

Friday, September 10, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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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 and 25 Vic., cap. 67.

The Council met at Simla on Friday, the 10th September 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding*.

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

Colonel the Hon'ble R. STRACHEY.

VOLUNTEER CORPS BILL.

His Excellency the COMMANDER-IN-CHIEF moved that the Report of the Select Committee on the Bill to amend Act No. XXIII of 1857 be taken into consideration. He said that he had explained on a former occasion that there might be reason for re-considering the form of the proposed Act.

He had found on referring to Act XXIII that further alterations were required, and the Select Committee had come to the conclusion that, instead of passing a mere amending measure, it would be better to repeal that Act and to re-enact it with the changes necessary to adapt it to the Articles of War and the present circumstances of the country.

They had expressly extended the proposed Act (so far as regards British subjects) to allied Native States.

They had declared that the procedure in Volunteer Courts Martial should be in accordance with that of Courts Martial held under the Articles of War for the time being in force for Her Majesty's army.

In accordance with a recent change in the Articles of War, they had made nine, instead of thirteen, the minimum number of members of a General Court Martial.

They had provided that the sum adjudged by a Regimental Court Martial in case a retiring member of a Volunteer Corps failed to deliver his arms, &c., should be recoverable as if a decree had been pronounced for it under the Code of Civil Procedure; and in lieu of the provision contained in section 14 of the Act, they proposed that fines imposed by a Court Martial should be recovered by a Magistrate as if they had been imposed by himself.

Lastly, they were of opinion that section 22 of the present Act might be omitted as obsolete.

These were the principal changes which had been suggested. If the Council agreed to them, His Excellency would have, at a subsequent stage, to move a further amendment.

The Motion was put and agreed to.

His Excellency the COMMANDER-IN-CHIEF then moved that in section 2 the following words be omitted:—"But nothing in this Act shall apply to any Volunteers listed or mustered and in pay." This clause was taken *verbatim* from the present Act. He had made enquiries, but had been unable to ascertain the intention of the Legislature in introducing it. In fact, he could not understand its purport or effect. He was of opinion that if it were left, considerable confusion might be caused. There were several Volunteer Corps which received a grant and capitation allowance, and it was at least arguable that the members of such corps were "in pay" within the meaning of the clause quoted. It was obviously desirable that there should be no doubt as to whether the Bill affected such persons.

The Motion was put and agreed to.

His Excellency the COMMANDER-IN-CHIEF then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

EUROPEAN VAGRANCY BILL.

The Hon'ble Mr. MAINE presented the Report of the Select Committee on the Bill to provide against European Vagrancy.

GÁRO HILLS BILL.

The Hon'ble Mr. COCKERELL introduced the Bill to remove the Gáro Hills from the jurisdiction of the tribunals established under the general Regulations and Acts, and moved that it be referred to a Select Committee with instructions to report in a week.

He said that the Bill was framed on the model of Act XXII of 1860. That Act was passed for the purpose of removing certain hill tracts within the limits of the District of Chittagong from the jurisdiction of the ordinary tribunals under circumstances very similar to those which had given rise to the present legislation; and the Bill would divest the civil, criminal, and revenue Courts of all jurisdiction, and suspend the law relating to procedure, within the tract of country comprised in the Gáro Hills, the boundaries of which were described in the 4th section.

The administration of justice within that tract would be vested in such officers as the Lieutenant-Governor might appoint, subject to such rules of procedure as might from time to time be prescribed by the same authority.

Provision was also made for the enforcement by the Local Government of the separation from the estates of zamíndárs of any portion of the hill tracts bordering on such estates which were attached, or were claimed to be attached, to the same, and for awarding the zamíndárs such compensation as they might be found to be entitled to for the compulsory surrender of their rights.

The Bill further proposed to repeal Regulation X of 1822, and so much of Act VI of 1835 as relates to the Khásyá Hills.

Most of the provisions of the former enactment had become obsolete.

The office of Special Commissioner for the administration of the North-East Frontier had long since been amalgamated with that of Commissioner of Assam, and that officer at the present time had no connection with the administration of any portion of the tract to which the Bill applied.

