ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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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 Simla on Thursday, the 14th June 1877.

PRESENT:

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

BRITISH BURMA EMBANKMENTS BILL.

Colonel the Hon'ble SIR ANDREW CLARKE moved that the Bill to provide for the execution of works urgently required in connection with embankments in British Burma be referred back to the Select Committee. He explained that, in consequence of a communication received from the Lieutenant-Governor of the Panjáb, who had acquired very valuable experience in dealing with a similar Bill for Northern India, he wished to delay the consideration of the Select Committee's Report for the present, and to make the motion above indicated.

The Motion was put and agreed to.

Colonel the Hon'ble SIR ANDREW CLARKE then moved that His Honour the Lieutenant-Governor of the Panjáb be added to the Select Committee on the Bill.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION ACT AMENDMENT BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT introduced the Bill to amend the Bombay Revenue Jurisdiction Act, 1876. He said:—"When I asked for leave to introduce the Bill to amend the Bombay Revenue Jurisdiction Act of 1876,

which I now lay before the Council, I said that the practical changes which the Bill would effect in the law, as it now stands, were very slight, and that I would explain on this occasion the precise nature of those changes.

"The Council are aware that the main object of the Act passed last year was to exclude from the jurisdiction of the Civil Courts, disputes connected with the amount, the incidence, the mode or the principles of the assessment and collection of the land-revenue in those districts in the Bombay Presidency commonly known as the Old Provinces, wherein such jurisdiction either was exercised, or was held to be capable of being exercised as the law then stood. Another, and on the whole less important, object of the Act was similarly to exempt from the jurisdiction of the Civil Courts claims connected with property appertaining to hereditary offices and also claims to hold land either wholly or partially free from assessment, and claims to receive payments charged on, or payable out of, the land-revenue. Some other matters were dealt with in the Act; but those to which I have alluded, are the only matters to which I need refer in connection with the Bill now before the Council.

"Now, as the Council are aware, the measure which eventually took the form of Act X of 1876, was under the consideration of this Council for a very considerable time. It was introduced in 1873 by my predecessor, Sir Barrow Ellis, at the instance of the Government of Bombay. The measure encountered a great deal of opposition in Bombay; and eventually the Government of Bombay, at whose instance it had been introduced, deprecated its being passed, and, in recommending that it should not be passed, they received the support of many authorities, some of those authorities being very high authorities in the Presidency. The Government of India gave the most careful and anxious consideration to all the arguments which were advanced, and to all the objections which were adduced against the passing of the Bill. They attached great weight to the observations which were made by the Local Government, by the Judges of the High Court, and in many of the memorials which were addressed to them; but after the fullest, gravest, and most anxious consideration, they came to the conclusion that, under all the circumstances and looking to the importance of the revenue interests involved, they would not be justified in abandoning a measure which would assimilate the law in that portion of the Bombay Presidency to which it referred, to the law as it stood in other parts of that Presidency, and as it stood, practically, in every other part of India. The Bill was subjected to very careful examination, and after having undergone some by no means unimportant alterations, it received the assent of Your Lordship's predecessor on the 28th March 1876.

"My Lord, it was not without the most anxious consideration that the Government of India came to the conclusion that in this matter the views of the Local Government, supported as they were by a large consensus of local public opinion, and by the views of authorities entitled to the highest respect, ought to be overruled. It is often said that the Government of India are too much addicted to overruling the views and opinions of the Local Governments, and interfering with matters which had better be left to the discretion and superior knowledge of the local authorities. Some years ago, and especially during the twenty or twenty-five years which elapsed after the passing of the East India Company's Charter of 1833, there may have been, and undoubtedly there was, more or less foundation for those allegations; but, for many years past, there has been a very great change in this respect; and speaking as one who has had an opportunity of studying this question from the two opposite points of view,—from the point of view of an official of one of the minor Presidencies, including during my service in that Presidency a close connection with its Government for a considerable number of years; and looking at it also from the point of view afforded to me more recently as a Member of this Government,—I think I am in a position to affirm that, with the rarest exceptions, the interference of the Government of India, whether it be in regard to questions of legislation or in regard to questions of executive administration, is confined to matters which are either essentially matters of principle, or are of such importance that it is the duty of the authority responsible for the safety of the Empire to deal with them. Now the questions dealt with in the Act of last year are questions of principle concerning that which is the most important branch of our revenues, and which it is, in my humble opinion, the essential duty of the authority responsible for the financial administration of the Empire to guard and protect; and it was the deliberate opinion of the Government of India, after giving, as I have said, the most careful consideration to the arguments advanced by the Government of Bombay, and to the remonstrances contained in the various memorials which were addressed to us, that in the Old Provinces of that Presidency the law relating to the assessment and collection of the land-revenue should no longer be allowed to remain as it then stood, but should be brought into conformity with the law and practice which existed in regard to such matters throughout the rest of India.

