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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.

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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 Thursday, the 29th June 1876.

PRESENT:

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

His Excellency the Commander-in-Chief, K. C. B.

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

The Hon'ble Arthur 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 F. R. Cockerell.

MERCHANT SEAMEN'S BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the law relating to Merchant Seamen be taken into consideration. This Bill was introduced into the Council last September for the purpose of making some amendments on isolated points in our Merchant Shipping Law, which had beenbrought to the notice of the Government by the various maritime authorities. The Council was aware, as he had explained at the time of the introduction of the Bill, that we had pending a general measure for amending and consolidating our Merchant Shipping Law. That measure had now been before us for—he thought he was not wrong in saying—nearly ten years; but it had been put upon the shelf for the reason that a similar measure had been knocking about the House of Commons, and the House of Lords, for the amendment of the law upon the same subject in England. The Merchant Shipping Law was one of those laws which it was of great importance for us to make agree as nearly as circumstances would permit with the law of England. In the first place, the English Merchant Shipping Act of 1854 was directly opera-

tive in India, partly by its own force, partly by being the basis upon which our Indian Merchant Shipping Act was framed, and with which it interlaced a great number of points; and the other principal English Shipping Act, namely, the Act of 1862, also directly affected us, and it was one of those Acts which we were not able to affect by our legislative powers. It was therefore very necessary for us to follow the English law as closely as Indian circumstances would admit, and on that ground the Secretary of State advised us to put our great Merchant Shipping Bill on the shelf, and defer the consolidation of our own law until we saw into what shape the English Parliament would put the law of England. We had reason however to believe that this year this very long story would come to an end, and then we should be in a position to consolidate our own law. On that ground we had been advised by the Government of Bombay—a maritime Government interested in the question—to postpone this Bill; but it seemed to him that we had better not postpone the consideration of those points which must be dealt with when the law was finally settled, and which were now quite ripe for decision. They had been the subject of discussion for some years, and of communication between the Supreme Government and the various local maritime Governments; and they had also been the subject of communication between ourselves and the Board of Trade, who had approved of the contents of the Bill as introduced into Council. Even if the Merchant Shipping Bill now before Parliament should pass this session, it was quite certain that a considerable time must elapse before we could fully consider the subject here, and say exactly how much of the measure was suitable, or how much unsuitable, to Indian circumstances, and before we could propound, in conjunction with the Secretary of State and the Board of Trade—who must be taken into consultation upon such points as those—the exact measure which we should consider suitable for India. To effect this a considerable time must elapse, and, in the meantime, he thought that we had better deal with the various points suggested to us from the different maritime ports in India.

The first point in the Bill was contained in section 3, which related to the rather difficult and troublesome subject of distressed seamen. The Merchant Shipping Acts gave large powers to the Governments of all dependencies of the British Empire to take up seamen who were left on their shores, and to send them back to their homes at the expense of certain funds which were under the control of the Board of Trade. But it was a great mischief having those distressed seamen at all, and it was desirable to contract the limits of the mischief as much as we possibly could. This Bill was

principally concerned with that particular subject; it provided for a more speedy way of shipping distressed seamen, and avoiding disputes about who were, and who were not, distressed; and it sought also to prevent the mischief from growing into undue proportions by placing a certain restriction upon the discharge of seamen. Section 3 dealt with the one subject of distressed seamen. Now every British ship-owner was bound to receive a distressed seaman, but he might raise a dispute in every case whether or no the man was a distressed seaman, and that dispute might be carried into a Court of Law, and decided in the ordinary way upon proceedings taken against the Captain for refusing to receive such seaman. Now that was a dispute which might arise under very critical circumstances—it would be most likely to arise just when a vessel was going to start—which it would be utterly impossible to settle in time unless by some summary method. The Board of Trade had suggested that we should enact the infliction of certain penalties upon Captains refusing to receive seamen. There were penalties in England upon Captains for offences of this kind, but they had not been, and were not now, liable to penalties in India. But when we came to consider the subject, and to look at the cases which had actually arisen under the Merchant Shipping Act, we found that penalties would hardly meet the point, because we could not inflict a penalty unless it was first decided whether the Captain refused to receive the distressed seaman, whereas the issue raised was whether the man was a distressed seaman or not. We therefore proposed to make the decision of the local authorities binding upon the Captain. If he felt that in any case he was an injured man, he must lay his case before the Board of Trade, and complain if we had acted wrongly. But we proposed to cut short those disputes by saying that a certain certificate given by the local authorities should be evidence that the seaman was distressed, for the purpose of compelling the Captain to receive him, and of enabling him to claim indemnity from the funds under the control of the Board of Trade. That was section 3. He should explain that we had received a communication from the Bengal Chamber of Commerce on the subject, and they desired that from this certificate there should be an appeal. The Bengal Government very properly observed upon that, that an appeal would defeat the whole object of the measure, because it would introduce those very disputes and delays which were apt to occur now, and which the section was intended to get rid of.

Then we came to sections 4 and 5, which related to the discharge and engagement of seamen. With respect to the discharge of seamen it was provided by the British Merchant Shipping Act that they should not be discharged

except with the sanction of certain local authorities; that was intended for the purpose of preventing improper discharges by which seamen were thrown upon the charitable funds of the place where they happened to be. But a dispute arose in India whether that sanction of the local authorities was entirely within the discretion of the sanctioning authority, or was a ministerial act which he was bound to perform, upon the master or seaman or both showing a case for the discharge: and it was actually decided by a Judge of the High Court of Calcutta that the sanction was only a ministerial act. That was quite contrary to the view of the Board of Trade, and to the view that had been acted upon all over the British Empire. Of course the Bombay ship-owners were not slow to avail themselves of the advantage of the Calcutta decision, and they raised the question in Bombay, when a decision was come to in opposition to the Calcutta decision and in accordance with the view of the law prevailing everywhere else. We had always acted on that view; still, as we were amending our law, we thought it better to put it entirely beyond question, and make it quite clear that this sanction for the discharge of seamen was to be exercised at the discretion of the local authorities. We also added a penalty leviable in India, in addition to the penalty leviable in England, for the discharge of seamen without proper sanction.

Section 5 was intended again to give the Local Governments control over improper discharges, and the principle upon which it was founded was this. It was very frequently found that Captains of vessels desired to get rid of their European crews, either to save money or for some other reason, and to replace them by Natives of India. The result was that the European crew ran loose on our shores without employment, loafed about, and fell into the category of what we called 'distressed seamen'—a very undesirable class of people to have. Therefore we proposed to give Local Governments the power to forbid the engagement of any Native of India to serve as a seaman on board any ship specified in the order of prohibition; and it was conceived that such a provision would strike at the root of the evil. The suggestion had been made by the Government of Bombay; it had been adopted by this Government, and was approved by the Board of Trade.

It was opposed, however, by the Bengal Chamber of Commerce, and what they said about sections 4 and 5 was this:

"The object of these two sections appears to be the very desirable one of preventing the accumulation of vagrants in Calcutta, which, as already remarked, is a public nuisance of no small magnitude, and in that respect the sections are approved: but at the same time their

provisions involve the important issue of interference with agreements between master and seamen. In many cases men are shipped for the voyage only, and the Committee apprehend that the Local Government has not the power to set aside such special contracts.

"Seamen thus paid off can always be sent home as distressed seamen in case of there being no regular employment for them, but as a rule there is always a demand in this port for able-bodied men.

