ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

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

The Council met at Government House on Tuesday, the 9th March 1875.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble B. H. Ellis.
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 John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.

HIGH COURTS CRIMINAL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction be taken into consideration. He said :—"This is a Bill which in one shape or another has been a long time before the Council, for leave to introduce it was obtained by my friend, Mr. Stephen, in the year 1872. There was considerable delay in introducing it, because, almost simultaneously with its first mention here, the Local Governments were consulted about it, and we could not prudently or properly introduce the Bill until their answers were received. The subject-matter of the measure was a larger one than it now is, because it embraced not only the procedure of the High Courts but that of the Police Courts in Presidency Towns, and it required a careful consideration of the whole Criminal Procedure Code before an opinion of any value could be given on the question what sections we should apply to the High Courts, and what to the Police Courts. At first sight it seemed proper to combine in one Bill two branches of Criminal Procedure, each relating to the Presidency Towns, and the first draft of the Bill,

which I introduced in the month of July 1873, combined the two accordingly. That however was a mistake, as we found when we came to work the Bill in Committee. The two portions of the Bill are subject to quite different considerations; they involved communication with different sets of officers; they promised to travel at different paces; and have ultimately been subjected to very different treatment. Accordingly we determined to cut our Bill in two, and to let each half take its own independent course. That was done in the month of April 1874, when we presented our first report.

"Up to that time we had framed our Bill on the principle of applying to the High Courts certain parts of the Criminal Procedure Code in block, and by reference to the chapters and sections of that Code. We were however very much urged, especially by the High Courts of Bombay and Calcutta, not to do the work in that fashion, but to set forth *in extenso* all the sections of the Code which we proposed to apply to the High Courts, making the requisite alterations in the text of each section. On further examination of the subject we thought that the learned Judges were right, and that we should avoid a good many ambiguities and errors by taking the trouble to set out the sections at length. Accordingly we made that alteration, and the Bill was published in its new form about two months ago.

So much for the shape which the Bill has now assumed. As regards its substance, the Council knows that our objects in introducing it were partly to consolidate the law relating to the Criminal Procedure of the High Courts, partly to bring it more into accord with the procedure established for the Mofussil, and in some respects to provide simple processes instead of complicated ones. The present practice of the High Courts is regulated partly by several Indian and English enactments, which we propose to repeal and consolidate, and partly by the rules of English common law imported into India by the first Chartered Courts. The Select Committee who sat upon the Criminal Procedure Code reported that the Mofussil practice should, so far as possible, be applied to the High Courts, and the Bill is principally devoted to that operation.

"After some preliminary sections we commence with the commitment of the accused, when the High Court first gets cognizance of the case, and detail the procedure up to the time when a plea of guilty or not guilty is put in. That occupies Chapters III and IV of the Bill, and brings us to the subject of juries, to which Chapter V of the Bill is devoted.

"This part of the procedure is now regulated by special Acts for the High Courts: and in the first instance we contemplated little more than a consolidation of the High Court law about juries. But we were strongly advised by some very high authorities to introduce so much of the Mofussil practice as allows of a less number of jurors than twelve, and so much as dispenses with the necessity for an unanimous verdict. And believing that this practice of the Mofussil was more suitable to the circumstances of India, even in the Presidency Towns, than the English practice, we made some important alterations in that direction in the month of April last year. I then presented our report, and took the opportunity of explaining to the Council the changes that had been made, saying that I anticipated a great deal of controversy and criticism upon them. Events however have quite belied my anticipations, and have proved that men's minds were ripe for the proposed change. Though the proposal has been before the public for nearly a twelvemonth, there has been exceedingly little controversy upon it. The learned Judges of the Bombay High Court are or were not agreed among themselves on the question of unanimity, but that disagreement arose before our alteration was proposed, and was consequent on a proposal spontaneously made by one of their own body to abolish the rule of unanimity. They have said nothing about the reduction of numbers, and nothing further about the rule of unanimity, since the publication of our altered Bill. Possibly they have felt what I have always felt with respect to this matter, that as Judges cannot always attain unanimity among themselves, even after weeks or months of consideration, it is hardly reasonable to expect it all of a sudden of twelve men caught at random and brought together for the first time to consider a wholly new subject. However, let the reason be what it may, the fact is that since the publication of the Bill in April 1874, we have received no objection to the principle of the alteration except from the British Indian Association, who, to use their own words, 'submit that the merits of the jury-system lies in the unanimous verdict of twelve good men and true.' And they think that the liberty of the subject is better guarded by requiring unanimity. An obvious answer to such observations is that the unanimity which is thus talked of does not really exist. Which of us ever knew twelve men agree on any matter which was capable of being disputed with even a shadow of plausibility, or indeed, for the matter of that, without any such shadow? We know that such a thing never happens; and that it is a mere pretence to talk of its happening in the jury-box. The merit of the jury-system, considered as a mode of administering sound justice (for its political and social merits are not under discussion here), has always seemed to me to be that the view which recommends itself to a decided majority of reasonable and impartial people

generally prevails. But that advantage is best secured by requiring a decided majority coupled with the agreement of the Judge. It is not secured by requiring an outward show of unanimity. On the contrary, to require that is to put a dangerous power into the hands of any crotchety wrong-headed person who may happen to be upon the jury.

"But I feel relieved from the necessity of arguing this point with any degree of elaboration, because of the great preponderance of authorities in this country in favour of the principle of the change we have proposed. The High Courts of Calcutta, Madras and the North-Western Provinces, and the Chief Court of the Panjáb, all accept it favourably. The Madras Government was the first to urge it on us. The Governments of Bombay and of the Panjáb both express approval of it. The late Lieutenant-Governor of Bengal, who drew his experience of the working of juries from England as well as from India, gave his emphatic approval of it at this table.

"In fact, with the exception I have mentioned, there has been no controversy on anything but the details of the alterations. What we propose is that a jury shall consist of nine persons, the maximum number required for the Mofussil; that when they disagree, a majority of two-thirds shall suffice for a verdict if the Judge agrees with them; but that, if there is no such majority, or if the Judge disagrees, there shall be no verdict, and the jury must be discharged, as it is now in case of disagreement. Well, there are different opinions about the number of the jury, and there are different opinions as to the proportion which should constitute a decisive majority, and as to the exact position which the Judge should occupy. Those opinions conflict with one another: some would urge us in one direction, and some in the contrary one. The result is that on the whole we thought it better to make no alteration in what we proposed by the draft published in April 1874. After all, rules on this subject must be arbitrary: there cannot be any very close argument about them; we can only guess what rules are likely to work most smoothly in practice: we found that we had chosen a middle path between the limits of opinion, and thought that that path would be the safest to continue in.

