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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.

1876.

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

The Council met at Government House on Tuesday, the 28th March 1876.

PRESENT:

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

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.

The Hon'ble Sir W. Muir, K. 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 John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Nárendra Krishna Bahádur.

The Hon'ble J. R. Bullen Smith, C.S.I.

His Highness Maháráját Iswaríparshád Náráyan Singh Bahádur, of Benares.

The Hon'ble F. R. Cockerell.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers, be taken into consideration. He said that this matter had been before the Council some considerable time, and on one or two different occasions. When they met last at Simla, he had explained to the Council the extreme complication of the present law, and that in point of fact the present law was found to be quite unworkable. He had also mentioned that a Bombay gentleman, Mr. Kittredge, who was very well acquainted with the business of passenger ships, had suggested a new principle on which the measure might be framed. This principle had first been provisionally adopted, and they had communicated with the Local Governments on the subject; and, finding that the principle was a sound and workable one, they had determined on recommending it to the Council. The B' had been published, and nothing had occurred to make them wish to recede from the position taken up. In fact,

all that had happened since the measure was last before the Council was that one or two small alterations had been made in details.

The principle that was adopted was to divide voyages, not according as ships were going east or west, nor into coasting voyages and others, but into short and long voyages. A long voyage was defined as one in the course of which a ship was fully five days out of port, and a short voyage included all other voyages. These, in fact, represented two different and distinct classes of business; one represented the passenger trade to the more distant countries, and the other represented the coasting voyages, which were, at the present moment, provided for under that not very intelligible name by a separate law. Then, a set of rules had been laid down applying to all voyages, another set of rules applying to short voyages, and another applying to long voyages; those applying to short voyages were less stringent than those applying to long ones; that was to say, in the case of long voyages more precautions were taken. These alterations in the principle of the Bill necessitated considerable alterations in the details. All these were set out in the Bill, as presented to the Council in September 1875, and in the Report of the Select Committee which was then presented. He would only now mention one or two of the larger details in the Bill.

They had endeavoured to consult the convenience of shipowners in respect of certificates and surveys. Complaints had been made that shipowners had been holding perfectly good and valid certificates for many purposes, but yet the law required them to take out fresh certificates before the commencement of a fresh voyage, and these fresh certificates sometimes entailed a needless survey, the cost of which in the first instance was borne by the shipowners, but of course must, as in all such cases, be borne ultimately by those who used the ships. Now they had divided certificates into two classes—the one relating to the more permanent qualities of a ship, and the other to the temporary incidents which affected ships. Such matters as the seaworthiness of the ship, her equipment, and capacity were the permanent elements of a ship, and it was proposed that they should be comprised in one certificate, which was called certificate A; and if a shipowner held a certificate of this sort from the Board of Trade or the Indian Government, not more than six months old, that would cover the particulars required by certificate A, and no new certificate would be required. The other temporary incidents were such things as the number of the crew, supplies of provisions, water, and so forth, which might vary with every voyage; and for these the Committee proposed a second certificate called certificate B, of which there must be a new one at the commence-

ment of every voyage. And in order to check recklessness in ordering surveys, at the expense of the owners, it was provided that, if the surveyors who conducted the survey reported that there was not, in their opinion, any good and substantial reason why the survey should have been ordered, the expense of such survey should be borne by the Local Government.

Another rather important alteration of the law was for the purpose of checking frauds which were committed in the passenger trade to India. For instance, they found that at Singapur a ship might put out of port with the number of passengers allowed by the law of Singapur; but after going ten miles out to sea, or after going to the coast of Sumatra, she might take in a larger number of passengers than was allowed by either the laws of Singapur or India, and convey them to an Indian port. At present the Indian law did not touch such an offence; it was an offence against the law of Singapur, and the moment the ship was three miles away from Singapur, she might laugh at that law. Now, as a general rule, it was not their business to interfere with the law of other countries, but this was a matter in which the interests of both countries were concerned, and they did not want that overcrowded vessels should enter Indian ports, and bring with them the risk of disease. They had therefore provided that if any ship entered an Indian port with an excess of passengers, more than was allowed by the Indian law, or more than was authorized by the license which the ship held from its port of departure, it should be deemed an offence committed against Indian law, and the captain should be punished accordingly.

He did not think there was necessity for him to draw the attention of the Council to any other matters, for all the other details were of a small kind, and he had no doubt the Council had satisfied themselves as to the propriety of this Bill in respect of these details.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed. He had only to add that they were very much obliged to the gentleman who had been at some pains to assist them in this matter. Mr. Kittredge, whom he had previously named, had taken a great interest in it, and Messrs. Mackinnon, Mackenzie and Co., the agents of the British India Steam Navigation Company, who had taken much pains to submit the case from their point of view, and who, in pressing their own interest, had only done that to an extent which was perfectly reasonable, proper and in the interests of the public. Two of their late colleagues, Mr. Eden and Sir Douglas Forsyth, had also taken

great pains in framing the Bill, and they had held interviews with the Calcutta gentlemen engaged in the trade, and had enabled the Committee to adjust technical details with more confidence than would otherwise have been the case. He hoped that the Council would approve of the measure, and that it would be found to meet the requirements of the case.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY asked for leave to postpone the motion that the Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta, be taken into consideration.

Leave was granted.

NATIVE COINAGE BILL.

The Hon'ble SIR W. MUIR moved that the Report of the Select Committee on the Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India, be taken into consideration. When he asked leave to introduce the Bill, he had explained its provisions fully, and they were also discussed at a subsequent meeting. It was found in Committee that it was necessary to make only a few alterations. They had changed the definition of "Native States" in accordance with certain expressions used in a treaty; and it was now explained to mean any Indian State which was under the protection or political control of Her Majesty, or of which the Government had acknowledged the supremacy of the British Crown. In sections 3 and 4 they had struck out the words "or issued by," so as to preclude the power to issue, under the proposed Act, coins manufactured in England or any place other than a mint of the Government of India; and to section 4, clause (*f*), they had added some words to make it clear that the coins declared by a Native State to be a legal tender, should be so only in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India. Words had also been introduced empowering the Governor General in Council to impose on any metal sent for coinage, under the proposed Act, the duty leviable on the same metal under the Indian Coinage Act, 1870; in all such cases, compensation would be arranged for, in the engagement entered into with the Native States, as the equivalent of such duty.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE moved that the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue, as amended, be passed; and in doing so, he proposed to offer a few remarks upon the principle of the Bill, and the objections which had been raised against it. He had taken steps to have himself supplied officially with all the criticisms which had been offered upon the Bill in the public prints of the Bombay Presidency, both in English and the Vernacular, and to the best of his belief, he had received and had carefully perused all such criticisms. He did not propose to attempt to correct all the misrepresentations, or to answer all the vague declamations which had been scattered broadcast throughout the presidency upon the subject. But he would take up a few points of more or less importance which might be considered as typical of the style of criticism which the Bill had had to endure.

First, there was what he might call personal criticism which had been directed against himself, and there was case criticism which had been based upon certain civil suits which had been recently before the public in the Bombay Presidency. To criticism of these two descriptions, he did not propose to reply, because it appeared to him that whether an individual revenue officer had acted correctly or not in any particular case, or whether the Government happened to be successful, or the reverse, in any particular suit, was a matter altogether irrelevant to the great public measure now under consideration. It seemed to him to be the duty of the Government and the Council to consider any measure which might be brought before them on the broad and general grounds of public policy which its advocates affirmed necessitated it, and not to turn aside, or be influenced by any circumstances which might arise out of the conduct of individual persons, or the accidents of any particular case.

He would next point out that the scope of the Bill had been almost universally and in a most remarkable manner misrepresented or misunderstood. It had been stated over and over again that the object of the Bill was "to place all landowners in the Bombay Presidency at the mercy of zealous revenue officers." We were told that "all revenue suits would be barred" by it; that "the revenue officer will be the sole judge of the validity of a man's claim to any property," and so on. It was only necessary to mention such statements for their incorrectness to occur to every Member of the Council, and he need not recapitulate the details of the Bill in order to disprove them. It would be sufficient to state that so far from placing all landowners at the mercy of the

revenue officers, this Bill only affected certain owners of land, and so far from placing them all at the mercy of revenue officers, it would admit a large section of them to the privilege of resorting to the Civil Courts which they did not now possess. Similarly with regard to property, it would allow suits in the Civil Courts in respect of property in the new provinces which were hitherto not permissible, provided the claim rested on any one of a large class of proofs.

He also observed that a very ingenious attempt had been made to assert that in point of fact, the new provinces of the Bombay Presidency were legally and practically in the same position as the old ones; and that all which had been said to the contrary in the discussions upon the subject was simply so much nonsense, and was merely calculated to blind the eyes of those who did not know any better. In proof of this ingenious assertion, the two great cases of exemption and assessment had been taken. Regarding exemptions, it had been contended that this was so because by the Inám Act, and the Summary Settlement Act, II of 1863, a large portion of the *inám* or alienated lands had been settled, and consequently, the Civil Courts had now returned to their full jurisdiction over inám lands; and in support of this a case decided by the High Court was quoted. This was absolutely irrelevant. It had never been contended that when a claim to exemption had once been adjudicated on or disposed of by the revenue officers under those Acts, those officers would have any further power to interfere with the property. By the old law even such adjudicated property became just like any other private property, and ceased to possess any special character; and according to the old law that judgment was very properly passed. Under the present Bill, the law would still remain the same. If it were said that practically the whole of these inám cases in the new provinces had been decided, and therefore this Bill affected nothing, then it might be replied that, under the operation of the similar Act, VII of 1863, the whole of the inám cases in the old provinces must have been decided too, and there was no necessity to make the outcry about the Bill which was being made. As a matter of fact, however, what the Bill did touch was the residue of all this class of cases, and similar cases which must from time to time arise in the course of settlement both in the new and in the old provinces. With reference to the point of assessment, on the other hand, it was simply stated that it was now unnecessary to reserve to Government any special powers relating to assessment, because the revenue assessments over the whole of the new provinces had been completed. This statement entirely ignored the fact that, although the original survey and assessment had been completed at dates ranging up to above thirty years ago, a revision of the assessment was now going on in full force and would continue to

be in progress throughout the whole of the next thirty years, until the second series of leases fell in, and the process had to be repeated. Therefore, it was obvious that it was just as necessary for the Government to have this power of control of assessment for revised surveys as it was for them to have it for original surveys.

