Friday,
22nd December, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXI

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ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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

The Council met at Government House on Friday, the 22nd December, 1882.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E Baring, R.A., C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Mahárájá Sir Jotíndra Mohan Tagore Bahádur, K.C.S.I.
The Hon'ble C. H. T. Crosthwaite.
The Hon'ble Rájá Siva Prasád, C.S.I.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble R. Miller.

NEW MEMBER.

The Hon'ble R. MILLER took his seat as an Additional Member.

DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, be taken into consideration. In doing so he said he did not think it was necessary to trouble the Council with any lengthy remarks at present, as he had already on a previous occasion given a somewhat full account of the objects which this Bill proposed to secure, and he had subsequently also explained certain

modifications which the Select Committee proposed to make. A complete statement of the modifications they finally recommended would be found in the report of the Select Committee which was last printed, and it was so full that he did not think that any speech which he could make would explain more clearly to the Council than that document did the changes which had been made and the reasons which had rendered those changes necessary. He would only add that the Committee had done their best to give effect to the suggestions made by the Local Government, which, in a purely local Bill of this nature, was the best qualified to decide on matters of detail, and that they had also given their most careful consideration to the whole of the remarks contained in the communications and memorials which had been received from the outside public.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS moved that after section 10 of the Bill the following section be inserted:—

Amendment of section 40. (Power of Conciliator to compel attendance.)

"11. In section forty, for the word 'invite' the word 'direct' shall be substituted; and for the second clause the following shall be substituted, namely:—

"'Any person who, without sufficient excuse, fails to attend or be present as directed under this section shall be deemed to have committed an offence under section 174 of the Indian Penal Code.'"

This clause, he said, had been excluded at the last meeting of the Select Committee, at which he was unable to be present, by the casting vote of the President, and, as it was a matter of considerable importance, it was thought advisable to place the amendment before the Council. On looking at the papers which had been circulated to the members of the Council, it would be seen that the question of compelling the attendance of the opposite party before the arbitrator was regarded as one of considerable importance. The Local Government advised that the power should be granted, and the Special Judge also thought that such a course would be judicious, although he had some doubt as to the best mode of carrying it into effect. Dr. Pollen showed that, when both parties appeared, fifty per cent. of the cases were amicably settled, and the Puna Sarvajanik Sabhá had forwarded a memorial, passed by a general meeting of the inhabitants of Puna, in which they accepted the alteration, only they thought the penalty should be made more stringent. He therefore thought the change was a desirable one, and he would propose that it should be adopted.

The Hon'ble MR. HUNTER said:—"My Lord, I should be sorry to impede in any way the passing of the Bill as revised by the Select Committee. But

in the Report of that Committee I read the following words:—'We have, after a very full consideration of the arguments adduced on both sides, struck out the 11th section of the Bill as introduced, which would have empowered a Conciliator, whose assistance is invoked by one party to a dispute, to compel the attendance of the opposite party. The majority of us think it safer not to confer such a power at present.' The present amendment seeks to restore the *ipsissima verba* of the section thus rejected. The punitive sanctions which it creates, seem to go beyond the intention of the Legislature in framing the original Act. The question as to whether attendance on Conciliators should be made compulsory was considered when the original Act was under discussion, and it was decided that such attendance should be left optional. The question has again been considered by the Select Committee to which the present Bill was referred, and after a full examination of the arguments on both sides, the proposal to make such attendance compulsory was rejected. I feel sure, my Lord, that reasons must exist for now proposing to grant punitive sanctions which have been thus repeatedly and deliberately refused. But I hope that the Hon'ble Member in charge of the Bill will favour the Council with a statement of those reasons; and that any Member of the Select Committee who may have altered his opinion, since he signed the Report, will acquaint us with the arguments that have led to his doing so."

The Hon'ble MR. CROSTHWAITE said that, as one of the members of the Select Committee, and as being in part responsible for the rejection of this amendment by the Committee, he thought it necessary to state his reasons for his opinion. In the first place, this amendment differed entirely from any of the other amendments which had been made in the Bill. He was quite ready to agree, and he thought the Council ought to agree, to any amendment which might be necessary to make the intention of the original Act clear. But the amendment now before the Council went beyond the intention of the original Act, and authorized a system of conciliation which the Legislative Council in passing it did not intend. The question whether attendance on the Conciliators should be made compulsory was considered by the Bombay Government before the Act was passed, and it was decided in the negative after careful consideration by the then Government of Bombay. The then Governor wrote that, having carefully considered the question whether the raiyat should be compelled to attend before the Conciliators, he thought that he should not be so compelled.

"If the Conciliation Judge had the power of compelling the attendance of the raiyat to answer the money-lender's claim, he, the Judge, would have a power which would be liable to abuse. Though he would not have the power of deciding, or enforcing his decision if he formed one, still he would, by compelling attendance, be able, if so disposed, to put great

pressure on the raiyat to compromise the claim. Such power of applying pressure by an educated man of position upon an uneducated and humble man, or a claim preferred by a man generally of some education and wealth, is a power that ought not to be conferred upon honorary Conciliation Judges in the present state of society in the Dekkhan. I state this with confidence, appealing to the knowledge of those who are acquainted with the Native gentry of the Dekkhan, from among whom the Conciliation Judges would have to be selected."

This view of the matter was accepted by the Legislative Council in 1879, and, if not actually accepted, was acquiesced in by the Hon'ble Member who was the distinguished author of the Act. But what had happened after that with regard to the system of conciliation? It would be in the recollection of the Council that the original Act provided that no police-officer should be appointed a Conciliator. Apparently, that provision was intended to include, or rather to exclude, the village-officers called police-patéls from being Conciliators. Afterwards, in 1881, the Government of Bombay having, MR. CROSTHWAITE supposed, found out that this exclusion was inconvenient, and being unable to find a sufficient number of Conciliators without having recourse to the services of police-patéls, this Council was asked to amend the Act, and then his hon'ble friend Mr. Gibbs asked the Council to say that the words "officer of police" in the original Act should not be deemed to include the village-patél. The village-patél as represented by Sir Richard Temple and the Hon'ble Mr. Hope in 1879 was a person who ought not to be entrusted with the administration of cases between money-lenders and raiyats.

Speaking of the appointment of patéls to be village-munsifs, Sir Richard Temple advocated the measure, and explained that the village-tribunals would have nothing to do with affairs between raiyats and money-lenders—a class of cases, he added, with which they would be utterly unfitted to deal; and the Hon'ble Mr. Hope, speaking in relation to the same matter—the appointment of the headmen to be village-munsifs—said in 1879, "there is this further difficulty in their case, that the bulk of our petty suits are brought by money-lenders with whom the patél would too often be, by want of education or by absolute interest, unqualified to cope."

Accordingly, it was understood at that time that these patéls were not to be Conciliators, but now by the alteration made in the law in 1881 they could be appointed Conciliators, and, MR. CROSTHWAITE supposed, had been so appointed in many instances by the Bombay Government. Therefore, he thought it fair to infer that the class of men who could be appointed Conciliators at present were not a higher class of persons than those in respect of whom the legislation of 1879 was enacted, but that they might absolutely include a class

which was declared at that time to be unfitted to deal with cases in which raiyats and money-lenders were concerned. Now, the Council was called upon to go a step further and reverse the decision it had come to in 1879, and to make failure to attend before the Conciliators penal. MR. CROSTHWAITE thought, under these circumstances, they should proceed with great caution. They ought to have before them full information as to the real working of this measure of conciliation, and as to whether the abuses which Sir Richard Temple anticipated had occurred. In a note by the Hon'ble Mr. Hope which had been put before the Council as Paper No. 1 relating to the Bill, and in several other papers connected with this Bill, reference was made to a report of Dr. Pollen, and quotations were made from that report which showed that the system of conciliation had on the whole worked very well. MR. CROSTHWAITE had no fault to find with those quotations, but he thought it necessary, as Dr. Pollen's report had not been placed before the Council, to quote at greater length than the Hon'ble Mr. Hope had done what Dr. Pollen said on the other side of the question; and if the quotations which were already before the Council were read in connection with the quotations which MR. CROSTHWAITE would make, he thought the Council would then be placed in a position to arrive at a fair understanding of Dr. Pollen's meaning. The Special Judge said:—

"The chief objection I have to the system is that it tends to encourage collusive agreements and to nullify to a great extent one of the principal objects of the Act, namely, the relief from debt of the indebted agriculturists, by the facilities which it affords for evading that searching enquiry into the merits of each transaction which to my mind is the most important means of relief afforded by the Act. There are many conscientious and zealous Conciliators who seek to probe the true merits of each case, and who use all their influence to persuade the parties to come to an equitable compromise. Other Conciliators are more easy-going, and such persons are apt to be made mere registrars for giving legal sanction to the claims presented to them. Large number of conciliation-agreements are little better than mere renewal bonds supplanting old deeds. In former reports I have enlarged upon this subject, and it will here suffice thus briefly to refer to my views. I have only to mention in this connection a new practice which seems to be growing up in some places. When a loan is being negotiated, in order to avoid the trouble and expense of writing out a bond on stamped paper and of having it formally registered by a Village-Registrar, the parties go before a Conciliator. The creditor makes a demand. The debtor admits the debt and promises to pay in certain sums and at certain times as may have been fixed upon. The Conciliator takes down the agreement in writing. It is signed by the parties. It is then sent to Court and takes effect as a decree. The dispute and the pleadings are a kind of legal fiction to give the Conciliator jurisdiction. The lender thus gets what is equivalent not only to a registered bond, but to a registered bond with a decree cut and dry already tacked thereto, and this he gets, without stamped paper, registration or litigation—by the mere collusion or consent of the borrower. In this way the stamp and registration laws are easily evaded. I do not think a state of things like this was ever contemplated. It does not, however, appear illegal."

The Bombay Government, in commenting on Dr. Pollen's report in paragraph 17 of their resolution, wrote as follows:—

"The merits and defects of the system of conciliation are impartially stated at length in paragraph 44 of the report. It is satisfactory to learn that both Mr. Ranadé and Mr. Bhede testify to the usefulness of the system, and that the Special Judge is himself of opinion that, where the Conciliators are efficient, the system may fairly be held to have done much good. But His Excellency in Council considers that it would be still too early to pronounce a definite opinion on the success of this system. The irregular practice referred to at the end of paragraph 44 requires careful watching. The mere fact that it is possible under the existing law to obtain what is equivalent to a registered bond with a decree attached by means of a collusive dispute before a Conciliator, and without registration, stamp or litigation, shows the necessity of careful supervision."

That being the state of the case, the Council should consider to what extent abuses of this kind might possibly extend. It appeared from the returns attached to Dr. Pollen's report that there were something like 70,000 applications made to the Conciliators last year, and in 25,000 of these cases the party invited to attend (who, Mr. CROSTHWAITE presumed, would generally be the raiyat) neglected or refused to appear. Possibly, the effect of the amendment which the Hon'ble Mr. Gibbs had proposed would be that these 25,000 persons might be compelled to attend. But, before they authorized such a measure of compulsion, the Council ought distinctly to know that no such abuses as had been pointed out by Dr. Pollen had taken place, or were likely to take place. And information to that effect was not before the Council. His hon'ble friend Mr. Hope, when the Act was passed, stated his belief that, if the decisions of the Conciliators were just and equitable, the parties would attend. Mr. CROSTHWAITE perfectly agreed in that expression of opinion, and he believed, if time was given, it would be found that confidence would grow up, and that before a just Conciliator the parties would attend, but before an unjust one they would not attend; which was the result they must all wish to see attained. But there had not been sufficient time to ascertain the effect of the Act, as it had been in force a very short time. The report of Dr. Pollen was not before the Council; but it had been seen from the passages now quoted that even he spoke in a dubious manner on the subject, and that the Bombay Government re-echoed his tone.

The Council would no doubt be told that what had been done was exactly in accordance with the French law, from which this system was borrowed. But MR. CROSTHWAITE, on looking into the matter, had found some very material differences between the two laws. He had quoted Dr. Pollen to show the force which a decree given by the Conciliators had: it had the effect of an unappealable decree. A man might go before a Conciliator and mortgage his

property on most unconscionable terms, and there was no appeal from the agreement so made. If MR. CROSTHWAITE wanted to upset the Act altogether, this was the very provision which he would introduce. Notwithstanding the clauses forcing the Courts to go behind the bond, the money-lenders were provided with the means of evading those wholesome provisions of the Act. It might be said that the Government could watch the working of this conciliation-system and prevent its abuse. But we had to deal with very clever people, who had their whole attention directed to the matter, and they would soon find out how to evade the law. He was firmly of opinion that the introduction of the proposed clause, together with the extraordinary force given to agreements made before a Conciliator, would virtually upset the intention of the Act if its operation was not very carefully watched. Under the French law, the agreement in a Conciliation Court had no such power as the Act gave to it. It was merely an authenticated private agreement, by which no lien on real property could be created: and if the parties wished to enforce it, they had to go before the Courts. Neither had the Council a precedent in the French law in the matter of the penalty which it was proposed to attach to non-attendance before the Conciliator. The French law merely provided that, if either of the parties did not choose to attend, he was liable to pay a fine of ten francs, and that fine could be imposed only by the Court of first instance before which the case might ultimately come. If the fine was not paid, that Court might refuse to hear the defaulting party's suit if he was a plaintiff, or might give a decree against him without hearing his defence if he was a defendant. This was very different from what was now proposed.

The only other argument likely to be brought in support of the amendment was what he might call the confidence argument. It was said that this Council was now dealing with a local question, and ought to accept the recommendations of the Local Government. MR. CROSTHWAITE was quite prepared to act to a certain extent on that principle, but he thought that in this instance it was carried too far. He thought that their confidence must be tempered with discretion. When, having already confided in the Bombay Government of 1879, which was against the conferment of power to compel attendance before the Conciliators, he was now asked to place confidence in the Bombay Government of 1882, which asked that the power might be conferred, he felt himself very much in the position of the patriarch when he was called upon to give a second blessing. The Council had already given their confidence to the Bombay Government in 1879, and if that Government now wished them to adopt a different course, it should afford the Council very strong reasons for changing their opinion; and that had not been done. He held a strong

opinion on this point, and he thought that, before the Council proceeded to make attendance upon Conciliators compulsory, they ought to have greater experience of the working of the Act and a certain assurance that those abuses (which, he must confess, he considered gross abuses) to which Dr. Pollen had referred were not likely to recur.

