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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 and 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 22nd July 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble Major General Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.

COORG COURTS' JURISDICTION BILL.

The Hon'ble MR. TAYLOR, in moving for leave to introduce a Bill to define the jurisdiction of the Courts in Coorg, said that the Bill as framed by Mr. Saunders, when Judicial Commissioner of Coorg, would embody the details requisite to ensure the efficient working of the courts of that province, and be modelled on the Acts recently passed for the administration of civil and criminal justice in the Panjáb and other Non-Regulation Provinces.

The Council were doubtless aware that the small mountainous province of Coorg, probably not larger than an ordinary District elsewhere, was situated in the south-western corner of Mysore, and was administered by the Commissioner of that territory. It was annexed by the British Government more than thirty years ago in consequence of the hostility and rebellious conduct of its Rájá, our tributary; and, what was perhaps more remarkable, at the express desire of the people of the country who were thoroughly harrowed and worn out by the savage and revolting cruelties which had been perpetrated by their own native rulers for a series of years. The people were a hardy warlike race, and were described as retaining to the present day much of the primitive simplicity, as well as the independence, of their character. Our administration had not failed to give satisfaction, and the courts of judicature established since our

assumption of the country had been well suited to the wants and habits of the people. But a great change had passed over the province of recent years. Owing to the extension of coffee-planting, to which the soil and climate of South Coorg were peculiarly adapted, and to the influx of Europeans connected with that growing industry, civilization had progressed, commerce extended, and the work of administration had consequently increased. Until quite recently, the Superintendent was the only European executive and magisterial officer in the province, and his court was held forty miles from the tract chiefly occupied by the English planters. The want of an Assistant Magistrate and executive officer, who could communicate with the settlers by word and letter in their own language, soon began to be keenly felt. On the urgent representation of the Planters' Association, the Commissioner thoroughly advocated the appointment; and the Government of India had recently allowed an European Assistant to be posted to South Coorg. A question, however, at once arose as to his duties: it was asked by the local authorities if he should try all cases in which Europeans were concerned all over the Province; and it was proposed that, for this purpose, he should have concurrent jurisdiction with all local courts in all civil cases up to Rs. 3,000. The object was to allow all Europeans to bring their cases to his court in preference to the ordinary courts of the country if so inclined. It was then pointed out that this could only be done by a legislative enactment, as in the case of other Non-Regulation Provinces in respect to which it had been found necessary to pass laws to confer civil and criminal jurisdiction not hitherto exercised. It seemed desirable, therefore, instead of confining the measure to the single object of providing a jurisdiction for the court of the European Assistant, which could not have been easily fitted to the existing system, to take the opportunity of remodelling the whole judicial machinery of the Province and placing it on a proper legal basis.

The Commissioner was accordingly desired to prepare and submit a Draft Bill, defining the constitution and jurisdiction of the various courts he proposed to retain, and the kind of procedure he would lay down for them. This he had now done. Several grades of courts of both civil and criminal jurisdiction were proposed on the model of those in the Panjáb and Central Provinces, though under different local names; retaining as far as possible the present system and the simple rules of procedure now in force. He (MR. TAYLOR) would not detain the Council by going over the several provisions of the measure; but with the above explanation of its object, he would ask His Excellency's permission to introduce the Bill.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. STRACHEY moved that the further report of the Select Committee on the Bill to consolidate and amend the law relating to rent in Oudh be taken into consideration. When the Bill was introduced, he stated that there were two objects for which legislation was necessary; first, to give the force of law to the engagements entered into by the Government, and to confirm the concessions made by the taluqdárs of Oudh in favour of certain classes of tenants; and second, to provide for many matters relating to the recovery of rent, in respect of which the existing law was either doubtful or unsatisfactory.

Since the Bill was last discussed in Council, it had been twice referred to a Select Committee, and all its provisions had been carefully scrutinized. The opinions of all the principal revenue officers in Oudh, and of many officers in other provinces, had been given, and every section of the Bill had been discussed by him personally with the present Chief Commissioner and Financial Commissioner, and with the chief taluqdárs. He believed that no Bill had yet come before this Council which had been more thoroughly examined and criticized.

So far as the Bill referred to the engagements entered into between the Government and the taluqdárs, it was stated in the report of the Select Committee, dated the 15th September last, that the taluqdárs were completely satisfied with the provisions of the Bill. They had repeatedly declared that the Bill carried out faithfully all the engagements of the Government, and they themselves confirmed to His Excellency in person the accuracy of this statement when His Excellency visited Lucknow in November last.