"Well, my Lord, the Act of 1876 was passed and transmitted in the usual course to the Secretary of State. By that authority the most essential provisions of the Act—those connected with the assessment of the land-revenue—were fully approved and pronounced to be valuable provisions which, in the then doubtful state of the law, had become absolutely necessary; but the Secretary of State took exception to those provisions which likewise exempted

from the jurisdiction of the Civil Courts objections to the proceedings of Revenue officers regarding claims to hold land, altogether, or in part, free from payment of land-revenue; to receive payments charged on, or payable out of, the land-revenue; and also claims relating to any property appertaining to any hereditary office. In objecting to these exemptions, which I may observe are in force throughout the rest of India, the Secretary of State adverted to the fact that for a long series of years a different law had prevailed in the Provinces in question, and that for this and other causes its abrogation might be distasteful to the population which had been accustomed to it, and whose pecuniary rights were deprived by the new law of a protection to which they had been habituated.

"Now, my Lord, it is not necessary, nor would it be proper, that I should offer any remarks on these observations and instructions of the Secretary of State. The Secretary of State has had the whole case before him, and this is his decision. He has accorded his full approval to the most important provisions of the Act; but on three points, two of which, as I shall show presently, are of comparatively trifling importance, he has directed the Government of India to amend the Act. These instructions, I submit, it is our plain duty to obey, and I have no doubt that this will be the view taken by my hon'ble colleagues.

"My Lord, I should, perhaps, apologise for having trespassed at so much length on the time of the Council with these preliminary observations; but I have thought it well to state as plainly as I could, how the case stands, and the circumstances under which this Bill is now presented to the Council. I will now endeavour to explain its few and brief provisions.

"The main provisions of the Act of 1876 which it is now proposed to amend, are contained in section 4, and the provisions which I propose to alter, are the first article of sub-section (*a*) and the first two articles of sub-section (*f*). The first article of sub-section (*a*) runs as follows:—

"'claims against Government relating to any property appertaining to the office of any "hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other "law for the time being in force, or of any other village-officer or servant.'

And the two first articles of sub-section (*f*) of the same section include:—

"'claims to hold land wholly or partially free from payment of land-revenue, or
"'to receive payments charged on, or payable out of, the land-revenue.'

"Now if honorable members will turn to the Bill, they will find the amendments which we propose contained in the first section under the heads (*a*), (*b*) and (*c*). They add to section 5, which I may call the saving section of the Act,

three clauses restoring to the Courts in the Older Provinces any jurisdiction which, but for the passing of the Act of last year, they would have exercised in the three descriptions of claims to which I have just referred. Now, the only amendment which, in my humble opinion, is of any real or practical importance is that contained in clause (*b*), which restores to the jurisdiction of the Civil Courts claims "to hold land wholly or partially free from payment of land-revenue." This jurisdiction was vested in the Civil Courts in the Old Provinces of Bombay up to the time of the passing of the Act of 1876, and had been so vested in those Courts—as the Secretary of State observes—for upwards of half a century. This jurisdiction will now be restored, and in this respect the Civil Courts in the Older Provinces of Bombay will again exercise a jurisdiction which is not exercised by the Courts in the other Provinces of Bombay or in other parts of India.

"The other two clauses, (*a*) and (*c*), of the Bill are far less important.

"In regard to clause (*a*), I may remark that very few suits can possibly lie for property of the nature of that referred to, which are not and were not barred by other laws in force when the Act of 1876 was passed, and which are still in force; but it has been thought that cases might possibly arise which are not so barred, and should cases that are not so barred arise, the Court will have jurisdiction.

