ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 13

Jan to Dec

1874

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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.

1874.

WITH INDEX.

VOL. XIII.

Published by the Authority of the Governor General.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1875.

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

The Council met at Government House on Tuesday, the 10th February 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. F. D. Inglis, C. S. I.
The Hon'ble Rajá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
The Hon'ble B. D. Colvin.

ACT X OF 1859, &c., EXPLANATORY BILL.

The Hon'ble MR. HOBHOUSE in moving that the Report of the Select Committee on the Bill to declare the true meaning of Acts X of 1859, XIV of 1863 and XXII of 1872, be taken into consideration, said:—"I fear that I shall have to make some lengthened observations on some of the points mentioned in the report, and I will, therefore, bespeak the patience of the Council at the outset. When leave was given to introduce this Bill, I dwelt in some detail on the natural history of Collectors, Deputy Collectors, Tahsíldárs, Settlement Officers with judicial powers, Settlement Officers without, and their genera, species, varieties and characteristics. In order to save repetition, I shall beg to refer occasionally to my former speech, and hope that the Council may recollect enough of it to follow me now.

"The first circumstance which I have to mention to the Council is, that since this Bill was introduced, there has been a great change in the law. When I introduced the Bill, the several enactments on which it operates were still in unimpaired force. But since that time His Excellency the Viceroy has seen fit to give assent to the Rent Bill for the North-Western Provinces, which repeals Act X of 1859, Act XIV of 1863 and Act XXII of 1872. Then, per-

haps, you will ask me 'where is the necessity for your Bill' ? I am sorry to say that the necessity for the Bill exists in undiminished force. So long as the Rent Acts were unrepealed, the Bill had two faces, like the God Janus, one looking forwards and one backwards. It has now only that one which looks backwards. But the Council will bear in mind that as regards all suits pending at the time of their repeal, the repealed Acts are still operative, and that the present measure was called for quite as much by the necessity of supporting what had been done as of providing for the future. It still remains the case that unless we interfere, the tempest of idle litigation, which I endeavoured to describe on a former occasion, will rage unchecked, and will cause great confusion. Doubtless, as a general rule, when a statute is repealed, for it the draftsman's occupation is gone. But it is not so here. We still have to protect the myriads of decisions which may be called in question, and the thousands which have actually been called in question; and we must bestow as much care as ever to make our work sound and capable of bearing any strain that may be laid on it.

"The alteration of the law is however one reason for a change, which doubtless the Council have observed, a change in the title of the Bill. Instead of calling it a Bill to declare the meaning of certain Acts, we have called it a Bill to quiet certain titles; and the new appellation represents more accurately its present scope and aspect.

"There is also another reason for the same change which I will explain. I mentioned previously that a number of appeals had been presented to District Judges for the purpose of quashing decisions of Deputy Collectors, on the ground that they had no authority. The High Court have acted with public spirit as becomes them, and have joined with the Local Government in endeavouring to stop the progress of such appeals. Still either from the speed with which the appeals have been heard, or from other causes, a number of appellate decisions have already been given. One case we happen to know in which a District Judge has overturned a number of Deputy Collectors' decisions on the ground that he was bound, after Pancham Singh's case, to hold that a public notification was necessary to confer powers on a Deputy Collector, and that one who had only received powers by means of a private letter from Government was not qualified. There may be many other similar cases, and in fact the Local Government believes them to be very numerous, though the impossibilty; of accurately ascertaining in reasonable time what has happened will be obvious to the Council. Now, our object is to do justice by stopping litigation. The hardship from which people are suffering is, that

the decrees given them by the officials sent by the Government to decide their disputes, have been pronounced to be nullities, and so have been take away from them. If each of these decrees has to be got back again by the institution of a fresh appeal in the High Court, it is a serious hardship on the rightful owner of it; and if that hardship is multiplied many times it becomes a serious public evil.

"For these reasons we have introduced into the preamble a recital to the following effect:—

"'And whereas it is believed that many decisions passed by officers engaged in making or revising settlements have, since the dates of the holdings aforesaid, been declared or treated by certain Appellate Courts as void for want of authority in such officers, and it is expedient that the parties concerned should not, by reason of such declaration or treatment, find it necessary or expedient to appeal from the decisions of such Courts';

and have followed it up by the enactment which is contained in the present section 8 of the Bill, providing that in such cases the original decrees shall be restored without appeal.

"The Council will bear in mind that we are not interfering with any decision made on the merits of the case. That would be a proceeding which a legislative body would be justified in taking only by the very rarest combination of circumstances; at all events it is one quite beyond the range of our contemplation. We are dealing solely with objections to the title to the Judge, and are saying nothing more than that the suitors shall find that he who appeared to them to be the Judge really was such. The effect will be (taking an enhancement suit by way of example) that a zamíndár who has obtained a decree from the Deputy Collector will be entitled to the rent decreed to him, without the necessity of appealing to the High Court, notwithstanding that a District Judge may in the meantime have declared the original decree invalid for want of authority in the original Judge. Such an operation as this seems to me most proper for a legislative body, one of whose chief concerns should be to see that the time, money and temper of the people are not expended in wrangling over formalities.

"I have not read to the Council the words of section 8, because one of the Judges of the High Court, Mr. Justice Turner, has done me the favour to write me a letter containing some useful suggestions about it, and I propose with the permission of His Excellency the President to move an amendment of the Bill on this point.

"I now pass to an important document with which our report is principally concerned, namely, a letter addressed to the Legislative Department by direction of the High Court of the North-Western Provinces, and embodying certain views and suggestions of that learned body. We are indeed very glad to learn the opinions of the Judges even in this shape and at this stage of the case, but I must say that if some of the opinions here expressed had come earlier and in a judicial instead of an extra-judicial character, they would have produced more desirable result in a way involving a less amount of labour and friction. The Government was exceedingly anxious to obtain a judicial review of the very brief and embarrassing judgment which I have read to the Council. They hoped that, whether the decision stood or fell—indeed whether the case was re-heard or not—the Court being made aware of the great difficulties attending their judgment, would take an opportunity of expounding its true meaning, and so removing all difficulties except such as were necessarily inherent in the convictions they ultimately held to. It was deemed both most respectful to the Court, and most advantageous to the public, to apply for a re-hearing of Pancham Singh's case. And if one may argue from what has been said off the Bench to what might have been said on it, this letter shows that our anticipations were not unreasonable. I collect for instance, though it is not stated in express terms, that the Courts are not disposed to abide by the judgment in Baladeva's case concerning the retrospective effect of a declaratory Act. They admit that a general power of referring suits to Deputy Collectors exists in Collectors by virtue of section 150 of Act X of 1859. They agree that it was never intended to deny that, under Act XXII of 1872, Deputy Collectors, whether invested with special powers or not, had a general jurisdiction over rent-suits. They agree that a public notification is not required by law for the exercise of powers under section 8 of Act XIV of 1863. And they throw overboard the conclusion that section 10 of Act XIV of 1863 compels the same officer to hear an enhancement suit from beginning to end; and with that conclusion, as appears to us, goes the whole argument founded on that section. Now, all these things, especially the first, are most important comments on the text of the two judgments we are dealing with. If delivered from the Bench, they would alter that text very substantially. The first one would enable us to put our Bill into the more simple and usual shape of a declaratory Act, the others would reduce to a small compass the points on which a declaration by the legislature is required. All these things might have been effectually said either upon the motion for re-hearing consistently with a refusal to re-hear, or upon a re-hearing consistently with a refusal to disturb the decision. Unfortunately for us, and as I think for the public, the

Division Court before whom this question came, not only thought themselves bound to refuse a re-hearing, but in refusing it confined themselves to the single remark that the application was out of the regular time, and that no sufficient reason was assigned for delay. The judgments therefore stand precisely as they were delivered.

