ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

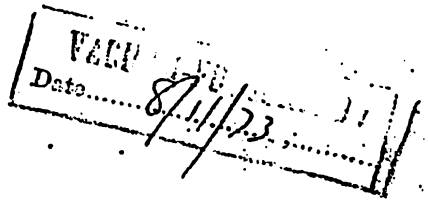
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1879.

WITH INDEX.

VOL. XVIII.



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1880.

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

The Council met at Government House on Thursday, the 24th July, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir J. Strachey, G.C.S.I.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Reports of the Select Committee on the Bill to amend the Code of Civil Procedure be taken into consideration. He said that in March 1877, on the occasion of passing the Code of Civil Procedure, His Excellency the President had averred, with perfect accuracy, that it might indeed be said that the whole legislative and administrative machinery of India had, for a lengthened period, been at work upon the Bill then before the Council. It might now be averred, with equal accuracy, that for nearly two years the whole of this machinery had again been at work, criticising with the utmost minuteness and freedom the result of its former labours. The Bill which MR. STOKES would ask the Council to pass to-day embodied the bulk of this criticism. The report which he now asked the Council to consider, together with the two preliminary reports which had already been presented and published, described in great detail the additions which the Select Committee had made to the Bill. Following the precedent of what was done in the case of the Railway Act, they proposed that this final report should be published in the Gazette along with the Bill when passed, and this course would relieve him from the necessity of troubling the Council with a mass of

technical details which no ingenuity could render interesting to unprofessional persons. There were, however, two or three changes of substance on which it seemed desirable to say a few words.

The first was the amendment of section 13, which dealt with *res judicata*. The object of that section was to lay down the rule that the Courts may not try any suit in which the matter directly and substantially in issue, having been directly and substantially in issue in a former suit before a Court of competent jurisdiction, was heard and finally decided therein. The former judgment was not conclusive, to use the language of De Grey C. J., in the Duchess of Kingston's case, as to any matter "which came collaterally in question," or as to any matter "incidentally cognizable," or as to any matter "to be inferred by argument from the judgment." The first paragraph of section 13 of Act X of 1877 was intended to express this doctrine; but it was not very accurately worded, the words "directly and substantially in issue" not being clearly referrible to the former suit as well as the latter. The amendment made by the Bill would, he trusted, preclude the difficulty sometimes felt in cases like the following, which had actually occurred under the former Code. A sues B in a Court of Small Causes to recover damages for the wrongful cutting down and removal of some mango trees, which grew on land claimed by A. B denies that A has any right to the land or the trees. The Court may try the question as to A's title to the land as an incidental question, the decision of which is necessary to the adjudication on the claim for damages. But the judgment on this point would not be conclusive, except so far as regards the right to the damages claimed (Sutherland S. C. C. Rep. 51). Again, A sues B in a Munsif's Court to recover damages for the taking away by B of some mango trees growing on land to which A set up a title. A's title is tried incidentally in the suit and decided in his favour. B subsequently sues A for a declaration of right to the land. The decision in the former suit is no bar to B's claim (1 Beng. L. R. A. C. 4). We had struck out the explanation which we proposed to add to this section, since it would not, apparently, have suited any part of British India but the Lower Provinces. There the local legislature would be able, if it thought fit, to declare that a Court trying a suit under a rent-law should not be deemed by any Court trying a suit under any other law, as regarded the title to the immoveable property in respect of which the suit was brought, a Court of competent jurisdiction within the meaning of this section.

The next point to which MR. STOKES would ask the Council's attention was the extension which the Bill gave to the chapter on Insolvency. The present Code provided an insolvent law for the Mufassal much less rudimentary than that of the former Code, Act VIII of 1859. But (to quote one of Sir

Arthur Hobhouse's instructive speeches) it still fell "short of a complete and full Insolvency law, which we are informed the judicial machinery of the Mufassal is not strong enough to work."

