ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 16

March - Dec.

Book No. 2

1877

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 29th March 1877.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *Presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble Sir Arthur Hobhouse, Q.C., K.C.S.I.

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 T. C. Hope, C.S.I.

The Hon'ble D. Cowie.

The Hon'ble Mahárájá Narendra Krishna.

The Hon'ble J. R. Bullen Smith, C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

CIVIL PROCEDURE BILL.

The Hon'ble SIR EDWARD BAYLEY moved the following amendments :—

That in section 322, *for* clauses (*b*), (*c*) and (*d*), the following clauses be substituted :—

(*b*) by mortgaging the whole or any part of such property : or

(*c*) by selling part of such property : or

(*d*) by letting on farm or managing by himself or another the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or

(*e*) partly by one of such modes and partly by another or others of them.

He said that if Hon'ble Members would look at section 322 as at present amended, they would see that clauses (*b*) and (*c*) and (*e*) of the proposed amended section were counterparts of clauses in the present section. The whole force of the amendment lay in the clause which was lettered

(*d*). As the section at present stood in the Bill, the Collector was authorized to do what the proposed amendment gave him power to do, *but only at the request of the decree-holder*, and in such case there was no limit of time according to the Bill as at present drawn to his management or interference. SIR EDWARD BAYLEY'S proposed amendment was in effect to give the Collector this discretion without the consent of the decree-holder, but it limited the term of his management to a period of twenty years. The main object which particularly he had in view was the treatment of the very numerous class of petty holdings and rights in the Upper Provinces, which it was very difficult to deal with in any other way. As a matter of fact these rights were often attached for default of revenue, and he could recollect, amongst his earliest experiences, the late Mr. Thomason was ever urging upon all Revenue Officers the extreme expediency of adopting this course of procedure in preference to any other, that was to say, the expediency of satisfying the demand against the defaulter by transferring his share to the management of some co-proprietor or fellow-sharer. The properties in themselves were very often mixed up with those of others, so that it was difficult to get any one except a fellow-villager to take them in mortgage; indeed a class of persons who were unused to the village system generally, could hardly afford to take them up in mortgage, but the villagers could usually manage such properties among themselves in some way or other together with their own holdings and make a profit by it. In fact this practice of managing the shares of others was a natural and indigenous arrangement which had always gone on with regard to absent sharers of every kind. If a man went on a pilgrimage, or enlisted, or left the village for any other reason, his share was usually made over to one or other of the shareholders in the village who dealt with it as the owner, paid his revenue and ordinarily managed his domestic affairs for him. There was no law precisely on this subject; it had been a kind of natural arrangement, an arrangement on honour utilized for the mutual advantage of the people of the village. And in many cases the right of the absent shareholder had been protected in that way long beyond the periods of limitation. When SIR EDWARD BAYLEY had charge of the Kangra district shortly after it came under British rule, he found that during the previous government of the Sikhs and Goorkhas, large numbers of villagers had left in discontent and had sought refuge across the Sutlej in States under our protection. But when the Kangra district fell under the British Government these men returned. It was a long time however before they were all aware of the ameliorated condition of things at their own homes; some did not come back for eight or ten years after we occupied that district. Many had been absent twenty, thirty, forty, and fifty years, and in the meantime the regular settlement had been

made in the Kangra district, and the rights of the absentees had been settled with others; but when these men came back, they invariably looked to receive back their property, and a practice instituted by his predecessor Mr. George Barnes was followed with great success. A man, for example, came back and said—"Forty years ago I left this village, and my rights were made over to such and such other persons." The claimant was referred to the Chief Revenue Officer of the district, who had instructions to take the claimant to his village and settle the case by voluntary agreement amongst the villagers, and in no single case was the right of these men ever refused. On the contrary, the right was acknowledged in spite of the lapse of many years, and in spite of the fact of a new settlement having been made giving to those others in possession a legal and usually indefeasible claim to the property. It was amongst that class of people the natural mode of helping absent shareholders; it had therefore been the practice we had adopted with great advantage in managing the estates of petty revenue defaulters; it was an extremely ancient practice, and it was more applicable to that class of cases than any other mode, and it seemed one, then, which it was wise and appropriate to adopt in realizing other demands besides those for arrears of revenue.

The objections to the proposal to give the Collector the power of adopting this mode of arrangement were of two classes. One of the objections was that the management did not secure the immediate payment of the creditor, and that the creditor having got a decree for immediate and instant payment without regard to any other interest, was entitled to have the benefit of that immediate payment. This opinion SIR EDWARD BAYLEY knew was very strongly held by very many gentlemen. But he thought the speech of his hon'ble friend Sir Arthur Hobhouse the other day must have convinced them that it was a principle absolutely unknown to the English law—a principle which he might say was not recognized by law in any civilized country. It was a theory which had grown up, he believed, in India alone amongst a certain class of jurists who had not very wide experience of the principles of jurisprudence, and which they were pleased to think was a logical result of the doctrines of political economy. SIR EDWARD BAYLEY thought it could hardly be called the result of the doctrines of any science at all, much less of the doctrines of political economy. He did not himself see how such result was to be upheld without contravening the real principles of political economy, or applying them blindly, and without reference to the fitness of the application, to the facts of the case before the Council.

The other objection was that we should give a great deal of trouble to the Collector. He understood that there would probably be on the average about

two hundred and fifty cases of execution of decrees against landed property made over to the Collector in each district of the North-Western Provinces where this class of cases was most likely to arise. It was not proposed, nor was it likely, that they should be all dealt with in this way. In some cases no doubt actual sale would take place; in others some of the various modes provided in this section of the Bill would be put into use. It would probably be only in cases of small petty holdings which were almost of no saleable value that the mode provided by clause (*d*) of his amended section would be employed: if these were left to any other process, it was a question even whether the creditor would in most cases ever realize his decree. Indeed such a mode of dealing with cases of this sort would ignore what SIR EDWARD BAYLEY thought he had shown to be the indigenous and natural and popular means of getting over such difficulties, the practice employed by the people themselves time out of mind, and which gave a reasonable hope that the creditor himself might get his money sooner or later.