"Now, as I have several times pointed out, our object was to quiet titles and to stop litigation. We knew that thousands of appeals were pending before District Judges. We knew that the District Judges must obey what they found laid down by the High Court. Our only guide to what the High Court had laid down was the text of the two judgments in question, and the Minute by Mr. Justice Turner which is referred to in our Report. From these we concluded that unless we extracted the rulings which we thought wrong, and said distinctly that they were contrary to Law, we should fail in our object of stopping litigation. Hence the necessity of detailing the points on which we wish the law to be clear; hence the necessity of framing our Bill, so as to make it a distinct reversal of the rulings; and, inasmuch as it would not become this Council to declare that people are wrong unless they think so, hence the necessity, which unhappily falls on my shoulders, of assigning reasons why such a declaration should be made.

"If I may here digress for a moment to speak of myself, I would say that I have not attempted to lay before the Council anything approaching to a full argument against the doctrines of the High Court, such as I should present to a Court of Appeal. I have only given such leading considerations as may be sufficient for the satisfaction of impartial minds who will give a little close attention to the subject. And though I am free individually to express my strong dissent from the conclusions of the High Court and from the methods which they have used in the construction of statutes, and though I should fail in my duty if I did not deal frankly with their arguments, I hope that I have not spoken, and shall not speak, with any personal disrespect of the members of that tribunal. The matter is one of grave public concern, and as such I must treat it. As between the infallibility of the High Court on the one hand, and Truth on the other, I must follow my old honest heathen teacher and say that both being dear to me, it is righteous to prefer the Truth.

"To return to the point. Have the difficulties which, as I have shown, were fastened on us when the re-hearing was refused, become in any degree relaxed by this letter of the High Court? I cannot think so. It must be remembered that this measure is primarily for the guidance of subordinate

Courts. Those Courts cannot properly look at extra-judicial utterances (even if they have the advantage of seeing them) to control judicial ones. If they did so, their labour and their bewilderment would be endless. To go no further than the present case, the Council will find among these papers two extra-judicial opinions; and on the most important point of all, those opinions are directly contradictory and destructive of one another. The subordinate Courts then must apply to the cases before them, the rulings of the High Court given in its judicial character and with all the sanctions which that character affords. They must do so according to the plain natural interpretation of the rulings themselves. If they did so in this case, the consequences would, in the opinion of the Select Committee, be most disastrous. We have had an illustration of this since the Bill was referred to us. One of the points which I mentioned as being probably and inferentially, though not in express words, decided by the judgment in Pancham Singh's case, is that a formal written order of the Local Government was necessary to invest Settlement Officers with the powers of Collectors. About the time that I was saying these words, the very point was being handled by a District Judge, and he decided that such an order was necessary, and that a letter written by the Local Government to a Deputy Collector was not sufficient for the purpose. This view alone invalidates a great number of decisions. We have had then to place ourselves in the position of a subordinate Court trying loyally to obey the decisions of its superior. As I have before observed, the judgment in Pancham Singh's case deals with a large and complicated subject in such very brief and general terms that conclusions are to be drawn from it which were not meant. This we cannot help, being left as we are without judicial explanation of its meaning. We have therefore followed the plain natural meaning which the judgment would convey to a man of common sense, and have dealt with it on that footing. I have said from the outset that this Bill is but a sorry substitute for a judicial exposition of the Law, and I think so still. But we have no other alternative that I can see; we have not time to ask for such an exposition in England, and we have asked for it but cannot get it in India; so we must do the best we can under the necessity which lies upon us.

"I will now call attention to one or two of the details with which the High Court's letter and our report are occupied. But I will only take the leading points, not the smaller ones, whether of agreement or disagreement. The High Court lay down the most excellent principle, that statements which are introduced into the preamble of Bills should be as far as possible accurate. They then proceed to illustrate the value of accuracy by referring to

something contained, not in the preamble of this Bill, but in my opening speech about it. They say—

"'The Local Government did not, as has been recently stated in Council, parcel out certain local areas and appoint Deputy Collectors to them for the purposes of the section relating to sub-divisions, but the Collector of the district was allowed to direct tahsíldári Deputy Collectors to receive plaints and try certain suits arising in their respective tahsíls, and again to direct Assistant Collectors with the powers of Deputy Collectors to receive plaints and try suits arising in a certain number of tahsíls, and, lastly, himself also to receive plaints and try suits arising within any portion of his district.'

"It has only an indirect bearing on this discussion, but I do so value accuracy, though I cannot always attain it, that I will, with the permission of the Council, say something upon the point.

"In the first place, the expressions I used would not be substantially inaccurate, even if the thing said by the High Court to have been done was all that was done. But the source from whence I drew my expressions was the orders of the Government. I need hardly say that I have made no original research and have no independent knowledge on this subject, but my friend Mr. Inglis had furnished me with the materials. It will be remembered that the question is whether the Government of the North-Western Provinces, not possessing ready-made Sub-divisions, deliberately and artificially created them for the purpose of putting officers in charge of them, and so getting judicial powers for those officers under the terms of Act X of 1859? I say aye, and the High Court says no. Now, I will beg the Council to attend to the following documents. The first is a letter from the Board of Revenue to the Local Government, dated 12th February 1862.

"'With reference to the orders of Government No. 20A (Revenue Department), dated 8th ultimo, appointing certain officers to be Deputy Collectors for the trial of suits under Act X of 1859, the Commissioner of Rohilcund has inquired whether these officers can only try cases especially made over to them by the Collectors or other officers in charge of sub-divisions of districts.

"'2. The Sadr Board of Revenue are of opinion that it might be advantageously left to the Collector to place the officers in question, for the purposes of the Act, 'in charge of a sub-division of his district' or not, according to his discretion. Under section 150, officers thus placed in charge could exercise their powers in all cases, without the cases being referred to him by the Collector.

"'3. I am directed to request that you will obtain His Honour the Lieutenant-Governor's orders on the subject, in view to the issue of a Circular Order.'

Then comes the answer of the Government, dated 28th February 1862:—

"'I have received and laid your letter No. 126, dated 12th instant, before the Lieutenant-Governor, who desires me to state, in reply, that he concurs with the Sadr Board of Revenue in thinking that, under section 150 of Act X of 1859, officers appointed Deputy Collectors for the trial of suits under that Act may advantageously be placed in charge of a sub-division of a district for the purposes of the Act, at the discretion of the Collector.

"'2. It was, indeed, contemplated by the Lieutenant-Governor, in appointing certain Tahsíldárs to be Deputy Collectors for the trial of suits under Act X of 1859, that they should exercise their functions each within his own tahsíl circle.'

"After that the Tahsíldárs and Deputy Collectors in question exercised judicial powers in rent-suits until the existence of Sub-divisions was denied in the Sub-division case. But if that is not a parcelling out of certain local areas and an appointment of Deputy Collectors to them for the purposes of the sections relating to Sub-divisions, the words must be used in a highly esoteric sense.

"The next matter is more important, because it forms part of the preamble to the Bill and leads up to one of the enactments in it. It relates indeed to the least sweeping, and therefore the least important, of the many objections taken to the title of the Revenue Judges; but it happens to be the most disputable, and therefore it is the most disputed. The simple question is whether the Local Government did or did not intend that when a man became a Deputy Collector employed in making or revising settlements, he should *ipso facto* become invested with jurisdiction over rent-suits? The Local Government say they did so intend. The High Court by their judgment denied it. We propose to affirm it by our Bill. The High Court say that such an affirmation would be inaccurate. That is the issue.

"The facts are as follows: Under the Act of 1863, the Local Government had power to confer jurisdiction over rent-suits on any officer employed in making or revising settlements. Out of such officers they might choose whom they pleased, and signify their choice in any mode they pleased. In the months of April and June 1863, they issued formal orders conferring the jurisdiction on all Deputy Collectors then employed in the requisite settlement work. Shortly afterwards, at least as early as the month of December 1863, it come to be thought that all Deputy Collectors becoming so employed also became invested with jurisdiction over rent-suits; and they all exercised that jurisdiction without doubt or dispute till the advent of Pancham Singh's case. A few of them were publicly notified as possessing jurisdiction, but the great bulk of them were not so notified. I can now give the Council, what I could not give before, the exact proportions as they have been furnished to

me after a careful enquiry by the Local Government. There have been ninety-eight of such officers, of whom nine have been specially notified, and eighty-nine not so. These are the facts. What conclusion then do the facts point to?

