ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 14

Jan to Dec

1875

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1875.

WITH INDEX.

VOL. XIV.

Published by the Authority of the Governor General.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.
1876.

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 13th October 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble T. C. Hope.

LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the improvement of Law Reports be taken into consideration. He said that this was a matter on which he need not make any observations to the Council, because he had already explained that the Bill was one which consisted solely of what we had already discussed in the early part of the year so far as it had not been disapproved of by the Secretary of State. The Select Committee had made no alterations in the Bill as introduced.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PANJÁB CHIEF COURT APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to provide an appeal from certain decrees of the Chief

Court of the Panjáb, and moved that the Bill be taken into consideration. He said that this was also a matter on which he need not trouble the Council with any remarks, as he had explained already the extremely simple character of the Bill and how it had been prepared under the auspices of two of the Judges of the Panjáb Chief Court themselves. The Select Committee had proposed no alterations in the Bill.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers. He said that this was a matter in which there was no motion before the Council, but he should like to make a few remarks upon the alterations that the Select Committee had made in the Bill, because they were of an important character, affecting the principle of the law, and they were not in contemplation when he introduced the Bill. The fact was that this was one of those numerous cases which were begun by aiming at some small changes in the law and at consolidation, and then in the progress of the work before the Committee they found that it was necessary, or at all events expedient, to make a much larger alteration than was at first contemplated. He would briefly state to the Council what the points were in which the Committee had been induced to alter the measure as introduced.

In the first place the law on this subject was governed by three Acts of Council: Act XXV of 1859, Act XII of 1870, and Act XII of 1872. Act XXV of 1859 applied solely to the Bay of Bengal and only to certain specified voyages within that Bay. The voyages to which it applied were those which took place from any port in Madras or Chittagong, or from any port in Orissa to any port on the Eastern Coast of the Bay of Bengal, or the Straits of Malacca, or in Ceylon, and also the reverse voyages, excepting that, for some reason which MR. HOBHOUSE could not explain, the voyages from Ceylon were not included. That Act applied to all sorts of vessels whatever number of passengers they might carry.

Then came Act XII of 1870, and that applied to voyages to or from the westward, namely, those which took place from any port in India to either the Red Sea or the Persian Gulf, or the reverse way. The scope of the Act was affected by a definition of the term "Native passenger ship." That term was said only to mean a ship which carried more than thirty passengers and which was plying from any port in India to any port in the Red Sea or the Persian Gulf, and *vice versâ*. The principal part of the Act of 1870 applied to those Native passenger ships. Then there was a separate chapter altogether which applied to what were called "coasting steamers." Those were steam-vessels carrying passengers without any limit of number whatever on coasting voyages from or to any port in British India. Those were the only provisions which affected the purely British Indian traffic. All the other provisions, whether under Act XXV of 1859 or Act XII of 1870, were for certain voyages, most of which were beyond British India and which were all long voyages. Nor did Act XII of 1870 contain anything about sailing vessels which might make coasting voyages; as regarded such voyages, it applied entirely to steamers. If a steamer carried only one passenger, it fell under Act XII of 1870; and it said that those steamers should have certificates which should state the number of passengers which the steamers should carry, but no measurements were given by which licenses should be adjusted. That was a state of the law which was very unsatisfactory, and it was found to bear very hardly on the good class of steamers, because, not applying at all to sailing vessels, it tended to drive passengers into making their voyages in very rickety craft.

So an Act was introduced in the year 1872, and that effected an alteration of the law by striking out the definition of "Native passenger ship" that was contained in the Act of 1870, and it substituted a very much more sweeping definition, defining the expression to mean a vessel, whether sailing or steam, which carried more than thirty Native passengers. So that by the new definition of the Act of 1872, vessels of every class, sailers and steamers, whether they carried one passenger or a thousand, were swept into the rules which were framed for voyages from India to the Red Sea and the Persian Gulf. That created a hardship greater than before, because the rules which might be applicable to a voyage from Madras to Jeddah were by no means applicable to a voyage from Madras to Negapatam; and yet they were applied to all voyages. The result was that the law had not worked at all; in fact it was very generally disobeyed, and in most cases from the impossibility of obeying it, no notice had been taken of the disobedience.

When this Bill was introduced, it was on account of the representations made by the British India Steam Navigation Company to the effect that they could not observe the rules laid down by the law; and, in the first instance, the Bill observed the classification of vessels and voyages established by the existing law; but it was proposed to relieve the hardships that were felt by giving a greater power to the Executive to exempt vessels from the existing statutory rules, and to make the law more efficient by empowering the Executive to make special rules for different voyages. When the Committee came to work out this proposal, it was attended by a very intelligent gentleman named Kittredge, who carried on a passenger traffic business in Bombay; and he pointed out, in the first place, that there was a great deal of uncertainty introduced by leaving those matters to Executive rules, and in the second place, that the Local Governments, though they must always have a great deal to say to those rules, could not possibly deal with the matter efficiently; because, from the very nature of the subject, the voyages to which the rules would apply would be under the authority of no one Local Government, so that it was a matter with which only the Supreme Government could deal with quite adequately. At the same time, Mr. Kittredge suggested that voyages and ships might be classified in a different way so as to have an efficient law which yet would not work hardship.

The proposals now made were founded on Mr. Kittredge's suggestions. In the first place the Committee adhered to the rule that a ship, in order to come within the provisions of the Act at all, should carry more than thirty passengers. It was not worth while to carry supervision lower than that. That would alter the law as regarded the Bay of Bengal, where at present the provisions of the Act of 1850 applied to all vessels. Then, instead of making a distinction between coasting voyages as performed by steamers, and other voyages, it was proposed to divide all voyages into long and short voyages. The dividing line proposed by Mr. Kittredge was that the voyage should be a long voyage if the ship, under ordinary circumstances, would be more than four days out of port. Subsequent representations, however, had induced the Committee to extend that period to five days, and they now proposed that, if a ship, under ordinary circumstances, was likely to be more than five days out of port, that should be considered a long voyage, and all other voyages short ones. Then they had made two sets of provisions: one of a very simple character, which was to apply to short voyages, and the other more elaborate and more restrictive, which was to apply to long voyages. In point of fact, they were assured that the two classes of business were of a totally different kind; that the voyages

in which ships were more than five days out of port included all the pilgrimages, and all the emigration to Singapore, the Straits Settlements, and Burma; and that the coasting traffic proper would all fall within the definition of short voyages.

