ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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

The Council met at Government House on Wednesday, the 28th March 1877.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble Sir Arthur Hobhouse, Q.C., K.C.S.I.
The Hon'ble Sir E. C. Bayley, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Sir J. Strachey, K.C.S.I.
Major-General the Hon'ble Sir E. B. Johnson, K.C.B.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble D. Cowie.
The Hon'ble Mahárájá Narendra Krishna.
The Hon'ble J. R. Bullen Smith, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.

N.-W. P. LOCAL RATES ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend the law relating to assignments from the general Provincial Fund established under the North-Western Provinces Local Rates Act, 1871.

The Hon'ble MR. COLVIN having applied to the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. COLVIN then moved that the Report be taken into consideration. He said that the amendments made by the Select Committee in the Bill now before the Council were limited to a few verbal amendments

which were found necessary to bring the new sections and the old law into harmony. No other amendments had been made whatever, and he did not think it was necessary to add anything to the remarks which he had made last week on this Bill.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LICENSING BILL.

The Hon'ble MR. COLVIN also presented the Report of the Select Committee on the Bill for the licensing of certain trades and dealings in the North-Western Provinces.

The Hon'ble MR. COLVIN having applied to the President to suspend the Rules for the conduct of business,

The President declared the Rules suspended.

The Hon'ble MR. COLVIN then moved that the Report be taken into consideration. He said that before formally making the motion which stood in his name in the notice paper, it was perhaps right that he should state the reasons for certain changes which had been made in the present Bill by the Select Committee.

The Bill as now presented differed a good deal from the one which was originally presented to the Council. The first and most important change was that the grades of taxation had been abolished. In the Bill as introduced there were ten of these grades, ranging from Rs. 64 to Rs. 2. As it now stood there were only three rates of taxation upon each class, Rs. 16, Rs. 8 and Rs. 2. This change had been made in accordance with the wishes of the Government of the North-Western Provinces, which found after calculating the charges it had to meet, and reconsidering the funds at its disposal, that the taxes, if imposed at the lower rates, would yield sufficient for its requirements. The Bill had been altered accordingly. There were no doubt some theoretical advantages about the former scheme, because, besides yielding larger profits, it would have made the incidence of the tax somewhat less unequal. In the face however of the opinion of the Local Government that the Bill in its present shape would yield sufficient money, the Committee were not prepared to carry taxation any further. In its new shape the Bill did not

differ in any material respects from the one which was introduced and abandoned in 1871. The only material difference was that the rates of duty leviable on the first and second classes of traders were somewhat higher than they then were. The next change introduced in Committee was that special notices which had to be given to each person who was liable to the tax had been dispensed with. Now that the Bill grouped all trades under three classes, and assigned a fixed rate of duty for each class, the Committee thought that every person liable to the tax would have ample opportunity of informing himself of the amount due from him. They thought also that the service of special notice on each person might possibly lead to petty exactions. Power however had been reserved to the Local Government to prescribe notices in any particular case or class of cases in which it might think them necessary.

The third change was that a maximum of two per cent. upon incomes, which was adopted to guard against over-taxation, had been abandoned. With the very low rates of duty now proposed, this seemed to be an unnecessary precaution. A further change was that the power of appeal had been taken away. In the Bill as introduced any person who had been assessed and was dissatisfied with the amount with which he was charged had the power within fifteen days of appealing to the Commissioner. But the present Bill left so little discretion to the Collector that the right of appeal seemed scarcely necessary. The only point which the Collector actually had to decide was whether a man exercised a trade or profession or not, and secondly, whether his income was over Rs. 200. The first was a very simple matter of fact, and the second was a point upon which precise proof was very rarely procurable. And in view of this, and the fact of there being no likelihood of the Act being worked harshly towards the lower classes of traders, it was thought better to withdraw the right of appeal.

Lastly, a few minor changes had been made in the Schedule of Trades. A few had been added to the first, and a few to the second class, and one or two had been taken away. But whatever had been done, had been done under the recommendation of the Local Government. The Select Committee did not think it safe to act on their own knowledge, and allowed themselves to be guided entirely by the recommendations they had received. In conclusion, he might say that he had received a telegram from the Lieutenant-Governor of the North-Western Provinces, expressing his concurrence in, and approval of, all the amendments which the Bill had undergone in Committee.

The Motion was put and agreed to.

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

His Excellency THE PRESIDENT said:—"My hon'ble friend Sir John Strachey began his singularly able Financial Statement by observing that it is the first Financial Statement made before the public in this Council since the year 1872. I am glad that in the first year of my administration the Government of India has had the opportunity of submitting its whole financial policy to the discussion of this Council. Whatever may be thought of the manner in which we have availed ourselves of this opportunity, no one I think can justly say that it has been half-hearted, reserved, evasive or ambiguous. Rarely has any Government been able to take the public into a confidence so complete as that which on the present occasion it has at least been our honest endeavour to facilitate; not only about our acts, but even, I might almost say, our inmost thoughts; our anxieties and hopes, our regrets and aspirations. When this Government was deprived of the experienced aid of my friend Sir W. Muir, Sir John Strachey, at the request of the Secretary of State, under a high sense of personal obligation to public duty, consented to exchange a very comfortable and easy post for a very anxious and laborious one. But to the discharge of its difficult duties, during a difficult period, few men could have brought greater courage and capacity than those which received last week, from my hon'ble friend Mr. Bullen-Smith, such generous, though well deserved, recognition.

"There is one of the announcements made by my hon'ble colleague in his Financial Statement which no hon'ble member has yet noticed, but on which I congratulate myself, and on which I think the public may also be congratulated. I allude to the announcement that although indeed we cannot at present apply the new rule to existing works, yet the expenditure on all unremunerative public works which may hereafter be undertaken will be carefully excluded from Extraordinary Account. This is a change of policy decided on by the Secretary of State when Lord Northbrook was Viceroy; but it has never before been publicly announced as the rule we intend to follow. Now it may be said that this rule is a mere reform in book-keeping; in fact that it is a very small matter. I admit that it is a small matter if it goes no further; but it will certainly not be my fault, nor that of my hon'ble colleague, if it does not go a great deal farther; and if it only goes far enough, I maintain that it is a very great matter. So far as it does go, it is a step in the right direction; for I share the doubt expressed by Sir John Strachey whether our Extraordinary Budgets have not been altogether

a mistake. In the course of an official life which at least began early, it has frequently been my hard lot to grope my way with the greatest difficulty through the financial accounts of Continental Governments, in order to place before my own Government an accurate estimate of their financial situation. And a system which I have more than once officially described as vicious and misleading—a system which has, I confess, sorely tried my temper when adopted by other Governments—is certainly not one which I can regard without reluctance as the system to be permanently pursued by the Government of India. The French Government, to its credit, has already abandoned that system. I have heard it said that our own system is exempt from the objections which apply to the Extraordinary Budgets of Continental States; since we do not put into our Extraordinary Budget any expenditure which ought properly to be carried to Ordinary Account. But I do not think we are entitled to lay that flattering unction to our souls. As a matter of fact, we have put into our Extraordinary Account many charges which ought to have been carried to Ordinary Account. However Spartan may be our financial virtue, still we are but human; and in my opinion, the whole system of Extraordinary Account is a perilous temptation to human weakness. A great English thinker, Mr. Burke, in his character of George Grenville, has held up to contempt those persons who mistake regulations for Commerce and figures for Finance; and certainly I do not pretend to say that good book-keeping is in itself tantamount to good finance. But I do say that it goes a long way towards good finance, and that it is the primary condition of a sound financial situation. I think that our book-keeping has hitherto not been so good as it might be; and I say this with some confidence, although I say it in the presence of a gentleman whom I believe to be one of the ablest and the most conscientious Financial Secretaries which this or any other Government has ever had the good fortune to possess. It is quite impossible for me to express in terms too strong the acknowledgments which, on my own behalf, I desire to add to those of Sir John Strachey, of the valuable services which this Government has received, and is receiving, from Mr. Chapman. But I am certain that Mr. Chapman himself feels as strongly as any man that our system of account-keeping, which he himself has so greatly improved, is not yet as simple as might be. Indeed I may say that I have always found in him one of the strongest advocates for its reform. I am sure that he feels what I feel myself, that no man who has studied as intelligently as he has studied the past history of Indian finance, will regard as unfounded the fears expressed by my hon'ble colleague, that the system hitherto followed, of jumbling-up together remunerative and unremunerative public works in an account, to which the term 'extraordinary' is extremely applicable, has tended to make

us less chary than we should otherwise have been in spending money upon them. For my own part, I am not at all afraid of the deficits which we might have to show by a change of system. What I do regard with fear and distrust is everything which may tend to conceal those deficits unduly from our own eyes or from those of the public. The first step towards getting rid of deficit is to look it frankly in the face. Nature abhors a vacuum; and the recognition of a financial vacuum is so revolting to ordinary human nature, that our best chance of filling it up consists in never losing sight of it. My hon'ble colleague has shown that, during the last seven years, while our expenditure has remained stationary, our income has steadily increased; and I am convinced that our financial character has everything to gain, and nothing to fear, from public criticism, if only public criticism be furnished with accurate data for the guidance of impartial judgments.

"There is another subject by no means unimportant, although the Government is not in a position to afford Hon'ble Members an opportunity of practically expressing their opinions by recording their votes upon it. It was for that reason no doubt that my hon'ble friend reserved it for the close of his financial statement; but in the arrangement of my own remarks upon that statement it will, I think, be convenient that I should say at once what little I have to say about it. I refer to the present position of this Government in reference to the Cotton-duties. Now I am not going to tax the patience of the Council with a long disquisition on those duties. I shall abstain from doing so for three very sufficient reasons. In the first place, there is now under discussion no measure which is even remotely connected with the Cotton-duties. In the second place, I have the misfortune to differ on this subject from the opinions entertained about it by many able and hon'ble gentlemen who have given to the consideration of it prolonged attention. Some of them are men of great eminence. Several of them are possessed of wide experience and high authority on fiscal and commercial questions, and not a few of them are my esteemed personal friends. Consistently therefore with the sincere respect I entertain for those who advocate the indefinite maintenance of the present import-duties on Cotton-goods, I could not adequately justify my dissent from their convictions without entering into a somewhat lengthened and detailed examination of the points on which we differ. But to do this when there is no measure before us either to defend or oppose, would in my opinion be an inexcusable waste of the valuable time of this Council. There is only one view of the question to which I feel obliged to demur. It is that which assumes that, on the one hand, those statesmen who have advocated the permanent maintenance of our present

Cotton-duties have done so regardless of the debt which, as English statesmen, they owe to English interests; or that, on the other hand, those who, like myself, earnestly desire the removal of these duties from our customs-tariff, are recklessly indifferent to the duty which, as Indian Legislators, we owe to Indian interests. On this point I cannot too cordially re-echo the language held by my hon'ble friend Mr. Bullen Smith. My pride and confidence in the character of my countrymen are far too great to admit within the scope of my liveliest imaginative efforts, such a notion as that the maintenance of the Cotton-duties has ever been advocated by English statesmen without reference to English interests. But I must also add that I am not prepared to concede to the advocates of these duties a monopoly of disinterested devotion to the interests of India. To say the truth, I am all the less disposed to do so for this reason: with those from whom I reluctantly differ on the question of the Cotton-duties, I cannot, and do not, presume to claim equality in tested ability, or recognized authority: but I do claim equality with all of them in the conscientious desire to deal justly and truly by the interests of this Empire. Therefore I will not yield to any man an inch of foothold on that one and only ground within whose special limits every honest man is entitled to consider himself the equal of its most illustrious occupant. Nor indeed am I able to recognise much reality in the ingenious distinction which has been suggested between the interests of Manchester and the interests of England. The so-called interests of Manchester are a great vital organic part of the whole English body-politic; and though it may be convenient to do so in theory, it appears to me quite impossible in fact, or in act, to separate the part from the whole. If a man stabs me in the hand or the foot, I am not comforted by his assurance that he recognises a distinction between my limbs and myself; that he has only been attacking my foot, or my hand; and that he had no intention of inflicting any personal injury on me. He *does* inflict a personal injury upon me; and the pain and hurt of that injury I feel, not only in the spot where I am wounded, but in every part of my body. But I do not think this question is primarily or exclusively a Manchester question. Political Economy is either a science or it is not. If it is a science, the laws of it are not affected by locality or climate. They will assert themselves as inexorably in one part of the world as in another, whether they are followed or disregarded. No one I presume will assert that a financial principle, if sound at all, is not equally sound in every case to which it is applicable. In the present stage of economic science, few men venture to advocate openly protective duties, on the ground that they are protective. The advocates of such duties generally try to persuade themselves and their opponents that the duties which practically protect a young manufacture are not

maintained for the purpose of protecting it. Now I am not so pedantic a political economist as to deny, or even to doubt, that in many quite conceivable circumstances, *bonâ fide* protective duties may be proper duties. But I like to call a spade a spade. And I congratulate my hon'ble friend Mahárájá Narendra Krishna upon having the courage of his opinions. I have no doubt that my hon'ble friend, the Mahárájá, unconsciously uttered the secret sentiment of many hearts besides his own, when he frankly told us that he hoped our present Cotton-duty would be maintained, because he believed it to be necessary for the protection of our cotton-manufactures. My experienced predecessor, however, in a statement of great ability, which he made two years ago on this subject, observed that 'Indian statesmen have all acknowledged the principles of recent English financial legislation to be sound, although, owing to the differences between the two countries, it has been impossible to carry them out as completely in India as in England. Indian statesmen,' he said, 'have never regarded Customs-duties as desirable for the purpose of protecting the products or manufactures of India. In India, equally as in England, protection has been regarded as an exploded doctrine, contrary to the general interests of the country which imposes protective duties.' I accept and endorse this statement; and if I object to the present Cotton-duties, it is because they appear to me inconsistent with sound financial principles, and as such, injurious to the interests of India. Now this opinion may be right or wrong. Like all human opinions, it is open to discussion; but as my hon'ble friend Sir John Strachey has appealed to my opinion, I feel it due to him, due to myself, and due to the public, that I should assure this Council that my hon'ble friend has not mis-interpreted or mis-stated my opinion. In saying that the Secretary of State has left to the Government of India a large discretion on this subject, my hon'ble friend Mr. Bullen-Smith did no more than justice to the common sense of my noble friend the Secretary of State. Yes, the Secretary of State has left to us a large discretion, but he has not left to us an unlimited discretion. The Secretary of State has distinctly affirmed and established the principle by which he intends our action to be guided; and the discretion he has left to us extends only to the time and mode which we may deem most suitable and most efficacious for carrying that principle into practical effect. In the exercise of that discretion, we have reluctantly recognized, but frankly acknowledged, the practical impossibility of any present reduction of the import-duty on cotton-goods. No one, so far as I am aware, no one in England or in India, has ever advocated, or even suggested, the reduction of this duty at the cost of fresh taxation for the purpose; and most certainly no such course is, or has ever been, contemplated by myself.

