COUNCIL OF GOVERNOR GENERAL

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

The Council met at Simla on Wednesday, the 31st July 1867.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.

MADRAS SALT BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable, be taken into consideration. He said that the Committee had merely made one verbal alteration, and that on a previous occasion he had explained that the Bill was only intended to remove a formal obstacle in the way of certain legislation proposed in the Council of Madras.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill be passed.

The Motion was put and agreed to.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY introduced the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate succession thereto, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said:—

"When, Sir, I asked for leave to introduce this Bill, I gave a sketch of the principal features of the policy which has been followed by the Government in

Oudh during the last few years. I shall now say very little regarding that policy, and I shall, I hope, be able to confine my remarks to an explanation of the provisions of the Bill.

As I before stated, the main object of this Bill is simple. It is to confirm by law the arrangements affecting the rights of Taluqdárs and others in Oudh, which were made under the orders of Lord Canning's Government.

One of Lord Canning's last acts, before he left India in March 1862, was to introduce a Bill to provide for the very same objects which are now contemplated. Although it has seemed necessary to remodel the Bill of 1862 to a great extent, the Council will find, if a comparison between the two Bills be made, that there is much resemblance between them. The differences are rather in matters of secondary importance than in principles of an essential character. I shall notice the more important of them in explaining the provisions of this Bill. After Lord Conning's departure, the further consideration of the Bill which he had introduced was postponed, and it has not since been proceeded with.

It is essential that there should be no misunderstanding regarding the nature of the rights which the Taluqdárs are held legally to possess under the sanads which they have received from the British Government. Every Taluqdár possesses, according to the opinion of the highest authorities, a strictly personal and exclusive right of property in his estate, with this exception only, that the rights of subordinate holders have been, under certain conditions, reserved. The Taluqdár, instead of holding an ancestral estate, as he formerly did, under the restrictions of the Hindú or Muhammadan or local law, now possesses an absolute power of disposing of his estate, as he pleases, by sale, or gift, or by will.

It will be observed that this absolute power, of which I have spoken, is not referred to in any very express terms in the form of sanad originally prescribed by Lord Canning, and which is republished in the first schedule to this Bill. But orders were subsequently issued which place beyond a doubt the interpretation which must be put upon the sanads. Those orders were issued when, as I explained when I moved for leave to introduce this Bill, conditions regarding succession according to the rule of primogeniture were added to the original sanads.

It will throw light upon all the questions to which this Bill refers, if I give some account of the correspondence which took place between the Government and the Chief Commissioner on this subject in 1860.

When Sir Charles Wingfield proposed to apply the rule of primogeniture he recommended that it should be a condition of the grants which had been made by the British Government, that estates should not be liable to sub-division. But he, at the same time, objected to give to the Taluqdárs the power of disposing of their estates as they pleased, in violation of the principles of Hindú and Muhammadan law. He stated that,—

'It had been laid down by a leading decision of the Sadr Adálat, North Western Provinces, that ancestral landed estates cannot be alienated without the consent of the heirs, and the principles has been repeatedly affirmed in the highest Courts of the North Western Provinces and of Bengal, and by the decision of the Privy Council, that in families where a *gaddí* or the law of primogeniture prevail, there can be no partition of the estate. There can surely be no reason for giving the Oudh Taluqdár s a power over their estates which is not possessed by landholders in any other part of India, which they have never yet enjoyed, and do not ask for now, and which is opposed to the tenets of their religion, and the most authoritative decisions of our tribunals. If it is desirable, as seems fully admitted, to maintain the great landed families that now flourish in Oudh, why devise new rules calculated to hasten their decay? The Chief Commissioner would observe that he is not contending against imaginary dangers. He has had opportunities of forming a judgment on the effects of the proposed measure; he has also instanced a remarkable case in point, and he could advert to others likely to occur. If the Chief Commissioner had not influence enough to prevent him, he is inclined to think that the ——————would leave his vast estate to his illegitimate son by a Muhammadan woman, though he has nephews and other blood-relations. The desire so common to all, of preserving the name and family estate to future generations, is no proof against the various influences and temptations to which their possessions for the time being are sure to be exposed. The Chief Commissioner can, therefore, place no reliance on the strength of this feeling to prevent the breaking up of our great taluqas.'

In another letter, Sir Charles Wingfield wrote as follows : —

'When the Taluqdárs come to know that the Government cosiders them 'free to dispose of their estates as they please by sale, gift, or bequest,' many will be tempted to make dispositions of their property opposed to Hindú law, public feeling, and all sense of justice or morality, and in their consequences ruinous to a Native aristocracy. Taluqdárs, in their dotage yielding to the influence of young wives, concubines, and corrupt dependents, would often disinherit their legal heirs in favour of younger sons, and even of illigitimate offspring. A case in point occurred only the other day in the family of the Rájá of ——————, the head of the ——————clan, and one of the highest Hindú families in Oudh. He has acknowledged as his son the offspring of a courtesan who had given birth to the boy before she had become acquainted with the Rájá. All the Rájpút Taluqdárs of the east of Oudh were incensed at the proceeding and claimed the Chief Commissioner's interferences. The Chief Commissioner told the Rájá that the Government would never recognize this pseudo-son as heir to the estate, but would vindicate the rights of his brother to the succession. He persisted in declaring the boy his heir but never ventured to make any gift or bequest in his favour

believing himself without the power to do so. Had he, however, been informed of the substance of paragraph 9 of your letter, he would undoubtedly have transferred his estates to this boy, and every Taluqdár in Oudh would have felt aggrieved, and that a dishonour had been done to his race, which he would have blamed the Government for having permited. It is quite certain that such full and unrestricted right to dispose of ancestral landed estate, as is conceded in paragraph 9 of your letter, has never been recognized by our Courts of law. Regulation XI of 1793, Section 6, which first gave landholders in Bengal power to dispose of their estates by will or gift, attaches the following conditions, which, in fact, reduces the power to nothing:—'Provided the bequest or transfer be not contrary to Hindú or Mahammadan law.' It is, therefore, laying down a totally new doctrine to assert that a Taluqdár is free to dispose of his landed estate in any way he pleases; and although it is part of the Chief Commissioner' argument, as will afterwards appear, to admit that the Government is at liberty to make this or any other rule in Oudh, this novelty has nothing to recommend it bieng opposed to the feelings of the people and to the policy of the Government.

The Governor General, Lord Canning, did not concur in the views thus urged by the Chief Commissioner. In Orders dated the 10th March 1860, it was stated as follows:—

'The condition which you proposed to insert in the sanads which remain to be conferred is much too stringent. It would limit the power of the Taluqdár over his estate to a degree which is not consistent with the promise of the Governor General that his right should be hereditary and transferable. It would also have the evil effect of a law of entail in leading to the retention of large estates by an improverished proprietor, in the not unfrequent case of long-continued extravagance. The Governor General has no doubt that each Taluqdár ought to be left free to dispose of his estates in whole or in part as he pleases, and either by sale, gift or bequest. But when a Taluqdár dies intestate, His Excellency agrees with you in thinking it desirable that the estate should devolve on the nearest male heir, according to the rule of primogeniture applicable at present to estates having a *gaddí*.

On the 17th July 1860, further orders were given by the Governor Genoral in Council as follows :—

'The Governor General in Council will not consent to limit the absolute power over his estate which has been guaranteed to every Taluqdár in Oudh, and is convinced that the existence of such a power is just as essential to the prosperity of the province, and to the maintenance of a landed aristocracy on a sound footing, as the extension of the rule of primogeniture in cases of intestacy. As, on the one hand, it will be in the power of every Taluqdár to refrain from making a will and, so to allow his estate to devolve undivided on his nearest heir, or, if childless, to adopt a son who will inherit the whole of his estate, or to bequeath it by will to any one pesron whom he may wish to designate as his successors; so, on the other hand, it is right that he should be at liberty to bequeath his estate to more than one person, in accordance with Hindú or Mahammadan law, or otherwise, as may suit his pleasure. Though the present holder of taluq may be in favour of the rule of primogeniture, his

successor may be of a different opinion, and his Excellency in Council would not deprive Taluqdárs, in all future generations, of the power of bequeathing their estates in accordance with their own views. To deny them this power would be in effect to establish a strict entail, so far as bequests are concerned, and would operate at least as injuriously in one direction as the existing rule of partition in another. * * * I am therefore directed to request that the Officiating Chief Commissioner will call upon every Taluqdár in Oudh, in whose family the rule of primogeniture has not heretofore prevailed, but to whom the Chief Commissioner desires to extend it, to declare in formal terms whether he is desirous that this rule should be applicable to his estate or not. To all who desire it, the Chief Commissioner is authorized to issue new sanads, declaring, in addition to the conditions already sanctioned by the Governor General, that the estate, in case of intestacy, shall descend to the nearest male heir; and adding by way of proviso, that the Taluqdár has full power to alienate his estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever he pleases. In respect to the Taluqdárs in whose families the rule of primogeniture now prevails, the Governor General in Council is of opinion that there is no necessity for calling upon them to make any such formal declaration, because their estates will pass, in case of intestacy, as heretofore; and the terms of their present sanads are sufficiently wide to confer on them the absolute power over their estates that the Governor General in Council desires they should have; but any Taluqdár of this class may be permitted to give up his sanad, and to receive in lieu thereof another in which the rule of primogeniture shall be expressly recognized as applicable to his estate and family, and in which it shall be declared that the title conferred on him by the Governor General includes a full right to dispose of his estate as he pleases during his life-time, and by bequest or adoption at his death.'

I have already quoted the reasons for which Sir Charles Wingfield objected to these orders. The Governor General refused to admit the force of those objections, and, on the 18th September 1860, the former orders were thus reiterated:—

'These arguments have failed to convince the Governor General in Council that it is either necessary or expedient to depart from the principles already laid down, or to limit the powers of the Taluqdárs over their estates, even to the extent you now propose. The estates of these Taluqdárs are not ancestral in the sense in which the word seems to be used by you. The majority of them are, no doubt, held by descendants or representatives of former possessors; but it is not this that constitutes the right and title by which the present possessors hold them. That right and that title consist in the estates having been bestowed upon the present possessors as a free gift from the State, and the estates are enjoyed under the conditions expressed in the sanads by which they were conferred. The Governor General considers it inexpedient to include, among the conditions of gift, the restrictions to which ancestral estates are subject, and by which the value of the gift would be materially diminished. The Governor General in Council doubts whether Hindús and Muhammadans in Oudh have not the power to dispose of their personal property by will; but supposing that they do not possess this power, it is of no great consequence that their landed estates should follow one rule of inheritance, and their personalty another. * * * I am therefore desired

to request that the instructions conveyed in the Secretary's letter of the 17th July may be acted upon.'

These orders were then carried into effect. The majority of the Taluqdárs, nearly 200, I believe, out of about 250, stated their willingness to take sanads in the new form, and the following words were added to the form of sanad originally ordered by the Government to be adopted:—

'It is another condition of this grant that, in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir, according to the rule of primogeniture; but you and all your successors shall have full power to alienate the estate either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever you please.'

I believe that there can be no doubt that these orders of the Governor General have as much validity as the orders under which the sanads were originally given, and that they have equally received from the Indian Councils' Act the force of law.