Having defined in the abstract what was a long and what a short voyage, the task remained to apply the definition to particular voyages. That must be the work of the Executive Government from time to time, and it was proposed to give the Executive Government power to declare with respect either to a steamer or a sailing vessel, whether a voyage should be a short or a long voyage.

The Committee did not think it desirable to introduce so great an alteration of the principles which underlay the whole of the law without consulting the local authorities; and although they did not at the time make a report to the Council, as they thought the matter too uncertain for that, they had consulted the maritime Local Governments, and the answers received from them and the naval authorities under them led the Committee to believe that the classification proposed by Mr. Kittredge was a sound one and would lead both to the simplification and the efficiency of the law.

There was one other point which it was proposed to alter. At present, so far as regarded the rules for the measurement of space, and for proportioning the number of passengers to the size of the vessel, they rested upon the tonnage of the vessel. The Committee were informed that this was not a measurement applicable to the vessels engaged in this business, and that it was not by the tonnage that we should calculate such measurements. They had therefore provided that those measurements should be calculated entirely in superficial and cubic feet.

Those were the more prominent alterations that the Select Committee had made in the principles of the existing law and of the Bill as it was introduced. Of course, such alterations of principle had led to numerous alterations of detail; but he need not trouble the Council now with any further explanation, because there was no motion before them to take the Report into consideration. It was proposed that the Bill should be republished, and that criticisms from the Local Governments and all persons concerned should be invited, before it was again brought before the Council.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be published in the *Gazette of India* in English, and in the *Calcutta Gazette*, the

Fort St. George Gazette, the *Bombay Government Gazette*, and the *British Burma Gazette* in English and in such other languages as the respective Local Governments thought fit.

The Motion was put and agreed to.

CENTRAL PROVINCES LAWS BILL.

The Hon'ble Mr. Hobhouse also presented the Report of the Select Committee on the Bill to declare and amend the law in force in the Central Provinces.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble Mr. Hobhouse also introduced the Bill for the repeal of certain obsolete enactments, and moved that it be referred to a Select Committee with instructions to report in two months. He had explained at the last meeting of the Council what the object of the Bill was. It was one of the measures that we had taken up with a view to get a convenient edition of the Statutes and Regulations which applied to India.

The Motion was put and agreed to.

The Hon'ble Mr. Hobhouse also moved that the Bill be published in English in the *Gazette of India*, and in the local Gazettes of the several Provinces.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble Mr. Hope presented the further Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, the charge of which, he observed, had devolved on him in consequence of the departure for England of Sir B. H. Ellis. As the subject was an important one, and the *personnel* of the Council had changed considerably since the Bill had been introduced, he would briefly recapitulate its origin, and then explain in detail the grounds of the present recommendations of the Committee.

The Bill was first introduced by Sir B. H. Ellis in August 1873, and its scope was to place the so-called "Old Provinces" of the Bombay Presidency, where the Civil Courts are not excluded from taking cognizance of matters connected with land-revenue assessment, exemptions, &c., upon a level with the "New Provinces," where they are. By the "New Provinces" was meant Khandesh, the Deccan, and the Southern Mahratta Country, which were conquered from the Peishwa, together with certain other districts acquired by treaty,

exchange, lapse, &c. The "Old Provinces" comprised Gujarat, the Konkan, and Canara, and were only two-sevenths in area, and considerably less than half in population, of the whole Regulation Provinces of the Presidency. The reasons given for the proposed change were, that the Civil Courts had not the technical knowledge to deal with assessment; that they might in a particular, and perhaps ill-argued, case go counter to the entire policy of Government; that suits might so multiply as to be executively embarrassing and politically injurious; and that cases had actually arisen showing good grounds for this view. The exact extent to which jurisdiction should be barred was left for discussion.

In April 1874, the Committee's first Report was presented to the Council. It left the principle of the Bill unchanged, but recommended considerable alterations in its phraseology, chiefly in accordance with the North-Western Provinces Land-Revenue Act (XIX of 1873), and added provisions to secure sufficient rights of appeal to the Executive in lieu of the resort to the Courts, which was to be withdrawn.

After this Report, further discussion ensued with the Bombay Government as to the wording of the Bill, and the whole question had also to be reconsidered in connection with a proposal from them to consolidate the entire Land-revenue law of Bombay, which shortly took form by the introduction of a Bill into the local Legislature in January last. Then occurred the departure of Sir B. H. Ellis, followed soon afterwards by that of Messrs. Bayley and Dalyell, who were members of the Select Committee. Consequently, it was only recently that the subject could again be taken up.

The present members of the Committee, who were all new, with the exception of the Hon'ble Mr. Hobhouse, had examined the subject *ab initio*. They fully concurred as to both the necessity for legislation and the principle on which it was proposed to provide it, and had in their report merely recommended certain modifications in the scope of the Bill. In order to assist the Council in appreciating the position which they had taken, MR. HOPE would offer a short sketch of the history and present condition of legislation on the subject of land-revenue, as far as the Civil Courts were concerned.

The early Regulations of Bengal, Madras and Bombay left the acts of officers of the Government open to question in the Civil Courts to a considerable extent; but at the same time the language used was so vague, and in some cases even so contradictory, that it was difficult to determine what were

the exact limits intended by the legislators; and the fact that the Courts for a long series of years never practically interfered in technical questions connected with the revenue would seem to show that their powers were not in those days understood as having the extensive application which has of late been claimed for them.

