ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

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WITH INDEX.

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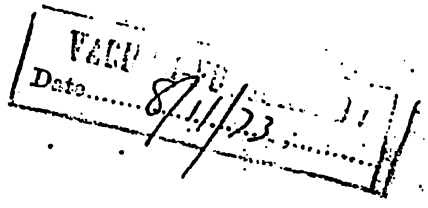

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1880.

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

The Council met at Government House on Thursday, the 17th July, 1879.

PRESENT:

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

BURMA DISTRICT CESSES AND RURAL POLICE BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to amend the law relating to district cesses and rural police in British Burma.

He said that he should perhaps best explain the necessity for the proposed legislation if he briefly described to the Council the circumstances and conditions of the rural police in Burma, and the demand which was made upon the Government to effect some improvement in them. He would advert at a later stage of the measure, if the Council accorded him permission to introduce the Bill, to the powers which should be taken to provide the funds necessary to carry out that object, which, from his own experience and in the opinion of all the authorities who had been consulted, appeared to be a very necessary measure of reform.

The regular establishment of police in British Burma was modelled very much upon the system which obtained in other Provinces, and the proposed

Bill, if it became law, would not affect the regular police. It would affect and apply only to the rural police—an institution which we found in existence when we succeeded to the territories which now constituted the Province of British Burma, and which, owing to more urgent demands, and consequent expenditure of money, in other directions, had remained to this day, he was inclined to think, very much in the position in which we had found it. That system recognized a headman of every village analogous to the police patel in Bombay, and a headman of a circle of villages analogous, he was told, to the police officials of circles in other parts of India; and upon those officials had devolved, amid a multiplicity of other functions, civil and revenue, the duty of giving information and assistance in all matters relating to police requirements. He might explain that the village formed the unit of civil administration in Burma, and to those officials—to the headman of the village and the headman of the circle—had attached a kind of official status, as in other Government appointments in Burma, which, in the absence of anything like a large landed aristocracy or a hereditary nobility, had carried with it a social rank and superiority always recognized and highly prized. Till recent years, therefore, the position of headman of a village having general supervision of the affairs of the village and that of headman of a circle, embracing, possibly, ten or twenty villages, were appointments which had always been very greatly coveted, and which, notwithstanding the smallness of the direct emoluments received from Government, it had always been found easy to fill. Gradually, however, the growth and prosperity of the Province, bringing with it an increase of population, larger revenues and wider fields for employment in every direction, had tended to show not only to the officers of the Administration but to those men themselves that the labours now required of them were very imperfectly remunerated by the small salaries—if they could be called 'salaries'—which Government offered to them. He might explain that, now-a-days, Burma received that particular kind of attention which, represented by Circulars and Resolutions of the Government of India, imposed upon the officers of the administration there much larger work in different directions than formerly. Requisitions from which Burma had before been exempt are now made upon it, as in other Provinces and Administrations. Burma, an eminently prosperous Province, and growing in population as fast as good order and security and natural laws would allow, was called upon now to register its births, deaths and marriages, and not only to say when a man died, but the particular disease of which he died; as well as to furnish information in connection with sanitation, meteorological statistics and numerous other subjects of more or less importance. He (MR. THOMPSON) certainly always felt, when he was in Burma,—and he had no doubt the present Chief Commissioner felt it more acutely—that the agency for the collection of all this information was very imperfect; and there was no reason to doubt that the agent himself upon

whom we relied for such information from rural and distant places, unaccustomed to returns of this kind, found, notwithstanding the privileges of his status and position, that life was not worth having at the price which we offered him for the discharge of those duties. This was the less to be wondered at when we realised that the actual extent of the remuneration which the village headman received from Government was his exemption from the capitation tax, which was never more than Rs. 5 in the year; and that the headman of a circle, having larger jurisdiction, was in the enjoyment of a salary which did not exceed more than Rs. 10 or Rs. 12 a month. It was not therefore matter for surprise that we found the Chief Commissioner complaining that, in consequence of the smallness of the pay accorded to these men and the variety of the labour exacted from them, when vacancies arose there was great difficulty now-a-days in filling them; and he was certain that Burma administration would suffer if its village official constitution was imperilled in any way. If, however, in general matters of administration the pressure which those demands exerted was heavy, when it came to the question of police work and criminal administration it took a form which was obviously inconvenient and dangerous. With the increase of population there had been a great increase of serious crime; and if in earlier days a village headman, depending upon his isolation and his distance from any control, reported what he liked and omitted to report what he did not like, the result was that no one was any the wiser; but at the present time better administration had brought with it a more direct supervision of the proceedings of those officials; it subjected them to a closer inspection, more frequent questionings, and a spirit of enquiry which he supposed any man on Rs. 5 a year would resent as an intrusion upon his freedom. In the meantime, the progress of organized crime in British Burma formed a marked feature in the administration reports of that Province. It was not an easy country, even with the best of agencies, to administer in the Police Department, from its wide area, its scattered population, the difficulties of communication, the dense jungles which extended over its vast uncultivated tracts, and the hills which afforded shelter and harbourage to those who were inclined to criminal propensities. He had seen it stated, as illustrative of the easy condition of the ordinary Burmese villager, that he was in no sense a slave to the soil. After he had paid in his light revenue, he, with others of the agricultural population, often found employment and profit from the large inland fisheries, forests and the numerous other occupations which a small labour market afforded them; but he was afraid, when that was all told, there was yet a wicked residuum which, from its natural aptitude in such things and as much from an inherent love of adventure as from the desire for unlawful gain, committed itself to cattle-lifting and other offences against property. The reports received from the Chief Commissioner showed that there was a great prevalence of crime and

very small means of adequately repressing it. As a matter of statistics, he might mention that, while in British Burma, which had really no rural police, or hardly any that might be called by that name, the average proportion of police to area was one man to fourteen square miles and one man to every 428 of the population. If in other provinces the proportion of police is one to 1,300 or 1,400, it must be remembered that the area of police jurisdiction in Burma was much larger, with very tedious and difficult roads to traverse. In Burma there are 7 reported offences per thousand of the population; in other provinces the average is under 3 per thousand. In Burma about 5 per thousand of the population are yearly convicted and sent to jail for crime; in other provinces the proportion is from 1 to 2 per thousand. Apart from those facts, he should say that Burma had a very extensive frontier to guard, and that, in one direction especially, it was a constant source of anxiety and trouble. The efforts of the regular police had not been wanting to control those difficulties; and he was glad to find that his opinion was supported by Mr. Aitchison as to their devotion to duty and their unsparing exertions. There was, however, no proper co-operation between them and the village police; and this arose chiefly from the want of organization of the village police, its inadequate pay and the indefinite character of its jurisdiction and duties. The Chief Commissioner had, therefore, after consultation with experienced officers, Native and European, submitted a scheme to us for the remedy of those defects, and the assistance of the Legislature was now asked to carry his proposal into effect.

Liberal concessions had been made to British Burma by recent financial arrangements with regard to its provincial revenue, and this would put the Chief Commissioner in a much better position to meet the wants of the Province and to overcome the difficulties which arose from an imperfect rural police. But outside that, powers would have to be taken for providing, by an enlargement of the local cesses, funds which would be applied to the improvement of the pay and position of the rural police. He would reserve for a future occasion the explanation of the course which legislation should take, and the means to be adopted for raising those funds.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS RELIEF BILL.

The Hon'ble MR. HOPE introduced the Bill for the relief of indebted agriculturists in the Dekkhan. He said—

"In availing myself of the leave granted me at the meeting of the Council on the 5th ultimo to introduce a measure designed to afford relief to the indebt-

ed population of our Dekkhan districts, I fear it is indispensable that I should tax the patience of my hearers by treating the subject at considerable length. A careful analysis of the condition of the raiyats, and an investigation of the cause of that condition, seem to be a preliminary indispensable to a just appraisement of each of the numerous provisions comprised in the contemplated legislation.

"The 'Dekkhan riots' began in May 1875. They extended to thirty-three villages in the districts of Puna and Ahmadnagar, and many more were threatened; but order was restored within a month's time. Symptoms of the bad terms subsisting between the raiyat and the money-lender had not been wanting in past years. Whenever, as from time to time happened, the turbulent and predatory aboriginal hillmen—Bhíls, Rámusís or Kolís—rose, they made money-lenders their victims, partly from personal motives, and partly to propitiate the population generally. Not a year passed without isolated murders by exasperated debtors. But in 1875 the uneasiness became general in the Dekkhan. An individual case set fire to the long-laid train. The villagers began by combining to refuse supplies, water and service to the money-lenders, but soon proceeded to actual outrage. The singular character of the proceedings proclaimed at once their cause and their importance. Setting aside isolated cases of personal violence and plunder, the movement was simply an organised, and temperately but determinedly conducted, effort, directed to the definite object of obtaining and destroying the bonds, decrees and account-books of the money-lenders. No persons except the latter were molested. The mobs were composed of respectable members of the community, not *bádmashes*, and were often led or encouraged by the headmen of the village. On attaining their object, they dispersed as rapidly and quietly as they had come together. The eventual cessation of the riots was due, not merely to the prompt action of the police and the military, but to the assurances of the civil authorities that complaints should be enquired into and proved grievances redressed. The latter pledge it remains for this Council to redeem.

"The riots have been followed by investigations in various forms. A Special Commission, in the first place, was without delay appointed by the Bombay Government. It was composed of two European officers, Messrs. Richy. and Izon, of the Revenue and Judicial branches of the service, Mr. Shambuprasád, a dintinguished Native administrator, and a civilian from the North-Western Provinces (first Mr. Auckland Colvin, now employed in Egypt, and afterwards Mr. Carpenter). Their report, in five volumes and above 1,500 pages, is a very able survey of the difficulty in all its aspects. Besides this, the riots gave a special direction in Bombay to the enquiries into the working of the Civil Courts then going on throughout India in con-

nection with the amended Civil Procedure Code under the consideration of this Council, which eventually became law as Act X of 1877; and a judicial officer, Mr. William Wedderburn, was deputed to report on the subject. Further, other circumstances led in 1878, to the condition of the peasantry in the four districts of the Dekkhan being subjected to a close investigation, in which the most experienced officers of the Bombay Presidency took part, and which is summed up in a Minute by Sir Richard Temple, dated October 29th, 1878. The Famine Commission also this year obtained a good deal of valuable evidence, to which they have been so good as to allow me free access. Finally, the question has been very ably and instructively discussed by the Press, both in India and in England. It would be impossible for me, on an occasion like the present, to summarize all these enquiries or to state separately the opinions of all the principal authorities. I can only lay before the Council what seem to myself, by the light of this mass of evidence and of my own knowledge and general experience, to be the condition of the people in the disturbed area and the causes which have operated to produce it, and then explain the measures by which the executive Government propose that relief should be afforded.

II.

"The Central Dekkhan, which is the locality principally distressed, though unfortunately not the only one, and to which the present Bill is intended to apply, consists of four 'districts' or executive collector's charges, namely, Púna, Ahmadnagar, Sholapur and Satara. The three first named became British territory in A.D. 1819-21, but Satara not till A.D. 1849. Their area is 21,000 square miles, and their population three-and-a-half millions; that is to say, the population of Scotland, located in two-thirds of its space. Mountains and forests occupy much of the country, so that the actually cultivated area gives about six acres per head of the agricultural population. The State is the landlord; the tenure *raiyatwárí* on the Bombay system of permanent occupancy, with revision of assessment every thirty years. The peasant-proprietors themselves cultivate about three-fourths of their land and sublet the remainder. The assessment or rent they pay to the Government is at average rates of from seven annas (10½*d.*) to twelve annas (1*s.* 6*d.*) per acre, which is equivalent on fairly good land to from an eighth to a sixteenth of the gross produce, and on the poor soils to much less.

"The proportion and extent of indebtedness are not easy to ascertain. In one batch of twelve villages tested by the Commission of 1875, one-third of the peasant-proprietors were found to be very heavily embarrassed; and of these, two-thirds were petty landholders, paying assessments of only twenty rupees (£2) per annum and under. Their debts came to eighteen times the average assessment, and two-thirds of this were secured by mortgage of the land. In

another batch of seventeen villages in Ahmednagar, forty-three per cent. of the proprietors were deeply in debt, the debts averaging fifteen times the assessment, but reaching forty-five times in individual cases. Only one-third of the debts appeared to be secured by mortgage, but one-eighth of the land had already been actually transferred to the money-lenders; and with regard to much of the remainder, the raiyats were virtually mere tenants-at-will of their creditors. The Collector was of opinion that, throughout the whole district, three-fifths of the people were so involved that, in ordinary course, it was impossible for them ever to get free. Upon this and much other evidence, I must confess myself unable to share optimist views of the condition of the people. Supposing only one-third of the proprietors to be irretrievably involved, is a ruined, despairing and embittered population of above a million souls beneath special consideration? The proportion seems to me, however, to have been nearer one-half than one-third, and to be, moreover, constantly increasing. Finally, it must not be forgotten that the statistics of the Commission, which I have been quoting, are now four years old. Since then, the terrible famine of 1876-77 and the subsequent indifferent seasons have passed over the land, and cannot but have left deep traces behind. True, as it is, that the peasant-proprietary struggled nobly and long to maintain themselves and their dependants without State relief, and vast as was the amount of accumulated savings, in gold and silver ornaments and the like, which they were found to possess, we must not forget that those savings were revealed by their passage to the mint, and that their dissipation must have left at the mercy of the money-lender thousands who were never so before. We may admire the honest pride and fortitude which the peasantry, as a body, displayed throughout their long-protracted trial; but we cannot ignore the obvious effects on their condition.

"Granted, however, that a large proportion of the population are deeply involved, we may well enquire whether such a condition is abnormal. It has been said, and in one sense with truth, that 'poverty and debt were the familiar heritage of the raiyats before the advent of the British rule.' Our records of the country when first acquired tell of indebtedness extending largely among the population. The raiyats, it is said, 'though usually frugal and provident,' were in many cases 'living in dependence on the saukár (or money-lender), delivering to him their produce and drawing upon him for necessaries;' and this condition is mainly attributed to the Marátha system of levying heavy contributions from bankers, to whom the revenues of villages were assigned in repayment, and of collecting the State dues generally through the agency of such capitalists, who recovered in kind what they paid in cash. Indebtedness thus arising mainly from a vicious system of collecting the land-revenue paid by all, necessarily extended to a large proportion of the population. But the amount of individual debt appears to have usually been moderate—necessarily

so, it may be added, because the security and means of recovery were small, since land was not sold for debts, and little or no assistance in recovering them was given by the State. Very much the same condition of affairs is shown by ample testimony to exist now, to a greater or less degree, in the Native States of India. I have myself noted it in those of Western India, with many of which I have had considerable official experience. The reply to our enquiry, then, is that, as compared with former times and with Native States, indebtedness now in the Dekkhan extends to smaller numbers, but is heavier in individual incidence, followed by consequences infinitely more serious and decidedly abnormal.

"Some may feel inclined to question whether, after all, there is any real harm in the present state of things. The institution of private property in land is essential, it will be said, to the well-being and progress of every civilised community, to the encouragement of industry and the accumulation of capital. But it is indispensable that such property should be in the hands of those who by their capital, intelligence and industry are qualified to turn it to the best account. If this condition be not fulfilled, but the land be held by a class who, through their ignorance, improvidence and want of energy, have burdened their heritage with debt which can never be repaid, and thus have deprived themselves of all incentive to labour and all interest in its results, then the only remedy is to promote rather than to obstruct a gradual restoration of healthier conditions of society by the bankruptcy and eviction of the incapable. True as such principles undoubtedly are in modern European populations, considerable caution is necessary in applying them to the ill-studied and little-understood problems of Oriental life. Assuming hastily a similarity of premises, we are apt to jump to familiar conclusions, and to inaugurate action wholly inapplicable and pernicious. Much of the difficulty in the present instance arises from such inconsiderate interference in the past. When we overturn by an Act of the Legislature institutions which popular consent has maintained for above a score of centuries, we sometimes forget that we are not the bearers of a political revelation from Heaven.

"In the present instance there seem grave reasons for doubting whether the premises upon which a policy of *laissez-faire* is based are sound. If the present condition of the Dekkhan raiyats are caused by inherent moral and physical defects, unfitting them for peasant-proprietorship; if they encumber the land to the exclusion of a class of intelligent, enterprising and energetic capitalists, and if the land is such that capital in large single sums can alone effect its improvement, then, indeed, we must perhaps sit down and sit out the process of gradual transfer of the rights of property from the one class to the other, merely softening, if need be, the fall of the sufferers. But consideration will

show that no such circumstances exist in the Dekkhan. The Marátha kunbi is not the defective and useless creature postulated. No such material composed the armies of Sivají and his successors, which defeated the Mogals, overran half India, and founded an empire of which the remnants still flourish around us. As a soldier, the Marátha in olden days was as enterprising as he was hardy, equally able to 'bide a buffet' and to strike a blow. At present, he furnishes material perhaps second to none in India for the purposes of modern war. All representations of him as thriftless, enervated and puny are incorrect. As a peasant-proprietor, he is no unfavourable specimen of the class. Mr. Chaplin and our other early authorities give him credit for many sterling qualities. He is still represented by the Commission as a 'simple, well-disposed peasant, contented with the scantiest clothing and hardest fare,' not without 'masculine qualities' and 'a stubborn endurance,' though still mostly uneducated, and consequently without a broad range of intelligence. Of course, improvidence and slovenly cultivation may be detected in individuals or particular localities. But we must not expect too much. Under British rule, the kunbí has undoubtedly progressed as fast as adverse circumstances allowed. He works his fields to the best of his lights, and in the dry season travels far in search of day-labour, or with his cart on hire. During the late famine he displayed resources equally creditable to his thrift and his good-feeling. His embarrassed condition seems to be rather his misfortune than his fault, induced by the calamities of the last century, the obligation of ancestral debt, the burden of the land-revenue demand—formerly in amount and latterly in imposition—and the facilities for extortion conferred by our laws upon his creditors.

