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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information :—

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Tuesday the 15th April 1879, at 4 P.M.

PRESENT:

His Excellency the Honourable Sir RICHARD TEMPLE, BART., G.C.S.I., C.I.E., Governor of Bombay, *Presiding.*
The Honourable L. R. ASHBURNER, C.S.I.
The Honourable E. W. RAVENSCROFT, C.S.I.
The Honourable the ADVOCATE GENERAL.
The Honourable Colonel W. C. ANDERSON.
The Honourable DOSABHOY FRAMJEE, C.S.I.
The Honourable M. BALFOUR.
The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.
The Honourable MORARJEE GOCULDASS, C.I.E.

Papers presented to the Council.

I.—The following papers were presented to the Council :—

1. The Report of the Select Committee appointed to consider the "Bill to provide for Irrigation in the Bombay Presidency."
2. Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to further amend Act XIII. of 1856.

Colonel Merriman moves the second reading of the Irrigation Bill, No. 11 of 1878.

The Honourable Colonel MERRIMAN, in moving the second reading of the "Bombay Irrigation Bill," said :—When the Council last met, I asked for an extension of time to present the Report of the Select Committee on the Irrigation Bill, and the time was extended

till the 10th April. The Report of the Committee was published on the 5th April. It has, therefore, been before the public, and in the hands of honourable members for very nearly ten days. When I moved the first reading of this Bill on the 17th December last, I alluded to the necessity for this legislation—I enlarged upon the objects and reasons for the Bill—I announced the general policy of the Government in regard to irrigation having for its main object the mitigation or prevention of famine—I referred to a five years' forecast which had been prepared and submitted to the Government of India for their approval—and I sketched out briefly a programme of works for the irrigation chiefly of that zone of territory extending from Khándesh in the north to Dhárwár in the south, situated about 40 miles eastward of the western range of ghâts. In this tract the rainfall is always more or less precarious, and irrigation there may really be said to be a matter of absolute necessity. On the present occasion, I do not think it is necessary that I should go over all the ground again that I went over when the Bill was read a first time. Turning now to the Report of the Select Committee, I have to mention that since the Report was published, the Government of India, in their Revenue, Agriculture, and Commerce Department, have invited the attention of this Government to what is called the Owners' Rate. The Owners' Rate is rather a complicated business. It has been under consideration for at least 12 years. It became law in 1873, when the Punjab and North-West Provinces Act was passed, but I understand that the working of it, that is the mode of assessing the Owners' Rate and bringing it into the accounts, is not even now uniformly carried out. It has been worked in various ways in various places. I do not think that this Owners' Rate, however applicable it may be to the other side of India, is at all applicable to the Bombay Presidency. It was designed to prevent inequitable advantage to private interests at the expense of the revenues of the State. It is a water-rate on the other side of India and not a land-rate, and it is credited as direct canal income. Here we have a very simple system of offering the people water on a simple application. If they take the water they pay the water-rate, which is fixed by Government as canal proprietor in the same way that the land-rate is fixed by Government as land proprietor. If they take the water and pay that water-rate, we require nothing further from them in the way of an additional rate. If they do not take the water, then we seek by this Bill to induce them to take it by applying a small protection-rate for the benefit that is afforded to them in their being able to take the water whenever they may feel inclined to do so, or whenever by stress of drought, they are obliged to do so; but even supposing that they never take the water at all, they still derive an immense advantage, because somebody in the vicinity takes the water, there is a larger amount of produce, and in all probability they are in a very much better condition than they have ever been before. I think as regards the Owner's Rate, we have something analogous to it, and that is that at every revision of settlement Government have issued instructions to the Departments of Revenue and Survey that they shall enhance the land revenue in consideration of the proximity of these large irrigation works. Such enhancement is credited under the present system to land revenue, but by way of a separate memorandum and for purposes of book transactions it is credited in the Revenue Account of the Irrigation work as well. So long as that is done, I think it is a matter of no importance whatever, whether it is credited to land revenue and shown in the irrigation accounts in the way I describe, as indirect revenue, or whether, as on the other side of India, it is credited as a water-rate, as part of the direct canal receipts. The amended Bill, as honourable members who have had leisure to compare it with the original will have seen, has undergone a great many alterations. In the first place, the Bill has been recast entirely and thrown altogether into better shape by the Legal Remembrancer. A few unimportant verbal alterations have been made of which I think I need make no mention in detail. From para. 5 of the Select Committee's Report it will be observed that "the rights and obligations of owners of water-courses" have received special attention. This, of course, is rather a difficult, as well as a most important point in canal administration. If we could let everybody have his own water-courses, we certainly would do so, and it would save disputes, but the thing is impossible and impracticable; the loss would be enormous from absorption and evaporation. But we believe that we have arranged the Bill in such a shape as to give everybody satisfaction in this matter. The compensation clauses alluded to in para. 6 of the Report have also been much improved. Certain concessions have been made in these matters also. We have made an addition to section 43 of the Bill [section 41 in the original Bill] in the shape of provision for the benefits that may be derived by the construction of any new canal or the improvement or extension of any existing canal. The benefit will have to be proved in every case, and the rate therefore appears to be perfectly just and fair. In section 45 of the original

