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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

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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 21st September 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 T. C. Hope.
The Hon'ble F. R. Cockerell.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE presented the further Report of the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature. He said:—"There is no motion on the list of business, and it is not strictly necessary to make one. But this is a bulky matter, as anybody can see who will cast his eye on the Bill that I have before me. It is full of details, which are as the stars of heaven for multitude, and by no means so brilliant or interesting. Most of those details concern the technical mechanism by which a suit is conducted from its beginning to its end; and those are matters upon which criticism and advice cannot be very usefully offered by anybody who has not undergone the labour of studying the Code as a whole, and with some professional knowledge to start with. Embedded in those details, and underlying them, are various principles of considerable importance—some of them of very great importance—and those are just the points upon which we may receive useful criticism and advice from persons who are unable or unwilling to undergo the labour of studying the Code as a whole. Now in such cases we generally find it a useful thing, on the presentation of a Report, to call attention to the

points of principle on which we propose alterations, although there may be no discussion on hand, and although we are asking the Council to take no step beyond suspending their judgment until after the publication of the Report of the Committee and of the new draft. Therefore I propose to call the attention of the Council to the main points in which the law will be altered, if the Council think fit to pass this Code into law in the shape in which the Committee have now prepared the draft. Some others of my hon'ble friends have also some information to impart on points which, owing to their greater experience, they can explain more accurately and clearly than I can; and in order to put myself and them in more strict order, I will, with His Excellency the President's permission, make a formal motion when I have finished what I have to say, to the effect that the Report be published as recommended by the Committee.

"I have before had occasion to observe that, constituted as our Legislature is, our proceedings in Committee often had more of the essentials of a public discussion than our proceedings at this table, and I never knew that to be the case more certainly than now.

"The Bill which we prepared last year was published in the month of March 1875.

"We asked the Local Governments to be good enough, each of them, to submit it to a few skilled officers. They have discharged that task with great judgment, and the result is that, besides the opinions given by the Local Governments themselves, we have a body of comment and criticism, I may say, upon almost every sentence of our Bill, proceeding from about fifty gentlemen well competent from their position and antecedents to give advice, and many of whom have brought great zeal, industry and acuteness to their work. That work is rather bulky. It consists of the two volumes which I hold in my hand, and which contain about 450 folio pages of close print. It has been carefully and methodically perused and digested by our Secretary, and by my hon'ble friend Mr. Cockerell, who have winnowed the chaff from the wheat; and it has been examined, I am sorry to say in a more fragmentary way, and mostly with reference to the more important parts of the Code, but still to a considerable extent, by myself. And I have no hesitation in saying that it contains as valuable a public discussion and criticism of our work as it is possible for a Legislature like ours to obtain on a subject of this kind—a subject of great magnitude, great intricacy, abounding with details, and requiring professional and practical knowledge at every turn.

"We have upon the face of our Report expressed our obligations to the gentlemen who have been good enough to favour us with papers, and we have endeavoured to indicate what seemed to us the most able and useful papers among the number. But there are many others that are able and useful, and I am not quite sure that we have been wise in making distinctions.

"I have only to add on this point that, as I anticipated when moving for the Committee, the number of small alterations consequent on the criticisms is something enormous. I cannot tell the Council how large it is, and indeed nobody can tell, excepting a person who will take the Bill of last year, which is labelled 'Bill No. III,' and the new draft, which is labelled 'Bill No. IV,' into his hands, and will compare them sentence by sentence. But the gentlemen who have been good enough to bestow pains on this matter will find that, in whatever shape the Code is passed, their work has passed very largely into the frame-work of the law.

"Now I proceed to mention what are the principal alterations that the Committee are proposing; and the Council will find that most of them—in fact nearly all of great importance—are connected with that critical part of the Code which regulates the execution of decrees; the execution of a decree being the *ultima ratio* by which the law enforces the rights of the creditor against the debtor. Now, it is very generally thought that our existing Code is too rigid and mechanical in its operation, and that it bears too hardly and incisively upon the debtor. By our Bill No. III we proposed certain relaxations of the Code in that respect, which I explained to the Council last year. The result of the comments we have received has been to induce us to go further in the same direction, and to propose some further relaxations and some further facilities for the debtor to discharge his obligations to the creditor, without being what is commonly called 'sold up.'

"The principal point to which I drew attention last year, a point mentioned both in our Report and in my speech to the Council, related to the sales of land in execution of decrees for money. This is indeed in my judgment by far the most important point of all the matters of debateable policy involved in the Code. Every Member of this Council must be familiar with the discussions which arise from time to time about the rapid transfer of land from the poor cultivator to the rich, or comparatively rich, lender of money. The discussion crops up in all directions. A few weeks ago I had occasion to mention the subject in connection with the law of pre-emption in Oudh. Mr. Hope mentioned it the other day in connection with the Jágírdárs of Sindh. Within the

last few years, it has twice been the subject of a general and formal enquiry by the Government of India. There is hardly any part of India in which the problem does not more or less exercise the mind of the Local Government and of its principal officers. Some of them think that India abounds with usurers, who lend their money chiefly with a view of getting the land of the debtor, each being a sort of Indian version of the

'Fœnerator Alphius
Jam jam futurus rusticus.'

"Others tell us of village Shylocks, each intent upon securing his pound of flesh, and with apparently no village Portias to counteract their machinations by quibbling away what is written down in the bond. No doubt there has been some exaggeration in those matters, but, all exaggeration apart, the problem is a serious one and requires some careful consideration.

"Now the rapid transfer of land, which creates such uneasiness, is a process which we may see to have gone on in all countries where wealth is increasing and the commercial spirit is advancing. And though it is always accompanied by some painful incidents, the process is a healthy and beneficial one enough, if it is spread over a length of time, if it advances only with advancing civilization, and is not accelerated by adventitious circumstances.

"The peculiarity of our case in India is this, that, with the British rule, we introduced two most powerful factors of civilization tending to promote the transfer of land to the moneyed classes. One of those factors is an equal and moderate assessment of revenue, which has given to the land a margin of value that it did not possess before, and has made it a covetable possession for the purpose of investing money. The other factor is a vigorous system of law-Courts, which gives to the creditor swift and certain means of enforcing his contracts, and of taking his debtor's land if he cannot pay. There is no doubt that those means have been very much increased since the Civil Procedure Code came into force, and it is a strong testimony to the efficacy of the Code as a whole, though in this particular instance it may have produced some disagreeable effects.

"The Code itself contains no check whatever upon the unreserved and unqualified sale of the land of the debtor who cannot pay. There is indeed one section—section 248 of the Code—which provides that, in certain circumstances, the execution of a decree may be handed over to the Collector. Whether it was intended to give the Collector any discretionary power in such cases may be doubted, but at all events if it was

intended, the intention is not clearly expressed, and the Courts have held that the Collector is only a ministerial officer for carrying into effect the decrees of the Court. The result is that sales have gone on in a rigid mechanical way, without even the check of an upset price, or of a power of adjourning the sale when the whole thing is an evident failure, and with the common result that the property is bought in by the judgment-creditor himself at a great undervalue.

"There are some parts of our dominions—the Panjáb, Oudh, and the Central Provinces—in which the Code has been introduced with a material modification upon this point, the modification being in the shape of a provision that, before a debtor's land can be sold, the consent of some high and responsible authority shall be required; so that there is a discretionary power given to the Administration to prevent such sales. And we are told that in those Provinces there has been a substantial retardation, and, in the opinion of I think I may say all officers, a beneficial retardation, of the process of transferring land from one hand to another. But elsewhere, where the Code has been introduced in its simplicity, the transfer of land has been going on at an accelerated pace, with the effect of creating a large dispossessed and discontented class.

"The effects of this system upon debtors have been very much intensified by certain arrangements which lower the price to be obtained at execution sales. I explained to the Council before that there are two rules which have a very prejudicial effect in that respect. One is the rule that nothing can be put up for sale excepting that vague thing, the 'right, title and interest' of the debtor in the land. Whether that right, title and interest be much, or little, or nothing at all, it is the only thing which can by law be sold. The other is the rule that the judgment-creditor, who is practically the vendor, shall keep the purchase-money in his pocket, although it may turn out that the right, title and interest which he has sold are nothing whatever, although he may have put up for sale the land of an entire stranger, and although the purchaser may have got nothing by his purchase except a lawsuit.

"I believe also that another blemish in these sales is that the property, however large, is always put up in a single lot.

"In our Report of last year we mentioned the effect of those rules, and the remedies which we proposed for bettering the condition of the debtor. Our remedies were, to allow a specific description of the interest to be sold, and

to require at least some attempt at a more specific description than the law now allows; to alter the rule as to the recovery of money when nothing whatever has been sold; to prevent the creditor from bidding at a sale except with the permission of the Court; and to provide that the Executive may make rules imposing conditions on sales. We contemplated that the rules made by the Executive would be of such a nature as this—to require the consent of some high and responsible authority, as is done in the Panjáb and in the other Provinces I have mentioned, to provide for an upset price, for sales in lots when desirable, for adjournment of sales, and such other safeguards as might be thought necessary to prevent the land from being sold for a mere song.

"Regarding the action of the Collector we said this:—

"'It has been held that the Collector is a mere ministerial officer under the corresponding section of the present Code, and that he has no discretion as to postponing sales, fixing an upset price, or any other matter affecting the substance of the sale. And it is suggested that the Collector ought to have discretion in such matters, or even some larger power to make arrangements for payment of the debt by some means short of an absolute sale of the land. The point is one on which we should be glad of opinions from those who have been led to study it. It will be remembered that, in section 272, we propose to give power to the Executive to make special rules on the subject of sales of land.'

"Respecting the incidents of sales and the risks incurred by purchasers we said:—

"'We shall be glad to know of those who are familiar with the subject whether the fact really is that property is apt to be sold at an undervalue in execution-sales, and if so, to what cause they impute it, what they think of the alterations now proposed, and whether any remedy has occurred to them by which more security can be given to purchasers with the view of obtaining better prices for land.'

"Those are the points on which we specifically asked for advice. Upon the latter point we find a large concurrence in our views, and I need only say here that we have gone somewhat further in requiring specific description of the property to be sold. We hope that the proposed alterations will lead to more care in putting up properties to sale than is now exercised by judgment-creditors. Any one who wishes to examine them more at large will find them in section 288 of Bill No. IV.

"Upon the more important question of controlling the execution of a decree for sale we have received a great deal of advice, and the result is that we propose to make some more specific alterations of the law than the mere investiture of the Executive with power to impose conditions on the sale of

land. I will just read to the Council some of the views which we have received upon this subject. The Lieutenant-Governor of Bengal, who has sent us three minutes, all of value, says upon this point:—

"'I am advised by many well-informed authorities that the immoveable property sold in execution of decrees often goes for prices much below the ordinary selling value, not only by reason of the uncertainty for which I have just proposed a remedy, but also by reason of the summary and obligatory character of the sale. Indeed it is notorious that the misfortune of a man whose property has thus to be sold, is much aggravated by the unduly low sum which it fetches. The unpopularity which must thus, as I believe unnecessarily, attach to the sale of such property in execution of decree, is manifest. I say unnecessarily, because if a good department of execution of decrees were to be established, it could take charge of such property, attaching it before sale; managing it for a time; thus practically ascertaining its value; fixing an upset price; and in the event of such price not being offered, retaining the land under management for the benefit of the judgment-creditor and judgment-debtor alike. The cost of such management would be recoverable from the property. If the property consisted of land paying revenue to Government, it might best be managed by the Collector of the district, under precept from the Civil Court.'

"Now it will be seen that what the Lieutenant-Governor recommends is the establishment of a department for the execution of decrees, and he has insisted upon that plan further in another minute in which he goes into the matter with a good deal of detail. It may be an excellent plan, and I do not say a single word against it, but it is rather outside the scope of our present operations. It is an administrative operation, and would require the consent of the Government of India after going through the ordeal of various executive departments, the head of one of which I see looking very hard at me across the table. At the same time it will be seen that we adopt in substance the proposal of Sir Richard Temple, only that, instead of a new department, we propose to use the existing machinery of the Collector.