The maintenance of the distinction as to jurisdiction and procedure between suits in which one or both of the litigants belonged to the Gáro or other hill tribes, and suits in which neither of the parties was of those races, created by section 6 of that enactment, was inexpedient.

As the law stood, a suit instituted by a zamíndár against the Government, the cause of action arising within the hill tract, and seriously affecting the whole policy of the Government towards the inhabitants of that tract, would, if the amount at stake exceeded five thousand rupees, be ultimately referable to the High Court, and thus one of the main objects of the present legislation would be completely defeated.

The need for repealing so much of Act VI of 1835 as referred to the Khásyá Hills was explained by MR. COCKERELL when the subject of the proposed legislation was last before the Council, but he had since been informed that some small tract of country within these hills *did* form part of British territory. The reasons for removing the Gáro Hills from the jurisdiction of the ordinary courts were no less applicable to this tract as well as to the Jintía and Nága Hills, and the propriety of extending the provisions of the Bill to all those tracts would be a question for the consideration of the Select Committee, to which he hoped this Bill would be referred.

The Motion was put and agreed to.

COURT FEES' BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to provide for the better regulation of Court fees.

He said,—“The stamp fees now leviable in judicial proceedings were fixed by Act XXVI of 1867.

The alterations of the former law effected by that enactment embraced—

- 1st.—A general enhancement of the scale of fees leviable on the institution of all civil suits;
- 2nd.—An increased valuation of land for the purpose of computing the amount of the fee chargeable on suits relating to such property;
- 3rd.—The abolition of the privileged rates up to that time accorded to suits instituted in the revenue courts between landlord and tenant, and the application to such suits of the rates leviable in the civil courts;
- 4th.—The imposition of a fee of one rupee on the institution of certain criminal complaints;

5th.—A slight enhancement of the fees obtaining in certain miscellaneous judicial proceedings, and the imposition of a fee on certain petitions and applications when presented to the Magistrate in his executive capacity.

These changes were avowedly experimental. It had been strongly represented to the Government that the litigation of the country could, without prejudice to the administration of justice, bear a greater burden of taxation than it had up to that time been subjected to: it was certain that the scale of fees then in force needed revision on account of its irregularity, and the extreme inequality of the incidence of the taxation imposed by it, and it was considered expedient and equitable that the opportunity afforded by such revision should be taken to obtain the increased revenue needed to cover the additional outlay which had then been resolved on for the improvement of our courts of justice.

But when after the new rates had been some months in operation, allegations of their repressive effect on the general litigation of the country reached the Government. Your Excellency's predecessor on one public occasion at least pledged the Government to watch closely the operation of the new Act, and to grant relief if, after a careful investigation of its results, such a measure should seem to be called for.

The Act came into force on the 1st May 1867. The results of its operation during the first twelve months have been examined in comparison with the results of the operation of the former law during the corresponding period immediately preceding the date from which the existing law took effect.

The effect of the general enhancement of the rates of fees leviable on all civil suits combined with the increased valuation of land, was a reduction in the number of institutions during the first twelve months of the operation of Act XXVI of 1867, as compared with the number instituted during the twelve months immediately preceding the date on which it came into force, of nearly 14 per cent.

This general result, examined in detail, shows a much larger proportion of decrease in the number of institutions of suits regarding land than in the case of claims to money, the proportion of suits involving some interest in land which, under the former law, was about one-fifth having, during the first year's operation of the existing law, fallen to less than one-sixth of the entire litigation.

Such a marked decrease as 14 per cent. in the number of suits instituted is in itself sufficiently suggestive of the baneful effects of the existing law upon the administration of justice, but it becomes more so when contrasted with the course of litigation previous to the enactment of that law; for the returns of the four years immediately preceding 1867, show a steady progressive increase, year by year, of from five to six per cent. in the entire number of civil suits instituted throughout India; hence as, but for the passing of Act XXVI, there would have probably been a corresponding increase in 1867, the actual decrease caused by the enhanced rates during the first twelve months in which they were in force may be reckoned at not less than 20 per cent.

