

*Friday,  
21st March, 1890*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,  
ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS,

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

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The Council met at Government House on Friday, the 21st March, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G.,  
G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

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

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Maung Ón, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir Alexander Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward be taken into consideration.

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said :—" I beg leave to make one or two observations on the general policy which the Indian Legislature has to follow in steering clear of difficulties presented by the different religions, and the multiplicity of social and domestic customs, to be found among

the different races, communities, castes and tribes into which the Indian populations are divided. These difficulties assume a more or less practical form in the actual administration of the laws passed here, when these touch the dividing line between questions of personal and property rights on the one side and the religious and social or domestic customs and usages having the force of law on the other. Two of the measures which this Council has had to deliberate upon during the present session furnish apt illustrations of the difficulties I am alluding to, namely, the Charitable Endowments Bill (now Act VI of 1890) and the Bill now under consideration relating to guardian and ward. In both a more efficient safeguard had to be provided for a certain description of public and personal properties without unduly interfering with the religious, social and domestic institutions or susceptibilities of the people concerned. The criticisms which gathered round these Bills elicited opinions almost diametrically opposed to each other, the one representing that the measures did not go far enough, and the other expressing doubts whether they might not be said to be going too far for the necessities of the case. In the first instance, while one party expressed the desire that malversation of even religious endowments should be prevented by the Executive Government undertaking their direct management, the other strongly advised strict adherence to the policy of avoiding all connection between District-officers and such management. As regards the Bill under consideration, the questions involved are even more complicated, and consequently the criticisms are not less divergent. It was suggested by some that all guardians should be compelled to place themselves entirely under the direct executive control of the Civil Courts, and those Courts should be further empowered to interpose by taking part in the management on behalf of minors when they are members of undivided Hindu families; while others pointed out the danger of such provisions, which were further shown to be unnecessary in the presence of other less objectionable remedies provided by the existing law. And thus it required quite four years of correspondence and consideration to find a safe way, as far as it was possible, out of all these difficulties. It seems to me that in considering both these measures the Select Committees have, so far as they could, steered clear of the dangers both of over-legislation and of unnecessary interference with delicate questions of religious, social and domestic concerns of the people, the general laws relating to the points raised being considered sufficient to meet the contingencies brought to notice. If the parties concerned fail to avail themselves of the ample remedies already provided, such failure is traceable to lack of public spirit and a proper sense of duty on their part. These considerations are peculiarly apposite as regards various topics of social reform which have of late been exercising the minds of my countrymen. While the activities and agitations which are going on

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for some time past in the different parts of India are healthy signs of the awakening of the Hindu mind to a sense of responsibility on the all-important subject of social reform, the calls for special legislation now and then made deserves a mature and sober consideration on the part of those who make them. As a general proposition, it is undeniable that in India the interests of minors and women call for special protection, and the statute-book presents evidence of the attempts made from time to time to adequately safeguard those interests. If it could be shown that after actual trials the existing legal remedies are not found sufficient to prevent the authority of parents and heads of families from being flagrantly and criminally abused, it seems to me that an appeal to the Legislature for further help would be appropriate. But the fact must never be lost sight of that, while in these days the laws of a country may provide remedies against abuse of the authority in question, it is for the intelligent, influential and public-spirited citizens to see that these remedies are fully and timely resorted to, and found to be defective, before calling for amendment or blaming Government for the existence of the alleged defects; because the path of the Legislature in successfully handling these delicate matters is no smoother than that of the active social reformer in the presence of the diversity of opinions strongly held and persisted in with phenomenal tenacity by all parties to the controversy."

The Hon'ble MR. EVANS said :—“ The Hon'ble Member in charge of the Bill has so thoroughly laid before the Council on the last occasion, when presenting the Report of the Select Committee, the whole history of the main provisions of the Bill, that it is unnecessary for me to follow him upon those points. I desire only to say that, so far as this is a Bill for consolidating the existing provisions, I hope it will be useful in that it gathers them together to a great extent in one Act. As for the remainder, it has been an exceedingly arduous task for the Select Committee, as has just been pointed out, to steer clear of the great difficulties connected with this question. On the one hand, they had to provide sufficient safeguards for the persons and properties of minors, and, on the other, to avoid disturbing the habits and feelings of the Native community, and also they had to avoid giving fresh facilities for a most undesirable class of harassing litigation in which infants are used as pawns on the chess-board of litigation in order to harass adult members of the family. They also had to avoid, so far as possible, throwing upon the District Courts large and responsible duties which they have no practical machinery for performing. The task has been a difficult one, and the Select Committee have endeavoured to meet it in the most practical manner they could. What success they have achieved can only

be discovered by the working of the Act. The success of the Act very much depends upon the discretion with which it may be worked by District-officers. I hope the powers which have been given to the High Courts for assisting the District-officers in the exercise of their discretion by means of rules will prove of aid to them. If the Act is worked with discretion by District-officers, I hope it may prove successful."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—

"I was a member of the Select Committee which considered the Bill. There were two important points upon which there was considerable difference of opinion. A Committee of the Hon'ble Judges of the Calcutta High Court was of opinion that, without compelling a *de facto* guardian in every case to come to the Court for appointment or a declaration of his title, the Bill should be so framed as to make it necessary for guardians of large estates to place themselves under the supervision of the Court. It is clear from this statement that the Committee of the Hon'ble Judges thought that it was not absolutely necessary for a guardian, in the interests of a minor, to resort to the Court in all cases. By not resorting to the Court the guardian is free to act on his own responsibility, without being hampered with the obligation of making references and applications to the Court for orders regarding every small matter, and he is left in a great measure to act on his own discretion. With all deference to the opinion of the Hon'ble Judges, no legal check should, I think, be devised to harass him in the management even of a large estate under his charge. The only way in which he could be made to place himself under the control and supervision of the Court would be to compel him to submit periodical accounts. It is only in the case of dishonest guardians that such a safeguard would be necessary. Provision is made in the Bill to guard against such contingencies. Sections 36 and 37 provide that all guardians and their heirs are liable to the minor for acts done by the guardian, whether appointed and declared or not; and the Bill gives the Court power to remove a guardian for any wrongful acts. These provisions, I submit, are sufficient to protect the interests of minors whenever their guardians act in a dishonest or wrongful way. In the case of honest and conscientious guardians, any interference by the Court with their management would only tend to cripple their usefulness. These *de facto* guardians act as a rule without remuneration, and to harass them with a liability to file accounts would be to dissuade them from taking upon themselves the trust. The consequence would be that in a large

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number of cases inferior persons of doubtful honesty would be entrusted with the management of these estates, while subjecting them to increased expense. The value of the advantage which a minor's estate often derives from the supervision of a guardian, who would only undertake the trust out of regard to the ward, cannot be overrated. No paid agency could do the work of management so efficiently as he would. He would not accept the trust if he were to be troubled with Court interference; and to prevent him from undertaking the work would be to do a great injury to the minor's estate. Under the circumstances, it would have been injudicious, in my opinion, to frame the Bill in such a way as to compel a *de facto* guardian even of a large estate to place himself under the control and supervision of the Court.

"Opinions were also divided as to the expediency of making a provision in the Bill relating to the appointment of guardians in cases in which the interests of minor members of undivided Hindu families are concerned. In undivided Hindu families it is generally, or rather invariably, the next friend of the minor who becomes his guardian. It is either the mother, brother or uncle who undertakes the trust. These persons are particularly interested in the well-being of the estate for the benefit of the minor, and, as a rule, they do their duty to the satisfaction of all parties. It may certainly happen sometimes that such persons may be dishonestly inclined, and in these cases the Court, on satisfactory proof, has the power to compel them to render accounts or to remove them from the management. These remedies, I submit, ought to be sufficient to protect the interests of minors when they are in peril. To put in a stranger as a guardian of a minor in a joint Hindu family would simply be to destroy the family union and thus inflict great injury upon all members of the family. The family is so constituted that, if a foreign element be introduced into it, it will lead to the destruction of the peace, harmony and happiness of all members thereof. It was for these reasons that section 20 of the original Bill has been omitted, and I am glad it was.

"It is my firm belief that the Bill, as revised by the Select Committee, will well protect the interests of minors. There may be individual cases of loss and hardship, but on the whole the advantage, I do not hesitate to say, would far outweigh the disadvantage which may be apprehended."

The Hon'ble SYUD AMEER HOSSEIN said:—"As one of the members of the Select Committee who sat on this Bill in the year 1887 as well as in this year, I beg, with Your Excellency's permission, to say a few words.

"I congratulate the Hon'ble the Law Member on his bringing the labours of the past four years to a successful close. In my humble judgment the great merit of this Bill lies in the fact that it is of a permissive character. While it gives guardians every inducement to place themselves under the control of the Court, it does not compel them to do so.

"The saving clause contained in section 6 guarantees that in the appointment of guardians due regard will be paid to the personal laws of Hindus, Muhammadans, and other sections of the communities residing in this empire; while section 12, sub-section (2), makes provision for due observance of the customs and manners of this country on the occasion of the production of a respectable female minor before such person as may be appointed by the Court.

"The provision of section 53 will, I hope, sufficiently guard against abuses arising from vexatious suits which may be brought on behalf of minors by persons calling themselves the next friends of the said minors.

"With these remarks I beg to support the Bill."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

#### RAILWAYS BILL.

The Hon'ble MR. SCOBLE also moved that the Report of the Select Committee on the Bill to consolidate, amend and add to the law relating to Railways in India be taken into consideration. He said:—

"The first observation that I have to make regarding this Bill is that it is of general application. It extends to all railways in British India, whether belonging to the State or to Companies. A claim has been made by some of the older Guaranteed Companies to have a clause inserted that nothing in the Act should affect existing contracts between the Government and those Companies in the particulars for which such contracts expressly provide; and this claim has received the support of very high authority. But, upon careful consideration, the Select Committee decided not to introduce such a clause into the Bill. When I laid the draft before the Council in October, 1888, I stated that in framing the Bill care had been taken to maintain the provisions of those contracts so far as they are consistent with a due regard to the public interest; and in the Bill,



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as amended by the Select Committee, this condition has been scrupulously observed. Indeed, I am not sure that in our anxiety not to interfere with vested rights we have not given a more liberal interpretation to some of the provisions of these contracts than a Court of law would have done; and I think it will be found, upon a candid examination, that there is nothing in the Bill to affect injuriously the contract rights of the Companies so as to give them any reasonable ground of complaint.

"It would be improper for me to occupy the time of the Council by a minute examination of these contracts; but I may say that, in regard to four Companies, the contracts provide that they shall carry on the business of carriers of goods and passengers in accordance with the provisions of the law of India for the time being: in regard to five others the contracts contain a clause barring claims in respect of the prejudicial effect upon the undertaking or the profits thereof of any Act of the Indian Legislature of general applicability for the time being in force; and in regard to the remaining four Companies the contracts contain no special provision on the point, but provide that the Companies shall carry on the business of common carriers of goods and passengers by railway. It is clear from this enumeration that, in regard to the majority of contracts, there is no necessity for any special reservation.

"The four Companies whose contracts contain no express clause on the subject are the Great Indian Peninsula Railway Company, the Bombay, Baroda and Central India Railway Company, the Madras Railway Company, and the Great Southern of India Railway Company. Of these the last-mentioned may be left out of account, as its contract will expire in the course of the next few months; so that we are left with three Companies only in whose favour a reservation of contract rights might be operative. I will not pause to discuss the question whether or not, having contracted to carry on the business of carriers in a particular country, those Companies must not be held to have contracted to carry on that business in accordance with the law for the time being in force in that country. I prefer to call the attention of the Council to the provisions of the Bill which, it is urged, may be found to conflict with the terms or with the tenor of the contract. These provisions will be found in sections 42 to 44 of the Bill, and enact that it shall be the duty of a railway administration—

- (1) to abstain from making or giving any undue or unreasonable preference or advantage to or in favour of any particular person or Railway Administration or any particular description of traffic:

(2) to afford all due and reasonable facilities for receiving and forwarding the traffic carried by other railways so as to supply a convenient continuous line of communication and for the return of rolling-stock :

(3) to quote, and accept the apportionment of, through rates.