"The theory of the North-Western Provinces Government is very simple. They first state as a matter of fact within their own knowledge that they intended all the ninety-eight gentlemen in question to exercise jurisdiction over rent-suits. Then, they point to the phenomena as showing that they must have so intended, for it is impossible, say they, that an enormous mass of such business should be carried on for years all over the Province except with the knowledge and permission, and therefore according to the intention, of Government. As for their omission to notify eighty-nine officers, they say they were not bound to do it, and their omission does not invalidate the title of the officers; but that in point of fact they would have done it, if they had not been under the erroneous impression that it had already been done by General Order. And as for the actual notifications of nine, they cannot now trace the reasons, if indeed there were any reasons, for them, but say that they had a right to notify specially as well as not to notify specially, and the circumstance that a few were specially notified does not affect the question of their intention as to the others who were not specially notified.

"The theory of the High Court will be found stated in paragraph 22 of their letter:—

"'The only conclusion which is consistent with the facts is, that the Government intended on all occasions to invest officers with powers expressly, but that, by inadvertence, many officers exercised powers without having been so invested.'

"If I rightly understand it, for it may be read in more than one sense, it embodies two conclusions: first, that the direct evidence of the Local Government is to be passed over in silence: secondly, that the Government really intended to notify every officer before he could exercise jurisdiction over rent-suits, but that, by inadvertence, they omitted to do so in eighty-nine cases out of ninety-eight.

"Now I may observe first that this theory is an afterthought; for when Pancham Singh's case was decided, the Court did not think fit to call for evidence either direct or indirect of the intention of Government. In fact, as one of their subordinate Judges has decided, they considered that a formal written order was necessary in each case. This is one of the points in which, as I have mentioned, their letter reverses their judgment.

"Still an afterthought may be right, and if this is right our preamble is wrong and we cannot abide by it. Let us then see by what arguments the theory of the High Court is supported. First, they refer to the orders of April and June 1863. I think the learned Judges have construed those orders quite rightly, but they throw no light whatever on the intention of the Government subsequently to June 1863, and up to that date they show an intention to give powers to all Deputy Collectors employed in making or revising settlements. Secondly, referring to the practice, they say that in order to interpret a law practice must be uniform. But it so happens that in this part of the case nobody is relying on practice to interpret a law. Certain undisputed facts are relied on to establish another fact which is disputed. The question of intention or no intention is as simple a question of fact as any that can be submitted to a jury.

"Now, I will put a case to the Council. Suppose that my butler goes about Calcutta purchasing goods on my credit, that I pay the tradesmen when they send in their bills, and that this sort of thing goes on for ten years. Now, suppose that, at the end of the ten years, I turn round and tell the tradesmen that my butler has run away with the last batch of goods, and that I will not pay them, because I never gave him authority to pledge my credit. What would you think of such a defence? Would you not find a verdict against me, and think my defence a dishonest one into the bargain? Well, but suppose the tradesmen were ninety-eight in number, and it was shown that, with respect to nine, I had written directly to them, begging them to attend to my butler's orders. Would that make any difference with respect to the eighty-nine to whom I had not written? Would you not say at once that the claims of the eighty-nine must be judged of by my course of dealing with the eighty-nine, and that you did not care whether I had any reason, or no reason, or what was my reason, for behaving differently to the odd nine?

"If your answer would be such as I anticipate, then neither does the fact that the Government of the North-Western Provinces chose to gazette some officers invalidate the title of others whom they did not gazette. Indeed, so immaterial did this circumstance appear to me that, in opening the matter to the Council, I mentioned it as part of the *res gestæ* and then passed it by; and I should have been silent about it now, but for the singular amount of stress that has been laid upon it.

"I take it then that, in the case I have put, you would conclude, against my denial, that I had given my butler authority to pledge my credit. But even that does not represent the strength of the case in favour of those who

hold the decrees of the settlement officers. I must draw upon your imagination a little further. Suppose that it was not I, but a stranger, who denied the authority of my butler to pledge my credit; for instance, that I had become bankrupt and that my assignee was fighting the question with my creditors. And suppose that I appeared as a witness, and said that I had intended to give the disputed authority, would you then say that the facts showed that I intended to write to each tradesman before he was to give me credit, but that in most instances I forgot it? Would you not say at once that my evidence tallied exactly with the facts and must be true? Would you so much as turn round in the jury-box before giving your verdict?

"Now, then, you have the exact parallel to the case of the Local Government, the Revenue Judges and the suitors of their Courts. You have before you the evidence which the High Court did not call for. And if your view of it be such as I have ventured to anticipate, you will with perfect confidence say that credence is to be given to the statement of the Local Government, and that we are justified in embodying that statement in the preamble of our Bill.

"Really the only question is the unimportant one of date. As the intention of the Local Government is unwritten, an exact date cannot be assigned to it. But as the list of unnotified officers commences in December 1863, we are safe in concluding that the intention of the Local Government to confer the jurisdiction over rent-suits upon all Deputy Collectors employed in making or revising settlements must have been formed before that period. We have slightly altered this clause of the preamble so as not to affect a precision in date which we cannot attain, and so as to avoid the use of the word 'resolve,' which is sometimes used in a formal sense, and appears to have struck the learned Judges in that sense.

"The remaining points on which we find ourselves at variance with the learned Judges, relate principally to the question whether the doctrines we propose to negative have ever been affirmed.

"By far the most important of them forms the subject of the second section of the Bill and the 33rd paragraph of the letter. It relates to the general power of Collectors to refer suits to their Deputy Collectors. I have before explained fully the nature of the question and the reason why we were called on to decide it. The existence of this indispensable power was not in terms denied by the judgment in Pancham Singh's case, but there was a passage in the judgment which was not easily understood until the key was supplied by one of the learned Judges, who informed us that it rested on a tacit assumption

that the power of reference, exercised all over Bengal and the North-Western Provinces also ever since the passing of Act X of 1859, had no legal existence. I will read the passage from Mr. Justice Turner's Minute,—

"'Mr. Reid states he does 'not understand why the High Court have dragged section 162 (of the Rent Act) into the discussion.' The answer is very simple, because that section, and not as Mr. Reid erroneously states section 150, is the only section of either Act which gives the Collectors power to refer suits. The question at issue in regard to this portion of the case was simply whether or not the powers mentioned in section 8, Act XIV of 1863, included the powers given to Collectors by section 162 of the Rent Act.

"'So far as Mr. Reid's arguments then affect the question at issue, they would appear to amount to a mere *petitio principii*, and it seems that he misapprehended, not only the reference in the judgment to section 162, but the whole of the grounds on which this portion of the judgment proceeded.'

"Mr. Reid's *petitio principii* then was an assumption that section 150 did confer a general power of reference, and the whole ground of the misunderstood passage in the judgment was an assumption of the contrary. No doubt the High Court now tell us through their Registrar that Mr. Reid's assumption is right and that the contrary assumption is wrong. In that we concur, and if they had told us so from the Bench, it would be extremely important. But the passage in the judgment still remains, and is not explicable except on the theory supplied by Mr. Justice Turner. The High Court have not thought it right to correct or explain it by any judicial utterance, and the two extra-judicial utterances we have contradict one another. What, then, is a subordinate Judge to do under such circumstances if the legislature remains silent? I think the Council will be of opinion that we are bound to speak so as to make the matter clear.

"The next point relates to that part of the judgment which in apparent contravention of the Act of 1872 denies to Deputy Collectors any jurisdiction over rent-suits, unless they have been invested with powers under the Act of 1863. The learned Judges say in paragraph 26 of their letter, as Mr. Justice Turner said before, that this was not meant, and if this came from the Bench, it would relieve us from a difficulty. But nobody has attempted to show how the judgment can be construed so as to avoid the meaning. I explained the matter quite fully to the Council before. To my eyes and to those of my colleagues on the Select Committee there plainly stands the ruling we propose to negative. The learned Judges might have removed the whole difficulty when the motion for review was before them. Unluckily they have not done so, and it therefore remains for us to do.

