

Wednesday, November 29, 1876

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 15

JAN. - DEC.

1876

P. L.

ABSTRACT OF THE PROCEEDINGS

1877

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

VOL. XV.



Published by the Authority of the Governor General.

Gazettes & Debates Section

Parliament Library Building

Room No. FB-025

Block 'G'

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1877.

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

The Council met at Government House on Wednesday, the 29th
November 1876.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K.C.B., Senior Member of
the Council of the Governor General of India, *presiding*.

The Hon'ble Arthur Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir A. J. Arbutnot, K.C.S.I.

The Hon'ble R. A. Dalrymple.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

The Hon'ble F. R. Cockerell.

OPIUM BILL.

The Hon'ble MR. HOPE moved that the Reports of the Select Committee on the Bill to amend the law relating to Opium be taken into consideration. He said that he very much regretted that his hon'ble friend, Sir William Muir, should have been unable to carry through the Council this Bill, to which he attached considerable importance, and in which he took great interest, and that it should have devolved on him (MR. HOPE) at what was almost later than the eleventh hour. He was, however, in a position to state that Sir William Muir approved of the Bill as it now stood in every respect, and had left on record, for MR. HOPE's use if necessary, his special approval of one or two provisions in it which had been more or less the subject of dispute, and especially of those in reference to warehouses, to which MR. HOPE would refer presently.

The report of the Select Committee only mentioned three or four amendments which had been made in the Bill since the previous Report of the Committee had been laid before the Council, and those were not of a very important character. In explanation of the amendment which was noticed in the second paragraph of the Report, that the definition of "Magistrate" had been extended so as to allow Magistrates of the second class, when specially em-

powered by the Local Government, to try cases under the Act, he would say that that had not been done with the view of indicating an opinion that Magistrates of the second class, generally, ought to decide opium cases, but merely to meet special cases, such as that of some large districts in British Burma, which contained about 15,000 square miles, and which had Magistrates of the first class scattered over them at very long distances, so that the restrictions which were considered generally suitable in other parts of India would, in the places referred to, have an oppressive effect, and would involve people being sometimes taken enormous distances in petty cases. One of the other amendments which had been made was in favour of the merchants, for the Committee had given power to redeem confiscated opium on the payment of a suitable fine, instead of providing that the owner should be deprived of his goods in every case. On the other hand, the Committee had secured the confiscation of the opium where the person charged with smuggling it might not happen to be convicted.

There were, however, certain objections made from without, which, as Sir William Muir was not here, Mr. HOPE would refer to in rather more detail. They related to the seventh section of the Bill, on the subject of warehousing. The effect of that section was to give power to the Local Government, with the sanction of the Governor General in Council, to authorize the establishment of warehouses for the warehousing of opium, either before or after payment of duty. The question, he might say, in one sense, was an executive one, which, in the first instance, had been decided by the Government of India; but as their decision would not preclude the Legislative Council, as such, from doing their duty by going into it, and from expressing their opinion if it happened to be unfavourable, the subject was still one for consideration on the present occasion. These objections arose from Messrs. Sassoon & Co., of Bombay, who were owners of large Docks, from the Bombay Chamber of Commerce, and from certain merchants interested in the opium-trade. He ventured to think that his Bombay friends, in raising these objections, were suffering under several misconceptions.

In the first place, they were under a misconception which, perhaps, all Bombay people were liable to fall into, and that was, they were liable to forget that Bombay was not the whole of India. A measure of this kind, which was intended to secure the opium-revenue throughout India, must necessarily contain provisions which were suited to the different circumstances of that revenue in all the different provinces. And, when it was borne in mind that in some cases opium which was grown in foreign States—as, for

instance, Rájputána—had to pass through the Central Provinces, which were British territory, then through the Bírárs, which were under the Resident at Haidarábád, after that, across the Nizám's dominions, and finally through a long stretch of the Madras Presidency, before reaching the coast and being shipped to China; or, again, that opium which was grown under a free license-system in the Panjáb, had to traverse Sindh before being exported at Karáchi; or that opium grown under the monopoly-system in Bengal might be smuggled through foreign territories into other parts of British India, where a different system prevailed,—when, Mr. HOPE said, they bore in mind all these different peculiarities, it would be seen that it must be necessary to insert in a Bill of this description provisions which, although they might be required in one part of India, there need be no present intention of applying to another. In that view, the operation of this section had been made purely permissive.

There was also another misconception, which had already officially been corrected by the Government of India, but had not been swept away from the minds of the Bombay objectors, that the revenue which it was desired to protect was merely a China revenue; whereas, in reality, it was mainly a revenue from home-consumption. It would not be desirable, or proper, that he should enter in this place into an explanation of all the various methods in which the revenue from internal consumption might be injured under the present system, or that he should lay before the Council all the different and most ingenious frauds which were at present practised. He ventured to say that the objectors were, some of them, quite as well versed in those methods as himself, or rather, that they were probably much better acquainted with them. But he would mention one fact as a proof that a necessity did exist for some remedial measures; that in the island of Bombay itself, the sum which was paid by licensees for the privilege of selling opium, which they were bound to obtain from the Government stores, together with their expenses, very largely exceeded the entire value of the opium which they took out of the Government stores to sell; so that they would obviously be in a state of bankruptcy, if it were not for the peculiar shifts they had for carrying on the trade, and making a handsome profit. Further, this revenue from home-consumption was not by any means small, as was alleged, but was a large item even now, and might be much larger, if better means were taken to protect it.

