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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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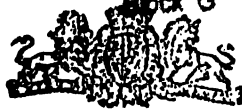
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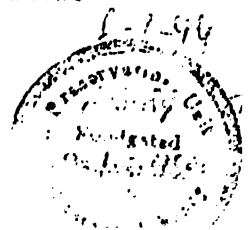


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1879.



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 20th June, 1878.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, C.S.I.

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

The Hon'ble Sir A. J. Arbuthnot, K.O.S.I.

Colonel the Hon'ble Sir Andrew Clarke, B.E., K.C.M.G., C.B.

The Hon'ble Sir J. Strachey, G.O.S.I.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble A. R. Thompson, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble F. R. Cockerell.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES presented the second Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. He said:—"Although there is no motion before the Council, I propose, with your Excellency's permission, to make a few remarks on the third stage of the slow, but I think I may say healthy, development of this measure. Drawn originally by the late Indian Law Commission and introduced, as I may remind the Council, in December 1867, the then mercantile members, Mr. Steuart Gladstone and Mr. Skinner, while approving of the proposal to codify the law of negotiable paper, strongly objected to the Bill on account of its numerous deviations from the English, which is practically the Anglo-Indian, law on the subject. More urgent matters took up the time of Sir Henry Maine and Sir Fitzjames Stephen, and the Bill slumbered in its official pigeon-hole until the advent of Sir Arthur Hobhouse, who went through the Bill with the acuteness, industry and learning which he brought to bear on every subject with which he had to deal. He discovered a number of changes and omissions which had escaped Mr. Steuart Gladstone and Mr. Skinner, and satisfied himself that the Bill, if it were to go on at all, must be completely re-drawn. This laborious task was reserved for an excellent mercantile lawyer, my friend Mr. Phillips, our late Secretary in the Legislative Department, and now, as we all know, a leading member of the Calcutta Bar. Of the skill and patience with which Mr. Phillips did his work, I, who discussed every clause—I may say every

word—with him, could speak with confidence and gratitude: but I prefer to read to the Council some of the opinions of men who cannot be supposed to be biassed by friendship. Thus the Bombay Chamber of Commerce, after making some criticisms to which the Select Committee have duly attended, say: 'With these exceptions, the Chamber approve of the provisions of the Bill.' The Madras Chamber say that 'the Bill, while containing some elementary information which might, it is submitted, be omitted without detriment, explains with precision many nice points of mercantile law and usage which, in the absence of legislative authority, are likely to excite controversy.' The Calcutta Trades Association say 'they have given it their careful consideration, and are of opinion that, so far as the particular interests they represent are concerned, no objection can be taken to any of the provisions of the Bill.' The Managers of the Allahabad Bank, the Agra Savings Bank and the Upper India Bank, and the Agent of the Bank of Bengal at Allahabad, have either fully approved of the Bill, or made suggestions so unimportant, that the Local Government has considered it unnecessary to forward them. So much for the mercantile experts. The lawyers follow suit. Thus the present Advocate General of Madras, Mr. O'Sullivan, states that, in his opinion, the Bill deals in the most satisfactory way with the difficult subject of negotiable instruments. 'The Bill,' he says, 'as altered by the Select Committee, is a carefully considered document, and, so far as I can see, leaves nothing unprovided for which is required in such an enactment.' The Recorder of Rangoon 'thinks the exclusion of hundis is the more to be regretted, considering the exhaustive and satisfactory manner in which the Bill has dealt with the particular classes of instruments it embraces.' Similarly favourable opinions have been received from two distinguished Native lawyers, Lakshmi Nārāyana Pandit of Lucknow, and Nānābhāi Haridās of Bombay.

"The Report states minutely all the changes which the Committee have recently made. The first, and by far the most important, is that in section 1. The Bill as framed by the Law Commissioners and introduced into this Council was silent as to Native Bills of Exchange, commonly called hundis. The result of course would have been to render hundis subject to the Bill, without any saving of the custom of Native merchants. The Select Committee, therefore, inserted a clause declaring that nothing in the proposed Act should apply to hundis. But this went too far in the other direction. The Madras Chamber of Commerce, the Recorder of Rangoon, the first Judge of the Small Cause Court at Rangoon, and Pandit Lakshmi Nārāyana have all urged us to bring hundis within the scope of the Act. As Lakshmi Nārāyana is a Native lawyer, I will first read to the Council what he has said on this subject:—

"I may also be permitted to state that I cannot understand why hundis have been excepted from the applicability of this Act unless it be to avoid interference with mercantile customs of

Native bankers, whose opinion as to the suitableness of the law to their mutual transactions would perhaps be difficult to secure. After some enquiry from the mercantile classes of this city [Lucknow], I find that there is scarcely any difference between the provisions of the Bill and the rules which, under the sanction of mercantile custom, govern the rights and liabilities of parties to a hundis. I would respectfully suggest therefore that, unless there be any other strong objection to it, hundis be allowed to be governed by the same rules as the other Bills of Exchange, which is likely to facilitate dealings between Native merchants and bankers on the one part, and European bankers and houses on the other. The only part of the law which may be expected to be received as an innovation by Native bankers, and in the working of which they may find any difficulty, is chapter II as to noting and protest; but the appointment as notary in each city of a respectable Native with whom the bankers may be expected to be familiar, and who is sure to be easily accessible to them, is sure soon to reconcile them to it by showing them its undoubted advantages.'