"On the other hand, those into whose hands the land is now observed to be passing are not yearning for it in order to improve it by their intelligence, enterprise and capital. With solitary exceptions, the transferees are the professional money-lenders, who have no wish even to hold the status of landed proprietors, much less to invest their capital in comparatively unprofitable agricultural experiments. Often too they are aliens, who return home after a time. So far from eagerly getting the land formerly transferred to their own names, they show general reluctance to do so. They prefer to keep the raiyat on his land, and extract all they can from him: the punctual discharge of their advances is the last thing they desire. As Mr. Auckland Colvin says—

'the position is that of a man recorded as occupier of his holding, and responsible for the payment of revenue assessed on it, but virtually reduced by pressure of debt to a tenant-at-will, holding at a rack-rent from, and sweated by, his Márwárí creditor. It is in that creditor's power to eject him any day by putting in force any one of the decrees he has against him; and if allowed to hold on, it is only on condition of paying over to his creditor all the produce of his land not absolutely necessary for next year's seed-grain or for the support of life. * * He has nothing to hope for, but lives in daily fear of the final catastrophe.

Under a so-called raiyatwári settlement it is gradually coming to this, that the raiyat is the tenant, and the Márwárí is the proprietor. * * The proprietor is irresponsible; the tenant unprotected. It promises to become, not a raiyatwári, but a Márwárí settlement.'

Such conditions deprive the transfer of land from distressed to moneyed classes of all the glamour with which political economy would surround it. They show that the noble gift of property in land, made by the British Government to the peasantry for their sole benefit, is passing, contrary to their intentions and in frustration of their objects, to a class unfitted to possess it. As observed as early as 1852 by Sir George Wingate, the great author of the gift—

'it was never contemplated that the measures intended to secure these benefits for the class of landholders should transfer their dearest rights and the possessions that had descended to them from their forefathers to a class of usurious money-lenders, and degrade the former to the position of labourers or of tenants cultivating their former lands at the will of the latter.'

In short, the second of the premises on which a policy of *laissez-faire* would rest is as unsound as the first. In the words of Mr. Pedder, a gentleman who has long made a special study of this subject, and whose talents have lately led to his transfer from the Bombay Civil Service to a high position at the India Office,—

'it cannot be too clearly understood that only in the dream of a visionary will the English agricultural system of large landlords, capitalist farmers of large farms, and peasant-labourers for wage, ever be substituted for the *petite culture* of India. Happen what will, each raiyat will till his petty holding; but he may be, as we have made him in Bombay, its proprietor; he may be, as in the North-West, a member of a proprietary cultivating community; he may be, as in Rájputáná, the customary tenant of an hereditary lord; or he may be, as I fear he is becoming, the prædial serf of a money-lender.'

"Only one of the three premises mentioned above remains—that the land is such that capital in large single sums can alone effect its improvement. That is exactly what it is not. There are indeed certain localities, limited in number, where irrigation projects may alter the character of the produce and counteract seasons of drought. But these are far too extensive for individual enterprise. They must be undertaken by joint stock companies or Government, and the latter has them in hand But the great proportion of the cultivated area is such that the most it is capable of can be made out of it either by mere careful tillage and economy of stable manure, or by petty improvements, such as, for instance, digging a well, banking-up a stream or watershed at certain seasons, making a supply-channel from a neighbouring canal or river, or altering the level or inclination of a field—by action, in short, of exactly the kind which the peasant-proprietor, standing on his own land, fully realising its capabilities, and feeling pride and pleasure as well as utility in developing them to meet the growing needs of himself and his children, is at once the most competent and the most likely to apply. That he has so improved his estate since it came into his hands when he could, despite all the adverse circumstances by which

he has been met, is proved by the increase in wells and the reclamation of unassessed waste within holdings during the last thirty years. Whether he shall pursue these inclinations freely, or continue, as at present, thwarted and checkmated at every turn, it now mainly rests with us to decide.

"To the question, therefore, whether there is, after all, much harm in the present state of things, we must, perforce, answer that the harm is of the greatest. To a peasantry such as I have described, expropriation means discouragement, despair and exasperation. To the money-lending class, it means the acquisition of what they are unfitted to use and do not particularly desire to have, of what yields them at best a precarious profit, not exceeding that which reasonable rates of interest, combined with easy recovery, would produce, but wrung forth with trouble, anxiety, expense, popular execration, and even personal danger. To society, it means the discouragement of labour in extracting wealth from the soil, the application of capital in disadvantageous and comparatively unproductive channels, and the fomentation of disorder and outrage. As reported to the Bombay Government in 1858 by Mr. J. D. Inverarity, the Revenue Commissioner—

'the question is one of vital importance both to Government and the people. Even the passive society of the East cannot bear so great a burden without making from time to time convulsive efforts to shake it off. These efforts must increase in frequency and strength, unless the Legislature seriously takes up the evil and applies the knife to it.'

III.

"Assuming, then, that indebtedness to an unusual and extreme extent is the condition of a large proportion of the people in the British Dekkhan, we must enter into a critical examination of its probable causes before we can hope to apply an effective remedy. These causes are numerous, and complicated both in themselves and in their action and reaction upon each other. They may be conveniently classed as 'normal' and 'special.'

"The normal causes are those which may be found at work, more or less, at all times, and some in all parts of India, others only in certain localities. First of these stands *poverty*. It is obvious that where there is a peasant-proprietary, though the stimulus to individual exertion is considerable, and in India the Hindú joint-family system tends to prevent minute subdivision, the individual capital cannot be great, and misfortunes comparatively small will throw even a thrifty and industrious person into the hands of the money-lender for temporary loans. Besides this, the kunbi of our Dekkhan labours under the special disadvantage of a soil mostly indifferent, and a rainfall so precarious, that he hardly gets a full crop once in three years. Finally, the obligation to pay a father's debts, laid by Hindú law upon a son without any equitable restrictions, imposes a burden oppressive at all times, and too often aggravated by

fraud in the creditor and ignorance in the debtor. The Commission, in fact, go so far as to term ancestral debt the 'chief cause' of the raiyat's embarrassments. Next to poverty comes ignorance, which renders the unlettered peasant unable to read, and often to understand, the documents and accounts in which he is vitally concerned, or to state and substantiate in a Civil Court a good defence when he has one, and thus makes him a tempting subject for every kind of roguery. *Social observances*, such as marriage, birth and funeral expenses, also swell the roll of obligations; but, being connected with religion, they are to a great extent unavoidable. If occasionally excessive in prosperity, they are reduced in bad times. The Commission consider that in amount they are generally not larger than the raiyat's income, if otherwise only fairly taxed, would justify, and that undue prominence has been given to them as a cause of his ruin. *Improvidence* must be admitted to contribute its share to the catastrophe; but it consists as the Commission remark, 'rather in the short-sighted improvidence of an ignorant class, ready to relieve present necessity by discounting future income on any terms, and unable to realise the consequences of obligations foolishly contracted, than in an extravagant expenditure and misapplication of income.' To this may be added an honest and confiding, rather than vigilant, temperament. A soil yielding but one crop, and therefore the whole year's income at one period, a climate so capricious as to preclude at seed-time any safe estimate of what the harvest, if there be one, will be worth, and prices varying above cent. per cent., as they twice have done in this century, might well derange the calculations, and produce the bankruptcy, even of sober men of business.

"Besides these normal causes conducive to indebtedness, there exists a long array of special ones, some general in their operation, others peculiar to the Bombay Presidency or the Dekkhan alone. These I propose to notice in four groups—namely, those increasing credit, diminishing ability to repay, proceeding from the revenue system, and comprised in the term 'arming of the money lender.'

"*Increased credit* obviously flowed primarily from our establishment of a settled government, and the consequent immunity of the raiyat from being plundered and murdered by hostile armies, or drawn from his fields, perhaps killed in battle, on his own side, as also from the grosser forms of private crime. A like effect followed our land-settlements. The meaning of the phrase 'land-revenue' varies greatly in different parts of India. In Bombay the State is the landlord, entitled to the entire rent—that is, to the whole net produce or surplus after deducting the cost of cultivation and of the subsistence of the peasant and his family. The State has no intermediary or landlord to think of to whom a certain proportion of the rent must be left. It may relinquish to

the peasant-cultivator as much or as little of the rent as it chooses. The Native governments preceding us relinquished but little, and the cultivator was rack-rented. Hence, even a small debt pressed heavily, and complaints of indebtedness were general when we acquired the country. Gradually we reduced our land-revenue demands, producing immediate relief and recovery of agriculture, until by the revenue survey system, founded by Goldsmid and Wingate in 1838-40, and gradually extended throughout the Presidency, we levy, says Mr. Pedder, only one-half, *at most*, of the net produce or rent, thus leaving the cultivator a liberal margin upon which to borrow and repay. But we went further than this. Under the Native government a cultivator could not, according to custom, be ejected as long as he paid the revenue demand; but that demand was so high that his right of occupancy was worth little or nothing, and was, besides, mostly not recognised as saleable. The land was not his to sell, being deemed the property of the State. Under our settlement, however, 'this right of conditional occupancy' (to quote Bombay Act I of 1865) 'is declared to be a saleable and transferable property.' Though the land is still termed 'Government land,' the occupant has acquired a tenant-right far wider than that of Ireland, and has virtually become proprietor, while the Government retains only a rent charge, variable once in thirty years, within certain prescribed limits. The right of property thus granted acquired simultaneously a considerable value through the reduction of the revenue demand and its invariability for thirty years. The gift, intended to enrich the raiyat, increased his credit along with his means, thus exposing him to the loss, not only of the extra share of net produce bestowed, but of the land from which a livelihood had hitherto been secure.

"Fast upon these additions to solvency and credit came days of brilliant but ephemeral prosperity. Commencing with 1850, railways, roads, bridges and other public works poured millions into labourers' hands, while a series of good seasons gave the best encouragement to agriculture, and brought almost every available acre under the plough. Then came the American war, raising to almost fabulous rates the prices of cotton and other produce. These circumstances had a double effect: many raiyats paid off, or greatly reduced, their debts: many more, both of these and others, increased their expenses, and some even borrowed largely, upon the strength of increased incomes which they supposed would last for ever: all learned a higher standard of comfort and new wants, which they could not relinquish with readiness equal to the subsequent rapid contraction of their means. A further expansion of the raiyat's credit was induced by greater facility in obtaining loans, owing to two reasons. The arming of the money-lender, to which I shall presently allude, rendered frauds and legal recovery of advances easier. Also, the general prosperity increased the capital of money-lenders for investment and the number of persons com-

peting in the business. Money was lent recklessly, on unsound credit; money was lent designedly to secure the unwary raiyat as a bond-slave for ever.

"*Diminished ability to repay* arose partly from greater pressure on the land by the population, which had grown 45 per cent. in the thirty years ending with 1875. The proportion of 167 souls per square mile becomes extremely heavy after making allowance for mountains, forests, &c., and for the defects of the cultivable soil and the climate. But even the cultivable area cannot be, on an average, as productive as in former days. When only a half of it was cultivated, the best soils were chosen, fallows were readily allowed; the waste land and forests supported cattle freely; the stable manure was sufficient. Now all is reversed. The waste land has disappeared; the cattle and manure are insufficient in proportion; the jungles have become reserved forests; the poor soils reduce the average; and the general result is a lower yield per head for subsistence or repayment of debt. Again, the raiyat's solvency was reduced by a great fall in prices after the close of the American war. Between 1836 and 1866 prices rose from fifty-six to eighteen *seers* per rupee: between 1866 and 1874 they fell again to fifty *seers*. With the various causes of low prices; with questions such as those of the effect of levying revenue in money instead of in kind; of the sufficiency of the circulating medium, or of the action of the so-called 'Indian tribute,' I am not now concerned; for our present purpose, to note the fact of the fall is sufficient. A series of bad seasons has, likewise, supervened. Finally, the effect of an absence of stimulus to exertion in lessening ability to repay must not be overlooked. Where the raiyat is hopelessly involved, and all produce goes to the creditor, a bare subsistence being given back, what inducement can there be to add to the latter's gains? The raiyat pays off less; his debt on paper increases, and what more? He thinks it 'as well to be hung for a sheep as for a lamb.'

"*To our revenue system* must in candour be ascribed some share in the indebtedness of the raiyat. Time would fail me were I to attempt to enter here into the elaborate question of the pressure of the land-revenue demand, nor does my subject require that I should do so. The Commission's report and the other enquiries to which I have referred contain the fullest information on the subject. Suffice it to say that it is amply proved that the riots had no immediate connection with the revision of assessment, which was neither imposed nor contemplated in many of the localities where they occurred. Still less can the general indebtedness of the raiyat be ascribed to the weight of the assessment, whether unrevised or revised, since the proportion of the net produce taken is low in itself; very low for *a landlord* to take; far lower than that prevailing in 'alienated' British villages and adjacent foreign States. I am here of course speaking broadly, irrespective of individual instances of over-

assessment, which in so vast an undertaking may not improbably have occurred. But it seems likely that indebtedness arising mainly from other causes, normal or special, may have been aggravated by our rigid system. If any considerable increase at a revision were gradually worked up to in the course of two to five years, the raiyat would have time to readjust his expenses to his means instead of being taken by surprise, and perhaps driven to the money-lender. Again, if the recovery of instalments were more coincident with the time when the raiyat realizes on his produce, instead of falling sometimes too early and sometimes too late, and so the land-revenue were more in practice (what it is in law) a first charge on the latter, much temporary borrowing, fraud in crediting produce, and eventual Government process for recovery, might be avoided. Some debt, too, may be caused by the fear of eviction—a mode of recovering the revenue for which a substitute is much needed. Moreover, though the system of taking revenue in kind, besides involving the injustice of assessment on the gross produce instead of the net, is so open to fraud, when adopted on a large scale, as to be impracticable, its object might be attained, in localities subject to drought, by such suspension of the revenue demand as to spread over three or four years, according to the seasons, the aggregate amount to be recovered in that period. Finally, in times of famine, suspension of demand might be systematically granted, as of late it has been by Sir Richard Temple, and even total remission, which is not inconsistent with the Bombay settlements. And, above all, whatever relief is deemed reasonable should be granted in time.

"*The arming of the money-lender* is a general term which I shall apply to the process of increasing in numberless ways the legal power of creditor over debtor, which has been synonymous with the elaboration of our Indian law procedure. In our early judicial dealings with our newly-acquired possessions in the Bombay Presidency, we combined as far as possible the Native model in form with European common sense and equity in practice; but gradually the system was made more regular and rigid. Mountstuart Elphinstone's Code of 1827, however, still contained much of the old leaven, such as arbitration courts, usury law, and a long limitation for suits. Only gradually did creditors perceive and work up to the advantages the law had given them. At first the debtors complained of usurious interest only. From 1843 to 1850 the Court's influence became rapidly more apparent. Attachments and the extortion of new bonds with a premium for forbearance increased. From 1850 to 1858 credit and frauds much expanded. Numerous public officers pointed out the mischief which was going on; none foresaw more clearly than Sir George Wingate how the benefit of his settlement was being turned into wrong channels, or pleaded more earnestly, though in vain, for prompt and effective remedies.

While affairs were in this state, the legislature stepped in to aggravate the evil. In 1859 the period of limitation for suits was reduced and the first Civil Procedure Code was passed, followed by the Stamp Act in 1860.

"The condition then consummated, which has lasted with but slight variation for about twenty years, may be thus briefly summarized as it appears in the Dekkhan. The procedure is highly elaborate and technical; the penalties for contravention of it severe, and litigation dangerous without the guidance of a pleader, whose services are costly and interests often at variance with those of his client. The procedure is the same for a debt of Rs. 5 and Rs. 5,000, except in the rare instances where Small Cause Courts are established. Stamp and court expenses have nearly doubled. Arbitration has been gradually shouldered out, partly by the superior prestige of the Courts, partly by the stamp-duties, partly by its disadvantages for the money-lender. Suits may be heard *ex parte* in the absence of the defendant, and are found to be so, in the four Dekkhan districts, in above half of the cases. Great weight is attached by the Courts to bonds, and they are therefore largely, almost exclusively, depended on. However fraudulent, extortionate or in excess of consideration a bond may be, the burden of proof lies on the debtor, and in practice his defence is generally hopeless. Payments on a decree made by the debtor out of court were (till 1877) ignored, and were therefore obtained, wherever possible, by the fraudulent creditor. The reduction of the limitation period for bonded debts from twelve to six and in some cases three years, and for simple money debts from six to three years, respectively, has subjected the debtor to compound interest, frequent suits, extra costs and a vast increase of his liabilities. The power of obtaining arrest and imprisonment gives the creditor the means of extorting almost any terms for his forbearance in exercising it. Of all the weapons he has obtained, this has been proved to be the most misused. The power of sale in execution extended, till 1877, to *everything* the debtor possessed: since then certain bare necessaries have alone been exempted. Land remains saleable, whether ancestral or acquired, subject to certain provisions for saving it analogous to an *elegit*, which have hitherto proved inoperative, but are now being amended. Of all sales it is a characteristic that the property, through technical difficulties, constantly goes for a mere song, and the creditor is the purchaser. Decrees were, till 1877, interminable, and the Commission found numbers to be of twenty years' standing. Now they may be executed for twelve years. A sub-judge mentions one executed *nine* times. If the persecuted debtor turned towards the law of insolvency, he, till quite recently, found it little more than a name. Until actually arrested or in jail, he could not resort to it at all: and whether, after doing so, he escaped its pitfalls and two years' imprisonment or not, his subsequently acquired property and earnings were liable (unless his debt was under Rs. 100 and the judge chose to discharge

him) until the last pice due, with interest, had been repaid. Finally, the increase of work entailed delay, with loss of time and money, in the disposal of cases, while financial reasons led to reduction in the numbers of the Courts, and consequently to their greater remoteness from the raiyat's home. And all this is the more important, in that a vast increase of litigation has followed the new law, so that in 1876 there were 37,128 suits, and in 1878 (after the famine) 27,577, disposed of in our four districts alone.

