

*Thursday,
1st March, 1894*

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
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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 1st March, 1894.

PRESENT :

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

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

His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Westland, C.S.I.

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

The Hon'ble Dr. Rashbehary Ghose.

The Hon'ble C. C. Stevens.

The Hon'ble A. S. Lethbridge, M.D., C.S.I.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble W. Lee-Warner, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Mahārājā Partab Narayan Singh of Ajudhiā,

CODE OF CIVIL PROCEDURE AND INDIAN LIMITATION ACT,
1877, AMENDMENT BILL.

The Hon'ble DR. RASHBEHARY GHOSE moved that the Report of the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER moved that the Bill be republished ; that the proposals made by the Government of Bombay and the Chief Commissioner of the Central Provinces be referred to the other Governments for consideration, and the Lieutenant-Governor of the North-Western Provinces be invited to

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state whether those proposals or any other suggestions he thinks fit to make will remove his objections to the limited applicability of the present Bill; and that some account of the working of section 174 of the Bengal Tenancy Act be furnished to the several Governments and Administrations consulted. He said:—

“My Lord, I hope that I shall be able to explain briefly to the satisfaction of the Council the position which I have been compelled to take in regard to this Bill. Recognising fully the credit due to the Hon'ble Mover for inviting attention to the evil, I also recognize the fact that the opinions of the Local Governments are entitled to careful consideration; and if a Select Committee dismisses them without discussion, and puts upon them the strained construction ‘the Bill has been received with much favour,’ it is a duty which I owe to them as well as to this higher Court of Appeal to claim for them here the attention which they deserve. The propositions which underlie my amendment are—first, that there is a grave defect in the judicial system created by this Council in 1882; secondly, that although no practical man will aim at a counsel of perfection or be content with nothing short of the best remedy, yet there is an ample choice offered to us of adequate remedies, whilst the Bill submitted to us is considered by most of the Governments consulted to be inadequate; thirdly, that the necessity for altering another section in the same chapter of the Civil Procedure Code suggests the expediency of giving the Government of India and the Local Governments an opportunity of reconsidering this Bill by the light of the criticisms offered and with the aid of some information regarding the operation of the Bengal Tenancy Act from which this Bill professes to be copied.

“Of the gravity of the existing evil I need not say much. The Hon'ble Mover in his Statement of Objects and Reasons confessed that ‘it is a well-known fact that immovable property put up for sale in execution of a decree seldom fetches an adequate price.’ I need not add a feather weight to that grave indictment. But its gravity justifies me in claiming for the remedies proposed by the Local Governments something more than that they should be bowed out of the room by the Select Committee, merely because their adoption would go beyond the present Bill. We are told that the Bill has been received with much favour, and, when I got over my surprise at reading that prominent remark in the report of the Committee, I at first doubted whether I could add my signature to it. But I reflected that this specious argument might

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be used. The Bill is an attempt to remedy a grave defect. The Local Governments receive with much favour such an attempt. Therefore they receive the Bill with much favour. Happily, the Council can judge for itself what their opinions are on the provisions of this Bill. The Government of Bombay writes that it 'approves of the object which is sought to be attained by the proposed legislation,' but it expresses 'a doubt whether the provisions of the Bill will, unless amplified, often be effective.' It then proposes an addition of four words to section 311 of the Code suggested by Mr. Justice Fulton, an officer whose experience both in the revenue and in the judicial departments entitles his opinion to careful consideration. That suggestion is one of our proposed remedies.

"The Chief Commissioner of the Central Provinces has 'very considerable doubt' about the Bill, and he proposes 'an extension to the Civil Courts of the powers given to the Collector by section 325 of the Civil Procedure Code.' This again is a second remedy proposed, and I must interrupt my review of the opinions offered on this Bill by quoting a sentence from the report of the Commission on the Dekkhan Agriculturists' Relief Act, page 53 :—'The Commission consider that the law regarding the exemption of immovable property from attachment and sale in execution of money decrees should now be extended to agriculturists in other parts of India.' That is a third solution, and, if we should borrow from the experience of any law of local application, why should we have recourse to the Bengal Tenancy Act, about which we know nothing certain, and the provisions of which are not even mentioned by the Commission, rather than from Act XVII, 1879, of which the operations have been most carefully investigated ?

"The Government of the North-Western Provinces approves only 'of the purport of the Bill, though it will probably have but a limited application in these Provinces.' Looking at what the distinguished and experienced officer who fills the post of Lieutenant-Governor of the North-Western Provinces has written on other occasions, I should fancy that he would advocate the extension to all India of section 194, clause (9), of North-Western Provinces Act XIX, 1873, and that he would exclude certain rights in the soil from liability to be sold in execution of a decree. That would be a fourth suggestion; but we want further light as to the views of Sir Charles Crosthwaite.

"The Chief Commissioner of Burma can say no more in favour of the Bill than that 'on the whole the results of the proposed measures are likely to be

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beneficial.' From the heights of Baluchistan a refreshing breeze of praise is blown which entitles the Select Committee to rely upon the Governor General's Agent there as endorsing their report; but the air in Madras is laden with discord, and even in Bengal the Hon'ble the Judges lay their finger on a weak spot in the remedy proposed—in the great majority of cases under that Act the properties are of small value, and the amounts of compensation must be but inconsiderable.' The Judges of the Chief Court of the Punjab are with one exception silent or 'see no objections to the Bill.' I submit, then, that the remark made by the Select Committee—the Bill has been received with much favour—is true only in a highly specialised sense, and takes altogether too sanguine a view of the reports received.

"I shall be told that it is open to me to propose amendments to the Bill and that I ought to state my own opinion. I think that the Bill may be described as giving to a solvent and apathetic judgment-debtor a *locus pœnitentiæ*, and as providing no remedy for any other class of people who now suffer from the enforced sale of their properties at inadequate prices. In fact, this Bill helps the very small section of sufferers who deserve least at the hands of this Council. No doubt I might move the amendment proposed by the Government of Bombay or by Mr. Woodburn, but I submit that the case is not ripe for legislation. I should be guilty of the very charge which I bring against the Committee if I were to choose from the remedies before us without further reference to the Local Governments which at present are ignorant of the suggestions made to us. The Empire looks to the Supreme Government to take the initiative and direction in the case of amendments or additions to the great Codes of Procedure; and the case seems to me one in which further reference should be made to the Local Governments. Meanwhile I apprehend nothing but injury to the cause in passing this imperfect Bill which tinkers with our Civil Code and provides no relief to the judgment-debtor, who cannot pay off his debt, or to any one except that particular debtor, who has no claim whatever on the Legislature since he would not pay when he could. If this Bill is hurried through and the Local Governments press for legislation on the main point, the answer will be given—'Give the new remedy a fair trial and then come up again.' This stop gap will thus retard the provisions of an adequate remedy. It seems to me to be the duty of this Council, having undertaken to deal with a specific evil which it has formally admitted, to proceed with its task to the best of its ability, and not rest content with a remedy which will 'do no harm.'

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"There are, moreover, these two special reasons for delay. The Government of India has been advised by the Commission which reported to it in June, 1892, to amend the Civil Procedure Code in the very chapter tinkered up by this Bill. The consideration of that report can proceed with the reconsideration of this Bill. Meanwhile Bengal, in which Province 50,000 applications for sale of immovable property are presented annually against some 35,000 for the rest of India, has its Bengal Tenancy Act in operation to cover a large proportion of these cases. Its own Government has not, I believe, pressed for the extension of the Act, and it might reasonably object to the alterations in that Act which this Bill introduces, since in the same province you will have two remedies working side by side in the same area with some differences between them. My second reason is supplied by the paper of business before us. The Select Committee in their sanguine temperament write—'We have suggested little alteration beyond making it as clear as possible what the amount of the deposit must be.' The ink is hardly dry on the Report, when the Hon'ble Mover comes to this Council to make the point 'clearer' still. I am the more able to dwell upon this fact because my own amendment, based on the opinion of the Government Advocate of the Punjab,—to require the Courts, without prejudice to proceedings for the ultimate recovery of any balance, to certify the sum which must be deposited,—was not approved of by my colleagues. I submit that the difficulties of the Hon'ble Mover and of the Select Committee furnish further justification for my motion, which I trust is now beginning to appear less obstructive than it first seemed to the Hon'ble Mover.

"In conclusion, I have to deal with that part of my motion which asks for further information regarding the operation of the section of the Bengal Act which we are asked to adopt. The Commissioner of Fyzabad writes: 'As to the successful working of the provision in Bengal I know nothing, and the reference to such successful working in the Objects and Reasons attached to the Bill is not based on any given statistics.' I have exhausted every published report of the Bengal Government on which I could lay hands, and found nothing. I have anxiously listened to the Hon'ble Mover to see if he could tell us in what proportion of sales under the Bengal Tenancy Act this remedy of deposit is utilised, but I have gained no light. In examining the Dekkhan Acts, the Government of India have required annual and special reports before they would apply the experience gained there to the general law; and, when we bear in mind that in every province of India there are local laws which variously affect the question, I think that the case for further consideration and inquiry gains force.

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What we want to know is in how many cases the deposit is now paid in Bengal, whether it is ever paid where the value of the property sold is large, and whether there are any special features in the land-tenures or the procedure of the Courts here which would render the experience of Bengal no certain guide for the rest of India.

"My Lord, I regret that I have been compelled to occupy your time so long, but I trust that I have satisfied the Council that the evil demands a remedy which shall be worthy of this Council and satisfactory to a majority at least of the Provinces of India, and that I have only done my duty in calling attention to it."

The Hon'ble SIR ALEXANDER MILLER said :—"I hope this amendment will not be accepted. I entirely agree with one observation of the Hon'ble Mover, namely, that it is a great evil which the Bill is intended to meet, but that is an evil which is admitted, and the Bill applies to it a remedy which has been tried, and tried successfully, in more places than one. At present I need only concern myself with Bengal. The evil is this, that a man who is perfectly able to pay his debts, but who is neglectful, or who at any rate can raise the money to pay when he is properly pressed, does not think enough about it to raise the money in due time to pay off his decree, and it is not until he learns that his property has been sold for a song that he bestirs himself to find the money to redeem and save his property. It is a phase of human nature which is not peculiar to this country alone. I have seen it elsewhere very much upon the same lines, and I happen to know that, in a country which I know more about than India, the power to redeem land after it has been sold is a very valuable one, and one which saves thousands of tenants every year from being dispossessed of their farms when they have omitted to pay their debts, not because they could not raise the money, but because it did not occur to them to raise it until pressure was put upon them and their land was being sold over their heads.

"This Bill provides a very simple remedy for these cases and these cases only. What it says is that where a man can manage to pay his debts he ought to be given a second opportunity of saving his property. Now, my hon'ble friend Mr. Lee-Warner objects that the Bill does not apply to a very large number of debtors who are not in a position to pay their debts ; but it is not intended to apply to them. If, and when, the Legislature of this country is prepared to go into this large question of legislation for the purpose of enabling impecunious debtors to retain their land at the expense of their creditors, it will be

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time to consider whether such legislation ought to be allowed or not ; but this particular Bill is an absolutely uncontentious Bill which raises no question of that kind whatever, and which merely says that upon paying the whole amount due from him, *plus* a small premium as a sort of solatium to the purchaser, the man should be reinstated in his land. In fact, it makes part of the law of India that which for centuries was part of the law of the Court of Chancery in England in the case of sales under its decrees. The Dekkhan Agriculturists Act is a very different Act indeed, and, although I am prepared to admit that if passed and extended to all India it may possibly cure this evil amongst others, I think I may say without much presumption that the time is a long way off when we may expect to find that Act extended to the whole of India. I know that three years ago, just before I joined this Council, the Council as it was then constituted—none of the members of it are in India now—were unanimous against its extension one yard beyond the four districts to which it now applies, and it was only in deference to the wishes of two Local Governments and in order not to appear to act with too great precipitation that the matter was afterwards referred to a Commission, there being more or less a doubt I think even then—I wont undertake to say what the effect may be now—as to whether it was right to continue the Act in its present form even in the four districts to which it now applies. But I do not think that any one has suggested that a remedy so large and so contentious in its principle as that involved in the Dekkhan Agriculturists' Relief Act is to be extended to all India without an amount of consideration and examination which it certainly has not yet received.