As already stated, the special investigation traced the results of the existing rates of institution fees down to the 30th April 1868. Further statistics bringing the record of the general litigation of all India, except the territories subordinate to the Government of Bombay, under the operation of these rates to the close of the year 1868, have been recently obtained. In the Bombay Presidency the provision of the High Court's letters patent, which empowers the local Government to call for statistics regarding the administration of justice, and lays that court under an obligation to comply with such requisition, would appear to be inoperative, as I am told that no such statistics are furnished by the High Court, and I have on that account been unable to procure the required information in regard to Bombay. The returns which have been furnished show that whilst a not inconsiderable reaction has taken place in regard to the resort of the people to the civil courts of such recently-acquired territories as the Central Provinces, Oudh and even the Panjáb, in the older territories of Bengal Proper, the North-Western Provinces and Madras, where the British Administration is of much longer standing, and civil rights are better defined or at least better understood, the repressive influence of the new rates on litigation is rather increased than abated.

With these facts before it, the Government has decided on conceding a considerable reduction of the existing rates of court fees leviable on the institution of civil suits; and I venture to add that it is not the least satisfactory reflection in regard to this decision, that it should have been arrived at, whilst the Government still retained the advantage, of which it is, unfortunately for the country, so soon to be deprived, of the counsels of my honourable and learned friend (Mr. Maine), who, as a member of the then existing Government, is fully conversant with the circumstances which attended the legislation of

1867 on this subject; and that the present measure should be inaugurated, as I believe it to be, with that gentleman's full concurrence.

Repressive as the rates fixed by the Act of 1867 are believed to have been, their financial results have been eminently successful. It is true that the somewhat extravagant anticipations of their projectors have not been even approximately realized, but a very considerable increase of revenue has been obtained through their operation. I think it necessary to draw attention to this fact, because I have seen it stated on more than one occasion that not only had the general litigation of the country been checked to a very serious extent, but that the public exchequer had actually been a loser by the change in the law. So far from that being the case, notwithstanding the number of suits instituted fell off to the extent already described, the revenue derived from the decreased number of institutions was no less than $13\frac{1}{2}$ lakhs, or nearly 25 per cent. in excess of the amount obtained under the provisions of the former law.

The changes effected by Act XXVI in regard to suits instituted in the revenue courts between landlord and tenant resulted in the falling off of the number of such suits instituted during the first year's operation of that enactment to the extent of about 26 per cent. as compared with the institutions of the year immediately preceding, and a simultaneous increase of revenue to the amount of upwards of three lakhs, or nearly double the entire amount of revenue yielded by suits of this class under the former law.

The burden of this greatly increased taxation was further aggravated by the absence of any express provision in the enactment for determining the valuation of certain suits of this class, *e. g.*, suits to recover a right of occupancy or to enforce ejectment, and suits to obtain a patta, or a kabúliyat,—the value of the subject-matter of which, though not absolutely indeterminate, can only be determined, and even then not very satisfactorily, after a protracted and intricate investigation. For a claim to recover a right of occupancy of, or enforce a right of ejectment from, any land bears obviously a very different value from that of a claim to recover a proprietary title in such land, and the rule for the computation of the latter is altogether inapplicable to the former.

The want of a rule for the guidance of the Courts in the assessment of such claims has necessarily led to a great variety of practice, and on no point is the amendment of the existing law more urgently required.

So far as the working of the one-rupee stamp in certain criminal cases can be tested by the statistics which have been furnished, the impost would appear to have had little or no deterrent effect on the institution of such cases, for the returns show a falling off of five per cent. only in the number instituted during the year, subject to the payment of a fee, as compared with the number instituted during the corresponding period when no fee was required. I have little doubt, however, but that the returns for the period during which the fee was not imposed are imperfect, and cannot be safely used for the purposes of comparison; for in the absence of any special register of the class of petitions to which the fee was intended to apply, there would be no certain guide for the preparation of a correct return of such petitions, and it is most probable that many which should have been included in the return have been omitted. Opinions founded on administrative experience of the question are pretty evenly divided. Whilst the Governments of Bombay and Madras and most of their subordinate officers advocate the abolition of the fee, the several Administrators of the Provinces included in the Bengal Presidency are, with rare exceptions, in favor of its retention. On the side of the abolitionists opinion is purely theoretical, no facts are adduced to show that any real hardship is inflicted on the community by requiring persons to contribute something towards the cost of the machinery employed in the redress of their petty grievances; whilst on the other side it has been shown that a small fee does act as a rough sieve to the multifarious complaints which would otherwise inundate the criminal courts, wasting the time of the magisterial officers, entailing much hardship on persons, who are often needlessly and even vexatiously brought into the courts as witnesses in such cases, and tending to no public benefit.

