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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.

1873.

WITH INDEX.

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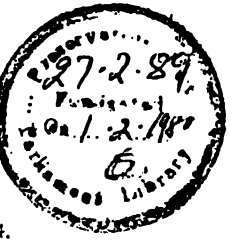

CALCUTTA:
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1874.

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 Vict., Cap. 67.

The Council met at Government House on Tuesday, the 4th February 1873.

PRESENT:

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

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble F. S. Chapman.

The Hon'ble R. Stewart.

The Hon'ble J. R. Bullen Smith.

The Hon'ble R. E. Egerton.

His Highness the Mahárájá of Vizianagram, K. C. S. I.

The Hon'ble J. F. D. Inglis.

The Hon'ble Rájá Ramánáth Thákur.

The Hon'ble Rájá Ramánáth Thákur made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

OATHS AND AFFIRMATIONS BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to consolidate the law relating to Oaths and Affirmations, and moved that it be referred to a Select Committee with instructions to report in a month. He said that, before introducing this Bill, he would explain its nature and objects. When he obtained leave to introduce the Bill, he mentioned that it was simply a measure of consolidation; that the law was scattered about some dozen or more different enactments, and that it was desirable to bring it all into one document. So far as regards the subject of judicial oaths, the Bill still retained the character which he gave to it when he obtained leave to introduce it. A clause relating to official oaths had been added, but, for his present purpose, he would ask the Council to put that clause entirely out of their minds, and to consider the Bill as relating simply to judicial oaths.

The Bill might be divided into two parts, one relating to the nature and effect of an oath, and the other to the power to administer it. That part which related to the power to administer an oath consisted of section 4, and the rest of the Bill related to the nature and effects of an oath. He would take the latter part first, that being the great bulk of the Bill. Now, our law on this subject was derived from the English law, with some modifications suggested by the circumstances of India. The law of England was peculiarly jealous that every witness should take an oath before he was admitted to give evidence. That used to be, up to a recent period of our history, the universal rule, that, without an oath, there could be no evidence whatever. If evidence was found to be given without an oath, the evidence, with every proceeding founded on it, was void. Gradually, slowly, reluctantly, under considerable political pressure, some relaxations of that rule were made, and a Statute was passed for the purpose of relieving the consciences of the members of particular communities, who had an objection to take oaths. The form of oath, at least ever since the decision of the well-known case of *Omichund* v. *Barker*, was to be such form as woul be most binding on the conscience of the witness; but oath there must be, otherwise the evidence could not be received. Now that law we imported into India, and the general rule here was exactly the same as the general rule in England; but exceptions were engrafted upon it. There were three Acts of Parliament still in force, which provided for the cases of Quakers, Moravians and Separatists; and MR. HOBHOUSE thought that was the only relaxation made of the general rule up to the year 1840. But, at that time, it had been found that the taking of an oath was highly objectionable to the Hindús and Muhammadans, and Act No. V of 1840 was passed for the purpose of prohibiting the administration of oaths to persons belonging to those communities, a form of solemn affirmation being substituted instead of an oath. That privilege, or that peculiar law, was extended further, in 1863, by Act No. XVIII of that year, section 9, the details of which he need not mention. So the law remained down to last year, when Act No. VI of 1872 was passed. That Act introduced two very important alterations. One was this, that every witness who objected to take an oath might, instead, make a simple affirmation; and the other was that, notwithstanding any irregularity in the administration of an oath, or any irregularity in the making of an affirmation, or, in fact, any irregularity in the form or method of taking evidence, the proceedings should be valid. Another alteration was introduced, probably of less importance, because MR. HOBHOUSE imagined it applied only to a few cases. Act V of 1840, which was the Act that prohibited the administration of oaths to Hindús and Muhammadans, was modified in this way. It was provided that, if a witness was willing to take an oath in a form peculiarly binding upon his own conscience, it should

be competent to the Court to administer such an oath. That was the present state of the law. The general rule, if anything could be called general which excepted Hindús and Muhammadans, remained the same as before. With regard to Hindús and Muhammadans, it was forbidden to administer oaths to them, except in those special cases in which a witness himself was willing to take an oath; and it was provided that irregularity should not affect the validity of the proceeding.

Now, he believed that this Bill exactly expressed the present state of the law. Section 5 specified the persons by whom oaths and affirmations should be made, and they were the persons by whom they were to be made now. Sections 6 and 7 gave formulæ of oaths and affirmations. Those formulæ were taken from actual practice, and were the formulæ used at the present moment. Section 8 embodied the law as to Hindús and Muhammadans, and all persons having an objection to take an oath; and that, he believed, was exactly the expression of the law as laid down now by Act V of 1840, Act XVIII of 1863 and Act VI of 1872.

Sections 9, 10, 11, 12 and 13 corresponded to a single section in Act VI of 1872, namely, section 4, which was the section which enabled volunteers to make oaths in special cases. Section 14 provided for the case of affidavits, which was provided for by one of the sections of Act XVIII of 1863, and section 15 re-enacted section 5 of Act VI of 1872, by which the validity of proceedings was affirmed, notwithstanding any irregularity in the mode of taking evidence.

Now, he returned to that part of the Bill which related to the power of administering oaths, and the whole of that was contained in section 4. There, again, our law was derived from the English law. As that law attributed great importance to the effect of an oath, so it was equally jealous that the oath should be administered by a person who had due authority by law to administer it; and there had been much litigation and much legislation on the subject. There must be, at this moment, he thought, a score of Acts, perhaps more, on the English statute-books, expressly conferring upon different officials the power of administering oaths. It had happened that a whole Bench of English Judges had been equally divided in opinion upon the question whether a British Consul residing abroad could or could not administer an oath. The importance of the power, and the necessity of providing for it by express law, was strongly exemplified in England a short time ago, when an Act was passed to enable Committees of the Houses of Parliament to

administer oaths. Neither Committees of the House of Lords, nor Committees of the House of Commons, nor the House of Commons itself, had the power to administer oaths. The House of Lords could, because it was an ancient judicial body, deriving its powers from times anterior to legal memory, and administering them by express or presumed grant from the Crown; at all events, from custom. But that power had never been extended to Committees. So it was found that, if witnesses did not speak the truth, they could not be punished; and if they did speak the truth, and it was published and hurt the feelings of anybody, an action might be brought for libel. To remedy those inconveniences it was deemed necessary to pass an Act of Parliament: and one was accordingly passed, in the year 1858, which enabled Committees of both Houses of Parliament to administer oaths. The Indian law had followed the English law on that subject. There were a number of Regulations and Acts passed in India, expressly conferring the power of administering oaths. Nor did MR. HOBHOUSE suppose it had ever been thought that a Judge or any other person had the power of administering oaths, unless expressly authorized to do so by law. He found the law recognized in the Penal Code, section 191, which related to false evidence. It defined the giving of false evidence thus:—

"Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

That section referred to the three modes of taking evidence then known to the law—oath, affirmation and declaration; and no doubt those who drew that section had in their minds the provisions of the English law which empowered certain persons to take evidence in these three forms, and the principle which underlay the whole subject, that everything not taken in one of those three forms was not evidence.