"Mr. Bell, the Legal Remembrancer to the Government of Bengal, a gentleman of great experience, writes as follows on the subject of execution sales:—

"'With regard to the difficulties which decree-holders experience in executing their decrees, I have nothing to add to the very full discussion which the subject has undergone in His Honour the Lieutenant-Governor's Minute of the 29th September. But there is another aspect of the question which should also be considered: I mean the grossly inadequate price at which the debtor's property is sold at these execution sales. More noble and ancient families have been ruined by these Civil Court sales than by any other cause. A case came before me the other day in which property, for which the judgment-creditor had himself previously offered Rs. 50,000, was purchased by the same judgment-creditor at an execution

sale for Rs. 6,800. I venture to say that hundreds and hundreds of similar cases happen every year in Bengal. The present Bill (section 288) attempts faintly to deal with the evil by providing that the judgment-creditor shall not bid for the property sold without the express sanction of the Court. But that is clearly a most inadequate remedy. In many cases, unless the judgment-creditor was permitted to bid, there would be no bidders at all. What is required is that there shall be some security that the property is sold at a fair price. There is only one way in which this can be done, and that is by allowing the judgment-debtor, in case the Court holding the sale considers the price offered inadequate, to have the estate valued by the Court, and made over at such valuation to the judgment-creditor in satisfaction of his debt. I am sure that no measure short of this will be able to remove this great blot on our judicial administration. The present system of selling landed property at these judicial sales is only another form of robbery sanctioned by law.'

"Now the Council will observe that Mr. Bell speaks in very strong terms of the inadequacy of the prices obtained at these execution sales. But having read every word that is said upon this subject in the volumes of correspondence before me, and every word said in the two inquiries which I mentioned as having been made by the Government of India, and having had the opportunity of speaking about it to many gentlemen in high judicial positions, I have only found one officer who expresses an opinion that adequate prices are obtained at execution sales. No doubt such may be the case in some portion of India, but that it is not the case over India generally is quite clear; and strong as Mr. Bell's language is, it is borne out by a cloud of other witnesses.

"We do not indeed provide in terms that the estate shall be forced upon the judgment-creditor at a valuation made by the Court, but it will be seen that we propose to give the Collector a very large discretion which may lead to such an arrangement, if found to be beneficial under the circumstances.

"The only other opinion I will quote upon this subject is that of the Government of Bombay. Last year that Government consulted the High Court of the Province as to the expediency of transferring execution sales to the hands of the Collector in a particular district. Addressing the High Court on the subject of section 248 of the Code, which I mentioned a little while ago, they spoke as follows:—

"'It cannot be concealed that much dissatisfaction is felt in many parts of the country at the system at present in vogue for the sale of revenue-paying land, either owing to the unfitness of the Court's officers to conduct sales, to the dislike of the people, other than professional money-lenders, to bid for land at such sales, or to other causes which it is needless to mention. It is generally believed that practically the working of the present system ends in lands being sold by the Court's officers for very much below their value, and to their being very frequently bought in by the judgment-creditor for comparatively small sums.

"'His Excellency in Council is disposed to think that some measure of the dissatisfaction might be removed if such sales were entrusted to the Collector and conducted by his department. He accordingly proposes to introduce this practice under the authority vested in Government by the section quoted above. He does not at present intend to make it universal, but to introduce it as an experimental measure in one district. He has accordingly issued instructions to the Collector of Kaira, who has offered to undertake the duty, that in future his department should conduct all such sales within his district.'

"To that the High Court replied, expressing some doubts as to the legality of the proceeding, and pointing out that, at all events, the provisions of the Code were totally inadequate for the purposes contemplated by the Government. It will be seen that our proposal is to give to the Executive the very powers which the Bombay Government desired to exercise in a particular instance.

"Now for our proposals, the principal of which will be found in sections 320, 321, 323 and 326 of Bill No. IV.

"It will save trouble to quote sections 320 and 321 in full. They run as follows:

"'320. The Local Government may, with the sanction of the Governor General in Council, declare by notification in the official Gazette that in any local area the execution of decrees in cases in which a Court has ordered any interest in immoveable property to be sold, shall be transferred to the Collector; and rescind or modify any such declaration. The Local Government may also from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same.

"'321. Whenever the execution of a decree has been so transferred, if the Collector has reason to believe that the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such interest, the Collector may (notwithstanding any order under section 303, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge such debts with interest thereon according to the decree, or, if the decree makes no provision as to interest, then with interest (if any) as he thinks fit not exceeding the rate of six per cent. per annum,

'(*a*) by selling part of the judgment-debtor's interest in such property or in any other immoveable property:

'(*b*) by mortgaging the whole or any part of such interest:

'(*c*) by letting on farm, or managing by himself or another, the whole or any part of such interest for any term not exceeding twenty years from the date of the order of sale, or

'(*d*) partly by one of such modes and partly by another or others of them.

'For the purpose of managing under this section the whole or any part of such interest, the Collector may exercise all the powers of its owner.'

"The Council will see that by performing one or another of the operations authorized by section 321, or by combining any two or more of them, the Collector will have an almost absolute discretion as to the mode of raising money out of the property for a term of twenty years; and if it really is the case that the debtor is a solvent man, provided only that the best is made of his property, there will be an opportunity of making the best of it, and he will eventually pay his debt and get his land back. If on the other hand the term of twenty years will not suffice for such a process, the poor man must yield to his fate and be sold up at last, and that we have provided in section 323. All we can do consistently with the principle that a man who has property shall pay his debts is to give him the chance of recovery; and to prevent the destruction of his property through ignorance, accident, hurry or extreme pressure.

"In furtherance of the same object, we have made some minor provisions applying to the Courts as well as to the Collectors. By section 291 we have provided for the power of adjourning execution sales. In section 292 we have provided that no officer having any duty to perform in connection with sales shall acquire any interest in the property sold; and by section 303 we have provided that sales of immoveable property shall only be ordered by a Court of the rank of a District Court.

"Section 326 requires a little more explanation. In that section we propose to alter the terms of Bill No. III, which gave to the Executive power to impose conditions upon the sale of land. Now of course a general power of imposing conditions, or a power of discretionary consent, may be so handled as to operate by way of complete prohibition in particular cases. But there are cases, especially in the more unsettled and backward parts of the country, in which it is better to give the Executive power to prohibit in direct terms the sale of particular interests in land, instead of doing it by some cumbrous and circuitous process.

"I will illustrate my meaning by reference to what is now going on in the Central Provinces. In that part of the country, the interests of jágírdárs, and those of occupying tenants, are in a state of very considerable obscurity. Their nature, and particularly the transferable quality of the property, will not be ascertained even approximately until the settlement of the country

has been entirely completed, probably not for many years to come. At the same time, although the interests are of an obscure legal character, the men are in possession, and are actually cultivating the land and living out of it.

"Here then is a possession of great value to its possessor, which is yet of so speculative a character, and the power to transfer which is so uncertain, that the sale of it rises very little above the level of a gambling transaction, that nobody will purchase it except the man who has got a decree to satisfy out of it, and he will only purchase it at a price trifling as compared with its value to the possessor. Yet it is under these circumstances that the Civil Courts have, in carrying out the letter of the law, put up for sale under the general expression of the debtor's 'right, title and interest', land in which the debtor has no interest except the vague one that I have just described. The Executive on their part have interposed difficulties by refusing consent to the sales. Now it does not place the Government in a very seemly position, if its officers in their judicial capacity put up something that professes to be of value for sale, and the same officers, or similar ones in their executive capacity, prohibit the sale because there is nothing of a marketable nature belonging to the debtor. It is still worse, when the property has been actually knocked down to a purchaser who pays his money for it, and then the Government officers have to contend that the interest was not transferable, that the purchaser had got nothing, and that he must lose both his purchase-money and what he fancied he had bought. It is impossible that people should believe that good faith has been kept with them under such circumstances. In cases of that kind, it is surely much better to give the Executive direct power of prohibiting the sale of particular classes of interests in some way which will be directly binding upon Courts of justice. That is the reason why we propose to empower the Executive to make rules prohibiting the sale of classes of interests in these terms:

"'326. The Local Government may from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, or prohibiting such sales—

'(*a*) where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value:

'(*b*) where for reasons of State the Local Government thinks that such class of interests should not be compulsorily transferable.'

* * * * * * * *

"These provisions relating to execution sales constitute the principal alteration that we propose in the Code, and our object has been to

alleviate the harshness and rigidity of the law, to diminish the number of forced sales, and to get for the owner of the land something like an adequate value for it, at the same time keeping clearly in mind the important principle—one of the most important objects of all civilized society—that a man should perform his contracts and pay his debts to the best of his ability.

"Another matter to which we called special attention in our Report last year is one which is considered to be of great importance by many Judicial and Executive authorities, and that is the practice of treating decrees as permanent investments of money. I mentioned to the Council before the remedies by which we proposed to abate that practice, which is considered to have a very injurious effect. I have only now to say that our proposals have met with almost universal approval, and that we have in the present draft somewhat strengthened the provisions which were made before. What we have further done in that respect is as follows.

"In section 209 we have adopted the plan already adopted by the High Court of Calcutta and the Chief Court of the Panjáb, namely, to provide that decrees shall not carry more than 6 per cent. interest. That plan has been in operation in those two parts of the country for some two or three years, and is believed to work satisfactorily.

"In section 232 we have provided that before a decree which has been transferred from hand to hand can be executed, notices shall be given to the transferor and the judgment-debtor, that the Court may hear if they have anything to say against that decree being carried into execution; and in section 235 it is provided that applications for the execution of decrees shall be verified, and that such applications shall give the history of all previous applications for the same purpose.

"Another subject of importance connected with the execution of decrees is that of insolvency. I explained to the Council before how we proposed to enlarge the present very rudimentary law upon the subject by providing a law somewhat less rudimentary, but still falling short of a complete and full insolvency law for the mufassal, which we are informed that the judicial machinery of the mufassal is not strong enough to work. What we proposed in that respect has been received with very general acquiescence, although we have received some contradictory opinions on the subject. One gentleman tells us that we ought to enact a complete and full insolvency law for the mufassal; another that the sections we have inserted into the Bill are such

as the mufassal Courts are not now strong enough to work; another says that the provisions are too cumbersome; and another that they are too meagre. On the whole, we have thought it best to leave this part of the Bill substantially unaltered.

"There are two other subjects still connected with the execution of decrees, each of considerable importance. One of those subjects relates to the things that may be taken in execution of a decree; and the other, to the priority of one decree-holder over another.

"In the Code there is contained no express exemption of the things that may be taken in execution. It is true that in those seldom-used sections which do duty for an insolvency law, it is provided that the insolvent may retain his wearing apparel and necessary implements of trade. But in section 205 of the Code, which relates to execution sales, it is said that all the property of the judgment-debtor, without any exception whatever, may be attached and sold. That extreme generality has been somewhat restricted by judicial decisions, and in our Bill No. III we followed those decisions, and made it part of the express written law that the exemptions in question should be allowed; and we also added that the salary of a Government servant should be exempted from attachment. Whether the salary of a Government servant can be legally attached at the present moment appears to be a matter of some doubt; the prevailing opinion is that it can be, and it is not infrequent in practice to have the salary attached by the creditor while still in the hands of Government. Our proposal to exempt it has met with a various reception—*laudatur ab his, culpatur ab illis.* We have adhered to the principle that public policy requires a Government servant to receive that amount of salary which is thought fit for his office. When he has got it, it is his; he must spend it as his affairs require; and we have no more concern with the amount that he pays to his creditors, at least as long as he keeps himself free from scandals and in a position to perform his duties, than we have with the amount he may spend upon his wife, his servants, his charities, or his amusements. Our business is to see that the judgment-creditor shall not intercept the money that is coming to the Government servant, and cut off those supplies which are necessary to enable him to perform his duties. We have therefore maintained that principle, and have extended it to Railway servants who, in this country at least, stand very much in the position of Government servants.

"If the Council will look at section 266 of Bill No. IV, they will find a list of the articles that we propose to exempt from attachment. Under head (*b*) we exempt tools of artisans, implements of husbandry, and cattle kept *bonâ fide* for agricultural purposes. Those articles were exempted in accordance with a great number of opinions received from mufassal officers, representing the hardship and impolicy of bringing people to total ruin by attaching such property; and we have added head (*j*), which exempts the wages of labourers and domestic servants. The principle is that it is against public policy to make a man compulsorily idle either by taking away from him those tools which are necessary to enable him to earn his living, or by anticipating the wages of his daily labour, and so destroying all motive for self-exertion.