" These provisions introduce no novelty into railway legislation ; they have been in force in England for many years ; they are called for by the development of railway enterprise in India ; they are in accordance with the public interest ; and I can find no reason, in the silence of the contracts regarding them, for hesitating to make them directly applicable to the Companies in question. The extension of railways throughout India has brought about a state of things which was not contemplated when the contracts were made, and for which the contracts make no provision ; it would be unreasonable, as well as detrimental to the public interest, to hold that Railway Companies which, under legislative Acts, have been granted a species of monopoly for the public benefit, are exempted from subsequent legislation in regard to the restrictions under which, as circumstances change and new conditions arise, that monopoly is to be exercised.

" Passing now to the principal provisions of the Bill, the first point to which I desire to draw the attention of the Council is that the existing right of railway administrations to charge terminals is expressly recognized. In section 3 (14) terminals are defined to include charges in respect of stations, sidings, wharves, depôts, warehouses, cranes and other similar matters, and of any services rendered thereat. Section 45 allows reasonable terminals to be charged ; and section 46 points out the method in which the question of reasonableness in regard to terminals may be authoritatively decided. In these provisions we have followed the English law. Railway administrations perform, in regard to goods, a great many services which would otherwise have to be performed by the servants of the owners of the goods, and for the proper performance of these services they have provided, at considerable cost, accommodation and appliances which greatly facilitate the transaction of business. For these services railway administrations in India have from the first been allowed to charge terminals. These services are for the benefit of the public, and, not being included in the mileage rate for the mere carriage of the goods, have to be paid for separately. It was suggested to the Committee that the levy of terminals should be allowed only at stations at which goods are actually received or delivered, and that no terminals should be leviable where tranship-

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ment in the course of the journey was rendered necessary by a break of gauge; but the Committee did not accept this suggestion, preferring to leave it to the proper authority to determine what would be a reasonable terminal under such circumstances.

“ Chapter II, in regard to the inspection of railways, seems to call for no remark. In Chapter III, relating to the construction and maintenance of works, the Select Committee, acting upon a suggestion of the High Court at Calcutta, has made the exercise of the powers of railway administrations to interfere with roads, water-courses, subterranean pipes, and so forth, subject to the control of the Governor General in Council, who will, in these respects, fulfil the functions of the Board of Trade in England. The same chapter provides for the assessment of compensation for interference with private rights, and for the construction of accommodation works for the public convenience.

“ Chapter V relates to the appointment and powers of Railway Commissions, and this part of the Bill has provoked a good deal of discussion. It is admitted that such a tribunal is desirable on many grounds, but exception has been taken to its composition and to its probable costliness. The Bill proposes a Court of three Commissioners, one of whom is to be a Judge of the highest Court of Civil Jurisdiction in the province in which the Commission is held, and the other two Lay Commissioners, of whom one at least must be of experience in railway business. This would enable the Governor General in Council to constitute, in Bengal for instance, a Commission consisting of a Judge of the High Court, the Director General of Railways and the President of the Chamber of Commerce. Such a tribunal, in the opinion of the Select Committee, would command public confidence to a greater extent than a Commission composed of inferior Judicial officers or men of lower professional or commercial standing. For it is to be borne in mind that the Commission is only to be appointed when, in the opinion of the Governor General in Council, there is a *dignus vindice nodus*; its function will be rather to settle principles for the guidance of railway administrations in cases of special importance or likely to be of frequent occurrence; and its decisions will form precedents. That such a tribunal will be somewhat costly I have no doubt; but my experience leads me to anticipate that it will not be greatly more expensive, while it will be certainly less dilatory, than an arbitration; and its very costliness will have the good effect of causing it to be resorted to only when all efforts at compromise have failed. Moreover, having regard to the large amount of private capital invested in Indian railways, the Select Committee were of opinion that a tribunal likely to be less independ-

ent of Government influence than that proposed in the Bill would not give satisfaction, especially if the dispute happened to be between a Guaranteed Railway Company and a line owned by the State.

“Chapter VI, in regard to the working of railways, goes into somewhat fuller detail than is thought necessary by some of the critics of the Bill; but while it is undesirable, and indeed impossible, to legislate for all contingencies, and much must be left to be dealt with in rules made by the railway authorities themselves as occasion may require, there are some matters as to which the Legislature both in England and in India has deemed it advisable to make specific enactments. These are accordingly reproduced in the Bill. There is one new section which requires notice, and that is section 64, which provides that in every train which is to run for a distance exceeding fifty miles a third-class compartment furnished with a closet shall be reserved for females. This may seem a small concession, but the information laid before the Select Committee justifies the belief that it will meet the real difficulty. As regards male passengers, there is no case made out which countervails the objections raised against the general provision of such accommodation in third-class carriages. The statement which I made when introducing the Bill, as to the short distances which the bulk of these passengers travel, is amply borne out by a recent report of the East Indian Railway Company, from which it appears that, of a total of (roughly speaking) six millions of third-class passengers, 20 per cent. travelled less than 10 miles, 45 per cent. less than 20 miles and 72 per cent. less than 50 miles; 12 per cent. travelled between 50 and 100 miles and 16 per cent. more than 100 miles. Those who are familiar with railway travelling in India know the ample opportunities of halting which are afforded by trains which run for long distances; and for short distance passengers it can scarcely be contended that latrine accommodation in the carriages is necessary.

“Chapter VII defines the responsibility of railway administrations as carriers in accordance with the existing law: and, in regard to it, I have received a communication from the Madras Chamber of Commerce, regretting that the exemption of railway administrations from responsibility in respect to goods carried under ‘risk notes’ has not been modified by the Select Committee. The Chamber points out that ‘under existing circumstances railway administrations in India have two schedules of rates for the carriage of goods, both of which are sanctioned by the Government; namely, the full rates which impose on a railway responsibility for the non-delivery of goods, and the reduced rates which are granted on the express condition that no such responsibility is incurred.’ This

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is not quite an accurate statement. The law imposes on railway administrations the duty of taking as much care of all goods delivered to them for carriage as a man of ordinary prudence would under similar circumstances take of his own goods : but it does not impose the further duty of insuring them. Goods are therefore carried either at owner's risk or at railway risk—for the former a lower rate is charged than for the latter. The object of the Madras Chamber seems to be to require railway administrations to carry goods at their own risk at the same rate as they charge when the goods are carried at the risk of the owners—a responsibility which I should not think they would be inclined to accept. If it were imposed upon them by legislation, they would, I fear, charge railway risk rates in all cases—a result which would be unwelcome to traders, and would not apparently give them much more safety than they now enjoy, as I gather from the letter of the Chamber that the present system 'does not often result in the loss or neglect of goods entrusted to the care of railways.'

"In connection with this Chapter I may notice another proposal which has been made, that railway receipts should be given the same effect as bills of lading. This proposal has not been adopted by the Select Committee.

"In introducing the Bill I stated the objections which to my mind stood in the way of the acceptance of such a proposal. One of these was the inconvenience likely to arise in connection with the exercise by an unpaid consignor of his right of stoppage in *transitu*. A recent case which has been decided by the High Court at Bombay affords a good illustration of this difficulty. A firm at Bijapur sold to a firm in Bombay three parcels of wheat and received from the purchaser *hundis* payable at sight for the purchase-money. The railway receipts were thereupon handed to the purchaser, who promptly endorsed them for value to a third party. The *hundis* were dishonoured on presentation, and the purchasing firm became insolvent. The endorsees of the railway receipts claimed the goods and actually obtained delivery of a portion of them : the delivery of the residue was stopped on a telegram from the original vendor. The High Court held that the railway receipts were not instruments of title within the meaning of section 103 of the Indian Contract Act, and that the unpaid vendor was therefore not deprived of his right to stop the goods in transit by reason of the endorsement of the receipts to secure a specific advance. The endorsee in this case seems to have been an innocent holder ; but it is easy to see what a door would be opened to fraud under a different state of facts ; and I am not surprised that a very large majority of the members of the Railway Conference, which assembled at Simla in 1888, came to the

conclusion that it was not desirable to give the same legal effect to railway receipts as to bills of lading.

"Chapter VIII relates to accidents and contains no new provisions. In Chapter IX, which deals with offences and penalties, the Select Committee has thought it wise to bring into the body of the Act the more important breaches of the law which have hitherto been dealt with under bye-laws only. It is difficult for the public, and sometimes even for the Courts, to know what is contained in bye-laws, and whether bye-laws are *ultra vires* or not; and the Select Committee were of opinion that the fullest notice, and the completest sanction, ought to be given whenever acts or omissions are made punishable by fine or imprisonment. There is in this Chapter one section to which I desire to call particular attention. It is section 113. It is frequently found that persons get into a train either without a ticket, or with a wrong ticket, and they may do so with or without intention to defraud. In the former Act relating to railways, Act IV of 1879, there were two sections dealing with these cases. Section 31 required the innocent traveller to pay the fare of the class in which he was found travelling from the place whence the train originally started, unless he could prove that he had travelled a less distance; and the aid of the Magistrate might be invoked to compel payment of the fare. Section 32 subjected the fraudulent traveller to a fine which might extend to fifty rupees, in addition to the fare which he ought to have paid. It was represented to the Select Committee that this alternative method of dealing with cases led to vexatious prosecutions being instituted, which involved great loss of time and hardship. Returns which I have seen show cases in which people have been kept waiting for weeks before the charge was disposed of; and, though a conviction may generally be the result, it is clearly desirable, in the interest of the railways no less than of the travellers, that such delays should not occur. The Select Committee therefore resolved to deal with the unticketed or wrongly-ticketed passenger in the same manner as the Post Office deals with an unstamped or wrongly stamped letter. Assuming the want of a proper ticket to be the result of carelessness rather than of dishonesty, it is proposed to exact from passengers not duly provided with tickets an extra charge of the amount specified in sub-section (3) of section 113, and this extra charge will be recoverable summarily on application to a Magistrate if the passenger fails or refuses to pay it on demand. It is hoped that by this simple method the railways will be saved from the loss, and passengers from the annoyance, which is inevitable under the present system. It is only fair that a person who, by his carelessness in not providing himself with a proper ticket, puts not only railway servants but his fellow-passengers to the

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inconvenience of what may be serious delay in the movement of the train, should not go scot-free; and, on the other hand, it is certainly not desirable that Railway servants should be tempted to stretch the presumption of fraud against travellers who often err from mere ignorance.

“In Chapter X, section 135 of the Bill, relating to the taxation of railways by local authorities, is of considerable importance. Following the lines of Act XI of 1881, with regard to the levy of municipal taxes on Government property, it provides that a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor General in Council, by notification in the Gazette, declares it to be so liable, and in that case the railway administration must either pay the tax, or such a sum in commutation thereof as the Governor General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable. I need scarcely perhaps say that the intention is not to relieve railways altogether from municipal and local taxation, but to restrict the liability within proper limits. A railway administration seems to be considered a fair subject for every sort of demand. In Madras, for instance, the South Indian Railway Company was required, under section 53 of the District Municipalities Act, to pay a profession tax to the Municipality of Negapatam, and did so for several years. Thereupon the Tuticorin Municipality demanded a similar payment. The Company paid under protest, and upon a reference to the High Court their contention was upheld that payment to one Municipality was sufficient, as otherwise ‘the South Indian Railway Company would have to pay as many profession taxes as there are municipal towns through which their railway passes, although they exercise but one profession.’ Railways contribute so much to the prosperity of the districts which they traverse, and in this country have been so largely constructed with public funds, that their title to exemption from local cesses has already been recognized by the Legislature in Bengal. Section 8 of Bengal Act IX of 1880 provides that no railway or tramway which is the property of the Government of India, or the dividend of which is guaranteed by the Government, shall be liable to road-cess or public works cess without the previous consent of the Governor General in Council. The present Bill gives a general application to the principle thus affirmed.

