

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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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.

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1877.

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

The Council met at Government House on Wednesday, the 6th December 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*.

His Honour the Lieutenant Governor of Bengal, K. C. S. I.

The Hon'ble Arthur Hobhouse, Q. C.

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

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

The Hon'ble R. A. Dalryell.

The Hon'ble T. C. Hope.

The Hon'ble Rájá Narendra Krishna Bahádur.

The Hon'ble F. R. Cockerell.

DRAMATIC PERFORMANCES BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the better control of dramatic performances be taken into consideration. He said, in submitting this report to the Council, he did not conceive it to be necessary to restate the general considerations which induced the Governor General to publish an Ordinance on the subject in the early part of this year, and which induced the Council to accept the present measure and to send it into Committee. It was true that from certain quarters, principally Native gentlemen, whose opinions he always listened to with the greatest respect, they had received some expressions of opinion adverse to any legislation at all on the subject. It was also true, at least in his judgment, that the Council should not refuse to reconsider the principle of any measure merely because that principle was affirmed when the Bill was referred to a Select Committee, for the reason that upon many subjects they did not enjoy the advantage of thorough public discussion until after the Bill had been introduced and published. If therefore any new considerations were brought forward, shewing that a Bill which in the first instance appeared to be desirable was not desirable, it seemed to him that the Council ought to give full weight to them, and not rely upon what was a very convenient rule amongst

themselves, namely, that the principle of a Bill was affirmed when they sent it into Committee.

Now they had received representations from certain inhabitants of Lucknow, and again from the well-known British Indian Association. The former document was a brief one. It gave no reasons for the objections which its framers entertained to the principle of the Bill, but it contained some observations upon particular parts of the Bill which were well worthy of attention. The paper which was sent in by the British Indian Association argued at length against the whole principle of the Bill, and he thought it a very temperate, clear, and able statement of their side of the case. At the same time he did not find in that paper any general considerations which were not fully present to the minds of the Council when this Bill was sent into Committee.

The Association relied very strongly upon the sufficiency of the Penal Code to punish any representations which were defamatory or scandalous or seditious or obscene. But they did not address themselves to that argument which was the ground-work of the Bill, namely, that there were many cases in which prevention was worth all the punishment in the world. That was particularly true in times of excitement, and in cases where the play was of a seditious character. If the performance took place a few times, the mischief was done, and it was a poor satisfaction to punish the offenders afterwards. It was also particularly true when the object of the play was defamation. He should like to ask any one of these gentlemen which of the two alternatives he would prefer; whether he would prefer to be held up in the most vivid way to the scorn and hatred of the public and then to have his assailant punished, or whether he would prefer to have the whole exhibition prevented? In which case would he think that the law had most effectually protected him? which course would leave him the happier and more contented man? MR. HOBHOUSE thought he knew what answer would be given by any body who had not a foregone theory to maintain.

In the remaining case of obscenity it would seem that even for the purpose of punishment the Penal Code had been found to be insufficient. The section of the Code which bore upon their subject, that was, the subject of words sung or spoken, was section 294, and it ran thus:—

“Whoever sings, recites or utters, in or near any public place, any obscene song, ballad, or words to the annoyance of others, shall be punished.....”

and so forth.

Upon that the Advocate General of Madras had written as follows:—

“The Bill is, I think, needed. We had a year or two ago here an extremely obscene play being acted, which was greatly affected by students, &c., the managers of which the Government dared not prosecute, because there was no evidence that the obscenity was ‘to the annoyance of others,’ so as to bring the performance within section 294 of the Indian Penal Code.”

The other arguments put forward by the Association were of a very general character. They dwelt much upon the value of liberty, and upon the danger of stifling a rising national literature. But all law was, to the extent to which it operated, a restraint on liberty. The question to be argued in each case was, whether it was desirable in the interests of the public to restrain individual freedom to do particular acts. The Government said that in this case it was desirable; that the punitive law failed in effect; that preventive powers were necessary; and they gave instances to prove that. Those gentlemen who said it was not desirable to pass such a law as this, should make out that it was not desirable to suppress such a play as the *Nil Darpan*; that it was not desirable to suppress such a play as the *Cháka Darpan*; that it would not be desirable to suppress a play whose object was to gratify feelings of resentment against a private gentleman, because he did what was a perfectly lawful, innocent and honourable thing to do, but was opposed to the sentiments of his caste.

MR. HOBHOUSE therefore thought he might let the general merits of this Bill stand upon the arguments which he adduced when he moved for leave to introduce it. All the Members of Council had in their hands the arguments which had been adduced against it, and they had also a valuable Minute by his hon'ble friend the Lieutenant Governor, from which he should have taken the liberty of quoting one or two sentences, only that the Lieutenant Governor was there himself, and was able to say more effectually than Mr. HOBHOUSE could what his sentiments were.

He might also add upon this point, that all the Local Governments had approved of the general principle of this Bill, excepting those who told the Council that in their Provinces that class of performances which had called for the action of the Council did not exist.

But though he could not accede to the general line of argument which their friends had put forward against the principle of the measure, the papers he had referred to contained some valuable criticisms upon portions of the Bill, and accordingly the Committee had made some modifications in the Bill as introduced. He would explain to the Council what they were.

The first, and in his opinion the most important, observation which had been made related to the places in which performances might be carried on. It was pointed out that as the Bill was framed there was nothing to restrict it to public performances, and that there might be interference with a purely private entertainment given by a gentleman to his own friends. They of course never intended such interference, but the Committee thought the criticism was a just one, and that there was a blot in the Bill. Therefore, in section 3 it was provided that the plays which might be prohibited were those which were to be performed in a public place. By a public place they did not mean merely such places as were public from their position—such as the maidan here—but they had expressly provided that a building in which money was taken at the door to witness a performance was a public place within the meaning of the Act.

Another thing pointed out to them was that there were certain religious ceremonies which might not commend themselves to the ideas of propriety entertained in Western Europe. Well, he believed that there were such religious ceremonies, exceedingly ancient, which had prevailed more or less among all nations at different times, and which still prevailed in parts of India. They did not intend to interfere with them, and accordingly they had said at the end of the Bill, that nothing in this Act should apply to any *jātras* or performances of a like kind at religious festivals. He was sorry that he was very ignorant on this subject, but he was told that "*jātra*" was a name given in Bengal, and in some parts of Northern India, to performances of the kind he had alluded to; that the name did not prevail in other parts of India, but that there were similar performances which the Committee had tried to indicate by the words they had used. Whether they had used the right words or not, it was for the Council now to determine on considering the Report. The matter had been very carefully discussed between those members of the Committee who had that knowledge of the subject which Mr. HOBHOUSE had not, namely, by his hon'ble friends Mr. Cockerell, Mr. Dalryell and Rájá Narendra Krishna, and these were the words which had been ultimately decided on.

The third thing pointed out to the Committee was that in section 3 as originally framed, one of the sub-sections, that which was headed (d), was dangerously vague. It ran thus :—after saying that the Local Government might prohibit performances of certain specific characters, it went on to say that it might prohibit those which were "otherwise prejudicial to the interests of the public." Now the case was put to the Committee thus: if a play is scandalous or defamatory, or seditious, or likely to deprave or corrupt,

the Bill effectually strikes at it : but if it is none of these things, in what respect can it be prejudicial to the interests of the public? The Committee found on consideration that that was an exceedingly difficult question to answer. He supposed it was not the wish of any member of this Council to give to the officers who would work this Act a general power of prohibiting any play they might dislike, but rather to make those officers reflect and consider whether they could assign specific objections to a play. They therefore struck out these general words, and provided that the play must fall within one or other of the predicaments specified in the prior sections.

There was another sub-section of section 8 which was retained in the Bill—sub-section (c)—the words of which were—“likely to deprave and corrupt persons present at the performance.” This had been objected to, not by Native gentlemen alone, but by at least one European officer, as also being too vague. It was said that they did not specify by what standard of morals or manners the likelihood of depravation or corruption was to be judged. Well, that was an important consideration. No doubt the standard of morals and manners varied, and it would not do to apply a too rigid standard to persons accustomed to a lax one. But if they were to retain the power of striking at the thing—and he thought hardly anybody desired that we ought not to strike at the thing—if they were to retain the power of prohibiting that which was likely to deprave and corrupt, he thought it impossible to use words which were better suited to the purpose. The Committee had tried a good many times, but could not find any words which were so apt. The fact was, that these words did not set up any absolute or ideal standard of decency or purity. They said that, in order to be prohibited, a play should be such as was “likely to deprave or corrupt persons present at the performance,” and that necessitated the consideration, who the persons were, and whether they were likely to be depraved or corrupted. Of course it might be said, and was said, that we were foreigners, accustomed to a different standard, and however much we might try to judge people by their own standard, we were likely to err. It might be so ; but those were considerations which were applicable to a great many other things we did, and this particular liability to error was one of those incidents which are absolutely inseparable from our presence here as rulers and administrators of this country. After all it seemed to MR. HOBHOUSE by no means an unmixed disadvantage, if in matters such as these—matters of taste, decency and purity—there was now and again a higher standard applied to those who were accustomed only to a lower one.