He would therefore vote against the amendment.

The Hon'ble MR. HOPE said it would be necessary for him to reply to the running fire of objections which had been brought to bear upon him by a somewhat similar series of rather curt replies, because, as regarded some of the points raised, if he were to resort to the means of answering them fully which were at his disposal, it would lead him to draw largely from the bulky volume which was in his hand and from one or two more which he had under the table; and, if he attempted to do so, he would be obliged to trespass very largely upon the time of the Council. As, however, he did not think the Council would consider such a tedious course to be necessary, he should be obliged to give replies which must necessarily appear to be of a somewhat dogmatic character. One of the objections which had been taken was that the effect of the amendment would be to go beyond the intention of the original Act, and was therefore inadmissible, since it was recognised on all hands that, in the legislation now before the Council, it was not intended to interfere in any degree whatever with the principles of that Act. But he ventured altogether to deny that the amendment went in any way beyond the scope and intention of the Act. The Act might be said to comprise both main principles and detailed provisions by which those principles were to be carried out. Starting with the previous litigation was a very ruinous as well as a very tedious process for all parties. The principle of conciliation was that the two persons at issue, who both, or, at any rate, one of them, were supposed to be more or less wrong-headed, should be brought in the first instance before a person of greater intelligence and better position, and of certainly more calm mind than either,—a person who was able to give them good advice; and that they should then be left to decide whether they would take it or carry on the war to the bitter end. Any measure, therefore, which was calculated to allow that principle full play was within the intention of the original Act. The present proposal was to be looked upon as a mere detail of machinery for carrying out that intention fairly on a point in which that machinery had been found to fail; and he could, with little trouble, point out to the Council various amendments of a similar character which had been made without any objection by the Bill of last year. The point in which the original intention of the Act had failed was simply this, that whereas it was intended that both the parties should appear before an intelligent person, who would,

if possible, bring them to terms, it was found in practice that, in a large proportion of the total number of cases, one of the parties did not so come before the Conciliator; and, consequently, the conciliation, which the law intended to take place before litigation was resorted to, had no chance of coming into play.

As to the next objection which was taken to the Bill, it was raised by the Hon'ble Member who spoke first in the debate, and MR. HOPE thought it was also embodied in substance in the remarks which fell from his hon'ble friend Mr. Crosthwaite. It was said that, when the original Act was under consideration, the Government of Bombay was opposed to conferring upon Conciliators the power which the amendment now proposed to give them, and quotations were made in support of that statement from a minute written by Sir Richard Temple, in which he said that he thought the power was liable to abuse, and that the Conciliator might put great pressure on the raiyat in order to induce him to compromise the claim in favour of the money-lender. It was likewise said that the refusal on the part of the Bombay Government to confer upon the Conciliator the power of summoning the defendant had been accepted by the Council as well as by himself. Thirdly, it was pointed out that, as regarded police-patéls, he himself had said, in a certain note which he had written, that he did not think it was desirable to impose upon the police-patéls in the Dekkhan the responsibility of deciding certain cases.

With regard to these three points, which he had briefly, but he hoped not incorrectly, enunciated, he would remark that the Council were now in the year 1882 and not in the year 1879, and that they might therefore at present very well grant a power, though in 1879 they had no sufficient warrant for doing so. Again, without laying too much stress on technicalities, he might say that the only way in which the refusal had been accepted was a demi-official way, in the course of the private consideration given to the subject by the Executive Government. So far as he recollected, the subject never came up before the Legislative Council. As to the particular question of police-patéls, he must point out that his note was on a totally different subject, and what he there said was, that he did not think it was desirable to impose upon the hardworked patéls of the Dekkhan the duty of acting as judges in all civil suits exceeding Rs. 10 in value. He had never said that they might not be trusted to exercise the power of bringing two wrong-headed people together with a view to enter into a compromise, and he objected to that inference being drawn from his note or to its being used for such a purpose.

The Hon'ble MR. CROSTHWAITE here observed that he had said that the quotation referred to the different matter of village-munsifs.

MR. HOPE said that this was so, but then what became of the applicability of the quotation? Either it applied to this case, or it did not. If not, then the remarks by his hon'ble friend must be held to come under the stricture of total irrelevance.

However, passing from the observation that the Council were now legislating in the year 1882 and not in 1879, he would proceed to the demand which had been made for fuller information to prove that certain abuses had not occurred. Reference had been made to certain quotations which were given in the note which he had written on Dr. Pollen's report, and it was said that, if they were read with certain other quotations from the latter document which he had not given, a very different view of the question from his would probably be justified. He would here remark that he *did* in that note also say as follows:—

"While thus quoting Dr. Pollen against himself, it is only fair to invite perusal of his 43rd and 44th paragraphs, in which he objects to the system that there is in it no guarantee against claims purposely enhanced in order to make the remissions imposing, against collusive agreements, or for that thorough investigation into the true merits of each transaction which could be secured by the application of the law in the Civil Courts."

MR. HOPE did not for a moment suppose that his hon'ble friend meant to imply that Dr. Pollen was not quoted with fairness, but, having supplemented his statement by the words out of his note which MR. HOPE had just read, he would remark that the whole of this matter was outside the present question. The issue which the whole of Dr. Pollen's remarks, taken together, really raised was, whether conciliation, on the whole, was a good thing or not. Dr. Pollen was an able and thoroughly trained judicial officer, and his general opinion was that no authority, except the regular Civil Courts, was fit to investigate matters of this sort; he considered, on the whole, that any procedure by way of conciliation was unsatisfactory, and that the Courts would do the work much better. In carrying out the system of conciliation, his recommendations would be directed towards bringing the Conciliators under the fetters of the law, and attaching to them the restrictions imposed on the Civil Courts. MR. HOPE was not now called upon to defend the principle of conciliation, because it was not proposed to touch it in the present Bill. On the other hand, he thought that the demand to show that abuses had not occurred was an exceedingly fair and reasonable one. In answer to that demand, he could only say, in the first place, that no general complaints had been received from any portion of these districts that the Conciliators had abused the power which had been entrusted to them. No such complaint had been made in any of the memorials which were before the Council, nor had it ever reached him from outside. As to the statement made by Dr. Pollen, that certain objectionable agreements might be made before the

Conciliator, and that renewal-bonds might be substituted for the existing ones, all MR. HOPE could at present produce in answer to it were certain statistics which he intended to refer to at a later period of the debate, and in which it was shown that the greater number of bonds were not renewal-bonds but records of original transactions between the parties. He thought, therefore, that there was nothing to show that that particular form of abuse had prevailed to any great extent. Then, another argument which had been brought forward in proof that abuses must exist was this, that he himself had said that, if the Conciliators' Courts were good, the people would themselves resort to them, and that, if they were not, they would stay away; and it was inferred, from the large number of refusals or neglects to attend, that the people were dissatisfied with the system. MR. HOPE found that neither this argument nor the facts would bear that inference. As regarded the people failing to attend before the Conciliator, it was shown in the reports that it was not always the raiyat who stayed away, but the complainant, the saukár himself, who, having brought his complaint before the Conciliator, did not appear to press it, the reason being that he merely sought to use this process as a screw *in terrorem*. But, granting that there was a large proportion of raiyats who did not attend before the Conciliator, there was another answer, which was that there was no security that the raiyat had ever received the summons to attend. If the argument from Sir Richard Temple which was put forward was held to be good, and if it was to be supposed that the Conciliators would use their powers in favour of the saukárs, then that at once afforded a good reason why the Conciliator and the saukár between them should take uncommon good care that the raiyat heard nothing about the application. The saukár usually did not want conciliation at all. Therefore, nothing could be inferred from the mere absence of the parties. Nor was there any inconsistence between the present motion and the remarks which he had made on a former occasion, and to which reference had this day been made. The most probable reason, if he might venture to suggest one, for the non-attendance of the parties was a combination of all these reasons together. There might be certain cases in which the saukárs succeeded in preventing the attendance of the raiyat; there might be some cases in which the raiyat took no trouble to attend; and there might be others in which he had never heard of the application made to the Conciliator. The objections now made were of exactly the same character as those which were taken to the provision in the Bill of 1879, that the defendant should be obliged to attend; yet they now knew that that provision had produced the very best effect.

He would now pass on to another point, namely, the remarks which had been made with reference to the French system. It was said that the system

inaugurated by the Dekkhan Agriculturists' Relief Act differed from the French system, because in France the parties might appear before the Courts to contest an agreement made before a Conciliator, whereas here it had the effect of an unappealable decree. His answer to that was, that here also, before an agreement could take effect, the parties were allowed to appear before the Court, and they received ample notice that they might do so. The Act required the Conciliator to forward the agreement to the Court of the Subordinate Judge, notice was issued to the parties to show cause within one month why the agreement should not take effect as a decree, and rules were framed taking the utmost possible precautions to ensure the notice reaching the parties. It was said that these were "unappealable decrees," but to that statement MR. HOPE begged altogether to demur. These proceedings were entirely open to revision under Chapter VII of the Dekkhan Raiyats' Act. Under that chapter, the special Judge was empowered to transfer applications from one Conciliator to another in cases in which he had reason to believe that injustice was likely to be done, and in every way the proceedings could be rectified, under the revisional power given, if there was anything very gross or wrong in them. Finally, it was said that the fine imposed under the French law was only ten francs, and that that could not be imposed by the Conciliator. To that MR. HOPE would reply that here the fine could not be imposed by the Conciliator either. The amendment merely rendered a person disobeying a summons to attend before a Conciliator liable to the same fine to which every person is liable for not attending on the lawful summons of a Court of Justice. Proceedings would have to be taken before a Magistrate for the adjudication of the fine, and the Conciliator would have nothing to do with its imposition.

He hoped that by these remarks he had succeeded in showing, first, that the amendment was not beyond the original intention of the Act; secondly, that the Council were perfectly at liberty now to provide new details of machinery for carrying out that intention, which they did not feel justified in providing in 1879; thirdly, that there was no proof that any abuses had arisen, or were likely to arise, in the working of the Act, or that any of the precautions against abuse which had been provided were insufficient. Also that no extraordinary power was asked for the Conciliators, and no special hardship was likely to occur from the exercise of that which it was proposed to confer on them.

Lastly, he would refer to the "confidence argument" which had been objected to by his friend the Hon'ble Mr. Crosthwaite. It should be remembered that on this question this Legislative Council was, for technical reasons, obliged to legislate, instead of the discussion and settlement of the matter

being left to the local legislature. That being so, he thought that in this matter the Council might place the same confidence in the judgment of the present Local Government as it might be seen from the debates had been placed in the Local Government of 1879; especially might they do so in a matter in regard to which the Government of Bombay was in close communication with the local authorities to whom the duty of administering the law had been entrusted, and had also the advantage of watching closely the comments of the local Press. But there was another form of the confidence argument to which he would refer, and that was, that, at the time the conciliation-system and the village-munsifs were proposed, he had to undergo considerable opposition on the ground that there were no fit men available for the discharge of the duties which it was proposed to impose upon them. The line of argument Mr. Hope then took was more generous and, he was glad to say, had been proved more just, with regard to the integrity and the capacity of the Natives of India. He then said that, to his own personal knowledge, there were a considerable number of Native gentlemen who would be found quite fitted to exercise the small amount of authority proposed to be conferred upon them by the Act. He was glad to say that these anticipations had been fully justified. There were at present upwards of three hundred Conciliators, and, after making due allowance for the incompetence or even for the misconduct of a few, if such really were necessary,—he thought only two or three had been removed from office,—the experience which these gentlemen brought to the performance of their duties, and the general satisfaction in which their proceedings were held, amply justified the confidence which was reposed in them. He, therefore, saw no reason why the Council should hesitate for a moment to confer upon them the small additional power which was now proposed. He did not know how the Natives of India were ever to be educated to self-government or to independence if they were not to be allowed to exercise a certain amount of responsibility. His own opinion was that, if responsibility was put well upon people's shoulders, it would be found that they bore it much better than was expected. There was no ground whatever to cast a slur on a number of gentlemen who had been performing these honorary and delicate services well for the last two years, and to refuse to give them the power of summoning the parties to appear which the amendment proposed.

The Hon'ble Sir Steuart Bayley said that he would not take up the time of the Council very long after the thorough and lengthy way in which this question had been threshed out; but as he happened to be one of the unfortunate minority of the Select Committee, and having been called upon as such by his friend the Hon'ble Mr. Hunter to explain the reasons on which he had

acted, he wished to say a few words in support of the vote he had given in favour of the amendment before the Council. It was, he would not say unfair, but still not quite correct, to draw an argument in favour of the law as it stood from the fact that the Select Committee in this instance were willing to leave that law on the lines on which the Act had been originally passed; because, if the Hon'ble Member would look into the history of the case, he would find that the present amendment was put into the first draft of the Bill, and it was only at the last stage of the Committee's meetings that it was proposed to abandon it. His friend Mr. Gibbs had not been able to be present on that occasion, and consequently the members were two and two, and therefore the abandonment of the proposed section was carried by the casting vote of the Chairman of the Committee. Had Mr. Gibbs been able to be present, the section would have stood as originally drafted; so that, if any weight was to be attached to that occasion specially, it was fair to say that there were as many on one side as on the other.

But he himself did not attach much weight to that circumstance. The real reason which justified him in voting for the amendment was that the Bombay Government, who were really responsible for the working of the Bill, and who possibly understood better than the members of this Council the character of the amendment, although they rejected it in 1879, had subsequently, after three years' experience gained, found that this power could safely be given to the Conciliator. It was not a question of giving their confidence to that Government in 1879, and not giving that confidence in 1882. But it seemed to him that that Government spoke in 1879 before gaining experience, and the Government of the present day made their recommendation after having found that experience. Considering the importance of the functions entrusted to Conciliators, it was only reasonable to give the Conciliators this additional power without which those functions were shorn of half their usefulness. His own opinion was that, in the majority of instances, it was not the raiyat but the saukár against whom the exercise of this power would be needed, and that it would be absurd for the Government to appoint Conciliators and to give them all these powers for the express purpose of bringing the two sides together, if, at the end, they were not in a position to do it. The penalty, as it stood in the amendment, was, he believed, only declaratory. He could not pretend to offer a professional opinion on that point, but it appeared to him that, if the word "directed" was used instead of "invited," the penalty would follow as a matter of course under section 174 of the Penal Code. The Conciliators could not act under that section themselves, but would have to go to the local Magistrate to enforce the penalty, and it struck SIR S. BAYLEY that the number of cases in

which they would take the trouble to do so would not be very great. If they proceeded against one or two recusant persons, the parties concerned would become aware of the existence of this power, and the result would be that the parties would be brought together and the object of conciliation would be attained. But, without this power of bringing two parties together, it seemed to him that the Conciliators would be placed in a very false position. These were the reasons which induced him to support the amendment.