Another of the objections taken was that these warehouses would be obstructive to trade. It was said that it would be impossible to carry on business if the opium was kept in a warehouse which was opened at 10 o'clock in the morning and closed at 5; and that, "as things go now, the merchants work in their own godowns from 6 A. M. to 10 P. M.,

including Sundays, before the China Mail starts, as the purchases are then compressed into the three or four days preceding the departure of the Mail." He need hardly say that the Select Committee had not provided in the Bill that the officer of any Government warehouse, who ventured to keep open his warehouse after 5 o'clock P. M. and opened it before 10 o'clock A. M. should be subject to six months' imprisonment and a fine of one thousand rupees. It was obvious that the Government and the Custom-house authorities would make whatever regulations might be necessary for the proper and convenient working of warehouses. It was also said that it would be impossible in Government warehouses to secure the secrecy which it was necessary to observe in the sorting, mixing, dealing in, and re-packing of the different kinds of opium. For himself, he could not understand how any secrecy as to what was legitimate was likely to be interfered with in the Government warehouses. It might be possible that there might be some operations which it was more advantageous to the merchant, than to the Government revenue, to carry on with secrecy; but with regard to such, he could not express any sympathy with the difficulties that might be felt. Otherwise, it was hard to see how the warehousing of opium could be, in any measure, an obstruction to the legitimate manipulation of the article, any more than in the case of spirits and wine in the London docks, where it was well known that every kind of admixture of wines, and selling and tasting went on every day without any injury or complaint.

Besides this, there was what he might term a personal and local aspect of these objections. It was stated that "Messrs. Sassoon, being the largest exporters of opium, are naturally anxious to prevent such a Bill as this from passing, as the concession to export opium from their dock, which has been recently granted them after a long struggle with the Government, will be at once cancelled if the Opium Act should be permitted to apply to Bombay." And, again, "the fact is that the opium must, under the new arrangement, be deposited in the warehouses of the Port Trust, and rent charged for the storing of it; in other words, a new source of income to the Port Trust will be created." Now here Mr. Hore ventured to think that his friends in Bombay had got hold of a mare's nest. It ought not to be necessary to assure them that there was really no snake lurking in the grassy pastures of the Government of India; and they had undoubtedly, to quote a phrase which, from its associations, ought to have a soothing effect upon their protestant feelings, "got the *wrong* sow by the ear." The Government of India, which had recently, in fairness to Messrs. Sassoon & Co., required the abandonment of Port Trust revenue which amounted to some Rs. 40,000 a year and was likely to increase, really did not deserve to be viewed with such suspicion. Besides, it might occur to many, and to

Messrs. Sassoon especially, firstly, that there was nothing in the Act to prevent more than one warehouse being established at any place, and, secondly, that, if only one warehouse was to be established, it was in the highest degree probable that it would be located where the largest amount of opium was shipped, which in Bombay was, according to Messrs. Sassoon, their own dock.

Again, objections were made on the general ground that the Government should not interfere with any article when the duty had once been paid upon it, and that "every ounce of the opium warehoused in Bombay has already paid duty in Malwa, and so it is difficult to see how the revenue can possibly suffer." In another place, it was said that the Chamber of Commerce is justified in protesting against "the principle the Act would establish, that the Government have a right to interfere with the disposal of merchandise after the duty on it has been paid. The novelty of the principle sought to be established is too injurious to trade to be permitted to pass without every effort being used to upset it altogether; but when it is put forward in support of such a concern as the Bombay Port Trust, it is scarcely possible to discuss the subject with ordinary calmness." Now, with reference to that it might be said, in the first place, that the Government was perfectly justified in taking whatever measures might be necessary for the protection of its revenue; and the question of what particular stage of the transit of the article the duty might happen to be levied at, was quite irrelevant to the main question. But besides that, he would point out that the duty which was levied upon opium was a duty expressly levied upon opium intended for China, and not for consumption in the country. Therefore, if the duty was levied upon the express understanding that the opium was going to China, and at a rate based on that understanding, the Government was perfectly justified in taking measures to see that the opium *did* go to China, instead of being diverted to home-consumption in parts of India where, as in Bombay, it would naturally need, and be subject to, a different course of restriction. He thought he might very well dismiss this matter by reading the answer which had been given by the Government to the memorialists on this occasion. It had been said by the Government of India in the Financial Department, in reply to the Chamber of Commerce—

"I am directed to state that the Hon'ble the President in Council regrets that he is unable to modify the decision conveyed in my letter No. 3052, dated 26th September last, and to say that the establishment of Government warehouses for opium is intended principally for the protection of the revenue from the home-consumption of opium. I am also to request that you will remind the Chamber again that the proposed legislation is only permissive, and is not designed to apply to Bombay in particular. It will not be applied to Bombay as long as other measures are found sufficient. Warehouses may be established in any part of India in which they may appear necessary, but only with the sanction of the Government of India.

