Thursday,
16th February, 1882

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXI

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OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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

The Council met at Government House on Thursday, the 16th February, 1882.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.
The Hon'ble L. Forbes.
The Hon'ble G. H. P. Evans.
The Hon'ble C. H. T. Crosthwaite.
The Hon'ble A. B. Inglis.
The Hon'ble Rájá Sivá Prasád, C.S.I.
The Hon'ble W. C. Plowden.
The Hon'ble W. W. Hunter, C.I.E., LL.D.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES moved that, in section one, line four, of the Bill to define and amend the law relating to the Transfer of Property, for the word "April," the word "July," be substituted. He said that in the case of this Bill it was desirable that the translations into the Native languages should be made with special care, and the object of this amendment was to give time for that purpose, and also for the making by the High Courts, under section 104, of subsidiary rules for carrying out the provisions of the mortgage-chapter of the Act.

The Motion was put and agreed to.

The Hon'ble MR. STOKES asked for leave to withdraw the Motion that, in section eighteen, line eleven, of the same Bill, for the words "one year" the words "ten years" be substituted, and that, in the next following line, for the word "year" the words "said ten years" be substituted. He said that it had been represented by a gentleman whose opinions were deserving of much attention, that, in the case of Hindús, further consideration of the question as to the period during which accumulation should be allowed was desirable.

His Excellency THE PRESIDENT said that he thought this matter was deserving of attention, and that consideration would be given to it. His present opinion was in favour of the amendment.

Leave was granted.

The Hon'ble MR. STOKES also moved that, in section eighty-eight, paragraph two, line one, of the same Bill, after the word "succeeds" the words "and the mortgage is not a mortgage by conditional sale," be inserted. He said that the object of the amendment was to correct a clerical error for which he alone was responsible. Section eighty-eight, paragraph two, provided for sales by the Court, under certain circumstances, of mortgaged property the subject of a suit for foreclosure. Now, mortgagees by conditional sale could not under any circumstances sell the mortgaged property; and it was not intended that they should do, indirectly, through the Court, what they themselves could not do directly.

The Motion was put and agreed to.

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

The Hon'ble DURGÁ CHARAN LÁHÁ said that, when this Bill was brought up before the Council three weeks ago, he took occasion to thank the Select Committee for excluding Hindús and Buddhists from the scope of chapter II so far as their personal laws were concerned; but there was one important point which he wished to bring to the notice of the Hon'ble Council on the present occasion.

Section 1, in the first place, exempted from the operation of the law the territories administered by the Governments of Bombay, Panjáb and British Burma, but left it to the discretion of those Local Governments to extend it to the whole or any part of their territories as they might deem fit. This, in his humble opinion, was highly objectionable on principle. As he understood the constitution of this Government, all laws ought to originate with the legislature, but this section practically left the task of legislation in this matter to the discretion of the Executive Governments of the provinces named. The Executive

Government, as the Hon'ble Council was well aware, was differently situated from the Legislative Council, and it was not bound by any such standing orders as required this Council to allow the public a fair opportunity to discuss a measure before it was passed into law. None had shewn a more laudable anxiety than His Excellency to give the public the fullest opportunity for the discussion of legislative measures, and DURGÁ CHARAN LÁHA believed the provisions of section 1, as he had explained, could not be in consonance with His Excellency's views. He did not wish to move an amendment on the subject, but left the matter to the consideration of the Hon'ble Council.

The Hon'ble MR. PLOWDEN said that he would like to say a few words in reference to this Bill, as he had intended to oppose the passing of the measure to-day. But the amendment which was placed first in the notice-paper had relieved him of that unpleasant duty, and he found that he was no longer obliged to oppose the Bill. Only last Thursday fortnight, while discussing this Bill, one of the members who spoke referred to the objectors of the Bill as properly falling within one of two classes—one class who objected altogether to the principle of the Bill, and another who objected to the measure itself. But the hon'ble gentleman omitted to notice the large section who objected to the Bill not because it was a bad Bill,—the Bill might be a good Bill,—but because it had not received that amount of publicity which it ought to have received, and also because they feared that, if it was passed at the time when it was intended to be passed, the change in the law would take effect in a very short period, and large masses of the people would suddenly find a change regarding which they had received no notice whatever. The first of the amendments which was carried to-day took the best part of the sting out of these objections, because it provided for the Act coming into operation from July instead of from April next. That gave four months' time, within which the Local Governments would be quite able to take measures to have the law properly promulgated and explained to the people, and MR. PLOWDEN had no doubt that that would be done. Under these circumstances, he would no longer oppose the passing of the Bill.

The Hon'ble MR. INGLIS said that he had intended giving a silent vote, but he felt called upon to indorse the views expressed by the Hon'ble Durgá Charan Láhá as to the inexpediency of the principle embodied in the first section of the Bill, which permitted its extension by mere executive order of the Local Government to territories to which it did not at present extend. He thought such extension should only be permitted in the regular way by an Act of this Council. As to the present Bill, he felt it difficult for a non-professional person like himself

to express an opinion. So far as he could judge, the chapter relating to mortgages, and particularly the sections relating to rights and liabilities of mortgagees and to foreclosure and sale, would effect distinct improvements in the present law. The argument which had most weight with him in deciding to support the Bill was that brought forward by the Hon'ble Mr. Crosthwaite when the measure was last before the Council, that it would greatly help Mufassal Judges in the administration of justice to have the law on the subject of the transfer of property stated in a concise form as was done in this Bill. For these reasons he had decided to support the passing of the measure.

His Excellency THE PRESIDENT said:—"Before this Bill passes I should like to say a few words with respect to what fell from my hon'ble friends, Bábú Durgá Charan Láhá and Mr. Inglis, regarding the mode in which it is proposed, in accordance with precedent, to extend this Bill to other parts of the country than those to which it has been made immediately applicable. If any notice of amendment on that point had been placed on the paper, it would have most certainly received the careful attention of the Government; but, as no such notice has been given, the point cannot now be practically considered. With regard, however, to the general question, I do not wish to lay down any hard and fast rule, or to pledge the Government, as to the course which it may take in regard to future Bills. That course must be regulated by the nature of each particular Bill and the circumstances of the time at which it may be proposed to the Legislative Council. I have also one other point to mention. In the course of the discussion three weeks ago, there appeared to be some doubt in the minds of members of Council as to what was the opinion of a very distinguished person in this city—the Chief Justice of the High Court—with reference to this Bill. Of course any opinion entertained by Sir Richard Garth is entitled to so great weight by the Government that I felt it my duty to ascertain what his opinion in regard to this measure was. I accordingly addressed to him the following note:—

"'MY DEAR SIR RICHARD,—There appears to be an impression in the minds of some persons that you disapprove of the Transfer of Property Bill now before the Legislative Council.

