Thursday,
24th January, 1895

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXIV

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1895

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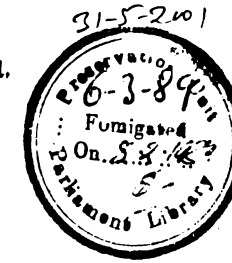

CALCUTTA
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1895

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),

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The Council met at Government House on Thursday, the 24th January, 1895.

PRESENT:

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

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

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

The Hon'ble Sir A. E. Miller, KT., Q.C.

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

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

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

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

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

The Hon'ble Sir Luchmessur Singh, K.C.I.E., Mahárájá Bahádur of Durbhanga.

The Hon'ble P. M. Mehta, M.A., C.I.E.

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 Partab Narayan Singh of Ajudhiá.

The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.

The Hon'ble Mohiny Mohun Roy.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Sir F. W. R. Fryer, K.C.S.I.

The Hon'ble C. C. Stevens, C.S.I.

NEW MEMBER.

The Hon'ble MR. STEVENS took his seat as an Additional Member of Council.

QUESTIONS AND ANSWERS.

The Hon'ble MR. PLAYFAIR asked:—

"1. Has the attention of the Government of India been drawn to certain statements which have appeared in the public Press regarding Mr. A. Rogers,

and the remedy he states he has prepared for the prevention of quarrels between Muhammadans and Hindus in connection with kine-killing?

"2. If so, will the Government say whether Mr. Rogers' scheme for the prevention of the anti-kine-killing agitation was communicated to the Bengal Government last year?

"3. Is it the case that the Bengal Police seized Mr. Rogers' papers as alleged by him?

"4. Did the Behar Indigo Planters' Association address the Government of India on the subject of Mr. Rogers' remedy, and have the Government of India made any use of that remedy?

"5. Is it the case that the Government of India or the Government of Bengal has brought any pressure to bear on the Bengal and North-Western Railway Company to induce it to dispense with Mr. Rogers' services?"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"1. The answer to the first question is yes.

"2. Mr. Rogers' scheme was not communicated by him to the Bengal Government, though information as to its nature reached that Government unofficially from a private quarter in December, 1893.

"3. The information before the Government on this question is obscure. Enquiries are being made, and I would suggest to my hon'ble friend that he should repeat his question at a future date. So far as the available information goes, it seems doubtful whether any papers were *seized*; though a letter by Mr. Rogers advocating a Pan-Indian Association of leading Hindus to promote his scheme was taken by the police from, or received by them through, a notorious emissary connected with the anti-kine-killing agitation. It is, however, certain that the apology to which Mr. Rogers has referred had nothing to do with the alleged seizure of his papers, but was an apology written by a police-officer for a discourteous letter which he had written to Mr. Rogers.

"4. The Behar Indigo Planters' Association did address the Government of India upon the subject of Mr. Rogers' remedy at the end of February last, and was informed that under the rules regarding the submission of memorials to the Government of India it was necessary that its memorial should be forwarded through the Government of Bengal, inasmuch as the Government of India

required to have the views of the Government of Bengal upon it before it could be taken into consideration. The Association was therefore requested to forward the memorial through the Bengal Government, but has not thought fit, by adopting this suggestion, to urge upon the Bengal Government or the Government of India the further consideration of the scheme.

"The Government of India made no use of Mr. Rogers' remedy, which it appears contains no proposals of a practical character that the Government of India had not adopted independently of it.

"5. No pressure was brought to bear upon the Bengal and North-Western Railway Company, by the Bengal Government or the Government of India, directly or indirectly, to dispense with Mr. Rogers' services, nor has any communication been made to the Railway Company by either the Government of Bengal or by the Government of India in connection with Mr. Rogers."

The Hon'ble Mr. PLAYFAIR said:—"With Your Excellency's permission I shall repeat the question at a future meeting of this Council."

The Hon'ble MR. MEHTA asked:—

"1. Will Government be pleased to say if the Secretary of State for India has replied to the memorial submitted in December, 1892, by the Statutory Civilians of the Presidency of Bombay; and, if so, whether the reply has been communicated to the parties concerned?

"2. Will Government be pleased to state what is the ultimate decision of the Secretary of State for India with regard to the claims of the above-mentioned officers to promotion not to be considered with reference to the lists under rule 2 of the Revised Rules under Statute 33 Vict., cap. 3, section 6, published on 2nd November, 1892, restricting their appointment to posts in the Provincial Civil Service, but with reference to the conditions which were understood to regulate their promotion when they were first appointed to posts in the Indian Civil Service?

"3. Will Government be pleased to state if the Secretary of State has now ruled that these officers should, for the purpose of promotion, rank from the date of appointment as they did for a period of ten years from 1880 to 1890 and in conformity with Government of India Notification No. 1187 of 8th June, 1880, and not from date of confirmation as was subsequently ruled; and, if so, whether these officers will be restored to their original positions from which they were retrospectively put back two years?"

The Hon'ble SIR ANTONY MACDONNELL replied :—

"The answer to the first portion of question 1 is yes, and to the second portion the answer is that the Bombay Government have been requested to communicate the substance of the Secretary of State's reply to the officers concerned.