"Then again with regard to clause (*c*), most of the claims referred to will be barred by the Pensions Act; but should it be otherwise, this clause will give jurisdiction to the Courts.

"It will thus be apparent to the Council that it is only on one point that the Bill makes any alteration of importance in the Act of 1876; and it may be doubted whether this alteration is really of very great or practical importance, for I understand that the number of claims to hold land wholly or partially free from the payment of land-revenue which can arise in the districts included in the Schedule appended to the Bill, is comparatively small. The Bill is so short and simple that I have not thought it necessary to propose that it be referred to a Select Committee. My intention is to move at an early meeting—after the Bill has been published, and there has been time to receive any observations the local authorities may wish to make on it—that it be taken into further consideration with a view to its being passed".

The Hon'ble SIR ALEXANDER ARBUTHNOT then moved that the Bill be published in the *Gazette of India* in English, and in the *Bombay Government Gazette* in English and in such other languages as the Local Government directs.

The Motion was put and agreed to.

CHUTIA NÁGPUR ENCUMBERED ESTATES ACT AMENDMENT BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT also introduced the Bill to amend the Chutia Nágpur Encumbered Estates Act, 1876. He said that at the last meeting he stated very briefly the objects and reasons for amending the Act in question. It had been found by experience in other provinces, where similar Acts had been brought into operation, that the period of six months allowed by the Act of last year, was too short to enable the Government authorities to decide whether an estate should be retained under management, or relinquished; and it had been thought advisable that the period should be increased to twelve months. For reasons very similar to those which he had given in the case of the Bombay Revenue Jurisdiction Bill, he had not thought it necessary that this Bill should be referred to a Select Committee; and he proposed that at the next meeting it should be taken into consideration and passed.

The Hon'ble SIR ALEXANDER ARBUTHNOT then moved that the Bill be published in the *Gazette of India* in English, and in the *Calcutta Gazette* in English and in such other languages as the Local Government directs.

The Motion was put and agreed to.

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES introduced the Bill to define and amend the law relating to the transfer of property and moved that it be referred to a Select Committee. He said—"The primary object of this Bill is to complete our Code of Contract Law, so far as relates to immoveable property, and thus to carry out, to some extent, the policy of codification which the Government of India has at last happily resumed. Its secondary object is to bring the rules which regulate the transmission of property between living persons into harmony with the rules affecting its devolution upon death, and thus to furnish the necessary complement of the work which the late Indian Law Commissioners commenced in framing the Law of Succession, now Act X of 1865. Another great object of the Bill is to improve the law relating to Mortgages and Conditional Sales, which seems to have got in the minor Presidencies into a somewhat unsatisfactory condition. The expediency of legislation on this subject was recently affirmed by the Judicial Committee of the Privy Council in the case of *Tambasámi Mudali* v. *Muhammad Husain*, Law Rep., 2 Indian Appeals, 241.

"Rules are also laid down on the subjects of settlements, gifts for religious and charitable purposes, apportionment, the rights and liabilities of limited owners, leases and sales of settled estates, powers, property held by several persons, and, lastly, assignments of things in action.

"The Bill was originally framed by the late Indian Law Commission. But it has been most carefully revised, first by myself, then by Sir Arthur Hobhouse, then by Sir A. Hobhouse and myself jointly. The chapters on Powers and Mortgages were then redrawn, the former by Sir A. Hobhouse, the latter by myself. Lastly, here at Simla the Bill has been subjected to renewed examination by my learned friend Mr. Phillips. I mention these facts, not by way of deprecating the criticism which we earnestly desire; but merely to shew that no pains have been spared in the Legislative Department to render the Bill worthy of consideration by the Council and by the judicial authorities to whom I trust the Bill will be submitted.

"The aim of the Commissioners in drafting the Bill, and of the Legislative Department in revising and modifying it, has been to avoid refinements and technicalities, to discard all rules whereby the parties to a transaction are made liable to unexpected consequences, all rules which seem unfair or inexpedient in themselves, all provisions in deeds which are found in practice to lead to embarrassment and litigation.