"In the 28th and 29th paragraphs of their letters, the learned Judges also disavow a ruling imputed to them in the 11th paragraph of the preamble. This, again, is one of the points which it would have been most desirable to have had explained from the Bench, but which has not been so explained. I stated it fully before. The Council will remember that, in Pancham Singh's case, the judgment quotes the introductory words of a sentence, stops short there, and apparently deduces the conclusion that the introductory words were intended as a positive prohibition of the reference of enhancement suits. The statute, they say, has provided that, if a certain suit is brought before a certain officer, it *shall* (the word is emphasized in the judgment) be heard and determined by such officer. Not a word is said about his referee, therefore he cannot refer the suit. The extreme difficulties of this theory were not adverted to when it was promulgated. One however was pointed out, namely, that if the officer died or was removed pending the suit, all the proceedings would be useless. 'Oh but,' the learned Judges say, 'we did not mean to exclude his successor.' Very likely, but then the statute they quote says no more about a successor than it does about a referee. If one is to be excluded by its silence, why not the other? I say nothing here about the difficulty of saying who is the successor of such an officer in such a legal sense as will make him the very same officer according to the supposed exigency of the statute, for I dwelt on that topic before. The learned Judges have told us what was not meant, but they have not told us what was meant, nor how any argument is to be extracted from the statute in question, which shall be good to exclude a referee, and not good to exclude all the rest of the world. The plain fact is that a statute intended for one purpose has been applied to a totally different purpose, and, as invariably happens in such cases, a great difficulty has arisen. That difficulty must press on the subordinate Judges, unless we remove it as we propose to do.

"The only other point to which I think it necessary to call the special attention of the Council is the rules of evidence laid down by the ninth section of the Bill. The learned Judges say in paragraph 38 of their letter that they recognize these principles as substantive law. But they do not notice that one of them (that which related to presumptions), goes considerably beyond the Evidence Act, and therefore can hardly be said to be the general law of India, though it may be quite justifiable to lay it down in a very peculiar case like this, where we are so anxious to repress litigation, and to make every kind of presumption in favour of accomplished facts.

"The other direction, that regard should be had to the practice, is no doubt founded on a general principle. What we say is, that it shall be applied to

this subject. I think I am not wrong in saying that it has been wholly lost sight of; otherwise, we should at least find that it had been discussed, whether it had been applied or not. But the judgment is wholly silent about it. The case seems to me eminently fit for the application of this *principle*. The documents on which the Court decided, when not in favour of the practice, were at the worst ambiguous, and it is in the case of ambiguous documents that such a principle as this is useful. The usual rule has, indeed, been actually reversed in these cases. It would seem, not that every reasonable intendment has been made in favour of accomplished facts, but that every intendment has been made against them. The burden of proof has been shifted, and shifted on to the wrong shoulders. Speaking of the Deputy Collector, whose decision was under review, the learned Judges say 'nor is it *shown* that he has since been invested with special powers,' and so forth. 'Therefore,' they add, 'he had no jurisdiction.' They thought, therefore, that in the absence of evidence, it was to be assumed that a *de facto* Judge had no jurisdiction. If they had called for the evidence, they would have found, as I have abundantly shown, that the Deputy Collector in question had a perfectly good title. The issue was an issue of fact, apparently raised for the first time before the High Court, and I cannot find that evidence was ever properly taken upon it. Under those circumstances, the High Court assumed that the Deputy Collector had no title. That was reversing the order of things. If that process is correct, every respondent, who goes into a Court of appeal to maintain his decree, must make it a part of his case to prove the title of the original Judge. The principle we propose to enunciate is admitted to be right, and it seems to me that there is ample reason for applying it to this special subject.

"And this brings me, as the Council will probably be very glad to hear, to the last observation I have to make. The Council are aware that a Bill for the repeal of obsolete enactments is pending before us. Those Bills usually take long in settling, and if the present one lingers as usual, I may express a hope that the present measure, should you think fit to pass it, will figure in the schedule to that Bill. When all fear of appeal from the Deputy Collector's decision has been removed by time, the enactment which I am now presenting to you will have done its work, and our Secretary will subject it to amputation. It will pass away, and I hope that with it will pass away all memories of this controversy."

The Hon'ble MR. INGLIS wished to take this opportunity of explaining to the Council how it came to pass that the Government of the North-Western Provinces acted for nearly ten years on the understanding that officers employed in making or revising settlements of the land-revenue were invested by virtue

of their appointment to the Settlement Department with powers under section 8, Act XIV of 1863, and that, consequently, no separate order investing each officer by name with these powers was necessary. He also wished to notice briefly some passages in the letter from the learned Judges of the High Court at Allahabad, in which the action of the Local Government in the matter was commented on.

Shortly after Act XIV of 1863 was passed, the Government of the North-Western Provinces issued a notification investing all officers at present employed in making or revising settlements with the powers described in section 8, Act XIV of 1863.

On the 10th of May of the same year, the Board of Revenue, North-Western Provinces, with the sanction of the Local Government, issued a circular order to all Revenue Officers drawing their attention to the alterations made in Act X of 1859 by Act XIV of 1863, explaining some of its provisions, and laying down rules for the guidance both of officers employed in ordinary district work, and of officers attached to the Settlement Department in the performance of their duties under the Act. Paragraph 13 of this circular ran thus—

"The Government has invested all Collectors and their Assistants employed in making or revising Settlements with the powers described in sections 8 to 18; the heads of these officers have thus been considerably strengthened in determining the rent rates for the jamabundies; in cases of enhancement no notice under section 13 of Act X of 1859 will be necessary previous to the suit, and in these cases and those of abatement any number of ryots of the same mahal may be sued or sue."

On the 9th June 1863, the Board issued another circular order with the sanction of the Government to the following effect:—

"The Board of Revenue, North-Western Provinces, with the sanction of Government are pleased to intimate that Deputy Collectors under Regulation IX of 1833, employed in making or revising Settlements of the land-revenue in the Regulation Districts of these Provinces, are invested with the powers described in section 8, Act XIV of 1863, by the Government Notification No. 514 A, dated 21st April 1863."

It would be observed that these circulars so far as they related to the powers of Settlement Officers under section 8, Act XIV of 1863, were drawn in general terms. They stated broadly that all officers employed in settlement work were invested with these powers. The words "at present", which appeared in the Notification issued by the Government being omitted.

The Notification issued by the Government appeared once in the Gazette, and then dropped out of sight; the circulars issued by the Board on the contrary were published in the Gazette, were distributed, as was usually done, to all District and Settlement Officers, and were also bound up with a collection of circular orders issued for the guidance of all officers employed in the Revenue Department published under the authority and sanction of the Government. These circulars conveyed the rules and instructions laid down by the Board of Revenue with the sanction of Government on various matters connected with the revenue administration of the country. They were binding on all officers who might be at any time employed in the Revenue Department whether before or after their issue, and remained in force until cancelled or altered by a fresh circular; thus, the circulars issued relating to the powers of Settlement Officers under section 8, Act XIV of 1863, being drawn in general terms, were considered applicable to all officers employed in making and revising settlements either at the time they were published, or afterwards, and were held to convey the authority of the Government for the exercise of these powers by all officers engaged in this duty by virtue of their appointment to the Settlement Department, and that, consequently, no separate order conferring on each officer by name with these powers was required. Had it been considered necessary that this formality should be observed, there was no possible reason why it should have been omitted in the case of the comparatively small number of Settlement Officers invested with powers under section 8, Act XIV of 1863, while it had always been carefully observed in the case of the far larger number of officers invested with judicial powers under Act X of 1859 and Act XIV of 1863. For no officer, whether employed in district work, or in settlement work, had ever exercised judicial powers under these Acts without having been specially invested with powers by name by a notification in the Gazette. The only reason why this was not done in the case of Settlement Officers invested with powers under section 8, Act XIV of 1863, was that it was considered unnecessary. No doubt, some officers employed in making or revising settlements have been separately invested with these powers, but these cases were by no means so numerous as the learned Judges of the High Court at Allahabad appear to suppose from paragraph 21 of their letter. The list received from the Secretary to the Government of the North-Western Provinces, to which the Hon'ble Mr. Hobhouse referred just now, showed that ninety-eight officers have been posted to the Settlement Department since the issue of the circulars of 1863, and that only nine of these officers have been invested with powers under section 8, Act XIV of 1863, by a separate order, though these powers have been exercised by all. Why these nine officers were treated differently from the eighty-nine others also