The extreme number of twenty years had been fixed for this process, because it was supposed that if the object of the management could not be effected in twenty years, there would be little hope that it could be effected at all. As a matter of fact twenty years was an extreme time. He believed that five, ten or fifteen years were the ordinary terms for which shares were put under management for default in payment of revenue. The amendment would of course include all the Provinces which had small tenures,—the Panjáb, Oudh, and the greater part of the Central Provinces. He could not of course speak so confidently as regards other Provinces, such as Bombay and Madras. This mode might not be equally applicable to them. But it was quite competent to the Local Government to give a discretion to their Collectors as to the use of these powers, assuming that the sale of lands in execution of decrees was made over to them. He believed that in one or two large provinces—Madras and Bengal for instance—the agency of the Collector would probably be not employed at all. At any rate, it would only be in those particular instances in which this mode of procedure was applicable that it would be usually applied; and in those it only would be practically useful, and then probably it would be the only way in which the creditor would have a chance in most cases of realizing the full amount of his decree. He however regretted to say that clause had been struck out of the Bill in Committee under what he believed to be a misapprehension of its true character and probable effect, and he therefore at the time gave notice that he should move to re-introduce it on the present discussion of the Bill in Council. It was with this object that he moved the amendment. He might say a good deal more on the general principle of this clause, but he thought what had been said

would be sufficient to allow the Council to understand the urgency of the reasons upon which he proceeded, and to enable the Council to judge of the expediency of restoring it.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said that he did not pretend to any knowledge of jurisprudence, English or Indian; but speaking from a common-sense view of the question, he was one of those who thought that a creditor ought to have every reasonable facility for the recovery of his money at the time stipulated in the contract entered into by his debtor. He fully appreciated the generous motive of the hon'ble mover of this amendment, but he was sorry he could not support a proposal which attempted to favour the debtor at the expense of an innocent third party. The judgment-creditor might have had to raise the money on the strength of his higher credit from some Bank or some other source, and might have advanced it to his debtor in the certain belief that he would receive back his money within the stipulated period, and thus be able to liquidate his own loan on the due date. There were many people in this country who advanced money in this way. But if the Collector were to step in and order the judgment-debtor to repay his debt by instalments spreading over twenty years, and that too without interest, it might be a great blesssing to the debtor, but it would be absolute ruin to the honest creditor. It would be reversing the principle of the maxim, that one should be just before he was generous, if this amendment were accepted; for the Collector would have the sanction of the legislature to be generous before he was just. Besides this, he was not sure whether the amendment if passed would be altogether a boon to the class for whose benefit it was intended. The better class of capitalists would retire from the field and the money-lending business would be in the hands of less scrupulous men. The greater the obstacles thrown in the way of the execution of decrees, the more stringent would be the conditions imposed by the money-lenders to cover the risk which they would have to run. The effect of the amendment would, he feared, very likely be that no money would be advanced on mere credit, and those who required to borrow would be forced to mortgage their property and land or to sell them outright. For these reasons he was opposed to the amendment.

The Hon'ble MR. COCKERELL said the hon'ble mover of the amendment had suggested the possibility of the Bill having assumed its present shape in Committee owing to some misapprehension on the part of the hon'ble members by whose vote its provisions in regard to the subject of the amendment were determined. He wished therefore to state for his own part, as one of the majority by whose opinions those provisions were regulated, to disclaim

most emphatically any misapprehension as to their effect, and he proposed to confirm this statement by the vote which he would give today in the event of the Council dividing on the subject of the amendment. The difference between the hon'ble member's amendment and the provisions of the Bill on this subject was simply this, that whereas the Bill would allow farming and managing for a period not exceeding twenty years where the decree-holder consented, the hon'ble member's amendment would allow of such a course whether the decree-holder consented or not. There was no other difference between the procedure of the Bill in regard to this matter and the proposals of the hon'ble mover of the amendment.

The hon'ble member who last addressed the Council had spoken of the hardship of postponing for such a long period the settlement of the decree-holder's claims without his consent, and had pointed out that there were conceivable cases in which such postponement would be almost tantamount to the ruin of the decree-holder. He (MR. COCKERELL) thought that this was probably not an exaggerated view of the case. Decree-holders were not necessarily always capitalists, who, so long as the security was good and the interest adequate, could afford to wait for the gradual repayment of their advances.

He believed that it was a not uncommon practice in this country—at all events it was so in Lower Bengal—for people to advance on good security, money which they had either themselves borrowed from others, or for the early return of which they had made themselves responsible, and if they did not recover their money so as to be in a position to replace it within the period upon which they had calculated, it was not too much to say that the consequence might be absolute ruin to them.

Where there was no such exigency for an early recovery of the amount advanced, it was reasonable to suppose that the legitimate influence of the Collector, which was recognized in Bengal to a considerable degree, and in the North-Western Provinces and in Bombay and Madras to an even greater extent, would be always found sufficient to effect an arrangement for the satisfaction of the decree-holder's claims by the process of gradual liquidation.

Hence it seemed to him that the distinctive feature of the amendment, as contrasted with the existing provision of the Bill, would—if the amendment prevailed—only come into operation in those cases in which it would be a *quasi* suicidal action on the part of the decree-holder to consent of his own free will to a protracted liquidation of his claim; and it was for the Council to consider whether it would be justifiable to provide for the relief of the judgment-debtor to the extent of inflicting such possible injury on the

decree-holder, in circumstances for which it was fair to presume that the judgment-debtor rather than the decree-holder was equitably responsible.

The Hon'ble Mr. Hope said the objection which was taken to the amendment by the two Hon'ble Members who had spoken reminded him somewhat of the objection which was made by one of them in the course of the discussion on section 417 yesterday, to the effect that if the course proposed was taken, some very dire consequences would ensue. He would remind the Council of the fact he laid before them then as to the dire consequences threatened in the event of all classes of Courts not being allowed to try the highest classes of suits not involving money. We were now told that unless the clause was allowed to stand as it was at present, money-lenders stood a very poor chance of being repaid. The answer to that objection was essentially the same as the answer to the other. The answer to the objection against the other clause was, that in the case of the Bombay Presidency the law was diametrically opposed to the law in the Lower Provinces, and yet none of those consequences had ensued. On the present question he would point out that hitherto in many of the Native States, some of which were admirably administered by most distinguished men, we did not find this severe law for the sale of land in execution of money-decrees and for imprisonment for debt, and yet the people managed to get loans, and money-lenders were not ruined at all. He thought it would be better if, instead of arguing on speculative and *á priori* grounds, we were to look at what was going on in these Native States. We were told that in most respects they were much behind us, but he thought that in these matters, in some matters connected with land-administration and everything in fact in which action to suit Native peculiarities was concerned, they were indeed in advance of us. This had, he thought, been well brought out by the replies given to the question asked in 1867 regarding the relative merits of British and Native Rule, which had been printed in a Blue Book and laid before Parliament.