"The Bill, I may remark, provides for the appointment of such notaries. Then the Madras Chamber of Commerce say:—

" 'It appears to this Chamber that a law relating to Promissory Notes, Bills of Exchange and Cheques should apply to the instruments termed 'hundis' in use among Natives, which, presumably, represent among the Native community the separately specified instruments employed by Europeans in financial and mercantile transactions. The Act extends to the whole of British India, and should extend to all inhabitants of British India who have occasion to use negotiable instruments. In other branches of legislation, no serious objection has been raised to making Natives, like Europeans, amenable to Acts framed on English law, and this Chamber see no occasion for an invidious distinction in the Bill under notice between the negotiable instruments of the two races. They submit that it should be an advantage to assimilate Native commercial practices to English usages.'

"The Recorder of Rangoon, after urging that the law relating to hundis stood more in need of definition than the law relating to Bills of Exchange, proceeds as follows:—

" 'The omission of hundis may have arisen from a reluctance to interfere with the trading laws and customs of the country; but if that objection were allowed to have in all cases weight, no reformation or amendment of the law would take place; and there is no sufficiently strong reason why, in this instance, it should have any. I do not profess to have a wide acquaintance with the law relating to hundis, but I have had both at the Bar and judicially frequently to deal with questions respecting them; and as far as my experience goes, and judging from the opinions I have received from bankers and Native merchants, I should say there is but a trifling difference in the law of hundis and that respecting our own Bills of Exchange, and that, with a slight alteration in the definition of a Bill of Exchange, the present Bill might very well be extended as it stands to hundis. Probably in some few of their incidents, as with respect to notice, there may be some little difference; but if they exist they could easily be ascertained and provided for. Practically, however, these instruments pass from hand to hand by indorsement, and are regarded in the same light and treated in the same way as if all the incidents of an English Bill of Exchange attached to them. The objection, then, that by including them with negotiable instruments which are foreign to the country in

the same legislation, it would clash with our policy to leave the Native laws and customs intact, has not much force.'

"The first Judge of the Small Cause Court in Rangoon says:—

"The law in the Presidency-towns has been adopted by the Natives in the Provinces as the custom of their dealings in hundís. The present Bill, with slight modifications, can be safely extended to hundís. Speaking by estimation, about 1,500 cases a year come before this Court on, or in respect of, Bills of Exchange and Promissory Notes. In almost the whole of them Indian subjects are alone concerned. . . . I therefore see as much of the practical working of the law of negotiable instruments as any Judge in India, and amongst various classes of people.

"I would respectfully suggest the omission of the restriction as to hundís.'

"The true solution of the difficulty, which Lakshmí Náráyana has perhaps underestimated, has been given by another eminent Native lawyer, Nándbhái Haridás, who has acted as Judge of the High Court at Bombay, and is now Government Pleader in that Presidency. 'It is possible,' he says, speaking of the usages of Native merchants relating to hundís, 'to leave such customs and usages untouched, and yet, in matters not provided for by them, to apply the provisions of the Act to those instruments.' This is what the Committee have now done. For 'nothing in this Act applies to hundís,' the Bill now says 'nothing herein contained affects any usage relating to any instrument in an oriental language.' The Bill will thus not only embody the ruling of Sir James Colvile in *Amritram v. Damoodhur Dass*, that 'when the analogy between bills and hundís is complete, and there is no proof of any special usago, the English law applies:' it will also give effect to the first principle of the policy of codification which the Government of India has resumed, namely, that as little change as possible should be made in the substance of the existing law, whether enacted by the Legislature, declared by judicial decision, or established by ancient usage. I may remark that our new words will not only save Native usages as to hundís, but also usages (supposing such to exist) as to Native promissory notes and cheques. The change is, as I have said, of the very first importance, and the Committee (chiefly in consequence of this change) recommend that the Bill be republished, that it should be carefully examined by the local authorities, and that its further consideration should be stayed till we re-assemble in Calcutta.

"The Report acknowledges the valuable criticisms received from the Chambers of Commerce at Calcutta, Madras, Bombay and Rangoon. They had been most useful, and the thanks of the Legislature were due to the able and busy men who had given up their valuable time to the work of improving the Bill. Omission to make any particular change which they recommended was not due to any carelessness or neglect on the part of the Committee, but solely to our

inability to concur in the propriety of the change. Thus section 59 of the amended Bill (=section 70 of Bill No. II) declares that the indorser of a negotiable instrument may by express words restrict the right of the indorsee to negotiate, and gives 'Pay O' as an instance of an indorsement which does *not* exclude the right of further negotiation. On this the Bengal Chamber objects that 'at present, the indorsement 'Pay O' would be considered as requiring O to apply personally for the money, and would not empower him to transfer the document to any other than the drawee.' But I venture to maintain that the illustration is perfectly right. It has been ruled over and over again that the omission of the words 'or order' in a special indorsement will not restrain the negotiability of a bill, the reason being that the indorsee takes it with all its incidents, among which its negotiable quality is included."