I have said, Sir, that I shall not now discuss the wisdom of the policy that has been followed in Oudh. On that subject I said enough on a former occasion. But that there is one matter in which I wish to guard against possible misunderstanding. The Council may remember that I expressed an opinion that the injustice which has, in some instances, resulted from the measures that have been taken in Oudh, would not have been admitted by Lord Canning to be a legitimate consequence of his policy, and that he would have insisted upon such injustice being remedied. Now this opinion may seem to be hardly consistent with the orders which I have just been quoting. For those orders show that the Governor General deliberately insisted upon giving to the Taluqdárs an unlimited power of disposing of their estates, and those orders really confirm the sweeping away of preexisting rights in a more unmistakable manner than the original sanads themselves. But the truth is, I believe, that the Government of Lord Canning never became aware of one of the chief effects to which the sanads, thus interpreted, would lead. The Chief Commissioner objected to giving these unlimited powers to the Taluqdárs, because he thought that the result would be that estates would be broken up, and that the object of preserving a great landed aristocracy would be frustrated. Lord Canning disagreed with the Chief Commissioner on the grounds that I have quoted. But not a word was said regarding what seems to me to have been one of the most important questions that were really at issue. That question was, whether numerous rights of third parties were to be confis-

cated. I can nowhere find the least sign that Lord Canning contemplated any such results as those which I described when I obtained leave to introduce this Bill. And I think that the correctness of this view is placed beyond doubt by statements of Lord Canning's intentions which are upon record. For instance, on the 12th September 1860, while the discussion regarding the question of primogeniture and the rights of Taluqdárs was going on, and after that question had virtually been disposed of by Lord Canning, the following instructions were sent to the Chief Commissioner:—

'The Governor General in Council desires me to observe that, in declaring that in confiscated estates which have been conferred in taluqdárí tenure on a new grantee, the strict terms of the proclamation of March 1858 are to be enforced against all holders of subordinate rights in such estates, and that the whole agricultural community, whatever their previous status, are to be reduced to the condition of tenants-at-will under the new taluqdárí grantee, the Officiating Chief Commissioner has gone considerably beyond the intentions of His Excellency, and has not acted in accordance with the spirit of Her Majesty's proclamation. In the Governor General's orders of the 19th October last, defining the extent of taluqdárí rights as against inferior holders, no distinction was made between ancestral and acquired taluqas on the one hand, and conferred taluqas on the other, and no such distinction has ever been recognized by the Government. The policy of the Government has been to leave the confiscation of 1858 in force only in the cases of persons who persisted in rebellion, and generally, so far as to restore in its integrity the ancient taluqdárí tenure wherever it had existed at the time of the first occupation of Oudh in 1856, but had been set aside by our revenue officers. But the Governor General in Council never intended that in taluqdárí estates confiscated under the general order, and conferred, in consequence of the persistent rebellion of the Taluqdár, on a new grantee, all the holders of subordinate rights, though themselves not persisting in rebellion, and though pardoned by the Queen, should be merged in the consequences of the Taluqdár's guilt, and become partakers of his punishment. It was the intention of the Government that all such subordinate holders, unless specially deserving of punishment for persistent rebellion, should be restored to the rights they possessed before the rebellion, whether the parent estate were ancestral, acquired, or conferred; and that every such holder should be maintained in his rights under the new grantee, precisely as if the taluqa had not been confiscated or as if, having been confiscated, it had been settled with the hereditary Taluqdár. Generally, as regards the position of those who hold under the Taluqdárs, the intention of the proclamation of 1858, and of every act of Government that has followed it, was a return to the condition of things which existed before the annexation of Oudh, and which had been altered (for the better as was then believed) by the action of our officers in 1856, under the instructions issued on annexation. This is stated broadly and generally in paragraphs 29, 30 and 31 of the Governor General's published despatch of June 17th, 1858, to the Secret Committee, and is further explained in the instructions of October 19th, 1859. As regards the Taluqdárs, the intention of the proclamation of 1858, and of the declarations made and measures taken in October 1859 and subsequently, was, *first*, that in replacing them in possession of their old estates, or in conferring upon them new estates (as the case might be)

they should step into such possession, carrying with them the rights and authority which the Taluqdárs of those estates respectively held before annexation, and which the action of our officers in 1856 had impaired; and also carrying with them a new title derived from the Government, from whom alone, as their possession had been confiscated, any new title could be derived; *secondly*, that the Taluqdárs should by certain obligations imposed upon them, be restrained from the abuse of those rights and that authority.'

I hold it to be impossible that when Lord Canning issued the orders which I have now quoted, he could have supposed that property had been given to the Taluqdárs to which they had never made any claim nor any pretension; that the rights which former co-sharers with the Taluqdárs possessed had been swept away; and that the Government had transferred to the Taluqdárs all the rights in these estates which were formerly possessed by the members of their families. If, again, Lord Canning had been aware that such a revolution as this had taken place in the tenure of landed property, is it credible that when, just before he left India, he introduced the Bill to define the nature of the rights of the Taluqdárs, he should have made no reference whatever to the subject? Not only did he say nothing to show that he supposed that any great change in the position of the Taluqdárs had taken place, but he declared that "the object in view was to combine the principle of primogeniture with 'other principles and usages traditional in this country and dear to the people.' The truth, as it seems to me, is clearly this,—Lord Canning believed that the Taluqdárs with whom the summary settlement had been made, and to whom the sanads had been given, were, so far as superior rights were concerned, the sole proprietors of the estates settled with them. He had no knowledge of the fact that these Taluqdárs were, in many cases, not at all proprietors in the English sense of the term, but representatives of undivided families, the members of which had rights as indisputable as those of the Taluqdárs themselves.

But, Sir, as I said before, the orders of the Governor General under which the sanads were given, and the orders referring to succession by primogeniture, and to the absolute power of Taluqdárs over their estates, have received from the Indian Councils' Act the force of law; and being law, they must be interpreted like any other law by the light that they throw upon themselves. And, although I have declared that I do not believe that the law, as it now stands, is really in accordance with Lord Canning's intentions, I must admit that a different view may be taken by some high authorities; and this fact is alone sufficient to show that it would be unwise to propose to alter the law hastily. I have already explained why it seems to me unnecessary to consider the propriety of attempting now to correct by legislation the hardships of which I have spoken. Such a course would, I think, only be right if it became evi-

dent that no other means of redressing those hardships existed, and I have sufficient confidence in the liberality and good sense of the Taluqdárs to make me hope that nothing of the sort will be required.

Sections 4 and 10 of the Bill carry out the orders of Lord Canning to which I have been referring. Section 4 gives the force of law to everything contained in the orders under which the sanads were granted, and in the sanads themselves; and Section 10 removes all doubt as to the power which every Taluqdár possessess of transferring or bequeathing his estate in any manner he pleases.

Although, Sir, it seems to me necessary thus to confirm by law the engagements entered into with the Taluqdárs, I think that the considerations are very serious which were urged by Sir Charles Wingfield in support of his belief that the result of giving these unlimited powers to the Taluqdárs will probably be the breaking up of estates and the defeat of the objects which the Government had in view in establishing the Taluqdárs in a position of so much importance. There has always been a strong and influential party among the Taluqdárs themselves, who agree with the views which Sir Charles Wingfield expressed. Exactly the same view was taken by the Secretary of State. In a despatch dated the 17th August 1861, he wrote as follows :—

'I do not perceive why, on grounds either of justice or of policy, your Excellency's Government desire to give the Taluqdárs a more absolute control over their estates, than could have been the case if they had inherited them from their ancestors. In such cases the estates would have been subject to the prescribed conditions of such property, and could not have been disposed of in the unrestricted manner in which the proprietors are now declared by you to be competent to give or bequeath them to whomsoever they please. And when I consider the effects of *zanánd* influence, the frequency of family dissensions, and the general tendency to intrigue, among these people, it appears to me that this latitude of disposal, against which the Chief Commissioner has respectfully protested, may prove an obstacle to the accomplishment of the object which you most desire to realize, the preservation of property in the hands of the lineal representatives of the great families of Oudh.'

If, Sir, I could look upon this question as one which could properly be disposed of upon economical or, I ought rather to say, upon theoretical considerations alone, I should have no hesitation regarding the conclusion to be arrived at regarding it. Looking at such matters from a theoretical point of view, I entirely concur with those who believe that everything is an evil which places restrictions upon the transfer of land, and that the more completely land can be made to pass from one person to another without hindrance, like any other property, the better it is for the interests of the public. But I cannot admit that, under present circumstances, we ought much to concern our-

selves with such considérations. It is not necessary to go to Oudh for proof of the fact that, in the existing state of things in the greater part of India, this principle leads us to consequences which are politically mischievous and dangerous. I believe, to give an example of what I mean, that the restrictions which, in the Panjáb, in Oudh, and in some other provinces, have been placed upon the sale of land under decrees of the Civil Court, or for arrears of Government revenue, have been very necessary and very beneficial, and I believe it to be true that the adoption of an altogether different principle in the North-Western Provinces tended greatly to aggravate the difficulties of 1857. I do not profess any great admiration for the rule of primogeniture, nor do I think that the general application of this rule in Oudh is likely to lead to the preservation of the ancient families of the country. I believe that this object would have been more likely to have been gained if we had interfered less violently with the usages which had long prevailed, and I think that sudden changes, such as this, are more likely to destroy than to build up a landed aristocracy. But nevertheless I agree almost entirely with Sir Charles Wingfield's practical conclusions which I have already quoted. I think it very unwise that we should encourage dispositions of property unknown to the laws and customs of the people, by which violent outrage is done to all their notions of propriety.

'Two instances of the kind,' Sir Charles Wingfield reported to the Government in December 1862, 'have occurred already. A *Sombunsí* estate has passed into another tribe by a will made by a Taluqdár a few days before his death, and deep discontent pervades all the members of that ancient race. For the uses of a landed aristocracy, it is not enough in this country that large property be accumulated in single hands. The possessor must be connected by caste and tradition with the land. The great Hindú Taluqdárs are mostly chiefs of clans, and if the estates of the great *Báis*, *Sombunsí* and *Buchgotí* houses were to pass in the possession of men of other races, the new class of landholders would fail to secure the attachment of the population of their estates; the universal feeling of their country would be against them; and, instead of conducing to the good government and prosperity of the province, they would become a source of dissension and disquiet.'

Believing this to be a matter of political importance, I think that if, while we strictly carry out the engagements made by the Government of Lord Canning, we can prevent, to some extent at least, the evils which Sir Charles Wingfield foresaw, we shall be doing what is right. And I believe that we shall also be doing what is agreeable to the majority of the Taluqdárs themselves. In saying this I have no authority to say that the Taluqdárs will approve the particular provisions of this Bill, by which I endeavour to gain these objects, for I have had very little communication with the Taluqdárs upon this

part of the subject. They will have the opportunity of considering the Bill maturely, and giving their unbiassed opinions regarding all of its provisions.

Sections 11, 12, 17 and 19 show the restrictions which the Bill proposes to place upon the power of a Taluqdár to dispose of his estate by gift or bequest. Section 11 is based upon Section 101 of the Indian Succession Act. Under it the power of a Taluqdár to create successive interests in his property by gift or bequest is limited. Such power will not extend beyond the lifetime of one or more persons living at the time of the Taluqdár's death, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the property transferred or bequeathed is to belong. Section 12 provides that, if a Taluqdár desires to give or bequeath his estate to any person not being the legal heir, or being a person who would have been the heir under the former custom of the family if no conditions on the subject had been inserted in the sanad, he can only do so by an instrument of gift or will executed not less than twelve months before his death, and publicly registered. Similar provisions in Sections 17 and 19 are intended to place a check upon the gift or bequest of estates to religious or charitable uses. Section 19 is based upon Section 105 of the Indian Succession Act.