With regard to the alternative proposals of the Chamber, I am desired to say that the Hon'ble the President in Council is unable to approve the suggestion that the provisions relating to Government warehouses shall be applicable only to opium on which duty has not been paid, and that all warehouses now and previously used, and proved to be suitable for the opium trade, shall be entitled to be licensed.

"Nor can it be stated in the Act that the 'fees for warehousing' shall not exceed the cost of warehousing the drug at present; but I am to explain that it is not intended that the Government should derive a profit from the rent of the opium warehouses.

"As regards the two remaining proposals, I am to say that every facility will be afforded for the conduct of business in the Government warehouses, which is afforded in other bonded warehouses, or which the peculiarities of the trade may be shown to require."

That reply, Mr. HOPE ventured to think, was as complete as it was possible to supply, and ought to be satisfactory to those who felt reasonable doubts about the measure.

With regard to the Bill in general, he need not trouble the Council with any more remarks, except that he himself personally had some doubt as to whether the provisions of section 15, with regard to the arrest of persons who were suspected of offences, would prove sufficient, and that he should have preferred a rather more stringent provision, similar to that in the Bombay Salt Act and the Inland Customs Act also. However, he hoped that the present section, which the Committee thought would be sufficient for the purpose, might be found on trial to verify the view which they had taken.

The Hon'ble Mr. DALYELL said that he must express his regret that, owing to his absence from the Council for the last eighteen months, he had been unable to take any part in the discussions on this Bill. He felt this the more as he found, on reference to the papers which had been printed in connection with the Bill, that one of the main objects of the measure, as it had been originally introduced, was to remedy the absence of all repressive legislation with regard to opium in the Madras Presidency—a state of affairs which had been said to lead to practices equally injurious both to the public revenue, and to public morality and health. He was aware that, for many years past, all the best authorities on revenue matters in the Presidency had been of opinion that the consumption of drugs in Madras was so very insignificant that any legislation on the subject was altogether unnecessary, if not mischievous, as being likely to lead to oppression; but of late it had been found that the consumption of intoxicating drugs had increased, and that the extension of trade, and the increased facilities for transport afforded by the construction of railways, had led to a considerable quantity of opium passing into Madras from

Northern India, either for local consumption, or for the purpose of being exported without the payment of duty. It was also within his own knowledge that within the past few years there had been several cases of attempts to defraud the opium-revenue detected by the Customs Authorities at Madras, and also that a very much larger number of cases had escaped their vigilance, owing to their being compelled to proceed under the ordinary Customs law, instead of being able to put into force the powers of the Opium laws which were in force in other parts of India. Indeed, he believed it had been stated that, if the quantity of opium which yearly passed into the Madras Presidency were diverted to the China trade, it would pay a duty of upwards of six and a half lakhs of rupees. He could very well believe that a very considerable portion of this quantity was being surreptitiously exported by sea, and thus did actually entail a direct loss to the imperial revenue from opium. Under these circumstances it was quite clear that legislation of some sort was necessary; and the Madras Government was so sensible of this necessity, that some time back they had brought into the local Council a Bill for the purpose of controlling the possession and exportation of opium. But no doubt it was always desirable that fiscal legislation should, as far as possible, be of an imperial character; and therefore the Bill now before this Council would probably be preferable to a local enactment, provided that it met local needs.

So far as he had been able to judge of the probable results of the different provisions of the Bill now under consideration, he was disposed to think that it was likely to meet the requirements of the case as to most matters; but he must confess that there was one section in regard to which he had some considerable doubts. He alluded to the tenth section of the Bill; and it would perhaps be as well that he should explain to the Council how his attention had been drawn to the provisions of that section. When he had received the final copy of the Bill, as approved by the Select Committee, a few days ago, it had come to his recollection that Mr. Hunter-Blair, the Collector of Customs at Madras, the only official who had had an opportunity of becoming practically acquainted with the difficulties connected with the detection and suppression of opium frauds in the present state of the law, had recently returned from leave; and Mr. DALYELL had thought it advisable to enquire from him by telegraph whether the Bill met the wants of his Department. In reply, he had informed Mr. DALYELL, that in his opinion the penalties prescribed by section 10 of the Bill would altogether fail to prevent opium smuggling on the Madras coast, as, in consequence of the high rate of duty charged on the drug, opium smugglers made such large profits that they would be able to laugh at a fine of Rs. 1,000, and as it would always be difficult to induce the Magistrates to punish the principals with

imprisonment, though they might be inclined to imprison the persons who were actually engaged in illicit exportation.