"The refusal to allow ships to take native crews in the place of Europeans is, in the Committee's opinion, indefensible on the broad principle of interference with freedom of trade, and would be especially unjust in cases where vessels or steamers come to India with the object of regularly trading to and in the East. It is true that, under these sections, with the sanction of Government, seamen may be discharged and native crews engaged; but if the seamen agree to take their discharge, and lascars are willing to take their place, it should be an obligation on the part of Government both to grant the discharge and to sanction the engagement."

Of course, we did not assume powers to set aside any special contracts as between masters and seamen; what we said was, that whatever the contract, or whatever the rights of the parties might be as between one another, they could not bind us by making arrangements to cast a number of distressed seamen on our shores; the very object of the provisions in the English Act 1854 was to prevent that operation, and we were only now making the provisions of that Act more efficient in India. The Bengal Government, in forwarding the remarks of the Chamber of Commerce, made very much the same observations that he (MR. HOBHOUSE) had made. They said that it was public policy to prevent those discharges of seamen, and that they were prevented by means of giving to the local authorities a discretionary power of veto upon them. We were now only making this means more efficient, and it seemed perfectly right that we should do so.

Section 6 related to desertion, and all it provided was that the Master of the ship should report the desertion to the Local Government. He thought that everybody approved of that. The only difference between the Bill as introduced and as it now stood before the Council as amended by the Committee was, that section 6 of the former Bill provided that the Master or owner of a ship should be equally bound to report. It was pointed out by the Chamber of Commerce, and by the two mercantile gentlemen who sat upon the Committee, that the owner of a ship never knew anything about those things, whereas, in cases of desertion or absence, the Master must always know, and he was the proper and only person on whom the obligation should lie. The Committee therefore altered section 6 of the present Bill in that sense.

Sections 7 and 8 were again connected with the same subject of discharged and distressed seamen; only they related to those seamen who were put in prison. Now again we were told that it was a common thing for Masters of vessels to make complaints against seamen for breaches of discipline and petty offences; to get them put in prison, and then immediately to fill up their places with Natives; and so in fact to leave the seamen a charge upon our hands. That was the mischief struck at by sections 7 and 8. We had a clause in our Shipping Act (section 88, Act I of 1859) to the effect that if a seaman was imprisoned for certain offences—being those petty offences against discipline which he had mentioned—a Magistrate might, with the consent of the Master of the vessel, relieve him from imprisonment and send him back on board ship. We proposed to extend the operation of that law. It was suggested by the Board of Trade that we might make it compulsory upon the Master to receive back the man; but we thought that that would be going too far, and that if the quarrel between the Captain and the man had proceeded to a certain point, there might be danger in forcing the man back upon the Master. What we therefore proposed was this: In the first place, we proposed that the Master should not be able to engage Natives, without sanction, while any of his men were in prison; in the second place, we proposed that the local authorities should be able to tender the man to the Master, and that if the master did not receive him, he should deposit a sufficient amount of money to defray the expenses of taking the man home according to the scale of cost usual in the case of distressed seamen. We also proposed to extend the provisions to other petty offences. Those provisions were again objected to by the Bengal Chamber of Commerce, and he would read what the Chamber said with regard to those two sections 7 and 8:

"The Committee have no objection to offer to the former of these sections except in so far as it is applicable in connection with the section following. The provisions contained in section 8 are, in the judgment of the Committee, most unjust and prejudicial to the ship, while at the same time it offers to the seaman inducements to commit offences so as to bring him under its operation. It seems to be overlooked that a ship has to take away another man in the place of the prisoner if she refuses him; and the Committee cannot see why the prisoner so refused should not work his way home in another vessel. The provisions of the section are tantamount to giving the man, at the expense of his late ship, a three months' holiday after his imprisonment; and if his offence has been such as to compel the Master to refuse to receive the prisoner, the law should rather protect the Master than a refractory seaman, who may at sea repeat the offence for which he was punished ashore, and be a troublesome and unwelcome member of the crew on the return voyage. It should be *optional* with the Master, and *not compulsory* on him, to take back a seaman after his imprisonment."

The Bombay Chamber of Commerce made an observation somewhat similar to the first of the objections of the Bengal Chamber, namely, that the provision was apt to encourage insubordination on the part of the seamen; and the Governor of Madras had made a similar remark. It seemed to MR. HOBHOUSE that all those observations lost sight of the reason for this clause. As for the observation that the provisions of the section were tantamount to giving the man, at the expense of the ship, a three months' holiday after his imprisonment, MR. HOBHOUSE did not understand what it referred to. All the good that could happen to him would be that he would be sent home as a distressed seaman; not a single penny was to come into his pocket, nor was he to have any benefit from our provisions. But as regarded insubordination, the theory, supported by opinions from the maritime officers, was, that those quarrels were, he would not say, got up by the Master, but laid hold of by him in order to get rid of the man; because it was found that once the man was in prison, the Master engaged Native seamen and was off with the ship. The Lieutenant-Governor of Bengal gave the proper answer to those objections in sending on the remarks of the Chamber of Commerce. When he forwarded those remarks, he endorsed the observations of the Shipping Master of Calcutta, which were to this effect:

"The change in the law to be made by the 7th section is advisable, and, followed by section 8, will render it impossible for a Master to get rid of his European sailors by procuring their imprisonment and then declining to take them out of jail to go on their voyage. The whole tendency of these leading sections of the Bill is effectually to remedy the evil which has been so long felt in Indian ports, of British seamen being thrown out of their proper employments, and becoming helpless and destitute on the hands of Government."

It seemed to him that this was quite a sufficient reason for retaining sections 7 and 8 in the Bill in the form in which they now were. The alterations made in them by the Committee had the effect of diminishing the amount of the deposit which the Master was bound to make in case he refused to receive a seaman. As the Bill was introduced, it required him to deposit a sum sufficient to defray the cost of the passage of the seaman to the port from which he was shipped, and of his subsistence during such passage, and also of his lodging and subsistence during his detention at the place at which he was imprisoned until he embarked. It now only required him to deposit a sum calculated by the Local Government to be sufficient to defray the cost of passage, according to the scale of cost usual in the case of distressed seamen. As regarded the contention of the Chamber of Commerce that it should be optional with the Master to take back a seaman, it would be optional. But we should test his

good faith by requiring him, in case he refused to take the seaman back, to defray a cost which would otherwise be thrown on the Government of India or the Board of Trade, namely, that of conveying him to his own home.

The other two sections he need not explain at any length. One referred to the space to be allowed on board ship. It somewhat enlarged the space given by the present law. We were advised from some quarters that the space given by the English law was still larger, and that we had better make our space the same as that allowed by the English law. He was quite incompetent to advise the Council on that point, or even to explain exactly why the existing or the proposed measurements were chosen for India. If it was necessary to make our law in accord with the English law, no doubt that would be done by the Consolidation Bill, and the matter would be considered in the Department over which Sir Alexander Arbuthnot presided. It had been very carefully considered after communication with the Local Governments in that Department, and the amount of space specified by the Bill was settled as being the best at this moment. At all events, it was an increase on the present space, and he thought we might allow the proposed arrangements to stand, reserving it for consideration afterwards whether the space should be further enlarged in accordance with the English law.