Now, on that point, a difficulty had been pointed out by Mr. West, the Judicial Commissioner of Sindh. He had communicated with the Bombay Government, and had stated that the Civil Courts in the Mofussil, in Bombay, had authority to administer oaths given them by section 34 of Bombay Regulation IV of 1827. This Regulation was almost wholly repealed by Act X of 1861, and nothing was put in its place. That was exactly one of the evils which resulted from the scattered state of the law, and which never would have happened if the law was brought into one document. The result was, as the Judicial Commissioner put it, that the question might not improbably be raised before long

in an embarrassing form, and that it was expedient to make matters clear by timely legislation. And with that view the Bombay Government agreed, unless it were possible to extract the requisite authority out of Act XV of 1852, section 12, which on examination proved to be quite impossible.

It was obvious that the question might be raised in an embarrassing form, and that in two ways. It might be raised by the Judge taking the view that he had not the power to administer an oath ; that, moreover, the power to take affirmations flowed from the power to administer oaths ; that there was no Statute substituting an affirmation for an oath, except where there existed antecedently the power to administer an oath ; and he might stay the proceedings on the ground that he had no authority to take evidence according to the solemnities contemplated by the law. Or, again, a witness might give false evidence : he might swear falsely ; and, then, on being indicted for giving false evidence, he might say he was not a man legally bound by an oath, because, though the oath was adminstered to him, it was not adminstered by law, the person administering it having no power to do so.

Now, the same sort of difficulty arose when we introduced the Act to amend the Evidence Act. By the Evidence Act, the whole of Act XV of 1852 was repealed. One of the sections of that Act happened to be one which gave power, express power, to the High Courts, and to Commissioners, arbitrators, and other officers acting under the authority of High Courts, to administer oaths. It was suggested that the power was gone. We looked into the question, and, as to the High Courts, we ultimately came to the conclusion that they had the power from another source; as to Commissioners and arbitrators, we came to the conclusion that they had no such power, and therefore we revived the section that had been repealed.

A difficulty arising from the same source led to the introduction of the Act of 1872. The case that brought the subject to the attention of the legislature was this. An Act was passed for regulating the law relating to Coroners and Coroners' juries. In that Act, it was provided that Coroners' juries should be sworn, and then arose a difficulty when some of the jurors consisted of Hindús and Muhammadans, whether they ought to be sworn according to the Coroners' Act, or whether they should come under the provisions of Act V of 1840. The Madras Government were advised by their legal advisers that Hindús and Muhammadans must be sworn under the Coroners' Act ; and then arose the question of administering an oath to those who objected to it. Now, these were things which could not possibly happen if we had all the law on judicial oaths in a single document. At pre-

sent, as far as we knew, it was contained in fourteen different documents. There might be, and probably were, more. He should be astonished if they did not come across particular enactments, conferring the power of administering oaths upon particular persons in particular instances. At all events, we had fourteen enactments, of which six or seven dealt with the nature and effect of oaths and others with the power of administering oaths. And it seemed to MR. HOBHOUSE a matter of importance to bring these into one single enactment. If, then, the Council would turn to section 4 of the Bill, they would see that every kind of person administering any kind of judicial office and having to take evidence, might administer an oath or affirmation. It applied also to the Commanding Officers o military stations, for which there was a special Act (IX of 1836) now in existence. That was the Bill as far as it related to judicial oaths.

As to official oaths, MR. HOBHOUSE had very little to say. It was after the motion for leave to introduce the Bill that this clause was added, because the subject was brought to our attention by the Madras Courts' Act. He explained, when moving to pass that Act, what was the view taken by the Committee on that subject; and showed that, as regards Oudh and British Burma, every kind of oath or declaration had been deliberately dispensed with in the case of judicial officers assuming office. We did the same thing the other day with respect to Madras. Now, he supposed, if the principle was good for those parts of India, it would be good for the rest of the country; and the principle which was good for judicial officers would be good for other officials. Therefore, he anticipated little or no difference of opinion on that point, although, he admitted that, on this point, the Bill was not a measure of consolidation, but one of alteration. With this explanation, he introduced the Bill.

Now, he had to move that it be referred to a Select Committee with instructions to report in a month. He should have thought it an absolute matter of course to refer the Bill to a Select Committee, when once it was seen what its contents were. If the Bill did not consolidate, but altered, the law, the Committee would set it right; it would be their duty to see that the Bill answered the objects it professed. But it was not always given to us to see ourselves as others see us. He supposed there must be some ugly deformities about this Bill which he had been unable to discern, because His Honour the Lieutenant-Governor had given notice that he would move that the Bill be removed from the List of Business before the Council. MR. HOBHOUSE would not attempt to anticipate the arguments by which His Honour would support that proposition. But His Honour had been kind enough to communicate personally with MR. HOBHOUSE on the subject. As far as he

understood His Honour's objections, they were that the Bill raised awkward and disagreeable questions, and that the Committee who sat on the Bill last year did not think fit to consolidate the law at that time. Now, how a measure of consolidation could raise questions it was very difficult to say. Of course, it raised the particular question whether or not it did express the existing law. But why that should be a question of anxiety or delicacy, and why anybody should shrink from expressing his views upon it, MR. HOBHOUSE could not understand. With regard to the action of the Committee of last year, they were dealing with a great alteration of the law, and they came to the conclusion that they would not at the same time consolidate. If MR. HOBHOUSE had been a member of that Committee, he believed he should have been of the same opinion too. He thought the Committee were right in not burdening themselves with a single question beyond those which were actually raised by the Bill before them. And when an Act was being altered, and not merely consolidated, it was likely that many more questions might be raised than when you said—"all I wish to do is to bring the law into one single focus." The Committee concluded their report in this way. They said :—

"The effect of this alteration will be to leave the law in a somewhat cumbrous shape, but, as we think, in a substantially sound condition. Oaths will continue to be administered as at present, but those who object to them will be allowed to make an affirmation, and accidental mistakes as to their administration will not defeat the ends of justice."

With this MR. HOBHOUSE entirely agreed. He thought the law was in a substantially sound condition; and, having brought it into that condition, we proposed to relieve it of its cumbrous form: we proposed to add to its substantially sound condition a neat and sightly shape.

That was the way in which the Committee of last year drew up their report, and, so far from acting contrary to their opinion, he conceived we were taking up the case at the point where they left it, and carrying on the completion of their task as they themselves would have done it, if they were dealing with this case at the present time. He might mention that Sir John Strachey had been on that Committee. He was present when MR. HOBHOUSE obtained leave to introduce this Bill, and he did not intimate that anything was being done contrary to the views of the Committee. There were two other gentlemen, members of the same Committee, present in Council to-day, and it was for them to say if they objected to the course proposed.