I think it probable that the propriety of these Sections may be the subject of much discussion. I do not think it necessary at this stage of the Bill to do more than call particular attention to them. I do not affirm that they form essential portions of the Bill. Nor do I pretend that they will completely secure the objects that I have had in view, and I admit that if a Taluqdár is determined to defeat their intention, he may find the means of doing so. But they will, I think, so far as they come into operation, have a decidedly beneficial effect. It may be added that if these restrictions were much more stringent and numerous than I have proposed to make them, an Oudh Taluqdár would still practically have greater power over his estate than that which is possessed by most of the proprietors of land in England, for between entails and marriage-settlements, and other obligations, it seldom happens that the owner of a great estate in England can dispose of it as freely as a Taluqdár will be able to do in Oudh.

If, however, any Taluqdár should think these provisions insufficient, and should wish to guard more completely against the danger that his family estate may hereafter be broken up and transferred to strangers, or if he should object to these provisions on other grounds, Section 24 of the Bill gives him a complete remedy. Under it, he will be able to replace his estate under the operation of the Hindú or Muhammadan or local law, which would have been applicable if he had inherited the estate according to the former custom of his family.

To these Sections, of which I have now been speaking, there was nothing corresponding in the Bill introduced by Lord Canning in 1862. Neither was there anything like Section 23, which enables a Taluqdár to whose family the rule of primogeniture was not applicable before the sanad was issued, to revert to the rule of succession formerly followed in his family. But this provision is not, I think, in any way inconsistent with Lord Canning's views, expressed in the orders of the 17th July 1860 which I have already quoted, and upon other occasions, and I believe that it will be agreeable to some of the Taluqdárs who, although they agreed to adopt the rule of primogeniture, would now be glad to be able to return to the ancient custom of their families.

Sections 13 and 14 must be noticed. Under the Bill of 1862, if a Taluqdár transferred his estate, or any portion of it however small, to any person, the succession thereto would ever after have been regulated by the rule which was applicable to the original Taluqdár. Thus, if a Taluqdár to whose family the rule of primogeniture applied, sold a small patch of ground to a shop-keeper, or to another Taluqdár whose estate remained under the operation of the Hindú law, this patch of ground would always have been subject to the rule of primogeniture, although that rule applied to no other portion of its owner's property. This would have been, I think, extrmely objectionable and inconvenient. The present Bill provides that, in such cases, the succession shall be regulated by the rules ordinarily applicable to the property of the person into whose possession the land in question has passed.

I have referred to the urgent necessity of legislation regarding the execution of wills. There can be no doubt that, in consequence of the absence of any legal provisions on this subject, the estates of Taluqdárs are now exposed to serious danger. The power of making wills is a power almost unknown to the Hindú or Muhammadan law acknowledged in Oudh, and there are now no securities for the due exercise of this power, such as those which have been found necessary in all countries in which the practice of making wills prevails. When I asked for leave to introduce this Bill, I quoted a case in which one of the Oudh Taluqdárs, a Hindú lady, sitting behind a curtain and unseen by any witnesses, gave away by word of mouth a valuable estate held under sanad from the British Government to a person altogether out of the regular line of succession. There can, I believe, be no doubt that the Courts were right in deciding that, under Hindú law, this disposition of the property was valid. I may properly quote, as applicable to this part of my subject, the following passage from a letter addressed by the Government of India, in the Legislative De-

partment, on the 22nd August 1865, to the Local Governments and Administrations, regarding the Indian Succession Act:—

'The High Court at Bombay has decided that a Hindū's will need not be attested, and the High Court of Madras has lately declared, in a learned and elaborate judgment, that a Hindū's will need not be in writing; in other words, that a Hindū may make a valid nuncupative will, and this without any formalities similar to those required in such cases by European systems of jurisprudence. So, Hindūs' nuncupative wills were held valid by the late Supreme Court at Fort William, and are recognized by the present High Court of Judicature for Bengal. Considering the facilities with which frauds in setting up nuncupative wills are attended (for false swearing is more easy to perpetrate and more difficult to detect than forgery), it may perhaps be doubted whether the benefits arising from the introduction among the Natives of the testamentary power, are not counterbalanced by the encouragement which its recognition by our Courts at present affords to perjury. Moreover, the same evidence that sets up a false nuncupative will may practically revoke a true written one. The witness has only to declare that the testator made a nuncupative will subsequent to the date of the written will, and revoking the latter; and his evidence, if believed, destroys the written will, however solemnly executed or carefully preserved. Lastly, even in the case of a genuine testamentary disposition by word of mouth, the certainty of writing is replaced by the frailty of memory.'

I think that the necessity for legislation on this subject is obvious. As I before said, the British Government has created rights which the existing law is incapable of protecting, and I think it the evident duty of the legislature to supply the protection which those rights require.

I propose to supply this protection by applying to the wills of Taluqdárs the provisions of the Indian Succession Act, so far as those provisions appear suitable. And I ought here to state that, in determining what parts of that Act may properly be made applicable, the admirable opinions recorded by Sir A. Buttleston of the Madras High Court, on the 13th November 1865, on the subject of extending to Hindús and Muhammadans such parts of the Indian Succession Act as relate to testamentary succession, have been very closely followed. I believe that no other course that could be taken would be so satisfactory as this. The provisions of the Succession Act which refer to the execution, attestation, revocation, alteration, and construction of wills, are exceedingly clear and simple, and they seem to meet completely every requirement of the present case. There was nothing corresponding to these provisions in the Bill of 1862.

The provisions regarding intestate succession, contained in Section 20 of the Bill, are intended to define the manner in which the rule of primogeniture is to be applied. There is only one difference of any importance between the rules in this Section and those contained in the Bill of 1862. In that Bill it

was provided that, in default of any male heir, the estate of the Taluqdár would pass to his widow, or if there were more widows than one, jointly to his widows, for her or their life-time only. I believe that the latter part of this provision was not approved by the Taluqdárs, and it seems far better that the estate should in any case be held only by one widow at a time, and not by several widows jointly.

Section 21 provides for the maintenance of widows and children, and for the education of the sons of Taluqdárs. There was no provision of this kind in the Bill of 1862, but I think that its justice will be universally admitted.

Section 22 provides that, in case of the intestacy of a Taluqdár to whom the rule of primogeniture does not apply, the succession shall be regulated by the ordinary law. This is in accordance with Lord Canning's Bill, and it requires no explanation.

The third part of the Bill requires the Chief Commissioner to make lists of the Taluqdárs to whom the provisions of this Act are to apply, distinguishing those to whose families the rule of primogeniture has been made applicable by the sanads, from those whose estates remain under operation of the Hindú or Muhammadan law. Although the procedure laid down in the Bill for the preparation of these lists differs from that proposed in the Bill of 1862, the principle now followed is the same as that which was approved by Lord Canning. This principle is, that it rests with the executive Government alone to declare who the persons are upon whom these estates and these privileges have been bestowed.

When this has once been declared, I think that the functions of the executive Government properly cease. All questions that subsequently arise regarding the rights of Taluqdárs, must be left to the judicial tribunals. In this respect the present Bill differs from that of 1862. It was then proposed that no Civil or Revenue Court should have any jurisdiction in case of disputed claims to the succession to or possession of any taluqa, and that the authority to determine such claims should be vested in the Chief Commissioner, subject to confirmation by the Governor General in Council. Although this may have seemed expedient in 1862, I do not think it likely that there will now be any inclination in any quarter to reserve cases of this kind for the orders of the executive Government. It seems better, on all grounds, to leave them to the ordinary tribunals, and I have no doubt that this will be the opinion of the Taluqdárs themselves.

There are only one or two other matters that need now be noticed. Section 5 of the Bill is intended to remove doubts regarding the legal position of the six persons whose estates were specially exempted from the operation of the general confiscation of all landed property in Oudh, declared in the proclamation issued by order of the Governor General in March 1858. It is not easy to say what the legal effect of that proclamation has been; but some high authorities have been of opinion that the six Taluqdárs who were thus singled out on account of their conspicuous and extraordinary loyalty, actually hold their estates by a worse title, and are in many respects in a worse legal position, than the Taluqdárs whose estates were confiscated for rebellion, but which were afterwards restored under the sanads. Very delicate questions may easily arise regarding the position of these loyal Taluqdárs, and it is desirable that all doubt upon the subject should be removed. It is not the least remarkable or the least suggestive fact connected with the policy that has been followed in Oudh, that it is now argued that, if we desire to bestow a valuable boon upon these Taluqdárs who thus made themselves conspicuous for their loyalty, we cannot do better than to place them in the same position as that which has been assigned to the Taluqdárs who distinguished themselves by their violent and persistent rebellion, and whose estates were confiscated as the punishment of their offences against the Government.

There is only one other point upon which I need now speak. It will be observed that the Bill refers, not only to Taluqdárs, but to grantees who received estates from the British Government as rewards for loyal services. It was the declared intention of Lord Canning that these grantees should be placed on the same footing as the Taluqdárs: this was laid down in the Bill of 1862, and the present Bill follows the same course.

I now, Sir, introduce this Bill. It is a Bill which will, I hope, be thoroughly examined and discussed, not only in this Council, but by the Taluqdárs whom it so closely concerns, and by the public generally. Until it has received this complete examination, there ought to be no proposal to make it law. It deals with many questions of great complexity and difficulty, and it is highly probable that important improvements may be suggested. But I think that the Bill, even in its present shape, will at any rate be held to deserve the character which I formerly claimed for it, when I said that, if it should become law, the engagements entered into by the Government of Lord Canning would be completely carried out; that the existing doubts regarding the actual nature of the legal rights of the Taluqdárs would be removed; and that the law would secure to them everything to which their sanads declare them to be entitled."

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND said—"Sir, before entering upon any observations on the Oudh Taluqdárs Bill now brought before the Council, a Bill which I regard as being to the full of as great importance as the Oudh Rent Bill, and to which the formal assent of the Taluqdárs, or of the great majority of them, is as indispensable in my opinion to every Section as to the provisions of the Oudh Rent Bill, I wish to make a few remarks upon what fell from the Hon'ble Mr. Maine when, at the close of the proceedings on the introduction of the Oudh Rent Bill, he recorded his opinion as follows :—

'The Hon'ble Mr. Maine observed that it was very important that the Taluqdárs' consent should be obtained to everything in the Bill, of which they had not already expressly approved, otherwise the Bill could not come within either class of those measures which—with the concurrence, as he believed, of the Council—he had recently described as being proper to pass at Simla. For it certainly was not a trifling measure of routine, and, in the absence of the Taluqdárs' approval, it could not be said that this was a measure on which every one entitled to speak with authority had spoken.'