By the tenth section it was proposed to remove a certain ambiguity which existed in the corresponding section of the present law, which related to the payment of wages in India in English currency. It was proposed to confine the operation of this section to those cases in which the rate of wages was stipulated for in British currency. The existing section extended to cases in which stipulations had been made for payment in other currencies; but it was found impossible to apply a definite rule to such cases, and it was thought better to leave them to the general operation of the law. It was convenient to have a cut-and-dry rule for stipulations made for payment in British currency, and the section provided that payments should follow the rate of exchange for the time being fixed by the India Office and the Treasury for their pecuniary transactions. That was the present practice, and, he believed, quite a legal one, though some doubt had been expressed about its legality.

Having now gone through all the sections of the Bill, he had only to add that, although we were now sitting at Simla, the whole substance of the amendments by the Committee had been settled at Calcutta. We had had the advantage there of the presence of Mr. Bullen Smith and Mr. Cowie, who had paid great attention to this matter, and attended the sittings of the Committee,

and several alterations had been made at their instance; he had mentioned one which occurred in sections 7 and 8, namely, the amount to be deposited by the Master of a ship. The Committee had also, in deference to their opinion, and to the opinion of the Bengal Chamber of Commerce, omitted the definition of the word 'owner' of a ship. As the Bill was introduced, it made the owner of a ship include the agent of a ship; what the mercantile gentlemen said was that the agent of a ship did not occupy such a position as ought to expose him to the various provisions of this Bill. The Committee therefore omitted that definition and kept in only the words 'owner' or 'master,' as the case might be. At the same time they had modified sections 4, 5 and 8, by making the expressions rather more general, so that if the agent of a ship should occupy the same position as the owner, which might be the case for all we knew in Bombay, then the provisions would apply; and if the agent should commit offences which were struck at by the Bill, he would find himself exposed to penalties.

After the amendments agreed on at Calcutta had been put into proper form and the draft report prepared, they were laid before our two mercantile Members, who, as the Council would observe, had signed the report.

The Hon'ble SIR ALEXANDER ARBUTHNOT wished to make one remark with reference to section 8 of the Bill, in addition to the observations addressed to the Council by his Hon'ble friend Mr. Hobhouse. That section contemplated the possible existence of circumstances under which the Local Government would exempt a Master or owner from receiving again on board ship seamen who had undergone imprisonment. Mr. Hobhouse did not, SIR ALEXANDER ARBUTHNOT thought, advert to the words "without assigning reasons satisfactory to the Local Government" which occurred in the clause. There might of course be extraordinary circumstances which would render it very hard on the Master of a ship to be compelled to receive back a seaman, and that was provided for in the section.

The Hon'ble MR. BAYLEY would make one remark with regard to sections 4 and 5 of the Bill. A case that recently came before him officially, illustrated, he thought, very accurately what the working of those sections was likely to be. A vessel arrived at the port of Rangoon not very long ago the Master of which made certain complaints against his seamen. They on their part met those complaints by assertions of brutal treatment on the part of the Captain himself; unfortunately, the officer before whom those complaints were urged was unaware of his actual powers, and he allowed the matter to be compromised, and the Master to discharge the seamen

without their case being fully inquired into. The result was, that the Master shipped a lascar crew. On the voyage home one of those lascars was undoubtedly done to death by the Captain, and several of the others were most brutally treated. If the proposed sections had been then in existence, MR. BAYLEY thought that, in the first place, it was probable the officer before whom the complaints had been laid, though he might have permitted the discharge of the seamen, would pretty certainly have inflicted a penalty on the Captain; as a matter of course, he would not have permitted the Captain to engage a lascar crew, and the horrible scenes which subsequently occurred would, undoubtedly, have been avoided.

Colonel the Hon'ble SIR ANDREW CLARKE said that, with reference to section 3,—unless the English Merchant Shipping Act especially provided for it and limited the number of seamen that any ship could be compelled to receive on board as distressed seamen,—the wording of this clause, as it stood, might lead not only to very considerable hardship to the owners and Masters, inconvenience to its ordinary crews, but might even imperil the actual safe-conduct of a ship in its subsequent passage to its destined port. This would be hard on a British ship clearing for a foreign port from which had sailed a ship of another nationality having left in our port some fifteen or twenty men to receive them for passage back to it; it would be hard on the ship of the same nationality, but it was not clear if we could compel a foreign ship to receive its own countrymen. This was a large power to confer, even if exercised only by the higher officials of Local Governments; but it would be in reality left in the hands of the Harbour Master and his subordinates.

His Excellency THE PRESIDENT said he apprehended that section 3 of the Bill, to which the Hon'ble Member referred, only applied to British ships. The section distinctly declared that any Master of a British ship refusing to accept seamen as distressed seamen would be liable to the penalty.

Colonel the Hon'ble SIR ANDREW CLARKE said that he also alluded to the case of a Master of a British ship having to receive a large number of foreigners on board; that would, if possible, be a still harder case.

His Excellency THE PRESIDENT thought that the matter would naturally be one of reasonable arrangement with the local authority. He should think it improbable that the local authority would insist upon an inordinate number of British seamen being shipped on the same ship.

Colonel the Hon'ble SIR ANDREW CLARKE thought that if the matter was entirely dependent upon the Local Government, the occurrence would probably not arise, but it would be very likely to arise from a Harbour Master being allowed to assert his right to place on board ship the number of men he might have on his hands, and the difficulty of the matter was enhanced by the Master being deprived of the right to appeal.

The Hon'ble MR. HOBHOUSE explained that the law upon which we were operating was not Indian law but English law. We were only laying hold of certain clauses in the Merchant Shipping Act of the British Empire, and doing our best to make those clauses work in India. But the obligation to receive a distressed seaman when the fact of the distress was ascertained was contained in the English Act, and it was without statutory limit, though of course there must be a practical limit, which would be settled, he had no doubt, by arrangement between the local authorities and the Master of the ship. That law had been in operation ever since the year 1854, perhaps longer, but he had not traced back its history beyond 1854. The Masters of ships were not a class to be silent when any injury was done them; in point of fact, complaints did come to the Board of Trade of the improper action of the authorities in the dependencies of the Empire, amongst others in India. There had been three or four of those complaints which he had had to look into made by Masters of ships, but he had never yet heard of a complaint of too many men being forced on board ship. Of course, there might be such complaints without his hearing of them. But the Bill had been very carefully considered, not only by the maritime authorities in India, but by the several Chambers of Commerce who represented the interests of the Masters of ships, and nobody had made that objection, namely, that there was a danger of too many men being forced on board ship. It seemed therefore to MR. HOBHOUSE that we had better let that question alone; nobody appeared to be suffering any grievance, and we should be introducing a limitation that might be inconvenient if we were now to insert a provision that a Master of a ship should not be bound to take in more than a certain number of men.

Colonel the Hon'ble SIR ANDREW CLARKE remarked that the section in question imposed a very much heavier penalty for refusing to receive distressed seamen than the English Act. However, as he now understood from Mr. Hobhouse that those directly interested were content with this particular provision in the Act, he would not trouble the Council further on the subject.

His Excellency THE PRESIDENT said that he was under the impression that the Bill left the right of appeal to the Master of a ship who had cause to complain of having been forced to take too many seamen on board; but the appeal was to the Board of Trade.

The Hon'ble MR. HOBHOUSE explained that there would be no legal appeal at all. It would be an executive matter, and complaints would be sent in in the nature of the complaints now made. There were a great many arbitrary discretions given to the local authorities, and every now and then the Masters of ships complained that those powers were improperly exercised, and the officers concerned were either justified or were warned not to do the same thing in future, as the case might be.

The Hon'ble SIR WILLIAM MUIR inquired, with reference to section 3, to whom was the refusal of a Master to be given in the case of his declining to receive a distressed seaman. Was it to the Local Government, or to a subordinate authority?