"The next topic is the priority of decrees *inter se*. That is at present regulated by section 270 of the Code, which provides that the person who first attaches property shall be the first to be paid out of it, even as against another creditor who has obtained a prior decree. Now there is no principle of justice whatever in that rule. Possibly the Code is framed upon the analogy of attachments of another kind, in which, when it happens that there are more suitors than one, it is allowable that a prior attachment should prevail. If so, the analogy hardly applies to objects that are inanimate and capable of division. In fact all rules on this subject must be more or less arbitrary and artificial, and we have got to find out the rule that is most convenient.

"Now the present rule leads to some unseemly scrambles for priority, so that it may become a matter of accident or of favour whether *A* or *B* or any other letter of the alphabet should be the lucky person to get paid in full to the detriment of other creditors. The Judge of Kaira speaks on this point as follows:

"'The provision that the holder of the decree on whose application the property sold was first attached, shall be entitled to be first paid out of the assets realized by the sale, does not appear to be quite an equitable one, and also gives rise to several questions which cannot be satisfactorily settled. It often happens that a certain decree-holder presents his application first for the attachment of a certain property, and another decree-holder presents an application for the attachment of the same property some days subsequently; but owing to some unavoidable accident the ministerial officers of the Court carry out the attachment under the second application first, and then attach the same property a day or two subsequently under the first application. In such a case, it is quite unjust that the person who presented his application

subsequently should have precedence over the first applicant in the matter of the appropriation of the assets. Again, when several decree-holders have presented applications for the attachment of the same property on the same day, and attachments have been made thereunder simultaneously, it is most difficult to determine how the assets should be divided.'

"From Sindh we hear somewhat the same story. The Judicial Commissioner tells us—

"'If several applications are presented simultaneously, the applicants might be satisfied rateably. In the Small Cause Court at Karáchi there is sometimes a rush of, say, twenty decree-holders, each anxious to be the first to attach. All applications put in at the opening of the Court might be held to be simultaneous.'

"That which goes on at the extreme western point of our dominions is not due to the longitude, for we find just the same state of things in British Burma, the extreme eastern point of our dominions. Mr. DeWet, our Government Advocate there, says:—

"'Provision should, I think, here be made for a case that is very common anyhow in Rangoon, where several persons attach property of the same judgment-debtor on the same day, and where the several warrants are handed to the officer of the Court at the same time. Which of these is to be deemed the first attaching creditor? The practice here has usually been to divide the proceeds of sale between them all rateably, but for this there seems to be no authority.'

"Now the Council will see that the recommendations which these gentlemen make are that when attachments are simultaneous there shall be a rateable division. We think that the principle of rateable division may be carried a little further; in fact as far as is convenient. We see no reason why there should not be a rateable division among all the judgment-creditors up to the point when it becomes inconvenient to delay dealing with the assets. Therefore it is provided, in section 295, that the attached property shall be divided rateably among all persons who apply for execution of money decrees against the same judgment-debtor prior to the realization of the assets.

"Another matter also connected with the execution of decrees is the imprisonment of debtors.

"There are many gentlemen, with whom I believe that my hon'ble friend Mr. Hope sympathises, who would have us abolish the remedy of imprisonment altogether. We do not see our way to that, but we propose to shorten the terms of imprisonment materially. At present the terms are limited by section 278 of the Code, which provides that the maximum term of imprison-

ment for any amount of debt shall be two years; if the debt is R. 500, six months; and if R. 50, three months. We propose to shorten those terms by providing that the maximum term should be six months, and if the debt does not exceed R. 50, the term of imprisonment shall not exceed six weeks.

"There are some matters in our Report which I will pass over with the briefest possible indication. We propose to reserve for the District Courts certain processes involving much discretion and responsibility. We also propose to give to the District Judges and to the High Court a certain control over the Small Cause Courts. These are points on which I have no personal knowledge, and which I have not found discussed in these papers. My friend Mr. Cockerell, who has experience of them, will be able to tell the Council more clearly than I can what is the precise practical effect of our proposals. But with regard to Small Cause Courts I may say that, ever since I have been in India, I have heard from various quarters that some power of supervision over their decrees is needed.

"In Chapter XVI of our Bill No. IV we have provided for the use of affidavits, an instrument at present unknown in the mufassal. It is however a very useful mode of taking evidence in all uncontested cases, and in applications which are of an urgent and provisional character. Nor do I believe that when sifted by cross-examination, as it is always liable to be here, affidavit evidence is more likely to mislead than oral evidence. In point of fact, one who cross-examines on affidavits has a considerable advantage in that his enemy has written a book, and a book which he has had time to study before he comes to cross-examine. Doubtless the use of a new instrument will require some care and circumspection, and it will also probably require some directions from the High Court to the subordinate Courts, for which we have provided; but with that precaution I see no reason why the alteration should not be productive of considerable advantage.

"While on the subject of evidence, I will call attention to an alteration made by section 184. We provide there that the Local Government may, in cases in which an appeal is allowed, permit the evidence of witnesses in any Court or class of Courts to be taken down by the Judge in his own hand in English. That is an innovation which in cases actually appealed would be attended with great advantage,—if it could be done consistently with the interests of justice in other respects,—because the Appellate Judge would then have the evidence in the same form before him as the Judge in the Court below. I need hardly dilate on the advantage of introducing the English language wherever

we can consistently with more important public interests, and I have no doubt that the Local Governments will take very good care that the course of justice is not obstructed by any order upon this subject. The Secretary (Mr. Stokes) reminds me that not only will the mind of the Appellate Judge be left freer to work when he is provided with the same materials as the Judge below, but that a great deal of expense will be saved in translations for the Appellate Courts if the original proceedings are taken in English.

"In section 433 we have attempted to deal with the rather delicate subject of a foreign potentate suing in our Courts. In that term I mean to include the Native Chiefs of India who are our feudataries. With regard to them the question is apt to arise much more frequently than with regard to those potentates who are foreign to all intents and purposes. The matter is one of some difficulty, and the difficulty has been recently illustrated by the case of the Rájá of Nahan, who keeps a shop in Ambála and was sued there by his own agent. We have had the advantage of seeing the principles applicable to this case discussed in a very clear and instructive judgment by the Chief Court of Lahore, who disallowed the suit. What we think is that if a foreign Chief become a suitor or a trader or a landholder in our territories, he may fairly be subjected to the incidents of the position he has chosen to assume. But in order to protect the dignity of such personages, and to avoid complications which are sometimes very awkward, we have thought it better to provide that in such cases suits shall not be instituted, nor decrees executed, without the consent of the Government. Those provisions we have embodied in section 433 of Bill No. IV.

"The last point I think it necessary to trouble the Council with—and they will be very glad to hear that it is the last—is the subject of appeals, not the vexed subject of second appeals upon which we have had so much discussion, because the proposals of the Bengal Government to alter the structure of the Appellate Courts have not yet been determined upon. But the law with respect to appeals where the Appellate Court consists of a plurality of Judges is not in a satisfactory state. According to section 332 of the Code, which applied to the Sadr Court, when an Appellate Court of two Judges differs upon a question of fact, and one of the Judges agrees with the Court below, the judgment of the Court below is to stand. When they differ on a point of law, the point is to be re-argued before another Judge or other Judges, and is to be decided according to the opinion of the majority of the whole of the Judges who have heard the point argued. By the charters of the High Courts, if a Division Court of two or more Judges is equally divided in opinion, the opinion of the senior Judge is

to prevail. Now, in that clause of the charter, original business and appellate business were lumped together, and though the rule is a very good rule in respect to original business, it is not satisfactory as applied to appellate business. The result of it is that the plaintiff may have a great preponderance of judicial opinion in his favour, and yet a decree be given for the defendant. It may happen that a man has obtained a decree in the Court below, or in two Courts below, and that half the Appellate Court is in favour of his retaining that decree, but because a single Judge, being the other half of the Appellate Court, thinks otherwise, then the decree goes for the defendant. We had to consider this question very carefully last year in connection with the Burma Courts Act, because the principal Court of appeal in Burma consists of no more than two Judges, and the principle we applied there was that which prevails in England, and which seems to me to be the most reasonable of all principles; that if there is no majority of the Appellate Court which can agree to alter, and how to alter, the decree of the Court below, that decree shall remain unaltered. I must confess that in our Bill No. III we left that matter in a rather unsatisfactory position, for we copied too faithfully both the Code and the charters, and the result was that we had introduced two conflicting principles. However we found out our error, and we have now adopted the principle which will be found embodied in section 575 of Bill No. IV.

"I will now conclude with the *pro formâ* motion that the further Report of the Select Committee, together with the Bill as settled by them, be published in the *Gazette of India* in English, and in the local Gazettes in English and such other languages as the Local Governments think fit".

The Hon'ble MR. COCKERELL said that in the remarks which he had to make upon some of the provisions of the amended Bill, he would endeavour as much as possible to avoid going over any portion of the ground which had been already traversed by his hon'ble and learned friend (Mr. Hobhouse) in his vigorous and lucid exposition of the leading features of that measure.

He desired to draw attention to certain important alterations of detail which had not been noticed, or at least dwelt upon, in the speech of the learned Member who had charge of the Bill, and which, his (MR. COCKERELL'S) personal experience led him to think, were calculated to improve very materially the existing provisions of the law on this subject.

The Report of a Select Committee upon any Bill ordinarily contained little more than a concise statement of the several amendments proposed, and in a report upon a measure of this magnitude any explanation of the grounds upon which the suggested alterations were based must necessarily be exceedingly meagre. The main object therefore of the present discussion of the subject of a report which was not intended to be received as a final settlement of the matter of which it treated, was to supplement its deficiencies in the way of explanation of the considerations upon which the proposed alterations of the law rested, and to draw to them as much public attention and criticism as was possible, whilst there remained time to utilize such criticism ere the measure was finally matured and passed into law.

He thought that it would be convenient to notice the alterations to which he had referred in the order in which they stood in the Bill as amended.

One of the most important perhaps of these was in regard to the status of the Courts of Small Causes. By section 2 these Courts were declared to be subordinate to the District Courts, and the precise effect of this declaration would be seen by a reference to sections 25 and 622 by which power was given to the High Court and the District Court, (1) to transfer any case from one subordinate Court to another, and (2) to call up from a subordinate Court any case in which no appeal would lie and to set aside any order or decision passed therein contrary to law.

Under the existing law the Courts of Small Causes were wholly independent of the District Courts, and controlled by the High Courts to only a very limited extent. The Act from which they derived their constitution empowered the High Courts to frame and issue rules for regulating their practice and certain other subordinate matters connected with their working, and it enjoined upon them obedience to the call of the Local Government and the High Court for periodical returns and statements of business performed by them, but beyond this it may be said to have practically placed them under no control. The High Courts could under section 13 of their Letters Patent call up from Courts of Small Causes, as Courts subject to their general superintendence, any case and try such case under their extraordinary original jurisdiction—an obviously inconvenient remedy—but they could do nothing under the power, which they had under their Charter, of transferring cases from one Court to another subject to their *appellate* jurisdiction, for that power could not be applied in the case of Small Cause Courts from whose decisions there was no appeal.

It had always seemed to him (MR. COCKERELL) that this position of the Mufassal Small Cause Courts was of a singularly anomalous character. They were placed side by side in almost every district with the Principal Civil Court to which all other Courts of every grade were subordinate, and yet this Court of general control had no power of interfering with them in any way.

The Judges who presided over these Small Cause Courts were for the most part selected from the higher grades of Subordinate Judges who had always been subject to the control of the District Judge, and the class of business performed by the Small Cause Courts was distinctly less important than that discharged by other Courts subordinate to the District Court.

What then he would ask was the reason for according this exceptional status to Judges of Small Cause Courts?

That it led to much abuse, he could not doubt; he had been frequently told of the inconvenience caused to suitors, and the irregularities in the practice of these Courts which arose out of this state of things and for which, it was complained, there was no local means of redress; and indeed he did not see what other result could be expected.

The Small Cause Courts had now been in existence for about fifteen years, and he believed that they had survived much of the unpopularity which undoubtedly at one time attached to them; but this practical independence of the chief local Civil Court had always been, and was still, regarded as a blot upon the system, and he was confident that its removal would be considered as not the least of the improvements projected by the amended Bill.

He would have been at a loss to conjecture why this want of local controlling power had been allowed in the original enactment for the establishment of these Courts but for the provision which it contained for the creation of principal Courts of Small Causes. For although these principal Courts were invested with no special power of control over the other Courts, yet it had been intended that Barristers should be appointed Judges thereof, and, in fact, at the time of the first establishment of these Courts, Barristers were in some cases so appointed.