In *Bombay*, the subjection of the Executive to the Civil Courts in revenue matters, whatever may have been its exact limits, which Mountstuart Elphinstone's revised Code of 1827 contained, was even at that date felt to be unsuitable to, if not dangerous for, the New Provinces; and the action of the Courts was therefore by that Code barred in those Provinces as regards the assessment and collection of the land-revenue, the administration of alienations from it of all kinds, and of grants and allowances not hereditary, village boundary disputes, and certain minor matters. This exclusion of the Courts continued in all essentials up to the present day, having been maintained by Acts XI of 1852 and II of 1863. The principle had also found further development through the whole Presidency in the Acts of the local Legislature: in Act II of 1866 (section 6), with reference to superior holders' rents, and in Act II of 1871, when it was applied to an assessed tax. As regards holdings for service, the law had since 1833, if not before, been that they were "resumable or continuable" at the pleasure of Government. In *Madras*, a definite and material restriction regarding ináms was placed on the Courts by Regulations in 1831 and subsequent years; while in matters of assessment they did not appear to have ever practically interfered up to 1864, when they were effectually excluded by the proviso in Madras Act II, that "no Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land-revenue payable to Government," &c. In *Lower Bengal*, the fact of a permanent settlement, the paucity of ináms, and the absence of village-officers, had rendered the question of less moment; but a special procedure for ináms existed, and in practice the Civil Courts had not often interfered in the subjects now under discussion. In *the North-Western Provinces*, including the permanently settled districts, the Courts had now been effectively barred by Act XIX of 1873, which however was but little of an innovation except in those districts. In *the Panjáb*, Act XXXIII of 1871 only gave legal form to the exclusion which already existed; and in *Burma* and *Oudh* analogous exclusion was understood to prevail. As regards the land-revenue, it might thus be safely said in general terms that in no part of India, except perhaps in Bengal and the "Old Provinces" of Bombay, did the Courts possess a power of

going into the question of the principle and amount of assessment; and even in those "Old Provinces" the exercise was only of recent date. As regards the entire class of State grants and alienations which were now technically termed pensions, Act XXIII of 1871 had consolidated throughout the Empire the exclusion of the Courts which the local laws had already more or less completely provided. Finally, the principle was applied to an assessed tax by the series of Income Tax Acts from 1860 downwards.

Thus, the whole course of legislation during the last half century had been gradually to withdraw from the Civil Courts to a greater or less extent, matters affecting the public revenue, whether in its assessment, its collection, the adjudication of alienations from it, or the remuneration of public servants connected with its administration. It was remarkable, MR. HOPE continued, that the position at which we had thus arrived in practice corresponded pretty closely with what was well known, and clearly acknowledged by historical and political writers, to be in theory the position of the State, at least in India, namely, that of being the highest authority in matters of taxation, vested with the prerogative and the duty of imposing and equitably distributing the public burdens, of conferring exemption from them to such extent and for so long as to it appeared expedient, and of adopting such measures as might be required effectually to ensure its orders and grants being understood and acted upon. He used the term "the State" in its widest sense, including the Legislature partly composed of non-official members. This prerogative of taxation was conspicuously asserted in section 2, clause 2, of Bombay Regulation XVII of 1827, which provided that nothing "shall affect the right of Government to assess to the public revenue all lands, under whatever title they may be held, whenever and so long as the exigencies of the State may render such assessment necessary." Were there any doubt as to this being, in fact, the common law of India, it would be removed by a glance at the Native States around us, where all the powers which MR. HOPE had mentioned were exercised without question. In the course of his own political experience, MR. HOPE had come across numerous instances in which the British Government had acknowledged this prerogative in such States. The latest was that of the Gaikwár. In the proceedings connected with the first Commission it was never, he believed, questioned that the Chief had full power to regulate his assessments, or to resume any or all grants of money or land, whether made by himself or his predecessors; but it was merely held to be inconsistent with good government and the preservation of peace and order to exercise this power in a harsh, capricious, or vindictive manner.

Such being the fundamental principle, it would be inconsistent and improper for Government to abandon its functions in favour of the Civil Courts, or any other authority. The establishment of Courts of Justice independent of the Executive was a most important element in the good government of a country. But it was essential to their healthy action that they should not have assigned to them a province alien to their peculiar capabilities. The maxim *ne sutor ultra crepidam* was no less applicable to them than to others. In a country where the jurisdiction of such Courts did not rest on immemorial custom, but was of modern introduction, it was necessary to define by written law what subjects should or should not be referred to them: and of that matter the State must, by the nature of the case, be the final judge.

What matters should or should not be so referred was the essential point in the present Bill. Here it was obvious that much depended upon the grade of cultivation and the political circumstances of the province to be dealt with. Where wealth and education were widely diffused, and private rights were defined with nicety and generally understood, the people might be left to protect themselves in the Civil Courts to a greater extent than where their ignorance would make the privilege a farce, or their turbulence might convert it into a source of danger. Consequently, we found the line drawn at different points in the various provinces of India, from Bengal at one extreme to Burma at the other. Considering the high advancement of the Western Presidency, there could be no doubt that the line should be drawn as high as possible, that is, that to the Courts should be referred all matters which were not in themselves unsuited for their cognizance. What matters the Committee deemed suitable could not be better stated than in the words of their Report:

"We consider that the true distinction between the province which is more proper to a Civil Court and that which is more proper to Revenue officers is to be found, not in the nature of the privilege claimed, but in the nature of the evidence by which it is supported. If the evidence consist of formal State documents, such as a law expressly creating or confirming an exemption, or a sanad, grant, judgment, or other formal adjudication affecting a particular property, then there can hardly be any dispute except one of construction, which is best remitted to a Civil Court. But where the question turns upon the validity of an alleged informal guarantee, or on the genuineness or authenticity of documents, though they may be said to emanate from a Native Government, or on oral evidence, and still more, when technical and special knowledge, historical research, or an accurate understanding of the political effect of political events, more or less distant and obscure, are indispensable, then we consider that the decision should rest with Revenue officers, and ultimately with the Government. For the Government is likely to have better information supplied to it; may select peculiarly

skilled persons as its advisers; is not dependent on the facts and arguments which the parties may happen either to supply or to omit; is more accustomed to deal with affairs on a large scale and on a moral basis; and alone has a direct political responsibility for its actions, and is at liberty to guide itself thereby."

