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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

ASSEMBLED FOR THE PURPOSE OF MAKING

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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 20th February, 1880.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.
The Hon'ble G. H. M. Batten.
The Hon'ble C. Grant.
The Hon'ble E. C. Morgan.
The Hon'ble J. Pitt Kennedy.
The Hon'ble H. J. Reynolds.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons be taken into consideration. He said that he might remind the Council that, as the law of British India at this moment stood, there was, speaking generally, no procedure for conferring upon any one a complete and conclusive title as representative of the estate of a deceased Hindú, Muhammadan or Buddhist or other person exempt from the operation of the Indian Succession Act. The primary object of the Bill was to provide such procedure, while guarding against interference with the substantive succession-laws of the classes in question. The Bill as introduced, following the course adopted in the Hindú Wills Act, incorporated by mere reference the sections of the Indian Succession Act which it was proposed to apply. This

mode of legislation, it had been strongly urged by several of the authorities consulted,—by none more effectively than by Mr. Mahmud, District Judge of Rai Bareli, the son of their Hon'ble colleague Sayyad Ahmad Khán,—was likely to render the Act less intelligible and convenient to many of those who would have to use it; and the Committee had accordingly set out at length in the amended Bill all the sections of the Succession Act which it was intended should apply, and thus made the measure complete and self-contained.

Apart from this, which, though it much altered the appearance of the Bill, was a change merely in form, the amendments made by the Committee were few. The most important of these consisted in the introduction, in section 12, of the provision of the Indian Succession Act (omitted in the Bill as introduced) which barred the establishment of any right as executor or legatee, until a grant of probate or letters of administration with the will annexed had been obtained; but in introducing this provision the Committee had confined it to cases in which the property comprised in the will amounted to more than one thousand rupees —in other words the Committee proposed that every will bequeathing in the whole property worth more than a thousand rupees should be proved.

The Committee did not think that, in this limited class of cases, the considerations which had been urged against making the obtaining of probate or letters of administration a condition precedent to the establishment of any right based on succession had any application; for in such cases the persons concerned could hardly be said to be poor or ignorant. On the other hand, the advantages of requiring the will to be proved were too obvious to call for comment. The genuineness of the document, if it were genuine, was established; authenticated evidence of the executor's title was provided; and the revenue of the country was benefited, as it fairly might, considering the advantages received by persons claiming under the will. The experiment had already been fully tried under the Hindú Wills Act of 1870, with most satisfactory results, and no hardship could reasonably be expected from applying to wealthy Native testators throughout British India what had been the law applicable for the last ten years to all Hindú testators throughout the Lower Provinces and the Presidency-towns.

With this solitary exception, the Bill remained a purely permissive measure. But it would not, he thought, be the less effective. Regarding this Mr. Stokes would quote a paper by Mr. Geddes, of the Bengal Civil Service, and lately Acting Remembrancer of Legal Affairs in Calcutta. Mr. Geddes, after stating his opinion that the Bill would be useful and would supply a want which was beginning to be felt rather extensively in Bengal, went on to say,—"It is useless to ignore

the fact that the Western institution of will, developed as it has been by the partial application of the Indian Succession Act, is profoundly modifying Hindú custom and usage. Musalmán customary law proves more intractable, but even this is beginning to recognize the *jus repræsentationis* hitherto unknown to that system of jurisprudence. The change is going on. It is impossible for any one who has served as District Judge for some time not to observe a marked change of late years.....It is the people themselves who are spontaneously appreciating and resorting to this English principle of determinate succession or representation. It is they themselves who are modifying their own legal usage."

The amendment next in order of importance would be found in section 91 of the Bill, where the Committee had rendered the consent of the Court necessary to every disposition of the property made by an executor or administrator. This limitation had been considered necessary in the mufassal, where it was deemed unsafe to entrust to an executor or administrator the full powers conferred by the Succession Act. In the Presidency-towns, however, where executors and administrators at present were allowed these powers, and where, moreover, the expense attending an application to the Court would be considerable, the Committee had given the Court power to exempt the executor or administrator from the necessity of applying for its consent in each case. And in the Mufassal, though the Bill, as now settled, was in accordance with the decision of the Committee, he (MR. STOKES) would be inclined to require the Court's consent only in case of alienations of immoveable property and, perhaps, Government-securities, which were specially provided for under the Certificate Act, XXVII of 1860, section 9. To compel an executor or administrator to apply to the Court whenever he wanted to sell any of the bullocks or household-utensils of the deceased, would obviously lead to much useless trouble and expense.

Coming now to minor amendments, he might mention that the Committee had omitted in sections 8 and 14 of the Bill the words to be found in the corresponding sections of the Succession Act, making the consent of the husband a condition precedent to the grant of probate or letters of administration to a married woman. Such consent was required in England, partly because by the law of that country husband and wife were considered but as one person and as having one mind, which (according to our male lawyers) was "placed in the husband," and therefore the wife could do no act, such as taking probate, which might prejudice the husband; partly because, in all actions by or against the wife, the husband must be joined. But these reasons did not apply to India. Among a large proportion of the persons for whom the Bill was intended,

married women had a proprietary status which rendered them, in the eyes of the law, almost independent of their husbands; and the technical objection as to the necessity of joining the husband in suits by or against the wife fell to the ground under the new Civil Procedure Code, section 439, which expressly declared that, unless the Court directed otherwise, the husband of a married administratrix or executrix should not be a party to a suit by or against her.

The Committee had, in section 63, required an applicant for probate to insert in his application, as an applicant for letters of administration was bound to do under the Succession Act, an estimate of the amount of assets which were likely to come to his hands. This amendment was required to complete the chain of securities at present provided by law for the protection of the revenue derived from Court-fees on probates and letters of administration, and it merely brought the Bill into conformity with the law of England (55 Geo. III, c. 184, s. 38) and the existing practice of the Calcutta High Court.

The other changes to which he would call the attention of the Council were all directed to making the measure more in accordance with the usages and circumstances of the population of the Mufassal. Thus the rate of interest (4 per cent.) prescribed by sections 307 and 318 of the Succession Act seemed to the Committee too low for the purposes of this Bill, and they had accordingly, in sections 127 and 133 of the Bill, raised it to six per cent., the ordinary Court rate, and the lowest usual rate among Natives.

Again, in introducing section 276 of the Succession Act into the Bill, the Committee had, with a view to adapting it to the ideas and practices of the classes to which the measure would apply, limited the duty of the executor to providing the necessary funds for the performance of the funeral ceremonies of his testator instead of requiring him to perform them himself, as the section as it stood in the Succession Act had been supposed by some to do. According to Hindú law, funeral-rites must be performed by certain specified persons, who might or might not be executors; and he believed that Muhammadans had similar rules on the subject.

He would conclude by mentioning what was perhaps the most important of the changes to which he had last referred. The Committee had excluded from the Bill sections 283 and 284 of the Succession Act, which provided that, in the case of a deceased person whose domicile was not in British India, the application of his moveable property to the payment of his debts should be regulated by the law of the country in which he was domiciled. Such a provision, if applied to the classes of persons for whose benefit this Bill was

intended, would, the Committee felt certain, be the source of endless complications and difficulty. The vast majority of those persons, when not domiciled in British India, were domiciled in countries—such as Afghanistan, Nepal, Burma—where either there was nothing that could be called law applicable to the matter in question, or, such laws as existed were merely personal laws. Wherever this was so, to withdraw the matter from the operation of the Bill and relegate it to the territorial law of the domicile, would be in effect to remove it altogether from the sphere of ascertainable law, leaving it to be determined according to some vague principle of equity and good conscience, as compared with which the proverbial Chancellor's foot would be an absolute standard.

The Committee thought the only feasible plan in dealing with the class of persons to which this Bill applied was to subject the matter to our law in all cases without any reference to the domicile of the deceased. The Committee had the less hesitation in doing this, as the principle which allowed the law of the domicile to prevail in this particular against the law of the situs of the assets, though recognised in some parts of the continent of Europe and followed in a well-known English case (*Wilson* v. *Lady Dunsany*, 18 Beav. 293), was far from being universally accepted, was at variance with the late Vice-chancellor Kindersley's decision in *Cook* v. *Gregson*, 2 Drew. 286, and had been condemned by eminent textwriters, such as Westlake and Story, as out of place in any system founded on the English law. Practical convenience was obviously in favour of the change proposed by the Committee, and in theory the rule that the law of the situs of the assets should prevail might be supported—to quote a recent book on private international jurisprudence—by regarding all questions of the priority of creditors as touching matters of procedure, a principle asserted in general terms by jurists and recognised in English Courts as to the distribution of assets under a bankruptcy.

