

*Thursday,
22nd 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
LAWS AND REGULATIONS,

1894

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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 22nd March, 1894.

PRESENT :

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

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

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. Fritchard, 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 Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Fazulbhai Vishram.

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 Mahárájá Partáb Narayan Singh of Ajudhiá.

QUESTIONS AND ANSWERS.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

(1) Whether it is the fact that in the Central Provinces Sir Richard Temple, as Chief Commissioner, with the sanction of the Supreme Government, promised in public print a perpetual limitation of the Government demand on fulfilment of certain conditions?

(2) Whether it is the fact that, after sanction of such policy by the Supreme Government, Sir Richard Temple, as Chief Commissioner of the province publicly declared such policy to the people in public Darbars? If so, will the Government be prepared to confer perpetual limitation of the Government demand on such landholders as may have fulfilled the conditions laid down by Sir Richard Temple at the time, and who may come forward to ask for the settlement of such demand in perpetuity?

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The Hon'ble SIR ANTONY MACDONNELL replied :—

"The proposal to make a permanent settlement of the land-revenue in India has been from time to time discussed; and in 1862 Sir Charles Wood, then Secretary of State for India, invited the Government of India to consider to what extent a permanent settlement could be immediately applied throughout the different provinces. In consequence enquiries were instituted, and it was apparently in connection with these enquiries that in his Administration Report on the Central Provinces for 1862-63 the Chief Commissioner, Sir Richard Temple, wrote :—

'The period over which the limitation of the Government demand, according to the new assessment, is to extend is thirty years for all districts alike. This has been sanctioned by Government. It has also been recommended that the boon of a permanent settlement, that is, the limitation of the Government demand in perpetuity, should be conceded to those landholders who might have brought their estates to a high state of cultivation. The Government have decided that after the lapse of ten years from the commencement of the new settlement, and therefore even within the period of that settlement, those landholders who may be thought worthy of the concession, and who may desire a perpetual limitation of the Government demand, may have their assessments revised with a view to such limitation in perpetuity being declared.'

"But the policy of the Government of India on this question had not been finally settled as Sir Richard Temple had supposed: a correspondence ensued in which the advantages of a permanent settlement of the province became more and more doubtful, and finally, in February, 1864, Lord Lawrence's Government declared that (I quote their words), 'bearing in mind the circumstance that much of the Central Provinces consists of a new country, that many of the Government officers are inexperienced in fiscal matters, and, lastly, that the Secretary of State has agreed that permanent settlements are not expedient in this Province, His Excellency in Council would not sanction their being made.'

"I have been unable to ascertain that Sir Richard Temple ever made in public Darbar any such declaration or promise as that stated in the Hon'ble Member's question; but, if he did, it is quite clear that he had no valid authority to make it.

"Sir Charles Wood's orders of 1862, to which I have referred, were suspended by the Duke of Argyll when Secretary of State in 1871, and were finally withdrawn by Lord Kimberley when Secretary of State in 1883 in the following words: 'I concur with Your Excellency's (Lord Ripon's) Government that the

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policy laid down in 1862 should now be formally abandoned.' In these circumstances the Government of India are not prepared to re-open the question of making a permanent settlement of the land-revenue in the Central Provinces."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

(a) Whether it is the fact that the receipts from the Patwari Fund constituted under section 144 of the Central Provinces Land-revenue Act, 1881, have always exceeded the expenditure debitable to it?

(b) Whether it is the fact that the balance (after meeting all charges) to the credit of this fund at the close of the official year ending 31st March, 1892, amounted to Rs. 3,95,000?

(c) Whether patwaris employed under the Act have been largely utilized in settlement work?

(d) Whether or not such number of patwaris could be conveniently reduced if strictly confined to village work for which they have been appointed under the Act?

(e) Will the Government be pleased to ask the Chief Commissioner to consider whether the rate realized from the proprietors and tenants for remunerating the patwaris might be regulated so as to make the receipts exactly equal to the expenditure?

The Hon'ble SIR ANTONY MACDONNELL replied :—

"The answers to the Hon'ble Member's question are—

(a) Not always; but generally there has been an excess of receipts over expenditure. For the five years ending March, 1893, the receipts of the Fund have been Rs. 20,88,593 and the expenditure Rs. 18,35,862.

"(b) The balance to credit of the Patwari Fund on 31st March, 1892, is reported by the Comptroller General to have been Rs. 3,95,943; but no recoveries for cost of supervising establishments have yet been made from the Fund under section 146A of the Land-revenue Act in respect to districts of which the re-settlement has not yet been completed. In such districts the cost of these establishments has hitherto been paid from Provincial revenues. If these recoveries are made, the balance will be largely reduced.

"(c) Yes. It is the patwari's duty to assist in settlements, but, if the Hon'ble Member's question points to the employment of patwaris outside the limits

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of their own villages, I may say that such employment when it occurs is temporary, and devised with the object of promoting greater despatch in the work, and reducing the costs of the proceedings in the tahsil or circle. It ceases with the completion of the preliminary stages of the re-settlement operations.

“(d) and (e). On completion of the re-settlement of a district the usual procedure is to fix the circles within which the patwaris shall exercise their functions. This is done with strict regard to economy, and no larger staff of patwaris is entertained than is necessary. When the number of patwaris and of the supervising establishments is fixed, the cost is calculated and the rate of cess adjusted, so that income and expenditure shall balance as nearly as possible. No further orders on the point seem to be called for.”

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

(a) Is it not the case that short-period settlements have been denounced in very strong terms in several despatches by the Secretary of State, the Government of India, and such officers as Sir Auckland Colvin and Sir Richard Temple?

(b) Whether it is the fact that the period of settlement in the Central Provinces has been lowered down during the current settlement in some districts even so low as only eleven or twelve years?

(c) Is Government aware that such policy has been the source of greatest anxiety and dissatisfaction to the people in the province? If so, will the Government be pleased to reconsider this policy and to extend the periods of the current settlements to reasonably long periods or at least to their former period?

The Hon'ble SIR ANTONY MACDONNELL replied :—

“It is the case that short-term settlements have been at various times objected to by various authorities, and the Government of India are not in favour of short-term settlements unless in exceptional cases, as, for example, when a tract of country hitherto inaccessible to trade is being opened up by a railway.

“It is the fact that the term of the current settlement in some districts of the Central Provinces has been fixed at about twelve years. One reason for this is that these districts were being opened up or tapped by the construction of railways, which have already produced a very great increase in the prices of agricultural produce and given an impetus to cultivation and progress

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in those districts. At the end of ten or twelve years the first effects of such improvements will have worn off, and a more normal state as regards prices and agriculture will have been reached. If in these circumstances the term of the settlement had been long, the State would lose its fair share of the profits accruing to the districts by the construction of the railways. The rest of the country would then have to contribute that portion of the public burden which in equity should fall on the districts which have especially and largely profited from the public expenditure.

"I may here mention that an improved system of settlement procedure has been introduced, which provides for the continuous maintenance of village records-of-rights, and thus dispenses with the necessity for re-measurements and re-valuations of the soil at each revision of the contract, and saves the people all the harassment which has been looked on as one of the great objections to short-term settlements. It is a part of this new system that the re-settlement of each district is taken in hand in turn, and not of all simultaneously. This arrangement can only be brought about by making the settlement now in progress run for different terms in different districts, that is, by establishing a proper roster for the future. Thus, if the re-settlement of the Raipur District will run from twelve to thirteen years, that of the Bhandara District will probably run from twenty to twenty-three years.

"The Government of India are aware that the landowners of the Central Provinces wish for long-term settlements, and Your Excellency's Government desire to treat this wish with as much consideration as the general circumstances permit. The settlement now in progress in the Central Provinces may be regarded as a process of transition and as laying the foundation for a more settled system of fiscal administration."

The Hon'ble MR. PLAYFAIR asked :—

Whether a copy of the despatch from the Government of India to the Secretary of State on the subject of the proposed amendment of the law relating to Common Carriers in India, and dated Simla, the 13th June, 1893, was sent to the representatives of the Steamer Companies who memorialised Government on the matter with a portion of such despatch erased, and whether the Government will lay a copy of the despatch in full and the answer in full before the Council.

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The Hon'ble SIR ANTONY MACDONNELL replied :—

"The answer to the first part of the question is yes. The Companies' solicitors applied on the 6th January for a copy of the despatch in question and a copy was sent them with the following remark :—'The last paragraph of the despatch refers to an individual opinion, and is omitted.' The answer to the last part of the question must be, I regret to say, in the negative, because the paragraph in question did not express the opinion of the Government, with which alone the Companies are concerned."

FINANCIAL STATEMENT FOR 1894-95.

The Hon'ble MR. WESTLAND said :—

"In accordance with the Statutory Rules for the discussion of the Financial Statement of the Governor General in Council, I have caused a printed copy of the Financial Statement of 1894-95 to be delivered to each Member; and I proceed to submit to the Council the explanations I desire to offer with reference to it. Following the example set last year by Sir David Barbour, the prescribed Financial Statement will form the Second Part of the published compilation, and will set forth and explain in detail the various figures of the receipts and outgoings of the Government, being intended both for the information of the public, and as a permanent official record of the financial arrangements and prospects of the current and the approaching year. My accompanying explanation, which will form the first part of the compilation, is intended to give Hon'ble Members a more general view of the accounts and estimates, leaving fuller information regarding the details to be sought for in the more elaborate compilation, which has been printed and distributed in accordance with the rules.

"I have so recently had occasion to lay before Hon'ble Members a review of our recent and present general financial position that I am to a certain extent discharged from the obligation to look on this occasion beyond the figures of the three years, the finance of which I have to explain, *viz.*, the past year, the current year and the coming year. I do not think that any Finance Minister has yet had the evil fortune to present figures which for all three years shew a deficit of Revenue, but I shall not waste the time of the Council in again going over the ground covered by the statement I laid before them three weeks ago, and bemoaning the adverse fate which a continually dwindling rupee imposes upon us. I pass at once to the consideration of the accounts and estimates which it is my duty to explain.

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"ACCOUNTS, 1892-93.