He would next proceed to show the application of this principle in the amended draft of the Bill, as also to touch briefly on certain other matters now provided for in the latter. He did not propose to go through every section of the measure, but only to notice a few leading features. One point to which he wished especially to refer was to be found in the first section. The previous Bill provided, in clause (*b*) of that section, that the Act should not be applied in any degree whatever to towns and cities, for which there was a special law, namely, Bombay Act IV of 1868. The Committee considered, however, that there was no valid reason for treating matters which were really of a technical nature, such as assessment, boundaries, &c., differently in towns from elsewhere. It was, perhaps, true that the State had, to a considerable extent, forgone its rights in towns and cities, but at the same time it had very large rights remaining, and these rights were infinitely more valuable and as intricate to determine as, if not more so, than any similar rights which it possessed in the country. On the other hand, it so happened that a great portion of the questions which, as a matter of fact, did arise in towns were connected with exemption from land-revenue, and therefore these questions would, under the proviso in section 4 of the amended Bill, actually remain under the cognizance of the Civil Courts. In consequence of this it might be said that even any allusion to Act IV of 1868 was now superfluous. Probably it was so; but the Committee thought it better to let the Bill stand as now drafted, for the purpose of giving the public a more complete assurance that there was no intention of withdrawing from the Courts matters relating to exemptions of this particular class. He might also add that cases which were actually cases as regards the right of property, as distinct from occupation, would not be affected by the Bill. In view of these explanations, he trusted that there would be no reasonable ground for discontent at the extent of the change which had been made.

Passing on to section 4, that section was the key to the whole Bill. Clause (*a*) was simply a re-enactment of the existing Bombay law, which, as he had already mentioned, was likewise distinctly affirmed, as regards offices, by the Pensions Act. Clause (*b*) no longer contained, as it did in the first draft of the Bill, words referring to the question of the validity of an engagement made with Government for the payment of revenue; because, under the principle

which the Committee had adopted, an engagement being a definite and specified affair, might very well be left to be interpreted by the Courts. As illustrations of the sort of engagements which he referred to, he might mention Abkárí, Ferry, or other contracts which were given on a large scale in the Bombay Presidency.

The next clause (*c*) was one which provided for the collection of the land-revenue, and was a necessary corollary of the principle that the State must have the power of imposing what revenue it thought proper. Of course, to allow the State to impose what revenue it thought proper, and then to permit the collection of that revenue to be disputed by the Courts, would be altogether inconsistent. At the same time the Committee had reserved, by the important provisos under section 5, namely (*a*) and (*c*), which should be read together with this clause, a power to the individual to dispute in a Civil Court whether the amount which had been demanded of him was really correct, and also to allege that he was not the person from whom the demand ought to be recovered. This provision was more favourable than the law of Northern India, where the money must be actually paid under protest to admit of a suit being filed. As regards the second sentence in clause (*c*), section 4, about setting aside sales in consideration of irregularities or mistakes, the Committee had allowed the previous phraseology to stand, because the Bombay law on the subject of sales, which, though perhaps, quite sufficient, in reality, for the protection of the interests of the subject, was not at present very clearly enunciated, would be amended in the new Code now before the local Legislature.

Next as to clause (*d*). This should be read in connection with clause (*b*), section 5. The reason of this exclusion obviously was that the Government could not be dragged into Civil Courts in matters in which they had no concern merely at the beck and call of private parties, or compelled to keep their records in any particular way which the Courts thought best. At the same time, there could be no doubt that it was fully contemplated by the Bill that any decrees of Court in private matters which were passed, would, in practice, be fully recognized by the officers of Government. Clause (*e*), which reserved the question of the distribution of land on the partition of estates, similarly proceeded on the principle that the Executive Revenue Officers were the only competent judges of what were the relative values of different parts of a field or an estate, and alone fit to decide on similar technical matters.

Clause (*f*), again, must be read in connection with the proviso which followed almost immediately after it, and which he need not dilate upon, as

it spoke for itself; but he might notice that the sentence under (*f*), with regard to setting aside any cess or rate authorized by Government, was consistent with the principle which he had already pointed out as being established in the case of the Income tax, and in Act II of 1871. With regard to the other sentence under the same head, respecting the occupation of waste or vacant land belonging to Government, he might point out that the words "belonging to Government" were put in to show that it was not intended by this to bar suits against Government where a man claimed a piece of land as his own private property, but merely to bar vexatious suits regarding land admittedly belonging to Government.

He had already, in the course of his remarks, said all that was necessary regarding section 5. Sections 6, 7, 8 and 9 were merely a re-enactment of the existing law now scattered in a variety of different places in the Bombay Regulations and Acts. This re-enactment had been thought desirable in order to put the whole of the provisions about the jurisdiction of the Courts in one place, and so to let people know fully and clearly the remedies which they possessed against any illegal action on the part of Government officers. As to sections 10, 11 and 12 which related to appeals, they owed their origin to a desire to secure a thorough appeal up to the Executive Government in all cases in which, owing to mistake or accident, the right might not be found in the present law, which right of appeal was the more necessary at present, because we were taking away the resort to the Courts which had hitherto existed. But at the same time the Committee had considered it only reasonable to preclude the individual from resorting to the Courts until he had exhausted all the rights of appeal which the law allowed. Then followed three more sections, 13, 14 and 15, which it had been thought advisable to provide with a view to obviating suits against Government being prolonged or inefficiently tried, and to ensure any case being promptly taken up, and if necessary referred to the High Court on the question of jurisdiction. He need scarcely enlarge on the political and executive inconveniences which ensued when a point was raised with Government, and after three years or more consumed in litigation, it was perhaps eventually ruled that the Government were right, or even that the Court should never have taken up the question at all.

The concluding section of the Act had perhaps already been sufficiently explained by Sir B. H. Ellis. A certain section of a Bombay Regulation was inadvertently repealed in September 1871, by the Land Improvement Act, and

it was now proposed to reinstate this section, giving powers for the recovery of advances made by Government for rebuilding villages which had been swept away by inundation, or houses destroyed by fire, purchasing bullocks or seed, and similar objects which could not come within the terms of the Land Improvement Act.