His Honour THE LIEUTENANT-GOVERNOR moved, as an amendment to the motion of the hon'ble member, that the Bill to consolidate the law relating to Oaths and Affirmations be removed from the List of Business

before the Council. He gathered from papers circulated to the members that that Bill had now received the *ex post facto* sanction of the Government of India. He gathered that it was now considered a Government Bill. But he apprehended that the fact of this *ex post facto* sanction having been accorded to the Bill put him in a position to say that it was not in the first instance a Bill of the Government, but only a Bill of one Department, or one member of the Council. He ventured to hope that Bills of importance, introduced by a representative of the Government, would not be introduced without explanation whether the Bill was placed before the Council as a Government Bill, after having been considered by the Government of India. This Bill having now come before the Council as a Government Bill, he felt himself in this situation, that he had already committed himself as opposed to the introduction of the Bill. And although the support of the Bill by the master of many legions would leave him little hope of effecting his object, still he should submit the reasons which induced him to bring forward his present amendment.

The great and main objection (HIS HONOUR had several objections, but the main objection) which he entertained—the objection which had induced him to put his amendment in this form—was this, that the motion of the hon'ble member, if affirmed by the Council, would amount to a distinct reversal of the proceedings of the Council when it last sat in Calcutta. He said that this Bill would not only supplement the Act of last year, but would amount to a distinct reversal of the determination of the Council on that question.

The hon'ble member in charge of the Bill had given them an extremely interesting history in respect of oaths in England, and the introduction of that law in this country. HIS HONOUR would give a brief history of what took place in regard to the Bill which had recently dealt with the subject—he meant Act VI of 1872. He was not in a position to say anything regarding the birth of that Bill: it dated from a time anterior to his own legislative birth. When he entered the Council, he found that it was one which disturbed the rest of the members. It was altogether a Bill of an embarrassing character, raising most troublesome and difficult questions. He was eventually made a member of the Committee to whom the Council devolved the task of dealing with this most difficult Bill. His own personal experience was that no Bill which came before a Committee or the Council had troubled the members so much. We tackled it again and again; we tackled it once and failed to solve the difficulty; we tackled it a second and a third and a fourth time: and at last, after much labour and difficulty, we evolved a form of Bill which was satisfactory to the Council and was passed, thus so far solving, beyond our hopes,

a very difficult question. As he had said, the Bill solved some very difficult questions. But the question also arose, would it not be better to consolidate the whole law on the subject? The law was scattered through many enactments; and the question arose, would it not be better, while we were about the matter, to place it in a simple shape? He had himself suggested to the hon'ble member in charge of the Bill that it might be better to consolidate the law. That subject was fully discussed in Committee, and it was decided that it was not expedient to do so, not because we shirked the trouble, but because there were reasons why we should not consolidate the law which were explained to him by the hon'ble member in charge of the Bill (Mr. Stephen). Those reasons HIS HONOUR would briefly repeat. The Hon'ble Mr. Hobhouse had told the Council the devious paths by which the law relating to oaths, coming from various quarters, had now attained its present anomalous shape. The result of all that variety of sources was that the law was now somewhat in the shape in which it was put before the Council, and which, HIS HONOUR ventured to affirm, was a very absurd shape. The main law in regard to oaths was contained in the fourth and eighth sections of the present Bill. It amounted to this, that an oath should be tendered to every one, except almost every one; that was to say, except every one who was a Hindú or Muhammadan, or who objected to take an oath. If the Council looked to these sections, they would see that that was the effect of the Bill. We all knew that Hindús and Muhammadans composed the great mass of the people in India. The provision, therefore, amounted to this, that an oath should be tendered to every one, except every one, with certain limited exceptions upon the exceptions. When we came to look what those exceptions upon the exceptions were, we found that it amounted to this, that an oath should not be tendered to the great mass of people, inhabitants of the country, who were classed under the wide designations of Hindús and Muhammadans, but should be tendered to Christians and any other minor sects of people who might turn up. The population of the country might be mainly classed into Hindús, Muhammadans and Christians. Therefore, practically, the declaration amounted to this, that an affirmation should be tendered to Hindús and Muhammadans, but an oath to Christians. It seemed to HIS HONOUR that, in such a state of things, very difficult questions—questions that were more than troublesome, the very gravest questions—arose. The hon'ble member would pardon him, having considerable experience in India, if he ventured to differ on one point, namely, the objection to oaths on the part of Muhammadans stated by the hon'ble member. He thought that Muhammadans had no religious repugnance to taking oaths. The Muhammadan laws, principally drawn from a Jewish source, particularly affected oaths; any important transaction between Muham-

madans, to obtain validity, should be bound by an oath; and oaths were taken on every occasion on which any Muhammadan wished strictly to bind another. He would be corrected if he was wrong when he asserted that the Korán was the common instrument used for binding an engagement. Therefore, so far from objecting to oaths, Muhammadans affected the Jewish law of oaths. That law was much modified by the Christian law. His opinion was that, if any class of people might reasonably object to take an oath, it was Christians. The law which was common to Jews and Muhammadans was clearly modified by the law of Christians. In the Christian Scriptures, very strong expressions were used against the use of oaths: their communications should be "yea, yea, and nay, nay"; and again they were told to "swear not at all." Therefore, if there was any class of persons who might object more than others to take an oath, it was Christians. It did seem to him that it was an extraordinary anomaly that we should now enact a law, that an oath should not be tendered to Hindús and Muhammadans, but should be tendered to Christians. It seemed to him that the reasonable solution would rather be to say—"you are exempting Hindús and Muhammadans from the obligation to take an oath, you had better exempt Christians also." On the other hand, we were told by Mr. Stephen, that there were many good people who objected to the abolition of oaths: there might be lawyers who objected to the abolition, as against their legal religion, as well as others who wished to retain the religious sanction.

Such and such like were the serious questions raised by the declaration of the law. Last year it seemed to the Committee and the Council inexpedient to bring before the public these inconsistencies, anomalies and difficulties of the law without solving them. It seemed to them that it would be better to leave quietly sleeping in their graves these questions which were set at rest in an indirect manner by Act VI of 1872. That Act contained two very important provisions which seemed to them to get over the difficulty. It might not have been very courageous to adopt that course, but it was discreet and expedient. We got over the difficulty in Act VI of 1872 by enacting that, if any person objected to take an oath, he need not do so; and that, if there was any irregularity in the mode of administering an oath, it should not affect the validity of the proceedings. Those two provisions seemed to render any further questions impossible.

As he had before said, these very grave and serious questions, among which the then members of the Council feared to tread, were got over by the Council last year in the manner stated. If the hon'ble member was now about to rush in and solve them, His Honour should admire the hon'ble member's courage, although he might doubt his discretion. But His Honour did think

it most inexpedient to flaunt in the face of the public these inconsistencies and anomalies without attempting to solve them. The hon'ble member did not attempt to solve them, but he brought in a Consolidation Bill which flaunted these inconsistencies in the face of the public. The question had been before the Council last session, and the Council deliberately resolved that it was better not to do what it was now proposed to do. Great questions, relating to the land-tenures and land-revenue, must occupy the attention of the Council during the comparatively short period of its sitting, and it was most inexpedient and undesirable that these embarrassing questions regarding oaths should take up time which might be so valuably employed in the consideration of other grave and important questions. It might be said that we were driven to a Bill of this kind by necessity, and, if the Council believed in that necessity, they must submit. But, in HIS HONOUR'S opinion, there was no necessity of the kind. Not only had we had a Bill, Act VI of 1872, which he might call No. 1, but also, a few months ago, the hon'ble member in charge of this Bill again dealt with the question in another law, which he might call No. 2, section 12, Act XVIII of 1872, by which he professed to clear the doubts which existed regarding the administration of oaths and affirmations. HIS HONOUR thought that, if there was any difficulty, it was cleared by that provision: if there was no difficulty, he thought a difficulty had been created. This Bill, No. 3, was, in his opinion, a work of supererogation. By the codes of procedure, every man was bound to give evidence, and was bound to state the truth, whether he was on oath or not, and was liable to the penalties of perjury if he stated that which was false.