"The accounts of 1892-93, as finally made up, shew a deficit of Rx. 833,412, as compared with the deficit in the Revised Estimate of Rx. 1,081,900. The improvement, which amounts to Rx. 248,488, is composed of a number of small differences scattered over both the Revenue and Expenditure heads, none of which are large enough to require particular mention. In short, the Revised Estimate presented to the Council twelve months ago represented as accurately as an estimate could be expected to do the outturn of the year. The accounts were made up at an exchange a little less than 1s. 3d. per rupee; the total amount of Council Bills drawn during the year being £16,532,215 at the average rate of 1s. 2'985d.

"The usual appropriation report, containing the Comptroller and Auditor General's review and comparison of the estimates and accounts of the year, was published in last week's Gazette of India; and with it the year's accounts are consigned to past history.

"REVISED ESTIMATES, 1893-94.

"As compared with the Revised Estimates for 1892-93, which we have seen were very accurately justified by the final figures, the Budget Estimate of 1893-94 provided under *Revenue* heads for better Land Revenue Rx. 299,600, worse Opium Revenue Rx. 650,300, worse Salt Revenue Rx. 60,800, better Railway Revenue Rx. 487,500, and a number of minor differences. In the aggregate the difference was a difference for the worse of Rx. 15,500.

+	299,600
-	650,300
-	60,800
+	487,500
Net -	75,000

"The Revised Estimates of 1893-94 shew that we have had a very favourable Land Revenue year, even after taking into account the fact that Rx. 207,200 of the increase comes in, in Madras and Bombay, by deduction from, or charge to, other heads. The return is about 25½ crores, whereas we have never yet come up to 25. and is Rx. 335,100 in excess of Budget. But, on the other hand, the loss of Opium Revenue is by Rx. 621,800 greater than anticipated, and whereas the lowest figure recorded for many years has been Rx. 7,879,182, we this year estimate to receive only Rx. 6,694,400. The loss under Salt Revenue has been much greater than anticipated, being Rx. 241,600 as compared with Budget Estimates. On the other principal Revenue heads taken together there has been a gain as compared with Budget of Rx. 252,000. Railways have done extremely well during the year, the Revenue being taken at Rx. 654,800 better than Budget, and more than a crore better than last year.

+	335,100
-	621,800
-	241,600
+	252,000
+	654,800
Net +	378,500

"These differences and a number of minor ones give us a net improvement of Rx. 423,800 upon the Budget Estimates on the Revenue side,* of which Rx. 104,900 goes to Provincial account, leaving Rx. 318,500 for Imperial.

1,595,100
— 318,900
1,276,200
— 48
1,276,200
— 48
1,276,200

"The Budget Estimates of the year were for a deficit of Rx. 1,595,100 upon the year's account. With the improvement of Revenue which I have noticed, our Expenditure if kept within estimate would have brought out at the end of the year a deficit of only Rx. 1,276,200. Our deficit, however, stands at Rx. 1,792,800, or Rx. 516,600 greater than this figure. And indeed, as a short opium crop has saved us Rx. 370,100 on our estimated opium payments, I have really to explain Rx. 886,700 of excess of Expenditure over Estimate in 1893-94.

159,500
151,500
318,300
629,300
— 89,000
540,300

"The only heads of *Imperial Expenditure in India* which shew any noteworthy excess of Expenditure over Estimate are Interest on Debt (Rx. 159,500), Working Expenses of State Railways (Rx. 151,500), and the Army Expenditure (Rx. 318,300). The excess under the first represents for the most part the discount on the Loan raised in August, which amounted to Rx. 133,000. The excess Expenditure under the second arises in connection with the larger traffic already referred to. Of the Army Expenditure Rx. 263,500 is due to Exchange Compensation Allowances: there has also been expenditure in excess of the Budget Grants of Rx. 21,500 for certain special military and political operations, of Rx. 48,100 for special expenditure in connection with the Gilgit Agency, and Rx. 26,700 for special purchases of horses and mules: on the other hand, savings are anticipated from some of the Budget Grants.

"We have saved Rx. 89,000 by short Expenditure upon Special Defences.

"The items I have mentioned account for excess Imperial Expenditure in India of Rx. 540,300. The smaller differences result in a net saving of Rx. 26,600, and the real excess in the total figures, after allowing for Opium, is Rx. 513,700. So that we have saved more than enough, in minor differences over the rest of the account, to pay for the Exchange Compensation Allowances to non-military officers. These were not included in the Budget, but are estimated at Rx. 137,800 under the non-military heads.

104,100
27,300
— 66,000
65,400

Net . . . 65,400

"The *sterling expenditure* account compared with Budget Estimate shews £104,100 excess payments under Interest; excess marine charges £27,300; short charges for special defence works £66,000, giving, with a few smaller differences, a net excess of £65,800.

"The *exchange* upon the expenditure was estimated, at 1s. 2½d., to cost Rx. 9,935,900; it is now estimated at Rx. 307,200 more.

* I neglect for present purposes the fact that about Rx. 30,000 of this is due to the operation in 1893-94 of the new Tariff Act.

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"Adding together these items, the deterioration which I have explained on the expenditure side amounts to the figure above stated, namely:—

	Rx.
Imperial Expenditure in India	513,700
Sterling Expenditure	65,800
Exchange	307,200
TOTAL	886,700

and leaves the year's account in deficit by Rx. 1,792,800.

"I ought to mention, as a matter of some public interest in connexion with the estimates of 1893-94, that the Royal Commission on Opium is expected to cost in India about Rx. 20,000, and in England about £1,500; of these amounts, half will be charged to Indian Revenues. The smallness of the expenditure is for the most part due to the fact that the Commissioners (except the one who was placed on the Commission as an officer of the Government of India) neither required nor received any remuneration for their services, being determined that their laborious task should cost as little as possible to the people of India.

" BUDGET ESTIMATES, 1894-95.

"In explaining the Budget Estimates for 1894-95 I ask the Council first to go back to my statement that the Revenue in the Revised Estimates of 1893-94 falls short of the Budgetted Expenditure of that year by Rx. 1,276,200. Our revenue of the coming year is largely estimated upon the basis of the Revised Estimates of the current year, and I propose first to shew, as compared with those Revised Estimates, what additional Revenue under the same heads we may expect to come into our account during the year 1894-95.

"First, under the principal *Revenue* heads, the Estimates of Land Revenue show an increase of Rx. 211,300 upon the high figures of 1893-94; and Salt will, we hope, recover from its backward position of the current year, and bring us in an addition of Rx. 283,000. Under both these heads in fact we have some reason to think that certain short collections of February and March, 1894, will come into the accounts of April or May, that is, of 1894-95. On the other hand, we do not think it safe to take Opium at even the figure of 1893-94; our realisations are necessarily affected by the adverse exchange arising out of the low price of silver, and we estimate a falling-off of Rx. 300,800. The remaining principal heads show some increases and some decreases, but on the net account a decrease of Rx. 1,600, giving for this section of the accounts a net increase of Rx. 191,900. To this we have to add the estimated increase in Railways of Rx. 201,900 and in Irrigation of Rx. 144,200; but, on the other hand, we lose Rx. 160,400 under Mint Receipts (by reason of discontinuance of coinage). The net amount of all these is an increase of Rx. 377,600, which, by a number of minor differences under other

+211,300
+283,000
-300,800
-1,600
Net : +191,900
<hr/>
+191,900
+201,900
+144,200
-160,400
<hr/>
+377,600

c

heads, becomes Rx. 395,400. Of this total amount of increase of our revenues, Rx. 240,300 belongs to the Provincial account, and Rx. 155,100 to Imperial. In respect of Revenue, therefore, we expect on the Imperial account to be better off in the approaching year by only Rx. 155,100, as compared with the Revised Estimates of 1893-94; and the result therefore is that if we had on our expenditure side merely to meet the same Imperial expenditure that was provided for in the Budget of last year, we would be, with the revenue we anticipate, in deficit by Rx. 1,276,200, less Rx. 155,100, or Rx. 1,121,100.

"The deficit we will actually have to meet will be this amount *plus* any amount by which the expenditure for which we have to provide in the coming year exceeds that of the Budget Estimates of 1893-94. To find what this addition will be, take first the estimate of *Imperial expenditure in India*. The figures stand as follows:—

	Budget, 1893-94.	Budget, 1894-95.	Increase or Decrease.
	Rx.	Rx.	Rx.
Direct charges on Revenue	4,614,200	4,662,300	48,100
Interest	55,400	—113,400	—168,800
Post Office, etc.	2,081,400	2,073,200	—8,200
Civil Departments	3,134,500	3,240,100	105,600
Miscellaneous	688,400	700,000	11,600
Famine	1,119,300	1,121,200	1,900
Railway Revenue Account	11,597,400	12,051,100	463,700
Irrigation	1,349,300	1,372,200	23,900
Buildings and Roads	1,878,500	1,577,800	—370,700
Army	15,692,500	16,169,200	475,700
Special Defence	252,300	113,500	—138,800
TOTAL	42,464,200	42,908,200	+444,000

"The increases and decreases in this statement, which are less than Rx. 50,000, require no remark; they may be described as ordinary variations. The decrease under Interest merely means the transfer of more interest to the Railway Revenue account, the net increase under these two heads, Rx. 294,900, representing the additional working expenses and surplus-profits payments arising in connection with the larger traffic. Under Civil Departments we have a net increase of Rx. 105,600, of which the principal items are Rx. 28,500 under Administration (mostly Exchange Compensation allowance), Rx. 139,800 under Political (additional subsidy to the Amir Rx. 60,000, probable expenditure of

463,700
—168,800
294,900
28,500
139,800
41,600
—26,900
—77,400
Net . 105,600

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demarcation under the treaty Rx. 50,000, Exchange Compensation Rx. 23,400; other increases Rx. 41,600 mostly due to the Exchange Compensation; savings in Police Rx. 26,900 (chiefly in Upper Burma); and savings under Marine Rx. 77,400 (mostly counterbalanced by short receipts).

"The decrease of Rx. 370,700 under Buildings and Roads is due to economies forced upon us by our present financial condition. We have saved Rx. 194,200 by reducing the grant for Military Works, and Rx. 176,500 by cutting out practically every new work upon the Civil side (under India, General, and in Upper Burma) to which we are not absolutely committed.

"The Army expenditure shows, as compared with the estimates presented last year, an increase of Rx. 475,700. Of this amount, the variations in pay and allowances which depend upon Exchange alone account for Rx. 390,100.