"Passing from the subject of juries, the Bill goes on to regulate the procedure at the trial and a number of points connected with the evidence: then the Judge's charge, the verdict and the sentence. That takes us to the end of Chapter X of the Bill, and completes the ordinary procedure which is wanted for all trials. Then come some chapters relating to incidents of an exceptional character; one to Previous Convictions and Acquittals; one to Lunatics; one to Prosecutions for offences against the State and affecting public servants; and

two to Bail and Security for keeping the peace. Finally there comes a chapter of Miscellaneous matters, some of which are of considerable importance. In section 146 we affirm the right of the Advocate General to intervene on behalf of the Crown to stop any prosecution at any stage of the case prior to the verdict. It is very important always to bear in mind a principle which underlies all criminal proceedings, but which our position in India sometimes tends to conceal: the principle that a criminal suit is not a mere question between the person injured by the crime and the accused, but that the public have an interest, and the greatest interest, in it, and that the Crown is the representative of the public, and is the true plaintiff in every criminal suit, and has dominion over it throughout. That principle we affirm and apply in this section.

"Then section 147 enables the High Courts in the Presidency Towns to draw into their own hands the trial of any criminal case within the limits of their ordinary original jurisdiction; and section 148 enables them to order the attendance before themselves of prisoners in all proper cases. These two sections are intended to take the place of the more cumbrous proceedings by writs of *certiorari* and *habeas corpus*. We have directed the Courts to make rules for the proceedings by way of *habeas corpus*, and I believe it will be found that the procedure will be simpler and less technical than it used to be.

"I have now explained the general scheme of the Bill."

His Excellency THE PRESIDENT said:—"This Bill is, as my hon'ble friend, Mr. Hobhouse, has rightly said, a Bill of very considerable importance, and I am sure that the Council will agree with me in feeling that we are much indebted to Mr. Hobhouse for the great care and attention which he has given not only to this Bill, but also to other complicated and important Bills which have come before us during the course of the year. Opinions upon the provisions of this Bill have been carefully collected from all parts of India, and although the Bill has been accepted by this Council without any lengthened discussion, full explanations have been given from time to time by my hon'ble friend Mr. Hobhouse, and the Bill has received the most careful consideration in Select Committee.

"The papers that have been circulated to Members of Council show that it may now safely be passed into law.

"I make these observations for the purpose of stating that none of the provisions of this Bill have escaped attention, and that they have been most

carefully and fully considered at the different stages of its progress through the Council."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues be taken into consideration. He said:—"This is a Bill which I obtained leave to introduce just a twelvemonth ago for the following objects:

"*First*, it was found that the legal powers of the Port-authorities, which extend partly over ports proper, and partly over the channels leading to ports, were not sufficiently extended over the latter area, and the Government had not sufficient control over the traffic in those channels.

"*Secondly*, it was desirable to extend to other parts of India arrangements which have been for some time at work in Calcutta, for providing medical attendance for sick sailors and paying for it by a rate on the shipping in the ports.

"*Thirdly*, it was desired to extend to other parts of India certain powers for the arrest and detention of deserters from ships—powers which are already in force in the Presidency Towns.

"*Fourthly*, it was found that the law was scattered over a great many enactments, there being altogether no less than twenty-six relating to the subject. These we undertook to consolidate, and we proposed to set forth in a single table the tolls and dues leviable in the various ports of British India, and to bring into one enactment all the existing provisions on the subject.

"*Fifthly*, inasmuch as many of these enactments were passed for single ports, we found many useful provisions in force in one place and not in another. For instance, in Calcutta there are some useful provisions respecting fires and combustible materials, which do not exist for other places. No doubt for each place laws were passed according as events suggested them in that particular place; so that there were a considerable number of local powers and

regulations besides those I have specifically mentioned which in the process of consolidation we found not to be due to any local peculiarity, but to bear a general character, and to be fitly extendible to all ports. That amount of extension we proposed also to perform.

"When I introduced the Bill, I explained to the Council how it aimed at these several objects, and I may say now that, though it has undergone numerous alterations of small details, as was to be expected and as our reports fully explain, it remains substantially unaltered as regards the five objects I have mentioned. There are however one or two other points to which I ought to call the attention of the Council before proceeding to the consideration of the reports.

"One point is that we have introduced a definition of the expression 'high-water-mark.' The present law says that the Executive may define the limits of a port, and that such limits shall extend up to high-water-mark, but it says no more. Now the expression 'high-water-mark' contains two elements of uncertainty. The principle on which it is to be ascertained may be disputed; and again, when the principle is settled, it may be disputed what is the actual point of space which high-water actually reaches. Of course we cannot help the second of these difficulties: we cannot measure the ground in this Council. But the first difficulty we can help, and we have done so by saying that high-water-mark means the point reached by ordinary spring tides. The principle on which we have gone is this. The object of a Ports Act is that control may be exercised on behalf of the public over the space ordinarily used for the purposes of a port. When then we find that ground is frequently, regularly and according to the ordinary operations of Nature, covered with water, it is impossible to say that such ground does not fall within the natural limits of the port, or that it does not require the same control as other parts of the port. If a piece of ground is covered with the tide regularly even only once a month, it is used, or may be used, regularly by those who frequent the port: the circumstance that it may not be so used at neap tides does not prevent its being an integral part of the natural port, and any arrangements which left it out would be defective. We have therefore taken no account of neap tides; neither have we taken account of extraordinary springs or floods, such as may overflow the adjoining land once in a way; but have taken the flood-water of ordinary springs as the fairest and most probable interpretation of the expression 'high-water-mark' for the purposes of such an Act as a Ports Act.

"Some gentlemen indeed think that we ought to have struck an average between spring and neap tides; but that seems to us not to answer the purposes of a Ports Act, because it leaves the public without sufficient protection. And if the fact be that in our interpretation we have put too extensive a meaning on the expression 'high-water-mark', the persons to complain would be those who claim to be the owners of the adjoining shore. Now, as I shall show presently, the riparian owners of Calcutta have not gone to sleep over this Bill, but are quite alive to their own interests; and yet on this particular point of the definition they have raised no objection, though it was on the 15th of December last that I mentioned the matter in Council, and the Bill containing our interpretation was published immediately afterwards. I presume that they feel that the definition is only a reasonable one, and I hope that the Council will be of that opinion. After all the point cannot be one of very much practical importance, otherwise it would before now have been the subject of litigation, which I cannot find that it ever has been.