The Hon'ble MR. KENNEDY said that he ventured to add a few words in support of the motion of the hon'ble Member in charge of the Bill. The greater portion of it might be said to be properly merely a matter of procedure. There was, however, one provision of very considerable importance which would effect an important change in the law, except in the Presidency-towns and in the Provinces subject to the Lieutenant-Governor of Bengal. There it merely continued the same state of the law which, so far as regards Hindús, had there existed for the last ten years. But the change seemed to him to be one that he had long thought to be requisite. His professional experience had convinced him that it was of the greatest possible importance that the basis of the title under which any rights were to be claimed should be made secure, and that

probate of the will or grant of administration under which property was claimed should be obtained as early as possible. A false case was strengthened by the lapse of time; a true case became weakened. When a will was put forth after a time he had seen an array of false witnesses brought forward either in support or contradiction of it. While the facts were recent the Judge had the opportunity of coming to a right decision. But when the lapse of time had weakened an accurate recollection of the facts, if the Judge did come to a right conclusion, it might not unfrequently be rather by chance than the real weight of evidence. Therefore, it was most important to make persons understand that, if they meant to put forward a will, they should put it forward at a very early opportunity. The Bill would not prevent applications for probate of wills at later periods; but if it was made an absolute duty imposed by the law to obtain probate, it would throw extreme difficulty in the way of persons who kept them, as it were, concealed for a long time, and the grant of letters of administration in the meantime would in most cases absolutely exclude any attempt to put forward a will. MR. KENNEDY would have wished even to go further, but the change would have been too serious until the people of the country had been more accustomed to the operation of letters of administration. In numerous cases great difficulties arose in dealing with property for want of some authorised representative of the estate of a deceased person, especially in the case of Musalmáns, when their families had remained (as they often did in these Provinces) undivided for considerable periods. Under those circumstances, as a result of their peculiar system of inheritance, most infinitesimal, shares became vested in some individuals. But this difficulty would become obviated if on death the whole property became vested in some one representative of the family. He felt, however, that it was safe not at present to ask to have administration made general and compulsory. We must wait until the people of the country were convinced by experience of the working of the voluntary system, that the grant of administration to one party was beneficial for the general interests of the parties concerned.

The other modifications mentioned in the Committee's report which the Hon'ble Member in charge of the Bill had alluded to seemed to be required: they very much carried out the provisions which did exist in cases where there were managers of the property appointed under the existing Acts. A manager could not sell the immoveable property of an incapacitated person without the consent of the Court; and as to certificates taken out under the Act of 1860, special power must be given to authorize sale of Government Promissory notes.

The Hon'ble MR. HOPE said he observed that the Committee, at the end of their report, made the following recommendation:—

"We think the amendment we have referred to in paragraph 3 *supra* is of sufficient importance to make it desirable that the Bill be re-published; but as we do not anticipate that any objections will be made to that amendment, we recommend that this report should be taken into consideration before the end of the Calcutta sittings, so as to place the Council in a position to pass the Bill at Simla in the event of no valid objection being brought forward, say, within two months."

In order to see what the amendment referred to was, he would ask leave to read a portion of the Statement of Objects and Reasons, which ran thus:—

"The reports of the local authorities have now been received, and their purport may be briefly described by saying that, while there is a considerable body of opinion in favour of providing the means of obtaining probate of the will or letters of administration to the estate of any deceased person when those interested desire to do so, the proposal to insist on probate or letters of administration as essential has been generally condemned, as tending to impose upon a multitude of poor and ignorant people, in cases where there is no difficulty or dispute, an unnecessary amount of trouble and expense."

On further referring to the report of the Committee, paragraph 3, it would appear that they had so far modified their previous determination as to make the Bill apply to all cases of probate in which the property comprised in the will amounted to more than one thousand rupees.

It was, perhaps, unnecessary for him to attempt to prove what the Statement of Objects and Reasons itself admitted, namely, that the proposal to insist upon probates had been generally condemned; but he would very briefly invite attention to one or two opinions which had been expressed. The Government of Madras, in their communication, which was printed as Paper No. 7, said that "the measure is not wanted in the circumstances of the country and is highly impolitic." The Chief Commissioner of the Central Provinces stated that there appeared "to be no necessity for altering the law so far as these Provinces are concerned;" and he generally concurred in the remarks of the Judicial Commissioner, who said "I consider the proposed legislation to be premature and unnecessary, and beyond the present condition of the inhabitants of these Provinces." Again, referring to the opinion received from the Lieutenant-Governor of the Panjáb, MR. HOPE thought he was not in error in understanding the qualified approval therein given to the Bill as given only to the Bill as first introduced, in which this extension of the measure did not exist. The hon'ble Mr. Justice Thornton, a late colleague of the Members of this Council, also merely said that, *as* the

taking-out of probate and letters of administration was not to be compulsory in the case of those to whom the Bill applied, he thought there could be no objection to the principle of the measure.

The Hon'ble MR. STOKES thought the hon'ble Mr. Hope was out of order in speaking and quoting opinions upon the principle and substance of the Bill when the motion was simply that the report of the Select Committee be taken into consideration. Under the Rules for the conduct of business, his remarks should apparently have been made when the Bill was introduced.

The Hon'ble MR. HOPE remarked that, if there was to be no discussion now upon the substance of the Bill, he should like to be informed at what stage the discussion should take place: a prolonged discussion took place upon the Dekkhan Raiyats Bill at this very stage.

His Excellency THE PRESIDENT did not think the hon'ble Mr. Hope was out of order: if no discussion were allowed at this stage, and the Bill was passed elsewhere than in Calcutta, some Hon'ble Members might have no opportunity of speaking upon it.

The Hon'ble MR. HOPE proceeded. He had just referred to the qualified approval given by the Lieutenant-Governor of the Panjáb. In the report from the Government of the North-Western Provinces, paragraph 2, it was stated that "the proposal to render recourse to the Bill voluntary removes His Honour's main objection," which MR. HOPE took as only a similarly qualified approval.

Besides this particular objection which had been pointed out, MR. HOPE would also remark that the Bill raised a very important, broad question of principle and of policy. It was a very important question, deserving of most serious consideration, whether it was desirable to give special encouragement to the practice of making wills amongst the Natives of the country, instead of allowing property to devolve in accordance with Hindú or Muhammadan law. The Council had been told by a preceding speaker that this system of making wills was entirely at variance with old Hindú customs and usages: amongst Muhammadans the practice was allowed by their law and did, to some extent, prevail; but still MR. HOPE thought the step now proposed should not be taken without mature and careful consideration. The practical effect of the measure before the Council should also be considered, even supposing it was desirable in the abstract that the making of wills should be encouraged. There could be no question that the procedure proposed was of a highly technical nature. On

this point he would not quote other authorities; but the Lieutenant-Governor of the North-Western Provinces said he would "strongly object to the application of the procedure laid down in the Indian Succession Act, as far more complicated and detailed than is in any way desiderated." The Members of the Council all knew the direct effect of introducing a highly technical law. The effect was—and they had been told on another occasion that it was a desirable one—to force the management of every kind of dispute into the hands of the recognized agents of the parties, that was to say, of pleaders, and from this it followed that there would be an immense increase of litigation. As regards increase of litigation, the point would be perfectly obvious, but it was well expressed in one of the papers before the Council (Paper No. 6), where an officer in Mysore remarked that, "with the proneness evinced by Natives to resort to litigation, it may be concluded that the law Courts will, in a short time, be had recourse to largely to settle disputes among families, which are now adjusted by mutual arrangement or private arbitration." It was a very serious question whether such an immense amount of litigation should be encouraged and such an apple of discord thrown among Hindú and Muhammadan families of the Mufassal generally.

On these points MR. HOPE did not propose at present to give any opinion whatever; the remarks which he offered were merely for consideration in connection with the course he thought should be adopted, and with the view of showing that, in his opinion, the Committee were somewhat over-sanguine in supposing that no objection would be made to this very important amendment which they had inserted in the Bill. At any rate, he thought there could be no question that ample time should be given for the great Hindú and Muhammadan communities which were to be affected by the Bill fully to realize what was about to be imposed upon them. The change which was proposed was an enormous one. The Hon'ble Mover of the Bill had stated that the cases in which wills would be found relating to property above Rs. 1,000 in value would be very few. MR. HOPE understood him to imply that Rs. 1,000 was rather a large amount of property for an individual to have. But it should be remembered that it would include property in land; and property in land, for the purposes of litigation or otherwise, was not valued according to the annual rental, but according to a certain multiple of that rental. He had not been able to ascertain exactly on what principle the valuation of this Rs. 1,000 would be made. Supposing it were, as the Secretary, from a reference just made to him, would seem to think, that the market-value would be considered, MR. HOPE thought the market-value might be taken at from ten to twenty times the annual rental. If it were twenty times the rental, this provision of the

Bill would apply to all land having a yearly rental of more than Rs. 50: if the other valuation of ten times the rental were adopted, the provision would apply to every landholder having a property yielding more than Rs. 100 a year; and who knew how many millions of such landholders there were? But even if the operation of the law was not so extensive, still its operation would be exceedingly wide.