“These are the salient features in the Bill, as amended by the Select Committee, to which I think it necessary to call the attention of the Council. In other respects the Bill follows the existing Act or reproduces recent English legislation.

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"If the Bill is accepted by the Council, I propose, with Your Lordship's permission, to move that it shall come into force on the 1st of May, 1890, instead of the 1st of April, which is the date fixed in the Bill as reported."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—  
 "One of the pressing reforms needed in the law relating to railways in India was to insure a more considerate treatment and better convenience of Native passengers in the lowest class of carriages. Overcrowding and want of closet accommodation, especially for women, have formed subjects of constant complaints on almost all the lines. I am glad to see that sections are now inserted and penalties prescribed on these important points in the body of the Bill. The invariable observance and effectual prevention of infringement of these rules must still depend, almost entirely, upon the degree of efficiency of inspection of the passenger traffic at all stations. No failure on the part of station authorities is more frequent than that of the performance of this part of their duty of firmly preventing overcrowding of the lowest class of carriages. It is not easy for the higher railway authorities to exercise effectual control in all matters over their subordinate establishments, which are scattered over vast areas along the lines, without some extraneous aid from Government and the public. In addition to a system of constant inspection by responsible officers, a complaint book should be made available at each station, in which any public-spirited passenger, seeing these rules infringed, may be able to note down the fact with sufficient clearness so as to facilitate further inquiry, stating the steps he took to bring the same to the notice of the station authorities concerned. It is to be hoped that with this new specific law on the subject, and with the adoption of means necessary for its due observance, we may hear less frequently of its infringement with impunity."

The Hon'ble SIR ALEXANDER WILSON said:—

"The most important part of the Bill is dealt with in the fifth Chapter, on lines generally following the law in England but adapted as far as may be to the circumstances obtaining in India.

"The provision of a tribunal competent to deal with any questions which may arise between railway administrations and the public, and between railway administrations themselves, will supply a want which has long been recognised. And the constitution of the Railway Commission provided by the Bill, consisting of a Law Commissioner, who is to be a Judge of the High Court, and of two Lay Commissioners, of whom one must be an expert in railway business and one may be a representative of the mercantile community or an



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[*Sir Alexander Wilson.*]

other person whom the Governor General in Council sees fit to appoint; will, I am sure, command the fullest confidence of the public.

“Considerable discussion has arisen as to whether the Railway Commission should be, as in England, of a permanent nature, or one specially to be convened as is now provided for in the Bill; and I am of opinion that the recommendation of the Select Committee which is embodied in the Bill is a sound one. I will not take up the time of the Council by entering into detailed reasons for coming to this conclusion. I think that on the grounds of economy alone there is strong reason for adopting the course which has been followed, admitting, which I submit is the case, that the composition of the special tribunal is such as to ensure universal confidence and respect.

“The questions which are likely to be referred to the Railway Commission will be of such a nature that a decision on any of them will be held to be a ruling, and as such will probably obviate any necessity for further reference on the same subject, and thus the expense of maintaining a permanent, separate and expensive machinery to administer the law which is proposed to be enacted, without sufficient work to fully occupy it, is saved.

“The Chapter I am referring to imposes on railway administrations the general duty of receiving, forwarding and delivering traffic without unreasonable delay, and without partiality or undue preference, and the special duty of so treating through traffic at thorough rates.

“Now, without any reflection on the administration of railways in India in the past, I trust I may be permitted to say that there has been a feeling on the part of the public that they were at least open to arbitrary treatment in some of these respects at the hands of the railway authorities, and that practically there existed no Court of Appeal or means of redress.

“The Bill provides that, if the Governor General in Council is satisfied that any person has just grounds of complaint against a railway administration for breach of any of the duties imposed by the Bill, he may refer the case to a Railway Commission for decision.

“This will afford a ready and, in my opinion, practicable means of redress for any real or imaginary grievance, and will instil a confidence in fair and just treatment which will be distinctly beneficial to the interests of trade and commerce.

[*Sir Alexander Wilson ; Mr. Crosthwaite.*] [21ST MARCH,

"A proposal has been brought forward that the Bill should incorporate a provision to give railway receipts the same effect as bills of lading. This proposition has not been adopted, and wisely so, I think, looking to the wide difference between a consignment of goods in wagons passing over, it may be, various lines of railway under different administrations and a shipment of goods on board a vessel in one port bound to another.

"I cannot see that any provision of the kind would have materially benefited the export trade, and certainly not on this side of India, and would have been a departure which did not commend itself to the railway administrations and which does not seem justified by existing legislation elsewhere.

"The other provisions of the Bill deal chiefly with matters which have been carefully discussed in the light of past experience in the working of railways, and require no comment from me. I would therefore only express my entire concurrence with the Bill in its present form."

The Hon'ble MR. CROSTHWAITE said:—

"I agree with the opinion expressed by the Hon'ble the Law Member with regard to the effect of the Bill on the rights of certain Railway Companies under their contracts, and also with regard to the constitution of the Railway Commission which may be appointed under section 26. I have carefully considered the former question, and I think that the contract rights of the Companies will not be unnecessarily interfered with or infringed by the provisions of the Bill. The provisions of Chapter V, regarding the duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality, are necessary in order to enable an extensive railway system to be carried on to the best advantage of the public and the railway administrations. Possibly in fixing a through rate the Railway Commission may direct a Company to charge a rate lower than the maximum rate which the Company is authorised by the contract to charge. But, if such a direction were given, it would be because a rate in excess of that enjoined by the Commissioners would have the effect of stopping the through traffic and of depriving the public of the free use of a continuous line of communication. A Railway Company has, I think, no right to complain if it is not permitted to charge a rate which would prevent traffic from passing over its line from another railway and so deprive the public of the benefit of a through route from one part of the country to another.

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[*Mr. Crosthwaite.*]

"As the Hon'ble the Law Member has pointed out, the Bill does not propose to regulate the traffic on railways by original and untried principles. The provisions regarding facilities for traffic, undue preference and through traffic have been in force in England since the passing of the Railway and Canal Traffic Act of 1854, and the Bill follows in this respect the law which after many years' experience was enacted by the Railway and Canal Traffic Act of 1888. We have therefore every reason to believe that this portion of the Bill will be beneficial in its operation. The interests, moreover, of the railway administrations are duly safeguarded; for it is provided by section 26 that a Railway Commission can only be appointed by the Governor General in Council, by section 27 that the Commissioners shall take cognizance of such cases only as are referred to them by the Governor General in Council, and by section 41 that the Commissioners alone shall have the power of enforcing the duties and obligations imposed by Chapter V on railway administrations.

"Then, my Lord, with regard to the constitution of the Railway Commission, I should have been glad if provision could have been made for a less costly tribunal than that contemplated by the Bill; but I think that the questions which the Commissioners will have to decide are so important, and the interests which will be affected by their decisions are so great, that the Legislature is bound to provide for the appointment of the best tribunal that can be obtained. No doubt some questions may arise which a Judge of a status inferior to that of a Judge of a Chartered High Court or of a Chief Court might decide. It is, however, unlikely that it will be necessary to resort to the Railway Commission for the decision of a simple question; and in conferring jurisdiction the Legislature should, I submit, consider, as its usual practice is, the general scope and extent of the subject-matter over which the jurisdiction is to be exercised. The powers which are to be conferred on a tribunal, the extent of the interests which may be affected by its decision and the weight which the decision should carry are the principal matters to be considered. Now, as the questions to be disposed of by the Railway Commission will be, as a general rule, difficult and important questions affecting important interests, I think the Legislature should endeavour to secure that the Court which will have to decide these questions shall be the best Court which can be procured; so that not only there may be the best chance of obtaining a sound decision, but that the decision may carry weight with the public. Therefore, I consider that the Law Commissioner should be a Judicial officer of the highest status, so that we may secure, as far as possible, that the cases referred to the Commission may be well decided, and that the judgments of the Commissioners may give satisfaction to the railway administrations

and to the public. With regard to Judges of High Courts which are not chartered, such as Judicial Commissioners, I think that, besides the reasons I have already given, there are two other objections against giving them jurisdiction. The first objection is that the Judicial Commissioner being the sole superior Criminal and Civil Judge of Appeal for a whole Province, and having also extensive administrative business to dispose of, it would be scarcely possible to appoint him to serve on a Railway Commission without appointing another Judicial Commissioner to act for him and discharge the duties of his office. The second objection is that it is unlikely that any case would come before the Railway Commissioners in which experienced counsel would not be required, and a Judicial Commissioner would probably hold his Court at a place where such counsel could not be obtained except at great expense.

“If the Bill imposes new obligations on railway administrations, it, at the same time, confers advantages upon them. For instance, powers for the construction of railways are now for the first time given to railway administrations by sections 7 and 8 of the Bill; section 10 protects the administrations from being overwhelmed with suits for compensation for injuries alleged to have been caused by the lawful exercise of those powers; section 9 of the Bill gives them power to enter on land adjoining a railway in order to repair the line or to prevent an accident happening thereto; and section 72 settles the law, which is now somewhat doubtful, as to the extent of the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to be carried. The responsibility will now be that of bailees for hire, and a railway administration will be held to undertake only that it and its servants will take as much care of the goods delivered for carriage as a man of ordinary prudence would take of his own goods under similar circumstances. Moreover, section 81 limits in the same way the liability of a railway administration for goods which it forwards by inland water for a consignor in a vessel which does not come within the definition of a railway, that is to say, which does not belong to and is not hired or worked by the administration. Then the provisions of section 135, regarding the taxation of railways by local authorities, will afford a very necessary protection to railway administrations, by preventing the imposition of taxes which they should not be required to pay and by providing a method by which the amount payable by them may be assessed. Some local authorities have, it seems, imposed an excessive amount of taxation on railways, and in the case of a railway it is difficult to assess fairly many taxes which might be imposed, such, for instance, as taxes on houses, buildings or lands, or on the persons occupying houses, buildings or lands.

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[*Mr. Crosthwaite; Rôjâ Durga Charn Laha.*]

"I will not, my Lord, take up the time of the Council in enumerating the other advantages which the Bill proposes to confer on the railway administrations. I think that the Bill is a great improvement on the present law, and that it will prove beneficial both to the railway administrations and to the public."

The Hon'ble RAJÂ DURGA CHARN LAHA said :—

"In December, 1888, when the Railway Bill was referred to a Select Committee, I took occasion to urge upon the attention of this Hon'ble Council the great necessity that existed for providing retiring accommodation for third class passengers, who formed the bulk of the passenger traffic of railways, and from whom so large a revenue was derived. It was nothing but fair that some consideration should be shown to them in this respect. Judging from the deliberations of the Select Committee such as have come to my notice, it appears that the question was considered; but what has been the result? The only provision that has been made is a reserved compartment for females with a closet in each train running for a distance exceeding fifty miles. This is no doubt some concession, for which the Native community cannot but be grateful; but what about the men? If regular latrines were found impracticable, could not a similar provision be made for them, at all events experimentally? It would then have been something; at any rate, it would at least have shown that the Legislature was not unmindful of the comfort and convenience of that class of men who are not able to make their wants and feelings known to the governing authorities.

