month, several papers from various quarters containing remarks and criticism on the Bill had been received, and the Committee had made some further amendments in it. He would now mention the more important of these.

In the report last referred to, the Committee had reserved for further consideration the request of the Government of the Panjáb that the Chief Court of that Province should be empowered to enrol advocates in the same way as the High Courts were empowered by their Letters Patent. They felt at the time some doubt as to the necessity or desirability of increasing the number of authorities competent to enrol advocates. But it had been represented that the High Court of the North-Western Provinces had recently refused to enrol advocates unless they intended to practise at its own Bar;

that it was not improbable that the other High Courts would do the same; that thus the only way by which an English barrister could hitherto gain admittance to the Courts of the Panjáb on the footing of an advocate might be closed; that it was scarcely to be expected that the most promising men would be willing to practise in those Courts on any other footing; and that thus an element, which at present gave a higher tone to the Provincial Bar, would rapidly disappear. To these considerations, urged by persons most competent to form an opinion on the matter, the Select Committee had deemed it right to yield; and they had accordingly inserted a section in the Bill (41) giving the requisite powers. They had at the same time amended section 4 so as to put the advocates of the Panjáb Chief Court as regarded their privileges in other Courts on the same footing as the advocates of the High Courts; and they had added to the repealing schedule sections 42 to 44 of the Panjáb Courts Act, 1877, as the powers conferred by them would, if this Bill became law, be no longer required.

The Committee had omitted "Coorg" from the enumeration of Provinces (in section 1) to which the Bill was made directly applicable, as the Chief Commissioner had represented that there were certain portions of the Bill (those, for example, relating to revenue agents) which would be unsuitable in that province.

They had restricted the power given by sections 12 and 21 to suspend or dismiss a legal practitioner convicted of a criminal offence to the case of offences implying a defect of character unfitting the practitioner for his position as such.

They had inserted words in section 13 rendering a pleader liable to suspension or dismissal for taking instructions from any person other than the party on whose behalf he was retained, or the private servant or "recognized agent" of such party. The necessity for such a provision, in order to render effectual the prohibition against unauthorized practising as a mukhtár, had been brought to notice by the Calcutta High Court.

At the instance of some persons who had complained of the stringency of the procedure against legal practitioners guilty of misconduct, the Committee had extended from ten to fifteen days the period allowed by sections 14 and 23 for preparing an answer to a charge, and had inserted a new section (40) providing that no legal practitioner should be suspended or dismissed until he had been heard, or had had an opportunity of being heard, not only by the authority inquiring into the charge against him, but also by the authority exercising the power of suspension or dismissal.

They had also amended the second schedule so as to make all certificates to pleaders and mukhtárs except those of the lowest grade confer the privilege of practising in any Criminal Court subordinate to the High Court.

The commencement of the Act had been postponed to the 1st January, 1880, in order to allow time for some of the pleaders of the Calcutta Small Cause Court and some few pleaders up-country whose position would be affected by the Bill to apply to the High Courts of their respective Provinces for licenses to practise.

The remaining amendments were not of sufficient importance to call for special notice.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

RAIPUR AND KHATTRA LAWS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the law in force in Thánás Raipur and Khattra. He said that it was recently determined, as part of a larger scheme for the redistribution of territory in the Lower Provinces of Bengal, to transfer the tracts comprised in the thánás of Raipur and Khattra in the Mánbhum district of Chutiá Nágpur to the district of Bankura, with which they were not only geographically but also, looking to the race and language of their inhabitants, more closely connected. The actual transfer was carried out on the first of this month; but, owing to these tracts having been hitherto comprised in a Scheduled district, there were certain differences between the law prevailing in them and that prevailing in the rest of the Bankura district which it was desirable to remove with the least possible delay. The present Bill had accordingly been prepared with the object of assimilating the law of these tracts to that of the rest of the Bankura district with effect from the date of the transfer. As the Bill would affect the Scheduled Districts Act, XIV of 1874, it had to be passed by the Governor General in Council.

The Motion was put and agreed to.

The Hon'ble MR. STOKES introduced the Bill. As there had not been time to circulate it, and as it was very short, he would read it to the Council:—

"*A Bill to amend the law in force in Thánás Raipur and Khattra.*

Preamble.

WHEREAS the territory comprised in the tháná of Raipur (including the independent police outpost of Simlapal) and the tháná of Khattra has been transferred from the district of Mánbhum to the district of Bankura;

And whereas the said territory, when included in the district of Mánbhum, formed portion of the Chutiá Nágpur Division, which is a Scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874) ;

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankúra ; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Raipur and Khattra Laws Act, 1879" : and it shall come into force at once.

Laws of Bankura to apply. Other laws repealed.

2. All enactments which on the first day of October 1879 were in force in the district of Bankura and not in the said territory shall be deemed to have come into force in the said territory on that day ; and all enactments which on that day were in force in the said territory and not in the district of Bankura shall be deemed to have been repealed on and from that day in the said territory.

Pending proceedings.

3. All proceedings commenced before any authority in the said territory before the said first day of October 1879, and still pending, shall be disposed of by such authority as the Local Government may direct, and, save as aforesaid, shall be carried on as if this Act had not been passed.

Territory to cease to be a Scheduled district.

4. The said territory shall be deemed to have ceased to be a Scheduled district on the said first day of October 1879."

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

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th November, 1879.

SIMLA;
The 24th October, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 566, L. D.—19-11-79—230.