The change of the law in regard to the fees leviable on miscellaneous petitions and applications has produced an increased revenue of about 6 lákhs, without apparently entailing any hardship save in a few exceptional cases. For example, (1), a fee of one anna only is charged on a petition relating to conservancy matters addressed to a Municipal Commissioner in a Presidency town, but under the operation of the existing law such a petition, when presented to a Municipal Commissioner in the Mofussil, is subjected to a fee of eight annas. (2), A salt-merchant desiring a pass, or a licensed spirit-vendor requiring a renewal of his license, must each pay a fee of eight annas on their respective petitions or applications to the Collector, although the communication is necessitated by the nature of their contract and dealings with the

Government. (3) The farmer of a public ferry can only obtain the interposition of the Magistrate to secure the recovery of an unpaid toll of very trifling amount by the payment of a similar fee on the petition which he must present to the Magistrate for that purpose.

Equitable considerations clearly call for a certain measure of relief in such cases.

I now come to the concessions and other alterations of the existing law contemplated in the Bill.

It is proposed, *first*, to substitute a fee of 6 annas on the institution of a suit not exceeding Rs. 5, and a fee of 12 annas on a suit exceeding Rs. 5 and not exceeding Rs. 10, for the one rupee chargeable in either case under the existing law.

Secondly, to reduce the average percentage of the institution fee on all civil suits of amount ranging between Rs. 10 and Rs. 1,000 from 10, the present rate, to $7\frac{1}{2}$, to effect a small reduction of the percentage of institution fee on suits of amount exceeding Rs. 1,000, and to revert to the principle of a maximum fee which obtained under the former law, making Rs. 5,000 the fixed limit.

Thirdly, to reduce the fixed valuation of temporarily settled land and land exempt from the payment of Government revenue from 8 to 5 times the amount of the annual revenue, and from 20 to 15 times the annual profits of the land, respectively, and also to restore the provisions of Note (c), Article 11, Schedule B, Act X of 1862, or to introduce a provision of similar import.

Fourthly, to provide for the computation of the institution fee leviable on suits for the recovery of a right of occupancy, and other suits between landlord and tenant, the value of the subject-matter of which is not readily determinable, upon one year's rent of the land to which such suits have reference.

Fifthly, to reduce the fee on criminal petitions from one rupee to eight annas.

Sixthly, to reduce the fee on certain miscellaneous petitions from eight annas to one anna, and to exempt certain other petitions from the payment of any fee.

Seventhly, to substitute for the *ad valorem* fee now leviable on certain summary suits instituted in the Bombay Presidency under Act XVI of 1838 and the Bombay Act V of 1864, a fixed rate of eight annas.

The first of these proposals involves a concession to suits of very small amount or value not accorded to them under any previous law. Heretofore an uniform rate of one rupee has been levied on all suits up to Rs. 10 in amount or value, by which the overwhelming majority of suits of this class are made to bear a tax wholly disproportioned to that imposed on suits of larger amount, and as about one-sixth of the entire litigation is included in this class, the area of unequal taxation is considerable.

By the contemplated reductions, the proportion of the institution-fee to the amount of suits of this class will be brought into harmony with the scale of fees applicable to other suits.

The $7\frac{1}{2}$ per cent. on the amount of suit at which rate it is proposed to fix the institution-fee on suits of amount or value ranging between Rs. 10 and Rs. 1,000, represents the exact mean percentage on the amount litigated of the varying rates applicable to such suits under the operation of the scale of fees contained in Act X of 1862, and as the ascents of the existing scale will be maintained, the contemplated reduction amounts to a surrender of one-fourth of the revenue now derived from this, which is, both numerically and with regard to the aggregate amount of fees derived from it, by far the most important class of suits.