"For apart from the question of Exchange Compensation, the pay of the British soldier is fixed in sterling, and the rupee payment depends upon the rate of exchange annually fixed for the adjustment of transactions with the English Treasury. That rate was for 1894-95 fixed, as usual, upon the basis of the rates actually current in December last (namely 15½d.); but, owing to the peculiar circumstances of the year, the rate has been declared 'subject to revision hereafter, should it be deemed necessary, in consequence of the actual rate varying greatly from the official rate for any considerable length of time.'

"The balance of the excess, or Rx. 85,600, is composed of several items, of which a fuller account is given in the second part of this statement.

"The *English expenditure* for which we have to provide is, on the whole account, £13,500 less than that of last year. We have an increase on account of interest of £288,500, owing chiefly to the temporary borrowings of which I shall have presently to give an account; on the other hand, there are savings of £33,300 on the Marine charges (as last year's estimates contained some special construction charges); of £12,600 under Territorial Pensions (due to the death of Maharaja Dhulip Singh); of £69,700 under Army charges (a balance between a large saving in Military stores and an increase in non-effective charges); and of £152,100 under Special Defence Works, the expenditure on which is coming to an end.

£
+ 288,500
— 33,300
— 12,600
— 69,700
— 152,100
— 34,300

TOTAL	— 302,000
NET	— 13,500

"The other differences are small, and involve a net decrease of £34,300.

"The *Exchange* upon our expenditure was in last year's Budget taken at 14½d., and came to Rx. 9,935,900. This year we take 14d. as our rate, and the Exchange comes to Rx. 11,307,400, so that we have an excess expenditure to provide for of Rx. 1,371,500.

"Now, bringing all these increases of expenditure together, we have, as compared with Budget Expenditure of 1893-94,—

	Rx.
In India—Imperial account—increase	444,000
In England, decrease	—13,500
For Exchange, increase	1,371,500
NET INCREASE	1,802,000

"I have shown that our estimated revenue of 1894-95 falls short of the Budget expenditure of 1893-94 by Rx. 1,121,100; it therefore falls short of our budgetted expenditure of 1894-95 (so far as we have gone) by Rx. 2,923,100.

"The difference between this and the 3½ crores I gave in my Statement of March 1st is mainly in the reductions we have effected, chiefly under Buildings and Roads, both Military and Civil, in order to meet the shortness of our means.

"SPECIAL MEASURES TO MEET THE DEFICIT.

"This amount then, Rx. 2,923,100, is the deficit which we have to take special measures to meet. The first of these special measures is the re-imposition of, Import-duties for which the Council passed a Bill on March 10th. The annual revenue to be obtained by that measure I then stated at Rx. 1,400,000, but the measure was modified in Select Committee by the reduction of the first-proposed duties on iron and steel, and I now put down the revenue at Rx. 1,350,000. I make a deduction of a little over ten per cent. for short collections the first year, and the actual figures passed into the estimates on account of the duties are—

	Rx.
Revenue (after deduction of Refunds)	1,200,000
Establishment	60,000
Net Produce	1,140,000

"The next measure is that we are obliged to suspend the famine grant for the time. This is, as has been often explained, the grant of surplus revenue to the construction of Protective Railways and Irrigation Works. Part of the original Rx. 1,500,000 is already pledged, that is, it is used to meet the loss to Government on its contracts in respect of the Bengal-Nagpur and Indian Midland Railways. That loss, in the coming year, is estimated at Rx. 368,800, and there is also an estimate of Rx. 10,000 for actual famine charges;

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so that of the whole grant only Rx. 1,121,200 is capable of being resumed, or rather withheld. We have deemed it expedient to allow Rx. 45,000 on account of certain Irrigation works to remain charged against this head, but the remaining Rx. 1,076,200 will remain unspent in 1894-95. The principal Railway work which is being charged to this head at present is the East Coast Railway. And, as this work is classed also as a Productive work, a considerable grant has been given to it, under the head of Expenditure not charged against Revenue, so that this particular work will not very greatly suffer by the suspension of the grant. But this only means that the effect of the reduction is passed on to other Railway projects.

"One other measure we have been obliged to take, namely, to call on Provincial Governments for contributions to our aid, in other words, to force upon them severe economies, and appropriate the results to the benefit of our own account. The Government of India were most unwilling to have recourse to a measure which practically means the stoppage for the time of all administrative improvement, a measure which they feel must take all the heart out of Provincial Governments, by making them surrender all the fruits of careful administration, to fill the yawning gulf of our sterling payments. But, as the Government of India said in addressing its demand to them, 'the imperious necessity for imposing new taxation obliges the Government of India first to exhaust all available methods of increasing their resources; and this necessity is the only justification they can put forward for so soon making a practical revision of "contracts" made only two years ago, and calling in balances which the Local Governments might legitimately claim as pledged to them for the purpose of administrative improvement.'

"The Government of India wish to acknowledge the readiness with which this demand has been met. The demand was issued on March 1st; it had been complied with by March 12th. Though not very large in amount, except in one case (that of Lower Burma), the demand comes so closely after the adjustment of assigned revenue to assigned expenditure that it means in every case the adoption of active measures to restrict expenditure; and it must be remembered also that it comes after the Local Governments have already had, in the Exchange Compensation allowances, to meet new expenditure over and above their assignments.

"The total amounts obtained from the Local Governments come to Rx. 405,000, their balances being, in nearly every case, reduced by the demand to the minimum prescribed by the Secretary of State.

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"By these three measures the deficit in our account is reduced by Rx. 2,621,200, namely :—

	Rx.
New Import-duties, net produce	1,140,000
Suspension of Famine Grant	1,076,200
Contributions from Local Governments	405,000
	<hr/>
	2,621,200

from Rx. 2,923,100 to Rx. 301,900, at which figure it stands in the final statements.

"I have already in my statement made in this place on March 10th given a full account of the reasons which have led to the Government accepting this deficit for the year 1894-95. I shall not weary the Council by a repetition of a subject then very elaborately discussed.

"CLOSING OF THE MINTS.

"The central fact of the Financial History of the year was the closing of the Mints on 26th June last. When the last Budget Estimates were presented to this Council, the Government of India were waiting for the Report of the Committee assembled under Lord Herschell's presidency, to whom had been committed the examination of the Currency proposals of the Government of India. The Committee reported under date May 31st. Their recommendation was as follows :—

'It remains for us to state the conclusions at which we have arrived. While conscious of the gravity of the suggestion, we cannot, in view of the serious evils with which the Government of India may at any time be confronted if matters are left as they are, advise Your Lordship to overrule the proposals for the closing of the Mints and the adoption of a gold standard which that Government, with their responsibility and deep interest in the success of the measures suggested, have submitted to you.

'But we consider that the following modifications of these proposals are advisable. The closing of the Mints against the free coinage of silver should be accompanied by an announcement that, though closed to the public, they will be used by Government for the coinage of rupees in exchange for gold at a ratio to be then fixed, say 1s. 4d. per rupee; and that at the Government treasuries gold will be received in satisfaction of public dues at the same ratio.'

"The Government of India, having considered the Report, telegraphed to the Secretary of State on June 15th, proposing to take immediate action on this decision; the Secretary of State's consent was given on June 20th, and the necessary legislation was carried through on June 26th.

"It was, of course, expected that the value of silver would be immediately affected by this change. It stood at about 38d. till June 25th, and then in four

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days it fell to 30½*d.* In July it recovered in the first week to 34*d.*, but settled afterwards at about 32½*d.* In August and September it stood at about 34*d.*, but it fell during October, and its price from then till the middle of January stood at about 32*d.* After this, a renewed fall set in, and in the first week of March the price was quoted at 27*d.*; at that price the metallic value of the rupee is about ten pence farthing.

"Meantime, Silver legislation was taking place in the United States of America. Congress met on August 7th, and a Bill for the repeal of the silver purchase clause of the Law of 1890 was speedily introduced and was passed on August 28th by an unexpected majority. The Bill remained under discussion in the Senate from August 28th till October 30th, when it was passed after a strong opposition. It received the President's signature on November 1st. But it will be seen from my statement of the history of the price of silver that the legislation of the United States was practically a foregone conclusion. Its effect had been discounted, and the final passing of the law produced but little change in the price. The doubtful element in the case was the Indian legislation, and when that legislation became an accomplished fact the price of silver immediately assumed a lower level.

"During the months succeeding the closing of the Mints the price was favourably affected by a strong demand from India. The amounts imported into India during these months were Rx. 2,019,100, Rx. 781,400, Rx. 858,400, Rx. 1,127,400, Rx. 450,400, Rx. 926,600, Rx. 1,658,400, and in February Rx. 1,167,800. Total Rx. 8,989,500.

"We have naturally been very much interested in the question what came in this country of these large imports of silver, but our enquiries have satisfied us that there has really been a very large demand for it for private use and possibly also for hoarding. The divorce between the value of coined and of uncoined silver brought about a state of things utterly unknown in Indian history—in the experience at least of any of the present generation—*vis.*, that uncoined silver could be sold at a profit for considerably less than its weight in coined silver. Silver dealers rushed in to make a profit out of the inability of the ordinary Indian to understand that it was not necessarily a profitable transaction to buy a tola of rupee-silver for fifteen annas. The question was violently agitated of imposing a silver import-duty, so as to prevent a demand for silver that threatened to annihilate, by its own force, that balance of trade which had hitherto required settlement by Council Bills. But it was recognized that this demand for silver would have to be exhausted before our new Currency policy could have a fair chance, and it was determined to leave it to the operation of natural causes. The announcement was made upon January 18th that no duty would be placed on imported silver in aid of the Currency policy.

"A certain amount of this silver, but not, so far as we can find, a very large amount, passed into Native States for use in coinage. It was easy to foresee that, by the closing of our Mints, our rupees would be appreciated with reference to the silver coinage of Native States, especially if measures were not adopted in these States to restrict their coinage in a corresponding measure. We advised the various Durbars to watch the current rate of exchange between their rupees and the Government rupee, and most of them stopped coinage very shortly after we had done it. The Native States are not, however, so favourably situated as we are with reference to the maintenance of an appreciated coinage; for their rupees can, in most cases, be manufactured without elaborate machinery, and so far as we know (though we have not yet full information on the point), the local systems of currency are in very few cases strictly limited, like our own, to coin issued by the State in which it is current. We are, however, continuing to watch the effect of our policy upon the coin of Native States, and to advise them, from time to time, as to the economic effect of measures taken by ourselves or intended by them.