In respect, therefore, of those portions of the Bill which referred to those particular questions, nothing more need be said, for no changes of importance had been subsequently made in them.

One addition, indeed, had been made to section 5, with the object of negativing more distinctly the transferability *inter vivos* of rights of occupancy. This had been done merely to make the intention of the section clearer. It was never proposed that those rights of occupancy should be transferable without the consent of the landlord. With such consent, they would be transferable, if the conditions of the last proviso to section 5 were complied with.

When he introduced this Bill, he said that, except the rights of occupancy declared to be possessed by the class of cultivators who had once possessed

proprietary rights in the land which they now held, no rights of occupancy were recognized by this Bill, and he added that no rights of occupancy could hereafter be created by the Government, or could grow up in Oudh, as they could grow up in provinces where Act No. X of 1859 was in force, from the mere occupation of the land for twelve years, or for any other time. So far as the Government was concerned, the only class of tenants with rights of occupancy was the class described in section 5 of this Bill. If any other rights of occupancy were claimed, they could only be established by the decree of a competent Court of law, and such claims would not be affected by this Bill. If any tenant claimed to possess a right of occupancy different in kind to the rights of occupancy therein described, it was of course open to him to sue for that right in a Court of law, and to prove his claim if he could. If such rights should in any case be established, they must be protected by the Courts, in accordance with those orders of Lord Canning which formed the legal basis of all existing rights in land in Oudh, and which declared that all persons "would be secured in the possession of the subordinate rights which they had heretofore enjoyed." He had thought it desirable to mention this, although he did not suppose that the matter was one regarding which there was likely to be any doubt. He might add that what he had now said was in strict accordance with the views of Sir Charles Wingfield. He had repeatedly stated in the official correspondence which had been published, that, although he considered that non-proprietary tenants must be assumed to be tenants-at-will until the contrary was proved, he had never desired to shut against any one the judicial tribunals by which claims to rights in land were heard and determined.

He would have to propose some verbal amendments in two of the sections which referred to the right of tenants to claim compensation, under certain circumstances, for unexhausted improvements. No change of importance, however, was proposed in the original provisions of the Bill in regard to this matter. There was no part of the Bill which he believed to be more important than this, or which he looked upon with greater satisfaction. This was, he believed, the first attempt that had been made in India—he was very sure that it would not be the last—to legislate on this subject, regarding which there had lately been so much discussion at home.

The time had, he hoped, almost passed away in which it was necessary to argue in favour of the principle that property created by the industry of a tenant ought to belong to him, and that it ought not to be liable to confiscation at the pleasure of a landlord. The justice of this principle was the more evident in a country like India, where for the most part, whatever improvements were

made were commonly made by the tenants and not by the landlords. That being the case, it was right to assume, as this Bill assumed, that in the absence of any specific agreement to the contrary, improvements made by a tenant had been made with the tacit consent of the landlord.

The necessity for legislation on this subject had lately received a strong illustration.

When he introduced this Bill, he believed that, although in the present state of the law, it was, to say the least, very doubtful whether a tenant could in any case obtain compensation for improvements which he had made without his landlord's consent, it did not occur to him (MR. STRACHEY) to imagine that the tenant, by making such improvements, even of the most trivial description, exposed himself not only to the chance of losing the money that he had expended, but to the danger of being summarily ejected altogether from his holding. Yet this had lately been declared by a Full Bench of the High Court at Agra to be the existing law in the North-Western Provinces, and if it were the law there, it might perhaps be supposed that it was the law in Oudh also. He asked the attention of His Excellency and of the Council to that judgment of the High Court which he held in his hand. It was dated the 20th July 1867, and it had recently been published for the information of revenue officers by the Board of Revenue in the North-Western Provinces. This judgment laid down the general rule that a tenant, even though he possessed a right of occupancy, made himself liable to ejectment if he dug a kachchá well without the previous consent of his landlord, although it was admitted that there might be local usages forming exceptions to the general law.