"'It would greatly assist me in deciding what course it would be desirable to pursue with that measure if you would let me know what you think of it in its present shape, and whether in your opinion it ought to be passed into law without further delay, or should be postponed for another year.

"'Yours sincerely,

"'(Sd.) RIPON.'

"'*Calcutta, 8th February, 1882.*'

"To that letter I received the following answer:—

"'My dear Lord Ripon,—I beg to acknowledge the receipt of your letter, and to say, in reply to it, that on the whole I do approve of the Transfer of Property Bill, and trust that it may be allowed to pass into law without further delay.

"'I feel grateful to Your Excellency for having given me an opportunity of expressing this opinion. I fear that my views on the subject were somewhat misrepresented on the occasion of the late debate upon the Bill: and I should be extremely sorry if any critical remarks which I may have made in my note of November last were in any degree the means of retarding the progress of a measure which, I believe, will prove a real blessing to the people of this country.

"'The remarks to which I allude applied rather to the principle upon which the Indian Law Commissioners in England have been in the habit of framing laws for India, than to any special defects in this particular Bill.

"'I have no desire to criticise the numerous objections which have been made to the Bill by my good friend and colleague Mr. Cunningham. Suffice it to say, that for the most part I do not agree with him, and I believe that, if a Bill were framed in accordance with his views, it would not be nearly so good a measure as that which is now before Your Excellency's Council.

"'A perfect Bill upon such a subject is probably out of the question, and it is as difficult in codification as it is in other things to please everybody; but, having regard to the length of time during which this Bill has been under consideration, the careful and repeated discussion which it has undergone, and the pains which have been bestowed upon it by the highest authorities in the land, I think that any further postponement of the measure can lead to no profitable results.

"'No man, I believe, has ever protested more strongly than I have against hasty and ill-considered legislation in such matters, and I am afraid that my excellent friend, Mr. Stokes, has often looked upon me as one of his most determined opponents. But it can hardly be said, with any show of reason, that this Bill has not received its due meed of consideration; and I was indeed rejoiced to find that Sir Michael Westropp, although not approving of the Bill for the Presidency of Bombay, paid a just and generous tribute to the ability and earnest industry which has been displayed in the preparation of it, and which, whether we agree with him or not, we must all feel that our friend the Legal Member of Council most fully deserves.

"'I am,

"'My dear Lord Ripon,

"'Very sincerely yours,

"'(Sd.) RICHARD GARTH.'"

"'33, Theatre Road;
"'*15th February, 1882.*

The Motion was put and agreed to.

EASEMENTS BILL.

The Hon'ble MR. STOKES also moved that the further Report of the Select Committee on the Bill to define and amend the law relating to Easements and Licenses be taken into consideration. He said that the Committee had only made four not very important amendments. It had omitted the words "as of right" in the first two paragraphs of section 15 of the Bill. Those paragraphs related to the acquisition, by prescription, of negative easements, and, as a rule, it was not possible to prove, in the case of such easements, that the enjoyment was "*as of right*" in the sense in which these words were now understood. Actual enjoyment of light without interruption for twenty years would thus, as in England (2 & 3 Wm. IV, c. 71, s. 3), give an absolute right, unless, of course, the right was limited by agreement.

In section 15 they had restored the provision of the present Limitation Act requiring that each of the prescriptive periods should end within two years next before the institution of the suit wherein the claim to which such period related was contested.

Where the heritage over which a right was claimed belonged to Government, they had provided that the prescriptive period should be sixty instead of twenty years. This was the period fixed in the Limitation Act for suits brought by the Secretary of State in Council. In respect of the use of water, the effect of the saving in section 2, clause (*a*), would be that no prescriptive right acquired under the Bill would derogate from any right of the Government to regulate the collection, retention and distribution of the water of rivers, streams and public irrigation-channels. This was in accordance with Act VIII of 1873, section 32, clause (*f*), and the advice of Mr. Justice Innes and Mr. Justice Field. In a country like India, the welfare of which was so dependent on a proper distribution of water, the power of the Government to control rivers and streams serviceable for irrigation should remain, as far as possible, unaffected.

Lastly, the Committee had, for obvious reasons, declared that the rule as to the extinction of an easement by a permanent change in the dominant heritage should not apply to an easement of support.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR of Bengal moved that the following amendments be made in the same Bill, namely:—

(1.) That in section one, the words "in the first instance" and the words "and the Local Government may, from time to time

by notification in the official Gazette, extend it to any other part of British India" be omitted.

(2.) That for section two, clause (*c*), the following be substituted, namely :—

"Any right acquired, or arising out of a relation created before this Act comes into force."

(3.) That in section three, the words "for the time being" be omitted.

He said that these amendments had been accepted by the Government, and that therefore he need not enter into any detailed discussion of the reasons which led to his moving them. They simply related to the question, which had been raised by the Hon'ble Durgá Charan Láhá in the discussion on the previous Bill, as to the extension of the scope of Bills of this sort by an executive order instead of by an Act of the Legislative Council. The practical result of these amendments was that the Bill would only extend to the Provinces which had accepted the provisions of it, and that the other Provinces which had rejected them would remain outside the scope of the Bill, unless at some future time its principles were extended to them by a regular legislative enactment.

The Motion was put and agreed to.