He did not find, in the whole of the papers before the Council, one single indication that the great Hindú and Muhammadan communities were even aware of what was going on. The Council was accustomed to receive memorials from the leading associations which represented those communities in different parts of the Empire. Not one single representation of the kind had been received; there were certainly a few communications from Native officials in various parts of the country; but otherwise the Council had received no indication of the feeling of the Native communities regarding the provision to which he had drawn attention. If it were contended that it was the fault of those associations for not having been sufficiently prompt in memorializing, MR. HOPE might reply that it was only about ten months since this Bill was introduced, and that from their own experience the Council knew that it took a long time for a knowledge of the effect of any proposed legislation to be diffused; and that it was not until a Bill was approaching maturity that the general public was roused to the effect of the proposed legislation. But ten months was not the period during which the Bill, with reference to which he was pointing out these objections, had been before the public. The Bill now before the Council was a Bill of a totally different operation from that introduced ten months ago, and, therefore, the Council could not at all infer, because no representations had hitherto been made, that none would be made.

It would be observed from this that all MR. HOPE was asking for was some more time for the consideration of the Bill. He was not himself prepared to give a decided opinion one way or the other; he had too much respect for the people to consent to the gradual undermining of their most important institutions before they had been fully heard upon the proposed measure; and he had too much respect for the Committee to assume, until he had heard both sides of the question, that they were in the wrong. It did not appear to him that the other side had been heard at all; therefore, he trusted that some considerable extension of time would be allowed, or some modification made in the intention to pass the Bill in two months. The passing of the Bill on the expiry of two months would involve its being passed at Simla. There were a great many Bills which might be properly passed at Simla, and regarding which no reasonable objection could be raised. But this

was not one of those cases. The probability was that, when the time came forward for consideration of the Bill at Simla, the Hindú and Muhammadan Members of the Council would not be in their places to represent the interests of their countrymen. MR. HOPE would, therefore, simply suggest that the further consideration of the Bill might very well be deferred until the Council re-assembled in Calcutta: the form in which that could most rightly be done would be by adjourning the debate to that time. But that was merely a matter of form.

His Excellency THE PRESIDENT asked if the Hon'ble Member concluded with a motion.

The Hon'ble MR. HOPE observed that the Rules required that every amendment should be given notice of three days before the consideration of the Bill upon which it was an amendment. But, on the other hand, the Rules likewise did not render it necessary that notice of the business to come before the Council should be sent to Members longer than two days before the meeting. It so happened that, before the notice of business reached him and he became aware that this Bill would come forward at this meeting, the three days required for notice of an amendment had already been broken into. But MR. HOPE believed that an amendment could be moved with His Excellency's permission. He would, with the President's permission, move that the debate on this Bill be adjourned until the Council re-assembled in Calcutta.

The Hon'ble MR. STOKES said that, as the Member in charge of the Bill, he might aver that he personally was anxious that it should receive the fullest consideration from the Native community; and though he, in common with the other Members of the Committee (of whom the Hon'ble Sayyad Ahmad was one), thought that two months would afford ample time for such consideration, he was not immutably bent upon passing the Bill at Simla. He was willing that this should be deferred till the Council re-assembled in Calcutta.

His Excellency THE PRESIDENT remarked that the Hon'ble Member had merely been speaking as to the recommendation of the Select Committee. It was not the intention of the Government to proceed to pass the Bill prematurely into law, and he hoped the Hon'ble Member would be satisfied with the assurance which the Hon'ble Mover had given on the part of the Government.

The Hon'ble MR. HOPE expressed his entire satisfaction with the assurance which had just been given.

The Hon'ble MR. STOKES said that it was incorrect to assert that the proposal to render probate compulsory had been generally condemned, and that

it was an exaggeration to describe the intended change as enormous. Considering the infrequency with which the testamentary power was still exercised by Natives, he might say that ninety-nine out of every hundred persons would remain as they were before the Bill was amended —they would simply be entitled to avail themselves of the optional procedure provided in case of an intestacy. The only change which would be effected by the amendment was the extension to the wills of Native testators throughout British India of the law regarding probates, which had applied for the last ten years to every Hindú will in the Lower Provinces of Bengal and the Presidency-towns; and even that extension was confined to wills comprising property exceeding Rs. 1,000 in value. As to the authorities which had been quoted by the Hon'ble Member as opposed to the Bill, they were both outnumbered and outweighed by authorities the other way. Besides the almost unanimous opinions of the Local Governments in favour of a permissive procedure which had led to the framing of the Bill as introduced, MR. STOKES might mention the learned and experienced Chief Justice of the Bombay High Court, who thought the Bill "much needed". Then there were the Legal Remembrancer, Bombay, the Commissioner and Judicial Commissioner of the Haidarábád Assigned Districts, the Recorder of Rangoon, the Commissioner of Ajmer, Mr. Sandford the Judicial Commissioner of Mysore, the Advocate General of Madras, Mr. Barkley the Commissioner of Jalandhar, the Government Advocate, Panjáb, the Judicial Commissioner of Oudh, the Judge of the Assam Valley Districts and others, of whom he would cite only one, a Muhammadan gentleman, the District Judge of Rai Bareli, to whose opinion MR. STOKES had before referred. This gentleman, Sayyad Mahmud, said:—

"The reasons given by the Hon'ble Mr. Whitley Stokes in his 'Statement of Objects and Reasons' for the necessity of making provision for the grant of probate and letters of administration, in respect of the estates of deceased persons of the Hindú, Muhammadan and other persuasions, are borne out by my own past experience as a practising member of the Bar. The administration of justice according to well-recognised principles of law and equity has been carried on long enough in British India to make the people aware of their rights and careful to guard them. Purchasers take greater care than formerly to investigate the title of their vendors, and the knowledge that defective title can be easily set aside by Courts of justice naturally operates to lower the value of property held by persons having defective titles. Any law which has for its object the providing of facilities for supplying purchasers with the means of obtaining from their vendors perfect titles to the subject of sale must tend to promote the contract and to raise the value of property. The absence of a law such as the one proposed in the Bill no doubt makes unnecessary litigation an almost inevitable sequence of the death of a person leaving many heirs and unsettled claims. This observation applies with especial force to Muhammadans, who, owing to the nature of the law by which they are governed, as a rule leave a large number of heirs,—father, mother, widow, sons and daughters, &c.,—being all entitled to inherit according to a very complicated code of rules."

The Hon'ble MR. HOPE asked whether the proposed law referred to in the extract which had just been read was not the Bill as first prepared and not the present Bill.

The Hon'ble MR. STOKES said that the hon'ble Member was well aware that it referred to the Bill as introduced, but the observations of Sayyad Mahmud were equally, if not still more, applicable to the Bill in its present form. With reference to the hon'ble Member's remark that the Bill gave special encouragement to the power of making wills, he begged to say that it did nothing of the kind. It recognised the validity of the testamentary power of Natives, as had long since been done by the High Courts, the Privy Council and this Legislature, and it provided, after the exercise of that power, certain safeguards which the experience of all civilized countries had shown to be necessary. He denied that the procedure prescribed by the Bill was of a highly technical nature. On the contrary, it was one of great simplicity, though of course it seemed technical to those who had not studied the subject. The multiplication table was 'technical' to people who did not know the meaning and use of numbers, factors and products. As to the assertion that the Bill would encourage litigation, he had long since learned to distrust such prophecies when made by persons unfamiliar with the working of our civil Courts, and he had already quoted a passage from the paper of Sayyad Mahmud to show that the Bill would have quite a different effect. Was it not matter of ordinary experience that people were more prone to go to law and bring or resist claims when the rights claimed were doubtful than they were when those rights were certain? The effect of obtaining probate of a will was to establish its authenticity and thus to preclude doubts as to the rights which it conferred and to stop unnecessary litigation among the parties claiming under it; and he confidently appealed to all those who had had judicial experience of the Lower Provinces and the Presidency-towns as to whether the Hindú Wills Act, by requiring probate to be taken out, had not lessened litigation among the class to which it applied.

The only further observation of the hon'ble Member which need now be noticed was that the Council had received no memorials from Native associations upon the subject of the Bill. Several opinions had been received from Native gentlemen, most of which were in favour of the measure; and MR. STOKES thought the absence of memorials was due to the fact that the Native associations in question had no objections to urge. The Bill had been nearly a year before the Native public, and he was much mistaken if the managers of those associations, who were both shrewd and watchful, had not recognised it as likely to stop useless litigation, to prevent fraud, forgery and

perjury, and (by enabling Native executors and administrators to give good titles) to increase the value of property all over the country.