The Hon'ble MR. HOBHOUSE said that it was to an officer appointed by Government, usually the Shipping Master of the port.

His Excellency THE PRESIDENT presumed that the question of whether the seaman was entitled to a free passage was to be settled by the Secretary to the Local Government.

The Hon'ble MR. HOBHOUSE said that the Secretary, or an officer specially appointed by the Local Government, must sign the certificate of his distress.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the Indian Registration Act, 1871, and moved that it be referred to a Select Committee with instructions to report in four months. He said that he would mention to the Council one or two of the principal points on which it was proposed to make amendments in this Act.

The first section proposed to empower the Local Government to appoint more than one Sub-Registrar to a sub-district. There seemed to be some doubt whether such a power was contained in the Act, and the section now distinctly empowered the Government of Bengal to appoint one or more Sub-Registrars.

The second section proposed to make an addition to section 17 of the Act. Section 17 was that important section which indicated those documents of which the registration was compulsory. There were several exceptions made to the operation of the section, and the latter part of it provided that the prior compulsory clauses should not apply to certain deeds and documents. We proposed to add to this that they should not apply to any document which merely created a right to obtain another document which would create the right in question; that was to say, supposing there was an agreement by a man to execute a conveyance of land, the agreement need not be registered. The owner of the agreement would have an option to register it, which might be advantageous to him under certain circumstances. For the agreement would give him no absolute right to the land; and if before he got his conveyance, another person took a conveyance and registered it, acting honestly, the agreement would be displaced. But it might be hard to compel the owner of such an agreement to register it, for he would have to register his conveyance when it was completed, and in that case there would be two registrations for one transaction.

The next amendment was in section 18. Section 18 was the section which indicated those documents of which the registration was optional, and in the last clause of that section (clause 7) a number of instruments were mentioned some of which would fall within the description contained in section 17, the compulsory section. So that there was in the strict literal construction of the two sections a conflict between them, while the meaning was that section 18 should only comprise those instruments which were not already laid hold of by section 17; and he believed that in the Presidency of Madras an opinion had been expressed by high authority that the clause of section 18 was calculated to take out of section 17 altogether every single instrument which was enumerated in that clause. It was therefore proposed to alter the wording, so as to make it clear that section 17 entirely overrode section 18 in that particular respect.

Section 5 of the Bill simply amended the drafting of section 31 of the Act, which related to the presentation and deposit of documents at private

residences. Then there were some rather long amendments set forth in sections 7 and 8, which entirely related to the deposit of wills. It was found that the present clauses did not entirely satisfy the conditions of the case, and so it was proposed to make some slight changes in detail; but there was no alteration of principle.

Section 9 was the most important section in the Bill, and it was the section which he had explained at length at the last meeting. The remaining sections in the Bill were concerned with effecting either mere amendments in drafting or the removal of some ambiguities which had been brought to notice. They were all however matters of exceedingly small detail which it would be a waste of time to explain to the Council on this occasion, but which would of course receive the necessary consideration in Select Committee.

The Hon'ble MR. COCKERELL said that unless the very rapid passing of the Bill into law was deemed to be imperative—and such would not appear to be the case from the terms of his hon'ble and learned friend's motion as it now stood (namely, that the report of the Select Committee should be made *within four months*)—he trusted that the question which he had raised at the last meeting of the Council would meet with due consideration, and that the Local Governments might, if possible, be consulted in regard to it whilst the Bill was in Committee.

He had stated on the occasion referred to that a compulsory registration of all documents affecting title or interest in immoveable property was the aim and object of the projectors of the present system, and that this intention had been kept prominently in view on each successive occasion of the registration law coming under revision by the legislature. He would now, in support of that statement, with the permission of the Council, read a few extracts from speeches made on those occasions, to show exactly what had been said in regard to the course which he was now advocating.

So far back as 1834, the Court of Directors of the East India Company proposed the enactment of a law making registrations of deeds relating to immoveable property without any limit or reserve compulsory, under such penalties as might be deemed requisite. A project of legislation in that direction was then set on foot and referred from time to time to various Committees, until in 1864 a Bill containing the main substance of the present law on the subject was matured in Committee. On bringing up the Committee's report for consideration by the Council, the Member who had charge of the

Bill, after adverting to the varied labours which had extended over so many years in the elaboration of the measure then under consideration, said:—

* * * * * * "The result has been the preparation of a law for the registration of assurances which, *although it does not extend compulsory registration so far as was advocated at one time*, will be an immense improvement upon the present law according to which registration is optional. The several Committees to whom the original Bill, of which the Bill now before the Council is an amended form, was referred, have, I think, wisely refrained from making the law too stringent on its first introduction, leaving its extension to the future, when the people at large from their experience of this limited measure shall have become fully sensible to the advantages of registration and be prepared to receive without fear a more complete and extensive law on the subject. The measure as it is now presented to the Council will, it is trusted, secure the formal registration of every important transaction relating to immoveable property over a large portion of the empire, and, by bringing together in central offices in each district all documents relating to such landed property, greatly facilitate all transfers of land by rendering comparatively easy the investigation of title. The prevention of suits founded on false claims, supported by false witnesses and forged documents will in a considerable degree be attained as regards landed property of importance." * * * * * * * * *

Then again in 1866, when the law came under revision, the mover of the amending Bill on the occasion of its introduction said in reference to the particular question now before the Council:

* * * * * *

"But if any alteration were about to be proposed in the main features of the existing law—if the list of documents the registration of which was now optional or compulsory was to be revised—he thought that alteration ought to take place in quite a different direction from that desired by these gentlemen." [This was in reference to a proposal put forward by certain indigo-planters to extend the period of short-term leases the registration of which was to be optional.] "When alteration of this nature took place he hoped it would be *to make the registration of all documents relating to immoveable property compulsory*, rather than to increase the number of those, the registration of which was now optional.

"There was no doubt that the line drawn by the present law was very arbitrary. It was quite possible for a man to evade the law altogether by dividing his estate into small lots of less than Rs. 100 in value each, and then the public would lose the advantage of being able to inspect the register of titles. So again the registration of a deed of sale of a piece of land valued at less than 100 rupees was optional, but a lease of the same piece of land for thirteen months must be registered." * * * * *

And when the Report of the Select Committee on this amending Bill came before the Council, it was explained that—

* * * "the Committee had carefully considered the question of enforcing the compulsory registration of all instruments relating to immoveable property. As the law now stood, the

registration of such instruments was not compulsory if the value of the property to which they related was less than 100 rupees, and under the present Bill this exemption was continued. No doubt *it was extremely desirable that all such instruments should be registered, however small in value the property might be to which they related; but for the present* they thought it better to leave it to the option of the parties whether instruments relating to property of trifling value should be registered or not. It formed, indeed, no part of the intention with which this revision of the law was undertaken to extend the area of compulsory registration. Notice had not been given to the public of so important a change. It was true that *there was a strong and growing feeling in favour of such extension,* but they were on the whole of opinion that it would be wiser to invite through the local administrations a full expression of public opinion on this important question before legislating further in this direction." * * * * *

The revision of the law was again undertaken in 1870 as a part of the general consolidation of enactments then being carried out. On the introduction of the amending and consolidating Bill the following remarks were made in connection with this special subject:—

* * * "There was one important alteration of the law not included in the Bill as it now stood which was strongly advocated in some quarters, and especially by the Government of the North-Western Provinces.