Now although the present age was developing a levelling up tendency, and there was consequently no saying what the audacity of a future legislature might lead it to attempt, yet in 1860, when these Courts were first created, no person would have had the temerity to propose that a Court presided over

by a Barrister should in any way be placed in subordination to one of which the Judge was a member of the Civil Service! The Barrister element had, however, disappeared from the Small Cause Court Benches, and the class of Judges by which it had been replaced would have no reasonable ground for considering their personal dignity injured by being made subject to the control of the District Judge.

The alteration of the law contemplated by section 28 of the Bill was, he apprehended, one that would be deemed of especial importance to the interests of a large section of the community in the province to which he had the honour to belong. The Council were aware that in that quarter, especially in some of the Central and Eastern Districts, serious complications had from time to time arisen in regard to the relations between the landlord and tenant classes. Those complications had their origin in the special legislation of 1859 for the adjustment of the rent of land in the Bengal Presidency. Prior to the enactment of Act X of that year the landlords exercised large coercive powers which in effect compelled the tenants to pay in some form or another almost any amount that the landlord found it in his interest to demand—one practical result of the enactment of Act X of 1859 was the withdrawal of this power.

Now he (MR. COCKERELL) did not mean to say that this power should not have been disturbed, for it was a very arbitrary and unjust power which virtually placed the tenant class at the mercy of the landlord, but the law should certainly have compensated the landlord by affording him an effective remedy for the enforcement of his just rights, and this no doubt the framers of Act X had essayed to do by the provisions for enhancement of rent under certain conditions. Those provisions, however, had confessedly failed to effect their object, now that the tenant class had learned their exact legal status and the power which they could exercise by combination in resisting the landlord's attempts by process of law to exact an enhancement of rent. As the law stood, the landlord could only sue his tenants severally, and by virtue of their combination the pecuniary means of each one for resisting the claim to the last and carrying the case up to the highest Court of appeal were not wanting. Where this kind of combination existed even the wealthiest landlords shrunk before the ordeal of waging single-handed such an uneven contest with their tenantry in large estates in which the claim to receive enhanced rents might apply to more than a thousand persons. Sooner than embark in such costly litigation the landlords would endeavour by other means to gain their end, and these attempts

led to a state of bitter feeling between the classes which threatened serious breaches of the peace, and possibly open riots at any moment.

To meet this state of things a special Act was passed by the Bengal Council, and had quite recently, he believed, received the assent of His Excellency the President. By that Act, amongst other things, power was given to the landlord to proceed against the tenants of a whole estate for the enhancement of their rent in a single suit.

The Council would observe that a corresponding power was given by the Amended Bill (section 28) which provided for the joining of all persons

"as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative in respect of the same cause of action."

This provision would have a substantial advantage over that of the special Act referred to, inasmuch as, whilst the latter could be carried into operation only after the fulfilment of certain material conditions involving loss of time and expense, the former could be acted upon by every landlord who claimed to enhance the rents of his tenants collectively to the same extent and upon grounds common to all of them.

In section 58 of the Bill would be found an entirely new provision by which a plaintiff was required to present copies, on plain paper, of his plaint equivalent in number to the persons sued by him collectively for the purpose of being served upon the defendants together with the summons; and to meet cases in which by reason of the extraordinary length of the plaint itself, or the large number of the copies required, this obligation might be thought to press too hardly upon the plaintiff, power was given to the Court to allow the presentation of concise statements of the substance of the plaint to be served with the summons as an alternative measure.

Owing to the want of some kind of notice to the defendant as to the nature of the claim against him, great delay was often occasioned in the first hearing of the suit. It sometimes happened that the defendant knew all about the suit which was being brought against him, and the mere service of summons was sufficient to enable him to enter upon his defence, but in many cases the defendant either had, or affected to have, no such knowledge, and his first step on receiving the summons was to apply to the Court for a copy of the plaint and ask for an adjournment of the hearing to enable him to prepare his defence. Now by the provision just referred to, much delay would in such cases be avoided; moreover it seemed a more equitable course to throw the

burden of the first cost of the supply of the copy of the plaint upon the plaintiff, who had to establish his right to involve the defendant in the contemplated litigation, rather than upon the defendant, who, until some sort of *primâ facie* case was made out against him, must be regarded as in the right and entitled to the protection of the law.

Under the English law a somewhat similar practice prevailed, the nature and purport of the claim and a summary of the circumstances under which it was made being endorsed on the summons itself; that procedure was well suited to Courts where the summons was prepared by the legal agents of the parties to the suits, but would not apply to the Mufassal Courts in this country in which all forms of process were drawn up by the ministerial officers of the Courts.

There might be some difficulty in the working of this new provision, if the alternative of concise statements had to be largely resorted to, by reason of the responsibility thrown upon the officers of the Courts in regard to the correspondence of the statements with the subject-matter of the plaints, but it was to be expected that in the large majority of cases the power of substituting statements for copies of the plaint would not have to be exercised.

Sections 79 to 81 of the Bill were designed to effect a material alteration of the law in respect of service of the summons; and when it was considered that a very large proportion of the suits instituted in various parts of this Empire were decided *ex parte* by reason of default of appearance on the part of the defendant, the importance of this part of the Court's procedure could hardly be exaggerated.

He would first explain the mode of procedure at present adopted as contained in sections 54 and 55 of Act VIII of 1859, and the rulings of the High Courts upon this subject:

"In all cases where the summons is served on the defendant personally or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons, or on a copy thereof under the seal of the Court. If such person refuse to sign the acknowledgment, the service of the summons shall nevertheless be held sufficient if it be otherwise proved to the satisfaction of the Court.

"When the defendant cannot be found, and there is no agent empowered to accept the service, nor any other person on whom the service can be made, the serving officer shall fix the

copy of the summons on the outer door of the house in which the defendant is dwelling." * * * * *

Now in regard to this last provision it would be observed that the law contained no declaration as to the effect of this fixing of the summons upon the outer door of the assumed residence of the person summoned.

Most of the High Courts had supplied this omission by ruling that the affixing process above mentioned constituted valid service. Here then were two recognized modes of personal service: (1) the actual written acknowledgment of the person served, or other proof of his having been served in the absence of such written acknowledgment, and (2) the posting of the process on the dwelling of the person summoned when the latter or any other person capable of acting on his behalf in such matter could not be found by the server.

In the previously published draft of the Bill to amend the law relating to Civil Procedure, these provisions of the law as supplemented by the rulings of the High Courts were retained, and it was further provided that the mere endorsement on the summons by the serving officer that it had been served in accordance with either of these rules should be taken as *proof of due service*. Against this mode of treating this very important subject strong protests were made by a Judge of the Madras Presidency, and the writer of an article in one of the leading Bombay Journals. Looking to the severe penalty attaching to default of appearance on the part of a defendant when the due service of the summons upon him had been proved, and the consequent necessity of obtaining, as far as may be practicable, positive assurance that the defendant had really obtained timely notice of the action against him, the obvious injustice of reckoning as due service the spontaneous adoption by the process-server of a mode of procedure which was only allowed to constitute service, when specially ordered by the Court in the contingency of the latter being satisfied that the defendant was keeping out of the way to avoid service, was strongly insisted on.

The Madras Judge (Mr. Nelson) writing upon the existing Civil Procedure Code said in reference to this subject:

"Of all the enactments in the Code contained, perhaps it is the early part of this section (55) that is most frequently abused. Nothing in the world is easier than to fix a copy of a summons on the outer door of a man's house during his temporary absence from home, and process-servers are never over-diligent to find a man who does not happen to be sitting on the threshold of his house when they call. Again nothing can be more difficult for an ordinary

native to prove them that the process-server did not on a certain day fix a copy under this section, when a bribed process-server states that he did fix one, and dishonest suitors of course take advantage of every opportunity that offers when detection of their fraud is impossible or very difficult."

And the Bombay Journal wound up a well-maintained exposition of the unsoundness of the existing law with the following remarks:—

"Our contention is that personal service should not be dispensed with except under a special order of the Court. And we trust most sincerely that the Select Committee will pause before they finally give legislative force to a practice which is inconsistent with the other provisions of the Code, which damages the interest of defendants, which encourages negligence on the part of process-servers, and which opens a wide door to fraud."

The Committee had very carefully weighed these objections and had come to the conclusion that the principle of non-dispensation with personal service was the correct one; they further considered that the only satisfactory proof of personal service consisted in the production of the written acknowledgment of the person summoned, or some capable person acting on his behalf. It had therefore been provided in the Bill as now amended that where the process-server was unable from any cause to produce this written acknowledgment, he must make a return of non-service, and the Court should then, after examining him on oath touching the circumstances of such non-service, make such order in regard to substituted service as it might think fit.

The power heretofore vested in the Courts of ordering a general attachment of property had been omitted from the Bill as now amended. That power was conferred by Act XXIII of 1861 (section 13) in respect of moveable property found within the jurisdiction of the Court making the order of attachment in execution of money decrees where the amount did not exceed one thousand rupees, and by Act VIII of 1859 (section 214) in respect of moveable property, wherever it might be found, in execution of all other decrees. In England also the Courts were by law invested with a similar power. Nevertheless it was thought that this power should not be maintained, as being unsuited to the circumstances of this country. The existence of such a power afforded facilities for all kinds of oppression. An unscrupulous decree-holder armed with a warrant for the general attachment of his debtor's property, used it as a sort of roving commission to plunder his enemies by pouncing upon their property on the plea that, although in their possession, it actually belonged to his judgment-debtor.

In anticipation of possible or probable abuse of this authority, the existing law provided (Act VIII of 1859, section 218) that the Court might, previously to granting a warrant for the general attachment of property, require security from the decree-holder to such amount as should be deemed adequate in the way of compensation for any possible injury resulting to any person other than the judgment-debtor through the execution of the warrant. Now as it was obviously an impracticable task to forecast the amount of possible injury to individuals from an improper exercise of a general power of attachment of property, it followed that the above provision must prove a dead letter and could afford no adequate protection to the public against the misuse of this large legal power.

Moreover the holder of a warrant of general attachment would always be able to bring a cloud of witnesses to establish the equity of his proceedings under it, and it would in most cases be a difficult matter for the Court to come to the conclusion that the warrant had been deliberately misused and maliciously executed for the purpose of causing injury or annoyance to other persons than the judgment-debtor, and consequently the risk of an action for damages being successfully prosecuted was regarded as so remote that it had no practical deterring effect.

On the other hand, the provisions of the Bill for enabling the judgment-creditor to bring his debtor or any other person into Court as a witness for the purpose of making discovery of all property really belonging to such debtor, and liable to attachment in satisfaction of the decree, were so ample, that it was difficult to see what real hardship could accrue to any decree-holder or plaintiff in a suit from the withdrawal of the power referred to.

He (MR. COCKERELL) had now come to the discussion of what were perhaps the most important of the alterations of the law contemplated by the Bill upon which he had to offer explanations. He referred to those provisions which reserved exclusively to Courts not inferior to the district Court powers which were by the existing law vested in all Civil Courts; and in treating of this subject he would first notice the details of this policy and then comment briefly on its general principle.

By section 223, any Court subordinate to a district Court desirous of having its decree executed by some other Court was precluded from sending the decree direct to such Court, but must submit the case to the district Court to which it was subordinate, and full power was given to the district Court to dispose

of the question, as to how the decree so sent up to it was to be executed, in such manner as it might think fit. Under the existing law, a subordinate Court might send its decree to be executed by another subordinate Court within the same district, and consequently subject to the same district Court; but if the decree had to be executed beyond the limits of the district in which the Court passing such decree was situate, the latter Court was required to send it to the principal Court of the district in which it was desired to have the decree executed. It might be said, therefore, that the expediency of decrees not being executed outside the jurisdiction of the Court passing them, without the matter being in some measure at least brought within the control or cognizance of the superior Court, was already recognized.

By section 304 of the Bill, Courts subordinate to the district Court were debarred from ordering sales of immoveable property in the execution of decrees. The very important question of the sale of land in the execution of decrees, and the extent to which it should be restricted had already been discussed at much length by his hon'ble and learned friend (Mr. Hobhouse), and he (MR. COCKERELL) would only say here that in his opinion the great facility afforded to the sale of land for the realization of the amount of a money decree by the present Code of Civil Procedure was one of the greatest blots on our administration. Any measure that would mitigate and reduce the proportions of this evil was expedient, and the curtailment of the agencies by which such sales could be effected must be regarded as an effective step towards their discouragement.