employed in making or revising settlements it was impossible to discover now. Every one of these ninety-eight officers, whether acting under the authority of special orders, as nine of them did, or under the general orders issued in 1863, as eighty-nine of them have done, have all of them been employed on exactly the same work, and have exercised exactly the same powers. That they exercised these powers in accordance with the intention of Government and with the full knowledge of the Government was proved by the orders that have at various times been issued for their guidance, by their having been required to submit statements showing how the cases tried by them under the powers conferred on them by section 8, Act XIV of 1863, were disposed of; and also by many officers having been transferred to the Settlement Department and posted to districts under settlement for the express purpose of deciding suits relating to enhancement and abatement of rent under the simpler procedure allowed by Act XIV of 1863 at such times; and by other officers having been retained in the Settlement Department after the assessment of the district in which they were employed had been completed, in order that they might dispose of arrears of this kind of suits: it might, he thought, have been held that these orders constituted a sufficient investiture under the Act, considering that section 8 merely provided that the Government might invest any officer employed in making or revising settlements with certain powers, but said nothing as to the mode in which these powers were to be conferred; but however this might be the fact that all the Settlement Officers in the North-Western Provinces exercised these powers under the general authority supposed to have been conveyed by the circular orders of 1863, with the full knowledge of Government and in accordance with the intention of Government, could not be disputed.

He had now to explain to the Council why, this being the case, the Government thought it advisable in 1872 to issue the letters of investiture referred to by the learned Judges in paragraphs 21 and 32 of their letter. This was done in consequence of its having accidentally come to the knowledge of the Local Government, when the Bill which afterwards became Act XXII of 1872 was under discussion, that the High Court considered that a separate order investing each Settlement Officer with these powers should in all cases be issued. The Local Government being desirous in this matter, as in all others connected with the judicial administration of the country, to meet the wishes of the learned Judges of the High Court, determined to do what it was now understood they considered necessary, but there was this difficulty in doing it: it was apprehended that if a notification had appeared in the Gazette invest-

ing by name some fifty or sixty officers employed in settlement work with powers under section 8, Act XIV of 1863, that attention would be at once drawn to the fact that they had exercised these powers for many years past without any order of the kind; and that the difficulties, the Government wished to avoid, might be created. Accordingly, as Act XIV of 1863 said nothing as to the mode in which these powers were to be conferred, it was determined that a separate letter, signed by the Secretary to the Government, should be addressed to every officer employed in making or revising settlements. This was done, and a letter was sent then, or immediately afterwards, to every officer so employed, no exception was made. Every officer engaged in settlement work having exercised these powers in accordance with the intention of Government, ever since Act XIV of 1863 was passed, letters were addressed to all, the letters being intended not to bestow powers on those officers which they had not previously exercised, but as a precautionary measure to confirm and ratify what had been done in the past; and this brought him to paragraph 12 of Mr. Spankie's letter. The learned Judges had said :—

"The Court has always regarded the authority conferred on the Local Government by section 8, Act XIV of 1863, as an authority which involved the duty of selecting, out of the officers appointed to the Settlement Department, such as might be competent for the exercise of judicial powers, and therefore as not authorizing the Government to pass a resolution which would apply to officers thereafter to be appointed."

MR. INGLIS thought he should be able to satisfy the Council that although the Government decided that all officers employed in making or revising settlements, should be invested with power under section 8, Act XIV of 1863, yet that the duties of selection had not been neglected, and that these powers have not been conferred indiscriminately on officers not qualified to exercise them. The officers employed in the Settlement Department in the North-Western Provinces were all chosen from the best Revenue Officers in the Province. They were every one of them selected from among those officers of the Revenue Department who had previously been invested with full judicial powers under Act X of 1859 and Act XIV of 1863, after having passed a strict examination in the Revenue and Rent Laws. Thus, the Settlement Officers were all selected men who, previous to their appointment to the Settlement Department, had been invested with full judicial powers under the Rent Acts, so that the effect in their case of an order investing them with powers under section 8, Act XIV of 1863, would not be to confer on them any judicial powers they did not previously exercise, but merely to enable them, in a particular class of cases, under Act X of 1859, namely, cases relating to enhancement of rent, to dispense with the notice required by section 13 of that Act;

and in cases relating to enhancement or abatement of rent to allow tenants of the same village to sue or be sued in the same petition of plaint; alterations in procedure made solely for the convenience of the people, to enable them to get their disputes relating to rent decided by the Settlement Officers while in camp in the cold weather, and on the spot, which could not be done were the procedure laid down in Act X of 1859, for the guidance of the ordinary District Courts, strictly followed.

In the first part of Mr. Spankie's letter some remarks were made by the learned Judges on the practice which had prevailed in the North-Western Provinces ever since Act X of 1859 was introduced, of restricting Tahsíldárs, when first invested with the powers of Deputy Collectors under the Act, to the trial of the easier and less important classes of cases, the more important and difficult ones being reserved for trial by officers of greater experience; and also on the Resolution issued by the Government in September 1872 after Act XXII of 1872 was passed, directing that this practice should be continued, and that among others, cases relating to enhancement of rent should be reserved for trial by officers of experience. These remarks had no bearing on the Bill now before the Council, and MR. INGLIS would not have considered it necessary to call attention to them were it not that in paragraph 32 of Mr. Spankie's letter the learned Judges said that the first section of the Bill which was based on the statement made by the Local Government that all Deputy Collectors employed in making or revising settlements had for the last ten years exercised these powers, was incorrect, inasmuch as by this Resolution of September 1872, some Deputy Collectors were prohibited from trying enhancement suits, and that this prohibition was extended to certain other Deputy Collectors employed on settlement work, by their being omitted from the number of Deputy Collectors, to whom letters of investiture were at the same time sent. The passage in Mr. Spankie's letter to which he referred, was as follows:—

"Again, this section declares that *all* Deputy Collectors have been and are, and are intended to be, invested with powers, &c. The Court doubts whether the Local Government would be prepared to accept so general a declaration. It will be seen by referring to the Resolution of the Local Government passed after the enactment of Act XXII of 1872, that the Local Government does not consider all Deputy Collectors competent to try enhancement cases, and it is noteworthy that, when, in September 1872, the Local Government, with the view, as it would seem, of curing the defect which had been brought to its notice, invested with powers under section 8, Act XIV of 1863, upwards of fifty officers permanently appointed to settlement work, it did not invest several officers who were officiating as Deputy Collectors in that Department. It is, therefore, suggested that the declaration should be restricted to officers who have actually exercised powers."

The mistake which the learned Judges made in saying that the first section of the Bill declared that all Deputy Collectors had been, and were intended to be, invested with powers under section 8, Act XIV of 1863, had been pointed out and corrected by the Select Committee in their report. He should therefore confine his remarks to the Resolution and letters issued by Government in September 1872, in order to show to the Council that though the Resolution of September 1872 and the letters of investiture were issued about the same time and were in part applicable to Deputy Collectors, yet that they had no connection whatever with each other, and that the omission to send letters to certain Tahsíldárs employed on settlement work was purely accidental, and not intended to have the effect the learned Judges attribute to it.