The expediency of extending the law was strongly urged upon us by Major Grant, formerly District Judge of Karáchí, and now Judicial Commissioner of Sindh. Major Grant said:—

"The Insolvency law, as contained in chapter XX of the Code, is of very little practical benefit to any one, and is indeed, I might almost say, a dead-letter. The provisions of chapter XX are, in fact, perhaps less seldom used than the provisions of the old Code, which did duty for an Insolvency law. I think, if enquiry was made, this would be found to be generally the case throughout the Mufassal of India. I have before me the report on the Judicial Administration (Civil) of the Central Provinces for the year 1878. At paragraph 43, page 33, I find it stated that in nine districts the law on the subject of insolvency was never put into use, and that, as regards the remaining districts, out of a total of 68 persons declared insolvents during the year, 52 belonged to Nágpur. There can be no doubt that this very unsatisfactory state of things results from the fact that the law only applies to judgment-debtors who have been arrested or imprisoned in execution of a decree. I would gladly see the law go a great deal further, as proposed in the memorandum submitted with my letter referred to above; but if it is still held that the judicial machinery is not strong enough to work a complete Insolvency law, I think at any rate that some slight extension of the present law might be granted without causing any great increase of work. What I now venture to propose—and I earnestly beg that my proposal be considered—is that the provisions of the existing law, as contained in chapter XX of the Code, be extended to persons *against whose property an order of attachment has issued in execution of a money decree.* This would benefit debtors and creditors alike. It is obvious that it would greatly benefit a debtor to be enabled to become an insolvent before all he possesses has been sold at possibly a ruinous loss, and his creditors would benefit by a rateable distribution of his property while he has some. At present it is a fact, which can be very clearly proved, that, as a rule, those who are under the existing law declared insolvents have no property at all. It has all disappeared by process of attachment and sale before they have had an opportunity of being declared insolvents."

The Committee had accordingly extended chapter XX to persons against whose property orders of attachment had issued in execution of money-decrees. It had been proposed to provide (as was done by the Panjáb Laws Act, 1872, section 23) that any creditor whose debts amounted to a certain sum might apply that the debtor be adjudicated an insolvent. But, as this might obviously lead to harassing applications by persons who were not creditors at all, or who were not creditors for the requisite amount, the Committee decided, instead, to allow any holder of a money-decree to apply. The other changes in this chapter were specified in the report. The most important was that, as soon as the debts due to the scheduled creditors were satisfied to the extent of one-third, the Court was empowered to declare the insolvent free from all liability in respect of such debts. The law in this respect would thus be, as it

ought, identical in the Mufassal and in the Presidency-towns, where the Statute 11 & 12 Vic., c. 21, s. 69, was still in force.

Chapter XX, even with all these improvements, would still be incomplete. But it went as far as most of us, with our present knowledge of the condition of the Mufassal Courts and the extent of Indian indebtedness, thought safe and wise. The Home Department either had issued, or was about to issue, a circular to the Local Governments requesting their opinion as to the propriety of allowing debtors to a certain amount to apply for a declaration of insolvency; and, if this were found feasible, the law would be altered accordingly.

Lastly, MR. STOKES had to mention the extension of the High Courts' revisional jurisdiction which would be effected by the proposed amendment of section 622. The Committee considered that this section should run thus :—

"622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, *or to have acted illegally, or with material irregularity, in the exercise of its jurisdiction,* and may pass such order in the case as the High Court thinks fit."

The change was a serious one and must be understood as made tentatively. It would never do if the new power to call for cases in which the lower Court had acted illegally, or with material irregularity, in the exercise of its jurisdiction were misused so as, practically, to give a second appeal in every case. But the High Court of Bombay at present exercised under Bombay Regulation II of 1827, section 5, the jurisdiction which the amended section would confer on all the High Courts; and both Sir Charles Turner and Mr. Justice Innes were of opinion that the change should be made and might be made safely.