"It has often been said that the comfort and accommodation asked for are not supplied either in Europe or America; but I submit that, the conditions of life being different, no comparison could be instituted between them and this country.

"Representations have been made from various parts of the country pointing out the discomfort and inconvenience experienced by third class passengers. I would take the liberty of quoting here the opinions expressed on the subject.

"The District Magistrate of Bellary, in the Madras Presidency, thinks that—

'every carriage attached to a through train ought to contain a place for the relief of natural wants.'

"Mr. Tagore, the Judge of a certain district in the Bombay Presidency, observes:—

'The great discomfort from which the lower class passengers suffer is the want of latrine accommodation in their carriages.'

"Sir Dinshaw Manockjee Petit, also of Bombay, the late Member of this Hon'ble Council, remarks:—

"In carriages of some Railway Companies there is no latrine arrangement at all for these poor people,.....and great inconvenience is felt by passengers in that respect.'

"Mr. J. O. Porter, Magistrate of Shahjehanpur in the North-Western Provinces, says:—

"I should have liked to have seen provisions made for latrine accommodation for third class carriages. . . . No concession would be so popular as this.'

"The British Indian Association, speaking of the general complaint about the want of latrine accommodation for lower class passengers, points out that,—

'if it be found impracticable to have such accommodation in each carriage or compartment, American carriages may more largely be introduced, and they may be so arranged as to allow communication with each other. An entire carriage could be set apart for retiring purposes of male passengers.'

"The opinion of the Punjab Government is very emphatic in this matter. Speaking of the necessity of having latrine accommodation in railway carriages, the Secretary to the Government of the Punjab remarks that, in the opinion of His Honour the Lieutenant-Governor,—

'the Government should have power either to make rules in these matters, or to authoritatively require the railway administration to make rules which would be satisfactory to Government. The reason for this suggestion is that it is already known that discontent is sometimes expressed in regard to these matters, and it seems to the Lieutenant-Governor that as time goes on the natives having occasion to use the railway may wish for more security for their better accommodation in those respects. In a country like England matters of this sort may well be left to private enterprise and the pressure of public opinion. But the case is otherwise in India, where natives going on long journeys must practically of necessity use certain lines of rail, and where they would naturally look to the Government to help them, if they felt they stood in need of assistance.'

"It will be seen from the remarks quoted above that the necessity for having latrine accommodation in third class carriages is widely felt, and it will be a

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[Rájá Durga Charn Laha; Mr. Scoble.]

matter of extreme disappointment to the millions who travel by rail, but who, I repeat, have not the power to make their wants and wishes known to the Legislature, if no arrangement to remove their grievance is made.

"It has been said that the practical difficulties of meeting the want are insuperable. That there are difficulties does not admit of a question. But I submit that contrivances could be made to overcome them. I may be permitted here to mention that the Managing Committee of the Bhavnagar-Gondal-Junagurh-Porbundar Railway offered in 1888 for competition a prize for the best design and working model for latrines for third class carriages of metre-gauge railways which should get over 'the serious sanitary and hygienic objections that are believed by many to exist to extension of the present system in common use in India for upper class carriages.' The Consulting Engineer of the Government of India and the Director-General of Railways acted as Judges. In discussing the merits of the designs sent to them they considered 'that the requirements of the case would best be met by a combination of the good features of the several designs.' They gave it also as their opinion that 'if conveniences in the train are considered necessary for both males and females, we suggest that the third class carriages might be arranged on the through passage system with end doors, and one latrine carriage provided at the end of the train. The latrine carriage could be in charge of a travelling sweeper, and the excreta could be retained in the carriage to be removed and deposited at fixed stations *en route*.'

"This opinion, coming as it does from Railway Engineers of such high authority, shows that it is not impracticable to make a design by which sanitary and hygienic objections could be removed. If, then, the difficulties which were apprehended could be removed, I would venture to suggest that some provision should be made to supply the want felt by the people.

"Notwithstanding what has fallen from the Hon'ble Member in charge of the Bill, complaints on this head, I am bound to say, are loud and numerous.

"I hope the Government, in the interests of the millions for whom I speak, will reserve to themselves the power by which they could grant the concession later on, if it could not be granted at present."

The Hon'ble MR. SCOBLE said:—"As regards what has fallen from my hon'ble friend Rájá Durga Charn Laha, I may be permitted to say that the opinions to which he has referred were before the Select Committee, and were

carefully considered by them. Attention was particularly directed to the action taken by the Bhavnagar-Gondal Railway Administration, and to the report of the experts upon the designs submitted to them; but the Hon'ble Member will see, upon a little reflection, that the adoption of the suggestion of a through passage would involve the entire reconstruction of the whole of the rolling-stock of railways in India. This would mean an expenditure which the Select Committee did not consider they were justified in recommending. With regard to the difficulties which are no doubt felt by female passengers travelling in railways, the Native gentlemen who assisted in the deliberations of the Select Committee were of opinion that the provision recommended would meet the case, if not entirely, at all events sufficiently to prevent any real hardship. With regard to male passengers, who form the bulk of railway passengers, the existing arrangements, if properly availed of, would be found adequate; to do more would add greatly to the cost of travelling. If you put a latrine in every railway carriage, the result will be that the space now occupied by the passengers would be curtailed, and the fare would be proportionately increased. I put it to the Hon'ble Member, and those who take the same view as he does, whether it is not more desirable that Native passengers should suffer a little inconvenience than that they should have to pay a considerably enhanced price for travelling by railway."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that in sub-section (3), section 1 of the Bill as amended, for the word "April" the word "May" be substituted. He said :—"The object of this amendment is to give time for the proper circulation of the Act before it is brought into operation."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

#### ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend Act XXV of 1867 (*Printing-presses and Books*) be taken into consideration. He said:—

"The Council will remember that Act XXV of 1867, which this Bill is intended to amend, imposes on the printer of every book the obligation to deliver



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[*Mr. Hutchins.*]

a number of copies to a local Registrar of Books, and on the Registrar the obligation to pay for such copies at the rate at which the book is sold to the public. Last December I mentioned certain facts which seemed to show that the provision for payment had a demoralizing tendency, and entailed an unfair burden on the tax-payer, and I explained that the main object of the Bill now under consideration was to repeal that provision. In one case, which I described as apparently fraudulent, Rs. 100 had been demanded for each copy of a small pamphlet which the author called 'A New System of Book-keeping.' I have been assured by a gentleman for whose opinion I have much respect that the author had no designs on the purse of Government, but really thought his system would be worth Rs. 100 to any person who would make use of it. But this only serves to strengthen my position, for it shows that the tax-payer has to contend not only against positive fraud but against the extravagant claims of any one who may choose to treat a system as if it were patented, and may demand a royalty fixed by himself for the means of learning it—even when one does not wish to learn it.

"But there is no doubt whatever that there have been many cases of direct cheating. A fresh instance was brought to the notice of the Select Committee, in which three unsaleable copies of an old book were palmed off as a new work by merely substituting another title-page, and many more copies have been similarly got rid of by simply adding the words second, third or some subsequent edition. It has been admitted even by opponents of the Bill that it is a common practice to mark a fictitious price on books because purchasers generally beat it down. I remarked when I introduced the Bill that it was not becoming that the public Registrar should have to institute secret enquiries to prevent his being swindled, and it would certainly be most unbecoming that he should haggle about the price like an ordinary customer. Besides, he is not at all in the position of a customer, who can take the book or leave it according as the price pleases him or the contrary. He is bound to take all three copies, and to pay for them whatever the printer has been able to extract from private purchasers.

"It is perhaps natural that many writers in the Vernacular Press should vehemently oppose the abolition of payment. I have carefully considered all the fair arguments which they have brought forward, but some have chosen to insinuate that my real object after all is one which I expressly disclaimed, namely, to save the finances. But I am not aware that the Hon'ble Member in charge of the finances has taken any interest in my proposal, and I am quite sure that I have no idea myself what saving it will secure. I only know that it will be some-

thing very small, and that we shall probably give a much larger sum in aid of the new Society for the Diffusion of Useful Knowledge, if, as I hope may be the case, any definite and practicable scheme for the encouragement of indigenous literature can be elaborated. The difference will be that at present we pay extravagant prices for all sorts of rubbish which it would be better to check than to encourage, whereas in the future we shall exercise our patronage with some degree of discrimination.

“Proceeding now to notice the chief points which came before the Committee, the most important is that we have cut down the number of copies to be supplied in all cases from two to one. Looking back at the debates of 1867, when Act XXV was before this Council, I find it was stated by the Hon’ble Member in charge that the only object of requiring the second copy was that, ‘in case the first should be lost or damaged, it must be replaced.’ We do not think it necessary to maintain this additional burden on authors or publishers in order to meet such a contingency, especially as we find that it has led to a vast accumulation of what is for the most part pure trash. According to the Bill as now framed, only one copy is required at once and in all cases: two others may be demanded for the British Museum and the India Office Library, and I do not think that any author who may be honoured by such a demand will grudge giving a copy of his work to be preserved in the archives of the Empire. I am told that, in some parts of the country at all events, it is even now a rare thing for payment to be insisted on for a book required for the British Museum, and this is just the spirit I should have looked for in the better class of authors and publishers, who alone need be considered in this connection. They know that we do not exact even the first copy with any selfish object, but in order to preserve for future annalists a complete history of the development of the country as far as this finds expression in its literature. Any books that the Government of India may require for its own purposes it will continue to pay for as heretofore.

“It was suggested to the Committee by several authors whose opinions are entitled to weight that the duty of furnishing the required copies should be imposed on publishers rather than on printers. Theoretically this is the correct view, but it was explained in 1867 why the opposite practice was adopted, and the same reasons still hold good. The Hon’ble Mr. Hobhouse said that ‘he was told that in this country it was in most cases extremely difficult to find the publisher of a book: ordinarily, a person who wished to publish a book went to a printer and got a certain number of copies printed; but how he published the book and disposed of these copies was not known.’ And, again, ‘if the pub-

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lisher had to deliver the books, the Act must be a dead letter, because, in most cases, it was extremely difficult to find who the publisher was, whereas the name of the printer was very easily discoverable, as he was bound to register the press, and to put his name to every book that he printed.'

"It has been urged on the Committee that printers should be made to furnish quarterly lists of the books issued from their presses. In the absence of such returns, it was said, the Registrar would have no means of discovering when books were withheld, and it was pointed out with some force that it would no longer be to the interest of the publisher to obey the law. But we were averse to imposing any unnecessary burden on a hard-working body of men, and it seems unlikely that any book, worth preserving from any point of view, can escape the knowledge of a careful Registrar for any length of time. A printer who omits to comply with the requirements of the law will be subject to a tolerably severe penalty, and that ought to be enough. If it should prove insufficient, the printers will themselves be to blame, and there will then be no difficulty about imposing any additional liability which may seem necessary to make the law effective.

"Lastly, we were asked to amend Part IV of the Act, relating to copyright, by extending the definition of books so as to include pictures. Something of this kind is certainly desirable, but the Bill as published did not touch the question of copyright. If we had introduced a new provision of this nature, the Bill must have been republished, and could not have passed this session. Your Excellency is aware that the complete revision of the law of copyright is only waiting for the new law now engaging the attention of the Board of Trade, and that we have urged that the passing of this law should be expedited as much as possible."

The Motion was put and agreed to.