He would now invite the attention of the Council to the memorial from certain inhabitants of the Bombay Presidency which had been printed as Paper No. 10. This memorial had been signed by a considerable number of the leading pleaders of the Presidency town, and at the head of them was the name of the Hon'ble Vishvanáth Náráyan Mandlik, who was also a Member of the local Legislative Council. This document was worthy of great consideration, not only from the position and ability of those who had signed it, but from the remarkable nature of its contents. He noticed in the fourth paragraph that the memorialists deliberately attributed to the Civil Courts a jurisdiction which the Judges of the High Court had recently stated they were not aware had been imputed to them even in "the wildest arguments of legal practitioners." With this singular conflict of opinion between legal authorities, he would leave his hon'ble friend Mr. Hobhouse to deal more in detail.

It was next urged in the same memorial that in the course of his (MR. HOPE'S) speech at Simla, he had not "adduced one solitary proof showing that the judicature in the exercise of its functions had ever abused the powers conferred on it by the legislature." It might not perhaps have been altogether impossible to have adduced some decisions which, in the opinion of revenue officers, and some others, might have appeared contrary to law, contrary to facts, or contrary to Native custom. But to have explained such defects fully would have involved going through the entire history of the cases themselves, which would necessarily have elicited replies and recriminations, and caused ill-feeling, while after all the whole would have been altogether irrelevant, for the reason which he had given at the commencement of his address that day, namely, that he did not think that in a measure of this kind, the Council ought to be influenced by individual cases either one way or the other. He thought the Council would consider that he had exercised a wise discretion in abstaining from such a course as that which the memorialists appeared to be disappointed at his not having adopted. The allegation was not that the Courts had misused the powers they possessed, but that they ought not to possess the powers that they did.

In another part of the same memorial, paragraph 8, it was stated that the memorialists "had been dismayed to find that the objectionable features of the

first Bill appear in all their reactionary aspect in the modified Bill; whereas the alterations effected in it tend still more to the exclusion of the Civil Courts from the exercise of their salutary powers. The principle of exclusion and denial of justice in open Court has thus been made only more general and more positive than before." He scarcely knew how to deal with a statement of this description, because he thought there would have seemed to the most casual observer to be a distinction between the two Bills, and the modifications made in the second in favour of the subject were of the most striking character. The first Bill proposed to raise the old provinces entirely up to the level of the new, *i. e.*, to exclude the Courts entirely in all questions of revenue. The present Bill would not only deprive the old provinces of less than was at first intended, but would admit the new provinces to a larger measure of Court jurisdiction than they had ever possessed since they passed under British rule. The Bombay Government had been more candid than the memorialists, and had fully recognised the material modifications which had been made in the Bill since its first introduction.

Again, it was stated in paragraph 9 of the memorial that "in virtue of section 4, clauses (*c*) and (*d*) and section 6, any mámlatdár or mahálkari, or any officer (or their peons) acting in these capacities, may give assistance of this kind, and enrich one man at the expense of another, without leaving to the injured man any means of redress, or some roundabout remedy which will virtually prevent their obtaining redress." This remark had reference to the provision which enabled the Collector to render assistance to superior holders in recovering rents from their tenants; and it was only necessary to refer to section 5 to see that there was the fullest provision there for all suits between landlords and tenants proceeding without interference, just as they did under the present law.

It was next stated, with regard to what was called *watan* property, that it had "always been dealt with as private property, which could be sold and purchased at one time like all other property." To ascertain how totally mistaken this view was, it was only necessary to look at section 20 of Bombay Regulation XVI of 1827, which was the old law on the subject, to see that the alienation of service lands was extremely restricted, and could not take place beyond the limits of the family of the original holder, and now Act III of 1874 of the local legislature had perpetuated the same provision in a more explicit and equally definite form.

He might, perhaps, have occasion again to refer later on to this memorial in a casual manner; but as a whole, he would now dismiss it with an expression

of his regret that such a document should bear the signatures of some men whose friendship he valued, and of many whose talents he respected, but whose influence, when thus exerted, he deplored.

He would now pass on to another class of objections which had been raised. It was said that the "statesmen of former days wished to make the people here as happy as those of England by conceding to the former the rights and privileges enjoyed by the latter," whereas now the object of the Bill and the policy of the Government in general, in this and other matters, was to turn India into "a mere Empire, governed by a Great Moghul and a host of rapacious tax-gatherers." It was also said that the principle of the Bill was "unconstitutional," and the changes were rung upon what was constitutional and unconstitutional in an infinity of forms. He could not but think that those who made objections of this description were not fully aware of what "the rights and privileges of the British people" really were in matters of revenue. The simple fact, however, happened to be that there was "no proceeding in a Civil Court in England for the recovery of over-paid or over-assessed taxes; the aggrieved parties can only apply to the Commissioners" appointed for the purpose, that was to say, to the Revenue Officers of Government. And the Court of Exchequer had ruled that it "will not upon motion enter upon any question of rateability to assessed taxes," and that "an assessment under the Assessed Taxes Acts is final and conclusive, unless appealed against" to the Revenue Officers. That was a broad and general statement which applied more or less to all classes of what might be called the Queen's taxes in England. With regard to local taxation, the principle was very much the same; the Appellate Court was different, being usually the Court of Quarter Sessions. But with regard to such taxation also, the law was perfectly explicit, that "no rate * * * or any order, or award or other matter, or thing, made, done, or transacted, in, or relating to the execution of this Act, shall be * * * removed or removable by certiorari or other writ or process whatever into any of the superior Courts." But there was a further point in connection with the English law which was worthy of notice. That was that the Statute of 43 Geo. III, c. 99, which was called the Land Tax Act, contained a proviso that at the time of the hearing of an appeal "no barrister, solicitor or attorney, or any person practising the laws, shall be allowed to plead before the said Commissioners on such appeal for the appellant or officers, either *vivâ voce* or by writing." And this proviso applied to all appeals which followed this statute. Now he ventured to think, that this was one of "the rights and privileges of the British people," which those who raised an objection of this kind would perhaps admit, on reconsideration, that they would rather *not* enjoy. And the

Council could picture to themselves the number of memorials signed by pleaders throughout the country, with which they would have been flooded if the committee had ventured to put such a section as this into the Bill before them. He must confess that the allegation of the Bill being "unconstitutional" was so far borne out that it did not contain this well-established provision of the English law.

Another point which had been raised was that the line which had been drawn in the Bill between different kinds of claims was indefensible. This line the Council would recollect was, that whenever a case or a claim rested upon an express enactment or the provisions of a *sanad*, or upon a deed or a judgment, or other specific basis, the Civil Court should decide; but where a case turned upon a tenure or a custom or any matter more or less of a technical nature, the revenue Courts should deal with it. It was said that this line was totally indefensible. Why, it was said, could not the Courts decide as well revenue officers on "the genuineness or authenticity of documents," on oral evidence, and on "the validity of informal guarantees?" Why could they not judge of the "political effect of political events more or less distant or obscure," and why could not Government give them all the information it might happen to possess? Now in the first place, with regard to political considerations, it was obviously not the business of the Civil Courts to enter into them; it was the duty of the Civil Court to decide on the evidence before it, and if it were to go wandering away from the specific matters before it into any such general considerations as to how the country ought to be governed, it would be entirely neglecting its own proper functions and trespassing on the domain of the executive Government.

Then with regard to the remaining objections as to documents and so on, he must point out, that it had never been said that the revenue officers were better qualified to decide upon *all* documents and so on, but the allegation was merely in reference to the particular nature of revenue documents and revenue tenures, and the like, of which they were presumed to possess special knowledge. With regard to this branch of the subject, he would remark that it might be considered from two different points of view. In the first place, the forms, principles and procedure of the Courts were necessarily in themselves not so favourable for the working out of elaborate revenue cases which might become precedents, as would be the revenue procedure. The Court was necessarily bound to decide upon what was placed before it; it must go upon the particular statements which might happen to be extracted, unintentionally or without full consideration, from individual witnesses and sometimes under

cross-examination. The Court would, perhaps, under some theory of *laches*, refuse to admit in the course of the hearing certain evidence to rebut other evidence with which one of the parties considered he had been surprised. The Court would draw inferences unfavourable to one party from the absence of evidence which would probably have been produced in the Lower Court, if it had ever entered into any one's head that it was required. Many other instances could be given where a Court could not exhaustively and properly deal with this sort of questions, whereas the revenue officer was bound to investigate the matter to the bottom; he might send for any information he required. If he could not make out from the complaint, and the evidence upon which it was based, what the case rested on, he might send for people considering themselves aggrieved, converse with them, find out what they really meant, let them amend their statements, and deal with the case accordingly. In support of this, MR. HOPE would point out that if it were not for such essential distinctions in the procedure of the Civil Courts, there would be no reason whatever, excepting the difference of Appellate Courts, for excluding from the Civil Courts revenue matters in such a province as the Panjáb, where the same officer sat as a Judge in the morning and as a Collector in the evening; and there would be very little reason for having a similar distinction as regards similar suits in provinces like the North-Western Provinces, where the officers who were the Judges had obtained their posts by simple transfer from the office of Collector, and were just as much up in revenue matters as the Collector himself.

Besides this, he must, however, add that in Bombay there was a special disability of the judicial department for dealing with revenue matters; and it was this, that there the revenue and judicial departments were separated from one another, almost, he might say, from the commencement of every individual's service. Instead of passing into the grade of Judge after having been fifteen or twenty years in the country in revenue employ, it was not at all uncommon for young civilians to enter the judicial department as soon as they had passed their examinations, or at any rate, three or four years after entering the service, and when, in a great number of instances, their knowledge of the country and of the people could be, at the best, but skin deep. He was not now offering any opinion as to whether the system of separation of the two branches in Bombay was a proper system or the reverse. It might be that this system was highly favourable to the cultivation of judicial knowledge. All that he contended was that it could not also permit the acquisition of revenue knowledge. There could be no doubt that the Bombay judicial department, as a whole, were a body of trained lawyers who were inferior to none in India, whether in or out of the civil service. All that he

contended was, not that they were not so, but that from the fact of their being so, they could not also be trained revenue officers.