"I am sorry to say that I cannot dispute the opinion expressed by my hon'ble friend Mr. Bullen Smith, that our financial-system is not yet free from other features quite as vicious, if not, indeed, more vicious, than these Cotton-duties, from a purely fiscal point of view. But I doubt if they are equally objectionable from a social and political point of view. Be that as it may, however, my hon'ble friend cannot desire more ardently than I do myself to see our fiscal policy purged of their presence. They all stand upon our condemned list; and I hope it may be in our power, as it will certainly be within our aim, to deal simultaneously with at least the worst of them. But I dare not indulge in vaticination. The awful warning contained in the homily addressed last Wednesday by my hon'ble friend the Lieutenant-Governor to my hon'ble colleague Sir John Strachey is still ringing in my intimidated ear. Mrs. Malaprop long ago averred that we should not anticipate misfortunes till they are past; and certainly that is a policy which appears to have greatly commended itself of late years to English statesmanship. But my hon'ble friend the Lieutenant-Governor goes further than Mrs. Malaprop, and forbids us even to anticipate good fortune. Therefore, as I am sitting just now within close reach of his ferule, I will endeavour not to anticipate anything at all. Perhaps however I may be permitted to mention one fact which, I hope, will satisfy Hon'ble Members that we have not been regardless of salt or sugar in our efforts at fiscal reform. No man can be more impatient than I am myself to see removed, as soon as possible, from the records of Anglo-Indian history such a scandal as our present Inland-Customs-frontier. Previous to the present appointment so ably held by my hon'ble friend Sir John Strachey,—indeed some months before his return to India, and before either of us could have anticipated that we should be sitting to-day at the same Council Board,—I had entered into personal negociations with the Rulers of those Native States whose co-operation is an unavoidable condition to any practical measures for the removal of this commercial 'Abomination of desolation standing where it ought not.' These negociations are now so far, and so satisfactorily, advanced as to justify, I think, some confidence in the anticipation that ere long we shall be able to effect an early breach in what my hon'ble friend has not unfairly, I think, described as our commercial wall of China. But more than this I dare not say at the present moment, for fear of incurring renewed rebuke from my hon'ble friend, and close neighbour, the Lieutenant-Governor; and therefore without pausing to put even a pinch of salt on the visionary tail of this bird in the bush, I will ask permission to say a few words on behalf of the two little birds I now hold in my hand.

"One of the most pressing and important questions I had to consider on behalf of this Government, when I assumed charge of it, was—Whether we can afford to go on borrowing, as heretofore, something like four million sterling annually for the prosecution of Extraordinary Public Works. I came to the conclusion that we cannot afford it. Then I had to consider whether we can afford to do without such works, or to prosecute them on a greatly reduced scale. I am satisfied that this is equally impossible. These works are our only safeguard against famine; and their vigorous prosecution is in my opinion essential to the prosperity of the Empire. What should we do then? From the dilemma in which we are thus placed, reflection has convinced me that there is only one practical issue. It is, however, an issue which I believe to be not only practical, but highly advantageous; and I find it in the prompt adoption and steady development of financial decentralization accompanied by localised administrative responsibility. Of this principle, it is the privilege of my hon'ble colleague, Sir John Strachey, to be one of the official parents. But I think I may honestly say, on my own behalf, that it is not as a convert I am prepared to maintain it: at least my conversion to it dates far back in the course of my official life. It is not only in India that the conflicting principles of centralization and decentralization have been debated, or considered, in reference to financial and administrative policy. I have watched in other countries the conflict of those principles, and witnessed the issue of it. Observing that even in Spain, which should more properly perhaps be called 'the Spains,' it has been found impossible, up to the present moment, to codify the laws which govern the most essential relations, and determine the most fundamental interests, of society; observing, too, that over a geographical area comparatively so restricted as that of the Austrian Empire, it has been found after repeated effort, equally impossible to apply one centralized homogeneous system of taxation to all the Imperial provinces, it certainly does seem to me surprising that English statesmanship, generally so free from the Continental passion for legislative symmetry, should have persisted in attempting to apply to every part of an empire vast, various, and composite, as this of India, the same form and mode of taxation. Doubtless there is one conspicuous and most satisfactory exception to this otherwise general rule of our past financial policy. But it is an exception which tells most strongly in favour of the principle we are now endeavouring to introduce. The Government of India has never applied the contrary principle to its administration of the Land-revenue: and I think I may safely say that, on the whole, no branch of the public service has been so wisely, or so well, administered as the Land-revenue.

"I listened with the attention which his clear and practical utterances always command from me, to the few observations made last Wednesday by my hon'ble friend Mahárájá Jotíndra Mohan Tagore upon the policy which has led us to introduce these Bills; and to which they will give effect, partial as yet no doubt, but salutary I hope, so far as it can now be extended. I did not gather from what he then said that he had any cause to complain of the application to Bengal of the principle of localised financial responsibility: and indeed I think it can hardly be doubted that, if there be one province in India to which, more than any other, this principle may be justly and equitably applied, it is the wealthy and privileged province of Bengal. I trust then that the measures we hope to pass into law this morning will be prolific of beneficial results which may hereafter be more widely extended. This will not be through any merits of their own; for in themselves they are somewhat insignificant little measures: but because of the principles they recognize, and which they will help us to carry out.

"Before I assumed the anxious charge of this administration, it was said to me by experienced friends,—and said with a prophetic truth which has been prematurely verified by my personal experience,—that the one thing which of all others it behoves every Governor General of India to be constantly foreseeing is the unforeseen.

"Scarcely had I reached Calcutta, ere the rosy financial horizon, which might otherwise have been opened to the admiring gaze of a pleased and hopeful public, had been unexpectedly darkened by the appearance of a little cloud, with a depreciated silver lining to it, that was by no means reassuring. That cloud grew and greatened till it hung over our heads like a portent of doom; and so grievously did its growth oppress the minds of men, that really I think I may say without much exaggeration, that not even the siege of Jerusalem itself was more prolific in warnings, wailings, predictions of disaster, and desperate proposals for reckless remedies, than the financial period covered by the first six months of my administration. And then, just when our financial prospects appeared to promise better things—just when the cloud was clearing away from the horizon, when our patience seemed about to be rewarded, and our confidence revived, a wholly unforeseen calamity occurred; and a great part of the southern region of this Empire was suddenly smitten with widespread famine. Nor is this all. Misfortunes never come single; nor anxieties either; and these things happened during a season of extreme political tension, when no night passed on which we could say with certainty that we should not receive on the morrow some telegram from London or Constantinople of

a character very unfavourable to the tranquil prosecution and improvement of our domestic affairs.

"From that source of anxiety we have, I am thankful to say, been entirely relieved by the patriotic exertions of my noble friend the present Secretary of State for India. But I am not at all surprised that Hon'ble Members should have alluded in anxious tones to the fallen value of silver measured in gold; for I fear that we cannot reasonably anticipate any immediate release from the disturbance occasioned by this phenomenon in our exchanges with Great Britain and other countries which have a gold standard of value. I fully recognise the magnitude of the inconvenience thereby occasioned to trade; and I deeply deplore the loss inflicted on many public officers and others who can ill afford it. But I certainly do think that experience has fully justified the resolution to which we came last September, not to tamper prematurely with our standard of value. This question is not, in our opinion, a question that simply affects foreign exchanges. A country's standard unit of value cannot be either enhanced or reduced without injury to many important interests; and India is certainly no exception to the rest of the world. I do not disguise from myself that we may have to face a long period of anxiety and difficulty, during which the various interests, already affected by the depreciation in the value of silver measured in gold, will be slowly and painfully readjusting themselves to the altered relations between the precious metals; and I can assure my hon'ble friend Mr. Hope, that we are by no means indifferent to the importance of the questions in dispute between the monometallists and the bimetallists, or to any of the various modes of utilising the two precious metals with a fixed intervaluation for the establishment of a double or compensatory standard. Indeed, the stoppage of the great compensation-valve, formerly opened in France to the world at large, renders all such questions of special interest to this country. And although it is undoubtedly not in our power to announce any immediate or isolated action in regard to it, still we are fully alive to the importance of this subject. I have but very few words to say upon our other great source of financial anxiety.

"Now I think it cannot be doubted that the present famine is one of the most serious and wide-spread scarcities with which India has yet been afflicted. In extent and intensity, it greatly exceeds the last famine in Bengal and Bihár; and should there be a failure in the rainfall due next month, I fear that the scarcity in Madras may assume still more serious dimensions. Yet, although the management of the last famine cost six-and-three-quarter millions, we are able to estimate the nett cost of the much larger famine with

which we are now dealing at no more than five-and-a-quarter millions; and we feel confident that, should we hereafter have to deal with a famine as serious as this, the cost of it will be very much smaller still.

"Now I cannot but think that this is an encouraging fact. It is partly due to the previous completion of adequate railway-communications, partly also to the application of principles which experience has proved to be sound, and to the energy and discretion with which those principles have been carried out in many of the famine-districts. They were spontaneously resorted to by the Government of Bombay; and now that they have been loyally adopted by the Government of Madras, I feel no doubt that they will be no less efficiently and scrupulously acted on in that important Presidency. I cannot mention this subject without expressing the sincere gratitude of the Government of India for the eminent services rendered to it and to the whole empire, by the indefatigable and most successful labours of Sir Richard Temple. But the person to whom we are, in my opinion, primarily indebted for our present comparatively moderate estimate of famine-expenditure, and for our hopes of still more moderate famine estimates in the future, is my immediate predecessor, Lord Northbrook. It must not be forgotten, and it ought I think to be thankfully acknowledged, that although the famine with which we are dealing, is much larger, and more serious, than the famine dealt with by Lord Northbrook, the conditions under which we are dealing with it are much more favourable.

"In his management of the famine in Bengal and Bihár, Lord Northbrook found himself placed under a tremendous pressure of public opinion in favour of reckless expenditure; but he did not shrink from the no less tremendous responsibility of withstanding it. No public man can ever be entirely independent of public opinion; and had Lord Northbrook's hands been wholly free, I have no doubt that he would have greatly diminished the cost of the late famine, without in any wise increasing the loss of human life. But in the teeth of all antagonisms, he prevented famine-expenditure from reaching far more extravagant dimensions. And by resisting public opinion, he educated it. What is the result? The Government of India, relieved from all undue pressure, is now in a position to carry out calmly, and develope more fully, the principles bequeathed by him for our guidance.

"One of these enjoins upon us the importance of providing for famine-expenditure out of income, and charging it to Ordinary Account. This principle has been re-affirmed by my hon'ble colleague, Sir John Strachey. It may be said, however, that though he has re-affirmed it, he is not acting on

it, since he finds himself still obliged to borrow on account of famine-expenditure. It may be said that it is easier to lay down principles than to carry them out, and that our present action is a proof of this. It may be said that principles thus publicly proclaimed are too often like triumphal arches, which make a very handsome effect, and look very fine, but which practically lead to nothing. It may be said that, once erected into doctrine, there they remain,—lofty and monumental, with plenty of empty space all round to show them off; but that practical life, going about its business as before, takes care to pass on each side of them, and whilst admiring them, rarely makes use of them.

"Well, I must admit that our present position is exposed to criticism of that sort. The fact is, however, that Lord Northbrook left India before it was practically in his power, or in the power of any man, to make sufficient provision for enabling his successors to carry out, at the shortest possible notice, the principle he had laid down; and this recurrent calamity has smitten us suddenly, before it was in our own power to provide for it in conformity with that principle. But all we ask is fair time and fair play for the future. The salutary principle we hope to affirm today—that principle which hands over to Local Governments the responsible management of local works, coupled with financial responsibility for the result of their management of them,—will, I believe, go far towards facilitating the fulfilment of the principle laid down by Lord Northbrook, and unreservedly adopted by ourselves, as the guide of our future conduct in regard to famine-expenditure. For if such expenditure is to be provided for out of ordinary resources, it is quite clear to me that the Governments of the famine-stricken Provinces must, to some extent at least, be held henceforth responsible for the financial results of their famine-management.

"My hon'ble colleague wisely and properly refrained from prematurely indicating the steps we may hereafter be prepared to take to enable the Government of India to carry out the principle laid down by Lord Northbrook on this subject; but I can assure the Council that we are not regardless of our duty with reference to them.

"There is only one other subject on which I need any longer detain the attention of the Council. Sir John Strachey has rightly drawn attention to the ominous circumstance of our increasing military expenditure; and I shall not attempt to deny that this circumstance is one which I regard with profound concern. An examination however of the figures given by my hon'ble colleague, in the Minute he has laid before the Council, will show that the

nett increase in our Military Budget is mainly due to charges not under the control of the Government of India. In regard to those branches of our military expenditure which *are* under the control of this Government, I am bound to acknowledge our great obligation to the colleague of whose services we have recently been deprived, for the unceasing vigilance with which he, and the responsible officers acting under him, have successfully restrained the growth of them.

"Those who witnessed the representative military force assembled at Delhi last January, cannot have failed to admire the discipline, intelligence, and equipment of the Army of India: but to discipline, to intelligence, and to equipment must be added some power of rapid mobilization, in case of any sudden emergency, before the practical efficiency of an army can be regarded as altogether complete.

"Now, some measures taken by us, in consultation with the Commander-in-Chief and our other military authorities, to remedy certain undeniable deficiencies in the mobility of our defensive force, have been misrepresented and magnified by uninstructed rumour, into preparations for a great campaign against our neighbours. I beg to assure this Council that nothing could possibly be further from our minds than the intention thus imputed to us. It is obvious that, if we harboured any such design as this, the estimates laid before the Council would be very different from what they are. And to rush into purposeless border-warfare, or wantonly to provoke hostilities with any of our immediate neighbours, would be an act of insanity doubly inexcusable on the part of a Government for which I am prepared to claim the merit of having secured within the last few months the most beneficent results from the patient pursuance of precisely the opposite policy. Two years ago our relations with the neighbouring Khanate of Khelat were so extremely unsatisfactory that military operations against that country were commended to our immediate adoption by some of our most experienced frontier-authorities. "But before having recourse to any act of aggression upon a weak and neighbouring State, the Government of India wisely resolved to make further pacific efforts for the restoration of order around our western frontier. Those efforts, commenced by Lord Northbrook, it has been my privilege to conduct to a successful issue; and the result of it is, that without having fired a single shot, or shed a single drop of blood, our present relations with Khelat are more satisfactory, more fraught with promise for the future and security for the present, than they have been for a long series of years. Not only is British influence now predominant throughout that country; not only is this

influence cordially welcomed and appreciated by all its inhabitants, from the highest to the lowest; but the beneficently practical results of the influence thus established are already apparent in the restored freedom and security of peaceful commerce, in the rebuilding of villages destroyed by civil war, in the revival and extension of agriculture, and in the general contentment and confidence of the population and its lawful Ruler.

"I may be asked however, what are the means upon which this Government relies for the maintenance of British influence; and why we desire to extend and confirm British influence beyond our own immediate territory?

"To the first question I reply, that the means on which we reckon for the maintenance of British influence are loyal and disinterested advice, supported, if needs be, by timely and sufficient assistance for the promotion or confirmation of good government and social order, in contiguous territories less civilized than our own. To the second question I reply, that we desire the promotion of this salutary British influence beyond our border, because we do not desire the hostile movement of British armies beyond our border. The connection existing between the tribes and populations inside and outside the frontier which it is our duty to guard, is so close and so far-reaching, that any disturbance of the latter vibrates instantaneously along the whole extent of contiguous British territory.

"Unrestrained barbarism immediately beyond our frontier, means constant insecurity immediately within our frontier. Civil war on the part of neighbouring Asiatic populations, or even a passive, but pronounced hostility towards the British Government, involves the closing of our trade-routes, the maltreatment of our merchants, the spoliation of their property, and the chronic disquietude of our subjects. Therefore it is that the one only thing which at no time past or present this Government has ever been able to do, however greatly it might desire to do it, is to remain a passive and inert spectator of what passes immediately beyond our border.