The Council would see that the penalties prescribed were, first, imprisonment for a term not exceeding one year, or a fine which might extend to Rs. 1,000, or both. Well, with reference to Mr. Hunter-Blair's opinion, that these penalties might prove inadequate for the purposes of the Bill, Mr. DALYELL noticed that it was proposed, under the Bill, to replace all the penal clauses of the existing Bombay law, of the law in Lower Bengal, of the North-Western Provinces, and of the Panjáb by the penal sections of this Bill. If the Council would turn to the schedule attached to the Bill, they would see that it was proposed that the provisions of Acts XI of 1849 and XXI of 1856, so far as they related to opium, were to be repealed. These two enactments referred, one to the town of Calcutta, and the other to the up-country districts of Lower Bengal; and the penalties prescribed in both of them for the illicit possession of opium were proportioned to the quantity of opium in possession, and were therefore considerably more stringent than the pecuniary penalty provided in the present Bill. It was also provided that the sections in the recently enacted Excise Law of 1871, which referred to opium, should be repealed, and the penalties prescribed in that Act were precisely similar to those of the Bengal Acts. Further, as the Bill provided a special punishment for the exportation of opium in contravention of the rules prescribed, the general Customs law, under which any person convicted of smuggling was liable to a penalty equal to three times the value of the opium smuggled, would no longer apply; so that, while the smuggler of any other commodity, if the goods were worth, say, Rs. 2,000, would be liable to be mulcted in the sum of Rs. 6,000, the smuggler of opium of that value would only be liable to a fine of Rs. 1,000, as the pecuniary penalty of his fraud on the revenue. It was true that the Bill as it had originally stood, and as approved by the Financial Department, contained no provision of the kind he desired to see in the present Bill; and it might therefore be fairly concluded that the Financial Department was satisfied that the stringency of the Customs law, so far as opium was concerned, might be somewhat relaxed. He had, moreover, been informed by his hon'ble friend Mr. Hope, that the matter had been fully considered by the Select Committee, and that they were of opinion that the provision giving the Magistrate the option of awarding imprisonment as an alternative punishment, or in addition to the fine, counterbalanced the reduction of the pecuniary penalty; yet Mr. DALYELL confessed that he had some doubts as to whether it would be found possible to induce Magistrates to award imprisonment for offences against a fiscal law, especially when they had the option of imposing so large a fine as Rs. 1,000 for each offence.

He must not allow it to be supposed that he wished to throw any difficulty in the way of the passing of the Bill. He had been informed that there were urgent reasons why no avoidable delay should take place in the passing of it into law; and if the Council was not prepared, at this stage of the Bill, to alter the provisions relating to pecuniary penalties—that was to say, to give the Magistrates power to impose a fine with reference to the quantity of opium smuggled; and he believed it was quite within the power of the Council to adopt that course when the report of the Select Committee was under consideration—he should not press any objection to the passing of the Bill, especially as any enactment of the kind would be a considerable improvement on the present state of matters in the Madras Presidency. Moreover, as the Customs Act was under revision, the opportunity might be taken of re-enacting the penal clauses with regard to the exportation of opium, if penalties provided in the present Bill were found, on trial, not to have the desired effect.

He trusted that the remarks which he had felt called upon to make would not induce the Council to believe that he was in favour of making the fiscal laws of the Empire more stringent than was absolutely necessary for duly collecting, and properly protecting, the State revenue. He held no such view; but he had felt that, as an official who for a very long series of years had been connected with the revenue administration of the country, he should fail in his duty if he did not let the Council know that, in his humble judgment, there would be some risk in reducing even the pecuniary penalty for the offence of smuggling opium below the same penalty for smuggling any other article of merchandise, especially when it was remembered that, owing to the very high duty placed upon the drug, and to its very portable character, it offered special inducements to the smuggler, and afforded him peculiar facilities for carrying on his operations.

The Hon'ble MR. HOBHOUSE wished to make one or two remarks respecting the penalties which were imposed by the Bill before the Council. He laboured under a little disadvantage because so many extraneous noises found their way into that room—human voices, rumblings of wheels, and some mysterious squeaking, which, he hoped, proceeded from an inanimate object—that he had lost some of his Hon'ble friends' remarks. He thought however that he had heard enough to enable him to say something to the point.

With regard to section 10, which was observed upon by his hon'ble friend Mr. Dalryell, he wished to say that it had been in the form in which it now stood ever since the Bill was introduced into the Council by Sir William Muir, and it was settled by him deliberately in that form. The adverse opinion

which had been received now had arrived very late. After so many months of publication and discussion, it would be inconvenient, to say the least of it, if at the last moment an opinion was sent up, and the Council was expected to give the same attention to it, as if it were sent in to the Select Committee months before. In point of fact however the matter was brought before the Select Committee, and the decision of the Committee was to abide by the plan devised by Sir William Muir, and principally upon the grounds stated by his friend, Mr. Dalryell.

Now he (MR. HOBHOUSE) confessed that there was a great deal of force in what his hon'ble friend said, and his contention was illustrated by a case which had recently happened in Madras. The case was of this kind. A merchant residing in Ceylon had a warehouse and an agency in Madras. He was convicted of smuggling opium, that is to say, the Customs officer thought it was proved against him; and for the purpose of testing the law, we must assume that it was proved against him. His offence was that he used his agency in Madras as a base upon which to carry on smuggling operations from India into Ceylon. The nature of the operations was supposed to be this. A ship sailed from Madras, and some distance out at sea boats came off to it with opium in them. The opium was taken on board, and was carried on to Ceylon. Now there were some general powers given by the Customs Act to Customs officers to inflict fines upon all persons contravening the law; and the Madras officer considered that, under these general powers, he could inflict a fine upon this gentleman in Ceylon, and he did inflict a fine, and proceeded to realize the fine against the property which was in Madras. However, the Madras Court thought that the Madras officer had no jurisdiction to inflict the fine, and they even thought that it was so absurd to suppose that he had such a jurisdiction, that he could not have made the order in good faith, and they awarded large damages against him for malicious and wrongful proceedings against the property of the gentleman in Ceylon.