By section 386, the power of issuing a commission for the taking of evidence of certain officials and persons residing beyond the jurisdiction of the Court issuing such commission had been restricted to district Courts and Courts of Small Causes. Such commission would probably in most cases be addressed to other Courts or officers of a superior status to that of the subordinate Court which required the commission to be executed.

By section 505, the power of appointing a receiver for the management of any property forming the subject of a suit was withdrawn from Courts inferior to the district Court. The determination of the question as to whether any property should be taken from the person in possession of it at the time of the suit, as also the selection of proper persons for the responsible office of a receiver, were matters requiring much judgment. It was doubtful, moreover, whether the lower Courts had a sufficient field open to them for the selection of such persons.

Section 650 contained special provisions, to which he believed there was no equivalent in the present law, in regard both to the mode of attaching property beyond the jurisdiction of the Court desiring to make such attachment, and the Courts by which such attachments might be ordered. Under the Code of Criminal Procedure, if a Magistrate wanted to attach any property for the realization of a fine or otherwise, situate beyond the local limits of his jurisdiction, he must get his warrant backed by the Magistrate within whose jurisdiction the property was situate; and it was now proposed to adopt a similar rule in Civil Procedure; the Court desiring to attach any property situate within the jurisdiction of another Court would have to send its requisition to such Court to procure the attachment; and this being so, the reasons which had led to the withholding from a subordinate Court the power of putting in motion a superior Court for the execution of a decree passed by such subordinate Court would apply with equal force to the case of the attachment of property out of the local jurisdiction of the subordinate Court.

It was to be observed that in all these cases the proper exercise of the power which had been confined to Courts not inferior to district Courts, required in a greater or less degree experience, and that discretion and sound judgment which are the outcome of experience. It would be seen that in the structure of the Criminal Procedure Code, the principle of the inexpediency of entrusting large discretionary powers to persons wanting in experience had been carefully maintained. For instance, the power to put the police in motion in connection with any criminal case had been very sparingly conferred on the lower grades of Magistrates, and generally it might be said that all quasi-extra judicial functions requiring tact and discretion for their proper performance had been assigned to the several classes of Magistrates in exact proportion to their standing and experience in the exercise of Magisterial duties.

If this distinction was held to constitute a wholesome rule, as it avowedly did, in the determination of the jurisdiction of the Criminal Courts, why should it be wholly disregarded in Civil Procedure? Under the present law, the veriest tiro in the administration of civil justice was invested with as large discretionary powers as the principal Civil Courts. He (Mr. COCKERELL) considered that the changes in this system which would be introduced by the Bill, if passed into law, in its present shape were of a most salutary character and urgently called for. He would add that he regarded as most satisfactory the re-affirmation in this very important measure of the correctness and soundness of this

principle on which he had been commenting, and which seemed in danger of being so completely ignored in some quarters; and he thought the enunciation of this principle especially opportune at a time when, as he understood, it had been seriously proposed to appoint to posts of great responsibility requiring the exercise of much tact, discretion and energy, men whose antecedents had in no way tested their fitness and capacity for the proper discharge of the very arduous duties attaching to such posts.

In regard to the explanation which he had made as to the policy of the amended Bill in withholding certain discretionary powers from Courts subordinate to the district Court, he desired not to be understood to hold that none of the powers to which he had referred in detail could be safely or wisely entrusted to any of the subordinate Courts. He was far from entertaining that opinion; many of these subordinate Courts were doubtless thoroughly qualified to exercise most of these powers. Indeed, in their case, the only exception that he would be inclined to make would be in regard to sales of land, which matter he would reserve to district Courts exclusively in order to limit the exercise of the power of sale to as few hands as possible. But it must be remembered that this Bill was to apply to the whole Empire, and it would be very difficult, if not impossible, under the varying conditions of the several provinces in regard to the constitution of Civil Courts, to draw the line otherwise than at the district Court, so as to exclude all the Courts that it would be desirable to debar from the exercise of these powers. No other line of demarcation, he believed, would meet the circumstances of all provinces, and so it resulted that some competent Courts must be excluded in order to avoid the risk of conferring the powers in question upon the incompetent.

It might perhaps be objected that during the currency of the present Code of Civil Procedure, the tone and character of the lower Courts had vastly improved, and that there was consequently an apparent inconsistency in withdrawing from these Courts this extra judicial jurisdiction which had uniformly been exercised by their predecessors. Doubtless, the knowledge of law, and indeed general intellectual attainments of the Judges of the inferior Courts of the present day, were very superior to those of the Judges who had gone before them, and this superiority was probably universal; but the judicious exercise of the discretionary powers which had been referred to could not be regulated by any rigid prescription of law, and depended rather on the possession of other qualifications, such as the good judgment, tact and discretion which resulted

from a thorough acquaintance with the habits, thoughts and feelings of the masses of the people, and a cordial sympathy with their customs and usages.

Now his own personal observation had led him (MR. COCKERELL) to think, and his remarks on this subject must be understood to apply to the province (Bengal) in which his experience had been obtained, (for he had little personal knowledge of the effects of the present system of education upon the people of the other provinces of the Empire), that the circumstances in which the youth of the present time attained this improved legal knowledge and superior mental and intellectual culture were such as to unfamiliarize them with the character, customs and feelings of the majority of their uneducated or imperfectly educated countrymen, and to place them out of harmony with their most cherished usages and prejudices. In these respects he thought that the Munsifs of the present time, most of them young men who previous to their appointment had but recently been emancipated from the school and college course of education conducted on the European system, did, though otherwise more competent, compare disadvantageously with the class of men who had preceded them in those offices. Indeed he (MR. COCKERELL) would go further and say that many of the class from which the present race of junior Native Judges was taken had scarcely a greater degree of personal acquaintance and familiarity with the habits and customs of the people generally, and even less interest in, and sympathy with, their thoughts and feelings, than the European officer who had spent some years amongst them.

It was proposed (section 335) to allow the arrest of a judgment-debtor without restriction as to the day or time at which such arrest might be effected. He could hardly say how far the existing law might be said to be altered by this provision, for the law of India contained no rule on the subject, and it was doubtful whether the law of England as contained in a Statute of Charles II, entitled the "Lord's Day Act," which allowed no service of civil process on Sundays, and the English practice which, he believed, admitted of no such service taking place between sun-set and sun-rise, applied to this country. There had clearly hitherto been some uncertainty on the subject which it was desirable to remove, and in regard to the question of principle, the Committee had come to the conclusion that so long as the law sanctioned arrest and imprisonment for debt, there should be no restriction having the force of law in regard to the time at which a judgment-debtor should be liable to arrest Many persons were opposed to the policy of recourse to arrest and imprisonment for debt in any case. He (MR. COCKERELL) entertained himself strong

objections to such arrest and imprisonment in the case of women, and he was not prepared to say that he would not concur as to the propriety of their abolition in regard to all persons, but this was a very large question and not directly raised in the Bill under discussion. Whilst the law permitted this form of procedure, it seemed to him only reasonable that such permission should be absolute and without any qualification.

The last, but not the least important, of the proposed alterations of the law to which he had to draw attention now was that in regard to suits against the Government, or any public officer respecting acts done by him in his official capacity. At present, in Bengal and elsewhere, these suits might be instituted in any Court, at the option of the person suing. The Bill (section 416) provided for the restriction of such institutions to district Courts. There was nothing new in the principle of such a rule; it had been in force in the Bombay Presidency from the date of the earliest Regulations, and re-affirmed in the comparatively recent enactment of the Bombay Civil Courts Act (XIV of 1869). In Bengal, up to the enactment of the present Code of Civil Procedure in 1859, only a limited number of Government officers were liable to be sued at all in a Civil Court in respect of any public act. The Bengal Regulation III of 1793, in its preamble, set forth the considerations on which independent Civil Courts were established, and the limitations under which the Government was willing to allow its interests and the acts of its officers to be submitted to their arbitration:

"To ensure to the people of this country the uninterrupted enjoyment of the inestimable blessings of good laws duly administered, the Government has determined to lodge its judicial authority in Courts of justice; and has resolved that the authority of the laws and Regulations as lodged in the Courts shall extend not only to all suits between Native individuals, but that the officers of Government employed in the collection of the revenue, the provision of the Company's investment, and all other Financial and Commercial concerns of the public, shall be amenable to the Courts for acts done in their official capacity in opposition to the Regulations."

By section 10 of this Regulation the public officers who could under the foregoing declaration be sued in the Civil Courts were specified. They were the Collectors of Revenue and Customs, Commercial Residents, Salt Agents, Mint and Assay Masters, and their respective Assistants. By subsequent Regulations, Opium Agents were similarly made amenable to the Civil Courts. As Regulation III of 1793 applied only to district Courts, it might be questioned whether the Government or the public officers above referred to could have been legally sued in any other Courts.

All this went to show that the restriction contemplated by the amended Bill was wholly in accordance with the spirit of the law up to a comparatively recent period. Of the ill-effects of the present system, under which the Government and its officers could be sued in any Court in Bengal,—where from various causes the Government and its Officers were probably much more frequently sued than in any other province,—he (MR. COCKERELL) could give no better evidence than reading to the Council extracts of a valuable paper on the subject of this Bill contributed by the Legal Remembrancer of Bengal (Mr. Bell), who stated as follows:—

"The most unseemly conflicts often arise between the local Executive and the local Judicial Officers. It frequently happens that a Munsif and a Deputy Magistrate are located at a sub-division. They are quite independent of each other, and there is a natural rivalry between them as to which of them shall be accounted the greatest. The Deputy Magistrate perhaps passes an order under the Criminal Procedure Code, directing the removal of a hut as an obstruction. The owner at once files a suit in the Munsiff's Court to have it declared that the ground upon which the hut stands is his private property, and prays the Munsif to issue an injunction to stop the Deputy Magistrate from carrying his order into execution. I could refer to a number of cases in which these unseemly conflicts between the local Munsif and the local Deputy Magistrate have occurred. In one case a Munsif went so far as to issue a warrant of arrest against an Assistant Magistrate for not obeying an injunction which the Civil Court had illegally issued.

"I will give another illustration of a case which came before me last month. An Assistant Magistrate in charge of a sub-division had sentenced a zamíndár to pay a fine, or, in lieu of payment, to suffer a certain period of imprisonment. The order was passed while the Assistant Magistrate was in camp, and as the zamíndár was not provided with the money to pay the fine, he was necessarily forwarded in custody to the lock-up. As soon, or almost as soon, as he reached the lock-up, his friends brought the money, paid the fine, and obtained his release. The zamíndár thereupon sued the Assistant Magistrate for damages, on the allegation that the Magistrate had acted maliciously in passing the sentence when he was in camp, and there was a further averment that the Magistrate had not accepted the fine when tendered.

"The first part of the plaint clearly disclosed no cause of action, for it did not allege that the Magistrate had acted without reasonable and probable cause; and the second part of the plaint merely involved a simple question of fact whether the money had been tendered or not. The Munsif, however, tried the case as if he had been an appellate Court over the Assistant Magistrate. He censured the Assistant Magistrate for trying the case in camp, for delaying to examine the witnesses, and for a number of other matters into which a Civil Court has clearly no jurisdiction to enquire, and he concluded an illogical judgment by dismissing the case, but casting the Assistant Magistrate in costs, because, in the judgment of the Munsif, the proceedings of his Court had been irregular. I have seen a great many similar cases, and I must record my deliberate conviction that it is most inexpedient to allow local Munsifs to

try suits against local Executive Officers. Such suits should be instituted before the Judge, and it should be left to his discretion either to try the case himself or transfer it to one of his subordinates."

He (MR. COCKERELL) concurred entirely in this view of the question, and from his own experience as Legal Remembrancer could confirm all that had been advanced by Mr. Bell against the present system. The cases cited by that gentleman were suits against the Officers of Government in respect of public acts, but he remembered suits, in which the Government had been plaintiff, dismissed by Munsifs who proceeded to deliver themselves, in their recorded judgments upon the cases in question, of gratuitous diatribes against the policy pursued by Government on large and important questions, in regard to which from want of knowledge of the circumstances they were not in a position to form any opinion. It was on every consideration inexpedient to allow such opportunities for the arraignment of the conduct and action of the Chief Executive Officer of the district, as the local representative of the interests of the State, by the Judges of the lowest grade of Civil Courts.