"Now I mentioned that the riparian owners took a lively interest in this Bill, and the reason is that they are engaged in a controversy with the Port Commissioners, or the Bengal Government, or both, respecting some rights claimed by them over the foreshore down to low-water-mark. So they have addressed us on paper, and have also had the kindness to meet us in conference, and have urged that the new Bill ought to contain something to place them in some more favourable position by recognizing the fact of their claims, and at all events the possible validity of them, which they say is denied by their opponents. Now there may be claims to private property of such a kind and on such a scale as to justify the legislature in interfering to settle them. But these Calcutta controversies did not appear to us to be of such a character. They appear to possess the characteristics of ordinary lawsuits, and we could not see why we should be called on to interfere on one side or on the other. Indeed I do not suppose that the riparian owners would be pleased if we interfered on the side of the public; and neither the Port Commissioners nor the Bengal Government have asked us to do so. Well then our position is that, whatever rights the public have against claims of private property, and whatever protection private property has received against the claims of the public, are to be found in the existing Act of 1855, and have been thereby ascertained and regulated for twenty years. It may indeed be for more than twenty years, but we have not looked behind the Act of 1855. At all events for twenty years the public have had the rights which the existing law gives them, and we could find no reason why those rights should now be lessened. If we were to attempt such a thing, I know what would happen: we should find ourselves

engaged in a lively controversy with the Port Commissioners and the Government of Bengal, on whom is thrown the duty of protecting the public interests; and there would immediately be a motion by my hon'ble friend the Lieutenant-Governor, or by my hon'ble friend Mr. Bullen Smith, or by both, to reduce the Bill back again into an expression of the existing law. So we determined to keep the Bill confined to an expression of the existing law. I will just read to the Council what the provisions of the law are on this subject. The Executive has power to define the limits of ports and to alter those limits from time to time. Then section 4 of Act XXII of 1855 enacts that—

"'Every declaration by which any port, navigable river, or channel shall be made subject to this Act, shall define the limits of such port, navigable river, or channel; and such limits shall extend always up to high-water-mark, and may include any piers, jetties, landing-places, wharfs, quays, docks, and other works made for any other purposes mentioned in the preamble of this Act, whether within or without the line of high-water-mark, and (subject to any rights of private property therein) any portion of the shore or bank within fifty yards of high-water-mark.'

and in a subsequent part of the Act, section 60, it is enacted that—

"'Nothing in this Act shall extend * * * to deprive any person of any right of property or other private right, except as hereinbefore expressly provided' * * *.

"Those are the powers vested in the Executive, and those are the protections thrown around private rights for the last twenty years or more. On this point we only purposed to re-enact the existing law, with such improvements of detail as occur on every occasion of re-enactment, and our duty was to see that the new Act would be substantially neither more nor less than the old. The Bill has been carefully and repeatedly examined for this purpose, and I believe that whatever doubts they entertained at first, the gentlemen who have communicated with us are now satisfied that, so far as regards any prejudice to their interests, the law is substantially unchanged; indeed, absolutely unchanged with the two exceptions I will mention.

"One exception is this. Section 4 of the Act of 1855 says that any wharfs, quays and so forth may be taken as within the limits of the port, and those words, if rigidly construed, would include a private wharf made at private expense for the convenience of private traffic. We now propose to say that only works made on behalf of the public may be so taken. We do that on the assumption that the literal construction of the section could not have been intended, and that a Court of justice would struggle as hard as it could against such a construction; but whatever the alteration may be worth, it is in favour of the riparian owners.

"The other alteration is a mere verbal one. The present Act says that the Executive may define the limits of ports; and we go on to say that they may do it by notification in the Gazette, or by means of maps, posts or otherwise. But it is quite clear that Government may do that now. He who has power to define the property over which he has control may define it in any way he pleases. He may adopt a mere abstract definition by words, or a pictorial one by maps and plans, or a mechanical one by boundary-marks fixed on the property, or any combination of those modes of definition. Whether the definition is made according to one mode or another of these modes, it may transcend the legal powers of the Executive, and if so it will be *pro tanto* invalid, and will not override any private right. The mere circumstance that the Act mentions some modes of definition does not alter the quality or enlarge the quantity of the original power of definition given by it to the Executive. These modes of definition are indicated on account of a notion prevailing in some quarters that definition means only a verbal definition; they are what theologians would call an accommodation, a concession to human weakness, which we are often obliged to make in our drafts, and which I for one usually make with some reluctance.

"I have thought it right to acquaint the Council with the nature of this controversy so that they may see how matters stand at this moment. But I am glad to think that the riparian owners do not now feel that the Bill is calculated to place them in a worse position by reason of any alteration of the law which it effects. We have now a memorial from them to the Council, which has come in only within the last twenty-four hours, and which shows the position they now take up. They are afraid that the mere re-assertion of the law will place them in some worse position. I will read their own words from the memorial:—

"'Section 5, clause (*c*), of chapter II of the Indian Ports Bill fully guarantees all rights above the high-water-line; but your memorialists fear that after the discussion which has taken place the silence of the legislature on the subject of rights below that line may be prejudicial to them.'

"By 'the silence' of the legislature is meant the fact that we say nothing to the point but that which the law now says. I confess I cannot see how that silence can have the effect ascribed to it. We are passing this measure for the purpose, *first*, of making some substantial alterations of the law; and, *secondly*, of consolidating the law with such small amendments as are incidental to consolidation. Consolidation is in the main re-enactment. How can a Court of justice draw any inference from a mere re-enactment

under such circumstances, and for such an object, except the inference that it is intended to leave the law precisely as it stood before?

"Again, if we admit the validity of such a doubt as is here suggested, just see where it would land us. A considerable portion of our work is the consolidation of written law, and I repeat that consolidation means the re-enactment of large portions of the law consolidated. Are we always to hold our hands directly we find ourselves re-enacting something on which a controversy exists? Take, for instance, the Civil Procedure Code on which we are now engaged. In that Code there must at any given moment of time be many passages bearing on some dispute or other. Is it to be said that one party to the dispute is prejudiced because the other puts a hostile interpretation on the Act, and the legislature then repeats the Act without taking notice of the dispute? If we admit that principle we should never effect any large consolidation without entering into a number of controversies which we are not competent to deal with, and for which the fitting arena is a Court of law.

"The memorial suggests that the Executive authorities are unduly straining the law against them. All I can say is that, if that be so, a Court of justice is not likely to look with favour on their case; but that is a matter for the Court to decide.

"I therefore trust that the Council will accept the principle to which the Committee have adhered, namely, that the new Act should upon this point be in substance a repetition of the old one.