“ In the meantime are these debtors, more or fewer, to lose their lands while we are waiting to see whether we can extend the larger remedy to the whole of the country or not? Even if two or three or even five years hence it should be determined to extend the larger relief to India generally or to some part of it, that would not benefit the hundreds, perhaps thousands, of men who had lost their land for less than half its value in the interval ; and I venture to think that the passing of this Act, which merely places all decrees on the same footing as to execution as that which has been found successful in respect of certain classes of decrees under the Bengal Tenancy Act, could not interfere with any extension of the Dekkhan Act which may hereafter be resolved upon, while the delay during the time that that great and controversial question is being discussed would continue for a very considerable period what is admitted to be a very grave evil.

“ I must correct one of the remarks, which I am sure was made inadvertently, by the Hon'ble Mover in which he says that the Bill is being

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again amended. The fact is that in its course through the Select Committee a certain expression—'warrant of sale'—was used, and we used it without referring to the Code of Civil Procedure. Every one understood the meaning of what was intended, but when we came to look at the Code we found that this document was not the proper one by which to determine the amount to be paid for redemption, and thereupon the learned author of the Bill gave notice of the amendment you see on the paper, merely to set right this clerical slip, but in no way altering the substance of the remedy, and this amendment does no more than bring the provision strictly into the shape which the Select Committee intended to bring it. It is founded on the Bengal Tenancy Act and is not by any means a divergence from what the Select Committee had determined on at all. I hope therefore that, whatever the fate of the Dekkhan Act may be, this little Bill, which will save hundreds, perhaps thousands, of raiyats yearly from losing their lands for small debts, will be passed without the delay which is proposed by the Hon'ble Member."

The Hon'ble DR. RASHBEHARY GHOSE said :—"I am bound to observe that the motion of the Hon'ble Mr. Lee-Warner is, to say the least of it, of a somewhat unusual character. The Hon'ble Member has charged me with having at least three minds. I must confess that the Hon'ble Mover has, in this respect, the advantage over me, for he has not chosen to disclose his mind at all. Instead of suggesting any definite amendment the Hon'ble Member has only entered a dilatory plea and proposes 'that the Bill be republished ; that the proposals made by the Government of Bombay and the Chief Commissioner of the Central Provinces be referred to the other Governments for consideration, and the Lieutenant-Governor of the North-Western Provinces be invited to state whether those proposals or any other suggestions he thinks fit to make will remove his objections to the limited applicability of the present Bill ; and that some account of the working of section 174 of the Bengal Tenancy Act be furnished to the several Governments and Administrations consulted.'

"Now, the thoughts of Hon'ble Members may possibly be widened by this highly suggestive process, but the proposal involves potentialities of delay which are positively alarming, at least to the untutored unofficial mind. It is suggested, among a good many other things, that the North-Western Provinces Government should be invited to state whether the proposals made by the Bombay and Central Provinces Governments, or any other suggestions which the Lieutenant-Governor of the North-West thinks fit to make, will remove his objections to the

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limited applicability of the present Bill. Now, suppose the Lieutenant-Governor should, in response to this suggestion, make some new proposal; some Member, if not the Hon'ble Mover himself, attracted by the novelty of the proposal, might in that case invite the Council to recommit the Bill, and consult other Local Governments on the proposed amendments formulated by the Lieutenant-Governor of the North-Western Provinces; and this process might go on for ever. It has been said that the delay which would be entailed by the acceptance of the Hon'ble Member's motion cannot possibly do much harm. But is the assertion well founded? In speaking of the Bill Sir John Edge says 'the sooner it becomes law the better.' Mr. Ferrar, the Commissioner of the Gorakhpur Division, says:—

'I think the amendment a most advisable one. It is notorious that, as the Statement of Objects and Reasons says, attached property seldom is sold at its proper value. From my own experience in hearing appeals from sales fraudulently brought about by decree-holders I can corroborate this. The amending Bill should become law as soon as possible, as every day all over the country numerous such sales are taking place and many judgment-debtors suffering great loss.'

'Last, though not least, the Calcutta High Court, in a letter dated the 29th August, 1891, addressed to the Bengal Government, extracts from which were read by His Honour the Lieutenant-Governor in Council last year, observe:—

"Whatever system may be adopted, and however carefully that system may be administered, there will occur cases in which properties are sold very much under their real value, and even on the assumption that in such instances nobody has been to blame except the judgment-debtor himself, who, therefore, suffers by reason of his own negligence, still it seems a frightful penalty to impose on a man for his neglect to pay a trifling sum that his estate should be sold for a fraction of its value and he himself reduced to ruin. Extremely hard cases of this nature have occurred under the existing law. The Judges recommend that a provision should be introduced, analogous to that contained in the Bengal Tenancy Act with regard to sales for arrears of rent, by which a debtor whose property has been sold should always be at liberty to come before the Court and pay the amount of the demand, or so much of it as remains unsatisfied, together with a penalty, or, if the whole of the demand has been satisfied, to pay simply the penalty and the amount of the purchase-money with interest, and thereupon to have the sale set aside. This the Judges would allow him to claim as of right without any inquiry into the circumstances."

"It will be noticed that the learned Judges merely assume that where properties are sold very much under their real value the judgment-debtor alone is

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to blame. We all know, however, that the judgment-debtor is not in every instance to blame, as the prescribed notices are not always duly served, although he may not be in a position to prove the fact affirmatively in a great majority of cases.

"The usefulness of the enactment on which this measure is admittedly based has also been questioned, and it has been suggested by the Hon'ble Mover that some account—by which I suppose is meant statistics—of the working of section 174 of the Bengal Tenancy Act should be furnished to the several Governments and Administrations, including, I presume, the Bengal Government, for their enlightenment. Now, we have abundant evidence furnished in the papers as to the working of section 174 of the Bengal Tenancy Act. We have the opinion of the learned Judges of the Calcutta High Court, who approve of the provisions of this Bill, and only suggest a comparatively slight modification with which I need not deal here. We have also the opinions of various District and Subordinate Judges who have been consulted by the Bengal Government, and who, I presume, are thoroughly familiar with the operation of section 174 of the Bengal Tenancy Act, and figures and statistics too have been supplied by the Judge of Krishnagar, Mr. Handley, for the delectation of those who revel in them. Mr. Badcock, District Judge of Bhagalpur, says:—

'I consider the proposed amendments in the Civil Procedure Code and Indian Limitation Act are desirable, and will tend to remedy the losses suffered by judgment-debtors owing to their property being sold at inadequate prices.'

"Mr. Seal, a Judge of very great experience and thoroughly familiar with the wants of his countrymen, in Bengal at any rate, says:—

'I approve the principle of the Bill. About two or three years ago, in my Civil Administration Report for the district of Bankura, I had suggested the propriety of legislating on the line of this Bill.'

"Mr. Pratt, District Judge of Midnapore, says:—

'There is quite a consensus of opinion of judicial officers and the local Bar that the proposed amendment is likely to be beneficial, especially to honest debtors. The provision in section 174 of the Bengal Tenancy Act has been found to work well, and it is confidently anticipated that, if the principle be extended to all sales of immovable property, the parties concerned will be benefited. The decree-holder, unless he be a fraudulent one, cannot suffer, but will often be a gainer. Many judgment-debtors will resort to this expedient rather than to the risky and often fallacious remedy provided by section 311 of the Code. Judicial officers will also be saved no small amount of time and trouble.'

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"Mr. Pratt then goes on to point out a defect in section 174, which has been discovered in its practical working and which it is now proposed to remedy. He says:—

'It will be a great boon to tenants having more than one landlord in an undivided estate to have the one month's time for deposit extended to them by the proposed law. The purchasers in eighty per cent. of such sales in this district are the landlords themselves, nobody else outside the village where the holding is situated being anxious to bid.'

"These observations, I may mention in passing, refer to the decisions on section 174 of the Bengal Act which have limited the operation of the section to cases in which the holding is sold at the instance of all the landlords and not merely of some of them, where, as is very frequently the case in this country, the estate is owned by two or more persons jointly. The construction put upon the law by the High Court may be quite correct, but it has undoubtedly robbed the section of more than half its usefulness. Mr. Handley observes:—

'I think the provision a good one. It cannot hurt the auction-purchaser, whose title is not confirmed till after a delay of sixty days. On that day either the sale is confirmed, or he gets his money back with interest, and I would extend the period of limitation to sixty days.'

"Mr. Cameron, another District Judge, also approves of the provisions of the Bill, and of the way in which section 174 of the Bengal Tenancy Act has worked.

"I think it unnecessary to trouble the Council with further quotations, and will only observe that, with the somewhat dubious exception of the Chief Commissioner for the Central Provinces, all the other Administrations have approved of the measure, though the Bombay Government proposes the addition mentioned by the Hon'ble Member, while the North-Western Provinces Administration seems to think that it would have only a limited application in those Provinces. The Hon'ble Mover, not content with relying upon these opinions, has referred us to the recommendations of the Dekkhan Commission, composed, we are told, of some of the most distinguished men in the country. The Hon'ble Member has also been good enough to tell us 'in something like a prophetic strain' that any suggestion that may be made by the Lieutenant-Governor of the North-Western Provinces if his opinion is invited would not differ materially from the proposals formulated in the Dekkhan report. The Hon'ble the Law Member has discussed these last proposals, and I can only add that the remedies which have been suggested are of a somewhat drastic character and would give rise to almost endless controversy. I

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may also be permitted to doubt whether the proposal of Mr. Justice Fulton, which has found favour with the Bombay Government, would not be classed by many persons as 'well-meant ill-doing.' The Hon'ble the Law Member has pointed out how the right of redemption is valued by debtors in a country which the Hon'ble Member knows very intimately, and I may mention that a similar privilege is allowed in some of the American States. I am not, however, aware of any system of law in which an auction-sale by a Court of Justice is liable to be set aside merely on the ground of inadequacy of price. In England the Court of Chancery used to reopen the biddings whenever before the sale was confirmed a larger price was offered for the property. The practice was condemned by successive Lord Chancellors as having a deterrent effect on intending purchasers and thus reducing the price. Few persons, it was pointed out, would care to bid when the title to the property rested upon such an uncertain basis. The evil was found to be of such magnitude that the Legislature was obliged to intervene and to sweep away this injurious practice. And here I confess I cannot congratulate the Hon'ble Member on the felicitousness of his reference to the opinions of some gentlemen living in the arid plains of 'discord laden' Madras who are opposed to the Bill under discussion. If the grounds upon which the Chief Justice of the Madras High Court and Mr. Justice Muttusami Aiyar object to the present measure are examined, Hon'ble Members will find that their criticisms would apply with far greater force to any comprehensive measure of the kind shadowed forth by the Hon'ble Mr. Lee-Warner in his speech. I need hardly point out that Mr. Justice Fulton's proposal goes far beyond the old English Chancery practice, as it would entitle the Court to set aside a sale whenever it happens to think that the price offered for the property was seriously inadequate, a question which must always be one of considerable difficulty.