It was proposed to accompany this restriction as to institutions of this kind by a power of transfer to selected subordinate Courts. This also had been recommended by the Legal Remembrancer and was certainly necessary in Bengal where the District Judge might and frequently would not have the time to try himself all suits instituted against the Government or its Officers.

A very necessary provision (section 424) had also been inserted to compel previous notice of such suits. This was very much wanted, the number of such suits would probably be materially reduced by this obligation, as it often happened that matters which were taken into Court and made the subject of a suit could have been easily adjusted by some amicable arrangement, if the parties having a ground of action had taken the slightest pains to make known their claim in the proper quarter and obtain a private settlement of the subject of dispute. There was in Bengal at least, he feared, a too great readiness on the part of persons who considered themselves aggrieved by some action of the Executive authorities to rush into the Civil Court and submit their grievance to its arbitrament, without making the slightest endeavour to obtain the redress to which they considered themselves entitled in any other way. He (MR. COCKERELL) remembered a case in which whilst he was in correspondence with the subordinate Executive authority on the merits of a particular claim, the claimant went into the Civil Court, and the next thing that he heard

in regard to the claim was that a suit had been instituted for its enforcement against the local officer referred to.

There were precedents also for the proposed rule in regard to this matter in the general Police Act of 1861, and the various Municipal Acts which had been passed since that date, in all of which the issue of notice prior to the institution of a suit against a public officer for acts done in his official capacity was made a condition essential to the validity of such suit.

He had no further remarks to make on the provisions of the Bill at the present time, and would only add that in his opinion it constituted even, as at present arranged—and further improvement ere it became law might be anticipated—a very decided amelioration of the existing Code of Civil Procedure.

The Hon'ble MR. HOPE said that as his name appeared upon the Report of the Select Committee on this Bill, presented to-day, he thought it was only just, both to his co-signataries and himself, that he should draw the attention of the Council to the fact that he had only very recently been made a Member of the Committee. From that, it followed that his colleagues on the Committee had had to bear the burden and heat of the day in this very elaborate, troublesome, and difficult matter; and, on the other hand, that perhaps his responsibility in having signed the Report might be considered to be of a somewhat more limited nature than it otherwise would have been. His position in this matter would appear to be one to a certain extent *ab extra*, not indeed that of the jealous stepmother; but rather he would say of the friendly critic, than of the confident and yet modest author.

He would now observe that the Act of 1859 which it was proposed to repeal and replace by another was the first of those great codes passed for India with which we were all familiar. The laws which it superseded were framed in the earliest years of British rule in this country; they were passed in the face of the practical difficulties of governing large and ill-understood nations, of whom it might fairly be said that we knew their law little, their customs less, and their tendencies not at all. In consequence of this the laws passed at that period with regard to civil judicature almost all of them bore the character, if he might so speak, of a compromise between legal theories upon the one side and the necessities of the situation upon the other. They contained many of the technicalities, and not a few of the absurdities, of English law. English law, he need scarcely say, enunciated in the most clear and unmistakeable terms the

majority of the great principles of eternal truth and justice which had been recognized in all ages and countries throughout the world, and it had been copied in those respects by the codes of almost all civilized nations. But, on the other hand, it must not be forgotten that just at the very time when it was being declared by one of our great Chief Justices to be the perfection of human wisdom, it was permitting women with children at the breast to be put to death for thefts of a few shillings, while Counsel endeavoured to mystify each other, as they had long mystified the outer world, by a combined jargon of monkish Latin and Norman French. On the other hand, those laws contained a number of simple and somewhat rude provisions which were alien to the text, and, in many cases, to the spirit, of British law, but at the same time were dictated by sound policy, humanity and common sense.

Such laws as he had endeavoured in these few words to describe, Act VIII of 1859 came in to supersede. No doubt, it would be unjust to say of the distinguished men who took a part in preparing and bringing into law that Act, what had been said of the Bourbon dynasty at the time of the Restoration, that though their experience had been what it was, they had learnt nothing, and forgotten nothing. At the same time it was, perhaps, at any rate not too much to say that it would appear, to some of us at least who can now look back, that they did not sufficiently realize two of the great facts—he might say characteristic features—of the society by which they were surrounded. One of these features was that it was, in India, an entire anachronism to treat all Her Majesty's subjects equally in the eye of the law. It might, no doubt, be very right, proper and necessary to do so in Middlesex, or parts of England less civilized than that; but it was different here. To class in the same category, and furnish with the same weapons, and put under the same disabilities, the astute Brahman and the cunning and greedy Baniyá, together with the wild tribes of our remote territories, such as the Bhíls, and others, such as even the simple kunbi, who were so different in every respect—to put them all together, and regard them as being equal in the eye of the law, was only to commit them to a most unequal and unjust contest. Another feature which they would appear not to have realized was, that the educated oriental intellect had peculiar tendencies to technicality and subtlety. In bye-gone days we saw those tendencies very clearly in the wondrous intricacies of the Sanskrit grammar, and also in the elaborate account system of the Mahrátha Government so well described by Grant Duff; and if we came down to our own day we found the same talent produced, on the one side, a few Native

Judges and Pleaders, of whom it might be said that they would be a credit to any country; and on the other, a class of money-lenders and low agents, who hung on to the inferior Courts, together with certain of the lower officials of such Courts, who for astuteness, greed, hardness and corruption were probably unequalled anywhere. Now, through non-realization of these characteristic features, Act VIII of 1859, instead of weeding out from the previous law all the elaborate technicalities which were then known to be so injurious, and all the absurdities which were fast becoming discredited in Europe itself; instead of doing this and on the other hand, embodying all the practical safeguards it contained and enlarging them with others which sixty years of experience had proved to be necessary, came forward and took the opposite course. It struck out such humane provisions as, for instance, the exemption, in the case of the judgment-debtor, of implements of trade and agriculture and the clothing of his wife and children from attachment and sale; and the result of the whole including, other legal changes then made, was that the unfortunate lower classes were chastised with scorpions, whereas before they had only been chastised with whips.

The consequence was that under the stimulus thus given there was a rapid continuation of the revolution which the defects of the earlier law had begun. From almost all parts of India the same cry arose regarding the indebtedness of the agricultural classes, the transfer of land, by sale or mortgage, to the money-lending portion of the community, and the hardship which resulted from property coming into the hands of those who were not likely to be good landlords, and who simply took it and held it for the purpose of making it a means of battening on the wretched cultivators who became their tenants. Now, on this subject he had got beside him one very large and ponderous volume which consisted of evidence taken by the Commission on the Dekkhan Riots in the Bombay Presidency; and another equally large volume containing a series of reports and papers collected from all other parts of India, which went to prove the existence of the same conditions there. There was not the slightest lack of evidence that almost everywhere the ryots stigmatized the Civil Courts as the cause of their misfortunes, and as the curse of their country. He feared that he might be supposed to have used exaggerated language in the remarks which he had felt it his duty to make. He could support what he had said by abundant proofs, but as time was short he would merely mention to the Council that Sir George Wingate, who was very well known as one of the most able of our administrators for some years in the

past generation, after writing very much in the same strain as what he had now been saying, used of the ryot the following words: —

"He toils that another may rest, and sows that another may reap. Hope deserts and despair possesses him. The virtues of a freeman are supplanted by the vices of a slave."

The whole tenor of his remarks was that the moneyed class, even then, had got the ryots completely at their mercy, and left them barely enough to keep the life in their bodies, the proceeds of their lands being almost entirely carried off. But there was, perhaps, a better and more recent authority than Sir G. Wingate. Lord Elphinstone, who, after holding the Government of Madras, succeeded to the Government of Bombay in the troublous times of the mutiny, and of whom it was well known that for calmness, impartiality of judgment, and a capacity for seeing clearly all things around him, he had perhaps no equal excepting Lord Canning himself, remarked as follows on this subject:—

"His Lordship in Council entertains no doubt of the fact that the labouring classes of the native community suffer enormous injustice from the want of protection by law from the extortionate practices of money-lenders. He believes that our Civil Courts have become hateful to the masses of our Indian subjects from being made the instruments of the almost incredible rapacity of usurious capitalists. Nothing can be more calculated to give rise to widespread discontent and disaffection to the British Government than the practical working of the present law."

But, in addition to those two authorities to which he had referred, there was a very large number of others. He might mention that he had seen almost exactly the same sentiments expressed in two Native newspapers in Bombay within the last fortnight. In our Acts which had been passed for the protection of Taluqdárs, Jágírdárs, Zamíndárs and Thákurs, there had been a practical recognition of the principle of what he had been saying. No doubt all those classes of the nobility and superior gentry had been relieved for sufficient reasons, but at the same time he could not help remarking that they were extremely fortunate, and owed their good fortune to their position, and not to any urgency of their case superior to that of the great mass of the people around them who, so far as they were concerned, rendered the passing of such Acts altogether superfluous. If there was, as had been urged in the passing of these Acts, a necessity for having the upper classes loyal, well-affected and contented with our rule, surely there was an equal necessity for having the great mass of the people in the same frame of mind. It was not a light thing to have the population of whole tracts rising in agrarian outrage as they

had done in Western India, and if we left this fact unheeded, we need not be surprised if at some future time we found that it was but the muttering of the thunder which preceded the storm. The upshot of all, therefore, that he had said was that it seemed to him that we must look at the report now presented chiefly from the point of view of how far it provided an effectual remedy for the gigantic evils to which we could not shut our eyes, and how far it retraced all such steps of past legislation as experience had proved to be false. He would wish therefore the assent which his signature to the Report implied to be taken as qualified in this sense. In the remarks he had made, however, he would beg not to be for a moment understood as casting any imputation upon the members of the Judicial Department, European or Native, who administered the law. His quarrel was at present entirely with the law itself; and equally he did not mean to imply that his colleagues, who possibly in these matters might not be inclined to go so far as he was going, were blind to all he had brought forward. The question, however, appeared to him to be of such importance that he felt he ought not to hesitate in expressing his opinions upon it in somewhat strong terms.

In the Bill itself which accompanied the Report presented to-day, he noticed, with pleasure, a certain number of provisions, in which it appeared to him a vast improvement had been effected. One of those was the supervision of the Small Cause Courts, the details of which had been alluded to by his hon'ble colleague. Another provision was that by which trials were required to be, as far as possible, condensed, instead of being perpetually adjourned for a week, a fortnight, or a month at a time for practically insufficient reasons. A third was that which permitted the successor to a Judge to act upon the evidence taken by his predecessor, which would do away with an evil which in some instances had gone to the extent that after a case had been brought up to a state of decision, everything had to be begun again, simply because the Judge had been removed to another station or from some other similar cause. Again there was the abolition of general attachments, and likewise the exemption from attachment and sale of certain necessary property of judgment-debtors,—their implements of trade and husbandry, their clothing, the houses in which they lived, and so forth,—which his hon'ble friend, Mr. Hobhouse, had fully commented upon. Further there was the definition of the interest to be sold as far as it was possible to define it, a point of the utmost importance, and one which he trusted might even yet be made more clear before the Bill became law. Again there was the rateable division

of the assets amongst the judgment-creditors, and in conclusion there was the reduction of the periods of attachment and of imprisonment in cases of specific performance and injunction.

Those were all points upon which, as he had said, a considerable improvement had been effected. There were some others, however, upon which, he confessed, he felt considerable doubts, but he wished to be considered as reserving his final opinion upon them for three reasons which he would explain. One of course was that he had only very recently joined the Committee, and that he had not, therefore, had the advantage of hearing the whole of the arguments which had induced his colleagues to draw the Bill in these instances in the form in which it now stood. Another was that there was a large body of fresh evidence of which the two volumes to which he had just now directed the attention of the Council were only about one-third, which had been mostly collected by the Commission appointed by the Bombay Government to consider those agrarian riots in Western India to which he had already alluded, and his colleagues, or the Council, had had no opportunity of studying it. Indeed he must himself confess that he had only been able to get through it in a rather superficial manner. The third reason was that this Report of the Puná Commission, although it had been for some months before the Bombay Government, had not yet been formally considered and disposed of by them, nor, in consequence, had it come before the Supreme Government. Now, it would be very important to know the opinions of those two high authorities before the Committee themselves came to a final decision upon the subject-matter of the Report. It might, perhaps however, facilitate future discussion both in Committee and in Council, if he were to mention, in as short terms as he could, bearing in mind the length to which the discussion had been already prolonged, a few of the principal points which appeared to him to require consideration, and he would do so in the light of some of the evidence which this Report had brought forward, premising that the Commission who had submitted it was a Commission in the highest degree worthy of the confidence both of the Government and the public, inasmuch as it was composed of two most distinguished officers of the North-West in succession, one of our most rising Bombay Civilian Judges, a talented Revenue Officer, and one of the oldest and most experienced Native administrators of Western India. Also, as regarded the appendices, he might say that the great mass of evidence which they contained was not merely the evidence of Revenue Officers who, as we were all aware, were supposed to be very excitable persons, but also of Judicial Officers, both European and Native.