"The tendency of the change of relations thus gradually brought about by the law will be seen to have been all one way—in favour of the party possessing the most intelligence and money. Even of old the superiority of the money-lender over the raiyat was considerable, though the former had little power of compulsion; but by the law this superiority has been infinitely increased. The likening of the contest between them to one 'between a child and a giant' is no figure of speech; yet the law presumes them both to be equal! That the superiority is fully and often fraudulently availed of is proved by the vast increase of litigation just mentioned; by the evidence of judicial and revenue officers and of numberless debtors; by the scrutiny of accounts by the Commission and by the use in 1874 of some 150,000 warrants as threats only. The general result is that through these undue powers the raiyat is enslaved by a vast amount of debt, which has been much enhanced by our legal system, and in part was never incurred by him at all. In concluding this sketch, it seems scarcely necessary for me to add that the law, and not the Judges, are to blame. Some of the most valuable proofs of the defects of the former are derived from judicial officers, Native as well as European; and I fully agree with Mr. Auckland Colvin that it is 'very much to the credit of the subordinate judicial administration that it has expressed itself so clearly as to the position which it is compelled to occupy.'

IV.

"Having thus enumerated the various causes of the raiyat's indebtedness, I will briefly classify them according to the possibility or expediency of remedial measures. As causes regarding which little or no special action is practicable we may put down all normal ones. Ignorance, improvidence and extravagant ceremonial or social expenditure can never be eradicated from the world, either in the Dekkhan or elsewhere, though time, experience and education may reduce their strength. An agricultural population everywhere is comparatively ignorant; they are found so even in England under a compulsory educational system, much more in India, where compulsion cannot be thought of. But village-schools are exceptionally numerous and efficient in the Bombay Presidency; cultivators' children form 21 per cent. of the pupils, and we may hope for gradual improvement in this respect. Comparative poverty must continue

the lot of a peasant-proprietary whose soil is poor and climate capricious. Periodical absorption of savings by famine can, at least, be only diminished in degree by palliatives of partial applicability, such as forest conservancy, railways and irrigation, which, under Sir Richard Temple's vigorous administration, are being promoted as rapidly as means allow. Prices must take their course.

"As causes regarding which interference is undesirable may be mentioned the increased credit due to orderly government, property in land and competition of money-lenders, and the lessened ability to repay arising from the diminution of waste land for fallows and grazing by the extension of cultivation and forest reserves. The raising of the land-assessment to the level of Native States in order to stimulate exertion, and the lowering of it so as to pay private debts at the expense of the community in general, are equally out of the question.

"Respecting the remaining causes, action, either executive or legislative, seems open to us. *Executively*, some little might probably be done to relieve pressure of population by favouring emigration to other districts. Then, though the idea of Government agricultural banks appears to me to be unsound in theory and unworkable in practice, the opening of local loans in small amounts, as in France, might offer to bankers an alternative for indiscriminate lending on usury, and to cultivators an investment preferable to ornaments. The system of advances by Government for land-improvement, also, might be simplified. Again, relief might be afforded by modifying, in the directions I have already indicated, the mode in which our land-revenue demand is imposed and levied. Stamp and process fees and batta seem also capable of revision. Finally, there are exchange and cognate financial questions. But I must not dilate upon these executive remedies, which are beyond the sphere of this Council. I have touched on them merely in order to show that I am not so simple as to suppose that all the raiyat's difficulties will be removed by the passing of the Bill before us. *Legislatively*, what we can do, what is proved by overwhelming evidence to be the thing required, what we undoubtedly ought to do, promptly and effectively, is to restore, as far as may be, the rude balance between debtor and creditor, which has been disturbed by our own legal institutions. We may take back many of the weapons inconsiderately placed in the money-lender's hand and shown to have been misused; we may check the undue credit arising from unjustifiable facilities for recovery; we may increase ability to repay by removing discouragements to industry; we may obey the long-neglected proverbial mandate to hear both parties; we may substitute for the blind and ruthless operation of legal machinery the intelligent dispensation of justice between man and man.

V.

" As introductory to a fuller definition of the principles upon which our proposed measure should rest and to a detailed explanation of the Bill itself, it may be instructive to survey, briefly, the relations of debtor and creditor as they were found on the introduction of British rule and as they may now be seen subsisting in some of the best administered Native States. For the former period I can quote no better sketch than that given in the despatch of the Secretary of State dated December 26th, 1878, which has recently become public—

' Under Native Governments, it seems no assistance was, ordinarily, afforded by the State to a creditor for the recovery of his debts. No Court of justice was open to him, and he was left to his own devices to extort what was due, Government winking at very forcible measures that were occasionally employed. The result was not so bad as might have been expected. It speaks well for the national character that contracts were rarely repudiated. And the Commissioners observe that in these proceedings honesty was the best policy for the raiyat and caution was a necessity to the money-lender.'

" In order to state correctly the present practice in Native States, I have made special enquiries in four cases. As to Haidarábád, His Excellency Sir Salar Jung has favoured me, through the Resident, Sir Richard Meade, with a valuable memorandum and summary of regulations. From Bhaunagar, a large State in Káthiáwár, which was, till lately, under joint administrators, English and Native, during the minority of the Thákur, and of which a graphic account by Sir David Wedderburn appeared last year in the *Fortnightly Review*, I obtained a note through Mr. Percival. The system in Morvi, another Káthiáwár State, is described in communications from the administrator, Mr. Shambuprasád, who was a member of the Dekkhan Riots Commission. About Baroda full information is forthcoming in the administration reports of Sir T. Madava Ráo and the letters of some private Native friends I have there. In all these States civil suits for debt are comparatively rare. The limitation period, where there is any definitely laid down, is twelve and six years. The Hindú rule of *dám-dupat*, or disallowance of interest at any time in excess of the principal, is observed in Baroda, Bhaunagar and Morvi. In Haidarábád usurious interest is summarily cut down to a reasonable rate. Imprisonment for debt is not allowed in Morvi, nor, apparently, in Bhaunagar. In Baroda it is forbidden altogether during the cultivating seasons, and very sparingly used at other times. In Haidarábád it is reserved for cases of contumacy and fraud. As to the sale of a raiyat's land and house for debt, both are exempt in Bhaunagar, and the former (if not both) in Morvi. In Haidarábád the sale of either is said to be resorted to in extreme cases only. In Baroda only such portion is saleable as may be in excess of what is indispensable

for the residence and support of the raiyat and his family, and sales are not favoured by the Courts. The sale of moveables is also under characteristic restrictions. In Baroda the raiyat's implements and cattle necessary for cultivation, cooking utensils and clothes indispensable for daily use, 'the ornaments which a married woman must have on her person as long as her husband is alive' (even if not hers, but her husband's) the two months' corn for the raiyat and his family are all exempt. In Bhaunagar only agricultural stock and implements in excess of what is necessary for cultivation, as also the produce, may be sold; and in Morvi the rule seems much the same. In Haidarábád the reservations embrace cattle and implements necessary for agriculture, seed-grain for the next season, grain for subsistence for six months, and necessary apparel and cooking utensils. In all the States the fixing of instalments is common, and, whatever may be the standard rules promulgated through a desire to imitate our judicial institutions and to obtain credit for well-organized government, a summary enquiry into the facts of the case, with scrutiny of accounts, and a more or less rough-and-ready adaptation of the creditor's demands to the debtor's means, appear to be the practice. This practice, being supported by popular opinion, is probably less affected in individual cases by corruption, partiality or oppression than might on general grounds be expected. Having held for many years intimate relations, official and otherwise, with Native States, which in Bombay form one-third of the Presidency, I can say with confidence that, making due allowance for the growing mischievous tendency to copy the British system blindly, the picture just presented is, on the whole, fairly typical of them all.

"This picture may, at first sight, seem to exhibit conditions under which either the raiyat can get no credit or the money-lender no returns. As a matter of fact, however, neither result occurs, because all the parties concerned—debtors, creditors and rulers—thoroughly understand the limits to their several action which are essential to their several ends. No doubt the raiyat has in many cases a hand-to-mouth sort of existence; but even this is endurable, combined with immunity from eviction. I have come upon a passage in Sir T. Madava Ráo's Administration Report of the Baroda State for 1875-76 so ably describing the position that I must ask leave to quote it at length—

'Sales must not be made so rigorous as to crush or impair industrial energy or to induce its emigration. The Civil Courts have to be specially careful in regard to the last-mentioned point, which mainly concerns the raiyats. These have frequent dealings with the saukárs, whose exacting tendencies are well known. The Civil Court should take up such a position between the raiyat and the saukár as freely to allow benefits to pass, but effectually to arrest mutual injuries. The raiyat here can never, as a rule, altogether dispense with the services of the saukár; for the seasons are not so regular nor are the means of irrigation so extensive as to ensure equability or constancy of production. Again the land-tax is in most cases

fixed, and absorbs a considerable proportion of the produce; and, again, the prices of produce fluctuate, changing the incidence of the tax on the produce from year to year. In other words, while the outturn of the land is necessarily varying, the raiyat has to pay a fixed and considerable tax, which must come from the land. In other words, again, the exchequer has to draw a constant and continuous stream out of a fitful supply. The saukár by his interposition meets the mechanical necessity of the problem. He is the receiver of the fitful supply, and enables the raiyat to pay the sarkár equably. He often performs another useful function, namely, he enables the raiyat also to draw from that fitful supply an equable subsistence for himself and family. It is thus to him that both sarkár and raiyat are indebted for equalising to each their annual receipts from a fluctuating source. He, therefore, fulfils very beneficial duties, and deserves to be conserved as an almost indispensable part of the rural organization. At the same time, we are bound to see that he does not override the interests of the raiyats. Let the Civil Courts enable the saukár to recover his just claims from the raiyats. But the Courts should not permit the saukár to press the raiyats to the point of crushing. This point should be well defined and ever kept in view. No process of the Courts should, without the concurrence of the revenue-officers of the sarkár, deprive the raiyat of his land, of his agricultural cattle and implements to the extent necessary for the cultivation of that land, of his cottage, and of food and raiment according to the necessity of himself and family. These should be left to the raiyat, and, as a general rule, placed beyond the grasp of the saukár. It should be understood that the first demand on the produce of the land is that on account of the sarkár tax; the next is that on account of the subsistence of the raiyat and his family; and the last is that on account of the debt due to the saukár. The surplus which may be forthcoming in good seasons after meeting the first two demands may be made available to the saukár for the recovery of his advances made to or for the raiyat in bad seasons. This being understood, the saukár will easily limit his advances to the prospects of such recurring surplus, and will not go beyond. This principle of adjustment may be expected to work well and to the advantage of all the parties concerned, provided that the land-tax is not so excessive as to trench upon the subsistence of the raiyat and the remuneration of the saukár in an average year. As a rule, the principle is not novel in Native States, and has been long in operation, more or less. Our new Civil Court should recognise and respect it, and by no means set it aside. After what I have stated, I need hardly say that our Courts should not imprison the raiyat on account of debts due to the saukár and consign industrious hands to idleness, unless where the debtor may be fairly presumed to possess the means of payment and to withhold payment from a refractory spirit.'

"The *Quarterly Review*, in an able and interesting sketch of the Dekkhan published last April, further truly describes the useful functions of the money-lender in relation to both the State and Society:—

'The village-banker is essential to the social system of the country. At once the purchaser of rural produce and the local agent of the central mercantile firms, alike the village shopkeeper and money-lender, he enables the peasantry to derive full benefit from a good season, and to moderate the recurring disasters of drought and flood. Without his aid the rent would not be realised. His functions in normal times are most important, but in the abnormal times of famine they are indispensable. Then the banker and shopkeeper is stimulated to double activity in both capacities. He advances from his stores food, seed, stock, and even money to the peasantry, who can offer nothing but their credit in return. By relieving the better classes of the community he lessens the pressure on the public purse.

But he does more than this. * * * Experience has proved the advantage of leaving the transport and distribution of food-supplies to private trade. * * It is the saukár who spans the gulf which separates want from plenty, and fulfils the functions of distribution which no State agency can perform.'

"The problem before us is how to keep the money-lender in his place, to encourage and support him in all useful functions, but to restrain him, as he is restrained in Native States, from becoming the enemy and oppressor of the poor? The leading principles of our new measure then should be to give both sides fair play, instead of setting the two classes by the ears; to diminish the risk of fraud in borrowing and extortion in repaying; to diminish the risk of loss in lending and excessive delay in recovery; to obliterate any stigma resting on our judicial institutions. We must foster due credit, check that which is undue, and allow free scope to all civilising processes and healthy relations between capital and labour. We must hold the raiyat responsible in our Courts for what he has really borrowed, not for what he has not, and make him repay by his own exertions all that he reasonably can repay, not set him free, by sudden, one-sided or 'heroic' remedies, to enter on a fresh career of indebtedness. In short, we must see the parties as they really are, in a condition of Oriental, not of European, civilisation, and deal with them by the Indian experience of success in past generations and failure in the present, rather than by the intrusion *per saltum* of alien institutions which are in their own land the result of centuries of experience under totally different conditions.

"I will now endeavour to set forth, as clearly and fully as time and the occasion permit, the principal provisions of the Bill I am introducing, premising that, as the latter is intended to supplement, modify and dovetail into the Civil Procedure Code, and it therefore in some parts presents to the unskilled reader a confused and imperfect aspect, I shall discard its arrangement, and endeavour to express in plain English the effect which its provisions (coupled with the Code) are intended to produce.

"The first object aimed at, is to establish precautions against fraud by either debtor or creditor in their original transactions with each other, and so keep them on good terms and out of court, as far as possible. The Commission thus enumerate the chief frauds which are practised:—

By creditors: (1) forging bonds; (2) withholding the consideration mentioned in bond; (3) obtaining new bonds in satisfaction of old bonds and of decrees and nevertheless enforcing the latter; (4) not giving credit for payments; (5) refusing to explain or wrongly representing their accounts to debtors.

By debtors: (6) tendering in evidence false receipts and false evidence of alleged payments; (7) pleading that bonds are false when they are really genuine.

"Chapter VIII of the Bill is intended to meet the first three and the last-mentioned kinds of fraud. It provides that every instrument to which an

agriculturist is a party shall be written by or under the superintendence of a village-registrar, executed in his presence, and attested by him; that the registrar shall give a copy of it to the party not entitled to the original, and shall both endorse on the original whether transfer of consideration took place before him or not and mark for future identification any instrument which such original supersedes. The reasonableness of such a measure is evidenced by the provisions for notaries in France and most other European countries, and by the penalty in England on unauthorized persons practising as conveyancers. Instruments not so executed will be invalid. By these means every raiyat should at least know what he signs, and both parties should receive due protection. Chapter IX, directed against the remaining three kinds of fraud, provides, under a penalty, for the grant to raiyats on demand of written receipts, annual statements of their account, and pass-books, and for the latter being written up from time to time and attested by the money-lender. These two chapters are based on recommendations of the Commission. Certain provisions of both of them may to some eyes appear too minute to be satisfactorily workable. But due allowance must be made for the existence of a raiyatwárí settlement; for the detailed regulations which the position of Government as a landlord necessitates, and for the intimate personal relations with the people resulting from residence of revenue-officers (who will supervise the working of these chapters) in camp for six or seven months of every year. For instance, the granting of receipts for revenue payments and furnishing every raiyat with a copy of his account have in Bombay been provided for by law since the commencement of British rule, and the calling raiyats in person by thousands and testing the pass-books or receipts given to them by the Government books is there one of the most ordinary and useful duties of an assistant or deputy collector.

"The next step contemplated is that, whenever serious misunderstanding unfortunately arises between money lender and raiyat, either party should be able to resort to a friendly non-judicial authority bound to use his best offices to reconcile the two, and that no litigation should be commenced without a certificate from the Conciliator (as the authority constituted by chapter VI will be termed) that his endeavours in this behalf have failed. Such Courts of Conciliation were advocated by Sir John Strachey just twenty years ago, and by Mr. Cust in 1870 in the *Calcutta Review*. On the present occasion, their success in France was brought forward last year by Sir Erskine Perry, in some Notes which have been published in India; and the subject is suggested for consideration in the Secretary of State's despatch already referred to. For details of the French system, derived from personal observation during a residence in France, I am much indebted to Mr. Fitzpatrick, Secretary to the Government of India in the Legislative Department. The proposed Conciliators will so far differ from the French *Juges de Paix*, that they will not

have, in addition to conciliatory functions, a petty judicial jurisdiction (up to 100 francs = Rs. 50), nor will they be able to compel the attendance of the defendant before them; but they will, in consequence, be unable to exercise undue pressure, which in India might perhaps under some circumstances be apprehended.

"Closely connected with the subject of conciliation is that of Panchâyats, or arbitration by non-official persons or bodies, such as the Puna Arbitration Court, and of incorporating such arbitration, with more or less assistance and control, into our judicial system. The question is a difficult one in some aspects. All that I am now able to say is that it is under careful consideration, and that any provisions which may be decided on can be inserted hereafter in the Bill when passing through the Select Committee of this Council.