He did not wish to say much on this subject, for he thought that the bare statement of those facts was sufficient for his present purpose. But the matter was one of very great importance. The right of occupancy possessed by an hereditary tenant was, as his hon'ble friend Mr. Maine had clearly shown, a right of property in the land. Such a tenant was in fact a part-proprietor. Whether this sort of property were economically good or bad,—he himself believed it to be good,—had nothing to do with the present question. Not only did that right of property unquestionably exist, but the right was often a very valuable one. That such a right, or for that matter, any other right should be capable of annihilation by the digging of a kachchá well seemed to him to be truly extraordinary.

For what was a kachchá well? It was really a misapplication of terms to call it a well, or it would be so, if they had in English any other word by which

it could be described. A kachchá well, in the greater part of Northern India, was a mere hole dug in the ground to the depth of a few feet, and perhaps 3 or 4 feet in diameter, and it cost usually a few shillings to make. The digging of those holes for the supply of water for irrigation was very commonly, as the Board of Revenue had truly said, as essential as the ploughing of the land to the production of any crop at all.

Yet the digging of such holes, without which no crop could be raised, exposed a man, unless he had got the consent of the superior owner of the land, to the confiscation of the property which he and his ancestors had perhaps held for centuries! If they were to be told that in those parts of Ireland in which the Ulster custom of tenant-right prevailed, and in which tenants often invested large sums of money in the improvement of their farms, it had now been found to be the law that such a tenant might be summarily ejected, and his property confiscated, if he manured his crops, or removed the weeds from his corn-fields, they might say, without any exaggeration of the fact, that such a law was less extraordinary and less unreasonable than that law which had been declared to be the law of the North-Western Provinces of India.

He would not for a moment call in question the accuracy of the conclusion as to the state of the existing law which the High Court had thus declared, and he might add, in justice to the Court, that the Judges had shown most clearly by the terms in which their judgment was worded, that they felt strongly the injustice and the inexpediency of the law which they held themselves bound to administer. While he was glad to know that after the passing of this Bill, there would be no danger of any such law being applied in Oudh, he thought that the facts which he had now noticed demanded the serious attention of the Government.

An important change had been made in that part of the Bill which related to the enhancement of the rent of tenants not having rights of occupancy. The original Bill following the practice hitherto in force in Oudh and in those Provinces to which Act No. X of 1859 was applicable, provided that when (with certain exceptions) a landlord desired to enhance the rent of a tenant, he must, before a certain date, serve a notice upon him through the tahsíldár, specifying the rent demanded and the fields in respect of which enhancement was to take place. Although the intention of these provisions was the protection of the tenant, it had been found that their actual effect had been of a very different character. They had placed in the hands of the landlord a power of enhancing rents which he would not otherwise have exercised, and the tenant often looked on the

notice served through the tahsíldár as an order of the Court that he was to pay the increased rent which had been demanded by the landlord. This procedure had been objected to on other grounds also. It often led to unnecessary and objectionable interference by the Courts between landlord and tenant in cases in which, if left to themselves, they would settle by mutual agreement the terms upon which the land was to be held. The Select Committee, in accordance with the almost unanimous opinion of the officers who were consulted, came to the conclusion that this custom of issuing notices of enhancement of rent through the tahsíldár ought to be done away with. All that was really necessary was that, when a dispute arose regarding the amount of rent to be paid by a tenant to a landlord, the Court should be able to ascertain without difficulty the terms which were actually agreed upon between the parties. Section 36 of the amended Bill provided for this difficulty. If in any suit between a landlord and a tenant not having a right of occupancy, the amount of rent payable by the tenant were disputed, the Court would assume that the tenant was liable to pay rent at the same rate which was payable for the last preceding year, unless it were shown by evidence in writing that the parties had agreed that the previous rent should be altered. This was almost equivalent to saying that an enhancement of rent must always take place under a written lease. If no arrangement could be come to between the parties, the landlord would have the remedy in his own hands by exercising his power of ejectment. A strong encouragement would thus be given to the adoption of the highly beneficial custom of giving written leases for a term of years. He (MR. STRACHEY) believed that while this change in the law would be advantageous to tenants, it would be entirely approved by the better class of landlords.

Since the Bill was introduced, an important change had been made in Chapter VI, which related to distress for arrears of rent. The result of the original proposals would have been a lawsuit in every case in which the landlord exercised the power of distraint, and the expense of this litigation could have fallen, almost invariably, on the tenant. The Bill, as it now stood, followed in regard to distress for arrears of rent, in all essential respects, the procedure of Act No. X of 1859.