The Resolution of Government issued in September 1872 was addressed solely to officers employed on district work who had been invested with judicial powers under Act X of 1859 and Act XIV of 1863, and contained instructions for their guidance. It was rendered necessary by the wide terms in which Act XXII of 1872 was purposely drawn. This Act was passed to remedy the state of things which had been brought about by the decision of the High Court passed early that year, in which it was ruled that a tahsíl was not a sub-division of a district in the North-Western Provinces. This decision had affected, it was estimated, over 600,000 decisions of the Subordinate Courts. The relations between landlord and tenant throughout the North-Western Provinces had been thrown into utter confusion by it, while appeals were being presented in hundreds by persons against whom decrees had been passed, simply on the ground of want of authority in the Court which had passed the decree, it was obviously necessary that this state of things should be remedied as quickly as possible. The Council therefore determined, as the Hon'ble Mr. Hobhouse stated when he introduced the Bill, "to describe the practice in general terms of wide extent without attempting to go into minute, and also in wide terms, to render legal those acts which had been done, or should be done, in accordance with the practice," leaving it to the Local Government to regulate the practice as before. Accordingly, the Government immediately after the passing of the Act issued this Resolution of September 1872 by which Collectors of Districts were directed to exercise the powers which they had previously exercised, and which they undoubtedly possessed under Act X of 1859; and to withdraw from Tahsíldárs when first invested with powers the trial of cases relating to enhancement of rent. This order was confined to the officers employed on district work.

The letters of September 1872 on the contrary were addressed solely to Settlement Officers; they were, as he had already explained, merely letters of in-

vestiture containing no rules or instructions whatever. It was intended that one should be sent to every officer employed in making or revising settlements, but when the first list was made out, the names of a few Tahsíldárs employed on this duty were incidentally omitted. As soon as the omission was discovered, it was rectified, and letters were sent to these officers as had been done to the others; no officers actually engaged in making or revising settlements were omitted, indeed it was these officers, who of all others, were best qualified to dispose of suits relating to enhancement or abatement of rent, as the special knowledge required by them of the qualities of the soil, and of the prevailing rates of rent, in the district in which they were employed, gave them peculiar advantages in deciding disputes of this nature not possessed by the ordinary district Courts.

MR. INGLIS thought it necessary to give this explanation to the Council of the reasons which led the Local Government to dispense for nearly ten years with the issue of a formal order investing each officer employed in settlement work with powers under section 8, Act XIV of 1863, and why, this being the case, letters of investiture were addressed to every one of these officers in 1872, and also to show to the Council that though it has always been the practice for all these officers to exercise these powers *ex officio*, yet that the Government in determining that this should be the practice, had not conferred these powers indiscriminately on officers not fully qualified to exercise them, but has performed its duty of selection when these officers were posted to the Settlement Department.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the following clauses be substituted for clause 8:—

"Every decree or order of an Appellate Court made on or after the first day of January 1871, which has declared or treated any judicial order or proceeding of an officer employed in making or revising a settlement to be void for want of authority in such officer, is hereby declared to be itself void, and all such orders and proceedings of such officers shall be deemed to be as valid as if no such decree or order declaring them to be void for want of authority had been passed in appeal:

"Provided that whenever the merits of the case constituted any portion of the grounds of appeal, and the appellant, who has succeeded on the ground of want of authority in the Court of first instance, desires to prosecute his appeal on the merits, and applies to the Appellate Court for that purpose within ninety days after the passing of this Act, the Appellate Court shall resume the hearing of the appeal and proceed to determine it on the merits:

"Provided also that the provisions of this section shall not apply to any case in which the holder of a decree treated as invalid for want of authority as aforesaid has, before the passing of this Act, obtained a decree in a competent Court in another suit upon the same cause of action."

He said that the amendment was suggested by the letter from Mr. Justice Turner. He could not give the Council the assurance that it was exactly and in every particular what had been suggested, but it was in the spirit of and mainly in accordance with the suggestion.

The second paragraph was introduced in order to make it abundantly clear that in case of an appeal on the merits we did not wish to interfere, but dealt only with those cases in which the decrees were upset solely for want of authority in the Judge, not on the merits. There were cases, the learned Judge had pointed out, in which, since the quashing of the original decree, the decree-holder had brought a new suit and had pushed his suit to a successful termination. In that case, he might have two decrees in his hands if the provisions of this section applied to him. So we thought it better to leave the first decree to its fate, and let him enforce his second one. Our object being to stop litigation, we need not interfere where it had come to an end of itself. The first part of the new clause was section 8 of the Bill, with this slight alteration that we put in a date beyond which the section should not go back. That was a date recommended by his hon'ble friend, Mr. Inglis, as being a perfectly safe date to fix. We did not want to have people raking up old suits, in case there should possibly be any of a date prior to January 1871.

The Motion was put and agreed to.

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

His Excellency THE PRESIDENT said: "Before the Council passes this Bill I wish to say that it has not, in my opinion, occupied unduly our time. The Bill is intended to prevent an enormous amount of litigation in certain suits relating to land in the North-Western Provinces, not on their merits or from any doubts as to the substantial qualification of the officers who originally decided them, but in consequence of a judgment of the High Court of the North-Western Provinces, which affected the validity of the appointments of some of those officers. The point, as the Council are aware, was one of considerable difficulty. The Government of India were exceedingly anxious that legislation should, if possible, be avoided, and we hoped that, in some manner, the case might have been re-heard by the High Court of the North-

Western Provinces, and the question more fully and completely considered. Unfortunately, this course did not appear to be practicable. We have, however, received on the part of the High Court a letter which is now before the Council, and with which my hon'ble friend, Mr. Hobhouse, has dealt to-day. We have also received a Minute by Mr. Justice Turner, to which Mr. Hobhouse has referred.

"I think that Members of Council must be satisfied, from the manner in which Mr. Hobhouse has explained the views entertained by the Select Committee on this Bill, that the most careful attention has been paid to the remarks which have been made on the part of the High Court with respect to the Bill; and the Council are, I am sure, much indebted to the High Court for the careful suggestions which we have received from them. I entirely agree with Mr. Hobhouse that this letter contains only an extra-judicial opinion, and that however important and valuable the arguments on the several points may be, they cannot be looked upon by those who have to administer the law, as possessing legal authority. I therefore concur with the conclusions come to by the Committee, and the reasons which Mr. Hobhouse has advanced for those conclusions.

"The Council will observe that the Committee have adopted the suggestions made by the High Court with regard to many of the points raised in the letter, and also that we have just amended one of the clauses of the Bill in consequence of the suggestions of Mr. Justice Turner.

"I am sure that the Council will feel that, although such legislation as this is much to be deprecated as a general rule, we should not have properly performed our duty if we had allowed unnecessary and expensive litigation to prevail throughout the North-Western Provinces, and had shrunk from introducing the explanatory provisions which are contained in this Bill, and which we hope will prevent that unnecessary litigation.

"I am sure also that in this matter, which has been one of some delicacy and considerable difficulty, we are much indebted to the ability and discretion with which Mr. Hobhouse has brought the subject before the Council and has dealt with it, from the time when it first came under our consideration."

The Motion was put and agreed to.

MARRIED WOMEN'S PROPERTY BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to explain and amend the law relating to certain Married Women, and for other purposes.

FOREIGN ENLISTMENT BILL.

The Hon'ble Mr. HOBHOUSE also presented the Report of the Select Committee on the Bill to prohibit recruiting in British India for the service of Foreign States.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble Mr. HOBHOUSE also moved that the Final Report of the Select Committee on the Bill to amend Act XXIV of 1867 (the Administrator General's Act), be taken into consideration. He said that the Bill had been before the Council for a long time. It was introduced in February 1872, and the first report of the Select Committee was presented in April of the same year. Shortly after that, questions arose connected with the Administrator General's office which required consideration in the executive departments, and some correspondence ensued. So that it was not until quite lately that we resumed the consideration of the Bill. It had been re-committed, and this report was the result. There were only two important amendments. The first extended the provisions of the Administrator General's Act to the effects of British subjects dying in Native States in India. That was one of the objects with which the Bill was introduced; in fact it was originally the only object of its introduction. The other point was that a question had arisen as to the time when the commission of the Administrator General was due. Now, the object of paying this officer, or any officer, on the principle of commission or percentage on assets realized and administered, was to stimulate the exertion of the officer. We might take the more simple mode of paying by salary, or a more simple mode of paying by commission, namely, by paying the whole on the realization of assets, and, indeed, it had been proposed by a high legal authority that the whole of the commission should be paid on receipt of the assets. Such an arrangement would apply a stimulus to get in the assets, but it would not apply a stimulus on the officer to distribute the assets. In the Act of 1867, the arrangement adopted was that which appeared in section 54 of the present Bill. The Administrator General of Bengal was paid three per cent. on the assets of an estate, which payment was intended to cover, not merely the expense and the trouble of collecting the assets, but also the trouble and responsibility of distributing them in due course of administration. Therefore, it was provided that one portion should be paid on the collection of the assets and the other half should be paid to the Administrator General on the distribution of the assets in due course of administration. Then the question arose as to what was a distribution of assets in due course of administration.