"I do not propose to trouble the Council with what ancient lawyers would have called a 'reading' on the details of the proposed Act. To do so effectually (so wide is the scope of the Bill) would take not half an hour but several days. But I think I may usefully add to the Statement of Objects and Reasons a few remarks on points which are either not noticed at all in that Statement, or noticed so briefly as to render further exposition desirable.

"Passing over the first chapter, which contains the usual preliminary matter and certain important savings specified in the Statement of Objects and Reasons, we come to the second chapter, which deals with assurances of immoveable property. Section 4 declares that every person competent to contract may make an assurance of any immoveable property of which he is the owner, or which he is entitled to transfer. As words importing the masculine gender include females, and as married women are, under Act IX of 1872, competent to enter into contracts, they will, when this section becomes law, be free to make assurances affecting any land in India to which they may be entitled. And as under section 53 conditions restraining alienations will be void, the well-known exception in the case of property settled on married women with restraint on anticipation will cease to exist.

"Section 6 declares that immoveable property may be granted subject to an obligation for the benefit of the public. And the Bill lays down that whenever such an obligation is created for the benefit of the public it may be enforced by the grantor or his legal representatives, or by the Government as a civil right. This addition to our law is, in a country like India, where the Native Nobles and gentry are honourably distinguished for their liberality to the community, likely to be extensively availed of.

"Section 9 declares that the rules of construction which apply to testamentary instruments shall also be applicable to assurances, so far as the different nature of assurances will permit. As the rules referred to are contained in the Indian Succession Act, and as that Act does not apply to the bulk of the population, who are consequently ignorant of its provisions, I greatly fear that this section, if enacted, may cause some hardship, even though its operation be confined (as it would be) to instruments executed after it comes into force. But in deference to the Commissioners and Sir Arthur Hobhouse, we have allowed it to stand for the present. If, as I anticipate, the criticisms which we hope to receive from the Local Governments, the Judges and the legal profession are hostile to its retention, it can of course be struck out by the Select Committee.

"The last section of this chapter declares that a grant of immoveable property, unless a contrary intention appears by the assurance, comprises trees and all other products of the soil, fixtures, and in the case of machinery affixed to the soil, the moveable parts thereof, and in the case of a house, the locks, keys, bars, doors and windows. This clause, which is one of the many additions we have made to the Commissioners' draft, is in accordance with well-known English law, according to which what are called 'personal chattels incident to the freehold' are subject to many of the rules applicable to fixtures properly so called.

"Chapter III deals with sales of immoveable property and contains nine rules regulating the respective rights and liabilities of sellers and buyers. The first of these rules declares (just as the Contract Act, section 109, declares in the case of goods) that the seller of land shall be responsible to the buyer for loss caused to the buyer through the invalidity of the seller's title. As the law now stands, with some few special exceptions, a buyer of land has no remedy in respect of any defects in the title, which are not covered by the seller's covenants. The enactment of this rule will render covenants for title unnecessary. The second rule in effect declares that where lands are sold, but the whole of the purchase-money is not paid to the seller, he has a lien on the lands for the amount unpaid. This, so far, is in accordance with the law administered by English Courts of Equity. But, when the property has been subsequently dealt with by the

purchaser, questions often arise how far the vendor's lien can be made available against sub-purchasers and mortgagees. Moreover, the lien may be lost without the parties intending it by the seller's accepting independent security for his money, and in various other ways. The Bill proposes to get rid of the difficulties thus indicated by declaring that the lien shall cease as soon as the deed of sale is registered.

"Another difficult head of equity jurisprudence will be got rid of by section 12, which declares that a contract for sale shall not of itself create any interest in or charge upon the property, other than the vendor's lien, but that the parties shall be left to enforce specific performance of the contract according to the general law. As the law stands, as soon as the owner of an estate enters into a binding agreement for its sale he holds it as a trustee for the buyer, subject to the payment of the purchase-money. But he is not under all the obligations of an ordinary trustee, and the buyer's beneficial interest cannot affect the interests of third parties. The Bill will preclude the complications to which this quasi-fiduciary relationship gives rise.