"Now I consider that the safest and strongest frontier India can possibly possess would be a belt of independent frontier-States, throughout which the British name is honored and trusted; within which British subjects are welcomed and respected, because they are subjects of a Government known to be unselfish as it is powerful, and resolute as it is humane; by which our advice is followed without suspicion, and our word relied on without misgiving, because the first has been justified by good results, and the second never quibbled away by timorous sub-intents or tricky saving-clauses,—a belt

of States in short, whose chiefs and populations should have every interest, and every desire, to co-operate with our own officers in preserving the peace of the frontier, developing the resources of their own territories, augmenting the wealth of their own treasuries, and vindicating in the eyes of the eastern and western world, their title to an independence of which we are ourselves the chief well-wishers and supporters.

"Looking to the history of recent events along our lower Panjáb and Sindh frontiers, I cannot think that this aim is unattainable, or that the desire of attaining it is inconsistent with common sense. But although I believe that the influence I desire to exert and extend is perfectly attainable, I do not believe that it is attainable by means of military expeditions; or indeed by anything except constant friendly contact with our less civilized neighbours, and the presence and every-day acts in their midst, of earnest upright English gentlemen.

"Now during the last six months we have passed through a time when the Powers of Europe, armed as they still are to the teeth, seemed drifting into a war of which the eddies could not fail to reach and trouble the minds of our Asiatic neighbours; whilst at the same time our frontier seemed threatened with a succession of local outrages and disturbances greatly in excess of any by which it has been afflicted for many years past. At that time it was in my opinion the duty of this Government to place itself in a position of preparedness to defend the interests committed to its charge by military action, should military action at any moment be necessary, instead of waiting unprepared till the opportunity of effective military action had passed away.

"I am not ashamed to say that we did not shrink from the recognition of this duty. Had the Pass Afridís continued recalcitrant; had the recent inroads on British territory been renewed; had the late disturbances on our frontier assumed, as at one time they seemed likely to assume, a more systematic character, then we might have found ourselves at any moment under an imperative obligation to resort to military operations, in order to punish the murder, or preserve the lives and properties, of our own subjects, or restore and secure the peace of our frontier. This however, I can truly say, no one would have recognised more reluctantly, or more deeply regretted the necessity of recourse to such measures, than myself. The British Government repudiates all views of conquest or territorial extension. Our territories are already vast enough to occupy all our attention and satisfy all our ambition.

"Our paramount position on this Continent is so indisputable that it is rarely indeed we need ever have recourse to arms for the protection of those who trust us, or the punishment of those who deceive us. There is not an independent Native State which is not strengthened by the bestowal, or weakened by the withdrawal, of our friendship. It has been my object ever since I assumed charge of affairs in this country, to draw closer by every legitimate means in my power, the bonds of friendly relation between ourselves and our neighbours. I think there are few persons who will maintain that our present relations with the tribes and peoples immediately upon our north-western border are altogether satisfactory, whether we regard them from a political, or from a philanthropical, point of view. Those neighbouring regions have, after 25 years of the closest geographical contact between us and them, remained almost the only ones in the whole world which are forbidden grounds to British footsteps, except on some mission of vengeance, and for the purpose of burning the homes, or destroying the property, of our neighbours, in retaliation for outrages committed by them upon our own territory. Surely this is not a state of things which any Englishman can contemplate with unmitigated satisfaction, or which any English statesman should wish to perpetuate. I am thankful to say that these retaliatory raids have been somewhat less frequent of late years; still already twice within my own short tenure of office, I have been called upon to consider the necessity of recourse to them.

"Now no one can realize more deeply, or acknowledge more unreservedly, than I do myself, the practical difficulties of dealing with such wild social material as that which fringes the greater part of our Indian-frontier. If I am inclined to trust more to negociation and friendly intercourse, and less to a policy of alternate vengeance and inaction, than some of my predecessors in the government of this country, it is certainly not from any assumption of superior wisdom or humanity on my part. I am well aware that these military expeditions have been considered the only means of bringing our influence to bear efficiently upon turbulent neighbours, by men whose names are no less celebrated for their Christian humanity than for their knowledge of the tribes to whom that system has been applied. Therefore, if with their example and opinion before me, I still prefer to make attempts in the direction of a more patiently-pacific, but less impassive, policy, it is not because I undervalue their judgment or overrate my own, but because the object I have in view appears to me so supremely important, and so generally beneficial to all concerned, as to justify a more systematic prosecution of it than has yet been attempted. If I fail in my own efforts to

attain it, I shall not be ashamed; for I had rather be able to say that I have tried and failed in such a cause, than be obliged to own that I had never tried at all.

"I do not think that, consistently with its high duties to God and man, as the greatest civilizing Power in Asia, this Government can watch coldly and immovably its closest neighbours floundering in anarchy and bloodshed on its immediate border, without extending to them in their hour of need a kindly and a helpful hand, if they seek its assistance and invoke its guidance. Such a policy would be in my opinion an atheistic and inhuman one. But whilst humanity condemns a stolid indifference to the interests of our neighbours, prudence equally forbids undeserved and unrequited favours to those who make no effort to reciprocate our confidence and justify our protection.

"If I do not rely upon military expeditions for the reasonable extension or maintenance of British influence around our frontier, neither do I rely upon spasmodic gifts and aimless expenditure of money, or a profitless assumption of embarrassing obligations.

"These, then, are the feelings which induced me to invite a friendly interchange of views between ourselves and our near neighbour, the Amír of Cabul, on matters of common interest, and for the improvement of our mutual relations; as also to comply with the suggestion made to us by His Highness, that Envoys on the part of the two Governments should meet at Peshâwar for this purpose. These also are the principles which determined the instructions given to Sir Lewis Pelly. The personal and official intercourse between the two Envoys has been friendly. But I regret to say it has been prematurely terminated by a sad event. The Cabul Envoy, who was in seriously ill health when he arrived on British territory, died at Peshâwar last Saturday, of a malady from which he had long been suffering.

"What might otherwise have been the practical results of his conferences with Sir Lewis Pelly, I am no more able to say than any other Member of this Council. But I can positively state to the Council what will *not* be the practical result of these, or any other conceivable, negociations with the Amír of Cabul.

"On the one hand, they will assuredly not result in any unprovoked aggression by us upon the independence or territories of His Highness, nor in any uninvited intervention in Afghanistan. On the other hand, they will no less assuredly not result in any unreciprocated concessions or uncalled for obligations on our part.

"That His Highness has lost in the late Envoy a wise, an honest, and an experienced councillor, is a fact which I certainly regret all the more because it cannot be denied that the mind of the Amír has been deeply stirred by recent events at Constantinople, which inflaming the sentiment of religious fanaticism at Cabul, have somewhat disturbed his usually clear judgment and good sense.

"The position however of this Government in the matter is a very simple and intelligible one. We think that between closely neighbouring States, having in common certain interests, to which neither of them can afford to be wholly indifferent, the best security against mutual misunderstanding and mistrust is to be found in adequate means of free, frank, and frequent intercourse.

"We think that in some representations recently made to us by the Amír, with reference to episodes in our relations with His Highness during the last few years, there is confirmation of this impression; and we believe that the peculiar and exceptional isolation in which His Highness has been induced to seek a source of strength, is more likely to prove a source of weakness to his rule, by acting prejudicially on the internal peace and progress of his dominions. We have therefore assured him that, if he really desires to strengthen the bonds of his relations with us, we shall at all times be ready to reciprocate that desire, and to assist him in promoting the attainment of its object; but that if he has no such desire, we cannot act on the assumption of a sentiment the evidence of which is not before us; that the matter is one which concerns His Highness rather than ourselves; and that we cannot accept, or acknowledge, unreciprocated liabilities.

"I feel that I owe some apology to the Council for having intruded upon it this explanation of the real facts and plain principles of our frontier-policy; although indeed my explanation has reference to a subject closely and most practically connected with the Financial Statement of my hon'ble colleague. For it is obvious that on the character of such facts and principles, must at all times depend the military expenditure which it is his duty to provide for and my duty to justify. But my excuse is this: The Viceroy of India has very few opportunities of telling the public the truth about the facts and principles of his policy on important questions in which the public is legitimately interested. In countries governed by representative institutions it is the easy function of a free Press to criticise the action of a free Government of whose action all the facts and principles are not only well known, but elaborately explained to the community at large. In India, however, the position of the Press is a peculiarly difficult and embarrassing one; for it is expected to

criticise daily the policy and action of a Government, whose policy and action are in nine instances out of ten wholly unknown to it. And thus, even with the best intention, its judgment is exceptionally liable to error. The members of such a Government as ours cannot sit in the gate like the law-givers of old; they cannot be continually crying out to the public, 'Pray good people allow us to prove to you that we are neither fools nor knaves, 'only hear us for our cause, and be silent that you may hear.' But there is at least one thing which can be done by the head of this Government to mitigate the mutual disadvantages of an anomalous position. He can, even at the risk of sometimes disregarding official etiquette, seize every opportunity which comes within his reach to win confidence by showing confidence; and to dispel fictions by stating facts. Such an opportunity has been offered me today, and I have embraced it eagerly, perhaps even recklessly, because I think that every member of the non-official community ought to feel interested (and I am glad to believe that every member of it does feel interested) in all questions that concern the public welfare. For the management of such questions, this Government must no doubt, in the first instance, be generously trusted by the public, whose interests it is here to protect or improve. But sooner or later, the Government must satisfy the public that it has not been regardless of the responsibilities involved in so great a trust; and the sooner it can do this the better it will be for all concerned. Since I came to India the magnitude of these responsibilities has been daily, hourly, I may say unceasingly, present to my mind; and if I err in my own judgment as to the course we ought to follow in the discharge of them, I am fortunately surrounded by able and experienced Councillors who are ever ready to correct me. Believing as I do, that at all times the purity of our purpose, and the character of our policy, will bear the light, I hope that I shall ever be ready to court, and never disposed to shirk, the daylight of public opinion.

"The Latin proverb avers that all is magnified by the unknown. My own experience assures me that all is distorted by the half-known, and it is not the daylight, but the twilight, that I shun.

"With these explanations and apologies, I have now to put the motion I hold in my hand."

The Motion was put and agreed to.

LIMITATION OF SUITS BILL.

The Hon'ble SIR ARTHUR HOBHOUSE presented the Report of the Select Committee on the Bill for the limitation of suits, and for other purposes. He had no remarks to make on the substance of the Report. He had explained

to the Council when he moved for leave to bring in the Bill, that it was desirable to pass it into law some time prior to the Civil Procedure Code coming into operation. If all things went smooth with respect to the Civil Procedure Code, it would come into operation in the autumn, that was to say on the first of October. Therefore it was advisable that this Bill should pass some time between that day and this. The Committee recommended that it should be republished in order that any observations that might occur to persons interested might be made. They did not anticipate that any important alterations would be suggested, and inasmuch as they had had the benefit of considering the Bill during the sittings in Calcutta, and with all the assistance which the resources of Calcutta afforded, it would be desirable that the Bill should be passed some time during the sittings in Simla.

ACT No. XXIII OF 1867 CONTINUANCE BILL.

The Hon'ble SIR EDWARD BAYLEY moved that the Bill to prolong and amend Act No. XXIII of 1867 be taken into consideration. He said that he should, as he stated last week, request the Council to take this Bill into consideration at their present meeting without reference to a Select Committee; he had only now to add that the Bill was practically in the same shape in which it was introduced, with the exception of one or two verbal amendments, which were rendered necessary by the fact that during the time the Bill had been before the Council, Act XXIII of 1867 had actually expired. He had nothing further to say as to the reasons for which this Bill was introduced or in explanation of its details. He trusted that what he had said on two previous occasions would satisfy the Council that the Bill was required and that it was suited to its purpose.

The Hon'ble MR. COCKERELL said that the hon'ble mover, both on the occasion of asking leave to introduce, and the subsequent introduction of, the Bill, laid much stress upon the fact that Act XXIII of 1867, during its passage through the Council, met with the most thorough consideration, and underwent the fullest discussion in a Council, of which many of the members were especially qualified by their personal administrative experience to give an authoritative opinion on such a question; but he did not remind the Council that the exceptional character of that enactment had been fully recognized by the acceptance on the part of those experienced gentlemen of the amendment which was brought forward and carried in the course of the debate on that measure, and which restricted the operation of that Act to a limited period.

The Bill which became Act XXIII of 1867 was introduced into the Council with no such limitation, and it was evident therefrom that the outcome of the full discussion which had been referred to was this, that whilst the emergent circumstances of the time were such as to justify the passing of such an enactment, the measure was one of an avowedly exceptional character, and should not remain permanently in force, but that the question of the policy of its continued maintenance should come under the consideration of the Legislative Council from time to time. If the Bill which was introduced had been referred to a Select Committee according to the usual course, he (MR. COCKERELL) would have advocated the consideration of the question as to whether a fixed period for the prolongation of Act XXIII of 1867 was not preferable to the indefinite period contemplated by the present Bill. Although however it was proposed now to re-enact this special law for an indefinite, in lieu of its former fixed, period, still some degree of finality to its operation was intended, and the effect of the change was merely to shift the responsibility for seeing that the Act was kept in force no longer than was necessary, from the Legislative Council to the Executive Government. He (MR. COCKERELL) would only therefore add the expression of a hope that the Executive Government would not be unmindful of its obligation.

The Hon'ble SIR EDWARD BAYLEY wished to explain very briefly the reason why the clause which the Hon'ble Member had just brought to the notice of the Council was not inserted in the present Bill. The Act when it was originally proposed was a purely tentative one; whereas it had now been in operation for ten years; it was no longer an experiment; the machinery it employed had been most successfully tested. It was therefore a tentative measure no longer, and the limitation as to time of its operations was no longer necessary. He would only remark in addition that his hon'ble friend's present objection seemed rather inconsistent with the opinion he expressed on the last occasion when the Bill was discussed, that the law ought to be continued by the executive action of the Governor General in Council and by a mere notification in the Gazette. It seemed to SIR EDWARD BAYLEY that if his hon'ble friend thought the Governor General ought to have power whenever he chose, without reference to this Council, to give fresh life to the law, there was no reason why it should not be left to the Governor General in Council to continue or terminate it when he deemed it necessary without reference to this Council.

The Motion was put and agreed to.

The Hon'ble SIR EDWARD BAYLEY also moved that the Bill be passed.

The Motion was put and agreed to.

BRITISH BURMA EMBANKMENTS BILL.

Colonel the Hon'ble SIR ANDREW CLARKE introduced the Bill to provide for the execution of emergent works in connection with embankments in British Burma, and moved that it be referred to a Select Committee. He had no observations to make.

The Motion was put and agreed to.

CIVIL PROCEDURE BILL.

The Hon'ble SIR ARTHUR HOBHOUSE moved that the Reports of the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature be taken into consideration. He said:—"this motion is not one to pass the Bill before the Council into law, but it is intended to lead up to that final step, and I should like to add something to the reasons which I assigned a fortnight ago why that final step should now be taken, because, unless it is now taken, the labour of the Council in travelling into the consideration of these reports may prove to be premature, and may be to a considerable extent thrown away.