HIS HONOUR thought that the objections of the Judicial Commissioner of Sindh were unnecessary objections, which were raised by people seeking out illegalities and finding flaws which were not raised by those practically affected. HIS HONOUR'S opinion was, then, that this Bill was unnecessary; that it was inexpedient; and that it reversed the deliberate determination of the Council last year. He had thought it his duty to place on the paper his amendment, and, having explained his views, he left it to the Council to decide upon the matter.

The Hon'ble MR. CHAPMAN felt bound to state that, whatever difficulties and complications had arisen in this matter were due to the course which His Honour himself had thought fit to pursue. His Honour had talked of the danger and inexpediency of flaunting these questions before the public, but MR. CHAPMAN would like to know who was responsible for this flaunting; who had unfurled the flag, if not His Honour himself?

The original Bill was of a very simple character. It was, as had been explained by the hon'ble and learned member, introduced for the purpose of removing a difficulty that had occurred in connection with the Coroners' Act. The Council expected the Bill would have passed without much difficulty and discussion. But His Honour thought fit to deal with general questions of principle, and the discussion threatened to become embarrassing and troublesome.

In order to avoid those invidious discussions, the Bill was passed in its present incomplete state. The concession thus made was perhaps a weak one, but the Council were at the time much occupied with two great measures—the Contract Law and Criminal Procedure Code—and were desirous to avoid both embarrassment and delay.

MR. CHAPMAN could not conceive what the objections to the present proposal could be. Nothing was altered; if His Honour's amendment was carried, the result would simply be that the number of confused and doubtful laws specified in the schedule would remain on the statute-book, and the work of consolidation would be indefinitely postponed.

His Honour THE LIEUTENANT-GOVERNOR wished to explain that he must give the most emphatic contradiction to the facts stated by the Hon'ble Mr. Chapman.

His Excellency THE PRESIDENT observed that the statement which His Honour the Lieutenant-Governor had just made was not an explanation, but a statement of fact, and was therefore out of order.

The Hon'ble MR. HOBHOUSE felt he had not very much matter to reply to in the arguments that had been advanced against this Bill. The principal argument—the first one—adduced by the Lieutenant-Governor was this, that we were reversing the proceedings which the Committee of last year thought fit to take. MR. HOBHOUSE said that they were carrying on the proceedings of last year's Committee. He conceived the Committee had not laid down any rule to their successors, and never intended to do so. They judged on the case before them. But seeing that their report was dated 1st March 1872, looking to the statute-book, and seeing the great mass of business going on at that time, there could be little doubt that they felt the value of time, and that their judgment was partly guided by the necessity of paying attention to other important work. Indeed, with all these reasons for the decision of the Committee, the Hon'ble Mr. Chapman doubted its soundness MR. HOBHOUSE, however, could hardly doubt it. The Bill was an important

one. It settled the law in a satisfactory way, and it was better to pass it and leave consolidation to the future, than to incur the risk of losing it during that sitting of the Council by lapse of time: a risk which they would have incurred if they had taken up the work of consolidation.

But he wondered when this new desire of not disturbing previous decisions arose in his friend the Lieutenant-Governor's mind. Was he prepared to stick to it? Then MR. HOBHOUSE thought the Lieutenant-Governor must omit the next notice of motion standing in his name. He saw that the Lieutenant-Governor was to move—

[His Excellency THE PRESIDENT observed that it was rather irregular to refer to a motion which was not then before the Council.]

The Hon'ble MR. HOBHOUSE was using an *argumentum ad hominem*. That motion referred to a section of an Act recently passed, in which a distinct line of action was affirmed by the legislature. The Lieutenant-Governor thought it wrong, and did not find his respect for what had been decided prevented his moving to alter it. Moreover, in the Lieutenant-Governor's speech he showed a disposition not only to reverse a particular decision of the Council, but to reverse a principle which formed the very keystone of the policy of the Government in its legislation for a number of years. He had actually argued that it was better to have an obscure law than a clear one. When MR. HOBHOUSE came out to this country, nothing was so strongly impressed on him both by his friend Sir Henry Maine, and by his friend Mr. Stephen, as the great importance of simplifying the law. He was told that the law was in a state of much dispersion and confusion, and that it admitted of measures being passed from time to time for the purpose of bringing it into one view. And, now, in proposing one of the simplest of those measures, he was told that there was a difficulty; and because there was a difficulty, we were not to show the people what the law was; we were to hide the law, lest the people should see the anomalies of the law. That was a complete reversal of policy.

As to the difficulty, MR. HOBHOUSE did not see it. First, the Lieutenant-Governor said "you commence with an absurdity: you say oaths are to be administered to every one except certain persons who are every one." MR. HOBHOUSE would ask His Honour to read section 5, which said—"oaths *or affirmations*" shall be made by certain persons. There was no clause which said that oaths were to be tendered to everybody, with those large exceptions which His Honour mentioned. On the contrary, His Honour

would find that, throughout the Bill from beginning to end, the two alternative methods of taking evidence were contemplated, according to the law as settled by Act VI of 1872. Then, he said, there was a large class of persons, the class of Muhammadans, who were wrongly dealt with by Act V of 1840. Now, that Act had been the law for thirty-two years. MR. HOBHOUSE could find no complaint of its operation. He had read the whole of the proceedings which took place on the passing of Act VI of 1872, and found nothing on that point, except that His Honour himself made a speech which gave people outside the impression that he wanted to revive the administration of oaths; on which the British Indian Association presented an address in which they stated that perfect satisfaction had been felt with the working of Act V of 1840. That was some evidence of the soundness of the law of 1840; the absence of complaints was still better evidence; and, except the statement MR. HOBHOUSE had heard for the first time that day, there was not one scrap of evidence to the contrary.

Well, then, the only other argument was, that there was in fact no difficulty about the administration of oaths, and that, if there was a difficulty, it ought to have been dealt with when we passed a law to amend the Evidence Act. But if His Honour would refer to the proceedings in connection with the passing of that Act, he would find that it was stated at the time in this Council, that a Bill for the consolidation of the law respecting oaths was to be introduced, and the topic was one which fell more justly under that Bill. The reason for dealing with a fragment of the case by the Evidence Act was, that a particular law standing in the statute-book, containing certain express provisions, had, along with a mass of other law, been repealed; and the powers which had been conferred by, and exercised under, that particular law were wanted for immediate use. The communication from Bombay had not then been received, and it was that which first drew attention to the existence of doubts elsewhere. Now we were told by an officer of great learning, industry and merit, and holding a responsible judicial position, that he felt some embarrassment. He sent a communication to his immediate Government. They examined the question very carefully, as their letter showed: they suggested one solution of the difficulty; but, failing that, they agreed with him. Then, were we to declare that, when persons holding high and responsible positions felt a difficulty, because express powers given by law had been taken away, we would not restore those powers and place the matter beyond doubt? It so happened that MR. HOBHOUSE was reading yesterday a very able paper by the Advocate General of Madras on the subject of the re-arrangement of the law. Speaking of the Procedure Code, Mr. Cunningham said, "formerly the

law was scattered about all over the statute-book and what was the result? For fifty years all the Sessions Courts in the North-Western Provinces were acting without jurisdiction. Every man that was tried by them for half a century had a right of action against the Judge who sentenced him, and the Government had to pass an Act all of a sudden, because the Allahabad High Court positively refused to confirm any more sentences of death till the Judge who passed the sentence was provided with a legal footing."