The Hon'ble MR. COLVIN said that he had no objection whatever to the proposed delay in passing the Bill, but as a Member of the Select Committee, he wished to say a few words, in order to show that they neither desired to make such revolutionary changes as had been laid to their charge, nor to carry into effect such changes as they had recommended without allowing any time for their consideration.

He would point out, in the first place, that the principal innovation which the Committee advocated was far from being so important as it might appear to persons who formed their opinion of it from the Hon'ble Mr. Hope's speech. The Bill, no doubt, provided that no right as executor or legatee should be established until probate had been obtained, in cases in which the property comprised in a will amounted to more than one thousand rupees. But, as a matter of fact, he believed that the practice of making wills amongst the Hindú community was still exceedingly uncommon. He was not speaking of Bengal or the Presidency-towns of Madras and Bombay, where the Hindú Wills Act was already in operation, and where the Bill, therefore, would make no change whatever. He was speaking of the country generally; and he thought that it was within the mark to say that the number of Hindú wills executed throughout the rest of India in any one year would not exceed a few hundreds. The Muhammadans made wills more frequently; but the number of wills made by them, which comprised property exceeding one thousand rupees in value, could not be very numerous. To whatever extent this compulsory provision of the Bill did operate, its results could hardly be other than beneficial; for it provided the best safeguards that could be given against fraud and mistake, and ensured as far as possible that a testator's wishes should be duly executed.

Then, as regards letters of administration, the taking out of these had been left optional. If nothing whatever in the nature of letters of administration had hitherto been required in cases of disputed succession, it might be said that to give this optional power was a considerable change. But the law over the greater part of India already prescribed that in such cases application must be made to the civil Court for a certificate of succession by any person desiring to collect debts due to a deceased person, and declared that nobody should be compelled to pay such a debt to any person, except on the production of such a certificate. The only difference made by the Bill, if it became law, would be that instead of a certificate of succession, letters of administration would probably be applied for in future, as the position of an administrator would be

more secure and better defined than that of a certificate-holder. The Bill would improve the procedure in such cases, but would introduce no great substantial change.

He did not think that these alterations of the law were of such a startling nature as had been described. Such as they were, the Committee had certainly not tried to take the Local Governments and the public by surprise in regard to them. The republication of the Bill had been recommended expressly in order to allow time for their being understood and considered. Two months might not be sufficient to allow of objections being discussed and settled; but two months were long enough to show if objections existed which would make a further delay in passing the Bill necessary.

The Hon'ble SAYYAD AHMAD KHÁN BAHÁDÚR said:—"My Lord, I think this Bill in its amended form may safely be accepted by the Council. Section 149 of this Bill has clearly provided against all possible inconsistency with the Muhammadan substantive law relating to wills, as well as with the Hindú law on the subject.

"Section 12, no doubt, is important. It has made the possession of probates and letters of administration compulsory in certain cases. But this compulsion and other proceedings provided in the Bill are simply matters of procedure. They do not interfere with the substantive law of the Muhammadans and Hindús. The passing of this Bill will, I am sure, remove all uncertainty as to the position of executors and administrators of the property of a deceased.

"With these remarks I beg to support the motion."

The Hon'ble MR. BATTEN said that he understood that the Motion before the Council was that the Report of the Select Committee be taken into consideration. It appeared that the Committee recommended that, if no representations against the changes now made in the Bill were received within the space of two months, the Bill might be passed after the lapse of that period at Simla. It seemed to be the hon'ble Mr. Hope's desire not to oppose, but rather to intensify, the Motion before the Council; that was to say, he wished for a more prolonged consideration of the Bill as reported, in fact that there should be a period of gestation of nine months before the Council were delivered of it. He should vote for the Report being taken into consideration.

The Motion was put and agreed to.

BURMA SURVEY BILL.

The Hon'ble MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to provide for the demarcation and survey of land in British Burma be taken into consideration. He said that the Report of the Select Committee would show that, since this Bill was introduced into Council, very few amendments had been made in it. The Committee had been in communication with the Chief Commissioner of the Province, and at his instance an amendment had been made by the omission of the proviso which was originally attached to section 3. As originally prepared, the measure had been drawn for revenue purposes only, and it had been intended that all lands situated in towns, villages, cantonments or civil stations should be exempted from the operation of the Bill; but the Chief Commissioner reported that, in many of such places, lands existed which were liable to assessment of land-revenue and should be brought under the provisions of the Bill, which provided for the demarcation and surevy of land. The Committee had, therefore, accepted the Chief Commissioner's recommendation to omit the proviso to section 3. As a consequence, in section 19 words had been added which made appeals from proceedings in connection with boundary-disputes in the town of Rangoon lie to the Recorder of Rangoon and not to the Commissioner. The Committee had also made a material amendment in section 18, providing for an appeal where the Boundary-officer might refuse to take cognizance of any objection that might be urged before him: in such a case the Committee thought it right that an appeal should lie. He might say that the report omitted to mention that the Bill had been published in due course in the *British Burma Gazette*. It had been ascertained, however, from the Chief Commissioner, that publication had taken place in that Gazette, and therefore any objection on that ground would not be tenable.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

MULTÁN DISTRICT LAWS BILL.

The Hon'ble MR. STOKES introduced the Bill to declare the law in force in certain lands annexed to the Multán District and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Colvin and the Mover. He had no remarks to offer.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Government Gazette, Panjáb*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

VACCINATION BILL.

The Hon'ble SAYYAD AHMAD KHÁN moved that the Bill for giving power to prohibit the practice of inoculation, and to make the vaccination of children compulsory in certain Municipalities and Cantonments be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Thompson, the Hon'ble Mahárájá Jotíndra Mohan Tagore, and the Hon'ble Messrs. Colvin and Grant and the Mover. He said,—"My Lord, the Vaccination Bill, which I had the honour of introducing into the Council on the 30th of September last, has been published in the *Gazette of India*, and also in the local Gazettes in English as well as in the vernacular languages. The Local Governments have submitted their opinions and those of local officers as to the expediency of the proposed legislation. Some of the Municipal Committees and Societies have commented on the measure. All these opinions, remarks and papers are now before the Council.

"My Lord, on the first occasion when I advocated in the Council the expediency of making vaccination compulsory by legislation I said:—'I have carefully considered the difficulties which exist in putting such a law into practice; and I am aware that there are some parts of India which have not yet reached the stage when the enforcement of such measures would be advisable. The proposed Bill will, therefore, not be generally compulsory. It is not meant to be applicable to those parts of India which possess local legislatures, and its operation will be confined to such municipalities and military cantonments in British India as the Local Governments in their discretion deem fit to place under the proposed law.' I further remarked that the object of the proposed Bill was to provide a law to enable the Local Governments of those Provinces, which do not possess their own legislatures, to make vaccination compulsory in such places as they consider fit for the promulgation of such a law. I am glad to find that the opinions hitherto received from various quarters support my views; since some of the municipalities and cantonments are declared by the local authorities to be prepared to accept compulsory vaccination, while others are represented as less advanced, and not in such a state as to admit of such a law being safely enforced. The difference of opinions among the various local officers in regard to the expediency of rendering vaccination com-

pulsory is due to the variety of local circumstances which I had in view when framing the Bill now before the Council.

"My Lord, the legislation which I have proposed meets the objections of those who oppose it, and the wishes of those who support it; since one of the most essential features of the Bill is that its adoption is permissive. If the Bill is referred to a Select Committee, I shall be glad to adopt any alterations which the Select Committee may consider necessary, in accordance with Dr. Cunningham's suggestions, to restrict the power of the Local Governments in respect of enforcing the proposed law.

"My Lord, it has been said, as a reason against the passing of the Bill, that vaccination is gradually spreading, and that the prejudices of the people against it are giving way to the beneficial influence exercised by local officers. The statement, my Lord, on which this argument is based is no doubt correct; but I may be permitted to say that the circumstance, far from furnishing an argument against the Bill, strongly supports its policy. Even the greatest opponents of the proposed legislation do not maintain that the object in view is not desirable. The strongest argument against the proposed law is that there are still many amongst the people of this country who look upon vaccination either as unnecessary or objectionable. But in a matter of this kind the discussion resolves itself into the simple question, whether the indifference or opposition of a part of the community should be allowed to deprive the whole community of advantages which the truths of science and the conclusions of actual experience have made undeniable.