Lastly, as the Code would, if the Bill passed, be amended, more or less, in about 130 of its 652 sections, the Legislative Department would, for the convenience of judicial officers and pleaders, at once issue a revised edition of the Code, embodying all the amendments which the Bill would effect.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Oudh be taken into consideration. He said that the very few amendments of substance which

had been made by the Select Committee since the Bill was last before the Council had been made on, and entirely in accordance with, the suggestions of the local authorities, and that these alterations of the former Bill were described in sufficient detail in the brief report now under consideration.

He would therefore confine the few remarks which he had to make in regard to the subject of this Bill to an explanation of the reasons which had led the Select Committee to withhold their support from some of the recommendations of the local authorities. The Local Government had strongly pressed the expediency of assimilating the provisions of the law in regard to second appeals, where the judgment of the first Court of appeal was in substantial concurrence with that of the original Court, to the law which was current in all other parts of India. It would, in short, abrogate the finality of concurrent judgments, which was the peculiar feature of the Oudh appellate procedure. The theory of this special procedure seemed to be that, as each Court, whether original or appellate, consisted only of a single Judge, where the judgments of the two first Courts by which any case was tried were substantially at variance in regard to such case, there should be a power of reference, in the form of a second appeal, to a third Court; but that no satisfactory result could be expected from a reference to a third Judge in the converse state of circumstances where the two first Judges who had to do with the case were agreed as to the decision to be pronounced upon it; and this conclusion applied equally whether the question at issue was one of fact or of law. Now, as the effect of this Bill was simply to alter the status of Courts subordinate to the chief Appellate Court and the latter remained on precisely the same footing as before, the plea for the assimilation of the appellate law in Oudh to that of other Provinces in which the Chief Courts of Appeal consisted of two or more Judges had no particular force. It had been further urged that the extraordinary powers of revision exercised heretofore by the Chief Appellate Court in Oudh had acted as a safety-valve to the otherwise dangerous curtailment of the ordinary right of appeal; whereas it was proposed in this Bill to rescind those powers. As a matter of fact, these special appellate provisions, which were, without any qualification as to time, reported to have worked satisfactorily, had been in force in Oudh since 1871; whilst the extraordinary powers of revision were conferred on the chief Appellate Court only in 1876. The Select Committee, however, would probably have been prepared to admit as a general principle that any curtailment of the ordinary right of appeal should be accompanied by the grant to the superior Court of an efficient power of reviewing non-appealable cases, and in that view would have provided in this Bill for the exercise by the Judicial Commissioner of some extraordinary power of revision of concurrent judgments declared to be final; but all necessity for any such special provision had been avoided by the passing into law to-day of the Bill for

amending the Civil Procedure Code, which afforded the utmost desirable protection and relief in this direction.

The local authorities had also desired that the opportunity afforded by the present fresh legislation in regard to the Civil Courts in Oudh should be taken for conferring on the Judicial Commissioner, as the High Court of that province, the powers in regard to matters of divorce and probate which were by Act IV of 1869, and Act XIII of 1875 in conjunction with Act II of 1877, conferred upon the High Courts of most other Provinces. As he had already observed, the status of the Judicial Commissioner's Court was in no way altered by this Bill; it continued to be a Court consisting of a single Judge, and the considerations which operated in withholding the powers conferred by those Acts, at the time that they were enacted, from the Court of the Judicial Commissioner were in full force still.