"The other proposal contained in the papers is that made by the Chief Commissioner for the Central Provinces. Mr. Woodburn, however, speaks in rather uncertain accents. In the letter before us it is stated:—

'The Officiating Chief Commissioner defers to the practical experience and opinion of the Judicial Commissioner, but he has very considerable doubts as to the expediency of the proposed amendments. Judgment-debtors in the country at large are quite aware of the inadequacy of the prices fetched at auction-sales in execution of decree, and, if they can possibly meet the amount of the decree, they pay before sale is effected. Bidders at these official sales are always more or less distrustful of the completeness of the information they receive as to the encumbrances with which the property for sale may be burdened. If another uncertainty is added to those which already exist, the Officiating

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Chief Commissioner apprehends that the prices realised at sales will be still further reduced, and that the practical effect of the measure may be to benefit an occasional judgment-debtor, who has been reckless in his procrastination, at the cost of that great class of judgment-debtors with whom there is no alternative but sale of their lands.

'In Mr. Woodburn's opinion an extension to the Civil Courts of the powers given to the Collector by section 325 of the Civil Procedure Code would be preferable to the proposal made in the Bill.'

"Now, against the doubts expressed by Mr. Woodburn we have to set the opinion of the experienced Judicial Commissioner, who writes as follows:—

'The Officiating Judicial Commissioner is decidedly in favour of the provisions of the Bill as giving the judgment-debtor a chance to redeem his property and thus preventing hardship to him, especially where the property has been sold for less than its proper value. The Officiating Judicial Commissioner has seen it suggested that purchasers will not care to come forward in uncertainty as to whether they will eventually get possession of the property; but Mr. Stevens thinks that the certainty of getting at least a profit of five per cent. on the purchase-money, three-fourths of which need not be paid till fifteen days after the sale, ought to be a sufficient inducement. It is a great advantage to discourage applications under section 311 of the Code, a very large proportion of which are at present groundless.'

"I may mention in passing that the other officers who were consulted by the Chief Commissioner also express their approval of the Bill, and the Chief Commissioner's communication therefore only reflects the individual doubts, which are said to be considerable, of Mr. Woodburn himself, rather than the deliberate opinion of the Administration. Mr. Justice Fulton, however, in no way approves of the proposed extension of section 325 to the Civil Courts. The learned Judge must know that the provisions of this section were deliberately not made applicable to execution sales generally because we could not impose upon the Civil Courts the duties prescribed by section 325 without making very considerable additions to the number of our Judges of all grades, a fact of which Mr. Woodburn seems to be oblivious. It has also been urged in favour of the Hon'ble Member's plea for delay that if we pass the present Bill we shall have two dissimilar laws operating in Bengal, one contained in section 174 of the Bengal Tenancy Act, and the other in the present Bill. Now, I must confess that this argument is too subtle for me. The drafting is no doubt slightly different, but the principle is the same, as this Bill has been avowedly modelled, I need hardly remind Hon'ble Members, on the lines of section 174 of the Bengal Tenancy Act. Instead of two laws therefore in Bengal, one for tenants whose holdings have been sold and another

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for other judgment-debtors, we shall by passing this Bill remove the distinction which now obtains in this Province—a distinction for which I am unable to find any sufficient justification.

“I trust I have said enough to show that this Bill, however imperfect, would give some relief at least in a limited class of cases, and that no harm will be done if it is now passed into law, as it cannot bar the way to a more comprehensive measure in the future, such as I trust would satisfy the Hon'ble Mr. Lee-Warner. In opposing the motion now before the Council I can assure Hon'ble Members that I have not been actuated by any parental feeling towards this little measure—‘this ill-favoured thing’—merely because ‘it is mine own.’ I have thought it my duty to oppose the motion because the acceptance of it must end in the ruin of many honest debtors, the breaking up of numerous households, and with it the breaking of countless hearts.”

The Hon'ble SIR. ANTONY MACDONNELL said :—“As I am a member of the Select Committee I wish to offer a few remarks which possibly may induce the Hon'ble Mr. Lee-Warner to think that it is not desirable to press his motion. All the Local Governments approve of the object of the Bill; they, all of them, think that there is a substantial evil to be remedied, and they believe that the provisions of this Bill will go some distance towards that remedy. The Hon'ble Mr. Lee-Warner thinks that these provisions do not go sufficiently far, and he is apprehensive that, if this Bill is allowed to pass, the opportunity of the further and more far-reaching measure of reform which he desires may not present itself. In this I think my hon'ble friend is mistaken. It has been hitherto the custom for our Government to subject its Codes of Procedure to periodical revision. Hitherto the Code of Civil Procedure has been so revised at the end of ten years, and the time has now come for another revision of the Code; and I believe I shall be borne out by the Hon'ble the Law Member when I say that probably when a convenient opportunity presents itself the Civil Procedure Code will be again revised. When that revision takes place the whole question raised in this Bill will again come under the consideration of the Government and the opportunity for proposing and urging those large measures of reform which the Hon'ble Mr. Lee-Warner desires, and which I for my own part am not prepared to say are not necessary, will present itself. In the meantime this little Bill, which all the Local Governments think desirable, will be in the nature of tentative legislation, from the operation of which we shall be able to judge better than perhaps we can now of the direction in

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which a larger measure of reform is desirable. I have offered this explanation in the hope that it may induce my hon'ble friend to reconsider his motion."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am not prepared to support this motion. It is well known that I expressed my hearty approval of the principle embodied in this Bill at the time, and even before, it was introduced, and it seems to me that, when we have discovered a specific grievance and have applied a specific remedy, it is desirable that no time should be lost in putting that remedy into action, even although it may be true that there are other grievances and other remedies which may come before the Council at some future date.

"With regard to section 174 of the Bengal Tenancy Act, if the request had been made earlier, it might have been possible to obtain more information as to the exact nature of its working. The only thing I am able to present my hon'ble friend with is a passage from the report of the Board of Revenue, dated the 30th April, 1892, on the working of the Tenancy Act up to date, in which the Board say:—

'52. Section 174.—The operation of this section is favourably spoken of, and it is suggested that it should be extended to persons claiming through a judgment-debtor.'

"And then we have what the Hon'ble Dr. Rashbehary Ghose has already quoted, *viz.*, the figures given in Mr. Handley's letter, as showing the number of cases in which that section has been taken advantage of in the Nadia district. It so happens that in the papers which are before the Council that statement is not printed so as to show what period his figures refer to. I wrote therefore to Mr. Handley and learned from him that the figures in column 3 of the statement referred to the period between January, 1886, and December, 1892, except for three of his Subordinate Courts, the records of which were wanting. In those seven years there were in all 198 cases of this class, or in other words 16 per cent. of the judgment-debtors applied to obtain permission to redeem their property under section 174. We could, no doubt, with a little more trouble, and if more time were allowed, obtain further information as to the number and class of cases in which the section has been utilised in all Bengal, but I do not know that the statistics would be very useful.

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"It must be remembered that these are sales under the Tenancy Act in which the property of tenants was sold for arrears, and, the tenancies being small, the arrears and amounts are small; but the Bill we are discussing refers to ordinary sales under the Civil Court, and may apply to land or real property of different kinds, and will probably refer to much larger decrees and debts. It does not seem to me that there is any validity in the Hon'ble Member's objection that we should not have one kind of procedure in the case of the debts of tenants and another kind in the case of debts of persons against whom decrees have been taken out in the ordinary Civil Courts. It is known to the Members of Your Excellency's Executive Council that I have already made proposals for extending a similar procedure to a third class of cases, *viz.*, to sales in default of the payment of land-revenue. Under my proposal, the penalties are more numerous, more various and more severe than those in the Bill now before the Council. I am not imbued with the passion for uniformity which influences some of the Members of Your Excellency's Council, and I think it is decidedly desirable that we should have a different treatment as regards sales under the Tenancy Act, under the ordinary Civil Courts, and under the law dealing with default of revenue.

"But, though I am not now prepared to support the motion before the Council, I must explain that up to yesterday I was fully prepared to support it, and it is only the fact that yesterday morning I received the amendments now to be considered which has prevented me from joining in the motion before you and in opposing the passing of the Bill in the manner in which it has been brought before the Council by the Select Committee. I may say that we are under a considerable disadvantage in consequence of the delays which now frequently occur in the Legislative Department in laying information before us. It was on last Thursday that the Report of the Select Committee was presented to us. The first time I saw it was in the Gazette of India of Saturday, and I did not receive the official copy of the Select Committee's Report till Monday. It does not seem to me that it would have been difficult to have had that small quantity of matter printed at the Government Press and circulated to Members of Council on Thursday evening, and I am sure that my hon'ble friend the Legal Member will admit that it is a great disadvantage to Members of Your Excellency's Council that they should have to consider important questions of this kind at so short a notice. On Saturday, as I have said, I saw the Report of the Select Committee and thought that the proposed procedure was absolutely unworkable. Excellent as

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the principle of the Bill was, it would have been wrecked if the faults in it had not been pointed out to the hon'ble promoter of the Bill and amended in the form in which we now see them. The principle being accepted, the important point in the procedure was to provide that the judgment-debtor should be able to know exactly the sum which he had to pay in order to redeem his property. The mode in which the Select Committee proposed to give that information was by referring him to the warrant of sale which is a document given by the Judge to the nazir or bailiff, and of which the public has no cognisance."

The Hon'ble SIR ANTONY MACDONNELL said that, with all respect for His Honour the Lieutenant-Governor, he desired to speak to a point of order. The motion before the Council was that which the Hon'ble Mr. Lee-Warner had placed on the *agenda* paper. He begged to submit that His Honour the Lieutenant-Governor was not in order in referring to a draft section of the Bill, which was not now before the Council.

His Honour THE LIEUTENANT-GOVERNOR said that he was referring to the Bill as it left the hands of the Select Committee, the consideration of whose Report was now before the Council.

The Hon'ble SIR ALEXANDER MILLER said:—"It might answer the Hon'ble Lieutenant-Governor's purpose if I were to say at once that the error was entirely my fault. When the amendment was proposed in Select Committee we had not the Code of Civil Procedure handy to refer to. As soon as the Hon'ble Dr. Rashbehary Ghose mentioned the point, steps were taken to set it right by the notice of amendment on the paper."

His Excellency THE PRESIDENT said that the question now before Council was the Hon'ble Mr. Lee-Warner's motion.

His Honour THE LIEUTENANT-GOVERNOR said:—"My object was to explain that the Bill, as it originally passed out of the Select Committee and as it now stands before the Council, was drawn out without due consideration of the correct procedure, and that it was only when I saw these amendments that I satisfied myself that there was no reason for my opposing the further progress of the Bill. But, after what has been said by Sir Alexander Miller, I do not propose to make any further remarks on this subject."

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The Hon'ble MR. LEE-WARNER said :—" In view of the appeal and the assurance which has been addressed to me by the Hon'ble Sir Antony MacDonnell, I think it is quite unnecessary for me to enter into the matters of controversy which have been raised or to go beyond the opinions of the Local Governments which I have quoted. The position is rendered clearer by the two admissions which have been made by the Hon'ble the Law Member and the Hon'ble Dr. Rashbehary Ghose. The evil which this Bill is designed to cure is fully admitted, and Dr. Ghose has described it as one which under the present system results in the 'breaking of countless hearts.' It has nevertheless been admitted that this Bill is not intended to apply to those who cannot pay the deposit, but that it is intended to apply to the apathetic few who could have paid before their property was sold and can still raise the money ; and therefore we may still have cause to fear for the many hearts that will yet remain to be broken when this Bill becomes law. At the same time, after the various explanations which have been offered and with the assurance which the Hon'ble Sir Antony MacDonnell has given that he will see that the Government of India hereafter takes the opportunity of reviewing the various remedies suggested, and that they will consider whether there are not adequate remedies to meet this grave evil, I am content under the circumstances to withdraw the amendment which I had proposed to make."