The Hon'ble MR. STOKES moved that, in section one, line thirteen, of the same Bill, for the word "March," the word "July," be substituted. He said that the object was to give time for making careful translations of the Bill into the various vernaculars of the Provinces to which it would apply, and for gaining the necessary familiarity with the provisions of the law.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill, as amended, be passed. He said this Bill attempted to state clearly and compactly the rules relating to easements, that is to say, speaking untechnically, the rights which a man had or might have over one piece of land by reason of his ownership of another. As to these rights the present statutory law was silent, except so far as regarded the acquisition of easements by long and continued possession (Act XV of 1877, s. 26), the limitation of suits for disturbing them (Act XV of 1877, schedule II, Nos. 37, 38, 120), and the granting of injunctions to prevent such disturbance (Act I of 1877, ss. 54, 55); and three of our most experienced Judges—Sir Michael Westropp, Mr. Justice (now Sir Louis) Jackson, and

Mr. Justice Innes—had expressed their opinion that it was desirable to codify the law on the subject, which was now (to quote the Chief Justice of Bombay) "for the most part to be found only in treatises and reports practically inaccessible to a large proportion of the legal profession in the Mufassal and to the Subordinate Judges." There was much litigation in the case of urban easements and one of the Judges of the Panjáb Chief Court asserted that this was largely due to the fact that neither the people themselves, nor the majority of the Courts, understood the principles upon which such disputes should be determined. The Bill was mainly based on the law of England, which, being just, equitable and almost free from local peculiarities, had, in many reported cases, been held to regulate the subject in this country; but a few deviations had been made from that law where it did not seem adapted to the local requirements of India. For instance, an easement to restrain interference with privacy, being founded on the oriental custom of secluding females, was recognised by the Bill, and, where the right to a free passage of air was disturbed, the Bill allowed a suit for compensation if the disturbance interfered materially with the physical comfort of the plaintiff, although it was not injurious to his health. The English rule on this subject, however well-suited it might be to a northern country, was certainly not adapted to India. Rules as to some matters, such as negative prescription, which had not hitherto come under the cognizance of the English and Indian Courts, had been adapted from the writings of modern jurists.

The Bill would, in the first instance at all events, apply only to the Presidency of Madras and the Chief Commissionerships of the Central Provinces and Coorg. But, as Sir Henry Maine said in a letter which MR. STOKES had quoted at the meeting of this Council on the 15th June last, the law would be on the Indian Statute-book, and serve as a magazine of rules to Courts and lawyers everywhere in India.

The Bill was said to be over-technical and obscure. But he had reason to believe that the persons for whom it was primarily intended, namely, the Judges and practitioners in the Mufassal, would have no difficulty in understanding it, especially as the technical terms (terms which it was absolutely necessary to use) were all explained at the beginning of the Bill and in sections 13, 17 and 24. At all events, it would be found both more comprehensible and more accessible than the treatises by Gale and Goddard and the English and Indian Law Reports, to which the learned Chief Justice of Bombay had referred.

It was said, again, that the Bill was not wanted. He had already addressed the Council at such length on this Bill that on this point he would confine

himself to quoting a recent minute of Mr. Justice Field, whom they all knew to be one of the most experienced and able judges on the Indian Bench, and to whom he (MR. STOKES), in common with his predecessors Sir Arthur Hobhouse and Sir Henry Maine, was deeply indebted for the copious and valuable criticism which he had furnished on almost every measure of importance brought before this Council during the last fifteen years. Mr. Justice Field expressed himself as follows :—

"Doubts had been expressed as to whether a measure like this Bill is at present demanded by the requirements of this country. I have on many previous occasions expressed my own opinion that legislation in India ought not to anticipate future requirements, the nature and measure of which must in the present be uncertain; and that the real test of the advisability or utility of any proposed legislative measure is whether it is demanded by the actual present requirements of the country. If there is a considerable amount of actual present litigation to which any proposed measure will be immediately applicable, and for dealing with which it will supply a ready and useful body of rules, it appears to me that this is a strong fact to show that such legislation is demanded by the requirements of the progress of the country. Applying this test to the Easements Bill, I think that it is a measure which may well be passed into law. As the result of my own personal experience, I have had before me within the last six months cases which directly involved the following easements :—

"(1) Rights of way for foot passengers.

"(2) Right of way for boats.

"(3) Right of way for carts.

"(4) An easement of necessity.

"(5) *Destination du père de famille.*"

By this the learned Judge meant easements arising from the arrangements which the proprietor of several heritages had made for their respective use before they became the property of different owners. The matter was dealt with by section 13 of the Bill, clauses (*b*) and (*d*). Mr. Field proceeded thus :—

"(6) *Flumen,* or the right of discharging water in a continuous stream upon adjoining premises.

"(7) Right of allowing water to drop from the eaves of the dominant tenement upon the servient tenement (*stillicidium*).

"(8) *Jus projiciendi,* or right to project a roof over the boundary-line of a neighbour's land

"Turning to the published reports of the last twenty years, we find cases connected with easements in every Presidency, and in every Court, from the Munsif's Court in India up to the Judicial Committee of the Privy Council. For the assistance of any who may desire to

test the value of this argument, I give a few instances which may be verified by referring to the reports. The reference will be found most interesting:

Mr. Field then referred to the reports of over seventy Indian cases relating to easements, which might be tabulated as follows:—

Right of way, 34 cases.

Right to water, 8 cases.

Right to stop or obstruct the natural flow of water, 7 cases.

Fall of water from roof of house, 2 cases.

Light and air, 9 cases.

Profits *à prendre*, 2 cases.

Other cases connected with easements, 11 cases.

If the Council remembered that the number of reported cases on a given subject was only a small fraction of the number of unreported cases on that subject, MR. STOKES thought they would agree with him that Mr. Justice Field had made out his contention that there was a considerable amount of litigation to which the Bill would be immediately applicable.

The Hon'ble SAYYAD AHMAD KHÁN said:—"My Lord, as I was one of the members of the Select Committee to which this Bill was referred, I do not wish to say anything in regard to the details of the rules contained in the various sections for I concur in them completely. But I am anxious not to let this opportunity pass without making a few observations on the general scope of the Bill.