Bill (now section 47) we have fixed a limit within which charges for leakage and percolation shall only be made. A great deal has been said upon this subject, but I think it is generally admitted that in a country like the Deccan, where the water gets away so fast, a rate of this kind is absolutely necessary. People have said to me, "Why don't you line the canals with concrete?" and so on. But the works cost, as it is, quite as much as we can afford to pay for them, and any additional expenditure of this kind is really neither desirable nor necessary. In sections 46 and 47 of the original Bill (now sections 48 and 49) very great concessions have been made. I am inclined to think that those concessions have gone too far, but a majority of the honourable members who were associated with me on the Select Committee thought that they were necessary, and therefore I had perhaps better not say anything more upon the subject. Section 57 [49 in the original Bill] has been improved and modified on a suggestion of the Government of India, and we have taken as our guide in this matter the Burma Embankments Act, XIII of 1877. With these few observations, I beg to move the second reading of Bill No. 11 of 1879, being a Bill to provide for Irrigation in the Bombay Presidency.

The Honourable MORARJEE GOCULDASS:—Your Excellency—The object of the Bill now before the Council is to protect the country against drought by means of irrigation works and canals, and the usefulness of this work cannot be too highly appreciated by any one who has witnessed the sad experience of the last two years of famine. The intention of Government to provide the country with them, therefore, is worthy of support, and I beg to express my sympathy with it. So far, I am ready to accord my support to the general principle on which this Bill is based; but I am anxious at the same time that the spirit of its special provisions should be in accord with the beneficent intentions of Government. I am sorry, however, to observe that the harsh character of some of its provisions is calculated to detract from its merits and to defeat the good intentions of Government, and I feel it my humble duty to draw the attention of your Excellency to this circumstance. The provisions referred to are, as I have stated in the Select Committee's report, contained in sections 48, 49 and 57 of the Bill as amended by the Select Committee; but these three sections, I venture to think, affect the whole spirit of the Bill, and are thus calculated to make the Bill unpopular and its working harsh. I, therefore, beg to be allowed to state my objections to these sections at this stage of the discussion in full. The Bill contains many provisions which at first sight seem objectionable, such as the powers vested in canal officers, &c., but it must be allowed that without them it would not be possible for the Government to construct and keep up irrigation works. The Bill, moreover, provides for compensation in cases where private rights happen to be infringed on account of the exercise of those powers, and there cannot be much room for complaint on this ground. But the way in which it is sought in the Bill to make the cultivators of this Presidency responsible for the failure of any irrigation work is founded in injustice, and is calculated, I think, to lead to much evil. If a canal three years after its construction is found to be unproductive, the lands "under command" of it are to be charged with its cost, whether the owners of such lands are willing to use the water of the canal or not. It must be borne in mind that the canal is to be constructed without consulting the wishes of the cultivators, and its construction is in no way subject to control on their behalf, and yet if it proves financially a failure, the Bill before us saddles them with its cost and exempts the Government and its officers from all responsibility! The injustice of such a course has been, I am glad to say, condemned by many high authorities. It is needless to remind the Council that when the Viceregal Council passed the Punjab Irrigation Act in 1869, His Grace the Duke of Argyll, then Secretary of State for India, refused to give his consent to the Bill as long as it contained any provision which compelled the cultivators of lands to defray the expenses of a canal whether they used it or not. His Grace in his Despatch to the Government of India urged that, as the people were not consulted when the irrigation works were constructed, it was not sound policy to call upon them to pay for a blunder, in the commission of which the Government were alone concerned. Now, it deserves to be noticed that when the Viceregal Council amended the Punjab Bill in accordance with His Grace's suggestion, they expunged the provision in respect of a compulsory water-rate from it. In 1875, when your Excellency was in charge of the Government of Bengal, the question of irrigation was taken up in connection with that Presidency, and the Bengal Irrigation Bill obtained your Excellency's consent on the 22nd December 1875, and His Excellency the Viceroy's consent on the 24th March 1876. What do we find in it in respect of the compulsory water-rate? I have a copy of the Bengal Bill in my hand, and I am happy to say that I see no such provision in it. I am, therefore, the more surprised to see that after such strong precedents