The Hon'ble MR. HOPE said that he did not propose to offer any objection to the passing of the Bill, or to bring forward any amendment with respect to it. There was, however, one point which it seemed to him desirable should remain on record in connection with the measure. Under the system which would be superseded by this Bill, there was a large number of Courts in Oudh. So far as he had been able to ascertain from the papers which had been kindly furnished to him for perusal by the Home Department, it appeared that formerly there used to be 128 Courts of several grades in Oudh to which the people could resort, and amongst them there were 43 Courts of tahsíldárs, that was to say, officers in charge of the lowest subdivisions of a district. Under the Bill the number of those Courts would be reduced to about 38, and the Courts of the tahsíldárs would be abolished. So far as he had been able to make out from the papers, which were not perhaps very clear, about 18 tahsílís would be left without any Court at all, whereas under the previous system the tahsíldár had a jurisdiction up to Rs. 100, and the people of those tahsílís would now have to resort to some adjoining tahsílí in order to get their cases decided. Besides that, it appeared that the subordinate Judges and munsifs who were now to be appointed, and who corresponded with the assistant commissioners and extra assistant commissioners of the old system, would have two classes of powers instead of one, and that in the present Bill we had reduced the power of the munsifs from Rs. 1,000 as it originally stood to Rs. 500, for a reason which he would not say was a valid one, but which, at any rate, was connected with the remark with which he wished to conclude—namely, that, unless the jurisdiction of the munsifs was cut down, there would be little left for the subordinate Judges above them to do. The effect of this was that people with cases above Rs. 500 would be obliged to go to a subordinate Judge at a distance instead of a munsif, in order that he might have his time sufficiently occupied.

MR. HOPE was well aware that this reorganization had been very carefully considered by the Local Government and by the Government of India in the Home Department, and he was not in a position, ignorant as he was of the local circumstances of Oudh, to offer criticisms on the general policy of the measure; but he wished merely to call the attention of the Council to the fact, which might remain on record, that this seemed to him a move rather in the opposite direction to that in which it was considered desirable to move in the Dekkhan, and rather opposed to the policy lately suggested in the despatch of the Secretary of State, which was well known to the Council, of bringing the Courts near the homes of the people.

The Hon'ble SIR ALEXANDER ARBUTHNOT said that, as the Hon'ble Member who had just spoken had referred to certain facts which had come to his knowledge from papers furnished to him by the Department of which he (SIR ALEXANDER ARBUTHNOT) had charge, it was perhaps desirable that he should say a few words on the subject. He gathered that the Hon'ble Member objected to the reduction which would be made under this Bill in the number of Courts of the lowest grade in Oudh.

The Hon'ble MR. HOPE explained that he did not object. He merely wished to draw attention to the fact of the reduction.

The Hon'ble SIR ALEXANDER ARBUTHNOT continued to say that he gathered, however, that, from the remarks the Hon'ble Member had made, he wished to place on record the fact that he regarded the measure which had been recommended by the Local Government, and supported by the Government of India and by the Select Committee of that Council, as a measure which was inconsistent with the principles of the policy which had been followed in the Bill recently introduced into the Council with reference to the Dekkhan districts; and, as Mr. Hope had had charge of the last-mentioned Bill, he inferred from his present remarks that he greatly preferred the principle of that Bill to the principle of the Bill which had now been introduced into the Council by our hon'ble colleague Mr. Cockerell. He thought that, in the remarks Mr. Hope had made, he had somewhat overlooked the very material difference between the judicial and executive arrangements hitherto subsisting in Oudh, and those hitherto subsisting and now existing in the Bombay Presidency. Oudh, up to the present time, had been administered under what was called the non-regulation system. The judicial and revenue functions had been discharged by the same officers. The tahsíldár had not only performed executive duties, often of a very onerous character, but had been entrusted with judicial duties corresponding with those which were performed by district munsifs in the Regulation Provinces. Under the Bill now before the Council, the Revenue authorities would be entirely divested of their judi-