His Honour THE LIEUTENANT-GOVERNOR said that, as he should not be able to attend the Council when the Bill for Negotiable Instruments came up for consideration, he wished, with His Excellency's permission, to say a few words on the present occasion—though there was no motion before the Council—with regard to the alteration which had been made in the scope of the Bill by the amendment introduced into clause 1. When the Bill was first sent out in 1868, the Panjáb Government, after consultation with the Judges of the Chief Court, objected to the inclusion of Native hundis in the scope of the Bill, and made certain recommendations regarding the way in which they should be treated. The Judges of the Chief Court, in their letter to the Panjáb Government, showed clearly that there was a distinct *lex loci* in regard to hundis which universally governed those transactions; that a summary of it was to be found in the Manual of the principles of Civil Law, then in use in the Panjáb, and which had been compiled, after very careful enquiry, by Mr. Temple,—now Sir Richard Temple—who had carefully enquired into the Native customs of the large commercial towns in the Panjáb, and shown distinctly that the custom in regard to Native Bills of Exchange—hundis in fact—was very different in principle to that which prevailed in regard to such documents under English law. Subsequently, when the Bill was sent down to the Local Governments for consideration, hundis were expressly excluded from its scope; and he found now that, at a very late period, and upon what he thought insufficient reasons, the law regarding hundis would by this Bill be placed on an entirely different footing. Instead of hundis being excluded from the operation of the Bill, the provisions of it were now made applicable to them. Usages relating to hundis were saved, but the existence of such usages would have to be proved in each case; and thus suits regarding hundis were placed upon a footing entirely different to that on which they stood in the first and second editions of the Bill. This was such a radical change in the Bill that, in the place of merely republishing it, he thought it should be referred to Local

Governments for reconsideration and report. This did not appear from the motion on the paper, nor from the Report of the Select Committee, and for that reason he brought it to His Excellency's notice, as he desired that the Bill should not only be republished, but also be referred for reconsideration to the Local Governments. He was of opinion that the change had been introduced with much too little consideration, and, as it seemed to him,—so far as the Province over which he had the honour to preside was concerned,—very much to the detriment of the law.

His Excellency THE PRESIDENT remarked that, as he understood the observations of his hon'ble friend Mr. Stokes, it was proposed by him that the Bill should be referred to Local Governments for further consideration.

The Hon'ble MR. STOKES was afraid that he had expressed himself indistinctly; but he certainly had intended to say, and he believed that he had said, that the amended Bill would be referred to the local authorities for examination. It had always been the practice of the Legislative Department, when republishing a Bill of importance, to send it again to the Local Governments for consideration and report; and, on the present occasion, not only would this be done, but the Local Governments would be requested to have the Bill republished in their Gazettes in English and the Native languages. As to the statement of his hon'ble friend the Lieutenant-Governor that the *lex loci* was excluded by the Bill, he begged to say that, on the contrary, it was expressly preserved by the first section. What could be clearer than 'nothing herein contained affects any usage relating to any instrument in an Oriental language?' If His Honour could suggest better words, he (MR. STOKES) was sure the Committee would gladly adopt them. As to His Honour's other statement that the change had been made with much too little consideration, he would remark that, if His Honour had only been present on the Committee and heard the long and anxious discussion of the question, initiated by himself and maintained by the Advocate General (Mr. Paul), Mr. Evans and Sir Edward Bayley, he would never have made such a charge as that. The subject was one which had received the most careful consideration: the change was exactly in accordance with paragraph 19 of the despatch (Legislative, No. 34, dated 10th May, 1877,) in which the Government of India had informed the Secretary of State of their intention to revise the Bill; and the extension of the Bill to hundís, far from causing detriment to the law in the Panjáb or elsewhere, would, he (MR. STOKES) was convinced, be regarded, not only by lawyers, but by all intelligent mercantile men, as highly beneficial.

His Honour THE LIEUTENANT-GOVERNOR said that he understood that the Panjáb Government had been, on one occasion, rebuked by this Council for sending in an uninvited opinion to the Select Committee of the Government of

India in the case of the Panjáb Tenancy Bill of 1868. It was not stated in the List of Business that the present Bill was to be referred to Local Governments for consideration, nor was it stated in the Report of the Select Committee, and for that reason he thought it right to bring the matter to His Excellency the President's notice.

His Excellency THE PRESIDENT observed that his hon'ble friend the Lieutenant-Governor was right in so doing, but that he fully understood his hon'ble friend Mr. Stokes' intention to be to refer the Bill again to Local Governments for their consideration. Still he thought it might be desirable to embody that intention in the form of a motion.

The Hon'ble MR. STOKES then moved that the Bill be referred to the Local Governments for consideration and report.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Colvin be added to the Select Committee on the Bill to amend the North-Western Provinces Land-revenue Act, 1873.

The Motion was put and agreed to.

BRITISH BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON moved for leave to introduce a Bill to prevent the indiscriminate destruction of wild elephants in British Burma. He said that legislation, for the object stated in the title of the Bill, had been strongly recommended by the Local Government of British Burma, and was considered by the Government of India to be urgently required, because the destruction of wild elephants in British Burma was going on, and had been going on, so extensively and so indiscriminately that, if allowed to proceed, it must ultimately lead to the extinction of the breed. In support of this statement, he need only trouble the Council with a few extracts from the official correspondence on the subject.