"My Lord, I am myself a Native of India, brought up under the same social circumstances and prejudices as those of my countrymen whose voice is raised against the proposed legislation. And at my time of life, my Lord, I hope I may confidently escape the imputation of arrogance in saying that I have lived long enough amongst my countrymen to have obtained a familiar insight into the laws which regulate their feelings and prejudices. I can emphatically say that the hatred which once existed against vaccination is a thing of the past, at least in the more advanced parts of British India. The opposition to vaccination, wherever it exists, is due either to the manner in which some of the underlings of the department conduct themselves, or to defects of system. Such being my views, I have no hesitation in saying that, if the causes of the opposition are removed by introducing better organization and more effective supervision, by providing facilities and by obtaining the co-operation of influential native gentlemen, vaccination will become more popular every day. But this result cannot be achieved without a legislative measure such as I have ventured to propose.

"The highest castes of Hindús have accepted vaccination. There is a memorial in favor of the Bill before the Council sent up by forty-eight of the most respectable Hindú citizens of the ancient city of Benares, a place which in the eyes of orthodox Hindús is still unsurpassed in sanctity and religious learning. To those forty-eight names I may be allowed to add that of Rájá Shimbhú Narain Singh Bahádur, a gentleman of great influence and high position in that city, and a Brahmin by caste. In a communication addressed to me he has strongly supported the policy of the Bill, and has expressed his wish that it may pass into law. It is true, as has been urged by some of the opponents of the Bill, that there are still in India many temples consecrated to the worship of *Mátá-Debí*, the goddess of small-pox, and that large numbers of people resort to these places of worship. But I feel sure that vaccination has never been regarded as interfering with the worship of this goddess or any of the ceremonies connected with it. The parents of vaccinated children perform the ceremonies of worshipping *Mátá-Debí* without the smallest feeling that a resort to the prophylactic against the disease in any way interferes with their religion.

"My Lord, I must confess I was in no small degree surprised when I read the speech of the President of the Anjumán-i-Panjáb and the communication which he has made to the Council. He seems to think that the natives of India were not aware of the source from which the vaccine lymph was taken, and that Dr. Cunningham's *Sanitary Primer* and the Bill now before the Council have, for the first time, supplied the information to the people. On this statement he has based his argument that the people will consider vaccination as interfering with their caste-prejudices.

"My Lord, I am not aware that the Government, in adopting its earliest measures to introduce vaccination, ever made a secret of the source from which the vaccine matter is drawn. I feel confident that it was never a secret to the people, nor ever regarded as doing injury to caste. On the contrary, inoculation was not unknown in India. It was called *chhopa*, while vaccination has ever since its introduction received the name of *gau-than-sitla*, which, literally translated, means cow-udder-small-pox. The name itself suggests the source from which the lymph was obtained, and there is, therefore, little foundation for the proposition that Dr. Cunningham's *Sanitary Primer* or the present Bill have, for the first time, enlightened the people upon the subject. I am in possession of two treatises upon the subject published by Dr. Pearson in the Hindi and Urdú languages in 1867, and intended for public distribution, which furnish minute information as to the source from which the vaccine-lymph is obtained.

"I should have dwelt more upon this point had I not felt that a full answer to the objection is to be found in a sentence which His Honour the Lieutenant-Governor of the Panjáb has recorded with regard to the Society's argument. His Honour observes:—

"'There is one point which is not noticed by the Society, and which has a practical bearing on vaccination, namely, that a child of the age at which vaccination is practised on it is not, according to Hindú law, liable to ceremonial impurity, and, therefore, even though vaccine may be impure to Hindús, the child would not be made impure by it.'

"My Lord, the practice of vaccination has gained footing in some native States also. I can speak of two Hindú States in the Panjáb. The history of Patiálá, written by its able minister, informs us that vaccination was introduced in the State in the Hindú year 1933, corresponding with the year 1876. The late Maháráját had his own son vaccinated, and all the young children of the Minister's family were also vaccinated. I have trustworthy information that, in the State of Patiálá, no less than 55,618 children were vaccinated in three years. Similarly, in the State of Kapurthalá no less than 4,394 children were vaccinated in one year.

"My Lord, I now come to another important subject connected with the Bill, namely, the prohibition of inoculation. The majority of opinions which have been received are in favour of prohibitive provisions in this respect. When one member of a family is inoculated, others are also obliged to undergo the operation as a protective measure; and the appearance of small-pox is its necessary consequence. The reasons for prohibiting inoculation make it all the more necessary that every measure should be adopted to make vaccination prevalent; for the State should not deprive the people of one remedy without supplying facilities for adopting a better and a more efficacious substitute.

"My Lord, I do not wish to take up the time of the Council in dwelling upon the provisions of the Bill. They appear in the Bill itself, and will be fully considered, with reference to the valuable opinions that have been received, if the Bill is referred to a Select Committee. But I wish to mention the principles which have been prominent in my mind in framing the Bill. I have endeavoured to make its provisions as simple as possible, to provide facilities for their being carried out, to avoid everything likely to give offence to the feelings of the people, and lastly, to encourage, as far as possible, the co-operation of Native gentlemen in giving effect to provisions of the proposed law.

"My Lord, no one can hold stronger views than I do, that no measure relating to the welfare of the public should be adopted by the State without

due regard to the feelings of those to whom the measure relates. Whatever my own personal opinions might have been, I should not have ventured to seek the passing of a legislative measure like the one now under consideration, if I had felt that it would raise the opposition of the masses of the people of India, or that it would involve evils which would outweigh the advantages which can be expected from it. But the tenderest regard to the prejudices of the people does not prohibit the proposed legislation. The British rule in India has, for its guiding principles, the alleviation of human suffering and the protection of the weak and the helpless. Those principles have abolished the sacrifice of human lives at the altar of superstition, and put an effective check upon female infanticide. Who can deny that those evils were time-honoured institutions, and had become fixed habits of a portion of the population of India? Who can maintain that the State was not justified in adopting decisive measures to remove those evils? Who can maintain that the State in adopting those measures acted in opposition to the principles of toleration or humanity? And, my Lord, I feel that in advocating the measure now before the Council, I am not asking the legislature to act contrary to the principles upon which it has always acted. I am not asking the legislature to interfere with the religious prejudices of the people. I am not seeking the abolition of any of their time-honoured customs. I am asking the legislature to interfere in a matter which, to thousands of innocent and helpless children, is a matter of life and death. I feel that I am advocating the cause of humanity against the indifference o the majority, and the vague and unfounded prejudices of a limited section of the population. The ravages of small-pox are not now involved in uncertainty They are terrible both in their extent and their regularity. An instalment of a hundred thousand human lives is paid every year to the malady, and, my Lord, in view of this awful fact, I must confess that I find it difficult to conceive how any vague apprehensions of opposition, or the existence of unfounded prejudices, can have greater weight than the absolutely certain fact of the enormous loss of human life which the absence of a well-organized system of compulsory vaccination involves. The British rule, to whose guardianship the lives of millions are entrusted, has always felt itself called upon to adopt measures for preventing the loss of human life, and I feel that the legislation proposed by me, if sanctioned by the legislature, would only be an addition to the numerous instances of the policy of humanity which the British Rule in India has always pursued.

"My Lord, I move that the Bill be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Thompson, the Hon'ble Mahárájá Jotíndra Mohan Tagore, and the Hon'ble Messrs. Colvin and Grant and the Mover."

The Hon'ble MR. GRANT said it was not without diffidence that he took it upon himself to oppose, in a question affecting the life and habits of the people, a gentleman who was himself a native of India, and whose opinion must command special weight owing to the prestige attaching to his distinguished career and character. In demurring to his authority, MR. GRANT felt that he was laying himself open to the charge—one not unfrequently made against Anglo-Indian officials—of being more conservative than those whose interests they sought to guard. But to that charge there was a reply which, if not altogether pleasant or satisfactory, was at least significant; and that was that, although the hon'ble mover of the Bill and those who thought with him might undoubtedly claim to represent the enlightenment and the intelligence of the country, whilst those who differed from him must admit that they were held back by the prejudice and superstition of the masses, yet unfortunately these latter made up by far the larger constituency of the two; and, however much the Council might regret their existence, they certainly could not afford to overlook or disregard them.

These were of course mere general propositions, and it might fairly enough be argued that in the Bill now before the Council the danger of ignorant opposition had been foreseen; and with that very object its operation had been limited to large towns, the population of which was presumably more enlightened and advanced than that of the country generally. He believed such an impression to be an entirely mistaken one. Unfortunately, it was from the larger towns and from the wealthier classes—whether because they were more independent in means and character, or better versed in what they believed to be the requirements of their religion than villagers—that most opposition had been experienced to the extension of vaccination. Probably all who had been concerned in promoting the cause of vaccination throughout the country would bear MR. GRANT out in this assertion; but, indeed, ample evidence in its support was forthcoming, if it were needed, in the papers now before the Council. Thus, he found that the Chief Commissioner of the Central Provinces wrote—

> "In the Central Provinces, at all events, opposition to vaccination comes more from the well-to-do classes than from the poorer, who form the bulk of the population; and it seems to the Chief Commissioner questionable policy to frame a law which will place the higher classes in opposition."