and established authorities, the question of a compulsory rate should be revived and sought to be enforced in the case of this Presidency, the soil and cultivating classes of which are admittedly poorer. The eight instances cited in the memorial of the Poona Sarvajanik Sabha show, not only that this Presidency might fairly seek exemption from a compulsory water-rate like the sister Presidency of Bengal and the Punjab and North-Western Provinces, but the policy of the Government of this Presidency up to now gives it a right to claim this exemption. From those instances I find that in the case of the canals existing in the several districts of this Presidency, it has been decided that it was illegal to levy compulsory and additional rates upon lands, indirectly benefited by the canals. I therefore submit that there should now be no change in this policy, the justice of which has the support of so many precedents and such authorities. It might be said that irrigation works are sure to confer great benefits on the country, and so the levy of a compulsory water-rate would not perhaps press on the ryots heavily. But does past experience enable us to place implicit faith in these benefits? I have heard a good deal said in official papers and public prints as to many of the irrigation works hitherto undertaken by Government having proved financial failures. I do not venture to say how far this is correct, but I speak open to correction when I state the belief, which I think is entertained by many, that canals are not after all as successful as they are supposed to be. In no part of this country have canal works been constructed on so large a scale as in the North-West Provinces; no part of the country requires such artificial provision for water as those provinces, where the quantity of rainfall is far lower than either here or in Bengal. And after all, what has been the result of the construction of a series of large water works in those provinces? In the last administration report for these provinces the Government remark:—"In a year of drought, while the canals which drew their supply from snow-fed rivers increased their irrigation greatly, those which depend on the smaller streams almost failed. Doubtless, had the time of trial lasted during the *rabi* also, the difference would have been still more apparent." In our own Presidency, the Jamda Canal in Khándesh has failed financially. How, when such is the case, is it reasonable to ask the ryots to pay for a supposed benefit, whether they enjoy it or not? If most of the irrigation works of the past have been a dead loss, what is there to lead us to suppose that the future works would not be so? And if they fail financially, would not the charging of their cost on the ryots lead to over-taxation for imaginary benefits not enjoyed by the ryots? It is well known that the present Bill is due to the recommendations made by the Deccan Riots Commission appointed in 1875 to enquire into the condition of the ryots of the Deccan. But the Commission in its report do not unconditionally recommend irrigation as one of the remedies necessary in the interests of the ryots. The Commission in chapter 7 of their report observe:—"The only possible mitigation of this cause (that is unfavourable conditions of soil and climate) appears to be the improvement of the conditions of agriculture by irrigation; but we have seen that the incubus of debt requires to be removed before the ryots can be expected to avail themselves of such means." A Bill is certainly in view to remove the "incubus of debt" as suggested by the Commission; but taking into consideration the fact that the ryots are already indebted, and that the irrigation works may be losing concerns, I fear their indebtedness would be only increased by making them pay for what may be of no use to them in many cases. The beneficent intentions of Government will be liable to be mistaken by the agricultural classes, and thus lead to results which it is not certainly the wish of Government to produce by means of this Bill. On the other hand, even on the ground that the irrigation works would not be useless but will serve the end for which they will be constructed, the levy of a *protection rate* cannot, in my humble opinion, be maintained. If the ryot sees that they would fertilize his land he will not be slow to avail himself of them, and on this point again I have the authority of the Deccan Riots Commission on my side. In the same chapter of the report they remark:—"The introduction of canal irrigation cannot fail in time to change the face of a great part of the country. The experience of the North-West Provinces has shown that though there may be reluctance at first to use canal water, the pressure of bad seasons sooner or later compels the ryots to make the experiment, and the reluctance is then overcome." If such has been the case in the North-West Provinces (and it will be remembered that one of the members of the Commission came from those parts), is there any ground for us to say that the ryots here will not use the water of a canal if they find it does produce beneficial effects? If they are likely to avail themselves of the advantage kindly offered to them by the Government, what is the necessity of a Protection Rate? To this, I fear, it will be objected that if the ryots will use the water, then the provisions legalizing the Protection Rate would be in effect harmless, and may, therefore, be allowed to stand in the Bill. But the