Major Seaton, the Conservator of Forests in British Burma, wrote as follows :—

“ There are many large and suitable areas on, and contiguous to, the Donat Range where elephants were found in great numbers, but where hardly a single small herd is now to be met with, consequent on the hunting proclivities of the Karens, who now shoot the males and females indiscriminately, urging, as a plea, that the animals are becoming so scarce that the

hunters cannot afford to limit operations to only the males, although the females rarely furnish a tooth large enough for a dagger handle, and but little of their carcasses can be eaten and carried away."

The Deputy Commissioner of Bassein remarked in his letter of the 17th October :—

"Elephants are constantly slaughtered in the most wasteful manner, in hope of obtaining their tusks; and I am of opinion that, if Government really contemplates the capture of wild elephants, all killing, except for purposes of defence of crops, should be prohibited."

Again the Officiating Commissioner of the Pegu Division wrote :—

"The Officiating Conservator of Forests quite recently spoke to me on the subject, and stated that, in passing through certain tracts well known as the favourite haunts of wild elephants, he repeatedly came on herds without a single tusker, and consisting mostly of females, and that on enquiring he found that all the male tuskers were systematically shot down by Karens for the sake of the ivory, while from other sources I have reason to believe that the males are generally throughout the country shot down as soon as their tusks attain a marketable size—a process which must lead, first to the deterioration, and ere long to the extinction, of the breed."

To prevent this result, namely, the ultimate extinction of the breed of elephants, was a matter of public concern, because the herds of wild elephants in the forests of British Burma constituted the source of supply of the elephants largely used in British Burma, not only for military and other State purposes, but also for purposes connected with the great and growing timber trade of that Province. He believed that an attempt had been made to meet the evil under consideration, by the issue, under executive authority, of rules prohibiting the destruction of wild elephants, except under license from the district officer or in the defence of life or crops; but, as these rules have no legislative sanction, they could not be enforced by legal process, and had consequently proved more or less inoperative. To meet this difficulty, legislation had been proposed, which would have the effect of placing the existing system on a legal basis; and he might add that the provisions of the Bill would be found to be based on the provisions of an enactment passed with the same object in 1873 for the Madras Presidency, which had been found to work well.

. The Motion was put and agreed to.

BOMBAY INDEBTED AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill for the relief of indebted Agriculturists in certain parts of the Presidency of Bombay. He said that the proposal to legislate on this subject was one of the results of the investigation conducted, and the report made, by the Dekkhan Riots Commission in regard to the very serious disturbances which took place in certain

districts of the Bombay Presidency about three years ago. Those disturbances had their origin in circumstances not unlike those which led to the rising of the Santhál population in Bengal in the year 1855; but whilst in the case of the Santháls other questions were mixed up with their special grievance in regard to debt and the exactions of their creditors, and the avowed object of the outbreak was to subvert the reigning power, the sole aim and purpose of the raiyats of the Dekkhan was to wreak their vengeance on the hated oppressor—the saukár—and to procure the extinction of the evidence afforded by the bonds taken from them in most cases without adequate consideration, which had been in the past, and was likely to be again in the future, used with such fatal effect against them by their creditors.

The riots, though they extended over twenty-two villages in the Ahmednagar district and eleven villages in Poona, were attended with no loss of life, and caused no indiscriminate destruction of property; the operations of the rioters were confined to what to them doubtless seemed the laudable purpose of finally settling accounts with their creditors, and they attacked, burned and plundered the houses and property of the latter, ransacking every place where the bonds which they had been forced to execute were likely to be kept.

The constitution of the Commission was such as to afford the best guarantee for the impartiality and freedom from local bias or prejudice of the conclusions at which it might arrive in regard to the causes of the outbreak, and the defects of administration or the operation of the law, if any, which might have conduced to its occurrence; for it included, in addition to two civilians and a Native gentleman belonging to the Bombay Presidency, a civilian taken from the North-Western Provinces, and selected presumably for his varied experience in revenue administration and the condition and circumstances of agricultural industry.

The Commissioners had, by the thoroughness of their enquiry and their exhaustive treatment of the whole subject connected with it, if he (MR. COCKBELL) might venture to say so, rendered a very important service, not only to the Bombay Presidency in which their inquiries were conducted, but to the country at large, inasmuch as the state of things brought to light in regard to the relations subsisting between the professional money-lender and the agriculturist, though found probably in its worst form in the Dekkhan districts, had its parallel, in some degree at least, amongst certain classes of creditors and debtors in other parts of the Empire.