The Committee had therefore thought it was desirable to retain the words of sub-section (c), and the Council would remember how very much more

definite and specific they were than the similar law which prevailed in England. He had informed them on a previous occasion, that in England a single officer was empowered to prohibit the acting of any play, even though it had been already put upon the stage, whenever he should be of opinion that it was fitting for the preservation of good manners, decorum, or the preservation of the public peace. The expressions "good manners" and "decorum" certainly were infinitely vaguer than any expression which was to be found in this Bill.

But even on this point the Committee had taken some precautions. Of course the great security, both for the efficient working of a Bill like this, and for its working without oppressiveness, was to commit it to efficient and responsible hands. As the Bill was framed, the prohibitive order, which lay at the bottom of the whole Bill, and was the pivot upon which the machinery turned, might be made either by the Local Government or such officer as the Local Government might generally or specially empower. That took in a wide range of officials. The Committee thought it desirable, in view of the arguments presented to them, to confine the making of the prohibitive order to an official of greater experience and responsibility than any officer who might be empowered to make it. Therefore, as sections 2 and 3 now stood, by their combined force the prohibitive order must be made in the Presidency towns, and in Rangoon which was a town of the same nature as the Presidency towns, by the Local Government itself; and elsewhere it must be made only by such District Magistrates as the Local Government might expressly empower to make it. For instance, taking Bengal, within Calcutta it was the Lieutenant Governor himself who must make the prohibitive order, and in the mufassal it was such a District Magistrate as the Lieutenant Governor might think worthy of being entrusted with such powers.

Another matter upon which a good deal was urged would be found in the fifth section of the Bill, sub-section (c). It related to spectators who were present at a prohibited performance. As the Bill originally stood, spectators were put upon the same footing with the performers and the proprietor of the place. The Committee were told that this might bear very hardly upon spectators, who might be ignorant of the prohibition and be present quite innocently at the prohibited performance, and then find themselves guilty of a crime. A great many of their correspondents had urged them to strike spectators wholly out of the Bill. On the other hand, it was said that spectators might come in wilful defiance of an order of Government, and might be the most dangerous part of that objectionable thing which the Government desired to put down. The Committee thought therefore that it was not desirable to

leave spectators wholly out of the purview of the Bill, but that it was desirable to put them on a different footing from performers and proprietors. Accordingly they had provided that spectators might be punished if guilty of wilful disobedience to an order of prohibition. A case of open defiance would be well known to the Government, and it would be easy to make the order known, and then the spectators would be in much the same position as those who were members of a mob after the reading of the Riot Act in England. There was no reason why such persons should not be punished for disobedience to the law.

The Council would see that the Committee had taken great precautions to prevent the working of this Act in an unduly restrictive or oppressive manner, and that they had endeavoured to make it more definite, more narrow, and more specific than it was when it was introduced. He thought there was only one point on which the scope of the Act was at all enlarged, and that was the subject of section 7. It merely gave the Local Government power to make such enquiries as might suffice to inform it of the nature of a play before deciding whether or no to prohibit it. And he did not suppose that the worst enemy of the Bill would wish to deprive the Government of such a power as that: it was in fact one of the safeguards for a judicious working of the Act.

He thought there was no other point in the Bill to mention now. But he might state that the Council had received certain requests for delay, not at the eleventh but at the twelfth hour. One came to his hands at 4 o'clock yesterday afternoon; it came from a gentleman, a member of the Bar, whom it would always be a pleasure to him to see under any circumstances, whether on business or otherwise. He said that he was Counsel for the proprietors of the National Theatre, and that they desired time to consider the Bill, and if necessary to be heard through himself upon the subject. Another memorial reached Mr. HOBHOUSE's hands a little later, and that came from a Committee appointed by some Native inhabitants of Calcutta in public meeting assembled. It prayed that the measure be withdrawn, or if that were impossible, that the measure be restricted in its operation to the Presidency towns, with such modifications as were indicated in the memorial; or that the memorialists might be "heard by delegate at the bar of this hon'ble Council or in Select Committee, as might appear fit and proper". There was again another memorial which was dated 6th December, and was put into his hands about half an hour ago. That was from the Committee of the Indian Association, who said that they only recently learned that it was the intention of the Legislature to pass this Bill

to-day, and that they desired some delay in order that the matter might be further considered.

It was no doubt very desirable that any body of gentlemen entertaining opinions on public matters should be allowed to express those opinions, and every encouragement was given to them to do so. But it was also very desirable that the public business should be done, and there must be an end to all things; there was a time when discussion must end and action must be taken. Now this Bill had been published for fully eight months; it had attracted a great deal of attention; Committees had been appointed for the purpose of criticizing it, and it had been extensively criticized. This very Committee of the inhabitants of Calcutta, whose memorial he had referred to, said that they were formed on the 4th of April last for the purpose of watching the Bill, and on the 5th of December, late in the day, they had sent in a memorial against it. Now it seemed to Mr. HOBHOUSE that unless some important novelty had been introduced into the Bill since its publication, or unless there was something very new and striking brought to the notice of the Council by the memorialists, the Council ought not to delay their action. He had read the memorial presented by this Committee of the inhabitants of Calcutta, and he could not find in it anything of the slightest importance which had not been already said, and better said, by the British Indian Association. There was no new suggestion of detail, and there was nothing in the general arguments but what the Select Committee had already had before them. It seemed to him therefore, that if they were to delay their proceedings, and disturb the course of business and create that confusion which always occurred when things were brought to the birth and not born, that the Council would encourage those persons who were opposed to Bills to delay action until the last moment, and then to send in petitions and memorials praying for more delay, possibly in the hope that something in the chapter of accidents might occur to prevent the passing of the measure altogether. Therefore, though he thought it his duty to mention to the Council what had reached his hands, yet if they would take his advice, they would not delay their action. The matter however was entirely in the hands of Hon'ble Members to do what they pleased.

The Hon'ble RÁJÁ NARENDRA KRISHNA said that, with reference to what he had remarked on a former occasion when this Bill was under discussion in Council, he would observe that it was a wise measure which aimed at checking the growth of a dangerous evil in the shape of public performances of obscene dramas—a powerful agency in the speedy demoralization of the national character. This Bill, as it was originally framed, had certain

objectionable features which had now been removed, and as it now stood, he believed it would successfully strike at the root of the evil, and guard against the remedy in any shape proving injurious. Doubts which might have arisen as to the construction of the words "public place" had now been set at rest by a clear definition of the term; the apprehension which might have been entertained as to the vesting of the power of punishing a breach of the new law had to a very great extent been removed by providing that, in the Mufassal, only a district Magistrate would have the jurisdiction to try the offences made punishable under the proposed enactment, inasmuch as the word "Magistrate" was defined to mean the chief Magisterial officer of the district—an officer who, before he reached that high position, must have acquired a good deal of experience and a knowledge of the people, so as to be a very qualified person to exercise jurisdiction under the Act without causing any dissatisfaction to the parties concerned. A provision had been very properly made that ignorant and other spectators, instead of being taken by surprise, should be served with a notice to quit the place where an obscene play was being performed before they would be liable to any penalty. Lastly, to remove all possible objections to the measure, he would suggest that a competent Native official should be associated with the District Magistrate for the trial of such cases, as these dramas were composed in the vernacular language, and that *jātras* should be allowed to be performed on all occasions, both private and religious.

The Hon'ble MR. COCKERELL said that he wished to say a few words on the subject of this Bill, and chiefly in reference to what had fallen from his Hon'ble friend RĀJĀ Narendra Krishna. In the first place, he was very glad that that gentleman, who might be fairly represented as the exponent of the feelings and opinions in a question of this kind, of a very large section of the best-informed Natives of Bengal, was so far in favour of the Bill that he thought legislation in this direction desirable, and that the measure, as it then stood, was for the most part well calculated to attain the objects which it had in view.