The Motion was therefore withdrawn.

The Hon'ble DR. RASHBEHARY GHOSE moved that the following be substituted for clause (b) of section 310A of the Code of Civil Procedure, proposed by section 2 of the Bill as amended :—

" (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder."

He said :—" The object of the amendment may be explained in a very few words. As the revised Bill now stands, the judgment-debtor in order to be able to redeem his property must pay the amount specified in the warrant of execution. Shortly after the Bill had been revised by the Select Committee this section—as His Honour the Lieutenant-Governor has pointed out—was found to be unworkable. I therefore proposed, and the proposal was agreed to by the other Members of the Select Committee, that the words 'proclamation of sale' should be substituted for the words 'warrant of sale.' The amend-

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ment also supplies an obvious omission. The proclamation of sale would no doubt tell the judgment-debtor the amount he must pay as recoverable under the decree in order to save his property, but a portion of the amount due to the execution-creditor may have been paid by the judgment-debtor since the proclamation or may have been levied by the execution-creditor in one of the ordinary modes prescribed by the Code of Civil Procedure for the execution of decrees. The amendment accordingly provides that credit should be given by the execution-creditor for any such amounts which may have been received by him."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said that before the next amendment was put he desired, with His Excellency's permission, to call the attention of the Council to another slight amendment which was necessary in the last line of the last paragraph of this section, and which was one of a purely consequential nature. He wished to propose that the words "proclamation of sale" be substituted for the words "warrant of sale."

The amendment was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE moved that in the last paragraph of section 310A of the Code of Civil Procedure, proposed by section 2 of the Bill as amended, the words "and interest" be inserted after "costs" in line 3. He said that the object of the amendment was to supply an omission in the Bill. Judgment-debts as a rule carry interest, and something must therefore be due to the execution-creditor on account of interest which would not be included in the proclamation of sale. The object of the amendment was to supply this omission.

The Motion was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE then moved that the Bill, as amended, be passed.

His Honour THE LIEUTENANT-GOVERNOR said that he was heartily glad that the Bill was now being passed, and he believed that it would do much good. He only wished to refer to two points with regard to which it might have to be amended hereafter. One was the use of the words "five per centum of the purchase-money." He thought it unfortunate that the Select Committee had

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not accepted the suggestion of the Madras Government that for those words the words "one-twentieth of the purchase-money" should be substituted. The words "five per centum" would be connected in the human mind with a period of time, and it was not improbable that Munsifs and Subordinate Judges would understand it to mean five per cent. per annum up to the time the debtor paid the money. His Honour thought it well to mention this point so that attention might be drawn to it, so that it might be made clear what the correct meaning of the passage was.

"Then, too, it was unfortunate that there was not another clause inserted specifying the definite procedure by which the judgment-debtor should be able to go into Court and obtain a certified statement of the amount he had to pay. The proclamation was a paper which was hung up at the door of the munsifi and might easily be blown away or torn up. The judgment-debtor might be unable to obtain the information it contained, and there might be some subsequent expenses to be added, and the technicality of our Courts was such that if a debtor came into Court offering to pay, say, Rs. 1,121-9-6, and the Court was able to reply that this was indeed the figure named in the proclamation, but that the costs of the sale and interest up to date had raised the total to, say, Rs. 1,131-15-3, there was a great probability that his application would be thrown out and his opportunity of redeeming his property would be lost. It would therefore have been more convenient if there had been a procedure by which he would be able to apply to the Court for such information. With the exception of those slight deficiencies in procedure, which would probably have to be amended the next time the Code came under revision, His Honour was sure that the Bill would be useful, and he heartily and entirely approved of the principle which it involved.

The Hon'ble SIR ALEXANDER MILLER said that the point was considered in Select Committee, and the view of the Select Committee was that, on paying the sums included in the proclamation of sale, a man could redeem his property without being obliged to pay for the purposes of redemption those small sums for costs or otherwise incurred afterwards, but that these might be recovered from him in the ordinary way. That was the meaning of the last clause in the section.

His Honour THE LIEUTENANT-GOVERNOR said that his fear was that it was not quite specific enough.

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LIMITATION ACT, 1877; AMENDMENT OF INDIAN STAMP
ACT, 1879; AMENDMENT OF PRISONERS ACT, 1871;
TARIFF.

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The Hon'ble SIR ANTONY MACDONNELL said he hoped he would be allowed to speak to a point of order. The motion before the Council was that the Bill should now be passed. Much of what had fallen from His Honour the Lieutenant-Governor was of a contentious nature, which would, if the rules allowed, call for a reply. But he thought it was undesirable that a discussion of this nature should be raised at this stage of the proceedings.

The Motion was put and agreed to.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. WESTLAND presented the Report of the Select Committee on the Bill to amend the Indian Stamp Act, 1879, with respect to Policies of Sea-insurance and Sale-certificates. He said he wished to draw the attention of the Council to the principal amendment made by the Select Committee, *vis.*, the introduction of a definition from the English Stamp Act of the words "sea-insurance". The advantage of the definition lay in the fact that sea-insurance also included river-insurance, and that by its adoption in the Bill the provisions of the law relating to sea-insurance were extended to river-insurance; an existing mercantile practice being thus placed beyond doubt as to its legality.

PRISONERS ACT, 1871, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to amend the Prisoners Act, 1871.

INDIAN TARIFF BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to amend the law relating to Customs-duties, and for other purposes. He said:—

"Six years ago it was my fate, in this Chamber, to propose to the Legislative Council of Your Excellency the last measure of purely fiscal legislation by which it was sought to improve the general resources of the Government. At that time I laid before the Council a review of recent finance, in which I showed, shortly, that within about four years we had been called upon to enhance our expenditure by nearly Rx. 1,200,000, in consequence of increase of the army and of military measures adopted on the North-West Frontier, nearly Rx. 1,800,000 in consequence of the annexation of Upper Burma, and nearly Rx. 1,800,000 in consequence of increase of exchange charges. These increases

of expenditure we had during that period met by imposition of Income Tax, by absorption of the Famine Grant, and by curtailment of the revenue assigned to provincial purposes.

" We found ourselves then at the end of our existing resources. Exchange was still falling, opium revenue was showing signs of diminution, and the productiveness of Railways was for the time decreasing. We came before the Council, therefore, to justify an increase in the Salt-duty which we had imposed within our legal powers, and to ask for further powers of taxation, namely, in respect of petroleum.

" I then laid before the Council a short review of current finance, in which I addressed myself in part to the question of the extent to which we had permitted increase of expenditure in matters within our control. I shewed that that increase amounted for ten years to only Rs. 200,000 a year, and it was impossible for us, I urged, to have discharged the duties of a civilized Government in India without admitting at least this amount of increase to our expenditure.

" To-day I come before the Council with a much more serious proposal, but based upon the same grounds. Again our revenue is falling seriously short of our expenditure, but of this there is now one cause, and one cause only. It is that the fall in the value of the rupee has of late been increasing the burden of our sterling payments in a ratio which far outstrips any possible increase to be hoped for in our revenues. And as exchange, and exchange only, is the burden of my song, I have had some figures prepared which will shew, with reference to this item, the extent to which the charge has affected our financial position in the past, and the acute degree to which we are suffering from it in the present. The figures I produce cover the finance of sixteen years; but they are drawn up in such a condensed form that I trust I shall be able to give a sufficiently accurate idea of my subject without wearying the Council with a long array of figures.

" It will be observed from the statement of net accounts* which I have laid before the Council that I exhibit the accounts of each year in twelve figures only. The first three of these give the net totals of revenue (without regard to exchange) under three heads, *vis.*, (1) our ordinary Revenue heads, (2) the Post Office and Telegraph, and (3) the Railways. Then follow, for each year, eight figures giving the net totals of our expenditure, also without reference to exchange. And then I shew the surplus as it would have stood had our rupee remained continually at its old nominal (though very rarely real) value of two shillings.

* *Vide Appendix.*

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"I then shew, in a single figure, the effect of the exchange charge upon the year's account, converting the surplus in seven cases out of sixteen into a more or less heavy deficit.

In one year there was a deficit even excluding exchange.

"I ask the Council to bear with me while I use these figures to show in as simple a form as possible what the real increase of revenue and expenditure has been in the past, and while I try to satisfy them that it is not from any cause avoidable by our own efforts, or by reason of any laxity either in developing revenue or in controlling expenditure, that we come before them to-day to ask for increased powers of taxation.

"Analysis of recent Accounts.

"The first line in the statement which I have placed in the hands of Hon'ble Members shows that the net REVENUE of the Empire (*i.e.*, the ordinary Revenue, after meeting charges of collection and the like) has steadily increased from Rx. 46,000,000 to over Rx. 53,000,000, giving an average increase of over Rx. 400,000 a year, besides the addition of the revenue of Upper Burma.

"Passing to details under this head, we find that the *Land Revenue*, steady at about Rx. 20,000,000 for the half of the period, has lately been rising, and its standard is now about Rx. 3,000,000 higher, of which about Rx. 600,000 is due to Upper Burma. Re-settlement operations are active in several of the provinces, and continued increases may be expected under this head. *Salt*, which stood at Rx. 6,300,000 at the beginning of the period, may now be stated at over Rx. 7,500,000. For six years in the middle of our statistics, the figures stand at a comparatively low figure, as the salt-duty was lowered in March, 1882, but was again raised in January, 1888. The revenue from *General Stamps* gradually rose from Rx. 826,000 in 1878-79 to Rx. 1,304,000 in 1893-94. The *Court-fees* revenue, which also shows a great rise, is necessarily accompanied with increase of expenditure, and will be noticed in connection with the Expenditure on Law and Justice. *Excise* shows a remarkable increase. It stood at Rx. 2,500,000 in 1878-79, and the figure has now all but doubled. No branch of revenue administration has during the period under review received greater attention than this. Practically a new era of excise administration set in, in Bombay, at the beginning of this period, and the principles first adopted there were introduced with similar success in Madras; in other provinces also the restrictive measures, which a closer administration has enabled the Local Governments to carry into effect, have led to a great restriction of illicit consumption concurrently with considerable increase of revenue. *Customs* revenues and *Assessed taxes* have been levied at nearly the same rates for the last

eight years (except for the Petroleum-duty, which now produces Rx. 200,000), but the returns have shewn an almost regular increase. The *Forest* Department at the beginning of the period produced a net return of only Rx. 150,000, but now brings us in Rx. 600,000 or Rx. 700,000, besides having effected an increased accumulation of Forest wealth throughout India. *Opium* alone of all the heads of revenue shews a decreasing productiveness, and that is due to causes which lie beyond our control. At the beginning of our period we got a net revenue of Rx. 8,000,000, but lately we are obliged to regard Rx. 6,000,000 as a fairly good year. It is almost entirely in the diminution of the number of chests exported, and only to a small extent in that of the price obtained, that this falling off has occurred.

"The second line of the statement shows the net working of the POST OFFICE, Telegraph and Mint Departments. For the first half of the period under review, these Departments, combined, failed to pay their way; but during the last half they have shown a small but increasing surplus.