"My Lord, I cannot help feeling regret that the proposed law contained in the Bill will extend, in the first instance, only to the Presidency of Madras, the Central Provinces and Coorg. This limitation of the territorial application of the Bill has been made in deference to the views of the Local Governments, who did not wish the extension of the Bill to the territories administered by them. If I were a native of those parts of India to which this Bill will be applicable as soon as it becomes law, I should not have considered it incumbent upon me to express my regret in regard to the limited application of this Bill. But, my Lord, I belong to one of those parts of India to which the proposed law is not to be applied in the first instance. Hence I regard it as my duty to represent to the legislature the feelings of regret with which this circumstance will be regarded by the people of my part of the country. The Bill, as it now stands, systematically formulates those rules of law which govern the decision of disputes relating to easements. Those rules are such as our Courts are even now, irrespective of this Bill, in the habit of administering; and I think I may

safely say that there is no rule of any consequence contained in the Bill which has not already been adopted by Courts of Justice in India and England. This Bill, so far as I can see, does not aim at inventing new rules. Its object is to make the law as to easements certain and capable of being ascertained by those who are under the necessity of settling, either privately or by litigation, disputes in regard to easements, and by the Courts who are called upon to decide those disputes. If it could be said that the rights of easements are limited to isolated areas of India—if it could be said that disputes as to easements arise only in those territories to which the proposed law is to extend in the first instance, I could fully have understood the principle of extending the proposed law only to such territories. But, my Lord, the right of easement is a right as old as the day when the human race, first emerging from barbarism, adopted the custom of living together in towns, of living as each other's neighbours, of respecting each other's rights. The right of easement is the necessary consequence of the right of ownership of immoveable property; and, as soon as mankind arrived at the determination that individuals were to be allowed exclusive ownership of property, the very next step was concurrence in the equitable principle, that the good of the public lay in enjoying one's property so as not to disturb the enjoyment by the neighbour of his own property. And this salutary principle appears to me to be the original foundation on which easements are based.

"My Lord, I speak thus almost in platitudes, because I have often heard and read that this Bill is an unnecessary measure, that it is too advanced for the present condition of life in India. My Lord, I trust I shall be excused if I speak with some emphasis in vindicating my countrymen from the implied charge of not having advanced beyond that elementary stage of human progress when rights to easements either do not exist, or definite rules in regard to them are not necessary. And if it is true that easements do exist in any part of the country; if it is true that suits relating to them do come before our tribunals; if it is true that Courts of justice are obliged to decide them; then, my Lord, I maintain that the existence of an ascertained law, such as is proposed in this Bill, is a necessity, and that the regret which I express at the limited territorial extension of this Bill is founded on more tangible grounds than mere sentiment. I am, however, happy that there is nothing in the form of the Bill which makes it either a special or a local law, and I regard with great satisfaction the power given by the first section of the Bill to Local Governments to extend the proposed Act to the territories administered by them at any time when they think fit. In the cause of justice, and on behalf of the unfortunate litigants who have to deal with easements, and are now living under an unascertained and unascertainable law, I sincerely

hope that it will not be long before the Local Governments, who are at present unwilling to adopt the proposed law, will deem it fit to accept its principles, and will extend it to the territories administered by them.

"My Lord, though I have expressed regret at the fact that this Bill will not apply to the whole of British India as soon as it becomes law, I fully appreciate the expediency of not enforcing a legislative measure of this kind against the wishes of the distinguished statesmen who are at the head of our Local Governments. Their views on such matters are naturally entitled to the greatest respect. But, my Lord, even if the extension of this Bill is delayed, its practical utility will be great as soon as it becomes law. For I feel sure that the intrinsic merits of this Bill will recommend themselves to the minds of our Judges, and they will consult the principles of the Bill to help their own judgments. I am aware of no text-book which explains the law as to easements so systematically and clearly as the Bill now before us. And, since the principles it contains are practically the same as those now administered by the Courts; since treatises on the law of easements do not exist in the vernaculars of India; since many of our native judicial officers are not acquainted with the English language; since English text-books on easements are either not accessible to the vast majority of our Mufassal Judges or are not easily intelligible to them, I sincerely hope that the Bill, as soon as it becomes law, will be freely studied by the public, by advocates, and by judicial officers. The fact appears to me obvious that, so long as rights exist, there must be disputes about them; so as long there are disputes there must be ascertained rules to decide them; and if the legislature declines to define those rules, the judges will have to decide them according to their own individual notions of justice under given sets of facts.

"My Lord, I sincerely trust I shall not be understood to be in the smallest degree wanting in due respect to the Local Governments who are unwilling to adopt the proposed law when I say that the public and the Courts will, out of necessity and for the sake of convenience, resort to the rules of this Bill even before they are commanded to obey its principles as statutory law.

"My Lord, I have said enough to indicate distinctly the direction in which my views and sympathies lie with reference to this Bill. But I am anxious to avoid even the suspicion of being regarded as a blind enthusiast or a theoretical advocate of the policy of codification. I am not here to advocate any given policy of legislation. I am here to represent the feelings and opinions of my countrymen, and to place before the legislature such matters as require its attention and constitute the needs of the native population.

And it is in my capacity as such that I venture to say that the present Bill is a measure of which the country has long stood in need. It has sometimes been said that easements in an agricultural country like India are not matters of sufficient importance or deserve the attention of the legislature; that to frame an Act in regard to them is to encumber the Indian Statute-book unnecessarily. Now, my Lord, with all due respect to those who advance such opinions, I feel it to be my duty to say that such views are not countenanced by the Native community. My own experience leads me to think that, in cities and towns, easements are regarded as rights of great pecuniary value, and litigation often arises in regard to them. In the rural parts of the country, the right to take fish or water from lakes and tanks often becomes the subject of litigation, and the final decision materially affects the value of the property in regard to which the easements are claimed. Nor are disputes in regard to easements confined to the most advanced parts of India. Probably they are more frequent in those parts of India which have come under British dominion comparatively lately. It is chiefly in such territories that rights are still unsettled, for they have not been adjudicated upon. My humble opinion, therefore, is that the provisions of this Bill could, with great advantage, be extended even to the most backward parts of the empire.

"My Lord, I have a few more words to say in regard to this Bill from a Muhammadan point of view. The subject of easements is no novelty to the Musalmán mind. Easements are familiar to them, and their law-books are full of rules in regard to what are termed by Muhammadan lawyers as 'neighbours' rights.' So that, at least so far as my co-religionists are concerned, I have no doubt the Bill will find favour with them.

"Again, my Lord, if it is necessary to point to any circumstance in favour of the Bill besides its intrinsic merits, I may be permitted to say that we have the best possible guarantee for the soundness and expediency of the principles contained in the Bill. Besides the long legislative experience of the hon'ble the Law Member, the Bill has had exceptional advantages in having gone through the hands of the Hon'ble Sir Charles Turner, Chief Justice of Madras, to whose distinguished abilities as a lawyer and a Judge are added a long judicial experience in my country, and exceptional knowledge of the feelings and needs of the Native population, in whose welfare he has always taken a deep personal interest. The Bill has also had the benefit of the lucidity of intellect and thoroughness of judicial acumen which have made the Hon'ble Mr. Justice West, of the Bombay High Court, one of our most eminent Civilian Judges. The Bill, as it now stands, is in substance the same as that settled by the Law Commission of 1879, of which the hon'ble gentlemen I have named were members. My Lord, I see nothing in the Bill to require any further amendment, and I therefore hope it will pass into law."