In saying this, the Hon'ble Member evidently referred to what he had deemed it expedient to state when the Railway Servants' Act was passed :—

'Mr. Maine desired, not for the information of the Council, but for the purpose of correcting or preventing of misapprehensions which might exist elsewhere, to add a few words as to the reasons for passing urgent measures at meetings like the present. All his Hon'ble colleagues well knew that it was simply impossible to keep the Council for making Laws and Regulations together at any one place whatsoever in India for more than a few months. The organization given to the Council by the Indian Councils' Act, and the instruction simultaneously issued by Her Majesty's Government, which were binding on the Government of India, rendered this result inevitable. It was a consequence, not solely of the fact that the Native non-official Members could not be kept from their homes for more than a limited time, nor again solely of the converse fact that the European non-official Members could not practically attend at places which Native chiefs and gentlemen of rank visited with less reluctance than they did Calcutta —it was a consequence chiefly of the fundamental rule which distinguished the present legislature from the former Legislative Council, the rule that the official Additional Members, who naturally bore most of the burden of legislative work, should not be persons appointed and salaried to do nothing but legislate but should continue to make their ordinary executive or judicial functions their principal occupation. It was doubtless with a view to the consequences of the fundamental distinction which it was intended to create, that the Indian Councils' Act for the first time conferred on the Governor General a new power of legislating in emergent cases by Ordinance, without the advice of any Council, executive or legislative. But Mr. Maine apprehended that, when a quorum (though even a bare quorum) of the Council could be obtained, the Governor General would often prefer, and that His Excellency personally preferred, submitting to it urgent legislative measures, on account of the greater opportunities of discussion and of explaining the grounds of action which were afforded by a meeting at which even

a limited numbers of Members was present. Apart, however, from emergent measures which were submitted to the Council as an alternative selected by the Governor General in preference to legislation by Ordnance, Mr. Maine considered (and he felt sure the whole Council would agree with him), that it would be very wrong to proceed, at meetings at which it was difficult or impossible for most of the Additional Members to be present, with any business of importance, or on which material difference of opinion might arise. There were two classes of measures only (independently of urgent measures) which Mr. Maine considered legimately submitted to the Council when it was not full. These were trifling measures of course and of routine, and measures on which everybody entitled to speak with authority had spoken. Measures of this last description constituted a not inconsiderable part of the Council Business, and they were always passed by the Council, even when full, more on the responsibility of the authorities recommending them than on that of the Council itself. Certainly at the present sittings, the Legislative Department had no intention of asking the Council to consider any measure which did not belong to the classes specified.'

These remarks of the Hon'ble and learned Member met with the approval of the Right Hon'ble Mr. Massey and the Hon'ble Mr. Taylor. Sir, it is with reluctance that I differ from so well informed a section of your Excellency's Council; but as I do differ, and as my silence might confirm the impression of the Hon'ble Mr. Maine as to the concurrence in his views of the Council, I feel it my duty to prevent any misconstruction as to my own opinion, and to state distinctly that no apologetic explanation whatever was necessary for the introduction of these two very important Oudh Bills into this Council whilst holding its sessions at this place; and that I hold it inexpedient to endeavour to put upon the free action of this Council, any quasi-legal restriction neither specified nor warranted by the Indian Councils' Act.

As your Excellency was present at the deliberations which took place in the Council of the Secretary of State, when Section by Section of the Indian Councils' Act was most carefully considered and discussed before the Act itself was laid before Parliament and obtained its sanction, you, Sir, are aware, as well as myself, that among the main objects of the Act was the intention to mobilize, so to speak, the Government of India, to render it peripatetic, and to facilitate its transfer from one part of India to another without detriment to its functions. Accordingly power was conferred on the Governor General in Council to assemble his Council, from time to time, at such place or places as it should be advisable to appoint—(Section 3).

Conjoined with this intention of rendering easy the mobility of the Government of India, was the prevailing feeling, a very strong one, that the Governor General should not, as a rule, be separated from his Council; and with this view provision was made to obviate difficulties with regard to the

movement of the Council and the presence of Additional Members for purposes of legislation—(Section 10).

At the same time, it was felt that critical circumstances might arise rendering it necessary for the Governor General again to do what has, on more than one occasion, been previously deemed imperative, namely, that, under an exceptional condition of affairs, internal or external, the Governor General should have the power of proceeding, without the attendance of his Council, to the theatre of action; and when there, should be empowered to act with the speed and vigour which the crisis might render imperative—(Section 6 and Section 23).

Now, Sir, the difference between the Hon'ble and learned Member and myself is, that instead of regarding the 23rd Section of the Act, namely, that which empowers the Governor General, in case of urgent necessity, to make Ordinances having force of law, as being intended to supplement the ordinary course of legislation, I read this Section mainly in connection with Section 6, which authorizes the visit of the Governor General to any part of India unaccompanied by his Council, and arms him with the necessary power to meet a critical and emergent juncture. The operation of Section 23 is not limited to the absence of the Governor General from his Council for obvious reasons; but no one can read the Secretary of State's comment upon the Ordnance Section without being convinced that its provisions were intended to cope with very extraordinary events, and circumstances far more allied with such as warrant the absence of a Governor General from his Council, than any mere ancillary action to supplement ordinary legislation. His words are:—

'By Section 23, the Governor General of India is invested with a new and extraordinary power of making and promulgating Ordinances, in cases of emergency, on his own responsibility. It is due to the supreme authority in India, who is responsible for the peace, security, and good government of that vast territory, that he should be armed with this power; but it is to be called into action only on urgent occasions; the reasons for resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government.'

This envisages a state of affairs very different from those under which ordinary legislation takes its course. To remedy, however, the minor inconveniences which might arise in connection with Additional Members from change of place for the session of the Council, or from other causes, it was pointed out by the Secretary of State that Section 10 of the Act prescribed as a maximum a considerable number, not with the view of the entire number being summoned at once, but in order that there might be a reserve of vacancies to which Addi-

tional Members could be nominated at such times and on such occasions as the Governor General might think proper. This appears quite a sufficient remedy for the accidental inconveniences that may arise whether the Council be at one place or another, and obviates the necessity for cramping the functions of the Council by limitations or restrictions not in the Act. I could have wished that on this occasion, there had been present one or two of the Oudh Taluqdárs as Additional Members. We frequently have Additional Members discussing subjects which affect their own interests, and a man like Rájá Mán Singh, the leader and representative of the Taluqdárs, is peculiarly fitted by his station, experience, acquaintance with the subjects before us in these Oudh Bills, great ability, and ready power of reasoning, to have proved most useful at this assembly. He would have been of material assistance in clearing up points which now offer difficulties, and in solving doubts which now involve references and delays. I have no doubt that the Hon'ble Mr. Strachey and Colonel Barrow, who knew them well, might have suggested a fit man or two from among the Taluqdárs to associate with Rájá Mán Singh as Additional Members, if there were vacancies available. I am certain that their attendance on this occasion would have been advantageous to the satisfactory consideration of these Bills, and productive of confidence on the part of the Taluqdárs. Their presence might also have tended to allay a feeling which is, I am bound to say, very prevalent. The sentiment to which I advert is, that the compromise to which the Taluqdárs have been brought is the effect of strong and continuous pressure—the compromise is by many regarded as wanting in mutuality;—the Taluqdárs on the one hand, and the Chief Commissioner, acting under the direct instructions of the Governor General, on the other, are hardly considered to have been on fair and equal terms. It is pretty generally known that the leader of the Talukdárs was with difficulty, and only after long persuasion, induced to accede to any compromise; and the suspicion is that, where there is a heavy preponderance of power on one side, persuasion is apt to assume the quality of moral compulsion of the weaker side. Possibly much of this might have been removed or softened had the opportunity for free utterance and discussion in this place been afforded to Rájá Mán Singh and an associate Taluqdár. No one at this table is more competent to discuss both the Oudh and the North West Province systems than Rájá Mán Singh, and there would have been advantage in his presence. However, although I regret their absence, and feel that their presence might have helped in some degree to dispel doubts not so easily removed or shaken in their absence, I am not in favour of regarding the limited number of Additional Members who have been able to attend as forbidding, when a quorum is formed, the entertainment by this Council of measures of importance, such as

these Oudh Bills, or necessitating, if such Bills are entertained, any apologetic explanations. Still less am I in favour of the imposition of restrictions not in the Indian Councils' Act. There are doubtless advantages when the Council meets at a presidency town, whether Calcutta, Madras, or Bombay; but bearing in mind the intentions of the Act, I object to the inconvenience which may accrue to future Governments from a construction put on Section 23, which I contend is foreign to its purport and intention, and the effect of which, if accepted on the authority of the Hon'ble and learned Member, fetters the action and utility of this Council in a way neither contemplated nor prescribed by the Indian Councils' Act, but absolutely contrary to its spirit.

I now pass on to a consideration of the Bill before the Council, which is, I think, a far better constructed Bill than its predecessor, drafted under the administration of Lord Canning. Before pointing out in what respects I give the preference to the present Bill, I must advert to some passages which fell from the mover of this Bill, when leave was asked for its introduction, and which call for a few observations. I allude to passages from the tenor of which it might be supposed that, when Sir R. Montgomery, as Chief Commissioner of Oudh, entered upon the administration of that province, his invitation to the Taluqdárs to return to their allegiance to the British Government, and to submit to its authority upon terms certainly very favourable to men in open rebellion, was an invitation due on his part rather to a sense of weakness than of strength, to a conviction of the inability of our forces to cope with the rebels and the mutineers arrayed against us, rather than to a generous policy towards men practically vanquished. Such an impression, very erroneous in every respect, would neither be beneficial if entertained by the Taluqdárs, nor if it obtained currency throughout India. Such a misconstruction of the real motives which actuated the British Government in adopting the policy it pursued, would, I think, be unfortunate. I hold that it cannot for a moment be doubted that, with the force at his command, Lord Clyde had the means of stamping out with an iron heel all opposition on the part of the Taluqdárs, and that before the campaign was over, the whole of Oudh was prostrate. Under such circumstances, Oudh was at the mercy of Lord Canning and had he pleased, there was nothing to have prevented his persisting in the administrative policy of Lord Dalhousie, and re-establishing what is called the system of the North-Western Provinces. The rebellion would by many have been held to justify the forfeiture of their estates by the Taluqdárs who had taken up arms against us; whilst the others might have been disposed of by the slower, but very sure, process of the North-West Province system. He has, in fact, been inconsistently enough charged by the advocates of that system, in

consequence of his deferring the reversal of Lord Dalhousie's policy, with having driven the Taluqdárs into hostillity, forced upon us the necessity of reconquering Oudh, thus entailling upon the Government of India the prosecution of a bootless compaign, the heavy loss of a revenue of which the Government stood greatly in need, the imposition of the unpopular Income Tax, and all this for the display in the end of an ostentatious magnanimity. Well, Sir, it is not usual for a Governor General new to India to enter at once on an off-hand upsetting of his predecessor's policy, more especially when that predecessor is a Governor General of the reputation which Lord Dalhousie had acquired as an able administrator who had for eight or nine years seemingly been eminently successful in his government of India. He can hardly be very fairly held responsible for at first accepting what he found established on such authority. But when the events of 1857 had opened the eyes both of Sir J. Outram and Lord Canning, the latter, conscious of the gross injustice which had been perpetrated towards the Taluqdárs in the course of the summary settlement of 1856, was not disposed to visit the rebellion of 1857 with the extreme penalty which he was legally entitled to inflict. When, therefore, he received the views of Sir J. Outram that the system of settlement with the so-called village proprietors had not answered in Oudh, and that recourse must be had to the taluqdárí arrangement, Lord Canning not only endorsed Sir J. Outram's views on this cardinal point, but directed that they should be carried out in a more liberal spirit than had been recommended by Sir J. Outram, in the following passage :—

'The system of settlement with the so-called village proprietors will not answer at present, if ever, in Oudh.