However, let us take, Mr. Hope proceeded, an illustration of this point. Let us suppose some elaborate revenue case—a case, we would say, in which intricate and obscure land tenures were involved, where it was necessary to consult the revenue records and accounts of the country for a couple of hundred years; where it was indispensable also to know the whole revenue history of the district and the surrounding districts for years before the country had passed under British rule; where documents were bristling with revenue terms, half of them partially obsolete, and there was very little of real law at the bottom. Such a case we should probably see taken up in the first instance by an experienced Assistant Collector, who would go through it, take evidence, collect accounts and documents, and submit his own view on it to the Collector. The case would then be considered by the Collector, possibly by two or more Collectors, and when it had been thoroughly sifted, it would be handed up to the Revenue Commissioner, who, in Bombay, was an officer of the very highest standing and authority, and had revenue control over one-half of the presidency. From him it would go up to the Government, and if there was any legal point in it, the legal adviser of the Government would no doubt be consulted. It would then be taken up by the Revenue Member of the Council, and finally the orders of the Government would be issued.

On the other hand, we might imagine the same case in the hands of the district Court and the High Court. We should find the Courts and the Counsel on *both* sides striving with great zeal, honesty and ability, to make out what the whole thing was about. We might find dictionaries of doubtful authority consulted as to the meaning of revenue terms; we should probably find one side or the other pinned by the Court to ill-weighed statements made by individual witnesses. Old printed reports about one thing, might be supposed to apply to another really quite different. We might also find a whole mass of papers and accounts, perhaps some four or five hundred, handed over to the translators down at the presidency—papers in regard to some of which the entire value depended upon some idiomatic term of the Native language; and the result of such translation might be somewhat similar to what might be that of an English charter or title-deed some two hundred years old, when rendered into Hindústání by a European. And on these data the Court, with great care and industry, would pass as good a judgment as it could.

And yet, after all, if it so happened that the decision of the Court was different from the decision of the chain of revenue officers, we should

probably at once find a whole series of persons who would be ready to denounce, as something little less than criminal, the views which the revenue officers had taken. We should be told that this was "a just judgment," giving the people "their rights," of which over-zealous and indiscreet, if not rapacious and dishonest revenue officers, had banded together in order to deprive them. Yet on what principle could such an assumption be defended? Would the very parties who put it forth, act upon a similar assumption in the relations of private life? Suppose a man's house was leaking, would he call a consultation of doctors; or if his health was affected, would he convene a committee of engineers? The only ground upon which Mr. Hope could understand such an assumption being tenable, would be, that the Courts had necessarily and intrinsically a monopoly of all equitable feeling, knowledge and common sense. He need scarcely say, that no judicial officers would ever dream of claiming such a monopoly as that, which was practically ascribed to them by their too zealous advocates.

Mr. Hope was well aware, that it might be said that this argument went too far; that altogether, it proved a great deal too much. It might be said that if the revenue Courts were really as good as he tried to make them out to be, we ought to hand over to them the decision of all revenue matters between private parties, and not merely those in which the Government was concerned. There were three answers to this objection, first,—that usually private relations were not by any means so complicated as, and were more of the nature of simple contract than the relation between the State and the subject. Likewise, it might be said, that where the State was involved, the interests were more important than mere private interests, because, although it might not matter to the nation generally whether A or B had a particular piece of land, it mattered very much to them, whether or not they were all to be taxed in order that A might enjoy an exemption. Thirdly, he might add that, to a certain extent, we did at present entrust such matters to the revenue Courts. In the Burma Land Revenue Bill, for instance, which was passed not long ago, there was an express provision that if the Civil Court found any doubt about the status and rights of a landowner, it was to stay proceedings, and refer to the Collector to decide the question. Similarly with regard to rent. We were all aware that rent suits had been in various parts of India transferred from the Collector to the Civil Courts only recently, and there was still a great difference of opinion whether this transfer was a wise and workable one or not.

He would now change the subject to another point. It had been said in the memorial of the Hon'ble Vishvanáth Náráyan Mandlik and others,

that the Courts were "the only specific assurance to the people of the justice and sound policy which actuates Government in its dealings with its subjects." And the decisions of the Civil Court again had been said by another critic to be in "ninety-nine cases out of a hundred against the Government." Now he was not prepared with a return of the whole of the civil suits in the Bombay Presidency and their general result. But he did happen to have a return of the suits filed in the large Collectorate of Surat for nine years, *i. e.*, between the years 1866 and 1874, both inclusive. This was a period, as it so happened, during which a series of the most important interests were dealt with in that Collectorate. Nearly the whole of the alienations were disposed of under the provisions of Act VII of 1863, the Summary Settlement Act; and thus thousands upon thousands of cases of disputed area, tenure, &c., were investigated and decided. Besides that, the revenue survey was introduced throughout the whole Collectorate; and finally, the city surveys, which related to landed property in large towns, were carried out in the town of Surat with a population of above 100,000, and in two other towns with a population of 10,000 and 15,000 respectively; so that altogether it would have been difficult to select a period in which those terrible fellows, the revenue officers, could have worked more havoc amongst the rights of the people, or in which the protecting genius of the Civil Courts might have been more needed to throw "the *ægis* of law" over the oppressed. Yet, what were the facts? There were altogether within those nine years one hundred and one suits, of which he might remark that very nearly one-half were either instituted before he had anything to do with the Collectorate, or related to matters which had happened independently of him. He merely happened to have had the troublesome task of defending most of them. If we deducted thirteen cases which turned upon two others, the decision of individual points in which governed the whole number, and three more which were now pending, we got a balance of eighty-five. Of these, fifty-three were decided entirely in favour of Government; five more were partially decided in its favour; two were withdrawn by the plaintiffs themselves, and three more, which Government had gained, were still under appeal, which made sixty-three to the credit of the Government. On the other hand, fifteen had been won by the plaintiffs, five had been compromised by the Government, including two in which the Government had got favourable decrees in the lower Court which they did not think it safe to pursue, as the wording of the law was doubtful and contrary to the intentions of the legislature, and two were under appeal. That made twenty-two cases given against the Government as against sixty-three decreed in their favour; or, in other words, instead of ninety-nine out of every hundred cases going in favour of the people, three out of every four were decided in favour of the Government. Now, he could only say that if this

was the "only specific assurance to the people of the justice and sound policy" of the Government, as stated by the Hon'ble Vishvanáth Náráyan Mandlik and the other memorialists, they were assured by very little, and it seemed to him that it would be more appropriate to apply to the action of the Civil Courts than to the Bill before the Council the language of the Hon'ble Mr. Vishvanáth and his fellow memorialists, namely, that it was "a sweeping measure of exceeding stringency, and as against the subject, with but a small modicum of utility." He could scarcely understand such enthusiastic advocacy of popular resort to the Civil Courts on the part of the Hon'ble Mr. Mandlik and his friends, except by supposing that they adopted the somewhat homely maxim, which, though well known, had not yet found a place in legal text-books, that "a woman, a dog, and a walnut-tree, the more you beat them the better they be."

It might be asked, if the Government generally won all these suits and the people liked it, why should you alter the law? The Canara case has been decided in your favour; six Ratnagiri cases have been decided in your favour; the Chief Justice has delivered an extra judicial speech in your behalf. What more can you want? Cannot you let well alone? It was true that the users of this argument were equally ready with the opposite one—You have lost such and such a case. Therefore, of course, "the fate of the Revenue Jurisdiction Bill is sealed." However, letting that pass, he would but briefly observe that the change was required because of the enormous amount of friction, the immense delay, and the waste of time and money which all these suits caused; because of the political embarrassments which Sir Barrow Ellis had explained to the Council, and the fiscal difficulties involved in even a single erroneous decision which Mr. Hobhouse had dwelt upon; and because, as he himself had already said to-day, the Government could not look to individual suits, but to the broad general principle of any measure which they were considering.

He had now only one more point to refer to, and it was this. It was said that "however just and independent revenue officers may be, * * * it cannot but be that their minds perhaps unconsciously are biassed in favour of the Government," and it was asserted, as a matter of fact, by a different critic, that they were prejudiced and did habitually decide in favour of the Government and to the detriment of the people. Now, he thought that those who made such allegations as these, did not bear in mind that a revenue officer had two interests, as had been pointed out by his honourable friend Mr. Hobhouse; and that the one in favour of keeping the people quiet, of collecting the revenue smoothly, and so gaining with

his superiors the character of a man of tact and moderation, who could rule his district to the benefit of the Government and the satisfaction of the people, prevailed more, so far as he had experience infinitely more, than the mere desire to add a few rupees to the revenue, which would perhaps never be noticed even by the Accountant-General. Such an accusation, too, could at best apply only to the men who were quite in the lowest grade of superior revenue officials, who might perhaps sometimes get over-interested in a case they had worked out in detail. It could not apply to all the superior officers, who were often, perhaps, much more ready to criticise the acts of those below them than to adopt the views which they offered. On the last occasion on which he had the honour of addressing the Council, he had referred 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," and in support of this, he should like to lay before the Council one illustration. It was that of the city surveys. These surveys involved the setting out of boundaries of all properties in large cities, and enquiries into the tenures and titles under which they were held, with the names of the parties possessing them, as also the measurement of the whole and the issuing of title-deeds. In short, these surveys were a matter of the very greatest importance, and it was said when they were first started, that the rights of the people would inevitably be trampled on by the revenue officers, with much more of the same sort of declamation as we had been favoured with in this matter. These surveys had now been completed in four large cities, Broach, Surat, Bulsar and Rander, after having lasted over a period of above ten years. In Broach, with a population of from 30 to 40,000, the survey had lasted five years, and seven different officers had been engaged on it. The number of decisions was 20,047, the *sanads* issued were 9,596, but the appeals were only 445, or little more than two per cent., though a considerable portion of them were decided in favour of the appellants. As to civil suits, there were only three, of which one was decided entirely in favour of the Government, another partly so, and the third was withdrawn on the death of the plaintiff. Again, in Surat, with a population of 107,000, the survey had lasted nine years, and there were ten different officers engaged on it. The decisions were 47,133, the sanads issued were 26,404, and the appeals 491, or scarcely more than one per cent. This was not from any want of encouragement to appeal, because nearly one-half of the appeals were decided in favour of the appellant. The civil suits were nineteen; of these five were still pending, eight were decided in favour of the Government, two were with-