A proviso had been added to section 109, to the effect that in the notification by which the Code of Civil Procedure was extended to Oudh, the words "ancestral property" should be held to include the property in land of persons admitted to engagement for the land-revenue at the Summary Settlement of 1858-59. This required explanation. For political and other reasons, the Government determined that ancestral property in land should not be sold in satisfaction of decrees of Court without the sanction of the Judicial Commissioner.

In cases coming under the present Bill, the sanction of the Financial Commissioner would be necessary. But according to the orders of Lord Canning under which the sanads of the taluqdárs were granted, the property in land of an Oudh taluqdár, as he (MR. STRACHEY) explained when he introduced the Bill to define the rights of taluqdárs, was not, legally speaking, ancestral. That property depended entirely upon the gift of the British Government, and not upon any hereditary rights. Consequently, if the proviso that now added to the Bill had been omitted, the land of a taluqdár might have been sold in satisfaction of decree of a Revenue Court without the sanction of any superior authority, and thus the desire of the Government to prevent property of this description passing into the hands of strangers would have been frustrated. This defect in the law would continue to exist after the passing of this Bill in respect of the decrees of the Civil Courts.

A change had been made in section 125 which required notice. As the Bill originally stood, there was no doubt that sufficient means were not given to taluqdárs for the speedy recovery of arrears due by under-proprietors holding sub-settlements. In such cases, there could be no exercise of the power of distraint, and the taluqdár who, under the system in force in Oudh, was directly responsible for the punctual payment of the Government revenue would not always have had, under the Bill as it was formerly drawn, sufficient means of recovering from under-proprietors the arrears, on the receipt of which his power of paying that revenue might depend. The only means that he could take was the institution of suits in Court. Theoretically, the taluqdár had been protected against ultimate loss by the liability of the under-proprietor to have his tenure sold in execution of decree, but, as he had before said, there were such great difficulties in the way of thus bringing landed property to sale, that this security was really not worth much. In the interest of the Government and of the under-proprietors themselves, some further provisions were quite as necessary as they were in the interest of the taluqdár. It must be remembered that a large portion of the taluqdár's demand on the under-proprietor holding a sub-settlement consisted, in fact, of the revenue that was due to the Government, and the amount of this demand on the under-proprietor did not depend on any voluntary agreement between him and the taluqdár, but was determined by a judicial decree. The Government was therefore interested, as well as the taluqdár, in the payment of the sums due under a sub-settlement by an under-proprietor. Under these sub-settlements in Oudh, a heavier burden was ordinarily placed on the land than would be the case if the revenue were paid directly to the Government instead of to the taluqdár. Special rules had long been found necessary in the case of village communities and of proprietors dealing

directly with the Government, to save them from ruin when they failed to meet the Government demand. Timely study of the causes of default was necessary, and if it was objectionable to leave such cases to the mechanical procedure of the Courts, it was not less objectionable to leave unprotected the interests of under-proprietors holding sub-settlements under taluqdárs. In the latter cases also, it was right that the causes of default should be discovered and appropriate remedies applied. The so-called rent that was paid by an under-proprietor holding a sub-settlement, differed in its nature from the rent ordinarily paid to a landlord. It was in fact, in a great measure, revenue payable to the Government, and it seemed right that it should, when necessary, be recovered as such. In this manner, while effect was given to the judicial decree of the Settlement Court, and the rights of the taluqdárs were upheld, the under-proprietor would at the same time be protected against the danger of unjust treatment on the part of the taluqdár. The Bill as it now stood gave to the Deputy Commissioner power to exercise, for the satisfaction of a decree against an under-proprietor, all the powers which he might have exercised for the recovery of an arrear of revenue.

He did not think that he need refer in detail to any of the other changes in the Bill which had been noticed in the report of the Select Committee. Many of these were of little importance, and the rest had been explained sufficiently in the report.

He had said nothing to-day regarding those questions of tenures and of the rights of landlords and tenants which had been the subject of so much discussion. When the present Bill and the Bill to define the rights of taluqdárs in Oudh were introduced, he gave his opinion fully upon all these matters, and he thought that no useful purpose would be gained by going into them again. The merits of the policy which had been followed by His Excellency in Oudh had been, as every one knew, keenly criticized. Few Indian questions had created so much interest as these questions connected with the Province of Oudh created in their day. Experience would infallibly show hereafter whether in its main principles the policy of His Excellency was right or wrong. Having had in his hands for two years the administration of Oudh, he (MR. STRACHEY) had had as good opportunities as most men of forming an opinion on these matters. He contented himself now with repeating what he had often said before, that he believed the policy followed by His Excellency in Oudh to have been just and necessary, and in complete accordance with the real intentions of Lord Canning, and he was glad to know that he had borne a part in carrying that policy into effect.