"I have seen some appeals publicly made to me of late days not to allow any desire I may feel to connect my name with the passing of this measure to influence me in trying to pass it. These appeals have not been made in any rude or disrespectful spirit; on the contrary, they have been made in terms that are only too complimentary to me; but there are one or two observations to be made upon them. In the first place, the man who built his house upon the sand would be a wise man compared to myself if I were to hope for any immortality because I happened to be the Law Member of Council at the time when this Bill was passed into law. We hope that this Code will be an improvement on the Code of 1859. But it is not nearly so great or difficult a work as the Code of 1859, because it is not nearly so original a work. Yet who connects the names of the authors of the Code of 1859 with that Code? It is true that men like Sir Barnes Peacock, Sir James Colville, or Sir Henry Harington have a lasting reputation, but that is because they have uniformly distinguished themselves throughout their lives, and not on the particular account of the Code of 1859.

"But even if I were vain enough to indulge in aspirations such as—

Forsitan et nostrum nomen miscebitur istis

or to sing,

Non omnis moriar, multaque pars mei
vitabit Libitinam

—if I were vain enough to indulge in any such sentiments as these, I am not

going to be unjust enough to put myself in the place of those who have performed the solid part of this work. My Lord, the man who has done the greater part of this work from the time of the re-arrangement of the Code in 1875 up to the final correction of the proofs, is Mr. Stokes. The man who has borne the second part in the labour is our colleague, Mr. Cockerell, who has brought to it all his great experience and ability and his untiring industry. In fact it is my belief that Mr. Cockerell knows this bundle of papers by heart; for when I want to know where anything is to be found, I do not trouble myself to hunt about the table of contents for it, but I ask him, and he immediately tells me. Moreover there is the original draft by Sir Henry Harington on which this Bill is founded, and there is the great number of able and industrious gentlemen outside this Council, to whose labours a large portion of the Bill is due—men like Sir Richard Garth, Mr. Justice Turner, Mr. Justice Ainslie, Mr. Field, and others whom time would fail me to mention. In fact if there ever was a law framed by the concurrence of a number of skilled hands, this is such a law; and if I were to appropriate it to myself because I happen to be the spokesman in Council, I should be an impostor, and some condign punishment would infallibly overtake me.

"I think that in this Council I need not disclaim any personal motive, but I wish to show how in point of fact there can be no personal motive for my pressing on the passing of this Bill.

"The only reason for the postponement of the Bill is, that it has been so short a time before the public. I dealt with that matter before, but I should like to read to the Council a letter which I received within the last two or three days from Mr. Justice Turner of the Allahabad High Court. He is one of the most able and uncompromising opponents of a certain portion of our Bill; and he is also one of those who have come forward and have assisted us most materially in framing that same Bill. He writes thus:—

"'Although as you are aware I was strongly opposed to some of the provisions of the Procedure Code Bill, No. IV, and although I fear I shall remain unconvinced of the desirability of some few of the modified provisions which remain in the Bill you propose to pass, I have no hesitation in asserting it will be a public misfortune if the passing of the Bill is delayed.

"'It cannot be said that the proposals embodied in the Bill have not been before the public for a sufficient time to enable all those who would be likely to criticize them to submit their opinions.

"'I have no reason to expect that within any reasonable period the constitution of the Legislative Council will be so altered, or the opinion of executive officers so much changed, as to promise a more favourable consideration of the objections I still entertain to some few sections.

"'On the other hand, should those sections of the Bill be disallowed by the Secretary of State, the symmetry of the measure would be undisturbed, and the valuable additions it makes to our rules of procedure would be immediately secured.

"'Moreover it is, as I understand it, the chief recommendation of a Code that any defects which escape notice in its enactment, or any provisions which may be found to operate unadvisably, may be immediately corrected by legislation.

"'For these reasons, if you think my opinion as an opponent of a few of the provisions of the Bill of any weight, I have felt bound to put you in possession of it.'

"Now I do think his opinion of weight, because no man outside this Council has more carefully studied our work than Mr. Turner, and no man is in a position which better enables him to judge what good it is likely to effect in the general business of the Courts of Law.

"The plain fact is, that a change of officers who have the conduct of a great measure like this does lead to disturbance of the work, and to waste of power. We all have our parts to play—Mr. Cockerell has one part, Mr. Stokes another part, and I a third part. If I go away Mr. Stokes must play my part, and his successor must play his. That would infallibly result in the unsettlement of portions of the work, and the necessity of doing a good deal of it over again. If therefore the matter is in substance ripe for final discussion, it is worth while to strain a point to bring on that discussion before a change takes place. I am afraid that some inconvenience has been caused to members of Council owing to the last print of the Bill being placed in their hands so late. But as regards the substantial questions of controversy which are embodied in this Bill, it seems to me that the time has come when they are quite ripe for final discussion: and therefore I hope the Council will not object to bring on that discussion now and finish it.

"Now I will pass to the more direct subject of my motion. There are three reports before the Council to consider. You are aware that this Bill was published in the year 1864. That publication brought in a great quantity of valuable comment, which resulted in the alteration of the Bill, and the re-publication of it in the year 1865 in the shape in which it was intended that it should pass. However the work was suspended, and it was not resumed until the year 1873. We then found that owing to changes in the law and other circumstances, it was necessary to alter the draft of 1865 to such an extent that it was convenient to recast it altogether. Accordingly we did that, and we published it in a remodelled form, being that Bill which is labelled Bill No. III. That re-publication was accompanied by a report which is the first report before the Council. Our re-publication brought us in a very large amount of most valuable and laborious comment from a number of skilled

persons, which resulted in numerous alterations set forth in our Bill No. IV. No. IV was published in September 1876, and was accompanied by a report which is the second report before the Council. Again we have had a great number of comments; not so many as before, but some of very great value; and again we have made a number of alterations; not nearly so many as before, but such as necessitated the reprinting of the Bill. The reprinted Bill is the Bill on the table and is numbered V. It is accompanied by a final report, which is the third report before the Council.

"The various papers have been placed in the hands of Hon'ble Members from time to time as they have been printed. They have not been placed on the table; and indeed if they were on the table, I should be speaking from behind a sort of breast-work of papers, and all my colleagues would be equally well protected; but they are in the hands of Hon'ble Members to use as they think fit.

"The substance of the two earlier reports has been explained to the Council, and I think I need not refer to it except so far as it may be in controversy at the present moment. Neither need I refer to the great quantity of detailed matter which we have touched from time to time. I shall confine this opening to the two subjects which have attracted general attention since the publication of Bill No. IV.

"The first of these subjects is the distribution of business between District Courts and Subordinate Courts. In Bill No. IV we proposed an alteration of the law for the purpose of confining to District Courts certain kinds of business now performed by Subordinate Courts. My hon'ble friend Mr. Cockerell explained the reasons for that proposal, and no doubt there was and is a good deal of reason and also a good deal of authority, as incidentally I shall have occasion to show, for the change proposed. But there came to the Committee so much evidence of the practical inconvenience likely to be caused by the change, that it seemed to them or the majority of them to preponderate, and it was thought wiser to leave matters as they now stand.

"There is a notice of motion on the paper in the name of my hon'ble friend Mahárájá Jotíndra Mohan Tagore. It is the third notice which stands in his name, and touches the relations of District Courts and Subordinate Courts. But it does not touch the general principles on which the changes were made by Bill No. IV, and I shall say nothing more about it at the present moment.

"The second subject of controversy relates to those parts of the Code which regulate the execution of decrees for money-debts. When I addressed the

Council in September last, I stated that our Code was found to work in a harsh and rigid way against the debtor, so as to drive men to despair, and to create much suffering and even danger. I said that having proposed to soften the law in this respect by our Bill No. III, we had on the evidence and advice sent in to us proposed to go further in the same direction and soften it still further by Bill No. IV. I mentioned various points in which we proposed alterations for that purpose. The principal of these were imprisonment for debt, the sale of land, and the exemption of property from execution at the instance of the creditor. Now in proposing these alterations we had regard to what was told us of the state of various parts of the country, which warned us that a very rapid transfer of land from the hands of one class to the hands of another class, or too great harshness and rigour in the prosecution of decrees against debtors, produced great misery and disorder, and even in some parts of the country danger. So far then, although it is confined to its own proper province of procedure, our Bill is connected, as other legal operations are connected, with a great political question. I thought we had given to the State somewhat more power than the present Code gave to it to guide the course of a decree, though I think now that in that opinion I was mistaken. But still I thought that substantially we aimed at the same objects with our predecessors who framed the Code of 1859, and that we kept their main lines intact. Speaking in Council I summed up the alterations thus:—

"'These provisions relating to execution-sales constitute the principal alteration that we propose in the Code, and our object has been to alleviate the harshness and rigidity of the law, to diminish the number of forced sales, and to get for the owner of the land something like an adequate value for it, at the same time keeping clearly in mind the important principle—one of the most important objects of all civilized society—that a man should perform his contracts and pay his debts to the best of his ability.'

"Such being my view of our proposals, what was my surprise when I found that the publication of the Bill brought us in lectures on political economy, or what calls itself such, and charges that we were confiscating property, disturbing the money-market, re-enacting usury laws, reverting to a patriarchal system of government, undergoing violent oscillations of policy which was known only to the minds of Indian officials, disregarding the wisdom of ages, and making laws at variance with human nature. Indeed such a storm of expostulation arose that I was quite frightened, until the happy thought occurred to me of looking to see what the existing law actually is, and what were the alterations we proposed. Then I was comforted, for with one dubious exception which I will explain presently, I found that we had proposed no more than what I had stated to the Council. In fact we had proposed something less. For being driven by stress of weather

to examine the motives of the Code of 1859, I satisfied myself that not only did we aim at precisely the same objects with the framers of that Code, but that we had in contemplation precisely the same methods as they had In fact the head and front of our offending is this, that we show an intention on the part of the legislature that the powers existing in the law, but now lying unused, shall be used, and for that purpose we proposed to commit them to hands more likely to use them.

"It will be convenient if at this point I explain to the Council what are the provisions that are so much complained of, and what they do, and what they do not, effect. They will be found in the sections of Bill No. V which are numbered 320 to 325. I omit section 326, because it is only a repetition of what is in the existing Code, and I do not for the present speak of section 327, because it turns upon some considerations which are peculiar to itself.

"In the first place these sections do not of their own force work any alterations either in law or practice, for they are only to be brought into action when and where the Executive Government thinks fit.

"In the second place they do not interfere with any specific contracts affecting land, such as a mortgage. If for instance land is to be sold in pursuance of a mortgage, the only powers the Collector will have over the sale are those powers which a prudent vendor by auction commonly exercises—the power of lotting the property, of adjourning the sale, of fixing a reserved bid, and of buying in. But in connection with this point, I should say that, owing to some inadvertence in the drawing of the Bill No. IV, it might have been considered that the whole of these sections applied to mortgages as well as to unsecured money-debts. It was obvious indeed from the context, and also from what I said in Council, that they were not intended so to apply; and in his comments, Mr. Justice Turner has treated this defect as an obvious slip, and with his invariable fairness has taken no advantage of it in his argument. But I mention the matter now because it may possibly account for what seems to me the very exaggerated views of our operations entertained by various of our critics.

"So much for what the sections do not effect. Now for what they do.

"Section 320 enables the Executive to declare that in any place and with regard to any class of decrees for the sale of land, the execution of the decree shall be committed to the hands of the Collector.

"Section 321 gives to the Collector the ordinary powers of vendors at auction-sales.

"Section 322 gives him further powers in cases only of money-decrees, namely, powers of arrangement between debtors and creditors. It provides that if he sees reason to believe that the judgment-debt of the debtor can be discharged without the sale of the whole of the property, he may raise the amount necessary to discharge the debt, with interest according to the decree if the decree specifies the rate of interest, and according to his discretion if the decree does not specify the rate of interest, by sale, by mortgage, by letting or by taking the property under his own management. The Council will observe that in sub-section (*b*), which gives powers to let on farm or to manage, it is provided that these powers shall be exercised only with the decree-holder's consent. That is a restriction which did not exist in Bill No. IV, but was introduced by the Committee in Bill No. V, and my hon'ble friend Sir Edward Bayley has a motion on the paper for the purpose of restoring the provisions of Bill No. IV in that respect.

"Section 323 requires the Collector to ascertain the other judgment-debts of the debtor, and it protects the property against alienation while in the hands of the Collector, just as the existing Code protects the property against alienation while in the hands of the Court.

"Section 324 provides that if the arrangements made by the Collector do not succeed in paying the debt, the property shall be sold after all.

"Section 325 makes the Collector accountable to the Court for all his receipts, and it directs the distribution of the proceeds in payment of the debts.

"I should have thought that these proposals were moderate and reasonable enough, but they certainly do not appear so to some people, because they have been severely observed in several quarters. I will read to the Council what Mr. Justice Turner says about them. I select him, not because he stands alone, but because he puts with much force what he has to say. He has sent in to the Committee a Minute on Bill No. IV which I can recommend as good reading to those of the Council who have not read it, in which he first enters into some general arguments directed against patriarchal government. Possibly those general strictures might have been modified in view of the alterations made since Bill No. IV was published, but those alterations have not prevented a hostile motion, and I have to meet the whole line of argument on which that is grounded. In the course of these arguments he makes the following observations:—

"'In India however there exists, I will not say a school of political thought, but a numerous body of gentlemen, who declare that the experience of centuries should be disregarded, and that the rules of political and economical science, which the wisdom of Western philosophy has deduced from the motives ordinarily influencing mankind, are wholly inapplicable to Eastern nations.'

"Then when he comes to these particular clauses he says:—

"'The first objection which I have to offer to these sections, in common with section 326, is, that the Legislature is called upon to delegate its functions to an authority so eminent as to be almost above the reach of criticism. It is asked to empower the Executive Government, by purely arbitrary acts which will have *ex post facto* operation, to disturb the securities on which millions of rupees are invested, and to deprive persons who have money-claims against the owners of lands of the fund to which they are entitled to have recourse, and which, in the case of money lent, was the basis of the debtor's credit.'

"Now pausing here for a moment to explain, the Council will notice that section 326 of Bill No. IV, which Mr. Turner mentions, is section 327 of our Bill, to which I have said that different considerations apply. Nor does he mix up the two together. But all his observations, as the Council will observe from what I have said, apply both to the earlier sections, 320 to 325, and apply again to 327. He is also speaking of general money-debts, which he alleges to be contracted with an eye to the land, and not of debts secured by mortgage.

"Then he continues:—

"'Such acts amount to confiscation. Nothing can justify them but the gravest political necessity, and at present no such necessity exists or is imminent. I urge then that legislation should be postponed until the necessity arises which justifies the creation of this power.

"'The oscillation of official opinion, owing to the constant changes of the *personnel* of the Government and the absence of party traditions, is so great, that economical heresies are never killed, but revive at least once in a decade of years. Although I believe no one who pretends to statesmanship would at the present moment exercise powers of which the iniquity is apparent, and which are justifiable only in extreme emergencies, when the tide of official opinion turns, pressure may be brought on the Executive to avail itself of powers which it has ready at hand, and which, were time allowed for public discussion, it would not create.'

"Well now that is a good, honest, outspoken statement of the faith that is in a man, and such as one likes to see; and I think that we ought to be very much obliged to any gentleman who, with no motive whatever but the public interest, takes the trouble to put what he believes to be the truth into such very frank and clear language. At the same time it seems to me that the remarks are misdirected when they are applied to the provisions I have explained to the Council. I say the same of other similar arguments, and the Council will understand me to be addressing myself to the whole line of attack represented by the motion of my hon'ble friend the Mahárájá Jotíndra Mohan Tagore.