The Hon'ble Sir John Strachey said:—"I do not wish to give an altogether silent vote in favour of the amendment of my hon'ble friend Sir Edward Bayley, because I think it the duty of those who have for many years taken part in the actual every-day work of district and provincial administration, and who may be supposed to have thus obtained some practical acquaintance with the country and the people, not to remain silent on such a question as this, even when they feel that really nothing remains to be said about it. The question raised by this amendment is, I think, in reality the same as that on which my hon'ble friend Sir A. Hobhouse spoke yesterday with such admirable and convincing ability. My hon'ble friend performed by that speech a great

public service. He put this most important question of the sale of land in execution of decrees in its true light, and while he has left nothing, I think, for those who agree with him to say, except indeed to express their admiration and gratitude, I am quite sure that he has left nothing to be said by those who disagree with him. I predict that my hon'ble friend, by his speech of yesterday, has closed for the present generation all controversy on this subject. That speech teaches us how we ought to vote on the amendment of my hon'ble friend Sir E. Bayley, for this amendment is the logical outcome of the principle which Sir A. Hobhouse explained to us yesterday, and which I hope I may assume that the unanimous voice of this Council has approved. If we admit that great social and political evils have to be remedied or prevented, and if we say that our Courts shall not be instruments for bringing undeserved misery and ruin upon debtors, and that we have to provide an authority which shall be able to bring about fair and equitable arrangements between debtors and creditors, it follows necessarily that the more we can in a reasonable way strengthen the hands of that authority, the more chance there will be that we shall succeed in the objects at which we aim. The provision in the Bill as it now stands, that it is only with the consent of the creditor that certain measures for saving the property of the debtor from being sold in execution of a decree can be adopted, is entirely opposed to the assumption with which we start. To say that the consent of the decree-holder shall be necessary is flatly to contradict the principle which we now desire to maintain. If the amendment of my hon'ble friend be carried, I believe that the single serious blot which now remains in this provision of the Bill will be removed; and the Council may then hope that the law has at last been put into a shape which will make it possible to carry out the object which the most experienced officers throughout the greater part of India have been for years declaring to be of paramount importance, and which my hon'ble friend Sir A. Hobhouse told us yesterday will be in complete accordance with the intentions of the eminent men by whom the Code of Civil Procedure was framed. Having, my Lord, myself held almost every office, both in the Regulation and Non-regulation Provinces of Northern India, which a Member of the Civil Service ordinarily can hold, I have had perhaps better opportunities than most men, of at least making myself acquainted with the views which have been held on this subject by the most distinguished officers of the Government, and by the most intelligent members of the Native community. I know of course that high authorities have thought otherwise; but even they I believe must admit that there is perhaps no great subject of public importance that can be named on which there has been so general a consensus of opinion in Northern India as there has been on this.

"There has no doubt been much discussion about the exact nature of the remedies to be applied, but almost every one has agreed that the unrestricted transfer of land to strangers in the execution of decrees for debt has led and is leading to much social misery and political danger. My own personal experience during the last thirty years or more enables me to confirm without hesitation the statement which was made yesterday by my hon'ble friend Sir A. Hobhouse, that this is a subject on which there has been no oscillation of opinion; and it seems to me impossible to suppose that all the eminent men who for a great number of years past have had the best possible opportunities of forming an opinion on the subject should have come to this practically unanimous conclusion without good reason.

"I think, my Lord, that the truth is that the authorites who have taken the other side of the question have sometimes been led astray by the mistaken application of true economical principles. The present case offers a good illustration of the way in which political economy gets a bad name without the least reason. The truth seems to me to be, in the present instance, that the principles of political economy do not in the very slightest degree teach us, that in Northern India, or in many other parts of India, there ought to be no interference with the sales of land in execution of decrees. What political economy does teach us in regard to this matter is merely this abstract principle, that such interference tends *primâ facie* to cause loss of wealth to the community. But a Political Economist, if he understands his own science rightly, does not go beyond this, and he may with complete consistency declare that there are other, and perhaps more important, considerations than those which his own science deals with, which render it wise to accept such loss; and he may even believe that neglect of those considerations will lead to loss of wealth still greater. I am convinced that such considerations exist in the present case. Political economy never teaches us to carry out theories without reference to facts. I deny that these provisions of the Bill are open to economical objections, and I believe that, with the amendment which my hon'ble friend Sir E. Bayley has now proposed, they will afford a very moderate, reasonable, but I hope sufficient, safeguard against serious evils without interfering with any true principles."

The Hon'ble SIR ARTHUR HOBHOUSE said:—"to a certain extent my hon'ble friend Sir John Strachey has anticipated what I was about to say. It seems to me, as it does to him, that those who have accepted as sound the general line of argument that I submitted to the Council yesterday should support my hon'ble friend Sir Edward Bayley's amendment. We must remember that those powers which the amendment would give to the Collector are already in the bosom of the law although they there lie almost unused. Section 243 of

the existing Code gives to the Court unlimited power to manage property which is attached, and to pay the debt gradually out of the rents. It also gives to the Courts unlimited power to postpone the sale in order that the judgment-debtor himself may make arrangements, one of which arrangements is letting the property in farm. Section 224 contemplates that the Collector may exercise similar powers, though unfortunately it is coupled with the fatal proviso that security must then be given for the amount of the debt or the value of the land. Now of course it is quite competent to our opponents to say that although these powers are already in the law they are mischievous, and that we ought to strike them out. But if we accept the principle that the decree-holder is not, and ought not to be, the owner of his debtor's land to all intents and purposes, then such a power as the amendment contemplates is most essential. The other courses which the Collector may take are sale, mortgage, or letting on such terms as will raise money at once to pay the debt. But these courses all proceed on the principle that the creditor has a right to have an immediate and full payment of his debt out of his debtor's land, and they all involve practically the alienation of the land. What we want is some course which does not involve the final and complete alienation of the land, but which more resembles that course adopted by the English law under the writ of *elegit* which I mentioned yesterday. Suppose the case of a country which is desolated by famine. The land there may for a considerable space of time be producing absolutely nothing, and if the creditor elects to have the land of the debtor sold immediately or disposed of in some other way which shall raise the whole amount of the debt immediately, the land may go for next to nothing, and the creditor may buy it in, as he usually does, for next to nothing. But if the land can be held on for a time, better times will come, and the land may produce something not only for the creditor but also for its owner. I should therefore be very sorry if the Council thought it right to strike out of the existing law these powers which are in it. But if it is not right to strike them out, surely it is right to make them living powers instead of dead powers. I gave the Council yesterday evidence to show how very inoperative these sections had been, and it is my confident belief that if such discretions as these are left entirely to legal officers acting in districts where the peasant defendants are ignorant, helpless, without skilled advice, and totally unable to urge the Court into action, so long they will not be of any very great use. In fact it may be said that a Court of law carries such powers as these

'As the flint bears fire,
Which much enforced shows a hasty spark,
And straight is cold again.'

"Now our predecessors clearly saw that truth; they clearly saw that if they were to make these powers of use they must be committed to administrative hands and not only to legal hands. That is what I say now, and that is the effect of Sir Edward Bayley's amendment.

"The only alteration we are making in the principle of the law is that we do not require security to be given when the Collector has the management of the property. But as I understand the objection to the proposal, it is not grounded on the fear that the creditor will lose the security of the land, but on the hardship caused by delay, and by keeping the creditor out of his money. Now the creditor is just as much kept out of his money whether security is given or not. By security we do not mean security that can be enforced during management: that would be an absurdity, and make the management totally nugatory. What is meant is that the creditor shall have security which shall take effect after the management comes to an end, or in case the land is sold under some paramount claim as for arrears of Government revenue. But such security as that is equally wanted when the Court has the management of the property. All the liabilities which may occur to the land in the hands of the Collector may equally occur to it when in the hands of the Court. No such security however is required if the Court has the management; and why it should be required because the Collector has the management I cannot conceive.