The Hon'ble MR. EVANS said that, as far as he was aware, whenever any disputes did arise at present, the Courts had to decide these disputes on principles derived from reported English cases. Of course, there were customary rights in this country which were not usual in England, but that was not the difficulty. The difficulty was to know what gave a man a right to an easement so as to enable him to enforce it against a neighbour, and how he might acquire that right and how he could enforce it. All these points were decided by the High Courts according to the English law, and therefore it was that, in any attempt at codifying the existing law, the reproduction of the rules of English law, which had been complained of, were inevitable. What had been complained of was not the introduction of any new law, but the declaration of the law as it was at present. In regard to the nature of the Bill, he had no doubt it bristled with technical and curious expressions, but it was very difficult to draw up a Bill of this kind without these expressions; they were all explained in the Bill, and anybody who desired to do so could find out the meaning of them from the Bill. It had been said that nobody knew what an easement meant in India. Easements had been already legislated for in Act XV of 1877, the Limitation Act, section 26 of which referred to easements of various kinds. As there had already been legislation to some extent on the subject, the question was, whether it was desirable to codify the rules which existed at present, and whether the attempt had been successful. As the objections of the Local Governments who thought the attempt premature would, after the amendment carried, have to be discussed on some future occasion, he would not take up the time of the Council with any further observations. He would only say that the changes introduced into the existing law appeared to be slight.

The Hon'ble MR. CROSTHWAITE said that the only difficulty which he felt in supporting this Bill arose from the limits put upon the area of its operation by the second clause of the first section.

Every one, even superficially acquainted with the conditions of the various provinces of India, must feel that the proposal to apply to the Central Provinces and Coorg a law which was held to be in advance of the requirements of Bengal Bombay, the North-Western Provinces and Panjáb savoured surely of the in, consistent and the inexplicable.

Now, he had had no concern in the framing of this Bill, or, beyond mere acquiescence, in bringing the Central Provinces within its operation. It was Mr. Charles Grant, as Judicial Commissioner, who criticised the Bill in a favourable sense, and it was Mr. Charles Grant, as Officiating Chief Commissioner, who, in 1879, approved of the draft as then amended, and expressed his

readiness to extend it to the Central Provinces, and it was Mr. J. H. Morris, the Chief Commissioner of the Central Provinces, who, in 1881, finally approved of the Bill.

The Council would, he thought, admit that it would be difficult in any province to bring forward two officers who had had better opportunities of learning the condition and wants of the people of their province, and had greater abilities to make use of those opportunities, than the two gentlemen he had just named.

The present Chief Commissioner had held office, MR. CROSTHWAITE thought, for twelve years, and before that period, as Settlement-commissioner, had guided the settlement-operations from beginning to end. Mr. Charles Grant had served as Settlement-officer, as Secretary, as Commissioner, as Judicial Commissioner, and for a time as Chief Commissioner. He felt therefore that, so far as authority and experience could justify a measure, the extension of this law to the Central Provinces was well justified.

The burden of the inconsistency involved, as he was compelled to admit, in the first section of the Bill, must be borne by those administrations who had excluded themselves from the law. He left it to them to bear and to explain.

The papers connected with this Bill were worth reading by any one who was interested in Indian politics. There were two motives which seemed to him to have acted on the minds of those who had been the most earnest in their opposition: the one was an apprehension of mischief arising from an imperfect appreciation of the bearing of the law, the other was an exaggerated notion of the litigious character of the people, and the belief that every enactment of substantive law must increase litigation, and that all litigation was bad.

It was a common charge to bring against the people of India that they were unduly litigious. Without denying that they might be more ready to take their quarrels and disputes into court than some less excitable races, he ventured to think that the charge was not altogether true. He ventured to think that it was due in a great measure to the fact that most of us in this country were engaged in magisterial and judicial work, and that many of us had too much to do. A man who had to sit all day and every day on the seat of justice, and who could hardly overtake his work, was apt to think that, because he was always trying cases, the people were always coming into court.

Hence they saw an extraordinary picture drawn of the people of India. The people were described as thirsting for litigation. Society was divided into

two classes. On the one hand were the needy practitioners touting for clients and hunting for their prey; on the other, the foolish and quarrelsome public, who, whether they had wrongs or whether they had not, would rush into court. The courts of justice were opened, as it were, under protest. One man said "Keep the court-fees high." Another said "Whatever you do, don't let the people know their rights." A third said "Stop all appeals, or, if you cannot do that, deter men from appealing by the threat of an enhanced punishment." To show the Council that he was not exaggerating this sentiment, he would quote the opinions of some officers holding high positions and who had enjoyed ample experience. He need not name the officers, but if any hon'ble member wished to verify his quotations he would assist him. The first quotation he had on his list was as follows:—

"Litigation of a nature hitherto unknown may be expected to begin in the large towns where there are unscrupulous and needy vakíls, and thence extend to rural villages."

That was a terrible threat.

Another gentleman wrote—

"The Bill will suggest the assertion by suit of legal rights which are now dealt with by village-custom, and will therefore foster litigation."

MR. CROSTHWAITE did not quite follow the writer's meaning; but apparently he intended to say that there would be a remedy now at law, where there was formerly no relief except what might be obtained by village-custom.

A third officer said—

"It is useless to assert that the knowledge of people's rights does not provoke litigation with the practical experience we have had of the increase of litigation in past years."

Now, mark the argument underlying these sentences. The writers did not say the people had no such rights. They evidently admitted and knew that the rights were there and were frequently trampled on. But they were afraid that, if people were made acquainted with them, and were given the means of asserting them, they would avail themselves of that knowledge, and of those means.

Such an argument needed no answer; it required only to be stated. As the Law Commissioners well said (*Report of Indian Law Commissioners, p. 45*):—

"This objection, if valid, is an objection to all positive law declaring rights, and in a less degree to every decision of a Court of justice which enunciates a general rule respecting rights."

There was, however, another side of the picture. For example, Mr. Srí-kishen, who was an Extra Assistant Commissioner in the Birárs, and was described by Sir Richard Meade, who disapproved of the Bill, as an officer of superior intelligence, wrote—

"Legislation on this subject was extremely necessary. The absence of such a law kept many ignorant of the right of easements, and they for want of knowledge suffered rather than applied for remedies."