"Inasmuch as I contend that we are only proceeding cautiously on lines already laid down, the Council will hardly expect me to take much time in combating arguments which, whatever their abstract value may be, are pitched so high as entirely to miss the mark. But before I go on to show how

they miss the mark, I will try to show what seem to me to be the broad differences of opinion between the opposing parties.

"I may be wrong, and I hardly suppose that our opponents will accept my view of what is necessary to make their position a sound one, but it seems to me that they cannot support their objections without first making good two propositions. The first of these is, that when a man has made a contract with another man, he is entitled to call upon the supreme forces of Society to step in and enforce his contract in every jot and tittle, and that without allowing to Society any moderating influence over the contract, unless perhaps it can be shown to be grounded in fraud. The second proposition is, that a contract by A to pay B a hundred rupees is a contract by A to strip himself of every shred of property that he possesses in order to make good that hundred rupees.

"Now both these propositions seem to me exaggerations of principles which, if stated with their due qualifications, most people will be ready to accept. Of the first proposition I should say, that it is a most sound and important principle that people should be held to the substantial performance of their contracts. But I should add that if the rigid and extreme performance of contracts is found to produce misery and disorder, then Society, which is called in to enforce these contracts, should exercise some moderating influence over them, and that such a duty is the more imperative in proportion to the helplessness of the debtor-class. Of the second proposition I should say, that a contract to pay a sum of money seems to me quite a different thing from a contract that the borrower shall strip himself of all the property that he has for the support of himself and his family in order to pay that money. It may be argued that, in order to enforce a contract to pay money, it is the duty of Society to step in and strip the borrower naked. But I do not see how it is even arguable that if such a process takes place, the creditor does not get something outside the terms of his contract. If he does, terms may be reasonably imposed upon him in return, such as are found necessary for the peace and welfare of Society.

"How far Society should step in and insist upon some moderation as the price of its assistance, is a question of detail which has to be solved in every age and in every country. But it seems to me that all laws intended for the protection of debtors on terms short of the payment of the whole debt—laws of bankruptcy, laws for the exemption of property from execution—are founded on the view I take of the duties and interests of Society.

"It is clear however that our opponents assume that the laws of other nations are in accordance with their views of what is a righteous law of debtor

and creditor. And indeed in another passage occurring amongst his general observations Mr. Justice Turner speaks of such legislation as ours as being 'a divergence from the laws ordinarily accepted by civilized nations.'

"Now I do not myself profess much knowledge of any law except the laws of England and of India. But the Council are aware that the Bombay Government lately appointed a Commission to enquire into certain serious outrages committed in some of the districts of the Dekkhan by the peasants upon the money-lending classes. That Commission have made an able and elaborate report. They draw a very distressing picture of the state of the country, and they assign as one of its causes the state of our law of debtor and creditor. I will read to the Council what they say of the law of India as compared with other laws. They speak thus:—

"'In order to recover a debt, it is obvious that resort can only be had to the property, present and future, of the debtor and to the labour of the debtor and his family. A law which allows an unlimited resort to all these means of recovery gives the greatest help to the credit or that it is physically possible to give. The law of India appears to be the only modern law which allows such unlimited resort, and we find that under it the debtor and his family are liable in person and property to an extent which is practically unlimited.'

Imprisonment.

"Then they go on to mention some details of our law and of other laws, and they continue thus:—

"'96. The mere statement of what the power of the creditor is, would seem in itself a sufficient answer to the question. The power to utterly ruin and enslave the debtor is a power which clearly the creditor ought not to have, and as a fact it was never intended when the Code itself was passed that the creditor should have it. 'The ancient laws of most countries,' says Mill, 'were all severity to the debtor. They invested the creditor with a power of coercion more or less tyrannical, which he might use against his insolvent debtor, either to extort the surrender of hidden property or to obtain satisfaction of a vindictive character, which might console him for the non-payment of the debt. This arbitrary power has extended in some countries to making the insolvent debtor serve the creditor as his slave, in which plan there were at least some grains of common sense, since it might possibly be regarded as a scheme for making him work out the debt by his labour. In England the coercion assumed the milder form of ordinary imprisonment. The one and the other were the barbarous expedients of a rude age, repugnant to justice as well as to humanity.' When we compare the law of India with that of other countries, we find that not one is so oppressive as the Civil Procedure Code in this respect, not even the oldest law in the world, the law of Moses, which allowed the debtor a discharge after serving seven years.'

"The Commission are here speaking of our general law of debtor and creditor, not only of that which relates to the sale of land, but also of that which relates to the seizure of chattels and of the person. But the Council will

find that the whole of these subjects are mixed up together, and that those who object to the restriction of the creditor's power with respect to the sale of land are the persons who also object to the restriction of his power in other respects.

"Now with regard to the law of England, inasmuch as England may claim to have been in the rank of civilized nations for some time, I should like to give to the Council an account of what the law respecting the sale of land for debts has been and is there, which I think I may do without any great degree of prolixity.

"Before the reign of Edward I, land could not be taken in execution at all for a general debt. In that reign a Statute was passed known as the Statute of *elegit*. It gave to the creditor power to take the chattels of the debtor, except his oxen and his beasts of the plough, and power also to take one moiety of his land. The *elegit* creditor, as he was called, might take possession of the land, but he was subject to account for his receipts in the Court of Chancery, and he had no right to a sale. When he was fully repaid by the rents of the land, the debtor resumed possession. It is true that by means of successive *elegits*, as when various creditors took out judgment against a debtor, he might be deprived of the whole of his land instead of half. It is also true that possession by the *elegit* creditor not unfrequently resulted in the sale of the land, and that there was a tendency for such sales to increase; but such sales only took place through the medium of a Court of Equity, and with all due and proper safe-guards, and only in those cases (by no means all cases, though, as I have said, there was a a tendency in them to increase) in which the Court had by some means or other acquired jurisdiction to sell. In such cases, to use the expressions of Mr. Justice Story, 'where the payment of the judgment cannot be obtained at all by a mere application of the rents and profits (as if the interest upon the judgment exceeds the annual rents and profits), or when the payment cannot be obtained out of the rents and profits within a reasonable time, Courts of Equity will accelerate the payment by decreeing a sale of the moiety of the lands.'

"Now that was the law of England for five hundred and fifty years; and it seems to me,—though of course it differs in detail for we have not the same machinery here as in England, but it seems to me a law not very unlike the arrangements which we contemplate, though more prohibitive of sales of land. It provided for payment of the creditor by the gradual application of the rents of the land for that purpose; it did not resort to the sale of land except where these means failed, and in many cases did not resort to it at all And yet the existence of such a law did not prevent England from rising into the very front rank of commercial nations.

"It was not until the year 1838 that matters were thought ripe for an alteration of that law. In that year a Statute was passed which effected the alteration. First the creditor was enabled to take possession of the whole instead of only half of his debtor's land; and secondly, when he had procured a judgment of a superior Court, it had the same effect as if the debtor had agreed to charge his land with the amount of the debt.

"Unless some change has recently taken place which I do not happen to know of, that is the law of England at the present moment. And it is attended with incidents which must make it extremely unsatisfactory to those critics to whom I have referred; for it by no means gives to the creditor the short, sharp, swift, direct remedy against the debtor's land which they think is necessary for the law of a civilized country. In the first place, it is only the superior Courts—that is to say, some five or six Courts in England—which can issue decrees charging the land at all; and that is the sort of arrangement which my hon'ble friend Mr. Cockerell proposed for India. In the second place, though the creditor might at once take possession of his debtor's land, he must account for every farthing of his receipts in the Court of Chancery. In the third place he acquires no immediate right to sell that land. If he wants to sell, he must institute an entirely new suit in a Court of Equity; a Court which takes care that all parties interested are brought before it; a Court which will give every facility for arrangement and accommodation as it well knows how to do, and when it does decree a sale will take care that the sale is carried into effect with all due precautions and safeguards. In the fourth place, the creditor cannot institute even that new suit directly. The Statute says he must wait a full year after he has got his judgment, and after he has performed certain formalities with that judgment. And in the fifth place, our Parliament has been guilty of enacting what these gentlemen call a Usury Law; that is to say, they have provided that when the Court gives to the creditor the security of a decree, his debt shall carry a Court rate of interest which they have fixed at four per cent.

"It must also be noticed that during all these centuries I have spoken of, there were other influences at work which tended very much to retard the passing of land from the hands of one class to the hands of another class. The most familiar of these influences is the system of entails or strict settlements, a thing so familiar to every reader of English history, that I will not trouble the Council with pointing out its effects. But there was another influence which has been much less observed upon, but which in all probability has exercised no less effect than the system of entails, and that is the action of the statesmen who presided over our Courts of Equity.

"In his concise and admirable account of the distinctive characteristics of Courts of Equity, Blackstone points out this among the chief; that they construed contracts for securing money in a different way from the way in which the same contracts were construed by Courts of law. In point of fact the Courts of Equity exercised a regulating power over such contracts, and they exercised it in favour of debtors.

"The common form of a penal bond is this: A borrows £100 of B, and he contracts that if he does not pay B within twelve months he shall pay £200. The terms of the contract are as clear as noonday; and yet the Courts of Equity held that the penalty of £200 was a mere fashion of speech, Shylock's merry jest, a sort of playful way of securing principal and interest. And accordingly to principal and interest they confined the creditor, and they prohibited him from suing for the penalty.

"The common form of mortgage is, that the borrower conveys his land to the lender out and out, but with a proviso that if he pays the lender the sum borrowed in the course of a year, the conveyance shall be void; otherwise it remains indefeasible. Again I say the contract is as clear as noonday, but Courts of Equity applied to it the same construction that they applied to penal bonds, and they allowed a debtor to redeem his land after very long periods of time on payment of principal and interest.

"Now that is something like interference with contracts. And indeed there were not wanting eminent persons, principally common lawyers, who denounced the proceedings of the Courts of Equity in language as vigorous as that in which our far milder proceedings are denounced at the present moment. The battle was nearly over by Lord Hale's time, but even he complains that 'by the growth of Equity on Equity the heart of the Common Law is eaten out, and legal settlements are destroyed.' The fact is that these proceedings of the Courts of Equity led to very sharp collisions between them and the Courts of Law. But the Courts of Equity held their ground, because the good sense of the nation was at their back. Their doctrine as to mortgages has long since formed part and parcel of the framework of the Law of England; and their doctrines as to bonds were imported into Common Law Courts by a Statute passed in the reign of Queen Anne.

"Now upon that brief review of English history I think the Council will have observed two things. One is the extreme slowness with which, even in an advancing commercial nation like ours, the *corpus* of the land, as distinguished from its temporary and redeemable possession, was made available to

answer general debts. The other is the care which our legislature took, when it was at last giving the creditor full remedies against his debtor's land, to provide that these remedies should be worked with due moderation and caution, and under due control.

"Slow and spontaneous changes such as these are the healthy growth of nations. But some of our critics tell us that we are right, indeed that we are bound, to introduce all these changes, and more than all, at once, without the slightest attempt at mitigation, by foreign rule, into extremely backward communities. Certain abstract principles are brandished in our faces, and we are told that if we hesitate to transmute money-debts into the ownership of the debtor's land, we are setting ourselves against the experience and wisdom of ages. I answer that the study of history and the study of contemporary phenomena equally convince me that nations do not accept that species of transmutation very readily; and that for us to put it into force without any attempt at mitigation among primitive agricultural communities is not Political Economy; it is not Policy; it is not Economy, nor any combination of the two; but it rather savours of pedantry, and of a disposition to treat matters on some *á priori* theory, instead of dealing with men as we find them.

"Having now as I trust disposed of the assertion that we are setting ourselves against the example of all civilized nations and on principles peculiar to Indian official nature, I proceed to examine the assertion that even in India such a proposal as we have made can only be due to some violent oscillation of official opinion.

"The existing Code of 1859 contains the following provisions: By section 243 it is provided that where the property attached consists of land, it shall be competent to the Court to appoint a manager, and that the manager shall collect the rents and apply them in payment of the debt, and to the term of such management no limit of time is assigned. It is also provided that if the judgment-debtor can satisfy the Court that there is a reasonable ground to believe that the amount of the judgment may be raised by mortgage, lease or private sale, it shall be competent to the Court to postpone the sale for such period as it may think proper to enable the judgment-debtor to raise the amount. And again to that postponement no limit of time is assigned. Now I think that those who followed me in my exposition of Bill No. V, sections 320 to 325, will see that the Court has here given to it powers as wide and large as those which we propose to bestow upon Collectors. It may pay the debt by management, and by gradually applying the rents and profits. It

may allow the judgment-debtor to try his hand at making arrangements short of a suit. In point of fact the powers given to the Court are somewhat larger, because we propose to limit the Collector's operations to twenty years, whereas the Code leaves the Court's operation unlimited in point of time; and we propose not to apply our provision to mortgage-debts, whereas this section is so framed as to apply to mortgage-debts.

"By section 248 it is provided that if the property to be sold is land, and the Government shall so direct, the sale shall be conducted by the Collector on the requisition of the Court. And by section 244 it is provided that in such a case as is mentioned in section 248,

'If the Collector shall represent to the Court that a public sale of the land is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land, the Court may authorize the Collector, on security for the amount of the decree or for the value of such land being given, to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land.'

"Now what is the object of these sections? To find that, I refer to the debates which took place in Council when the Legislature was engaged in discussing the Code.

"In the first place the Council had before it much evidence of the mischief and embarrassment which was being produced by the rapid transfer of land from one class to another, and they had also before them a despatch from the Secretary of State, Lord Stanley, written in 1857, the terms of which I will proceed to state. He began by saying:—

"'It cannot be doubted that the increased powers in respect of suits relating to real property, which of late years have been conferred upon the Subordinate Civil Courts, have greatly promoted the rapid transfer of such property from old to new hands.'

"Then he goes into some details on the subject, and continues thus:—

"'With reference to the foregoing remarks, the question arises as to the expediency of altering the existing constitution of the Munsifs' Courts, and of reverting to the system under which they were tribunals for the adjudication of suits only for money or other personal property, at the same time enlarging, if thought advisable, their jurisdiction in such cases. A further check might be imposed by providing that no process either for attachment or sale of real property shall be allowed in cases below a fixed amount, and that in suits exceeding that amount the Munsif shall not be competent to issue such a process without the previous sanction of the Judge.'

"That was the proposal made by Bill No. IV which my hon'ble friend Mr. Cockerell explained to the Council at Simla. There was another proposal

before the Council, that they should put some express prohibition upon sales, in what form I do not exactly know, for the principle was discussed without any definite plan being propounded; but the Council did not see their way to it. Neither did they see their way to the suggestion made by Lord Stanley. Whether they rejected it on account of the practical considerations which have influenced us I cannot find. At all events they did not accept either of those two suggestions, but instead thereof, and with the same object, they enacted these sections which I have been citing.

"Sir Henry Harington moved to insert that section which is now section 243, and the reason he gave is stated as follows:—

"'The addition proposed by him was intended to meet to some extent the objections entertained by many persons to the sale of land in satisfaction of money-decrees. He would not now go into the very important question as to whether such sales should or should not be allowed.'

"He then intimates his opinion that there was some exaggeration in the matter, and that alienation of land could not be prevented.