The Hon'ble MR. ILBERT said that he admitted that the amendment would merely have the effect of restoring to the Bill a section which originally stood in it. He admitted, also, that the omission of that section was due to an accidental circumstance, namely, the unavoidable absence of Mr. Gibbs from the meeting of the Select Committee. Owing to that absence, MR. ILBERT was unfortunately compelled to decide the question by his casting vote. He thought the supporters of the amendment were fully entitled to the benefit of both these admissions. After what had been said by Mr. Crosthwaite, he need not explain at length his reasons for opposing the amendment. They were, first, that the amendment made, not an alteration of detail, but a modification of principle, and, as such, went beyond the proper scope of the Bill; and, secondly, that the evidence before the Council was not sufficient to justify the making of the amendment. He would explain his first point by quoting the concluding remarks of the very able note by his friend Mr. Hope on which this Bill was founded. Speaking of the measure of 1879, Mr. Hope said :—

"In order to succeed in all respects, it needs no modification of principle, no change of method, nothing except the aid of a few legislative amendments to make its original meaning more clear, of vigorous executive action to carry out the provisions fully, and a little patience."

Then, was the effect of this amendment to make the original meaning of the Act more clear? He would answer this question by another quotation from the Hon'ble Member's speech in introducing the Bill in 1879 :—

"The proposed Conciliators will so far differ from the French *Juges de Paix* that they will not have, in addition to conciliatory functions, a petty judicial jurisdiction up to 100 francs (=Rs. 50), nor will they be able to compel the attendance of the defendant before them; but they will in consequence be unable to exercise undue pressure, which, in India, might perhaps, under some circumstances, be apprehended."

So it was perfectly clear that the Government had in 1879 considered this point, and had, after deliberation, come to the conclusion that it was not wise or safe to confer on the Conciliators the powers which would be given them by the amendment. The principle, as he understood it, of

the original Act was, that the plaintiff, before he began his suit, should be required to give the defendant an opportunity of attending before an impartial and reasonable person, and talking the question over, an opportunity of which the defendant might avail himself or not, as he pleased. The proceeding, so far as the defendant was concerned, was to be probably voluntary. If so, was the Council now justified in making so great a departure from this principle? He submitted that they would not be justified in doing so, except upon full and clear evidence that the dangers apprehended in 1879 were found by experience to have no foundation. The Council were told that this was a matter in which they were to be guided by the opinion of the Bombay Government. MR. ILBERT admitted that they ought to attach the greatest possible weight to the opinion of the Bombay Government on such a point, but he did not think that they could altogether disclaim responsibility for this legislation, or refrain from exercising their own judgment as to the effect of the evidence before them. They had before them the very able report which had been drawn up by Mr. Pollen on the working of the Act in 1881. MR. ILBERT had very carefully read that document, particularly paragraphs 43 and 44, from which extracts had been made in previous speeches; and the impression which it left on his mind was that Mr. Pollen was on the whole favourably disposed to the system of conciliation, but that he believed it to be in certain cases liable to serious abuse. "My judgment," says Mr. Pollen, "is still, to a certain degree, in a state of suspense, and I cannot feel sanguine as to the ultimate success of the experiment." Now, what was the fair inference to be drawn from this statement? The inference which he would draw was that the Council would be fully justified in continuing the powers conferred by the existing law on Conciliators, but that they would not be justified, without further evidence, in extending those powers. That was the inference he drew, and he thought the proper course to adopt was to leave the law as it stood,—not to take away one jot or tittle of the powers given by the existing law, but not to increase those powers. Nor did he think that the adoption of such a course would place the Conciliators in a false or undignified position. What was the position which they occupied? It was difficult to conceive a more dignified or responsible position. They occupied the position of arbitrators selected by the State for the purpose of determining disputes between saukárs and raiyats; like other arbitrators, they had no power to compel the attendance of the defendant; but, if he failed, without sufficient reason, to appear, the Court would subsequently draw its own inference from his non-appearance. MR. ILBERT did not wish to make a single remark which might imply the slightest reflection on the integrity or capacity of the gentlemen who had been appointed to perform the responsible functions of Conciliators,

but he would prefer to give them the opportunity of justifying that selection. He believed that the parties would appear before those Conciliators in whom they had confidence, and would decline to appear before those in whom they had no confidence.

The Hon'ble MR. GIBBS said in reply that the first practical observation which offered itself to his mind was that he regretted very much that he was unable to attend the last meeting of the Select Committee, because then the Council would probably have been spared this long debate. As had already been explained, so evenly were opinions balanced in the Committee, that, owing to his unavoidable absence, the question now before the Council had to be determined by the casting vote of the Chairman. Under such circumstances, MR. GIBBS did not think any argument or conclusion could be drawn one way or the other from the decision of the Committee. His hon'ble friend Mr. Hope had in his reply almost entirely disposed of all the points at issue. His hon'ble friend Mr. Crosthwaite, in considering the question of police-patéls, had quoted what he, MR. GIBBS, had said when he had charge at Simla of the first amending Bill. He did not think his friend could draw from what was then said any argument against the proposal to confer this power on police-patéls. The police-patéls of the Dekkhan were a very mixed class of people. Some of them were of a highly respectable class, and were the leading men of the village, and were possessed of great local influence, and were merely hereditary police-patéls. The appointment of Conciliators was in the hands of the Local Government, who would make them on the recommendation of the local officers, who were intimately acquainted with all the people of the upper and more respectable classes; and every care would be taken to exercise in a proper manner the power which the Act gave for the appointment of Conciliators. It was because it was desirable that the best men available should be appointed Conciliators, that MR. GIBBS had urged the adoption of that amendment. It was not to be supposed that every police-patél would be made a Conciliator, but it was not desirable that Government should be debarred from appointing persons who were in a position of influence in the villages simply because they were hereditary police-patéls.

With regard to the observations which fell from his hon'ble friend Mr. Ilbert, he must say he could not quite understand how the amendment which he proposed was an alteration in the principle of the Bill. It might be so, but he did not see it himself. The principle of the Bill was conciliation, and the principle of conciliation was to bring the parties together before a person who was to act as Conciliator. That being the principle of the Bill, he

looked upon this amendment as an additional step taken in furtherance of that principle. It was proposed under the advice of the Government of Bombay, given after an experience of a three years' working of the Act. It was not an "appeal from Philip drunk to Philip sober," as had been suggested, but the opinion of the Bombay Government given in the dark *versus* the Bombay Government given after a great deal of light had been thrown on the subject. He thought that this amendment was not an alteration in principle: it was only an alteration in the procedure by which that principle would be carried out.

As to the fact of there not being evidence sufficient before the Council to prove whether the Conciliators had done well or not, MR. GIBBS admitted that there was not much information on that point in the letters of Dr. Pollen. But the Council must remember that with Dr. Pollen's report came up the reports of two of the Subordinate Judges, one of whom had a longer judicial experience than Dr. Pollen; and he was very strongly in favour of the measure which MR. GIBBS pressed the Council to accept. They must remember also that the Local Government did not form its opinion entirely on Dr. Pollen's report. If it did, this Council would be able to form exactly as good an opinion as the Bombay Government. But the Bombay Government had before them other papers and also the experience of a conference on this very point. At that conference were the Commissioner, the Special Judge and one, if not both, of the Subordinate Judges, together with the Members of Council. And the result of that conference was that the measure as originally laid before the Select Committee was approved, and this contained the clause which formed his (MR. GIBBS') amendment.

He did not think he need take up the time of the Council any longer in regard to this matter. He thought it was a matter in regard to which the Council ought to be guided by the opinion of the Bombay Government, which was, that the want of authority to enforce the attendance of parties seriously impeded the work of conciliation; and, for his own part, he did not think that the grant of such power was likely to be detrimental in any way. The Sarvajanik Sabhá recommended that the Conciliators should have power given to them to summon the defendant to appear, and if he failed to appear the Conciliator should have power to issue a warrant to compel attendance. There might be some doubt as to whether section 173 of the Penal Code did or did not apply to the case of Conciliators—whether they were or were not public servants; and therefore it was thought better to make the matter perfectly clear by a declaration that that section should be applicable to orders made

by Conciliators, and this was proposed to be done by the alteration of the word "invite" to the word "direct." MR. GIBBS did not think that any harm was likely to occur to any body from the exercise of this power, and he thought that a provision of this sort was the more necessary, because, from his knowledge of the people of the Dekkhan, derived from an experience of many years, he knew that they were in the habit of disregarding the summonses of the Civil Courts to a very great extent. In three districts it had been found that, out of 80 per cent. of the money-suits, the defendants never appeared in something like 74, preferring that the decree should be passed *ex parte*. Thus, it would be seen that the people of the Dekkhan had got into a sort of chronic habit of not obeying summonses, and that was another reason for the enactment of these provisions; for, unless both the parties appeared before the Conciliators, they would not carry out the work which it was intended they should do; the principle of the original Act being that, by the intervention of Conciliators, resort to the Civil Courts would be rendered unnecessary.

His Excellency THE PRESIDENT said:—

"It is quite evident, from the mere fact that the members of the Executive Government differ in opinion upon this question, that it must be one of considerable difficulty, and, at the same time, also that it is not one of very vital importance, because, if it was not difficult, they would be likely soon to come to an agreement upon it, and, if it had been a matter of very vital importance, they would have been bound to express an united opinion upon it.

"My own view is that, on the whole, it would be better to adopt the amendment of my hon'ble friend Mr. Gibbs, and I am led to that opinion by the fact that the amendment is supported by the two members of this Council representing Bombay, and is consistent with the wishes expressed by the Government of Bombay. The Bill is of a local character, and would not have been brought forward in this Council if it had not been for special reasons, to which I need not advert: ordinarily, it would have been brought in in the Bombay Council, and there discussed with an amount of knowledge of local circumstances which it is impossible to obtain here; but, as that course has not been taken, we ought to look specially to the opinions expressed by the two able gentlemen who represent Bombay here, and to bear in mind that those views are in concurrence with the recommendations of the Bombay Government, who, as Mr. Gibbs has shown, have very carefully considered the various proposals connected with the present Bill. I am also the more confirmed in my opinion—though I do not take a very strong view on the matter one way or the other—that, on the whole, it would be better to accept the amendment of my hon'ble

friend, because it appears to me that no objection whatever has been felt to this provision by the gentleman whose name has been frequently referred to in this discussion, and whose opinion on this question is of great importance—I mean Dr. Pollen. My hon'ble friend Mr. Ilbert has quoted Dr. Pollen's report in support of his view, but the most recent paper that I find among these documents emanating from that learned person is a letter or report of his addressed to the Bombay Government, and dated the 14th of last November. In that report Dr. Pollen says—

"'When I was at Mahabaleshvar on the 1st instant, I had an opportunity of reading the Bill, and I then stated my opinion that it was a great improvement on the original draft, and that its provisions seemed adequately to meet all the requirements of the case; but, at the same time, I expressed a wish to have a further opportunity of examining the details of the Bill more deliberately, so as to guard, as far as possible, against the chances of any latent errors which on a cursory perusal might have escaped observation. I have now the honour to submit, in accordance with the instructions of Government, the following remarks on the sections of the Bill which seem to require special notice.'

"Then Dr. Pollen, having prosecuted that further inquiry, proceeded to make comments at considerable length upon the various sections of the Bill, but makes no comment, and takes no objection, to the section now under discussion. Under these circumstances, I am inclined to draw the inference that Dr. Pollen does not think that this section would work unsatisfactorily, and, looking to the weight of local opinion, so far as we have it before us in these papers, I shall give my vote in favour of Mr. Gibbs' amendment."

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble R. Miller.	The Hon'ble G. H. P. Evans.
The Hon'ble T. C. Hope.	The Hon'ble H. S. Thomas.
The Hon'ble Sir S. C. Bayley.	The Hon'ble H. J. Reynolds.
Lieutenant General the Hon'ble T. F. Wilson.	The Hon'ble Durga Charan Láhá.
Major the Hon'ble E. Baring.	The Hon'ble Sayyad Ahmad Khán.
The Hon'ble J. Gibbs.	The Hon'ble W. W. Hunter.
His Honour the Lieutenant-Governor of Bengal.	The Hon'ble Rájá Siva Prasád.
His Excellency the President.	The Hon'ble C. H. T. Crosthwaite.
	The Hon'ble Mahárájá Sir Jotíndra Mohan Tagore.
	The Hon'ble C. P. Ilbert.

So the Motion was negatived.

The Hon'ble MR. THOMAS moved that after section 16 of the Bill the following section be inserted, namely :—

"16. (*1*) In section fifty-six, after the words 'for which a Village-Registrar has been appointed' the words 'and not being a person exempted from the operation of this section by a written order of the Collector' shall be inserted.

"(*2*) To the same section the following shall be added, namely :—

"The Collector may make an order under this section where, in his opinion, the applicant for exemption is a person of sufficient education to conduct his own business."

He said :—

"I may premise that I make this suggestion not in opposition to the Select Committee, but because through an accident I have not had an opportunity of ventilating it through them.

"My object is to modify in some measure the extreme stringency of section fifty-six, which invalidates instruments executed by agriculturists unless '*written by or under the superintendence of*' a Village-Registrar. I wish to lay stress on the words '*written by or under the superintendence of*'.

"It seems to me a very serious disability to impose on the people, educated and uneducated alike, that no single agriculturist in all the area embraced by the Act shall ever be at liberty to conduct his own monetary business without the intervention of the Village-Registrar.

"My belief is that it is quite as repugnant to Asiatics as it is to Europeans to conduct all their little borrowings in public, and I know the experience of the Presidency in which I have served is, that agriculturists prefer to borrow at considerably higher interest from their own private banker to going before the public official, and that they show their repugnance to publicity and officialdom to be strong by practically having no recourse to them. Why then should we take away their option in the matter, and compel them to submit to the annoyance of opening out their affairs to public canvas at the Village-Registrar's office, where there will always be a goodly knot of people within sight and earshot while the deed is being dictated and written?