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR moved that the following amendments be made in the Bill, as amended, namely:—

(1) that in section 4, amended section 9, the words "and free of expense to the Government" be omitted;

(2) that in clause (a) of the amended section 9, after the word "copy" the words "free of expense to the Government" be inserted;

(3) that to the amended section 10 the following words be added :—

“and, if the book, is for sale to the public, shall, on the publication thereof, pay the publisher for the one or two extra copies which may have been received under section 9, clause (b), at the rate at which the book shall be *boná fide* sold to the public.”

He said :—“ In moving the adoption of the amendments, I beg to draw attention to the Statement of Objects and Reasons for this Bill, and to the explanation given by the Hon'ble Member in charge when he introduced the same. The main object is to require publishers to present copies without any payment, the reasons given being two :—(1) that the obligation to pay must be entirely rescinded as the only effectual means of preventing frauds shown to have been practised upon the public treasury under cover of the present law ; and (2) that the time has come to assimilate the Indian with the English law, which latter provides for presentation of a certain number of copies without payment. As to the necessity of accomplishing the first object, namely, the prevention of fraud, there can be no difference of opinion. Clause (a) of the amended section 9 of Act XXV of 1867 effectually secures this object, by requiring one copy to be furnished gratis, thereby enabling the Government Curator or Librarian to set his face against all worthless publications, by not calling for any more copies of them, and by confining his requisitions to works of real merit worthy to be preserved in public or official libraries. The necessity which the present law imposes upon Government to pay for these copies of works, of however worthless character, is thus obviated, and public money saved from being wasted upon literary sharpers and charlatans. But I must own that I fail to see how the time could be said to have arrived to require Indian authors or publishers to present more than one copy to Government without payment. During the twenty years since Act XXV of 1867 was passed, nothing is shown to have occurred to necessitate an alteration in that law, except the fraudulent practices brought to notice, which, as I have just pointed out, the amended section 9, clause (a), will make it simply impossible to carry on in the future. The profession of literature or authorship generally has not become more attractive or remunerative in India since 1867. It still wants very badly all the fostering care and countenance it then required at the hands of a paternal Government and a patriotic public. It would really be an irony of fate if persons publishing books deemed worthy of preservation by Government should be rendered liable to supply them gratis even after efficient means have been found to prevent fraud by others. The real misfortune would be that the degree of hardship upon

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honest authors must increase on a sliding scale according to the merit of their works and the limit of demand for copies in the market; the more meritorious suffering more and more for the preventible and now effectually prevented misconduct of a few unscrupulous persons. As regards the question of assimilation with British laws on the subject, there seems to me to be no real necessity for it now any more than there was in 1867. But, granting for a moment the desirability of it, there seems, in reality, to be no assimilation of principle in the Bill as it now stands, because we are to continue of necessity as unable as ever to secure such reciprocity from British authors in endowing Indian public collections with free copies of their works as the English law requires Indian authors to do in favour of English collections. We have our public libraries, which are quite as valuable to India—for instance the Asiatic—as the English institutions now able to claim free copies from Indian authors are to England. Again, seeing that the one-sided English law must of necessity stand as it is, I entirely fail to see how the Bill, without the amendment I propose, can be said to cut down the existing liabilities, as stated in the introductory proceedings. Indeed, even with my proposed amendment, these present liabilities of Indian authors to supply free copies will, in fact, have been increased by one copy, because, anyhow, one additional free copy will have to be delivered as a means of preventing fraud in future, as to the absolute necessity of which we all agree. For these reasons I beg to commend the amendments to the acceptance of the Council as due in bare justice to Indian authors. With reference to the remarks of the Hon'ble Member in charge regarding the tone of criticism in the Native Press against this Bill, I have only to say that I was myself greatly pained to find so few of the public writers who have expressed with sufficient earnestness their indignation against the nefarious practices of book swindlers which were brought to light in these discussions. The Council can only abstain carefully from giving cause for just complaint against the measures it sanctions; and such is the sole object of the amendments I have proposed for adoption.

The Hon'ble MR. EVANS said :—"There are valuable works, like illustrated works on botany, the printing of which is exceedingly expensive, and, if we throw upon the authors of such works the liability to present more than one copy of such works, the tax may in exceptional cases be a heavy one. The proposed amendment therefore deserves consideration, if it can be carried out without frustrating the main objects of the Bill."

The Hon'ble MR. CROSTHWAITE said :—"I do not think the amendment proposed by my hon'ble friend should be accepted. The object of the Bill is to

put a stop to the device of putting fictitious and exorbitant prices on books in order to defraud the Government. If the two copies which are to be delivered for despatch to England are to be paid for, I doubt if this fraud will be put a stop to. On the other hand, the hardship of supplying at the most three copies free of expense is infinitesimal. It merely consists in this, that the cost of three copies has to be added to the cost of printing the book. This extra cost will probably, as a rule, amount to little more than the cost of the paper, and will not materially affect the price of the book."

The Hon'ble MR. HUTCHINS said :—" Notice of these amendments was not given within the time limited by the rules, but I wish, with Your Excellency's permission, to waive this technical objection; especially as the Hon'ble Mr. Nulkar was courteous enough to mention the matter to me personally at the earliest possible opportunity. But I cannot accept the amendments, and I wish to express my regret that the Hon'ble Member did not ask me to have him placed upon the Select Committee to which the Bill was committed: had he joined it, he would have known that I myself brought this very question before the Committee, and that it was fully considered.

"The result of these amendments, if carried, would be that the Trustees of the British Museum, as well as the Secretary of State, would have to pay for every book which they select from the catalogues transmitted to them. But the British Museum is already entitled to have a copy of every book free, and, though the main object of this Bill was to abolish compulsory payment as leading to unscrupulous practices, I had in view as a subsidiary object the expediency of putting this unquestionable right on a proper footing. Four other libraries, it is true, have a similar right under the Statute, but they have never attempted to exercise it, and I think that, when once this Bill becomes law, their right may be treated as altogether obsolete. The Museum, on the other hand, has constantly pressed its right, and only consented to pay for its copies as a provisional arrangement. Let us suppose that Mr. Nulkar's amendments are carried—our Act will then say the Museum must pay. But the Statute says that it shall not have to pay. We at once introduce a legislative conflict, and a very probable consequence would be that Her Majesty would be advised to disallow our Act.

"It seems to me that this objection is fatal, and I do not wish to say much more. The Hon'ble Mr. Crosthwaite has pointed out that the risk of cheating will only be diminished and not removed if the amendments are accepted, and he has explained what an infinitesimal burden it is which we are imposing on authors and publishers. I have myself on a former occasion shown that they

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will only lose the cost price of the books, and have referred to the number of presentation copies which almost every author in this country distributes to those whom he regards as his friends and patrons. I really believe that the authors themselves, whose books are chosen (they are chosen in England and not by the local Registrar), will esteem it an honour and rejoice that their work will always be preserved at the cost and for the use of the empire at large. I do not see that the exemption of British authors from similar contributions to our Indian libraries has anything to do with the matter. The British Museum's library is the library of the empire, and not merely of England. It receives books from all the British colonies and dependencies without exception, and without any question of reciprocity. By giving up its own copy the Government of India has made a great concession, and I do not consider that we need go further. I am not sure, indeed, that we can make any further concession without the sanction of the Secretary of State."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said :—" I wish to point out that the alleged conflict between the English and Indian laws on the subject of payment is not shown to have been practically felt since 1867, and there is no reason to anticipate its action in future. As to the question of reciprocity, I remain unconvinced, and believe that the contention is a very reasonable one."

The Motion was put and negatived.

The Hon'ble MR. HUTCHINS moved that for section 6 of the Bill as amended the following be substituted, namely :—

"6. In section 18 of the said Act, there shall be substituted, for the words and figure 'pursuant to section 9' the words, letter and figure 'pursuant to clause (a) of the first paragraph of section 9', and for the words 'copies thereof in manner aforesaid' the words, letter and figure 'copy thereof pursuant to clause (a) of the first paragraph of section 9'."

He said :—" This is a mere formal amendment. Section 6, as it now stands, provides for one formal alteration in section 18 of the Act which is rendered necessary by the number of copies to be delivered, in the first instance, being reduced from three to one, but I find that another similar alteration is required further on in the same section. The new section 6, as framed in my amendment, provides for both these alterations."

The Motion was put and agreed to.

[Mr. Hutchins.]

[21ST MARCH, 1890.]

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

### PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS also moved that the Report of the Select Committee on the Bill for the Prevention of Cruelty to Animals be taken into consideration. He said :—

“Barely two months have passed since this Bill was introduced, and, as I fully explained its provisions on that occasion, I shall now confine myself to such observations as seem necessary to explain the Report of the Select Committee.

“It will be remembered that the Bill divides acts of cruelty into two categories—one comprising those which might be ignored unless committed in public, the other restricted to acts which, either from their nature or from their peculiar brutality, seem to justify intrusion under proper safeguards into private premises. I intimated that I would be prepared to consider suggestions for adding to the second category, but only one such suggestion has been received. His Honour the Lieutenant-Governor of Bengal considers that the practice called *phuká* should be definitely provided for, and in section 4 we have given effect to his recommendation. So far as I can learn, the practice is hardly known elsewhere than in or near Calcutta; it is, perhaps, even more disgusting than cruel, and the justification for placing it in the second category is not so much its special barbarity as that it is only carried on in private cowsheds.

“As regards the first category, the Council will recollect that I undertook to ask Local Governments whether we might give effect to section 3 everywhere or in all towns, and, if not, whether the condition as to publicity might not be dispensed with. The weight of authority is decidedly in favour of retaining both the condition of publicity and the discretionary power of the Local Administrations with regard to local extent. There is such variety in the circumstances and conditions of different parts of the country, and even of different towns, that it would be unsafe for us, sitting at this Board, to attempt to determine anything about the local application of the measure; and the opinions of most Local Governments seem to justify the apprehension which I expressed that they would be very chary about extending any measure relating to cruelty perpetrated in the seclusion of private houses. I trust that I carried the Council with me when I stated my own opinion last January that far more good is likely to result



[21ST MARCH, 1890.]

[Mr. Hutchins.]

from the prevention of open cruelty over a wide area than from any premature attempt to suppress private as well as public cruelty within more restricted limits.

“A slight difficulty arises in Bengal from the fact that the local Act, I of 1869, includes cruelty of all sorts, wherever committed, within those towns to which it has been or may be applied. We have, however, modified the first section of the Bill so as to enable Local Governments to extend either the whole or any of its provisions to any local area, and such extension will not necessarily involve the repeal or suspension of any local enactment. His Honour can, therefore, maintain his local Act side by side with any sections of the general measure which may seem applicable to the particular locality, and, if there should be towns where he does not at present think it safe to attempt to deal with cases of only ordinary cruelty committed in private houses, he can apply the general measure alone. Section 1, as amended, gives the local authorities absolute freedom in this respect.

“The most important alteration made by the Committee is in the definition of animal. We felt that the old definition—‘animal includes a bird’—was both inadequate and likely to be misleading. A bird is unquestionably an animal, but, if we go out of our way to affirm this, it might be inferred that we meant to exclude a fish, a frog, a turtle, and so forth. I take it that the animals which we desire to protect are those which we keep around us, or choose to take out of their natural freedom, either for the sake of their services or for some other selfish reason. We have, therefore, defined animal for the purposes of the Act as ‘any domestic or captured animal.’ It seems to me that this will meet every case which we have in view—not only the domestic or tamed quadruped and bird of the Bengal Act, but the quadrumanous monkey, that untamed but captured rat which was dipped in oil and set alight, the turtle which in Assam is sometimes carried about for days on a rope passed through holes bored in its feet, and the netted snipe which throbs out the last remains of its miserable life on the pavement of the Calcutta market. On the other hand, we avoid interference with anything worthy of the noble name of sport: hunting, fishing, pig-sticking and the like would clearly come under the Act if the word ‘animal’ were left to be interpreted in its widest signification.