The Hon'ble MR. MAINE said that he had seen references to the judgment of the High Court of the North-Western Provinces on which his hon'ble friend had placed so much stress, but before the present moment, he had not had an opportunity of reading it. So far as he could judge from a cursory perusal, it seemed to correspond with the description of it given by Mr. Strachey, and no doubt the Viceroy, after what had been said, would direct an enquiry to be made of the North-Western Provinces Government as to the probable effect of the decision on the status of the ryot. But he, MR. MAINE, was anxious to say that the High Court did not appear to be in the very least to blame for the law it had laid down. It avowedly based its decision partly on the general custom of the country as shown to it by evidence and authority, and partly on the wording of parts of Act X of 1859. But the Judges expressly justified their decision on the ground that they were interpreters of the law, and not legislators. He would read a passage from the judgment of the Full Bench, in which the Court indicated, as far as a Court could do so with propriety, that it doubted whether the law, which it was obliged to declare, was in accordance with good policy.

"There may, of course, be local usages forming exceptions to the general law; but we see no reason to doubt that the law is such as it is represented to us to be by the pleaders who appear for the plaintiff in this case. The law may or may not be opposed to good policy. The act of digging a well or planting a tree does not necessarily imply or assert a proprietary right in the land in which the well is dug or the tree planted. Whether it be most expedient that the tenant should be encouraged to improve his holding by all means, or that the benefits resulting from certain modes of improvement should be secured to the landlord or left to his option, may be a question, but it is one which we are not called upon to consider. The Court must recognize the law as it is found to exist, so long as it shall not be superseded by positive law, and must apply it in all cases not governed by local usages or special contract.

So also in respect of the penalty incurred by a tenant who is guilty of a breach of contract of the kind which this case brings to our notice, the unwritten law of the country must be our guide. Were we free to legislate upon the subject, it might seem to us equitable and expedient to look to the amount of injury actually caused to the landlord by the act complained of, and to grant him relief and compensation whenever possible, otherwise than by ejectment of the tenant. But it is not contended or proved that any other penalty than forfeiture of his holding for such a breach of contract is sanctioned by the law of these Provinces."

The case made strongly in favour of an opinion which he, MR. MAINE, held, and which, judging from many communications he received from learned Judges of the High Courts, he inferred that not a few of them held that, if common

justice was to be secured to the masses in India, it would never to do to trust exclusively to declarations of law by Courts however dignified, but the active interposition of the Legislature was indispensably necessary.

The Hon'ble Sir H. M. DURAND said that, in signifying his general assent to this Bill, he had to observe that some of its provisions involved principles that, under ordinary circumstances, would have been open to much discussion and conflict of opinion, and which would have demanded more sifting and limitation in application, than they had here met with. The Hon'ble Mr. Maine had touched upon one such radical point when noticing the decision of the High Court to which the Hon'ble Mr. Strachey adverted, and this was by no means the only point affecting the rights of the proprietor of land, or the landlord, that might be adduced. We had, however, during the progress of this Bill so repeatedly received the assurance that its every section had the concurrence, not only of the administrative authorities in Oudh, but also specially of the talúqdárs and landlords, that this legislative enactment came before us under peculiar circumstances. Under these circumstances, namely, the primary action of the Government in this matter, the liberal concessions of the taluqdárs to meet the views of Government, and the continual assurances given by the hon'ble mover that the consent of the taluqdárs was obtained, *pari passu*, to every provision and section admitted into the Bill so that the latter had their entire approval, he (SIR H. M. DURAND) signed the Report of the Committee. He must add that, though occasionally prevented by other duties from attending some of the sittings of the Committee, he was enabled, by the information given him by the Secretary, Mr. Whitley Stokes, not to lose, on such occasions, the chain of its proceedings. But, though he had followed with care and interest the consideration of the provisions of this Bill, he was bound to add that what has had great weight with him in accepting the Bill was, the information derived from one enjoying in a peculiar degree the confidence of the taluqdárs. He alluded to Sir George Yule, from whom he learnt that the taluqdárs, though they regarded the Bill as drafted in a spirit adverse to their rights, and containing provisions based on the theoretical views of a particular school, were nevertheless willing to accept the Bill, because they considered that, as a formal legislative enactment, it contained an acknowledgment of their rights, and was a solemn guarantee that would render any future invasion of those rights by succeeding Governments difficult, if not impossible.