'These men have not influence and weight enough to aid us in restoring order. The lands of men who have taken an active part against us should be largely confiscated, in order, among other reasons, to enable us to reward others in the manner most acceptable to a Native. But I see no prospect of restoring tranquility, except by having recourse, for the next few years, to the old taluqdárí system.

'The Taluqdárs have both power and influence to exercise either for or against us. The village proprietors have neither.

'Taluqas should only be given to men who have actively aided us, or who, having been inactive men, evince a true willingness to serve us, and are possessed of influence sufficient to make their support of real value.

'There will be no difficulty in settling the rent to be paid from each taluqa, and this should be distributed rateably over the several constituent villages, the exact amount to be paid by each villager to be settled among themselves. By this arrangement, the Taluqdár

will be unable to raise his rents, and he should, moreover, be given to understand that, on his treatment of the people under him, his admission to engage at the revised settlement would, in a great measure, depend. This, in my opinion, would suffice for the protection of a body of men not one of whom, not even those with whom the settlement was made to the exclusion of the old Taluqdárs (some of eighty years' possession !), have come forward to aid us in this juncture. The Taluqdár should be responsible for the disarming of the population, the destruction of the forts, and the apprehension of offenders within the limits of his estate. He should be made to feel that he holds upon a strictly 'service' tenure, dependent entirely on the punctual discharge of his duties as a landholdor. *Very* influential men, or men who have done real good service during the present crisis, might have a portion of land in jaghír conditional on constant and zealous service. This measure would enlist this powerful body of men on our side, while it entails no injustice on the cultivators of the soil, who have been accustomed all their lives to the taluqdárí tenure, with power on the part of the Taluqdár to raise his rents *ad libitum*. In a word, the men capable of restoring order and confidence will be gained over, while the men who will be benefited by the restoration, but who will never move a hand or foot to obtain or hold such a blessing for themselves, will suffer no hardship and be in a much better condition than they were before annexation.'

It is only necessary to refer to the 34th paragraph of Lord Canning's instructions to Sir R. Montgomery, drawn up in reply to Sir J. Outram's despatch, a paragraph which the mover of this Bill read out to the Council, to be satisfied that the Governor General of 1859 had gone through a painful experience in 1857, and in spite of the provocation that the soil of Oudh was stained with the blood of some of our best and bravest men, and of some of our gentle and guiltless women, that it was both just and advisable in the province of Oudh to acknowledge the rights of the Taluqdárs, and in consideration of their treatment in 1856, a treatment on which the Hon'ble Mr. Strachey has himself dwelt, to condone much that had happened in 1857 and 1858, and to open a door of reconcilliation by the abandonment of an erroneous system, and the return to one congenial with the habits and feelings of the people, and the prescriptive rights of the Taluqdárs.

We had it somewhat dogmitically asserted that the grant of the sanads to the Taluqdárs involved a change of policy, and was a sort of excrescence on the talukdárí system which did not properly belong to it; and if I understood aright, Sir Charles Wingfield was given the credit of the innovation. This is hardly fair either to Sir Charles Wingfield, or to the able officer, Colonel Barrow, by whom the suggestion for the grant of sanads was first formally pressed upon the consideration of Government. Originally it had been adverted to in the passage which I have quoted from Sir J. Outram's despatch, for he had been particular in specifying the conditions under which the Taluqdárs restored to their estates should hold them, strictly on "service" tenures dependent entirely on the

punctual discharge of their formal obligations. No one knew better than Sir J. Outram that a taluqa or jaghir held on these terms required a formal instrument, in fact, a sanad; and the issue of such a deed was involved in the very nature of his recommendation; for, without it, the recommendation was futile. Still, strictly speaking, the grant of these sanads was pressed by Colonel Barrow, who, as Special Commissioner of Revenue, stated distinctly in the 11th and 12th paragraphs of his Report of the 24th June 1859, the reasons which rendered it advisable to issue the sanads.

'11. The other statement E refers more particularly to the larger taluqs, and exhibits what we left the Taluqdárs in 1856, and in how far we have now restored them to their original status by reverting to the taluqdari system. The four largest taluqdari districts, as per margin, show the greatest amount of change: and although Gonda and Baraitch are equally composed of large taluqs, they were not in the former settlement upset to the same extent as in what was the old Fyzabad division, and it is here some delicacy and firmness is requisite to re-establish the system ordered in Government letter No. 3502, paras. 33, 34, 35. It must not be forgotten that the possession of certain rights in 1264 was the *test* by which the Taluqdár was overthrown, and that any minute investigation now to establish a record of such rights gives rise to doubts in the minds of the Taluqdárs, that as we ousted them after the one season's settlement in 1856, so shall we again at the expiration of this settlement, and in the minds of dispossessed zamindárs it raises hopes that there will yet be a road open to future litigation. The late Chief Commissioner, in my circular No. 27, and the Chief Commissioner, in yours No. 52, have laid down restrictions in respect to this record of rights, which, if adhered to, would suffice; but to give the present settlement a fair chance, and to preserve the settled state of things now for the first time during our rule commencing in Oudh, adverse claims must be set at rest, the superior right of the Talu qdár be unflinchingly supported, and the rights now conferred be firmly and (*vide* circular No. 31) fixedly upheld.

Fyzabad, Sultanpore, Pertabghur, Roy Bareilly.

'12. As a means of settling the minds of both parties, I had the honour to suggest that sanads should be given to the largest Taluqdárs on the part of the Chief Commissioner, and with my letter No. 2672 of 7th May, the lists were forwarded for this purpose, for although circular No. 31 has been freely circulated, doubts still do exist, and this feeling of insecurity may do an infinity of mischief.'

The main reason Colonel Barrow assigned was the doubt which our settlement-proceedings in 1856 had unfortunately ingrained into the Taluqdárs that, at the expiration of the new settlement, they were again to be ousted as they had been previously. Such a suspicion was not confined to the taluqdárs, but also raised the hopes of the village occupants that the North-West Province system would, as soon as decently practicable, be reinstated. Nor can it be matter of surprise that, with the example of the results of that system close to their own doors, so to speak, the Taluqdars, still smarting under the indig

nities of 1856, should have felt misgivings. They would naturally argue that, as Lord Canning could reverse the administrative policy of Lord Dalhousie from which they had suffered so severely, there was nothing to hinder a future Governor General from, in his turn, subverting that of Lord Canning, unless their rights were formally and solemnly confirmed by an instrument which placed them beyond question. I think the Taluqdars were right, and that they showed a sound foresight and a just appreciation of the importance attached by the British Government to a formal deed. It is creditable to the character of our rule in India that its Chiefs and people feel that, admidst the perpetual changes of men and the violent oscillations of measures, there is one element of stability upon which they can rely even in our administration,—that no Government will lightly violate a formal deed of any kind, treaty, agreement, or sanad, and that it is bound by these fetters of its own forging. The Hon'ble mover of this Bill spoke with somewhat of a sneering tone of a sort of superstition which beset Sir C. Wingfield for institutions of an English type. I could not exactly make out the precise bearing of this allegation; but I venture to think, Sir, that both Colonel Barrow and Sir C. Wingfield were, in this matter of the sanads, far more influenced by a practical knowledge of the people they were dealing with, than by any particular phase of superstition. I need hardly remark that in India under every form of Government, Hindú or Mussulman, as well as British, a special value is attached to formal instruments emanating from the Ruler. We have lately issued such to the Chiefs of the Central Provinces. In this feeling the Taluqdárs of Oudh were not peculiar, and it was natural that they should wish for Letters Patent embodying the assurances and promises previously publicly made; and it was to the credit of Colonel Barrow and Sir C. Wingfield that they moved the Government of the day to seal its good faith by granting them.

I have said that what had taken place in the North-West Provinces was calculated to render the Oudh Taluqdárs earnest in securing their status by Letters Patent, a statement which may be at variance with the eulogy pronounced on the North-West Province mode of treating Taluqdárs. The eulogy was accompanied by a quotation of a fundamental principle said to have been laid down by the late Mr. Thomason. Sir, there is no man for whom, when living, I had a greater esteem and admiration; there is no man dead for whose memory I entertain a deeper reverence; but, Sir, if I had to select an instance to show how one thing can be said and another done, the text which I should probably choose would be this very quotation. General principles, however admirable, depend for their operation on specific application. It is the spirit in which a system is worked rather

than the letter of a detached paragraph which forms its character. The practical originator of the North-West system was Mr. Bird, not Mr. Thomason, and the principle quoted is anterior to either. But if any of the members of this Council are unacquainted with the actual working of this system, let them compare this principle with the Sections 100 to 115 of 'Instructions to Revenue Officers'; and if that does not satisfy them, let them compare the orders of the Court of Directors of the 2nd August 1853 with the action taken upon them. I allude specially to the ten per cent. clause on *málikána* to Taluqdárs, and then let them pronounce on the spirit and practice in which a system that professed "to alter nothing, but only to maintain and place on record what it finds to exist" has been actually worked. It is not my object to enter into a criticism or analysis of the North-West Province system and it is only in justice to Sir C. Wingfield that I have dwelt upon the subject so much as I have. Any one who has had to wade, as has been my lot, through the Oudh official papers of 1856, and the conflict between Mr. Jackson and Mr. Gubbins, knows that in the earlier period of his connection with Oudh, Sir C. Wingfield, trained in the North-West Province school and system, was as much imbued with its tenets as others. The later series of official papers show that gradually the errors of the system forced themselves on his attention; and I think it greatly to his credit that, in spite of early training and prepossession, he did what very few men have the faculty of doing, broke clear from the prejudices with which he started, and arrived at the conviction that justice was as due to a man with 800 villages as to a man with eight acres. If, on the advantages of the law of primogeniture and the relations of landlord and tenant, he had strong theoretical opinions, we know from the avowals which the Hon'ble Mr. Strachey has made in this Council that he holds in equal strength contrary theoretical opinions. As far therefore as impartiality of opinions is concerned, we are much where we were before. I feel it, however, due to an absent man of his ability and character to say that, even if Sir C. Wingfield's administration of Oudh were open to the charge, which I am far from admitting that it was, of any excess of reverence for the policy and promises of Lord Canning, I for one greatly prefer the courteous but uncompromising honesty, the straightforward integrity with which Sir C. Wingfield stood forth as the champion of the Taluqdár rights and system, to any subservience, on his part, to a system of the fallacies of which he had convinced himself, and which, whilst it says one thing, does another.

The Council will remember, when taking the present Bill into consideration, that we owe its prototype to the late Lord Canning, and to the general concurrence of the Taluqdárs as formally made known to Lord Canning by Sir

C. Wingfield in his communication of the 22nd December 1862. I cannot say that that Bill seemed to me, though drafted by the late Mr. Ritchie, in any respect satisfactorily drawn up. It aimed at dovetailing two absolutely contrary principles of law, and besides this, after pronouncing invalid in one Section the general and local law, it rehabilitated it in another in a very loose manner. In a note written in August 1863, I observed with respect to the first Bill—

'With regard to the 1st and 2nd classes of Taluqdárs, the aim of the Draft Act is to combine two distinct principles. So long as the holder of the sanad of a 'list' estate lives, there is no limit to the absolute control over his estates which the Taluqdár enjoys. The principle *voluntas hominis constituit hæredem* is in force, and it is only in the event of his dying intestate that the converse principle *la loi fait les héritiers, et non volonté de l'homme* comes into play.