cial functions; in fact, the motive of the Bill had been to relieve the Revenue authorities of those functions, on the ground that the work in Oudh was so heavy that it was impossible for the same officers to do justice both to their judicial and to their revenue work. Now, he had no more personal experience of Oudh than the Hon'ble Mr. Hope had; but he understood that the districts in Oudh were very small, and he had no doubt that, when the measure now before the Council became law, the territorial jurisdiction of the district munsifs of the Courts which would now be established would not be greater—probably it would be considerably less—than the territorial jurisdiction of the corresponding Courts in the Regulation Provinces of Bengal, Madras and Bombay, while, as in Madras and Bombay, their whole time would be devoted to their judicial work. The two Governments and the Select Committee having come to the conclusion that, on general grounds, it was desirable to separate the two functions—judicial and executive—and to constitute a separate judicial establishment in Oudh, it had become necessary, with reference to the character of the litigation, to entrust to the subordinate Judges suits involving lower amounts than those entrusted to subordinate Judges in other provinces; but the difference of jurisdiction under the present Bill would be so small that he did not think that there was any reason whatever to apprehend that the proposed measure would involve any denial of justice to suitors.

He believed that the circumstances of the case afforded a complete justification for the measure now before the Council.

The Hon'ble MR. HOPE begged the permission of His Excellency the President to explain that his remarks had no reference either to the principle of the Bill, or to the propriety of relieving the Revenue officers of judicial work—in which he entirely concurred—or to the area of their jurisdiction. His remarks simply had reference to exactly what they contained—namely, that he thought the Council, in passing the Bill, should be aware of the fact that they were thereby placing the Courts further off from the homes of the people.

The Hon'ble MR. COCKERELL had only one observation to make in reply to what had fallen from the Hon'ble Member on his right (Mr. Hope).

The hon'ble gentleman was a Member of the Select Committee on this Bill, and yet he had not in Committee, so far as he (MR. COCKERELL) could remember, at any time raised this question of the possible inconvenience to the people arising out of the reduced number of Civil Courts which would be one of the results of this Bill being passed into law. At all events, he could say positively that his hon'ble friend had not put the question—to use the technical phrase—"directly and substantially in issue" before the Committee; had he done so, he (MR. COCKERELL) had little doubt but that he could have met the question with

statistics to show that the Hon'ble Member's apparent apprehensions were not well grounded. He might remark also that the Hon'ble Member had apparently, in his conjecture as to the evil or inconvenience that might be caused through the reduced numerical strength of the Civil Courts in Oudh, taken no account of the provisions of section 15 relating to the investment with civil jurisdiction of taluqdárs. He (MR. COCKERELL) could not say how many of these gentlemen were likely to be invested with the powers of Civil Courts, or what appreciable measure of the litigation of the Province was likely to be disposed of through this agency. But he conceived it possible, and even probable, that the Local Government would, where it was likely to operate advantageously in bringing the administration of justice nearer to the homes of the people, readily avail itself of this kind of judiciary for the trial of petty cases, and he could not doubt but that it would prove certainly not inferior in administrative efficiency to the village munsifs of Madras or the patels of the Dekkhan.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

BURMA DISTRICT CESSES AND RURAL POLICE BILL.

The Hon'ble Mr. RIVERS THOMPSON introduced the Bill to amend the law relating to District Cesses and Rural Police in British Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Colvin and the Mover. He said that he had endeavoured to explain to the Council at the last meeting the necessity which existed for placing the rural police in British Burma upon a better footing. The progress of violent crime throughout that Province, especially in times of excitement and disturbance on an extensive frontier, had been too plainly proved by the Administration Reports in the Police Department, and he knew, from the most recent one that had come under his notice, that in the last year there were as many as 61 dákáities within British Burman territory, which was a larger number than had been committed in any year since 1872.