"The next line, showing the net revenue obtained from the working of the RAILWAYS, also shows a most satisfactory progress. It must be remembered that the account is charged with the interest upon the capital expended on construction, both of the unopened as well as of the opened lines. Changes in accounting, arising in connection with the transfer of the East Indian Railway and other transactions, destroy the usefulness, for comparison, of the figures in the first two years of the period covered by the statement; but for the rest of the time, the figures may be taken as compiled on the same basis, and they shew a substantial, though irregular, increase in the railway returns. I regret to say that I shall have to shew, later on, that the whole of this advantage, and more, is swept away by the increase in the exchange upon the sterling interest which we have to pay in respect of the Guaranteed Companies and their successors.

"We pass to the Expenditure side of our accounts, in which the first line shews the charge for INTEREST. The burden of interest, it will be seen, has very greatly diminished. For the same reason as is mentioned in speaking of the Railway revenue, the first two years' figures have to be left out of account in the comparison; but during the rest of the period under review the charges have regularly diminished, except in the year 1887-88, in which a high charge came into the English accounts in connection with the conversion of 4 per cent. into $3\frac{1}{2}$ per cent. stock and the alteration in the dates of interest payment. This continual diminution, though not due to actual discharge of debt, arises from an operation which is practically equivalent to it: the funds which would otherwise have been used for discharge of debt have been actually used in construction of

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Railways, and the interest charge not only transferred to the Railway account, but actually met—and, as just pointed out, more than met—by the Railway earnings.

“The next lines shew the expenditure on ADMINISTRATION, and it is under this head and under that of Army Services that I have to answer the question what we have done with our increasing revenues. The administration charges as a whole have increased from Rx. 10,657,000 to Rx. 14,754,000, but it is better to consider them in the detail shown in the account at the bottom of the page.

“The first head is the *General Administration* of the country down to and including the district officers and their subordinates. The whole charge has increased from almost exactly Rx. 3,000,000 to almost exactly Rx. 4,000,000, but about Rx. 350,000 of this, between the years 1885-86 and 1886-87, is due to a change in classification, which on the revenue side appears under Land Revenue. We do our best to avoid such changes, as they destroy the value of our accounts for comparative purposes, but changes are occasionally introduced by administrative measures, and even by legislative measures, which necessitate consequent alterations in our accounts if they are to shew the real facts of expenditure. The total increase of expenditure, therefore, is only Rx. 650,000, or a little over Rx. 40,000 a year. To examine the detail of it would be tedious, and I feel sure that no one whose personal experience includes the India of 1878 and the India of 1894 will consider that an increase of a little over 20 per cent. in the cost of administration, which it must be remembered includes the cost of a new province, in any way measures the progress recorded during the interval.

“The increased cost under the next head, *Law and Justice*, is only Rx. 450,000. The revenue by Court-fees has increased during the same period by Rx. 820,000. Although this last item includes a good deal of revenue which has no connection with the Courts charged under Law and Justice, the figures may be taken as proving that Law and Justice are not an increasing burden on the finances of the country. *Police* charges have increased, if we exclude Upper Burma, from Rx. 2,210,000 to Rx. 2,930,000. Increased expenditure under this head has been forced by many considerations upon all the Governments, and the limit of increase is not yet reached. Elaborate enquiries made by special commissions in recent years have shown the necessity of improving the working of the police and increasing the strength of the force, and measures are being taken in nearly every Province to carry the proposals of the several Commissions into effect. An increase of 50 per cent. in Education charges and of a moderate amount under *Medical* represent expenditure which goes directly to the advantage of the people of India. The *Political* expenditure has increased

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from Rx. 450,000 to Rx. 820,000—an increase which is chiefly due to the necessities arising out of the extension of our North-Western and Eastern frontiers. Political subsidies, political expeditions,—ranging from the Afghan Delimitation, which cost over half a million, to minor expeditions and missions which occur every year,—and charges for refugees and State prisoners all enter into and increase the expenditure under this head.

“The *Non-effective* administration charges—that is, the Political allowances and Service pensions and Leave allowances—remained very steady at about Rx. 2,800,000 from 1880-81 to 1889-90. Before that period the figures are affected by transfer of certain charges which used to be taken under interest, but by the abolition of service funds came under direct payment by the Government. The expenditure tends slightly to increase, and that increase has been somewhat more marked during the last three years, partly by reason of the falling off in the receipts of the abolished military funds and partly by the improved terms as to exchange given to the recipients in England of rupee pensions and furlough allowances.

“The next head—that of FAMINE—includes, besides what is usually a small amount of actual famine expenditure, the grant which we make out of our surplus revenues, when we have any, towards protective irrigation and protective railways. We have at present a compulsory expenditure under the last category of about Rx. 380,000 towards the loss accruing to Government on account of the Bengal-Nagpur and Indian Midland Railways. This amount is now shown in the Railway account, but the balance of Rx. 1,500,000, after this loss is met, is used, when we are able to afford it, for actual construction of railways and canals. We made the full grant in the five years beginning 1881-82: thereafter for five years the state of our accounts compelled us greatly to limit the grant; but the improvement in revenue and in exchange enabled us to make the full grant in 1891-92, 1892-93 and 1893-94.

“The next head in our statement includes the IRRIGATION charges. This expenditure is directly productive of benefit to agriculture. Including the charge for interest upon capital expended upon major works, the expenditure has risen from about Rx. 900,000 at the beginning of the period to Rx. 1,300,000 at the end of it; but, on the other hand, the amount of land-revenue which the Major Works have brought in (which is not separately shewn in these statements, though it is separately shown in our accounts) has increased during the same period from Rx. 450,000 to Rx. 700,000. We do not attempt to reckon in our accounts the similar benefit arising from the Minor Works.

“The next line is RAILWAY CAPITAL expenditure, with a few small Railway items which are not strictly speaking capital. The heavy charges at the

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beginning of the period represent the construction of frontier Railways. Latterly the expenditure, excluding some Provincial expenditure on Railway Construction, has been confined to the Railway Direction establishments of the Government, the purchase of land for Subsidized companies and Surveys for projected railways. The burden of these charges is Rx. 200,000 to Rx. 300,000.

"For the explanation of the MILITARY EXPENDITURE I must first of all refer to the statement at the bottom of the page which distinguishes between normal expenditure and war expenditure. The period under review contains two wars,—one in Afghanistan and one in Burma, besides minor expeditions; and also large charges in recent years on account of 'Special Defence' works. The figures which have to be explained are those which remain after the elimination of these special charges.

"The effective charges of the Army have increased in the sixteen years from about Rx. 13,000,000 to Rx. 16,000,000. The general explanation of this increase is (I) Increase of British army by 9,255 officers and men, and of Native army by 20,765 officers and men: involving increase of all establishments and of charges for clothing, feeding and equipment generally, and also for warlike stores; (II) Fall in exchange. The pay of the British soldier is fixed at sterling rates; and the difference on this account alone, between the pay of the present strength of non-commissioned officers and men, at the rates they received in 1878-79 and those they received in 1893-94, amounts to Rx. 863,000. (III) Occupation of new territory, *viz.*, Upper Burma, Gilgit and Baluchistan. (IV) More elaborate and scientific and consequently greatly more expensive armaments. (V) Development of the Volunteer forces. (VI) Increase in the price of food-supplies in India. (VII) In England, introduction of the grant of deferred pay.

"The *Military Works* charges were at the beginning of the period under review fixed at Rx. 1,000,000 a year, but recently it has been necessary to increase the amount to meet the requirements of Upper Burma.

"General financial position as affected by exchange.

"So far, I have been dealing with the accounts apart from any question of exchange, and the summary of the accounts so stated is shewn in a separate line of my statement as the Surplus excluding exchange. This surplus necessarily varies from year to year, as we have bad or good revenue years, or as we have or have not special expenditure. It is easy, however, to show at what figure the surplus thus stated (always excluding exchange) would have stood

apart from certain special and very variable expenditure; and, as it is useful for my present purpose to thus set it forth, I shew the following figures:—

Year.	Surplus in Accounts.	SPECIAL EXPENDITURE.			Surplus apart from special Expenditure.
		War charges and special defences.	Railway capital in excess of Rx. 250,000.	Famine. (a)	
1878-79 . . .	5,252	600	—30	313	6,135
1879-80 . . .	1,729	4,630	1,563	104	8,026
1880-81 . . .	—1,358	8,101	2,140	35	8,918
1881-82 . . .	6,107	—877	252	1,568	7,050
1882-83 . . .	3,791	609	493	1,495	6,388
1883-84 . . .	5,194	63	—501	1,523	6,279
1884-85 . . .	2,965	162	151	1,548	4,826
1885-86 . . .	1,263	2,726	525	1,500	6,014
1886-87 . . .	5,534	270	72	461	6,337
1887-88 . . .	3,584	446	—73	377	4,988(b)
1888-89 . . .	5,904	1,055	—129	509	7,339
1889-90 . . .	8,736	1,021	—27	1,062	10,792
1890-91 . . .	8,568	832	—70	1,082	10,412
1891-92 . . .	7,262	1,266	38	1,500	10,066
1892-93 . . .	8,842	639	107	1,500	11,088
1893-94 . . .	8,040	601	—39	1,500	10,102

(a) These figures include the loss on certain Railways, charged in the Railway Account.

(b) After allowing for a payment of £746,000 under interest in connection with conversion of debt.

"My object in bringing out the figures in this form is to deduce from them what I may call the general financial position, apart from the fluctuations of revenue and expenditure due to peculiar circumstances of each year. The measures which I have to propose to the Council are measures of a permanent character, and I could not justify them if I were merely to set forth the actual or the estimated Revenue and Expenditure of any given year. This is not the time when the Council deals in detail with the figures of particular years, and I now use the details which I have presented for the purpose of eliminating from them the varying features of successive years, and stating what I describe as the general financial position, not varying irregularly from year to year, but gradually altering for better or worse during the whole period under review.

"With this object I ask attention now to the figures in the last column of the statement just set forth, which show the surplus which our ordinary revenue account gave us before we met the exchange charges and the charges of war and of famine. At the beginning of the sixteen-year period that surplus was Rx. 8,000,000, gradually coming down, by remission of Customs-duties, to Rx. 6,000,000. In 1884-85, by a serious failure in opium, it came down

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below Rx. 5,000,000; but in the next two years the figures again stood at over Rx. 6,000,000. In 1887-88, there came upon us a heavy charge for an increase to the army necessitated by our new military relations to the North-Western and to the Eastern Frontiers; and the surplus fell to Rx. 4,988,000. We now took measures for the increase of our revenue. The tax on salt was increased, an import-duty placed on kerosine and patwari-cess partly re-imposed in the North-West Provinces. Moreover, Upper Burma began to bring revenue into our account, and new land-revenue settlements began to increase the returns under that, our main head of revenue. The result was shown in our quickly attaining a standard of revenue which enables us to state our recent surplus, under the conditions already stated, at over Rx. 10,000,000.

"Assuming, therefore, that we are bound to set aside, as a famine reserve, about Rx. 1,500,000 of our excess revenue, and assuming further that exchange were to stand at 1s. 8d., so that we would have to pay about Rx. 3,200,000 for the remittance of our English demands (amounting now to about £16,000,000), the history of the last sixteen years would show, apart from war charges,—

- (1) for nine years a surplus diminishing from Rx. 3,300,000 to Rx. 1,300,000;
- (2) in the evil year 1887-88 a practical equilibrium (surplus of only Rx. 288,000);
- (3) since then, a surplus beginning with Rx. 2,600,000 in 1888-89, and standing in subsequent years at Rx. 5,300,000.