The investigation instituted by the Commission had elicited a mass of valuable information in regard to the dealings between the raiyat and the money-lender, and as to the condition and circumstances of the agricultural industry

generally in the Dekkhan districts, which in point of bulk was, when compressed into print, but very inadequately represented by the substantial volume which he (MR. COCKERELL) held in his hand. The fact of the extreme indebtedness of a large section of the agriculturists in the districts in which the investigation was made had been conclusively established: nor was this general state of debt, though it had assumed much larger dimensions of late years, of recent origin; it had existed in some degree almost from the time of the conquest of the Dekkhan and its annexation to British territory. There had, however, been intervals of prosperity: the settlements of 1836-37 recognized for the first time or created the agriculturist's proprietary interest in his land, and this gave him a considerably enhanced credit with the money-lender; then the construction of railways and public works, and the stimulus given to the cultivation of, and trade in, cotton throughout these districts by the American war, followed in succession, causing a free expenditure of money and consequent rise in the value of agricultural produce. This tide of prosperity began to ebb after 1866-67, and by 1870 prices had fallen, and an adverse state of things set in, which culminated in the disturbances of 1875. The small raiyat's condition had been rendered worse further by a marked increase of population without any corresponding expansion of the area under cultivation or the productive capacity of the land; he had also contracted habits of increased expenditure on personal comfort, which in his less prosperous circumstances he was loath to forego.

As an illustration of the extent of indebtedness and hopeless embarrassment which had been reached in the case of some of these raiyats at the time of the outbreak, he (MR. COCKERELL) would quote some statistics furnished in the Commissioners' Report. The particulars in this respect of some twelve villages selected at random had been recorded, showing an aggregate book-debt of nearly two lakhs of rupees, whilst the revenue assessment of the debtors' lands amounted to about Rupees 10,000, and their proprietary interest in the same was estimated to be equivalent to ten years' revenue; so that the total debt in these villages was double the full value of the entire land belonging to the debtors. This would seem obviously to point to the conclusion that the consideration actually passed to the debtors in these must have been wholly disproportionate to the sum of their recorded obligations; for under no other hypothesis could the money-lending creditors carry on their business, where the value of the security was so much below the outstanding debts represented by it, without absolute ruin.

This conclusion, as to the extreme disparity between the extent of the accommodation actually obtained by the borrower and his recorded obligation in respect of it, was fully corroborated by the facts which had been recorded by a member of the Commission in regard to this question. He (MR. COCKERELL)

would cite a particular case—an extreme one certainly, but one that had been brought to light in the course of the enquiry. A raiyat had borrowed Rupees 10, and at the end of ten years from the date of the loan, his account with his creditor stood thus : he had paid Rupees 110 and still owed Rupees 220. So that in the short space of ten years, through the process of repeated renewal of bonds in which compound interest at high rates was added to the principal, his debt had been made to mount up to thirty-three times the sum actually borrowed by him.

The causes of this extreme indebtedness had been recorded in much detail in the report of the Commission, and the possible effect of the Government revenue assessments and the state of the law applicable to the relations of creditor and debtor, in conducing to the embarrassments of the agriculturists, had formed the subject of close enquiry and full discussion, not only in the general report, but also in the separate minutes or memoranda which had been recorded by some of the members of the Commission. Foremost amongst the causes of the existing complications were (1) unfavourable conditions of soil and climate ; (2) increase of population in excess of any increase in the local supply of means of supporting such population ; (3) the obligations of ancestral debt ; and (4) the money-lender's custom of inordinately enhancing the original debt by charges of compound interest at high rates, and constant exaction from the debtor of fresh bonds or other instruments of obligation.

An additional recorded cause of the general increase of debt amongst the raiyats of late years was the greater facility of obtaining credit on inadequate security, brought about through the more active prosecution of the money-lending business by a lower class of *saukars*.

There could be no doubt that the raiyats of the Dekkhan districts were placed at a very great disadvantage, owing to the naturally unproductive character of the soil and the specially precarious nature of the rainfall in that part of the country ; for it was estimated that, with the frequent recurrence of drought and other unfavourable conditions of agriculture, in not more than one year out of three did the cultivator obtain a satisfactory return for his labour. As the raiyats in these districts held their lands under direct engagement with the Government, the possible connection of the revenue-system with, and its partial responsibility for, the poverty and embarrassments of the people became an important subject of enquiry. The report of the Commission, whilst it did not show that the assessment of the land fixed at the latest revision of settlements pressed with undue harshness upon the raiyats, expressed the opinion that, in the peculiar conditions of the Dekkhan as regards climate and the productive capacity of the soil, the fixity of the Government revenue demand operated adversely to the direction of keeping the cultivator free from the

need of recourse to borrowing. A more elastic system under which the demand would better correspond in point of time with his own realization of profit from the land, without at the same time introducing to too great an extent the element of uncertainty as to the amount of the demand, would, it was represented, be more suitable to the exigencies of the case.

The present state of the law relating to the administration of justice and the procedure of the Civil Courts, in so far as it governed or affected the dealings between the *saukars* and the *raiya*s, was fully considered and dwelt upon in much detail in the report of the Commission. It was held that the difficulties of the *raiya*t had been greatly increased in his earlier borrowing transactions with the money-lender through the change in the Law of Limitation as regards the period allowed for suing on contract-debts which was introduced by the Act of 1859. Previous to the operation of that enactment, the law gave a period of twelve years, and in practice it was found that the creditor was content to allow debts to run on without any settlement of accounts, and bearing simple interest at the ordinary rate for ten or eleven years; whereas after the change in the law the custom of coming to a settlement and renewing bonds on the terms of adding interest to the amount of the original obligation every second year gradually sprung up and had become one of the chief causes of the *raiya*t's embarrassments. At each recurring renewal of a bond or other instrument of obligation, the opportunity of enhancing the proportions of the previous debt by the addition of fictitious charges of various kinds was largely taken advantage of by the money-lender, and the effect of a renewal, even where no additional consideration was given, was frequently to double the previous debt.