A question occurred of this kind; the assets were got in, all the creditors paid, and the estate cleared of all claims in due course of administration. But

when the Administrator General came to pay out the clear balance to the parties entitled, he found that they were in such a position that they could not receive payment. The person who might be solely entitled to payment might be a child, or it might be found that the residue of an estate was settled on a man for life with remainder to his children. In this case the money could not be paid.

The course which had been followed in such cases was to carry the balance to the private account of the parties interested. MR. HOBHOUSE believed that till now the Administrators General in all the Presidencies had followed the same course of practice in treating that as distribution in due course of administration, and had then paid themselves the remaining one and a half per cent. Mr. Hogg, the predecessor of Mr. Broughton the present Administrator General, brought the question before the auditors, and they decided that he was in such a case entitled to take the commission. When the present Administrator General succeeded him, he felt doubtful upon the point, and he did not feel himself at liberty to take the commission for himself, and he had partly upon his own account and partly on account of the estates of which he was trustee, raised a question as against the estate of Mr. Hogg. It became necessary to decide that question, and it was very plain to any body who had had anything to do with administration, that similar questions might arise from time to time. In the great majority of cases it would be perfectly plain when the assets of an estate were distributed and when they were not. But there would be cases which were doubtful. In respect to the present point, it was proposed to put in a clause making it clear that the course pursued by the late Administrator General was the right course. In MR. HOBHOUSE'S opinion it was the right course as the law stood. But it was proposed to make it plain by an explanation added to section 54 in these words:—

"The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section."

The words "notified as hereinbefore provided" referred to another provision introduced in the Bill by the Select Committee. It had been the practice not to give any public notification, nor necessarily any private notification to the parties when the assets were carried to a separate account. But it was very important to distinguish between that which was administration proper, during which the assets were kept in bulk and were free to answer all claims of outsiders, and that which was trusteeship when the property was recognized as belonging to particular individuals. Therefore, it was provided

that, whenever the funds were carried over to a separate account, notice should be given, and from that moment the Administrator General would become a Trustee. In order that he might rid himself of that trust, he might transfer the fund to the Official Trustee with the consent of that officer. The trusteeship began on the distribution of the assets when the trouble and responsibility of administration would be over, and the Administrator General would be entitled to his commission.

Another proposal before the Committee was that the Administrator General should be entitled to his commission at the time of payment. But it was more desirable to provide that the commission should be paid at the time when the administration was ended and the funds carried over to a separate account. Anybody who had had much experience in administration knew that the main trouble was over when the Administrator had cleared the estate of all outstanding claims. It was extremely desirable that that should be done at as early a period as possible. But if we postponed the right to commission until the time of payment, then we gave no motive to complete the administration, whenever the Administrator General found that the parties were under such disabilities as he had mentioned or any disability which would necessitate a postponement of actual payment. On that ground the Committee had adhered to the existing plan, and had made it clear that the commission should be paid when the assets were carried to a separate account.

As to the other questions which might arise, what we proposed was that the Executive Government should have the power to decide them as they arose. The matter was one in regard to which the public had no interest excepting that the best rule should prevail. They wanted that rule which would make the officer work best. It made no difference as between one and another Administrator General; to them it was just as broad as it was long. It made no difference to the estates if you took the whole mass of them. As regards any particular estate, it might make a difference, because if the assets were of fluctuating nature, the taking of commission ten years earlier or later might have different results. But that was a matter of chance which could not be foreseen as to any particular estate, and if you looked at the aggregate of the estates, of course the gains would exactly balance the losses. The subject therefore was one which it was quite convenient for the executive to settle either by laying down a general rule, or deciding a particular case, so as to bind the Administrator General and the estates which he represented.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE had a few remarks to make with regard to section 36 of the Bill. That section provided that any person

not being a Hindú or a Muhammadan or a Buddhist should not have the privilege of getting a certificate from the Administrator General. The estate for which letters of administration might be required might be a very small one, and for a Hindú or a Muhammadan or a Buddhist to be obliged to apply to the High Court and go through a troublesome and expensive procedure in order to get out letters of administration, would be a very great hardship; because, for instance, if the estate consisted only of a Government Promissory Note of Rs. 500, or if it was composed of a small house of the value of Rs. 1000, the person applying for letters of administration might have to expend about Rs. 250 or Rs. 300 to obtain them, and in that case the estate would be almost completely exhausted. Besides, RÁJÁ RAMÁNÁTH TAGORE considered the principle of that section as something very invidious. Why should a Hindú or a Muhammadan not get the same privilege as a Christian, or a person of any other pursuasion? Even a Sonthal might get a certificate from the Administrator General without any expense. Under these circumstances, he suggested that the words "not being a Hindú, Muhammadan or Buddhist," which were inserted in the section to which he referred, should, if the Council were of the same opinion, be expunged.

Then there was another clause at the end of the same section to which he objected; that was to say, under a certificate from the Administrator General, a person could take out all the money belonging to an estate except that which was in a Government Savings Bank. He did not understand the reason of not allowing a person to draw out money, however small, from a Savings Bank. A Savings Bank was the same as the Bank of Bengal or any other Bank; and if an executor was allowed to draw money from the Bank of Bengal, why should he not be allowed to draw it from a Savings Bank? He was aware that these clauses did not contain any thing new. He believed the same provision was contained in the existing law, but that appeared to him to be no reason why it should be continued in this new and amending Act. What was wrong was wrong whether it was in a new or in an old Act.

The Hon'ble MR. HOBHOUSE said that if he rightly understood the observations of his hon'ble friend, he gathered that he wished to omit from section 36 the words "not being a Hindú, Muhammadan or Buddhist." That section was part of the present law, and we had not considered any alteration of it; and if any alteration was to be considered, it would be more convenient that we should consider it in Select Committee. But MR. HOBHOUSE did not think there was any necessity for amending the section, because the provisions of Act XXVII of 1860 applied to the case of persons who were not included

in the Administrator General's Act. Under Act XXVII of 1860, the District Judge was the officer to whom such persons should apply for a certificate. As the matter had come upon MR. HOBHOUSE by surprise, he could not explain all the details of that Act. All that he could at present say was that the law had provided for both cases, and that the matter would require careful consideration before the amendment proposed could be acceded to.

His Excellency THE PRESIDENT suggested that the consideration of the Bill might be postponed.

The Hon'ble MR. HOBHOUSE observed that in several cases the question about commission was pending, and that it was very inconvenient to have it unsettled.

The Bill had been hanging on for some time, and he thought it would be better to pass it without further delay. Besides, before very long, it would be necessary to consider the whole question of the position of the Administrators General and the Official Trustees. His hon'ble friend, Mr. Colvin, mentioned to him some matters on which he desired alteration, and on MR. HOBHOUSE's mentioning that he was of opinion that the consideration of those questions should be postponed until the consideration of a more comprehensive measure, his hon'ble friend had agreed to that view. There was an objection to making alterations in the arrangements during an incumbency, but some alterations might usefully be made when the officials were changed.