"This excessive import of silver was not the only obstacle which our Currency measures had to meet with. We had been obliged, for reasons for which we were not responsible, to initiate these measures at the most unfavourable time of the year, namely, the beginning of the slack season—that is, the season when our exports are smallest; and the refusal of the Secretary of State to issue his Bills under 15½*d.* brought other importers into competition besides the importers of silver, and the balance of trade on the whole actually turned against India for a time. I think it is now recognized that the policy of refusing to issue Bills was a mistaken policy, and that it would have been better to issue Bills moderately so as to meet the demands on the Home Treasury. But the circumstances we had created were altogether new, and both officials and merchants and bankers had all to learn, by actual experience, what new economic forces had been called into existence, and how they affected the question of the appreciation of the rupee. The Secretary of State announced, on January 20th, his abandonment of his attempt to maintain a forced value for his Bills, and since then the course of commerce has given us ground for expecting that we shall be able to maintain the rupee at a value considerably above its metallic value, though not as yet approaching the limit at which there is any chance of its functions as a Currency beginning to be replaced by gold.

"The first considerable issue of Council Bills was on 31st January, when a rate of 14¾*d.* was obtained. The rate fell, till on the 26th February it stood at 13½*d.*, but it has since then recovered to about 14*d.*

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"The question of the future value of silver is so doubtful that I hesitate to express any opinion regarding it. We are told that it has now touched bottom, but we have been told that very often, in past times, and yet it has sunk lower. I do not agree with those who think that if we were to open our Mints we would benefit by enhancing the value of silver. It should be remembered that we can enhance that value only by actually absorbing a considerable share of the world's produce of the metal. But the absorption and coinage of a large amount of silver is an effect that can only follow, and be concomitant with, a fall in the value of the rupee. It is, in fact, economically, the effort of the Currency of the country to adapt itself, by increase in volume, to its decrease in value. In other words, if the opening of our Mints is to enhance the value of silver, it can do so only by a process which involves the depreciation of the value of the rupee; and therefore, as it seems to me, no enhancement of the value of silver, brought about by our opening our Mints, can be of any advantage to us.

"I think that even those who do not believe in the ultimate success of our currency legislation must at all events admit that we have, by its means, escaped an immediate disaster; and those who believe that the only way of issue from the difficulty lies through bimetallism will admit that they are several steps nearer its realization when the rest of the world has ceased to rely on India's consent to bear the main portion of the burden of silver-depreciation.

"SECRETARY OF STATE'S OPERATIONS.

"By the circumstances to which I have alluded the sale of Council Bills was practically in suspense from July 1893 to January, 1894, inclusive. The Secretary of State had estimated to raise £18,700,000 by Bills, of which £1,189,200 was the estimated amount of net payments to Railway Companies, the remainder representing the current requirements of the year. During the first three months of the year he issued Bills for £5,722,799, an unusually large amount, which raised his sterling balance on June 30th to £4,173,925; but from that date till the end of January the amounts received were, in each of the seven months, £51,750, £78,250, £6,672, £4,791, £609,544 (in November), £20,937, £90,658; giving a total of only £862,602.

"During this period, therefore, the Secretary of State had to carry on his transactions by borrowing. The high balance of June 30th carried him over July and August, and besides this balance he had at that time over £400,000 in hand on account of a borrowing and repaying transaction provided for in the Budget Estimates. He had estimated to raise £1,300,000 of 3 per cent. stock to pay off Railway debentures, and, though he raised most of this amount in

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July, the repayments were not complete till October. His cash balance, however, was very low in the end of August, namely, £460,903. In September he issued $3\frac{1}{2}$ per cent. debentures for £1,386,000, and borrowed temporarily £500,000; and the net temporary borrowings in subsequent months were—October £1,500,000, November £750,000, December £750,000, January £2,750,000, giving a total of £6,250,000.

“The figures as made up on actual accounts till the end of January, and estimates received from the Secretary of State for the two last months, give us—

	Till January : Accounts.	February and March Ac- counts and Estimates.	Total for year.
Funds raised by Permanent Debt	1,386,000	...	1,386,000
Council Bills	6,585,400	2,814,600	9,400,000
Temporary Borrowing (net)	6,250,000	—250,000	6,000,000
	<hr/> 14,221,400	<hr/> 2,564,600	<hr/> 16,786,000

“It will be seen therefore that the Estimate of Council Bills now made falls short by £9,300,000 of the Estimate of last March, and that this amount has been made up by permanent debt £1,386,000, temporary debt £6,000,000, a reduction in the cash balance of £1,013,000: total £8,399,000; besides reductions in the payments to Railway Companies and on account of remittances.

“We have *per contra* an enormous accumulation of silver in our Treasury Balances in this country. The £8,399,000 of debt incurred, and cash balance reduced, during the year are represented, at an exchange of 15*d.*, by Rx. 13,438,400 in this country, and our cash balances in India being practically increased by this amount, stand at the close of January, February and March at the unprecedented figures of Rx. 23,802,200, Rx. 25,016,500 and Rx. 26,251,800 (estimated).

“Next year, it will be seen that it is not the present intention of the Secretary of State to draw Bills on our accumulations of silver in order to pay off his temporary debt. He proposes to borrow £8,300,000, of which £6,000,000 will be used to discharge the temporary obligations outstanding at the end of the current year; and the rest is required for his ordinary transactions. The amount for which he proposes to draw, £17,000,000, is only the expenditure of

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the year, with the addition of the Capital outlay on account of State Railways, and a portion of his remittance payments. It must, as usual, be understood that these figures are given with reservation of entire liberty to the Secretary of State to vary his borrowings and his drawings as he may find occasion.

"LOANS IN INDIA.

"In the Budget Estimates of 1893-94 we proposed to raise a loan of Rs. 3,000,000. On July 14th, while we were still in ignorance of the approaching failure of Council Bills, a notification was issued calling for tenders for Rs. 3,500,000 at $3\frac{1}{2}$ per cent., and at the same time notice was issued for the discharge of such part of the $4\frac{1}{2}$ per cent. loans of 1878 and 1879 (excluding the 7 shillings per cent. portion) as still remained unconverted, under previous notifications, into four per cents. The loan was raised at an average of Rs. 96-3-2 $\frac{1}{2}$ per cent., producing Rs. 3,366,130, against a nominal value of Rs. 3,499,100 (as Rs. 900 remained unissued). Of the $4\frac{1}{2}$ per cent. loan we estimate to have paid off Rs. 1,100,000 during the current year, leaving Rs. 241,447 undischarged. The three-and-a-half per cents. are now above par.

"It is hardly necessary to say that with our huge silver balances we have no intention of raising a loan in India during the year for which estimates are now being presented.

"CONCLUSION.

"Such then is our programme for the approaching year—a programme of retrenchment and of vigilance, intended to tide us over what I have called a transition period. The means which we have adopted in our Budget Estimates of nearly balancing our Revenue and Expenditure are means which will hardly be available a second time. It is at some risk that we suspend even for one year the provision of a crore or a crore and a half which we shall certainly require if a famine season comes upon us: we cannot call our financial position safe till we find ourselves again with that crore to the good. The forty lakhs also which we obtain from the Provincial Governments exhausts for the time that source of relief from temporary difficulties. A year hence, as I said a fortnight ago, we shall certainly have to reconsider our position, and we hope by that time to have a much more definite knowledge of the conditions upon which our future financial position rests."

PRISONS BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Report of the Select Committee on the Bill to amend the law relating to Prisons be taken into consideration. He said :—

“ My Lord, in the remarks which I addressed to the Council, when asking leave to introduce this Bill, I gave a brief account of the reasons which had led the Government to propose legislation on this subject. The Council will perhaps not consider it necessary that I should repeat these reasons now. If I may judge from the undemonstrative reception which has been accorded to the Bill by the public, the reasons have on the whole been considered sufficient. In my introductory remarks I also briefly explained the framework of the Bill. That framework is preserved in the Bill as it is now presented to the Council. It is true that many alterations and additions have been made to the Bill during its passage through Select Committee ; but the Bill remains, as to its scheme, practically the same as when it was introduced. The main features of that scheme consisted in the retention in the Act of as many principles of permanent operation as possible, and the relegation to rules of such matters of internal discipline and control as were liable to be influenced by circumstances, and to vary from time to time. This scheme has been challenged from two opposite quarters. From one side it has been said, why put so much into the Act and not leave more to executive discretion ? From the other side it is objected, why leave so much to executive discretion and so little to the Act ? There is no doubt an element of justice in both views ; but the Committee thought that a middle course was preferable to either extreme—a course which aimed at borrowing what was good in the two extremes while avoiding their defects. How far we have succeeded experience alone can shew ; but if we have failed it has not been for want of care and deliberation.

“ I do not propose to detain the Council by going *seriatim* through all the changes which have been introduced into the Bill. The changes are printed in italics in the edition of the Bill which has been presented to Council, and are apparent at a glance. I may, however, call attention to a few of the more important alterations. It will be in the remembrance of the Council that I laid stress when introducing the Bill on the distinction drawn between a prison and a subsidiary jail. The latter institution is excluded from the operation of the Bill, unless by special order the Local Government brings it within the scope of the measure. This distinction has been preserved ; but the definition of ‘ prison ’ has been so recast as to cover all the ground necessary in a neater

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and more effective manner than in the first draft. For this improvement I am primarily indebted to the Inspector General of Jails, Madras. Instead of endeavouring to describe in the Act what a subsidiary jail is, we now, having defined a 'prison,' leave the Local Governments free to declare what subordinate or minor institutions shall be treated as subsidiary jails and what provisions of the Act and the rules made under it shall apply to them.

"The chapter relating to the duties of prison-officers has been very carefully revised and expanded with a view to the clearer definition of each officer's responsibilities, and an important new provision has been inserted declaring convict-officers to be public servants within the meaning of the Indian Penal Code. This supplies a remedy for an inconvenience which has been felt in practice.