“With regard to the third section three objections have been taken which require some notice. It has been said that a place to which the public have access is included in the term ‘street’ and need not be repeated, but the definition of street only includes such places if they are *open*. The repetition is necessary in order to bring in markets, sheds, pandals, shamianas, and the like, used for public resort or entertainment. The words ‘for sale’ in clause (c) have been

demurred to, but they are necessary for the protection of veterinary surgeons; nay, without them the Society for the Prevention of Cruelty to Animals, which is one of the objectors, would itself be liable if it took charge of a maltreated beast out of pure compassion. The case of a gelding seemed to present some difficulty, but we considered that it would not be 'for sale' until it had recovered from the effects of the operation. The last part of this clause was also objected to, but we resolved to retain it. Just as there would be no thieves if there were no receivers, butchers would cease to skin goats alive or to cut out the tongues of turkeys if they could not safely dispose of the carcase. We may not be able to bring home the actual cruelty to a particular individual, but there should be no such difficulty in regard to possession of the carcase for sale; and by making that punishable we may hope to prevent the cruelty itself.

"It seems important to empower a Magistrate to prevent a beast which he finds unfit for work from being put to labour, and as far as possible to provide for its proper treatment. With this object we have borrowed from the Madras City Police Act a series of clauses relating to veterinary infirmaries. Perhaps these will not be of much present use outside the presidency-towns, but I hope, as time goes on, infirmaries may be constituted in other places. Personally I should be glad to find a Local Government selecting some well-regulated pound under an intelligent superintendent and declaring it an infirmary under the Act; but such an experiment would require careful supervision.

"We have struck out the special section relating to the apprehension of offenders, because we thought this was sufficiently covered by section 57 of the Code of Criminal Procedure. If the person is known to the police or gives them his name and address, there is no reason why he should be dragged through the streets in custody. If he refuses to give his name and address, or gives one that there is reason to believe to be false, any police-officer can arrest him under the ordinary law.

"By section 10 we have authorized any Magistrate and some other responsible officers to order the destruction of any animal if they consider that its condition requires that it should be put out of its pain without delay.

"Section 11 is a new and important provision. Some discussion arose as to whether the Muhammadan and other methods of slaughtering animals might not be regarded by some Magistrates as 'unnecessarily cruel' within the meaning of section 5. To obviate the possibility of misconstruction upon this point we have now provided that—

'Nothing in the Act shall render it an offence to kill any animal in a manner required by the religion, or religious rites and usages, of any race, sect, tribe or class.'

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[*Mr. Hutchins; Mr. Halliday.*]

"The only other matter requiring notice is the slight alteration made with regard to penalties. The maximum punishment which can be inflicted under section 3 is now just half that provided by section 5, while the fine awardable under section 7 has been raised to Rs. 100, which is the limit prescribed in the corresponding section of the Bengal Act."

The Hon'ble MR. HALLIDAY said :—" I am in accord with the Hon'ble Member in charge of the Bill in the remarks he has just made regarding the provisions generally as arrived at in Select Committee. But there are one or two points on which I would ask to be permitted to say a few words. They relate to the Select Committee's determination to remove from the Bill the section which authorised police-officers to arrest without warrant persons offending against the Act. It has been represented that the very nature of the offences under the Bill seems to render it absolutely necessary that, to be effectual, action must be prompt, and the delay in obtaining a warrant will almost invariably be fatal to successful action. If I understand it rightly, the procedure adopted in the Bill will, so far as Calcutta is concerned, practically restrict the measure to cases occurring in public view, and, as has been pointed out to us by one authority, the power to apply by sworn information for a search-warrant would only meet some of the possible instances of cruelty which might be practised on private premises; indeed, the evidence of, I may say, most cases coming under the Bill would probably have disappeared before the necessary formalities had been complied with. The Hon'ble Member in charge of the Bill has said that provision relating to the apprehension of offenders was sufficiently covered by section 57 of the Code of Criminal Procedure, but it will be found that section 57 is not among the sections of that Code extended to the towns of Calcutta and Bombay by various Acts. It would seem that in the town of Madras under their Local Police Act the law reaches any case of cruelty, and the general power given under that Act enables any police-officer in whose view an offence under the Act is committed to take cognizance thereof at once, if immediate action be necessary. Thus, an important provision which is made applicable in Madras is not extended to either Bombay or Calcutta by this Bill. I was therefore of opinion that some provision should have appeared in the present legislation, not only for conferring powers on selected police-officers to take cognizance at once if immediate action be necessary, but also to have conceded to specially selected police-officers, of a rank to be determined by the Local Government, the right of entry to search; for, as it is with regard to section 57 of the Criminal Procedure Code which I have mentioned, so with regard to the provisions of that Code relating to searches, the sections relating thereto have not been extended to Calcutta. I think myself that in this presidency-town the right of entry might be conceded to specially selected police-officers, safeguarded by certain conditions

[*Mr. Holliday; Muhammad Ali Khan; Rājā Durga Charn Laha.*] [21ST MARCH,

as to the rank of the officers, and as to their recording before entering private premises the information on which they are taking action. In regard, then, to the provisions in the Bill which go beyond those of the Bengal local Acts, I and III of 1869, the powers under section 57, Criminal Procedure Code (which is the only section under which action can be taken in respect of offences punishable by the Bill), are of no use in the presidency-towns of Calcutta and Bombay. For these reasons I should have liked to have seen such provisions as I have mentioned included in this Bill; but, as I understand that it is still left open to the Local Governments to embody in their local Acts those provisions in this Bill which relate to offences and punishments that are not to be found in the local Acts, I do not now press for any enlargement in the direction I have indicated of the powers sought to be conferred by this Bill, which is to have wider application. I have no doubt the Bengal Government will not now allow its presidency-town to be in this respect in a worse position than the rest of the province to which this Act, when it comes into force, may be extended."

The Hon'ble MUHAMMAD ALI KHAN said:—

"The Bill on the table is on the lines of the existing enactments on the subject of preventing cruelty to animals in different provinces; but its application is general and it is more comprehensive. Some new provisions have been introduced in the Bill for preventing animals being killed in a most brutal manner. Of late it has been discovered that there exists a practice among the butchers of flaying animals alive for getting better prices for the skin. Within a very short time I have read in the Calcutta papers of two or three cases of such wanton cruelty coming up before the Police Court. But no adequate punishment has been provided for such revolting practices in the existing enactment. The present Bill prescribes exemplary punishment for such inhuman acts.

"It is the duty of the Legislature to take proper measures for the protection of dumb animals from unnecessary cruelty, which they suffer patiently and helplessly at the hands of unfeeling persons, and I think the provisions of this Bill are sufficient for the purpose. The Bill has undergone some necessary alterations in the Select Committee, and as it is revised, if passed into law, will, I dare say, command general approval."

The Hon'ble RAJĀ DURGA CHARN LAHA said:—"I was a member of the Select Committee which considered the Bill. It struck me at first that the inquisitorial power therein given might lead to some hardship and oppression. Since, however, the operation of the law or any portion of it is left to the discretion of the Local Governments,—which I am sure will never think of extending the provisions of the Bill anywhere beyond the precincts of presidency-towns, centres

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[*Rájá Durgá Charn Laha ; Mr. Hutchins.*]

of trade and commerce and other populous towns where such offences as are provided for in the Bill are largely committed,—I do not think any great harm will be done by the measure. Besides, unless some such provision is made, it will be utterly impossible to reach the offenders when the offences are committed in private houses, and a door will be left open to evade the law.

“It is only to be hoped that the provisions of the law will be so administered that they might not be turned into an engine of oppression in the hands of over-zealous police-officials.”

The Hon'ble MR. HUTCHINS said:—“With reference to what has been said by the Hon'ble Mr. Halliday, I would remind the Council that this is a general enactment, designed on lines which, I hope, may be found applicable to the country generally, and specially intended, as I pointed out when I introduced it, for those provinces which have no local Legislature. If we had been framing a measure for the presidency-towns or limited to other centres of intelligence, we might possibly have gone further than we have done in the direction indicated by my hon'ble friend. But this right of entry is another of those questions upon which, even in Calcutta, the views of the community are widely divergent. Many excellent people, who earnestly desire to protect the brute creation from cruelty, are extremely opposed to anything like intrusion upon private premises even under a Magistrate's warrant. The Commissioner of Police thinks we ought not to require a warrant at all. It seems to me that we have adopted a safe middle course, and that no other course would be suitable to a general enactment. We have provided in section 8 that—

‘(1) If a Magistrate of the first class, Sub-divisional Magistrate, Commissioner of Police or District Superintendent of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4, section 5 or section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorize any police-officer above the rank of a constable to enter and search the place.

‘(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as those provisions can be made applicable, apply to a search under sub-section (1).’

“If this section is extended to Calcutta, all the provisions of the Code relating to searches will necessarily be extended at the same time; and, as for section 57 of the Code, I am not aware of any reason why it should not be brought into operation in a presidency-town: at all events even now the police

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must have the same powers of arrest in regard to offences relating to cruelty to animals as they have with regard to other non-cognizable offences, and I do not see any particular reason why they should be given larger powers.

"I am not disposed to take special precautions against a mere casual act. Where there is reason to suspect anything like habitual cruelty, a warrant can be obtained without difficulty and almost in as short a time as my hon'ble friend's selected officer would take to record his information in writing. It seems to me—and, if I rightly apprehend my hon'ble friend, he does not dissent from this view—that any supplementary legislation specially required for the presidency-towns should be undertaken by the local Councils and not embodied in our general Act."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ACTS I OF 1859, VII. OF. 1880 AND V OF 1883 AMENDMENT  
BILL.

The Hon'ble SIR DAVID BARBOUR moved that the presentation of the Report of the Select Committee on the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*) be postponed. He said:—"There has not been sufficient time to receive and consider the opinions of the Local Governments, and postponement is, therefore, inevitable."

The Motion was put and agreed to.

INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to introduce a Bill to amend the Indian Tariff Act, 1882. He said:—

"The object of this Bill is to raise the rate of duty on imported spirit from Rs. 5 to Rs. 6 a gallon of the strength of London proof. Some time ago the Secretary of State for India requested the Government of India to consider the expediency of enhancing the import-duty on spirits. It was pointed

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out that in recent years the rates of duty on spirit manufactured in India had been increased in a higher proportion than the duty on imported spirit: while the duty on the latter had been raised from Rs. 4 a gallon, the amount at which it was fixed in 1875, to only Rs. 5 a gallon, with a proportionate reduction for strength below London proof, the enhancement of the rates of duty on country spirits had been in many places very considerable. It was said that 'in order to restore the ratio that used to exist between the duty on imported spirit and the duty on Indian spirits, the rate of duty would have to be increased considerably.' It was also urged 'that an enhancement of the duties on imported spirits would be an important step towards increasing the price of, and the revenue from, strong drink, and also towards restricting the consumption. It would also, moreover, pave the way for further increases of the still-head duties in towns and populous tracts.' The Government of India consulted the Local Governments and Administrations on the question. With the exception of Assam and the North-Western Provinces and Oudh, the authorities consulted have been generally in favour of an increase. Both the Chief Commissioner of Assam and the Lieutenant-Governor of the North-Western Provinces consider that there is no such competition between imported and country spirit as to call for an increase in the import-duty. But in Assam the circumstances of the country have not as yet permitted the imposition of rates of duty on country spirit levied according to quantity and strength; while in the North-Western Provinces and Oudh the rate of duty is exceptionally low, though the Local Government is now considering the propriety of raising the rate. These facts sufficiently account for the opinions that have been received from Assam and the North-Western Provinces. All other Governments are in favour of an increase. The following is an extract from the report of the Madras Board of Revenue, which is fully endorsed by the Government of Madras:—

'The incidence of duty on country spirit, that is, the excise-duty *plus* the vend rents, in almost every large town in the presidency and in many rural tracts, is already greater than the present tariff rate, Rs. 3-8 at 30° under proof; and it will be practically impossible before long to raise the rate of excise-duty any higher. . . . In the interests, therefore, of the local distilling trade, in the hope of keeping cheap and inferior European spirits out of the country, and in the interests of temperance, in order that there may be scope for raising the excise-duty and thereby decreasing consumption, the Board recommend an increase in the tariff rate of duty.'