It seemed to MR. HOBHOUSE that this ought to be remedied; that it was a monstrous thing that a person residing in a neighbouring country should use our country as his base of smuggling operations; and that we should not be able to attach his property for the recovery of a fine imposed on him. If there was no law for fining a man guilty of such an offence, and for attaching his property within our jurisdiction, there ought to be such a law; and as the penalty of imprisonment would have no terrors to a man residing in Ceylon, it might be necessary in such cases to inflict a large penalty, and to make the penalty recoverable against goods of his in this country.

Now it so happened that the Council were revising the Customs Act. It was the Customs Act under which the Madras case and the legal difficulty arose. The Customs Act had a wider range than the opium law, and we should have to consider that question in connection with the Customs Act. It seemed to him the wiser plan to let the present Bill pass into law, and to reconsider the whole question when the Customs Act was in the hands of the Committee, and when it came again before the Council. More advice might be taken upon the subject. At present nobody seemed to have been dissatisfied with the alteration of the law proposed by Sir William Muir until now; but no doubt a different turn was given to the question by what had happened. It would however be easy, if it was found desirable, to inflict a larger penalty under the Customs Act than what was provided in this Bill, and it would be easy to say in the Customs Act that that provision should apply to opium.

With regard to section 15, Mr. Hope said that he was dissatisfied that power was not given to the Police to arrest persons suspected of committing offences against the law. The broad issue before the Committee was this. Should they give power to the Police to arrest any person they had reason to believe guilty of any offence against this particular law or any other opium law, or should they confine their power of arrest to those cases in which there was a *prima facie* case against a man because of his being in possession of opium? The Committee thought it was too large a power to give the Police, to say that they might arrest any man at any time wherever he might be found, and whatever he might be doing, because they suspected him to be guilty of an offence against the opium law at any other time and any other place. It was, in other words, to give almost unrestrained powers of arrest to the Police. The Committee thought it wiser and more prudent to confine the discretionary power of the Police to detention for the sole purpose of search, and if they found their man in possession of opium, they might then arrest him.

There was only one other point he wished to mention, and that related to the abetment of offences. The Bill said nothing about abetment, and it had been the subject of some observations; in fact, one Magistrate had written to say that, in his part of the country, smuggling really proceeded from substantial and responsible persons, but that those who acted directly in the smuggling were men of straw, whom it was hardly worth while to punish, and who certainly could not pay a fine; and he asked why we did not make abetment an offence. The reason was that it was already a punishable offence under the general law. It was quite true that under the Penal Code of 1860 abetment was not punishable when the principal offence was committed under a special or local

law; but that was amended many years ago—in 1870, if he recollected rightly—and now abetment was an offence, although the principal offence might be committed under a special or local law. If therefore any Magistrate felt a difficulty about punishing those who instigated or abetted smuggling, he would find his difficulty removed by referring to Act XXVII of 1870.

The Hon'ble Mr. HORE had only a very few words to trouble the Council with, in reply to the observations which had been made upon the Bill. He had heard with great satisfaction the remarks of his hon'ble friend Mr. Dalyell, who belonged to the Madras Presidency, admitting that the amount of smuggling which took place there was very large, because the period was not at all remote when the Madras Government itself expressed a totally different opinion, and it had for a long series of years stated that there was no necessity whatever for any legislation on the subject.

With reference to the point regarding penalties, to which exception had been taken, he might explain that, under the old law, in Bombay or in other parts of India, there was no imprisonment for the offence of smuggling opium; but, on the other hand, there was a fixed fine, which the Magistrate had not power to modify. In Bombay, if the offender was convicted, the Magistrate was obliged to fine to the extent of twice the amount of the duty, *plus* twice the value of the opium; and the law elsewhere was analogous. Representations were received from various parts of India—from Burma, Bombay and elsewhere—that this provision was totally insufficient, and that it was absolutely necessary that the Magistrates should possess the power of imprisonment, in order that they might inflict punishment upon the higher persons who usually kept in the background as abettors, although, in reality, they were principals, and were the merchants who benefited by the trade. The Bill which was brought forward by Sir William Muir combined both methods, and here Mr. HORE must point out a slight inaccuracy into which both his hon'ble friends had unwittingly fallen. The Bill as introduced *did* contain, in section 6, in addition to the fine of Rs. 1,000 and imprisonment for six months, a clause to this effect: "Provided that, if the opium in respect of which such offence is committed exceeds the weight of twenty sers, the fine may be increased at a rate not exceeding fifty rupees the ser for all the opium so found in excess." So that, had that clause remained in the Bill (and it was a clause which the Council received from the Financial Department), the objection of the Hon'ble Mr. Dalyell would no doubt not have been made. But this clause had been fully considered in Committee at one of the earliest meetings which took place, and after full discussion it had been struck out of the Bill for the very reason which

the Hon'ble Member brought forward as a good one for keeping it in. The argument which was then used was this, that if it was difficult to induce the Magistrates to punish principals with imprisonment (and this the Hon'ble Member said it was), it would be more difficult to induce them to punish principals with imprisonment if there was the alternative of a very high fine, and it would be next to impossible to get them so to punish if that high fine were compulsory. That that clause was struck out, he himself had at the time regretted. But he had since considered the matter, and he had come over to the views of his colleagues who advocated the striking out, because there seemed to him to be very great force in the argument he had stated.