One of the points he would propose to notice very rapidly was the question of the service of a summons. His hon'ble friend Mr. Cockerell had already gone at some length into the question, and he would at present merely say that the Committee had rightly determined to secure evidence first of all that service of summonses was not withheld, and also that non-service was not falsely reported, for fraudulent ends. It was, however, still a question whether the assistance of the village officers of Government should not in some manner be brought in so as to secure that the process-server should not simply return saying that he could not find the man, but should bring with him some report of a proper and reliable person saying that the man was absent, and where he had gone, in order to bring him back or otherwise ensure the proper serving of the summons.

Another point upon which his hon'ble friend Mr. Cockerell had also made some remarks was that of *ex parte* suits. Those suits were of particular importance in the Bombay Presidency, inasmuch as they stood at about 66 per cent. of the entire number adjudicated upon. The Committee ascribed this large proportion to the ignorance of the debtors, to their inability to meet the money-lender in Court without the expensive aid of pleaders, and also to the small amount of the debts, as to which it was a remarkable fact that out of 422,000 cases, no less than 295,000 were about less than Rs. 20. It would be a matter here for consideration whether the creditor should not be required in all *ex parte* proceedings to prove the existence of the debt which he claimed, and also to go into Court with clean hands, that was to say, that he should be obliged to shew that he had kept regular and proper accounts, and had been giving receipts for any payments that he had received from the debtor, and that he should shew this by reference to his general accounts, and not simply by producing a falsified sheet relating only to the particular debtor himself. It might of course be said that the Courts were insufficient for such enquiries. But, on the other hand, it was pointed out in one of the papers accompanying the Report that taking for instance the Bombay Presidency, there was a surplus of no less than ten lákhs of rupees of stamp-duties received in the subordinate Courts, that in the Courts of the whole Presidency there was a surplus of two lákhs and a half, and further that this surplus of two lákhs and a half would be about four lákhs and a half, were it not for the enormous expense of the Original Side of the Bombay High Court. The expense of the Original Side of the Bombay High Court, this paper said, was about three times as much as that of the Original Side of the Calcutta

High Court, notwithstanding that the business transacted was only one-third larger, and this extra payment thrown upon the ryots in the Mufassal amounted to about one rupee and four annas for every case decided throughout the country. Those facts no doubt, if they were such as they had been described, would appear to be worthy of great consideration, and might perhaps pave the way to having a more careful enquiry into *ex parte* suits than, under present arrangements, would be possible.

Another point he would refer to was that relating to the introduction of English into any Court by the order of the Local Government. He must confess that he himself did not quite understand why this alteration should be made, and it appeared to him to be one extremely to be deprecated. The public, he considered, suffered abundantly, as it was, from the delay, cost, and blunders of translation, both oral and written, of evidence in High Courts under the present system, without having the same evil extended to the Mufassal. As to the impression which his hon'ble friend, the Mover, entertained, that this system would be attended by a saving of expense, he ventured to think that the result would be exactly the reverse, because, whereas at present only those papers were translated which were necessary for appeals, under the proposed arrangement the translation would affect all the exhibits and documents of that kind in every case, whether it was appealed or not; and, further, there would be a fresh evil introduced: the stream of truth would be in danger of being poisoned at the fountain-head. When a document was put in to the lower Courts, at once it would go into the hands of some ill-paid subordinate for translation into English, and a very large door would thus be opened for every kind of fraud in the translation itself, which the superior officers would have no means of checking whatever With regard, again, to taking the evidence of the witnesses themselves, it was true that the Code here provided that whenever the evidence of a witness was taken down in a language which he did not himself understand, it should be interpreted to him in his own language; but he (MR. HOPE), from a considerable amount of experience in this matter, had no confidence whatever in such *vivâ voce* interpretations, and he did not see how a man could be made liable for perjury for a statement made unless the statement had been read out to him from writing in his own language.

Another point was the introduction of the new English provision with regard to the discovery of documents. It appeared to him that this measure was extremely likely in this country, where we had to deal with so many

peculiar tendencies, to lead to a paper war between astute pleaders; and the result might be, that one party or another might be involved in the serious penalties which the Act now provided.

Another important matter was the introduction of the system of affidavits, which his hon'ble friend, the Mover, had stated were an entirely new instrument in the Mufassal. He should say, however, that they appeared to him very much like an old friend with a new face. When he came to India he found that a practice, though then dying out, was still existing in many parts of the country. The practice was this, that when cases had to be heard the presiding officer called four or five of his clerks, and said to one—"You sit in that corner and take the evidence of that witness," and to another he gave similar orders, and so on with the rest; and in this way four or five different men's evidence was taken simultaneously. Half a dozen cases were thus conducted simultaneously, and when all the depositions had been taken they were read out hastily, and a decision was passed without the Officer having seen the demeanour of the witnesses, or the witnesses knowing what they were recorded as having said. It was well known that in England the system of affidavits lead to a great deal of "swearing up to the mark" and of learning the affidavit by heart so as to stand cross-examination, and in this country there were infinitely greater facilities for its abuse. If admitted at all, it should be so for pure matters of form only.

A further point was that of payments out of Court, which was proved to be one of the most fruitful sources of oppression in the Mufassal. If time were not pressing, he could quote remarks by more than one Judge in the Mufassal in which it was said that people were sometimes brought up before them who had paid the amount of a decree three or four times over; that owing to the creditor having been so fraudulent as to induce the debtor to make payments out of Court, the creditor was enabled to snap his fingers in his face and to get execution of the decree over and over again. He was aware that there had been a certain amendment made in the Bill on this subject, but whether that met all the objections which the Commission brought forward, or whether the abolition of the provision as to requiring payments in Court was advisable, were still questions for consideration.

With regard to sales of land, he had nothing to add to the very full exposition of the subject made by his hon'ble friend, the Mover. On the whole, he should say that the provisions of the Bill pretty well came up to the recommendations in the Report of the Dekkhan Riots' Commission in that particular. At

the same time the Report itself did not seem to be very definite on this particular point, and its appendices contained a variety of conflicting opinions on the subject by a large number of very high officials, both in Judicial as well as in Revenue employ.

Another point, which he was obliged to notice, was the question of imprisonment for debt. The draft of the Bill, now submitted, certainly made a very important amendment in the law, in that when a man was brought up and arrested for debt, the Court was to be bound at once to explain to him that he might have the benefit of the Insolvency Law; and further, if he declared that he wished to take the benefit and gave security for his appearance, he was not to be detained or sent to jail at all. This, no doubt, would remedy the evil, well known to exist now, of ryots being totally unacquainted with the existence of an Insolvency Law. He was also aware that the period of imprisonment for debt had been reduced by the present Bill; but the Commission recommended the entire abolition of such imprisonment upon two broad grounds. In the first place, they urged that it had, in point of fact, with certain exceptions which it was scarcely necessary to particularize, been abolished by almost all civilized nations in the world, and they quoted no less an authority than that of Mr. John Stuart Mill, who said that—

"the ancient laws of most countries were all severity to the debtor. They invested the creditor with a power of coercion more or less tyrannical, which he might use against his insolvent debtor, either to extort the surrender of hidden property or to obtain satisfaction of a vindicative character which might console him for the non-payment of the debt. This arbitrary power has extended, in some countries, to making the insolvent debtor serve the creditor as his slave; in which plan there were, at least, some grains of common sense, since it might possibly be regarded as a scheme for making him work out the debt by his labour. In England the coercion assumed the milder form of ordinary imprisonment. The one and the other were the barbarous expedients of a rude age, repugnant to justice as well as to humanity."

The second argument which the Commission used was with reference to the gross abuses to which this power of imprisonment led throughout the country. It appeared that the terror of being put into a prison, even for debt, was so extraordinary and so unreasonable among the native population, that they were willing to make any sacrifices, even in some recorded instances to the extent of surrendering their wives and daughters to the creditor for immoral purposes, rather than be sent to jail; and further, that it led to absolute slavery, and also to the execution of fresh

bonds upon any terms whatever. They were aware that in some parts of India those powers of imprisonment were said not to be abused; but the Commission also urged that the evidence was, at best, doubtful, and that they must judge the case, not merely by the number sent to jail, but also by the number who did not go to jail, and so obtain the amount of pressure which took place under the application of this provision.

In connection with this matter was the question of insolvency. The present Bill had extended the benefit of insolvency to all judgment-debts scheduled by the creditors, and it had, likewise, increased the limit of the amount for which a man could get an absolute discharge from one to two hundred rupees; but the Commission urged that nothing less would be sufficient, or was reasonable, than a complete discharge. They dilated at great length on the ruinous effects on the industry of the country of depriving the ryot of all stimulus to improving his land or extending his cultivation; they referred to labour bonds, execution, and so on; and they said that, while the creditor had under our Code here more protection than in almost any other civilized Code in the world, the debtor had not only less, but absolutely none at all. They strongly urged that when the debtor got his discharge, he should get it altogether; provided, of course, he was not fraudulent, and that his discharge should not be, as at present, accompanied by a power to seize all his future property for a long period of years.

He had now spoken at a length which he feared must have been somewhat tedious to the Council; but the great importance of the subject of procedure to the entire population of British India must be his excuse. In a very few words it might be said that the classes who were suffering were being ruined, not on account of their own improvidence or of the money they borrowed, but on account of the money which they were falsely said to have borrowed, and which our system enabled their creditors to recover. He had also borne in mind the mass of evidence that was yet to be considered, and the extreme difficulty of getting a Code of this magnitude when once passed, revised again more than once in the course of a generation.

Finally, it was, perhaps, unnecessary for him to explain that he had not spoken as he had with any intention of retarding the passing of the Bill before the departure of his hon'ble friend, the Mover, from India, or from any suspicion that what he had said would have such an effect. All the evidence was now collected and at hand, and he saw no reason why it should not be exhaustively considered with little loss of time. He, undoubtedly,

should regard it as a public calamity if the Bill were not got through the Council before it was deprived of the assistance of one who had guided it from a very early stage with all the acuteness of his intellect, and all the weight of his authority, and if it consequently failed to be the fitting conclusion to an Indian career, which had left so many important landmarks upon our Statute-book and upon our Administration.

The Hon'ble SIR ALEXANDER ARBUTHNOT said that he would not detain the Council many minutes. He wished however to say a few words, first with reference to the observations which fell from his hon'ble friend Mr. Hope regarding section 184 of the Bill, which would enable the Local Government to permit the evidence of witnesses to be taken down by the Judge in English. That was a point of considerable importance, and he had no doubt from what had fallen from his hon'ble friend that the provisions of the section would elicit some criticism. He would here only observe that the provisions in question appeared to him to be exactly similar to the law which now obtained on the subject of Criminal Procedure, and from what he was able to learn from the working of that provision under the Criminal Law in the Presidency to which he formerly belonged, he had every reason to think that the provision was a salutary one. But the point upon which he most especially wished to say a few words to the Council had reference to the remarks which had fallen from his hon'ble friend Mr. Cockerell regarding the want of familiarity, and the want of sympathy, with the great mass of the people who resorted to our Courts, which, in his opinion, characterized the present class of Judges who presided over the inferior Courts, and which he attributed to the particular description of education they received and the training they underwent in qualifying for their judicial functions.

The Hon'ble Member's remarks on the subject were in some measure qualified by the special reference which he had made to the Province of Bengal, but from their general tenor it appeared to him (SIR ALEXANDER ARBUTHNOT) that the Hon'ble Member conceived them to be practically of general application. For his own part he had little or no personal knowledge of Bengal, but he confessed he should be surprised to learn that the views which appeared to be entertained by his hon'ble friend were generally concurred in by the great majority of the officials of Bengal. Speaking for the south of India, he was able to affirm—and he could confidently affirm—that the educated natives who now presided in the inferior Courts were not only far better qualified in respect to education and training for the duties which they

had to discharge, and had not only attained to a higher standard of official honour and integrity than that which characterized their predecessors, but that in respect of knowledge of, and sympathy with, the habits and feelings of the great mass of their countrymen among whom their lives were passed, they were in no way inferior to those who had gone before them. He thought it due to the many acquaintances and to some valued friends whom he possessed among the native official hierarchy in that part of India in which the greater portion of his official life had been passed, an official life which he might remark commenced exactly that day thirty-four years ago, to offer this brief reply to the observations which had fallen from the Hon'ble Member.