"The next section, 13, perhaps the most important in the Bill, is intended to abolish the doctrine of equitable presumption. According to English equity, the person who pays the purchase-money for property which is transferred to another is generally entitled to the property, and he is treated as the equitable owner, and the transferee as trustee for him. But if the transfer is made to the wife or child of the buyer, or to any one to whom he stands *in loco parentis*, in that case he is supposed to have intended to make the purchase for the advancement of the transferee, who then takes the property for his or her own benefit. This, however, is only a presumption which may be rebutted by evidence, which again may be contradicted by evidence to support the presumption. Contests are often thus produced which cannot be decided on any satisfactory grounds. The section in question runs thus:—

"'13. A person paying the consideration for any immoveable property, but having the transfer of it made to another person, is not, by reason of such payment, entitled to such property or to any interest therein.'

"The result of enacting this section will be, first, to abolish the doctrine of presumption just referred to, and secondly, to render property so transferred the absolute property of the transferee, unless he is made a trustee in some more definite manner. We hope thus not only to prevent litigation of the kind just mentioned, but also to discourage the pernicious custom so prevalent in India of buying land *benámí*, that is to say, in the name of some person other than the purchaser, a custom which often causes great difficulty in making the property available in satisfaction of decrees against the real owner.

"Chapter IV deals with mortgages and charges. It is founded in substance on a note written last year by Sir Arthur Hobhouse, in which that eminent equity lawyer laid down a few general principles on sound and right lines, which he thought would supply a useful basis for a more detailed law at a future period. This chapter provides remedies mainly in accordance with existing contracts and practice, but makes them simpler and more uniform. It seeks to improve the system established in Bengal for *bai-bil-wafá* mortgages, or mortgages by way of conditional sale, and extends it to other parts of the country and to other forms of mortgage. It rests on the great principle that the proper remedies, on the mortgagee's side, are possession, foreclosure or sale, and on the mortgagor's, redemption. And it attempts to carry out the recommendation of the Judicial Committee of the Privy Council to which I have already referred, that 'an Act affirming the right of the mortgagor to redeem until foreclosure by a judicial proceeding and giving to the mortgagee the means of obtaining such a foreclosure . . . . would probably settle the law without injustice to any party.'

"Further, it shows when the mortgagor or the mortgagee may obtain an injunction to stay waste: it abolishes those implied mortgages called mortgages by deposit of title-deeds, which have met with the disapprobation of many great judges; and it legalizes in the mufassal a power of sale given by the mortgage-deed to the mortgagee, that is to say, an authority to the mortgagee, on default being made by the mortgagor, to sell the mortgaged property and so repay himself without applying to the Court. Owing to a decision of the late Bengal Sadr Díwání Adálat (S. D. A., 1847, p. 354), such a power is, at all events, in the Bengal mufassal, now of no effect. But I will read to the Council what one of the ablest and most experienced of our Judges, Mr. Macpherson, has said as to this decision in the new edition of his work on mortgages:—

"'It may be doubted whether the dread of injustice to the mortgagor, which is the foundation of this rule, is sufficient to outweigh the manifest convenience and advantage to both parties, which arise from a sale unaccompanied by the expense and delay by which litigation is at all times attended. Moreover, except where there are strong reasons for it, interference with arrangements fairly made between individuals is undesirable. There is nothing *primâ facie* inequitable in such a power, and if in fact any great oppression is worked by the mortgagee, or the land is sold for an evidently unfair price, the mortgagor still has his remedy through the Courts.'

"The Bill will also get rid of the system of 'tacking.' To express myself less technically—as the law now stands, where there are several mortgages of the same property, if the first mortgagee takes a further charge on a subsequent advance to the mortgagor without notice of any inter-

mediate mortgage, he will be preferred to the intermediate mortgagee. So, if a third mortgagee who has made his advance without notice of a second mortgage can procure a transfer to himself of the first mortgage, he may attach or 'tack' his third mortgage to the first and so postpone the intermediate mortgagee. In either case it is obvious that if the property be insufficient to pay off all the mortgages, the intermediate mortgagee will, without any fault of his own, lose the benefit of his security. The Bill accordingly provides that no mortgagee paying off a prior mortgage shall thereby acquire any priority in respect of his original security, and that no mortgagee making a subsequent advance to the mortgagor shall thereby acquire any priority in respect of his security for such advance. The Bill also abolishes the technical rule that if A mortgages two estates to B, both estates must be redeemed, or neither.