In conclusion, he had only to point out that, while the effect of the proposed changes would be to take away some of the powers hitherto enjoyed by the Courts in the Old Provinces of the Bombay Presidency, it would also, on the other hand, admit them to a very large jurisdiction in the New Provinces never hitherto exercised. Now, with regard to that, it was a remarkable fact, and worthy of notice, that in the whole of the petitions presented to Government in connection with this Bill, it was nowhere seriously attempted to urge or prove that the exclusion which actually existed in the New Provinces had been productive of any harm. Therefore, he thought, we might fairly argue that if the great exclusion which at present existed in the New Provinces had produced no harm, the very much more limited exclusion which it was now proposed to introduce in the other districts would not be productive of any harm either. It was said in one of the petitions that the Old Provinces had hitherto thriven under the shadow of the Courts. Well, with regard to that it might be remarked that the New Provinces had also thriven without the shadow of the Courts. However, as a matter of fact, the truth lay in this, that the Courts had scarcely ever interfered in revenue matters in the Old Provinces till of late years, and that probably whatever thriving was to be found in these Provinces which was not attributable to the ordinary progress of society was attributable to the conscientious liberality of the Revenue Officers themselves, who he knew, from his own experience, and otherwise, habitually decided, and had decided thousands of cases, in favour of the subject, which, if they had been referred to the Civil Courts, must, under the rigid rules by which the Courts were conducted, have been decided in favour of the Crown.

The proposed Bill thus appeared to be based upon principles which were just and liberal, and which had been approved, as Sir B. H. Ellis mentioned, by no less an authority than the late Chief Justice of Bengal, Sir Richard Couch, who was peculiarly well qualified to pass a judgment upon a Bombay question. It also had the approbation of other high legal authorities. He had, therefore, every confidence that the Bill would be approved by this Council, and that it would bring about a satisfactory termination of the difficulties which had led to its introduction.

The Hon'ble Mr. Hope then moved that the Bill and the further Report of the Select Committee be published in the *Gazette of India* in English and in the *Bombay Government Gazette* in English and such other languages as the Local Government might think fit.

The Hon'ble Mr. Hobhouse said—"As this Bill bears upon the administration of justice, and as it has been my duty to pay attention to some of the questions it deals with, I should like to make a few remarks on the shape it has now assumed; the more so because, as Mr. Hope has observed, the casualtites affecting our Committee have been so severe that I am the only survivor of the party. I do not propose to speak of anything but the most general principles involved in the measure. There are many details of it, especially among those additions which have been made by way of consolidating the law, which require an intimate practical acquaintance with revenue work to understand properly. I can only dimly form an opinion on such matters, and certainly should not presume to speak of them in this Council.

"Now the Council are aware that there was a good deal of objection made in the Presidency of Bombay to this Bill in the shape in which it was introduced: and I have been re-perusing divers petitions and pamphlets which have reached our hands, and which though numerous are mostly of one type and have evidently proceeded from only two or three sources. Petitions, however, must be estimated not so much by their numbers as by their contents, especially when the subject they deal with is one that cannot be judged of upon a superficial view, but requires a good deal of study, training and special knowledge to understand.

"Of the contents of the petitions I wish to speak with all respect. I do not think that the petitioners are by any means wholly wrong. They have indeed weakened their position by exaggerations, and the greater part of their arguments is rested on the erroneous idea that the Bill as introduced was intended to withdraw Revenue officers and their proceedings wholly from the control of the Civil Courts. The case of the petitioners would have stood better if they had set themselves to study the Bill and had worked out the problem how far it would actually interfere with the jurisdiction they wish to preserve. In presenting the former Report of the Committee our late colleague Sir Barrow Ellis mentioned that one of the pamphlets published on this subject contained a list of twenty-five cases which Civil Courts had decided against Revenue officers. The implication of course was that all such cases would be withdrawn from the

Civil Courts by the Bill, and that much injustice would be left unredressed. On examination, however, he could only find that two cases out of the twenty-five would be withdrawn from the Civil Courts by the operation of the Bill. I also have examined the cases and bring out the same result. And I add that the two cases in question are such as should be kept in the hands of the Revenue authorities.

"At the same time, and all misapprehensions and exaggerations notwithstanding, I think that some fault was justly found with our Bill as we framed it at first. If it had been carried in that shape it would have excluded from the cognizance of Civil Courts some classes of cases which I myself think ought to fall within it. And I believe that as it has now been modified under prolonged discussions and under two operations of the Select Committee, it represents more accurately than at first the most advantageous dividing-line between those matters which should, and those which should not, be treated as ordinary matters of litigation.

"It is true that the measure is still very far from according with the views of the petitioners. They propose to keep the law of the old provinces of Bombay just as it is, and to assimilate the law of the new provinces to it. Now I will just show to the Council what sort of a law it is which we propose to change and others desire to keep unchanged.

"The law is contained in Regulation XVII. of 1827, and, as was customary with the laws of those days, it mixes up with matter proper for legislation a quantity of directions to Revenue officers which would now be kept off the enactments and left to executive orders. I will read the passages which are germane to the present purpose:—

"'II. *First.*—All land, whether applied to agricultural or other purposes, shall be liable to the payment of land revenue to Government, according to the established principles which govern the assessment of that description of land to which it belongs, except such as may be proved to be either wholly or partially exempt from the payment of land revenue, under any of the provisions contained in Chapters IX. and X. of this Regulation.

"'*Second.*—Provided, however, that nothing contained in the preceding clause, or in the enactments therein cited, shall be understood to affect the right of Government, to assess to the public revenue all lands, under whatever title they may be held, whenever and so long as the exigencies of the State may render such assessment necessary.

"'IV. *First.*—When there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government. . . . . .

"'*Second.*—When there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.

"'IX. *First.*—The Collector's decision upon any question arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

"'*Second.* But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.'

"The effect of all this is that although the assessment is to be fixed at the discretion of the Collector, that discretion may be challenged before a Court of Law: and if the discretion of the presiding Judge happens to be something different, the decision of the Collector must be overset. There is not a single question which can arise in the course of a settlement, whether it relates to the fertility of soils, or the prices of produce, or any other matter if any there be even more impossible for a Court of law to investigate, which may not be taken out of the skilled hands that can deal with it and carried before a tribunal that knows nothing about it. The Civil Judge may even control the broadest principles that lie at the bottom of an assessment. He may disapprove of the portion of the assets which the Government think it right to take. He may think that the assessment ought to be governed by prevailing rates of rent instead of the productiveness of the soil and the rates of prices, or he may think the contrary. He may even decide that the exigencies of the State are not such as to warrant the imposition of such an assessment as the Collector has decided to impose. In all these cases the decision of the Revenue officer is expressly made disputable in a civil action. In short, the whole land-revenue system of the country is by this Regulation made subject to the control of the Civil Courts.