The Hon'ble MR. COCKERELL wished to put to the hon'ble mover a question in regard to section 41. He would ask why the tenant holding

on an unexpired lease had been classed with the tenant who had distinct rights of occupancy, and was made liable to ejectment only under the operation of a decree granted for that specific object? It appeared to him that all tenants were properly divisible into two classes, namely, those who had rights of occupancy, and those who had not, and that the mere lease-holder, without any distinct right of occupancy, whether the term of his lease had or had not expired, must necessarily belong to the latter class. In the amended Panjáb Tenancy Bill, the holder of an unexpired lease was classed with tenants who had no right of occupancy, and made subject to provisions precisely similar to those of Clause 1, Section 42 of this Bill. It seemed to him that in that case, the class of tenant referred to was properly dealt with, and should be similarly treated in this enactment. In other words he held that the lease-holder against whom a decree of arrears of rent had been obtained, should be liable to be ousted at his landlord's pleasure in the execution of such decree. The lease was in the nature of a contract by which the holder thereof is bound to pay a certain rent; if his rent-payments fell into arrear, he had failed to perform his part of the contract, and, as in ordinary contracts, the default of either party rendered the contract voidable. He submitted that a lease became justly cancelled by the mere fact of the holder's failure to act up to its conditions. He saw no use in the provision of section 40, that a tenant whose rent was in arrear on a certain date, might be ejected, if such ejectment could only take place after a decree for that special purpose had been sought for and obtained independently of any decree establishing the fact of the arrears of rent.

The Hon'ble Mr. Strachey said that, if he rightly understood the question, he thought that the section required no alteration. If a tenant held under an unexpired lease, it was not proper that he should be liable to be ejected until the decree of a competent Court had declared that he was so liable in consequence of his failure to act up to the conditions of his contract.

His Excellency the President said that it was a subject of congratulation that this Bill, which he might describe as defining the rights of the tenants in Oudh and the principles on which those rights were founded, had now been brought to so satisfactory a conclusion. Considering the circumstances under which so many of the rights and privileges of the taluqdárs had arisen—considering that these rights had been gained at the expense of the old village landed proprietors, who were now often reduced to the condition of tenants with rights of scarcely appreciable value,—the Government of India were, in His Excellency's opinion, bound to mediate between the tenants as a body

and the taluqdárs. While he, THE PRESIDENT, admitted that in every case these claims of tenants had not received all the consideration they might have had, they had in fact obtained a great deal, and HIS EXCELLENCY entertained a hope, which he might say amounted to a conviction, that the result of the present measure would be beneficial to all classes, taluqdárs, sub-proprietors and tenants. He (THE PRESIDENT) had always felt a strong interest in the subject, and for many years he had taken a large part in all that had been done to settle the conflicting claims to which he had referred, not from any undue animus on his part against the taluqdárs, but because he thought the tenants were the weaker party, oppressed, and in former days despoiled by their landlords. All that he had done in the matter, HIS EXCELLENCY rejoiced at having done, and he was sanguine that the results anticipated by his hon'ble friend Mr. Strachey would be attained by the measure which the Council was about to pass.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY moved that in lieu of sections 22 and 25, the following be substituted:—

"22. If any tenant, or the person from whom he has inherited, make any such improvements on the land in his occupation as are hereinafter mentioned, the rent payable by him or his representative shall not be enhanced, nor shall he or his representative be ejected from the same land unless and until he or his representative, as the case may be, has received compensation for the outlay, in money or labour, or both, expended in making such improvements, by him, or the person from whom he has inherited, or whom he represents, within thirty years next before the date of such enhancement or ejectment.

Tenants' right to compensation for improvements.

25. In case of difference as to the amount or value of the compensation tendered, either party may present an application to the Court, on a paper bearing a stamp of eight annas, stating the matter in dispute and requesting a determination thereof.

Provision for difference as to amount or value of compensation.

Notice of such application shall be served on the other party by the proper officer, and the applicant shall pay the costs of service.