"Now I will make one or two remarks on the arguments which have been advanced against the amendment. I understand my hon'ble friend Mahárájá Jotíndra Mohan Tagore to rest his objection entirely on the right of the creditor to be paid at once and on the evils of delay; and as he said, if the Court has the power or the Collector has the power to order the debt to be paid by instalments, it will be a serious thing both to the lender and the borrower. Now the Court has the power under the Code, and has had the power at least since the year 1859—I do not know how long before—to direct any debt to be paid by instalments. Yet we have never heard that the money-market was disturbed by that power, or that either the lender or the borrower had been injured by the exercise of it.

"Then my hon'ble friend says that you will drive the honest and more respectable lenders out of the market and call in a class of men whom it is not advantageous to the borrower to call in. But that is a very speculative matter, and it is one to which the Dekkhan Commission have paid a good deal of attention. They give us an account of the classes and characters of money-lenders,

and of the different ways in which different classes of lenders deal with borrowers; and the conclusion they come to is exactly the opposite to that to which my hon'ble friend comes. I do not say they are right; I am not competent to form an opinion. But I say that it is a purely conjectural matter, and I think that such arguments ought not to weigh with this Council one way or another.

"Then my hon'ble friend Mr. Cockerell says the small capitalists deal with capital which is not their own, but borrow for the purpose of lending again at a higher rate of interest. I am sorry to hear that the money-market is conducted on so rotten a system of dealing in money without capital, and I should be surprised to hear that the gentlemen who conduct their business in that way do not secure themselves by mortgages when they lend their money. The man who makes it his trade to borrow for the purpose of lending again is exactly the man who will secure himself by taking a mortgage. I think therefore we ought to know how that matter stands before we attach much weight to my hon'ble friend's argument.

"Then he tells us that the Collector's personal influence can effect such arrangments as are contemplated under this section. If that is so, surely it places the Collector in a more proper position to arm him with legal powers to do that which is a good thing, but which he now effects by some irregular, however beneficial, influence on the minds of the persons with whom he is brought into contact.

"I think it has not been sufficiently observed by those who oppose this amendment that these powers are not to take effect except in those cases in which there is reason to believe that the judgment-debts of the debtor can be discharged without the sale of the whole of the property. I cannot help thinking that the cases contemplated by my hon'ble friend Máhárájá Jotíndra Mohan Tagore and those who act with him are cases in which the property is in a hopeless state of insolvency. Those are not the cases in which the Collector is empowered to exercise the discretion which we propose to give to him. He has first to satisfy himself that the case is a *bonâ fide* one; that there is a property which if properly managed may satisfy the debt and leave something to the owner, but which, if it goes into the market at short notice and on peremptory sale, will be lost, with the result of ruining the debtor, perhaps without satisfying the creditor."

His Honour the Lieutenant-Governor said that the section before the Council being entirely permissive, and being therefore not likely to affect the

part of the country in which he was interested, he should not take up the time of the Council in discussing the general principle of this section. He believed that the provisions of the section were entirely inapplicable to the tenures of Bengal, although it might be the case that they were absolutely necessary in some parts of the country of which he knew nothing. Therefore taking that view of the case, and accepting the assurance given by his hon'ble friend Sir John Strachey, that in Northern and Central India the provisions of these sections were really required, he should not oppose the amendment before the Council.

But he thought he might say a few words in regard to the probable practical working of these provisions, and to the allusions made during the discussion to the powers of the Revenue Courts to deal with the mass of business which would be thrown upon them. Judging from the experience of the Non-Regulation Provinces of Bengal, in which sections precisely similar to these had been applied by special Acts of Council, he thought that it would be found that the powers of the Collectors to deal with all cases which would come before them would be quite inadequate; and that the section could not be worked without a large increase of the Revenue-establishments. We had to work powers similar to these in certain districts of the Chutiá Nágpur Division. He saw by a return before him that we had already 320 petty estates attached for debt in four districts, of which 167 were under the management of the Collector in one single district. In 89 cases the current annual demand was below Rs. 100 a year; in 87 cases it was above Rs. 100 and below Rs. 500. His Honour did not think it was one of the functions of the Government to take over the whole of the management of all the petty holdings of the country, and if the Government did do so, it would end by the Collectors being completely swamped with their work; for there was apparently scarcely an estate in the Dekkhan and parts of Northern India in which there were not already some heavy debts.

The Hon'ble Sir Edward Bayley wished to make a few remarks in closing this discussion, and in doing so he would not detain the Council long. The remarks which his hon'ble colleagues Sir John Strachey and Sir Arthur Hobhouse had made practically disposed of the theoretical part of the objections that were brought forward against the amendment so effectually that he only should diminish their force if he attempted to add any thing to what they had said in that respect. He wished rather to remark on one or two points of detail which those who opposed the amendment seemed to have overlooked. As regards the effect on a creditor who himself was a borrower, he thought not only had it been overlooked that the power of directing the payment of a debt

by instalments was no new one, for it existed in the old law long before the Code of 1859, but the provisions of this Bill were not confined to debts of any particular class; they extended to all debtors, and if the unfortunate man who had borrowed money to lend it out again found himself in a difficulty, he would at the same time find under the other provisions of this Act that the Courts had power to give him also a very large measure of relief, so as to enable him to pay his debts without being brought to absolute ruin.

As regards moreover the economical effect which these clauses were likely to have, his hon'ble friend Mr. Hope had very justly pointed out that that particular principle on which they were founded had to a great extent been acted upon in Native States, and had there produced no such evil results as were anticipated. But SIR EDWARD BAYLEY would add also that it had been shown by experience they could be worked with equal benefit in our own Provinces. This was the case notably in the Panjáb. The spirit of this law had been practically in operation there from the day of the annexation until now. And what was the result there? Was the land less valuable? Were the tenants less solvent? Was the rate of interest higher? Was there, as a matter of fact, greater difficulty in obtaining credit by tenants in the Panjáb than elsewhere? It so happened that enquiries had been, independently of the subject-matter of this Bill, recently made on these points, and the result of the enquiry showed that the peasantry were less indebted and in a more flourishing condition than perhaps in any other British Province. No difficulty was found by them in obtaining money, nor, as far as he knew, did they pay a higher rate of interest than elsewhere. The real fact seemed to be that a moderate and merciful application of the law was in the long run as much to the interest of the creditor-class as to that of the debtor-class; it was certainly to the advantage of the creditor to have to do with a prosperous, contented and substantial class of debtors rather than with a pauperized and insolvent class. SIR EDWARD BAYLEY thought that the Dekkhan Riots Commission had shown how that in certain parts of the country to which their particular enquiries extended, the unrestricted action of the Civil Courts had, by various abuses, which he would not stop to discuss, actually been the main cause of producing the complete pauperization of the agricultural community. This surely was a result most deeply to be regretted, and he was certain nothing could be worse for the interests of the creditors themselves than the state of things disclosed in that report. The object of this Bill was to do something to prevent a similar state of things arising elsewhere, and the clauses he now moved were intended to give more full effect to the principle which the Bill had generally adopted in regard to the execution of decrees, and specially as regards those for the sale of land,

and to facilitate the application of that principle in regard to the more humble and more ignorant class of debtors.