"In Chapter V of the Bill we have inserted a substantive provision that prisoners may be confined either in association or separately. My Lord, our present system of jail administration in India is based on the detention of prisoners in association with each other. There is, of course, classification of prisoners in our jails according to the heinousness or habitual character of their offences—a classification which is more or less complete according to the construction of the jail. But there is always association of the individuals composing the class. Against the association of prisoners while engaged in labour, I have nothing to say; I am in favour of it. But the association of prisoners at other times, and especially at night, is more open to objection. For financial and other reasons the full extension of the system of separate confinement is still a matter of the distant future, but the separation of prisoners at night is more within our means and power. Improvement has already begun in several jails of this and other provinces, by providing cubicles made of wire-netting, by which each prisoner is confined to a separate compartment without any alteration in the general structure of the ward being made necessary. I do trust that this system, or some other equally effectual system, will be as soon as possible introduced into every jail in the country, and that in this way prisoners may be restrained from communication with each other at night time, when control over them must be necessarily lax. The inter-class segregation of the more respectable and least culpable from the others would thus become easy, and the demoralizing influences of jail life would be proportionately reduced.

"The chapters of the Bill, my Lord, which relate to the Food and Clothing of Civil and Under-Trial prisoners, to the Employment of prisoners, their Health

and their Communications with their friends have been carefully revised; and certain suggestions, in connexion therewith, emanating from a Calcutta Association which takes an interest in jail administration have been considered. I desire to call attention to two of these suggestions which seem to me to be typical of the ideas which are prevalent in Native circles on the subject of prison-discipline: One is that the rigour of prison-discipline should be moderated in regard to convicts of respectable social standing; the other is that prisoners sentenced to short terms of rigorous imprisonment should be dealt with more leniently than prisoners sentenced to similar imprisonment for longer periods.

“My Lord, I have no doubt that a feeling does prevail, among a considerable section of educated people in this country, that our system of jail-discipline imposes a specially heavy punishment on members of the better classes of Native society who have the misfortune to transgress the bounds of the law and to find themselves in jail. The section of Native society—I refer especially to Hindu society—to which I am alluding urges that, having regard to the sanctity of caste in the eyes of all orthodox Hindus, and to the difficulties in the way of caste observances which prison-discipline imposes, it is a great punishment for, let me say, a zamindar or a professional man to find himself in jail; it is a greater punishment for him to have to do unaccustomed labour. Why subject him to the further punishment of association with criminals of the baser kind, and to a regimen which, though wholesome of its kind, is entirely different from what he has been accustomed to? This is the view of Native society—at least of a considerable section of it. It is of course easy to marshal reasons against that view; and I shall not trouble the Council by going over hackneyed arguments with which they are no doubt familiar. But I would say this much, that in India members of the respectable classes come much more frequently into collision with the law than in England. This I believe to be largely due not to the innate perversity of the Indian gentleman, but to the circumstances that the vast bulk of the people are connected with the land; that the relations between the land-owning and rent-paying classes have been and still are often strained; and that the land laws have not been as satisfactory as they might have been. But, however that may be, men of the middle classes, especially small landlords, do, I think, get into difficulties with the law more frequently in this country than in England; and, as these difficulties do not involve any particular moral depravity, there is a feeling that the circumstances ought to be allowed for, and that the theoretic ideas of equality in punishment which are rightly enforced in England ought, in such cases, to be modified when

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applied to this country. My Lord, I do not speak in this matter for the Select Committee, but for myself. I wish to say that the views I have referred to deserve consideration, and I am glad that, in the Bill as now presented to Council, the Government of India and the Local Governments have the widest executive powers, so that any arrangements which they may desire to introduce shall be covered by the provisions of the Act.

"In regard to the question of punishment for short-term prisoners, I cannot feel the same sympathy as in regard to the segregation of prisoners of the better classes sentenced for misdemeanours. It is an accepted principle that prison-discipline in the early days of rigorous imprisonment should be sharp and deterrent. If the sentence be short and the discipline mild, then the jail becomes, for malefactors, a pleasant retreat in hard times—a *sosur bari*, to use a suggestive Bengali term. But in this, as in all things, there is a 'sweet reasonableness' to be aimed at. In jail matters the best evidence of its attainment is shewn by prisoners leaving the jail better and wiser men. I would encourage jail-officers to make within the law the attainment of that end their guide in apportioning labour and in enforcing discipline.

"When introducing the Bill, my Lord, I anticipated that discussion was most likely to arise in connexion with Chapter XI of the Bill, which deals with prison-offences. I am glad, however, to say that the Chapter has proved non-contentious, and that the arguments in favour of the Bill as drafted were considered adequate. Some improvements have been introduced, but the Chapter remains substantially unaltered. I have great hopes that its provisions will be effectual in checking unnecessary divergencies in prison-discipline, while allowing to Local Governments as much discretion as is needed.

"I do not think, my Lord, that at this stage I need detain the Council any longer, and I shall therefore conclude by saying that the Select Committee appointed to consider this important Bill was an unusually strong one—strong not only in numbers but, if it be permitted to me to say so, also strong in the ability and experience of its members. The Committee have considered the Bill with the greatest care and deliberation, and have been able to make an unanimous report. I am in hopes, my Lord, that the result of the Committee's deliberation will be approved by this Council and by the public, and that the measure on which so much care has been bestowed will in practice be found to be a valuable addition to our statute-book."

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The Hon'ble MR. LEE-WARNER said :—"My Lord, I had not intended to make any remarks, but in view of what has fallen from the Hon'ble Mover of the Bill I would beg to observe that in the Bombay Presidency at least the land-owning class of Native gentlemen do not furnish any considerable contingent to the 'Native gentlemen' who unfortunately find themselves in jail. Any attempt, moreover, to treat the inmates of jails differentially as regards jail-discipline with reference only to their status out of jail would seem to me inexpedient. It is the function of the Magistrate to apportion his penalty with due regard to the personal and other circumstances of the case, but beyond that I think no further class differentiation based upon caste or social, and not on moral, grounds, is needed."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said :—"Before the Prisons Bill passes into law, I crave Your Lordship's permission to submit a few remarks on the system of separation of prisoners in our jails according to the nature and gravity of the offence they are guilty of. So much has just been said in favour of this system by the Hon'ble Mover of the Bill that I need only confine my remarks to only a few words. An attempt has been made, my Lord, by the Select Committee to give effect to the principle of separation as far as may be. Section 28 of the Bill now presented lays down that convicted criminal prisoners may be confined either in association or individually or in cells, or partly in one way and partly in the other. Section 60 empowers the Local Government to make rules for the classification of prisons and description and construction of wards, cells and other places of detention, as well as for the classification and separation of prisoners. The carrying out of this principle is a measure which is called for alike in the interests of the prisoners themselves as well as of society. I am well aware that in the present state of the finances of the Empire we cannot reasonably look forward to any radical change or reform in this direction. Yet the recognition of the principle is something and its inclusion in the Act which consolidates the law relating to our prisons is a step gained. That indiscriminate mixing of prisoners guilty of offences of various degrees of moral delinquency both by day and by night, while working or otherwise, is undesirable, can scarcely be questioned.

"In the mufassal we often hear it complained that serious evil results from the practice of allowing prisoners summarily convicted for the first time for light offences to associate while in prison with prisoners who are hardened criminals or who have been convicted of serious offences.

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“It often happens that such a system tends to augment that criminal fraternity which it is feared at the present day exists in many of the big towns like any other community in the midst of a well-ordered society. The way in which persons summarily convicted should be treated is a matter deserving of very careful consideration, but the very large number with which we have to deal and the limited accommodation of our prisons makes it especially incumbent upon us to act with the utmost caution and care, lest, as has been said, we ‘should mingle with the corrective a sort of moral poison which would rather tend to the greater depravation of the offender than would the punishment to his intimidation or amendment.’

“When it is borne in mind that in the inmates of our prisons are to be found such characters as these—‘the trivial offender of tender years and yet undepraved morals, the honest and industrious citizen whom a momentary impulse of passion, or violence of provocation has betrayed into the commission of an assault, the modest female whom the strength of temptation or the pressure of distress has impelled into a breach of trust or a petty theft, the young and artless who have been the dupes of the more designing, the unhappy culprit guilty of a first offence and that too involving neither violence nor malevolence’—the serious consequences of allowing them to be contaminated and polluted by association with confirmed and hardened criminals in whom the moral sense is altogether dead would be at once apparent. The treatment which these new offenders receive in the jail and the experience they there imbibe constitute for them the crisis of their lives. They may either be restored to society, amended in morals, confirmed in habits of strict discipline and honest industry, shielded in reputation and thankful for such a change in their character, or they may leave the doors of the jail saturated with the moral poison received from their associates, thoroughly depraved in character by companionship with the more profligate of their class, and with their minds filled with deep and lasting resentment against the whole community. These are the men who after they leave the jail form themselves into gangs and prey upon society at large.

“Humanity and policy alike thus call for a reformation of a system which has a tendency to lead to such dire results. The first attempt in the direction of the reforms I have attempted to indicate was made by the Committee of 1838, whose recommendations, as the Hon’ble Mover of the Bill told us the other day in his exhaustive speech, turned towards the congregation in centra

[*Gangadhar Rao Madhav Chitnavis; Sir Griffith Evans.*] [22ND MARCH,

prisons or penitentiaries of all prisoners sentenced to more than one year's imprisonment and in the retention in district jails of prisoners sentenced to shorter terms. For the complete success of such a policy a much larger expenditure of money was necessary than the Government could see its way to incur. Yet it must be admitted that the principle has been kept in view and sustained efforts have been made to give it effect consistently with the funds that could be made available for the purpose. At the same time it goes without saying much yet remains to be done, and I believe that the provisions now embodied in the Bill will enable the Local Governments to arrange for a more rational treatment of first criminals, and as funds permit to carry out in prisons a thorough classification of prisoners according to the nature of their offences, and their separation according to the degrees of their crimes.

"The present Bill is no doubt a great improvement on its predecessor, and although, like everything human, it may be susceptible of improvement, it will have justified its introduction if it had done nothing else than to bring about a uniformity of system in the matter of jail administration in various parts of the Empire—a uniformity without which no prison reform of a general nature is possible or practicable. It will also facilitate, as circumstances and means permit, the introduction of a system of complete classification as based upon the nature of the crime committed, which, while it will secure for the prisoner the elements of punishment, protection and reclamation, will act as a preventive against a prolific generation of crime with all its disastrous consequences to individuals and the community.