"Now we are told that this was the deliberate policy of a great statesman, Mountstuart Elphinstone; that it is the fundamental land-law of the country; and that to alter it will be to take away the feeling of security which the people have against the encroachments of an irresponsible executive. I say on the contrary that no system of revenue could possibly stand such a strain, and least of all such a system as that of the Indian land-revenue, where the amount taken from the cultivators from time to time is, and always has been, and necessarily must be, at the discretion of the Ruler, until a permanent settlement is made. That Mountstuart Elphinstone did not intend to abandon this discretion is

manifest from the passages that I have read. What precisely he did intend, how far he contemplated that matters connected with land-revenue should be contested by ordinary litigation, it is impossible to say, for the Regulation contradicts itself in more places than one. But one thing we may be pretty sure of, and that is that nobody would be more surprised than Mountstuart Elphinstone himself to find that, owing to unskilful processes in framing his law, the discretion of the Ruler might be exercised by the Civil Court, and further that, owing to administrative changes which he could not foresee, that Civil Court might consist of professional lawyers.

"When we set up an income tax we do not allow every individual to dispute his liability in a Court of law; we take care to keep the decision in the hands of special officers, namely, the Revenue officers of the Government. And yet the amount of income tax is not discretionary with the Ruler, but is fixed by law; the controversies about it turn on the amount or nature of a man's income, facts which may be proved by ordinary evidence and handled by ordinary legal methods just as well as any other disputes about matters of fact. But even in such a case as this it is felt that the Treasury would be imperilled and the public service seriously embarrassed if every difference between the collector and payer of taxes could be the subject of a regular lawsuit.

"On every ground then, both because it is a public necessity that the greatest source of Indian revenue, the land-revenue, should be collected without vexatious litigation, and because its amount turns on considerations which are familiar to Revenue officers and are almost incapable of treatment by the methods of Courts of law, it is desirable that such Courts should not interfere in the kinds of question to which I have been referring. In parts of the Presidency of Bombay they can so interfere. In the greater part of the Presidency they certainly cannot; throughout the greater part of India they certainly cannot; and I believe they cannot in any other part of India. In truth, in the district governed by the Regulation of 1827, the extent of jurisdiction given to the Civil Courts for a long time escaped observation: but we are told that there has of late years been an increasing tendency to dispute the decisions of Collectors in Courts of law. Recent discussions have now made people aware that they may litigate any question they please, and it is certain that unless we alter the law, both we and the Civil Courts have serious trouble before us.

"I will just give the Council an illustration of the mode in which circumstances draw one question after another into Courts of law when the jurisdic-

tion exists; and it is an illustration of the greater value because it also shows how the Judges themselves naturally feel—as I should feel if I were one of them—the uncongenial nature of the functions which our law forces on them.

"I hold in my hand the report of a case decided in the Bombay High Court, entitled *Govind Vinaydk Gadre* v. *The Collector of Ratndgirt.* The point was this. A man had his assessment raised. He contended that for the current year he was not bound to pay the increased amount because he had not received a certain notice, and he filed a plaint to enforce his contention. The jurisdiction was disputed by the Collector. The Court's judgment on the objection was as follows:—

"'It has been strenuously argued before us that the plaintiff, if injured by the act of the Collector in ordering the levy of the new rates from him, should have appealed to the superior Revenue authorities and to Government before he had recourse to the Civil Courts, and that as he had not done this, his suit should not have been entertained. We are of opinion that it was competent to the plaintiff under section 9 of Regulation XVII of 1827, if aggrieved by the Collector's decision directing him to pay increased assessment, to file an action in the Civil Courts, whether he applied for redress to Government or not. It was not the act of the Survey Officer fixing the new rates of assessment, subject to the sanction of Government, of which the plaintiff complained, as the Joint Judge appears to have considered. It was the act of the Collector, in directing the levy of the new rates from the plaintiff during the fiscal year 1867-68, to which the plaintiff objected; and the law we have cited has expressly given him the remedy to which he has had recourse.'

"Now, what does that mean? It surely means that in the opinion of the Court the discretion of the Survey Officer in fixing the assessment was a sort of question which could not properly be argued before them, though the smaller and more definite question about the act of the Collector in giving or withholding notice was expressly submitted to them by the Regulation. The former point was not the one to be decided, but that was obviously the way in which it struck their minds, though what they said was extrajudicial.

"Well, but then comes the case that was described by Sir Barrow Ellis at this table; and there the very principles of assessment were brought into question. The plaintiff's contention there was that the Ruler was taking too large a portion of the assets. Did the Court then treat the question as one not arguable before them? Did they say that the case supposed in the former judgment as one which ought not to come before a Civil Court had now arisen and therefore they would not entertain it? They did not say so, and they could not say so. They entertained the case, as they were bound to do, and decided it on the evidence

before them. And inasmuch as the Collector had relied entirely on the lack of jurisdiction, as it had not occurred to him that he was bound to defend the principles of his assessment to the satisfaction of the Judges, he had given no evidence to show that those principles were right, and so the decision necessarily went against him.

"I learn from the papers laid before the Committee either that fault has been found with this decision, or at least that it is supposed that the present measure was dictated by the feeling that the Court had done wrong. All I can say is, that I find no fault with the decision. If I did, I should say that the remedy was by appeal, not by this measure. The learned Judges seem to have acted in strict accordance with the duty cast upon them by the law. What I say is, that the law is in fault; that it bears hardly on all concerned; that it is not right towards the public or towards our Revenue authorities that they should have to vindicate the principles of their assessments before Courts of law, nor right towards our Civil Judges to saddle them with such a jurisdiction.

"Now if I have carried the Council along with me, they will, I am sure, concur with the Committee in thinking that the most sweeping and by far the most important clause in this Bill should be maintained: I mean that which is headed 4 (*b*) and which excludes from the cognizance of Civil Courts objections—

> "'to the amount or incidence of any assessment of land-revenue or cess or rate authorized by Government, or
>
> "'to the mode of assessment, or to the principle on which such assessment is fixed.'