But there were one or two points on which his Hon'ble friend had commented, and expressed the apprehensions which MR. COCKERELL believed from all that he had heard were shared by other Native gentlemen in regard to certain provisions of the Bill, to which he would direct his remarks:—

First.—The Hon'ble Member had dwelt with some satisfaction on the fact that the Bill provided for the trial of breaches of the law by District Magistrates only. Now MR. COCKERELL, for his own part, would say that although this was a precaution in the right direction, it was scarcely necessary,

and that other Magistrates might have been vested with this power; for the person who tried a case of this kind was not called upon to decide, or even pronounce, any opinion upon the question as to whether a particular performance was admissible or not. All that the Magistrate trying these cases had to do was to ascertain that the performance, for taking part in, or being present at which, somebody was brought to trial, was actually prohibited; that the prohibition had been duly promulgated as required by law; and with regard to those who were charged as spectators of the performance, that they were fully aware of its prohibition and yet elected to witness it. Now these were simple questions of fact, and in no way touched the primary and more important question as to whether the performance came within the category of those at which the Bill aimed, and which *ought properly* to be prohibited.

The decision of that question was the function of the Local Government, or the officer to whom the Government might delegate its authority in the matter.

His Hon'ble friend had further suggested that a Native official should be associated with the Magistrate for the trial of these cases. Now MR. COCKERELL thought that this suggestion, as he had just explained, proceeded from a misapprehension of what the Magistrate would have to do in trying those cases,—the question which would really have to be adjudicated in these trials, and which was exceedingly simple. The only important point to be determined under this Bill was, whether the performance which was about to take place, or which there was reason to suppose was about to take place, was a proper or improper performance, and one which should be allowed or prohibited, and the authority with whom rested the decision in such case was the Local Government, or some officer in whom the Government reposed full confidence. Therefore, if a Native was to be associated with the person who had to determine this question, he must be associated, in some manner, either with the Local Government, or the officer to whom the Local Government might delegate its functions. MR. COCKERELL had no doubt that the Local Government would, in this matter, as it undoubtedly did in many others, consult well-informed Native gentlemen, whose judgment and opinion on such a question was likely to be of public benefit, if the character and nature of the performance were such as to suggest doubt as to whether it should be prohibited or not. He knew that, in the ordinary administrative affairs, Native gentlemen were frequently consulted upon certain questions in which they were conversant with the feelings of their countrymen, and their advice or opinions were likely to be advantageous to the public interests,

But for obvious reasons no directions to the Administration on such a matter could properly find place in an Act; the discretion of the Local Government could not be so hampered and limited with any practical advantage. In this, as in other matters, it must be left absolutely unfettered, and there was no reason for anticipating that it would not be wisely exercised.

Then, his Hon'ble friend was not satisfied with the license granted by the Bill in respect of "*jātras*;" he would wish it extended to all performances or ceremonies of that nature, whether connected with religious observances or not. Now, the word "*jātra*" applied, in its original signification, to pilgrims. The original meaning of the term was a pilgrimage, and "*jātris*" was the ordinary vernacular designation of pilgrims. But the term *jātra* had come to be applied to performances of the kind to which his Hon'ble friend had alluded, and which were of common occurrence, and identified by that name, he believed, all over the territories included in the Bengal Presidency; but, apparently, the term had no such signification in either Madras or Bombay. The Hon'ble Member claimed for these performances immunity from the restrictions of the law, not only when they were connected with some religious festivals, but also when they took place on what he termed private occasions. MR. COCKERELL supposed his Hon'ble friend meant by this "upon all occasions" other than religious festivals, because the Bill merely dealt with performances in public places, and in no way interfered with what was of a really private character. Assuming that he wished to apply the exemption to public performances wholly unconnected with religious ceremonies, then MR. COCKERELL would say that it was not desirable that any such exemption should be made. The reason for exempting *jātras* was the desire not to legislate so as to interfere in any manner with the religious ceremonies or observances of the people, and with that object, and that only, it was proposed to enact the exemption as it stood in section 12 of the Bill.

To extend the exemption as now proposed would be to subvert the principle of the Bill, which was designed to restrain public performances within the bounds of propriety; for if the religious element be eliminated, there was no ground whatever for placing the *jātra* on a different footing, in regard to the controlling powers to be conferred by the proposed enactment, from that of any other public performance.

For his own part, he (MR. COCKERELL) would say that he thought that legislation in the direction of the Bill was urgently called for, and that the repressive powers to be conferred on the Executive were of a very moderate character,

surrounded by efficient safeguards and such as could not reasonably be objected to.

HIS HONOUR THE LIEUTENANT GOVERNOR said that although he was very unwilling to trouble the Council, he thought he ought not to give quite a silent vote on this occasion, as it was a measure which so immediately concerned the interests of Bengal. He must express the satisfaction with which he heard the moral support given to this measure by his Hon'ble friend and colleague, Rájá Narendra Krishna. He was sure that the dictum of a Native gentleman who was so eminent in rank and so highly esteemed and respected in the country would carry great weight with the entire Native community.

As to the precise verbal objection just raised, HIS HONOUR was anxious to explain for the satisfaction of his Hon'ble friend, that the objection he raised was really met by the terms of the Bill. His Hon'ble friend desired that the words "and on other occasions" should be added to the end of section 12. By that, HIS HONOUR understood him to mean, on all private occasions. But as the Hon'ble mover of the Bill knew so well, these private occasions were expressly saved by the definition given in the explanation to section 3. It was there explained that the Act only applied to public performances in a public place or in a place where money was taken at the door. By that, therefore, performances on all private occasions were saved; and the desire of his Hon'ble friend was entirely met and his objection was really obviated.

Then, passing from this particular point, HIS HONOUR deemed it his duty to give whatever weight might attach to the authority of the Local Government in favour of this measure. And though he was very sorry to see that so many Native gentlemen, whose opinions he so much regarded and respected, seemed to be opposed to this measure, he deemed it to be his duty to state publicly and fearlessly, that this measure was absolutely necessary; that if it was not passed, mischief would arise of a moral as well as of a social character—mischief which would be detrimental to the prestige and character of British rule in the metropolis of India. It was all very well to say, as HIS HONOUR was sorry to see so many highly respectable Native Associations had said, that the Bill was not necessary because the existing law was quite sufficient. Now that objection was answered by the facts of the case. It was nothing short of the truth when he said that cases had occurred in this city, last Spring especially, and on former occasions generally, which fell within all the categories prescribed in section 3 of the Bill, that was to say, there were cases of a scandalous and defamatory character; they were calculated to excite feelings of disaffection to the Government; they were likely to deprave and

corrupt persons present at the performance. He might really go farther and say that they were injurious and derogatory to individuals and calculated to stir up angry feelings between several important classes within these Provinces. These performances were reprobated not only by Europeans, but equally by Natives also. He believed there was not a single right-minded and educated Native throughout Bengal who did not utterly condemn what had occurred.

Then, as to the law being sufficient for protection, all he could say was, that they did try to put the law into force, and that at first people obeyed, but the offenders very soon took legal advice, and passively defied the authorities. And it was certain that, had not His Excellency the late Viceroy seen fit to pass an immediate Ordinance, these performances would have gone on. There was no legal power whatever to prevent them; and if they had gone on, then one evil would have stimulated another. They obtained a certain sort of success, a certain sort of spurious notoriety accrued to them, and this would have encouraged others; and just as fire went on feeding itself; just as a snow-ball gathered force as it rolled down a precipice — *vires acquirit eundo* — so this evil would have gone on increasing until really at last serious mischief would have been done.

So much then for the absolute necessity. But he should like the Council to consider two further points, namely, the private tendency and the public tendency of these performances. Now, as regards private defamation, this sort of holding up people to public scorn, either as a class or as individuals, was a very difficult thing to bring to a successful prosecution before the Courts, especially when a whole class was concerned. Who was to come forward and indicate that the defamation affected himself? Who was to volunteer to say that such an ugly cap fitted himself? And as a proof of the extreme difficulty of conducting such prosecutions, he might state that, of the several cases which had occurred within the last few years, only one had been successfully prosecuted.

Then as regards public tendency, the manner in which all the most revered institutions under which we lived had been brought into contempt by public exhibitions, might not amount to treason, and not even to sedition, yet nevertheless, everything which politically ought to be treated as sacred in the eyes, not only of Europeans, but more especially of Natives, might be brought day after day, month after month, into greater and greater contempt. And though political danger was not to be feared—indeed, ideas of danger should not lightly be evoked—yet it was undesirable that this sort of thing ought to be permitted,

and he was quite certain that no Government on earth would permit it. And as for stopping such things, by means of political prosecutions, every body knew that this was a double-edged weapon, fraught with divers objections, which ought not lightly to be resorted to. So that, both upon private and public grounds, there was the strongest argument, which argument had been used by the Hon'ble Mover, that prevention was better than cure. And in saying this he was most anxious to avoid any misunderstanding as to there being any idea whatever of disaffection or disloyalty spreading in Calcutta or in Bengal. His Honour affirmed that the people of Bengal were most loyal and well-affected. He also affirmed that these occurrences were reprobated as much by the vast majority of the Natives as the Government could possibly desire. Nevertheless, it was possible that, if these objectionable performances were to be repeated for any lengthened period of time, gradually the youth of the country, the educated, quick-witted and aspiring young men of the rising generation, would become—he would not say corrupted or disaffected, but—not so well-affected as we might desire them to be. In fact, the prevention of these performances might be said to be the means of saving them from themselves—from those evil influences to which they might otherwise be subject.