"But now I draw attention to what has actually happened. The exchange charges, instead of remaining at about Rx. 3,200,000, have since 1884-85 steadily increased, the actual excess over this figure being, as will be seen from the figures in my net statement in the line marked X—Exchange—

	Rx.		Rx.
1884-85 . . .	152,000	1889-90 . . .	2,924,000
1885-86 . . .	865,000	1890-91 . . .	1,680,000
1886-87 . . .	2,156,000	1891-92 . . .	3,594,000
1887-88 . . .	2,412,000	1892-93 . . .	6,475,000
1888-89 . . .	2,667,000	1893-94 . . .	6,435,000

"In short, since 1887-88, while our surplus of revenue, after providing for the famine reserve and for exchange at 1s. 8d., but before providing war charges, had risen from Rx. 2,600,000 to Rx. 5,300,000, the fall in the exchange has thrown upon us an additional charge rising from Rx. 2,667,000 to Rx. 6,435,000. In fact, the exchange charge was just within our resources in 1888-89, but it is ahead of us now (that is, in the Budget Estimates of 1893-94,) by Rx. 1,135,000.

"There were two or three intermediate years in which the charge for exchange was not advancing as fast as the revenue, and the fact enabled us to close the year with actual surpluses, namely :—

	Rx.		Rx.
1889-90 . . .	2,612,000	} or, as they would have stood } had the full famine reserve } been charged off	2,174,000
1890-91 . . .	3,688,000		3,270,000
1891-92 . . .	468,000		468,000

"But the hope that this cessation, or at least diminution in the rate, of the fall of the rupee gave us, has been dissipated by the experience of the past two years, and the charge for exchange has again overtaken and even passed the improvement of revenue which we can set against it.

"Even in thus stating our available revenue as falling by Rx. 1,135,000 behind the increasing burden of exchange, we are taking the rupee (as just mentioned) at its figure of last March, *viz.*, 1s. 2½d. The highest at which we can really put it now is 1s. 2d., and it is a question if even that is not for the next year a sanguine estimate. We may reckon every farthing of fall, under present circumstances, as involving a charge, in the remittance account alone, of Rx. 450,000, so that our deficiency of last March, Rx. 1,135,000, becomes, by the fall of exchange to 1s. 2d., during the present year, about Rx. 2,485,000.

"In all this it must be remembered we are leaving war charges out of account. In our situation in India these charges are unavoidable, and the Budget of 1893-94 provided Rx. 601,000 on their account, and thus showed a deficit considerably larger than the Rx. 1,135,000 which I have above set forth. If we take these charges into account (I trust they will be less in future), our deficit with the rupee at 1s. 2d. would be about Rx. 3,000,000.

	Rx.
Deficit excluding war charges . . .	1,135,000
Add war charges . . .	601,000
TOTAL . . .	1,736,000
Deduct a difference chiefly due to the item called "gain by exchange" . . .	141,000
Deficit of Budget . . .	<u>1,595,000</u>

"Exchange Compensation to European Officers.

"There is another serious burden, arising from this same fall in the value of the rupee, which we have to bear, namely, the compensation which we have to pay to our European services for the fall in the exchange value of their salaries. The necessity for this had been pressing itself upon the Government for some time, and it was only with some hesitation that the Government decided, when the Budget Estimates last year were under consideration, that the decision on the question must be put off, until the settlement of the currency measures then under consideration of the Herschell Committee. When these measures were settled, the announcement was made that an

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allowance would be made to the class of Government officers to which I have referred, of which the amount would be equivalent to the remittance of half their salaries (up to a maximum of £1,000) at an exchange of 1s. 6d.

"In justification of the necessity and policy of this measure of limited compensation, I wish to quote two or three weighty opinions, carefully guarding myself against any mere official utterance, which might under the circumstances be considered to be affected by personal considerations. The first is an extract from the address of the spokesman of the deputation to Lord Lansdowne of February 3rd, 1893, which declared itself as representing merchants, traders, shipowners, bankers, landowners, producers, manufacturers, importers and exporters, and which certainly did not contain a single European official member:—

'My Lord, we freely confess to a strong feeling of sympathy with the servants of Government who find their incomes daily dwindling, and who in consequence are in some cases put to severe straits, such as are calculated to do serious injury to the efficiency of the administration. We realise, in fact, that it will be absolutely impossible for Government to carry on the administration on the present terms. We are strongly convinced, however, that the adjustment of salaries and all other adjustments can only be properly effected by the reform of a currency system which has gradually, but with increasing rapidity, brought the country to the present pass.'

"The Herschell Committee, whose standpoint was a purely impartial one, reported on the same subject as follows:—

'17. The difficulties which the Indian Government have in meeting the Home charges are aggravated by the fact that the fall in exchange has led to claims on the part of their
Servants of Government. officers, civil and military, who receive salaries in rupees, to some compensation for the loss which they sustain owing to the fall in exchange. Many of those officials are under the necessity of remitting a considerable portion of their income to this country for the support of their families and the education of their children. It has been said that prices have fallen in this country during the last fifteen years, and that a smaller sterling remittance will now purchase more than formerly. This is no doubt to some extent true, but it does not apply to all prices. It is a matter of dispute how far the fall of prices in this country compensates for the smaller sterling remittance which the same number of rupees will procure; but it is certain that, when due allowance has been made for this, the purchasing power of the incomes of Indian officials has been largely reduced.

'18. It appears that some European employers have felt themselves bound to make an allowance to the Europeans in their service
Practice of private employers. in India sufficient to counterbalance to some extent the loss which they experience owing to the fall of the rupee; and there can be little doubt that even in existing circumstances, and still more if the fall of exchange continues, the Government of India cannot turn a deaf ear to the appeals of their servants for similar treatment without the danger of engendering serious discontent, apart from the question whether such appeals are just and reasonable.'

"The cost of this exchange compensation for the year 1893-94 may be stated as follows:—

	Imperial. Rx.	Provincial. Rx.	Total. Rx.
The Civil Services	83,400	202,900	286,300
The Military Services	263,800	...	263,800
Public Works Department	53,900	29,400	83,300
	<hr/> 401,100	<hr/> 232,300	<hr/> 633,400

The compensation has been calculated this year upon an exchange a little better than 1s. 3d., and for next year we shall likely, at the best, have to calculate it upon an exchange of 1s. 2d.; the charge for next year is at present estimated at about Rx. 680,000 for Imperial, and about Rx. 400,000 for Provincial. The whole of this is of course a burden upon our resources in one way or another, although, by the operation of the provincial system, part of it is provided for without immediate demand upon our available revenues, or immediate inclusion in our stated deficit.

"Proposed Import-duties.

"We are therefore face to face with a deficit, all told, of $3\frac{1}{2}$ crores, which, as I trust I have convinced the Council, is wholly due to the deterioration of position caused by the fall of exchange during the last two or three years.

"It is hopeless to attempt to meet this position without increasing our revenues, and the Government have anxiously considered the best way in which they might seek for that increase. They are aided in this matter by the deliberations of the Herschell Committee, who enquired into the possibilities of further taxation in India, and passed in review all the sources of revenue suggested to them. They stated their conclusion upon the evidence relating to Import-duties in the following paragraph:—

'39. Of all the suggested methods of adding to the revenue, the re-imposition of import-duties would, according to the evidence before us, excite the least opposition; indeed, it is said that it would even be popular. The duties on cotton goods have, however, only recently been abolished. They were the subject of vehement attack in this country. Any attempt to re-impose them would meet with great opposition. And it cannot be denied that the re-imposition of such duties would provoke a demand for a countervailing excise upon all cotton goods manufactured in India. Although such an excise-duty might be collected without serious difficulty in respect of goods manufactured in the cotton mills of Bombay and elsewhere, it is alleged that it would be wholly impracticable to enforce it generally in view of the extent to which the manufacture of cotton goods on a small scale prevails throughout India.'

"With the opinion that the revival of the import-duties is the best means of recovery—or partial recovery—open to us, the Government of India thoroughly concur. The measure opens to us not only an additional revenue, but an additional source of revenue, and our present position is unfortunately such that we cannot with any certainty claim finality for our present fiscal measures. We have entered upon a struggle with the falling rupee, and, however strong may be our hopes of ultimate success, every day has shown more clearly that the haven of rest is not to be reached without arduous efforts and prolonged anxieties. To add increased pressure to some of our existing taxes is a policy that might be pursued if we had to tide over a temporary difficulty out of which we saw an early escape; but it is a policy which would not meet either our present or our possible future difficulties.

"The proposal, therefore, which on the part of the Government of India I have to lay before the Legislative Council, is that we should take power to levy Import-duties, at the rate, except in a few cases, of five per cent. Her Majesty's Government agree with the Government of India in thinking that it is undesirable, at the first introduction at least, to impose a higher duty than this; but they are not prepared at present to sanction the inclusion of Cotton Yarns or Cotton Fabrics among the articles declared liable to duty.

" Cotton-duties.

"Under these circumstances I do not propose to discuss the question of Cotton-duties. I am anxious, however, that the real fiscal questions arising in connexion with them should be fully understood. The levy of a countervailing Excise-duty upon Indian manufactures is sometimes stated as part of the Cotton-duty policy. It is no doubt possible for us to levy such a duty on the manufactures in the cotton mills that lie within British India, but cotton mills have been erected also within Native Territory, and on the manufactures there no excise-duty can be levied by us. We might, of course, establish frontier customs posts, and levy duty on cotton manufactures passing them; but such frontier posts are open to the very strongest objection, and, after for a long time preaching free transit to Native States, it would be impossible for us, for very shame, quite apart from the intrinsic objectionableness of the measure, to adopt a contrary policy on our own account. On the other hand, if we excise our own manufactures, and do not excise those of Native States, we obviously protect a foreign industry against our own, besides raising all sorts of difficulties in the matter of granting drawbacks when Native manufactures are exported from British ports. In any case, it will be obvious that we can levy no excise-duty upon the manufactures of hand looms.

"It is, therefore, well to clear the way by pointing out that the question of levying duties on cotton goods is the question of levying Import-duties only, and not of levying also an excise on Local Manufactures.

"History of Import Tariff."

"Up till the time of the Mutiny the general rate of import-duties levied in India was 5 per cent., but that event rendered it necessary to increase the rate to 10 per cent. In 1864 the rate was lowered to $7\frac{1}{2}$ per cent., with an implied understanding that it would be further reduced to 5 per cent. when the state of the finances permitted. This time arrived only in 1875, when what may be called a general tariff reform took place. The whole subject was referred to a Committee, of which the President was Mr. Alonzo Money of the Board of Revenue in Calcutta, and whose members were three Civil Servants, Mr. Lane, of Calcutta, Mr. Dalzell, of Madras, and Mr. Hope, of Bombay; and two merchants, Mr. Bullen Smith, who was, I believe, a former President, and Mr. Murray, who was the existing President, of the Bengal Chamber of Commerce.

"Besides revising the tariff valuations, they were requested to consider the propriety of removing from the tariff any articles too unimportant to be retained; to consider any cases in which the duties levied appeared prejudicial to trade; and to make any suggestions for subjecting fresh articles to duty, or raising existing duties.

"The Committee's report was based upon the $7\frac{1}{2}$ per cent. duty, which they proposed in a few cases to reduce to 5, and in a few cases, subject to a strong dissent from Mr. Hope, to increase to 10.

"The estimates for the year 1875-76 were closed shortly after the report of the Committee was received, and the results were considered sufficiently favourable to warrant the Government in avoiding all discussions as to the rate of duty, by making a general reduction from a $7\frac{1}{2}$ per cent. rate to 5 per cent. The Tariff Act of 1875 was accordingly passed, which adopted this as the general rate, and embodied the valuations adopted by the Committee, the most laborious portion of their work.