mere sight of such a provision is likely to create in the mind of the ryot the suspicion that the aim of the Bill is to increase the Government revenue; and thus look upon the canal as a means of loss rather than gain. It is, therefore, I think necessary that this provision legalizing the Protection Rate should be struck off. When the ryots are held responsible for any loss seemed to be incurred in respect of it three years after its construction, there would be no check on schemes of irrigation, and it has been already stated that all such schemes have proved financial failures. The ryots will have to pay for them, and in so doing, will be crushed by the weight of over-taxation. There is another feature of this question on which I ask Your Excellency's permission to dwell for a moment. I begin by enquiring, what are the expected results of irrigation works? The prosperity of the ryots is one of them; but supposing a canal proves profitable, who shares the revenue ultimately derived from it? The canal makes the lands fertile; and their fertility necessarily leads to the increase of the land revenue, which, I suppose, goes to the imperial revenues. The work then ranks under works of imperial utility in this respect. But if it does not pay, the Bill before us gives it—if I understand the scope of the Bill correctly—a provincial form, as if it were meant only for the needs of this Presidency. The moment the Government of Bombay derive profit from a canal, the Supreme Government step in and say:—"Bring your money here;" but as soon as they see a work is likely to fail, they say to the local Government:—"You must look out for yourself, we can't help you." And the local Government in its turn puts the burden on the ryots. This is hardly fair. I venture to say that as leading to increased and more fertile cultivation and the increase of the land revenue, canals deserve to be ranked under works of imperial utility. If for the purposes of profit they rank under this class, it is only just that the principle of classification should be adhered to even for the purposes of loss. In both cases the imperial revenues must, I think, bear the responsibility. On these grounds I beg to say that I strongly object to the provisions which legalize a *Protection Rate* contained in this Bill. Another ground of my objection to the special character of this Bill is that it legalizes *forced labour*. In the first place, such a provision as that of compulsory labour is superfluous and unnecessary in a country like India. There is no lack of labour amongst us, especially in the Mofussil, and the want is not of labourers but of work. If it is found out that there is work and that they are paid *well* for it, people would be only too glad to swarm in numbers. And it deserves to be noticed that the Bengal Bill, to which I have drawn the attention of the Council on account of its not including the compulsory rate, has also excluded *forced labour* from its provisions. The result of including such a provision will be only vexatious to individuals and lead to much evil,—bribery and extortion, the usual consequences of power being left in subordinate hands. I therefore think, in the second place, that it is dangerous to make the provision as regards *forced labour* indefinite, giving a very wide and vague meaning to the term "labourer." The term should, I think, be defined for the purposes of the Act, as it would be oppressive to exact labour of every and any person, however respectable, whether interested or not in a canal, and whether accustomed to labour or not, simply because he happens to live in its vicinity. I would here take the opportunity to point out that the Punjab Irrigation Act is somewhat more reasonable on this point. The term labourer is thus defined therein:—"For the purposes referred to in this part, the word labourer includes persons who exercise any handicraft, which shall be specified in rules to be made in that behalf by the local Government." I humbly maintain that this is bare justice to do to the people in the Mofussil, who will be affected by the Bill when it passes. I allow that it is sometimes expedient to do what seems objectionable in principle; but the honourable members need hardly be reminded that if there is one advantage more than any other which this country has derived from the advent of the British Ráj, it is the security and liberty of person and occupation accorded to every subject of Her Gracious Majesty. This is a great boon, but the Bill before us seeks to deprive the people of this Presidency of it. If this unwarrantable interference with the just rights of the people is found to be necessary, the legislature is bound at least to guard the provision against any possible abuse and reduce the evil to a minimum. I therefore think it is necessary to follow the Punjab law in defining the term labourer. These are my objections to the spirit of the provisions of this Bill. In concluding I only beg that Your Excellency will not depart from the noble policy which guided the Government of Bengal in 1876 during Your Excellency's Lieutenant-Governorship, which led to the exclusion of the provisions legalizing a compulsory water-rate and forced labour from the Bengal Irrigation Act. Under these circumstances I pray Your Excellency to direct that petitions or representations on the subject received, but not read in the Council, be circulated among the honourable members before we proceed with the Bill in detail.

The Honourable Mr. ASHBURNER:—All the arguments used by the Honourable Mr. Morarjee were thoroughly discussed by the Select Committee, of which Mr. Morarjee was a member, and I will not, therefore, attempt to repeat them. But it is necessary that I should express my entire concurrence in the Bill, especially as regards the protective rate which has excited so much discussion. In principle a protective rate is perhaps objectionable, but in the present case it is so fenced round by all sorts of provisions that it is impossible for it to operate harshly. For instance, it is restricted in amount to one-fourth of the ordinary land revenue; and the ordinary land revenue for the greater part is about 4 annas per acre. I ask what burden is a protective rate of 1 anna per acre for the blessings which a constant supply of water will afford? I only mention this as one of the precautions against abuse or hardship, for the rest I must refer to the Act. As to the compulsory labour, when the country is threatened with inundation by floods owing to the embankments giving way, it is absolutely necessary that the local authorities should have the power of enforcing labour in order to avert wide-spread calamity; but here also the Act provides that there shall be no abuse, the Collector is to prepare a list of the persons liable to be called on to labour, and the principle in framing this list should be that no able-bodied man, from the Collector to the Koli, should be exempt from assisting to avert great public danger. I am quite sure that every European would do so, and I have too high an opinion of Natives as a body to suspect them of any desire to evade the same responsibility.