The proposed scale of fees is not calculated to effect any material reduction of existing rates on suits whose amount or value ranges between Rs. 1,000 and Rs. 10,000.

The reduction becomes greater when the litigated amount exceeds Rs. 10,000, and the benefit of the maximum fee is enjoyed when that amount reaches $8\frac{1}{2}$ lakhs of rupees.

Suits involving a larger amount are doubtless of rare occurrence, but as such claims do occasionally arise, and the present unlimited scale of fees is believed to operate as an absolute prohibition of the litigation of those cases it has been thought desirable to revert to the principle of the former law in this respect.

As regards the valuation of landed property, it is not thought that the value of land under permanent settlement, fixed by the existing law is, in average cases, in excess of its real value, but eight times the amount of the Government revenue is believed to be a relatively excessive valuation of temporarily settled land, having regard to its much heavier assessment and the narrower margin of profit which it yields to the settlement-holder. It is thought also that fifteen times the annual profits accruing therefrom afford a better approximation to the true market-value of land exempt from the payment of Government revenue, than the valuation which obtains in regard to suits relating to such land under the present system.

There is a large class of suits also to which neither of these forms of valuation are properly applicable. I refer to claims to mere parcels of land included within the limits of some settled estate, but not assessed with any defined or specified portion of the amount of the Government revenue payable on the latter. Such cases were formerly met by the provisions of Note (c), Article 11, Schedule B, Act X of 1862, which it is now proposed to restore.

For suits to recover a right of occupancy and the like, the value of the subject-matter of which is not susceptible of ready determination, some arbitrary method of valuation must be adopted, and the annual rent of the land to which such cases relate seems to afford the best relative criterion of the value of the thing sued for.

The maintenance of the fee levied on certain criminal petitions is, regarded from a financial point of view, unimportant, for its operation thus far yields an annual revenue barely amounting to 2½ lakhs. But having regard to the case made out for its retention by the authorities in Bengal, it cannot be altogether abandoned, and the best practicable solution of the difficulty created by the conflict of opinion which prevails on the subject seems to lie in the compromise of a reduction of the amount of the fee from one rupee to eight annas.

The reduced rate of fees and miscellaneous petitions and applications is intended to apply only to petitions relating to conservancy, presented to Municipal Commissioners, or by persons having contracts or dealings with the Government, such petitions or applications being in the nature of communications addressed to the officers of Government on the subject of such transactions. Petitions of this class will thus be placed on the same terms as applications addressed to a Collector of Customs.

Looking to the character of the awards obtained in summary suits instituted in the courts of the Bombay Presidency under the provisions of Act XVI of 1838, and the Bombay Act V of 1864, *i. e.*, their liability to be set aside by judgments passed in regard to the same cause of action in a regular suit, it seems more equitable to treat such institutions as miscellaneous applications, and subject them to a fee of eight annas only.

As a set-off against the proposed concessions, and the probable loss of revenue resulting therefrom, it is proposed, *first*, to discontinue the grant of any refund of fees levied on the institution of original suits, and *secondly*, to raise the duty chargeable on the grant of probates and letters of administration under the Indian Succession Act and of certificates under Act XXVII of 1860, to an equivalent with the rates levied in England in like cases. The system of refund as applied to the fees paid on the institution of original suits is inconsistent with the principle on which those fees are regulated; for their amount is fixed not in proportion to the measure of labour imposed upon the court in the adjudication of the suit, but according to the value of the matter litigated, *i. e.*, in proportion to the advantage which the suitor obtains or seeks to obtain through the court's action. Now in the vast majority of cases in which the plaintiff withdraws from his suit at an early stage of the proceedings, and thereby recovers by refund a moiety of the institution-fee, he has obtained no less advantage from the court's agency than the suitor whose case has proceeded to an actual trial, and if such is the case, then on the principle on which these fees are fixed and levied, the suitors in either case should contribute equally to the cost of the machinery from which they derive an equal benefit.