These then being the broad grounds for introducing a measure of this kind, he felt bound to add that every reasonable concession had been made by his Hon'ble friend the mover on the side of the objectors. Religious festivals had been expressly excluded, and now all private performances had been excluded also. He was well aware that this concession of excluding private performances might possibly be open to abuse. But he earnestly hoped that the forbearance of the legislature would not be abused, and that it would never be necessary for the Local Government to ask this Council for further powers in that respect. And as a proof that the people were really a law-abiding and a law-respecting people, he might remark that, from the date that the Ordinance was issued by order of the late Viceroy, not a single case of this objectionable character had occurred, and the evil had wholly ceased. The people knew that this Ordinance was on record, and they never attempted to disobey it. And he was sanguine that if this measure should be passed to-day, he should always be spared the pain of ever having to put it in force. In short, the best proof of the success of the measure would be the fact of the people so loyally obeying the rules that penalties had never to be inflicted.

And, in conclusion, His Honour need say but little as to the dramatic literature which it was said this measure would discourage. The dramatic literature of Bengal was in a very rising and promising condition. It greatly exercised

the thoughts and imaginative faculties of the people, and we might hope that this measure, so far from checking the intellectual amusements of the age, would keep the national drama pure and sound, and would help it to flourish. So that on every ground upon which he had touched he affirmed that this measure could not possibly do harm, while, on the other hand, if rightly handled, it would be of use in preventing possible mischief.

The Motion was put and agreed to.

The Hon'ble RÁJÁ NARENDRA KRISHNA moved that, to section 12, the words "and on all other occasions" be added after the words "religious festivals."

The Motion was put and negatived.

The Hon'ble Mr. HOBHOUSE then moved that the Bill as amended be passed. He had only some observations to make in respect to what had fallen from his hon'ble friend Rájá Narendra Krishna. As to the association of a Native official with the Magistrate, he entirely agreed with the remarks of Mr. Cockerell, that that was a matter which would be within the discretion of the Local Governments, and he had no doubt that they would exercise a wise discretion, but we could not provide for it in the Bill. With regard to the amendment which was just lost, it seemed to him that the Bill would work satisfactorily. If a *jātra* was religious, it would fall under section 12 and be saved; if it was really private, it would fall under section 3 and be saved. If there was an essentially public performance, say in the middle of a street, but called private because it was got up by a private individual, such a pretence of privacy would be an evasion of the law. The performance ought to fall within the scope of the law, and he did not think any body would wish to save it if it was of an objectionable nature.

With regard to the passing of the Bill now, he observed that none of his honourable friends had said anything about the memorials which they had received. He therefore concluded that they were all of opinion that in a case like this, where there had been such a long publication of the Bill, where everybody had known what they were about to do, where the Committee had made no alterations in the Bill, excepting alterations narrowing its original scope and limiting it, in that case persons were bound to come in good time, if they desired the Council to delay their action; and that if they did come at the latest moment, they ought to show the strongest grounds, that there were some new facts or some new considerations which had previously escaped notice, and of which it behoved the Council to take notice in order to save themselves from error.

The Hon'ble THE PRESIDENT said that it was quite clear from his hon'ble friend Mr. Hobhouse's full explanation that every possible consideration had been given to the various representations received against the Bill or against parts of it, and he thought that the Bill had been improved by the attention which had been paid to those representations. * As to the necessity of a Bill of this kind, he (THE PRESIDENT) individually had no doubt whatever, and it appeared to him that the precautions with which the Bill was hedged in amply provided that no oppressive or useless action would be taken under it if it became law. He did not think that the passing of the Bill, which had now been many months before the public, should be any longer delayed.

The Motion was put and agreed to.

LAND IMPROVEMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the Land Improvement Act, 1871.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1871. He said that, although the Bill had been very much enlarged, that was only due to the circumstance that the Committee found the amendments so numerous, that it was more convenient to re-enact the existing Act with the amendments woven into its body, than to leave them in a separate document. That was the only reason why the Bill appeared to have been so much changed.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY presented the final Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta. He said the progress of this Bill had been deferred for certain technical reasons, there having been considerable delay in transferring the collections of the Asiatic Society to the new building, and it had been found that, according to the existing law, the trustees of the Museum could not sign the lists accepting the custody of the collections until the collections themselves were so actually transferred. That difficulty had now been removed, and the lists were in the course of signature. But the delay had enabled the Select Committee to re-consider a few points in the Bill, and they had therefore submitted a further report, suggesting one or two alterations, which he

ventured to think were improvements. The chief of these consisted in the reduction of the number of *ex officio* trustees. It was found that several of the offices which now constituted their holders *ex officio* trustees of the Museum were not necessarily of such a character as ordinarily to be held by gentlemen who took an interest in scientific matters. And moreover almost all the incumbents of these offices were gentlemen so burdened with other duties as to make their position as trustees purely nominal. It had been therefore determined to omit from the Bill the names of the Chief Justice, of the Vice-Chancellor of the Calcutta University, and of the Bishop of Calcutta. The Select Committee proposed to supply their places by enabling the trustees to elect gentlemen who would be willing, and able, actively to assist in carrying out the business of the Museum.

The other substantial alteration in the Bill consisted of a reduction in the number of trustees necessary to constitute a quorum. There had been considerable alterations of drafting induced by these changes; but in other respects the Bill had not been altered. He proposed at the next meeting to move that the Bill be passed.

BRITISH BURMA FOREST BILL.

The Hon'ble MR. HOPE introduced the Bill to consolidate and amend the law relating to the management and preservation of Government forests in the province of British Burma, and moved that it be referred to a Select Committee with instructions to report in three months.

The Motion was put and agreed to.

GENERAL FOREST BILL.

The Hon'ble MR. HOPE asked leave to postpone the motion for leave to introduce a Bill to consolidate and amend the law relating to the management and preservation of Government forests, to the transit of forest-produce and to the duty leviable on timber.

Leave was granted.

KAIRA THÁKURS INCUMBRANCES' BILL.

The Hon'ble MR. HOPE asked leave to postpone the motion for leave to introduce a Bill to relieve from Incumbrances the estates of Thákurs in Kaira.

Leave was granted

BHAUNAGAR THAKURS BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to give better effect to certain agreements with the Thákur of Bhaunagar. He said,—
 “I must apologize to the Council for the short notice on which this Bill is exhibited to them. I know it is inconvenient, but I trust they will be of opinion that there is sufficient excuse for it. It is true that the scope of the Bill is very limited, whether as regards time or space or subject-matter. Upon what subjects it will operate is matter of pure conjecture, and, if the Bill succeeds, always will be matter of pure conjecture, for it is intended to operate by way of prevention only. But it happens to be a proper part of the political action of the Government of India; and its frame depended on the form which that political action was to take. We have only just received from England a final decision on the subject. At the same time we have learned from the other side of India that speedy action is necessary if we would avoid embarrassment. The broad object of the Bill is to prevent litigation and vexation which may otherwise be caused by the circumstance that the tract of country, which my Hon'ble Colleagues may see described in the schedule, and which we call the scheduled villages, has for ten years and upwards been treated as a Native State, as a country which, so far as regards British law, is a foreign country, whereas in point of law it remained British territory and should have been so treated.

“The Council I hope will not misunderstand me. I am not asking you to lift your little fingers for the purpose of turning British territory into foreign. We have no power to do any such thing. Our territorial powers are strictly confined to British India. If we took any step to make an acre of British India not British India, our action would be null and void. That may be done only by the Imperial Parliament or by the Crown. But we have the power of passing such laws within British India as may enable political arrangements to work more smoothly. And it is an operation of that kind which I am asking the Council to perform.

“It is now my business to explain to you what is the nature and origin of the mistake which gives us uneasiness. For though, when all is told, it will be seen that the Bill is a very plain and simple one, indeed a very small one, it is necessary for you to understand the position of affairs which makes it so. The story is rather a disastrous one, and it would be, if fully told, a very long one, with many episodes and abounding in detail, but I will try to state what is material for the present purpose within a moderate compass. I may say—

Longa est injuria, longæ Ambages, sed summa sequar fastigia rerum.