On receiving such application, the Court shall, after taking such evidence as the parties or either of them may adduce, and after such further enquiry (if any) as it may deem necessary, determine (as the case may be) the amount of the payment or the terms of the lease or both.

In determining such amount, the Court shall take into account any assistance given by the landlord, either directly in money, material or labour at the time of making such improvements, or indirectly by subsequently allowing the tenant to hold at a rate of rent more favourable than the rate at which he otherwise would have held.

The proceedings on any such application shall be deemed to be a suit for the purposes of chapter six (as to reference to arbitration) of the Code of Civil Procedure and of section nine of Act No. XXIII of 1861 *(to amend Act VIII of* 1859*)*."

He said that the alterations now proposed were little more than verbal. But it had been pointed out that as section 22 now stood, a tenant might claim compensation for improvements on the mere demand by his landlord of an enhanced rent, or on the receipt of a notice of ejectment, although neither the enhancement nor the ejectment might have been actually carried into effect. This would have been clearly unfair to the landlord, and nothing of the sort had been intended when the Bill was prepared, nor by the Select Committee. Doubts had also arisen whether cases under section 25 could, under the Code of Civil Procedure, be referred to arbitration. There was clearly no class of cases in which recourse to arbitration could be more generally proper, and all doubt as to the legality of this course would be removed by the amendment which he now proposed.

The Hon'ble MR. COCKERELL said that before the hon'ble mover of the Bill proceeded to put his proposed amendment of section 25, he (MR. COCKERELL) would suggest for his consideration the propriety of making a slight alteration of its present purport. In Clause 2 of the proposed amendment, it was provided that "the applicant shall pay the costs of service" (of the notice therein referred to). It was elsewhere provided in the Bill that the rules prescribed by the Civil Procedure Code should be generally applicable to proceedings under this Bill. By section 2, Act XXIII of 1861 (which formed part of the Code of Civil Procedure), it was provided as follows :—

Every process required to be issued under Act VIII of 1859 shall be served at the expense of the party at whose instance it is issued, unless otherwise specially directed by the Court; and the sum required to pay the costs of such service shall be paid into the Court before the process is issued, within a period to be fixed by the Court issuing the process.

MR. COCKERELL submitted therefore that the insertion of the words above cited was not merely unnecessary, but was calculated to limit the application of the more comprehensive provisions of the existing law in this matter, and he would for this reason propose the omission of Clause 2, and the substitution therefor of the following words to be inserted after the word "shall" in the first line of the third Clause of the same section,—"cause notice thereof to be served on the other party, and"

The Hon'ble MR. STRACHEY expressed his willingness to adopt Mr. Cockerell's suggestion.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL said that, with Mr. Strachey's approval, he had to propose a slight amendment of section 30. The subject of this section was to a certain extent *in pari materia* with that of section 25, but whereas in the case of the latter, provision had been made,—probably with regard to the difficulties known to have arisen in the determination of the proper stamp duty chargeable under the new Stamp Act on petitions and applications in suits and proceedings, the value of the subject-matter of which was undefined,—for imposing a moderate fixed stamp duty on the petition or application to be presented to the Court under that section, no such provision had been made in section 30. MR. COCKERELL moved therefore that the omission be supplied by inserting after the word "Court" in that section the following words:—"on a paper bearing a stamp of eight annas."

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY also moved that in section 31 the words 'one month' be substituted for 'three months.'

The Motion was put and agreed to.

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

HIS EXCELLENCY the COMMANDER-IN-CHIEF begged to offer a few words of sincere and hearty congratulation to His Excellency the Viceroy and his hon'ble friend Mr. Strachey on the completion of this great labour. He (SIR W. MANSFIELD) had abstained from taking a part in the discussion which had led to the introduction of the Bill, and in the debates which had subsequently taken place, but he had been a careful observer of all that had occurred. He now ventured to bear his humble testimony to the admirable forbearance and moderation which had been exercised by His Excellency the Viceroy and other hon'ble members of the Council in dealing with the great questions submitted to them. Without the display of those qualities, this Bill, which was the solution of those questions, could not possibly have been carried.

When the vast importance of the interests concerned is considered, it was not too much to say that the passage of this law would be deemed hereafter a bright illustration of the history of the viceregal reign, and that it would throw into the shade feats of government and policy which the public at present might consider more brilliant.