"Supposing that, notwithstanding all the preceding precautions, the dispute unfortunately develops into litigation, the Bill next endeavours to place the Courts of law within easier distance from the homes of the people, and to make them more absolute, less technical, less dilatory and less expensive. I may here mention that, out of 4,650 villages in our four districts, only 29 per cent. are now within ten miles of their Courts; 35 per cent. are from ten to twenty miles off; 24 per cent. from twenty to thirty miles; and 12 per cent. between thirty and sixty miles—distances which, in the absence of railways, represent a considerable inconvenience and loss of time to those obliged to attend. In pursuance of the objects just named, chapter V empowers the Local Government to appoint any Patel of a village whom it deems competent to be village-munsif for his own village, or, if desired, for other villages also within a radius of two miles. The munsif's jurisdiction will be limited to suits for money not exceeding ten rupees, and will generally follow the model of the Madras village-munsif's system, constituted under Madras Regulation IV of 1816, except that the munsif will have, as there, a further jurisdiction, by consent of parties, extending to Rs. 100. The munsif's decision will be final, except in case of corruption, gross partiality or misconduct proved before the special Judge, to whom I will presently refer. This Madras system is well worthy of attention. It is a remarkable fact that these munsifs dispose of nearly one-fourth of the whole civil litigation of the Presidency. In other words, some 45,000 suits, for which the people in Bombay might be dragged to our regular Courts, with all their attendant delay, cost and harshness, are in Madras quietly disposed of at the people's own homes without any one of these evils. Nearly the whole of these suits are for sums not exceeding Rs. 20, and nearly half for Rs. 5 and under; but the returns do not show how many of them are for Rs. 10 and under, and therefore tried without the consent of both parties. It has been surmised that many of the disputes here dignified by the name of 'suits' are so petty, that in Bombay

they are never brought to a regular Court at all; but the general statistics do not bear this out, as in the Bombay Mufassal in 1877 there were 144,412 suits to a population of 15½ millions, while in Madras there were only 190,290 to about 31 millions. Again, I understand from Mr. Carmichael, Member of Council at Madras, who has kindly given me much information, that the bulk of them are not between usurers and raiyats. But the fact remains that a very inferior agency can dispose successfully, without appeal, of suits not lower in value, though differing somewhat in nature, from those with which we have to deal. Although, however, village-munsifs may thus be a fairly efficient institution in Madras, where they are a survival of ancient times, and where society is still in a comparatively simple state, it would be impossible at the present day to constitute them by law throughout all villages or village-circles in our Dekkhan districts. The people are now too independent, too active-minded, too irreverent to accept implicitly the decision of village seniors as such, or, as a Native newspaper puts it, 'in the present times of freedom and liberty, when even children do not obey their parents, the village headmen have no authority and influence.' Even if we in Bombay could successfully impose on our hard-worked and ill-paid Patels this, to them, novel function, there is the further difficulty in their case that the bulk of our petty suits are brought by money-lenders, with whom the Patel would too often be, by want of education or by absolute interest, unqualified to cope. Our advanced conditions postulate a more skilled judicature, better Judges, and, consequently, fewer of them; and these the Government must in the main provide. At the same time, there can be no harm in taking advantage of the present opportunity to empower the Government to invest with petty jurisdiction up to Rs. 10 any village Patels whom it may here and there find to be qualified by education and character. We may hope that the number of such will gradually increase.

"Next above these new Munsif's Courts come the existing Courts of subordinate Judges, who are all trained officers, divided in two classes, with proportionate powers, and receiving salaries of from Rs. 200 to Rs. 800 per mensem. These Courts it is proposed to strengthen in two ways. Their number will be increased from 24 to 36, thus diminishing their local jurisdictions and the distances to them from the people's homes; but this, being an executive measure, needs not to be provided for in the Bill. Their powers will, moreover, be considerably increased. By chapter II of the Bill all subordinate Judges in the four districts will be invested with what are termed Small Cause Court powers, but enlarged so as to include mortgage-cases of the class in which agriculturists are so commonly involved. And by chapter IV they will all receive jurisdiction in insolvency. The question of how far the summary jurisdiction, not open to appeal, which the Small Cause Court model implies,

might safely be entrusted to the two classes of subordinate Judge has received careful consideration in connection with the opinion of the Secretary of State in paragraph 33 of the despatch: 'I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all civil Judges in the Dekkhan with great benefit.' It is considered that such jurisdiction may be conferred on the first class subordinate Judges up to the full limit allowed in the Mufassal Small Cause Courts Act, namely Rs. 500 (£40), and on the second class subordinate Judges up to Rs. 100 (£8) absolutely, and up to Rs. 500 by consent of the parties (on the analogy of the higher jurisdiction of village-munsifs in Madras). But three special safeguards are proposed in chapter VII. *Firstly, inspection.*—A special Judge will be appointed to inspect, supervise and control the proceedings of the subordinate Judges, munsifs and conciliators under the Act in all the four districts, and see its new principles and policy effectively carried out. The special Judge will be aided, in each pair of the four districts, by a special assistant Judge or subordinate Judge, who will during the greater part of the year be engaged in travelling about, inspecting and supervising all subordinate Courts. In Bombay the Collector and his assistants similarly move about, inspecting and controlling the revenue and magisterial administration, mixing with the people, and, in particular, examining the civil work done by mámlatdárs. Long experience has proved that the system produces excellent results. *Secondly, revision.*—The power of revision vested in the High Court by section 622 of the Code of Civil Procedure is extended, on the analogy of section 295 of that Code, to the special Judge, who will be enabled to call for and examine the record of any case and correct failures of justice, as also similarly to deal with cases called for and referred to him by his assistants just mentioned. The powers of the High Court under the same section will remain intact. *Thirdly, sitting 'in banco.'*—The special Judge and the assistants with his authorisation are enabled to stay the proceedings in any case pending in a subordinate Court, and to sit with the Judge as a Bench to try it. The power of withdrawing a case and trying it himself, or transferring it to another Court, which the district Judge possesses under section 25 of the Code of Civil Procedure, will also be exercised by the special Judge, and by his assistants with his authorisation. These provisions will enable important cases to be tried by superior officers or a Bench, and promote that exercise by such officers of their personal example and that enlargement of their practical experience which are thought so desirable by the Secretary of State.

"In concluding this part of the subject, I should explain that the amended jurisdiction will, for convenience' sake, supersede altogether that under the Mufassal Small Cause Courts Act, and thus litigants who are not agriculturists will in money cases obtain throughout the four districts the special advan-

tages designed for the latter. Also, no special provision is made for subordinate Judges moving about and sitting at different places, because they can be required to do so under the existing law.

"The procedure followed by the Courts under their new jurisdiction will be pretty nearly that of Small-Cause-Courts, which again differs but little, except as to recording evidence at length, from that of the Code of Civil Procedure. One exception, however, is so important as to require special mention. The Commission pointed out that the proportion of cases decided in Bombay *ex parte*, or in the absence of the defendant, vastly exceeded that in any other part of India. In the four districts the proportion ranged in 1876 from 60 to 74 per cent., and last year from 57 to 66 per cent. This has been ascribed to a variety of causes, of which the chief probably are ignorance of the raiyat that he has a defence, want of means to pay a pleader, conviction that the Court, for want of time or other reasons, will not go into the merits of his case or look behind the bond, fear of irritating his creditor by a defence or fraudulent non-service of summons. The various provisions of the present Bill, however, completely alter the position. The obligation laid on the Court of going into the whole merits of the case, and behind the bond if necessary, to which I shall presently allude, will remove the first three of the above causes of backwardness on the raiyat's part, and will probably lead to his more frequent voluntary appearance. But that obligation can scarcely ever be successfully performed in his absence and without his help; and it is therefore considered indispensable to make it incumbent on the Court ordinarily to exercise in all cases of a defendant's non-appearance the power of compelling him to attend now vested in it by the Code for exceptional use. Compulsory attendance will meet the other two causes of absence above mentioned. Any hardship which it might be supposed to involve will be more than balanced by the consequent better hearing of the case, and will, moreover, be much lessened by the proposed bringing of the Court nearer to the debtor's home.

"Closely connected with the question of procedure is that of how far effect should be given to the suggestion of the Secretary of State that possibly it would be desirable to exclude professional pleaders from the 'Courts with summary jurisdiction and without appeal up to a limited amount' which he desires. Upon this point we have two precedents. The French Code excludes all skilled advocacy from the Courts of the *Juges de Paix*, whether in conciliation or trial of suits, in the following most stringent terms:—

'Aucuns avoués, greffiers, huissiers et ci-devant hommes de loi ou procureurs ne pourront representer les parties aux bureaux de paix.'

The Madras Regulation for village-munsifs excludes professionals, but allows the deputation of a relative, servant or dependant—so that, for instance, a saukár

could send his *gumáshta*, and a raiyat could send or bring with him a clever son or nephew, educated in a Government school. It may be true that where a case, involving even a moderate amount, is intricate, owing to mortgages or other exceptional circumstances, a competent pleader may be of much use both to the parties and the Court. On the other hand, it must be admitted that a pleader is a weapon at the command of the rich alone (one subordinate Judge even states that a pleader who often took raiyats' cases would lose his best customers); that in simple suits a pleader can often add nothing of value to what is in evidence, but only wastes time and introduces confusion; and that the presence of pleaders predisposes some Judges to decide on what counsel put before them instead of going independently into the merits. Upon a balance of such considerations, the draft Bill follows the Madras law in excluding pleaders, but admitting non-professionals, in all cases before a village-munsif or conciliator. It also attempts to check the unnecessary employment of pleaders in higher Courts, by excluding pleaders' fees from the costs awarded in cases before a subordinate Judge not exceeding Rs. 100, unless the Court certifies that professional assistance was necessary to the proper conduct of the case. The appointment of a pleader by the Court in cases where the debtor needs counsel but cannot obtain it is also provided for. This has been suggested in several quarters, and seems reasonable.

"I must here venture to express my regret that a material simplification of the civil procedure with a view to saving delay and expense has not been found to be feasible. I see from official returns that in the Bombay Presidency in 1877 the average duration of uncontested suits was 132 days, and of contested suits 272. It is no doubt true that the intricacy of a suit has no necessary connection with the amount in issue, and that a mortgage for Rs. 50 may present the same features as one for Rs. 5,000; and it may be argued with much show of reason that a Procedure Code should provide for all possible circumstances, and be of general application. At the same time, looking to the fact that, out of about fourteen hundred thousand civil suits of all kinds disposed of annually by the Courts of all grades in British India, some twelve hundred thousand, or 85 per cent., are for sums under Rs. 100 (£8), and six hundred and thirty thousand, or 44 per cent., for sums less than Rs. 20, I cannot but feel, and I think the people feel too, that our Civil Procedure Code, with its six hundred and fifty sections and all that they involve, is in minor cases a burden almost too heavy to be borne. I trust the day may come when not only Dekkhan raiyats but all India will obtain some relief in this respect.

"Having thus noticed the proposed reorganization of the Courts, I proceed to explain some important changes contemplated in the substantive law which they administer. These group themselves round two main heads,—the definition of a debtor's liability, and the mode and extent of its enforcement.

"A Court proceeding to determine the amount of a debtor's liability is met *in limine* (in our four districts at any rate) by the undeniable fact that, as Mr. Pedder expresses it, 'the passing of a bond by a Native of India is often of no more value as proof of a debt he thereby acknowledges than the confession by a man under torture of the crime he is charged with.' The Commission urge two points,—that the money-lenders have learned, through our system, to use and rely upon bonds almost exclusively, and that their bonds are mostly no correct representation of actual transactions. In close connection with this difficulty about bonds is that of usurious and of compound interest, whether only levied in the account, or also provided for in the bond. That the money-lenders do obtain bonds on false pretences; enter in them sums larger than agreed upon; deduct extortionate premiums; give no receipts for payments and then deny them; credit produce at fraudulent prices; retain liquidated bonds and sue on them; use threats and warrants of imprisonment to extort fresh bonds for sums not advanced; charge interest unstipulated for, over-calculated, or in contravention of Hindú law, and commit a score of other rogueries—these are facts proved by evidence so overwhelming that I scarcely know whose to quote out of the five volumes composing the Report of the Commission. Hence arises the question whether, as the Secretary of State expresses it, 'the Courts should be obliged to enter into the merits of every money-claim, whether secured by bond or not, and should award only such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest, or a larger amount of interest than the principal sum.'

"The answer in the affirmative has been maintained, in various quarters of not inconsiderable authority, to be in accordance with sound general principles of equity. Sir Arthur Hobhouse, in a note on the execution-sale of land dated April 28th, 1874, when alluding to some remarks by 'a man like Sir John Strachey, who treats the subject with equal sobriety and ability,' continues—

'From my point of view, I say that, if what he has said, or the major part of it, be now true, it can only be met by a large increase of correctional power over contracts to be vested in judicial tribunals and strengthened by a usury law. In our own country the Courts of Equity invented laws for the protection, not only of persons of weak character and immature age, but of expectant heirs, of reversioners—in fact, of all persons placed under temptation to make improvident bargains. When they came across the usury laws, they made them subject to the more sweeping law created by themselves, and moulded them so as to produce fairly reasonable, though not very legal, results. They laid hold of mortgages under which the mortgagee became absolute owner if the debt were not paid by a certain day, and declared that the parties did not mean what they had said, but that, notwithstanding the absolute forfeiture, there remained an equity of redemption in the mortgagor. * * * I do believe that sensible Judges, armed with a large power of moulding improvident bargains, and

strengthened by a usury law in the background, may administer more than a trifling palliative.'

Sir George Wingate wrote thus in 1852—

'It remains to be shown how it is that the creditor in our Provinces has acquired a degree of power over his debtor which is wholly unknown in Native States. This power, it is clear to me, has been conferred by our laws, which enable the creditor to obtain a decree against a debtor for whatever may be written in his bond, and enforcement of that decree by the attachment and sale of whatever property, moveable or immoveable, his debtor may possess or acquire. * * * The first remedy I have to suggest is as follows: * * The enactment of a law to permit the Court to decree in all cases, on equitable consideration, whatever rate of interest it may deem proper, but that in no case shall the total amount of interest exceed the principal; and that the Court shall also in all cases be at liberty to fix the amount of the principal on equitable considerations with reference to the amount which it may consider to have been actually received by the debtor, and irrespective of the sum entered in the bond or acknowledgment of the debt.'

Mr. Pedder says:—

'A bond should not be considered sufficient proof of a debt unless its antecedents will bear the light, and show that the consideration for which it was passed was a fair as well as an actual one. * * * *

'It appears to me that some limitation of the rate of interest and some restriction on grossly unfair stipulations in contracts, as contrary to justice and public policy, are practicable and expedient.'

From 'The Land and the Law,' a well-known pamphlet by the Hon'ble Mr. Justice West, of the Bombay High Court, I take the following excerpts:—

'If, on the one hand, therefore, the State must needs lend its aid to the creditor as an essential condition of material progress, it must, on the other hand, assign bounds and conditions to this aid, without which it will probably become an instrument of social and political mischief. Particular classes in England supposed to be specially subject to imposition or unfair usage—as seamen and miners—are protected against disadvantageous bargains. The truth is recognised and acted on that there is no real equality, even of the roughest kind, between them and their employers. Still less can such an equality be assumed with safety in a community split up into sections, divided by the impassable barriers of caste and hereditary occupations. The extremes of astuteness and gullibility are thus fostered and brought into contact. * * * At an earlier stage, borrowing at interest in England, as elsewhere, was generally an appeal of helplessness to avarice. * * * There are few who will deny that the India we have to deal with is much more like that earlier England than the England of to-day. * * * In the case of all obligations for a principal of not more than Rs. 500, the Courts should have full power to treat any interest in excess of nine per cent. as simply penal, and to cut it down to such rate as should, under the circumstances, seem just. * * * Compound interest should be disallowed, consistent as it is with sound commercial principles, in order to make it a disadvantage to creditors to leave obligations unsettled until the debtors are involved beyond redemption.'

"But upon this subject not only opinion but precedent are forthcoming. Of the manner in which our Government, a few years ago, deemed it necessary

to protect the raiyat we have a striking instance in a clause (still unrepealed) of the Bombay Regulation V of 1827. It runs thus :—

'*Clause 2.*—And in the case of a cultivator of the soil, sued upon a written acknowledgment executed at a place which was not at the time of such execution under British jurisdiction, if the circumstances are such as to convince the Court that the creditor might reasonably be expected to possess other proof of the amount besides such written acknowledgment (the consideration received for the same being contested), then the said writing shall not be held conclusive as to the amount, whether the defendant prove a deficiency in the consideration or not, but the Court shall pass a decree for only such amount as the claimant may otherwise prove to be due.'

The law which preceded it, Regulation I of 1823, was even more explicit :

'*Section 36.*—Whenever a cultivator of the soil is sued upon an acknowledgment in writing executed by him before the territory where it was executed came into the possession of the British Government, it shall be competent for him to plead that he did not receive a full consideration for the same, whereupon the plaintiff shall be required to prove his debt in the same manner as if no acknowledgment had been executed; and such sum only as in the circumstances of the case is just and equitable shall be allowed in the decree.'

The wisdom of our early legislators in thus dealing with the facts around them was greater than their foresight, which led them to hope that with the planting of the British flag and the establishment of 'a regular system for administering justice' the causes would pass away by which 'cultivators were easily induced to grant written obligations for larger sums than were due.'