The enhancement of the rates of duty leviable on grants of probate and letters and certificates of administration to a par with the rates charged in like cases in England seems clearly justifiable.

In the case of most other stamp-duties, the rates are, where they differ from, in excess of, the English rates, and there seems to be no reason for imposing in those cases a lighter taxation than they would be subjected to under the English law.

I have gone somewhat further into the details of the proposed Bill than is usual at this stage of legislation, because I think it most desirable that the first intimation of any reduction of the judicial stamp fees now in operation having

been actually resolved on, should be accompanied with the most explicit and unqualified statement of the exact measure of the concessions which the Government is prepared to grant.

The first sound of any overt action on the part of this Council in the direction of reducing the charges on the administration of justice, is sure to have the effect of arresting and keeping back as much of the incoming litigation as can be postponed consistently with a due regard for the Act of limitation, and of thereby seriously disturbing the business of the courts. It is on this account most desirable that the progress of measures of this kind should, after their introduction into the Council, be as rapid as possible, and that they should not be kept long before the public, thereby prolonging the derangement of the administration of justice which must continue to a certain extent as long as they remain pending.

It was this consideration which justified the rapid progress of the existing law through the Council, and must ever be held to excuse speed on the part of the legislature in dealing with like measures.

Viewed in this light, the present time seems most opportune for the inauguration of this measure, for, throughout the greater part of the country, the civil courts are about to be closed for a considerable period. There will be ample time consequently during the recess, without prejudice to the course of litigation, for a thorough ventilation of public opinion on the details of the proposed legislation, and I trust that, soon after the courts re-open, we may be in a position to proceed with the Bill, and pass it through its remaining stages, ere the close of the current year, so that the new law may be brought into operation, simultaneously with the new Stamp Act, on the 1st January 1870."

The Hon'ble MR. MAINE obtained the permission of the President to offer some observations on the Motion, upon the ground that he would not have an opportunity of joining in the discussion at any later stage, and said that, independently of the reference which his hon'ble friend had been good enough to make to him, he had been desirous of explaining away two misapprehensions, one much more important than the other, which were disclosed by the papers which he and his hon'ble friend had examined. One of these was the mistaken idea that the Government of India had ever started or encouraged the doctrine that the taxation of the administration of justice was a

justifiable mode of recruiting the general finances of the empire. In order to dispose of that statement, it would be enough to refer to a paper furnished to MR. MAINE by the Secretary in the Financial Department. The figures could not be quite confidently interpreted on account of the system which, MR. MAINE hoped, would be abolished, of lumping together the revenue derived from general or documentary stamps and that derived from judicial stamps which were in reality court fees. A conclusion which was roughly true might, however, be founded on the figures, and it appeared from them that the litigating part of the Indian community paid just about half the expense of the administration of justice, and this result was reached without debiting that administration with the cost of the revenue courts, which, of course, in many of their functions, were just as much courts of justice as any others. The inference was that the part of the community which, in India, availed itself of the courts, contributed less to their cost than the corresponding section of any civilized community, although the courts in this country were resorted to in many matters which elsewhere were settled by private adjustment. All the rest of the expense of the administration of justice was paid by the general body of tax-payers for which the Government was trustee. The question, therefore, whether justice might be taxed for the general purposes of the State did not arise in India. Nor did the history of the scale of 1867 bear out the doctrine he had been disclaiming. Mr. Cockerell had correctly stated that there had been many representations to the Government of India that the scale of 1862 was too low and capriciously arranged. These representations might not have been attended to but for the anxiety of the late Viceroy to carry into effect a measure which, in the farewell given to Lord Lawrence by the community of Calcutta, had been described by the Commander-in-Chief as one of his highest titles to the recollection of the people of India. Lord Lawrence had, very early in his career, formed the opinion that the greatest evils arose from the under-payment of the lower Mofussil Judges and of the officers of their Courts, and he had much at heart the improvement of their position. The plans which he had been considering came to maturity in 1866; but, as His Excellency would easily believe, the finances of the country were ill able to bear the additional burden. Accordingly, it was determined to institute an enquiry directed to ascertain whether, as the quality of the justice to be administered was to be so much improved, the suitors might not fairly be asked to contribute something more towards the cost of administering it. Every precaution was taken to secure a great weight of authority for the new scale. The Commission appointed by the Government included gentlemen of the highest judicial