That was exactly the thing we might have to do, though in a case of less importance, if we allowed these matters to go on as they were. The fact was, we never knew at what inconvenient moment an unsound part of the law would be tested; but if we left it unsound, it was sure, sooner or later, to plunge us into a quagmire. His Honour might not recollect, but MR. HOBHOUSE did, the circumstance that the old law of wager of battle was sprung upon the Courts, after very long disuse. It had not been repealed, and about fifty years ago an accused person availed himself of it by offering to fight his accuser. We had then gravely to enact that, thenceforward, suits were not to be decided according to the defendant's bodily strength, or skill in arms.

MR. HOBHOUSE thought that the difficulties indicated by the Judicial Commissioner of Sindh and the Bombay Government were substantial; but whether we thought difficulties were well or ill-founded, if they were entertained by a number of competent persons holding high official position, we had better make the law clear.

His Excellency THE PRESIDENT said: "I wish to remark that it is a frequent practice of the British Parliament to amend the law relating to a particular subject in one session of Parliament, and afterwards to consolidate that law as amended in another.

"The advantage of that practice is, that the legislative assembly has its attention directed, in the first instance, to the particular amendments proposed to be made, and the law is afterwards put into a clear and definite shape. I think the Council would act wisely in following the same course, and the law relating to oaths having been fully discussed, and an agreement having been arrived at in this Council last year, there is no objection, so far as I can see, to the consolidation now proposed.

"I also beg to say that I agree with what has fallen from my hon'ble friend, Mr. Hobhouse, that it is essential to solve the doubt which exists in regard to the authority of the Courts in the Bombay Mofussil, which has been stated by the highest judicial authority in Sindh and supported by the

Local Government. It would, in my opinion, be undesirable to leave any such doubt to be solved *ex post facto*, because such action is very much to be deprecated, and should only be resorted to in unforeseen circumstances.

"In this case, we cannot say that the circumstances have been unforeseen, and therefore it seems to be our duty to deal with the case."

His Honour THE LIEUTENANT-GOVERNOR wished now to submit to the Council his most emphatic contradiction of the facts stated by the Hon'ble Mr. Chapman. HIS HONOUR understood Mr. Chapman to have stated that the difficulties in regard to consolidation of the law of oaths were of his own creation. He gave the Council to understand that HIS HONOUR had opposed consolidation; that it was on account of the difficulties he suggested that consolidation had not been effected. If he had rightly understood Mr. Chapman, HIS HONOUR gave that assertion the most emphatic contradiction. He did not oppose consolidation, or make difficulties about it: on the contrary, he had suggested it, not knowing the difficulties; and, so far from having his own way in this matter, his suggestions were overruled by the explanations of Mr. Stephen and of his colleagues. HIS HONOUR'S reason was convinced, and he submitted to the opinions of his colleagues. That being so, the assertion that he in any way created difficulties in regard to consolidation was an entirely mistaken one.

Then, the hon'ble member in charge of the Bill had submitted to the Council the proposition that, even if the law was bad and inconsistent, we should consolidate and put it into one document: he said that it was our duty to clarify the law and make it simple. HIS HONOUR quite concurred with the hon'ble member that, if we had a good substantive law, it was well to put it into a shape in which it should be shown as settled in a reasonable manner. But HIS HONOUR'S argument was that the present law was in a state of chaos and inconsistency, and he desired to cover up from the public that state of chaos and inconsistency till we could set it right. Till they could find a solution of the difficulty, he strongly recommended the hon'ble member not to consolidate the law.

As regards the suggestion of the Judicial Commissioner of Sindh, HIS HONOUR would say that he differed from the opinion of the Judicial Commissioner. It did not appear that the difficulties were suggested to him by anything which occurred in his Court; and therefore, not being a practical difficulty, HIS HONOUR was the less inclined to respect the opinion of the Judicial Commissioner. It seemed to HIS HONOUR that Judicial Commissioners

were, of all functionaries, those who had the least useful work, and who were the most given to go hunting-up difficulties. He was sure that gentlemen who had experience of the matter would bear him out in that assertion. His Honour had himself been a Judicial Commissioner, but in those days he had a great deal to do besides Court work. But things were now changed, and Judicial Commissioners had not a sufficient amount of judicial work, nor of any other useful work. The consequence was, that the Judicial Commissioner set himself to pick holes of all sorts and in every manner. It was one great merit of the English law and English lawyers, that, however technical and particular they might be, it was contrary to the genius of the English law to raise difficulties that were not raised before the Judges in a practical manner. But Judicial Commissioners were entirely beyond that trait of English lawyers: they seemed to consider that it was their duty to raise difficulties. His Honour was specially averse to take up a matter of this kind on the recommendation of a Judicial Commissioner.

The Hon'ble Mr. Hobhouse had twitted His Honour by saying that he was not averse to reverse the proceedings of the Council in another matter. But the hon'ble member forgot that the Bill to which his subsequent notice of motion referred had been vetoed by higher authority—an authority which had the power of disapproving of any proceeding of this Council, and had disapproved of it and disallowed it. The Bill which had been passed by the Council previously had been disallowed by that authority; and he thought the Council were entitled, and were bound, to reconsider the provisions of that Bill to which reference had been made.

The Hon'ble Mr. Chapman desired to state, by way of personal explanation, that what he intended to say was, not that His Honour opposed consolidation on this subject, but that the Committee, to avoid delay, and to avoid the discussion of difficult and embarrassing questions which His Honour was disposed to moot, agreed to the incomplete measure passed last year.

His Honour the Lieutenant-Governor remarked that he must entirely deny the correctness of the Hon'ble Mr. Chapman's present statement. He did not raise those difficulties, and had never even heard of them until they were explained to him by others, being entirely ignorant of them till Mr. Stephen stated them. He neither suggested nor knew of those difficulties: they were suggested by the hon'ble member then in charge of the Legislative Department and accepted by him.

His Excellency the President observed that the Council were rather drifting into the question of what took place on a former occasion. He thought

it was not desirable to continue a discussion which really affected the proceedings of last year: it could be settled by a reference to the debates of the Council.

His Honour THE LIEUTENANT-GOVERNOR remarked that the discussion in question occurred in Committee, and no reference to it would be found in the proceedings of the Council.

His Honour THE LIEUTENANT-GOVERNOR'S amendment was put and negatived.

The Hon'ble MR. HOBHOUSE'S motion was then put and agreed to.