drawn by the plaintiffs, and out of the remaining four, one was lost and three were compromised by the Government themselves, two of them, because it was not thought safe to push on appeal the interpretation of a law which did not very well express the intention of the legislature. At Bulsar, with a population of about 15,000, there had been 5,247 decisions, and at Rander about the same number, with the same other general features. Only one question, involving ten cases, had been taken to Court and decided against Government. Now, considering that these surveys had lasted so long a time, and that these cities were so large and rich, containing a population of wealth and intelligence, that there was an abundance of educated pleaders about the district Court, and that there was also there "Her Majesty's opposition," who might be counted on one's fingers, but who were always ready to make the most of everything that occurred, MR. HOPE thought that if the revenue officers had possessed any such biassed, indiscreet and rapacious tendencies as were ascribed to them, "what was bred in the bone" must have "come out in the flesh," and this whole district must have been driven into outcry or rebellion. Yet the fact was just the reverse. It appeared to him that this imputation of bias to the revenue officers was as unjust and unreasonable as would be the opposite allegation, that the Civil Courts had a tendency to consider every Collector as a wrong-doer, and to yield readily to the fascinations of posing in the attitude of protectors of the poor. Both would be equally false and untenable, and such allegations were both unjust to the great department at which they were levelled, and unworthy of the quarter, whatever it might be, from which they proceeded.

In conclusion, he would briefly recapitulate the grounds on which the Council were asked to pass this measure. First of all, the state of the law was uncertain, so uncertain that we had the leading pleaders of Bombay at issue with their own Chief Justice and High Court. The law likewise was exceedingly anomalous, as it was found that in the new provinces there was an unnecessary exclusion of the Civil Courts, while in the old provinces there was an extreme admission of them, so extreme an admission as to be greater than that which existed in any other part of India or even in the United Kingdom. Further, this uncertainty and extreme admission of the Courts was not unlikely to lead to consequences which were embarrassing both fiscally and politically; and the chances of such embarrassment were enhanced by the peculiarity of Bombay judicial officers not also having revenue experience. Upon those who objected to the Bill lay the burden of showing why one portion of one Presidency of India should be treated quite differently from the rest of India and England, and that they had altogether failed to do. On the contrary, they had been obliged to take refuge in a variety of exaggerations and misrepresentations

which had been more or less fully exposed. Under these circumstances, he thought the Council might pass the Bill without hesitation, in the full confidence that it would redress the glaring anomalies which now existed, and remove the risk of complications and difficulties in the future.

The Hon'ble MR. HOBHOUSE said:—"My Lord, when I spoke about this measure in October last, I told the Council that I was not competent to discuss anything but its most general principles, and that many, if not most of its details, were such as required more experience than I had to handle in this Council. I did not think then that it would have become necessary for me to address the Council again upon those principles; but I find that it is necessary, because an entirely new view of the existing law has since been promulgated, and it has been urged upon us that such new view is quite satisfactory, that the principal motive for the Bill is removed, and that the Bill itself may safely be dropped.

"It certainly is true that if the law be what we are now told it is, the most important provisions of this Bill, by far the most important in my opinion, amount to little more than a declaration of that law. And though I think there would still be ample reason for passing this Bill, others in this Council or elsewhere may think differently, and it is therefore incumbent on me to recapitulate the view of the law upon which we have hitherto acted, and to state what I understand to be the true view, and under what circumstances the new light has reached us.

"Now our late colleague Sir B. Ellis, when he first launched this measure, based its expediency on the state of the law which he described. I will read some passages from the report of his speech on that occasion.

"He mentioned a decision of the High Court of Bombay, in a suit brought by one Wamnaji, to the effect that an assessment was faulty because it exceeded a sixth part of the assets of the estate. The report then proceeds as follows:—

"'The result was that the ordinary principles which regulated the Bombay system of survey and assessment were entirely upset; for there was under that system no local or other rule which required one-sixth of the gross profits to be the limit in assessment. The result, then, of the decision of the High Court—if we acquiesced in it—was that the principles of our settlement throughout the country would have to be modified contrary to the opinion of those who were best able to judge. Such was the effect in this particular suit. In other cases, equally injurious effects might follow if the present practice were continued. For example, certain modes of assessment, and certain principles of assessment, might have been adopted by the State. Those modes and principles might not commend themselves to the learned Judges,

and in cases practically involving broad political questions, and matters of State policy, the opinions of the Judges of the High Court might overrule the deliberate decision of the Government here or in England. There were other minor evil consequences, which followed on the present system. He need hardly say that if, under the Ryotwarri system in Bombay, every man was allowed to question in a Court of law the incidence of the assessment on his own fields, the number of cases which might arise was likely to be overwhelming. The suit to which MR. ELLIS had referred, one of Rs. 4 only, was an instance of the small amounts which might be brought into Court, and if cases of this kind were frequent, and the Survey officers had to give evidence in each of them, the result would be that their time would be so fully occupied with such matters that they would be unable to attend to their duties, and the whole machinery of the Survey and Settlement Department would be disorganized. Moreover, it might be questioned whether Judges learned in the law, however skilled they might be to decide the cases ordinarily brought before them, were best fitted to deal with matters requiring special and technical knowledge, and which had been settled and decided by officers who had been all their service trained in this special branch of knowledge.'

"The reasons then given, briefly stated, were two. *First*, that the law cast on the Judges duties which they could not perform so well as Revenue officers. *Secondly*, that if every man might question in a Court of law the incidence of an assessment on himself, the public business could not go on.

"The Council are aware that the provisions of the Bill have been the subject of very animated controversy in the Presidency of Bombay. In fact, there came in petitions and utterances from several quarters, some of them from very well-informed gentlemen, adverse to the Bill, or to what the objectors supposed to be contained in it. But when we met at Simla in October last to reconsider the matter, we did not find a suggestion from any one that we were wrong in our estimate of the law. When I addressed the Council, I pointed out that the opponents of the measure, though in my judgment they were by no means wholly wrong, had not done justice to their case, because they insisted on maintaining in unaltered simplicity a law the terms of which were dangerously wide, which might have worked well enough with the machinery which existed fifty years ago, but which could not be considered as workable now. I then pointed out the nature of the law as Sir B. Ellis had done before, with somewhat, though not with very much, more of detail. The only difference between us was that he attributed the state of things to the ruling in Wamnajf's case, whereas I considered that ruling to be a right and necessary one, and showed that the results which were complained of, and those which were apprehended, were necessarily involved in the Regulation we are seeking to alter, namely Regulation XVII of 1827.

"That was the position of the case in October last. But it happened that in the month of December a division of the High Court of Bombay had occasion

to deliver judgment in a revenue case known as the Kabilpur case, and in the course of that judgment they referred to the views of myself and Sir B. Ellis, and stated that they thought us wrong. It is right that I should read to the Council a full account of the exposition made by the learned Judges, one of whom is the very able Chief Justice, Sir M. Westropp, and the other a learned Civilian, Mr. Justice Melvill. They quote some sections of the Regulation, the material ones of which I read to the Council before. They run as follows:—

"'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 principal sections are section IV and section IX, on which these observations are made:—

"'Section IV, clause 1, enacted that '*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.'

"'The special subjection of the *discretion* of the Collector to the control of Government, on the principle of the maxim *expressio unius est exclusio alterius,* precludes the construction that the Collector's *discretion* is subject to the control of the Civil Courts.

"'Section IV, clause 2, of the same Regulation enacted that '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.'

"'This clause deals with 'rights,' not with 'discretion,' and contains no provision, either express or implied, that 'rights' are to be excluded from the consideration of the Civil Courts. That portion, therefore, of clause 2 of section IX, which gives a resort to the Civil Court, would operate upon questions of right arising out of a specific limit to the assessment.

"'Section IX, clause I, enacts that, "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.

"'The second clause of the same section is important. It enacted as follows:—'But if any person should deem himself aggrieved by any such decision, he may 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.'

"'*Third.*—The Collector shall forward to Government, without delay, any petition presented to him under the preceding clause; but the reference to Government shall have no effect upon any suit instituted in the Civil Court.

"'The observations already made upon clauses 1 and 2 of section IV, show that in order to give to those clauses respectively their full and just effect, the second clause of section IX must, in matters of assessment, be read distributively, or as it is called, *reddendo singula singulis.* Thus Government must be regarded, when a petition is presented to it by a person deeming himself aggrieved by a decision of the Collector, as having authority to deal with it as Government may please, the discretion of the Collector being in all respects subject to the control of Government.

"'But in the case of an action in the Civil Court, the latter can only interfere with regard to (*i. e.*, adjudicate upon) the legal right or title of the plaintiff to exemption or partial exemption from payment of land revenue, by reason of the existence of a specific limit to the assessment in the case. This construction at once harmonises all three clauses, without violating the provisions, express or implied, contained in any of them, and also attains the object set forth in the preamble.

"'Those two clauses of section IV are most important, when taken in connexion, as they must be, and, as we believe, they always have been, with the second clause of section IX, as fixing a boundary beyond which the Civil Courts may not travel in questions of assessment of land revenue.

"'We have, therefore, with most astonishment learned that, in a quarter which is entitled to better information, it has been stated that the discretion of the Collector is, in all matters of land assessment, subject to that of the Civil Courts—that 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. It has been also said that the Civil

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Judge may even control the broadest principles of an assessment; that he may disapprove of the portion of the assets which the Government think it right to take; that 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, that 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, that in all these cases the decision of the Revenue officer is expressly made disputable in a civil action; that, in short, the whole land revenue system of the country is, by this Regulation, made subject to the control of the Civil Courts.