"The Government of Bengal states that low class European spirit competes considerably with country liquor, and recommends an increase in the tariff rate chiefly with reference to that inferior class of imported spirit, on the ground that

'it is, if not absolutely deleterious, certainly less wholesome than either country spirit or country rum.' It is on the two considerations above stated that the Government of India has decided that it is desirable to increase the rate of duty as proposed in this Bill. The first of them is a consequence of the excise policy, which has been followed by the Government of India, of restricting the consumption of spirits as much as possible by the imposition of high rates of duty. This has been carried so far that any further progress in the same direction is, in some provinces, difficult or impossible without increasing the tariff rate on imported spirits. It is also obviously a sound policy to increase the rate of duty on specially injurious kinds of spirit. In regard to the amount of the increase of duty the Local Governments differed in their proposals; rates varying from Rs. 6 to Rs. 7 per gallon were suggested. The Government of India has decided that an increase to Rs. 6 will be sufficient for the present.

"An increase in the rate of duty on perfumed spirit from Rs. 7-8 to Rs. 8 follows necessarily on the increase in the rate for ordinary spirit. The rate of duty on spirit in England is 10s. 4d. a gallon of the strength of London proof. This is considerably more than the rate of Rs. 6 a gallon which it is now proposed to place on spirit imported into this country, and the classes which consume imported spirit in this country are at least as well able to pay a high rate of duty as the classes which consume the same quality of spirit in England."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also applied to His Excellency the President to suspend the Rules for the Conduct of Business. He said :—

"My object in so applying is that I may be able to move that the Bill be taken into consideration at once and passed to-day if the Council should be of opinion that it ought to be passed. This is a course which can only be justified in a case of urgency, but I submit that the present case is one of urgency. If any delay takes place, large quantities of spirit will be taken out of bond, or imported, and particular individuals will be able to make an undue profit at the cost of the public and of the public revenues. There need be no hesitation in dealing with the matter at once on the ground that persons who have made contracts for the sale of liquor at a certain price, but have not yet



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paid the duty, will suffer hardship; because in an Act passed last year, VIII of 1889, provision was made to enable the seller in such case to add the additional duty to the contract price."

His Excellency THE PRESIDENT said :—" The course which the Hon'ble Sir David Barbour asks me to adopt is one which has been taken before on similar occasions when a clear case of urgency arose. From what has fallen from the Hon'ble Member I have no hesitation in saying that a sufficient case has been made out, and I therefore suspend the Rules."

The Hon'ble SIR DAVID BARBOUR moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR then moved that the Bill be passed.

The Motion was put and agreed to.

**EXCISE ACT, 1881, AND BENGAL EXCISE ACT, 1878, AMENDMENT  
BILL.**

The Hon'ble Sir DAVID BARBOUR also moved that the Bill to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, be taken into consideration. He said :—

" I may say at once that no objection to this Bill has been raised by anybody either in respect of the principle of the Bill, which aims at the taxation of Indian-brewed beer, or in respect of the amount of duty to be imposed. Certain suggestions regarding it have been received from persons who are interested in it in their capacity as brewers. These suggestions can be satisfactorily dealt with by executive order, but in respect of one of them legislation is desirable. I refer to the proposal to allow a drawback of the duty when Indian-brewed beer is exported to foreign countries. This is obviously a reasonable suggestion, and I propose to slightly amend the Bill so as to place Indian beer on the same footing in this respect as Indian spirits."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, with the amendment already referred to, be passed. He said :—

“Although the present Bill does not materially affect the finances, it will, I think, be convenient that I should now give a brief sketch of the general financial position. The usual Financial Statement is published to-day, and full details will be found in it. When I speak of pounds it will be understood that I mean tens of rupees.

“The Accounts of the year 1888-89 have now been finally closed. They show a surplus of Rx. 37,000.

“The Budget Estimate of that year, framed in March, 1888, showed a deficit of Rx. 698,000, and it is satisfactory that the Accounts have closed with a surplus, as it shows that we are beginning to see our way out of our recent financial difficulties.

“The Estimate of the current year, as framed in March last, showed a surplus of Rx. 106,300.

“The Revised Estimate, if compiled in the same way as the Budget Estimate, would now show a surplus of Rx. 2,733,200, and the Estimate of the coming year would show a surplus of Rx. 304,900. Certain special arrangements are proposed which will affect the surplus of 1889-90 and of 1890-91, but it will be convenient to keep these arrangements out of sight until it has been explained how it happens that the Budget surplus of the current year has grown into Rx. 2,733,200, while the Estimate of the year 1890-91, if compiled on the same basis, would show a surplus of only Rx. 304,900.

“In the first place, I propose to offer a few remarks on the subject of Exchange, so as to clear that question out of the way at the beginning. I have seen it stated that the improvement in the current year is largely or mainly due to the rise in the rate of Exchange. This is not the case. The rate of Exchange taken in the Budget Estimate was 1s. 4<sup>3</sup>/<sub>8</sub>d.—one rupee. Although the rate of Exchange is now considerably higher than that rate, it was lower during a large portion of the year, and the average rate of Exchange for the whole year 1889-90 is now taken at only 1s. 4<sup>5</sup>/<sub>8</sub>d. per rupee. The rise is therefore only slightly greater than one-sixth of a penny per rupee. For present purposes it will be sufficient to put the improvement on this account at Rx. 200,000 in round numbers. In the explanation I am about to give I shall distribute this improvement of Rx. 200,000 among the several heads affected.

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“ Although the improvement in the position has not been mainly due to the rise in Exchange, the cessation of the long-continued fall in the gold value of the rupee has been a most welcome relief to the finances. From 1873 to 1890 there have only been two other years in which the actual rate of Exchange exceeded or was equal to the rate taken in the Budget, and the average yearly fall from 1873-74 to 1889-90 has been '36 of a penny per rupee or more than twice the rise in the current year.

“ Although the cessation of the hitherto continuous fall in the value of the rupee measured in gold has greatly improved the financial position for the time being, the uncertainty as to the future relations of the precious metals constitutes a very serious danger, and one which it would be worth our while to make great sacrifices to escape. The future of the Currency question appears to rest at the present time in the hands of the United States of America.

“ Coming now to the ordinary Revenue and Expenditure of the year, I may say at once that the chief improvement in the current year appears under the head of Opium. There is an increase of Rx. 286,400 in Opium Revenue; there is a decrease of Rx. 708,800 in Opium Expenditure. The total improvement under Opium is consequently Rx. 995,200. In the Budget Estimate the price of Bengal Opium was taken at Rs. 1,070 a chest. It has proved to be Rs. 1,136; this accounts for the improvement in Opium Revenue, an improvement which I regret to say is not likely to be maintained during the coming year, as the price of Bengal opium at this month's sale was only Rs. 1,040 a chest, though the market-price has since risen.

“ The decrease in Expenditure is due to a poor crop of Bengal opium. The total crop of Bengal opium is purchased by Government at a fixed price per seer. A good crop means heavy expenditure in the purchase of opium; a poor crop means a saving in expenditure. As it happens, the bad crop of the year has not done us material injury, because the reserve of opium was very high and is still sufficient. The improvement under Opium in the current year must be considered as merely temporary. In a series of years we shall no doubt get average crops, and the present selling price of opium is much below the average price of the year about to close.

“ In addition to the improvement under Opium, there has been, during the current year, a very satisfactory increase of revenue under what is known as

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the other Principal Heads of Revenue, which include Land-revenue, Salt, Excise, Stamps, Provincial Rates, Customs, Assessed Taxes, Forests, Registration, and Tributes from Native States. This increase is partly Imperial, partly Provincial, partly Local.

"The large improvement in Revenue which is shown under the Principal Heads of Civil Revenue (excluding Opium) is of, a permanent nature, or, in other words, we can safely reckon on obtaining the same increase in future years. If there is any falling-off under some heads, it will be balanced by increase under other heads. This improvement amounts to Rx. 766,500 on Imperial account, and is mainly due to an increase of Rx. 298,400 under Land-revenue, of Rx. 149,600 under Salt, of Rx. 79,100 under Excise, of Rx. 31,500 under Stamps, of Rx. 69,600 under Customs, and of Rx. 112,700 under Forests.

"The improvement under Opium and the growth of Revenue under the other Principal Heads accounts in all for an improvement of Rx. 1,761,700 in 1889-90, of which more than 40 per cent. is a permanent increase of the public revenue, the rest being temporary.

"On Special Defences there has been a reduction of expenditure amounting to Rx. 344,500, which merely represents postponement of charges which will be incurred hereafter, and under Interest not charged against Railways and Canals there has been a net improvement of Rx. 230,900. The improvement in the net Interest charge is due to the high rate of interest obtained by the Secretary of State on that portion of his cash balance which he was able to invest, to the saving from the issue of a loan of 2 crores very nearly at par last year as compared with the estimated charge for the issue of a loan of  $2\frac{1}{2}$  crores at a discount, to the rise in Exchange, and to other causes.

"There has also been a net improvement of Rx. 118,600 under Army, notwithstanding the expenditure on the Chin-Lushai Expedition, and of Rx. 73,900 in the Railway Account. Under all other heads there is a net improvement of Rx. 97,300. The total net improvement of the year is Rx. 2,626,900.

"The explanation of the large surplus in 1889-90 may then be briefly stated as follows: in the current year Opium has given a net improvement of Rx. 995,200; other Principal Heads of Revenue have given an improvement of Rx. 766,500; Special Defences show a reduction of expenditure amounting to

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Rx. 344,500; Interest gives an improvement of Rx. 230,900. All other heads give a further net improvement of Rx. 289,800. The total net improvement of the year is Rx. 2,626,900, and, adding the Budget surplus of Rx. 106,300, the surplus with which the year is expected to close is estimated at Rx. 2,733,200. Of this net improvement of Rx. 2,626,900, about Rx. 200,000 has been caused by the rise in Exchange, which has favourably affected Revenue and Expenditure under various heads. As the Accounts almost invariably show a better result than the Revised Estimate, I have little doubt that this surplus will be found to have been exceeded when the accounts of the year are finally closed.

"I can now explain very briefly why the surplus of 1890-91 is so small as compared with that of 1889-90. In the first place, we lose the temporary increase from Opium to which I have just referred; the loss on this account is actually Rx. 992,400; in the next place, we receive in 1889-90 a special contribution from Local Governments of Rx. 490,000; there is no such contribution in 1890-91; in the third place, the Budget Estimate of net Military Expenditure in 1890-91 shows an increase over the Revised Estimate of no less than Rx. 611,000. On these three accounts—Opium, Contribution from Local Governments and Military Expenditure—the financial position of 1890-91 is worse than that of 1889-90 by no less than Rx. 2,093,400. Adding to this a net falling-off under Interest of Rx. 113,400 and an increase of expenditure amounting to Rx. 133,900 under Special Defences, we get a falling-off of Rx. 2,340,700. The surplus of 1889-90 being Rx. 2,733,200, this deterioration of Rx. 2,340,700 would of itself be sufficient to cause the large surplus of 1889-90 to be replaced by a surplus of Rx. 392,500. It so happens that under all other heads there is a net deterioration of Rx. 87,600, which brings the surplus down to Rx. 304,900.