The Honourable Colonel ANDERSON:—Much misapprehension as to the bearing of this measure has been caused by the use of the common term "compulsory rate." The case seems to me to be more one of ordinary taxation, providing for the principal incidence of the tax on those who derive most benefit from the protection afforded by the objects for which it is levied, and in proportion to the benefit derived. Experience shows that from time to time a great danger hangs over the country in the shape of more or less partial famines from drought which affect all classes of the community either directly or indirectly. It is believed that much can be done to obviate the worst effects of these periodical droughts by the construction of works which will place the lands above dependence on ordinary rain-fall. Such precautionary works cannot be constructed without funds. On whom should the provision of those funds fall? As all benefit it is but just that all should contribute. The question of general contribution is not now before us. But specially it must be just that those who will benefit most, exceptionally and specially benefit at the time the disaster occurs, should contribute specially, and above the general mass of the community. Now, what is the so-called protection or insurance rate in this measure. It is a small annual rate per acre on all lands under command of irrigation works, which do not use the water, but to which the water could be applied on occasion, and as required to be proved distinctly, at an actual and sufficient profit above expenses incurred. Thus the water is available for use on these lands on occasion in any year of drought when without this water absolutely no crop at all would be obtained on it. On the above reasons the measure does not appear to me in any degree open to theoretical objection on principle. As regards practical objection, that must much depend on the amount of the rate. What is the rate in question? It is limited to 8 annas per acre, but must not exceed one-fourth of the ordinary land assessment, which one-fourth in the Deccan districts most liable to drought would not, on the average, exceed two or three annas per acre, and in the very large majority of cases would be actually less than two annas per acre. The average land tax on unirrigated land in the Deccan districts most liable to drought will now range from 6 to 10 annas per acre. It may be noted that there are many cases bearing some analogy to the protection cess which forms that part of the present Bill which provokes most objection, such as the lighting rates in towns, and light-houses and port rates, which are paid by all frequenting the port and enjoying the protection and security afforded by the light. In regard to the percolation question, the levy of water-rate on water obtained by percolation from a canal is an absolute necessity, and in principle beyond objection. In the Deccan the soil is often singularly permeable to water, and it is impossible to prevent leakage from canals into the surrounding land. Such leakage or percolation advantages a ryot may use or not, but he will not be called on to pay unless he does use the water. It would not be just that a ryot should be able to sink a hole at no great distance from a canal, perhaps within a few yards of it, into which water would percolate from the canal, and irrigate his land by means of water lifted from this hole without incurring any water tax. With these remarks, I beg to support the Bill now before the Council.

The Honourable Mr. DOSABHOY FRAMJEE:—I have only a word to say. If in connection with section 57 the word "labourer" was defined as is the case under the Punjab Irrigation

Act, much of the objection to that section would, I think, be removed. Forced labour is always objectionable, but if it is necessary to have recourse to it in great emergencies, we should carefully define the word labourer, otherwise any person would become liable to be pressed for labour to which by habit he might be totally unfitted. In the Punjab Act I find the word labourer thus defined :—"The word labourer includes persons who exercise any handicraft specified in rules to be made in that behalf by the local Government." If the Council will agree to insert a similar section in the Bill, I think section 57 would be rendered harmless.

The Honourable Mr. RAVENSCROFT entirely agreed with the Bill.

The Honourable Colonel MERRIMAN :—With reference to the Honourable Mr. Dosabhoy Framjee's remarks, I think that matter is fully provided for in section 58, which runs as follows :—"Subject to such rules as may from time to time be prescribed under section 69 in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid and may from time to time add to or alter such list or any part thereof." I consider that a matter of this kind may be very safely left in the hands of the Collectors, and there is no necessity for any alteration of the Bill on that account.

His Excellency the PRESIDENT then put the motion for the second reading, which was adopted, the Honourable Mr. Morarjee Goculdass being the only dissentient.

Bill read a second time, and considered in detail.