"At present the registration of deeds affecting title to immoveable property not exceeding 100 rupees in value was optional. This exception to the general rule regarding instruments affecting that class of property was probably intended to prevent the conditions of the law working harshly in the case of transactions of a petty character; but as in this country the mass of transactions did partake of that character, the effect of the exception was to check very materially one of the chief objects of the registration-system—the attainment of a complete record of title to immoveable property.

"The very large number of documents of this class which were now registered, though their registration was optional, pointed to the conclusion that to make such registrations compulsory would entail no hardship or serious inconvenience, whilst the gain to the completeness of the record of title to immoveable property which the registration-system was specially designed to afford would be very great."

He had read these extracts to show that the original introduction and subsequent retention of the existing limitation of compulsory registration of deeds relating to immoveable property were simply provisional. It was a precautionary measure and intended to have temporary operation only.

Indeed, it must be obvious that the chief end and object of a system of compulsory registration of deeds affecting titles and interests in immoveable property, namely, the creation of a complete public record by means of which

rights and titles in such property might be thoroughly sifted and investigated by interested persons, and the consequent prevention of frauds in regard to the transfer of such property, could not be fully, or even satisfactorily, attained under anything short of the enforcement of an unlimited legal obligation to register such documents.

It seemed, then, to him that with such a strong case for an unreserved obligatory registration of deeds of title to immoveable property, the only reasonable grounds for objecting to the removal of the present tentative limitation must be either that the number of transactions to be affected by such a change was too insignificant to make it worth while to alter the law in this direction, or that the registering machinery was even yet too defective to admit of such an extension of the area of enforced registration, without causing serious inconvenience and expense to a class or classes least able from their circumstances to bear the burden.

Now, as regards the first point, his means of information were not such as to enable him to say confidently that transfers of, and dealings with, titles in immoveable property of very small value, which formed the subject of written instruments, were common in all parts of the empire; but he believed that in most of the provinces such minute transactions would on enquiry be found of very frequent occurrence, and at least he could with certainty affirm such to be the case in the province of Bengal, with the circumstances of which he was best acquainted. In regard to this subject he must further tax the patience of the Council by reading another extract. The Registrar-General of Bengal in 1870, in reference to the amendment of the law then under the consideration of the Legislative Council, wrote :—

"It has been asked whether the time has not arrived when the limit of Rs. 100 should be withdrawn, thereby rendering compulsory the registration of all documents affecting immoveable property, no matter what their value.

"At first I was inclined to advocate a change of this nature, but on more mature consideration I do not feel satisfied that the advantages which it may be supposed would accompany the change outweigh the inconvenience to which people would be put by the proposed extension. Optional as is at present the registration of assurances of less than Rs. 100 in value, no less than Rs. 1,36,103 such assurances have been registered within the last three years against 4,06,058 compulsory registrations.

"Nor do these figures convey any adequate impression of the number of such assurances that would have to be placed on record were their registration to be made compulsory. It is sufficient, perhaps, to state that, with the law as it stands, upwards of 60 per cent. of

the total number of documents registered are for a less value than 100 rupees. With these figures before me, I should anticipate a very considerable increase of registration were the proposed change in the law to be carried into effect; and I think that, unless the number of registration offices were also largely multiplied, the people would be put to very great inconvenience and hardship."

This statement showed that during the three years immediately preceding 1870 fully 25 per cent., or one-fourth, of the total registrations of deeds affecting immoveable property involved interests of less than 100 rupees in value; and this notwithstanding the fact that the bringing of such documents was a purely voluntary act on the part of the persons registering, to perform which they were placed under no compulsion by the provisions of the law as they then stood. It was fair to assume that if so large a proportion of written instruments affecting interests in immoveable property of less than 100 rupees in value were forthcoming for registration when such registration was optional, the number would be largely increased on the extension of the compulsory system; hence that, so far from the written transactions in regard to the transfer of minute interests in immoveable property being numerically or even proportionately too insignificant to make it worth while to legislate for their inclusion under the compulsory system, in Bengal at least, the numbers of such transactions were considerable, and in comparison with those covered by the present system probably even more numerous.

He (MR. COCKERELL) would submit, then, that if what was certainly the case as regards written transactions involving the transfer of interests in immoveable property in Bengal, in any approximate degree represented the state of things going on in the other older provinces of the empire, then there were very strong grounds, having regard to the stated objects of a system of compulsory registration, for removing the limitation to the completeness of that system.

The question then appeared to him to be narrowed to the single issue as to whether the existing registration machinery was yet sufficiently popularized and matured to admit of the classes who would be brought to the registration offices under an extension of the obligatory rule, resorting to those offices without dissatisfaction or inconvenience, and with but little expense and loss of time.

The hon'ble and learned mover had been so good as to send to him (MR. COCKERELL) the whole of the papers before the Government in

reference to difficulties and doubts that had occurred in connection with the working of the registration law since its enactment in 1871. That correspondence was certainly very bulky, and contained a great deal upon the subject of the registration of assurances; and it did not include any proposal or suggestion in the direction of the course which he was now advocating. Indirectly, however, these papers did furnish arguments for making compulsory registration absolute; for they afforded abundant evidence of the fact that great progress had been made in the improvement of the registering machinery, and familiarizing the people at large with the registration-system, its objects and advantages. In Bengal, a former Lieutenant-Governor (Sir George Campbell), about four years ago, introduced a system of rural registration offices the design of which was to bring the means of registering documents within easy reach of the people and to make the operation as little expensive as possible.

This system would appear to have attained very decided success, and to have resulted in the multiplication of registration offices in the interior of the districts, so as to give an annual increase of upwards of thirty such offices.

From these figures it was fair to assume that the registering machinery in Bengal had, since the time when the Registrar-General's above cited communication on the subject was made, been brought into such a condition of maturity and efficiency as would enable it to cope with the extra labour that would be thrown upon it by the removal of the existing limitation to compulsory registration.

The papers to which he had referred further showed that in the North-Western Provinces the registration-system had been rendered familiar and acceptable to the public, as was evidenced by the large proportion of optional registrations; that in the Bombay Presidency between two and three hundred sub-registry offices had been established, and that elsewhere the number of instruments brought for registration was progressively increasing. Contemporaneously with the multiplication of registry offices, there had been a general reduction of fees and cheapening of the process of registration.

It had been shown conclusively, moreover, that the popularity of the registration-system depended largely upon the degree of expense entailed by it on persons having documents to register, inasmuch as each reduction of fees was followed by an increase in the number of optional registrations. All that was wanted, therefore, was to multiply the number of registering officers and registration offices, and to reduce the registering fees, so as to place the

means of registering as near as possible to all persons having documents requiring registration, and to effect such a reduction of fees as to make the cost of registration a scarcely appreciable tax or burden in any case. Now this multiplication of registry offices and reduction of registration fees was a question of money; and if the Registration Department was worked at a loss, or only just self-supporting, it might reasonably be urged in opposition to his (MR. COCKERELL'S) proposals that the introduction of the admitted necessary conditions of an unreserved system of compulsory registration of assurances relating to immoveable property was impracticable; but he found from the published returns of the income and expenditure of the Registration Department that in every province of the empire there was a more or less considerable margin of profit in the working of this Department. Going back to 1871-72, he found the following figures:—

				Rs.
Net profits in	Central Provinces about	...	...	13,000
,,	Bombay ,,	...	...	22,000
,,	Bengal ,,	...	...	90,000
,,	N. W. Provinces ,,	...	...	1,20,000
,,	Madras ,,	...	...	1,00,000
,,	Panjáb ,,	...	...	60,000
,,	Oudh ,,	...	...	18,000

So that even in Oudh, to which the registration-system as regulated by the general law was only applied in 1871, there was a large proportionate excess of income over expenditure.