"There is only one more alteration which I will mention to the Council. The present law gives the Local Government power to appoint a Conservator, and it says that the Conservator shall be subject to the control of the Local Government. But it does not say how that control is to be enforced. Of course when the Conservator holds other Government employment, as I believe is always the case in the smaller ports, there is no difficulty in controlling him. But when the Conservator is represented by a body of independent gentlemen performing their duties from a sense of public spirit, such as our Port Commissioners and Port Trustees in large towns, the case is otherwise, and I am not sure how, in the event of a vital difference of opinion, the control would be enforced. Possibly the Local Government would find no easier method than the clumsy one of moving for a *mandamus*. We have therefore supplied the requisite machinery, and have added to the powers of appointment and control the power of suspension and removal. Of course such a power would only be

exercised on the occasion of some very grave controversy, but then it is only on an occasion of that kind that there would be any practical difficulty about the right of control."

The Hon'ble MR. DALYELL said that there was one point in connection with the Bill which he thought it desirable to bring to the notice of the Council, as it had not been mentioned in either of the reports of the Select Committee, and had not been referred to by his hon'ble and learned friend, the mover, in the remarks which he had just made. Amongst the papers which had been considered by the Select Committee was a letter from the Madras Chamber of Commerce containing many valuable suggestions on an earlier draft of the Bill, most of which had been adopted in the present Bill. In regard to section 45, the Chamber of Commerce had said: "It is observed that no port-dues or fees shall hereafter be levied in any port except under the authority of this Act. The Chamber would remark that it is desirable that this section should not prevent port-dues being levied under a Port Trust Bill at Madras, in the event of a harbour being constructed." Now, when this suggestion had been considered in Committee, there was nothing to show that there was any immediate prospect of the construction of a harbour at Madras, and they did not feel justified in making a proviso in the section to meet only a possible contingency. Since the presentation of the Committee's report, however, he (MR. DALYELL) had observed a statement in the local journals to the effect that the sanction of the Secretary of State had been received to the construction of the harbour, and it would therefore now be a matter for the consideration of the mover and the Council whether it would be advisable to insert a provision to the effect proposed before the Bill was passed, or whether it would be preferable to leave the matter to be dealt with by special legislation as soon as the harbour was completed. For his own part, he was disposed to think that the latter would probably be the best course, as no doubt, whatever provisions were made in the present Bill, a special Act would be required for various matters when the harbour was completed, and any provision in regard to port-dues which might be inserted in such an Act would of course override the provisions of the present Bill, which would be the earlier measure of the two.

The Hon'ble MR. BULLEN SMITH said he had just a single remark to make as to section 5 of chapter II of the Bill, and he could assure his hon'ble and learned friend that, in doing so, he was not insensible of the great trouble both he and the Select Committee had taken on the subject of the definition of high-water-mark. Still the matter was of such importance that MR. BULLEN SMITH wished to ask the

attention of the Council to a suggestion which had been made to him within the last few hours, namely, whether the addition of the word "average" to the explanation of the term "high-water-mark" given in that section was necessary or not. The explanation as it stood effectually excluded from the operation of the law all cyclone-tides, or tides which might be held to be of an exceptional nature; but there were in this Port of Calcutta, and probably in other ports situated on tidal rivers at a considerable distance from the sea, two sets of tides which could properly be called ordinary spring tides, that was to say, one set of spring tides during what were called the freshes when the river was swollen, which could be strictly called the ordinary spring tides for those months, the high-water-mark of which tides was very different from the high-water of the ordinary spring tides of other seasons of the year. It was thought by some that the Local Government, in determining the high-water-mark of "ordinary spring tides," would find itself face to face with a difficulty as to which of the spring tides were alluded to. It had therefore been suggested to him that, if the explanation were to declare that "high-water-mark" meant the average of the ordinary spring tides, it would meet the difficulty. He was not sufficiently acquainted with the language of drafting to know whether the suggestion he had made was sufficient to meet the object in view; but as the suggestion had been made to him, he thought it proper to bring it forward, and he almost apologised for doing so at this late hour, after the great trouble that the Committee had taken in settling the provisions of the Bill.

On one other point he would beg to be allowed to ask a question in connection with the concluding clause of section 60. He would ask whether in the words "or otherwise for giving medical aid to the seamen ashore or afloat in such port" was to be found the authority which would empower a Board of Port Commissioners to apply hospital-dues to the maintenance of a Health Officer. The matter was one of some considerable importance, inasmuch as the Lieutenant-Governor having determined to appoint a Health Officer for the Port of Calcutta, the expense must be provided by the Port Commissioners. But they had for that purpose no funds whatever beyond these hospital-dues and their general revenues. No doubt in a measure the appointment of a Health Officer would be for the good of the seamen; but it would also be largely, if not chiefly, for the good of the town to see that the banks of the river and the Port generally were so looked after as not to become a source of contagion and evil. He was not quite sure whether the expression "giving medical aid to the seamen ashore or afloat in such

port" would apply to the payment, by way of salary to a Health Officer, of any portion of such hospital-dues; but if the hon'ble and learned member in charge of the Bill thought that the words were sufficient to authorize such expenditure, MR. BULLEN SMITH was content.

His Honour THE LIEUTENANT GOVERNOR also had some doubts as to the expression used in section 60. He believed the point had been considered by the Select Committee, and that the Committee thought that the expressions used in that section were sufficiently comprehensive. As had been already explained by his hon'ble friend, Mr. Bullen Smith, it would be desirable to appoint a Health Officer, and to carry out measures of sanitation, and to defray the charge from the surplus-proceeds of these hospital-dues. It was very important that there should be no doubt as to the legality of such proceedings; he believed there was no doubt as to their necessity or expediency. He would suggest the addition of the words "or the carrying out of sanitary measures in such port:" that, he believed, would meet the difficulty.

Then, as regards the definition of the term "high-water-mark", he could not quite follow the argument of his hon'ble friend. It seemed to him that there could be but one set of "ordinary spring tides". He presumed that, in the event of any dispute, the proper authorities would decide as to whether such and such spring tides were ordinary spring tides. If there was any doubt upon the point, perhaps the hon'ble mover of the Bill would consider whether some addition should be made to the phraseology of that particular section.