"The duties on liquor, on salt (including salted fish), and on opium, are in India regulated on principles peculiar to themselves. Their inclusion in the Tariff and in the Tariff Act is really part of the Excise Law, and of the law relating to the Salt-duty, and it is unnecessary further to refer to these subjects, as they do not belong to the present question. The same may be said of the duty on arms and ammunition, which was in 1875 raised to 10 per cent., and has been ever since so maintained.

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"Excluding these special subjects, the duties levied under the Tariff Act of 1875 were 5 per cent., except in the case of cotton twist, which paid $3\frac{1}{2}$ per cent., and iron and railway material, which paid 1 per cent., on the principle that a tax on such raw material would really be a tax on Capital. Railway locomotives and carriages paid, however, the usual rate of 5 per cent.

"The whole of these general duties were abolished before or in 1882, and, as I am now laying before the Council a proposal to reverse this abolition, I narrate the history of it in some detail.

"The first remission was made in 1878, and was partly the consequence of a Resolution passed in the House of Commons on 11th July, 1877, declaring that the cotton-duties, being protective in their nature, 'ought to be repealed without delay, so soon as the financial condition of India will permit.' The financial condition of that year permitted only of a limited measure of repeal,

and the coarser qualities of cotton goods
32s. for mule twist, and 20s. for water twist. (i.e., not containing yarn finer than 30s.)

under certain designations were exempted at a cost of Rx. 25,600. At the same time railway material was also exempted from duty, the loss of revenue being calculated at Rx. 11,300. These remissions were made on grounds applying to the particular articles concerned, but opportunity was taken at the same time to exempt a number of other articles, i.e., 26 heads in all, on the ground mainly that they were of small importance, and brought in only a total revenue of Rx. 39,600. The principal of these was 'Fruit and vegetables,' yielding a revenue of Rx. 6,100.

"Next year, that is, in 1879, a much more general repeal of cotton-duties was effected. All grey cotton piece-goods containing yarns not finer than 30s., and all cotton twist up to 70 for mule twist, and 50 for water twist—in short all cotton goods of quality not too fine to be then manufactured in India—were exempted from duty. This measure was estimated to cost Rx. 200,000.

"Next year, Sir John Strachey in his Financial Statement reviewed the then condition of the Customs-duties. He pointed out that the remission of the duties on certain classes of cotton manufacture had caused a great change in the trade, by reason of the strong inducement given to manufacturers to bring their goods as far as possible within the exempted classes, and that the dutiable classes were being so diminished by this change, that the cotton-duties as a whole were 'dying a natural death.' It was impossible, in view of existing financial conditions, to abolish the duties completely, as that would cost Rx. 600,000 in addition to the Rx. 250,000 already remitted, but he pronounced that these duties must soon be entirely remitted. He went on to say:—

'78. Before leaving this subject, I think it right once more to point out that we ought not to shut our eyes to the consequences which, as it seems to me, must inevitably follow from the loss of the cotton-duties. Whether those consequences ought, as I believe, to be welcomed as fraught with a great development of wealth and prosperity to India, or ought, as others think, to be looked on as disastrous, we cannot wisely shut our eyes to the fact that the abolition of the duty on cotton goods will involve in all probability the loss of a great part of our revenue from sea-customs. In the Financial Statements for 1877-78 and 1878-79 this was clearly pointed out. In the former of these, I said that I looked forward with confidence to the almost total abolition of customs-duties in India, and I used these words:—"I do not know how long a period may elapse before such a consummation is reached, but, whether we see it or not, the time is not hopelessly distant when the ports of India will be thrown open freely to the commerce of the world."

'The cotton-duties will yield, say, Rx. 615,000, and, if I am right in believing that they must ultimately be altogether given up, our whole import-duties would then yield only about Rx. 500,000. The truth is that cotton goods are the sole article of foreign production which the people of India now largely consume, and there is no present possibility of a large customs-revenue from anything else. Will it be possible, when cotton goods have been freed from duty, still to tax woollen goods and many other articles? And can it be believed that we should long maintain our customs establishments for the sake of obtaining the insignificant revenue that would remain?'

"The time thus foreseen came in 1882, when the prosperous condition of Indian finance enabled Major Baring (now Lord Cromer) to abolish not only the remaining Cotton-duties, but also the other General Import-duties under some 31 general heads. It will be seen from the following extracts from Major Baring's statement that the complete abolition of the General Import-duties was, in his view, largely the consequence of the 'disruptive forces' introduced by their partial abolition in 1878. The extracts are shortened by the omission of illustrations.

'214. The Tariff of 1875 was complete in itself for the purposes for which it was designed, but the practical declaration on March 18th, 1878, that a duty was indefensible if it either was *at all* protective or did not yield a sum absolutely as well as relatively large, introduced two disruptive forces into a machine not constructed to meet them, and necessarily shattered it.

'215. Apparel of many kinds, hardware, jewellery, innumerable manufactures of metal, provisions and stores of many kinds, spices, sugar, tea, tobacco, with raw silk and fabrics of silk and wool, are all made in India, some to a large extent, and every import-duty on them is protective. On what principle, again, are silk and woollen goods, or goods having cotton mixed with silk or wool, to be denied the exemption accorded to cotton goods? "The duty on *Woollen Fabrics*," the Calcutta Trades Association rightly argues, "must, if only for the sake of consistency, follow the cotton-duties."

'216. The effect of applying to individual dutiable items the objection of small receipts is equally destructive. Under the Tariff before 1878, the heads fitted into each other, so

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that articles of the same general nature were taxed under one designation or another, and disputes were avoided. But the exemption of twenty-seven main heads on March 18th, 1878, introduced endless confusion and inconsistency, since certain heads were freed which were really parts of, or connected with, others left dutiable.

'217. Another objection to some of these duties is that the raw materials of industry and articles contributing to production are taxed.

'218. Nor are these the only objections to the existing Tariff. Many practical difficulties arise in giving effect to the law as it now stands. Of these difficulties I may mention a few examples.

'219. *First*, comes that of dealing with dutiable articles imported by letter post.

'220. *Secondly*, come the special claims for exemption in individual cases, such as organs and painted windows for churches, mess necessities, volunteer uniforms, gas and water pipes, and many other articles.

'221. *Thirdly*, difficulties of definition are great and lead to much minor injustice.

'222. To sum up this branch of the subject, I submit that the General Import-duties which are still levied on thirty-one main heads, comprising many hundreds of items, not only are open to the numerous economic and practical objections which I have already enumerated, but also cause an amount of friction, scrutiny and interference with trade quite incommensurate with the net revenue they produce.

'224. Whether, therefore, we look to the Cotton-duties or the General Import-duties, it is clear that it is undesirable to maintain the present Tariff.

'225. Various methods have from time to time been suggested to remedy the anomalies of the existing system. It has been proposed to levy a low and uniform rate of duty on all cotton goods, to excise Indian cotton, or to impose a low registration fee on all imports and exports. I need not discuss the merits and demerits of these proposals, for we are fortunately in a position to adopt a more thorough and satisfactory remedy.

"This measure involved the remission of Rx. 655,000 on account of Cotton-duties and Rx. 564,000 under the other heads.

"Since the year 1882 no general import-duties, with the exception of the petroleum tax, introduced by myself in 1888, have been levied in India.

" Past Policy of Government.

"It will be, I am afraid, very easy to confront our present proposals with assertions extracted from the Financial Statements, especially of Sir John Strachey and of Major Baring, about the impediments to trade caused by the levy of Customs-duties, and the great benefit of reducing the number of dutiable items by the exclusion of those which produce only a small amount of revenue

not enough to justify the necessary trade restrictions, or to warrant the expense of collecting. All I can say in reply is that we want the money which those statesmen did not, and that we cannot help taking a different view from that in which the duties presented themselves to Finance Ministers who were longing for a time when the ports of India might be thrown open to free trade, and watching every improvement of the financial position in the eager hope that it might lead to an early realization of their policy.

"Our circumstances now are different, and compel us to look upon Customs-revenue in the light in which it was accepted before Sir John Strachey's time. For example, Mr. Laing declared in 1861—

'We cannot dispense with Customs-duties on our imports generally, and, while this is the case, no reasonable man can object to our retaining an old accustomed duty of 5 per cent. on manufactured goods.'

"Again, in the Tariff Resolution of August 12th, 1875, this very sentence was quoted with the observation that 'the Government of India are still of opinion that a duty of 5 per cent. *ad valorem* upon cotton goods cannot practically operate as a protection to Native manufacture.'

"The following, also, is an intermediate quotation from the speech of Sir Richard Temple in 1871:—

'As regards the remark as to the spirit in which the revisions had been made, it might perhaps be inferred that the Government of India had been actuated by a severe and grasping spirit in the matter of its commercial taxation. But he ventured to affirm that any such inference would be in the highest degree unjust to the Government of India, and that this would be apparent from comparing the Customs Tariff of this country with the Customs Tariff of any other country in the world. To show that he was not singular in this view he would conclude by quoting the remarks of his predecessor, Mr. Massey, who had been for a long time Chairman of the Committees of the House of Commons, and had a very large knowledge and experience of the history of England in regard to its commercial policy. What Mr. Massey said on the last occasion when he made his financial exposition in this Council was—

"Again, it is asked, why not repeal your customs-duties? My answer to that is, our customs-duties are the lightest of any country in the world."

'After one or two remarks, as if anticipating the general objections which had just been raised, he said—

"In the like spirit, the Government will be always prepared to remove or lighten any duty which in any perceptible degree checks the prosperity or interferes with the interests of commerce, but do not sacrifice your customs-duties to the idea that you are imitating, when you would be only mimicking, the policy of Sir Robert Peel and Mr. Gladstone. The policy of these statesmen was as sound and practical as it was grand and imposing, and the customs-duties of India are adjusted on principles strictly in accord with that policy. You may keep what you have got with a safe conscience."

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"I think it must be admitted that the views of Indian Financiers even upon the theory of the question have been considerably coloured by the financial circumstances in which they found themselves, and if I now express views different from those of my masters and predecessors, Sir John Strachey and Major Baring, I do so with an expression of profound regret that it should be my lot, driven by financial stress, to propose to the Government the reversal of a policy which the former declared in 1877 and again in 1880 to be the attainment of the 'convictions of a lifetime.' I can only shelter myself under the declaration of Major Baring, when the flourishing financial condition of 1882 permitted him to close that particular chapter of Indian Finance:—

"I am, indeed, very far from saying that a free-trade policy should be carried out at all hazards. "There is not," Mr. Gladstone once said,* "a free-trade Government in this or any country which has not freely admitted that the state of the Revenue is an essential element in the consideration of the application even of the best principles of free trade." The question is essentially one of Revenue. Objectionable as is the present condition of the Tariff, we should be obliged, were our general financial position less favourable than it is, to bear for a time with some, at least, of the existing evils. But, under present circumstances, there is no necessity for withholding from India any longer the full advantages of free trade.

" 'Present circumstances,' alas! are now changed.

" Estimate of Revenue.

"If we are permitted to bring into operation the Bill which I now ask leave to introduce, we reckon that it will give us an annual revenue, after allowing for charges of collection and for drawbacks, of Rx. 1,200,000. This estimate is founded upon the amounts of the imports shewn in our Trade Returns, which we anticipate will not, after the first fluctuation due to a new policy, be materially, if at all, reduced. We are naturally in a little doubt as regards the proceeds of a five per cent. duty upon silver. The consumption of silver for other purposes than coinage has been hitherto very largely supplied by melting down coined rupees, so that we have only conjectural information as to the amount that the country will absorb under the new conditions. When these settle down, and the excessive imports of the last few months have been absorbed, we may probably find two crores of rupees worth of silver subjected to our new five per cent. duty. We do not tax gold.