MR. CROSTHWAITE feared there was much truth in this remark. Those who had served as Settlement-officers in the North-West, and especially in Rohilkhand, would, he thought, support him in saying that the peasantry generally had been deprived of their ancient rights of pasturage, and the like, by the inability of the Courts to understand how one man could possess a right of any sort over land which belonged to another. He believed the Bill would do material service in the Central Provinces in enabling the raiyats to maintain themselves in the enjoyment of those grazing and forest rights, which the Government had endeavoured to preserve to them, but of which a few of the more grasping landowners were seeking to deprive them. It is not that the raiyats themselves would read the Bill or even hear of it. But the Judges would read it, and would understand how to deal with cases that arose and which otherwise they might through ignorance reject. The District-officers would read it, and, siding as they always did with the weak and the oppressed, they would tell the people how to get relief. As Mr. Elsmie, Commissioner of Lahore, had well said "the Bill, if it did nothing else, would teach the Judges."

As to the outcry which had been raised regarding the use of abstruse legal terms in the Bill and the difficulty there would be in understanding it, it was needless to say much. The term "easement," to which some objected, had been on the Statute-book for the last ten years, and must be familiar to the Courts and practitioners. Those terrible terms "dominant tenement" and "servient tenement" had been for years, and were now continually, used by the Courts in all the provinces. And as to the charge which was brought against the Bill, that it was a mere statement of English law, so far as it was true, it was a meaningless accusation. It was the law hitherto administered, and which would continue to be administered, by the High Court so long as English lawyers were allowed to sit on the bench.

His Excellency THE PRESIDENT said:—"I should like to say a few words, not upon the merits of this particular Bill, because I have nothing to add to what has fallen from those who have preceded me, and whose authority on the mere legal aspect of the question is much greater than any which I possess. I merely

wish to say, in respect to the observations made by the Hon'ble Mr. Crosthwaite, that I do not feel the objections which he indicated in the commencement of his speech to the passing of a Bill of this kind for a limited area. I think that in a country so large as India that is a very judicious course to pursue, because different parts of the country are in different conditions of progress, and might require to be dealt with in a very different manner by legislation; and therefore I cannot say that is an objection which weighs with me that a Bill of this kind should be passed in connection only with those Local Governments who desire to have the advantage of it. What I am anxious to speak about is not the subject of this particular Bill, but the general question of which this measure is a part—the question of what is known by the name of 'codification.' My friend Sayyad Ahmad, on a late occasion, addressed the Council on that subject, and expressed his views in favour of the extension of codification in India, and his belief in the advantages it was calculated to confer on the people of the country. This is the last of a certain number of measures which were introduced into this Council a few years ago by the Government of India, and at that time the subject of codification was discussed in some speeches which were then made; and I hope, therefore, that my colleagues will pardon me if I now occupy some little time with remarks upon the general question involved in all these measures.

"I am not about to argue on the general merits of codification. The question of codification has now arrived at a stage at which most questions in course of time arrive, in which those who are opposed to any principle, finding that the arguments against them are strong and rest upon very high authority, no longer profess themselves enemies of that principle. You no longer hear, or very rarely hear, people in public argument, whatever they may think in private, say that they are opposed to codification in general. On the contrary, what they say is, that codification is an excellent thing; that the arguments of Bentham, Austin, Field and others are quite conclusive, and that they entirely agree in the propriety of codification, but that they are altogether opposed to this particular measure. It is against the measure, not against the principle of codification, that their arguments are directed. All persons who have had experience of legislative bodies are quite aware of that phase of public questions, when it is no longer possible to contest the general principle, and when the battle is confined to a war of posts and of details. This question has been so thoroughly threshed out by the eminent men I have just named—and I would add by Sir H. Maine, who is well worthy to be placed by their side—that I am only anxious now to say a few words as to the applicability of this principle to India. It has been often said that this principle is very good in itself and very applicable to Europe or to America, or to countries in which western civilization

exists and dominates; but that it is not applicable to the circumstances of India, because the natives of this country are a peculiarly conservative people; that they have their own customs, which are well known and recognized; and that the best possible course is to leave these customs alone, and allow them to operate in accordance with the traditions which have come down to them from a distant period of time. I confess that that argument has pressed a great deal at times on my own mind, and if the state of things in India were really such as that argument supposes it to be, then it may fairly be said that it is premature to attempt to introduce measures laying down general principles of written law upon varied and important branches of legislation. But I venture to think that the statement to which I have alluded is founded upon a misapprehension of what is the real condition of affairs in this country at the present time. I will not rest my opinion on my own authority. I have attended for a considerable number of years to Indian affairs, but I have been only a short time in this country, and I should be sorry to rest an opinion of that kind upon my own limited experience. But if the Council will pardon me, I will read a long quotation from a very great authority, Sir H. Maine, which appears to me to put the actual state of things with regard to the influence of English law in India upon the existing condition and circumstances of the customary laws of the country, in a light which has very much impressed me, and which I think is well worth the consideration of the Council when they are dealing with questions of this kind. I hope the Council will pardon the length of the quotation, because the views to which I desire to direct attention are much better expressed in it than it would be in my power to express them, and also because they are set forth by a gentleman whose authority is much greater than any I can pretend to. The quotation is from a book very well known—Sir H. Maine's *Village Communities in the East and West*, and is as follows:—