And again—

> "On this analogy most reluctance to vaccination would be experienced in towns, and the Chief Commissioner believes that considerable sections of the town-population would very much resent a law which will necessarily interfere with their domestic relations."

This opinion was confirmed by the Commissioner of the Haidarábád Assigned Districts, an officer whose views were entitled to much respect:—

"It (the Bill) means that compulsory vaccination is to be introduced into the largest towns and cities of India (for these alone are municipalities), inhabited by the highest and most influential classes. These are the very places into which it would be most dangerous to introduce a measure of the kind."

But then the Bill was not unprovided with other safeguards. It was permissive—permissive, that was to say, in the sense of permitting Local Governments to compel municipalities—and it was to be applied only to those Provinces which, having no Councils of their own, were unable to legislate for themselves. Certainly no measure could have been brought forward in a more moderate or modest manner. But, after paying the fullest possible tribute to the spirit in which it was conceived, surely the Members of the Council were not only entitled, but bound, to ask, what was the justification for introducing it at all? The *Indian* Provinces which it was intended to benefit—he said Indian, for Burma so differed in social habits from the rest of the Empire that it might for the present be left out of account—were the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, Assam, Ajmer and Coorg. Of these the last three only showed any willingness to accept the Bill; and, whilst Ajmer and Coorg were insignificant in area and population, the Chief Commissioner of Assam only accorded a very qualified welcome to the measure. Indeed, he admitted that the native public generally would be vehemently opposed to it; and he would not avail himself of its provisions, except possibly in the single municipality of Shillong.

The larger Governments, namely, the North-Western Provinces with Oudh, and the Panjáb, followed by the Central Provinces, were strongly against the Bill. Thus, the Lieutenant-Governor of the North-Western Provinces says:—

"To declare vaccination compulsory would be apt to stimulate the dislike with which it is regarded by many, and would be a grave political mistake, as it will give a handle to mischievous agitators, by which they may work on the religious scruples of the unenlightened masses."

The Chief Commissioner of the Central Provinces stated that, in his opinion, "the proposed legislation was not necessary." The Lieutenant-Governor of the Panjáb "would have much hesitation in applying the provisions of the Bill to any town in his Province."

On the other hand, the hon'ble mover had referred to the opinions of well-known gentlemen, Hindú as well as Musalmán, to show that there was a general desire for vaccination; but if there really were such a desire, and it was

genuine and general, the question irresistibly suggested itself—what need could there be for compulsion at all?

Was the Council, then, to pass such a measure as this, which would be viewed with suspicion by all the ignorant and all the superstitious, and which would be misrepresented by all the designing and all the discontented, for the sake of the small outlying territories of Coorg and Ajmer, and for the single municipality of Shillong in Assam? In that case, our task would be, at best, one of supererogation; but surely this was not a time for trying experiments or playing with prejudices. Possibly, if the legislature were bent on it, it might suppress, or at any rate mitigate, small-pox, as the Government of this country had already suppressed *satí* and mitigated female infanticide. But, setting aside all question of the comparative gravity of the cases, it was an important point to remember that vaccination was now surely and steadily extending itself without legislative aid, and that anything like compulsion would immeasurably increase the opposition to it. In the interests, then, of vaccination itself, even if there were no other reasons, he should feel bound to vote against the motion now before the Council.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said that, although he was not in a position to speak with authority of the feelings and sentiments of the people of the North-Western Provinces, if he understood medical opinion aright, it ascribed the spread of epidemics of small-pox, in a great measure, to the practice of inoculation; and he therefore thought Government would be justified in passing a measure of this kind prohibiting the practice of inoculation. Inoculation was already prohibited in Calcutta and Bombay; and, if inoculation was prohibited, there ought to be a substitute for it. Besides, between inoculation and vaccination there could not be any doubt of the bulk of medical opinion being on the side of vaccination as by far the safer of the two. On that consideration he supported the Bill, remembering also that it would be of a permissive nature and would not interfere with the prejudices of the mass of the people.

The Hon'ble MR. HOPE said that he had very few remarks with which to trouble the Council on the subject of this Bill. Admitting the argument of the hon'ble Member who spoke before him, that inoculation was the cause of a large amount of small-pox, and if it was prohibited it was necessary to provide for compulsory vaccination instead, it appeared to him that the time had hardly come for going so far on either one way or the other. No one who understood these matters could refuse sympathy to the enlightened motives of philanthropy, of those especially of the Native Member of this Council, who came forward for

the purpose of mitigating the suffering of the people. But at the same time it was absolutely necessary that, in matters which affected the religious scruples of the masses, the Council should proceed with caution, and he believed that vaccination would be diffused a great deal faster if they did not attempt to run before they were well able to walk.

He did not consider this Bill, although technically permissive, as really and substantially so. Properly speaking, a permissive Bill would be a Bill which provided for the introduction of compulsory vaccination under one or other of two procedures. One was to follow the analogy of the procedure prescribed by Act XXVI of 1850, when municipalities were first introduced, which was that, whenever a sufficient number of respectable inhabitants of any town memorialized the Government that they desired the law of compulsory vaccination to be introduced, it should be introduced there, after hearing any objections that might be offered and finding out that such was really the desire of a majority of the respectable inhabitants of the place. The second mode of procedure was rather more stringent. It was that the Government, when it proposed to make vaccination compulsory in any town, should notify its intention and should allow a sufficient time to ascertain the wishes of the inhabitants. Of the two safeguards, MR. HOPE should prefer the former; but, unless some such restriction was introduced, he should not support the Bill.

The Hon'ble Sir ALEXANDER ARBUTHNOT observed that he had only a few words to say on this subject. He thought the Members of the Council must all have listened with great interest to the speech which had been made that day by the hon'ble mover of the Bill. His arguments appeared to Sir ALEXANDER ARBUTHNOT to be entitled to very considerable weight. But he confessed there was a great deal to be said on the other side of the question. Since this matter was last discussed in this Council, he had been greatly struck by the great extent, if not the preponderance, of opinion which had been brought forward in opposition to the measure. As he was listening to the speech of the hon'ble Mr. Grant, it occurred to him that, although it might be inexpedient so far to stop the measure as to prevent its being referred to a Select Committee, it would be very desirable, in the event of that reference being made, that the Select Committee should consider the expediency of introducing into the Bill some such limitations as those which had been proposed by the hon'ble Mr. Hope. SIR ALEXANDER ARBUTHNOT had not very recently referred to the debate which took place at Simla, and he had not a precise recollection of what he said on that occasion; but he remembered thinking then, and he thought so still more now, that it would be very desirable that the proposed measure should not be introduced in municipalities or in large

towns until the authorities which introduced it were satisfied that there was a very strong feeling, especially on the part of the influential Natives of the place,—of those who might be supposed to lead and to guide Native opinion,—in favour of the adoption of the measure. No substantive Motion had been made by the two hon'ble members who had spoken in opposition to the Bill. If he was in order in doing so, he would beg leave to move that the reference of the Bill to the proposed Select Committe should be accompanied by instructions to the Committee to consider the expediency of providing that the Bill should not be introduced into any municipality or military cantonment, unless the authorities were satisfied that there was a preponderance of Native opinion, so far as it could be ascertained, in favour of the application of the Act. He thought that if such a provision was inserted in the Act, coupled, as it would be, with the discretion which it might reasonably be hoped would be exercised by the various Local Governments and Administrations, no serious apprehension need be entertained as to the effects which would ensue from passing the Bill.

His Excellency THE PRESIDENT said that an hon'ble colleague had suggested whether it would not be desirable to omit the word "cantonments" from the Motion which had just been made. HIS EXCELLENCY believed that no Native community could exist in cantonments without the permission of the military authorities.

General the Hon'ble SIR E. JOHNSON said he thought it would be inexpedient to allow the majority in a large bázár within the limits of a cantonment to decide whether the law should be applied.

The Hon'ble MR. RIVERS THOMPSON said the discussion, whether the Act should apply to cantonments or not, would come up when the Select Committee's report was brought on for consideration. Possibly the Select Committee would omit the reference to cantonments altogether.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved the following amendment:—

"That the reference to the Select Committee be accompanied by an instruction to the Committee to consider the expediency of providing that the Act should not be introduced into any municipality or military cantonment, unless the local authorities were satisfied that there was a preponderance of local Native opinion, so far as could be ascertained, in favour of the application of the Act."

The Motion as amended was agreed to.

DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to make further provision for the grant of Probate and Letters of Administration in non-contentious cases be taken into consideration. He said that the only change made by the Select Committee, beyond the correction of mere errors in drafting, consisted in requiring that an application for probate should contain an estimate of the amount of the assets likely to come to the executor's hands. The reasons for this amendment were the same as those which he had just given, when referring to a similar amendment made in the Probates and Administration Bill.