"'With all due respect for the high quarter in which this view of the jurisdiction of the Civil Courts of this Presidency in its older provinces has been thus expressed, we must most emphatically state, as we have already stated in the progress of this case, that the Civil Courts have not any such jurisdiction as has been thus ascribed to them; and that, so far as the Judges of this Court know, the Civil Courts have never asserted that they have or ever had any such jurisdiction. Nay, further, those Judges are not aware that, even in the wildest arguments of legal practitioners in those Courts, any such jurisdiction has been imputed to the civil tribunals.'

"They then refer to the Canara case, saying that if the jurisdiction in question had existed, they would have been called upon to exercise it then; but that in point of fact the question had never been raised.

"And they add—

"'We took that opportunity of disclaiming any such jurisdiction, in consequence of remarks made some time previously in the same quarter as that already mentioned, but by a different speaker, which attributed to the Civil Courts an extent of authority which they never possessed, and, so far as we know, never claimed.'

"Then after commenting on Wamnaji's case and some others, they continue as follows:—

"'We are inclined to the opinion that the jurisdiction should be regarded as thus circumscribed even independently of the fourth section of that Regulation. For we should be disposed to hold that section IX (which empowers a person deeming himself aggrieved by the decision of the Collector, to file an action against the Collector in the Civil Court) does not authorize the Court to exercise any control over the Collector unless he transgress the law. That is the proper and well-understood sphere of action of Courts of Justice, and, unless a contrary intention be clearly indicated, the legislature should not be regarded as intending to confer upon them any greater power. The preamble, which points out that the intention of the legislature was to provide means for determining as to the title to exemption from payment of revenue when the Revenue officers deem that title to be insufficient, is completely consistent with that view. The ninth section should, we think, be interpreted in that light. Neither in that section nor in any part of the Regulation is there, in our opinion, the faintest intimation of a desire on the part of the legislature that the Civil Judges should be transformed into Revenue Commissioners, or Collectors of a superior grade. We should no more deem the Civil Courts entitled

to arrogate to themselves the duties of those offices, than Lord Selborne, sitting in Chancery, did to assume functions assigned by Statute to a School Board (L. R. 9 Chan. App. 122) or Sir G. Jessel sitting in the Rolls Court did to appropriate to himself functions conferred upon a Railway Clearing Committee (L. R. 20 Eq. 383).'

"That is a pretty full account of what is laid down by the learned Judges, and I confess that I read it with great satisfaction, because, though it does not command my assent, it supplies a complete justification of the most important provisions of this Bill. Those provisions are to be found in section 4 (*b*), where it is enacted that no Civil Court shall exercise jurisdiction over—

"'(*b*) objections—

"'to the amount or incidence of any assessment of land-revenue authorized by Government, or

"'to the mode of assessment, or to the principle on which such assessment is fixed.'

"So complete is the justification that we have actually been urged to drop the Bill, or, at all events, this portion of it, on the ground that it enacts nothing new. It is therefore my duty to assign to the Council the reasons why I think the Bill to be expedient and indeed necessary.

"In the first place we must not imagine that because we are told that certain controversies have not been raised in Court, there are none such in the country. The view of the law which I submitted to the Council in October last was formed after a perusal of the arguments of the opponents of this Bill and upon a careful comparison of them with the terms of the Regulation itself. The memorials which have been sent in to us have come from intelligent and influential people, associations of landholders and others, who either have among their numbers a strong infusion of vakíls, or have been assisted by vakíls in the preparation of their memorials. I take a paper coming from the Desais of Chikli and read thus:—

"'The authority which the Civil Courts now possess in the older districts, that is, in Guzerát and the Konkan, in matters relating to land, is unrestricted. Our humble prayer is that this authority may be continued intact.'

"I turn to the petition of the Ahmadábád Association and find the following passages:—

"'Your Excellency's petitioners beg to urge that, from a political point of view, the Bill would seem to be highly inexpedient. The policy of the Government of India in the matter of land-revenue is not so indefensible as to require the protection of a special legislative measure to uphold it. They believe that the policy is sound enough on the whole to bear the

light of a public judicial enquiry. They would, therefore, ask respectfully Your Excellency in Council to reject a measure which cannot but create suspicions as to the intentions of Government, and serious discontent and alarm among the agricultural classes of Guzerát and the Konkan, and which, in some measure, at least must impair the character of the Government for impartiality and fair dealing.

"'Your Excellency's petitioners beg to state that section 2 of Regulation XVII of 1827 states that 'all land whether applied to agriculture 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.' These established principles have never been enumerated by Government, and as far as Your Excellency's petitioners are able to observe, Government have been guided by a desire to increase the revenue, and have, in many respects, departed from the established and well-known principles of taxation of land, which had been generally accepted by former Governments. Under the Hindú system there was a body of watandars and zamíndárs, who represented village communities and interceded between the ryots and the Government, so as to get a reduction in unreasonable extortions and correcting errors which led to over-taxation. This class of people has been set aside, and no Revenue Authority or Survey Commissioner ever thinks it worth his while to consult them. The Revenue and Survey Departments settle the assessment to any amount without any check or representation from the people. The principles on which assessments are fixed may be known to Government, but they are not explained to the people or to their representatives. The consequence has been that the revenue has been enormously increased by means which were never resorted to by former Governments. All perquisites and fees of zamíndárs known as hakks, and allowances granted to village communities, as Chillas and Malveras and Gam Kharacha, have been abolished as far as the recipients are concerned, but instead of any reduction being made on that account by the land-tax, it has been increased by that amount. The inám and miráś tenures are virtually upset. New modes of levying revenue from land have been invented, such as the sale of the right of occupancy, of fruit-trees, quit-rent on pasture lands, sale of stone, earth, sand and water, city-lands and settlement on freehold lands, watans, ináms and many others, and some of these are made to yield extortionate sums, as in the case of brick-makers and potters. To these may be added ábkárí and salt-revenue, which yield very large sums of revenue. In consequence of these causes a taluqa which yielded two lákhs of revenue, now yield six. The pressure of the land-tax on these taluqas, which were settled during the American war, and the high prices then reigning, is crushing, to say nothing of opium, stamp, municipal, judicial and registration taxes, and various tolls, which form separate items of revenue. The crushing nature of this taxation is testified by the extraordinary amount of debt, which exists in each village, the number of fields annually relinquished, the extent of waste-lands in each taluqa, the generally wretched condition of villagers, and the number of the vagrant and begging population, strolling in every corner of the country. Under all these circumstances, it is necessary that the ryot should be protected against the errors, indiscretion and over-zeal of survey officers, anxious always to show an increase as the result of their labours. The judicial Courts are, under the circumstances already enumerated, the only refuge for the poor ryot, and constitute the only remedy against the ever-increasing pressure of taxation. To deprive him of this remedy is, Your Excellency's petitioners most earnestly submit, equally unjust and inexpedient.'

"I ask whether you could have any clearer assertion that the whole policy of Government in raising land-revenue and the whole principles of assessment are subject to control by the Civil Courts.

"But I have, if possible, even stronger evidence of the prevalence of this view in well-informed quarters. The Council will remember that one of the early clauses of this Regulation expressly reserves to the executive a right to assess 'all lands under whatever title they may be held, whenever the exigencies of the State may render such assessment necessary.' That is to say, a supreme political necessity is to override all contracts, all bargains, all claims to exemption or privilege of any kind. That a Court of law should have a voice in such a matter would be most inconvenient, and I put it as the most extreme case of inconveniences arising out of the literal construction of the Regulation. Is there, then, a question, or is there not, whether such a jurisdiction exists? Now the last memorial we have on this matter is dated the 26th February 1876, two full months after the delivery of the judgment in the Kabilpur case. It is signed by Vishvanáth Náráyan Mandlik and twenty-one others. Mr. N. Mandlik is an eminent vakíl, and is moreover a Member of the Legislative Council of Bombay. I am told that of the twenty-one others, at least seven or eight are practising vakíls. Then, what does this body of skilled legal practitioners tell us? They refer to the section in question, and proceed thus:

"'And yet the framers of this very section did, it will be perceived, modify and define the limits of the comprehensive claim they had themselves assigned to the State, by providing, in sections 8 and 9 of the same Regulation (XVII of 1827), for certain powers to the Civil Courts in the older districts of the presidency to adjudicate in all matters of dispute between the State and the subject. The legislature of that period considered such safeguards against the possible arbitrary proceedings of Revenue officers to be necessary, and the lapse of fifty years has only tended to confirm the wisdom of this provision.'

"We heard yesterday from the Ahmadábád Association that they concur in these views.

"Now I think it will be plain to the Council that there lies before us a formidable controversy if we suffer this law to remain unaltered. I never told the Council that the whole of the jurisdiction which the two learned Judges now disclaim had been assumed or pressed upon Civil Courts in any case. I said it was certain to be so pressed. I pointed out how one question after another had been found to fall within the jurisdiction of the Court; how at last it had been found, contrary to a former extra-judicial opinion, that even the rules and principles on which the officers did their business might be enquired into there; how it had been decided that a Collector must come into Court and give evidence about the rules or principles of his assessment; and I said that all the rest must follow in time. I find no instance stated in which the Civil Court has

rejected a suit summarily on the mere ground of want of jurisdiction, unless it be under Acts passed for the express purpose of abridging the extravagant powers conferred by this Regulation. In every case I have come across, the Government, if they would not be cast in the suit, have been compelled to prove exactly what their operations were. And if I were asked why I advise a further abridgment of powers the existence of which is disputed, I answer as the fox did to the lion :—

Quia me vestigia terrent
Omnia te adversum spectantia, nulla retrorsum.

"I need not say that if I had known that there were Judges on the Bombay bench who differed from the views expounded by Sir B. Ellis, I should have addressed the Council far otherwise than I did. I should, indeed, have thought it incumbent on me to state my own opinion; but I should have accompanied it with the information that there were others who, as far as authority goes, were better entitled to be heard than myself, and who were of a different opinion. But the learned Judges never sent us any statement or hint that we had mistaken the law. It seems that two of them thought it right in the Canara case to answer Sir B. Ellis' speech in Council. But though the Canara case was decided, now I believe nine or ten months ago, no copy of the judgment has been procurable by me for love or money up to the present moment. I have asked, and the Government of India has asked, many times for a copy, and we have always been told that it is not ready. In last addressing the Council on this subject, I mentioned the disadvantage I laboured under in not having seen the judgment in the Canara case. No doubt the learned Judges have very good reasons for the course they have taken; it is their business, and I say nothing against it. But I have to justify myself for not laying before the Council all the available materials for judging of this legal question; and I do so by saying that, until the publication of the Kabilpur judgment in December 1875, I was in total ignorance that anybody had expressed or formed an opinion that a wrong construction of the Regulation had been suggested to the Council in the month of August 1873.