"What the Bombay Government of Sir Richard Temple have from the first substantially advocated and what we really need, is something approaching to a restoration of this early law, together with power to cut down unreasonable interest. The Court should set itself to do substantial justice in every case which came before it, instead of being satisfied with the letter of a bond or the bald assertions of either party, and it should of its own motion make such inquiry as it found necessary to this end. On the one hand, a simple denial of consideration should not throw the burden of proof on the plaintiff, but on the other, if the circumstances were such that he ought to have clear accounts and evidence and he failed to produce them voluntarily or on the Court's requisition, the Court would draw its own conclusions against him accordingly. If he did not come into Court with clean hands he would be entitled to little consideration. The Court should not go farther in any case or against either side than sufficed to get at the truth of the matter, and to give an equitable decision. There appears no reason to fear that such an exercise of its discretion by the Court would be either unfair to the creditor or demoralizing to the debtor. The objections to usury-laws are well-known and so cogent that only special circumstances can justify special legislation. Even a maximum legal rate of interest, however, had this advantage that, as Mr. West says, "it set up a standard, and gave fixity to men's vague ideas of what might reasonably be asked

for the use of money in those numerous cases in which the loan partook but slightly of the character of a true mercantile transaction." Where the rate of interest is regulated by the ordinary laws of supply and demand, interference is indefensible, unless, as in the case of interest after decree, the security be changed. But where, as Sir John Strachey has said, 'the conditions depend more upon the degree of simplicity in the borrower and of rapacity in the lender than on anything else,' no such respect need be paid to them—the less so that with Hindús we have the support of the law of *dám-dupat*, and that the security will be greatly increased by the provisions for recovery to be mentioned shortly. It has been urged, and with some truth, that there is nothing in the present law to prevent such enquiry and doing of substantial justice; that certain rulings of the Bombay and other High Courts are suggestive of this course and support *dám-dupat*, and that the provisions of the Contract Act as to undue influence are very wide. But, however this may be, the practice of the lower Courts is usually different, and there are good reasons to fear that, unless their duty in this respect be clearly expressed in the law, ignorance of rulings, press of work, indolence or a desire to get through cases rapidly will, as hitherto, tend to prevent its performance. It may be pointed out, finally, that Lord Cranbrook, besides confirming the sanction given by Lord Salisbury to the introduction of the Bombay draft Bill containing provisions on the principle above referred to, appears to look with approval on 'extending the powers of Judges to modify the contracts entered into between man and man.' In accordance with this view the first four sections of chapter III have been framed, and will apply to all determination of the debts of agriculturists which may take place under the Act. The history and merits of disputed or doubtful cases will be enquired into, and an account will be taken in a certain way if the Court considers the agreement not fair and equitable. Whether these sections express intelligibly, or will secure effectively, the action needed seems doubtful; but they can perhaps be improved in select committee. Regarding this safeguard and those of registration accounts already explained, I should perhaps observe that any ingenious person can imagine methods by which debtor and creditor in collusion may evade them. But the same may be said of many other most beneficial enactments. We can only help those who will help themselves; and I believe a large portion of our Dekkhan peasantry will take heart of grace to do so.

"A second important question affecting the determination of the amount of the debtor's liability is that of the period of limitation. The old law of Bombay (Regulation V, 1827, sections 3 and 4) fixed twelve years in the case of debts supported by a bond, and six years in the case of debts not so supported, as the periods within which civil suits for recovery must be brought respectively. By Act XIV of 1859 these periods were reduced to six and three

years respectively, with the further restriction that a debt supported by written contract was to come under the three years' period, unless it was registered. This is the present law, Acts IX of 1871 and XV of 1877 having made no material change. There is an almost universal consensus of opinion that, as the Commission say, 'The reduction in the periods of limitation has been the cause of considerable hardship to the debtor.' Under the old law, the debtor was rarely sued or called upon to renew the bond till near the expiration of the twelve years, and then he was, at most, sued under the provision of *dám-dupat* for twice the principal sum lent. But under the law since 1859 the creditor is forced within every three years either to sue the debtor, or to obtain from him a fresh bond for principal and any accumulated interest. In practice, he does so nearly every two years, in order to make sure of not missing the period through any accident or default. To show the difference between the two laws: Rupees 100 at 9 per cent. become Rs. 208 in 12 years; but if the bond be renewed triennially, the amount is raised to Rs. 260. At the higher rates which are but too common the effect is more startling. Rupees 100 at 25 per cent. become Rs. 400 in twelve years; but renewals every two years produce a total of Rs. 1,139! That these results are actually enforced in practice is amply proved by the evidence taken by the Commission, from which Mr. Pedder (in an interesting article in *The Nineteenth Century* for September 1877) gives a few illustrations. In short, the debtor thus suffers the cost of writing and stamping a new bond; is charged compound interest instead of simple; often has to bear the expenses of a suit, and, finally, is frequently obliged also to submit to a large nominal increase of the principal, as the price of the creditor's forbearing to sell him entirely up, or to have him arrested and imprisoned. It is perhaps unnecessary for me to quote numerous authorities at length to prove these general results. The collective opinion of the Commission has been stated. Mr. Auckland Colvin summarises the evils, and favours a change. Mr. Shambuprasád has treated the subject with much minuteness, and strongly urges the restoration of the old Bombay law. Revenue and judicial officers, both Native and European, take the same view in their letters to the Commission. Mr. Pedder has been quoted already. Mr. Wedderburn, in a report specially called for by the Bombay Government, advocates a twelve and six years' limit; and it has, I observe, been adopted as desirable at a public meeting of the inhabitants of Puná held not long ago. The Collector of Puná gave evidence to the same effect before the Famine Commission.

"The only plea which has, as far as I am aware, been advanced in favour of the three-years' period is that it obliges the making up of accounts at short intervals, thus enabling the raiyat to know how he stands, and preventing his being deeply involved without his knowledge. This objection had, undoubtedly, very considerable weight at the time it was made. Whether the benefit of a

short account, thus secured by a three-years' limitation, outweighed the evils of a new bond, compound interest, &c., which it entailed, is a point upon which there may well be difference of opinion. But the whole aspect of the question seems to be changed by the provisions in chapter IX of the Bill regarding receipts and statements of account. Taken in connection with section 17, which enables any agriculturist to sue for an account, and to get a declaration of the amount really due to him under all the new and searching provisions of the Act, it would appear that the object of short accounts will now be attained, and perhaps more efficiently than it ever could have been by the indirect expedient of a limitation-law. Under these circumstances, it is proposed to restore, by section 72, the old Bombay law.

"I now proceed to the second head—the mode and extent of enforcement of equitably determined liability. In the execution of a decree by sale of moveables, the necessary wearing apparel of the judgment-debtor and his wife and children, his implements of husbandry, and such cattle as the Court may deem necessary to enable him to earn his livelihood as an agriculturist, are now protected by the amended Code of 1877, so it has not been thought necessary to go further. As to execution against the person by arrest and imprisonment, I rejoice to state that it is now considered expedient to abolish it altogether. Imprisonment will still be inflicted as a punishment for fraud detected on insolvency; but that is a totally different thing. The maintenance of imprisonment for debt, as found in the Indian law, is equally indefensible in principle and in practice. As to principle, the Dekkhan Riots Commission make clear that point, utilising the opinions of John Stuart Mill. Their appendices teem with evidence in detail as to the extortion and wrong of which the warrant of arrest becomes in practice the engine. Unacknowledged payments, fresh bonds for sums unadvanced, life-long slavery and even female dishonour may all be obtained—the first three constantly, by the mere production of the warrant of arrest without enforcement. They say, for instance, that in 1874 'it would seem probable that somewhere about 150,000 warrants had been used as threats only.' The outcry against imprisonment from officers well qualified to judge of it has been uniform and persistent. Its abolition is unanimously recommended by the Dekkhan Riots Commission. Mr. Pedder and Miss Nightingale have in *The Nineteenth Century* brought the evils it causes prominently before the British public. Sir Erskine Perry gives its abolition his 'unqualified approval' in a note dated December 1st, 1877. Judicial officers and pleaders take the same view as the Executive. Were it even defensible in theory, which we have seen that it is not, the abuses to which, in a country like Western India at least, it is proved to lead in practice afford sufficient ground for its condemnation in the districts to which the Bill is to apply. The case has already been once laid, though less perfectly and

authoritatively than at present, before the Governor General's Council in the debates on the Civil Procedure Bill. The representations I then made had the warm concurrence of Sir Edward Bayley and the learned Advocate General for Bengal (Mr. Paul). The discussions in select committee as well as in council showed that the objections to the measure related less to its principle than to the other arrangements, such as an effective insolvency-law and a speedy recovery of *bonâ fide* debts, by which it ought to be accompanied. These the Select Committee and the Council could not see their way to, owing to the insufficiency of the judicial machinery in the Mufassal; and the matter may be held to have been deferred rather than negatived. But the present Bill provides all these necessary accompaniments for the districts to which it is to apply. Imprisonment was, at best, a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. Under the draft Bill, it will be quite unnecessary for these purposes and reserved for cases of flagrant fraud or dishonesty in insolvents. In this altered position I trust that no hesitation will now be felt by the Council in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilized world.

"The case of execution of a decree by sale of immoveable property remains for notice. The problem of whether such sales should be enforced—one of the most difficult by which Indian administration is beset—is entirely the creation of British rule. Although the later Hindú law permitted the sale of land 'on proof of necessity' and Muhammadan law placed no bar to it whatever, the general feeling of the country against alienation of ancestral lands, coupled with the trifling value of the right of occupancy and the political objections to expropriation felt under a Native Government, to which I have already alluded in my sketch of the system of Native States, appear to have co-operated to prevent sales to any noticeable extent. But under our judicial system 'the sale of land registered in the collector's books is' (as observed by Lord Stanley in a despatch of January 25th, 1859) 'the most ready way of enforcing a judgment: it gives the least trouble to both the creditor and the Court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other, even in the most trifling cases.' The Code provides, indeed, an alternative to sale of the nature of an *elegit*, or temporary alienation, by allowing the land to be placed under the management of the collector for a term of years, not exceeding twenty, whenever there is reason to believe that the liability can be thereby cleared off. But the sections enacted in 1859 were not efficient for the purpose in view, and therefore little acted on. Those substituted in 1877 accidentally became almost unintelligible, and we are now amending them. Practically,

therefore, sale has hitherto stood in the Code unfettered. The extent to which this judicial system has been allowed to play varies remarkably in different parts of India. In Lower Bengal a zamíndárí and certain subordinate tenures are freely saleable, but the tenure of an occupancy-raiyat is not; and the local legislature are just now considering whether transfer shall be allowed, provided the purchaser be a brother-raiyat and not a money-lender. Saleability in execution will, of course, follow power to transfer. In the Panjáb hereditary or joint-acquired land cannot be sold in execution without the sanction of the Chief Court, or other land without that of the Commissioner. In the Central Provinces and Oudh ancestral property cannot be so sold without the sanction of the Chief Commissioner, or self-acquired property without that of the Commissioner. In Ajmer all sale is absolutely prohibited. In the North-Western Provinces, Madras and Bombay sales are unrestricted. The position of the question as I have just described it is generally admitted to be unsatisfactory. In a correspondence originated by the despatch of Lord Stanley already quoted, carried on through the last twenty years, and now here embodied in some four hundred pages of print, the question of a remedy has been discussed by the most able administrators throughout India. The alternatives of making land by law absolutely unsaleable for debt; of enabling proprietors to make it so by voluntary trusts or entails; of limiting sale (as in some Native States) to any surplus unnecessary for the subsistence of the proprietor and his family; of replacing sale in execution by usufructuary mortgages for the debtor's life or a maximum term of years; of restricting sales to specifically pledged land; and of confining the power of sale to the Chief Court of a district—all these have found powerful and zealous advocates. In favour of restriction generally, it is urged that to a community whom a variety of circumstances combine to constrain or tempt into debt, the addition of the land to the security they can offer is no advantage whatever, but the reverse. It merely amounts to a permission to live on capital, instead of living on income, anticipated perhaps, but still only income. The process of living on capital is but a short one, all the world over. Abolish the whole land-revenue to-morrow, and the process would merely be somewhat prolonged. The inevitable end must come at last, but its concomitants of eviction and penury will, where the evil is wide-spread, lead to large charitable relief in famine—perhaps eventually to a poor-law—and are also, in parts of India at least, politically dangerous. But the conclusion of this Council when passing the Civil Procedure Code, as explained most fully by Sir Arthur Hobhouse in a remarkable speech on March 28th, 1877, was that, though special measures might be admissible in particular localities, the plan of temporary alienation through the collector for a term of years, whenever the property would be ultimately saved thereby, being in accordance with the past course of legislation regarding land in England and not inequitable, deserved a fair trial; and that, before

going further, an attempt should be made to give life to the intentions of the legislators of 1859, which have to a great extent failed of effect.

"My object in this statement of the position of the land question, which I fear may be deemed a digression, is to account for the absence in the Bill of any attempt at a final comprehensive settlement of it, and at the same time to show the connection and admissibility of the two limited measures which are proposed. Section 23 exempts the land of agriculturists from attachment and sale unless it has been specifically pledged. The equity of thus restricting a creditor's security has able champions in the general correspondence already referred to. But in Bombay the question is mainly one of fact, whether the existing debt can be held to have been, on the whole, contracted in view of the security of unpledged land. Keeping in mind the large proportion of such debt which the Commission found to be ancestral, the recent date (1865) of the legalization of transfers of occupancy, the known reluctance of the raiyats to pledge their land, and other considerations, the first local authorities have decided that it cannot. I must confess to some misgivings as to how the exemption may work in practice. The money-lender may everywhere make the execution of a bond, laying on the land all his existing unsecured advances, an indispensable condition of further accommodation. At the same time the exemption rests as to the past upon a perfectly intelligible and reasonable basis, while as to the future, the proposed village-registration will at least ensure that every raiyat when he pledges his land shall understand what he is doing, and insolvency will open to him a loophole of escape when unreasonably pressed by an extortionate creditor, if he prefers that alternative. The second measure, also contained in section 23, is the grant of power to the Court, when passing a decree or subsequently, to direct the collector to pay off the amount by managing for not more than seven years any land not specifically pledged, after deducting a modicum sufficient for the support of the debtor and those of his family dependent on him. This course, which is only a new application of the principle of temporary alienation, will add greatly to the creditor's security, while diminishing the worry and expense to both himself and the debtor; but I reserve further exposition for the Insolvency-chapter, where analogous provisions occur.

"While thus contemplating the continued recovery of debts from moveables and land, however, policy no less than justice demands that the last refuge of an effective insolvency-law should be provided for the debtor. Such a law is really the bottom of the whole matter. Compared with what we mean to compel a man to *pay*, the question of what we shall hold him to owe sinks into insignificance. The need for it has been generally admitted for a long series of years, and had led to various legislative efforts and measures.

Sir George Wingate in 1852 advocated strongly 'the enactment of a simple and equitable insolvent-law to enable a debtor hopelessly involved to free himself from all his liabilities within a limited period'; and so recently as December 23rd, 1877, he wrote thus: 'Of all the remedies proposed, I estimate the Insolvency Act as of the highest importance, and as likely to prove the most efficacious.' Sir Bartle Frere in 1853, when Commissioner in Sindh, issued Rules which worked well, but were superseded in 1861 by the Code of Civil Procedure. Mr. William Frere, Member of Council at Bombay, introduced into the Legislative Council there in 1863 a Bill based on these Rules and the Insolvent Act of the Presidency-town (11 & 12 Vic., cap. 21), but applicable to the whole Presidency. It was carefully matured in select committee, but was eventually withdrawn in 1867 for a variety of reasons, of which the expediency of awaiting the result of contemplated legislation in England was one of the chief. Sir James Stephen in 1870 introduced into the Legislative Council of the Governor General an Insolvency Bill applicable to all India. It was taken almost entirely from the English Bankruptcy Act of 1869; and on circulation to the Local Governments was generally held to be too complicated and unsuited to the circumstances of the Indian Mufassal. In 1872 Mr. (now the Hon'ble Justice) West, Judge of the Sadr Court in Sindh, proposed a Bill with the essential features of the original Rules of that Province; but the matter was not proceeded with. The measure generally is also advocated in his well-known pamphlet 'The Land and the Law.' In 1872, also, the Panjáb made a material step in advance in the Laws Act then passed.

"Upon the acknowledged harshness of the Indian Law of insolvency as it stood up to 1877 I need not enlarge. The new Code of that year, together with the amending Bill, which will, I hope, be passed at our next sitting, have so far relaxed it, that a debtor arrested or imprisoned, or whose property has been attached, may by application obtain a general inquiry into his affairs, a declaration of insolvency, and a release if in jail (with immunity from subsequent arrest for the scheduled debts) on *boná fide* surrender of all his property. A judgment-creditor also may apply for such declaration. A final discharge may also be granted by the Court at its discretion where the debts do not exceed Rs. 200, and is in any case acquired on payment of one-third of the scheduled debts, if the assets do not produce more, or after the lapse of twelve years. The law is still, however, most defective. Application may not be made by a debtor until process has issued against him; arrest is retained and imprisonment, though for a shorter period; *all* property, except the moveables exempt from sale in execution, must be surrendered; the debtor may he summarily imprisoned for a year, 'at the instance of any creditor,' for concealment or bad faith, while no such penalty awaits the creditor; and in some cases the debtor's future earnings will be unreasonably burdened, while in others the creditor will

not get what might fairly be recovered for him. Finally, the whole becomes a farce through the restriction that the Court may not grant a declaration unless it 'is satisfied' that the debtor 'has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts,' as if persons able to pay in full were the usual customers of the money-lender!

"The fact is that insolvency-law for the Indian Mufassal made an altogether false start. In England fraud by the debtor is the chief danger, and even the legislation of 1869 has failed through his ingenuity; in India fraud by the creditor has almost solely to be guarded against. In England insolvency is presumably a man's fault; in India it is presumably only his misfortune. In England embarrassment ordinarily arises from gross extravagance or reckless trading; in India one or more bad seasons, the loss of a bullock or two, or the religious necessity of marrying a child, are its more frequent origin: extortion and fraud by creditors help its onward course. Yet in England insolvency has hitherto been treated more leniently than in India. Misfortune has here been made a crime, for which even life-long slavery might not atone. Surely, we must divest ourselves of much confusion of ideas. Whether a man *is* insolvent or not is a mere question of fact, quite unconnected with the enquiry how he came to be so. How much he *can* repay, without being made a useless and dangerous member of society, is a mere matter of calculation, into which the moral aspects of his past conduct cannot enter. To such enquiries ideas of revenge and punishment are altogether irrelevant. Imprisonment is only appropriate for concealment, contumacy and other forms of fraud. To declare an agriculturist insolvent when he is so; to set a reasonable time before him during which he shall work himself free and reserve the means therefor; and eventually to start him afresh with the lesson of experience, seem more sensible than to lock him up for a time while his family are starving, and then turn him adrift a beggar. To the creditor certainly the former course will be the more profitable, as also to Society.