"I hope the Council will not think I am forfeiting my pledge to be brief, if at the outset I carry them back more than seventy years in our history, for there, so far as we are concerned, lies the origin of the present difficulty. Previous to the war which ended in the treaty of Bassein, the territory of Káthiáwár was occupied by a number of Native potentates, towards whom the Peshwá and the Gaekwár, or they and the Mogul together, stood in the relation of Paramount Power. On the conclusion of the treaty of Bassein in 1802, certain portions of the country, amongst which were the scheduled villages, were ceded in sovereignty to the British Government, and, in the year 1815, they were formally added to the Presidency of Bombay and became subject to the Bombay Regulations. As regards the other portions, they have remained Native territory, but by successive steps the Crown has attained the position of Paramount Power over them. Now every Member of Council knows that in the course of building up this empire we have acquired territories and powers in infinitely various ways; that we stand in infinitely various relations to Native Rulers, and that their connection with us has infinitely various degrees of approachment, shading off from almost entire political incorporation to almost entire independence of everything except the ultimate political power necessary for preserving the peace and unity of the country.

"The Káthiáwár States are not among those who enjoy a very large amount of independence on the Paramount Power. They are very numerous—I think 188 in number—mostly very small, and they used to be, until recent times, amongst the most turbulent and lawless people in India. Consequently, we have found it necessary, as rulers responsible for the public peace, to press upon these States some of the institutions essential to orderly government. By various arrangements, the last very important one of which was effected in the year 1863, we have established a Political Agency, have introduced codes of laws, have graded the jurisdiction of the chieftains, and have provided for the administration of justice, partly by the hands of the chieftains themselves, and partly by the officers of our Agency. So much indeed have we done there, that to some it has seemed that Káthiáwár has become part and parcel of British India. But that is not so. All that has been done has been done by, through, and in combination with, the chieftains. Laws made for British India have never operated in Káthiáwár, and though the Paramount Power has been exercised in several departments of government, a certain substantial amount of sovereignty has been left to the chieftains.

"One of the principal Káthiáwár potentates is he who is called the Thákur of Bhaunagar, a State with which we have had relations for upwards of 100

years. He is also, and has been for a great many years, the proprietor of the scheduled villages. Well, the scheduled villages are intermingled with the Thákur's Káthiáwár villages, and great inconvenience and irritation were found to result from the circumstance, that in one village the Thákur, besides being proprietor, was an independent chieftain, making and administering law subject only to the arrangements made by the Agency, while the next village, of which he was also proprietor, was subject to all the minutiae of law affecting a Bombay Regulation district. The inhabitants of two contiguous villages had the same origin, the same faith, habits, manners and traditions, they looked up to the same immediate superior, while the systems of law by which their affairs were regulated were essentially different. Continual disturbances and complaints arose from this cause, and led to a careful enquiry into the whole matter which was instituted in the year 1859. It was in the result determined that so much of the Thákur's property as had been ceded in sovereignty to the British Government in 1802 should be ceded over to him, subject only to the arrangements made for the Káthiáwár Political Agency.

"Now this is the particular operation with regard to which it has been recently discovered that a mistake was made. It turns out that the instruments which were framed for carrying the intention into effect did not actually carry it into effect. But I have stated to the Council what the real intention was. And of that I speak without doubt or hesitation, not only because the officers who took part in the transaction are clear about it; not only because all parties have ever since its completion treated the scheduled villages as being part of a Native State and no part of British India, but also because there were incidents in the course of the negotiations which set the intention in the clearest and strongest light that is possible.

"The principal one of these incidents I will mention. It did not appear in the course of the litigation I am about to speak of; probably it would not have been admitted in evidence if it had appeared; but we are a political and not a judicial body, and as a piece of moral evidence, I think it will carry conviction to every man's mind.

"The negotiation with the Thákur was embodied in a written agreement, dated 22nd December 1860, the terms of which I shall presently have to state more particularly. Then it was proposed to embody it further in an Act of Council, and a question arose by which Council the Act should be passed,—by the Bombay Council or that of the Governor General. That question got into the hands of a very able predecessor of mine, Mr. Ritchie, who was then the legal adviser of the Government, and whose work I never see except to

admire. When the papers came to him he at once put his finger on the critical point. He pointed out that, if Káthiáwár was no part of British India, we were turning the scheduled villages into foreign territory, a thing which should be done by the Executive and not by the Legislature. I will read to the Council what Mr. Ritchie said :—

“ ‘If the province of Káthiáwár be deemed a foreign province, not forming part of Her Majesty’s dominions in India, the transfer of Bhaunagar and the ten villages from the jurisdiction of Ahmadábád to that of Káthiáwár cannot be effected by the proposed Bill, or by any Act of either legislature.

“ ‘For the transfer of a portion of British territory in India to a Foreign State is of course not a fit subject for legislation at all. Moreover, it would fall within the prohibition in the Indian Councils’ Act against any legislation affecting the allegiance of the inhabitants to Her Majesty, or the sovereignty or dominion of the Crown over that part of Her Majesty’s dominions. And supposing the agreement with the Thákur to have been properly ratified in England, the transfer to a Foreign State will already have been effected by that agreement, considered as a treaty ; and the towns and villages transferred by it would no longer be in British India, or within the jurisdiction, for purposes of legislation, of the Governor General in Council or the Governor of Bombay in Council.’

“ It is clear that, if only Káthiáwár was foreign territory, Mr. Ritchie felt no doubt that the Executive might do what was wanted ; but he warned the Legislature against having anything to do with it.

“ Well, that opinion raised the question whether or no Káthiáwár was foreign territory, and that question was referred back to Bombay. It was found to involve a great deal of research, it elicited different opinions from different minds, and it was finally referred to the Secretary of State in Council, who formally decided that Káthiáwár was not part of British India.

“ The decision of the Secretary of State was given in the month of August 1864, and the negotiations with the Thákur were resumed. They were carried into effect by a notification in the Gazette dated 29th January 1866, and no Act of the legislature was ever passed on the subject. The Council therefore will see, that the reason why neither they nor the Bombay Council were asked to pass any law was because, after the issue had been raised and a formal decision given, after great discussion and deliberation, it was intended to make the scheduled villages foreign territory, and therefore British Indian legislation was wholly out of place.

“ Now I must proceed to state the circumstances which have led to the discovery that the scheduled villages have in point of law remained British territory. Any one who will look at the schedule of the Bill will see the

name of Gángli among the villages. Some time before the notification of 1866, when the villages were clearly British territory, an ordinary suit was brought before the Munsif of Gogo to recover a piece of land situated in Gángli. The claim was defended, apparently with great vigour, and the battle raged with various fortune. The Munsif gave the plaintiff a decree. The Judge of Ahmadábád reversed the decree. The plaintiff appealed to the High Court, who reversed the decree of the Judge and remanded the case for retrial. All that happened before the notification of 1866, and the suit was pending on the remand when the notification was issued. The defendant then took a new point, and objected that the Judge had lost his jurisdiction by the circumstance that the village of Gángli had ceased to be British territory. The Judge overruled the objection, on what ground I do not know, nor is it material, and he set the Munsif's overturned decree on its legs again. Then it was the defendant's turn to appeal to the High Court, and appeal he did, and the question was argued whether the Judge of Ahmadábád had jurisdiction or not. The High Court thought that, if the territory had actually been ceded, the cession would destroy the jurisdiction; but they held that it had not been ceded, because the Crown had no authority to cede any territory at all. This decision was given in the year 1870.

"Now, up to that time the Government of India had been no parties to the suit, but of course they heard of the decision, and it rather disturbed them. The Council will have noticed how entirely it was at variance with the opinion of Mr. Ritchie. It was also at variance with the opinion of the highest legal authorities, the English Crown lawyers, by whom they had been advised, on another case it is true, but on principles equally applicable to the Bhau-nagar case. It negatived the existence of a power upon the validity of which the nationality of many territories depends.

"Finding it therefore decided in a private suit that this essential power did not exist, the Government of India contrived, by leave of the Court and by arrangement with the parties, to intervene in the suit. The case was re-argued upon some new materials before the High Court, who adhered to their opinion. It then went to the Privy Council, who delivered judgment on the 28th March last.

"It will be observed that, up to the point to which I have brought my narrative, it had not occurred to any one to doubt that a *de facto* cession had been made. It was the cardinal fact with which the opinion of Mr. Ritchie, the decision of the Secretary of State, and that of the High Court of Bombay, were all concerned. The only motive of the Government of India for inter-

vening in the suit and appealing was to have the legality of the supposed cession decided. Never was there a more conspicuous illustration of the saying that a blot is not a blot till it is hit.

"It turned out that there was another point in the case, and one which, in the opinion of the Privy Council, rendered it impossible to pass a formal decision upon the great constitutional question. On examining the written Convention of 1860 made with the Thákur of Bhaunagar, their Lordships found that it was not a cession at all. I will read what they say :—

" 'The town and port of Bhaunagar were part of the territory to which the 7th Article (that directly bearing upon the present question) relates. That Article is in these words: 'Upon the above conditions Her Majesty's Government agree as follows: Government concede, as a favour, and not as a right, the transfer of Bhaunagar itself, with Wadwá, Sihor, and ten subordinate villages, from the district of Gogo, subject to the Regulations, to the Káthiáwár Political Agency.'