PANJÁB APPEALS BILL.

The Hon'ble MR. HOBHOUSE presented the report of the Select Committee on the Bill to prolong the law relating to Appeals and Reviews of Judgment in the Panjáb.

BURMA PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE also presented the report of the Select Committee on the Bill for the levy of Port-dues in British Burma.

NORTHERN INDIA IRRIGATION BILL.

The Hon'ble MR. EGERTON moved that the further report of the Select Committee on the Bill to regulate Irrigation, Navigation and Drainage in Northern India be taken into consideration. He said that it would be in the recollection of the Council that this Bill was amended in Council, and was referred back to the Select Committee for re-consideration, in order to complete the amendments, and to revise the whole of it with reference to them. The Committee had adopted the amendments in sections 35, 45 and 66, regarding appeals, which were proposed in Council, and they had retained the alteration in the wording of those sections which was suggested in Council.

The Committee had added words to section 1, which declared that the Bill was to apply to lands permanently settled and free of revenue, as well as to lands temporarily settled.

This was considered necessary, as a portion of the Benares Division of the North-Western Provinces was permanently settled. The alteration did not introduce any new provision. It was always intended that lands under permanent settlement should be subject to the Canal Act, but the express provision now made removed any doubt on the subject which might have been raised.

In section 8, in the last paragraph but one, the date of the notification, instead of the date of passing the Act, had been made the period from

which the limitation was to be reckoned. This was, in fact, a verbal alteration made to bring the paragraph into accordance with the rest of the section.

In section 38, words had been introduced which made the application of the rules regarding the assessment of the owner's rate to land under permanent settlement more clear.

In section 39, it was provided that no owner's rate shall be charged during the currency of a temporary settlement on lands assessed at irrigated rates.

In section 66, words had been introduced which defined more clearly that the Local Government was to prescribe the rates for impressed labour, and that these rates shall be in excess of the highest rates payable in the neighbourhood for similar work.

There was no need for him to trouble the Council with any further remarks on the Bill which had been so long before the Council. The substance of the Act of 1871 had been really very little changed, except in regard to compensation for loss or diminution of a supply of water.

The alterations made had been chiefly elucidations rather than substantive alterations.

The Hon'ble MR. HOBHOUSE moved that, in clause 38, lines 5 and 6, the words "or on adjacent land of similar description and with similar advantages" be omitted; and that, to the section be added the words "and, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue."

The amendment was of a purely verbal character. When this clause (38) was before the Select Committee, it ran thus: "The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof on account of irrigation." It was pointed out that, as the maximum owner's rate was to be ascertained by the rules in force for the time being for the assessment of the land-revenue, and those rules only were to show what must be assessed on such land, when you came to land which was permanently settled, the ruled would show that nothing additional could be assessed on the particular acres you were dealing with, and therefore, an owner's rate could not be assessed

on land permanently settled. That was the objection taken to the clause as it stood. But the intention was, that an owner's rate should be levied on all land that got the benefit of canal-water. And it was thought well to add the words "or on adjacent land of similar description and with similar advantages," with the view of referring the Settlement Officer to similar land, instead of the very land that was to be assessed. The Committee reported that they had done that. But after the report of the Committee was presented, his hon'ble friends, Messrs. Bayley and Inglis, put their heads together, and thought that, as there were large tracts of land under permanent settlement in the North-West Provinces, there might be cases in which this reference to similar land adjacent would not carry the Settlement Officer beyond permanently settled land, so that the object of the alteration would not be attained. It was now, therefore, proposed to affirm directly, instead of indirectly, the liability to owner's rate of land permanently settled. Therefore, what MR. HOBHOUSE now moved was, that they should strike out the words inserted in Select Committee "or on adjacent land of similar description, and with similar advantages," and so express the section as to apply to land permanently settled, by adding the words "and for the purpose of this section only" (that was for the sole purpose of ascertaining the maximum rate which could be assessed on the owner) "land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue." MR. HOBHOUSE believed, as far as he understood the question, that would meet the object in view.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR moved that section 45 be omitted, and that the numbers of the subsequent sections be altered accordingly. On the last occasion he withdrew several of his amendments, on the understanding that the Bill was to be referred back to the Select Committee. The Select Committee having considered those matters, and being quite capable of dealing with them, HIS HONOUR was not disposed to raise any question dealt with and settled by that Committee. But the matter which was the subject of the present motion was left an open one, and was not decided by the Committee. Therefore, the Council at large might decide the question one way or the other.

The hon'ble member in charge of the Legislative Department had already alluded to this Bill, and HIS HONOUR had also alluded to it, as founded on the disallowance by the Secretary of State of a former Bill, which was objected to principally on the ground of the compulsory clauses it contained. Now, it

seemed to His HONOUR that this clause was a short of compulsory clause; a sort of rag of compulsion that somebody had nailed to his mast. Section 45 was in these words:—

"If it appear to the Divisional Canal Officer that any cultivated land situate within three hundred yards of the edge of any artificial canal maintained by Government receives by percolation from such canal an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation, he may, subject to an appeal to the head revenue-officer of the district, or such other appeal as may be provided under section seventy-six, charge on such land a water-rate not exceeding that which would ordinarily have been charged for such a supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal."

The result of that section (45) was to introduce into this Bill the principle of compulsion, on a small scale no doubt, but still the principle. The man who did not ask for a canal found that a canal was brought through his grounds, and he was told—"you are benefited by it in the opinion of the Canal Officer, and therefore you must pay as if you had voluntarily taken water from the canal." That was so far compulsory, and was, he thought, to be avoided. There might be a good deal to be said in favour of the principle that a man who had benefited by a canal should pay for the benefit he derived, whether he wished to have that benefit or not. But it seemed that, practically, this would be a very small source of revenue, and extremely difficult of application. The rule could but apply to a very small strip of land on the sides of some portions of the canal; and it was extremely difficult to say whether the land had benefited, and how much it had benefited. It was still more difficult to say who ought to decide that question. His HONOUR strongly objected to the Canal Officer deciding it, and, if this section was passed, he thought the claim of the Canal Officer should be decided by an entirely independent authority. His HONOUR not only objected to the clause on direct grounds, but also on much larger indirect grounds, namely, that there was no provision for compensation on account of injury done by a canal, corresponding to the rate sought to be levied on account of benefits, and therefore it was not consistent that a rate should be levied on account of benefits indirectly given by a canal. That was, in fact, the principal ground upon which he would ask the Council to strike this clause out. He had spent considerable portions of his life in countries where irrigation-canals existed; and he found that, wherever you took a canal, you must necessarily very much disturb the existing state of things. You did good to some; you did harm to others. You gave water to many to whom it was a benefit; but, on the other hand, you flooded lands

where the flooding was an injury: you caused wells to fill in where such falling in was an injury. You drained where it was a benefit to drain: you drained where it was an injury to drain. There was no end to the questions which would arise if you applied fairly the principle involved in sectin 45 to adjust the benefits and the injuries resulting from canal-works. If you attempted to adjudicate in these matters, you would be put into overwhelming difficulties. He believed that you must look on these disturbances, these changes which altered the course of waters and drainage, as a sort of act of Providence. You must set the benefits conferred upon those who did not ask for them against the damage done to others. It would be impossible to adjust those matters satisfactorily; to give compensation to lands injured, and take payment from lands benefited. Unfortunately, we could not compensate those who were injured, and we should not seek to charge those who were accidentally benefited. His Honour much believed that that view must influence the Council, because those who benefited in the manner provided for by this section would be a small number in comparison to the cases in which compensation for injury might be claimed if the principle were allowed. He therefore hoped the Council would accept the amendment.