"Mr. Currie proposed the introduction of the section which, with a difference, is now section 244, and he spoke thus:—

"'He remarked that the present section went a step further than the last section. The Judge of Cawnpore, the Commissioner of Allahabad, and the Agra Sadr Court, objected to the indiscriminate sale of land. Mr. Muir objected to any sale of land at all under civil process. He (MR. CURRIE) would not go so far as Mr. Muir. He agreed generally with what had been said on the subject by the Hon'ble Member for the North-Western Provinces. But even if it were admitted that the transfer of the land from the hands of the old proprietors was an unmitigated evil, still in the existing state of things that would be no sufficient reason for a general stoppage of sales.

"'Something however was to be conceded to opinions so strongly expressed and urged by the authorities he had named. The new section which he proposed would enable the revenue authorities to interfere in behalf of old proprietors in all cases in which such interference could be beneficially exercised.'

"Now I will ask what difference is discernible between the policy of 1859 and the Policy of 1877. Then, as now, there were differences of opinion on this subject; then, I hope I may say as now, the majority of opinions was, that something should be done to check the indiscriminate sale of land; then, as now, the Council rejected the proposal to confine decrees for the sale of land to District Courts and the proposal to put a direct prohibition on such sales; then, as now, they resorted to the scheme of giving large powers of arrangement to some authority which in the first instance they said should be a Court of Law;

and then, as now, they contemplated that these powers should be exercised by the Collector.

"I do not find that anybody then came forward to tell the Council that they were meditating confiscation or interference with contracts. But if we are doing so, most certainly they were. If I am a creditor seeking to sell my debtor's land, and if it is confiscation of my rights to tell me that I must be content with payment out of the rents, it is no consolation whatever to me that the officer who tells me so is called a Judge instead of being called a Collector, or that he is a Collector set to work by a Judge instead of being a Collector set to work by the Government.

"However that was the reasonable policy which our predecessors adopted, to call in some controlling power to make reasonable arrangements, which might be the Court or which might be the Collector. Unfortunately it was suggested by somebody that if the land was in the hands of the Collector, some further security was required for the payment of the debt; though nobody seemed to dream that any further security was required when exactly the same process was going on in the hands of the Court. But in the course of the debate, apparently without any further consideration, that idea was accepted, and the clause I read to the Council about security was put in, which converted section 244 to almost an absolute dead letter. There is the section however and as evidence of the policy of the legislature it and the reasons for it remain; and we ought not to be charged with violent oscillations of opinion and departure from the policy of our predecessors because we are attempting to make a living letter of that which has become almost a dead letter.

"But I have something more to say on this point. The Code of 1859 extended of its own force only to the Regulation Provinces of the three Presidencies. With respect to the rest of India it is extendible by order of the Executive Government. When it came to be extended to Non-Regulation Provinces, it was found that although in other respects it might be suitable to those Provinces, in respect of the sale of land which it authorizes so freely it was not suitable; and accordingly the Lieutenant-Governor of Bengal extended it to his Non-Regulation Provinces, or to some of them, with the proviso that the land should not be sold without the consent of some executive authority. Well His Honour had no power to do that. The moment this question came up before the Council they proceeded to alter the Code; and in the month of July 1859 Sir Henry Harington introduced a Bill to enable the Local Governments of the Non-Regulation Provinces to do the thing that the Lieutenant-Governor of Bengal had assumed to do.

"On that occasion he spoke as follows:—

"'Lastly, the Bill proposed an alteration in section 385 of the Code. That section set forth that the Act should not take effect in any part of the territories not subject to the general Regulation of Bengal, Madras and Bombay, until the same should be extended thereto by the Governor General of India in Council, or by the Local Government to which such territory was subordinate, and notified in the Gazette. Hon'ble Members might have observed in a recent number of the *Calcutta Gazette*, that the Lieutenant Governor of Bengal had extended the Act to certain Non-Regulation districts under his Government; but that in doing so, His Honour had added a proviso that no sale of land should be made without the sanction of the Commissioner of the Province. The Code contained no such provision, and a question might arise as to the competency of the Lieutenant Governor to pursue this course, and whether, if he extended the Code at all, he was not bound to extend the whole Code. But as it seemed very desirable that the power exercised by the Lieutenant Governor of Bengal in this instance should exist somewhere, the Bill proposed to authorize the Government of a Non-Regulation Province to which the Act might be extended, with the previous sanction of the Governor General of India in Council, to declare that the Act should take effect therein subject to any restriction, limitation or proviso which it might think proper.'

"The Bill was then passed into Law. It has since been re-enacted, and it stands now as section 39 of Act XXIII of 1861. I have before stated to the Council how very largely that restriction on the sale of land has been used. The modifying power extends as you have heard to the whole of the Code; but it has hardly been used at all, except only for the one purpose of moderating the sale of land; and for that purpose it has been used throughout very large Provinces. I am not prepared to say in how large a portion of the Non-Regulation Provinces of India, but certainly throughout the Panjáb and Oudh and the Central Provinces the Code was only put into operation subject to the restriction that the sale of land in execution of decrees should not take place without the consent of some executive authority.

"Well now we have this result, that for the purpose of preventing the too indiscriminate sales of land which it was found the Code allowed, the Council of that day, the very same men who passed the Code, within four months after they passed it into law, passed an amending Act giving powers to the Executive of an extent and magnitude compared to which the powers we propose to give are the merest flea-bite; not a mere power to say that certain operations may be executed by one hand instead of another, but a power to extend the Code subject to any restriction, limitation or proviso whatever. And it is not right that we should be charged with departing violently from the policy of our predecessors, when we are only following their footsteps at a humble distance.

"Now I hope I have given the Council reason to think that the condemnation of our proceedings, however confidently and boldly pronounced, is founded on erroneous data and on a narrow and partial view of the case. At all events I am anxious to hear the allegations and arguments by which that condemnation is supported in Council. I know that whatever can be said on that subject will be said by my friend Mahárájá Jotíndra Mohan Tagore; for in Committee he has supported the views of the objectors with great ability and acuteness, and I must add with equal good feeling and moderation.

"The next question is, whether we have any case for altering the arrangements of the law at all. And here again I find a disposition to assume that our district officers must all be mistaken in what they think they see; and that if there is any mischief going on, it is all due to other causes, and not to this cause, namely, the state of the law of creditor and debtor. Other causes no doubt there are, but it seems to me impossible to doubt that this cause also exists, unless we are prepared to say that a great number of intelligent gentlemen, knowing the country thoroughly, better than any other men, some of them appointed to enquire into this very matter, are all mistaken in what they think they see and hear. I have told the Council before how much evidence there is on this point, and I will now add one other piece of evidence which has come to my hands since I last spoke on this subject. The Dekkhan Commission say:—

"'62. Another cause of the increase of indebtedness is the facility with which the money-lending class can command the assistance of the law in the recovery of debt, and consequent upon that facility an expansion of the raiyat's credit, inducing numbers of small capitalists to compete for investments in loans to the Kunbi. We have already quoted Sir G. Wingate's remarks on this point. Although at the present time other causes have combined to impair the raiyat's credit, still one material cause of his present condition must undoubtedly be sought in the state of things described in 1852; and since that date other causes have operated to aggravate immensely the evil which was then discerned. Whatever facilities were afforded by the law to the creditor in 1852 have been greatly enhanced by the introduction of the present procedure in 1859, and by the punctual conduct of judicial duties now exacted from the Subordinate Courts, while the raiyat's credit has been enhanced by the addition of his land and agricultural stock and implements to the security liable for his debts.'

Increase of money-holders and money-lending business.

"It is their opinion that the provisions of the law and the much greater swiftness with which the law is executed have aggravated the miserable condition in which they found the peasants of that part of the country. They no doubt are speaking of the law at large and not merely of that part of it which relates to sales of land. As regards sales we have this broad fact, that the complaints which come to us are from those parts of the country where the

Code is at work without restriction; and those parts of the country in which it operates subject to restriction are the parts from which complaints do not come. That seems to me a cogent piece of evidence.

"Our case then is this: We have evidence, which seems to us conclusive, that the Code has worked in a harsh, rigid, mechanical way, which leads to the ruin of the debtor, sometimes with benefit to the creditor, sometimes without any such corresponding benefit. We do not assume to regulate the contracts of mankind; we are not reverting to any patriarchal system of government; but we say that Society ought not to be a mere passive instrument in the hands of creditors for the purpose of skinning their debtors, and that the Code, not in its own nature, nor by the intention of its framers, but in its working, has been made too passive an instrument for that purpose. We are not foolish enough to suppose that we can control human nature; but we say that mischief which has been created by foreign and artificial causes may be remedied by modifying those causes; that what procedure has done procedure may undo; and we believe that we are swimming with the stream, and not against the stream, of human nature.

"The next question is, whether the alteration we propose is the best we can make. We have not seen our way to other alterations. One other alteration, namely, to confine sales of land to decrees of District Courts, we did propose, but have abstained from pressing it in the face of practical objections. What we do see our way to is the constitution of some authority which will have the power and the will to make some reasonable arrangements between creditor and debtor in those painful circumstances in which the *ultima ratio* has been applied, which will prevent the Code from being merely the means of carrying out to the bitter end that *summum jus* which is proverbially *summa injuria*, and which may in proper cases answer the old prayer of the debtor, 'have patience with me, and I will pay thee all.'

"We are trying to give life to the intentions of our predecessors which have to a great extent failed of effect; for not only have the provisions of section 244, but also those of section 243, failed to a very great extent. That matter was the subject of inquiry by the Government of the North-Western Provinces in 1873, and they received from their officers some accounts of the working of the sections. They sum up the matter thus:—

Opinion of Government, North-Western Provinces.

"'It will be seen that nearly all the officers consulted by the Court are of opinion that the sections in question are almost inoperative either from the ignorance of the judgment-debtor, or from the difficulties in the way of settlement under them. But His Honour the Lieutenant-

Governor concurs with the Hon'ble Judges of the Court and the Board of Revenue in thinking that the sections do a certain amount of good, and work for the benefit both of creditors and debtors.'

"Now of course sections that are almost inoperative cannot do much amount of good. What is meant clearly is, that the sections are good in themselves: that they are right in principle; that where they do work they do good, but unfortunately they are almost inoperative. I believe that these sections will remain inoperative as long as the motive power is confined to Courts of Law. Such operations are not judicial in their character; they are matters of arrangement and discretion and are quite extra-judicial. They are far more likely to be carried into effect by a person who knows the property, knows the place, knows the people, is accustomed to move about and visit his villages, and is in the habit of making administrative arrangements, than by a man who is accustomed to sit in his own Court, and to decide such legal points as are brought before him. This was seen quite clearly by our predecessors when they passed section 244, avowedly as a further step in the same direction with section 243, and with the view (I will quote the words again) 'that the Revenue-authorities should be enabled to interfere on behalf of local proprietors in all cases in which such interference may be beneficially exercised.' That view has not been answered because of the reasons which I have mentioned; and we seek now to make that a living letter which remains a dead one. We see no better plan than to follow the same line of policy, and to call on the Collector to exercise a reasonable discretion, not only when a Court of law thinks fit, but when the Government thinks fit.

"We are not proposing any rigid law for the whole of India. It is only when the Executive Government thinks that a part of the country requires these provisions, and also that there are hands to work them, that they will be applied. When that is the case, we wish the Government to have those powers which the Bombay Government desired to exercise in 1875, but were deterred from exercising by the opinion—no doubt a very well founded opinion—of the High Court as to the state of the law. Now I confess that it is at this point that the palsy of doubt begins to affect my mind. I will read a few words from a very valuable paper sent to us by the Advocate General of Bengal, Mr. Paul. He is a gentleman of great experience in Mufassal affairs. He quite approves of what we propose to do for the purpose of softening the law against the debtor; he is only sorry we do not carry some of our provisions a good deal further. He says:—

"'If the Collector who may be charged with the execution of decrees be an officer who has sufficient time in his hands to devote to the new department of jurisdiction intended to be

created, I think the exercise of the powers proposed to be given to the Collector will be beneficial to debtors.'

"That is just it; 'if the Collector has time.' It may be that the Collector has not time. It may be that the Collector's hands will require strengthening. It may be that in order to work this provision efficiently, we shall have to go further and do what Sir Richard Temple has recommended us to do, namely, to establish a separate execution department. But practical difficulties of that kind are no reason against giving powers to the Government which are sound in principle and which may be exercised in places where no such practical difficulties exist.

"Now I have finished what I had to say upon sections 320 to 325. I do not propose to say anything now upon section 327 but would prefer to hear the reasons of my hon'ble friend Mahárájá Jotíndra Mohan Tagore for expunging it from the Bill, because I apprehend that what I have said on the other part of the case will with some little addition be sufficient to constitute a good defence.

"But before I close I must call the attention of the Council to section 266, for that also is a part of our work on which we are said to be sentimental, patriarchal, violent, and all the rest of it. I am glad to think no person wishes us quite to go back to the simplicity of the present Code, and to exempt nothing whatever from being taken by the creditor in execution, and that there is no motion on the paper to expunge any of the items which we propose to exempt from execution. In fact I think that members of the Committee were satisfied that we were not being guided by pure sentiment, but that we gave to the matter a fair amount of hard-headed, if not hard-hearted, consideration. I must however tell the Council what alterations have been made. In sub-section (*b*) we have adopted the language of an old Bombay Regulation, the repeal of which by the Code of 1859, as the Dekkhan Commission inform us, has caused much distress. It exempts tools, implements of husbandry and such cattle as are necessary to enable a man to earn his livelihood by agriculture. This latter part accords with the first English Statute which gave powers to the creditor to seize his debtor's goods. Sub-section (*c*) has been modified by the provision that it shall not apply to the execution of decrees for rent. The peculiar relation of landlord and tenant induced us to put in this provision. In sub-section (*h*), which applies to the salaries of public officers or *quasi* public officers, such as Railway-servants, we have, instead of exempting the whole of the salary, applied the principle of the English Mutiny Act, and exempted only a moiety. That is a course suggested by Mr. Justice Turner among the many valuable and

careful suggestions which he has made to us for the alteration of the Bill. With these exceptions we have maintained the exemptions which were contained in section 266 of our Bill No. IV. But I should mention that there are two items which appear to be very important ones, those contained in sub-sections (*g*) and (*i*), but they are only an expression of the present law culled from the Pensions Act and from the Indian Articles of War. They are only put in here for convenience sake so as to have the whole of the exemptions in a single list.

"There are some other minor points connected with the law of debtor and creditor as to which some people think us foolishly indulgent to debtors, but they are comparatively trifling, and I do not think that the Council would be grateful to me if I took up further time by discussing them. I must therefore leave them to be opened by any other Hon'ble Member who may feel it desirable to do so."

The Motion was put and agreed to.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE moved that section 417 be omitted. He said that after the very able and exhaustive statement made by the hon'ble and learned member in charge of the Bill he had reason to modify his opinions as to sections 320 to 325, regarding which he had given notice of amendment. He gathered that there were certain parts of the country in which the restrictions on the sale of land were absolutely necessary for political purposes; that was a matter respecting which he had nothing to say. He was of opinion that, as regarded Bengal, these sections would be mischievous in their effect, and he therefore desired to oppose them; but supposing that his amendments were accepted, he feared from the explanations given that certain parts of the country would be in a very unsatisfactory condition. He therefore did not desire to press them; the more so as the sections were of a permissive nature, and he had sufficient confidence in the special circumstances of Bengal, and in the judgment of His Honour the Lieutenant-Governor, to believe that these sections would not be applied to Bengal. He begged leave accordingly to withdraw the amendment which stood in his name with regard to sections 320 to 325. Section 327 was so closely connected with the previous sections, that for the reasons he had already stated, he begged to withdraw his amendment regarding that section also. He next begged to move that section 417 be omitted. Nearly two decades had elapsed since Act VIII of 1859 was passed, and from that time up to the present day the Munsifs had had the power of trying cases in which Government or its officers were concerned. The Principal Sadr Amíns, or subordinate judges as they were now called, had enjoyed this power from a period long anterior even to that; but now it was proposed to make a retro-

grade move. He was not aware that there was anything to show that these officers had deteriorated either in character or competency. On the contrary Hon'ble Members of this Council, such as Sir William Muir and Sir Alexander Arbuthnot, had spoken in respect of the provinces which they represented in very high terms of the integrity and efficiency of these judicial officers. Sir Richard Temple in his Administration Report said:—

"Now I have constantly inquired from all sorts of persons likely to know, European and Native, official and non-official, and the universal opinion attests the integrity and probity of the Native judges, that is, the Subordinate Judges and the Munsifs. This is to my mind a striking circumstance, and a cause for thankfulness, inasmuch as corruption used to be one of the traditional evils of India."