"In accordance with these principles, the Bill, in the first place, provides (section 20) for the numberless petty cases in which the means of the debtor, the claims against him and his partial or total inability to satisfy them come before the Court in the course of the suit or application for execution. Where this is so, it is far shorter, simpler and less troublesome to all parties to empower the court at once to settle the matter than to let it go on through the perfectly useless, but costly and vexatious, forms of taking out execution, and applying for declaration or insolvency. Where the case is quite simple, the Court will therefore release the debtor from any balance which it is satisfied he cannot pay. When there are several creditors or other complications and the amount exceeds Rs. 50, it may at once direct the taking of insolvency-pro-

ceedings. Again, where such proceedings are instituted, either so or on the application of either debtor or creditor, ascertained insolvency will be at once admitted, and the Court will proceed to turn the available assets to the best advantage. To avoid the frequently ruinous loss through selling moveables by auction, the Court may hand over articles at a valuation made by assessors. As to immoveable property, any portion specifically pledged for a scheduled debt may be let rent-free for a premium for a term not exceeding twenty years, instead of being sold, if the debt can thereby be cleared off. Portions unpledged may be handed over for a term not exceeding seven years to the collector, who will assign to the insolvent sufficient to maintain himself and those of his family dependent on him and lease the remainder for the benefit of the creditors. In practice, the lessee will probably sometimes be a creditor, but more often the insolvent himself under due security. If the debts cannot be fully paid off by these measures, the insolvent will be discharged from the balance. The proposal which has been made that the fixed period should be subject to the life of the insolvent has been rejected as too unfavourable to the creditor. The limit of seven years has been fixed after careful consideration of the various proposals relating to temporary alienation contained in the land-sale correspondence already spoken of. If a man's debts are so heavy that he cannot clear them off in this time, it is better that he should get a discharge for the balance than that he should drag on as a slave without hope of freedom or stimulus to exertion.

VII.

"Reviewing the Bill broadly, it may fairly be said to secure, to an extent not hitherto attempted, (1) precautions against fraud by either debtor or creditor in their original transactions with each other; (2) interposition of friendly conciliation between disputants, previous to litigation; (3) approximation of the Courts to the homes of the people; (4) some small simplification of procedure and diminution of the expense and technicalities arising from legal practitioners; (5) equitable jurisdiction to reduce all exorbitant, fictitious and fraudulent claims; (6) finality of judicial decisions, subject to adequate safeguards; (7) prompt and unfailing enforcement, through the collector when necessary, of all adjudicated claims of reasonable amount; (8) discharge of the debtor from such claims, or balance of them, as, after all reasonable enforcement for a long period, could not be fully realized except by demoralization or life-long bondage.

"Such a result, while falling not short in favour of either debtor or creditor of what is fairly commensurate with the nature of the case, the anology of law in other countries, the rules of pecuniary need and supply, and the strictest equity, goes no farther in reform than the political necessity of a

prompt and effective remedy for the social disorders of the Dekkhan appears imperatively to demand.

"If I am asked what I think will probably be the effects of the measure and how far I expect it to be successful, I must reply that, although I cannot undertake to answer for all the detailed provisions of a Bill which is the outcome of revision at more hands and authorities than one, I think that it cannot but be most beneficial, and that it will to a great extent meet the needs of the Dekkhan, provided it be supplemented by executive action in the directions already indicated. Of course, no one expects from it the abolition of indebtedness for all time. The raiyats are 'depressed and crushed by a variety of concurrent causes.' With only one class of these, though, perhaps, the largest, does the Bill profess to deal, but in a way which may reasonably be rewarded with success. At least, it gives effective help to every raiyat who is disposed to help himself. The reorganization of the Courts is favourable to all parties. The relations of debtor and creditor are adjusted on fundamental principles, equitable as between the two, and essential to the cohesion of society. A man should pay what he really owes, and no more; but his creditor should not be allowed to use the State for the purpose of beggaring and enslaving him. On the other hand, we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in obtaining all that is fairly due to him and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a mininum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, the destruction of the raiyat's credit or his bondage to secret and extortionate agreements must ensue, and all our well-intentioned interference will do harm instead of good. With such provision, the measure will not injure the raiyat's legitimate credit, but improve it. Against all prognostications to the contrary, I set the actual facts observable in Native States. The raiyats there get all the credit that is good for them. I have no faith in the virtues of unlimited 'tick.' Borrowing, and lending with a view to securing permanent enslavement, will no doubt be checked; and so much the better. *Bonâ fide* debts should be more easily recovered, and more reasonable interest would thus be profitable. Finally, a legitimate mode, more practicable than any yet suggested, will be provided for gradually clearing off the mass of existing debt which now weighs upon the people and stops all improvement, while the great institution of the peasant-proprietary, which is at once essentially Indian and considered in Europe the best form of tenure for a free people, will not be destroyed.

"In conclusion, I have only to urge upon the Council that, while the deliberation and care with which this question has been brought to maturity are a

sufficient guarantee for the suitability of the Bill now introduced, the period which has elapsed since the raiyats first expressed discontent by outrage, the famine which has intervened, and the continued evidences of popular distress, render it desirable that the measure should be passed into law at the earliest practicable date."

The Hon'ble MR. HOPE moved that the Bill be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Sir J. Strachey, the Hon'ble Messrs. Stokes and Thompson, the Hon'ble Sayyad Ahmad Khán, the Hon'ble Mr. Colvin and the Mover.

The Hon'ble SAYYAD AHMAD KHÁN said :—" Before the Bill goes to the Select Committee, I wish, with Your Excellency's permission, to make a few observations with regard to the principles upon which the proposed legislation is based. These observations I have handed to my friend Mr. Fitzpatrick, who, with Your Excellency's permission, will read them to the Council."

Mr. Fitzpatrick then read the Hon'ble Member's remarks as follows :—

" My Lord,—I agree with the Hon'ble Member in his motion that the Bill should be referred to a Select Committee. But before the Bill goes to the Committee, I wish, with Your Excellency's permission, to make a few observations with regard to the principles upon which the proposed legislation is based.

" It may be accepted as an indisputable principle that special laws should only be introduced to meet special cases. The disturbances in the Dekkhan which have given rise to this Bill revealed the existence of considerable distress among the agricultural classes. The causes appear to have been the following. Owing to the large exportation of cotton during the American war the prices both of that article and of all agricultural produce greatly increased. This increase led to an increase in the expenditure and in the credit of agriculturists. It also appeared to justify an increase in the Government revenue, which was accordingly imposed in some of the districts, and, as it appears, unequally. When the demand for Indian cotton fell off, the prices of all agricultural produce fell; and the fund out of which the agriculturists had to meet the increased revenue, and the debts which they had contracted, became insufficient for that purpose. Credit could no longer be procured; and the raiyats, whether instigated by disloyal persons or of their own motion, commenced to attack and plunder the houses of money-lenders, and especially of the class of Márwáris, who, being strangers, were particularly obnoxious to them. It does not appear from the evidence of the rioters taken by the Commission that these men complained of the action of the Civil Courts. Many of them asserted that they were not in debt, and others that they had

not been sued for their debts; but, seeing that the object of the rioters was not only plunder but the recovery of bonds, it seems manifest that there had been a refusal of credit, and, in all probability, threats of proceedings in Court for the recovery of outstanding debts. It also appears that, by reason of a scanty and uncertain rainfall, the productive powers of the districts are usually uncertain, and have for some years been abnormally small.

"My Lord, no doubt a case has been made out for the application of special measures of relief, and I fully admit that that relief should take the form of a law providing facilities for the release of debtors from debts which they can have no hope of discharging, and which, while they remain subject to them, deprive them of the ordinary motives for exertion—the attainment of something more than bare livelihood.

"But, my Lord, while it is desirable to give greater facilities to the raiyats of the Dekkhán, whose ruin has been accomplished by unforeseen circumstances, to free themselves from debts which paralyse their industry, care must be taken that the remedies are such as will not deter the people from having recourse to them, nor impair the credit which is ordinarily given to agriculturists, and without which they would be unable to meet the demand for revenue, or to sustain themselves from harvest to harvest.

"The requirements of the present Bill as to registration appear to me so onerous, that they will operate to deter persons from committing their transactions to writing. Registration affords a very doubtful proof of the payment of money. It is a common experience in this country that money paid in the presence of the registration-officer is in part or wholly returned when the parties leave the presence of the registrar. It is rarely denied that a transaction has taken place; but if a dispute arises, it is as to the amount received.

"The portion of the Bill which relates to conciliation also deserves serious consideration. The Bill provides for the appointment of Conciliators, who, having invited the parties to attend, are to use their best endeavours to induce them to agree to an amicable settlement. Now, the matter on which the parties are supposed to be at variance is not a mere dispute arising out of domestic or friendly relations, in which the impartiality of a stranger or the influence of a neighbour can be hopefully introduced, to persuade the parties to make mutual concessions; and, therefore, I am not hopeful that this provision will be of practical use. No doubt, a revenue-officer or a police-officer could bring influences to bear on creditors which would induce them altogether to forego their claims; but I need hardly express my conviction that the Government of India would altogether discountenance the exercise of any such influence; and I have no doubt the Council, in order to avoid even

the apprehension of its exercise, will see fit to introduce a provision in the Bill prohibiting the appointment as Conciliator of any officer exercising revenue or police functions.

"On the other hand, the attendance before the Conciliator will put the parties to considerable inconvenience. The Conciliator can only 'invite' them to attend; and if the defendant does not attend, the Conciliator may adjourn the case for an indefinite time and as often as he pleases. A claimant may have to waste any number of days to obtain relief in the most trifling case; and there is no provision to secure him compensation.

"My Lord, in my judgment there is more reason to expect that a creditor will abate his claims when the parties are brought face to face in a public Court of justice than at a private sitting held by a Conciliator; but if it is resolved that an experiment be made, at least provisions should be introduced to secure the appointment of Conciliators to whom all parties can resort with equal confidence, and to restrict adjournments.

"My Lord, I now come to the provisions relating to the procedure in the civil Courts; and before I offer any remarks upon them, I must defend my countrymen from some imputations which have been, I think unfairly, cast on them and received as true without sufficient enquiry. It is said they are prone to litigation. In those provinces in which I have acquired experience I have found no facts to warrant this conclusion. Looking to the numbers of the population and their innumerable transactions resulting in credit, the number of suits for the recovery of debt will compare not unfavourably with the statistics of any other civilised country. Creditors rarely sue their debtors unless a dispute has arisen, or unless they desire, by obtaining a decree, to secure an advantage over other creditors. Nor is it true, as has been frequently asserted, that the village money-lender generally desires to acquire the land of his debtor. He looks for the return of his money principally to the crop raised by the labour of his debtor, and takes a mortgage to prevent the debtor's making away with the crop or defeating his claim in favour of another money-lender. In the hands of the money-lender, who cannot himself cultivate, the land is worth only the rent a tenant could give for it.

"Again, in the large majority of cases the claims brought are just, and the defendants do not seek to evade them by unjust defences. I do not mean to say that there are not in this country, as elsewhere, extortionate usurers and persons who advance false claims in Courts of Justice, and also debtors who have recourse to fraud to defeat just claims; but I believe—and I have seen no proof to the contrary—that the civil Courts have, in the ordinary course of their procedure, not failed in this country more than elsewhere to detect fraud

and defeat its intended consequences. In fact, our acquaintance with such frauds is derived chiefly from the investigations of Courts of civil justice.

"I would also observe that in this country, where opportunities for small investments rarely present themselves except in the shape of loans on the security of land, there is a large number of persons who are not professional money-lenders, but who invest their savings in such securities, and almost universally charge no higher interest than the usual rate in the market. The first deviation from the ordinary procedure which I find in the Bill is the compulsory enforcement of the attendance of the defendant. My Lord, if I am right in supposing that in the majority of cases the claim is just, it follows that in the majority of cases in which the defendant does not appear it is, because he knows the complaint is just, and does not desire to lose the labour of several days, possibly at a critical season for his crop, and incur the expense of going to and from, and attending the Court. It would perhaps be sufficient to require the Court to exercise the power it already possesses, of enforcing the attendance of the defendant only in those cases in which, on looking into the account, it sees reason to believe the claim is fraudulent or extortionate. The rule prescribed in the Bill appears to me calculated to injure rather than benefit the majority of defendants.

"The provisions of the Bill which direct the Court to go into the history of the case from the commencement of the transactions, I think, also require modification. They may involve an enquiry imposing on a Court many days' labour and affording it no certain conclusions. It is scarcely reasonable to expect either of the parties to produce reliable evidence of petty money transactions extending over a number of years and commencing, it may be, a quarter of a century ago, especially seeing that the limitation-law has encouraged them to believe that such evidence would not be required of them. I therefore think some definite and not too remote period should be prescribed for such enquiries. So also a definite limit of time should be prescribed for re-opening statements and settlements of accounts. Some debts which will come before the Courts will be the result of transactions commenced and settled before the lifetime of either party to the suit. The consequence of imposing on the Courts a duty they cannot possibly discharge would be to encourage them to evade it.

"My Lord, I think it right to point out that the provisions of section 12, requiring the Court to search for a defence 'on the ground of fraud, mistake, accident, undue influence' (whatever that expression may mean) 'or otherwise,' are calculated to encourage defendants to set up false defences and to support them with false evidence; and for this reason they call for very serious consideration. Nor can I give my consent to the provisions of section 15, forcing an

arbitration on parties, whether they consent to it or not. Competent and impartial arbitrators are rarely to be found in villages; and it is one of the acknowledged privileges of British citizenship that for the vindication of right recourse may be had to Judges of whose competency and impartiality their selection by the State is a guarantee.

"My Lord, I am also unable to agree with the principle upon which section 16 of the Bill is based. The provisions of that section appear to me to be contrary to Hindú law as administered on this side of India and to general equity. If a Hindú dies leaving assets, then *whoever* takes his assets, in whatever degree he may be related to the deceased, and even if he be a stranger, is liable to satisfy the debts of the deceased to the extent of the assets, and, where such debts bear interest, with interest. This rule is common to the English and Muhammadan as well as to the Hindú law. The Hindú law does, indeed, impose a moral obligation on the descendants of a deceased person to pay his debts, and, when the descendants are related to the deceased in the first degree, with interest; but this obligation, which has not the force of law, is not enforced by the Courts on this side of India, and ought, I think, in no case to be enforced, to the injury of *bonâ fide* creditors of the descendants of the deceased.

"In section 20, which provides that a debtor, owing less than fifty rupees, who is unable wholly to pay the debt should be discharged on payment of a portion, it appears to me necessary to specify what portion he is to pay—whether it be so much as he is able or a percentage: but this point will, no doubt, receive the attention of the Committee.

"The provisions of the Bill tending to prevent the employment of vakíls appear to me to be of very doubtful expediency. Having exercised judicial functions for many years, I am bound to say the Courts receive considerable assistance from vakíls, and that the more ignorant the suitor is, the less probability is there he will be able to explain his case in the confusion he experiences in a Court of justice as well as he can to his adviser outside the Court. I would prefer to see provision made for the employment of Government pleaders to appear on behalf of debtors in all cases, rather than discountenance the employment of pleaders at all.

"With regard to appeals, which are entirely prohibited in the Bill, I admit that they entail evils, in that they prolong litigation and increase expense; but it seems to me better to experience these evils than the greater evil of imperfect justice. Cases triable by the Courts of Small Causes ordinarily present very simple issues and do not call for the intervention of a superior Court; but questions relating to land are far more complicated, and involve frequently questions on which the law is not well settled. I can see no reason why appeals

should in these cases be refused in the Dekkhan when they are allowed elsewhere. Revision is, at the best, an imperfect substitute for the right of appeal.

"For similar reasons, I consider the expediency of introducing special rules of limitation, proposed in the Bill, open to serious doubt. If it is desirable in the interest of the debtor to extend the period of limitation for the recovery of debts, the benefit should be given to agriculturists everywhere, and, indeed, to debtors of all classes.

"The provisions of the amended Code of Civil Procedure relating to insolvency will afford sensible relief—and relief that was needed—to agricultural and other debtors in all parts of the country. The insolvency provisions in the present Bill go beyond the general law. I am not prepared to dissent from them on that account; for the circumstances have been shown to justify special remedies. But the provision respecting the delivery of property in lieu of cash is anomalous. It will not, I think, be acceptable to either party, nor does it appear called for.

"With regard to section 35 of the Bill, I have only to observe that I can see no reason why a fraudulent insolvent in the Dekkhan should be exposed to less penalties than a fraudulent debtor elsewhere.

"My Lord, there is one more point to which I wish to invite the Council's attention. Admitting, as I do, that the exigencies of the case require special legislation, I entertain a serious doubt whether the rules framed in the Bill should be enacted more than as a temporary measure. Perhaps, the requirements of the case would be sufficiently met if the operation of the proposed law is limited to a certain number of years. Some of the most important provisions of the Bill relating to interest strongly resemble the laws against usury which for many years were prevalent in this country. I had some share in administering them. They were found ineffective; they encouraged fraud; they operated as a hardship upon the borrower; and as such were repealed both in England and in this country. The revival of any rules of law which limit the rate of interest or empower Courts to interfere in the terms of private contract cannot be regarded by me as other than a retrograde step—a step which, if justified by extreme emergency, should, at any rate, not be allowed permanently to affect the law, even in a small portion of the country.

"My Lord, I have ventured to offer these criticisms, not in any way pledging myself to oppose any of the provisions of the Bill, in whatever shape they may eventually come before the Council, but with a view to invite the attention of the Select Committee before which the Bill will be laid to those provisions of which the expediency appears to me to be doubtful. So

far as the Bill tends to relieve the Dekkhan raiyats from their present embarrassments it will have my cordial support. The acerbity of feeling occasioned to creditors by the discharge of their debtors will be sensibly mitigated if the just ascertainment of their claims be secured to them. But should the provisions of the Bill go to deprive them of this privilege, and so far as such provisions tend to hinder the ordinary transactions of the people and render the recovery of debts incurred hereafter uncertain, I should be reluctant to support it.