'There is nothing in the Draft Act to qualify the absolute control of the Taluqdár for the words quoted by some of the Oudh Taluqdárs as affording them an opening to impose conditions binding on the person into whose hands an estate may pass, and as thus conferring on them the power to entail their estates, are a manifest misconstruction of the meaning and scope of Section 2, the last clause of which would stultify all that precedes, if such an interpretation could be put upon the concluding words.

'The Draft Act, therefore, contains no check whatever on the free power of a Taluqdár to dispose of his estate as he pleases, and in this respect it exceeds even the civil law, which though it gave the greatest latitude to the powers of testament and the institution of heirs, yet provided a remedy in case of abuse in the *querela de inofficioso testamento*; consequently there is no security whatever for the family of a Taluqdár as the latter can sell, in whole or in part, or will away by bequest the estate to any one, and the person thus inheriting the estate steps into the same limitless control over the estate covered by the sanad.'

With respect to the difficulty of blending conflicting principles of law, I am afraid it is inherent in the objects which are sought to be accomplished, and it besets the present Bill as much as it did its prototype. But there is one point, in which the new is in my opinion very preferable to the old Bill, for in the two clauses of Section 21 it provides a remedy against the abuse of the full power to alienate an estate conferred on the Taluqdárs. Provided this very important Section has the consent of the Taluqdárs, or of a large majority of that body, it removes what was the essential blot in the old Draft Bill. At the same time it must be observed that in this Section the general and local law is called in to supplement and control the principle of absolute right over the estate noted in Section 10 of the Bill. As the general and local law is as vague a term as it may be undefined as a reality, and as these provisional remedies against the abuse of sanad-rights open a door to much and very difficult liti-

gation, and as, moreover, they constitute a material infringement of the rights conveyed by Lord Canning, we ought to have formal intimation of the consensus of the Taluqdárs.

The latter remark applies to other Sections of the Draft Bill, notably to the 14th, which differs essentially from the provisions of the old Bill, and to the 18th and 19th on testamentary succession, which, however in themselves advisable, incorporate provisions more connected with our technical system of law, than with the habits and customs of the Taluqdárs and their families, who are not fond of minute legal intervention and registry or Court procedure in such matters.

The foregoing remark applies also to Section 17, which deals with gifts to religious or charitable uses. Theoretically, I am in favour of some such check on mortmain alienations, but practically we are, I think, bound to consult the sentiments and habits, and the religious customs of the Taluqdárs, whether Hindú or Mussulman.

Sections 23 and 24 are certainly neither in harmony with the avowed policy of encouraging succession by primogeniture, nor in accord with Section 10 of the old Draft Bill. The Hon'ble mover of the present Bill argues that these Sections are not adverse to the policy of Lord Canning, but I think this position doubtful, as action on Sections 23 and 24 virtually cancels the absolute powers conferred by the sanad. It may, however, be argued that it is in the spirit of the latitude of election conferred on the Taluqdárs to sanction the option, opened to them in these Sections, to abrogate the full powers of the sanads. Possibly it may be, but the matter demands careful examination both as to policy and effect on the conditions and obligations of the sanads, for this is not merely a question of the assent of the Taluqdárs.

Section 25 is in apparent conflict with Section 9 of the old Bill.

Nothing is said of sales, exchanges, mortgages; whence I infer, as also from the remarks which fell from the Hon'ble Mr. Strachey, that questions arising on such transactions are considered as wholly under province of the Civil Courts.

I have before remarked on the vagueness of the term "general and local law," which occurs frequently in the clauses of this Bill, but from the Statement of Objects and Reasons I infer that the local law means the custom of the family, whether Hindú or Mussulman, qualified by the supervenient general law of India in control of abuses of either Hindú or Muhammadan law, or of any very anomalous local custom.

I cannot but regret the absence from this Council of any able representative of the Taluqdárs, and the circumstance has made me dwell repeatedly on the expediency of our having some more formal expression of the cordial consent of the Taluqdárs, or of a large majority, than any we have as yet before us. I say this in no hostility to the general provisions of the Bill before us, for, excepting the doubts which I have expressed on some of its Sections, I regard the present Bill as in the main an improvement on its prototype of 1862."

The Hon'ble MR. MAINE said that he did not intend to enter at present on the merits of the Bill, but he must state that the views which he expressed on a late occasion had been quite misunderstood by his Hon'ble and gallant friend. He had never meant for one moment to deny the legality of sittings of the Legislative Council at a distance from its ordinary place of meeting. If that had been his meaning, it would have followed as an inference that all measures passed at such sittings were null and void. It was perfectly plain that nothing more was required under the Indian Councils' Act than that the Additional Members should be summoned to some place in India, and it was for them to decide whether they would attend or not. But while MR. MAINE had not denied the legality of sittings at which the majority of the Additional Members could not practically be present, he had certainly questioned their policy. He presumed that the object of summoning Additional Members was to secure variety of opinion, and that variety of opinion was of course sacrificed if the Additional Members were absent. Moreover, unless there were urgent reason for so doing, or unless the proposed legislation were trifling, MR. MAINE did not like the look of issuing summonses to Members who might be at the other end of India, or who could not quit their official or private business, so that the summons could not really be obeyed. With regard to the intention which his Hon'ble and gallant friend had attributed to the framers of the Indian Councils' Act, MR. MAINE was of course no authority as to what had passed in the Council of the Secretary of State for India, but he really thought Sir H. Durand had overlooked the two most important Sections of that part of the Act which regulated legislative proceedings. Section 10 empowered the Governor-General to summon not less than six and not more than twelve Additional Members, and Section 11 provided that every Additional Member must be summoned for two years. The maximum number, therefore, was twelve, and the period of service was two years. Now it happened that at one moment during the last sittings at Calcutta no less than ten summonses were out, which left very few vacancies as a basis for the theory of his Hon'ble and gallant friend. In fact, it was clear that the Additional Members must be

summoned with a view to attendance during a part of the year at some one place in India, since, if an attempt were made to work the Act on any other construction, its seats were reserved for persons who might appropriately be summoned to every place at which the Governor General might be present with his Council, a very nice calculation would be required to decide how many seats out of the twelve could be apportioned to each place through which the Government might pass. The Bill before the Council was absolutely necessary for the purpose of giving definiteness to law which was now in the vaguest possible condition. The existing law relating to taluqdárí estates in Oudh was furnished by the following passage in the sanads issued to the Taluqdárs :—

"It is a condition of this grant that, in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir, according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption, to whomsoever you please."

That was a merely popular description of the rules intended to be applied and every lawyer would see at once that between its terms there lay a vast province of jurisprudence, that to which corresponded in England the great system of Real Property Law. Lord Canning had submitted to his Council a Bill intended to complete the sanads, but the Hon'ble Mr. Strachey had not unjustly described it as being imperfect. The present was a much more perfect and satisfactory measure. It was at the same time fair to say that its superiority to the first Bill was in a great degree attributable to the Indian Succession Act, from which his Hon'ble friend's provisions relating to testamentary disposition had been taken, and which had in many instances furnished him with language appropriate to alienations *inter vivos*. The difference between the measures was in fact an excellent illustration of the value of a great body of written substantive law, capable of serving as a substratum for legislative enactments. The few doubtful questions which the Bill suggested had best be solved by the Taluqdárs themselves. Assuming, as his Hon'ble and gallant friend Sir H. Durand appeared to do, that there was any danger of illegitimate influence, MR. MAINE thought that such purpose was much less likely to be brought effectually to bear on the whole body of Taluqdárs deliberating by themselves at Lucknow, than on a stray Taluqdár or two at Calcutta or Simla.

The Hon'ble MR. TAYLOR concurred in the last observation that had fallen from his Hon'ble friend who had just spoken. He cordially shared the hope of Sir H. Durand that the general concurrence of the Taluqdárs would be obtained to this very important measure before it became law. But he thought that their genuine and hearty approval, both individually and collectively, was

much more likely to be given to the Bill after a full, free, and deliberate discussion of its provisions with the Chief Commissioner and other local officers at Lucknow; and that less moral pressure was likely to be exercised under such circumstances, than if two or three of their number had been summoned to Simla to sit in this Council Chamber and join in debates and discussions closely affecting their own interests, but of which they could not understand one word.

Referring to the Bill itself, he thought that the thanks of the Council were due to the Hon'ble Mr. Strachey for the able and lucid statement to which they had listened to-day. The Hon'ble Gentleman had very clearly explained the force and bearing of the more important Sections of the Bill; and for his own part, he might say that those explanations had removed from his (MR. TAYLOR'S) mind several doubts as to the expediency and necessity of parts of the measure, which the Bill itself, taken in connection with certain remarks occurring in the opening speech of the mover, was calculated to rise. He would not detain the Council by noticing any of its provisions in detail; these would be better discussed in Committee, and he would reserve any remarks he might have to make for a future occasion.

His Excellency THE PRESIDENT said,—"Considering the prominent part I have taken in questions specially affecting the Taluqdárs' interests, and the general subject of landed tenures in Oudh, I should have preferred to have said nothing in this debate. Certain remarks, however, that have fallen from Hon'ble Members rendered it incumbent upon me to make some observations. Sir H. Durand has expressed an opinion that one or two of the Oudh Taluqdárs should have been appointed Additional Members of Council, and summoned to this debate. Nothing, in my opinion, could have been more improper or impolitic. However high the qualifications of the Taluqdárs thus chosen might have been, they would have had not only to debate, but actually to vote upon questions closely connected with their own personal interests; and if it were right to allow Taluqdárs to do so, it might have been said that it was wrong not to allow the same privilege to those who might have antagonistic interests, and that the village proprietors and tenants ought also to be represented. I have always understood that the Additional Members of the Council of the Governor General of India for making Laws and Regulations ought to be men chosen on account of their position, character, and intelligence, and not as delegates of any particular class. Sir H. Durand has stated that there is a feeling prevalent that pressure has been put upon the Taluqdárs to obtain their consent to measures which in reality they disapproved. I have never heard of such a feeling; and

if General Durand meant to say that I, or any one connected with the Government of India, ever put any pressure on the Taluqdárs in order to get their consent to the propositions embodied in Mr. Strachey's Bills, I must say that nothing can be more unfounded than such a suggestion. The whole history of the compromise with the Taluqdárs in the matter of tenant-right, is already before the world. The demi-official correspondence which took place last year, and which has been published, will shew that the proposal to carry this compromise into effect really originated with Mr. Grey, who had always dissented from the views which I held regarding Oudh. He proposed to write to Sir Charles Wingfield on the subject; and when Sir Charles Wingfield was Chief Commissioner of Oudh, he agreed, under certain conditions, to use his influence to induce the Taluqdárs to accept the compromise that had been suggested. I acceded gladly to Mr. Grey's proposal. Sir Charles Wingfield, as every one knows, failed in his attempt; and when Mr. Strachey became the Chief Commissioner of Oudh, the negotiation came to an end. After his appointment I took no active part in the matter, but left it solely to Mr. Strachey to bring forward the proposition again or not, as he thought best. After some months Mr. Strachey wrote to say that he could make arrangements which would be agreeable to the Taluqdárs, advantageous to the sub-proprietors and the tenants, and perhaps also acceptable to the Government. Later, sometime last summer, Mr. Strachey wrote that he would come to Simla to talk the matter over and that he would bring with him some Taluqdárs authorised to speak on behalf of the whole body. This accordingly was done; and the result was that Mr. Strachey's proposals, which were almost the same as those which had been approved by Sir Charles Wingfield, were agreed to by the Taluqdárs and by the Government. I was strongly recommended by Mr. Grey to sanction these arrangements: Sir H. Durand himself agreed to them; and they were carried out without the slightest pressure having been exercised by the Government on any person concerned. I saw these Taluqdárs at Mr. Strachey's and their own request. There was little discussion at our interview as to Oudh affairs. They expressed themselves perfectly satisfied, and I told them that I also had fully accepted the settlement of those questions that had been arrived at. The result was the passing of the Act, XXVI of 1866, to legalize the rules for determining the claims of subordinate proprietors, which the Chief Commissioner of Oudh had drawn up. This disposed of the principal questions in dispute between the Taluqdárs and sub-proprietors. And this summer Mr. Strachey came up with further propositions, to carry out that part of the agreement with the Taluqdárs which referred to the rights of tenants. These propositions, almost all of which had been previously agreed to by the Taluqdárs, were embodied in the Oudh Rent Bill now before the Council.