The mode of dealing with cases between the *saukar* and the *raiya*t when brought into Court and the whole procedure of the Civil Courts in reference to such cases were wholly to the advantage of the creditor. He could, by collusion with the Courts' officers, delay or prevent the service of the usual process giving notice of his claim being about to be adjudicated; and where this fraud was not resorted to, the *raiya*t, from his incapacity, through ignorance, to set up an answer to the plaintiff's claim, or his inability to give the time required for a possibly prolonged attendance at a distant Court, put in no appearance; and so it resulted that, in the case of an overwhelming majority of suits instituted by the money-lenders, the Courts granted *ex parte* decrees.

It was shown further that the *saukar*, having thus obtained a decree without any examination of the circumstances of his claim, had thereby acquired a fresh instrument of oppression and exaction; for under the pressure of the process issued by the Court in execution of the decree, he could extort from his judgment-debtor almost any terms that he chose to impose upon him, the fear

of having to go to jail upon the issue of a warrant of arrest being sufficient to induce the latter to agree to anything.

That warrants of arrest were largely applied for with no *bonâ fide* intention of imprisoning the debtor, was clearly established by the very small proportion of cases in which such imprisonments had followed on the issue of warrants of arrest; for, seeing that the average raiyat would only in the gravest extremity voluntarily expatriate himself for any considerable period, the hypothesis that he could evade a real and active pursuit with the object of apprehending him was wholly untenable. Ample evidence was elicited in the enquiries of the Commission to show that the worst twist was given to the raiyat's coil of indebtedness after his creditor had obtained from the Civil Court a decree against him, for the decree formed the basis of a fresh agreement and starting-point in a further chain of embarrassments, in which the terms exacted from the debtor were more oppressive than those which marked the stages of bond-renewals to avoid limitation.

To remedy this state of things, the report of the Commission recommended two projects of special legislation: one designed to protect the debtor in his early dealings with his creditor and mitigate the difficulties of his position during the first stage of those dealings, *i.e.*, the period before the institution of a suit against him in the Civil Court; the other for the amendment of the existing law relating to the execution of decrees.

Draft Bills to effect these objects were incorporated with the report of the Commission: the first draft made provision for (1) the appointment of public notaries by whom all instruments of obligation to be executed by raiyats in favour of the *saukâr* might be written and registered; (2) the enforcement of the practice of granting receipts for money-payments and annual statements of account or pass-books on the requisition of the borrower, and (3) declaring the effect of the registration of instruments by notaries to be—for the purpose of extending the period of limitation fixed by the present law in respect of contracts from three to six years—equivalent to registration under the Indian Registration Act.

The second Bill embraced (1) the abolition of imprisonment for debt; (2) the exemption of the judgment-debtor's necessities in execution of a decree; (3) the restriction of the power of directing the attachment and sale of immovable property in execution of a decree for money, to the District Courts; (4) the introduction of rules for securing a preliminary investigation as to title where the sale of a judgment-debtor's interest in any immovable property was ordered by a Civil Court, and (5) the prevention of agreements, without adequate consideration, made by a judgment-debtor in favour of his creditor, under the pressure of the issue of the Court's process in the execution of a decree against him.

In addition to these legislative proposals, the Commissioners further recommended, in view to checking the prevalent practice of granting decrees *ex parte*, the establishment of special Courts for the trial of small causes, which should hold their sittings in the villages in or near which the persons against whom suits were instituted resided, so as to bring the administration of justice as near as possible to the home of every person sued in connection with his borrowing transactions, and that the Native Judges of the regular Civil Courts should be employed in making tours of inspection of these special village Courts within the local limits of their jurisdiction respectively, so as to insure regularity and uniformity of practice in their procedure and action.

The Government of Bombay, shortly before the late Governor of that Presidency quitted office, reviewed the entire report of the Commission in a letter addressed to the Government of India in April 1877. The Local Government accepted the general conclusions of the Commission in regard to the excessive indebtedness of a large proportion of the raiyats in the districts to which the enquiry had extended, and the causes of it, but did not consider that any case had been made out against the existing land assessments or the system under which the Government revenue was realized, as reasonably entitled to be reckoned amongst the causes of the raiyats' present embarrassments.

In the opinion of the Bombay Government, there was no other way of acting on the rather vague suggestions of the Commission, that greater elasticity in the regulation and recovery of the revenue demand was needed, than reverting to the old system of taking the Government revenue in kind—a retrograde course which that Government could never agree to. A fluctuating demand, on the other hand, under which the revenue-payer would never know what claims he might have to meet, would, by introducing the element of uncertainty into the relations between the Government and the raiyat, produce a greater evil than that which it was designed to counteract.