"My Lord, I should indeed be grieved if, from what I have said, it should be understood I am not cognisant of the difficulties and hardships under which the agricultural classes of India labour. I have for many years felt a deep sympathy with the raiyat, and should look upon it as a great piece of good fortune to take part in the passing of any measures which would relieve him from the miseries which indebtedness brings upon him. But at the same time I am convinced that no law can be framed which will do away with the necessity of borrowing, or, so long as the recovery of loans is uncertain and fraught with difficulty, put a stop to exorbitant rates of interest. An experience of thirty-five years, during which I had the honour of serving as a judicial officer of the Government, induces me to say that all rules which aim at regulating the rate of interest on private loans or which place difficulties in the way of their recovery, far from relieving, are injurious to the borrower, whose necessities compel him to evade the law by secret and collusive agreements of which the terms are more onerous because they cannot be enforced. The condition of the Indian raiyats not only in the Dekkhan, but in other parts of India, fully deserves consideration at the hands of the Government: perhaps in their pecuniary difficulties may be traced some of the causes which make famine so severe and oft-recurring a calamity. The question is undoubtedly momentous; and Your Excellency's administration is to be congratulated upon having undertaken its solution. But, My Lord, the solution, in my humble opinion, lies not in conferring anomalous privileges of protection against the demands of the money-lender, not in placing difficulties in the way of borrowing money, not in making the recovery of judgment-debts dilatory or uncertain—but in providing the agriculturists of India with facilities for borrowing money on moderate interest, and in making the recovery of such loans speedy and certain."

The Hon'ble MR. COCKERELL said that, whilst he readily admitted that a case had been made out for the application of some remedy, through special legislation, for the evils shown to exist in the heretofore subsisting relations between the agriculturists and the money-lenders in the Dekkhan districts, he thought the Bill before the Council aimed at a much greater interference with those relations,

and a more extensive variation of the ordinary law of the country than was necessary or justifiable; and he felt bound to record his dissent to those provisions of the Bill which in his opinion came within this designation. He considered the sections relating to the establishment of village Courts for the trial of petty cases and a system of village registration of contracts between the agriculturists and the money-lending classes, as well as the enforcement of the delivery of receipts and statements of account, as likely to prove efficacious in the removal of many of the evils now complained of. He would not object to the enactment of the conciliatory clauses of the Bill by way of experiment, though he apprehended that their effect for good or for evil would depend entirely on the character of the agency selected for the discharge of the functions of a conciliator.

If the powers conferred by the Bill were to be vested in officers trained in that school of thought which had devised some of the provisions of the Bill to which he would advert presently, the results to be anticipated could be hardly otherwise than unsatisfactory; they might be exceedingly mischievous.

The proposed abolition of imprisonment for debt had his concurrence as a measure which, if found to work satisfactorily in a limited area, might be advantageously extended at some future period to all India; and he was free to admit also that the proposed alteration of the law of limitation in regard to the recovery of debts (though personally he had doubts as to its advantage) had for its recommendation the support of the most competent authorities on such a question. He would have had no great objection to the disallowance of appeals if the unqualified power of revision to be substituted therefor were vested in the ordinary superior Courts; but he distrusted the action of a special revising agency such as was to be created under the Bill, which might be constituted so as to operate as a mere machine for carrying out the ruling policy of the day towards the classes affected by the proposed legislation.

He thought that the provisions of section twenty, which gave a discretionary power to the Court to absolve any debtor, after the partial satisfaction of a decree or claim, from his remaining liability to his creditor without any of the safeguards which belonged to the ordinary insolvency procedure, were unjust to the creditor, and wholly uncalled-for in the circumstances of the case.

His greatest objection, however, was to the provisions of chapter IV of the Bill, which contained a special insolvency procedure for the benefit of the indebted agriculturist. In the first place, it was proposed in section twenty-seven to virtually declare that no amount of falsehood or dishonesty on the part of the raiyat-debtor should deprive him of the advantages of an adjudication of bankruptcy if, as a matter of fact, he was found to be in insolvent circum-

stances. He would ask what tenable ground there could be for enacting that misrepresentation and fraud on the part of a Dekkhan agriculturist should not be attended with the same disabling and punitory consequences which would be the result of such conduct on the part of any other person. The Hon'ble Mover of the Bill had argued that, for an insolvency procedure to be efficient, the only question to be considered was whether a person seeking its benefits was in insolvent circumstances, and that, if he was, he was entitled to obtain the relief sought for; he (Mr. COCKERELL) regarded such an argument as wholly fallacious; an insolvency law was intended for the relief of honest debtors; hence, when it appeared on the face of a case that a person applying for a declaration of insolvency had been guilty of misrepresentation and dishonesty in regard to the matter of his application, he was most justly and properly thereby debarred from obtaining benefits and privileges to which from the nature of the case he was not entitled.

The next provision on which he had to comment was contained in section thirty. That provision was no less remarkable for its excessive unfairness than for the originality of its conception. After the moveable property of an insolvent had passed into the hands of a Receiver, the Court was to be allowed to interfere for the purpose of prohibiting its sale and to force its acceptance on an unwilling creditor, at a valuation made under no sort of responsibility, and consequently wholly unreliable, in liquidation or part liquidation of his claim against the insolvent.

The property so thrust upon the creditor might be wholly unacceptable quite apart from any question of a fair valuation; it might be a village pig, and the unfortunate creditor might have a conscientious objection to have anything to do with the unclean animal! It might be said, perhaps, that he was putting an extreme case; but it was a case that might well occur under the operation of the proposed section.

The provisions in section thirty-four of the Bill, which was designed to give an absolute release from all further liability for existing debt to an insolvent debtor whose available assets had been distributed amongst his creditors, had been conceived in the same spirit, *i.e.*, it was intended thereby to make a special concession to the insolvent agriculturist at the expense of his creditors which nothing in the circumstances of the case in any way justified, and this, moreover, at a time when, through the passing of the Bill for amending the Code of Civil Procedure, the general law of the country would be made as favourable to the insolvent-debtor in this direction as was reasonable, having regard to the just claims of the creditor to impartial consideration. The Hon'ble Mover had said in the course of his remarks that a man *ought* to pay what was *justly* due from him, but no more. He (MR. COCKERELL) did not understand how the proposed enact-

ment of section thirty-four of the Bill could be reconciled with that sentiment; for the effect of the general provisions of this Bill, if passed into law, would be so to scrutinise and cut down the money-lender's claims against the agriculturist that the residuum found to be due from him must surely come within the category of just debts, and leave the insolvent-debtor with no title to obtain any greater immunity from liability to meet them than was enjoyed by other insolvent debtors throughout the Empire.

He now came to the provisions which in his judgment evinced, perhaps, the greatest disregard of all equitable principles; he referred to section thirty-five which limited the power of Subordinate Judges to inflict punishment for offences under section 359 of the Civil Procedure Code to a sentence of three months' imprisonment in certain cases and one month in others—the punishment allowed in such cases by the said Code extending to one year's imprisonment. This section was so worded as to make it appear at first sight that the provision just described was a mere matter of jurisdiction; but then, even in that view, there would appear to be something anomalous in curtailing the jurisdiction which would be exercised by Subordinate Judges vested with the powers of Insolvent Courts outside of the Dekkhan in the case of the Judges upon whom as regards other matters unusually large powers were to be conferred by this Bill. But when section twenty-five, which required all insolvency cases to be disposed of by these Subordinate Judges exclusively, came to be considered in connection with this section (thirty-five), it was clearly the intention of the framer of the Bill to reduce the maximum penalty which could be imposed for offences under section 359 of the Code from one year to three months' imprisonment in some cases and only one month's imprisonment in others. Now, he (MR. COCKERELL) entirely concurred in what had fallen from the last speaker on the subject of this provision of the Bill, and he would ask why the punishment to be awarded for rascality of the kind dealt with in section 359 of the Code should be appraised by a different standard when the acts evincing such rascality were committed by indebted agriculturists? He (MR. COCKERELL) could not too strongly deprecate such class-distinction in the punishment of criminal offences as was contemplated by this section of the Bill.

The provisions of this chapter (IV) on which he had been commenting were mildly described in the Statement of Objects and Reasons as constituting a "procedure more liberal to the debtor than that of the Civil Code"; and the Hon'ble Member in charge of the Bill had endeavoured in his remarks to defend them as quite consistent with the exigencies of the case. The Hon'ble Member's explanation had in no degree shaken his (MR. COCKERELL'S) conviction as to the monstrously inequitable character of these provisions, which he would describe as marked by a degree of partiality and one-sidedness which he believed

to be without precedent in the annals of Indian legislation. He wished to be understood, however, in these remarks as not opposing the motion for the reference of the Bill to a Select Committee; but he had thought it right to state his views thus plainly in the hope that the provisions of the Bill on which he had specially commented would undergo such pruning and purging by the Select Committee to which it would be referred that the Indian Statute-book would not be tarnished by the admission to its pages of enactments conceived in a spirit diametrically opposed to that sense of fairness and strict impartiality in dealing with the interests of all parties affected by it which had heretofore characterised the legislation of this Empire.

His Honour THE LIEUTENANT-GOVERNOR said he did not wish to criticise in detail any of the provisions of this Bill, but he thought that the circumstances which had led to its being introduced were of such general prevalence throughout India that the mode in which they were to be treated in the Dekkhan might possibly form a precedent for their treatment in other parts of the country. He was not acquainted with the state of the revenue administration in Bombay, but he knew in the Panjáb there were many agriculturists and land-proprietors whose condition was very much the same as that described in the speech of the Hon'ble Member who introduced the Bill; there were parts of the country in the Panjáb, as doubtless there were in every Presidency, where the rainfall was uncertain and the crops precarious; yet in all those districts the Government had introduced its revenue system, which obliged the peasant-proprietor who had engaged for the revenue to pay a fixed sum at fixed times as Government revenue, and the Government had imposed the most stringent conditions with regard to the realisation of its own demands. It seemed to him that too little attention had been paid to this cause, which must in a great degree have contributed, if it did not entirely originate, the difficulties of the Dekkhan raiyats in the part of the country to which this Bill was to be made applicable. The peasant-proprietor who had become indebted to a banker was still obliged to satisfy the Government demand in cash: to procure that cash he had again to resort to the money-lender, and, as the Government demand came upon him at the usual season of the year with regular recurrence, he was obliged to resort again and again to the money-lender in order to procure the cash wherewith to meet it. The Government in this Bill proposed to take very stringent measures to protect the raiyat from the demands of the money-lender; but the provisions of the Revenue-law for the realisation of the Government demand had apparently been in no way altered. Every one knew the great stringency of those regulations, and it seemed to him unreasonable that, while we upheld them for the realisation of our own revenue, we should make such alterations in the ordinary law in regard to private contracts.

He thought it would have been more satisfactory if, before introducing this Bill, we had been told what measures the Bombay Government proposed to take in order to lighten the burden which the payment of the Government revenue demand imposed upon the peasant proprietor. He thought it desirable that, at the same time as measures of relief were afforded to the raiyat from his private creditor, the Government, which appeared as a public creditor of the raiyat, should also take measures to in some way lighten the pressure of its own demand—not perhaps by reduction of assessment, but by taking that assessment in some other way which would not impose upon the raiyat the burden of meeting all the risks of a scanty rainfall and a precarious crop, but would leave those risks on the Government itself, and relieve the peasant-proprietor, who had shown himself unfit to meet them. He thought there was considerable danger in altering the ordinary law of contract in the manner now proposed in this Bill in the case of agriculturists, unless Government itself took measures to relieve the burden which it had itself imposed upon them.

The Hon'ble MR. STOKES said:—"I shall vote for referring this Bill to a Select Committee, and I do not intend, either now or hereafter, to oppose it, so far as it carries out the express orders of the Secretary of State, that is to say, so far as it requires the Courts to enter into the merits of all money-claims by saukárs against Dekkhan raiyats, and forbids them to compel a raiyat to pay a saukár compound interest, or an amount of interest exceeding the principal sum lent; so far as it provides that the principle of the Presidency-towns Insolvent Act (11 & 12 Vic., c. 21) shall be extended to the Dekkhan raiyats; that their land shall not be sold in execution, unless specially pledged by a bond duly registered; that the number of Courts with Small Cause jurisdiction shall be increased, so that there shall be at least one within reach of every raiyat's home; and that Courts of Conciliation shall be established.

"Those instructions have been accepted by the Government of India in its executive capacity, and I am not now going to raise any question as to the necessity or propriety of such acceptance. I may, however, remark that the Bill, so far as it requires the Courts to enter into the merits of money-claims, is simply declaratory of the existing law: so far as it provides a special law of insolvency, it is, to my mind, rendered unnecessary by the great extension which the Select Committee on the Bill to amend the Code of Civil Procedure has recently given to chapter XX of the Code—an extension of which the Secretary of State was not, and is not, fully aware; and, so far as it provides for multiplying Courts with Small Cause jurisdiction, all that is really needed may be done by executive orders under section 3 of Act XI of 1865 and section 28 of Act XIV of 1869.

"The remarks with which I shall venture to trouble the Council have reference merely to the additions which the Bombay Government and the Hon'ble Mover have thought fit to make to the simple scheme recommended by the Secretary of State. It seems to me that, in framing a measure of which the policy is, to say the least, questionable, we should not go an inch beyond the instructions which the Indian Executive is bound to obey; and that we should all, whether we are ordinary Members or Additional Members of this Council, regard with the utmost jealousy accretions as to which the authors of the Bill have wilfully abstained from consulting the Bombay High Court Judges and other persons of judicial experience.

"The first of these accretions to which I shall call your attention is section 73—

"'No appeal shall lie from any decision or order in any suit or proceeding before a Subordinate Judge under this Act.'

"The effect of this section, coupled with section 3, will probably be the reverse of what is intended. It shuts out from appeal the decisions in almost all mortgage-suits. The object of doing so is, of course, to relieve indebted raiyats from expense and prolonged litigation. But, first, I am informed by Mr. Justice West that in the Bombay Presidency the Courts of first instance, in dealing with these suits, usually apply the harsh letter of the law in favour of the creditor. Relief is got from the higher Courts, in which modifications favourable to the raiyat are much more frequent than those in favour of the saukár. And, secondly, the useful power which the Appellate Court now possesses under section 551 of the Code of Civil Procedure of confirming the decision of the lower Court without sending or serving notice has in most cases rendered the cost of an appeal quite insignificant. The result of this part of the Bill will therefore be, on the whole, to place the indebted raiyat in a worse pecuniary position than he is in at present. As to cutting off all appeals in order to shorten litigation, the remedy will be worse than the disease. Let us remember that, in the absence of an appellate Court, the Judges of first instance will have no one (as Bentham says) 'to stand in awe of.' The errors arising from corruption, incapacity, laziness, precipitation, ignorance and love of arbitrary power, which are certain to be committed in these difficult land-suits, especially where the Judges are inexperienced and unaided by a Bar, will remain uncorrected and cause hardship and discontent. The barring of an appeal in cases of the Small Cause type (suits for debts, damages or moveables not exceeding Rs. 500 in amount or value) may be justified, because, as a rule, those cases are simple and easy, and practically it is better, on the whole, for the community that in such cases the decision should be

rapid than that it should be careful and correct. But mortgage-cases sometimes involve the investigation of difficult questions as to title, priorities, marshalling securities, contribution and rights of maintenance, and always the taking of complicated accounts. A Judge who does all this rapidly will simply scamp his work; and the power of calling for and revising his imperfect records will, as I shall show, be a very inadequate substitute for an appeal—a remedy which, wherever wrong has been done, the appellant's interest urges him to apply.

"The effect of abolishing appeals should also be considered in connection with the rule as to *res judicata* (Code of Civil Procedure, section 13). It seems to me that great hardship may sometimes be caused by regarding (as we must, if the Bill is passed in its present form) the uncontrolled judgments of these subordinate Courts as conclusive on questions of title to land. We may, of course, insert a clause declaring that, for the purpose of section 13 of the Code, no Court trying a suit under this Bill shall be deemed, as regards the title to immoveable property in respect of which the suit is brought, a Court of competent jurisdiction. But, then, suitors would be exposed to the harassment of repeated litigation, which the rules as to *res judicata* has been framed to prevent.

"The power given by section 54 to the Special Judge to call for and examine the records of suits tried by Subordinate Judges is intended as a substitute for appeals. But, first, the records of cases tried by second class Subordinate Judges at Rs. 150 a month will, it is safe to say, generally be defective; and the Bill (section 11) expressly provides that in the bulk of cases (those of which the subject-matter does not exceed Rs. 10 in amount or value) there need not be even a memorandum of the evidence. Under the Bill, therefore, the revising Judge will constantly have to exercise his jurisdiction on imperfect materials.

"Secondly, the revising Judge, no matter how carefully he is selected and how highly he is paid, will be greatly inferior in learning, ability and experience to the Judges of the High Court, who now form the ultimate Court of appeal in the Presidency. The result will be that rights will be established all over the Dekkhan, founded on the Judges' crotchets and erroneous ideas of law, and the greatest confusion and hardship will result when these rights are upset (as they are sure, at last, to be) by the High Court or the Judicial Committee of the Privy Council.

"Thirdly, those records, if, as I suppose, they resemble the Bengálí *nathis*, will be masses of ill-written documents in a Native character and language which, it is safe to say, no revising Judge will have time or skill to decipher and translate. The business of revision will, therefore, practically be placed in the hands of the sarishtadárs, who are notoriously open to the saukárs'

bribes; and here, again, the Bill will work to the injury rather than the benefit of the raiyat.

"Another mode in which it seems to me certain that the provisions of the Bill will be used to injure the raiyat is suggested by sections 45 and 46. Those sections provide that when the parties to a case before a Conciliator (who is intended to represent in India the French *Juge de Paix*) come to an agreement finally disposing of the matter, the agreement shall be reduced to writing and signed, and that the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides. The Bill then proceeds thus—

'The Court which receives the agreement shall order it to be filed; *and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.*

"It requires no power of divination to say how this provision will work. The saukár will say to the raiyat, who, we are told, is generally weak and apathetic: 'I will lend you the Rs. 50 for which you ask; you need not give me a mortgage, and you will thus not have to pay the Sarkár anything for stamps or registration fees. We can arrange the matter thus. I shall apply to the Conciliator 'to effect an amicable settlement' between us, and you will come with me before him and agree to pay me Rs. 100 three months hence.' The wretched raiyat will have to do so and the saukár, chuckling at the ease with which he twists a foolish law to his own advantage, will see the agreement taking effect as if it were a decree 'from which no appeal lies.'