"But then it may be said that whether there is or is not a controversy with landowners or with the legal profession, the Judges have settled the law. To that I answer, *first*, that they have not settled it, and, *secondly*, that the settlement they would propose would not be altogether satisfactory.

"It has been my duty on a previous occasion to explain to this Council the broad and well-known difference between judicial and extra-judicial opinions. The former are called for by the circumstances of the case; they have been the

subject of argument; they are delivered under all the responsibility which lies on the Judge to do exact justice between the suitors; and they may be challenged by appeal. They are in fact the actual application of the law to the facts of the case, and are law until set aside by competent authority. But the latter have not the same conditions attached to them; and though they are to be received with great respect, they are not law. Now in this case the remarks which have fallen from the learned Judges are both in substance and in form extra-judicial. Nothing can be more explicit than their statement, that they are not dealing with anything in the case before them, but simply with the speeches made in this Council. In the Kabilpur case they say, speaking of the Canara case :—

"'It was not, however, so much as for one moment contended, by the learned and very able counsel for the plaintiffs, that * * * * the Court had any jurisdiction to interfere in the assessment, or discretion left to it by law with respect to the extent of the enhancement.'

"And again :—

"'We took that opportunity of disclaiming any such jurisdiction, in consequence of remarks made some time previously in the same quarter as that already mentioned, but by a different speaker, which attributed to the Civil Courts an extent of authority which they never possessed, and, so far as we know, never claimed.'

"In the Canara case, therefore, the Court was answering Sir B. Ellis. In the Kabilpur judgment I have already read passages showing that they were answering myself and not addressing themselves to any point made in the case.

"These remarks therefore come with great weight, as everything on such a subject must come from such a quarter; but they are not, and do not profess to be, a judicial declaration of the law as applicable to the case before the Court. They must have the same effect, neither more nor less, as they would have had if the Judges had followed the more usual course of stating their views to the Council through their Registrar.

"Moreover, I am bound to state my conviction that, if the point had been raised and argued, the learned Judges would have found the stress of the argument too strong to resist. For this conviction I must state my reasons, though I fear that the brevity I am compelled to observe will hardly allow of justice being done to the subject.

"It will be observed that, in expounding the Regulation, the learned Judges fasten upon section IV, which says that where there is no limit of the right to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government, and they say that the Civil Courts are thereby excluded by implication. That might be so if it were not for

the express words of the overriding section IX, which contains nothing whatever that is at variance with section IV, but only shows exactly how far the Collector's decision is to operate, and how it is controlled. In any question, without exception, arising out of the preceding sections (the section preceding section IX) the Collector's decision is to be the rule *in the first instance only*. If any person deems himself aggrieved by such decision, he may petition Government or bring his action, or do both.

"The conclusion drawn by the learned Judges is that the jurisdiction given to the Courts is confined to 'the legal right or title of the plaintiff to exemption or partial exemption,' and that the extensive words of section IX must be cut down by what is called the distributive construction, or *reddendo singula singulis*. But to confine the jurisdiction to cases of exemption is not reconcileable with, in fact it would almost if not wholly nullify, the language of section IX. That section provides for controlling the Collector's decision upon any question arising of the *preceding* sections, and the controversies about exemptions are dealt with in certain *succeeding* sections, which prescribe the duties of the Collector and of the Courts. According to the ordinary meaning of words, a limit to assessment is the same thing with an exemption; and if that be the construction of the Regulation, section IX would be nullified by the suggested construction. I believe, however, that according to the decisions, there may be a limit to assessment which is not an exemption within the meaning of the Regulation; still the great bulk of exemptions are dealt with by the subsequent and not the preceding sections, and so these sweeping words of section IX would be cut down to insignificant dimensions. I conceive, therefore, that it must be the other numerous proceedings that are mentioned, and not the exemptions, which are contemplated by section IX.

"The same consideration throws great difficulties in the way of any distributive construction at all. That construction is of use where a number of different directions are applied indiscriminately to a number of different particulars. If then it is found that a manifest absurdity results from applying the whole of the directions to the whole of the particulars, but that each direction is sensible if applied to some one particular, you may legitimately distribute the language so as to apply each direction to its appropriate subject. But in order to use such a construction, you must first have your antecedent string of different particulars to which the directions are indiscriminately applied. But I have shown that these particulars are either not to be found at all, or are found in too small quantities to satisfy the extensive words of section IX in the sections of this Regulation which precede that section.

"There is another element in section IX which is equally fatal to a distributive construction. It is of the essence of a distributive construction that the directions shall find each its own subject, and shall not overlap or jostle one another. But here we find that the aggrieved man is told not merely that he may take the one course or the other, but that *he may take both at the same time.* I cannot conceive any words more conclusive to show that the jurisdiction of the executive and of the judiciary was meant to be a concurrent jurisdiction, to extend to the very same subjects at the very same time. To each is given a control over the Collector by identically the same set of words in identically the same set of circumstances.

"The learned Judges then intimate an opinion that the language of section IX ought to be cut down independently of any canon of construction, and simply because, if literally construed, it would extend the power of Courts of justice beyond their proper and well-understood sphere. And they refer to the case of a School Board and a Railway Clearing Committee. But I may be permitted to express a doubt whether the sphere of the Company's Courts, as constituted fifty years ago, seemed to Indian statesmen of that day quite the same thing as the sphere of the Courts he is familiar with may seem to a lawyer of the present day. At all events, I cannot understand that anything is legally beyond the sphere of Courts of justice which the law enjoins them to do. If Lord Selborne had found an Act of Parliament which said that a School Board should decide in the first instance, and then that any person aggrieved might file a Bill in Chancery, he would doubtless have done his best to decide the case, even though it might seem to him that the law had thrust upon him uncongenial duties, far removed from the proper sphere of a Court of justice. The English Judges referred to had not got to deal with this very intractable Regulation which makes all Collectors' decisions controllable by the Civil Courts.

"The plain truth is, that the Regulation does throw into Civil Courts controversies which are not suitable for them, at all events as they are now constructed, and that is the very reason why we come to alter the law. It is a gratifying thing to find that some eminent Judges would alter it if they could in the same direction, but that is the work of the legislature, not their work. We must remember that Judges cannot make law; they can only declare and apply it. It so happens that quite recently in the course of my duty of reading Law Reports, I have read a decision of the Privy Council in which they express disapproval of the practice of introducing new law because the existing one appears to the Judge to be impolitic. Referring to a case decided in India, they say—

"'The Chief Justice observes—'The recognition of the right to redeem was, having regard to the previous decisions of the Sadr Adalát, perhaps somewhat a strong measure. It had,

however, for a long time previously, been considered a desirable course to adopt, and eminent Judges of the High Court, who had formerly been Judges of the Sadr Adalát, regretted that their predecessors had, for the most part, enforced the conditions for purchase in *gahan luhan* mortgages, as such a course had been found to promote most oppressive and grasping conduct on the part of money-lenders in the Mofussil.' It would be difficult to have a more candid admission of the assumption by the Courts of the functions of the legislature.'

"They then comment upon this, and show that the Judges, who cannot deal with the matter comprehensively and with reference to all its bearings, as the legislature can, must take the law as they find it, and not attempt to alter it piecemeal by their decisions.

"Now I think that the law propounded by the learned Judges is a great improvement on the Regulation as it stands; that it is dictated by thorough good sense and good policy; and the only fault I find with it is that, as the line is at present drawn, it does not exclude from the Civil Courts some classes of cases that ought not to come before them. But for the reasons I have assigned, I fear that if the question were properly argued before them, as it has not been, the Courts would be constrained to admit that they have more jurisdiction than they now think, or if they did not, that the Court of Appeal would take a different view.

"But suppose the case to be otherwise, what would be the result of omitting to pass a law on the ground that the view propounded by the Judges is sound? We have it admitted on all hands that the literal construction of the Regulation is to give unrestricted jurisdiction to the Civil Courts over the Revenue officers. This literal construction has to be cut down either by some highly artificial handling, or by a Judge's estimate of what is the proper and well-understood sphere of a Court of justice. Now I think that lawyers will agree with me that of all the glorious uncertainties of the law, none is more glorious than the construction of a document when once the plain literal meaning is thrown overboard. In what manner the *disjecta membra* shall be pieced together again, what does and what does not fall within the sphere of a Court of justice, are questions on which, as sure as night follows day, one Judge will differ from another. The two learned Judges who have delivered the Kabilpur judgment would confine their jurisdiction to claims of exemption. Even that seems to me very vague, for all claims are claims to pay something less, and it would require many decisions before it was settled what kind of claim is cognizable as a claim of exemption and what is not. But there are a number of other things besides exemptions, which may be subjects of controversy. There are certain 'established principles,' as our Ahmadábád friends remind us, mentioned in the Regulation as 'applicable to different descriptions of land.' I should say that if any jurisdiction was clearly and indisputably conferred on Civil Courts by section IX, it was a

jurisdiction to enforce these 'established principles.' And I hardly see what controversy might not be brought in, at least with a very little astuteness in framing the plaint, under these expressions. It is clear that the Ahmadábád gentlemen think they open a very wide door indeed. I think so too. The litigation uncertainty and confusion which would ensue before the law got settled on a clear footing would be very great. And though I fully believe that by a long continued application of the same good sense that now prevails in the Civil Courts, the law would, after a great many arguments and decisions, get ultimately settled on a footing that would leave us little to complain of, the result might be otherwise. Indeed, at the present moment, those who delivered the Kabilpur judgment would draw the line of demarcation between Civil Courts and Revenue authorities in what I venture to think the wrong place. It is their opinion that the Canara case ought to have fallen, as undoubtedly it did fall, within their jurisdiction; whereas it seems to me that the question there raised was a broad political question, to be dealt with by the executive or, if necessary, by the legislature, rather than by the methods of a Court of law. They think the same of Wamnaji's case; whereas in that case the primary question was whether the Collector had or had not applied to the plaintiff's land the right principles of assessment. And apparently they think very lightly of the evil of having Revenue officers vexed with litigation about a quantity of business details, which, if a system is to work at all, must be left to those who work it.