Then, as regards riparian proprietors, HIS HONOUR begged to corroborate and to express his concurrence in all that had fallen from his hon'ble friend Mr. Hobhouse. The fact was that there was no controversy between the gentlemen who had signed the memorial on the one side, and the Port Commissioners and Bengal Government on the other, regarding anything that related to this particular Bill. There was a controversy existing between them undoubtedly, but it related to quite another Act, namely, the Calcutta Port Improvement Act, which was an Act of the local legislature passed in 1870. Well, it appeared to him that the real object of the memorial to which his hon'ble and learned friend had alluded was to get inserted into the present Bill certain expressions which should affect the working of the other Act. He was sure the Council would perceive that such a course would be very inconsistent, inasmuch as that Act did not happen to be before the Council; and unless the present Bill were to be read in conjunction with the Port Improvement Act, it would be impossible for the Council to properly observe the

practical effect of the proposed expressions. He had had the advantage of joining the Select Committee on the occasion when this matter was discussed; he had also had the advantage of discussing the question at issue very carefully with the memorialists themselves, and he was satisfied that, whatever claim in law or equity they might have to compensation with respect to the just and necessary action of the Port Commissioners, there was full power vested in the Local Government by the Port Improvement Act to consider those claims and award such compensation as might appear just, and his advice to the memorialists had been that if they considered themselves aggrieved in any way, they could submit their claim for consideration in reference to the Port Improvement Act.

He had now only to express his satisfaction in respect to what had fallen from his hon'ble and learned friend in respect to the question of a Conservator of the Port; whether the Conservator should consist of a single officer, or whether the conservation of the Port should be vested in a body of Commissioners. Having had the advantage of attending the Select Committee, he was satisfied that the power of control vested by the Act as it now stood in the Local Government was sufficient for all practical purposes. He need not point out the great interest which the Local Government had in the maintenance of strict Marine discipline in the Port of Calcutta. If ships were lost or sacrificed, or otherwise endangered or damaged in this important port, it was essential that the Local Government should have the power of enquiring who was to blame, and it was also essential that the Local Government should have the power of punishing the official who might be deemed blameworthy notwithstanding the opinion of any other local authority; and for the exercise of this discretion the Local Government was responsible to the Government of India alone. Then, that being the case, if the Local Government was to be responsible for the safety of life and property here, it should possess effective power, and he was advised that the Bill as amended by the Select Committee and as it had been explained by the hon'ble and learned mover, was sufficient for the purpose.

He had now only to express his acknowledgments, on behalf of the Local Government and on behalf of the community of Calcutta, to the Legislative Department for the care and attention that they had paid to this important measure, and he only hoped the Council would be kind enough to consider the addition of the words he proposed in section 60, and to consider exactly what should be done with reference to the definition of the term 'high-water-mark'

in reference to the remarks which had fallen from his hon'ble friend Mr. Bullen Smith.

The Hon'ble MR. BAYLEY said he had not had the honour of being on the Committee on this Bill, but with reference to what had fallen from his hon'ble friend, Mr. Dalyell, if any amendment of the Bill were contemplated, he thought it would be worth while to consider the point raised by the hon'ble member; for, as MR. BAYLEY understood the wording of the present Bill, it put a maximum limit on port-dues which, Mr. Dalyell seemed to say, would be insufficient to meet the demands of the Madras Harbour, and this provision would have to be modified accordingly by the legislation which the latter undertaking would probably render necessary. If this were so, then any legislation in regard to the Madras Harbour would have to be undertaken in the Imperial Council, for it was beyond the power of a local Council to repeal or modify a law passed by this Council, and yet he (MR. BAYLEY) was not aware that this Council was prepared to undertake legislation as to the Madras Harbour, which seemed clearly a proper subject for the local legislature.

The Hon'ble MR. HOBHOUSE said he would answer the questions put to him in order. The first was as to the proposed harbour for Madras. He thought it was not desirable to introduce an exception into this Bill on account of some contemplated operation which that exception would cover. We were almost sure to find when the change did happen that our exception would not quite fit it; there was always a chance of that when we took a step in the dark, and it was much safer to deal with the case when it arose. The words "no port-dues or fees shall be levied except under authority of this Act" were in the present law. The prohibition existed, and he had no doubt it was proper that there should be that prohibition, so that this legislature might consider whether or not port-dues should be levied which were beyond the amount allowed by the Act. We did not know whether any such operation in Madras would take place, though it seemed likely from what his hon'ble friend Mr. Dalyell had said. But then we did not know how far they would want to impose dues beyond the maximum allowed in the Act. On these grounds he thought it was better to pass the Bill as it stood and to see when the event happened what we were required to do.

His hon'ble friend, Mr. Bullen Smith, had referred to the definition of "high-water-mark." MR. HOBHOUSE knew the extreme difficulty of expressing in words any rule which should apply to the circumstances of all ports, and he thought whatever expression the Council might adopt, there would be difficulty

in applying it to some cases. In the generality of cases such a rule would work without difficulty. If you asked a sailor or an inhabitant familiar with any coast what was the ordinary reach of particular tides, he would tell you with sufficient accuracy and certainty in most cases. With regard to the peculiar circumstances of the port of Calcutta which his hon'ble friend had mentioned, it seemed to him that the introduction of the word "average" would not meet the wants of the case, nor accord with the principle upon which the Committee had gone—and he believed it was a sound principle—that when spaces were regularly, frequently and in the ordinary course of Nature, covered with water, those spaces were used by persons who frequented the port and fell within the natural limits of the port. He understood his hon'ble friend to say that in certain months of the year the ordinary spring tides were higher than in other months, and that there were two sets of ordinary spring tides. Now we had got to consider two questions: one was what was the principle which ought to apply to this state of circumstances? and it seemed to him that the correct principle was to include within the limits of the port that which was so often or so regularly covered with water as to be within its natural boundary, and to say that the high-water-mark of the port was the highest point reached by any ordinary spring tide. The second question was whether the words which were used covered what we wanted to effect. If it were true that the highest tides which occurred in the freshes were correctly designated as ordinary spring tides, then the words now in the Bill met the case, for nothing could be said to be the high-water-mark of ordinary spring tides which fell short of the highest point reached by ordinary spring tides. If however the Council should think differently, and if they thought any alteration of the definition should be made, he would abstain from moving to pass the Bill, because in a matter of such nicety there was difficulty and danger attendant upon alterations made in a debate at this table without preparation beforehand.