The Bill was accordingly read a second time, and the Council then proceeded to consider the Bill in detail.

Section 2 was amended on the motion of the Honourable Colonel Merriman, by the addition of the word "pipes" after the word "channels" in the 13th and 17th lines.

The Honourable MORARJEE GOCULDASS moved that section 32 be omitted. He said canals which existed before the Act came into force would be dealt with for the purposes of revenue, in the same way as canals which would be constructed afterwards, and he thought they should be treated in the same way, also in cases where compensation was allowable under the Act.

His Excellency the PRESIDENT :—The provision contained in this section was very fully considered when the Punjab Act was under consideration, and it was considered highly necessary. Unless there was a bar of this kind, most inconvenient claims would be urged by private owners of works in some parts of the country. I am not aware that this clause is of very great importance in this Presidency, but it embodies a sound principle which has been recognised in the Punjab.

The Honourable Mr. ASHBURNER said it did not prohibit compensation being given altogether, but only "under this Act."

The amendment was lost, only the Honourable Mr. Morarjee voting for it.

With regard to section 35, the Honourable Mr. MORARJEE said :—I propose that this section be altered so as to make the decision of the Collector as to the award of compensation appealable to a judicial court. The Canal Officer and the Collector may be led by the interest of Government alone, and the Collector, having too much to do in respect of his regular duties, may depend upon what the Canal Officer may do. It is therefore reasonable that a judicial authority should have jurisdiction in such cases. The Bill allows disputes between the owners of water-courses to be referred in appeal to a judicial court, whereas, according to this section, where Government interests happen to be concerned, the Collector is made the final arbiter, or under section 69, any other officer appointed by Government. I propose that the latter portion of the section, after the word "awarded" be struck out, and that the words "shall be appealable to a judicial court" be added instead.

His Excellency the PRESIDENT :—That again is a question which was very carefully considered in Northern India. The questions which would arise are of that sort which can only be decided by examination on the spot.

The amendment was then put to the vote and lost.

With regard to section 39, the Honourable Mr. MORARJEE said :—I cannot understand why the diminution in the market value should be taken into consideration and not the enhancement in the value of the property. If the owner suffers damage, the compensation

must be liberal, and not such as to hardly make up for the loss he incurs. And further, supposing a property loses in value through some accident at the time the compensation is awarded, the owner will be completely ruined. Therefore, I think the damage must be settled at the market value when the damage occurs. I propose that the words "the diminution in" in line 5 be omitted, and that for the words "of awarding compensation" in lines 6 and 7, the following words be substituted: "when the damage occurred." I also propose that the second para. of this section be altered. The interest derivable from land being so small, twelve times the amount of the net annual profits will hardly cover the cost. I, therefore, propose that the word "twenty" be substituted for "twelve" in the 11th line.

The Honourable Colonel MERRIMAN said the section was taken from the Bengal Act.

His Excellency the PRESIDENT said the obect of the section was to secure compensation being given for deterioration of the market value of the property on account of the damage. The loss in market value shall be taken into account in determining the award.

The amendment was lost.

With reference to section 47, the Honourable Mr. Morarjee proposed that land which had been assessed under the thirty years' settlement should be exempted from the levy of additional rates for indirect benefits received from a canal during that period. The precedents cited in the memorial of the Poona Sarvajanik Sabha, he thought, deserved consideration in connection with this point.

The Honourable Colonel MERRIMAN:—I think in all matters of this kind we should first endeavour to ascertain the intention of Government at the time of making the settlement. Undoubtedly the intention of Government was to guarantee all that then existed, and whatever else might accrue from the outlay of private capital upon the soil or by any other means, at the owners' cost; but that if Government in its wisdom makes a large canal, or other irrigation work, the advantages must be paid for when benefit can be proved. I see no good ground for inserting any provision such as the honourable Member has alluded to.

The Honourable Mr. ASHBURNER said the Honourable Mr. Morarjee's objection had probably been suggested by the Survey Act, but if he looked at section 29 of that Act he would find the power to a impose water rate was specially reserved. The guarantee given in the Survey Act only referred to land revenue.

The Honourable MORARJEE GOCULDASS:—I think more light would be thrown on this point by the memorial of the Sarvajanik Sabha than by discussion.

The amendment was lost.

The Honourable MORARJEE GOCULDASS proposed that Sections 48 and 49 should be omitted, for reasons stated in his previous remarks.