"But besides vexatiously disturbing the sensibilities of the people, this requirement about the Village-Registrar seems also to hamper their *business* arrangements; for deeds want drawing with some exactitude of phraseology, and it not unfrequently happens that the force of a certain stipulation is not fully comprehended till it takes shape in writing, and then it is objected to, and has to be discussed, and perhaps modified. Is it to be expected that, with a number of others waiting their turn with the Village-Registrar, the slow-witted will not be hurried, and the timid jostled, into agreeing to terms somewhat

different from what they would have consented to if they had had sufficient time to consider them in the undisturbed privacy of their own verandah? And who will be the sufferer from the pressure of the circumstances of publicity and haste? Not the habitual money-lender accustomed to such surroundings, but the less tutored agriculturist. The very man, in short, whom it is intended to protect.

"In the case of such agriculturists as are quite as competent to draw their own instruments as the Village-Registrar is to draw them for them, it is surely an unnecessary interference with the liberty of the subject to compel them, nevertheless, to sit under the Village-Registrar; and it is not well, I think, to legislate with a view to keeping people in leading-strings after they desire to cast them aside: we should aim rather at encouraging a spirit of self-help. I think, therefore, that every one petitioning to be freed from such leading-strings, and known by the Revenue-authorities to be able to read and write, should be exempted by an order published in the District Gazette, or otherwise as may be locally preferred. The effect of such exemption from the requirements of the special Dekkhan Act would be to throw them on the general Indian Registration Act, 1877.

"I believe I am right in saying that the legal measure before us is avowedly for the temporary purpose of spanning the period of growth from what may be called the helpless childhood to the self-protecting manhood of the body of the agriculturists in the Dekkhan. If so, I would suggest that the law should carry in itself both an opening for such growth and an indication of its extent, so that we may know when the transition stage is sufficiently past to point to the withdrawal of special protection; otherwise, if that protection is continued too long, the day will come when the remedy—the very treatment that is being applied to the weakness of the child—may be injurious to the growth of the man. I think that, if we allow such raiyats as wish it and are competent to be exempted in the way I propose, we shall see the number of exempted persons gradually increasing, and have some gauge of their relative numbers to the agriculturists still protected under section 56. We shall have some practical gauge, too, of their preferences, whether they are for protection or for exemption.

"But apart from the agriculturists, just one word may be said about the Village-Registrar. The Act makes him compulsorily legal draughtsman, and sole draughtsman too, to the whole community. Surely, it is only in a very primitive village that he can possibly be equal to the task. With the improvement of agriculture and the increase of the outlay thereon, with the growth of wealth and its accustomed luxuries and sudden calls for aid, the money-trans-

actions may well become so numerous as to swamp the Village-Registrar, and, long before he is so hopelessly swamped as to attract the attention of his superiors, he will probably have gone through the usual course of perfunctorily hurrying through his duties to the injury of the parties, and in nine cases out of ten, to the injury of that party, the agriculturist, whom he is supposed to be protecting. And if he abuses his powers, the raiyat is precluded from engaging any other legal draughtsman.

"In my proposal I have suggested the Collector as the exemptor, because I presume he has in his tahsíldárs or amíldárs and village-officials the machinery for feeling into his every village, and I presume also that in such minor matters he can delegate his powers.

"To sum up, my Lord, I submit briefly that to invalidate instruments unless *written by or under the superintendence of* the Village-Registrar is to impose a serious disability on educated and uneducated alike, which may well be repugnant to the feelings of the agriculturists, hampering to their business and injurious to their advancement in self-help; that it may also become impracticable to the Village-Registrar and be abused by him; and that it is better to give the opening for growth and the gauge of growth which I have the honour to propose—such gauge and liberty running consistently with, and not counter to, the protective principle of the Act for such as still need that protection."

His Excellency THE PRESIDENT remarked that he ought to point out to the hon'ble gentleman that he had altered his amendment as it originally stood in the paper, and that, under the rules, it was not open to him to have it considered now without the consent of the Council. HIS EXCELLENCY thought that, in order to put the discussion on a proper footing, that consent should be obtained.

The Hon'ble MR. HOPE said that, as His Lordship had pointed out, the Council was under some slight disadvantage owing to the wording of this amendment having been altered at the last moment. He would be the last to wish to take any mere technical advantage, but there was a more serious objection to the amendment. It was an amendment which went against the principle of the original Act. A prominent principle of that Act was a system of village-registration of all documents, and it was not within the scope and the object of the present Bill to alter the original Act in any important particular. He therefore submitted that the amendment was inadmissible. But it might perhaps be desirable that he should in a few words mention to the Council that the amendment corresponded in substance with a suggestion which had been made by the Puna Sarvajanik Sabhá in their memorial on this

Bill. The Select Committee had considered that suggestion very carefully, and had unanimously come to the conclusion that it was, for a variety of reasons, inadmissible. He did not know whether he could now effectively state those reasons, because they were so numerous, nor did he know whether he would be in order in speaking in detail against an amendment which was contrary to the principle of the Bill; but he might perhaps be permitted to mention briefly a few of those objections. On what principle was the Collector to exercise this discretion of exempting particular persons? How was he to ascertain that a man could read or write, or was sufficiently educated to dispense with the assistance of the Village-Registrar and to manage his own affairs? Was he to have a particular man brought before him and examine him to ascertain whether he was intelligent, and was a man's right to exemption to depend on the mere chance opinion of some Collector, who possibly could not speak the language well, formed in the course of a conversation of five minutes? MR. HOPE ventured to suggest that it would be impossible to exercise such a discretion in an intelligent and reasonable manner, or, if it was exercised notwithstanding, it might be exercised so as to give rise to favoritism and abuse. Again, suppose the exemption was not to be given to individuals on application, then was there to be a general examination of the whole district? If, on the one hand, the exemption was to be given to individuals,—to the men who went up to the Collector, and not to all,—we should make a distinction between man and man; on the other hand, if the power of exemption was to be exercised with reference to a whole district, the Act would impose an obligation on the Collector which it would be utterly impossible for him to perform. Further, suppose the Collector had given exemption to a particular person, and, when the matter came under litigation, the man who was thus exempted denied that he could read and write, and averred that some other man must have been substituted for him before the Collector. Suppose, again, the man who was exempted was dead. Were his relatives to be called to depose whether he could read and write, or to what extent he could do so? MR. HOPE could enumerate many other practical objections of this kind. But another difficulty was that these exceptions would totally destroy the value of registration. At present, when a person was asked to lend money on the security of land or to take part in any transaction connected with it, he could examine the register and ascertain whether the land was in any way encumbered with previous transactions. But under the proposed amendment the whole of the registers would become unreliable, and a man would have to ascertain not only whether there was any previous recorded transaction connected with the land, but whether any of the various parties who had held it from the time of the last known transaction had been exempted by the Collector or not. Moreover, MR. HOPE would point out that

there were a good many other advantages to be secured by this village-registration, besides the mere protection of the actual executants who could not read and write, such as the publicity of the transaction and security against extortionate terms.

He regretted that, for these reasons on the merits, no less than on the technical objection, he must oppose this amendment.

The Hon'ble SIR STEUART BAYLEY said he concurred with his hon'ble friend Mr. Hope in opposing this amendment. Agreeing, as he did, with the admirable principles which the mover of the amendment had laid down for guiding legislation on such subjects generally, still those principles, he regretted to say, were scarcely applicable to a Bill of this nature; this being a Bill to meet a peculiar and exceptional set of circumstances, in regard to which special legislation was undertaken on lines very different from those on which measures of an ordinary kind were based. He would not repeat the practical objections which had been taken by the hon'ble mover of the Bill, but the main objection which he took to the amendment was the period at which it was proposed. The Council could not accept it without knowing whether it was capable of being worked practically, and what its effect would be. The Government of Bombay was most anxious that this Bill should be passed in the course of this month. But if this measure was taken into consideration and the passing of the Bill deferred in order to ascertain the opinion of the Bombay Government on the proposal, the effect would be to throw back the operation of the measure, and the whole of the cold season, in which the work of inspection and instruction was done, would be lost. He agreed with the hon'ble mover of the Bill that it was rather difficult to consider the amendment, because the exact way in which it was proposed to work it was not made perceptible from the manner in which the amendment was drawn, and the Council could not say how the scheme would work without consulting the Bombay Government.

The Hon'ble MR. ILBERT said he quite sympathised with the desire of the hon'ble mover of the amendment to make the Act more elastic, but he agreed with his hon'ble colleague Sir Steuart Bayley that it was impossible to accept the amendment at this stage of the proceedings.

His Excellency THE PRESIDENT observed that he agreed with the remarks of his hon'ble colleague on his right (Mr. Ilbert). He did not think it would be possible to make the proposed amendment now, as it would undoubtedly necessitate a further reference to the Bombay Government; it was contrary to their feelings and wishes upon the subject; and it was introduced at

the eleventh hour. With all due respect, therefore, to the arguments of his hon'ble friend Mr. Thomas in favour of it, he should certainly recommend the Council not to accept the amendment.

The Hon'ble MR. THOMAS said in reply that, while not wishing, after what had been said, to press his amendment at this date, he would like to say just a few words to show that it was not quite so unworkable as the Hon'ble Mover of the Bill seemed to think. He was not proposing anything open to objection as contrary to the principle of the Bill; he was not proposing to do away with village-registration, but only to make individual exemptions. In reply to the objection that the Collector would be unable to cope with the numbers if everybody in a village came up to him for exemption, he would observe that he had already said that he presumed the Collector would delegate the duty to his subordinates. In the Presidency from which MR. THOMAS had come, this work could be done with ease through the taluq and village officials. As regarded the amount of education necessary to qualify for this exemption, he considered that being able to read and write would be sufficient, and he did not understand how exemptions made on this ground could be looked upon in the light of "favoritism." As to the objection that the grant of these exemptions would destroy the completeness of the village-registers, he would reply that the only effect would be to make the sub-registry more perfect, and the village-registers would gradually give way to the registration effected under the general Indian Registration Act, 1877, which registration was presumed to be sufficient; for, if it was not, the Indian Registration Act must be admitted to be defective. Under that Act, it was not required that these documents should *be written by or under the superintendence of* the village-registrar; it was simply required that they should be attested and recorded, and that was all he asked for in favour of the educated.

The Motion was put and negatived.

The Hon'ble MR. HOPE moved that the Bill, as amended, be passed. He said—"My Lord, I regret that I must inflict upon the Council some remarks which, I fear, may be somewhat tedious. I find, however, that certain misapprehensions are so prevalent, and the absence of definite information is so very marked, that it is necessary, in order that the Act should stand fairly in public opinion, to give some explanation regarding its working up to the present time.

"The original Act was passed in October 1879; a small number of village-munsifs, about 138, were appointed between January and August 1880; the new Subordinate Judges' Courts were not constituted till 1st June 1880.

No Conciliators were nominated until between the 1st May and 1st August of that year. Village-Registrars were constituted from March 1st, 1880; but it soon became apparent that the rules and instructions for them had been insufficient and unsuitable, as far as old deeds were concerned; difficulties accumulated in that respect—accumulated till they became insurmountable; the repeal of section 71 of the Act, abandoning in despair the registration of old mortgages, was deferred till October 1881; and the documents in hand have only lately been pretty well cleared off. On the same occasion (by Act XXIII of 1881) some doubts of interpretation were settled, and verbal improvements made.

"Consequently, the year 1881 was the first year throughout which even the machinery of the Act was in tolerably complete order, while some of its most important provisions are not, as the present Bill testifies, in operation up to the present day. What I wish to point out is that, until effect has been given to the whole Act, and the results during at least a year or two have been ascertained, the measure cannot be said to have received even an approach to a fair trial.

"The instructions of the Secretary of State were that the relief of the Dekkhan raiyat should be effected by a 'comprehensive measure,' which should provide Courts more accessible, more absolute, less technical, less dilatory and less expensive than the present ones; and should also mitigate 'the extreme severity of the law on debtors' and extend the powers of the Judges 'to modify the contracts entered into between man and man.' In accordance with these instructions, coupled with some of the recommendations made by the Dekkhan Riots Commission, the Act of 1879 contemplated five main amendments of the existing conditions, namely:—Courts having larger powers over smaller areas than before; improved control over such Courts; improved procedure; absolute relief of insolvents under certain circumstances; and protective measures, such as conciliation between disputants previous to litigation. Under the first of these heads, the Subordinate Judges' Courts in the four districts to which the Act applied were increased from 24 to 36. Six months afterwards, however, the Bombay Government, observing a large falling off in the number of suits filed, took away seven out of the twelve Additional Judges and combined their jurisdictions with the adjacent ones; moreover, some other Subordinate Judges were employed for part of the year out of their proper charges. This has necessarily somewhat interfered with the fulfilment of the intention of the Act, in the matter of bringing the administration of justice nearer to the homes of the people. Moreover, the falling off in the institution of suits proved merely temporary. The result has consequently been that arrears have accumulated, and rose from 1,100 in January 1880 to 3,658 in January 1882. I am glad to say that the

Bombay Government have now determined to restore at once five out of the seven Subordinate Judges whom they had withdrawn. Another measure coming under the first head was the establishment of village-munsifs with a jurisdiction in money-suits not exceeding Rs. 10. The fact that these munsifs are chiefly resorted to by the non-agricultural classes need excite no surprise, for it was well known, and was stated in my speech in 1879, that the bulk of the suits disposed of by village-munsifs in Madras are not suits between raiyats. Still, no doubt, a certain number of such suits do come before these Courts. At that time I myself was not in favour of the establishment of village-munsifs, and in my original draft of the Bill I did not provide for them; but Sir Richard Temple considered it very desirable to make an advance in the direction of giving these petty judicial powers, and they were therefore inserted. I did not expect much good, but I feared no harm from them. I am, however, glad, in the present instance, to sit on the stool of repentance, for I find that the institution has had a popularity and success which I never anticipated. Mr. Ranadé, who is one of the Native assistants of the Special Judge, Dr. Pollen, reports that 'there can be no doubt of the popularity of this office, and the inhabitants of several places have applied for the services of such officers.' As regards their efficiency, Dr. Pollen reported last year that 'most of the village-munsifs are respectable and intelligent men, and have done their work and kept the records in a satisfactory manner.' And, again this year, he has given testimony of a similar character. Moreover, the fact speaks for itself, that, although there were only 138 munsifs in 1880 and 136 in 1881, they disposed of 2,866 suits in the first year and 2,934 in the second. I may also mention, as an indirect proof which the statistics afford of the excellent effect of these new Courts, that the number of suits below Rs. 10 in value filed in the ordinary Subordinate Judges' Courts has fallen to 521, or $\frac{1}{10}$th of the total number, instead of $\frac{1}{8}$th or more at which it used to stand. It is evident, therefore, that these institutions supply a much-felt want in the settlement of disputes. I am glad to say that the Bombay Government intend to take special measures to find out a larger number of gentlemen competent to hold the office of village-munsif than have already come to notice.