" Petroleum-duty.

"We have also to propose a special duty in the case of petroleum, including kerosine oil.

"The duty on petroleum, imposed in 1888, was half an anna per gallon, and was then reckoned at about eight per cent. It is still about eight per cent. on the whole, for, by the trade returns of 1892-93, the whole importation of India was reckoned at a value of 25 millions rupees for 64 million gallons, or $6\frac{1}{2}$ annas per gallon. The net yearly duty since the tax was imposed has been Rx. 116,637, Rx. 160,451, Rx. 163,431, Rx. 172,544, and Rx. 201,071.

"Kerosine, it is admitted, is becoming cheaper and cheaper, and its cost now, including the present taxation, is less than it was before that taxation was imposed. I think it is pretty well agreed that it can easily bear twice its present rate of duty, and this we propose to impose upon it, by substituting an anna per gallon for the present entry of half-an-anna, in the schedule of our Tariff Bill.

"This increase of duty will bring us in a further annual sum of Rx. 200,000 and increase the revenue arising from the measures now proposed to the Council, from Rx. 1,200,000 to Rx. 1,400,000 a year."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill. He said :—

"The Indian Tariff Act which at present stands upon the Statute Book is an Act of 1882, which has been successively amended by changes and alterations introduced by Acts II of 1887, II of 1888, VIII of 1889, XII of 1890, I of 1892 and IX of 1893. We propose, as we are now taking up the whole subject, to repeal these Acts, and to re-enact them in a new Act, which will be called the Indian Tariff Act of 1894.

"The present Bill therefore reproduces, practically word for word, the Act of 1882, as amended, the changes being confined to (1) a verbal alteration of sections 3 and 5, in their reference to the schedules, and (2) the addition of section 11.

"The schedules in the existing Act are two in number—one for import-duties and one for export-duties. We have judged it more convenient to set forth the import-duties in three separate schedules. Of these the first relates to Arms and Ammunition, and reproduces the first part of the schedule under the existing Act. The second refers to the articles which are specially taxed, namely, Liquors, Opium and Salt, the duties on which are regulated by considerations which lie outside questions of Customs-duty proper; this second schedule also is a reproduction of the existing Act, with two exceptions. We have provided against the practice which now exists in some places of importing

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what is practically spirit in the disguise of wine by adding to the word 'wines' the restriction 'not containing more than 45 per cent. proof spirit.' We have also extended the taxation of salted fish (which is salt in another form) to the whole of India, that article being now subject to duty only in Burma, where it was made dutiable last year in order to prevent unfair competition with the local fish-curing industry. The duty will be levied at the same rate as in Burma.

"The third schedule, that of the General-duties, is that which mainly comes before the Council as a new enactment.

"The concluding schedule is Schedule III of the existing Acts, declaring the export-duty upon rice, and this schedule is left untouched, as we have no new export-duties to propose.

"We also take the opportunity of making the power, which Local Governments possess under the Customs Act, to make exemptions in certain cases, subject to the previous sanction of the Governor General in Council. It is not desirable that differences of practice in these matters should exist at the different ports of entry. We at present ensure this by executive instructions, but consider it expedient that the law should not give powers the exercise of which has created, and might in future create, inconvenience.

"In order to consider the details of a proposed re-imposition of import-duties, we take as our starting point the Tariff of 1875, whose history I have already narrated and which Major Baring, even at the time of dealing it its death-blow, admitted 'was complete in itself for the purposes for which it was designed.' Assuming that it is not necessary to argue the point that any re-imposition now proposed should follow the lines of a measure which was the result of so much examination and consideration, I note the points in which present proposals differ from it.

"First of all, as already stated, the questions of liquor, salt, opium and arms and ammunition, lie outside any present proposals.

"Next, I have to note that as our necessities are great, we are obliged to cast our net very wide, and we propose to include some items which were not in the 1875 Tariff. Of these I note—

"*Agricultural Implements.*—Agricultural machinery is exempt as machinery.

"*Metals.—Silver.*—This was not included in the Tariff of 1875, for obvious reasons. Silver is a new commodity and should bear its tax of 5 per cent. like other metals.

"*Raw Materials*.—The following were excluded, chiefly as petty items, but are now restored:—

"Hides and Skins, Lac, Stone and Marble, Tallow, Wax, Wood and Timber.

"Jewellery (precious stones and pearls, unset). Exempted in 1875 on account of the facility of evasion. It is necessary on the same grounds to exempt these items again.

"*Manufactured Articles*.—Jute and Lac were excluded in the 1875 list: these are now brought in. Glass bottles used for excisable liquors and aerated waters were also specially exempted. We do not continue this exemption. Uniforms will have, as in 1875, to be exempted under wearing apparel.

"I have already noticed the fact that iron and articles made of iron paid under the 1875 Tariff only one per cent., with the exception of wire and some unspecified 'other sorts,' which came under the 5 per cent. rate. The Tariff Committee of 1875 proposed to raise this duty to 2 per cent., but the Government did not accept their recommendation. The conditions of trade have since then changed, and steel, which bore a duty of £5 per cent., is now being extensively substituted for iron. It is not expedient to protect iron as against steel, and we therefore discontinue the exception in its favour.

"*Railway Material* was not altogether exempt in 1875, but was exempted in 1878. We continue the exemption.

"In this general schedule, besides doubling the existing duty on Petroleum, we have discontinued the exemption in favour of batching or lubricating petroleum, which will in future be dutiable at half the rate applying to other kinds of Petroleum.

"I wish to add a few remarks in justification of our retaining on our proposed lists a number of items which produce a comparatively small revenue. I think it is easy to exaggerate the relief which the exclusion of such items brings about. It must be remembered that every package of goods which is imported has to 'pass the customs,' and the shipping documents relating to every package go through certain formalities. We cannot avoid this at present for the purposes of trade statistics and of the Merchandise Marks Act. The payment of the duty is only one item in the formalities which surround the process of importation, and the abolition of such payment is not an abolition of formalities and restrictions, but only the cessation of one item among them, although no doubt an important and burdensome item. If we find any articles

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in our import list which are the subject of a special trade, passing along special channels, the abolition of the duties affecting them would be a material relief which would be felt in the trade affected; and we propose on this ground to exempt fresh 'fruits and vegetables.' But, when an ocean-going steamer brings a general cargo into port, the formalities and restrictions which surround the delivery of that cargo are not so very materially diminished by exempting from duty the packages which contain the more rarely imported articles.

"When we are proceeding towards the general abolition of a Tariff, it is wise to begin by excluding the less important items, because the amount of reduction permissible at each step is thus made to cover as large an area as possible. But, as that is not our present position, I am not inclined to admit the argument that, in the case of some of the less productive items, the revenue derived is too small to warrant the cost and trouble of collection. And it was well shewn by Major Baring, in his Financial Statement of 1882, that the abolition of some items, and the retention of others in a general list, led to innumerable difficulties in the way of deciding, in the case of specific articles, whether they came within the duty-free or the dutiable classes.

"An important part of every Tariff Bill is the valuation which is made for purposes of calculation of duty upon every article that does not embrace so many varieties as to necessitate the levy of a duty '*ad valorem*.' These valuations, if they are to be fair to the merchants and consumers on one side, and to the Government on the other, require to be periodically revised and brought into accord with current prices. The valuations of 1871 were, as above noted, revised by a very strong Committee in 1875; again in 1879 it was determined that a yearly revision should be made by a small Committee of three persons,—one being the Collector of Customs at Calcutta,—on the basis of returns of prices systematically collected during the year at the principal ports. The first of these systematic revisions was made in 1880; but the subject necessarily dropped when the duties were abolished in 1882.

"It is not possible to make this systematic revision of Tariff valuations in re-introducing the import-duties,—that is, we cannot, for obvious reasons, before introducing the Bill, have a Committee publicly sitting upon the subject. We have made the valuations we now propose by the help of our Collectors of Customs and our best appraisers at Calcutta and at Bombay. The examination of these valuations will have to be made in Select Committee, and we hope to arrange the means of its being effectively done.

"Now, as regards procedure, it is to be noticed that it is customary to pass Bills affecting the Tariff through the Legislature in as short a time as possible.

Any other course involves the disturbance to trade caused by the knowledge that at some future and unfixed date the cost of the goods to the merchants will be arbitrarily changed. This anticipation has, as I am informed by the Chambers of Commerce both at Calcutta and at Bombay, already been effective in greatly paralyzing trade at the commercial centres of India. I have been urged by both these bodies to restore the course of trade by announcing as soon as possible the intentions of the Government; and, now that I have announced them, I am anxious to bring to an end as soon as possible that intermediate state of disturbance which must continue until the new tariff is brought into effect.

"The Tariff Bill of 1875 was introduced by Mr. Hope, at a sitting of the Legislative Council at Simla, on 5th August, 1875, and it was passed at a single sitting, by suspension of the Rules for the Conduct of Business.

"Again, in 1882, two Bills were introduced by Major Baring, one relating to Customs-duties, and one relating to Salt, on 8th March. The rules for the Conduct of Business were suspended in each case in order to enable two stages of the Bill to be taken up on that day. Two days later, that is, on March 10th, these two Bills were 'taken into consideration,' and by another suspension of the rules were passed.

"I propose, therefore, after the Council has heard any criticisms which Hon'ble Members may desire, at such short notice, to offer upon our policy, to ask Your Excellency to suspend the Rules of Business in order that the Bill may be at once referred to a Select Committee. The Committee will, I hope, sit *de die in diem* until its examination of the Bill is complete."

The Hon'ble MR. PLAYFAIR said:—"My Lord, the Bill introduced to the Council by the Hon'ble Member is one of very great importance, not only to the mercantile interest, but to the whole community of this great Empire. I am glad that the Government have not delayed any longer in making known the intentions of their financial policy, and I acknowledge this as a response to the representations they have received from the Chambers of Commerce. As I understand Members will have the opportunity of discussing this measure in Council after it comes from the hands of the Select Committee, I shall reserve further remarks until then. I hope it may be permissible for the Members of the Select Committee about to be appointed to propose amendments, it may be to exclude certain commodities from the list given by the Hon'ble Member, or to include commodities that do not appear on this list. In connection with the latter suggestion I refer specially to the re-imposition of what are known as the Cotton-duties, which a large section of the mercantile community have

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no hesitation in considering should be brought about if imports have to be taxed—a tax that can be easily and accurately levied. The probable income to be derived from this source would not only meet the cost of exchange compensation to European officers to which the Hon'ble Member has referred, but in all probability would in addition leave a balance to meet other requirements of the State. With these few observations, my Lord, I beg to reserve further remarks upon this very important Bill now before this Council."

The Hon'ble MR. WESTLAND said that, with regard to the remarks that had been made by the Hon'ble Mr. Playfair, he might state for his information that an import-duty on Cotton goods, if re-imposed, would yield about Rs. 1,350,000.

The Hon'ble MR. WESTLAND then asked His Excellency the President to suspend the Rules of Business for the purpose of referring the said Bill to a Select Committee.

HIS EXCELLENCY declared the Rules to be suspended.

The Hon'ble MR. WESTLAND moved that the Bill be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Charles Pritchard, the Hon'ble Mr. Clogstoun, the Hon'ble Fazulbhai Vishram, the Hon'ble P. M. Mehta, the Hon'ble Mr. Playfair and the Mover, with instructions to report by Saturday, the 10th instant.

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 8th March, 1894.

CALCUTTA;
The 9th March, 1894.

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