Now to pass to section 60, with regard to the application of hospital-dues. It must be remembered what these dues were established for; they were a new rating upon ships in consideration of medical aid given to the crews of those ships, and to support any hospitals which might be established for those crews. The rates might be levied upon all the shipping in the port, and for the common benefit they received all must pay. The Select Committee had an application—he rather thought it came from the Government of Bengal—to introduce some special words in this section providing for the appointment of a sanitary officer and general sanitary inspection. He believed the Committee

were unanimous—at all events he would express his own opinion—that the introduction of any such specific words would be a little dangerous and might give rise to complaints from ship-owners. As far as the services of such an officer were necessary or expedient for the sake of the health of seamen either ashore or afloat, so far it seemed to him that the words in the Bill met the case, and it would be perfectly fair, if the Lieutenant-Governor appointed a special officer for that single purpose, to pay his salary from the hospital-dues, and if he appointed an officer for that duty in connection with other duties, to pay a reasonable proportion of his salary out of such dues. But suppose we used the words suggested, that these dues might be applied in paying for sanitary measures, then we might be providing the whole of the town, or that part of the town which lay near the port, with sanitary measures at the expense of the ship-owners alone. If the officer was appointed to superintend the sanitary condition of the whole port and of the persons who resorted to the port, he would be doing a great deal of work for the town and not simply for the ships in the port, and we might have some complaint if the whole of his salary was paid out of the hospital-dues. For that reason MR. HOBHOUSE would keep the words of the section as they were, and he thought it would be found that they covered every reasonable expense that was necessary; but if we went beyond that, he thought there would be complaints founded upon justice and which were not unreasonable.

His Excellency THE PRESIDENT said:—"I think that the point raised by my hon'ble friend, Mr. Bullen Smith, is one of some importance, and I am inclined to agree with Mr. Hobhouse that it requires some further consideration.

"I therefore think it would be advisable that my hon'ble friend, Mr. Hobhouse, should postpone his motion in order to allow the Select Committee to take the point into consideration. At present the words in question appear to me to be open to the possibility of misconstruction."

After some further discussion, the Motion that the reports of the Select Committee be taken into consideration was postponed.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Reports of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration be taken into consideration.

Leave was granted.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE presented a preliminary 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 that it recounted a great many details which it would not be profitable to mention. The Select Committee had made a considerable number of alterations in the draft prepared in the Legislative Department, and they directed that the Bill should be printed and published, and that opinions should be invited specifically upon a number of points and inferentially upon other points included in the Bill.

MADRAS SALT BILL.

The Hon'ble MR. ELLIS presented the Report of the Select Committee on the Bill to amend the law relating to Salt in the Presidency of Fort St. George.

The Hon'ble MR. ELLIS applied to His Excellency the President to suspend the Rules for the Conduct of Business. The reason he asked this of His Lordship was that, in anticipation of the Bill being immediately introduced into some districts of the Madras Presidency, the Madras Government had written to beg that no time might be lost in passing the measure. They had taken steps to prevent any anticipated run upon the the salt-districts, and such measures caused inconvenience to the salt-traders and the people generally, inasmuch as the sale of salt would necessarily be restricted. The Madras Government therefore asked that no time might be allowed to elapse before the passing of the Bill.

His Excellency THE PRESIDENT observed that the reasons given appeared to him to be sufficient, and he therefore declared the rules to be suspended.

The Hon'ble MR. ELLIS then moved that the report of the Select Committee be taken into consideration. He had on a recent occasion fully explained the objects and reasons of this Bill, and he need not therefore trouble the Council again at any length. He was afraid that the Bill in its present form was, as a specimen of drafting, hardly satisfactory to the Secretary to the Council. That was not owing to want of ability on the part of the learned gentleman, but owing to the necessities of the case. It was to be remembered that the Bill was an enabling one, permitting the Government to take action if it considered it desirable. The Bill did not render it obligatory on the Government to take action on the Bill being passed. In consequence of the Bill taking that form, the Council could not repeal absolutely

such portions of the law as stood in the way of the measure when it was to be brought into force; they could only say that these old laws were to be repealed upon its being determined that the measures which the Bill gave permission to take should have effect. There was therefore not an absolute but a contingent repeal of those laws, and the result was to make it very awkward in drafting. He made this apology, lest it should appear that the result was the consequence of want of skill, whereas it was the consequence of the form which the Bill had to take.

The second section of the Bill gave power to the Governor General in Council to fix the duty on salt in Madras at the rate of Re. 1-13-0 independently of any charge which might be incurred before the salt was brought to sale. On a notification to that effect being made by the Governor General in Council, it became the duty of the Local Government to fix, for all salt which might be sold under their orders, a price which would include the duty together with the charges which might be incurred in bringing the salt to sale. The Madras Government were asked for suggestions, and they had written stating one or two points for which they desired that the Bill should make provision. Their suggestions had been adopted. In one case they proposed the omission of a clause which had been inserted fixing for three years the price which might be determined under this Act, it having been inserted on a suggestion from his hon'ble friend, Mr. Dalyell, as giving fixity to the price, which would be of benefit and advantage to the traders. The Madras Government had objected to that, and consequently the Select Committee omitted the provision. It would be seen that the third section gave the Government the power of varying the price in any of the local areas in which the Governor General had declared the rate of duty to be Re. 1-13-0, and also to vary it in respect of the quantity which might be sold, or (which was a matter of some importance to the Madras Government) with reference to the description of the salt sold and the manner in which it was procured; the fact being that in some districts salt might be procured from Bombay or other distant places, and so cost a great deal more than salt procured in the district itself and which might be of less value than the salt imported from a distance. The section, it was hoped, was sufficiently elastic to enable the Government to take into consideration all the circumstances necessary to fix the price so as to include all charges. The Bill was a short one, and he did not think there were any other circumstances connected with it which called for explanation.

The Hon'ble Mr. Dalyell said that when the Bill had been last under discussion he had expressed some doubts as to whether all his hon'ble friend's

anticipations in regard to its results would be realized if it was passed in the shape in which it then appeared. Since that time the Bill had been very considerably modified in Select Committee, and if, as he (MR. DALYELL) understood, it was now the intention to put in force the powers taken under the Bill in the districts of Malabar and Canara only, he quite thought that all the advantages would be secured which his hon'ble friend had predicted for the measure when he first obtained leave to introduce it. It was not necessary that MR. DALYELL should recapitulate the arguments of his hon'ble friend in favour of the Bill. As Mr. Ellis had told the Council, they were mainly the same as those which had been urged by successive Governments of Madras for some years past, and some of them had, he (MR. DALYELL) believed, been brought forward by himself some time back, in his capacity of Secretary to the Madras Board of Revenue. The question was simply whether the people of Malabar and Canara should be required to pay the ordinary salt-tax of Re. 1-13-0 per maund, or whether they should be permitted, as heretofore, to pay this impost at a rate of from Re. 1-8-0 to Re. 1-9-0 per maund, a lower scale of tax than was paid in any other part of the Empire, except Scind and British Burma. There was, however, some force in the reasons which had induced the present Madras Government to differ from the opinion of their predecessors on this question. Their grounds for doing so were concisely stated in paragraph 6 of their proceedings, dated 17th October 1874, which were among the papers which had been printed in connection with the Bill. He would ask the permission of the Council to read to them this paragraph :—

"Independently of the general principle on which this Government have heretofore acted, namely, to charge a uniform monopoly-price for the whole presidency (many local variations notwithstanding), the following reasons have influenced the Governor in Council in his present determination :—

"(1.) The people of the West Coast, if they paid a higher price to Government than other coast-districts, could never be made to understand that they were not unequally and inequitably taxed.