The Honourable Colonel MERRIMAN:—The only further remark I have to make on this point is that unremunerative expenditure on irrigation works may possibly be legitimately incurred by Government for the purpose of saving life, but when expenditure is undertaken by the State for the advantage of private interests and so forth, the people who derive real benefit must either pay a protection rate or else they must take the water. They derive benefit in either case, that is quite clear, and if they will not take the water and derive the full benefit, they must still co-operate with the State, which is obliged to construct these works for the purpose of saving their lives, and pay a low protection rate.

His Excellency the PRESIDENT:—All the arguments used against the protective rate seem to me to be based on the assumption that Government is an entity separate from the country. Now, Government and the country are really the same; Government is nothing more than the representative of the country. Therefore it comes to this, that, if works are constructed at the expense of the Government, they are constructed at the expense of the people generally. Now if these works, constructed at the expense of the people generally, are constructed for the benefit, or at least for the protection of certain persons, and if those persons fail to pay, it follows that the cost is thrown upon those persons who are not benefited. I would ask the Honourable Mr. Morarjee Goculdass

to take the example of the City and Island of Bombay. When the Vehar Water Works are brought along a street every body has to pay the water rate, which is imposed on every house. Then there is the other argument, alluded to by the Honourable Colonel Anderson, that this protective rate is no novelty,—it is no more than carrying out a recognised principle, the same principle on which all Municipal and educational taxation, and in fact every sort of local taxation, is levied. The difference is merely this, that this kind of taxation and this kind of work is infinitely more important for the safety of the people than all other improvements put together. So that it differs only from analogous cases in its being more urgent and more important.

The Honourable MORARJEE GOCULDASS :—No such thing exists in the North-West Provinces and Punjab Acts, and why should Bombay alone be saddled with the tax ?

His Excellency the PRESIDENT :—This protective rate was recommended by the Punjab Government and passed by the Government of India, and the sanction was deferred. I can hardly recollect the reason now, and if I could recollect it, I could hardly discuss it in public ; but it was only deferred, and we have every reason to think that this sound principle is still concurred in by the Government of India certainly, and will be carried out. It is quite impossible, without a rate of this kind, for Government to go on constructing such works, and without such works of irrigation, honourable members know what little chance there is of the country being saved in time of drought.

The Honourable Mr. ASHBURNER :—The necessity of it is forced upon us by financial considerations.

His Excellency the PRESIDENT added that the Bengal Act was passed without the provision for levying a protective rate, because it was thought a good deal of discussion would be caused, and the Bengal Government were anxious to pass the rest of the Bill. But recently, after that Bill had been passed into law, a new Bill to provide for a protective rate was introduced. What was the result of the introduction of that measure His Excellency did not precisely know, but he had no doubt it was under consideration and there was every chance of its becoming law.

The amendment was lost.

With reference to section 57, para. 5, the Honourable Mr. MORARJEE moved, that the definition of the term "labourer" as given in the Punjab Irrigation Act be added to this Bill :—" For the purposes of this Act, the word labourer includes persons who exercise any handicraft, which shall be specified in rules to be made in that behalf by the local Government." Forced labour is in itself likely to create discontent, and when with it is coupled unfair compensation, the discontent will be dangerous. To pay such labour at rates "not less than the highest rates for the time being paid in the neighbourhood for similar labour" is doing hardly any justice to the labourers, who may have often to leave their own work, more profitable, to undertake this labour. There must be something to make up for this inconvenience and loss, which they shall have to incur. I think that the rates to be paid for compulsory labour should be in excess of " the highest rates for the time being paid in the neighbourhood for similar labour.' " In support of my view I will here quote what Sir Arthur Hobhouse said when this very point was discussed in the Viceregal Council in connection with the Northern India Canal and Drainage Irrigation Bill on the 21st January 1873 :—" The Honourable Mr. Hobhouse remarked that the clause imposed the duty of fixing some rate, which should be in excess of the highest rate for labour of the same kind. He thought that it was just to say the contributors of forced labour should be paid something more than the highest rate. There might be cases in which people might be employed so very close to their own homes that payment exceeding by some mere fraction the highest rate might be sufficient ; but, on the other hand, there might be cases in which the excess should be something substantial."

His Excellency the PRESIDENT :—This section is taken from the Sind Act, is it not ?

The Honourable Colonel MERRIMAN :—It is taken from the Burma Embankment Act XIII of 1877, at the special request of the Government of India, as being the most recent legislation on the subject.