His Excellency THE PRESIDENT said that it had been explained the reason why this clause did not include persons who were Hindús, Muhammadans or Buddhists was, that the same provision was to be found in Act XXVII of 1860 which did not extend to European British subjects, and therefore the advantage which by Act XXVII of 1860 already existed as regards Hindús, Muhammadans and Buddhists was simply by the Administrator General's Act given to persons other than Hindús, Muhammadans or Buddhists. Therefore, there was no real difference in the law as applied to either class of Her Majesty's subjects. The Hon'ble Member would therefore perhaps not press the amendment.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE consented to withdraw the amendment.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

BURMA FISHERIES BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to regulate Fisheries in British Burma, and moved that it be referred to a Select Committee with instructions to report in two months. He said that this Bill started with the recital that the exclusive right of fisheries in British Burma belonged by the custom of the country to the Government. That was the foundation of the Bill. In a matter such as that we had to depend on information given by the Local Government who had been making enquiry on the subject; and before asking the Council to refer the Bill to a Select Committee, he would read some passages from a letter received from the Local Government. The Commissioner of Rangoon made enquiries on the subject from a number of persons, and recorded the statements of three old men. One of these men said—

"The Dalla fisheries were at one time some Amwaytsa* and some Ayadaw. The 'Amwaytsa fisheries were those which had remained in one family, and had been worked successively by the members of that family. All the different fisheries had a fixed price on them, and in the case of the Amwaytsa fisheries, any one wishing to work them had to pay the owner the price of the fishery and a certain fee to Government, whilst the owner paid a commission to Government on the price, generally 20 per cent. In the time of the Kôn-boung Meng, an order was issued that all fisheries were to be Ayadaw, and then whoever worked the fishery paid to Government the price of the fishery and the tax,—this was the custom when the English took the country."

* *Amway*, any thing obtained by succession or inheritance.
Tsa, the person who (eats) enjoys this privilege.
Amwaytsa, a holder by descent or inheritance.

There was a good deal of negative evidence on the point, and Mr. Eden, the Chief Commissioner, summed up the matter thus—

"The question is, it appears to Mr. Eden, a very simple one. Is Government justified in claiming the fisheries as State property, and raising a revenue by them? No one has ever, as far as Mr. Eden knows, questioned the right of Government; a large revenue has long been raised from this resource, and in 1872-73 the revenue amounted to no less than rupees 5,85,000."

This Bill would now be published, and we should see if anybody concerned would dispute the assertion made on the part of the Government. Every claim was most likely to challenge objection, when definitely put forward in a legal document. If there was any evidence against the views of the Government upon this point, he hoped the publication of the Bill would produce it all.

The rest of the Bill was mere matter of regulation. Section 3 said, according to the preamble, that no right to fish in any fishery should be deemed

to have been acquired by the public or by any person, excepting in the modes prescribed in the Act, but that nothing was to be taken to deprive the public of the right of angling with a rod and line only, provided that the exercise of such right might in certain cases be suspended by proclamation.

There were other provisions by which the Deputy Commissioner might either declare a fishery open to the public or to any class of persons, or he might lease the exclusive right of fishing to any person, or he might grant licenses to any number of persons to exercise the right of fishing. Then came clauses preventive of the erection of weirs,—a precaution included in all Bills of this kind; and then a clause which imposed penalties. There were also clauses providing for the making of subsidiary rules. The Bill itself was a very simple one, depending on the recital itself that the exclusive right of fishing belonged to Government.

The Hon'ble MR. SUTHERLAND asked permission to say that he was glad that the hon'ble Member in charge of the Bill had given two months for the submission of the Report of the Select Committee. This would give ample time for the consideration of the sections introduced in the Bill. He would say, with reference to what had fallen from his hon'ble friend in regard to the preamble, that the statement with which it started was not borne out by gentlemen here who were interested in the Province, and who had had an opportunity of seeing this Bill; and MR. SUTHERLAND thought that on that account it was quite desirable that an opportunity should be given to merchants and other non-official persons to submit their opinions. He had been struck with a sentence which was in the Statement of Objects and Reasons accompanying the Bill, to the effect that fisheries in British Burma supplied one of the chief articles of food of the great mass of the population. And he ventured to think that on that ground alone the Council should be most careful and cautious in adopting the stringent provisions embodied in the Bill, as he was sure it was not the wish of the Government nor of this Council, that any hardship should be entailed on the people of Burma. He would venture to say, both with regard to this measure and to the other measure in connection with British Burma before the Council, that they were not calculated to foster and advance the interests of a young Province, he thought that Burma had a great future before it, and it would therefore be a matter of regret if legislation now were of a repressive and discouraging nature, rather than what the Province was entitled to, namely, legislation that would forward and advance its resources.

The Hon'ble MR. DALYELL desired to express his general concurrence in his hon'ble friend Mr. Sutherland's remarks. This Bill appeared to him

to be one which required the most careful and deliberate consideration of the Council. It seemed to inaugurate a new era in the general taxation of the Empire; for, although in some parts of the country fisheries were in some measure under control of the Government, there was no statute so far as he was aware which brought them under regular taxation. Whether, on general principles, such an enactment was desirable or expedient was a very grave question, and the question was one which would to some extent be answered by the course taken by the Council in reference to this Bill. As far as he was informed at present, it seemed any thing but desirable to bring under taxation any article which entered so largely into the food-supply of the poorer classes of the people, as his hon'ble friend had just said. Then we knew, from the replies to the queries asked by the Government of India with regard to the pressure of the general taxation of the Empire some eighteen months ago, that it was not the weight of the taxation which was objected to so much as the variety and constant changes in our fiscal measures. It was not the rate of a particular tax to which the people were accustomed which pressed upon them, but the feeling that at any moment some new tax might be imposed with the machinery and incidence of which they were unacquainted. It was true his hon'ble friend, Mr. Hobhouse, had said that the right of fishing in Burma vested in the State, but another hon'ble member, Mr. Sutherland, had stated that in some quarters that statement was contested. But in any case it was well known that in many other parts of India, fisheries vested, originally at any rate, in the ancient Hindú village communities. MR. DALYELL thought, perhaps, it would be desirable that the Select Committee should be asked so far to alter the character of the Bill as to make it rather a measure of conservation, in which form it would be a desirable and suitable enactment in many parts of the Empire, instead of allowing it to remain in its present form, a measure of taxation.

The Hon'ble MR. BAYLEY said he wished to say one word with reference to what had fallen from his hon'ble friend, Mr. Dalyell. The question before the Council was merely, as stated by his hon'ble friend, Mr. Sutherland, whether fisheries in Burma were the property of the State. It was not a question of taxation. Whoever might be the proprietor had the same rights as in regard to any other property and would doubtless exercise them. And therefore the public would be precisely in the same position as they were now; the Bill would in no way affect the price of food to be consumed. Whoever owned the property would take the profits from it. The question was in whom the right of property vested. As a matter of fact, it was asserted by the Chief Commissioner that, in the large majority of cases, fisheries in British Burma had been considered by the Government from time immemorial to be their

property and treated as such. What he asked was expressly to legalize the actual practice. Whether it was right or not was a question of broad policy to be considered. That was the only point at issue. It was not a question of taxation but of property.

As regards the other point raised, what actually was the state of the law in other parts of India, that seemed to MR. BAYLEY a matter wholly apart from this matter The whole state of society in all parts of Burma differed most widely from the state of society in other parts of British India, not less probably than from the state of society in England. There was, for example, no such thing as a village community in Burma or any other sort of community unless it was a community of monks. We found that rights in all immoveable property, even land throughout the province of Burma, were in an uncertain and fluctuating condition, though it was the object of the Government to give those rights consistency. But there was nothing in the condition of those rights as to which any useful analogy could be drawn from the law prevailing on the Continent of India and still less from which to draw any analogy, as to the right in fisheries. The whole question of the rights in immoveable property was totally different in Burma from what it was in other places, and must be determined on distinct evidence and to a great extent on local considerations.

The Hon'ble MR. HOBHOUSE said that he should be exceedingly anxious that everybody who was in a position to adduce any evidence on the subject should have an opportunity of doing so. He hoped his hon'ble friends, Mr. Dalyell and Mr. Sutherland, would consent to serve on the Committee. As far as his own mind went, it was unprejudiced in the matter, neither for nor against the recital; and that was because he had not yet sufficiently studied the matter to have a clear opinion.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in English and Burmese in the *British Burma Gazette*.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to regulate Fisheries in British Burma,—The Hon'ble Messrs. Ellis, Bayley, Dalyell and Sutherland and the Mover.

The Council then adjourned to Tuesday, the 24th February 1874.

CALCUTTA;
The 10th February 1874.

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

Office Supdt. Govt. Printing.—No. 338 L. D.—17-2-74.—250.