"The next subject dealt with by the Bill is leases—a matter that, so far as regards leases of houses, concerns us all most intimately. I venture to say that, outside the Presidency towns, where the English law is followed, no lawyer can state with certainty what, in the absence of special agreement, are the respective rights and liabilities of the landlord and tenant of a house in India.

"The Bill lays down twenty-two rules on this subject, most of them in accordance with English law, but some introduce changes which it is to be hoped will be considered improvements.

"Thus by section 44, clause (*b*), the lessor is bound to deliver the property leased in a condition reasonably fit for the purpose of the lease. This obligation will be particularly useful in the case of leases of buildings intended for the occupation of human beings. If the lessee is disturbed in the quiet enjoyment of the property or deprived of any substantial part of it, he will, under clauses (*c*) and (*d*) of the same section, be not only entitled to compensation but may obtain a decree for the rescission of the lease.

"Clauses (*f*) to (*i*) supply rules upon the subject of repairs which, though little wanted in England, where stipulations inserted in the instrument of lease do all that is requisite, will, it is to be hoped, be of use here in India, where there is what Hamlet would have called a plentiful lack of good conveyancing.

"Clause (*i*) will practically get rid of the absurd rule that the tenant of a house which has been casually burnt down is still obliged to pay the rent.

"Clause (*r*) relates to tenants' fixtures and makes none of the distinctions, which have been such a fertile source of litigation in England, between ornamental, trade and agricultural fixtures.

"The next chapter requiring notice is that which deals with settlements, which are so defined as to include endowments and absolute gifts to children and others. It extends (section 56) to the case of settlements the limitations which the Indian Succession Act has imposed upon the power of tying up any kind of property by will. Such restrictions are founded on considerations of public policy which seem as applicable to India as to England.

"The Bill also makes void (section 53) all conditions or limitations restraining any person from parting with or disposing of his interest, or making an interest reserved or given to any person to cease on his endeavouring to transfer or dispose of it. This is in accordance with the English Common-law. It will not only get rid of the subtle distinction which has been drawn between a condition in restraint of alienation and a gift to a person until he shall alienate and then over to another, but it will also render it impossible to deprive a married woman of the power of dealing with property settled upon her. Such a power is obviously a result of a married woman's capacity under Act IX of 1872 to enter into contracts.

"In accordance with the principles of the Indian Succession Act, chapter VIII prohibits persons who have near relatives from giving their property to religious or charitable uses unless by an instrument executed not less than twelve months before their death and duly registered. While the Bill allows property to be given in perpetuity for such uses (the Council will remember that the Statute 23 Hen. VIII, c. 10, is not in force in India), it requires that it shall be given with the sanction of some public authority to be designated by Government. This provision seems sound in principle, for a gift to religious or charitable uses is a gift to the community, and it is obviously as reasonable that the community by its representative, the Government should have the right to refuse such a gift, as that an individual legatee should have, as he has, the right to decline to accept a legacy. Moreover, as regards Hindús, I have recently found a passage in the Institutes of the Sage Nárada, translated by Dr. Jolly of the University of Würzburg, p. 115, which bears on this subject:—

"'Whoever gives his property away to Brahmans must have a special permission to do so from the King: this is an eternal law.'

"As Nárada's law-book, like all the Hindú Smritis, was divinely revealed, I need not enlarge on the importance of this text.

"The next chapter consists of a single section dealing with what is called the apportionment of periodical payments. It is founded on the Statutes 11 Geo. II, c. 19 and 3 & 4 Wm. IV, c. 22, and provides for such cases as this:

Tenant for life makes a lease which must expire with him. The rent is payable quarterly. Between two of the quarter-days the lessor dies. At Common-law his legal representatives would not be entitled to any part of the rent reserved from the last rent-day. But under these Statutes and our section they will be entitled (as they obviously ought to be) to a proportional part of the rent from the last rent-day down to the moment of the lessor's decease.