"With these words, my Lord, I submit that the Bill be passed."

The Hon'ble SIR GRIFFITH EVANS said that he wished first to draw attention to a small matter on which he thought a verbal amendment would be desirable. He was not moving an amendment, as he had not got one on the paper, and he only desired to make a suggestion for the consideration of the Hon'ble Member in charge of the Bill. Section 26, sub-section (3), provided "No prisoner shall be discharged against his will from prison if labouring under any acute or dangerous distemper," — that was one branch, and then followed the words "nor until, in the opinion of the Medical Officer, such discharge is safe." He apprehended that it was probably intended to provide that a sick prisoner was not to be discharged "unless" in the opinion of the Medical Officer such discharge was safe. It was very difficult to define what was an acute or

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dangerous distemper. As it stood it was absolutely illegal to discharge a prisoner suffering under a distemper which was acute or dangerous, and the opinion of the Medical Officer that it was safe to do so would be no protection to the person committing the illegal act. The prisoner so illegally discharged would have a right of action or might recover his expenses for medical attendance after discharge as damages. He only mentioned that because he thought that it would probably carry out the intention to substitute the word "unless" for "nor until". If that was so, probably the Hon'ble Member would be glad to make the change.

In addition to that he wished to make a few remarks about the Bill. This was rather one of those instances which showed how careful one had to be in putting what were really meant to be instructions into the form of positive law. Now, many of these instructions were very good in themselves, but when you came to putting such matters into law you had to remember that you were giving a prisoner the right to file a suit against the Government or the Superintendent of the jail supposing he could show that any damage had resulted to him from the neglect of such statutory obligations and making the rules rigid and impossible to relax without fresh legislation.

How many rights of that kind might be given to prisoners he did not know. He did not suppose that in section 36—in which it was stated that "provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment"—any lawsuit would be likely to arise out of that if a Superintendent, on being asked for employment by such a prisoner, replied that he had none to give at the time; he would be breaking the law, but, although he would be breaking the law by saying that, it would be difficult for the prisoner to prove any damage. But, supposing he could show that he suffered damage, of course he would be entitled to compensation, because it would be a breach of public duty. However, he did not suppose that anything of that kind would happen. He was merely pointing out that it was a little risky putting unnecessary things into the shape of law. And, with regard to those things, many of them seemed to him to be matters which could be better provided for by circulars or orders or by Jails Manuals. Here, for instance, was one matter in section 35, sub-section (2), which said:—

"The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon

the history-ticket of each prisoner employed on labour the weight of such prisoner at the time."

That seemed to be exactly the kind of thing one would expect to find in a Jail Manual; but it did hardly appear that it was the function of this Council to arrange all such small matters as the periodical record of a man's weight, or he might even say the taking of his temperature. He was not going to oppose the Bill on that account, because he did not think that any particular harm would be done by providing for such matters; he only thought that it was unnecessary and an objectionable kind of legislation.

Another instance.—There were elaborate provisions with regard to how prisons were constructed. First of all, there was a wide definition of a "prison," which "means any jail or place used permanently or temporarily under the general or special orders of a Local Government for the detention of prisoners." Then there are certain exceptions, one of them being "any place which has been declared by the Local Government by general or special order, to be a subsidiary jail". Subject to these exceptions section 4 provided that—

"The Local Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners."

Now then you turn to the requisitions of the Act, and you find them in section 27. One of these requisitions is that—

"in a prison containing female as well as male prisoners the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners."

Accordingly it would appear that a Lieutenant-Governor, who is the Local Government for this purpose, would be guilty of breaking the law if it were proved that in some out-of-the-way place and owing to faulty construction of a building, although there was segregation, the women were able to see the men at a distance. Putting these things into law seemed to be somewhat unnecessary. In England, where many of these jails, lunatic asylums and so on had to be constructed out of local rates, it was very necessary, when you wanted a particular stamp of jail, that you should put such matters into law, because it was necessary to have a law to enable the Local Government Board to compel the local authority to construct jails of the prescribed sort; but

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here, where we have to do with a Local Government, one did not see the use of it. The High Court had no power to issue a mandate against the Lieutenant-Governor. There was nobody except the Governor General in Council that could issue any mandate or order, and therefore it would appear that with regard to all these matters of construction, and so on, if the Government issued a circular stating that they desired that a jail should be constructed in this manner, so far as might be, they would be doing all that was necessary. No legislation was necessary to give the Governor General this power. All he wished to say was that it struck him that there were a good many things in the Bill which might have been provided for in another way, and although it might be said that uniformity was desirable, still that uniformity must be tempered in some cases by local circumstances and necessities, and it was far more difficult to temper it when you had it in the form of an Act like this than when you had it in the form of a circular or resolution.

Then there were the varying circumstances of different parts of the country to be considered. With regard to many things no doubt the Local Governments had been allowed to make rules. What struck one on looking at the Bill was that there were altogether too many matters of detail dealt with in it; at the same time SIR GRIFFITH EVANS did not think that they would do any particular harm, and therefore he did not propose to oppose the Bill; but, having to speak upon it and upon the small amendment referred to, he was obliged to say that it went much too far in taking up matters which did not require legislation to settle them.

His Honour THE LIEUTENANT-GOVERNOR said:—"The opinion of the Local Government of Bengal has been laid before the Supreme Government on the subject of this Bill, and a copy of that opinion has been presented to every Member of the Select Committee and the Council. It is not necessary for me to recapitulate in any detail the views there expressed as to the grounds on which I think that the Bill which we are now discussing is open to objection. My hon'ble friend the mover referred in his speech to one of the principal classes of objection which was taken by me and which has been recapitulated with great force by my hon'ble friend who has just spoken. It was the objection that the Bill has become too much of the nature of a manual of instructions. In this respect it offends against the principles held by a large and important class in India, that the best form of legislating for the country is to pass Acts which shall contain as little substantive law as possible and shall provide that the

execution of the principles laid down shall be carried out by rules to be passed by the Local Government. My hon'ble friend has already to a certain extent answered by anticipation my arguments on this subject by asserting that in this Bill we have only the main principles laid down, and that provision exists for the making of a large body of rules by the Supreme and Local Governments. But I venture to think that he has rather exaggerated the strength of his side in saying that the substantive provisions which this Bill contains are those which relate to important principles and to the grand provisions which it is right that the Supreme Council of India should lay down. I am satisfied that any one who studies this Bill will find in it many details which might with advantage have been omitted. My hon'ble friend who has just spoken has referred to one or two of them, and it would be unnecessary for me, especially as the Council is already aware of the instances which I am able to bring forward in support of my views, to follow up this point in detail. But there is a further expansion of the subject which has been touched on just now in the remarks made by Sir Griffith Evans where he said that whenever you constitute a legal offence you create a statutory right on the part of some one to prosecute the person who commits that offence. The objection which I am inclined to take is exactly in the contrary direction. It is this, that so long as you put into your manual of instructions that your subordinate officers should act in a certain manner, so long you are able swiftly and certainly to punish that man or those men if they transgress these rules; but once make their actions a statutory offence, so that these men must be taken before a Magistrate to have the offence proved judicially against them, and you open an enormous area for technical objections either by the offender or his pleader, and for arguments that the intention of offending cannot be proved, or that some formality has been omitted by the prosecution which has nothing whatever to do with the equity of the case or the spirit of the law.

“On grounds of that kind we see over and over again that transgressors are let off by our Courts, and therefore there is a considerable danger in turning acts which are departmentally punishable into acts which are criminal offences under the law. This is a great mistake which is often made by that class of amiable enthusiasts who are extremely anxious to see certain provisions which they consider right established. They think that so long as an act is departmentally forbidden the offender may escape, and they will not be satisfied until the act is declared to be an offence against the law. It is easy to see the hand of these enthusiasts in the regulations which the Bill contains as to the actions of the Jailor and the Medical Officer and all the jail subordinates. A general opinion has been

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expressed by this class of persons that there is a great deal of cruelty in our jails and that a great deal of oppression is carried on by subordinate officials, and they yearn to put a stop to such oppression. My hon'ble friend Sir Antony MacDonnell has casually mentioned a fact which contradicts that impression. He has referred to the popular description of a jail as a '*sosur-bari*,' a father-in-law's house, a place of much comfort and contentment. My Lord, I believe that it is in proverbs of this kind, and not in representations from charitable bodies and bands of unpractical philanthropists, that the true mind of the people is to be found. But in spite of this we have had it urged upon us that there is great cruelty carried on in our jails, and it is mainly to satisfy this impression that these provisions have been laid down. They existed in the Manual already, but the public did not know of them. Once, however, put them into the law and constitute them an offence, and in the opinion of the philanthropists you secure that the object of the Government, which is to stop such oppression on the part of its subordinates, will be carried out. My contention is that you have done exactly the contrary; you have put your prisoners into a position of much greater danger, and made it much more difficult to convict and punish the persons in charge of them than was the case before when these acts were condemned by the Manual and punished departmentally but were not declared to be criminal offences to be taken before the Magistrate, judicially proved, and capable of appeal to a higher Court.

"There are two other points which I would wish to mention very briefly in regard to which I think this Bill has also taken a wrong direction. One is that there is too much of an attempt to secure uniformity. My hon'ble friend Sir Antony MacDonnell mentioned this in his opening speech. He said that he was the greatest possible upholder of the rights of the Local Governments and of the necessity of recognising variations according to varying circumstances, but that this was an exceptional case, in which it was necessary that there should be uniformity. I have not been able to satisfy myself that any such necessity has been proved. There are two special instances which I should wish to bring to notice in which this mistake has been made. There is a provision in section 46, clauses (6) and (7), under which the handcuffs and fetters to be used in jails must be prescribed as to pattern and weight by the Supreme Government, and I presume it is intended that the weight and pattern must be the same in all jails in every part of India. I cannot but think that in a country like this, where we have to deal with such varied peoples as the stalwart ruffians of the North-West and the weak, puny-limbed people of Eastern Bengal, uniformity in this respect is undesirable; handcuffs may easily be imagined which would be

quite sufficient for a Bengali prisoner, but which a Kabuli prisoner, for instance, might readily break.