"I have in my hands a letter from a Revenue officer, Colonel Francis, in which he states the inconvenience of the present law. He gives a list of six recent cases. Of these he says:—

"'In one case, the Court is required to decide whether the Warkas lands have been properly measured, in another, to declare whether we are authorized in rejecting the fractional parts of a rupee' (he should have said of an anna) 'in fixing the amount of assessment, in another whether Warkas lands should be measured into Pot Nos., and in another, whether the cost of boundary-marks has been properly apportioned. All these involve questions of detail affecting the manner in which the survey operations are carried out, and in some cases, considerations of a purely professional nature, and it may safely be said that the Court cannot possibly possess the knowledge requisite to give a right judgment in such matters.'

"He then speaks of the case of Wamnaji, which has been so often mentioned, and shows that it involves disputes on the value of rice, ricestraw, and so forth.

"Upon this letter a gentleman who thinks the present law ought to be preserved makes the criticism I am about to quote—

"'This letter contained an indictment against the Civil Courts for allowing persons to appeal to them against the 'proceedings of the Survey Department in matters relating to the

measurement, classification and assessment of the land,' and he appended to his letter a statement of six suits of the above nature which have been filed in the District Court of Rátnagiri. But on referring to these, it appears that in five out of the six cases the Courts decided against the plaintiff and in favour of Government, while the sixth case was the famous one of Wamon Sudasiv, which failed to be decided in the favour of Government only owing to the want of ordinary care and attention on the part of the Collector and Survey Commissioner!'

"Now I quote that, because it is a not unfair specimen of some lines of criticism applied to this Bill, and I propose to make one or two observations upon it. In the first place, a critic of this kind appears to think that, if you can only win your case after taking pains and spending time and money enough, it is the same thing as if you cannot be sued at all. It seems that in every one of these cases the officer was right; for it is admitted that in Wamnaji's case the Court was misled by the plaintiff. But in every one of the cases time, labour, money, was expended on both sides. If the plaintiffs had succeeded, there would be something to show for all this. But they have failed, except in the one case in which the Collector thought there was no jurisdiction, that he was not bound to show to the Civil Courts that he had applied the principles of assessment rightly, and, relying on that plea, left the case undefended on the merits, so that the plaintiff walked over the course. Nothing could more completely justify the second main reason given by Sir B. Ellis for this Bill, namely, that the machinery of the Survey and Settlement Department was likely to be disorganized by a quantity of trifling suits. When you add that the trifling suits mostly end in nothing but costs to the suitors, and an occasional injustice owing to oversight, it seems to me that instead of diminishing the force of the reason, you have considerably augmented it.

"There is another part of the same criticism to which I object. Colonel Francis' letter is called an indictment against the Civil Courts, and this again is only an illustration of the vehement personal feeling with which this measure has been taken up, as though it were an attack on the able gentlemen who conduct the judicial business of the province. I really cannot conceive how any one who will consider what this measure is, and on what reasons it has been based, can allow himself to use such language. There is no indictment against the Civil Courts in Colonel Francis' letter, unless an assertion that some Judge made a sad mistake about the price of rice-straw, can be considered such. His complaint is that the law sets them to do unsuitable work. There is certainly no such indictment in our proceedings, for no one here has suggested that the Civil Courts have done anything they ought not to do. When I last spoke, I took the opportunity of saying that I found fault with the law, but that the Courts were blameless. Having now read some more of the literature

of this subject, I can say something more. Probably the judicial officers will not much value my opinion, but I am speaking to the Council, not to them, and I want the Council to know the truth about the spirit in which this measure has been promoted.

"On examining the cases mentioned by Colonel Francis, I find that the Judges who tried them—three different Judges—all followed much the same course: they took evidence on the whole case as they were bound to do; but when they found that the dispute merely came to one of opinion between man and man, or of judgment how proceedings should be conducted, they held that the officer's judgment must prevail, and that the plaintiff had no case to bring into Court. That seems to be a most reasonable way of dealing with a difficult jurisdiction. We must, indeed, bear in mind that none the less was jurisdiction exercised, and that the Collector had to appear, plead and give an account of the whole of his proceedings. It is one thing to be wholly debarred from enquiring into a given subject, and quite another to hold that, after all enquiry has been made, you won't interfere with mere matters of opinion or discretion. A judicious administration of an unsuitable jurisdiction very much diminishes the mischief, but does not destroy it. Still I think that in these cases, and in every other case, now a good many, that I have read about the jurisdiction of the Civil Courts, they have shown great sense and moderation. It is this very good sense and moderation with which they have worked the law, as I believe, that has prevented its defects from becoming intolerable much sooner. They have too wide a jurisdiction, and uncongenial duties are thrust upon them; but that is not their fault, it is the fault of the law which we are asking you to amend.

"Now I trust that the Council will be of one mind that there must be some line drawn to abridge the excessive jurisdiction of the Courts, and that the matter is one to be settled by the legislature, and not by a great number of judicial decisions. If so, the only question is what line shall we draw. This has always seemed to me a most difficult thing to decide, and am sure we have not been disposed to dogmatize about it. We have propounded a plan and invite criticism upon it. Our language has been;

> Si quid novisti rectius istis,
> Candidus imperti; si non, his utere mecum.

"I am sorry to say that we have received very little assistance from without. Of course nobody ever is eager in support of a tax bill, though many are eager against it. So it is with a Bill intended for the more efficient collection of the revenue. We have been loudly called upon to leave the law alone.

but have had no better dividing lines of jurisdiction pointed out to us. So the different branches of Government, and the members of the Committee have discussed the matter with one another, and have done the best they could to strike a fair and reasonable line. The Bill was considerably modified in October last, and it has been modified again now, with the effect of giving considerably more jurisdiction to the Civil Courts than it did when it was first framed.

"I noticed before one of the most favourite arguments against the Bill, namely, that it made men judges in their own cause, which was said to be contrary to a fundamental principle of all law. I am glad to see that this particular assertion has been dropping out of the controversy, and if a deathblow has been administered to one fallacy, that is a comfort. I have indeed seen myself mildly and good-humouredly bantered in some public prints for being so simple as to think that Collectors are under as strong temptations to lower the revenue unduly as to raise it unduly. I still retain however that simple belief, because my experience supports it; and I find myself reinforced by a most unexceptionable witness, being no other than the High Court of Bombay. In the course of the judgment from which I have quoted so much, they say this—

"'In the Canara case, on the other hand, it was manifest that the opposition offered to the survey and assessment, and the consequent litigation, were, in a great measure, due to the sympathy of some of the Collectors having been excited in favour of the landholders, by imperfect investigations and erroneous views as to the authority and acts of Sir Thomas Munro. We are not for a moment to be understood as saying that those Collectors intentionally sought to raise that opposition or litigation, but their opinions, confidently expressed in Reports to Government, were on record in their kachahrís, and information, contained in the archives of a kachahrí or other public office in this country, has a singular facility in making its exit if there be any person interested in assisting it to do so. Consequently the views of those Collectors were well known throughout the province of Canara. If the decision of the Canara case had been left to those officers, or had it been based on their reports, the result would have been the opposite of what it was in Court.'

"If that does not prove that the Revenue officers have their sympathies with the people they assess, I don't know what it does prove. The Collectors would have taken off a burden which the Court decided was to be laid on.

"I am not sure whether it is a revival of the same fallacy in another shape, or whether it is a totally new one, because it is couched in such very vague terms; but we are now told from one or two quarters that our proceedings are in violation of all principles of jurisprudence.

"I wish the gentlemen who say so would have pointed to the system of jurisprudence which they have in their minds. The only way I know of learning principles of jurisprudence is to look and see what is embodied in actual laws.

Now we are dealing with the subject of revenue; and I shall be surprised if our opponents can show us any system of revenue jurisprudence, except this Bombay Regulation, which is not based on the principle of protecting Revenue officers from litigation for acts done within the sphere of their duty. I referred before to the case of income-tax. The principles of jurisprudence recognized there are that Revenue officers (in India Collectors, in England Commissioners) and not the Courts of law, shall settle disputes between the tax-payer and the tax-collector. Perhaps the case of land-tax may supply even a closer illustration. When the land-tax was made perpetual, the maximum amount for given localities was fixed by law. Then assessors were appointed to distribute that amount over different properties. From the assessors there is an appeal given to the Land-tax Commissioners; and then it is—

"'declared, that all appeals once heard and determined by the said Commissioners on the day appointed shall be final, without any further appeal upon any pretence whatsoever.'

"And again—

"'all questions and differences which shall arise touching any of the said rates, duties, and assessments in *England*, *Wales* and *Berwick-upon-Tweed*, or the collecting thereof, shall be heard and finally determined by the said Commissioners, in such manner as by this Act is directed, upon complaint thereof made to them by any person or persons thereby grieved, without further trouble or suit in law in His Majesty's Court of King's Bench, or any other Court whatsoever.'

"Now there is the most complete protection against litigation given to the officers acting within the sphere of their duties. If they proceed to assess a property not within the scope of the Act at all, the Civil Court may take cognizance of such a case. So may the Civil Courts according to our Bill. Or supposing they assess a property expressly exempted by the Act, such as the endowment of a hospital, the Civil Court may interfere. And so it is according to our Bill. In each case, if the officer acts beyond his sphere, he may be sued; if he keeps within it, he may not be sued, except that even then section 5 of our Bill permits him to be sued under certain circumstances.