"With reference to the second head, namely, improved control over the Courts, it will be remembered that the Act of 1879 substituted for appeal a system of revision by the Special Judge and two Assistant Judges subordinate to him. This reform, which received at the time the approval of Mr. Justice Melvill and four other Judges of the Bombay High Court, has amply justified the expectations which were formed of it. I will not weary the Council by long quotations from Dr. Pollen's reports. Suffice it to say that, during the

year, he and his assistants scrutinized 75 per cent. of the cases instead of 30 per cent., which I had considered a sufficient percentage for the exercise of a proper control in lieu of the system of appeal, under which only 3 per cent. used to come to notice. The cases actually taken up for revision amounted to 2 per cent. On this subject Dr. Pollen says:—

"'The people are showing themselves keenly sensitive of the advantages of the revision system, which provides a surer and more constant, as well as a cheaper, safeguard against injustice and error than that afforded by the costlier and more tedious process of appeal which, as a rule, was a luxury which only the rich were able to indulge in.'

"Turning next to the improved procedure provided under the Act, one provision, intended to shorten the duration of suits, relates to their disposal at the first hearing as far as possible. The result has been that the average period has been brought to 3 months and 9 days. But that is still too high an average. I trust that further efforts will be made to reduce the time. Various causes of delay are mentioned, but over-formality and technicality are still the chief. Dr. Pollen states that—

"'It rarely happens, even in the simplest cases, that the personal attendance of the plaintiff is required less than six times in the progress of a suit; and on most of these occasions it is only to perform some purely formal or ministerial duty.'

"That is a burden which, in the absence of the simplified procedure which, I trust, will some day relieve the whole of India, every effort ought to be made to lighten under the special powers of the Act.

"Another important change in procedure was that for suppressing *ex parte* decisions by means of requiring the Court to examine the defendant. The result of this has been a complete success, for whereas under the old law *ex parte* decrees used to be passed in from 54 to 74 per cent. of all suits, and in from 93 to 97 per cent. of money-suits only, the proportion is now only about 6 per cent. On this subject a high authority in England has written to me a few remarks which are so expressive that, with the permission of His Excellency the President, I will read them to the Council—

"'Although considerable improvement in its working is possible, I am sure that the Act has already effected great good. It has, it is quite clear, effected its principal object; it has rendered it possible for the indebted raiyat to get a hearing and fair justice. I see that the result of contested suits was that claims were cut down 25 per cent. It is not the amount of the reduction (although that is not insignificant) which is of importance; it is the fact that for the first time the debtor's case has been gone into. The effect of this on the relations between creditor and debtor must be immense and beneficial.'

"The next question connected with procedure relates to pleaders. As pleaders have been admitted by the Act of 1881 in petty suits, the Government of Bombay now propose to adopt Dr. Pollen's recommendation and appoint Government pleaders experimentally in a certain number of taluqas, so that the raiyats may not be put to expense in consequence of the alteration of the law.

"One of the most important points in which the Act effected an alteration is in respect of the well-known operation called 'going behind the bond.' The new provisions have been applied in about 25 per cent. of suits, and are estimated to have effected an average abatement of 26 per cent. in claims. Dr. Pollen remarks that—

"'There has been no violent or radical change. Debtors are not unfrequently dissatisfied at the small results in their favour, and creditors on the whole are fairly satisfied. * * * The Subordinate Judges all speak in the highest terms of the general operations of the three sections referred to; and I fully share their opinions, regarding, as I do, these sections as being the most important and successful part of the whole Act.'

"With reference to the provisions in the present Bill regarding management of insolvents' land by the Collector, no remarks in addition to those made on previous occasions are necessary. But I am glad to be able to state that the Government of Bombay have accepted my suggestion to appoint a special officer to go thoroughly into the question, to draw up a set of rules of a really practical character, and to take other measures for ensuring that these provisions shall not be allowed to remain a dead-letter.

"Upon the question of conciliation I have already said so much that I need not trouble the Council with more than two figures, namely, that, in the first year of the operation of the Act, 10,195 disputes, and in the second year 14,146, were settled by the Conciliators without resort to the Civil Courts. I consider this to be a highly satisfactory result, and one which fully justifies the establishment of the institution.

"There is one further point to which I ought to allude, and that is the question of how far the relations between raiyats and saukárs have been affected by the Act, which was regarded by some persons as being such a terrible engine for oppression of the latter. On this point I do not wish to be tedious. I will merely put before the Council what Dr. Pollen and the Inspector-General of Registration have said on the subject. Dr. Pollen says—

"'It does not, therefore, seem to be the case that the saukárs invariably insist upon getting sale-deeds or mortgage-deeds passed to them before making advances. * * * But there has been a considerable decrease in the sale of general stamps, which makes it clear that comparatively few documents were executed in the year under report (1881).'

"Confirmation upon this point is also obtained from the Registrar-General of Assurances, who reports thus of 1880—

"'As far as can be judged from the returns received, the saukárs have proved themselves willing to lend to all those whose credit is good. * * * When questioned, several Natives of different classes told me that it is more difficult for the agricultural classes to get money than formerly, but, when asked to explain, they were generally obliged to agree that this only related to those whose credit was not high at any time; and, even admitting that this Act has made it more difficult than formerly to borrow, may not this very fact be of future benefit to the people, by making them more provident, and careful to spend less on ceremonies and extravagancies, which were recklessly indulged in when money was more plentiful?'

"In short, the Inspector-General held that there was no foundation for the statement which had been made that 'credit has been extinguished and capitalists have closed their business.' I myself always anticipated, and stated in 1879, that possibly a certain amount of pressure might at first be occasioned, but I held that it would be confined to those who were not really entitled to receive credit at all, and that the Act would not bring about any difficulty to obtain money in the case of those who might legitimately borrow. As I said in my first speech in 1879, I have no faith in the virtue of 'unlimited tick.'

"In conclusion, I must remark that the introduction of a measure so new in principle as well as detail has necessarily met with extraordinary difficulties. The interests of money-lenders and pleaders, the prejudices of some judicial officers, the intricacies of legal interpretation, the stupidity or corruption of some of the inferior agents, the ignorance of the people of their own best interests and the clamour of adverse *doctrinaires*—eager to draw conclusions before facts were available—all were against it. But I submit that, in order to succeed in all respects, the Act needs no modification in its general and broad principles and no essential change in the method of procedure; nothing except a few legislative touches to make its meaning more clear or its machinery more complete, and finally, a little of that virtue which so few seem inclined to exercise in its behalf—the virtue of patience."

The Hon'ble MR. HUNTER said:—

"My Lord,—At the last meeting of this Council it was announced that, among other improvements in procedure, the Reports of the Select Committees would be fuller than heretofore. I am not aware whether the Report now under consideration may be regarded as illustrative of the new rule. But its clear statement of the difficulties with which the Committee have had to contend, and of the reasons which guided them to their conclusions, are very wel-

come to one who, like myself, questions some of the principles involved. I understand from the Select Committee's Report, and from the speeches of the Hon'ble Member in charge of the Bill, that, in voting for the particular amendments now proposed, we do not express any opinion either as to the soundness of the general principles involved, or as to the adequacy of the original Act to cope with the evils which it was intended to cure. In 1879, the Government decided that the Dekkhan peasantry had sunk into such a depth of distress as to demand legislation of an exceptional character. The Dekkhan Agriculturists' Relief Act was accordingly passed to free the cultivators, under certain conditions, from their burden of debt to the money-lenders. It was a novel device in Indian legislation, and its supporters claim—and justly claim—that all reasonable facilities shall be given for the proper working of the measure. Obscurities of interpretation, and imperfections in mechanism, are inevitable incidents of so complicated a legislative experiment. I think, therefore, that those who, like myself, entertain doubts as to the adequacy of the original Act, should support the technical amendments now declared necessary for its effective operation. For it will be impossible to call in question the adequacy of the original Act until it has had a fair trial.

"But, my Lord, I do not think that even the present amendments will give the Act a fair trial. From the papers before the Council, those amendments seem to have been suggested by the Report for the year 1881, of Dr. Pollen, the chief Special Judge entrusted with the administration of the Act. The amendments now before the Council, however, deal with only a small part of the evils which the Special Judge brings to light, and which the Relief Act is intended to remedy. The difficulty which the Special Judge and his subordinates have to encounter in their efforts to bring substantial relief to the cultivators, is not merely a technical difficulty, nor can it be removed by technical amendments, however skilfully contrived. Permit me to explain my meaning by quoting a paragraph from the chief Special Judge's report:—

"'The inquiries made by the Subordinate Judges while on circuit, concerning the condition of the agriculturists in a few selected villages, have led to the accumulation of a mass of valuable information which I have not yet had leisure properly to digest. The general conclusions, however, to which the information points, seem to be; (1) that the raiyats are overburdened with an intolerable load of paper-debt outstanding against them; and (2) that in average years, the ordinary Dekkhan raiyat does not gain enough from the produce of his fields to pay the Government assessment, and to support himself and his family throughout the year; so that really no margin is left for the payment of his debts.'

"The fundamental difficulty of bringing relief to the Dekkhan peasantry, as stated by the chief Special Judge entrusted with the task, is, therefore, that

the Government assessment does not leave enough food to the cultivator 'to support himself and his family throughout the year.' Be it remembered that this is the state of the peasantry, not in time of famine, but in ordinary seasons. In another paragraph, he thus describes the state of the tract under one of his Subordinate Judges:—

"'During the last two years, although the crops have been in most parts fairly good, the very low prices that prevail leave no margin of profit to the cultivator. He can, perhaps, pay the Government assessment and support his family for a portion of the year.'

"'For a portion of the year,' my Lord. If the Government assessment reduces the cultivator to this condition after a 'fairly good' harvest, what must be his misery in the seasons of distress which afflict the Dekkhan every few years? The Special Judge is the chief officer responsible for bringing relief under the Act to these unhappy people. The measures of relief which he suggests consist partly of technical amendments in the Act, and partly of substantive amendments in the revenue-system. The technical amendments are now before the Council, and I have much pleasure in supporting them, as I would support any proposal necessary to give the Act a fair trial. But the substantial amendments suggested by the chief Special Judge in the same Report have not been circulated to the Council, and, with your Lordship's permission, I shall read a single paragraph containing the most important of them:—

"'Much may be done for the insolvent raiyat of the Dekkhan by modifications in the present rigorous system of collecting the assessment, by more liberal and elastic rules for the grant and recovery of takkavi advances, and, perhaps, by the gradual introduction of agricultural banks. When prices are very low, the fixed cash assessment presses on the people with undue severity; when prices are high, they hardly feel the pressure. When crops fail, and at the same time prices are low, they find it as hard to pay Government as to pay their saukárs. The adoption of a sliding scale of charges would be productive, I think, of much good. I feel convinced, from the experience I have gained in these districts during the last two years, that a rigid revenue-system is not suited to a deeply-indebted and practically insolvent peasantry, which lives truly from hand to mouth.'

"It may be argued that, although the system is rigid, it is nevertheless based on a fair average of good years with bad. But it is precisely this system of fixing a hard-and-fast line, based on a general average, which the Special Judge declares to be unsuited to the Dekkhan. A witness before the Dekkhan Riots' Commission illustrated the case by a short Native story. A man, he said, once wished to ford a river, and set to work to ask the 'passers-by as to the depth of the stream at various spots in its course. He found from one, that it was ten feet deep at a certain place; from a second, three feet at another place, and so on. Having thus collected a large body of statistics, he struck

an average, and finding the mean depth was only four feet, he boldly jumped into the river. But unfortunately, the channel happened to be seven feet deep at that particular spot, and he was drowned.

"My Lord, on the one hand, we are told that the Dekkhan peasantry are so hopelessly plunged in misery and debt, that a special insolvent law is necessary to free them from their private creditors—the money-lenders. On the other hand, we find that the Revenue-officers have, during the past ten years, greatly enhanced the land-assessment in these afflicted districts. The Government has sent forth one set of officers to absolve the cultivators from the loans which they have borrowed from private individuals; and, almost with the same breath, it launches another set of officers to collect a largely-enhanced rental from the cultivators. I do not wish to open the question of the Bombay revenue-system or its enhancements at present. The Dekkhan Riots' Commission Report is now several years old. It is absolutely necessary, in order to arrive at a just view of the case, to know how far the Government has adopted the measures recommended by the Commission, and what steps it has taken to carry them out. For, when we are asked to vote for certain technical amendments suggested by the Chief Judge's Report, we cannot shut our eyes to the painful substantive facts also disclosed in that Report. It may be that a perfectly good defence is forthcoming for the enhancements. But I do earnestly press on your Lordship's Government the necessity of a full and fair enquiry into this matter. I had hoped that a promise of such an enquiry would have been contained in the speech of the Hon'ble Member in charge of the Bill. I shall rejoice if, before the debate closes, some member of your Lordship's Government will give such a pledge. For I feel convinced that this Bill, with its technical amendment, only skims the surface of the evil; and that substantial relief will not reach the Dekkhan peasant under this or any other Act until an impartial enquiry is granted, not only into his obligations to his private creditors, but into the burdens imposed upon him by the State.