As to the contrast which had been drawn between the Customs law and the Opium law, it was true that there was a heavier pecuniary penalty under the Customs law, than there would be under the new Opium law; but, on the other hand, there was no imprisonment under the former, but there was under the latter. If we were to believe all that the local officers reported on the subject, people were likely to care more for imprisonment than they at present cared for the infliction of a heavy fine; so that, in point of fact, it would appear that, so far from the punishment, as a whole, which could be awarded, being reduced, it had been very materially enhanced. All that we could do was to trust to the Magistrates to do their duty. If the Government found that the Magistrates generally would not punish the principals in these cases, the only course open to them was the simple one, which they were obliged to pursue in ordinary cases, namely, that of, in the first place, cautioning the Magistrates, and then, if necessary, removing them from their appointments, and he knew one instance in which an official so high as a District Judge had been removed from his appointment for not having adequately dealt with a particular case. As to the powers of the Police, he need not say more than that the matter would be tested by experience. But he was not able to see why, if the powers he recommended were not too large in the case of the smuggling of salt and sugar, they should be considered too large in cases under this Bill. Opium was much more easily smuggled than the one or the other, and likewise was of very much more value.

The Motion was put and agreed to.

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

The Hon'ble SIR ALEXANDER ARBUTHNOT wished, before the question was put, to say one or two words by way of supplement to the observations which had been made by his hon'ble friend Mr. Hope with reference to the tenth section of the Bill. It seemed to him that there was one point which had not

been adverted to, but which ought to be borne in mind; that in all these matters the legislature was bound to assume that the Magistrates—especially the Magistrates who were likely to sit on the Bench in the Presidency Towns, the places where such offences were most liable to be committed—were men who, the Council were bound to assume, would exercise a reasonable discretion, and that, in regard to cases where a large quantity of opium had been smuggled or attempted to be smuggled, and where the fine that might be imposed under this section would obviously be insufficient as a punishment to the most guilty party, they were bound to assume that, where the legislature had given the option of adjudging a description of punishment which would be perfectly adequate, and which would be felt to be a very severe penalty, the Magistrate would exercise a reasonable discretion and would impose a sufficient and not an insufficient penalty.

The Motion was put and agreed to.

BURMA FOREST BILL.

The Hon'ble MR. HOPK also moved for leave to introduce a Bill to consolidate and amend the law relating to the management and preservation of Government forests in the province of British Burma. In doing so, he wished to explain very briefly the necessity for making this motion. He might premise that the province of Burma was, as compared with other parts of India, in a peculiar position, and that the whole of the specifically unalienated forest-land was the property of Government, subject only to certain rights of user, or privileges, exercised in some parts by individuals or village-communities. This right had been proclaimed at the time of the annexation of the various territories which now formed the Province of British Burma, and had never been gainsaid. The history of the previous legislation in regard to the forest-lands was this: In 1865, when the general Government Forest Act was passed, certain rules were made under it for Burma, which did not apply to the whole of the forests there, and it was eventually found that in part they were not covered by the Act itself. It therefore became necessary to pass an Act in 1869 to validate them. Subsequently, Act XIII of 1878 was passed to amend the law relating to timber floated and imported from foreign territory into British Burma, and that Act repealed Act VII of 1869, and partly also Act XXX of 1854. Later on, in 1874, the duty on foreign timber was made *ad valorem*, and finally, in 1875, further rules were made, under the Act of 1865, for the forests which had not been included in the old rules.

However, the whole had been at best but a piecemeal process, and legislation was still required upon five principal points, besides a number of small

ones. First, it was necessary to clear up doubts regarding the reservation of trees other than teak. The system of recovering a part of the price of Government timber in the form of a duty also had to be provided for. But perhaps the most important subject for which legal provisions were found necessary, was the enquiry into, and decision of, claims of persons to the various rights of servitude and user in the Government forests. It was likewise essential to bar the acquisition by prescription of new rights in reserved forests; otherwise, a man who had, unknown to the authorities, been doing a particular thing for a number of years, would become vested with a right which might be injurious to the revenue. Finally, the penalties provided by the present law were found to be totally insufficient.

The Motion was put and agreed to.

DRAMATIC PERFORMANCES BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the better control of dramatic performances.

INDIAN REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1871.

Leave was granted.

TREASURE-TROVE BILL.

The Hon'ble MR. BAYLEY introduced the Bill to amend the law relating to Treasure-trove, and moved that it be referred to a Select Committee with instructions to report in two months. When he obtained leave to introduce the Bill he said that it would possibly be necessary for him to detain the Council on the present occasion for some time to explain the nature of the existing law, the policy which regulated it, and the reasons for which it was proposed to substitute another, and he hoped a better, policy. He would therefore take the opportunity of giving an explanation on these points. He was afraid, however, he must go back somewhat to first principles, and to enable him to do so briefly, he should ask leave to read a few extracts from a well-known book, the Commentaries of the learned American Jurist Kent, which would enable him to place the matter in a clear light before the Council.