"The increased expenditure on the Army in 1890-91 is due to the purchase of Magazine rifles and ammunition for them, to the cost of 21 more batteries of 12-pr. breech-loading guns, to the purchase of machinery for making ammunition for the guns in India, and to the provision of Rx. 200,000 for the Chin-Lushai expedition and of Rx. 60,000 to complete the arrangements for prompt mobilisation of the 1st Army Corps. The total cost on the accounts I have stated is no less than Rx. 1,361,300.

"Summing up the whole case, and putting aside all matters of minor importance, it may be said that in 1889-90 we have a large surplus owing to a temporary improvement under Opium, to a general growth of revenue which will be maintained and will affect future years, to short expenditure on Special

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Defences, and in connection with the Army, to reduction in the Interest charge, to improvements in the Railway Revenue Account, and to a rise in the rate of Exchange. In 1890-91 we have only a moderate surplus, because we lose the temporary improvement under Opium, because we no longer receive the special contribution of Rx. 490,000 from Local Governments, because there are special demands in connection with the equipment of the Army, and because there is an increase in the net Interest charge, as well as an increase in the expenditure on Special Defences.

"It will be obvious from what I have just said that the estimates for next year would have shown a very considerable surplus but for the heavy and special demands that have fallen on them in connection with the Army. These special demands come to no less than Rx. 1,361,300, exclusive of a provision of Rx. 892,300 on account of Special Defences. It is reasonably certain that there will be special demands of a somewhat similar nature in 1891-92, but it is not probable that they will be so heavy as in the coming year. Nor are the finances of 1891-92 exposed to any special dangers, so far as can now be seen, other than those vicissitudes which must always attend Indian finance. On the other hand, we may look forward during 1890-91 to the normal growth of revenue. There are, therefore, strong grounds for holding that in 1891-92 we shall at least find ourselves in a position of comparative ease, with a surplus in hand, moderate in amount, but sufficient to allow of some improvement in financial conditions.

"In view of this comparatively favourable prospect the Government of India has decided to anticipate the future to some extent and to take immediate steps for the partial restoration of the Famine Grant. This can be done by measures which I shall now explain; but in the first place I propose to refer briefly to the nature of the Famine Grant and its history.

"The policy of strengthening the finances in connection with Famine was originally adopted in order to protect the country against the financial effects of Famine. It was calculated that Famine would cost, either directly in expenditure intended to relieve distress, or indirectly through loss of revenue, no less than Rx. 15,000,000 every ten years, and it was therefore decided that in ordinary years the Government should take measures for providing a surplus of Rx. 1,500,000. This surplus would be used either to reduce debt directly by buying up and cancelling public obligations, or to indirectly reduce debt by diminishing borrowing.

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"It has been sometimes assumed that the object of this policy was the provision of funds for the actual relief in time of famine of persons who were in distress, and it was argued that when the money so provided was no longer available the people could not be relieved in case of famine, and must perish. This was not the case. Whether a surplus exists or not, the Government recognises its obligations in case of famine, and the actual amount of cash in the treasury is regulated from time to time by considerations which are quite independent of the absorption or maintenance of the Famine Grant. The objects which the Famine Grant is intended to secure are purely financial. So long as it is maintained we have in ordinary years a surplus of Rx. 1,500,000, and this surplus of Rx. 1,500,000 in ordinary years will, it may reasonably be hoped, balance the deficits which must occur from time to time in a country of which the financial conditions are so uncertain.

"The Famine surplus was intended, in the first instance, to operate in the direction of reducing debt. At a subsequent period it was decided to use one-half of it for the construction of Railways and Canals which would protect the country from famine. I think this was, under the circumstances of the case, a wise and prudent measure, but it was a slight departure from the objects of the original policy. These were, as I have said, purely financial. In so far as the Protective Canals and Railways constructed from the Famine Grant returned a fair profit, or lessened the cost of relieving famine, in so far the original purpose of strengthening the finances was maintained. In so far as they failed to return this profit the original purpose was departed from. On the other hand, it was an important consideration that the construction of these Railways and Canals might have the effect of mitigating famine to the extent of preserving human life, which would otherwise have been lost.

"The Government of India expressed their willingness in past years to go further in the direction of using the Famine Grant for the construction of Protective Works than was actually done, and would have appropriated it to meet any loss that might arise on Protective Railways constructed by means of borrowed money; in 1886 the Secretary of State did actually agree that the interest charge on the Indian Midland and the Bengal-Nagpur Railways should be a charge against the Famine Grant. These Railways were held to be of importance for the protection of the country against famine, and it was only on the understanding I have stated that their construction was sanctioned.

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This matter has somewhat fallen out of sight in recent years, because, shortly after the decision of the Secretary of State was given, the financial difficulties of the Government became so great that the Famine Grant was practically abolished for the time, and there was no special reason for calling attention to the fact that a portion of it went to meet the loss on the Indian Midland and Bengal-Nagpur Railways.

"Although the Famine Grant was practically suspended for the time, the Government of India and the Secretary of State have always attached importance to its maintenance. If the Indian finances show bare equilibrium in normal years, the deficits of bad years can only be met by borrowing; such borrowing must in time lead to a large growth of debt incurred for non-productive purposes. The provision of what is really a yearly surplus of Rx. 1,500,000 is the most effective means of preventing the growth of debt of this character.

"The manner in which it is proposed to partially restore the Famine Grant at once will now be explained.

We receive this year a special contribution of Rx. 490,000 from Local Governments. This transaction is carried out by debiting the amount to the balances of Local Governments and crediting it to the Government of India. It is practically the same thing to all parties whether the transaction is carried out this month or next month. The credit is therefore postponed till next month, and the effect on the finances is to diminish our surplus of this year by Rx. 490,000 and to increase that of next year by an equal amount.

"After this change is made there will be a surplus of Rx. 2,243,200 in 1889-90 and of Rx. 794,900 in 1890-91. In both these years a certain amount of expenditure is already shown under the Grant for Famine Relief and Insurance, partly on account of the construction of Protective Canals and partly for relief of distress. Of the surplus of 1889-90, a sum of Rx. 433,500 will be utilised to raise the total Famine Grant to Rx. 600,000; of the surplus of 1890-91, a sum of Rx. 524,500 will be utilised to raise the Famine Grant of that year to a like amount. The surplus of the Revised Estimate will then stand at Rx. 1,809,700, and the surplus of the Budget Estimate of 1890-91 will be Rx. 270,400.

"The amount provided to meet the net charge on account of the Indian Midland Railway and the Bengal-Nagpur Railway is Rx. 458,100 in 1889-90, and Rx. 432,800 in 1890-91.



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"The final result then of the policy which the Government of India has decided to adopt is that in the current year we have provided in all Rx. 1,058,100 (Rx. 600,000 *plus* Rx. 458,100) on account of the Famine Grant, that in the coming year we have provided Rx. 1,032,800 (Rx. 600,000 *plus* Rx. 432,800), on the same account, and that we have nevertheless a surplus of Rx. 1,809,700 in 1889-90 and of Rx. 270,400 in 1890-91; these surpluses are available for the reduction of borrowing and will in practice be used for that purpose.

"The sums provided under the Grant for Famine Relief and Insurance *plus* the sums that go to meet the net charge on the Indian Midland and Bengal-Nagpur Railways, together with the surpluses of the current and coming years, amount to Rx. 4,171,000 in the aggregate; so that, practically, the Famine Grant has been more than restored for the years 1889-90 and 1890-91, as we have in the two years a sum of Rx. 4,171,000 available for the purposes for which the policy of the yearly grant of Rx. 1,500,000 for Famine Relief and Insurance was adopted.

"The general effect on our borrowing of the surpluses of 1889-90 and 1890-91, which amount to Rx. 2,080,100, and of the sums now set aside for Reduction of Debt, amounting to Rx. 953,000, making Rx. 3,038,100 in all, is shown by the following facts.

"The Government of India has arranged to spend in 1890-91 the sum of Rx. 3,750,000 on the construction of Railways and Canals, not chargeable against Revenue.

"Under ordinary circumstances we must have borrowed largely in the open market on this account. As our balances now stand we expect to be able to find this sum of Rx. 3,750,000 in addition to Rx. 907,000, on account of loans to be made by Government for local purposes, without raising a loan this year. This result is mainly due to the existence of the sum of Rx. 3,038,100 to which I have just referred, which enables us to avoid borrowing a like amount and in this way effects a permanent saving of about Rx. 120,000 yearly in interest. To this extent the finances of the country have been strengthened.

"A further advantage of the improvement that has occurred in the financial position is that it is unnecessary at the present time to revise the financial relations between the Imperial Government and the Provincial Governments. The present contracts can be left to run their course, and the relations between

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the Local and Imperial Governments can be settled in 1892 and included in the contracts that will then be made.

"In the Statement of last year I made the following remarks on the financial position of the Government of India:—'My deliberate conclusion is, that while there is every need for economy and for husbanding our revenue, there is no ground for despondent or pessimist views. Unless some unforeseen disaster occurs, there is every reason to hope that the lapse of two or three years will show a decided improvement in the financial position of the Government of India. It is true that the surplus which we have been able to show in the Estimates is only Rx. 106,300, but the Estimates have been framed with great moderation, and if the Indian revenues continue to exhibit their usual elasticity and no unforeseen disaster occurs, I anticipate that the Financial Statement of 1890-91 will show decided improvement.' These remarks were not universally accepted: those who had previously taken a pessimist view of Indian finance were not prepared to admit that there were signs of improvement. The progress made in the current year, however, confirms the soundness of the opinion I expressed in March last. Only twelve months have elapsed since I ventured to make that prophecy, and the signs of improvement are unmistakable.

"In 1889-90 and 1890-91 we have partially restored the grant for Famine Relief and Insurance; we have a large surplus in 1889-90, and a moderate surplus in 1890-91 after making provision for altogether special demands for the equipment of the Army. Although the coming year is unlikely to prove so prosperous from a financial point of view as 1889-90, I look forward, in the absence of unforeseen disaster, to still further improvement in 1891-92.

"But my remarks of last year regarding the signs of improvement in the finances had another effect which I did not anticipate at the time. It was assumed in some quarters that I was of opinion that the financial position was in all respects thoroughly satisfactory, and that the Government of India might at once with safety enter upon schemes which their promoters held would have the best effects on the country, but which certainly involved very heavy expenditure at the outset. Nothing was further from my intention than to convey any such impression, or to give the slightest encouragement to those who wish to mortgage the future of our finances for the sake of entering upon hazardous speculations.

"I said last year that there were signs of improvement. I say now that my forecast has been borne out by the facts of the year about to close, and that there

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are good grounds for expecting further improvement in the coming year, but I fully recognise that we have difficulties of no slight magnitude still to meet, that the finances are exposed to many dangers, and that unforeseen disaster might for a time upset our calculations. There is every need for caution and for economy, and I should greatly regret if anything I now say, or have said in the past, conveyed the impression that the Government of India is in a position to embark on a policy of adventure of any description."

The Hon'ble MR. EVANS said :—" I have to suggest to the Council to consider whether there is any particular urgency in regard to the passing of this Bill. There may be difficulty in discussing the Budget Statement if the Bill is passed now."

His Excellency THE PRESIDENT said :—" It will probably be convenient to adjourn at this stage till this day week and resume the discussion on it when the Council meets again."

The Council adjourned to Friday, the 28th March, 1890.

S. HARVEY JAMES,  
*Secretary to the Govt. of India,*  
*Legislative Department.*

FORT WILLIAM;  
*The 27th March, 1890.*

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