" 'This is not the language of cession. It is *primá facie* nothing more than an engagement for the transfer of the places mentioned (including Gángli), which were then, beyond question, British territory, from a Regulation Province to an extraordinary jurisdiction. The other Articles are consistent with this view.'

"But if the document of 1860 was not a cession, there was clearly nothing else to constitute one. The notification of 1866 simply brought into active operation the document of 1860. I will read it to the Council :

" 'It is hereby notified that, in accordance with a convention made between His Excellency the Governor of Bombay and His Highness the Thákur of Bhaunagar, the undermentioned villages belonging to the Thákur of Bhaunagar and situated in the Parganas of Dhanduka, Ranpur and Gogo, Zila Ahmadábád, are from and after the 1st February 1860, Sambat 1922, Maha Vud 2nd, removed from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency, and transferred to the supervision of the Political Agency in Káthiáwár, on the same conditions as to jurisdiction as the villages of the taluqá of the Thákur of Bhaunagar heretofore in that province.'

"Of course if there had been no cession, the villages remained British territory, and the appeal had to be dismissed.

Perhaps I had better explain here, with reference to the ten villages spoken of in the agreement of 1860 and again in Mr. Ritchie's opinion, that in order to preserve the necessary brevity and clearness, I am obliged to omit some whole stages of these transactions. The negotiations lasted many years, and it was not at first, but later on, that it was resolved to cede the whole of the scheduled villages. Such incidents however are immaterial to the purpose now in hand. Whatever territory was transferred was transferred on the

terms of the two cardinal documents, the agreement of 1860, and the notification of 1866, and on these therefore I have concentrated the attention of the Council.

"I am sorry, speaking as a lawyer, to say that failure is not unfrequently the fate of lawsuits instituted in order to get a particular point decided. It is often found that some preliminary objection to its decision exists. But in this instance it is very fortunate that their Lordships have not left us in the dark as to their opinion on the really important point. In their judgment they say this :

"The Judges of the High Court held that it was beyond the power of the British Crown, without the concurrence of the Imperial Parliament, to make any cession of territory within the jurisdiction of any of the British Courts in India, in time of peace, to a Foreign Power ; and on that ground they made the order of the 24th March, 1878, now under appeal, confirming their former order of the 2nd December, 1870. The question, whether the law thus laid down by the High Court of Bombay is correct, was fully and ably argued at this Bar in July last ; and their Lordships would have been prepared to express the opinion which they might have formed upon it, if in the result of the case it had become necessary to do so. But having arrived at the conclusion that the present appeal ought to fail without reference to that question, they think it sufficient to state that they entertain such grave doubts (to say no more) of the soundness of the general and abstract doctrine laid down by the High Court of Bombay, as to be unable to advise Her Majesty to rest her decision on that ground.'

"I may add that I have seen a careful report of those full and able arguments to which their Lordships refer, on both sides of the question, and of the interpellations of the Judges, which, even if we had not the collective opinion which I have quoted from the judgment, would leave no doubt on any one's mind how satisfied they were of the legality of such a cession as that which the Government of India intended to make.

"I suppose that every one will agree that, being able to complete our engagements with the Thákur, we are bound to do so. For all the reasons which originally dictated those engagements exist in full force, with the additional reason that our honour and good faith would be called in question if we did not complete them. Perhaps it is superfluous to say that the Thákur himself is urging us to do so.

"We learned the new position of affairs when we received a copy of the judgment of the Privy Council some time in the month of May last. We have lost no time in communicating with the Bombay and Home Governments, and the result is a notification which is dated the 5th December, and has been

issued in the *Gazette* of this morning. Its recitals first tell briefly the story which I have been telling at greater length. It then proceeds :

“10. And whereas the Secretary of State for India has, on behalf of Her Majesty the Queen of Great Britain and Ireland and Empress of India, given his sanction to the cession intended to be effected by these presents :

“11. The Governor General in Council, with the sanction aforesaid, doth hereby cede and grant to the said Thákur of Bhaunagar, his heirs and successors, the said Scheduled villages, to hold the same unto the said Thákur, his heirs and successors, on the terms and subject to the rules on and subject to which he holds the said Káthiáwár villages.’

“There is then a proviso for resumption of the territory in case of misgovernment. That, we hope, will be construed as a complete cession to the Thákur, and as bringing the legal status of the villages into accord with their actual administration.

“So far for the future. But then, what is to be done for the interval during which these villages have been governed illegally, though in perfect good faith? It is clear that persons who have been subjected to criminal or civil process may bring actions for trespass or assault; that those against whom decrees have been passed may deny the validity of those decrees and litigate the questions decided by them all over again. There has in fact been no legal basis for many of the most important functions of Government for ten years and upwards.

“It is true that there would be much practical difficulty in the way of such litigation by reason of the territory having ceased to be British. I do not suppose that the Káthiáwár Courts would permit land to be brought into litigation afresh merely because there was a technical flaw in the title of the Courts who had adjudicated on it; nor, if they were disposed to do so, could we help or hinder the matter, because that land has passed beyond our jurisdiction. Probably any one who sued in British India on the personal grounds I have suggested would not recover any substantial damages, if he recovered any at all. I do not wish in any way to exaggerate the importance of this Bill. Probably it will prevent little else but some purely frivolous and vexatious litigation for damages, and the retrial of some personal claims. But that is worth preventing, and the Bill is certainly the proper complement to the notification. The notification leaves only a small and uncertain portion of the ground uncovered, and the Bill covers that small and uncertain portion. It says in effect that, so far as any cause of action may exist in British India by reason of the common misapprehension under which all parties have laboured, that cause of action shall be destroyed.

"As regards the particular suit which has raised the difficulty, we are informed that the party who got the original decree in the Munsif's Court,—I am almost ashamed to say how many years ago—is pressing for execution, and that information has made it desirable to be speedy in completing the cession in proper form. I apprehend however that this Bill has no effect whatever on the suit. The suit relates to land now made part of a Native State, and the cession removes that land from the jurisdiction of our Courts. That was the view taken by the High Court of Bombay, and the Privy Council express agreement with them in a passage which I will read. They say—

"With respect to the competency of the Courts of the Bombay Presidency to proceed with the suit between these parties, if Gángli had, by any valid cession, ceased to be British territory, their Lordships agree with the High Court that the foundation of the jurisdiction of those Courts over the subject-matter of this suit, and the parties thereto, was territorial, and that it could no longer be exercised (whatever might be the stage or condition of the litigation at the time) after such a valid cession had been made.'

"Though therefore the language of this Bill is calculated to stop the suit if we had jurisdiction over the land, the suit is stopped antecedently, and the Bill cannot affect it.

"It depends upon the action of the Council and of the President whether I introduce this Bill to-day; but anyhow it will probably save repetition if I now call attention to its frame. It consists principally of recitals to explain the position which I have been explaining in greater detail. The first section is formal. I will only notice that, on the face of the Bill and elsewhere, we have called special attention to the fact that its operation is confined to British India, and does not embrace the scheduled villages after the cession.

"The second section frees the villages from the Regulations during the interval of the mistake, as they were intended to be freed; and it lays down a foundation for the third section, which carries into effect the main purpose of the measure, the prevention of litigation. The fourth section is merely for the purpose of taking care that no personal jurisdiction which our Courts may have beyond the limits of British India—such as that over European British subjects—shall be lost. It is hardly necessary, and is inserted only for caution's sake.

"There is perhaps a possibility, but it is such a bare possibility, so remote, so conjectural, so improbable, that I hardly like to trouble the Council with it at all, under which the Bill might have a larger operation than I have mentioned. Still we have had some surprises in this matter, and may have

others. Suppose it should turn out that what we have done is still only calculated to put the villages under the Káthiáwár Agency and not to alter their nationality. In that case our law would operate in the villages, and section two would have the effect of what we used to call a deregulationizing Act, removing territory from the Regulations, in order that it might fall under a special system of government. But I will not further discuss anything so speculative. In my view the Bill is merely a Bill of peace, and affects only what is past.

“I hope I have now made it clear that this Bill, though it involves a long story, is extremely simple in its nature : that it has only a very limited operation ; that so far as it operates at all it must be beneficial ; that it is intended to give such validity as this legislature can to acts done by a number of persons in good faith, in the course of their apparent duty, and under the influence of a general mistake ; that it does not require any lengthened consideration by this Council ; and that it is desirable to pass it as it were *uno flatu* with the notification, and to make, as far as we can, a single and complete end of our long protracted arrangements with the Thákur of Bhaunagar.