As regards one other question, namely, the influence which the Collector exercised in restraining the action of creditors, he thought it had been so satisfactorily set at rest by the remarks of his hon'ble friend Sir Arthur Hobhouse, that he (SIR EDWARD BAYLEY) need hardly say more, except that there were many cases in which neither the Collector nor any body in the world had any power to effect any thing with an unreasonable and harsh creditor.

He had only further to notice the objection which his hon'ble friend the Lieutenant-Governor had raised from his own experience in the Santhál Parganas, as to the capability of the Collector practically to work the provisions of this section; his hon'ble friend had, he thought, overlooked one material difference between the Collectors in Bengal and those in other parts of the country. In Bengal the Collectors had not at their disposal the agency of the officers called tahsíldárs in the Upper Provinces, and mámlatdárs in Bombay; they had not in fact the machinery which was used in other Provinces. As SIR EDWARD BAYLEY had said before, an exactly similar power was used in other parts of the country for recovering arrears of revenue, and the work was entirely done by the Collectors through tahsíldárs. Supposing there were on the average from 240 to 250 cases of execution against landed property a year in each Collectorate, probably to not one in twenty of these on the average would this particular procedure be applied. The work which it imposed on each tahsíldár would probably not be more than six or seven hours a year in each case, and probably each tahsíldár would at the outside never have more than fifteen or twenty such cases, and the supervising work of the Collector would not occupy him altogether more than one whole day in the year. Of course if there was no such machinery in any particular Province, this clause would be inapplicable; and if it were desired to use it more effectually in the Santhál Parganas, it might be necessary to provide the Collector with better machinery. But that was no argument against the policy indicated by these clauses, nor against their introduction in places where the machinery already existed in complete working order, as it did in the Provinces to which the operation of these clauses was more particularly suited.

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved the following amendments:—

That the following clauses be added to section 336:—

"The Local Government may, by notification published in the official Gazette, direct that whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of

bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court.

"If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest:

"But if he fails so to apply, the Court may either direct the security to be realized or commit him to jail in execution of the decree."

He said that the hon'ble mover of the Bill now under consideration yesterday expressed the opinion, or at any rate quoted from elsewhere with approval the opinion, that the Indian law with reference to debtor and creditor was the most severe and anomalous in the world. The creditor was able to proceed against the property, not only present but future, and also against the person of the debtor. There was only one small door left open—a door which indeed had been slightly enlarged by the amended form of the present Bill, but which still was an exceedingly small one, he meant the door of the insolvent clauses. Under the Bill as it was now before the Council, a man, if he chose to make a declaration of insolvency, could obtain a release from imprisonment, and if his debt did not exceed a certain small sum the Court could give him his liberty for the future altogether. But it had been proved to be the fact in some parts of India that a very large proportion of debtors were absolutely unacquainted with the existence of this door. In the document which had been so frequently referred to, the Report of the Dekkhan Riots Commission, it was stated of debtors arrested—

"That they may on certain conditions get free, or that the term of imprisonment is not absolutely of unlimited duration and hardship, is also as a rule unknown to them."

And in consequence of that there arose a very large number of evils, which he did not mean to recapitulate, caused by the fear of being so imprisoned. The Commission consequently recommended that when a man was brought up before the Court in the first instance on a warrant of arrest, care should be taken that he was made acquainted with this mode by which he could be saved the ignominy which he so excessively dreaded. As regards Bombay this recommendation had considerable force, more than as regards other Provinces, owing to the large abuse of these powers in that Presidency. It was not an impossible thing for a Subordinate Judge's Court to be eighty or a hundred miles from that of the District Judge or the Civil jail. A man brought before the Subordinate Judge was not only imprisoned, but sent off to a distant jail before in practice he could declare to the Judge his wish to become an insolvent. A large proportion of these debtors were ignorant people who very seldom left their village and could not take advantage of the insolvency clauses,

until they had performed this long and terrible journey. In order to support their recommendation the Dekkhan Riots Commission pointed out that in 1872, out of 1,877 persons who were imprisoned, only 76 took the benefit of the Insolvent Act. The force of this fact could be best appreciated by bearing in mind another fact, that in 99 cases out of 100 these people had no property whatever. The Commission pointed this out. They said—

"If, as is the case with the agricultural ryot of the Dekkhan, the debtor is a man with an established residence to which he is bound by the strongest ties; if his property is such that it is easily ascertainable and in great measure impossible to conceal; and if such frauds as he may be tempted to commit in order to evade payment are punishable under the criminal law, the necessity for the alternative method of securing his property in payment is reduced to a minimum."

So that we might fairly infer that a very large proportion of these 1,800 men who were sent to jail, and who had no property, did not get out simply because they were not aware of the advantage which the law gave them. The object of the amendment therefore was to impose on Courts of first instance the duty of simply informing the debtor that there were these provisions for his avoiding being sent to jail, provided he chose to take advantage of them. And the clauses had, with the assistance of the learned Secretary, been so framed as to give sufficient security against this power being made use of in a fraudulent manner, because it would be necessary, when the debtor expressed his intention to become an insolvent, that he should take the proper steps to do so in a certain time, and if he did not, the security would be debarred. MR. HOPE was well aware that it was one of the practical features of the whole question that there were enormous differences between one part of India and another. On this ground he had, at the suggestion of the hon'ble mover of the Bill, made a slight amendment in the terms of his amendment as it was originally laid before the Council. The effect would be that instead of the clause being applicable to all parts of India, it would only have effect in such districts as the Local Government might think necessary. He trusted that in this modified form, which was designed to ensure the intention of the law being carried out, it would meet with acceptance at the hands of the Council. He trusted also that the case would not be injured by his endeavour to compress what he had to say into a small compass.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said that in a country where the *benámí* system prevailed to a large extent, the facilities for fraudulent transfers of property were necessarily great, and the dread of imprisonment acted as a wholesome check upon dishonest debtors. If the proposed amendment was accepted, it would in a great measure remove that check; for if every time as a rule the Court were to expound the law of insolvency

whenever debtors were brought under arrest, it would in many instances be construed that it had a leaning towards the debtors, and that it was the wish of the Court that the debtors should declare themselves insolvents; the effect would be to encourage indirectly fraudulent transactions over the country. It would be far better to declare openly that there was to be no more imprisonment for debt than that the judgment-creditor should be led to undergo all expense and trouble for the purpose of arresting his debtor, in order that the Court might read to him a homily on Chapter XX of the Code, and then release him from imprisonment. But he saw that the amendment as now proposed to be altered was to be permissive in its character, and he had every hope that the responsible head of the Bengal Government would never see reason to extend it to Bengal.

The Motion was put and agreed to.