His Honour would say one word on the general question. It appeared to him necessary and most desirable that, in canal-irrigation, we should be scrupulously just: we should do nothing having the semblance of injustice. When this question was last before the Council, he alluded to the fact that there was a singular amount of unpopularity attached to canal-administration, notwithstanding the eminently benevolent and beneficial object of the works. He himself had some misgivings that he might have said too much on this point. His experience in Northern India had been in districts about the upper portions of the canals, where, perhaps, the injuries were more conspicuous than the benefits; and in Bengal, where the rainfall was so large that the benefit was not at once recognised by the people: but he fully admitted that, in dry countries like the Panjáb, they were not to be compared with any other work. When the Hon'ble Mr. Egerton was inclined to twit His Honour with an inclination to see the injuries caused by, rather than the benefits derived from, canal-irrigation, His Honour reflected that his experience was not so large as the hon'ble member's in countries where canals were a first necessity. In such a country as the Panjáb, canals were of immense benefit, and he thought to himself that, perhaps, he had said too much by way of caution regarding the proceedings of Canal Officers. But his opinion had been again somewhat modified. He was about to commit a serious breach of confidence. There were cases in which one must commit treason to save the State.

On that account, he was about to betray the private confidence of the hon'ble member in charge of this Bill. He would not mince the matter, but he would tell the Council that, talking with the hon'ble member in the confidence of private friendship, and without the least suspicion that he was extracting evidence against the Canal Bill, the hon'ble member said something which had considerable effect on HIS HONOUR'S mind in this matter. He was talking to Mr. Egerton about the Panjáb. HIS HONOUR was an old Panjábí, and had very much interest in the people there. He said to Mr. Egerton,—"Do you think the people of the Panjáb really are happy and contented?" Mr. Egerton said,—"I think they really are;" but he went on to say "they grumble a good deal, no doubt, as people generally do." HIS HONOUR asked, "What do they grumble about?" He thought Mr. Egerton would perhaps say they grumbled about the lawyers; but, in fact, he did not put the lawyers first on the subject of grumbling. He said—"well, they grumble a good deal about the canals." He went on to say—"It is very odd, but the people who have not got canals; the people who are at a distance from canals, are wild to have them; but as soon as they get them, they grumble about one thing and another." HIS HONOUR attributed this grumbling principally to what he had submitted to the Council, that the canal-administration had been too much the judges in their own cases; that they sometimes committed some injustice, not wilfully, or intending to do injustice, but from a natural zeal for their own Department. He attributed the conspicuous grumbling about canals, in a country where water was worth its weight in gold, in a very great degree to the cause which he had stated. Therefore, he thought the Council should take care that nothing should be done having the semblance of injustice. It did seem to him that this compulsory clause was not balanced by any corresponding clause for the grant of compensation for injuries sustained by means of canal-irrigation; that it would be difficult and irritating of application; that little would be got by it, and he would therefore omit it.

The Hon'ble MR. INGLIS agreed entirely with what had just been said by His Honour the Lieutenant-Governor, and should vote in favour of the amendment proposed by him. The section was a remnant of the old compulsory rating-clauses, which had been struck out of the Bill and should have gone with them.

It seemed to him inequitable that power should be given to Government to charge a water-rate on account of benefits caused by percolation, while all claims for compensation on account of damages arising from the same cause were barred. The cases in which injury would be done to land by percolation

from a canal were far more numerous than those in which benefit would be received; indeed, it might frequently happen that land which was benefited one year by percolation would be injured the next, should the percolation increase, and he could not think it right that a charge should be made on the owner in the one case, while no compensation was to be given to him in the other.

The Hon'ble MR. EGERTON opposed the amendment of his hon'ble friend the Lieutenant-Governor. The provision contained in this section was not a new one. In the rules made under Act VII of 1845, provision was made for charging a rate on lands which were situated within a certain specified distance of either side of the canal, whether the owners of such land took the water or not, and whether they benefited by the water or not. So that the rule was an arbitrary rule of distance, which applied rigidly to all lands within a certain distance from the canal. It had been found by experience, that the benefit derived from proximity to a canal varied according to the nature of the soil. The former rules, which prescribed that lands lying within a certain distance from a canal should pay the water-rate, disregarded this fact. In order to avoid the injustice which might arise from a uniform rule of distance only, this section was framed, which made the power of charging a rate on land depend, not only upon the consideration that the land lay within a certain distance from a canal, but also whether advantage had accrued to that land or not. If the land had been injured, the water-rate could not be charged. If it had not received the full benefit from percolation that it would have received from a direct supply of water, the rate could not be charged. There seemed to him to be no injustice in charging a water-rate on land which was shewn to have been benefited by its proximity to a canal, although it had not received a direct supply of water, in a degree equal to that which would be caused by a direct supply of water.

With reference to what the Lieutenant-Governor had stated in regard to a private conversation between His Honour and himself, MR. EGERTON would observe that His Honour had apparently misunderstood his meaning. When His Honour enquired what the people said about affairs in general, he told him that they certainly grumbled about canals. He went on to explain that you must not take people's grumbling literally, and stated that the proof of that was that the people who had canals always grumbled, while the people who had not the benefit of canals always wanted them. This illustration was intended to show that people made things which they really valued as advantages, ground of complaint, and that they were very reluctant to tell any one that they were

well off. It was not intended to convey the meaning which His Honour had apparently understood, that there was any general complaint against the administration of the canals by the Canal Officers.

The clause regarding percolation stood as a part of Act XXX of 1871. It had been maintained since the year 1845 in some form or other by the rules framed under that Act. It was not objected to by His Honour on the occasion of his proposing various other amendments. He objected to there being no express provision for an appeal to the head revenue-officer of the district in the section; but he did not object to the principle of charging for the benefit derived from percolation in itself. The amendment which His Honour proposed on that occasion to this section was, that after the first paragraph of section 45 be added the words "Any person dissatisfied with any such charge may appeal to the Collector." MR. EGERTON did not in that see any objection to the principle of charging for the benefit derived from percolation; and the provision regarding appeals to which His Honour's amendment related had now been inserted by the Select Committee. He thought therefore, that, as the amendment was a new one in substance, and as he considered that the section as it stood contained a right and proper provision, it was his duty to oppose the amendment.