The Motion was put and agreed to.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. COLVIN moved for leave to introduce a Bill to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces. He said: "I will explain, as briefly as I can, the nature of the evil to be dealt with, the necessity which exists for legislation, and the general outlines of the measure which I wish to introduce.

"The Jhánsí District, in Bundelkhand, consists of four parganas—Jhánsí, Gurotha, Mau and Moth, and lies between the great sub-Himalayan plain on the north and the high table-land of Central India on the south.

"The general circumstances of the district are not very different from those of the adjoining district of the North-Western Provinces. The people, in language, character and customs, are much the same. Their agriculture is not much more backward, if at all; and their soil is hardly less fertile. But in one respect there is an important difference between Jhánsí and the districts to the north of it; and that difference is greatly to its disadvantage. Except in one pargana, it has hardly any irrigated land at all. There are rivers and lakes in the country, but at present they supply little or no water to the fields; and the nature of the soil is unfavourable to the construction and working of wells. The people of Jhánsí are therefore dependent upon seasonable rain for their crops; and their harvests, the produce of which varies greatly from season to season, are exposed to great and constant risk.

"This absence of irrigation is generally admitted to be closely connected with the present distress of the landed proprietors of Jhánsí, and is a point which it is important to bear in mind.

"A few words are necessary, in the next place, as to the land-tenure of the district, which occupies a no less important place among the causes of its distress.

"The whole of Jhánsí has been under British administration since 1853 when Gangadhar Ráo, the last Native Ruler of the Jhánsí State, died. Under the Maráthas, the tenure of the land was raiyatwár, as was usual in Marátha States, *i. e.*, the land-revenue was taken from the individual occupier of the soil. The State was the only recognized landlord, and there was no distinction between rent and revenue. The Government collected its rents directly from the cultivators, with whom it dealt through certain headmen or representative raiyats. These headmen received a small allowance in money or land, which they shared with their kinsmen. They were not, in any sense of the word, landlords; nor were they responsible for the revenue, which usually did not even pass through their hands. They were only bound, in consideration of their allowance, to maintain and extend the area under cultivation, and to assist the ruling power generally in collecting its revenue. The mode in which the revenue was collected was not uniform. It differed with different rulers and at different times. But there was one characteristic which was common to nearly every mode of collection under the Marátha system, and that was that the demand of Government was never fixed for a term of years, but varied according to the produce. Officials were deputed by the Government who, either at each harvest or at the end of the year, made a valuation of the actual outturn of the crops, and raised or lowered the demand accordingly. It is said that this system was attended by great drawbacks, and I have no doubt that the practical working of such a plan under Marátha officials was not free from defects; but it possessed the great advantage of adjusting the revenue to the cultivators' means of paying. In a good year, they would pay more: in a year below average, less: in a very bad year, hardly anything at all. This was an advantage of the greatest importance in a country where the harvests, from their dependence on rain, varied greatly and were always precarious.

"Upon assuming charge of the country, the first change made was to extend to it the system of conferring proprietary rights upon the people and fixing the revenue-demand for a long term of years which had been so successfully followed in the North-Western Provinces.

"The officers who were entrusted with this duty, finding that there were no landowners, looked about for persons upon whom proprietary rights could be conferred, and for this purpose pitched on the headmen and those of their relations who were entitled to receive any share in the allowance made by the State. After a short time, a regular settlement for a term of years was made; and a certain portion of the cultivators of the country, namely, those who had been headmen, or were kinsmen of headmen, were recognized as proprietors, acquiring a new and valuable property thereby, and undertaking responsibilities of which, at the time, probably no one foresaw the consequences.

"Those consequences were simply disastrous. It may be thought strange, at first sight, that they should have been so. It was not unnatural to suppose that, in making such a change, a great benefit was being conferred. On the whole, the grant of proprietary rights had been a great benefit to the recipients of them, in the North-Western Provinces and Bengal. But the actual result throughout the greater part of Jhánsí has been the utter ruin of the proprietary class. Mr. Porter and Mr. LaTouche, two selected officers, were deputed two or three years ago to enquire into the condition of the three worst parganas—Moth, Gurotha and Mau—and they both agree in declaring that the people are now wholly destitute, without capital or income. There is ample evidence to show that this description, as applied to the proprietary class, is in no way exaggerated.

"Why have the grant of proprietary rights and the limitation of the demand of the State, which were beneficial elsewhere, been so mischievous in Jhánsí?

"Various causes, no doubt, have contributed to this result. In the first place, it was a mistake to introduce the alien zamíndárí system of the Doáb into a country where the tenure had been raiyatwárí for generations, and where (to quote from Mr. LaTouche) the holdings in most respects 'are now as purely raiyatwár as in the times of the Maháráthas.' It would have been far wiser, as observed by the North-Western Provinces Government in its orders on the settlement of Jhánsí, if the example set in certain parts of the Sagár and Narbada territories had been followed, and all independent cultivators of standing had been declared proprietors, each of his own holding.

"In the next place, the Jhánsí zamíndárs have suffered from extraordinary calamities since they passed under British rule. They began in

difficulties. Mr. Jenkinson, in his Settlement Report, has drawn a graphic picture of the general deterioration of the country, and the impoverishment of the people, at the time when the district passed into the hands of the British Government. Then in 1857 the Mutiny occurred, and the people suffered severely from the depredations of the Oorcha State and of the Rání of Jhánsí; and, after the mutiny was over, they were compelled in many instances to pay over again to the British authorities revenue which had already been exacted from them by the Oorcha or Jhánsí troops. After this, in 1867, came a failure of crops, and in 1868 a severe famine, in which one-fourth of the whole stock of cattle in the district died, and the poorer classes emigrated and perished in large numbers. That famine was followed by several years of short harvests, and, in 1872, by a murrain, which carried off many thousands of their plough-cattle. In addition to the ordinary consequences to agriculture of such misfortunes, there is a special one in Bundelkhand. A peculiar weed known as *káns* grass springs up there rapidly in land thrown out of cultivation, and mostly in the best land. This weed is extremely difficult to eradicate, and for the years during which it retains possession of the ground it greatly impairs its productive value. The consequence of all the agricultural misfortunes which I have described was that this *káns* grass spread widely over the country.

"Much would be accounted for by such calamities as I have enumerated, but they are not enough by themselves to explain the present hopeless destitution of the zamíndárs. Other parts of the country have gone through misfortunes scarcely, if at all, less than these, and yet the power of the people to recover from them has not been so utterly destroyed. Causes more permanent in their effect than these misfortunes must have been at work to reduce the proprietors of the soil in Jhánsí to their actual state of chronic insolvency.

"It was supposed at one time that the settlement might have been pitched too high, but it has been shown by ample evidence that this is not the case.

"Again, it has been said that to confer proprietary rights on a portion of the people was to give them a new and easy means of raising money, and that, once in debt, they were irresistibly drawn into destruction by the money-

lenders and the action of our civil Courts. There is truth in this, no doubt; but it hardly serves to explain why the whole body of landed proprietors should be in such urgent and general want of money. It has been said, indeed, that the British revenue-officials were too exacting, and pressed too hardly for the revenue. This may possibly be true in a few instances, but I think that more evidence is necessary before such a charge against the former revenue-administration of the district can be fully established. Indeed, as it is admitted on all hands that the revenue is by no means excessive, it is difficult to understand how its collection by no other than the ordinary modes of coercion can have been a measure of much harshness and exaction. Besides this, during the last ten or twelve years at least, large sums have been foregone, and the Government and its officers have certainly not pressed unduly for the revenue. I believe that the principal causes which have plunged the great body of the landowners of Jhánsí into hopeless debt must be sought elsewhere. I speak with much diffidence on a matter regarding which there is room for great differences of opinion; but there are two causes which, operating together, seem to me to be sufficient to explain a great deal of the present debts and difficulties of the Jhánsí zamíndárs. The first is that, in changing from a zamíndárí to a raiyatwárí tenure, we considerably reduced the number of persons who were responsible for the revenue, and so decreased the security for it. The second is that we made the revenue, at the same time, far more difficult to pay, by changing it from a varying share of the produce, which depended on the harvests, to a fixed money-payment. We added, in fact, to the burden of the revenue and then laid it upon fewer persons. I think it is certain that, sooner or later, the newly-made zamíndárs must have broken down. It is no wonder that they did so, when, in addition to these two causes, they were overwhelmed by such a succession of calamities as war, famine, murrain and drought.