He had seen later returns in regard to the registering operations of some of these provinces, and they showed even larger profits: for instance, the profits in Bombay had risen to more than 50,000, and those in Bengal considerably above a lákh.

Now, the Government in creating the present system of registration had, he believed, emphatically disclaimed any intention of making out of it revenue for appropriation to other purposes: it was only desired that the Department should pay its expenses—be self-supporting. Even after the income from this source had been assigned to Local Governments as a provincial asset, the principle of this policy had been adhered to, and one Lieutenant-Governor at least (Sir George Campbell) had in this Council insisted upon the necessity of the maintenance of an equilibrium between receipts and expenditure, declaring that the exaction of revenue out of registration for other purposes was contrary to good policy.

Assuming, then, that the Government had no intention of departing from this avowed policy in regard to the receipts of the Registration Department, he believed that they would be found sufficient to bear the increased cost of adequate registering agency and the reduction of fees necessary to the carrying out of a complete system of enforced registration of documents affecting titles to immoveable property without hardship or material inconvenience to the people. In this belief he would press upon the consideration of the Committee to which this Bill might be referred the question of the propriety of removing the existing limitation of compulsory registration in respect to *all* interests in immoveable property.

Passing from this very important question, which he had felt it his duty to bring prominently before the Council, he would now offer just two or three remarks on the details of the Bill.

In regard to section two, he wished to ask his Hon'ble and learned friend the mover whether in the event of a person who had executed an agreement to mortgage his property subsequently selling that property to another person, the latter, supposing him to be a purchaser in good faith, could be ousted from his purchase as the result of a suit by the person in whose favour the prior agreement had been executed against the vendor to compel the specific performance of the latter's agreement? Because if, as MR. COCKERELL apprehended, the purchaser could be so ousted, then he would clearly be a sufferer from the section referred to, under which the registration of the agreement, though it would operate in the case supposed as a material incumbrance on the property, would be optional.

Section 3 of the Bill also, he thought, was clearly wrong, inasmuch as, if he rightly construed its effect, it would operate to make the registration of such documents as (1) copies of decrees of the Civil Courts, (2) awards, (3) partition-deeds, and (4) bills of sale, if they affected interests in property the value of which was not less than 100 rupees, compulsory. He ventured to think that this result of the section as now drawn could hardly have been considered by its framer, because as regards the copies of decrees the provision would be tantamount to a complete reversal of the maturely determined rule on the subject adopted by the Council when the law was last under revision. The question of the enforcement of the registration of decrees was not only fully discussed in Committee, but the rejection of such a rule was adopted after a full debate on the subject by a large majority of the Council. And although that discussion and determin-

ation of the question applied only to the case of decrees of a Civil Court, yet the arguments upon which that decision was come to would apply with equal force to written awards when made by, or under the direction of, a public officer and placed amongst the records of a public office, to partition-deeds when the property was revenue-paying land and the partition was made by revenue-officers, and also to certificates of sale when furnished by a revenue or other public officer. In all such cases the reason for exempting the documents from obligatory registration is, that the object for which such registration is designed has, as regards them, been already attained, through their having been placed amongst the public records accessible to all persons interested in obtaining information in regard to the property affected by them.

The Hon'ble SIR WILLIAM MUIR begged to say a few words in reference to what had fallen from Mr. Cockerell. His Hon'ble friend had quoted the opinion of the Government, North-Western Provinces, as favourable to the extension of compulsory registration to immoveable property below the limit of rupees 100. Having been the head of the administration in those Provinces at that time, the inference might be drawn that he was himself in favour of such extension. He could not of course call to mind now the correspondence which had passed so long ago. But his views were opposed to the extension in question; and so far as his recollection served, he thought there must have been some misapprehension as to the quotation which had been made by his Hon'ble friend. His opinion certainly at present was against the extension of registration in the direction proposed by Mr. Cockerell; and he entirely concurred with what had fallen from his Hon'ble and learned friend Mr. Hobhouse on the subject in last week's debate. SIR WILLIAM MUIR also concurred in the remarks which had been quoted by Mr. Cockerell from the report of the Registrar-General of Bengal. Looking to the vast number of transactions connected with the transfer of small landed properties, the ignorance of the great mass of the agricultural population concerned, and their limited means, he (SIR WILLIAM MUIR) should regard any attempt at the compulsory registration of all documents conveying rights in such small holdings as inexpedient. It would be an unnecessary expense to the small landholders, and a burden which they would feel to be most onerous. And certainly in his opinion the time had not come for any such extension.

He had thought it the more incumbent on him to express his opinion on this matter, as if silent he might have been regarded as holding views in accordance with what had been quoted as the opinion of the North-Western Provinces

Government, and the more especially as when the subject next comes before the Council, he would in all probability not be present there.

The Hon'ble Mr. Hope said that he had not intended to trouble the Council with any remarks on this subject to-day; but after what had fallen from his Hon'ble friend Mr. Cockerell, he felt that he could not allow the occasion to pass without expressing very strongly his dissent from the proposal to extend registration in the manner which Mr. Cockerell would desire. No doubt the transactions, to which his Hon'ble friend had referred, of rupees 100 and under were exceedingly numerous; we had no idea how numerous they were; but what he would deduce from that fact was that we had all the more reason for being extremely cautious in any attempt to carry our registration-system further down than it was at present, and in not, without most thorough inquiry, and without a concurrence of recommendation from all the Local Governments, compelling the registration of every petty transaction relating to property in land. This registration was in reality a very serious burden. It demanded money and time which poor people could exceedingly ill afford to lose—time not merely occupied in attending the registry office, but in marching perhaps 60 or 70 miles there and back, with all the expenses of the journey. He would also point out that it seemed to him that the very object for which the registration-system was introduced into the country gradually failed in proportion as you descended to the lower transactions. The great advantage of a registration-system was that a man who was about to purchase, or deal in property in any way, might know how far it was previously involved, and so might not subsequently be surprised at finding it burdened with debts or other incumbrances of which he had had no previous notice. But the more you got down to the small transactions amongst the body of the people, the better known every man's little affairs were. If a man, for instance, mortgaged his field for rupees 30, everybody in the neighbourhood would have heard him talk about it for a month or more, and perhaps have half a dozen disputes in public with the village baniyá who might be going to lend him the money. Those were petty matters which he was quite sure would always be perfectly well known and in which registration was not required at all. He would not now detain the Council with any further expression of his opinion on this subject, although that opinion might, he believed, be supported at much greater length; and he trusted that the Committee might not be considered to have had any instructions on the subject unless a motion were made regularly to the Council and it was decided that they should have such instructions.

The Hon'ble MR. HOBHOUSE remarked that, if his motion was agreed to without amendment, he should hold, as Chairman of the Committee, that it was not competent to entertain so wide a question as the propriety of enlarging the area of registration. He therefore would suggest that his Hon'ble friend Mr. Cockerell should move an amendment.