"There are other reasons which render such an enquiry desirable. The peasantry of the Dekkhan, and, indeed, the Mahrattas of all classes in the Dekkhan, have been suffering from economic causes sufficient to break the spirits and to ruin the fortunes of any race. Seventy-four years ago, when the Mahrattas and the peasantry of the Dekkhan passed under our Government, they had five great sources of livelihood. The economic and political changes brought about by British Rule have deprived them of four of these sources and left them only one. In the first place, the Mahratta race had, during nearly two centuries, derived a large, although a fluctuating, income from war. Its pillaging invasions of wealthier provinces were reduced to a system of strictly mercantile ad-

venture, which enriched alike the fort of the chief and the cottage of the peasant. For the Dekkhan hordes were not the accidental product of any single leader, but the natural result of an overflowing peasant population under the guidance of a hereditary administrative caste. The secret of the Mahratta Power was a great standing army of cultivators, who fed themselves off their own fields in intervals of peace, and plundered their commissariat from the enemy in time of war. Their second source of income was Administration. Throughout the greater part of India the Mahrattas made a fixed demand of one-fourth, or *chauth*, on the provincial revenues; and organised this annual process of plunder into an administrative system. The peasant spearman of the Dekkhan was followed by the Mahratta scribe; ample employment existed for both; and tributary streams of silver poured into the Puna treasury from many distant provinces. A century ago, the Mahrattas were draining India of its wealth from Delhi to Haidarábád, and from the delta of Orissa to the Gulf of Cambay. Their third source of income was a great carrying trade by pack-bullocks, partly from north to south, but chiefly down the Ghâts from the Dekkhan to the coast. The railway has destroyed this trade as completely as British rule has put a stop to internal wars and the Mahratta *chauth*. Their fourth source of income consisted of domestic and local manufactures—hereditary handloom industries, now borne down by Manchester competition, as the old pack-bullock has disappeared before the railway. Their fifth source of income was the tillage of their own fields. Seventy-four years of British Rule have stripped the Dekkhan Mahrattas and the Dekkhan peasantry of the first four means of livelihood, and crowded the whole population into the last. For a time, the land responded to the extra labour given to it, and Settlement-officers rejoiced in the statistics of increased cultivation. But they forgot that extended cultivation, without capital, means a falling back upon inferior soils and a harder struggle for life. Sir George Wingate, the most illustrious of the Bombay Survey Settlement-officers, thus wrote in 1841—

"'There can be little doubt that the over-estimate of the capabilities of the Dekkhan, formed and acted upon by our early Collectors, drained the country of its agricultural capital, and accounts in a great measure for the poverty and distress in which the cultivating population has ever since been plunged.'

"These words, written by the highest official authority on the subject, describes the condition of the Dekkhan peasantry forty years ago when the process of decay was only half accomplished. Permit me to quote the statement of the great Dekkhan Association ('the Sarvajanik Sabhá'), issued last July, now that the decay is more complete:—'Confining our remarks for the present to the Kopergaum taluqa, the first point we wish to press upon the notice of

Government relates to the fact that, as in 1876-77, with the failure of the rabi crops last year, nearly half the inhabitants of the taluqa found it necessary to leave the villages. In the 27 villages visited by the Agent, out of a normal population of 19,850 souls, it was found that there were 9,450 villagers left in the villages, while the rest had gone into the Nizám's territory and Khandesh to earn their livelihood. In the same manner, in these 27 villages, the number of agricultural cattle was 6,830, out of which number about 2,000 cattle alone were left in the villages in March last, while the others had to be driven away for want of fodder into the Nizám's territory. The 27 villages visited by the Agent represent one-fourth of the whole taluqa in area and revenue. It follows, therefore, that, with the first sign of distress, more than half the people and three-quarters of the cattle have no stock to fall back upon; ' that half the inhabitants of the tract under report have to leave their villages, and that two-thirds of the cattle must be driven away to the foreign territory of the Nizám.

"My Lord, I do not offer this description of the tract reported on as a picture of the entire Dekkhan. I sincerely hope that it is not a true picture of the entire Dekkhan. Nor do I blame the Bombay Revenue authorities for this intense destitution of the people, or in any way prejudge the difficult questions as to the assessment. For I have shown that economic causes are at work, which would have stripped the Dekkhan cultivators of their former prosperity, quite independently of the Revenue authorities or of the rates of assessment. But there is abundant evidence in the report of the Dekkhan Riots' Commission, in the debates upon the Relief Act of 1879, and in the very Report of the special Judge on which the present amendments are based, to prove that misery and destitution are widely spread throughout the Dekkhan. There is proof that, while the State has stepped in to annul the debts of the cultivator to his private creditors, it has greatly enhanced its own demands for rent upon his fields. There is proof to show that, in the opinion of the people, of their representative Association, and of distinguished officers, this increase of the Government demand is the last straw that has broken the cultivator's back. Whether this statement be true or not, there is abundant ground for a searching enquiry into the economic and fiscal condition of the Dekkhan peasant—an enquiry not postponed to some indefinite date, but conducted concurrently with the operations of the amended Relief Act, which will, I trust, be passed to-day. It is not possible to solve a great political question of this sort by shelving it. I have lately had an opportunity of conversing with several of the Judges engaged in the administration of the Act, and with many other persons, both official and non-official, in the Dekkhan. I feel certain that nothing short of a full and complete enquiry will satisfy either the necessities of the case or the just claims of the people."

The Hon'ble Mahárájá SIR JOTÍNDRA MOHAN TAGORE said:—

"Not having any personal knowledge of the peculiar circumstances of the province, I confess I do not feel myself in a position to speak with any degree of assurance on the questions now before the Council. I deem it due, however, to submit that there is certainly a very widespread impression abroad that, notwithstanding the laudable efforts of the Government to ameliorate the condition of the raiyats of the Dekkhan, their exertions have not met with sufficient success, inasmuch as the root of the evil lies not so much in the extortion of the mahájans as in the pressure of the over-assessment of the Government demand on the raiyats—a fact which has been so ably stated by my hon'ble friend the last speaker. Besides, fear is entertained that the additional protection intended to be extended to the raiyats may throw additional difficulties in his way in raising money when in need; for naturally the mahájans will fight shy of all loan-transactions, having to work under such risks and rigid restrictions as the Act will impose. I would, therefore, give my humble support to the proposal for a full enquiry into the state of the raiyats of the Dekkhan, with special reference to the assessment and realisation of the Government revenue, as has been suggested by my hon'ble friend Dr. Hunter."

The Hon'ble MR. CROSTHWAITE had a few words to say on the amendments which this Bill proposed to make in the original Act. He referred chiefly to those contained in sections 7, 9 and 10 of the Bill before the Council. These amendments were in principle merely verbal, and affected sections 19, 22 and 29 of the original Act. Section 19 gave power to the Court to direct that insolvency-proceedings should be taken with reference to an indebted raiyat in cases which came before it. Section 22 gave a Court, when passing a decree against an agriculturist or at any subsequent time, power to direct the Collector to take possession of the debtor's land, and manage the same for the benefit of the creditor for seven years; and section 29 gave the Court similar powers in the case of an insolvent. The Select Committee had agreed to amendments which inserted words making it more clear that the Court had the power in its discretion, and without being moved by a party to the case, of directing these proceedings to be taken. He had no objection to these amendments, and he should have had nothing more to say if it had not been for some remarks which his hon'ble friend Mr. Hope had made in the course of his speech and in a note which he had written, which was to be found printed as Paper No. 1 relating to the Bill. It was evident from the expressions used in this note, and also from the speech which he made in connection with the original Act in 1879, that the Hon'ble Mr. Hope laid great stress on the clauses

to which Mr. Crosthwaite had referred, and that he considered them the key-stone of the Bill. He said in his note :—

"In short, what the Act contemplates is a compensatory system. If the creditor was, on the one hand, to have his bonds questioned, his accounts discredited and his power of imprisonment taken away, he was, on the other, to receive the benefit for seven years of all that could be got out of the land by efficient Collector's management, the debtor being declared an insolvent if necessary."

These sections were, in fact, the gilding of the pill, the jam to induce the creditor to swallow the dose, and they had failed to effect the purpose intended. They had not in fact "worked at all—well or ill," as was shown in Dr. Pollen's report. The Hon'ble Mr. Hope attributed this failure to the supine attitude of the judges—to that taint of original sin, that infection of nature, which doth remain even in judges regenerated by a contemplation of the provisions of the Dekkhan Relief Act. Accordingly, it was not only with the object of making their powers clear to them, but of pressing or forcing them to use those powers, that these amendments had been advocated by the Hon'ble Member. It appeared from his hon'ble friend's note that that might be presumed to be his purpose, and that he intended that the Courts should resort very largely to the use of the discretionary power which the legislature had given them. This would appear from paragraphs 29 and 30 of the Hon'ble Member's note. He wrote—

"If the Courts had vigorously used their powers to require management by the Collector, the rules would soon have been forced into existence"—

referring to the rules which the Local Government was empowered to make for working these provisions through the Revenue-officers. Again, he wrote, with reference to a remark made by Dr. Pollen in his report—

"The Court *is* empowered already, but its powers must be expressed more fully, and the duty of using them must be explicitly laid upon it."

In fact, the failure which had occurred in the working of this part of the Act was attributed to the supineness of the Courts. Now, Mr. Crosthwaite wished to guard against the supposition that, for his own part, in acceding to these amendments, he in any way acquiesced in his hon'ble friend's view of the case as expounded in this note. He thought the use of these sections should be left entirely to the discretion of the Courts, and that there was no reason to believe that, in the restricted effect hitherto given to them, the Courts were actuated otherwise than by a wise discretion. The reasons for the failure of

these well-intentioned measures laid, in his opinion, much deeper. He would not dwell on the danger of pressing the Courts to take action and force debtors who were naturally unwilling, and who were not pressed to take this step by their creditors, to pass through the Insolvency Courts. He was more concerned with the point that, if these sections were to be worked in the way it was proposed, some steps should be taken to see that the working of them should not put any undue stress either on the Revenue-officers or on the raiyats of the Dekkhan. The law empowered the Court to direct the Collector to manage the debtor's land for seven years. In the ordinary sense of management, it would be impossible to apply these sections to thousands of raiyats whose holdings averaged about 20 acres. But, as was evident from his speech on introducing the Dekkhan Relief Bill in 1879, the interpretation which his hon'ble friend Mr. Hope put on the term "management" was something very different. His intention was that the Collector should leave the raiyat in possession of the land, and should impose on him a rack-rent, and collect it by all the powers, short of selling the land, which the revenue procedure gave to the Collector for the purpose of getting in the Government revenue. Now, it was impossible to weigh the effect of such a measure apart from the consideration of the amount of the nett produce enjoyed by an average raiyat in the Dekkhan. Unless the Council was prepared to say that, in the majority of cases, there was a surplus left to the raiyat over and above what was necessary for the maintenance of his family, which the law obliged the Collector to set aside, and over and above the Government revenue, which was a first charge on the land,—unless there was a steady surplus left after meeting these two charges,—it would certainly cause serious difficulties if these sections were used in an indiscriminate manner. And, therefore, MR. CROSTHWAITE thought it right to say that, when this matter was before the Select Committee, as far as he was concerned, these verbal alterations were merely made to show that the Courts had a discretion under the law.

With reference to the question whether or not the raiyats had a surplus after meeting the two charges to which he had referred, he was entitled to call attention to a paper which was presented to the Council yesterday, and which purported to show the position of the people in the Dekkhan districts. He had looked through the reports of Government and other papers to see what represented the sum left to the Collector to meet the raiyat's debts after providing for the maintenance of his family and paying the Government revenue, but he had been saved from further trouble by this paper which bore the well-known name of Mr. Lee-Warner. It appeared from this that, on the average, the Government assessment was "less than half the nett produce,—more

perhaps in very bad lands,—but far less in better lands even where the cultivation is poor." With these data to go upon, and knowing, as they were told before by the Hon'ble Mover in his speech in this Council on the 17th July 1879, that the average Government assessment on poor land was 7 annas, while on good land it was 12 annas, MR. CROSTHWAITE arrived at the result that the average nett produce on bad land was not more than 14 annas or 1 rupee, and on good land about 24 annas, or say even 2 rupees. If the average holding of a raiyat in the Dekkhan was, as he believed it was, about twenty acres, and the Government assessment was about half the nett produce, it seemed probable that the whole surplus left to the average cultivator in an ordinary year would not be more than Rs. 15 or Rs. 20. So that, although it might be true—and he was quite ready to accept the assurances of the Bombay Revenue-officers that it was true—that the revenue was light, still it was plain that, owing to the poverty of the soil and smallness of the holdings, the margin left to come and go on, to meet fluctuations of price and production, was very small. Under those circumstances, MR. CROSTHWAITE thought that nothing ought to be left unsaid to guard against the supposition that it was desired that the Courts should act in an indiscriminating manner in the application of these sections. He now wished to recall to the recollection of the Council the speeches which were made in 1879 in reference to the revenue-system as affecting the Dekkhan and in connection with this Bill. He would confine himself to a quotation from the speech made by the Hon'ble Mr. Hope himself, who said—

"To our revenue-system must in candour be ascribed some share in the indebtedness of the raiyat . . . It seems likely that indebtedness arising mainly from other causes . . . has been aggravated by our rigid system. If any considerable increase at a revision were gradually worked up to in the course of two to five years, the raiyat would have time to re-adjust his expenses to his means, instead of being taken by surprise and perhaps driven to the money-lender. Again, if the recovery of instalments were more coincident with the time when the raiyat realizes on his produce, instead of falling sometimes too early and sometimes too late, and so the land-revenue were more in practice (what it is in law) a first charge on the latter, much temporary borrowing, fraud in crediting produce, and eventual Government process for recovery might be avoided . . . Moreover, though the system of taking revenue in kind, besides involving the injustice of assessment on the gross produce, instead of the nett, is so open to fraud when adopted on a large scale as to be impracticable, its object might be attained, in localities subject to drought, by such suspension of the revenue-demand as to spread over three or four years according to the seasons, the aggregate amount to be recovered in that period. Finally, in times of famine, suspension of demand might be systematically granted, as of late it has been by Sir Richard Temple, and even total remission, which is not inconsistent with the Bombay settlements."