"Of course we have not and cannot have an exact analogy between the two countries. In India it is a strong additional reason for exempting Revenue officers from civil suits that the land-revenue is levied at the discretion of the Ruler. And when we come to claims of exemption, the analogy fails to a greater extent. For, in England, there are no exemptions except those which are provided in the Statute itself, and we agree that of Statutes Civil Courts are the best interpreters. In India the circumstances are totally different. Exemptions are claimed under every conceivable species of circumstances,

of all degrees of remoteness, obscurity, lawlessness, or corruption; and it is distinctly the Revenue officer's ordinary duty in India, and a very important part, too, of that duty, to sift to the bottom every claim of exemption, otherwise the public treasury would be seriously encroached upon. To find then whether, in the case of exemptions, we are violating principles of jurisprudence, we must turn to the study of our Indian laws, for the phœnomena exist only in India. Our opponents have not told us where they find the violated principles. Under Native Rulers the process used with regard to exemptions was a very simple one: for though they might have been created by formal grant, and with expressions denoting absolute perpetuity, 'for ever,' 'from generation to generation,' 'as long as the sun and the moon endure,' they were usually treated as extinct by the death of either grantor or grantee, and sometimes revoked without waiting for any such death. We do not act in nearly such summary fashion; but an officer must have regard to the origin of privileges against the public right, and to the knowledge of all parties how precarious a possession they were. The objectors to the Bill should show how its dealing with exemptions violates such principles as regulate our jurisprudence in other parts of India. They should show, for instance, in what other part of India such suits as the 1,000 Canara suits could have been instituted. Certainly such a phœnomenon has not occurred elsewhere: we say it could not occur, and I believe that assertion to be correct.

"The plain fact is that it is this Regulation which violates the principles of jurisprudence prevalent elsewhere, and it is we who are seeking to introduce sound principles which shall be in harmony with the requirements of the case.

"After all, one of the great difficulties which our opponents have to meet, and which they never attempt to meet, is this. Are they prepared to say that in this comparatively small corner of India, our legislation is right, and that it is wrong everywhere else? They say the people are content; but they are not more content here than elsewhere. And the Revenue Department of the Government are not content; they find that the revenue suffers; they believe that injustice is done to the public at large owing to the unfamiliarity of the Civil Courts with these intricate revenue matters; they find their time taken up in defending petty revenue suits, mostly decided in their favour, though they have great difficulty in giving proper attention to them; they find that much cost is incurred and their business grievously disturbed. Our opponents have never attempted to compare one part of India with another, not even the two great divisions of Bombay, or to tell us what advantages exist

in the old provinces of Bombay to compensate for the mischiefs I have mentioned.

"I am extremely sorry to have detained the Council so long, but the subject is one of difficulty, and it has been overlaid with such an amount of misapprehension, exaggeration, fallacy and error as cannot be removed except at some length. Here is our Bill. It is founded on the broad principle of protecting the Revenue officer when he is acting within the sphere of his duty. It treats the investigation of claims of exemption or privilege as being within the sphere of his duty, but here it makes exceptions in favour of the jurisdiction of Civil Courts in several cases adapted to ordinary legal methods. In framing it, we have been guided partly by the law of England, partly by the law of other parts of India, partly by the peculiar circumstances of Bombay. It is utterly untrue that the Bill is animated by hostility to Civil Courts. It leaves to the Civil Courts of Bombay a large amount of jurisdiction which Civil Courts do not possess in other parts of India. It brings within that jurisdiction a very large area which is now completely shut out from it, namely, the new provinces of Bombay. It does not affect questions regarding ownership of land, nor rent-suits. It may be that we have not struck quite the best dividing line of jurisdiction. I am not sanguine enough to suppose that we have not made mistakes which the course of business will expose. But with all shortcomings, I confidently commend this Bill to the Council as a very great improvement on the existing law."

His Excellency THE PRESIDENT said :—"I wish to make one or two observations on this Bill. The first is that our hon'ble colleague Mr. Hope, in the remarks which he has addressed to the Council, very properly declined to dwell upon certain observations which have been made on the subject of his own connection with the Bill. I wish, however, in justice to him, to express my own feeling upon the matter. I entirely agree with my hon'ble friend Mr. Hobhouse, in regretting that this Bill should have excited a kind of personal feeling on the other side of India, and I still more regret that, in certain quarters, observations have been made with regard to our hon'ble colleague Mr. Hope, which I consider altogether unjustifiable.

"As regards Mr. Hope's connection with this Bill, it must be recollected that the Bill was originally brought before the Council, at the instance of the Government of Bombay, by our late hon'ble colleague Sir Barrow Ellis, who introduced the measure to the Council and supported it with that knowledge of the revenue affairs of the Bombay Presidency which he possesses in a greater degree perhaps than any other man.

"After Sir Barrow Ellis left the Council, Mr. Hope gave his assistance on the Select Committee, and on several occasions when the Bill has been discussed. He has always been ready to consider with impartiality all reasonable objections urged against the Bill, and we are greatly indebted to him for his assistance in the consideration which the Council has given to the Bill. Mr. Hope's connection with the Kabilpur case tried by the High Court of Bombay, has been alluded to by one of the members of the Government of Bombay. Upon that matter Mr. Hope has, in the proceedings before the Council, made some observations to which I wish to give greater prominence by reading them now, as I think they are perfectly proper and right. Mr. Hope says that the Kabilpur case is one 'requiring an enormous amount of technical knowledge of accounts, tenures and past revenue history for some two hundred years; that a series of experienced Revenue officers—1st Assistant Collector, two different Collectors, Revenue Commissioner, Chief Secretary and Revenue Member of Council, the latter advised by the Legal Remembrancer and a Judicial officer on special duty,—took one view of it, and that the District Judge and a Bench of the High Court, consisting of the Barrister Chief Justice and a Civilian who entered the Judicial department when he had been eighteen months in the country and is totally ignorant of revenue matters, took another view of it.'

"That statement shows that the observations made by a member of the Government of Bombay, reflect (if a difference of opinion on so complicated a case can rightly be considered to be a subject of blame at all) as much upon his own colleagues, and upon the constituted advisers of the Government of Bombay, in revenue matters, as upon Mr. Hope in the performance of his duty as Collector of Surat. Mr. Hope, however, has very properly explained that his own personal concern in the Kabilpur case is immaterial to the issue which is before the Council. The Bill must be considered on its merits, and its merits alone, and the question of its merits, so far as regards its principal features, has been so exhaustively dealt with by my hon'ble friend Mr. Hobhouse on the present occasion, that it leaves but little for me to say. The Bill was originally introduced in consequence of the existence of a certain Regulation—No. XVII of 1827—which extended to a part of the Bombay Presidency. The ninth section of that Regulation runs as follows:—

"'The Collector's decision upon any question arising out of the provisions of the preceding sections' [which refer to the assessment of the land-revenue] 'shall, in the first instance, be obeyed and acted upon as the rule. 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.'

"It was the opinion of the Government of Bombay, of Sir Barrow Ellis, and of every one, so far as I am aware, who, until recently, has expressed an opinion upon the construction of this Regulation, that under it all matters connected with the assessment of the land-revenue in that part of the Bombay Presidency over which the Regulation extended might be brought before the Civil Courts. That opinion was confirmed, as has been shown by Mr. Hobhouse, by cases in which various questions relating to the assessment of the land-revenue were actually brought before the Civil Courts. No doubt the Courts have dealt with such suits very wisely, and have held that the plaintiff had no case for relief when all he could show was that of two courses fairly open to the Collector he had followed the one which the plaintiff did not think right; but this seems to me to be quite a different thing from a refusal to entertain such suits at all. It was held by the Bombay Government, and by the Government of India, that it might occasion very great inconvenience and embarrassment if this jurisdiction was maintained, and a Bill was therefore introduced for the purpose of preventing the Civil Courts from dealing with those particular matters connected with the assessment of the land-revenue, with which the learned Judges could hardly have sufficient practical knowledge to deal satisfactorily, and which are not dealt with by the Civil Courts in other parts of India, the most important matters being 'the amount or incidence of any assessment of land-revenue,' the 'mode of assessment, or the principle on which such assessment is fixed,' and 'the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement,' this class of cases being placed under head (*b*) of clause 4 of the Bill now before the Council.

"It appeared to the Government of India that if the law, as we understood it, remained as it was, the whole assessment of the land-revenue of a district might be brought before the Civil Courts to the great embarrassment of the Government and of all parties concerned. The other principal class of cases which are excluded from the Civil Courts are—

> "claims against Goverment—
>
> 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.'

"During the two and a half years that this Bill has been under consideration, great pains have been taken to provide that all such questions of right connected with these claims as are properly cognizable by the Civil Courts should be admitted for trial in those Courts; and I believe that Members of the Council will be satisfied with the proviso contained in the latter part of the fourth clause

of the Bill, which expressly reserves to the Civil Courts cognizance of claims for exemption from land-revenue of the kinds specified; in fact, the Council have taken every pains to admit to the Civil Courts all cases in which it is right and desirable that they should possess jurisdiction, and to confine the jurisdiction of the revenue authorities—which jurisdiction, I may observe, is substantially analogous to the jurisdiction given to officers connected with the revenue in England in certain cases — to those practical questions which such officers alone are the best able to decide.

"That is the shape in which the Bill now stands.

"In respect to the extra-judicial opinion which has been given by the High Court of Bombay, upon the construction of Regulation XVII of 1827, I so entirely concur with everything which has fallen from my hon'ble friend Mr. Hobhouse, that I would only say that if the opinion of the High Court be right, it affords a strong argument in favour of the most important portion of the Bill which the Council are now asked to pass, because, as I understand it, the construction put upon the Regulation by the High Court would confine the jurisdiction of the Civil Courts very much in the same manner as is done by section 4 (*b*) of this Bill. But I must express my entire concurrence with Mr. Hobhouse that this construction of the Regulation is contrary to its plain language. So far as I can understand the argument used by the learned Judges, they have restricted that language by a distributive construction which the context apparently does not warrant, and this interpretation is to my mind so doubtful, that I think it most desirable to do what is proposed to be done by this Bill, namely, to make the meaning of this Regulation perfectly clear by a distinct enactment of the legislature.

"If, therefore, Members of the Council agree, as I do, with the opinion of my hon'ble friend Mr. Hobhouse upon this matter, namely, that it will not be safe to leave the law in a state of doubt, which I believe would be the case if we do not proceed with this Bill, and if they are satisfied that every pains have been taken to admit the jurisdiction of the Civil Courts in these matters, wherever it can properly be exercised, I have no hesitation in expressing my opinion that they will do well to pass the Bill into law."

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 4th April 1876.

CALCUTTA,
The 28th March 1876.

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

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