Some reference had been made by the Commissioners to the system of revenue administration obtaining in Madras, where similar raiyatwari settlements prevailed; but it was shown in the minute recorded by a member of the Bombay Council which accompanied the letter of the Local Government above mentioned, that in point of fact the grant of remissions in seasons in which, through drought or other untoward circumstances, there was an extensive failure of crops, to which the report of the Commission had made allusion, was as much the practice in the revenue administration of the Dekkhan districts as in that of the Madras Presidency.

As regards the effect of the present law and system of administration of justice in bringing about or contributing to the state of things brought to light

through the investigation of the Commission, the Local Government were clearly of opinion that the change in the Law of Limitation introduced in 1859, which so materially shortened the period within which suits upon breach of contract would lie, and the procedure of the Civil Courts under which so many decrees were given on an entirely *ex parte* view of the money-lender's claims, were the causes of much of the raiyat's embarrassments. They accordingly expressed their concurrence in those protective measures advocated in the report of the Commission, which embraced (1) the establishment of public notaries for the preparation and registration of instruments to be executed by the raiyats in favour of the money-lenders, by way of security for the repayment of loans; (2) the enforcement of the grant of receipts for money paid, statements of account, and pass-books by the saukár, on the requisition of the raiyat, and (3) an improved mode of trial of suits upon money claims by the Civil Courts; and they pressed upon the Government of India the expediency of reverting to the old Law of Limitation in force previous to 1859 in respect of suits upon contracts.

The Local Government further, in connection with the recommendations of the Commission regarding an improved method of adjudication of claims for the recovery of debts in the Dekkhan districts, indirectly invited a declaration from the Government of India as to how far definite proposals for an increase of expenditure on judicial establishments would meet with favourable consideration; but as regarded the scheme submitted by the Commission for the amendment of the law relating to the execution of decrees, they were not generally in favour of the proposal for the abolition of personal arrest and imprisonment for debt, nor did they approve of the suggested limitations in regard to the sale, by the order of Civil Courts, of immovable property in satisfaction of a decree for money; whilst in respect of the further suggested enactment for preventing the improper use of a decree by the judgment-creditor, they expressed no opinion.

The whole matter rested in this state until the question of further action was taken up by the present Government of Bombay, who early in the current year addressed the Government of India, submitting fresh legislative proposals for effecting the following objects:—

- 1st. (a) The enforced examination by the Civil Court of the merits of every claim for which it was asked to give a decree, whether any defence was made to such claim or not.
- (b) The disallowance of the obligation of any person to discharge ancestral debts, unless such person in the Court's presence expressed his readiness to accept responsibility for such debts.

(c) The disallowance of the compound interest included in any claim, as well as all interest in excess of a sum equal to the principal represented in such claim.

2nd. The declaration of the insolvency of any debtor upon his personal application, otherwise than after his arrest in execution of a decree against him.

3rd. The prevention of the sale of any land by order of a Civil Court in satisfaction of a decree for money, unless the land had been specifically pledged as security for the debt and the contract under which it was so pledged had been reduced to writing, and the written instrument embodying the same duly registered.

Thus far he (MR. COCKERELL) had very briefly summarized the facts and circumstances leading up to the motion now before the Council, by way of explanation of the reasons for the special legislation now proposed. It only remained for him to state the objects of the Bill which he was asking leave to introduce. They were three in number, namely :—

1. To empower Courts having insolvency jurisdiction to declare a person to be insolvent on his personal application, although he might not have been arrested in execution of a decree.
2. To limit the power of the Civil Court in respect of the sale of immovable property in satisfaction of a decree for money to cases in which the property was specifically pledged as security for the claim decreed.
3. To enforce the reduction into writing of all contracts so pledging immovable property, and the registration of the instruments embodying such contracts.

The Council would observe that legislation for effecting any one of these objects would involve an amendment of the new Code of Civil Procedure or the Contract Law or the Indian Registration Act, *i.e.*, enactments passed by this Council. It followed consequently that the proposed Bill, if it was to be proceeded with, must be undertaken in the Council of Governor General instead of the Local Council, as the latter had no power to deal with matters affecting the provisions of Acts passed by the superior Council.

As to the policy of the objects of the Bill, he need only say that, when the provisions of the new Civil Procedure Code were under discussion, there was every disposition on the part of the members of the Select Committee by whom

the details of that enactment were considered, to accept the principle of an unrestricted system of insolvency adjudication; and they were only deterred, he thought, from giving effect to the larger measure by the consideration of the insufficiency of the machinery available to secure its efficient operation. Such an objection would not apply in the case of the present Bill, the operation of which was limited to four districts only.

The propriety or expediency of the prohibition of the sale of land in satisfaction of decrees for money had been largely discussed in connection with the same Code, and there were not wanting advocates of such a course, even if applied to the whole of India; and at all events there was ample precedent for the adoption of such a policy when its application was restricted to the small area within which this Bill, if passed into law, would take effect.

The enforcement of the registration of all documents affecting title to, or interest in, immovable property without restriction as to the value of the interest, had more than once been advocated by him (MR. COCKERELL) in this Council, as a fit provision for all India; and the only tenable objection that he had ever heard made to such a proposal was the inadequacy of the present registering offices and establishments for such an undertaking and the consequent inconvenience and harassment to the people which would result from such an obligation if applied to all parts of the country. The force of such an objection would of course be largely diminished in the case under discussion, because, as before remarked, the area of the operation of the measure would be small, and the executive would take care to make the needful provision in the way of a suitable agency for the registration of documents, the registration of which was thus made compulsory.