The Hon'ble SIR ARTHUR HOBHOUSE moved that the Bill as amended be passed. He said :—" Before this Bill is dismissed into the outer world with all its imperfections on its head, I have one or two observations to make, but they will not be very long. First the Council will observe that we propose that it shall come into force on the first of October 1877. That seems a long way off. But it must be remembered that the Bill has to be translated, and many persons have to make themselves acquainted with its contents; and therefore the time proposed is not likely to be found too much. Indeed it is more likely to be found too little, as in the case of the Criminal Procedure Code the operation of which had to be postponed. The intervening time is also very useful in another way, because in the hurry of printing and general hurry of work at the last moment mistakes must be made, which may be found out in the process of translation or the other processes through which an Act has to pass between the time of passing and of coming into operation. Opportunity is thus afforded of introducing amendments before the mistakes have caused inconvenience.

"There is still one section in the Bill connected with the vexed question of sales of land, on which I should like to offer some explanation. This is section 427, my remarks upon which I designedly postponed yesterday, because I thought my hon'ble friend Mahárájá Jotíndra Mohan Tagore was about to move to expunge it; and I conceived it would be more proper to state then how the Bill stood in that respect. It is the more necessary to explain, because it looks as if it gives the executive some very large powers, whereas in point of fact it does not give them powers much larger than they possess at the present moment. It provides that the Local Government, with the sanction of the Gov-

ernor General in Council, may make special rules for any local area, imposing conditions in respect of sales of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value. In our Bill No. III that provision ran thus, that the Executive Government may make special rules imposing conditions in respect to the sale of land in execution of decrees for money. What was contemplated was that the Local Governments would make some conditions of the kind which prevail in the Non-Regulation Provinces. We did not at the time see our way to making the rules ourselves, nor did we see our way to do so until we got information from the Local Governments and authorities, particularly the Governments of Bombay and Bengal. Now we have made special rules for ourselves, namely, the rules we have just been discussing. It will therefore not be advisable to leave in the Bill a general power to make rules when we have made rules ourselves, for the power might over-ride the rules made by the Council. But we do give power to make special rules in one particular class of cases. That was proposed in Bill No. IV, and the power was carried further, because it was then said that the Local Governments, acting in concert with the Governor General in Council, may make rules imposing conditions on sales of land or prohibiting sales of land, not only where the interests in such land are uncertain or undetermined, but where for reasons of State the Local Government thinks that such class of interests should not be compulsorily transferable. Now we have left that out of Bill No. V, and we have only given power to make special rules where interests in land are so uncertain or undetermined as to make it impossible to fix their value. With that power and with the clause which enables the executive to transfer the execution of decrees to the Collector, we hope that all cases can be met which we contemplate providing for by legislation. I mentioned at Simla that the power of prohibiting sales was intended to meet cases where the nature of the interests in land was extremely obscure, very valuable to the actual cultivator but worth nothing in the market, and I illustrated the position by reference to what is going on in the Central Provinces. However on consideration we thought that so wide a power need not be given for so limited an object; so the power has been materially cut down, and the provision stands in the simple form in which the Council see it.

"The latter part of the section says that if any special rules for sales of land in execution of decrees are in force in any Province, the Local Government may continue such rules or modify them. That in effect is only a power which the Local Governments in question have already.

"I explained yesterday what alteration was made in the Code almost immediately after it was passed for the purpose of enabling the Local Governments to check indiscriminate sales of land. The check has been applied in this form, that sales shall not take place without the consent of some executive authority. Of course that consent may be given on any conditions, for the power of withholding it can always be exercised at discretion. These conditions have been specified by different rules in different places. Still there remains the absolute discretion vested in the Government which carries *in gremio* the power of making rules and conditions from time to time. So that the provision I am commenting on really gives no more power than the Local Governments of the territories subject to these special rules possess at the present moment, but only gives them what is given in the Code of 1859 as it was amended within four months after its passing.

"I do not think there is any other point I need bring to the notice of the Council specially."

The Hon'ble MAHÁRÁJÁ NARENDRA KRISHNA requested that the remarks which he had made on the 28th March in the course of the debate on the Civil Procedure Bill be taken to form a part of this day's proceedings.

The Hon'ble MR. HOPE was sorry to appear again as an offender by taking up the time of the Council, but as he was one of the signatories to the Report of the Select Committee he thought it only due to himself to state that he had not done so wholly without reservation. One of the ablest, most courteous and most practical among the critics who had given them the benefit of their advice on this Bill, Mr. Justice Turner, had been pleased to designate those who thought as MR. HOPE did as the party of interference. Now he ventured to think that those who interfered were those who innovated, who introduced something new and contrary to all previous custom, and it was evident that Mr. Justice Turner also took the word in that sense. The English might well call themselves interferers in India, and he thought those might justly be called the party of interference, or innovators, who commenced by a law to upset all the relations which had existed between debtor and creditor, for many centuries previously. Those seemed to him properly to be interferers or innovators who first of all introduced the petty details of the English law in the Presidency-towns and produced the results which were so ably sketched in Lord Macaulay's well-known Essay, and those who year by year carried out the same policy in the mufassal, and made our judicial system that minute, elaborate, complicated, costly and dilatory machine that it was. He did not mean to deny that to a

considerable extent the alterations introduced might have been good. There were certain principles which lay at the bottom of all sound law, and their recognition was an advantage which all who had to do with the subject must recognise.

But it seemed to him that the test of all measures was success. If innovation turned out to be a success, then it was called improvement, and all were glad that it should be so. But if it turned out otherwise, then it was naturally and very properly stigmatized as interference. Tried by this test he claimed that the law of the English as to debtors and creditors had been a conspicuous failure, and in proof he would point to the ever-increasing wave of objection which came rolling in. Not only did our public records during the last twenty or thirty years show perpetual differences and discussions and references carried on in almost all the Governments in India between all the highest authorities, but our Statute-book bore the same evidence in the number of special laws which it had been found necessary to introduce,—laws which he saw the critic to whom he referred looked on with regret. The same was also evident in the numerous exceptions which existed in the Civil Procedure Code and which were preserved in the present Bill, such as the exemption of the Panjáb and Central Provinces from some of the more important provisions, including even the very power regarding land to which the Hon'ble Mahárájá Jotíndra Mohan Tagore recently referred. Mr. Justice Turner had been so good as to designate this party of interference as a numerous body of gentlemen, but to deny to them the title of a "school of political thought." MR. HOPE was very content to accept the humbler designation. He was thankful that the number of those who thought with him was large, as admitted by his critic, and that it was increasing. He was not ashamed to be found on the ground of practical action, rather than up among the clouds of imagination, to be driven hither and thither by higher currents. The characteristic of this wave of objection was that it applied to some parts of India and not perhaps with any force at all to other parts of the country. This was naturally to be expected from the wondrous diversity of nations and circumstances, which had been so well described by his hon'ble friend Sir John Strachey, and which led Mr. Bright to propose the division of India into separate provinces independent of each other. MR. HOPE thought that the proper remedy was to have separate chapters and clauses applicable to different parts of India. In this way we could provide against the risk of enforcing in any place what was not applicable to it. In the course of the sittings in Committee he had been endeavouring to urge these opinions, and he was extremely indebted to the forbearance of his colleagues upon whom he had endeavoured

to enforce views in which they could not agree. He had been at a disadvantage owing to the fact that the Dekkhan Commissioners' report was not officially before the Committee, and that its contents were therefore not thoroughly known except to the hon'ble mover, who took a good deal of trouble to master them.