All systems of law recognized the means of acquiring personal property by what was called "occupancy," that was to say, by simply taking possession. Kent said that—

"though priority of occupancy was the foundation of the right of property in the primitive ages, and though some of the ancient institutions contemplated the right of occupancy as

standing on broad ground, yet in the progress of society this original right was made to yield to the stronger claims of order and tranquillity. Title by occupancy is become almost extinct under civilized Governments, and it is permitted to exist only in those few special cases in which it may be consistent with the public welfare."

It was the case still, no doubt, that if a person, on ground to which nobody had a claim, found any article for the first time which had never before been the property of any other human being, he was at liberty to convert it to his own use, and as there could not in such a case be any rights adverse to his, the property vested in him. But as a matter of fact, there were very few places and very few instances where other rights had not been, during the progress of civilization, created and defined by special provisions of law. Although, therefore, it might be said that, if a man found an article to which nobody else had or ever had had any claim, it was his and he might do with it what he liked, yet such instances were extremely rare. What was far more usual was, that a person found something which had become in some way or other the subject of property previously; that was to say, that some one else had in some way acquired some sort of right to it.

Now the subject of this Bill, which was technically called "Treasure-trove," belonged to the latter class. One of the old Regulations, to which MR. BAYLEY alluded last time as still in force in certain parts of India, described it as "hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones or other valuable property, which may be found buried in the earth, or otherwise concealed within any part of the territory subject to this presidency," &c. That was to say, it was valuable property in which some one else had, at some time or other, acquired already some sort of right. All systems of municipal law did, it might be said, at least in theory, provide for the perpetual devolution in some way or other of rights of property once acquired, and the rights of the owner in such property were in almost every conceivable case fenced round with penalties. Any person, therefore, who either dishonestly or ignorantly neglected, as not unfrequently happened, the distinction between the two kinds of finding—between the finding, that is, of articles which never had been, and of those which already had been, the subject of property—was apt to find himself in very awkward contact with the provisions of the criminal law.

Of course, under these circumstances the first object of any law on the subject of treasure-trove must be to provide for tracing out the history of previous rights, and such a provision would accordingly be found in the present Bill. But there was considerable difference in the circumstances of various cases; for, although in theory such rights of property might be supposed always to exist,

even if temporarily in abeyance, in the articles which formed treasure-trove, yet in a very large number of cases it was practically impossible, either to discover who the previous owner of the property had been, or on whom in the course of years the right of property which primarily existed in such articles had devolved.

Of course, these rights might sometimes be proved, and very extraordinary instances had occurred of such rights being capable of substantiation after very long periods of time. MR. BAYLEY could recollect a case himself in which a gentleman, who was then a midshipman in the Navy, lost certain particular property in the wreck of the *Royal George*, and who was able to recognize and to recover it fifty years later; and there were no doubt instances in which the persons originally owning property, or their representatives, had been able to establish distinctly their right to it, though it had passed out of their actual possession for a much longer time than fifty years. But, on the other hand, there were other cases in which it was practically impossible to trace the original owner or his representatives. Three cases came the other day to his (MR. BAYLEY'S) knowledge in which it was morally certain that the property (in one instance of considerable value) had passed from the rightful owner's possession at least eighteen hundred years ago. Under such circumstances it was of course useless to attempt to trace original rights of property. The Bill therefore, while prescribing a procedure for discovering, where possible, the original owners of treasure-trove, or their representatives, proposed to confine it to property of which there was not good presumptive evidence, either in the nature of the property itself or otherwise, that it had been concealed or lost for more than a hundred years. The term of a hundred years was no doubt a purely arbitrary limit, and might be considered in Committee; but he imagined that, as a matter of fact, there were very few cases of property in which it would be possible in India to make any successful investigation, or to gain any trustworthy information as to the original owners or their existing representatives, where it had been lost or concealed for more than a hundred years. Of course, if any persons could substantiate their right to property, the law would restore it to them. But it might be said that any such rights with regard to treasure-trove could only in occasional instances be established, and practically the cases for which the proposed law had mainly to provide were those in which all trace of the original owners was lost, or in which it was impossible to trace their representatives, and the task which the Council had before them was to regulate the devolution of the right of property in such cases.

He would now again, with the permission of the Council, refer to *Kent's Commentaries*, and would read a passage in which the author described the policy which had ruled various systems of law on the subject of treasure-trove.

Mr. Kent said—

"The common law, originally, according to Lord Coke, left treasure-trove to the person who deposited it, or, upon his omission to claim it, to the finder. The idea of deriving any revenue from such a source has become wholly delusive and idle. Such treasures, according to Grotius, naturally belong to the finder; but the laws and jurisprudence of the Middle Ages ordained otherwise. The Hebrews gave it to the owner of the ground wherein it was found; and it is now the custom in Germany, France, Spain, Denmark and England, to give lost treasure to the Prince or his grantee; and such a rule, says Grotius, may now pass for the law of Nations. The rule of the Emperor Hadrian, as adopted by Justinian, was more equitable, for it gave the property of treasure-trove to the finder if it was found on his own lands; but if it was fortuitously found in the ground of another, the half of the treasure went to the proprietor of the soil, and the other half to the finder; the French and Louisianan Codes have adopted the same rule."