His Excellency the PRESIDENT :—The duty imposed on the Native public by these sections is a duty which every man ought to be willing to perform. Every one will admit that, and I am sure that the great majority of the villagers in this Presidency are men of

courage and energy, who will answer to the call. But it may happen that out of a large number of men, a certain minority may be shirkers, skulkers, lazy fellows who will not turn out, and it is for the coercion of this very limited number that these sections are intended. I believe that they will seldom require to be acted upon in the Deccan or Gujarát, but they have very often been applied in Sind, and having repeatedly visited those parts of Sind to which these sections are applicable, I can assure the Council that the obligations therein comprised are thoroughly understood by every man, I might almost have said by every woman and every grown child, in the province of Sind, so much so that every time I have made a tour in Sind I have had to invest meritorious zamindárs and meritorious ryots—they do not call them ryots there, but we may call them so here—with turbans in acknowledgment of the good service they have done themselves and the community by turning out on these occasions. I am sure that the justice and necessity of these sections will be acknowledged by the great majority of all concerned.

The Honourable Colonel ANDERSON :—Wherever there are large irrigation works, of which I have seen a good deal in the districts of Dhárwár and Mysore, whenever an accident occurs it is the custom of the country to turn out, and the people often subject themselves to great danger in the attempt to stop a breach. There might be persons in a village some little way off, who would say "there is no hope to stop," and would not go; but if they were shown the law they would go, when without the law they would not go. These sections bring the law into accord with the common custom of the country, which is most certainly that when an emergency occurs all hands shall turn out. If any lazy fellows will not turn out voluntarily they should be made to do so.

The Honourable MORARJEE GOCULDASS said that under the sections of the Bill, if the canal sepoy had a grudge against a man he would compel him to go, while others would be allowed to stay away. He thought these clauses would work very harshly, because they would be in the hands of inferior subordinates.

His Excellency the PRESIDENT :—It will not be a case of some being called and others exempted; everybody will be called. The object is to meet very emergent cases, when serious danger is apprehended.

The Honourable Mr. RAVENSCROFT thought the Honourable Mr. Morarjee was fighting a battle for the villagers which they would not be inclined to fight for themselves. He approved very strongly of the sections, and thought the provision would be looked on by the people as a safeguard.

The amendment was lost.

The Honourable MORARJEE GOCULDASS moved that in section 66 the words "judicial court" should be substituted for the word "Commissioner" in the 13th and 14th lines.

The Honourable Colonel MERRIMAN said the word "Commissioner" was adopted in accordance with one of the other Acts, and after very full consideration of the matter by the Select Committee.

The amendment was lost.

The Land Revenue Code Bill considered in detail.

The Council resumed consideration of the Land Revenue Code Bill in detail.

The Honourable Mr. ASHBURNER :—The Council concluded the consideration of this Bill in detail at the last meeting, with the exception of one or two sections, and I then informed the Council that the Executive Government were in correspondence with the Government of India on the subject. A reply has now been received from the Government of India, and the Council are in a position to dispose of the matter. The sections under discussion were Nos. 38, 39 and 133. The Government of India have declined to accept our views on these Sections, and it therefore only remains for the Council to omit them from the Bill. I propose that Sections 38, 39 and 133 be omitted.

The motion was adopted.

It was also resolved, on the motion of the Honourable Mr. ASHBURNER, that the figures "38" in Section 138 be omitted.

The Honourable Mr. ASHBURNER further moved that lines 6 to 15 (both inclusive) of section 179 be omitted entirely, and the following words substituted: "the Collector as

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The amendment was lost.

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The motion was adopted.

It was also resolved, on the motion of the Honourable Mr. ASHBURNER, that the figures "38" in Section 138 be omitted.

The Honourable Mr. ASHBURNER further moved that lines 6 to 15 (both inclusive) of Section 179 be omitted entirely, and the following words substituted: the "Collector as

an arrear of land revenue." The section would then read as follows:—"179. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue." The honourable mover added that the amendment was proposed in accordance with a suggestion of the Government of India.

The amendment was adopted.

On the motion of the Honourable Mr. ASHBURNER, His Excellency the PRESIDENT suspended the Standing Rules in order that the third reading might be proceeded with.

The Honourable Mr. ASHBURNER:—This terminates the discussion on the most important Bill which has passed through the Council in the last half century. It has been carefully and minutely discussed for upwards of four years; every officer of experience has been consulted, and the Bill as it now stands is the result of their opinions. The Act consolidates no less than twenty Acts which have been passed during the last half century by this Government and the Government of India, besides amending and setting at rest all doubts in the working of those Acts. It is, as I say, one of the most important measures that has been passed by this Council, and I trust it will be found a valuable instrument in the hands of our Revenue Officers for the better government of the country. With these remarks, I beg to move that the Bill be read a third time and passed.

Bill read a third time and passed.

The Bill was accordingly read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council *sine die*.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Bombay Castle, 15th April 1879.

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