The High Court said in one of its reports:—

"The Court has had increasing reason to be satisfied with the performance and promise of the inferior judicial officers under its control, who in point of ability, competency, and attention, are far beyond the Munsifs of former periods. The character of this class of officers has long stood high, but the superior mode in which the business of their Courts is now transacted fully attests the wisdom of the Government in improving their condition in respect of emoluments and prospects."

Mr. Justice Jackson said:—

"I now come to the Munsifs, and I am able to say with confidence that they continue as a class to improve in carefulness and to bear a high character. We are no longer under the necessity of employing very young men, and we are able to insist upon the possession of some experience in addition to that of learning and ability which are indicated by the possession of a degree. Generally speaking therefore the Munsifs, even at the beginning of their career, are well prepared for the performance of their judicial duties; and failure in that respect is of great rarity."

Sir Richard Couch remarked:—

"The appeal from a Munsif is in most cases heard by a Judge who is not superior in knowledge or ability to the Judge whose decision is appealed against; in some instances he is inferior."

Mr. Justice Bayley said:—

"My own later experience here is that a Munsif in the Court of first instance, who has been educated in our colleges and schools, and takes his law degree in our University, not only discharges his duty with ability, but with a faithfulness and care and perspicuity which is certainly not surpassed, if it is equalled (except in cases of promotion from the same style of men), by some of the Subordinate Native Judges who hear the Munsif's appeals."

Mr. Justice Markby said:—

"In discussing the important question now raised it will not be safe to disguise the truth, however unpalatable it may be: and that the Courts of appeal in Lower Bengal are frequently

below them, it is I fear impossible to deny. I insert again here the opinions upon which in my former Minute I based this conclusion. None of these opinions have since been withdrawn. No opinion to the contrary has been since expressed. And my own more recent experience has strengthened me in the view that the conclusion I then stated and now repeat was correct."

Now he would not detain the Council by reading any more extracts, but after the testimony of these high authorities, it would be an ill recompense to the Subordinate Judges and Munsifs to put such restrictions on the power which they had so long enjoyed, and which, as far as he was aware, they had never abused. If the Government would not trust these subordinate Courts, the people would naturally hesitate to place any confidence in them, and the effect of this section would be prejudicial to the administration of justice. It had been said that this section had been introduced to prevent unseemly conflicts between the Munsifs and the executive; but he did not understand why there should be any friction between the two classes. Both served the same Government, and both were appointed to administer the law; the members of one class were amenable to the other only when there was an infringement of the law, and even then the officer who tried the case was bound by the Code under which he acted, and he could not go beyond that. Some cases were cited in which it was alleged that the Munsifs were influenced by their bias against the executive. He was not acquainted with the merits of these cases, and he could not therefore say how far those decisions were influenced by *animus* against the officers of Government, or were errors of judgment; but he knew of other cases in which, although it was at first believed that the Munsifs were biased in their decisions, those very decisions were on appeal upheld by the highest tribunal. Mr. Justice Innes of Madras, commenting on this section of the Bill, said:—

"Section 416 appears to be conceived in a similar spirit of distrust. It is certainly a retrograde step, and one much to be deprecated, that at a time when the Native judicial service is in education and integrity so much in advance of what it was before the enactment of the present Procedure Code, the Legislature should revive a restriction of the jurisdiction of these officers, which is certainly, so far as my experience goes, not called for by their mode of dealing with suits of the kind referred to in this section, namely, suits by or against Government or public officers."

Indeed he considered it very inconsistent, in the face of the testimony of so many high authorities, as regards the integrity, conscientiousness, and efficiency of the subordinate judicial officers, to hold that they were likely to be biased in their judgment against the executive officers or the Government they served. It had also been urged that cases in which the Government or its officers were interested often involved questions of large and important public interest, and

that the Munsifs were unable to form any opinion upon them. But in such cases he submitted the remedy was always ready at hand. Section 25 of the new Bill provided that any District Court might, on the application of either of the parties, or of its own motion, withdraw a suit from any Subordinate Court and try it itself, or transfer it to any other Court of competent jurisdiction. The Government therefore could on sufficient ground apply at any time for the transfer of a suit from the Munsif's Court. Further he submitted that it was not conducive to public interests to provide a special tribunal for the trial of suits in which Government or its officers were interested. Sir Richard Garth questioned if it was either necessary or desirable to withdraw all suits against public officers from the jurisdiction of the inferior Courts; and His Honour the Lieutenant Governor said that it seemed to him quite impossible for Government to say, as it did here, that the Courts which it provided for the public were good enough for ordinary suitors, but not good enough for its officers. Under these circumstances he earnestly trusted that the Hon'ble Council in its wisdom would see fit to expunge this section, which would otherwise remain a standing reproach upon a deserving class of officers, and have a most discouraging and disheartening effect upon them.

The Hon'ble MR. COCKERELL thought that the remarks which prefaced the amendment propounded by his hon'ble friend the Mahárájá, would have been more in point if applied to the corresponding provisions of Bill No. IV in relation to the subject of the amendment.

His hon'ble friend had commented on the section which he desired to strike out of the Bill as though its effect was to take away absolutely the existing jurisdiction of the inferior Courts of first instance in respect to suits against the Government and public officers. That statement of the case would more or less correctly apply to the proposals of the former Bill in regard to this matter; but those proposals had undergone material modification, and all that was now desired was that the inferior should obtain the sanction of the superior Courts, ere proceeding to try suits of that class instituted before them.

He would further submit that in treating this matter as a question of the proved competency or otherwise of the inferior Courts, his hon'ble friend had narrowed very considerably the issue upon which the subject-matter of the amendment should be considered and dealt with by the Council. We were not now called upon—as it seemed to him (MR. COCKERELL)—to determine by our action in this matter whether these Courts were or were not competent to deal satisfactorily with this class of suits, but to determine a question

of much wider character, and one that should be considered and decided on a much broader basis—namely on the grounds of the general public convenience—the advantage and pecuniary interest of the tax-paying community, and on such grounds he held that the provisions of the Bill before the Council should be maintained and the amendment of his hon'ble friend should not be accepted.

As regards the question of the established efficiency of our lower Civil Courts, and the extent to which they enjoyed the confidence of the people at large, there was no doubt a good deal to be said on both sides; for whilst on the one hand there had been very great improvement in the personal qualifications, in the direction of a superior education and legal training, of the Judges of these Courts—and indeed he felt that it was almost presumptuous, and at least superfluous, to offer any opinion or bear any personal testimony to a fact so clearly brought out in the recorded opinions of those who were of course far more competent to speak authoritatively on such a subject, some of which opinions had been cited in the speech of his hon'ble friend the mover of the amendment—but on the other hand, in Bengal at least, there was evidence to show that these Courts were according to a well-informed section of public opinion far from having attained perfection.

So recently as the period—about two years ago—at which much public discussion took place in regard to the Bengal Civil Appeals Bill, it was urged very strongly that it was impolitic and inexpedient to take any action which would have the effect of curtailing the existing area of appeal whilst the majority of the Courts of first instance were in such an unsatisfactory condition, and that the essential first step towards a substantial reform of the administration of Civil justice was the amelioration of the character of the inferior Courts of original jurisdiction.

At a public meeting held he believed in the rooms, and under the auspices, of the distinguished Association with which the hon'ble mover of the amendment and another of their hon'ble colleagues (the Mahárájá Narendra Krishna) were connected, this view of the question was strongly insisted on—a Bengáli gentleman of wide reputation who possessed large estates, with whom he (Mr. Cockerell) had the honour of having been acquainted for many years past, and whose personal experience and knowledge of the question then under discussion he believed to be unsurpassed, spoke on that occasion as follows:—

"Our Munsifs, who have to try a large number of original suits, and almost the whole class of suits between landlords and their tenants, are chiefly young University graduates, who have no knowledge of the world, and who are in many points as ignorant of the habits, cus-

toms, and feelings of the people as any European. They are usually required, after they have obtained their diploma in law, to practice in the High Court, or some zila Court, before they are appointed as Munsifs. This should doubtless give them an insight into the working of the Courts, and to the practical operation of the laws, but as a matter of fact this condition is of very little use. Those who can secure good practice do not care to exchange their profession for the service, while it is only those whom we might describe in one word as "briefless," and who, after a short time, give up attending Courts, which entails some expense, that are appointed Munsifs."

That was the candidly expressed opinion, not of an European official too often credited with the indisposition, from selfish motives, to accord the full recognition and generous acknowledgment of the value of the services of his Native fellow-officials which those services may have merited, but of a fellow-countryman of the Native Judges themselves, and a fellow-countryman moreover whose opportunities for forming a correct judgment on the matter, and general competency to speak with some authority on such a subject, he (MR. COCKERELL) was sure that his hon'ble friend the Mahárájá could not gainsay.

But as he had said before he did not think that the question before the Council ought to be determined upon this issue, and he had only referred to the subject for the purpose of showing that an argument against the amendment, even on the ground just stated, was not absolutely untenable. He had moreover cited the speech above mentioned in reference to what had passed when this Bill was last before the Council, on which occasion he had been rather severely taken to task by two Hon'ble Members, who seemed to think that their lengthened period of service and assumed intimate acquaintance with the people of this country entitled them to speak with paramount authority on such a question, for his remarks in regard to the personal characteristics of the Native Judges of our inferior Civil Courts in Bengal; he thought it right therefore, and in fact incumbent upon him in justice to himself, to appeal to the plainly declared opinion of one of their own countrymen, which had been delivered under the responsibility that attaches to public utterances, in corroboration of all that he had then advanced.

Passing now to the question as to how the disposal of this class of suits could be arranged so as to conduce most to the interest and advantage of the community, he would first ask, what there was in the way of novelty or innovation in the principle underlying the arrangement by which particular classes of suits or proceedings, or suits or proceedings affecting particular classes of persons, were reserved to particular Courts? He could point to several enactments by which the cognizance of particular kinds of suits and proceedings

was reserved to special Courts or classes of Courts. So also institutions of suits or appeals were restricted to a few Courts only in certain cases. He would take, as an example of this, appeals against the decrees and orders of Munsifs. These appeals, though they might be, and in the majority of cases were, tried by Subordinate Judges, could be instituted in the district Court only. Or he might refer to Small Cause Courts, which, although the Judges of these Courts were picked men of undoubted competency, had not jurisdiction even to attach immoveable property in execution of their decrees.

Indeed he might say that there was no class of Courts the jurisdiction of which was not restricted or limited in some direction; and his contention was therefore that the reservation of the cognizance of, or power to deal with, a particular class of suits to certain specified Courts, did not necesssarily imply the disparagement of any other Courts to which such authority was not extended, and he hoped that the Council would not, from a too tender regard for the sensitiveness of Munsifs or any other class of Judges, or from any apprehension of popular misconstruction of the object of the change in the law contemplated by the Bill in its present shape, be induced to settle this question otherwise than on the broad grounds of sound policy and the general interests of the tax-payer.

In determining a question of this sort some regard should, he thought, be had to the generally important character as well as the comparative number of the suits which, as regards the choice of forum, it was proposed to deal with in an exceptional manner. Now there could be no question in his opinion as to the greater relative importance of these suits as compared with that of suits between private parties, whilst their number was comparatively insignificant.

From the sort of criticism that the action of Government was so often subjected to, the popular conception of it would seem to attribute to it a personal character, and that, moreover, of a not very creditable type; nevertheless the Government did not make an unscrupulous use of its power; it was not aggressive in its instincts, nor did it evince a tendency to encroach on or trample upon the rights of individuals. So far from this being the case as was so frequently, by implication at least, suggested, the Government was in fact in its appearance before the Courts, whether as prosecutor or defendant, no more nor less than the legal representative of the tax-paying community, endeavouring to protect the rights of that community which had been invaded or meanaced by its opponent in the suit. Such being the case it would be natural to suppose that the support and sympathy of the public in such a contest

would be on the side of the Government, whereas the exact reverse of this was found to be the case, and notoriously the Government, instead of enjoying special advantages in the conduct of its litigation, might be said to litigate at great disadvantage. This fact was brought out clearly in the very small percentage of costs recovered in execution of its decrees.

Another important consideration in favour of the course proposed in the Bill was the increasing difficulty in regard to the maintenance of an adequate legal agency for the conduct of suits. If the Government must defend suits and carry on litigation, in every Civil Court in the country, it was evident that an expenditure for the maintenance of an adequate staff of Government Pleaders must be incurred which would be wholly unreasonable with reference to the object in view, and entail a burden upon the finances of the Empire, and consequently upon the tax-payer, which the exigencies of the case would not justify.

For these reasons he hoped that the amendment of his hon'ble friend, the Mahárájá, would not be accepted.

The Hon'ble MAHÁRÁJÁ NARENDRA KRISHNA said that it was with extreme diffidence he would venture to offer a few remarks on this Bill. It aimed at consolidating into one law all the enactments passed by the legislature from time to time for regulating the trial of civil suits. If even the legislature had confined itself strictly to the mere embodiment of the provisions of the old laws into one compact form, the opportunity should not have been lost of introducing improvements urgently needed, or of adopting modifications and omissions justified by past experience. But when there was obvious departure from this circumscribed course; when it was proposed to curtail the powers of some judicial officers and to increase those of others; when important changes in Civil Procedure were suggested, surely it behoved them to consider and discuss, not only the new points brought forward, but also to recommend important improvements which might occur to them, inasmuch as such a proceeding would obviate the inevitable necessity of re-discussing the consolidated Bill soon after it passed into law. He would observe in the first place that the terms of the contract between lender and borrower should always be allowed to be settled among themselves by laws based on the sound principles of equity and political economy. The capitalist, when he was forced to go to law to enforce the fulfilment of the terms of the contract, had to encounter difficulties of various sorts, and incur certain unavoidable expenses not recoverable by law, up to the date of the realisation of his money. It would therefore be considered a grievance by the capitalist if the rate of interest

contracted for was cut down after the decree at the discretion of the Court; a proceeding which directly tended to over-ride the substantive law on the subject as provided in section 2 of Act XXVIII of 1855. The kind object of the legislature—to protect the helpless borrower—might be defeated by the lender exacting commission and other charges before granting the loan, knowing that the law would only sanction the legal rate of interest. He would therefore recommend that the substantive law in respect of the rate of interest be not interfered with by the present Bill. The Bill threw greater obstacles in the execution of decrees than formerly existed, as by section 230 the decree-holder must apply for its execution on or before three years from the date of a decree; and if in the first execution he failed to realise any benefit therefrom, he would not be allowed a second execution, unless he proved to the satisfaction of the Court that he had exerted himself to give effect to it. This would in effect facilitate the evasion of the payment of a just debt, and would shield a fraudulent debtor. If the decree was kept alive by due measures, the time for its execution should not be barred until after the expiration of twelve years.