"(2.) To raise the price in Malabar and Canara would be a breach of a long-established arrangement of the nature of a prescriptive right, which has been tacitly acquiesced in for many years and originated in peculiar circumstances connected with the tenure of landed property in these districts.

"On grounds, then, of (1) policy, and (2) justice, the Governor in Council is opposed to any change in the price of salt in Malabar and Canara."

These then were the objections of the present Madras Government to the measure before the Council, and to them might be added the general one

to which he had alluded when the Bill was introduced, that it was perhaps hardly worth while to insist upon an equal incidence of salt-taxation throughout the Presidency of Madras, so long as the inequalities of taxation which existed throughout the remaining portions of the Empire were allowed to continue. There was a further argument which had been strongly urged in some quarters in favour of the present state of matters. It was that, whenever the State might find it convenient, for fiscal purposes, to disallow the local manufacture of any article of consumption which was liable to tax, it was the duty of the State so to adjust the rate of taxation in that particular locality as to insure a supply of the article to the public at a price not in excess of a sum made up of what would be the cost of production on the spot, together with the ordinary rate of duty levied in other places. As it appeared, however, from the proceedings to which he had just referred that it was now the intention of the Madras Government to develope the local manufacture of salt in the Western districts to the greatest possible extent, this argument no longer applied to the particular case under consideration.

As he (MR. DALYELL) had already said the arguments in favour of the Bill had been long familiar to him, and he had lately given his very best consideration to those which had been urged against it, to which he had just drawn the attention of the Council. If these latter were examined from a local point of view only, he thought it would be generally admitted that they were of very considerable weight; but he confessed that if the question was considered from its imperial side, it was somewhat difficult to find any really adequate grounds for opposing the Bill. It was not denied that the people of Malabar and Canara were as well, or even better, able to pay the full rate of salt-tax than their neighbours of the Bombay Presidency and of the other districts of the Madras Presidency, and though long usage might have given them a sort of prescriptive right to obtain their salt at the same price as that charged for the article in the Eastern districts, there was no reason why such a right should be more respected in their case than was a similar right in the case of the much less wealthy populations of the Ceded Districts, who were recently (mainly on grounds of consistency) brought under a more rigid system of salt-taxation by the virtual suppression of the manufacture of earth-salt, which had been permitted for years under a nominal license-fee. But what carried more weight with him than any other argument in favour of the Bill, was that he could not but consider it as the second of a series of measures, of which the first was the Salt Bill of last year, which would eventually result in the entire removal of the so-called customs-line, and in a much

nearer approach to a general equalization of the salt-tax throughout India than had yet been attempted. The remarks of His Excellency the President upon the Inland Customs Bill the other day must, MR. DALYELL thought, have been read with satisfaction by every person interested in this question, as intimating that, at any rate so far as the customs-line was concerned, this result was not so very far distant. Any subsequent efforts which might be made to secure a greater uniformity of salt-duty than at present existed, would necessarily involve a considerable reduction in the high rates which were paid in the Northern portion of the Empire. Now when it was remembered that, speaking roughly, the whole population of these localities paid a lower gross revenue, and consumed a smaller gross quantity of salt, than did half their number in the lowly taxed provinces of Southern and Western India, it was impossible to believe that this high rate of tax was not repressive of the general use of this necessary of life, and that a reduction of the tax would not result in an increased consumption and perhaps in an improved revenue. Any measure then which was of such a character as to be likely to facilitate such a reduction in future years was deserving of cordial support, and he believed he was correct in stating that though the anticipations in regard to the effect of the Salt Act of last year had not as yet been fully realized, there was every prospect of their being so to a very large extent before the Council assembled for another session. In conclusion, he desired to express his concurrence in the remarks of his hon'ble friend as to the expediency of the Bill being passed into law at once in order to put an end to that disturbance of trade which was inevitable, whenever it became known that the rate of salt-duty in any particular locality was likely to be altered.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said that in giving his vote for the passing of this Bill, he would beg to say that, owing to the publication of the Bill on its introduction, there had naturally been an apprehension in the mind of the salt-traders that the effect would be to raise the price of salt, and there had therefore been danger of a great run on the salt-stores.

The Madras Government had, His Highness believed, taken precautions to prevent this, but it was evident that the sooner the Bill became law the better.

The recommendation of the Madras Government that District-averages might be struck in each District or group of Districts where a decided difference existed between the cost of imported and that of the home-made salt—for example, in Canara—had fully been complied with in the Bill in its present form, and

he was sure that the object of the Madras Government thereby would be obtained.

It was to be hoped that the present Bill might lead to a system of excising salt in the Madras Presidency with a fixed duty, instead of selling it on behalf of Government at a fixed price, and that thus private enterprise in the salt-trade might be created by degrees to take the place of the present monopoly-system.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS moved that the Bill as amended be passed. He said it was with much satisfaction that he found His Highness the Maháráját of Vizianagram support this Bill, inasmuch as his connection with the Madras Presidency gave his opinion great weight, and it was also a source of congratulation to learn that his hon'ble friend Mr. Dalyell, after full consideration, was able to give the Bill that support which, no doubt from a feeling of allegiance to the Madras Government, he had at first hesitated to give. MR. ELLIS might state, with reference to the observations which fell from the hon'ble member, that the arguments with which he (MR. ELLIS) introduced the Bill were mainly based on what had fallen from the Madras Government itself, and indeed it now appeared that they were based on letters which had emanated from the hon'ble member himself. It was therefore satisfactory to find that he had returned to his first opinion, and that he was no longer haunted with doubts as to the correctness of those opinions. The arguments which appeared to have had some weight with him did not appear to MR. ELLIS to be such as ought to make him hesitate. With all respect for the opinion of the majority of the Madras Government—for they were not unanimous—he did not see that much stress could be laid on the assertion that if this measure passed, the inhabitants would not be made to understand how the price of their salt was greater than elsewhere. It was surely known that the duty throughout Southern India, as throughout the Western Coast of Bombay, was Re. 1-13-0; it would therefore be abundantly clear and easily understood on the Western Coast of Madras that the cost of bringing salt to their doors must be added to the amount of duty before they could get their salt; and as the Bill did not put the selling-price and customs-duty and charges all together, it would be easy for the private trader to understand for himself how the charge to him for salt was made up, or if there was any misapprehension it would be very easy for the officers of Government to make it clear to the people how the price was arrived at.