eminence both in the High and in the Mofussil Courts, and it was requested so to arrange its sittings as to be assisted by the Additional members of Council who were just arriving in Calcutta. The scale of 1867 was the result of the labours of the Commission, and though, as Mr. Cockerell had put it, there might be some appearance of haste in passing the measure through the Council, this haste was, as his hon'ble friend had also correctly stated, no more than was inevitable in the case of taxing bills of this nature. There was nothing like precipitation in settling the basis of the measure. Mr. Cockerell was further right in saying that Lord Lawrence promised an enquiry into the working of the new scale, which some had questioned from the first, though these were mostly persons under the influence of *à priori* ideas. The present measure resulted from that enquiry. The statements and opinions placed before Government perhaps struck Mr. MAINE as rather more contradictory and unsatisfactory than they appeared to his hon'ble friend; but still Mr. MAINE had no doubt that the scale required reduction in some particulars. Such experiments as the Commission of 1867 had attempted were always, as he supposed, more or less, leaps in the dark; and it certainly seemed as if the Commission had to some extent leapt too far. But assuredly the last thing which could be attributed to it, or to the Government, was a policy of taxing litigants, as a separate class, for the benefit of the general finances.

The other misapprehension to which Mr. MAINE had referred was of very much less importance. It seemed to be supposed that he himself had at some time or other elaborately justified the policy of filling the Treasury by taxing litigants. He might be permitted to say that he had never done anything of the kind. What he really had done was to contend against the extreme theories—and His Excellency must have already learned that this was a country of extreme theories—of certain gentlemen who argued, if the logical consequences of their doctrines were to be accepted, that the litigant should contribute nothing towards the expences of litigation. Some people seemed to suppose that Governments ought to be like oriental monarchs who first appropriated the greatest part of the property of their subjects, and then, by way of compensation, sat in the gate and administered justice for nothing. Mr. MAINE was not going to trouble the Council with any discussion of abstract doctrines; but, as in matters of this kind a grain or two of fact was worth a bushel of theory, he would call their attention to a fact immediately before their eyes which came home to them for a special reason. A late colleague of theirs, Bábu Prasanna Kumár Thākur, a most astute lawyer, left a

will in which, for reasons entirely personal to himself and his family, he raised a series of the most difficult questions which could possibly perplex an Indian Court. He in fact attempted, for objects of his own, to see how far some of the most recondite feudal doctrines of English law could be made to apply to India. During the last few months, much of the time and a vast amount of the intellectual strength of the Calcutta High Court had been employed in construing this will. But why on earth should the Government furnish for nothing a most costly machinery for the purpose of unravelling the perplexities of such a document? Or, to take the converse case, why should it supply judges gratuitously to construe perfectly stupid and ungrammatical wills? Or why should it pay for the winding-up of an insolvent joint-stock Company? The truth was that, though people were often involved in litigation through no fault of their own, yet a vast amount of litigation arose from complications of fact produced by the neglects of themselves or their predecessors in title, by unbusiness-like habits, by heedlessness, or by sheer folly. The true doctrine, Mr. MAINE submitted, was that the litigants and the general tax-payers should each contribute something. Nobody denied that the litigants benefited by the Courts, and nobody would deny that the rest of the community derived some advantage from the solution even of such questions as those raised by this Bengálí gentleman's will. What the proportion paid by each should be, was a question not of theory, but of experience, to be equitably settled by the Government as trustee for all, and it was due to the Commission of 1866 to say that they had furnished the Government with much valuable experience to work upon.

The Motion was put and agreed to.

The following Select Committee was named on the Gáro Hills Bill :—The Hon'ble Mr. Maine and the Mover.

The Council then adjourned to Friday, the 17th September 1869.

WHITLEY STOKES,

*Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.*

SIMLA, }
The 10th September 1869. }