The Hon'ble MR. BAYLEY said that he understood that his Hon'ble friend Mr. Cockerell would put a formal motion before the Council that it should be an instruction to the Committee to consider the question of making compulsory the registration of all conveyances relating to land; and if so, he thought it was his duty to oppose it, because the point involved was one eminently for decision by the Executive Government and not by the Legislative Council, for the decision really turned on a question of executive administration. He did not wish to detain the Council very long, but as he had been in charge of the Registration Department—as Secretary in the Home Department or as a Member of Government—for a period of fourteen years, he thought he might speak with authority as to the present condition of registration. He did not think anybody would dispute that it was very desirable, if it were possible, that every written document which passed in any shape should be registered. If it were possible, he thought registration would be even more important with regard to moveable property than with regard to immoveable property, because, with reference to the latter, to a certain extent, there was already some sort of a system of registration in most Provinces, and, in some measure, a man might generally pretty well ascertain the title to the property which he was about to purchase; but the frauds which were committed with regard to contracts for moveable property were far more numerous and difficult to prevent, and if the documents creating such contracts could possibly be registered, he had no doubt that nobody who had really considered the subject would say that it would be most desirable. The real difficulty was that, practically, a perfect system of registration would be impossible, at least for very many years to come. When registration was first made over to Local Governments as an item of their provincial financial system, he recollected especially taking the objection that it would allow the Local Governments to expend the profits from registration otherwise than upon registration itself, which was not the policy which the Government of India desired to pursue; and he recollected when the question was again discussed after Lord Northbrook's arrival, that he directed him (MR. BAYLEY) specially to watch the action of the Local Governments in that respect. Having therefore paid special attention to the progress of registration he was bound to say that he could not accuse any Local

Government of unfairness; but at the same time after watching the working of the different systems of registering machinery, although he was not in a position to speak with absolute authority without reference to official records, his impression from all the facts which were before the Executive Government was, that it would be very difficult to apply the compulsory system of registration even to those minor transactions to which Mr. Cockerell proposed to extend it. He thought, without wishing to flatter Sir William Muir, that his system of registration for the North-Western Provinces was distinctly the best and the most perfect of any in India, and the Council had already heard what Sir William Muir had said upon the subject, and how he considered it incapable of doing the work which his Hon'ble friend Mr. Cockerell proposed to put upon it. In some of the Provinces which MR. BAYLEY did not wish particularly to name the facilities for registration were very inferior; he was perfectly certain that it would be a most cruel hardship on the people to compel all the minor documents relating to immoveable property to be registered. Of course he had no objection to a reference to the Local Governments if His Lordship and the Council desired it to be made executively, and he had very little doubt himself what the result of that reference would be. He also wished to correct one statement which his Hon'ble friend had made regarding Bombay. The Bombay Government had been trying some experiments with regard to the mode of registration for the last few years, in which he (MR. BAYLEY) confessed he took some part; it was thought right that the Local Government should do what they considered proper in the matter, and on that ground they were allowed to carry out their measures without interference. The practical result, however, had been very greatly to reduce their income. There had been a bare equilibrium in last year's accounts. The Secretary of State indeed had noticed it, and there was very likely to be a deficiency this year. He thought that that state of things might be remedied, but it could only be remedied by a total re-adjustment of the system, and this would take some time to bring about. He did not wish to take up the time of the Council further; but as the motion to give this instruction to the Committee was about to be put to the Council, he wished to oppose it, although, as he had explained before, he had no objection to an enquiry as to the expediency of the measure being made executively. He had only to add that he did not concur in all the objections raised by his Hon'ble friend regarding the minor points in the Bill, which seemed to be matters more properly for discussion in Select Committee than by the Council.

His Excellency THE PRESIDENT suggested that the Hon'ble Mr. Cockerell should place his amendment in a definite form before the Council.

The Hon'ble MR. COCKERELL then put the question which he had raised before the Council in the form of a motion in the following words:—

"And that the Committee be further instructed to consider the propriety of removing all limitation to the compulsory rule in regard to the registration of instruments affecting any interest in immoveable property."

The Hon'ble MR. HOBHOUSE said that the observations which he had to make had been almost entirely anticipated by the remarks of his Hon'ble friend Mr. Bayley. He was quite certain that we could not enter upon any such question in the way that was proposed without consulting the Local Governments, and he felt certain that no Local Government would give us any opinion upon it without consulting the district officers in its own jurisdiction and those who were working the registry offices. Both the Collectors and the Registrars must be consulted. According to his experience, a consultation of that sort, extending all over India, would occupy at least a year and a half; then the matter would have to be very carefully considered here, and that again would occupy much time. He thought that the Select Committee would be placed in a false position if they were required to undertake any such work; it must be done by the Executive and thoroughly thrashed out before it could be usefully dealt with in Committee.

Then as to the necessity of passing this Bill. He did not mean to say that it contained anything of such pressing necessity, that we might not take the ordinary time to receive criticisms and do the work carefully. And if there were nothing in the Bill but trivial alterations, he would be content to shelve it, and to say, "Let all these little amendments bide their time, and let Government take the whole question into consideration." But there was one section in the Bill which related to a pressing question, and that was the section he had already explained, by which we proposed to deal with a defect which had already given rise to fraudulent practices. We had it stated by an eminent judicial authority in Bombay that suspicious cases had turned up owing to the gap in the Act, and he was apprehensive that as the flaw in the Act became known extensive frauds would be committed. He (MR. HOBHOUSE) therefore thought we ought not to make any long delay before we proceeded to remove that particular defect, though we need not be in such a hurry as to risk error.

With regard to the concluding observations made by his Hon'ble friend Mr. Cockerell, he thought he could give a perfectly satisfactory answer in reference to the question he asked about section 2. The case he put

was this: A person executed an agreement to mortgage; between the agreement and the execution of the mortgage the property was fraudulently sold by the owner and the purchaser proceeded to register his conveyance; and then he asked whether that purchaser was safe. He (MR. HOBHOUSE) conceived that if it was an honest purchase, the purchaser would be perfectly safe, though his vendor might have tricked the intending mortgagee. Therefore no difficulty would be likely to arise under the section. As to section 3, his impression was that some of the observations made by Mr. Cockerell were just, and care would have to be taken in Committee how that section was to be worded. He was not quite sure how the clause would construe if the exact words now used were retained, but he thought it might raise a question as to decrees of Court. Those however were matters which would be carefully settled in Committee. He would only say now, as a general principle, that it was not intended to enforce the compulsory registration of any of those instruments which were deliberately made optional when the Act was passed.

The Hon'ble MR. COCKERELL said that as he understood the adoption or rejection of the amendment which he had proposed to be the question now before the Council, he believed that he was in order in saying a few words by way of reply to certain observations which had fallen from certain hon'ble members opposite. His hon'ble friend opposite (Sir William Muir) had questioned the correctness of his statement as to the Local Government of the North-Western Provinces having in 1870 advocated the extension of the compulsory rule. He (MR. COCKERELL) could only say that the statement referred to was contained in a speech made in this Council upon the introduction of the Bill for the amendment of the registration law which subsequently became Act VIII of 1871. He presumed that the statement made in that speech rested on the authority of a communication from the Government of the North-Western Provinces about that period, but he had not had time yet to refer to the correspondence which took place in connection with that enactment, and so he could not on this occasion cite the precise authority upon which the statement rested. In regard to a remark from another Hon'ble member opposite (Mr. Bayley), he (MR. COCKERELL) should explain that the returns from which he had taken his figures representing the excess of receipts over expenditure in the Registration Department of the Bombay Presidency were for the years 1871-72 and 1872-73. Very possibly since that latter period the receipts had fallen off, but he had not obtained access to later returns, and could not therefore speak as to their effect upon the present question.