The Hon'ble SIR WILLIAM MUIR said that, without detaining the Council at any length, he wished to express the gratification he had felt at listening to the remarks of his hon'ble and learned friend who had brought up the Report of the Select Committee, especially in respect of the provisions for the sale of landed property in execution of decrees of Court. The subject had engaged attention as far back as he could remember, and particularly during the last five and twenty years. It was forced upon public attention most painfully during the events of 1857-58, when the ousted proprietary bodies throughout the country formed one of the most dangerous elements of society. Sale had everywhere ruined numerous hereditary proprietors and village communities, and everywhere had changed them from a contented and faithful yeomanry into a repining and disloyal body of cultivators ever brooding over their grievances and predisposed on the first opportunity to break out into lawless acts. When deprived of their proprietary title, they were still, as a rule, left in the cultivating occupancy of the soil,—powerless for good, but most active and vigorous for evil—a rankling sore in the side of Government.

Under the existing law, it was true, provision had been made for such sales to be conducted by the Collector, and it was at first supposed that that functionary was invested with some discretionary powers to avert the sale where possible. The Courts however had ruled otherwise; every endeavour had been made to work these provisions, but the law was so drawn that they were found to be nearly inoperative. Many projects had of late years been discussed with the view of checking the rapid transfer of landed property into hands which were found so unfitted for its management, but they had all fallen through. The powers which it was now proposed to confer upon the Executive would tend greatly to remedy this evil. They would enable the District Officers to interpose effectively, and by lease or farm or mortgage, or even by direct

management, to make the best possible arrangement for saving the property and rescuing the proprietor from ruin if it were possible to do so.

The limitation of the power of directing sale to the District Courts would also be beneficial as shewing the importance attached by the Legislature to the measure, and thus tending to check the indiscriminate transfer of land. It was far from his view, however, to justify this limitation on any grounds disparaging to the lower Courts, or implying distrust of their qualifications. He must dissent from the sweeping condemnation of our Civil Courts by his hon'ble friend Mr. Hope; the Courts would no doubt always be unpopular with certain classes; but he was persuaded that, as now worked, they were not unpopular with the community at large. No doubt our system had been heretofore too rigid and inelastic, and in this matter of the sale of land they had created a great and crying evil. The transfer of land was a result which sooner or later must follow upon the advance of civilization and the introduction of settled laws; but it was a result, as remarked by his hon'ble and learned friend, the rapid and mechanical enforcement of which by our Courts was every way to be deprecated as fraught with much evil. It must come gradually and slowly as society was prepared for it. SIR WILLIAM MUIR also entirely concurred with what had fallen from his friend Sir A. Arbuthnot in reference to the Hon'ble Mr. Cockerell's remarks on the junior ranks of the Judicial Service. He was quite sure that there was no deterioration in them. While much improved as a rule in their mental training and legal knowledge, he did not consider them to be at all inferior to their predecessors in sympathy with the people and knowledge of their habits, as well as in upright and honourable feeling. The case might be different in Bengal; he spoke of course only of the Provinces with which he was personally acquainted. The senior Judicial officers in the North-Western Provinces contained among their ranks men of the highest reputation in the land, such as his friends Muhammad Sayyid Ahmad Khán (now he was sorry to say retiring from the service), Rai Bakhtáwar Singh, and many others who would be an honour to any service; and he felt assured that the juniors would not in any respect, either social, intellectual or professional, be inferior to them.

It was not then for any such reason he was glad that it had been resolved to limit the authority for directing sale to the district Courts; but because the limitation to these higher tribunals would necessarily secure the closer and more uniform attention to the procedure which it was the object of the legislature to enforce. It might be objected that all such limitations to the ready

and immediate sale of a debtor's property were prejudicial to the interests of the judgment-creditor. No doubt there was force in that objection. But in view of the great political object of securing a contented and useful proprietary, and the grave evils of the opposite, he felt that the balance of gain to the nation was vastly on the side of the course proposed. It was therefore a matter of the highest satisfaction to him to see an object which he (SIR WILLIAM MUIR) had long had at heart so promisingly near completion before his retirement from the country. He earnestly hoped that these provisions would before long become law in substantially the same shape as that in which they were now before the Council.

There was but one other subject which he (SIR WILLIAM MUIR) would notice, and that was the imprisonment of debtors. He did not go quite the length which his hon'ble friend Mr. Hope did. But he thought it worthy of consideration whether the law might not be greatly relaxed in the case of female debtors. The subject he understood had received the careful consideration of the Select Committee, who had not seen their way to exempting females from liability to arrest and imprisonment. In British Burma, for example, it was known that women very generally carried on trade on their own account, and could not therefore be well exempted from the penalties to which men were liable. It was otherwise, however, in most parts of the Empire; and considering the position of the female sex in India, it seemed to him that it might be possible to meet the object in view by empowering Local Administrations to make the exemption wherever it was thought advisable. He must admit that in all his inspections of jails in Upper India, the had never me with a civil female prisoner incarcerated for debt; still the difficulty might occur, and it might be wise therefore to bring the law even in theory into accord with the feelings and customs of the great body of the people.

The Hon'ble MR. BAYLEY said he would only detain the Council for a very brief space, as what he had had to say had been generally anticipated by the Hon'ble Members who had already spoken. He could only add his testimony to that of his hon'ble friend (Sir William Muir) who was immediately seated on his right hand, and whose experience in India was even longer than his own, that the present Bill was a very great step towards the improvement of the Civil Procedure Code. He perhaps went further than other Hon'ble Members present in his opinion as regarded the condition of the Civil Courts before Act VIII of 1859 was passed. He believed that the Courts then were—and deservedly—extremely unpopular, and that the

morale and *personnel* of the Subordinate Judges and their staffs were really about as bad as they could be, with some very few exceptions, while the procedure was so complex that it gave opportunities for delay, confusion, corruption and fraud which it was almost impossible in the present day to realize. In the latter respect Act VIII of 1859 effected a very great improvement, and he believed that the point on which it was weakest and in which the present Bill was especially an improvement upon it was with regard to the execution of decrees.

The two sections on this subject to which his hon'ble friend Mr. Hobhouse had alluded were without question originally intended to give a power of interference to the Executive which the provisions now introduced gave with a larger scope and in fuller detail. They were introduced, he believed, at the instance of the then Secretary of State, the present Lord Derby, with especial reference to the results of the mutiny and to the truths which that event brought to light, and he could testify from his own experience that the earlier working of the Act was very much that which was now more distinctly formulated and introduced into the present draft. It was found as a matter of fact however that the wording of the sections as then drawn did not warrant the interpretation first put upon them, and it had been gradually contracted by judicial decision until the sections had almost become null and void. The Bill, however, as it was now drawn would restore what he believed was the intention of the framers of Act VIII of 1859, and also give all the further improvements which experience had suggested. He would instance only one section which had not been noticed by his hon'ble friends who had spoken before him, which seemed a very small and imperfect section in itself, but was nevertheless one which might be found to cover a very great surface. It consisted in this—that it gave power to the Collector, even in those districts in which the Collector was not entrusted with sales of immoveable property, to intervene and to represent to the Court which was about to sell any landed property that he considered that public inconvenience would arise from the sale. He believed it was notorious that in the celebrated case of Koer Singh of Behar the Collector had actually taken steps to relieve him from the weight of his embarrassments, and it was only because by reason of the want of a due provision in the law, and the cumbersome proceedings consequently involved, that the Collector's efforts had failed. Had this section been then law he believed it was not too much to say that Koer Singh would never have gone to rebellion, that the flame of the mutiny of 1857 would never have extended into the

Provinces of Bengal, and what *that* involved and how much might then have been saved he need hardly bring to the recollection of those who were in the country at the time.

He wished now to refer very briefly to some of the criticisms made by his hon'ble friend Mr. Hope. Those criticisms did not exactly tell a flattering tale, but he had no doubt that they would prove to be very useful. On one point they brought out a fact of which officially of course the Council had no cognizance, that was the fact that a mass of evidence had been collected by the Puná Riots Commission. He (MR. BAYLEY) believed that this evidence was of great value, and it had not been before the Council or the Select Committee, nor was it even, he understood, before the Government of India at the present moment; but he had no hesitation in saying that it would be of great assistance in the further discussions upon this Bill, and he hoped that the Executive might be able to take such measures as would hasten the submission of that Report, and even without the opinion of the Government of Bombay, the facts by themselves, he was sure, would be most important. He did not proceed to an examination of the criticisms which his hon'ble friend Mr. Hope had made. He was not prepared to say that even with all the evidence before him he should be prepared to go the length he (Mr. Hope) would; but on some points, for instance with regard to the service of summonses, he believed it was very likely that the facts Mr. Hope had placed before the Council would be very useful in producing modifications of the procedure in that respect. He need hardly say that those who were acquainted with the history of Civil Procedure in India would be aware that all who had attempted to improve that procedure had found it to be the chief difficulty with which they had to deal, and that it was one of the main points brought to notice by the Commission appointed to enquire into the subject of the excessive transfer of landed property and the great frauds which arose in the district Courts of Cawnpore many years ago. The procedure was changed then, and had been changed again and again, and no doubt it was one of the most difficult points that we had to deal with still.

He thought that it was almost impossible that we could have too many facts or recommendations on this point, and he would therefore be very glad to see the evidence regarding it, to which Mr. Hope had alluded. He did not wish to make any further remarks; he was quite prepared to maintain that the Bill as it now stood was a great improvement on all previous legislation in India on the subject of Civil Procedure, and he for one was

willing to lend his aid in the direction of further improvement before it was passed into law.

The Hon'ble MR. HOPE said that, with the permission of His Lordship, he wished to observe that his remarks about the use of English in Court had sole reference to the possible employment of English Barristers in the Mufassal. They had no reference whatever to the Native Judges, who in the Bombay Presidency were all that his hon'ble friend Sir Alexander Arbuthnot had described them to be in his own. He might further, perhaps, make clear, if he had not already done so, that on all the points upon which he had mentioned what the evidence and opinions of the Bombay Commission were, he reserved his own judgment pending the final consideration of the Report. At the commencement he had expressed a disinclination to father everything in the Report of the Committee, and he was equally reluctant to do so as regarded that of the Commission.

The Hon'ble MR. COCKERELL desired, with the permission of His Excellency the President, to say a few words by way of explanation to the Council in reference to what had fallen from certain Hon'ble Members opposite (Sir W. Muir and Sir A. Arbuthnot). He (MR. COCKERELL) was represented as having stated that in his opinion the inferior Civil Courts of the present time were unpopular, or at least less popular than those which had preceded them. Now he certainly had made no such direct statement, and he did not think that his remarks on this question could be reasonably construed as implying that such was the case. What he had said—and he must remind the Council that he had expressly confined the application of his remarks to the Province of Bengal in which alone had he the necessary practical experience to enable him to form a correct opinion on such a question—amounted to this; that the judicious exercise of large discretionary powers could not be secured or limited by any positive rule of law, but depended rather upon the possession of a familiar acquaintance with the habits and customs of the people at large and a thorough interest in, and sympathy with, their social usages, feelings and prejudices, than a scientific knowledge of the law or general intellectual capacity; that the circumstances in which the high class education and superior intellectual acquirements of the young men of the present day were obtained—he referred to their separation from their homes and dwelling in large towns within the precincts of the higher class educational institutions, their aspiration for proficiency in the English language and literature so zealously pursued, that they not only habitually wrote and spoke,

but might be said almost to think in English, and their general anglicized tone, and disregard of the restrictions imposed upon them by the caste regulations and religious tenets of their forefathers—had a decided tendency to estrange them from the mass of their countrymen; and that the highly educated young man of the modern school, in Bengal, was in effect almost as much a foreigner to the orthodox members of his race as the European himself.

The Motion was put and agreed to.

STAGE CARRIAGES BILL.

The Hon'ble MR. BAYLEY presented the Report of the Select Committee on the Bill to amend the Stage Carriages Act.

The Council adjourned to Wednesday the 4th October 1876.

SIMLA;
The 21st September 1876.

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

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