"I think that the present condition of the tenants in Jhánsí serves to confirm the probability of this view. They cultivate under precisely the same conditions as the landowners. They are exposed to the same losses from failure of rain. They have gone through the same misfortunes. The only point of difference between them and the zamíndárs is that they are no longer liable to the State

for its revenue as they used to be. In a bad year the tenants do not pay, and the landlords neither can, nor dare to, proceed to extremities with tenants whom it is not easy to replace. On the other hand, the landowners are between the upper and the nether millstone. They are crushed between the impossibility of withholding their revenue from the Government above, and the impossibility of extracting their rents from the tenants below. This difference seems to explain the fact, which is admitted by everybody who knows the country, that the raiyats of Jhánsí are fairly prosperous, whilst the zamíndárs are almost all beggars. A further confirmation may be found in the state of the villagers in the adjoining territories which belong to the States of Gwalior and Oorcha. They do not differ from the people of Jhánsí, except in holding on a raiyatwárí instead of a zamíndárí tenure, in the revenue being distributed generally instead of partially among the people, and in the payment being variable in amount instead of a fixed sum. These people are far from being in the same embarrassed state as the proprietors of Jhánsí. It is possible also that the freedom from distress of the Jhánsí pargana, as compared with the other three parganas, may be mainly due to a considerable portion of its area being irrigated, which makes the harvests less precarious, and the payment of a fixed sum more possible.

"I will turn now to the remedy which is proposed for the evils that I have described.

"Several schemes of relief have been suggested at different times. One, which was advocated with great vigour and ability by the late Mr. Pollock, a valued friend of mine, who was for some years Commissioner of Jhánsí, was that the State should buy back the zamíndárí rights which it had conferred, and restore the old raiyatwárí tenure; the interest of the capital so expended being provided for by the landlords' rental, which in that case would revert to the State. I believe that this scheme contained the elements of success, if it had been combined, as no doubt it would have been, with measures for adjusting the revenue-demand in some way to the outturn of each year.

"Besides this, various other plans have been suggested, all of which aimed more or less at the same principal object of reverting to the raiyatwárí system. It is unnecessary, however, to take up the time of the Council with

describing these; for the North-Western Provinces Government, on full consideration, has rejected them all, and has preferred a plan of its own. Under this plan, it will dispossess for a time the encumbered zamíndárs, will undertake the management of the embarrassed estates for them, will pay their debts and will hereafter restore their property to them, subject to certain conditions. The measure which I wish to introduce is intended to carry out this plan. The details of it will be fully described hereafter. At present it is, perhaps, enough to say that it will follow generally the provisions of the Sindh Encumbered Estates Act, adopting certain sections from the Broach and Kaira Act, and from the Act for the Relief of the Dekkhan Raiyats.

"As regards the part which is borrowed from the latter Act, I am bound to add that it will contain certain provisions which I opposed at the passing of that Act last year, and of the expediency and probable success of which I am no more persuaded now than I was then. I think it right to say this much. But as the principles contained in the sections referred to have been so recently affirmed by the Government of India, I have no intention on the present occasion of asking the Council to reconsider its decision upon the subject. Those principles have been fully accepted and adopted by the Government of the North-Western Provinces; and as I have been entrusted with a measure intended to carry out their views, I shall confine myself to endeavouring to give effect to the wishes of the Local Government to the best of my ability.

"The measure is intended to apply, in the first instance, to the Jhánsí District only, but power will be given to the Local Government to extend its operation to any part of the Jhánsí Division. Its main outlines will be sufficiently apparent from what I have already said. Its provisions will be similar to those which are usual in the case of encumbered estates. But all debts will be examined before liquidation, and an account taken, in the manner prescribed in the Dekkhan Agriculturists' Relief Act.

"The most important difference between the Bill which I desire to introduce and other similar measures lies in the manner in which it proposes to deal with an estate after it has been freed from incumbrances. Supposing the management to have terminated successfully, and the debts to have been paid off, the

zamíndár will not necessarily be restored to exactly the same position that he occupied before. His rights, if he recovers them, will thenceforward be neither transferable nor alienable in any way, but will remain, as now, hereditary. In short, he will be no longer absolute proprietor, but a hereditary tenant holding at a privileged rate.

"This future restriction of present rights rests upon the ground that, without the interference of the State the zamíndár would have lost his rights altogether, and that the Government, having saved them for him, may fairly annex such conditions to their restoration as seem proper in his interest. It may be added that, when the debts of the proprietors are so burdensome as to prevent them from paying their revenue, they have failed to fulfil the contract in consideration of which proprietary rights were conferred upon them, and have forfeited those rights. It must be remembered also that any zamíndárs who may apply voluntarily for the benefits of the Act may fairly be presumed to be consenting parties to this limitation of their future rights.

"These are the main features of the Bill. It will be seen that it is proposed to confer very large powers upon the Local Government and its officers, larger than those conferred by the Sindh, Chutia Nagpúr, Broach and Kaira, and Dekkhan Agriculturists' Relief Acts. It may be observed, in justification of this, that very large powers will be necessary for the success of the scheme. It is no easy task which the North-Western Provinces Government are going to attempt in undertaking the direct management of such a vast number of petty and encumbered estates, and in endeavouring to release from debt and restore to prosperity so large a section of the whole agricultural population of these distressed parganas.

"A few figures taken from the correspondence will make this clear. The total number of proprietors in three of these parganas is probably not less than 6,000. Of these, it may be said that three-fourths are in debt. Eliminating on the one hand those who are hopelessly insolvent, and on the other hand those whose debts are not so heavy as to require interference, it is quite possible that some 2,000 estates may be thrown upon the hands of the Government.

These estates will be scattered over some hundreds of square miles and they will all be very small; for the average profits of an estate in Jhánsí do not exceed Rs. 50 per annum. They are also exceedingly embarrassed, for the interest on the debts in these three parganas is estimated to exceed the profits of the encumbered estates by nearly Rs. 80,000 per annum. Now, not only have those debts after due scrutiny to be liquidated, but the cost of management must be provided, efforts must be made to improve the estates, and, in some cases, an allowance granted for the support of the excluded proprietors.

"These figures will give some idea of the great difficulty of the task which the Government of the North-Western Provinces, in its desire to relieve the distress in Jhánsí, is willing to undertake. It has satisfied itself that, with the powers which it asks for, the task is not impossible; but it is certain that large powers will be necessary, and I trust that none which can be legitimately conferred upon it for the purpose in view will be withheld.

"In conclusion, I have only to say that the importance of modifying the revenue-system of Jhánsí, and of adjusting it for the future in some way to the variations in the annual produce of the harvests, has not escaped the attention of the North-Western Provinces Government; and the question, I believe, is now under consideration and discussion. Personally, it seems to me that no scheme for relieving the distress of the proprietors in Jhánsí can be permanently successful which does not provide for this. In the oldest settled part of the North-Western Provinces, where rents have been paid in cash for half a century, there are particular fields and plots of land which no tenant will take at a fixed annual rent, but only on an engagement to pay a certain share of the produce, whatever that produce may be. The reason in such cases is that the yield of those fields, from local causes, such as exposure to inundation, diluvion, or the like, is so precarious that no one will take a lease of them at a fixed yearly rent. I believe that parts of the country, like Jhánsí, which have no irrigation and are dependent for their crops upon the rain from heaven, are in a like predicament; and that a fixed revenue for a term of years can never be realized from them (especially when the proprietors are small and needy) unless it be pitched below the due share of the State in average years, and greatly below it in years of prosperity. The only possible way of securing a

fair contribution for the State in such cases is to make the demand vary with the produce.

"When the revenue-system is being modified, a point which may deserve enquiry is whether the basis on which the revenue now rests may not be widened and rendered more secure, by restoring to the tenants of our day some of the responsibility in respect of the revenue which in Marátha times they shared with those who are now proprietors. The present scheme of the North-Western Provinces Government will result, in part at least, in restoring a raiyatwárí tenure. So far as it does that, it will only be an extension of it to make cultivators of standing responsible for their fair quóta of revenue.

"With this explanation I have to move for leave to introduce a Bill for the relief of encumbered estates in the Jhánsí Division of the North-Western Provinces."

The Motion was put and agreed to.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill relating to Merchant Shipping.

TRADE-MARKS BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the registration of Trade-marks.

Leave was granted.

ADJOURNMENT OF THE COUNCIL.

His Excellency THE PRESIDENT said he had hoped to have been in a position that day to adjourn the Council till tomorrow for the purpose of enabling his colleague Sir John Strachey to make his Financial Statement. Unfortunately, it had not been found possible to prepare the Financial Statement so rapidly as that; but HIS EXCELLENCY had ascertained that his colleague would be

prepared to make his Statement next Tuesday, and he therefore adjourned the Council to Tuesday, the 24th instant, at noon.

The Council adjourned to Tuesday, the 24th February, 1880.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

CALCUTTA;
The 20th February, 1880.

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