"The provision which comes next in importance is that which is headed 4 (*f*). It excludes from the cognizance of Civil Courts the following matters:—

> "'(*f*) claims against Government—
>
> "to hold land wholly or partially free from payment of land-revenue, or
>
> "to receive payments charged on or payable out of the land-revenue, or
>
> "to set aside any cess or rate authorized by Government.'

"It must be obvious enough that nothing requires to be more carefully watched than a claim of exemption out of a general system of contribution to the public necessities. It is a thing constantly lost sight of, though it is but a truism, that an exemption to one only means an additional burden to his neighbours. We have an analogous case in our own history. Tithes were imposed by common law for important national objects, the maintenance of churches,

clergy, and the poor. They were charged upon all land except land dedicated to the clergy themselves. And with regard to other lands our common law would not hear of such a thing as an exemption. Every acre of land in lay hands was forced to pay tithes, and claims of exemption were absolutely disallowed by common law. In India, our law has not been so strict, I suppose on the ground that the Rulers of the country have been in the habit of rewarding services by granting exemptions of this kind. But the public importance of tithes cannot compare with the importance of that which is the back-bone of the fiscal sytem of India. And inasmuch as it was in accordance with native principles to consider grants by the Ruler couched in indefinite terms or in terms importing a perpetuity, to be revocable at his will, the Ruler always held in his own hands the means of correcting the weakness or carelessness or improvidence of his predecessors or himself. We are much more tender about disturbing any existing state of things; but we have to be especially careful to see that the public at large are not made to suffer by the mere circumstance that particular lands have in fact been held as exempt, or have been assessed at the same rate, for long periods of time.

"Now enquiries into such cases as these require an accurate acquaintance with the history and customs of the country, and their decision is often justly affected by political and social considerations. A Court of law is simply dependent upon the facts which the parties happen to put in evidence before it, and it must draw the logical inference from those facts, whether for or against the individual claimant, without any reference to or responsibility for the political consequences of its decision. *It would be a very difficult thing to get a complicated case of this kind properly presented to a Court of law, nor do* I think that such a tribunal is so likely to come to a just and fair decision as an officer or commission skilled in the very subject-matter.

"A case has recently occurred which illustrates these remarks very strongly. The inhabitants of a considerable tract of country in Canara have claimed what is in effect a permanent settlement of the land-revenue. They cannot point to any Regulation or formal act of Government; but they rely on promises alleged to have been made by Sir Thomas Munro, on certain kowls or leases alleged to have been granted by British officers in charge of the district, and on the allegation that their assessments have in fact been unchanged for a great number of years. I am speaking of the case at great disadvantage, because I have not read the judgment of the Court. But I have read a memorandum upon the case by the officer charged with its conduct,

and I find that its decision involves an accurate enquiry into the history of the country and its administration from times anterior to Hyder Ali down to the present moment. Indeed on some points the investigation goes back upwards of five centuries; though here it rests upon materials which appear to have been in the hands of Sir Thomas Munro, but which now have disappeared. The Government have been exposed to nearly one thousand lawsuits instituted by different landholders, each claiming a reduction of his assessment on the grounds I have mentioned. Now we have no reason to complain of the treatment of the case, for the decision has gone in favour of the new and increased assessment. But I say that such a matter as this, even independently of its great magnitude and consequent political importance, is not a proper kind of case to bring before a Court of law. And it is only a foretaste of what will infallibly happen on a still larger scale if we leave our Courts of law to be the ultimate arbiters of all revenue questions.

"There are, indeed, grounds of exemption as to which, if a dispute arises, I would sooner see it settled by a Court of law than by the Revenue authorities. If there is a formal specific bargain between Ruler and subject, or in other words between the public and an individual; if that bargain has taken the form of an enactment or a written agreement or grant; if there has been a judgment recorded in favour of an individual against the public; such cases as those resemble claims regarding private property and turn on the same kind of evidence and reasons as ordinary lawsuits. Such cases we propose to leave to the decision of Courts of law, and we have made an important modification of the Bill for that purpose. But with regard to claims of exemption such as that which is made in Canara, I feel certain that the common weal will be best consulted by leaving them in the hands of the Revenue authorities.

"Now I have dwelt upon the most general and important features of the Bill, and in doing so have noticed some general arguments used against it. Before I conclude I wish to notice one more of these arguments, a very favourite one it seems, because I find it repeated frequently in the petitions. It is said that a man ought not to be judge in his own cause, and we are told in one of the petitions, a very well expressed one by the inhabitants of the Kallian Taluqa, that the Legislature has from time to time affirmed this fundamental principle of all law as regards the older districts of the Presidency. I have no doubt that both Legislative and Executive have affirmed the principle as regards the whole Presidency, and I hope the time will never arrive

when either will affirm the contrary principle; but it is a different question whether such a principle is applicable to the case before us.

"In one sense a Collector who has passed an original decision is interested in maintaining one side of the case. He has committed himself to the view that he thought right, and then, though his private interests are not concerned in the matter, he is no longer an impartial judge on the question whether his view is right or wrong. But how does that consideration apply to the Commissioner who sits in appeal from him, or to the Governor in Council, who sits in ultimate appeal over all? Indeed, how does it apply to the Collector himself in framing his original judgment? We have been told to-day, and I have often been told before, that the comfort of the local officers is so directly affected by the contentment or discontentment of those among whom their lives are spent, that they have a strong motive for indulgent dealings with them. In fact the Government and its officers are only the representatives of the public, and whatever interests the public at large have, they have. They are interested in seeing that nobody escapes his fair share of the public burdens, and they are also interested in so dealing that people shall be contented, and not think themselves unjustly treated. The latter of these interests is quite as strong as the former. I can remember two important cases in which controversies of this kind have come up to the Government of India; and in each of these cases the latter class of considerations was quite as strongly advocated as the former, and in each case it was the prevailing element in the decision. In the case of private litigants all their passions and all their pecuniary and private interests are bound up in one issue of the suit; they have no balance to incline them to the other side. That is the reason which underlies the maxim that a man shall not be judge in his own cause. But to put the case between the officers of Government and the payers of land-revenue as one in which the former have either their passions or their pecuniary interests concerned all on one side, is to apply an excellent maxim to a very bad use.