There was no need to detain the Council by further quotations from the speeches made in 1879. MR. CROSTHWAITE thought that the passage he had

read admitted in the clearest manner that the revenue-system was partly to blame, and that, in the opinion of the Hon'ble Mr. Hope, which they all must allow was entitled to very great weight, there were certain faults in the revenue-system of Bombay which required amendment and alteration. He had taken some trouble to find out what had been done since 1879 by the Bombay Government to amend those faults, and he found it a matter of great difficulty to ascertain what had actually been done. He had, however, succeeded in obtaining a volume published by the Bombay Government so lately as October last, which purported to contain "all the rules, orders and official correspondence on the system of revenue-survey assessment and its administration." And he could find nothing bearing on the matter now in hand in that compilation. This volume, however, did not appear to deal with the system of collection. On that point he had consulted the valuable work of Mr. Nairn, which contained all the standing orders on the subject. He could not, however, find any general order passed since 1879 correcting the faults with which his Hon'ble friend Mr. Hope had charged the Bombay revenue-system The prevalent tone of these orders was certainly against remissions or suspensions of revenue; and the latest order, which was dated March 1878, was to the effect that no remission of revenue should be made without the sanction of Government. He could find no orders that put the matter on a sound and defined basis by ascertaining the tracts of country subject to great seasonal changes, and by giving Commissioners or Collectors power to suspend collections of revenue when harvests failed, and to deal promptly when occasion required. He was aware that, in particular districts, remissions and suspensions of revenue had been made; but that was not sufficient. In order substantially to improve the raiyat's credit, the matter must be put on a sound basis and definite rules laid down by measures similar to those lately promulgated by His Excellency's Government for the benefit of Northern India. He believed that the Dekkhan Raiyats' Act had done good, and he believed it would in the future do more good, although not perhaps exactly in the way which was intended by its accomplished author. It would prevent creditors from harassing the raiyats; it would enable the Courts to exercise their discretion in bringing debtors and creditors to terms; but, speaking from his own experience as a Revenue-officer, he did not believe that, without a proper revenue-system,—by which he meant a system that would ensure discretion and moderation not only in the assessment but in the collection of the revenue,—the conditions, being so bad as they had been described to be, could be materially improved. He believed that, when widespread indebtedness of this sort was found among the agricultural classes of a large tract of country, a prudent Government would look to its revenue-system to see if it was well-suited to the conditions of the country. As regarded the present case, he had

the very best authority, namely, that of his Hon'ble friend Mr. Hope, for attributing some part of the indebtedness of the raiyats to defects in the revenue-system. He wished to speak in terms of the greatest respect of the Bombay Survey and Revenue Departments, and of the Revenue-officers and of the many great men who had served in that Presidency; but he did wish to see this question dealt with in a more liberal spirit than that in which it had hitherto been met. If he was wrong in supposing that nothing had been done by the Government of Bombay, and if the Government of India had at its disposal information which was not before the Council, he hoped the opportunity would be taken of informing the Council what had been done in this matter.

The Hon'ble Sir STEUART BAYLEY said that, in the course of this debate, questions had been asked to which he should have been glad to give more complete answers, but to which he thought it right that he should give such answers as the information at his disposal enabled him to do. Although he could not go into the general question of the Bombay revenue-system,—in fact, he must leave the defence of that system to persons who were abler and more competent than himself to do so,—he should not like it to be supposed that the particular strictures on that system which he neglected to meet were therefore unassailable. It seemed to him, from his small experience of the Bombay revenue-system, the operation of which he had an opportunity of seeing for one year in Birár, where the seasons were less variable than in the Dekkhan, and the produce consequently more even, that that system was very much to be recommended. He saw a system which worked smoothly and harmoniously and as satisfactorily as any system in India. There were as few complaints of pressure and of inability to meet the assessments as in any other part of India with which he was acquainted. It might be that that system was not equally applicable to all parts of the Presidency. He presumed the attack which had been made was not on the raiyatwárí system, but on the incidents of that system and the mode of collection. [MR. CROSTHWAITE said he had no objection to take to the Bombay raiyatwárí system.] But he was merely saying that in Birár the system, as a whole, worked satisfactorily. The parts of the system to which objection had been taken were no doubt less favourable in their operation in the Dekkhan districts than in Birár: those districts were specially notorious for the uncertainty of the rainfall and, in consequence, great variation in the quantity of produce. The hon'ble gentleman opposite (Sir Jotíndra Mohán Tagore), speaking of the assessments generally, referred to the exceptional weight of the assessment, and in some other expressions which were used the weight of the assessment was the burden of the complaint. But the Government of Bombay had always

maintained that their assessments were not heavy; and the speaker thought that, on an average of years, they had shown good grounds for saying so. A quotation on this point had been made from a note by Mr. Lee-Warner, but only a small portion of what that gentleman said on the subject was quoted. His opinion was, on the whole, very much against the hon'ble gentleman who quoted him. He compared the assessments in the British villages of Satára and Puna with those in some of the Native States adjoining. He fixed the value of land in the Bhore (Native) State and in the British villages adjoining, and he found that the assessment fell just twice as heavily in the Native State of Bhore as in the British adjoining district of Satára. But however that might be, the objection taken was to a system of assessment on an average of years. One hon'ble gentleman quoted from the Dekkhan Riots Commission the story there given of a gentleman who attempted to cross a stream on the system of striking a general average of the depths at various parts of the stream, the result being that the place at which the gentleman crossed was beyond his depth and he was drowned; and the analogy drawn from that was, that the assessment might be fair on an average of years, but was oppressive in an unfavourable year. [The Hon'ble MR. HUNTER said the analogy was the speaker's; he did not draw it.] He was about to question the entire relevancy of the apologue; but, whether the criticism was just or unjust, there could be no doubt that, in a district exceptionally liable to variation in the productiveness of the soil, the margin which the assessment left to the cultivator must be similarly liable to variation, and the opinion that this margin was dangerously narrow and required to be tempered by special elasticity of procedure was maintained by many authorities. This opinion, reiterated as it was by the newspaper Press, renewed and repeated by officials of weight and position, and pressed upon this Council not only when the Bill was brought in but on the present occasion, was not to be overlooked by the Government of India, nor was that Government likely to discredit the importance of such criticism or to pass it by unnoticed.

The two main points to which criticism had been directed were the rigidity of the system of collection and the suddenness of enhancements. These were the points of attack in the speeches made in 1879 to which his hon'ble friend Mr. Crosthwaite had referred, and they were the main points now. And, though he might not altogether be able to satisfy the anxiety of the critics or of enquirers generally, he might be able to show that the Government of India had not altogether lost sight of the question nor been indifferent to it. In the first place, the attention of the Government of Bombay had been called to the speeches which were made in this Council when the Dekkhan Raiyats' Act was

originally passed, and he would now read to the Council a portion of the letter on the subject :—

"There is one point, however, which, although it may possibly not involve legislation, appears to the Governor General in Council to demand further consideration from the Bombay Government, namely, the possibility of adapting the assessment of the land-revenue to the variations in the season. This question is discussed in paragraph 10 of the Bombay Government letter of the 6th April, 1877. The Governor General in Council fully agrees in the view that, in ordinary cases and where the land-revenue is moderate, it would not be good, either for the raiyats or for the public treasury, that the land-revenue demand should fluctuate. But the system which is best for districts enjoying an ordinarily regular rainfall may not be the best for the arid tract of the Central Dekkhan, where (it is said that) a good rainfall comes only once in three years. In view of the very great fall of prices and the vicissitudes of season in the Dekkhan during the last few years, it would be desirable that the present Government of Bombay should consider whether the recent (1873-75) revisions of the revenue have given sufficient relief from an assessment which was based, in part, on an unduly high estimate of the normal value of field-produce in the Dekkhan ; and, further, the Governor General in Council would wish the Government of Bombay to consider whether, in these four districts or in parts of them, it would not be wise to have a varying scale of revenue-demand, to be applied in unfavourable seasons, whereby the nominal assessment might be reduced by a certain percentage over an entire district or division of a district in the event of failure of rain or other serious damage to the crops."

The Government of Bombay at first postponed their answer to this question, and it was finally merged in the answer they sent on the recommendations of the Dekkhan Riots Commission. The point mainly alluded to was the possibility of having fluctuating assessments. On this point they said :—

'Before further discussing this important question, the Governor in Council desired to have before him the opinions of the most experienced Revenue-officers of this Presidency ; and the Commissioners of Divisions, the Commissioners of Survey and the Collectors were therefore instructed to submit their views on the proposed modification of the system of collecting the land-revenue. Their reports are now before this Government ; and I am to say that they are unanimously opposed to any departure from the principle of fixity of demand. Among the reasons given for this conclusion are, that the assessments have been fixed with due regard to the occurrence of bad and indifferent seasons, that uncertainty of demand is unfavourable to habits of thrift, that the necessity for annual inspections will open the way to frauds, and that the remissions will be unequal—in some cases sacrificing revenue which might be collected, and in others giving insufficient relief to real distress.

"His Excellency the Governor in Council concurs generally in the opinion of the Revenue-officers that the objections to a varying scale of revenue-demand are of a very serious kind, and at the same time desires me to say that this Government found other means in the recent years of scarcity to afford a timely relief to the raiyats from the rigidity of the revenue-demand, by suspending or deferring the exaction of the revenue-instalments. While, therefore, he feels grave reasons to doubt the urgency or advantage of a radical change in the method of collec-

tion, His Excellency in Council anticipates no difficulty in adopting, whenever abnormal circumstances may recur, such temporary expedients as may relax the stringency, without departing from the principle, of the land-revenue system of the Presidency."

They then went on to explain the reasons why they thought the recommendations of the Dekkhan Riots Commission would be very difficult to work in practice. And they said:—

"On the other hand, I am to submit to the consideration of the Government of India that the expedient of allowing payment of revenue to be deferred, which has been adopted by this Government in the late abnormal seasons, is at once effectual for its purpose and free from all the objections which are fatal to the alternative suggestions. The Bombay raiyat is not permitted by the theory of his contract to claim a remission of his very moderate assessment. It may, no doubt, be imperative to depart, to some extent, from this principle in a year of famine such as 1876-77; but seasons of total failure have not been of such frequent occurrence as seems to be supposed; and it can be shown that the system of fixed demand and realization has been worked with great success in many of the worst districts of the Dekkhan during a long series of years. For fifteen, twenty or even a greater number of years in succession the returns show that the revenue was realized without remissions and without outstandings, and with an annual increase from the extended occupation of land. During seasons of this character it has been found possible to maintain the principle of the survey-settlement without any noticeable pressure. The system, however, is not so inelastic as to be unable to bend to the stress of abnormal circumstances. The Revenue-officers have at their command accurate information as to every field and holding. When careful inquiries have assured the Collector that certain of the raiyats of his district are, from total failure of their crops, unable to meet their liabilities, an instalment of the whole year's demand is allowed to stand over until a better season furnishes the means of payment. Strict orders have been issued by the Government that the raiyats are not to be so pressed for recovery of land-revenue as in any way to impair their efficiency as tillers of the soil. I am to submit for consideration that the suspension of the assessment, not without hope of its ultimate collection, does not detract from the certainty of the tenure, does not discourage thrift, does not demoralize the raiyat by the expectation of constant remissions, offers no inducement to the bribing of officials, occasions the smallest financial loss, and at the same time secures the desired advantage of recovering the dues of the State from the tenant at the time when he has resources wherewith to pay, and of thus adjusting the demand to the circumstances of the season. I am to say that the Governor in Council has reason to believe that the postponement of payment has, by aid of the intimate knowledge of the people and the land possessed by the Revenue-officers, been worked with precision and has afforded the required relief.

"In conclusion, I am to say that His Excellency in Council trusts that the above considerations will satisfy the Government of India that there are the very gravest objections to importing a varying scale of revenue-demand into the land-revenue system of this Presidency, and that the expedient of suspending or postponing or ultimately remitting the payment of the assessment, to which Government now resorts in abnormal seasons, affords the necessary relaxation of pressure without deranging the most important principles of the survey-settlement.

On the other hand, the proposed remedial measures would be only applicable to years of rare and exceptional occurrence, and would be positively detrimental and demoralizing under all ordinary circumstances and in the general run of years."

At the time that reply was received by the Government of India, the same question of a variable system of assessments was under the consideration of the Famine Commission, and their view of the question was given in page 127, Part II of their report; and, although it was too long to quote, SIR STEUART BAYLEY might briefly be permitted to state their conclusions. They were not prepared to advocate the adoption, as a normal rule, of any of the proposals for making collections vary with the ordinary variations of the season; it should only be in exceptional cases of calamity that any such concessions should be made. They laid down the principle that, in such times of calamity, no cultivator should be made to pay the revenue by borrowing money when the yield of the crops was such as to leave no surplus above the amount needed for the support of himself and his family. They wished to make the degree of remission uniform over a considerable tract of country, so as to avoid the danger of corruption, and to make suspensions of revenue dependent on suspensions of rent; and they insisted on the necessity of relief being given early and promptly and regulated systematically. They also proposed that, in tracts where not only the outturn but the amount of cultivation was precarious, there should be an exceptional procedure, namely, a collection of a fixed average rate, but only upon the land actually brought under cultivation each year. These views, SIR STEUART BAYLEY thought it would be admitted, did not differ very materially from the policy which the Government of Bombay laid down for itself and accepted as part of the revenue-system. They agreed in the main points of preferring moderate fixed assessments to fluctuating assessments, the necessity of suspensions and remissions in bad years, and making such suspensions uniform over considerable tracts of country; and the points on which the Bombay system differed were in matters of administrative detail, such as systematic rules for procuring prompt and spontaneous action on the part of the Revenue-authorities.

To show what the Bombay system was in regard to suspensions and remissions, he might be permitted to refer to the same authority from which his hon'ble friend Mr. Crosthwaite had already quoted. The general order of 1867 laid down the general principle :—

"Permanent and entire remissions should only be granted in cases of complete failure of crops, and in villages which have been subject to a succession of bad seasons. In other cases, partial remissions, coupled with a postponement of the remaining Government demand or part

of it, may be sanctioned. Individual enquiries should, as far as possible, be avoided, and measures of relief, as a rule, applied to entire villages. In taluqas where the assessment is very light, the raiyats ought to be able to meet deficiencies in occasional bad years.—*G.R. No. 151, Jan. 15, 1867.*"

And in the order of October 1847, repeated in 1874, they said:—

"When a group of villages has suffered from an exceptionally bad season, an average reduction of assessment all round will be made, if necessary. When this is done, there will remain certain individuals unable from poverty to pay up their quota, even after the proportional abatement from the full demand had been made. These cases will require to be particularly enquired into, and the unrealized balances due written off at the close of the collecting season.—*G. R. No. 3899, October 5, 1847, and No. 1200, March 7, 1874.*"

Those were the general orders which existed long before the debate which took place in this Council in 1879. Then he had been asked what had been done since. He could not refer to any general orders, but could show what practical action had been taken. He had in his hand two orders passed in 1882; one in which directions were given to the Collector of Ahmadnagar in the following terms:—

"(1) In villages where there has been a total failure of crops, the Collector may exercise his discretion in granting remissions of the current year's revenue.

"(2) In villages where the failure has not been so complete, he may remit the increase imposed at the revised settlement, and postpone the collection of the remainder for the current season, or for a longer period if necessary.

"(3) In villages where the failure of crops has only been partial, the Collector may remit a fraction of the revenue in proportion to the estimated failure.