“With regard to further proceedings beyond leave to introduce the Bill, I am entirely in the hands of the Council and the President. I cannot say that the Bill is urgent. The notification was urgent ; but we have not received notice of any actual litigation which, on our theory of the notification, this law could affect. At the same time we were long ago told by the Bombay Government that such litigation might occur, and were asked to pass an Act of indemnity. The matter has been delayed till the cession could be determined on, and it will be best, as far as possible, to make a single transaction of it. At the same time, if there is a single Member of Council who desires more time to consider the matter, or who thinks it ought to go into Committee, I shall not press my wish to pass the Bill to-day.”

The Hon'ble MR. HOPE said he laboured under some disadvantage in addressing the Council, as it was not until this time yesterday that he had received intimation that there was any present intention of proceeding with the Bill ; and it was not until the previous evening that he had received some of the papers relating to this Bill, and they were not sufficiently complete to enable him to comment on the measure in the way he had wished to do. On the other hand, he ought not to allow the Bill to pass, giving only a silent vote, as he was the officer to whom had been entrusted the duty of carrying on the negotiations between the Thákur of Bhaunagar and the Bombay Government on the basis of very complete reports by Mr. Peile, which had resulted in the

agreement of 1860. He would not attempt the task, which would be equally superfluous and impertinent, of following the Hon'ble Mover on the technical points upon which he had expressed his opinion, or in the history of the case, which he had explained so completely. At the same time, in view of the possibility at which the Hon'ble Mover had glanced, that the notification which had been issued yesterday night, at some future time, lead to further proceedings, it might be of some use hereafter, if not at present, if he alluded to some remarks in the judgment of the Privy Council, which had not been specially noticed by the Hon'ble Mover, and which might be briefly described as being possibly likely to produce an impression that the agreement of 1860 did not mean a cession of territory, and that there was in fact no foreign territory to cede to on that or any other occasion. The parts of the judgment to which he alluded would be found at pages 8 and 11. In the former, the remarks in regard to the 7th Article of the agreement ran thus :—

"This is not the language of cession ; it is *prima facie* nothing more than an engagement for the transfer of the places mentioned (including Gāngli), which were then beyond question British territory, from a Regulation Province to an extraordinary jurisdiction."

And later on at page 11 :—

"What was attempted was, in their Lordships' judgment, neither more nor less than a re-arrangement of jurisdictions within British territory, by the exclusion of a certain district from the Regulations and Codes in force in the Bombay Presidency, and from the jurisdiction of all the High Courts, with a view to the establishment therein of a Native jurisdiction under British supervision and control."

With reference to these remarks, MR. HORE was in a position to say, in the first place, that what was intended and attempted was not to make any such re-arrangement ; what was intended was a complete and effectual cession of territory to a Foreign Power. He would first of all satisfy the Council what it was that was intended at the time, and then endeavour to show that the view then taken of the status of Kāthiāwār was the only correct view. It so happened that he was able now to produce before the Council the Guzarāthi agreement, in original, which had been drawn up between himself and the officer who was vested with full powers by the Thākur of Bhaunagar to settle with him on the subject. That agreement did not follow the order of the Articles in the agreement which had been afterwards drawn up, but it showed most clearly what it was the intention of the latter document to do. It stated the several claims of the Thākur of Bhaunagar under main headings, and the first of these was "independent sovereignty," or autonomy, the words used being "*swatantra hukumat*," in respect of the villages in question. So that it was perfectly clearly

understood, both by the Thákur of Bhaunagar and Mr. HOPE, that the question was, whether the Thákur was to be allowed to hold them as an independent Ruler, and not as the subject of any Foreign Power. And with regard to the transfer of the villages, all of which were now included in the schedule of the Bill, it was here said that the ones then ceded were to be placed or "thrown under Káthiáwár." In another passage, further on, the words used were that they should be "considered to be in Káthiáwár." That document, as Mr. HOPE said, was the original one, showing the terms of settlement. It was shortly followed by a formal one on December 22nd, 1860, between Mr. J. B. Peile, who was on special duty in connection with the case, and had submitted a very full and able report on it to Government, and the Thákur. In this document, the language employed was that "Government concede as a favour, and not as a right, the transfer of Bhaunagar itself, with Wadwá, Sihor, and ten subordinate villages, to Káthiáwár." The next step was an arrangement which bore the same date as that which he had just read, but which was really executed a short time afterwards by Sir George Clerk, then Governor of Bombay, on the occasion of a visit made by him to Bhaunagar. In this, the phraseology was slightly altered, to secure, as it was supposed, greater clearness. The words were—"the transfer of Bhaunagar.....from the district of Gogo, subject to the Regulations, to the Káthiáwár Political Agency." The Bombay Government at that time contemplated the passing of an Act to bar the jurisdiction of the Courts. Owing to discussion on this and some other points, the arrangement was not entirely carried out. In a Convention executed on April 25th, 1866, by Sir Bartle Frere and the Thákur, the words were substantially the same, or, if anything, rather more forcible, namely, "from the jurisdiction of the laws and Acts of Government to the Káthiáwár Political Agency, on the same terms as the villages now under the Thákur's jurisdiction in Káthiáwár." And the notification of 1866, which the Hon'ble Mover had read, used the same words.

There could therefore be no question, as a matter of personal evidence, so far as evidence could settle it, that what was intended and understood by all the parties was a transfer of British territory to a Native State. He found however in the course of the judgment, that a certain phrase was quoted out of a letter written in 1865 by the Acting Secretary to the Government of Bombay, and it would appear that some remarks in the course of the judgment were based on the meaning of the phrase in that letter rather than on the actual documents and agreements which had passed between the parties. The words used were—"transfer * * * to the supervision, laws and regulations of the Káthiáwár Political Agency," thereby implying, as it were, that there were "laws and regulations" in the Káthiáwár Political Agency as well as in the

district under which these villages were first placed. But he would contend that such a document as that could have no value in the face of the actual agreement of the parties, and their well-known and specified intentions. It might be that the agreement actually drawn up did not express the intention in a form exactly calculated to meet the subsequent controversy, which it was then impossible to foresee would arise. But it was the form best suited at the time to express clearly to any one who was acquainted with the status of Káthiáwár what was the real intention of the arrangement.

Mr. HOPE would now proceed to show that the view then taken of the status of Káthiáwár was the correct view. He would endeavour as far as possible not to go over the same ground as had been covered by the Hon'ble Mover. Mr. Hobhouse had already told the Council that, in the 17th and 18th centuries, the state of all this part of Guzarát was a very lawless one. Mr. HOPE would say that Káthiáwár was almost independent; that the Muhammadan Power had never even in its best days succeeded in completely subjugating that portion of Guzarát; and that at that time whatever power it had was rapidly falling to pieces. The only thing it could do was to send an army occasionally into the province and levy black-mail so far as it could succeed in extracting it by fire and sword.

In the commencement of the 18th century, the new Mahrátha Power sprang up in Guzarát and entered into a series of contests with the Mahammadans, so that the whole province was at the mercy of one or the other Power. Among the Mahrátha leaders was Damají Gaikwár, who was the founder of the present Baroda dynasty, and he having held his own against the Muhammadans, used to make incursions into all parts of Guzarát, including Káthiáwár and Ahmadábád. In the course of time he fell out with the Peshwa, and having got the worst of it, was obliged in 1751 to sign a treaty, by which he relinquished a portion of the districts in his possession and of the tribute he used to levy by sending a force into Káthiáwár.

Matters went on in pretty much the same way until the commencement of the present century, the result of the whole of the operations being that the Peshwa and the Gaikwár succeeded in establishing to a considerable extent their power in certain taluqas on the east and near the coast of Guzarát, but did not succeed in establishing anything more than the practice of raising tribute elsewhere. The portions of the Bhaunagar territory which were now included in the Bill, were some of these portions over which the Peshwa had succeeded in getting such a large share of power. They were nearest to the coast and most accessible from the capital of Ahmadábád, and in the course of

time he had established a pretty firm footing in them, but even in them his rights were much less than in adjacent villages not belonging to any Chief.

Similarly, the Gaikwár got well established in certain parganas in Káthiáwár termed Amreli and Okhamandal, which he holds in full sovereignty to the present day. But as regards the rest of Káthiáwár, neither the Peshwa nor the Gaikwár ever had any definite power other than that of levying tribute or black-mail. This was sufficiently evident to any one who had studied the history from 1735 downwards, with the details of which MR. HOPE would not trouble the Council.