So much for the transactions which have resulted in these measures.

"As to the policy originally pursued by Lord Dalhousie on the annexation of Oudh, and the policy afterwards adopted by the late Lord Canning, I think myself entitled to say a few words. There can be no doubt that Lord Dalhousie was as anxious to deal fairly with the Taluqdárs, and with all other classes in Oudh, as ever Lord Canning was afterwards. But I think that the orders which Lord Dalhousie issued in 1856 were undeniably injurious to the interests of the Taluqdárs, and were framed under an erroneous impression as to their status in the country. The misfortune was that, when Lord Dalhousie gave those orders, he was necessarily very imperfectly informed regarding the condition and the tenures of the persons to whom they were intended to apply. Had the local officers taken up in a right spirit the questions as to the relation of the Oudh Taluqdárs to subordinate proprietors and tenants, and dealt with them in the same way as such questions were ordered to be dealt with in the North-West Provinces under Lord William Bentick's instructions, no difficulty would probably have occurred. The Taluqdárs, as a body, were an ancient aristocracy, and the bulk of their landed property had unquestionably belonged for many generations to their families. But this was not so in all cases. Some of the Taluqdárs were not of old standing, and had acquired their possessions in modern times during the gross misrule of the Muhammadan sovereigns. Some of them were creatures of a day, farmers of the revenue, hangers-on of the Court, or successful and unscrupulous soldiers. There was a manifest and great distinction between these new men and the Chiefs whose names were bound up with the history of their country. Even, however, these Taluqdárs of ancient families had sometimes added to their estates, in quite recent times by force and fraud. On this point the evidence of that well-known friend and supporter of all Native aristocracies, General William Sleeman, who was Resident at Lucknow shortly before the annexation of Oudh, is, I think, conclusive. What ought to have been done in 1856, was, in my opinion, to distinguish between the immemorial hereditary possessions of the Taluqdárs, or those which had been so long in their families that it would have been unreasonable to inquire into the nature of the original title, or which had been acquired even recently by rightful means, and property which had been gained in recent times by the fraud or violence to which I have referred. It seems to me that if a fair rule of limitation had been laid down, and if, in the case of estates unjustly acquired in recent times, the ousted proprietors had been heard, and their cases decided on the merits—if, I say, this had been done, public opinion would have gone with the Government. There is an old Native saying, 'right should go to the right man,' and so every one would have said in Oudh. As the

Government incurred, in the North-Western Provinces, great unpopularity from the reckless way in which estates were sold for arrears of revenue, or under the decrees of the Courts, so the converse would have been the case in Oudh, and Government would have gained much popularity, if our measures had tended to the restitution of ancient rights, whether of great Taluqdárs or village proprietors.

"But although I admit that the Taluqdárs were not rightly treated, if the pendulum in 1856 swung to the point furthest from the Taluqdárs, so it swung to the other extreme after 1858. In 1856, the rights of the Taluqdárs were practically in ignored; in 1858 and subsequently, the rights of all persons subordinate to the Taluqdárs were to a great extent, placed out of Court. To me it seems that the rule applied to the sub-proprietors and tenants, was at least as hard as the other rule was unfair to the Taluqdárs in the previous year.

"In the days when these matters were first discussed I was the Lieutenant-Governor of the Punjab, and subsequently I was a Member of the Council of India at Home. I had thus many opportunities, both from my friendship with Sir Robert Montgomery, and from the communications with which Lord Canning often honoured me, of knowing a good deal about the policy which was pursued in Oudh. My belief is, that the general character of Lord Canning's policy has been correctly stated by Mr. Strachey. Lord Canning's policy was not a policy of confiscation. He held out the olive-branch to all in rebellion who were not stained with the blood of our countrymen. He had no intention of any general confiscation of existing rights. I do not deny that, at some times, he seemed inclined more to such punishments than at others. Proclamations declaring a general confiscation in Oudh were prepared and, to some small extent, disseminated; but (so Sir Robert Montgomery told me) they were either recalled or were practically not acted upon; and this is put beyond question by Lord Canning's replies to the well-known despatch of Lord Ellenborough, in which he showed that no one could say that he had actually carried out a harsh policy in Oudh.

"I agree with Mr. Strachey that there have been two policies in Oudh since 1858, and the difficulties of the first policy were greatly aggravated by measures subsequently taken. But it is, I think, impossible for any impartial man to read the letters between the Chief Commissioner and Colonel Abbott, and the orders of the Government passed thereon from which Mr. Strachey has quoted, without seeing that Lord Canning had a strong desire to maintain the just interests of all classes in the land. In those orders Lord Canning said that even where estates had been confiscated and given in reward to loyal

grantees, he by no means meant that the subordinate rights which formerly existed should be sacrified. Those letters of the 10th and 19th of October 1859, printed in the Schedule to the Bill now before the Council, sufficiently show that, however strong Lord Canning's feeling may have been in favour of the Taluqdárs, he did not forget the rights of others. I am satisfied that it was always Lord Canning's desire that justice should be done to all classes; and if unjust results have followed, I agree with Mr. Strachey in believing that Lord Canning would not have allowed them to be the natural consequences of his policy, and that he would have taken steps to have had them remedied.

"Sir Henry Durand alluded to the late Mr. Thomason in terms of which I heartily approve. Of all the men that I have seen in India, I have hardly met any of whom I had a higher opinion. His name, however, is constantly mentioned with disapproval when any difficulty arises respecting the settlement of the North-Western Provinces, as if he had been the author of the principles upon which that settlement was based. But what are the facts? The truth, as Sir H. Durand correctly stated is that, Mr. Thomason was in no sense responsible for that settlement. For the greater part of the time during which it was in progress, Mr. Thomason held a subordinate position. He was Collector, I think, of Azimghur, and subsequently in the Board of Revenue. But when he came into power the principles and, indeed, the details according to which the settlement was to be conducted, had long been determined and carried into effect. Those principles were really initiated by Holt Mackenzie—one of the ablest and clearest intellects that ever worked in India. He was the real author of the North-Western Provinces' settlement, and of all the other settlements that have been carried out on this side of India, and the man by whom these principles were practically applied in the North-Western Provinces was not Mr. Thomason, but, as Sir H. Durand observed, Mr. Robert Mertins Bird. To Mr. Bird were mainly due all the instructions that were issued. I am entitled to speak with some authority regarding the spirit in which the settlements of the North-Western Provinces was made; for I myself made settlements in three different districts; and I can affirm that no orders were laid down that could possibly be obnoxious to the interests of any class of the population. It was understood that the settlement officers were to look into the rights of all persons connected with the land, whether as landlords, middlemen, or tenants, and to act in all disputed cases as mediators and umpires, rather than as judges. I agree that the North-Western Provinces owe much of their prosperity to their settlement. I have known those Provinces for the

last five and thirty years, and the change that has taken place in their condition and appearance since I first knew them is something wonderful. Five and thirty years ago much of the country was a jungle, now it is almost all a garden. Much of this improvement is doubtless owing to irrigation. But I am satisfied that it is due in a great measure to the settlement.

"As to the Bill, I will now say little, as the meetings of the Select Committee will afford better opportunity for discussing its provisions, and for modifying or adding to them if necessary. But my understanding is clearly that the Oudh Rent Bill and the Bill now before the Council, have been brought forward, not only with the consent of the Taluqdárs, so far as the main principles are concerned, but by their express desire. These Bills will not only define the rights of the Taluqdárs under the sanads granted them by Government, but relieve them from the embarrassing questions which might continually arise in respect of the rights and privileges to be enjoyed by other classes in Oudh. But I agree with Sir H. Durand that there should be no room left for doubt regarding the views of the Taluqdárs themselves in respect of all the provisions of the Bill; and I also think that the more the Bill can be made to agree with their wishes, the better; provided, of course, that this can be done without infringing the engagements entered into by the Government, or the rights of other parties.

"I highly approve of the clause giving every Taluqdár power to revert to the Hindú or Muhammadan law of succession, as the case may be, or to the ancient custom of his family. It seems to me a great evil that the rule of primogeniture should be introduced where it never existed before. The rule is all very well in great historical estates which had devolved for many generations upon a single heir. But when you come to small taluqs, aggregates formed in modern times by individuals representing no great clans or interests, considerable difficulty will, I fear, be caused by its introduction. For the former sharers in undivided estates which were comprised in the sanads, and which will come under the operation of the proposed Act, will often be deprived of all interest in the estate, save the mere right of maintenance. This will often, I fear, cause great injustice; but I will not now dwell upon it."

His Excellency THE COMMANDER-IN-CHIEF said that his Hon'ble and gallant friend Sir Henry Durand had adverted to what might have been the original intention of the late lamented Governor General, Lord Canning, with respect to the inauguration of a policy in Oudh in 1857, and he had referred to certain matters of fact as affecting the campaign of the latter year in support of his opinion.

His Excellency did not propose to trouble the Council at this stage with any remarks on the principle or details of the Bill now before them. But owing to circumstances, he was in a position to contribute certain details which might serve to throw doubt on the views of his Hon'ble and gallant friend. It would be admitted that Lord Canning's original opinions or intentions could have little effect on present legislation. That must be guided rather by the exact meaning and legal bearing of the sanads, the confirmation of the object of which was apparently the end pursued by the Bill under consideration. But it is certainly a matter of interest, and perhaps historical importance, to trace the course of Lord Canning's mind at the time referred to by Sir Henry Durand, and to show that what was ultimately done was not the result of a preconceived policy.