The Motion was put and agreed to.

CODE OF CIVIL PROCEEDURE AMENDMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Code of Civil Procedure. He said that that Code had now been in force for nearly nine months, and the object of the present Bill was to make some amendments which experience had shown to be either necessary or desirable. He might mention that the late Law Member, as well as the rest of the Select Committee, had fully anticipated that necessity for making amendments would arise in a short time after the Code had become law. It was, however, thought desirable that the Code should be enacted while Sir Arthur Hobhouse was in the country, so as to give the Indian public the great benefit of the explanations which the Council would remember he made on the occasion of the Code being passed. But *ogni grano ha la sua semola*, 'every grain has its bran,' and it must be confessed that this benefit was somewhat counterbalanced by certain faults, both in form and substance, which would probably have been

corrected had more time been given to revise the numerous alterations made by the Select Committee in the last edition of the Bill. Mr. STOKES thought he would now best discharge his duty by merely mentioning the more important changes which the Executive had recommended to be made, and saying nothing whatever of the comparatively unimportant drafting alterations which he himself considered desirable.

The fourth section of the Code saved "any local law prescribing a special procedure for suits between landlord and tenant." It had been held that the local laws referred to here were only local laws in force when the Code was passed. The result, of course, was that the local legislatures were debarred from making any law dealing with that matter. It was accordingly proposed to amend this section by inserting after "local law" the words "whether before or after this Code comes into operation." It might also be desirable to make a similar amendment with regard to certain suits between landholders and their agents.

Section 229 of the Code provided for the execution in British India of decrees of any Courts established by the authority of the British Government "in the territories of any Native Prince or State in India." He need hardly remind the Council how extremely difficult it was to say what "India" really meant; if hon'ble members would look into Colonel Yule's edition of *the Book of Ser Marco Polo*, they would see that the term had been vaguely used from the time of Pliny. Indeed, until Sir Fitzjames Stephen's Bill consolidating the statutes relating to this country was passed into law, it would be impossible to say with confidence what the term "India" comprised. The result of the present wording of section 229 was to exclude certain Courts, for instance, the Court of the Resident at Mandalay, from the operation of the section, and that led to obvious inconvenience. The Bill would accordingly substitute the words "Foreign Prince or State" for the words "Native Prince or State in India."

When a judgment-debtor was imprisoned and the District Court was situated a long distance from the jail some inconvenience had been caused by the requirement of section 339 of the Code, that the monthly payment of subsistence-money of the prisoner should be made to the proper officer of the Court. If the decree-holder failed to pay this money, the Court's order for the discharge of the debtor could not be notified to the officer in charge of the jail until some days after the failure had occurred, and it was hard to say how the debtor was to be supported while he was unnecessarily detained. This difficulty had arisen in Burma and Lower Bengal. The Bill accordingly proposed to substitute for the officer of the District Court the officer in charge of the jail and, in case of non-payment, to dispense with the order of the District Court as a condition precedent to the discharge of the debtor.

The next point was with reference to section 588 of the Code, which gave appeals from certain orders. Two additional appeals had here been provided for by the Bill: appeals against orders for the sale of attached property, and appeals against orders rejecting applications to set aside a decree *ex parte*. It was also thought desirable to omit from clause (j) of that section—which allowed an appeal from orders under section 244, as to questions relating to the execution of decrees—the words “of the same nature with appealable orders made in the course of a suit.” Those words had been inserted by the Select Committee, and he confessed he never understood them, and did not understand them now. They had already given rise to great difficulty and doubt. The effect of this omission would be to give only one appeal from orders determining questions relating to the execution of a decree. Possibly the Committee to which the Bill would, he hoped, be referred might consider it preferable to strike out clause (j) altogether, and to make it perfectly clear, by a slight addition, either to the definition of “decree” or to section 244, that the Code treated such orders as decrees and gave two appeals therefrom.

The last point he would mention had reference to section 652 of the Code, which enabled the High Courts to make subsidiary rules to regulate the procedure of the subordinate Courts, but did not give power to the High Courts to make similar rules to regulate their own procedure. In the case of the chartered High Courts this omission was harmless, for the matter was sufficiently provided for elsewhere. But in the case of Judicial Commissioners and other “High Courts” as defined in Act I of 1868, this omission had caused inconvenience, and it was therefore proposed to insert after the words “connected with” the words “its own procedure or.”

It had not been thought necessary to provide against difficulties which had arisen solely from a strange forgetfulness of the provisions of the General Clauses Act, I of 1868, section 6, and the decision of the Bombay High Court (6 Bomb. A. C. J. 168) on that section. But the expediency of extending to Mufassal Courts of Small Causes the sections of the Code (223—228) which enabled one Court to send its decrees for execution to another Court, was under the consideration of the Home Department.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 4th July, 1878.

SIMLA;
The 20th June, 1878. }

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The Meeting which was originally fixed for Thursday, the 25th April, 1878, was adjourned to Thursday, the 20th June, 1878.