The other objection was a stronger one if it could be supported, namely, that there was a decided understanding that the people of those districts should have their salt at a lower rate than their fellow-countrymen in other places. If such a proposition had been established, men like his hon'ble friends, Mr. Sim and Mr. Robinson, members of the Madras Government, would have been the last to have supported any appearance of breach of faith, and he was quite convinced that there could not be any solid foundation for such an assertion. On examining the grounds upon which that assertion was based, it did not appear that the people had a decided understanding that they were to get their salt at a cheaper price than others. They were to have salt at a moderate rate; and that salt would still be available at a moderate rate could hardly be doubted when it was considered that other parts of India were paying a much higher rate; they were also to have the privilege of manufacturing salt for sale to Government: as for this, if they chose to do so, it was the intention of the Madras Government to give them every facility for the local manufacture of salt, and he did not see in these arguments any ground whatever for the Council withholding their assent to the measure before them.

With regard to what had fallen from his hon'ble friend, Mr. Dalyell, as to the effect the Bill would have upon the equalization of the salt-duty throughout India, MR. ELLIS might say that, although the measure in itself was not an important one, and was proposed to be immediately applied to only a restricted part of the Madras Presidency, yet it had an importance as paving the way for the equalization of the salt-duty. So long as there was a selling-price in Madras while in other parts of India there was an excise-duty upon salt, there could be no means of bringing the duty in Madras into conformity with the duty in other Presidencies. For his own part, having regard to the whole system of taxation, he was not prepared to say that they ought to have an absolutely uniform rate of duty throughout India; indeed, he deprecated such a principle being carried to its utmost extent. Yet, on the other hand, there were such wide differences in the rates of duty existing now, and there were such great difficulties in the way of removing the barriers to trade and commerce caused by the Inland Customs-line, that he would be glad to see a large reduction of the duty in some parts of the country, with even a small rise of duty in others, if we could attain such an approach to uniformity as would enable Government to administer the tax with the least amount of vexation to the people, and secure to them a larger supply of salt, while at the same time securing to the Government a reasonable amount of revenue. Perhaps these

observations were not wholly relevant to the Bill before the Council, but they had some bearing upon it, as he considered this Bill a step of some importance towards meeting those expectations and hopes which he and so many others entertained of a modification of the present system, though he did not desire a complete and entire equalization of salt-duties in India.

The Motion was put and agreed to.

PANJÁB COURTS AND OFFICES BILL

The Hon'ble SIR DOUGLAS FORSYTH moved for leave to introduce a Bill to amend the law relating to certain Courts and Offices in the Panjáb. He said that the Bill was intended to give effect to the scheme which had been recently sanctioned for strengthening the judicial and executive administrations of the Panjáb. The peculiarity of the Panjáb, and the Non-Regulation system in general, was such that in addition to the important duties imposed upon the executive officers who had already sufficient work on their hands the whole judicial work was also entrusted to those hard-worked officers. In the early days of the administration, when the population was scant and civil rights were almost unknown, when trade and commerce had not recovered from the harassing effect of Sikh misrule, the administration was carried on by a body of picked officers, who were able to carry on their work most ably—how ably was a matter of history, or if he wished to appeal to a living authority, he could not do better than appeal to his hon'ble friend, Sir Richard Temple, who himself was one of the most distinguished of those officers. In the course of time, as the population increased and trade and commerce extended, litigation in the country sprung up, and the Civil Courts began to be greatly resorted to. The officers found themselves burdened with the duties they had to perform, and the burden was further increased by the creation of separate Departments, the head of every one of which felt that he had a right to claim an important portion of the time of the hard-worked Deputy Commissioner. Notably, the establishment of the Chief Court of the Panjáb, though it was a step taken no doubt in the right direction for the improvement of justice and the better administration of the Province, yet as affecting these executive officers who had to carry out the orders of the Chief Court, it placed them in the unfortunate position of having to serve two masters. There was a great incongruity between the sedentary life of the judicial officer, and the active life of the executive administrator. But the Chief Court said to the officer, "you shall sit at your desk during certain hours of the day to enable you to attend to your judicial work;" the administrative head,

on the other hand, said to him, "you must always be in your saddle." It was difficult for a man to be in two places at once, and in these days the tendency was for a man to take to that portion of his work upon which the pressure was the strongest. According to the judicial system a man's work was judged by the results as they appeared upon paper; the monthly statements were called for, and any dereliction was quickly noticed. It was not the same in the executive department. The welfare of the people was entrusted very much to the hands of the executive officer, but he was left much to act according to his own discretion and for the good of the people entrusted to his charge. The consequences had been rather injurious to the Revenue administration of the Province, and attention was called to the matter by a former Lieutenant-Governor. About six years ago a very able Minute on the subject was written by a former Law Member of His Excellency's Council, and from that time there had been considerable discussion as to the best means of strengthening the judicial and executive administration of the Panjáb. Some of those who had been consulted were in favour of making a complete separation of the judicial and executive services, and had given their reasons for it. That, however, had not been considered to be desirable. But a scheme had been put forward, and had now been sanctioned, which went a long step in the direction of the separation of the judicial and executive offices, and it was proposed to appoint, in every district where it might be found necessary, a Judicial Assistant who would relieve the Deputy Commissioner of his judicial work and leave him free to apply himself to the management of his executive business. That was to say, the Assistant, so long as he was employed on judicial duties, would satisfy all the requirements of the Chief Court of the Panjáb by being always present in his Court, and at the same time the Deputy Commissioner would be left free to look after equally important business which belonged to his executive capacity. The scheme comprised this arrangement, that the Judicial Assistant should exercise the appellate powers which now belonged to the Deputy Commissioner. In the lower Courts, in the Courts of first instance, hitherto presided over by Tahsíldárs and Náib Tahsíldárs, it was proposed to add a Munsif, who, as a general rule, would take up the judicial duties of the Tahsíldár, but who might be appointed to do any other duty of the Tahsíldár. Thus, while maintaining the peculiar features of the Panjáb system, an almost complete separation of the judicial and executive services would be established. But in order to carry out this scheme, it was necessary to resort to this Council. Section 20 of the Panjáb Courts Act provided that, whenever the number of cases depending in any district or divisional Court should be so great as to prevent their

being disposed of within a reasonable period, the Local Government might invest any officer with civil and criminal powers. Such appointments were therefore, by their nature, temporary, and it was now proposed to make them permanent. In doing so, very little alteration would have to be made in the existing Act.

The Motion was put and agreed to.

The Council adjourned to Monday, the 15th March 1875.

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

CALCUTTA ;
The 9th March 1875.

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