As regards this question of sales of land in execution of decrees it seemed to him that the proper course was to provide a permissive clause, and that had been done to a certain extent. He could only regret the omission of the clause (327 (*b*) of Bill No. IV) which allowed the Government to prohibit absolutely sales of land in certain districts. That gave a larger degree of power than the clause which we had succeeded in preserving, and a power which he thought it was fairer to have, on the face of the Statute-book, than the undefined power of at any time upsetting the whole law by some special Act.

As regards what might follow a decree besides touching immoveable property, the most important question was imprisonment for debt. Our law here was most barbarous; it was admitted to be most severe. The enormous evils which that mode of endeavouring to recover property from the debtor were well described in this same report, a report which was not merely a report of the state of circumstances in the Bombay Presidency, but summarised all previous discussions in other parts of India; and it was with regret that he saw that it was not possible to take any advanced step in the present Bill towards the abolition of imprisonment.

He had made these remarks merely to qualify his own signature to the report of the Select Committee. He was aware that in a large number of matters the Bill was an immense improvement, and he was extremely glad that it had fallen to the Hon'ble Mover to complete this work in which he had taken so much interest. MR. HOPE was glad to mark the progress of the views which he had advanced. They derived immense support from the admirable speech of Sir A. Hobhouse. He was aware that he must trust to time, which, as he had remarked on another occasion, had already done so much for law-reform. He only hoped we might not eventually owe their triumph to any popular rising, such as that of the Santhâls, or more recently the Dekkhan riots, or to such disturbances as were witnessed by Sir William Muir after the outbreak of 1857, when whole lines of villages were seen in flames, where the villagers had risen and murdered those who had ousted them through the Civil Courts. If he was indulging in any vaticination in looking forward to the ultimate success of his principles, he could only plead the distinguished examples of looking to the future which had been set him during the last few days, and the fact that in the present debate the part of Cassandra had remained unfilled.

The HON'BLE SIR EDWARD BAYLEY wished to say a few words on one subject only, namely, the law of imprisonment for debt. He cordially acknowledged the very many improvements which this Bill would introduce into our Civil Procedure. The evidence which was laid before the Council did establish the fact that although the procedure of 1859 was in itself an enormous improvement upon that which preceded it, still it left open several doors by which very great fraud, cruelty and oppression had been practised through the agency of our Courts. The particular instances which had been brought to notice by the Dekkhan Riots Commission were perhaps crucial instances of abuses which had been perpetrated by the agency of the judicial administration of the country. He thought no one could read the evidence given before the Commission without feeling indignant that such things could have taken place under British rule. He did not wonder at the unfortunate men who were subjected to such proceedings rising up in utter despair against their oppressors. He could only say that it redounded very much to their patience and respect for the law, that they proceeded no farther than they did. Some of the measures which the Bill introduced would go, he trusted, far to make impossible such cruelty in the future. But he thought the Riots Commission had satisfactorily shown that the power of imprisonment for debt was one of the agencies which had been most abused, and which had, so abused, most actively contributed to the terrible result which ensued. He himself when he entered into the discussions upon this Bill was quite unprepared to take into consideration the expediency of the abolition of imprisonment for debt. But he had in the course of those discussions seen the horrible abuses to which that power could be twisted, and he now felt that it was one which was most dangerous and pernicious. He believed himself moreover that it was an utterly unnecessary power. His hon'ble friends, the Native Members of Council, had both spoken of the necessity of retaining it as a remedy against fraud; they spoke no doubt of what they saw as regards their own part of the country. But he believed he was able to oppose to that an authority relating to the same part of the country, which he thought it would be admitted was of no less weight, he meant the learned Advocate General of Bengal, Mr. Paul. That gentleman said:—

"I am an advocate for the abolition of imprisonment for debt, and I entirely concur in and support the views held by the Hon'ble Mr. Hope. During an experience of Mufassal Courts and cases for the last fifteen years, I do not remember meeting with a single case in which I have been engaged where an application had been made for the imprisonment of the debtor, but no doubt there are cases in which such applications have been made and debtors have been imprisoned. I merely refer to my experience as showing that mode of enforcing decrees is not

ordinarily pursued, and that its abolition will not entail any serious mischief or harm. I am fully satisfied that the process of imprisonment for debt is resorted to, either as a vindictive measure or as a means to extort money from the relations of the debtor, or to oppress the debtor for some purpose other than obtaining merely the monetary redress covered by the decree."

That opinion had been supported by the Madras Government which had, also recently proposed the total abolition of imprisonment for debt, and it fell to him, during the operations relating to the proclamation of Her Majesty as Empress, to take an account of the number of petty cases in which prisoners were actually lying in jail for debts of small amount: they were very few—he was surprised to find how few—all over the country. As a matter of fact therefore it was a power which in most parts of the country was hardly used at all, even as the law now existed. As the Bill was framed it had cut down the period of imprisonment so materially that it could no longer act as a deterrent to a man who was inclined to be fraudulent or recalcitrant: the only deterrent effect it could have was upon an honest but unfortunate debtor, and those were not the men to whom it ought to be made applicable.

SIR EDWARD BAYLEY therefore announced himself a convert to the doctrine of abolition of imprisonment for debt. Imprisonment for debt was, he felt, utterly unsuited to the circumstances of the country, and it was capable of being applied to the most cruel purposes. He should therefore have considered it his duty, even at this late stage, to move for the omission of the clauses which provided for it in the present Bill, although they had been in some respects modified and made less severe. But there was one particular difficulty connected with its abolition, namely the present state of the law of insolvency. He quite admitted that if imprisonment for debt were abolished, it would be necessary to enter into the consideration of a total reconstruction of the Insolvency law. But that would demand much time and discussion and involve the passing of a very considerable measure. He could not hope that it would be possible to take it into consideration in connection with the present Bill. He did hope however that his learned friend who would succeed Sir Arthur Hobhouse might find leisure at an early period to bring in an amended Code of Insolvency, together with a provision for the total abolition of the practice of imprisonment for debt.

His Excellency THE PRESIDENT said:—"I am reluctant to allow a measure so important as the present Bill to pass into law and become a substantive part of the Indian Statute-book, without at least a word of good speed from the President of this Council.

"But after listening yesterday to the masterly speech of my hon'ble friend Sir Arthur Hobhouse, I felt, what appears to have been felt equally by our

hon'ble colleague Sir John Strachey, that nothing had been left for any of us to say of the slightest practical value on behalf of this Bill.