“ Then you have made provision in the employment section (35) under which a nine hours' labour law is laid down for the whole of India. I have not been able to ascertain the grounds on which this rule has been arrived at or that there is *prima facie* evidence that a working day of the same number of hours should be prescribed for all the climates of India or for all the different races and for all the varying kinds of labour. I think there are many similar instances of this kind in which the Bill has aimed at uniformity where it would have been wise to leave matters in the hands of the Local Government. I may mention here that my hon'ble friend Dr. Lethbridge told me that the provision about fetters was thought necessary because it had been found that in one or more provinces the fetters were of undue weight, and this made it requisite that the Supreme Government should lay down a uniform pattern suitable for all places. Of course, it is possible that the Supreme Government should be wiser than any one Local Government: it is even conceivable that it should be wiser than all the Local Governments put together; but I venture to submit that the best way of controlling Local Governments in matters of this kind is not by providing passages in the law and making statutory offences in this way, but by a system of inspection, by employing able and capable officers who would go round and see what was actually being done. The Hon'ble Finance Member will remember that when we were colleagues together on the Finance Committee we put that suggestion very strongly before the Government of India. We found as the result of our tour over India that wherever we had gone there was something to learn as well as something to teach, and we held that everybody who goes to inspect other provinces will be able to pick up improved methods of procedure there, for the use of his own province, as well as to suggest improvements from his own experience; that the best way of effecting reform is by sending our officers round, and in that way there would be a general diffusion of knowledge and a check upon any excess or irregularity which a Local Government might be guilty of. I believe, my Lord, that this is the way in which uniformity will be secured better than by provisions of this kind introduced into a law which may not equally suit all parts of India alike.

“ I come now to my third point—the restriction of the powers of the Local Government by section 59, which conveys to the Supreme Government alone power to make rules in certain cases. My hon'ble friend referred to section 60, under which Local Governments can make rules, and spoke of it as if it were a large-minded and liberal section which considerably increased the powers of

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Local Governments. But I venture to think that it does not contain a single item which the Local Government has not already the power to carry out. There is no liberality and no expansion of the powers of Local Governments here ; but in section 59, the clause under which the Governor General in Council has the power to make rules, there is a very considerable restriction of those powers. I will give an instance of this. Three years ago, when I was new to Bengal, one of the first things that struck me in the way of reform for the jails in this province was the desirability of releasing moribund or seemingly moribund prisoners, so as to give them a last chance for life, or, at any rate, the comfort of dying in their own homes. I issued rules to give effect to these views on my own responsibility. I did not refer the question to the Supreme Government. I have no doubt that, if I had so referred it, it would have been received with that consideration with which the Supreme Government always does receive such suggestions ; but, at any rate, there would have been correspondence and considerable delay in carrying out my views. Discussion subsequently showed that I had not gone too far in the orders I passed, and the only restriction imposed upon me was that in the mortuary statistics the number of released moribund prisoners should be shown as actual deaths, so that the jails should not get undue credit for a low mortality by getting rid of prisoners before their death. That is an instance of a power which Local Governments did possess, which they ought to possess, and which is now taken from them by clause (7) of section 59 of this Bill. I venture to think that it would be a great calamity if any tendency should arise in this Council to interfere with the powers of the Local Governments, or not to give them credit for sufficient knowledge and for doing what is right under local circumstances.

“I make these remarks not with any intention of embarrassing the Government. I believe on the whole that the Bill is a good one, and the individual points to which I have taken objection are small points ; but I think it right to make this respectful protest in case there should be any tendency on the part of the Legislature or of this Council to act in the direction in which it seemed to me that it has been acting in this case. I am anxious to impress—as far as my representation is able to impress—upon the Council the importance of not burdening the Supreme Government with more responsibility than it can bear and with the necessity of possessing more knowledge than it can possibly obtain, of carrying out legislation with a more complete confidence in the Local Governments, and of leaving the law so elastic as to enable them to provide for the widely varying conditions of the different parts and peoples of India.”

The Hon'ble SIR ANTONY MACDONNELL said:—"I think I may congratulate the Select Committee upon the reception which on the whole the Council has accorded to the Bill. No doubt, the remarks which have fallen from my friend His Honour the Lieutenant-Governor and from my hon'ble and learned friend Sir Griffith Evans cannot be taken as an approval of the Bill; but I am glad to learn that they do not propose to oppose the passage of the measure through the Council, and that their remarks were more directed towards placing on record the views which they considered right and proper than with the object of preventing the measure from passing. The only possible objection I can have—and I hope my hon'ble friends will not think me ungracious in making it—is as to the tardiness of their remarks. Their remarks have reference to the framework of the Bill, and, being of that character, I respectfully submit that they would have come more appropriately on the introduction of the Bill, or on the motion to refer it to a Select Committee, which corresponds to the first and second reading of Parliamentary procedure. However, I am more than conscious of the considerate treatment which the Bill has received from Hon'ble Members, and I do not wish to take any further objection on that ground.

"My hon'ble friend Mr. Lee-Warner made one remark which I think must have been made under a misapprehension. The observations I offered in regard to the treatment in jail of respectable classes of natives had no reference to the question of judicial punishment, but to the question of segregation, and possibly the regimen on which such prisoners should be placed. On the latter point, however, I would touch very delicately, because it is a question upon which I am not myself prepared to express a strong opinion. In regard to what I have said on the subject of segregation, I think I shall have the sense of the Council with me; but that is a matter of jail administration, which may, with the utmost confidence, be left to the Local Governments.

"In the remarks which fell from the Hon'ble Mr. Chitnavis I generally agree, and I think that under this Bill, when the jail rules are modified, wherever modification is necessary, all his wishes will be met—one of the principal of those being that habitual prisoners should be separated from prisoners who are not habitual. That, indeed, is one of the fundamental principles of the prison system which we desire to carry out in every jail in the country. It may be possible to go a little further in that direction, and that was what I had in view when suggesting that further segregation of misdemeanants from felons (to use English terms) might be possible.

"Coming now to the observations of my hon'ble friend Sir Griffith Evans, I would first refer to his criticism of section 26, sub-section (3). The sub-section runs as follows:—

'No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.'

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"That, my Lord, is a reproduction *verbatim* of the existing law. I have much sympathy with Sir Griffith Evans' view that the word 'unless' would have been more appropriate in this section and that it should have been substituted for the words 'nor until'. I was disposed at one time to divide the Council upon that matter, but, inasmuch as the Select Committee were in harmony on most points, I thought it better not to strike a discordant note on this, to 'stand on the old ways' and to allow matters to remain as they were. However, I am prepared to accept an amendment in the direction indicated by my hon'ble and learned friend should he be disposed to propose one and should the Council Rules allow.

The Hon'ble SIR ALEXANDER MILLER remarked :—"I feel bound to say that I shall feel obliged, on behalf of the Select Committee, to oppose that amendment, if proposed."

The Hon'ble SIR ANTONY MACDONNELL continued :—"The next question to which my hon'ble friend Sir Griffith Evans has taken exception is section 36. That section runs :—

'Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment,' &c.

"That is also a reproduction of the spirit of a section of the existing Act, which enables prisoners sentenced to simple imprisonment to engage, if they so wish, on labour. By labouring they are placed upon a more generous scale of diet. My hon'ble and learned friend's criticism, so far as I understand it, is that, as the section is drafted, the Jail Superintendent who does not comply with the request of a prisoner to put him on hard labour lays himself open to a possible action for damages. How far there is practical danger in this my learned friend can perhaps judge better than I can. But if an action were brought—and there is no knowing what litigants may not be advised to do—I should expect the Judge to be guided by the maxims *de minimis non curat lex*.

"The next reference was made to section 35. The Hon'ble Sir Griffith Evans stated that the entry of the weight of a prisoner upon the history-ticke is a matter which might be better left to rules than put into the law. That was one point upon which we made a concession to what I may describe as one of the extreme parties. We had one party who would put everything in the Bill and leave nothing to rules; we had another party who would be anxious to have a Bill drafted of this sort: first section—name of the Act; second section—power to make rules: third and last section—repealing all previous laws. The work of the Select Committee was an endeavour to strike a happy mean. This was one of the concessions which we made, and I do not think that harmony

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on other, as I think, more important points was dearly purchased at the expense of such a concession as this.

"In regard to section 4, which states that Local Governments shall provide accommodation for the prisoners in the territories subject to their rule, my hon'ble and learned friend made some observations, but I am not quite certain that I have succeeded in catching the point of my hon'ble friend's objection. By section 4 the Local Government is placed under the obligation of providing certain accommodation to meet the requisitions of the Act, and the requisitions of the Act are stated in section 27. I was unable to see wherein the inconsistency lies in what the gravamen of my hon'ble friend's objection is."

The Hon'ble SIR GRIFFITH EVANS explained that, if in any prison it was possible for a female prisoner to see a male prisoner at any distance, such a state of things was contrary to law, but it was difficult to say that any particular result would take place from the illegality unless an action or prosecution were possible.

The Hon'ble SIR ANTONY MACDONNELL continued:—"My hon'ble friend explains that if it were possible, owing to some defect in a prison building, for a female to see the male prisoners, the Local Government or the Superintendent of the jail would be liable to prosecution or a suit for damages. This, if I may be pardoned for saying so, is one of those excursions into the realms of fancy with which my hon'ble and learned friend occasionally delights his many friends. But, with all respect for my friend's ingenuity, I venture to think that in these circumstances it is not a plaint that might reasonably be expected but a vote of thanks from the female prisoners for arrangements which, though defective, if judged by prison rules, had nevertheless gratified the natural curiosity of the female mind and lightened the tedium of their sojourn in jail.