"The next chapter relates to certain rights and liabilities of tenants for life and all other limited owners except lessees. In England tenants for life are punishable for voluntary waste (that is, acts tending to the permanent depreciation of the value of the property) unless their estates are made without impeachment of waste, or unless they are granted with partial powers to do waste. And even when tenants for life are, as it is called, dispunishable for waste, Courts of Equity will interfere to restrain them, not only from destructive acts, but also from interfering with anything set up by the settlor as an ornament. Tenants for years may not commit any kind of waste, unless their estates are made without impeachment of waste; and they are obliged to do repairs. Tenants at will must not commit any kind of voluntary waste, but they are not obliged to repair. The Bill gets rid of all these distinctions by declaring, in section 61, that a person having a limited interest (that is, an interest less than an estate of inheritance), in any property is not entitled to do or omit any act the doing or omitting of which is destructive or permanently injurious to the property. But then we go on to explain that no act done in the reasonable use and enjoyment of property (such, for example, as working a mine) is destructive or injurious within the meaning of this section, though it may exhaust the substance of the property.

"Chapter XI is founded on the English Leases and Sales of Settled Estates Act. It enables certain Courts to deal with lands subject to a settlement or will, on the application of any person having a limited interest in possession in such lands. This jurisdiction has been found very useful in England, where it is exercised by the Master of the Rolls and the Vice-Chancellors. But it seems too delicate to be given to every Court in India. The Bill therefore confines it to High Courts and District Courts.

"The next chapter deals with Powers, that is to say, authorities to determine the disposition of property otherwise than by virtue of ownership. It embodies the principal rules of the English law on the subject, and is almost wholly the work of Sir Arthur Hobhouse. The only important changes which it proposes to make are three. First, an appointment made in excess of the quantity of estate authorized by a power will not be wholly invalid, but will be

deemed void only for the excess (section 85). This reverses the doctrine of English Courts of Common-law, but follows the wiser rule laid down by the Court of Chancery in *Campbell* v. *Leach* and many other cases. Secondly, both in the case of the exercise of a power and of giving consent to such exercise, the survivors or survivor of several persons authorized to exercise the power or give the consent may do all that might have been done by the whole number. This will get rid of a most intricate set of rules as to when the power or the right of consent devolves upon the survivors. The third change is the most considerable. The Council is probably aware that English Courts of Equity have given themselves a jurisdiction to aid defective executions of powers in favour of (*a*) charities, (*b*) purchasers from, and creditors of, the donee of the power, and (*c*) the donee's wife and children: in other words, in such cases the Courts compel the person in possession of the property to which the power relates to give it up as if the power had been properly executed. Section 75 proposes to abolish this jurisdiction, for which it is difficult to discover a sound principle and which, indeed, is hardly consistent with a strict system of registration such as we have established in India.

"In the case of joint tenants of property the rule is that on the death of one the whole property vests in the other. In accordance with the general intention of settlors and other persons creating joint-tenancies, section 93 declares that a right to property by survivorship can be created only by express words. Of course property belonging to an undivided Hindú family is expressly saved from the operation of this section. It will be necessary to extend this saving to Buddhists, if, as I have recently been informed, the undivided family exists in Burma.

"The only other point in the Bill to which it seems necessary to call attention is the provision in sections 99 and 100 that the assignee of a debt must complete his title by giving the debtor notice in writing of the assignment. This will prevent what is in England a frequent source of litigation.

"I repeat what is said in the Statement of Objects and Reasons, that the subject of the Bill is one of great difficulty and complexity, and that, notwithstanding all the labour and time that have been bestowed on it, errors will doubtless be found in the draft. I therefore trust that the Council will allow the Bill to be introduced and published, so that it may receive the searching criticism which we court and which alone will enable us to remove these errors."

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be published in the *Gazette of India* in English, and in the Local Gazettes in English and in such other languages as the Local Governments direct.

The Motion was put and agreed to.

BROACH AND KAIRA THÁKURS INCUMBRANCES BILL.

The Hon'ble MR. HOPE presented the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Thákurs in Broach and Kaira.

The following Select Committee was named:—

On the Bill to define and amend the law relating to the transfer of property:—The Hon'ble Sir E. C. Bayley, the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Cockerell, the Hon'ble Mahárájá Jotíndra Mohan Tagore and the Mover.

The Council adjourned to Thursday, the 28th June 1877.

SIMLA,
The 14th June 1877.

A. PHILLIPS,
Secretary to the Government of India,
Legislative Department.