"I think, indeed, I cannot do better than imitate the judicious example of that civic worthy, I believe he was a Mayor of Liverpool, who, having to speak on some public question after Edmund Burke, condensed his own eloquence into three words, and said, "ditto to Mr. Burke." I say "ditto to Sir Arthur Hobhouse." The same has already been said in a more emphatic form by another hon'ble member of this Council. For of the six amendments of which he had given notice, my hon'ble friend Mahárájá Jotíndra Mohan Tagore, after listening to what he justly called the exhaustive statement of my hon'ble colleague, immediately withdrew five, and I think that his withdrawal of these five amendments was a most emphatic ditto to Sir Arthur Hobhouse. It is also I think creditable to the care with which this Bill has been drafted, or perhaps I should rather say, with which it has been considered in Committee, that on the sixth, and only, amendment moved by my hon'ble friend the Mahárájá, the opinions of the Council were so nicely balanced and so narrowly divided that the amendment was only carried by a single vote: and that vote I believe was my own. I gave it because I thought my hon'ble friend had established his contention that we have before us no sufficient evidence to justify us in withdrawing from a very painstaking body of judicial officers functions which they have hitherto exercised with promising intelligence and discretion.

"My hon'ble colleague, whose modesty takes, I think, a too Sadducean view of the immortality of his fame, disavowed and repudiated all claim to the special connection of his own name with the measure which we hope to pass into law today. But he may, I think, be congratulated,—and I do congratulate him—on the fact that he has been able before leaving India to bequeath to India so valuable a result of his latest labours, which have, I know, been most arduous. And I think that every Member of this Council may also be congratulated on the fact that my hon'ble colleague has bequeathed to us the recollection of one of the most brilliant orations, one of the most lucid, logical, and complete expositions, to which I have ever had the pleasure of listening, even from himself, on all the facts and bearings of a legal question specially important to this country.

"To say the truth I could not help feeling when I listened to what seemed to me his unanswerable arguments, that they would suffice to cover and to justify legislation much more copious and forcible than any which is contained within the four corners of the few and moderate clauses of this Bill which regulate the relations between debtor and creditor.

"And I have no doubt that if hereafter further legislation in the same direction be found necessary, future legislators will refer to the speech of my hon'ble colleague Sir Arthur Hobhouse as a high authority in favour of such legislation. I must frankly confess that if the amendment of my hon'ble friend Sir Edward Bayley had not been carried, as I am thankful to say it has been carried by a nearly unanimous Council, this Bill would have passed into law with what I for one should have considered a very serious—indeed, I may say, a very discreditable—defect in it.

"My hon'ble colleague Sir John Strachey most properly and appropriately vindicated the science of political economy from much of the nonsense we so often hear put forth in its name. Political economy is simply that science which enables us to understand and to practise the laws which govern the creation and accumulation of wealth. But it has nothing whatever to do with the laws which govern the distribution of wealth. I think that one of the first and most important considerations which practical legislators are bound to bear in mind when dealing with the subject to which the amendment of my hon'ble friend has special reference is, not what are the laws of political economy, but what are the actual facts to which they are to be applied; what are the interests and social circumstances which will be affected by their legislation, and whether those social conditions are of a character which a wise statesman would desire to encourage and possibly to extend, or to restrain and restrict. That being the case, the only objection I have heard made to the amendment of my hon'ble friend is one that surprises me; for it amounts to this, that his amendment, if carried, would have the effect of ridding the community, or at least the community of Bengal, of the existence, or at least the unrestrained activity, of a class which I confess appears to me to be about one of the most worthless, mischievous nuisances by which any community was ever infested—a class of needy usurers who have no capital of their own, who borrow at one rate of interest in order to invest their borrowed money at a higher rate, in speculating on the plunder of the agricultural community. I do not think it is necessary further to notice such an objection.

"I had also great satisfaction in voting for the amendment of my hon'ble friend Mr. Hope. I entirely concur in the principle embodied in that amendment. My hon'ble friend referred to Mr. Justice Turner in terms which were not exactly those of appreciation. But I am quite certain that whatever may be thought of the abstract views and opinions of Mr. Justice Turner, every one who has practically had to do with the preparation of this Bill must feel that it is indebted to Mr. Turner for most valuable assistance; and I think it is fair

to record the fact that to the revision of this Code he has sacrificed not only much valuable time, but also much hard-earned leisure.

"I am sure that I only express the feelings of all my colleagues when I add to those of Sir Arthur Hobhouse the expression of our collective thanks for the care and thought and consummate knowledge of statute law, which have been bestowed upon the preparation of this Bill by my friend Mr. Stokes, whom we shall all be proud to welcome to his well-won place at the head of that great department of our Government with which he has been so long and so worthily associated. I also beg to join in the tribute of gratitude so eloquently rendered by Sir Arthur Hobhouse, to my honourable friend Mr. Cockerell, to the Chief Justice Sir Richard Garth, and many other high judicial authorities, as well as to all the Local Governments, on behalf of this Bill.

"This Code of Civil Procedure, which we hope to pass into law today, may at first sight seem to constitute an enormous addition to the Indian Statute-book, but an examination of its details will show that, although the body of the Code contains no less than 652 sections, it repeals as many as 575 sections of other enactments. Therefore the addition made by it to our Statute-book represents only about 70 sections. But although this addition is not enormous, it is, I think, important, for it provides for many matters which have hitherto been, either not at all or inadequately provided for. It provides, for instance, for interrogatories, affidavits, foreign judgments, *lis pendens*, admission of documents, administration-suits, suits for dissolution of partnership, insolvency, commissions to make partitions, suits by and against minors and lunatics, interpleader, suits relating to public charities, and several others, amongst which I may specially mention suits against foreign Rulers, section 433. This last-named section of the Code will, I have no doubt, prove generally satisfactory to Native Chiefs, or Princes, carrying on commercial relations with British subjects, as it supersedes the present unsatisfactory manner of adjusting disputes in such cases, and provides certain and easily accessible remedies for breach of contract. The other sections of the Code which have been so lucidly explained by my hon'ble friend Sir Arthur Hobhouse, do not call for any special remark on my part. In attempting to deal comprehensively with questions so numerous and interests so various as those to which the present Code will be applicable, no Government can flatter itself that it has not made any important omissions, and we do not suppose that the law we hope to pass to-day may not be susceptible of improvement by future amendments.

"The framing of such a Code as this requires more than the science of the lawyer—more than the skill of the draftsman. It demands also that intimate

knowledge of local peculiarities of practice and custom, and that familiarity with the practical working of existing laws, which are specially possessed by the European and Native Judges in the Mufassal, and by the executive officers of the Local Governments. From all these, prolonged assistance has been received, and to all these our final thanks are due.

"It may indeed be said that the whole legislative and administrative machinery of India has, for a lengthened period, been at work upon the Bill before us, and my trust is that the Council will now concur in ratifying the result of so much labour, thought, and knowledge."

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to provide for the execution of emergent works in connection with embankments in British Burma —The Hon'ble Sir Arthur Hobhouse, the Hon'ble Sir A. Arbuthnot and the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned *sine die*.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 29th March 1877.

Government Central Press.—No. 7 L. D.—2-5-77.—250.