"'You may, therefore, perhaps recall with some surprise the reason which I assigned in my first lecture for making haste to read the lessons which India furnishes to the juridical student. Indian usage, with other things Indian, was, I told you, passing away. The explanation is that you have to allow for an influence which I have merely referred to as yet, in connexion with the exceptional English Courts at Calcutta, Madras and Bombay. Over the interior of India it has only begun to make itself felt of late years, but its force is not yet nearly spent. This is the influence of English law; not, I mean, of the spirit which animates English lawyers and which is eminently conservative, but the contagion, so to speak, of the English system of law,—the effect which the body of rules constituting it produces by contact with native usage. Primitive customary law has a double peculiarity: it is extremely scanty in some departments; it is extremely prodigal of rules in others; but the departments in which rules are plentiful are exactly those which lose their importance as the movements of society become quicker and more various. The body of persons to whose memory the customs are

committed has probably always been a quasi-legislative as well as a quasi-judicial body, and has always added to the stock of usage by tacitly inventing new rules to apply to cases which are really new. When, however, the customary law has once been reduced to writing and recorded by the process which I have described, it does not supply express rules or principles in nearly sufficient number to settle the disputes occasioned by the increased activity of life and the multiplied wants which result from the peace and plenty due to British rule. The consequence is, wholesale and indiscriminate borrowing from the English law—the most copious system of express rules known to the world. The Judge reads English law-books; the young native lawyers read them; for law is the study into which the educated youth of the country are throwing themselves, and for which they may even be said to display something very like genius. You may ask, what authority have these borrowed rules in India? Technically, they have none whatever; yet, though they are taken (and not always correctly taken) from a law of entirely foreign origin, they are adopted as if they naturally commended themselves to the reason of mankind; and all that can be said of the process is, that it is another example of the influence, often felt in European legal history, which express written law invariably exercises on unwritten customary law when they are found side by side. For myself, I cannot say that I regard this transmutation of law as otherwise than lamentable. It is not a correction of native usage where it is unwholesome. It allows that usage to stand, and confirms it rather than otherwise; but it fills up its interstices with unamalgamated masses of foreign law.'

"Well, now, I am bound to say that I was extremely struck with that passage the first time I read it after I came to India, and that it has made a considerable impression on my mind ever since, and that I have had a good deal of evidence since I read it to show the accuracy of the statements contained in it. It appears to me that it contains two statements. In the first place, that there is in Indian customary law, and in the customary law of all countries, in its original condition, an element of progress, namely, that it was applied by those bodies which Sir H. Maine described as *quasi*-legislative as well as *quasi*-judicial, and that there was then a means, while preserving the customary law, of applying to the changing circumstances of the time a change in the interpretation of the principles of that law, and even of extending and altering them sensibly. But, of course, the moment you crystallize—if I may say so—these customs by the operation of a series of legal decisions, which when they have once been given become fixed, that element of progress and modification to meet changing circumstances is destroyed. On the other hand, Sir Henry Maine points out that, in that large domain of law in which primitive customs give no light and provide no remedy suitable to the circumstances of advancing civilization, the practice of our Courts necessarily and inevitably introduces and fills up, as he says, the large and wide interstices of that law by an unamalgamated mass of English law. Therefore, we are not in the position, as it seems to me, of being able to maintain unchanged, without the operation of English law upon them, the ancient primitive and traditionary customs of the country.

There is a great change inevitably going on by the operation of English law and English Courts—a change which is steady, and at the same time almost unconscious; and the question which we have to deal with is, what is the best mode of meeting a state of things of that kind—whether it is better to leave that change to go on by the introduction of the principles of English law, gathered here and there as the case may arise; or whether it is better from time to time to lay down in carefully-prepared and well-considered statutes those principles which appear most nearly to combine the general principles of native law with the best principles of modern jurisprudence? I am bound to say that I am very much impressed by the strength and force of Sir Henry Maine's argument in the passage which I have quoted, and I believe that it distinctly proves that it is not correct to suppose that there is no change whatever going on by the ordinary operation of English law in this country in native custom, and that it is far better to legislate from time to time with a careful regard of the character and nature of that custom, as far as it is now operative and alive, and to fill up the interstices which exist in it, not with what might be called the accidental importation of portions of English law to meet particular cases, but by deliberate and well-considered legislation. That is the principal reason which has led me to think that the general course of legislation which has been followed now by the Government of India for a long series of years, in the preparation of measures of this kind, is a course suitable to the existing circumstances of this country, and which may be pursued from time to time with the greatest advantage, and without which you will find what is valuable and living in native customs passing away more rapidly, though possibly more insensibly, than would be the case under the operation of any distinct legislation on which public opinion could be brought to bear and which could be discussed in this Legislative Council.

"Now, there is, of course, I know very well, in the minds of a good many persons, an alternative to such a system as that of which I have been venturing to express my approval, and that is the system of practically leaving judicial officers throughout the country to act according to their own unfettered judgment in these matters. And I think that the preference for the system, which was adopted in many parts of India in former days with great advantage, lies very much at the root of some of the objections felt by some persons to what is called codification. On that point I should like again to refer to the authority of Sir Henry Maine, and, in doing so, I shall read from a letter of his which was quoted by my hon'ble friend Mr. Stokes on a previous occasion in connection with this very Bill in its earlier stage. The name of

the writer was not then attached to it, but I have Mr. Stokes' authority for now mentioning it. Sir Henry Maine writes:—

"'The true alternative to codification is the course hinted at by a certain school of administrative officials, that of having no law at all, but of giving the fullest discretionary powers to functionaries of every class. I do not at all deny that a great deal may be said for it. If the history of India could be begun again, and if Parliament were not disposed to do what it did in the old Statutes, and to force law upon us by the Courts it established, I am not at all sure that a wise Indian legislator would not go in for universal discretion. But the very Indian officials who denounce law do not seriously believe that it can be got rid of; and the only effect of their objections is to prevent its being improved in the only rational way. Great undigested lumps of English law are finding their way into the law administered by the Courts to the people. I doubt whether in India there are a dozen copies of some of the books from which this law is taken, and these are, of course, written in a language unintelligible to the bulk of the natives and to the great mass of Englishmen.'

"I do not, I confess, agree myself with the opinion here expressed by Sir Henry Maine, which is more a political than a legal opinion, when he says that he is not at all sure that a wise Indian legislator would not go in for universal discretion. That is, I confess, not my view of what is desirable in India in its present condition. I entirely admit that there have been men in past times, able rulers no doubt, and who have been able to administer to the people a law extremely acceptable to them, because they possessed those rare qualities of sympathy with the natives, and that intimate knowledge of their feelings, traditions and habits, which enabled them to discharge duties of so much difficulty in a manner acceptable to those whom they governed. But such men are always rare. You cannot supply the ranks of our judicial service in any number with men possessing these rare qualifications. I have the very highest possible opinion of the ability of the Indian Civil Service, but of course it is out of the question to find many men possessing those peculiar qualifications which have marked the career of some of the most distinguished members of that service in times past; and, even if we could find them, I feel bound to say that it would, in my judgment, still be a distinct advantage to the country that we should pass out of that patriarchial stage so far as concerns the more advanced and civilized parts of the country. Doubtless there are many tribes and races in a very backward —some of them almost in a savage—condition, who must be governed on principles different from those which are applicable to the great mass of the people of India; but, speaking of the country in general, I say that it is a good thing you should pass away from that condition of affairs in which, instead of having settled law, the decision of judicial cases was left to the arbitrary and unfettered judgment of the particular individuals