The next step in the matter was, that after the treaty of Bassein in 1802, by which the Peshwa's own possession of Gogo and Bhaunagar was transferred to us, we exercised our jurisdiction in them as we thought fit, and we found that we had also certain rights or interests in the tribute of Káthiáwár. Governor Duncan addressed a letter in 1804 to General Sir Arthur Wellesley, which set forth very clearly what the intention of the Government of that day was. He proposed that a force should be sent to Káthiáwár, and observed :—

“The extent of our interests in taking part in a Mulukgíri expedition through Káthiáwár may be viewed as comprehending the following objects :—

The first object Mr. Hope need not read, he explained, because it was one of general policy unconnected with Káthiáwár. The letter went on thus :—

“*Second.*—We shall see that the Mulukgíri funds are not misapplied.

“*Third.*—We shall secure payment of our own *Warrats* or assignments on these Mulukgíri collections.

“*Fourth.*—We may, if you please, obtain some possessions in Káthiáwár—such, for instance, as Porbandar. * * * *

“*Fifth.*—We shall be able to improve the Mulukgíri system so as to answer better the objects of humanity and the interests of the Gaikwár and Peshwa's Government.”

This clearly showed that, at that time, we had not any “possessions” of our own in Káthiáwár. In consequence of that, a force did go into Káthiáwár, and the eventual result was that agreements were entered into by the Chiefs. As regards the character of those agreements, MR. HOPE would quote a letter from the Bombay Government in 1831 :

“On our first interference in 1807-08, Lieutenant-Colonel Walker promulgated, by an address to the Chiefs, the object we had in view, and proclaimed that this was confined to the settlement of the regular payment of their tribute ; that no encroachment on their landed

rights or their independence was contemplated, and that the state of possession and power as it then existed was to be guaranteed; and at the same time both the British and Gaikwár Governments concurred in the policy of abstaining from a spirit of aggrandizement, and from every encroachment on the rights and possessions of the Chiefs. On the faith of these assurances, the Chiefs entered into the measures suggested to them," &c.

He would also call a better witness than the letter of the Bombay Government, and that was Colonel Walker himself, who, in a report made in 1808, shortly after he had effected this settlement, with reference to a subsidiary arrangement by which the Gaikwár revenue due from this very State of Bhaunagar was transferred to the Hon'ble Company. What he said was:

"The general superintendency which the Company have acquired over the Rájá as a tributary, and the control of a valuable and extensive line of sea-coast, afford both the right and the means of regulating the conduct of the Rájá in every affair that bears relation to foreigners, or is inconsistent with our policy. This does not, however, convey any right on our part to interfere in the internal concerns of the Bhaunagar territory. In this respect the Chieftain of Bhaunagar still retains every right he previously possessed, undiminished by the transfer of his tribute to the Company. These rights consist in the exercise of every species of authority within his own territories, either of a revenue, fiscal or judicial nature, and are limited only by his general obedience to the superior Government as a tributary."

Nothing could be clearer than these terms, and MR. HOPE would invite the special attention of the Council to them. Subsequently, in a memorandum for the future management of the affairs of Káthiáwár and the Mahikánta, which the Gaikwár passed to the Bombay Government in 1820, it was provided that, "with a view to the tranquillity of the country and to the peaceable realization of His Highness the Gaikwár's tribute," the Gaikwár should send no troops into either of those tracts without the consent of the British Government, and make no demands on any one there except through them. Now the Privy Council in the judgment gave a sketch of what the tributary relations of these Chiefs of Káthiáwár were, which he had not verified, but believed was generally correct. It was said that "the entire number of Káthiáwár States under separate Chiefs (large and small) is 188: of whom, 96 pay tribute to, or in right of, the British Government only; 70 to, or in right of, the Gaikwár only; and 9 (of whom the Thákur of Bhaunagar is one) to, or in right of, both Governments."

Now he would ask any person who contended that Káthiáwár was British territory, on what date and by what arrangement it became so? As regards a great portion of it, the right which we possessed was simply the right to collect the Gaikwár's tribute for him. As regards another portion, we collected both the Gaikwár's tribute and our own. MR. HOPE found no treaty, or agreement,

or arrangement, by which the Gaikwár transferred to us the sovereignty (if it belonged to him) of the States which paid tribute to himself ; no agreement by which it was ever intended that the States which paid tribute both to us and the Gaikwár should become more British than Gaikwár territory, or the joint-territory of both. In point of fact, he thought a careful scrutiny of the leading documents of those days could not lead to any conclusion other than that the whole territory was as completely foreign territory as that of the Nizám or of the Gaikwár of Baroda. The Government had been described as being throughout India the Paramount Power, and its position with regard to Káthiáwár was the same as that which it held towards the Nizám of Haidarábád, or the Gaikwár of Baroda, with this addition, that it possessed a certain right, which might be termed a rent-charge, in some of the States. But the fact of possessing such a rent-charge did not constitute those States British territory. Or, to take a further illustration, the British Government, by enforcing and collecting all the different tributes due to other Powers, no more became the owner of the whole territory than the German Government became the owner of France, or France became German territory, from the fact that the former imposed a large contribution upon the latter, or would have become so, even if the contribution imposed had been in the form of an annual tribute to be paid for ever.

In addition to these statements, which MR. HOPE had taken from treaties and documents, he could add his personal testimony as to what had been the universally accepted opinion of the Political officers of the earlier period of British interposition. It so happened that it had been his official duty previous to 1860, and for five years before he took up this matter, to spend several months in every year in Káthiáwár and the rest of the Native States in the Bombay Presidency ; and in the course of his duties, he naturally became personally acquainted with the views, the position, and the condition of almost every State in Guzarát. He was also on terms of intimacy with the older class of Political officers—Colonel Laing, who had been some thirty years in Káthiáwár, Colonels Keily, Whitelock, Barr, Short, Black and others, every one of whom had now passed out of the country—and he could safely say, that if the theory had then been propounded that Káthiáwár was British territory, they would one and all have at once repudiated it. Moreover, the view that it was not so had been repeatedly taken by the Court of Directors, as early as 1824, and again in 1858, and was more lately affirmed by the Secretary of State himself.

It might be thought that the history of the gradual establishment of Courts in the interior militated against his argument. They had a tolerably

correct sketch of that history given in the judgment of the Privy Council; but Mr. HOPE would point out that it was a fundamental error to suppose that though, in virtue of being the Paramount Power, we might certainly interfere, we had done more in establishing these jurisdictions than gradually to interpose, with the outward concurrence, at least, of the Chiefs themselves, and after full consultation with them, for the public good. No doubt the Government found it necessary to interfere in the affairs of Baroda; and it might be necessary to interfere for the public safety with any State however independent. But it was impossible to argue from that that such State was British territory, or had anything British about it. To have established these Courts on any other basis than that on which we had done so, would have been a most unwarrantable usurpation, and would have justified far more serious objection than in any case was actually offered to it.

He feared he had wearied the Council with these explanations. He could not however let pass the opportunity of placing these facts on record, and he ventured to hope that, if ever hereafter this judgment should be made the basis of, or afford a suggestion for, fresh proceedings, whether in the case of Bhaunagar or any other State in Political Guzarát, they might prove to be not wholly valueless.

The Hon'ble Mr. HOBHOUSE said he was not quite certain whether his Hon'ble friend Mr. Hope considered that the judgment of the Privy Council involved the opinion that Káthiáwár was British territory. Mr. HOBHOUSE considered that the Privy Council had pronounced no such opinion; on the contrary, they had carefully guarded against it. That question was not before them, nor had they the materials for a decision upon it. Their view was, as he understood it, that the Káthiáwár Political Agency consisted of a bundle of distinct States knit together by the bond of one administration set up by the British Government, and that it was quite consistent with the form of that administration that some of those States should be British territory and others not. Therefore, they held that the document of 1860, which only professed to transfer, not to the Thákur of Bhaunagar as the present notification did, but only to the Political Agency of Káthiáwár, was perfectly consistent with an intention that the villages should remain British territory, whatever might be the character of the Káthiáwár States themselves.

The Hon'ble Mr. HOPE said that, with the permission of the President, he would merely explain, with reference to what had fallen from the Hon'ble Mover, that he was aware that the Privy Council had abstained from deciding that Káthiáwár was British territory. The judgment was somewhat obscure, and its meaning had sometimes to be arrived at by inference. No doubt the explana-

tion suggested by Mr. Hobhouse was the correct one. At the same time, as the judgment contained passages which, if they did not indicate a tendency on the part of their Lordships to think that Káthiáwár was British territory, might be made use of by others to support a fresh argument to that effect, he had thought it best, in view of the possibility of the question being raised at some future date, to which the Hon'ble Mover had alluded, to take this opportunity of placing on record both the view of the status of Káthiáwár held in 1860, and the grounds for believing that view to be correct.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then applied to the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to the management and preservation of Government forests in the province of British Burma.—The Hon'ble Mr. Hobhouse, the Hon'ble Sir A. J. Arbuthnot and the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Wednesday, the 13th December 1876.

CALCUTTA;
The 6th December 1876. }

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