The defect in the organization of the village police system, which had been long recognised and had grown with the growth of the Province and the greater and closer supervision given in recent years to all executive measures, had shown to all concerned in the government of the country that a really efficient rural police was very urgently required, not only as supplementary to the regular police, but as a link—and a very valuable one—between the people and the central authority, and that measures with that object had to be seriously consider-

ed, and, if possible, a remedy to be supplied. The subject, he might say, had not been without consideration in previous administrations, but the want of means, coupled with the larger demands for expenditure in other directions, prevented immediate attention to it, and it was only recently, since a larger concession had been made to the Chief Commissioner in his provincial revenue arrangements, that he had been in a position, in a measure, to deal with this important question; still he was bound to say that, whatever concessions had been made to the Chief Commissioner, a somewhat ampler provision was necessary to enable him to carry out an effective and comprehensive police reform. British Burma was still very backward, compared with the position which older provinces had attained, in the administration of many of those departments which were sources of revenue—such as the administration of stamps, excise, the registration of deeds and several others; and, whatever surplus or funds the Chief Commissioner of British Burma might have at his disposal for the improvement and development of those resources, he imagined that very little would be left over to him, after all those requirements were met, for dealing with the question of police organization throughout the province. The Chief Commissioner had accordingly recommended—and he thought, upon consideration, that he was justified in his recommendation—that the local cess now levied upon the land-revenue and the revenue from fisheries throughout British Burma at a rate of 5 per cent. should be doubled. He (MR. THOMPSON) might explain that the practice of levying a percentage upon those revenues for purposes of local utility had prevailed almost since the time that Burma had become British territory. From the days of Sir Arthur Phayre downwards this practice had been followed; but what was done in this way formerly under rules sanctioned by the Governor General in Council and having the force of law had recently been embodied in the substantive land-law of Burma passed by this Council in 1876. That cess was levied in the proportion of one-eighth from the fisheries-revenue, and of seven-eighths from the land-revenue. It was levied over and above the imperial revenues under those heads, and the proceeds, which were entirely at the disposal of the Chief Commissioner, were applied in proportions, which he could fix at his own discretion, for the construction and improvement of district roads, the local postal service, primary education, and chiefly and mainly for the maintenance of the village police.

The funds realized from that cess were used in the districts where they were raised, and they were accepted by the people as taxes which went mainly to improve their own condition. In proposing to enhance the rate from 5 to 10 per cent., it was not intended by the measure under consideration to alter in any way the mode of collection or to divert the funds which would be raised under the Bill from those purely local purposes to which the funds had hitherto been applied; beyond this, that in the eighth section of the Bill it was contem-

plated that, in addition to those purposes to which he had already alluded, there should be included the object of sanitary improvement in villages—an object to which attention had been recently called by despatches from home, and in the desirability of which he thought that the Council would readily agree.

It needed that he should say something as to the reasonableness of the proposal to enhance the rate from 5 to 10 per cent. The justification for all taxation is to be found in the necessities of the State and the ability of the people to pay; and it was, of course, desirable in imposing any extra impost like this that we should be able to show the people not only the needs of Government, but also that the funds realized from such taxes were intended for their own personal benefit and the general public interest. He did not propose to trench in any way upon the department of his hon'ble colleague and friend Sir John Strachey as regarded the necessities of the State. It was well known to the Council that the financial depression which at present existed was caused by circumstances which, without any figure of speech, were absolutely and entirely beyond the control of the Government, and while those causes remained in operation our object must perforce be—if we did not desire to increase imperial taxation, which he knew we did not—to restrict expenditure rather than to expand it. But, even with this financial pressure upon the Government, a much more generous, though perhaps he would better describe it as a much more just, consideration had been shown to the claims of British Burma, which was one of our most flourishing provinces; and he was satisfied that, with the resources now placed at the Chief Commissioner's disposal, we should, under his auspices, secure very soon a full and commensurate return for whatever we had accorded to him. However, having made those concessions to the province, it was not to be expected that any additional help should be afforded from imperial resources for carrying out reforms and measures such as those contemplated by the Bill; and when we saw that the improvement and reformation which we desired under this Bill were directed to purely local purposes and local objects, it was reasonable that we should look to the people themselves for supplying the funds necessary for carrying them out. Now, the burden of this impost of 10 per cent. upon the land-revenue might be calculated in a measure from the incidence of the land-revenue upon the country; and by universal accord—both from past experience and recent reports—it was admitted that the revenue assessment in British Burma was exceedingly light. It would be surprising if it was not so. Nearly everything in connection with the conduct of the revenue administration in British Burma depended upon the intelligence, industry and honesty of a single official—the Thoogyee. He measured the land, assessed the revenue, collected the revenue and, indeed, all the other taxes; and it was found from the extent of District jurisdictions and the difficulties of inter-communication that, in a great measure, he was left without