It only remained for him to say that as the feeling of the Council appeared to be decidedly against the course contemplated by the amendment, he would, with the President's permission, withdraw it. He had brought forward this question because he deemed it expedient that whenever the registration law came under revision by the Council, the original object and scope of the measure, and the imperfect extent to which they had been as yet carried out, should be kept steadily in view.

The Hon'ble SIR ANDREW CLARKE took exception to the principle involved in the objection raised by the Hon'ble Mr. Bayley in stating that the question was not one for decision by the Legislative Council but for the Executive Government.

His Excellency THE PRESIDENT remarked that if he understood his hon'ble friend Mr. Bayley correctly, he did not say that the case was one for the decision of the Legislative Council, but that any communication with the Local Governments could only be efficiently carried out in executive form, not by the Select Committee, who would probably take a year or more to consider the subject; and that he had no objection to undertake this enquiry on the part of the Executive Government. His Excellency presumed that that course would probably meet the wishes of his Hon'ble friend Mr. Cockerell. He thought that it had been clearly demonstrated by his Hon'ble friend Mr. Hobhouse that it would be impossible for the Committee satisfactorily to carry out those inquiries without hanging up the Bill for an indefinite period of time.

The Hon'ble MR. BAYLEY explained that what he meant, was that the actual efficiency of the registration-system was a matter which the Executive only could ascertain and decide upon.

The Hon'ble MR. COCKERELL then withdrew his motion and the original Motion before the Council was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill be published in the *Gazette of India*, in English, and in the Gazettes of the various Local Governments, in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble Mr. Hope introduced the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that on the last occasion when he had the honour to address the Council on this subject, he explained the necessity for, and the objects to be attained by, this Bill. He would now briefly state the measures by which it was proposed to effect those objects. He had pointed out that the Council had already passed four Acts somewhat similar to the Bill now before the Council. All those had certain phases in common; that was to say, we had an order vesting the estate in a manager, and upon the passing of that order all processes of the Civil Court which were pending, ceased and were barred, and no fresh proceedings could be instituted while the management existed. The debtor also was rendered incompetent to charge the estate further. We, likewise, had a provision for enquiry into the debts by the manager, and a scheme for liquidation, and powers were given to raise money. In those general features the Bill now introduced corresponded with the other Acts on this subject to which he had referred. Those Acts also differed in certain material points. The Ahmadábád Act of 1862, which was the first, could only be put in motion by the Executive Government itself, and the Executive Government was limited, in applying the Act, to estates the debts of which were not less than five years' income of the property; and it was further limited in that the management was not allowed to continue, in any instance, more than 20 years. The Chutiá Nágpur Act both allowed the Government to interfere when the estate in any way came into Court, and also provided for the Government being set in motion by the application of the parties themselves. The Oudh and Broach Acts again took what might be called a further step; they could only be applied when the party himself moved; the Government had no power to initiate any action. In that respect the Sindh Bill now introduced would follow the Oudh and Broach Acts. Another feature which the Ahmadábád Act did not contain, but which the Oudh, Broach and Chutiá Nágpur Acts did, was the provision that the Government should be at liberty, within six months, to withdraw from its interference with the property. If it found that the property was so hopelessly involved that it was quite impossible ever to extricate it, the Government was enabled within six months to throw up the whole affair and leave it to the Civil Court. The Sindh Bill now introduced followed that principle generally, but with this difference that, instead of only within six months, the Government was allowed to withdraw at any time before the final order sanctioning the liquidation-scheme was passed.

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Again, the Chutiá Nágpur Act contained distinct instructions as to what the Government was empowered to provide for by rules, and in this respect the Sindh Bill followed the Chutiá Nágpur Act. That Act had also the peculiarity that it could apply to any landholder throughout the Province, but it was not intended, as he had explained last week, to go as far as that in Sindh, and the line had been drawn at landholders who paid direct to Government not less than rupees 300 per annum and upwards. Finally, the Sindh Bill, now introduced, had one novelty which none of the other Acts contained; it provided for a careful preliminary enquiry, based upon a statement made by the party himself on oath, as to the amount of his debts and liabilities, before any order of management could be issued at all. On the whole the course of legislation from 1862 had been in the direction of greater caution in applying these Acts and a more distinct definition of the purposes to which the power of making rules should be directed.

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved that the Bill be published in the *Gazette of India*, in English, and in the *Bombay Government Gazette* and the *Sindh Official Gazette*, in English and such other languages as the Local Government might think fit.

The Motion was put and agreed to.

BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble MR. HOPE also introduced the Bill to amend the law relating to the transfer of Bombay Municipal Debentures, and moved that it be referred to a Select Committee with instructions to report in a month.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill be published in the *Gazette of India* and the *Bombay Government Gazette*, in English.

The Motion was put and agreed to.

STAGE CARRIAGES ACT AMENDMENT BILL.

The Hon'ble MR. BAYLEY introduced the Bill to amend the Stage Carriages Act, and moved that it be referred to a Select Committee with instructions to report in a month. He said that he had already explained that the object of this Bill, introduced chiefly at the request of the North-Western

Provinces Government, was to place certain carriages drawn by camels under the operation of the existing law. As it was known that similar carriages were also drawn by oxen, and that as the abuses which necessitated the introduction of the proposed Act, applied in an almost equal degree to conveyances of this description, it had been proposed to include the oxen under the Bill; and as the object of the Bill was one to which nobody could take any objection, it was also proposed to extend it to the whole of India. A provision was however inserted that the Bill was not to supersede or set aside the provisions of any local law on the same subject. The reason of that was that there were certain municipal regulations in towns which met the object of this law and other objects besides, and which might be contravened, and be very difficult to work, if the Act was permitted to interfere with them.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY also moved that the Bill with the Act which it extends, be published in the *Gazette of India*, in English, and in the Gazettes of the various Local Governments, in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

TREASURE TROVE BILL.

The Hon'ble MR. BAYLEY asked leave to postpone his motion for leave to introduce a Bill to amend the law relating to Treasure Trove.

Leave was granted.

OPIUM BILL.

The Hon'ble SIR WILLIAM MUIR asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to Opium.

Leave was granted.

OUDH LAWS AND LAND-REVENUE BILLS.

The Hon'ble MR. INGLIS moved that His Honour the Lieutenant-Governor of the Panjáb be appointed a Member of the Select Committee on the Bill to declare what laws are in force in Oudh, and on the Bill to consolidate and define the law relating to the settlement and collection of land-revenue in Oudh. He explained that as Sir Henry Davies had a few years ago been Chief Commissioner of Oudh, the Select Committee were anxious to take the oppor-

tunity of his presence at Simla to obtain his assistance in settling the Bills now under consideration. His Honour had also kindly consented to act.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to amend the Indian Registration Act, 1871,—The Hon'ble Mr. Bayley, the Hon'ble Mr. Inglis, the Hon'ble Mr. Hope, the Hon'ble Mr. Cockerell and the Mover.

On the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh,—The Hon'ble Mr. Hobhouse, the Hon'ble Sir Alexander Arbuthnot, the Hon'ble Mr. Cockerell and the Mover.

On the Bill to amend the law relating to the transfer of Bombay Municipal Debentures,—The Hon'ble Mr. Hobhouse and the Mover.

On the Bill to amend the Stage Carriages Act,—The Hon'ble Mr. Hobhouse, the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Thursday, the 6th July 1876.

SIMLA;
The 29th June 1876.

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

Govt. Central Branch Press, Simla.—10-7-76.