His Excellency THE PRESIDENT said that he was unwilling to disturb or interrupt the Hon'ble Member, and had therefore not done so before, as he was under the impression that his hon'ble friend intended to move another amendment; but he would beg to remind him that the Council had now before them the amendment proposed by Mahárájá Jotíndra Mohan Tagore.

The Hon'ble MAHÁRÁJÁ NARENDRA KRISHNA said that he had been making remarks on the general contents of the Bill. However as His Excellency had stated that it was the amendment only which was at present before the Council for consideration, he begged to state that he gave the amendment his unqualified support, as he failed to see that any evidence had been brought forward to enable the Council to form an opinion that the suits in question should not be tried by subordinate judges. It was a matter of regret that the country would very soon be deprived of the valuable services of the Hon'ble Sir Arthur Hobhouse; the laws passed which he had the charge of had been generally received by the public with satisfaction. With high legal attainments he combined an earnest regard for the welfare of the sons of the soil, and his approaching departure therefore would be felt by them as a great loss.

The Hon'ble MR. HOPE said that at this late hour he would only say a few words on the amendment which had been proposed. He perfectly agreed with his hon'ble friend Mr. Cockerell in the view he took, that in placing the ques-

tion before the Council as if it were chiefly one of competency or incompetency of Munsifs or Native Judges generally, the hon'ble mover of the amendment rather placed it on a false issue. When on a former occasion certain remarks were made tending to suggest doubt as to the competency of the Munsifs, he himself spoke up in defence of them as far as regarded his own Presidency; and he should be ready to do the same on any future occasion. But that was not a matter with which they had any concern at present.

His hon'ble friend the Mahárájá, in commencing to justify the amendment, had spoken of the law as it existed in Bengal as if he were under the impression that the same law prevailed all over India; and it would appear that he was under the same sort of misapprehension as he had told the Council he was under in regard to the previous amendment which he had on the notice paper. But the second clause of this section might have reminded his hon'ble friend of his error. For instance, he might mention that the law in the Bombay Presidency was, and had been for a long series of years, that all Subordinate Judges were excluded from the trial of Government suits—and not only was that the case, but provisions to that effect which were inserted in the Bombay Revenue Jurisdiction Bill had been passed by the public, and by high official authority, without a single word of comment. His hon'ble friend apprehended that if the trial of these cases should be confined to too narrow limits, the public would hesitate to submit their own private concerns to the determination of the Subordinate Judges, and that it would be a standing blot against them. Now it was well known that none of these consequences had ensued in the Presidency of Bombay, where this restriction was in force; on the contrary, we were frequently told that nothing could be higher than the position the Native judges occupied amongst the people, notwithstanding they were under the disability which was now objected to.

With reference to the remarks which his hon'ble friend also made, that we should not have special tribunals for the trial of public suits, Mr. Hope might point out that Munsifs' Courts might, as it was, be called special tribunals, for they were subject to a money-limit as to jurisdiction; and it appeared to him that there was no reason why they should be allowed to try cases against Government without limit of any kind when they were subjected to a prohibitive limit in another direction.

Moreover, the section of the Code which was under consideration was of a purely permissive nature. It did not prohibit the subordinate Courts from

trying cases of the nature to which it referred. But it provided that when a case of this description came before such a Court, a certain time should be allowed during which the Government, if it thought necessary, might come forward and make any objection it might have to the case being so tried, and the decision on such objection would rest with the superior judicial tribunals. With reference to the allusion made to section 25, as giving the Government all the power it could require in this respect, he would state that, so far as his experience went, he believed it would be very much more difficult to bring the provisions of section 25 to bear on a case of this kind than to work section 417. Section 25 was intended to be applied as an exceptional and special remedy; and it would not be considered by the District Courts as a sufficient reason for removing a suit from a Subordinate Court, to state that it was a suit of importance. In such a case the superior Court would hold that the Subordinate Court was empowered to try such cases; and as no special reason for the application could be given, it would decline to remove the suit from the lower Court. He was speaking in this matter from experience, as it had been his fate more than once to apply to a superior Court to have a Government suit withdrawn from a subordinate tribunal and to meet with a refusal. Even if the provision on this subject in Bill No. IV had been passed without alteration, it would have been nothing more than re-enacting the general law of Bombay, which had existed for a long time without any ill effects having been felt. But in the way the provision had now been put, it was merely a provision by which suits of great importance, or in respect to which strong local feeling existed, could be withdrawn from the cognizance of the Subordinate Courts; and not only was the power of withdrawal as now provided less derogatory to the dignity of the presiding officer of the subordinate Court, but it would effect an immense saving in the matter of time and expense to the parties; because, if the case was a large and important one, it was not to be supposed that the Government would accept the verdict of the lowest Court, unless it were clearly shown that they were wrong: they would carry the case upwards even to the High Court.

The Hon'ble SIR JOHN STRACHEY said, if the amendment had been brought forward with an object the very opposite of that with which the amendment of the Hon'ble Member was made, and it had been proposed to take away altogether from the subordinate Courts the power of hearing suits against the Secretary of State in Council and the officers of the Government for acts done in their official capacity, he for his part should have given it his support. Amongst civilised nations, such as those which existed in some of the countries of Europe, the best safeguard against arbitrary and illegal acts

on the part of the officers of Government was to give the Courts of law authority to decide between the persons who considered themselves aggrieved and the officers of Government. That was true where the Government was the servant and not the master of the people, and where both the people and the Government had perfect confidence in the Courts. But it seemed to him that that was by no means true in a country like India. He believed that through nearly the whole of India the people were quite incapable of understanding the idea that the proper way of giving to a man the means of redress for injury received at the hands of the Government, was to give him the power to bring a suit in a petty Civil Court. SIR JOHN STRACHEY believed that if the man thought at all, which he certainly did not do on such a subject, the only light in which he could look on such a law was that it was another illustration of the strange fancies that his English Governors took into their heads.

He believed the law in regard to this matter to be wrong in principle. He quite admitted that it had done little or no harm in practice. The hon'ble member said that these powers had not been abused. SIR JOHN STRACHEY had no doubt that that was perfectly true. But he thought it would be more correct to say that these powers had been little used, and consequently they had done no harm. Still he thought them wrong in principle, because he believed that the first object essential in this country was a strong executive authority. Giving power to petty Civil Courts to call in question acts of the executive authority gave as a matter of fact the people no means whatever of redress against injuries inflicted upon them. But to give these powers to subordinate Courts had a distinct tendency to weaken that authority which it ought always to be our object to strengthen. This particular little section to which the hon'ble member objected, in SIR JOHN STRACHEY'S opinion, did not go half far enough. Still it was better than nothing, and he accepted it with a certain amount of thankfulness.

The Hon'ble SIR ALEXANDER ARBUTHNOT intended to vote in favour of the amendment. He regarded this question, as his hon'ble friend Sir John Strachey regarded it, mainly from a political point of view. But the conclusions at which he arrived from a consideration of the question were, he regretted to say, essentially different from the conclusions at which his hon'ble colleague had arrived. It seemed to be admitted on all hands that no serious practical inconvenience of any sort had resulted from the state of the law as it now stood in the Statute-book. Had the section proposed by the Select Committee been embodied in the existing law; had it been in operation ever since the

Code of Civil Procedure had been passed in 1859; had it been merely a re-enactment of a provision already in the Code, he should not have been disposed to advocate its removal. But he thought that the case was essentially different when it was suggested to remove from a body of useful public servants powers and jurisdiction which they had long exercised without apparently any perceptible disadvantage to the State. And when we had before us the evidence of numerous eminent judicial officers—and he thought he might add the evidence and opinion of numerous members of the official class not belonging to the judicial establishments of the country—that the efficiency of the subordinate Courts during the last twenty years had vastly and remarkably increased, he thought that, for the sake of what his hon'ble colleague regarded as a principle, which he himself regarded as an idea, but about which there might be a good deal of dispute—he thought that it would not be the part of wisdom that this Council should show that mistrust which would be indicated by the passing of this section as it now stood in the Bill, towards the particular class of judicial officers against whom it was directed.

His hon'ble colleague had more than once in the course of his speech designated these Courts as petty Civil Courts. They were of course Courts of inferior jurisdiction, but they were Courts of great importance and deserving of great consideration in connection with the administration of justice. Our policy, our aim, and our desire had been for many years by every possible means in our power to raise and elevate the standard of these Courts. It was not denied that a great deal had been effected in that direction. There might be many difficulties; there probably were some inefficient Judges. But even in other ranks of the judiciary, instances of that sort were not wanting. And he deemed it to be a good and salutary principle that if you wanted to make people trustworthy, you should show them that you trusted them; and when you had indications of real and material improvement, then he thought that it was a mistake to pass any measure calculated to manifest a distrust which was not called for by the most urgent and practical reasons of State policy.

The Hon'ble SIR ARTHUR HOBHOUSE said:—"perhaps it is because I have never been in the painful position in which my hon'ble friend Mr. Hope tells the Council he has often been placed, namely, as defendant to a suit, that I have never been able to satisfy myself that this is a question of very serious importance. Even if the clause stood as it was in Bill No. IV, I do not think it is very important. And that is shown by nobody being able to show any evidence of the ill-working of the law, either in Bengal where the subordinate Courts entertain these suits without restriction, or in Bombay where they are forbidden

to entertain them at all. If the clause stood as in Bill No. IV, I confess I should not be able to maintain my ground against such an argument as we have heard from my hon'ble friend Mahárájá Jotíndra Mohan Tagore. I have shown that conviction in the most practical way by succumbing to his arguments in Committee, and voting with him on his proposal to alter Bill No. IV. But it seems to me that the rule now laid down in Bill No. V gives a convenient rule of practice. It is one which will leave all petty suits of this kind to be decided in the Munsif's Courts, and will give time to consider whether the more important suits shall be taken into the District Courts. My hon'ble friends have advanced arguments for this provision which I will not repeat. But there is one argument which seems to me worth consideration, and that is the argument which arises from the course of appeal. If a suit is decided in a Munsif's Court the appeal lies to the District Court, and the case does not reach the High Court excepting in that most unsatisfactory of all shapes, a special appeal. But if a suit is decided in the first instance in the District Court, then the appeal lies direct to the High Court, which has the whole case before it and can decide according to the merits. I believe I am right in saying that my hon'ble friend the Mahárájá Jotíndra Mohan Tagore and those with whom he acts have the greatest confidence in the High Courts, and would be glad that cases of importance should be decided on their merits by those Courts. It is true that the District Court can call up a case when it thinks fit. But it is not nearly so likely to call up a case in the ordinary course as if there was a provision for a particular class of suits that notice should be given to it upon which it should make up its mind. It seems to me that this is a provision which is likely to operate as intended, namely, that important cases should be decided, as it is desirable they should be decided, by the higher tribunals, and that unimportant cases should continue to be tried, as they are now tried, by the subordinate Courts.

His Honour the Lieutenant-Governor said he felt ashamed to take up the time of the Council at that late hour, but as his hon'ble friend Mahárájá Jotíndra Mohan Tagore had done him the honour to refer to him, he must say that he entirely agreed with his hon'ble friend in every word that he had said in support of the amendment. His Honour observed that during this discussion the whole of the arguments which had been used had been directed to the question of the Munsifs' Courts. But it was not only that class of officers who were placed under an implied ban, but the whole of the Subordinate Judges of the country were by this section to be branded as being unworthy to be trusted with the trial of suits in which Government servants were concerned. He thought it was very wrong in principle that the Government should now come forward,

on no particular grounds, and state by implication that it considered that its Native Judges were not to be trusted to try cases in which the Government were concerned, although they were perfectly competent to try cases in which other classes were concerned, and claim for itself and its officers exceptional treatment in the Courts.

No doubt the section as it had now been amended was less open to objection than it was in the previous Bill, but it was still so worded as to throw a great slur on the whole of that valuable class of officers, the Subordinate Judicial officers. For his part he thought nothing showed so clearly the good effect education had had in this country as the extraordinary improvement which had taken place of late years in the efficiency and morality of the Subordinate Judges, and our judicial establishments generally; and he thought that no more unfitting time could have been chosen than this to cast such a slur upon a most deserving class of officers. His hon'ble friend Mr. Cockerell stated that cases of abuse of authority by Munsifs in trying Government suits, and hostility on their part to the executive officer, had become so frequent as to constitute a public scandal such as he considered would justify the passing of the provision now under discussion. HIS HONOUR had called for a return from the records of the Bengal Secretary's office of the number of cases which came before the Local Government, in which there was reason to suppose that officers of this class had abused their power, and he found that only two complaints of any kind had ever come under the notice of Government. One of these cases was the case of a Munsif who, acting with the concurrence of the District Judge, ordered the arrest of a Magistrate who had neglected to obey an injunction of the Court. That, HIS HONOUR admitted, was an unfortunate case; but cases of occasional abuse of authority were not confined to Munsifs or Native officers, and in this case Government would have gained nothing by the interference of the Judge, who, though consulted, never attempted to guide the Munsif to do otherwise than he did do, and must therefore be presumed to have thought him right. The case occurred many years ago and the Munsif was punished. The other case to which he referred occurred a short time ago, in which a Munsif gave a decree against an executive officer for interfering with what he believed to be an obstruction on the public highway. The case was appealed to the District Judge, who gave his decision to the same effect as the Munsif; so that there would have been no difference if that case had gone originally to the Judge instead of to the Munsif. From the decision of the Judge the case was appealed to the High Court, who decided that the Native Judge was right and the executive officer wrong. Therefore, the only two cases which HIS HONOUR had been able to find were entirely opposed to the assumption of his hon'ble friend Mr.

Cockerell as to the present state of the law leading to judicial scandals. As far as HIS HONOUR was aware, there was no such scandal as that which had been alleged. If there was anything of the sort, the records of Government would surely show it.

The only other reason which had been given for introducing this section—at least as far as regards its application to Bengal—was, that some similar section had existed in Bombay for many years. But he submitted that if that was the law in Bombay, the proper method of legislating was to bring Bombay forward to the state of things which was in force and which had worked so successfully here, and not to push Bengal back to the condition of things which existed in Bombay.

He could not altogether agree in what had fallen from his hon'ble friend Sir John Strachey, because, although HIS HONOUR agreed with him that it was most important to maintain a strong executive administration in this country, yet there was no way in which an Executive Government could better show its strength and its consciousness that its acts were all founded on a just consideration for the rights of others, than by its willingness to submit its conduct to the criticism of the Courts, and to stand before these Courts on terms of absolute equality with the humblest suitor.

The question being put,

The Council divided—

Ayes.	Noes.
Mahárájá Jotíndra Mohan Tàgore.	Mr. Cockerell.
Mr. Colvin.	Mr. Cowie.
Mr. Bullen Smith.	Mr. Hope.
Mahárájá Narendra Krishna.	Sir E. Johnson.
Sir A. Clarke.	Sir J. Strachey.
Sir A. J. Arbuthnot.	Sir E. C. Bayley.
His Honour the Lieutenant-Governor.	Sir A Hobhouse.
His Excellency the President.	

So the motion was carried.

The Council adjourned till Thursday the 29th March 1877.

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

CALCUTTA,
The 28th March 1877.

16

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