"If indeed the maxim were applicable to matters of public revenue, if to allow the Executive Government of a country to assess its revenue uncontrolled by Courts of law really be to make a man judge in his own cause, then the maxim certainly is not a fundamental principle of all law. I have instanced the case of income tax. I might instance others, and I have shown that in India the assessment of land-revenue has always been and must be discretionary with the Ruler so long as it remains variable. And so far from its being true that as regards matters of public revenue the Legislature has been

constantly affirming the maxim in question, I hold in my hand another petition in which it is made a subject of remark and complaint that exactly the opposite course has been taken by Government. I read from the petition of the Ahmedábád Association the following sentence:—

"'Your Excellency's petitioners would conclude their prayer with the remark that this Bill is a continuation of a series of legislative enactments which, beginning with the Huck Act of 1830, and including in its range the Inám Summary Settlement and other Acts, ended with the Pension Act of 1871, and which has had for its object the gradual abridgment of the power of the Civil Court in matters of revenue and the extension *pro tanto* of the powers of the executive officers.'

"The list given is not quite correct, for some of the enactments referred have nothing to do with the point; but doubtless the extreme and manifold public inconveniences flowing from the unskilful frame of the Regulation I have been explaining to the Council have cropped up from time to time, and have been met by various enactments of which I hope this will be the last.

"I will only advert to one other topic. The objectors to the Bill say that the time has come for extending to the new provinces of Bombay the benefits of the law that applies to the old ones. At present there is a sharp territorial division, the old provinces being subject to the unbounded jurisdiction of the Civil Courts the effect of which I have been describing, while in the remaining parts the jurisdiction of the Civil Courts in revenue matters is totally excluded in the terms used by the Bill as it was introduced. We have now modified the Bill so as to preserve the jurisdiction of Civil Courts over a larger legal area; we propose to give the same law to the whole Presidency, and that will extend the jurisdiction of the Civil Courts into the new provinces where now they have none. So far the views of the petitioners are met by the alterations made in the Bill: but then the new jurisdiction given will be of reasonable instead of unreasonable extent.

"I think that the foregoing remarks will have made it clear that the present wide and vague jurisdiction of the Civil Courts must be in some way curtailed, and that the only question is where to draw the line. The Committee have set themselves to consider solely what matters it is most for the public interest to keep in the hands of Revenue authorities, and what to leave to ordinary litigation. When that dividing-line is drawn to the satisfaction of the Legislature, there appears to be no reason now existing why it should not apply to the whole Presidency."

His Excellency THE COMMANDER-IN-CHIEF said that a few remarks suggested themselves with regard to the Bill. Of course from his long residence in India he must be fully sensible of the absolute necessity for the unfettered power of the Executive in all matters relating to revenue. He should like information as to the particular points which were to be transferred to the jurisdiction of the Civil Courts in the new provinces. It seemed to him that the extension of the jurisdiction of the Civil Courts in revenue matters might entail upon all those concerned in litigation the transfer of their business to great distances. Perhaps Mr. Hope would describe some of the cases that would be transferred to the Civil Courts in the new provinces.

The Hon'ble MR. HOBHOUSE remarked that in page 3 of the draft Bill a proviso would be seen under heads (*h*), (*i*), (*j*) and (*k*), followed by some illustrations of cases, which would not fall within the Civil Courts.

The Hon'ble SIR WILLIAM MUIR said that, as he understood him, His Excellency the Commander-in-Chief wished to know how far the proposed Bill effected a change in the present law, and to what extent suits, which were now triable in the Revenue Courts, would be transferred to the Civil Courts.

His Excellency THE COMMANDER-IN-CHIEF observed that the question naturally arose from the remarks of Mr. Hope to the effect that the new provinces had gone on and prospered extremely well without the shadow of the Courts.

His Excellency THE PRESIDENT said:—"I think that the question asked by His Excellency the Commander-in-Chief is answered by a reference to the proviso attached to section 4 of the Bill. It may be found advisable after the Bill has been published, and when we come to discuss it again, to take into consideration the objections which His Excellency has raised.

"With regard to the general scope and object of the measure, I wish to say that it has been for a considerable time under the anxious consideration of the Executive Government. It is a subject not without difficulties, and upon which the Government of India have had a lengthened correspondence with the Government of Bombay.

"The Government of India believe that the main provisions now contained in the Bill are just, and, moreover, that they are necessary for the

purpose of avoiding the doubts and difficulties which the present state of the law involves in regard to the assessment and collection of the land-revenue in the Presidency of Bombay.

"Mr. Hope's review of the history of the relation of the Civil Courts to questions connected with the land-revenue in different parts of India was very interesting, and he has also expressed his opinions upon the relative functions of judicial tribunals and of the Executive Government in these and similar cases.

"I do not desire to enter now upon the discussion of so large a question as that, but I wish to express my entire concurrence in the statement which has been made by Mr. Hobhouse of the present condition of the law, as we understand it, in the Bombay Presidency, and of the reasons which have influenced the Government of India in deciding to recommend the limitation of the powers of the Civil Courts contained in this Bill to the consideration of the Legislative Council.

"The Motion which I have to put to the Council is that the Bill, together with the Report of the Select Committee, shall be published in the *Gazette of India* in English, and in the Bombay Presidency in English and in such other languages as the Local Government thinks fit.

"It is possible that when the Bill has been thus published points may arise which we have not yet taken into consideration. I am satisfied that, as has hitherto been the case, the Council will give every consideration to any suggestions that may be made by persons conversant with the somewhat complicated matters of detail treated in the Bill, and that, if necessary, such modifications will be made in its provisions as, upon consideration, may be found to be expedient.

"Mr. Hobhouse has shown in his speech to-day that the Government have not neglected to consider the objections which were raised to the Bill in its first shape, and that considerable modifications have been made in consequence; but, at the same time, it appears to me that the main principle of the Bill cannot be abandoned, and that it is necessary that it should be passed into law without any essential alteration."

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the repeal of certain obsolete enactments—The Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Dalyell and Hope and the Mover.

The Council then adjourned *sine die*.

SIMLA;
The 13th October 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla.—L. D.—23-10-75.—230.