"I now come to the remarks of my hon'ble friend the Lieutenant-Governor. The most important argument, it seems to me, which he raised was that under the Bill as presented to Council we make a number of statutory offences; that we introduce sections which provide for prosecuting prisoners before the Magistrate; that there would probably be a danger of not getting a conviction, and if a conviction were secured that there would be the further danger of an appeal with all the uncertainties of the law attendant thereon. My Lord, I do not know where in this Bill these dangers and uncertainties are to be found. We do not propose to prosecute prisoners before the Magistrate for prison-offences except in very extraordinary cases. It is true that we have section 54, but that is intended to apply to the officers of a prison rather than to the prisoners. We have to provide for the maintenance of control over our jail establishments, and therefore we had

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to take power either in this Act or to leave it to the general law or to the Penal Code. We thought it right, following the procedure under the Police Act, to provide that offences against discipline should be punished by a special provision of the Act. We have therefore introduced a section (54), and I think that, from the remarks which have fallen from my friend the Lieutenant-Governor, he is labouring under the misapprehension that this section is meant to apply specially to prisoners.

HIS HONOUR THE LIEUTENANT-GOVERNOR said :—" I spoke about the subordinate officers of the jail oppressing prisoners, an offence which was formerly punishable departmentally under the Jail Manual but now is to be punished, on conviction before a Magistrate, under section 54 of the Bill.

THE HON'BLE SIR ANTONY MACDONNELL continued :—" They may also be punished by executive order. We do not deprive ourselves of the power to make a manual and issue executive orders. We have thought it desirable, with reference to the procedure adopted in the Police Act, to impose certain statutory obligations on our prison-officers and to take power to punish them under this section 54 for neglect of duty, or gross malfeasance.

" In regard to His Honour's criticism on section 46 of the Bill, on the subject of fetters, I wish to explain that, because the Government of India takes power to determine the pattern and weight of handcuffs and other fetters, it does not follow that an uniform pattern or weight shall be prescribed for all the provinces of the country. There is no intention of having one pattern for the weak-limbed men of Eastern Bengal and the same for the muscular Pathans. Power is taken to prescribe the kind of fetter which is found to be suitable to each province or even for each district. All orders on this subject would be framed with a view to the circumstances of the particular provinces concerned, and would be issued on the recommendations of the Local Governments. But so many instances of difficulties connected with the pattern of fetters have come to the notice of the Government of India in its executive capacity that we thought it desirable to introduce this provision.

In conclusion, my Lord, I may explain that for the Bill I am not myself personally responsible although I fully identify myself with each of its provisions. This measure is the result of fifteen years' consideration on the part of the Government of India. Three Commissions have sat upon it, and the Bill was thrown into its present shape before I joined the Council. I am only carrying out the conclusions come to by officers of greater experience and larger knowledge of this particular subject than, perhaps, I possess. At the same time I entirely agree with the principle of the Bill, and as regards its provisions your Excel-

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lency will see that there are only two entire sections printed in italics—the italics being the indication of the new matter introduced. This law has, as a matter of fact, been in force since 1870, and we are now only importing into it such matters as practical experience in the various provinces of India has shown to be desirable. I trust that the difficulties which His Honour the Lieutenant-Governor anticipates will not be found to be material, and that he will also find that the powers which the Act gives him under section 60 are fully adequate to save him from any unnecessary interference on the part of the Supreme Government. The object of the Government of India is not to withdraw from the Local Governments powers which they can exercise much more effectually than the Government of India can, but to co-ordinate and bring into line all local effort, and to that end to supplement local knowledge by larger information drawn from other provinces."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that in section 1, sub-section (4), of the Bill as amended, for the words "as those sections heretofore have been, or hereafter may be, amended by any Act passed, and for the time being in force, under the Indian Councils Acts, 1861 and 1892," the words "as amended by subsequent enactments" be substituted. He said:—"This is a purely formal amendment. Section 1, sub-section (4), was introduced in to the Bill by the direction of the Select Committee, but it was not settled in Committee and it has been put in in a different form from that which was before the Select Committee. That form—after stating that 'Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of Bombay Act II of 1874'—goes on—'as those sections heretofore have been, or hereafter may be, amended by any Act passed, and for the time being in force, under the Indian Councils Acts, 1861 and 1892.' That is rather an unusual form, and it is open, I think, to two objections—one that it purports to control future legislation, which of course we cannot do. The future Act (if any) will determine for itself whether it is to be applied to these jails or not, and anything that we may say now will have no effect upon that question. Another objection is that the expression 'under the Indian Councils Acts, 1861 and 1892,' would apply rather to rules made directly under the authority of those Acts than to Acts passed by the Council established by those Acts, and I think it would be better to ask the Council simply to substitute for the words I have read the ordinary words which are well understood and used at

*PRISONS; AMENDMENT OF CODE OF CRIMINAL PRO- 231
CEDURE, 1882; AMENDMENT OF INDIAN PENAL CODE
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least once a week in official documents—I mean the words ‘as amended by subsequent enactments.’ That, I think, will cover the whole ground.”

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—“I have, with Your Excellency's permission, another small amendment to propose which is not on the notice-paper. As the Bill was drafted the words ‘on and after that day’ with which section 2, sub-section (1), begins, followed immediately after the words the first day of July, 1894,’ with which section 1 then ended. Now that another sub-section has been introduced between these sets of words, it has been suggested that, instead of the words ‘on and after that day,’ section 2 ought to run ‘on and after the said first day of July’. It means of course the same thing, but the latter form is more precise.”

The amendment was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL also presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882. He said that he would ask the Council to take the Report into consideration on next Thursday.

INDIAN PENAL CODE AND ACT VI OF 1864 AMENDMENT BILL.

The Hon'ble Sir ALEXANDER MILLER moved for leave to introduce a Bill to amend the Indian Penal Code and Act VI of 1864. He said:—“The Bill is a very short one. The first section proposes to alter section 182 of the Code in respect of false information given to public servants. It arises out of a case in which, information having been given by a man to the police that he had been robbed at a certain village, the police went down and made inquiries and gave a great deal of trouble and annoyance to the people. It turned out that the information was absolutely false, but on prosecution of the informant under section 182 the High Court of Calcutta ruled that inasmuch as it was not intended, or could not be shown that it was intended, to injure or annoy any particular persons, the case did not fall within the section in question. The object of the

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section is to amend that, and to say that if such information is given the person giving it should be punished whether any particular person was aimed at or not.

“The second section of it is intended to give full effect to what is known as the Vienna Convention in respect of postage, and it provides for making it an offence to make fictitious stamps, which are defined to be stamps purporting to be used for purposes of postage whether by the British or any foreign Government.

“Section 3 is an amendment which is being proposed to section 294 in order to meet a case which I daresay a good many Hon'ble Members have seen—a case of indecency in the Presidency of Madras. I am not perfectly satisfied with the drafting of the section, but that is a mere question of detail and is a small matter, and can easily be settled at a future stage if the Council permit me to introduce the Bill.

“Section 4 is intended to meet a glaring defect in the law which was proved to exist in a somewhat celebrated case—the case of *Shama Churn Sen*—which occurred here in Calcutta shortly before I came out to India, in which a man was charged with defrauding a bank to the extent of three lakhs of rupees. He was acquitted because it could not be shown that the three lakhs had been abstracted upon any one particular occasion or in any particular sums. The section is intended to meet such cases and to make the falsification of books punishable even although no particular sum of money or particular occasion can be shown.

“Section 5 is only for the purpose of determining a point which seems doubtful; it seems that a question has been raised whether, when a higher punishment is authorised in case of the repetition of the same offence, the term ‘same offence’ will include the minor offences which go to make up the particulars of the offence. It is obvious that if you look at the section it ought to include them, especially where the offence is substantially the same though not identical. The only object of the section is to make this clear.”

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER 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.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend sections 366 and 371 of the Code of Criminal Procedure, 1882. He said :—"The Bill is introduced into the Council on a representation made to the Government of India by the High Court of the North-Western Provinces. According to their construction of the Code as it stands—and I am by no means prepared to say that the construction is not perfectly right, or that a sentence in a Criminal Court would be legal without that formality—it is absolutely necessary that not only should the judgment be written and signed before it is delivered, but that it should be read at length in open Court to the accused ; the result being that very often it would be necessary to read a long legal judgment in English before a number of persons when none of those who were interested either in the prisoner or the case would perhaps understand one word of what was said. The object of the Bill is to remove that necessity, and on the other hand to make it necessary that the judgment shall be at the time explained to the prisoner, or his pleader, in some language which the prisoner, or his pleader, does understand. It is not to be necessary to read the whole judgment, but it is to be necessary to explain the substance of the judgment in an intelligible form. It is also intended to provide for another small difficulty which has been found in practice—that it is very often inconvenient that the judgment should be read by the Judge, who has a great many other matters to occupy his attention. The reading of the judgment is more or less a ministerial act; once settled and signed it can be read and explained as well by some one else as by the Judge whose judgment it is; therefore and it is proposed to give the Judge leave, for any cause which may appear to him sufficient, to delegate the duty of reading the judgment to some other person or Court.

"The second section of the Act is practically consequential on the first, and is only the substitution of other words for words thereby rendered inappropriate."

The Hon'ble MR. WESTLAND said that he would like to know what was meant by the word "judgment". He had always understood that the judgment was the formal order of the Court, and it was the custom always to explain it to the prisoner. Was he to understand that according to the existing law the reasons for the judgment had to be recorded and explained?

The Hon'ble SIR ALEXANDER MILLER said that by the judgment was meant not the sentence itself but the reasons on which the sentence was founded. The judgment of the Court was not the sentence pronounced against

[*Sir Alexander Miller; Mr. Westland.*] [22ND MARCH, 1894.]

the prisoner, but the statement of the case and the discussion of the evidence on which the Judge justified the decision at which he arrived. As the Code of Criminal Procedure stood at present, it was the duty—a duty, he thought, more honoured in the breach than in the observance—of the Judge to read the judgment at length in every case before pronouncing sentence, and what was intended was to get rid of that necessity.

The Hon'ble MR. WESTLAND said that the custom had always hitherto been to explain the general meaning of the judgment arrived at to the prisoner, and the Judge or other magisterial officer considered himself quite at liberty to record his decision that is, the reasons for the judgment, at greater leisure afterwards.

The Hon'ble SIR ALEXANDER MILLER said that the statement he had just made was not his reading of the law, but that of the High Court. More than one sentence in important cases had been set aside on the ground that the judgment had not been in fact written and signed before the sentence was pronounced. There was no reasonable doubt either as to the meaning of the Code or as to the fact that it was frequently, he might almost say necessarily, disobeyed.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER 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 Tuesday, the 27th March, 1894.

CALCUTTA; }
The 30th March, 1894.

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