"Chapter VIII, which requires all money-obligations executed by raiyats to be written by or before village registrars, also seems to me a specimen of blundering benevolence. The chief result of this well-meant attempt to ensure the authenticity of documents will, I am certain, be to discourage the use of written agreements, and to force *oral* contracts on persons who would otherwise have expressed themselves in writing. I need hardly say that this is impolitic and contrary to one of the wisest aims of our recent legislation. If the scheme succeeds, it will also add greatly to the cost of all loans, such cost falling finally on the raiyats, who cannot pay their revenue without occasionally borrowing. But wherever saukárs are concerned the scheme is, I think, pretty sure to fail. The saukár will give up mortgages and written instruments altogether. He will say to the raiyat: 'I will lend you money at 60 per cent.; but mind, if you do not repay me on the day fixed, I shall never lend to you again, nor will any of my brother-saukárs.' The raiyat will borrow on the terms proposed, and his last state will be worse than his first.

"Section 69 declares that, in awarding costs in suits before Subordinate Judges in which the subject-matter does not exceed Rs. 100 in amount or value, nothing shall be allowed, unless the Court is of opinion that professional assistance was necessary. This, I fear, will practically exclude pleaders from appearing in most of the difficult mortgage-cases cognizable by Subordinate Judges. Now, on this point I have only to say that the experience of India and of every other country in the world proves that an honest, learned and independent Bar is of the greatest advantage to the Judge in the trial of complicated cases. And if the Bombay pleaders are, as a rule, honest, learned and independent (as to which, not having the needful local knowledge, I offer no opinion), the exclusion of them will be a public calamity as well as an unmerited slur on an honourable profession. . It may be true that some of them are dishonest and ignorant; but the arbitrary exclusion of the whole body from their proper functions will deprive the peccant members of all chance of improvement, render them discontented and dangerous, and compel them to earn their livelihood by all kinds of dishonourable practices. To draw the line at Rs. 100 or any other amount is absurd; for the difficulty of a mortgage-case does not vary directly as the amount involved. To give the Subordinate Judge power (as is done by section 69) to refuse any pleader's fees will obviously tend to excite suspicions of favouritism, whenever the Judge grants those fees, and to destroy that independence of the Bar which, for the sake of the Bench as well as the suitors, a wise Government ought to encourage. Lastly, if, as is probably the case, the legal profession in the Bombay Presidency is as influential as it is elsewhere, to make this powerful body of men bitterly hostile to the Bill seems to me the most certain mode of ensuring the failure of the experiment which it has been framed to try.

"The provisions which I have hitherto noticed are, in my opinion, unwise; but those to which I shall now ask the attention of the Council are grossly unjust and (if I may use the expression in India) unconstitutional. Both section 20 and section 49 are retrospective in their operation. They relate to decrees passed *before* the proposed Act will come into force, and the former section at least seriously interferes with the vested rights of the holders of such decrees. Section 20, paragraph 1, runs as follows:—

'When a decree has been passed, *whether before or after this Act comes into force*, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, whether in the course of execution of the said decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of *a portion of the same, and grant him a discharge from such* [sic] *balance.*'

Under this section, therefore, if a man (whether he be a saukár or not) has before the first of October, 1879, obtained a decree against a raiyat for

Rs. 49, the Court, if it is satisfied that there is no other claim against the raiyat, that he is unable to pay more than Rs. 48, but that he is quite able to pay that amount, may direct him to pay only *one* anna, and grant him a discharge from the balance. Surely such a provision was never before proposed for the consideration of a legislature! Section 49 declares that no application for execution of a decree passed before the proposed Act comes into force 'to which any agriculturist residing within any local limits for which a Conciliator has been appointed is a party' shall be entertained by any Civil Court unless the decree-holder produces a certificate under section 48. When the judgement-debtor refuses (as he often will) to appear before the Conciliator, the decree-holder cannot execute his decree until the expiration of that incalculable space of time which the Bill describes as 'such period as the Conciliator thinks reasonable.' Section 30 is also retrospective. It runs as follows:—

'Whenever any moveable property of an insolvent is liable to be sold by a receiver under section 356 of the said Code, the Court may direct that it shall not be so sold, and may, after recording the opinions of two Assessors appointed by the Court in this behalf, determine the value of such property and direct the receiver to transfer it to any of the scheduled creditors who may be entitled to receive in the distribution under the said section 356 an amount equal to or greater than the value so determined; *and such creditor shall accept such property in full or partial liquidation (as the case may be) of the amount to which he is so entitled.*'

A creditor who before the first of October, 1879, has contracted to be paid in money may be compelled, under this wonderful section, to receive payment of his debt in old brass pots, or worn-out bullocks, or village-pigs, or anything else which he does not want and which he may be unable to sell. I believe that the Hon'ble Mover is the sole author of this section—at least I can find nothing about it in the letter from the Bombay Government. Remedial statutes may be retrospective when they only go to confirm rights already existing and add to the means of enforcing existing obligations. But sections like these, that disturb absolute vested rights against which there is no equity, are founded on unconstitutional principles, and I, for one, will never be a party to passing them into law."

The Hon'ble SIR ALEXANDER ARBUTHNOT said:—"At this late hour I will detain the Council by a very few remarks. This Bill, which has been placed in charge of the Hon'ble Mr. Hope by the Executive Government in consideration of his experience in the districts now in question and of the attention which he has given to the subject, is in a great measure based on a draft Bill which was sent up to the Government of India by the Bombay Government, and in the preparation of which Mr. Hope's aid and advice were made available. I have

no doubt that, if the Bill had emanated entirely from the Executive Government of India it would have assumed in some matters of detail a very different shape. There are several provisions in the Bill with which I, for one, am unable to agree; but, as regards the general scope of the Bill, apart from those particular provisions, I feel bound to say that I consider that a sufficient case has been made out for special legislation, and that I approve of certain leading principles which the Bill embodies. On the other hand, I think that there is great force in many of the remarks which my hon'ble colleague Mr. Stokes has made regarding the section which bars appeals in cases of claims founded on mortgages. I personally entertain very little doubt that, when the Bill has undergone that examination and sifting which it will undergo at the hands of the High Court of Bombay and of other judicial authorities, and when it has been examined and revised by the Select Committee, that section will, if it does not entirely disappear, be very materially modified. In all that Mr. Stokes has said on the subject of those provisions of the Bill which provide for supervision and inspection in lieu of appeals I entirely concur. I may also say that I agree with my hon'ble colleague, Mr. Cockerell, in thinking that several of the insolvency provisions are exceedingly questionable. My impression is that it will be found that the insolvency-law which we hope to see enacted in the course of a few days in the Bill amending the Code of Civil Procedure will be found sufficient for the particular districts which are dealt with in the project of law now before us, as well as for the rest of India. However, I think it was only right that, looking to the circumstances under which the Bill has been framed, we should send it forth for criticism and examination, not exactly in the shape in which we, looking at the question from our point of view and not from the local point of view might be disposed to regard it, but that we should pay very great deference to the suggestions made by the Local Government, and afford every opportunity for those suggestions being examined and criticised in the Presidency to which the Bill refers.

"There are one or two points in connection with the address which was delivered by the Mover of the Bill on which I should wish to say a few words. The full and exhaustive and, I am bound to say, very interesting and suggestive, address to which we have listened this morning shows that the Hon'ble Member has exhausted every source of information which was available to him. It shows that he has carefully studied the Report of the Commission which has led to this project of law, and the correspondence which during a long series of years has passed on the particular subject to which this project of law refers, and on other subjects cognate to it. Naturally, in the Hon'ble Member's address a great deal was taken from the Report of the Dekkhan Riots Commission. From that report he was able to adduce a great deal of evidence in support of

the views which he individually entertains. But it struck me that on one or two points on which, as I read the report of the Dekkhan Riots Commission, the opinions expressed by the members of that Commission seemed to differ from those entertained by the Hon'ble Member, he failed to give us the benefit of the observations which are to be found in the Commission's Report.

"I do not think that the tone in which the Hon'ble Member expressed himself with regard to the character of the saukárs in the Dekkhan districts is by any means fully supported by the text of the Commission's Report. The Hon'ble Member used the expression 'usurious money-lenders.' He said many other things which, as his address was read rapidly, I cannot repeat *verbatim* but which gave me the impression that he regards the money-lenders of the Dekkhan districts as a class, with scarcely an exception of usurious and rapacious men—a class of men who make enormous and extravagant profits at the expense of the ignorant raiyat, and a class against whom it is desirable that the Government should direct very stringent legislation.

"Now, it seems to me that this is not the view held by the Members of the Commission. On the contrary, I find it expressly stated, in the 85th paragraph of their report, that 'on the whole there is no reason to believe that the saukárs dealing with the agricultural classes make higher profits than are warranted by the nature of their business, which is always precarious and unpopular—occasionally, as we have seen, dangerous.' There are other passages in the report on which I cannot lay my hand at this moment which convey to my mind a similar impression; and I think it would be wrong that this Bill should go forth to the public or to the people of the districts which it will affect with the impression that the Government of India entertain in regard to this particular class of the community—a class more or less intelligent, which is really very useful, and the existence of which in the circumstances of the country is an absolute necessity—views such as those which appear to be entertained by the Mover of the Bill. I have no doubt that among this class, as among other classes of money-lenders in other parts of the world, there are many black sheep, and that here, as elsewhere, there are instances of gross extortion and rapacity; but I do not for a moment believe that the case is nearly so bad—that the class, as a class, is so extortionate and such a curse to society—as might be inferred from some of the expressions used in the Hon'ble Member's address; such expressions, for instance, as that 'money is lent designedly to render the raiyat a bond slave;' or that 'fraud by the creditor is, in India, the only thing to be guarded against.'

"On another point it appears to me that the remarks of the Hon'ble Member are not borne out by the Report of the Dekkhan Riots Commission. I

refer to the alleged technicality of the procedure of our Courts. Nor do I think that those remarks are borne out by the actual facts of the case.

"In the 116th paragraph of the Report of the Commission I find it stated that 'upon these and similar statements the first remark we have to make is that it is a mistake to suppose that Courts in India are bound only to administer law in the strict sense in which the term is here used. They are distinctly Courts 'of equity and good conscience' as well as of law. Secondly, it is certain that the laws of this country, as, for instance, the Contract Act, the Evidence Act and the Civil Procedure Code, are as little open to the charge of technicality as any laws can possibly be.'

"I listened with great attention and with great interest to the speech of our hon'ble colleague Sayyad Ahmad Khán, the Native Member of this Council, and the only Native Member present. One of the observations made by him which particularly struck me, was that in which he expressed his opinion as to the expediency of prohibiting in this Bill the appointment of revenue or police officers as Conciliators. I agree in every word which the Hon'ble Member said on this point; and I trust that in this respect the Bill will be amended by the Select Committee. On the other hand, I do not agree in all that the Hon'ble Member said in regard to the Limitation-law. The alteration of the Limitation-law for these districts, and I should think for the country generally, in the direction in which it is proposed to alter it in this Bill seems to me to rest on very substantial grounds.

"There was one remark made by my hon'ble colleague Mr. Stokes at the commencement of his speech in regard to the scope of the Bill, with reference to the instructions which we have received from the Secretary of State, with which, if I understood him correctly, I am unable to concur. I do not conceive that this Government is either positively bound to enact every provision which was recommended in the despatch of the Secretary of State, or that it is debarred from going beyond those provisions, if, on full consideration, it appears to us that the main object which the Secretary of State had in view will be advanced by our enacting additional provisions which were not contemplated by him. Everything that the Secretary of State has written on the subject of this Bill, as well as on all other subjects, whether relating to executive or legislative matters, is entitled to the most careful and respectful attention of the Council of the Governor General. But it does not appear to me that in such a case as this, or indeed in any case, the Government of India is precluded from deviating from the letter of those instructions; or, at all events, from urging their reconsideration, if such a course should be deemed necessary. I conceive that it is quite open to us, if any of the provisions recommended by the Secretary

of State to be inserted in a project of law appear to us to be either inexpedient or impracticable or inadequate, to make such alterations or additions as we deem to be required.

"It only remains for me to advert to the remarks made by His Honour the Lieutenant-Governor—remarks for which I think the Government and this Council are very much indebted to His Honour—because it is very desirable that it should be known to the public generally, and to the community which will be affected by this Bill, that the question raised by the Lieutenant-Governor has not been overlooked by the Government of India; that, on the contrary, the view which is entertained by the Government of India on that particular question is, I may say, entirely in accordance with the opinion expressed by Mr. Egerton. With the permission of your Lordship, I will read the concluding paragraph of the letter which was addressed to the Government of Bombay previous to the preparation of the draft Bill, which, as I have said, formed the basis of the Bill now before the Council. After making various observations, which form the subject of fifteen paragraphs of the letter, in regard to the general scope and tenour of the projected legislation, the Government of India expressed themselves as follows on the particular point to which the Lieutenant-Governor alluded:—

'There is one point, however, which, although it may positively not involve legislation, appears to the Governor General in Council to demand further consideration from the Bombay Government, namely, *the possibility of adapting the assessment of the land-revenue to the variations in the season*. This question is discussed in paragraph 10 of the Bombay Government letter of the 6th April, 1877. The Governor General in Council fully agrees in the view that, in ordinary cases and where the land-revenue is moderate, it would not be good, either for the raiyats or for the public treasury, that the land-revenue demand should fluctuate. But the system which is best for districts enjoying an ordinarily regular rainfall may not be the best for the arid tract of the Central Dekkhan, where (it is said that) a good rainfall comes only once in three years. In view of the very great fall of prices and the vicissitude of season in the Dekkhan during the last few years, it would be desirable that the present Government of Bombay should consider whether the recent (1873—75) revisions of the revenue have given sufficient relief from an assessment which was based, in part, on an unduly high estimate of the normal value of field produce in the Dekkhan. And, further, the Governor General in Council would wish the Government of Bombay to consider whether in these four districts, or in parts of them, it would not be wise to have *a varying scale of revenue* demand to be applied in unfavourable seasons, whereby the normal assessment might be reduced by a certain percentage over an entire district, or division of a district, in the event of a failure of rain or other cause of serious damage to the crops.'

"These instructions expressly refer only to the four districts included in the scope of this Bill; but I quite agree with His Honour the Lieutenant-Governor that they are instructions which are probably very applicable to many other districts, not only in Bombay, but in other Provinces in other parts of the

Empire. And I may mention that at this moment, and for some time past, the expediency of applying such a system to another district in another part of India—I refer to the district of Jhánsi—is, and has been, under the consideration of the Executive Government."

His Excellency THE PRESIDENT here adjourned the debate to the following day, and the remainder of the business was proceeded with.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Foreign Jurisdiction and Extradition Act, 1872. He said that the eighth section of the English Extradition Act of 1870 empowered a Magistrate, when any person was charged with having committed an offence abroad, to issue a warrant of arrest in anticipation of a request being made for extradition by the State within whose limits the offence had been committed. Sections 19 and 20 of Act VII of 1854 contained similar provisions; but they were omitted in Act XI of 1872, the present Extradition Act, which consolidated and amended the existing law on the subject. It was, he believed, supposed by the framers of that Act that the matter was sufficiently provided for by the Code of Criminal Procedure, section 157. But that section seemed limited to the case of offenders whom some Court in British India would have jurisdiction to try, and would therefore not cover the case of a foreigner who had committed an offence at some place beyond the limits of British India. Section 194 of the Code was equally inapplicable. Certain recent cases in which subjects of the Nizam had stolen bullocks and committed other offences in the Nizam's territory, and then taken refuge in British India, had shown that some such provisions as those of Act VII of 1854, sections 19 and 20, were still required to prevent failures of justice. The present Bill, which had been prepared to meet this want, practically re-enacted, with certain unimportant modifications, what was the law in India up to the year 1872.

The Motion was put and agreed to.

LOCAL AUTHORITIES LOAN BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Local Public Works Loan Act, 1871. He said that section 3 of the Local Public Works Loan Act, 1871, prohibited the Trustees of the Port of Bombay and the Commissioners for making improvements in the Port of Calcutta from raising money on the security of their funds and the property vested in them, except in the manner provided by that Act; and, as the prohibition was imposed by an Act of the Governor General in Council, it was one from which the local legislature could not relieve those bodies. This had been found to lead

to some inconvenience. The Municipalities of Calcutta, Madras and Bombay were exempted from the prohibition in question; and there appeared to be no reason why the Commissioners or Trustees of the Ports of Calcutta and Bombay, and any similar body which might hereafter be created at Madras, should not likewise be relieved from it. The main object of the present Bill was to provide such relief; but the opportunity had been taken to re-enact the Local Public Works Loan Act with a view to removing certain difficulties of construction which had presented themselves in the working of it and to making the Act express in clearer terms what was understood to have been the intention of its framers.

The Motion was put and agreed to.

The Hon'ble MR. STOKES introduced the Bill and read the clause exempting from its provisions the Commissioners of the Port of Calcutta, the Trustees of the Port of Bombay, and any similar body that might hereafter be created at Madras.

The Hon'ble MR. STOKES then applied to His Excellency the President to suspend the Rules for the Conduct of Business. The matter was one of much urgency, as the Bombay Government and legislature desired to confer borrowing powers at once on the Trustees of the Port of Bombay, and this could not be legally done unless and until the present Bill was passed.

His Excellency THE PRESIDENT declared the Rules suspended.

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

The Motion was put and agreed to.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Oudh.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES presented the final Report of the Select Committee on the Bill to amend the Code of Civil Procedure.

The Council adjourned to Friday, the 18th July, 1879.

SIMLA;
The 17th July, 1879.

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

NOTE.—The meeting which was originally fixed for Thursday, the 10th July, 1879, was adjourned to Thursday, the 17th July, 1879.

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