any proper control, and was therefore independent of that supervision which was necessary in the discharge of such important duties. The annual measurements which practically prevailed, except in a few cases in which settlements had been made, had by their frequency and uncertainty opened a door to innumerable frauds; and he was sure that His Lordship and the Council would agree that an unscientific settlement was as obnoxious and objectionable as an unscientific frontier. The result of bringing the work of these Native officers to a test—which had been done in his own time in Burma in one of the most fertile districts of the province, by comparing the measurements of area made by the Thoogyee with the measurements effected by a more detailed and proper survey—showed a discrepancy of 24 per cent., and in the revenue an actual discrepancy of 28 per cent. In both instances the advantage, of course, was in favour of the cultivators. All this, he was glad to say, was about to be remedied. We had already taken measures to introduce into the Province a cadastral survey; and from the arrangements now being carried out, he hoped during the next cold season to see a very appreciable advance made in an accurate survey of the most advanced Districts in the Province, with the certain result of placing both the revenue and fiscal administration upon a better footing and of enabling the Government of India, if it should so deem it right, to consider the question of abolishing what was a very unsound, and in its incidence a very unjust, tax, that was, the capitation tax which now prevailed in the country.

He had entered upon this explanation to show that, with a very light land-assessment throughout Burma, the 10 per cent. assessment which this Bill proposed to realize as a cess for local purposes and objects would not press with any severity upon the people; and in support of this statement he would revert to a few practical details which illustrated very clearly the position and profits of the agricultural community in Burma. It was well known that there was a very large export of rice, the staple produce of the province, from all the ports in Burma. It amounted now to something over 800,000 tons in the year, and the demand was so large and continuous that it gave a very great and effective impulse to the clearance of land and the cultivation of rice throughout the Districts. When he first went to Burma, and almost within a week after his arrival, it was talked of as an unprecedented rise in the price of this commodity that it was selling in Rangoon at Rs. 66 for the hundred baskets—a measure equivalent to the English bushel. The ordinary price of paddy had averaged at a not advanced period of the season between Rs. 45 and 50, and it was thought incredible in the month of April that Rs. 66 should be demanded. Within three years afterwards the price had risen, during the middle of the season, from Rs. 66 to Rs. 100 and Rs. 120 per hundred baskets, and in speculative seasons it reached the figure of Rs. 130. He believed, from

recent returns, that not only had those high prices been maintained, but, in several instances, they had even gone beyond to Rs. 140 and Rs. 145 per hundred baskets. Now, he was aware that it had been said that the cultivator did not realize the whole profits of his produce, and that the intervention of middlemen between the raiyat and those with whom he dealt caused a considerable reduction of those profits; but he (Mr. THOMPSON) had considerable confidence in the shrewdness and sagacity of the Burman; and, though in outlying parts the brokerage system found a place and the raiyats were often induced to take money at disadvantageous loans before their crops were reaped, it was generally the case that the Burman was quite equal to the occasion in bargaining for his grain, and, if report be true, that often, indeed, he was more than a match for the combined action of the Chamber of Commerce of Rangoon. Again, the opening of the railway in Burma, which passed through some of the richest tracts of the country, had placed the cultivator in direct relation with the mill-owners who prepared the rice for the English markets: and, for himself, he had no reason to doubt that the greater proportion of the rise in the price which had resulted in the last three or four years from the competition in Rangoon had gone almost entirely into the pocket of the agriculturist.