It would be in the recollection of the Council that the late Lord Clyde assembled his forces in February of 1858, for the prosecution of the siege of Lucknow. In the course of that month Lord Clyde proceeded to Allahabad to hold a conference with the Governor General on the policy to be pursued. Sir William Mansfield, as Chief of the Staff in India, was desired to attend his lordship to take a share in the conference. They arrived at Allahabad towards the end of February 1858, and were immediately summoned to Lord Canning's presence. A long and anxious conference took place, extending over many hours. It was Lord Clyde's most earnest wish that a proclamation should be issued, assuring to the Taluqdárs the enjoyment of the rights of which they had been deprived by the proceedings of 1856, to which allusion had been made by the Hon'ble Mr. Strachey and his Excellency the Viceroy. It was urged that such a proclamation might now safely be issued, for the crisis of the war had passed. The glory and prestige of our arms had been restored in every direction. The course proposed could not now be attributed to fear, but merely to the desire for conciliation and justice as a consequence of our progress in putting down the rebellion. It was declared that such a proclamation would be the proper advanced guard of the Army. When the Commander-in-Chief and the Chief of the Staff quitted the Governor General's presence, they went away with the strongest impression that their views had been favourably entertained by Lord Canning. Lord Clyde could not conceal his exultation at feeling that he had carried his point; for he conceived that much blood would be saved in his Army—a consideration which was never absent from his thoughts—and further that the population would be spared, in the midst of which he was about to operate.

It will not have been forgotten that Lord Clyde was detained for many days at Cawnpore by the slowness of Jung Bahádur's advance. At length

when Jung Bahádur reached the margin of the operations, Lord Clyde moved on Lucknow.

In the meantime the promised proclamation had not come from Lord Canning. His Excellency well recollected the disappointment of his late and very dear friend, Lord Clyde, on this account. The siege proceeded. Lucknow fell. The Military Secretary of the Governor General then appeared in Lord Clyde's camp with the proclamation of confiscation, which was exactly in the contrary sense to that expected by Lord Clyde.

But further, it was well known that the late Sir James Outram, at that time Chief Commissioner in Oudh, was in immediate correspondence with the Governor General. On receiving the proclamation, Sir James' disappointment and astonishment were similar to the feelings of the Commander-in-Chief. Such was the perturbation of his mind that he came to the Chief of the Staff's tent and consulted him on the subject.

Sir James Outram, after discussing the policy, actually went the length of asking him for advice as to whether he should set aside the proclamation pending further orders. It would be understood by the Council that the Chief of the Staff was precluded from offering the slightest hint or suggestion on such a point. But all this served to shew that there could not have existed in the mind of Lord Canning that preconceived policy to which allusion had been made.

Very shortly afterwards, Sir James Outram was relieved by Sir Robert Montgomery in the office of the Chief Commissioner. After the Rohilcund campaign, the head-quarters proceeded to Allahabad, where Lord Clyde was in daily and intimate communication with Lord Canning. Arrangements were then made for the final subjugation of Oudh, and it was determined that Lord Clyde should enter the province for that purpose at the beginning of November. All arrangements were made accordingly, and about the middle of October, Lord Clyde asked for instructions as to the policy to be pursued. His Hon'ble and gallant friend was quite correct in saying that, at that date, the forces at Lord Clyde's disposal were overwhelming, and that Oudh lay at the Commander-in-Chief's feet. The campaign was not one of fighting, but, with regard to the object in view, *viz.*, thorough subjugation, it was a campaign of arrangement and disposition, and of the most strenuous marching. With regard to the instructions for the Commander-in-Chief, the Governor General had done him (Sir William Mansfield) the honour of consulting him about them. His Excellency accordingly put in a paper recommending in general terms the policy which was then adopted towards the Taluqdárs.

It was then evident, HIS EXCELLENCY conceived, that even at that late date, October 1858, the final conclusions of the Governor General could hardly be said to have had an actual existence. HIS EXCELLENCY, therefore, thought himself justified in assuming that there could not have been any preconceived policy on the part of Lord Canning such as he understood to have been alleged.

The Hon'ble MR. STRACHEY said:—"I wish, Sir, to add only a few words upon some of the points to which the Hon'ble Sir Henry Durand has referred. He has called in question the accuracy of my assertion that the real author of the policy that was followed in Oudh in 1858 was Sir Robert Montgomery, and he appears to consider that Lord Canning had determined upon the policy that he intended to adopt before Sir Robert Montgomery became Chief Commissioner. I think, Sir, that the valuable historical facts which have been just stated by His Excellency the Commander-in-Chief remove all doubt upon this subject; but, so far as the questions now under discussion are concerned, it does not much matter whether this policy originated with Sir Robert Montgomery, or with Sir James Outram, or with Lord Canning himself. The point which I wished to establish was this, that the policy carried out under Lord Canning orders in 1858 was totally different in its nature from the policy which was afterwards adopted, and which I may call the policy of the sanads. I do not think that Sir Henry Durand has said anything which throws doubt upon the accuracy of this conclusion. These two policies seem to me to have been contradictory and irreconcilable. The first policy was adopted under circumstances of great political urgency, with the special object of hastening the pacification of Oudh. Against that policy I do not say a word. Although there are parts of it that I think unfortunate, the time has passed in which any practical advantage can be gained by discussing it. It is my belief that this policy really involved no injustice that might not easily have been corrected. The policy of the sanads was totally different, and I have maintained that some of the results which have followed from this second policy, and which are not only unjust but irrational, were clearly never contemplated by Lord Canning. The Hon'ble Sir Henry Durand has insisted upon the necessity which existed for granting sanads to the Taluqdárs, and he has referred to the strong recommendations to this effect which were made in 1859 by Colonel Barrow. Now, I quite agree in the opinion that it was right to confirm in a formal and unmistakeable manner the engagements into which our Government had entered; and if the sanads had done no more than this, no difficulties would have arisen. What I have regretted is that, in consequence of the form in which these sanads were drawn up, consequences have followed which it is quite certain were never contemplated by Lord Canning. I cannot speak of

the opinions of Colonel Barrow, to whom Sir Henry Durand has referred, and for whom I feel the highest regard and respect, because I am not aware that there is anything on official record to show what Colonel Barrow thinks regarding this particular question. There is hardly any one living who could speak upon these subjects with so much authority as Colonel Barrow, because it was almost entirely through him that Sir Robert Montgomery acted in his dealings with the Taluqdárs, and it was Colonel Barrow who superintended the settlement-operations of 1858-59. Although I have no authority to speak for Colonel Barrow in this matter, I cannot help saying that I think that he would confirm the opinion that I have given regarding the great and essential difference between the policy which he carried out in 1858, and that which afterwards grew up out of the sanads.

"The Hon'ble Sir Henry Durand seemed to me to speak as if he were defending the policy of the late Lord Canning in Oudh, and as if I had been assailing that policy. Now, Sir, I wish to disclaim, in the strongest manner possible, the supposition that I have ever assailed the policy of Lord Canning. Ever since I became Chief Commissioner of Oudh, I have invariably declared it to be my duty and my determination to carry out that policy honestly and completely. But I have declared that some of the results that have followed from the measures which were adopted by Lord Canning are not only no proper part of his policy, but are altogether opposed to that strong feeling of justice by which Lord Canning was at all times actuated. In saying that remedies ought to be found for needless and unintentional blots upon Lord Canning's policy, I think that I act, not as the assailant of that policy, but as its supporter. And in this view I believe, as I before stated, that I have done nothing more than carry out the policy which has been that of your Excellency's Government.

"I need hardly add anything to the remarks which your Excellency has made regarding the circumstances under which this Bill has been introduced. Although I have no authority to say that the Taluqdárs will approve of all its details, the introduction of a Bill of this character has long been a measure which they have anxiously desired, for they have felt how necessary it is that the exact nature of the position which they hold should be distinctly defined by law. The Hon'ble Sir Henry Durand is, I think, hardly right in supposing that the Bill introduced by Lord Canning in 1862 was altogether approved by the Taluqdárs. In some very important respects, to which I have already alluded, that Bill was disapproved by many of the Taluqdars and by Sir Charles Wingfield. I think that it will be found that, in essential respects, the present Bill is, to say the least, as acceptable to the Taluqdars as that of 1862.

" Sir, there is only one other point to which I wish to refer. In the remarks which I made when I obtained leave to introduce this Bill, I made use hastily of a somewhat unfortunate expression. I said that Sir Charles Wingfield had his share of what I called the superstitious reverence which English men very often have for institutions of a purely English type. I regret that I said anything of the sort, because I see from the impression which my words have left upon the mind of My Hon'ble and gallant friend, that I may seem to have been wanting in respect to Sir Charles Wingfield. But, Sir, I hope that if these words are remembered, the rest of my remarks regarding Sir Charles Wingfield may be remembered too. I declared my belief—and no one has had better opportunities than I have had of judging—that the general excellence of his administration was such that comparison might be challenged with the administration of any province in India. I desire to repeat this belief, and I agree with the Hon'ble Sir Henry Durand in thinking that it adds greatly to the honour with which Sir Charles Wingfield's name deserve to be mentioned that he fearlessly and openly declared at all times the views which he believed, it to be his duty to maintain, regardless of the fact that his views were not always those which were acceptable to the Government."

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND said:—" Sir, with your permission I shall add a few words with reference to what has fallen from the Hon'ble and gallant Member, the Commander-in-Chief. I have only to observe that, in all that His Excellency has stated, there is nothing in any way inconsistent with my own remarks, for throughout I never said a word on the confiscation proclamation, which, as an intervenient *modus operandi*, had nothing to do with the subject to which I confined my observations, namely, the reversal of the Oudh administrative policy of Lord Dalhousie based on the North-West Province system, the substitution of the taluqdárí system, and the grant of sanads as a component part of that system, and one quite independent of the question of a taluqdárí title being based or not on preliminary confiscation. I did not to the best of my recollection utter a word on the subject of the confiscation proclamation."

The Motion was put and agreed to.

FINANCIAL AND JUDICIAL COMMISSIONERS' (OUDH) BILL.

The Hon'ble MR. STRACHEY introduced the Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province, and for other purposes, and moved that it be referred to a select Committee with instructions to report in six

weeks. He explained that the Court of the Financial Commissioner was the final Court of appeal in suits involving rights to land. In consequence of the progress of the settlement of the land-revenue, the Financial Commissioner was often oppressed with appellate business, much of which might be disposed of by the Judicial Commissioner; and the Bill accordingly provided for the transfer of appeals from the Court of the Financial to that of the Judicial Commissioner. The Bill also empowered these Commissioners to sit together for the hearing of cases of special difficulty, and thus to constitute a sort of High Court for Oudh. In case, however, of difference of opinion, a reference would be made to the High Court of the North-Western Provinces.

The Hon'ble MR. MAINE said that, as there were not now any Bills in the Legislative Department of a kind proper to be passed at Simla, and as his Hon'ble friend, Mr. Strachey, was on the point of returning to Lucknow to consult the Taluqdárs, which would have the effect of postponing the Oudh Bills for a time, he (MR. MAINE) suggested that the Council should adjourn *sine die*. The effect would be to revive the Governor General's power of publishing Bills for the information of the country, which was suspended during any regular sittings of the Council. The Home Secretary would doubtless remember that, when any further sittings had to take place, fresh summonses must be issued.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate succession thereto, the Hon'ble Messrs. Maine and Taylor, Sir H. M. Durand, Sir George Yule, and the mover.

On the Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province and for other purposes, the Hon'ble Mr. Maine and the mover.

The Council then adjourned *sine die*.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Simla,
The 31st July 1867.

S. G. P. I.—No. 149 L. D.—26-11-18—50.