"Before, however, granting any remissions, the Collector should cause a careful enquiry to be made into the circumstances of each case. * * *. No revenue should be collected by distraint and sale of the defaulter's property without the clearest evidence of contumacy."

These were directions given to a particular Collector in a particular district, and it was uncertain how far they might be known and acted upon generally, but the principle was distinctly laid down in the Resolution of February, 1882, in which it was said:—

"It must, however, be clearly understood that Government do not desire that in any case the payment of the assessment should be rigorously enforced when such payment will cripple the cultivator and reduce him to a state of insolvency. Government do not desire that remission should be granted lightly or for insufficient reasons, but they do desire that the payment of the full assessment should not be exacted when such a measure would prove the financial ruin of the raiyat and be the means of preventing him from properly cultivating his land."

He thought he had now shown that the policy of the Bombay Government and the principles it had adopted for its guidance in revenue-matters in years of scarcity were identical, or nearly identical, with the recommendations of the Famine Commission. The recommendations of that Commission had been taken up and thoroughly considered by the Government of India; and, so far as regarded the North-Western Provinces, the result had been the publication of a Resolution in October of this year. The effect of that Resolution was that, after a careful classification of protected and unprotected areas, it would become the duty of each Local Government to lay down a scale in accordance with which, and in proportion to the severity of the calamity, suspensions of revenue would be made. These would afterwards be turned into remissions where that course was found necessary.

The main point insisted upon was the necessity of providing for the prompt and spontaneous action, on a pre-arranged system, by the local authorities, as soon as their enquiries showed them the real nature of the calamity with which they had to deal. The Resolution also followed the lines laid down by the Famine Commission for those precarious tracts in which the cultivation fluctuated from year to year. This Resolution was, in the first instance, promulgated only for Northern India. It was not thought expedient to extend it to Bombay, because the principles underlying it were already accepted by the Bombay Government, and also because the Government of India did not know, without further enquiry, how far the scope of the scheme would have to be altered to make it suitable to the special revenue-procedure of Bombay. It was, however, still a matter for consideration whether the principles which the Bombay Government had accepted might not be further systematised and formulated so as to give Collectors some knowledge as to what their action should be on the occurrence of a calamity, and some power to deal with it, without having to refer each case separately for the orders of the Central Government.

With regard to the other point, namely, the suddenness of enhancements, he could only say that the Government of India had watched the action of the Bombay Government with much interest and not without some anxiety. But they had not felt called upon to interfere in any direct way with the discretion of the Government of Bombay. The Government of Bombay was in this matter in direct communication with the Secretary of State; it sent him its settlement-proceedings direct, and he reviewed and assented to them, or modified them, as he thought fit. In one case, when the Government of India, after failing to persuade the Government of Bombay to adopt its views on a question of enhancement, thought it necessary to indicate to the Secretary of State that they viewed with apprehension the extent to which,

in one instance, enhancements had been made, the Secretary of State pointed out in reply the unquestionable fact that the Government of Bombay had at its disposal much more complete and accurate means of information than the Government of India, and the interference of the Government of India was distinctly and decidedly deprecated. The Secretary of State had, however, himself dealt directly with this question of enhancement. In some of the distressed districts of the Dekkhan he did not sanction the enhancements originally proposed; that was to say, he laid down the principle that enhancements above 20 per cent. should not be carried out in those districts for a term of five years, in order to allow time for them to recover from the effects of the famine. This term was afterwards, on the application of the Government of Bombay, reduced to three years, and the Government of Bombay had, on its own motion, suspended the introduction altogether of the enhanced revenue in several of these talukas. It was not intended to deny that the Government of India had a distinct responsibility in the matter, but, under existing arrangements, they could only exercise it with advantage through the Secretary of State. Where the Government of Bombay corresponded directly with the Secretary of State, there was always a possibility of divergent orders being given by two supervising authorities, and the inconvenience thus caused would be very great. The result was that, though the Government of India watched this question earnestly and anxiously, they considered any direct interference in the matter inexpedient, but, should occasion arise, they would not fail to express their opinion after full inquiry and in the way most likely to be useful.

The Hon'ble MR. ILBERT said he should have been glad to have had the opportunity of commenting on some of the criticisms offered on the Bill since its first publication—criticisms some of which were extremely useful. Amongst other things, he should have liked to explain and to support, as he was fully prepared to do, the proposed amendments of the law relating to mortgages. But the debate upon the Bill had been protracted to an unusually late hour, and, under the circumstances, he thought the best course he could adopt—and it would certainly be the course most acceptable to the Council—would be to leave unsaid what he had intended to say.

The Hon'ble MR. GIBBS said he had not anticipated such a protracted debate on the revenue-system of Bombay. He had some doubt whether the criticisms which they had heard were technically within the purview of the Council, but, as far as he was concerned, he was certainly taken by surprise, so that he was not in a position fully to defend that which had been attacked. As it was, he would only make three brief observations. He was a member of the Bombay Government from 1874 to 1879. When he went into that Council,

he had not had any large official experience of the matters under debate; but from enquiries which he had made outside, and from what had come before him from time to time, he had arrived at the conclusion that the revenue-assessments in Bombay were high. But, having subsequently, as a member of Government, to go into the matter at considerable detail, he might say that he left the local Council with the impression full on his mind that the assessments were not high. While he was in Council there, before the famine took place, during the administration of Sir Philip Wodehouse, the question of the revision of the settlements in some of the Dekkhan districts came up for the first time, and the question whether any limit should be put to the amount by which the assessments should be enhanced was discussed, and a resolution was passed limiting the increase to certain fixed percentages on districts, villages, and on individual holdings. He could not then exactly remember the figures, but he recollected that the resolution was not passed without the opposition of some of the members of the Bombay Government; and the only thanks they got in the matter was a despatch from the Secretary of State stating that they had gone further than they should have done. Again, when the famine took place, the Bombay Government recommended to the Supreme Government that certain remissions of revenue should be granted in the territory subject to the distress; but the order which came back was that they should not make remissions, only suspensions of revenue. These were the only facts which then occurred to him in defence of the action of the Bombay Government.

The Hon'ble MR. HOPE said it might perhaps be expected that, as a member of the Bombay Civil Service, and one having protracted experience in revenue-matters, he should enter upon an elaborate reply to the attacks on the revenue-system of that presidency which had been made on the present occasion. He had, however, no intention either of satisfying the curiosity, or, it might be, of trying the patience, of the Council on this subject. His reasons for adopting this course were two: first, he considered that the revenue-system of the Bombay Presidency, whether good or bad, was not the question at present immediately before the Council. The Hon'ble Member who led off the discussion complained that, although the amendments which the Bill proposed would do good in their way, they would not do everything wanted to remove the evils which the Relief Act was intended to remedy. To this MR. HOPE would reply that the Relief Act was not intended to remedy any evils connected with the revenue-system, and it therefore contained no provisions on the subject. At the same time, he would take in a friendly spirit, in consideration of the desire to allow all subjects to be ventilated which ought to distinguish a Government, the remarks which had been made on this side issue. And he did so

the more, because the remarks which he had himself made in introducing the Bill in 1879, and which had now been quoted, were of a somewhat similarly irrelevant character. His second reason for not attempting to offer any reply to what had been said regarding the revenue-system was, that he did not feel himself at liberty in any way to commit the Government of India, of which he was a member: anything which he or any other member of the Government of India might say to-day was merely said in their capacity as individual members of this Council. In that capacity he need not say more than this, that a great deal had since been done, as his hon'ble colleague Sir Steuart Bayley had shown, to meet the strictures contained in his speech of 1879, and that those strictures were coupled with the emphatic statement that the assessment was "low in itself, very low for *a landlord* to take, far lower than that prevailing in 'alienated' British villages, and adjacent foreign states." He could only recommend his hon'ble friends who still found fault with the Bombay revenue-system to recollect the caution which, as Sir Steuart Bayley had mentioned, was conveyed by the Secretary of State as to the difficulty of criticising the revenue-systems of other provinces in remote parts of India.

With these remarks he would ask the Council no longer to postpone a measure which was intended to afford considerable relief to a large body of raiyats, including many whose suits were now pending.

His Excellency THE PRESIDENT said: —

"I have not the least intention of detaining the Council by entering into any discussion of this measure itself. Indeed, the chief part of the debate now brought to a close has turned on a question which, though connected with the subject of the Bill, is distinct from it,—namely, the question of the Bombay revenue-system generally. Not unnaturally my hon'ble friends Mr. Gibbs and Mr. Hope have intimated some doubt as to the regularity of that discussion. I myself entertained for a few moments some hesitation on the point, but did not think it advisable to put a stop, by the exercise of the powers of the Chair, to a continuance of that discussion; because it partly arose out of a circumstance which is of itself an anomaly,—namely, that a Bill of this purely local character affecting Bombay, and indeed applying only to a limited portion of that Presidency, should have been brought in and passed, and subsequently dealt with, by the Governor General's Council. The discussion here in this Legislative Council in Calcutta of the local affairs of Bombay would have been altogether out of order if it had not arisen upon a measure in which those affairs are directly

dealt with; but, as that is the case, a latitude of debate may fairly be allowed which would have otherwise been inadmissible.

"But even if this had not been so, I should have been quite unable to interfere after the circulation of the paper written by an able and very intelligent Bombay officer, my friend Mr. Lee-Warner, which relates to the question of the Bombay revenue-system and to nothing else. Of course, after that paper had been circulated to members of this Council by the hon'ble member in charge of the Bill, with special reference to this discussion, it would have been quite impossible for me to raise any objection to observations being made by members of this Council which naturally arose out of a paper already in their possession; and, under those circumstances, I thought it advisable—being always anxious to determine any doubtful point in favour of freedom of debate—that I should not attempt to place any restriction upon the discussion which has just taken place. But I must, at the same time, say that I think it exceedingly inconvenient that we should attempt to discuss in this Council the strictly local affairs of the minor Presidencies, and that such a proceeding is, generally speaking, much to be deprecated, and might easily lead to serious difficulties. As regards the general question of the Bombay revenue-system, I wish to reserve entirely my own opinion. My hon'ble friend Sir Steuart Bayley has explained the course hitherto taken with regard to that question, and has shown how revenue-questions relating not only to Bombay, but to Madras also, fall in a special manner under the cognisance of the Secretary of State; so that any premature declaration of the policy of this Government would be clearly out of place. My own views on the question of suspensions and remissions of revenue are embodied in the recent Resolution of the Government of India on that subject; and, as regards the question of enhancement, I cordially concur with the views expressed by the Secretary of State, that, even when an enhancement may be reasonable in itself, it is not desirable that, if it is heavy in amount, it should be made at once, but that it should be introduced gradually, so as not suddenly to raise very largely the payments which the raiyats have previously been accustomed to make.

"I do not think that I need detain the Council with any further observations. I merely wished in the present instance to make something of protest against a course of proceeding which I think should be avoided as much as possible, and also to explain my reasons for not entering now upon the general question that has been raised, and reserving my opinion respecting it."

The Motion was put and agreed to.

BURMA LABOUR LAW REPEAL BILL.

The Hon'ble SIR STEUART BAYLEY introduced the Bill to repeal the British Burma Labour Law, 1876, and moved that it be circulated for the purpose of eliciting opinion thereon.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

EMIGRATION BILL.

The Hon'ble MR. ILBERT moved that the Hon'ble Mr. Hunter be added to the Select Committee on the Bill to amend the law relating to the Emigration of Natives of India to the Colonies.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE presented the third Report of the Select Committee on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces.

AGRICULTURAL LOANS BILL.

The Hon'ble MR. CROSTHWAITE moved that the Hon'ble Mr. Hunter and the Hon'ble Sayyad Ahmad Khán be added to the Select Committee on the Bill to consolidate and amend the law relating to loans of money for agricultural improvements.

The Motion was put and agreed to.

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Hon'ble Rájá Siva Prasád be added to the Select Committee on the Bill to make better provision for Local Self-government in the Central Provinces.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. ILBERT moved that the Hon'ble Mr. Miller be added to the Select Committees on the following Bills:—

To amend the law relating to Merchant Shipping.

To give power to arrest persons whose evidence is needed under Act XII of 1859.

The Motion was put and agreed to.

CHUTIÁ NÁGPUR ENCUMBERED ESTATES ACT, 1876, AMENDMENT BILL.

The Hon'ble Sir STEUART BAYLEY moved for leave to introduce a Bill to amend the Chutiá Nágpur Encumbered Estates Act, 1876, and, in doing so, he said that only a few words were necessary in explanation. It came out, on the examination of the Act for the relief of the Oudh taluqdárs, that there was a mistake in the Act which enabled a proprietor to demand the release of his estate as soon as the scheduled debts were paid off. It did not occur to the drafters of the Act that, when the scheduled debts were paid, there might be a debt due to the Government for money borrowed for the purpose of paying off the scheduled debts, and the owner might demand the release of his land although the debt to Government was unpaid. The defect in the Oudh Act was remedied, and His Honour the Lieutenant-Governor was asked whether a similar correction was needed in the Chutiá Nágpur Act; to which His Honour replied that, although hitherto it had not been found necessary to contract any loan, it might possibly be necessary to do so on some future occasion. He was of opinion, therefore, that it would be desirable to amend the law in the direction indicated, and also to make special provision for loans to be raised by Government on the same lines as those on which sections 24 and 26 of the Broach Thákurs' Act were framed. Some other alterations had also been suggested by the Board of Revenue, but, as the Government of Bengal did not support those recommendations, SIR STEUART BAYLEY need not detain the Council further with regard to them.

The only other point for consideration was a proposal to remedy an oversight in the amended Act of 1877. Under section 12 of the Act, the Commissioner was required to decide within twelve months whether the management of an estate was to be proceeded with or to be abandoned, but, under section 18, the manager was empowered to effect a mortgage six months after the estate was brought under the Act. Although in the original Act the two sections were drawn so as to give the same limit of time in both, yet, when the time

came to be altered in the one from six months to twelve, the other section was left unaltered; and the result was that the Commissioner might direct the management of the estate to be abandoned after twelve months, although the manager had effected a mortgage upon it within the period between the six months and the twelve months. It was, therefore, expedient to extend the period for effecting a mortgage under section 18, so as to make the period conform to the period prescribed in section 12 for the continuation of the proceedings or the abandonment of the estate.

The Motion was put and agreed to.

The Council adjourned to Friday, the 5th January, 1883.

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

CALCUTTA;
The 22nd December, 1882.

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