The Hon'ble MR. BAYLEY agreed generally with the Hon'ble Mr. Inglis in thinking that the clause as it stood gave rather an unfair appearance to the Bill. Perhaps the unfairness was rather apparent than real in character, for, though the Bill, indeed, as it stood distinctly provided that, where benefits which the land previously enjoyed from percolation were destroyed, there should be no compensation; whereas, wherever new benefits were given by percolation, a rate should be levied, yet, as a matter of fact, he thought that this clause would prove really inoperative. It was so guarded, and limited, and hedged in with conditions which were very just and wise, that he doubted whether it could ever be put in force. It required that the benefit should be proved to the satisfaction of the revenue authorities to be equal to the benefit that would be derived from a direct supply of water. He had had some little experience of canals, and in those districts where the soil was porous and thirsty, and the climate arid; and yet he thought he might safely say that he had never seen a case to which this rule would apply. The chief benefit even in the parts of the country to which he referred were derived from the raising of the water level in the wells, and in other parts of the country, where the soil was not so thirsty, and there had been a tolerable water supply before, evil even might arise from this result. But it was mani-

fest that in no case could the benefit thus derived from percolati on amount to an extent equal to that of a direct supply of water. He believed, therefore, that the clause would be inoperative. But as he thought it represented an unfair principle, and as the cognate clauses regarding compulsory rating had been struck out, he would support the amendment.

Major General the Hon'ble H. W. NORMAN observed that he could not admit that the principle of this clause was the same as that contained in the clauses which had been objected to by the Secretary of State, because, under this section, it had to be proved that an advantage had been received, and there was the right of appeal to the principal revenue-officer of the district. Still, as he was informed that the question would rarely arise, and that, in point of fact, the clause would be inoperative, he did not care to support its retention.

The Hon'ble MR. ELLIS said, if this question went to the vote, he was prepared to vote with the hon'ble member in charge of the Bill. MR. ELLIS thought his hon'ble friend had fully answered the objection taken by His Honour the Lieutenant-Governor, that this was a part of the compulsory clauses disallowed by the Secretary of State. For Mr. Egerton had told the Council that this clause was a modification, in the direction of liberality to land-owners, of the rules framed and in force in the Panjáb under the old Panjáb Irrigation Act of 1845. That being so, it was obvious that the objection of His Honour that this clause was a remnant of the compulsory clause objected to by the Secretary of State could not hold good.

The second objection which the Lieutenant-Governor took had not been referred to by other members. But MR. ELLIS thought that that objection also might be answered. His Honour had stated that it was unjust to allow the Government to impose a rate on land benefited by percolation, when we refused to compensate land-owners for losses caused to them from land being injured by percolation. But there was a difference in the two cases. We had a standard whereby to gauge the benefit derived by percolation, and we laid down that the rate should not be leviable unless the benefit amounted at least to the corresponding benefit derived from a direct water-supply. On the other hand, compensation for damage done by percolation was disallowed after careful consideration, because there were no means of ascertaining the amount of loss sustained, which, as suggested by Sir William Muir, must necessarily be of so uncertain and varying a character, that there could be no estimate of the amount and no reason for allowing compensation. The two cases were perfectly distinct; and as both the objections raised by His Honour the Lieutenant-Governor were, in his opinion, untenable, he (MR. ELLIS) would vote against the amendment.

The Hon'ble Mr. HOBHOUSE thought His Honour the Lieutenant-Governor must not lay the flattering unction to his soul that this clause was comprised in the principle of those which were rejected by the Secretary of State, because the compulsory clauses objected to were for the assessment of rates on land which was irrigable but not irrigated; and the main objection to those clauses was, that you assessed people on a purely imaginary benefit, that was to say, on the benefit they might receive if they chose to take water. Here, you proposed to assess a rate on the basis of the real benefit they received from water coming out of the canal. At the same time, on comparing section 45 with section 8, MR. HOBHOUSE thought there was the injustice which His Honour pointed out. Section 8 said—

"No compensation shall be awarded for any damage caused by stoppage or diminution of percolation or floods, or for deterioration of climate or soil."

Therefore, if you diminished percolation, and so injured the land, the landlord got no compensation; if you increased percolation so much as to deteriorate the soil, again he got no compensation. But if your percolation was just of that amount which gave the landlord benefit, you made a charge for such benefit. When he first read the controversy between the Panjáb Government and the authorities of the North-Western Provinces, he thought that there was an inequality in this mode of treating the matter, and he had never been able to see the matter in any other light. Therefore, he was constrained to support the amendment.

The Hon'ble SIR RICHARD TEMPLE thought this clause was of extremely small importance, and could not say that he had any pronounced opinion upon it. But he concurred in the arguments adduced by his hon'ble friend Mr. Ellis. He believed that every word of that argument was correct. And, in reply to what had just fallen from the Hon'ble Mr. Hobhouse, SIR RICHARD TEMPLE would say that there was a difference between a charge for percolation, and the refusal of compensation for damages. That damage was absolutely undefined. It might be more or less, though it never happened to such a extent as to destroy cultivation. His hon'ble friend seemed to have lost sight of the fact that the damage was so indefinite. But in these cases of benefit from percolation, there was a precise measure of the benefit to be derived, namely, that it must be equal to that which would have been derived from a full supply of canal irrigation. It was not correct to say that there was one measure in this clause, and another measure in another clause. If it had happened that extensive lands were receiving benefit from percolation, then, certainly, he would, in concurrence with his hon'ble friend Mr. Ellis, vote for retention of the clause. But it was the fact, as stated by the hon'ble Mr. Bayley, that there was a very limited area of land thus affected. Therefore, he could

not say he had any pronounced opinion one way or the other, believing the clause to be of no practical importance. But, as the clause was not objectionable in principle, he thought it was better to follow the advice of the Member in charge of the Bill, who carried with him the weight of local authority; and to let the clause stand as it was.

His Excellency THE PRESIDENT thought enough had been said to show that there was a good deal in this clause which was open to objection. There was, no doubt, a small modicum of compulsion in the clause, and His EXCELLENCY was satisfied that the Council were desirous fully to carry out the views of Her Majesty's Government against compulsory rating. There was also the question of equity stated by His Honour the Lieutenant-Governor and the hon'ble Mr. Hobhouse, namely, that, as the Act debarred claims for compensation for loss caused by percolation, it was not fair that there should be a charge made in those cases in which the landholders received benefit from percolation. Therefore, HIS EXCELLENCY thought the Council would be disposed to decide the question by omitting this clause.

His Honour THE LIEUTENANT-GOVERNOR observed that he hoped his hon'ble friend Mr. Egerton would not be so hard upon him as he seemed to be inclined to be. His HONOUR believed that his hon'ble friend had re-stated the conversation almost exactly in the same words as HIS HONOUR had used, although the deduction he drew from them was different.

His Honour THE LIEUTENANT-GOVERNOR'S motion was put and agreed to.

The Hon'ble Mr. EGERTON moved that the Bill as amended be passed.

His Excellency THE PRESIDENT observed that the rules provided that a Bill could not be passed on the same day on which it was amended. The motion that the Bill be passed would therefore stand over till the next meeting of the Council.

The motion was, by leave, withdrawn.

The following Select Committee was named:—

On the Bill to consolidate the law relating to Oaths and Affirmations—The Hon'ble Messrs. Bayley and Chapman, His Highness the Mahárájá of Vizianagram, the Hon'ble Mr. Inglis, the Hon'ble Rájá Ramánáth Thákur and the Mover.

The Council then adjourned to Tuesday, the 11th February 1873.

CALCUTTA,
The 4th February 1873.

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

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