Well then, what were the deductions from those facts? It was found that an acre of indifferent land in an ordinary district in British Burma produced about 25 baskets of rice; an acre of medium land gave 45 baskets; and an acre of superior soil rendered about from 70 to 80 baskets. The assessment on rice-growing land in British Burma varied from 6 annas an acre on poor soil to Rs. 2-4 on the best soil. The average was about Rs. 1-6 per acre. This assessment had been generally continued without any variation; and if when it was first imposed the price which was realized for the produce was at the rate of Rs. 45 to Rs. 50 per hundred baskets, and we now found that the average was from Rs. 100 to Rs. 120 per hundred baskets, and that the gain upon the acreage had risen on an average on the poorest soil to Rs. 23-5 an acre; on medium soil to Rs. 42 an acre; and on the best soil to Rs. 50 an acre, it went without saying that the Government was not receiving its due share of the revenue derivable from the land. All those circumstances in his opinion justified the imposition of a higher percentage now in the form of a local cess where it was to be devoted to purely local objects of utility. It was due to the present Chief Commissioner to say that he had brought this point very prominently before us. Burma had rejoiced for many years in a very conservative administration; and the officers in the commission there, brought up at the feet of Sir Arthur Phayre, one of the most able administrators whom India had ever produced, were inclined to contend that what was good for his time was good for all ages; and so there had been an occasional difficulty in getting those with whom the Chief Commissioner had to act to realize the necessity of such changes

as the present Bill contemplated. They considered that the 5 per cent. cess upon the land-revenue was sufficient for all purposes, and if for some time he himself had shared that conviction in the belief that British Burma had for very many years before the introduction of the provincial system been paying a local cess which in other provinces was only introduced with the introduction of the provincial system in 1871, still, when he found that during the last seven years the local cesses throughout India had been very considerably raised for purposes of local requirement, and that, in addition to those, a famine insurance-fund in one form or another was applied to the different provinces last year, from which Burma was entirely exempted, he thought the time had come when we might fairly say that, in view of the very light assessment realized from the land-revenue in British Burma, it was reasonable and equitable to enhance the cess by the addition of 5 per cent. What was now realized under this cess amounted to a little over two lákhs of rupees, so that the whole cess, when doubled, would give something more than four lákhs of rupees in the whole province of British Burma.

Having explained the circumstances which in his opinion justified the enhancement, he would now allude briefly to other sections of the Bill. They were explained generally in the Statement of Objects and Reasons. He might say definitely that there was no intention whatever of disturbing or interfering with the indigenous system of rural police, the object of the Bill being to provide for the strengthening and better organization of that body. He had already explained all that was necessary with regard to the enhancement of the cess on the land-revenue; and he would now add—as the Statement of Objects and Reasons put it—that,—

"as it would be obviously unjust to throw completely upon the agricultural classes the burthen of providing for expenditure by which the non-agricultural population of the villages and rural towns will equally benefit, the Chief Commissioner has been empowered to impose a house-cess, not to exceed two rupees per house, on persons who do not pay the agricultural cess."

It should be stated that already a house-tax existed in a great many towns in British Burma, and that where that tax was found to exist the new house-cess would not be imposed.

Opportunity had also been taken under the Bill to provide—

"that the inhabitants of any town, village or hamlet are bound to aid in the prevention of dákáiti and robbery in such town, village or hamlet, and, when such offence has been committed, to aid in securing the offenders."

It had been too often found that the inhabitants had held aloof from giving any aid in the repression of crime. This arose partly from fear of the criminals, partly from apathy; and power would be taken under the Bill to

enforce by rules their obligation to give that assistance, or in case of refusal to punish them.

This was the general scope of the Bill, and he had now the honour, in submitting it to the Council, to move that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes, the Hon'ble Mr. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. THOMPSON also moved that the Bill be published in the *British Burma Gazette*, in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Foreign Jurisdiction and Extradition Act, 1872, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Cockerell, Colvin and Hope and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 7th August, 1879.

SIMLA;
The 24th July 1879.

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

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