who tried them. I do not use the term arbitrary in a disparaging sense, but I hold that it is a clear benefit to the people of this country that they should advance from the stage of arbitrary discretion to one of written and settled law. Sir Henry Maine, in the book from which I have just now been quoting, says that the fact that natives of India are becoming more acquainted with their rights as individuals is a source of serious difficulty to the Government of this country. There may, of course, be difficulties in such a state of advance from one stage of civilization to another. You cannot pass from one stage of civilization to another in any country, or at any time, without peculiar difficulties; but whatever may be the nature of those difficulties, I say distinctly that it is well for the people themselves that they should acquire an increased knowledge of their rights; that they should be more and more ready to enforce those rights, and should be able to appeal to the law and to distinct Statutes. Under any circumstances, I should think it a great misfortune if we were to fall back upon that patriarchial system which has been so largely abandoned in most parts of India from time to time.

"Again, I think that, when we consider that a very large number of our judicial officers in this country are necessarily men who have had none of that special legal training which barristers at home possess, and who consequently perhaps are not so well up in law-books and cases as barrister-judges might be, it seems to me that that in itself constitutes a strong argument for the embodiment in distinct and clear Statutes of the principles and rules with which officers of that kind have to deal.

"I have myself been a judicial officer at home, as a magistrate and justice of the peace, with no judicial training, and I know perfectly well that I should be entirely at sea if, having to decide cases when sitting in such a capacity, instead of having a distinct law to refer to, I had to search through a vast mass of cases for guidance. The result would be that I should be entirely in the hands of the magistrate's clerk, from whom I should have to take my law. I cannot but think, therefore, that it must be a great advantage to the judicial officers of this country to have the rules by which they are to be guided embodied in clear and definite language in Statutes framed with the utmost care and deliberation.

"I must beg pardon of my colleagues for having detained them so long. But I now come to the last point upon which I have anything to say, and that is, to the charge sometimes made against the Acts passed by the Government of India—the charge of what is called technicality. The drafting of Acts of Parliament is, in fact, a science, and the language of all science is necessarily techni-

cal. It is impossible to avoid it. What is called the absence of technicality is in reality the absence of precision; it is impossible to draw up laws with care and accuracy without the employment of technical language, and that system of definition which has been introduced of late years both in England and here, with, as it seems to me, such great advantage to the precision and intelligibility of our Statutes. That objection is one which I am very well used to at home, where I have had a pretty long administrative and political experience of the preparation of Acts of Parliament, and with their discussion in both Houses; and I know very well how frequently that objection to what is called technicality is raised, and I know also how often it is listened to in the House of Commons or in the House of Lords, with the result that, when the technicality to which objection is taken is avoided, the Act becomes in many respects altogether unintelligible, and has to be amended in a very few years, just because language has been imported into it during the course of debate by gentlemen who object to technical language, who bring in what they call common sense, and which really turns out afterwards to be a puzzle to the Judges sitting in Westminister Hall. I therefore myself do not see the force of that objection to technicality. I have had long experience of questions of this kind, have had intimate personal knowledge of some of the ablest draftsmen in England, and I can truly say that I have never had to do with any one who surpassed my learned friend, the Legal Member of the Governor General's Council, in zeal, in wide knowledge, in the accuracy and precision of language with which his Bills are drawn. I, therefore, must say that I think the charge of want of clearness, of accuracy, is one which, as far as my experience goes, can be brought less against the Bills drawn by my hon'ble and learned friend than against many of those which have been drawn by men of great distinction at home. As Sir Richard Garth truly says in the letter which I read earlier in our proceedings, men will always differ about questions of wording and drafting, but all experience goes to show that, if you have got a really competent draftsman on whom you can place real reliance, the best thing to do is to trust him with regard to drafting, whatever opinion you may entertain with regard to political questions, about which the Executive Government is bound to exercise the fullest discretion, and which are of course matters for discussion in this Legislative Council.

"I must again beg pardon for detaining the Council so long, but I was anxious on this occasion, when the last of the measures of codification introduced some time ago was about to pass, to take the opportunity of expressing my general views on the subject. I think I may say that I am always accustomed to say plainly what I think on any subject, but I do not know how far my opinions may be acceptable to the members of this Council; but they

are founded upon the honest conviction which I entertain that these measures will tend to promote the best interests of the people of this country."

The Motion was put and agreed to.

INDIAN RAILWAY ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also introduced the Bill to amend the Indian Railway Act, 1879, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Major Baring, Messrs. Inglis and Reynolds and the Mover.

The Hon'ble MAJOR BARING said that he wished to say one or two words on this Bill. The principle of the Bill was quite unobjectionable. It provided that the Government should have power from time to time to inspect any line of Railway with a view of seeing that it was safe for the conveyance of goods and passengers. He thought, however, it was extremely desirable, in the case of private companies, and more especially of private companies which were unaided by the Government, that the degree of Government interference should be strictly limited. The Government should not interfere except in so far as was absolutely necessary for the public safety. He did not say that the Bill at all erred in the sense indicated, but he wished to draw attention to the point, and to express a hope that the Bill would receive careful attention from the point of view he had submitted.

His Excellency THE PRESIDENT observed that he entirely concurred with the remarks of his hon'ble colleague; but he thought that, while it was the duty of the Government to take all necessary precautions for the safety of the public, it was at the same time desirable that it should interfere as little as possible in the management of the Railways.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

POWERS-OF-ATTORNEY BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to amend the law relating to Powers-of-Attorney.

PRISONERS' ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to amend the Prisoners' Act, 1871.

INDIAN COMPANIES BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill for the incorporation, regulation and winding-up of Trading Companies and other Associations.

HINDÚ WILLS BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Crosthwaite be added to the Select Committee on the Bill to declare the extent of the testamentary powers of Hindús and Buddhists, and to regulate their Wills.

The Motion was put and agreed to.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE then moved that the Hon'ble Mr. Reynolds be added to the Select Committee on the Bill to consolidate and amend the law relating to agricultural tenancies in the Central Provinces.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 23rd February, 1882.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 16th February, 1882.

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