Mr. BAYLEY said, at the last meeting of the Council, that the principle which the existing Indian law, so far as there was any law, had adopted, was practically that of the Middle Ages. It might be said to assume the right of the State, but to waive it on certain conditions and within certain limits in favour of the finder. He thought that, on broad principles of equity, that principle might very fairly be defended. Where no prior claim could be proved, it was at least a fair contention that property of any value so found should pass to the public treasury, and be used for the purposes of the general community. The real objection to adopting this principle was, that in practice it could not be enforced, and as in the case of all other laws which could not be enforced, it became not only useless, but mischievous and demoralizing. He did not mean to assert that the real reason of the provisions of the Indian law, or of the English law from which it was mutated, showed that it actually was founded on this principle. He believed, as a matter of history, that it was founded rather on feudal ideas which it was unnecessary here to discuss. The principle which the present Bill proposed to adopt was that, practically, of the old Roman law of the Emperor Hadrian, and of the French and Louisianan Codes, and to a certain extent also, as he should presently explain, of the law as it now stood (for it had been not very long since altered) in Denmark. The Bill proposed to give the property in treasure-trove to the finder, provided only that he would follow the very simple procedure which the law would require, for securing a hearing of the possible claims of other persons. The only deduction in his rights which would take place under this law would be that in favour of the owner of the ground on which the property might be found. It was perhaps not quite so easy to defend the natural equity of this provision, because treasure-trove could hardly be called any part of the soil in or on which it was found. But at

the same time there was no doubt that, if a man knew that there was a likelihood of finding treasure on his land, he had the power of preventing any body else from coming on the land and from searching for the treasure; and, what was still more important, as a matter of fact, where such rights or *quasi* rights were wholly ignored, they were always, nevertheless, very usually put forward, and attempts made to enforce them more or less irregularly in some way or another by the owner of the soil.

It was expedient, as a matter of convenience, therefore, to give to the owner of the soil in which treasure was found some concession; and the Bill provided for giving one-fourth of the treasure found to the owner of the soil, and the remainder to the finder.

The Bill further proposed to adopt one other provision which, as indicated before, was taken from the modern law of Denmark. This was to give the Government a claim, on the payment of a specified percentage in excess of the intrinsic value, to the possession of such articles as it should consider worthy of preservation in the interests of the public, as being of historic or artistic interest. This provision was inserted some years ago in the law of Denmark, and the practical result had been to make the Government collection of national antiquities in that country the finest now existing. In India such a provision would be of the very greatest value. There was much hidden treasure in India, and as he (MR. BAYLEY) could say from personal knowledge, much was being perpetually brought to light in various parts of the country, and a very large proportion of it was of importance, as illustrating either the history, the social habits, the religious beliefs, or the artistic skill, of the races who inhabited the country in past times. In truth, most of the only trustworthy information which we possessed of the history of India antecedent to the Muhammadan invasion was furnished by articles, especially by coins, discovered as "treasure-trove."

It was therefore an object to prevent articles of this kind from being lost or destroyed, and the provision the Bill proposed to make was, he believed, sufficiently liberal to secure to the Government an opportunity of purchasing such articles as they might consider of real public interest. Indeed, the present Lieutenant Governor of the Panjáb, Sir Henry Davies, had recently acted on this principle in a very important case, with the consent of the finder, and had preserved from destruction articles of extreme historic interest.

He had nothing more to say as to the principle of the Bill. He admitted that the Bill in its present shape was little more than tentative, and by the courtesy of the Consuls for Denmark and the Netherlands, he hoped shortly to

receive copies of the laws which prevailed in their respective countries, and from these and from other sources of information, he hoped to lay before the Select Committee materials from which he trusted they would be able to make the Bill in its final shape worthy of the Indian Statute-book, which already deserved so high a place in the systems of modern legislation.

The Motion was put and agreed to.

INDIAN SEA CUSTOMS BILL.

The Hon'ble Mr. HOPE moved that the Hon'ble Mr. Cockerell be added to the Select Committee on the Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.

In making this motion, he would remark that at the time he proposed the Committee on this Bill, he perhaps had more in his mind the number of members in Committee, and the technical nature of the duty, than the Presidential aspect of the question; and he then thought that, with his hon'ble friend Mr. Dalyell, who was a colleague of his on the Tariff Committee last year, to represent Government, and the two members of the Calcutta mercantile community, and with, of course, the hon'ble Mr. Hobhouse, a Committee of five would be constituted in which questions would be thoroughly considered, and decided, if necessary, by a casting vote. But His Honour the Lieutenant Governor, immediately after the appointment of the Committee, had reminded him that, considering the very large interests of the Government of Bengal in the customs and trade of the country, it would be desirable to appoint also the member of Council who might be said to represent that province. He need hardly say that His Honour's suggestion met with his entire concurrence, and he had therefore much pleasure in making the motion.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend the law relating to Treasure-trove—The Hon'ble Messrs. Hobhouse, Dalyell and Hope, the Hon'ble Rájá Narendra Krishna, and the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Wednesday, the 6th December 1876.

CALCUTTA,
The 29th November 1876. {

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