For this measure was not merely the termination of a discussion which had spread over many years,—it was not merely a resting-place in the controversy between two rival schools of English thought in the administration of India, a controversy which would probably endure as long as the principles they represented,—but it was also the settlement of a most difficult and complicated political problem which had been discussed with the earnestness certain to be seen in the management of all questions relating to property and its safeguards, and this more especially when there were many classes immediately interested in the particular question. On this occasion the classes were not less than three, that is to say, the taluqdárs, the sub-proprietors, and the tenants of the great Province of Oudh. Of these, the taluqdárs had all the advantages which position and wealth naturally gave them; and their baronial pretensions springing from the possession of landed property, and from their rank under the late native rule, had enlisted the sympathy of politicians in this country and of very important statesmen in England. The second and third classes, the sub-proprietors and the tenants, had enjoyed the benefit of the zealous protection of His Excellency the Viceroy. The contest had now happily been brought to a conclusion with the best results of a just and equitable arrangement, but he (THE COMMANDER-IN-CHIEF) would repeat his conviction that this conclusion could never have been attained without the exercise of extraordinary forbearance and moderation on the part of the several members of the Council, who represented different principles; and he would further add that the excellence of the measure before them was greatly due to the fact that those most interested, viz., the taluqdárs, had been personally consulted at all stages.

They sometimes heard of complaints outside of hasty or of over-legislation on the part of this Council. HIS EXCELLENCY did not share in such opinions; but it was indeed satisfactory to point to what had been done in this matter. For not only had the classes immediately concerned been consulted on every detail of the Bill; not only had every such detail been laid before them in the different forms which it successively assumed under the hand of the draftsman after the repeated consultations in Committee, but the principles which the Bill embodied had been submitted to the criticisms, and had received the approval of the ablest and most experienced authorities at home. In short, in one form or other, the discussion might be said to have lasted for seven years, a discussion not at all disproportionate to the importance of the interests and the difficulties of the questions concerned. As to how necessary law-making was now in this country, we had had ample illustration in the statements made to-day by the Hon'ble Messrs. Maine and Strachey, and

to the care and satisfactory manner with which that legislation was on the whole performed by this Council, testimony had been recently borne by competent authorities in England.

The Motion was put and agreed to.

LOCK HOSPITALS' BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to enable Municipalities to provide for Lock Hospitals, said that, when the measure ultimately passed as the Indian Contagious Diseases' Act was under discussion by the Legislature at Calcutta, it was fully understood that the greatest part of the cost of bringing it into operation would fall upon the Government, particularly in places where troops were located. Still it was hoped and believed that the Municipalities would not be unwilling to contribute part of the expenses from their funds, considering the extent to which the localities administered by them were interested in the success of the measure. Since the Bill had become law, however, doubts had been expressed whether, under all or some of the existing laws regulating Municipal Government in India, the Municipal bodies could lawfully devote a part of their funds towards defraying the cost of the new machinery. It was not necessary to consider how far those doubts were well founded, but it was clearly expedient they should promptly be set at rest, and this MR. MAINE proposed to effect by the present Bill, which could enable Municipalities to contribute out of their funds to the expenses of the Contagious Diseases' Act, notwithstanding anything contained in the enactments under which they were constituted. MR. MAINE thought that no apology for a permissive measure of this kind was required. The Indian Municipalities had now power to spend money, sometimes in very large amounts, on works intended to cleanse the cities and towns under their care, and thus to relieve the population from malarious and other insalubrious influences. MR. MAINE would be the last person to say a word in disparagement of these undertakings, but those who expected most from them would probably allow that their effects on the public health would be more or less indirect and remote. It seemed then to MR. MAINE the greatest of anomalies and paradoxes that Municipalities should be able to spend without stint on such works, and yet should be debarred from disbursing a single rupee in combating, by methods perfectly direct and absolutely infallible, a disease which poisoned the very springs of life, and probably killed or destroyed its hundreds, for every one person who fell a victim to the maladies against which the works now undertaken by Municipalities were a security. The Bill would be merely

an enabling Bill, and would put no compulsion on the Municipal bodies to whose good sense the matter would be left.

The Motion was put and carried.

The Hon'ble MR. MAINE applied to His Excellency the President to suspend the Rules for the Conduct of Business merely for the purpose of enabling him to introduce the Bill and secure its publication. He would not ask the Council to affirm its principle at present by referring it to a Select Committee.

The President declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill.

The Council then adjourned till the 29th July 1868.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

SIMLA,
The 22nd July 1868.