"The meaning of the second question is somewhat obscure, but, assuming it to be a demand for information as to whether the promotion of statutory civilians is to be limited to listed posts, the answer is in the negative.

"The reply to the third question is that the Government of Bombay have been informed that there is no objection on the part of the Governor General in Council to the issue by the Governor in Council of orders whereby the rule of 1890, to which exception is taken, shall be held not to apply to the statutory civilians of the Bombay Presidency except those (if any) who were appointed on condition that on the constitution of a Provincial Service they would be transferred to it."

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ asked :—

"Will the Government be pleased to consider the advisability of, and adopt measures for, reducing the rate of interest from 4 to 3½ per cent. on loans already advanced, or to be advanced in future, by Government to the municipalities and other local bodies in the North-Western Provinces and Oudh and other provinces of India for the construction of water-works, drainage and other local works of public utility?"

The Hon'ble SIR JAMES WESTLAND replied :—

"The ordinary practice of Government is to lend to municipalities at a rate which is ½ per cent. higher than that at which it can itself borrow, that ½ per cent. being intended to cover risk of irrecoverable loans, and to meet other margins. In certain cases in the North-Western Provinces, the loans were for special reasons made without the ½ per cent. margin and stand at 4 per cent. only.

"The Government of India has never yet obtained money on a rupee loan at so low a rate as 3½ per cent., and up to August 1st next, at any rate, it is paying 4 per cent. upon the greater part of its outstanding debt, most of which, moreover, was raised at a discount.

"It would, therefore, if it were to lend money now at 3½ per cent., recover less interest than it pays, quite independently of the risk attaching to the loan.

"So far as outstanding loans to municipalities are concerned, their terms are regulated by agreements between the lender and the borrower, and these, terms are not affected by the mere fact that the lender may afterwards find himself able to obtain money on more favourable conditions.

"The question to what extent and when the Government will extend to its debtors any advantages which it may itself obtain in the matter of rate of interest is one which it will consider in due time, but it is of opinion that it is premature at present to take it up."

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. LEE-WARNER moved that the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Charles Pritchard, the Hon'ble Sir Antony MacDonnell, the Hon'ble Mr. Mehta, the Hon'ble Gangadhar Rao Madhav Chitnavis, the Hon'ble Mohiny Mohun Roy, and the Mover. He said:—"In asking leave from Your Excellency's Council to refer this Bill to a Select Committee, I would venture to offer a few remarks upon the criticisms which have been made on the Bill introduced by me last March. Two general objections have been taken to the proposed measure which go rather beyond the scope of the reference about to be made to the Select Committee. It has been urged that the Bill does not redeem the expectations formed by the public upon the report of the Commission, and that a wider measure for the relief of agriculturists throughout India is needed. That remedy, however, is under the consideration of the responsible department, and when it is matured it will deal, I hope, with the whole question of occupancy-rights. Meanwhile this modest Bill for amending the local law of certain districts in Bombay need not wait. It has, in the second place, been asserted that this Bill and the Acts it would amend do not strike at the root of the evil, and that executive reforms are needed. I beg to remind this Council that in introducing this Bill I expressly qualified the undertaking by the words—'so far as any Legislature can deal with a great agrarian and social problem,' and I have been careful to exclude from controversy here vexed questions of local revenue administration with which the Government of India in its executive capacity can deal, and in regard to

the discussion of which Your Lordship's predecessor observed in this Chamber on the 22nd of December, 1882:—'I must say that I think it exceedingly inconvenient that we should attempt to discuss in this Council the strictly local affairs of the minor Presidencies.' I do not in the least depreciate the value of any well-considered reforms of revenue systems, for I may admit that I exposed to public criticism my views on this subject in the pages of the *Quarterly Review* in 1879 in an article to which reference was made by Mr. Hope when the Act of 1879 was under discussion. But I believe that this busy legislative assembly desires to confine itself to the one practical object in hand, and I have therefore studiously avoided discussion of matters not directly connected with the Bill before us.

"Dealing then with the Bill, I must confess to the Council, and especially to such of its members as will serve on the Select Committee, certain shortcomings of commission and omission. The Select Committee will be asked to consider the opinions expressed on the Bill with as much attention as the Bill itself. They will at once observe that some of the provisions of the Bill do not satisfy the Government of Bombay, and I may candidly confess that, although I introduced the Bill, I anticipated and shared the objections of that Government. An instance will make matters clearer. Section 3 of the Bill proposes the repeal of the last seventeen words of section 7. The correspondence shows that both Her Majesty's Secretary of State and the Government of Bombay object to the entire repeal of these words, which require the examination of the defendant as a witness in all suits under Chapter II. Looking at section 7, which must be read with section 12, and bearing in mind that suits under Chapter II include certain suits against non-agriculturists, I think that an amendment of section 7 of the Act will satisfy the Secretary of State, the Government of India and the Government of Bombay as well as the needs of the case, and such was my opinion when, in March last, I drew up the Statement of Objects and Reasons and found myself unable to justify the proposed repeal of the seventeen words of section 7 by any 'reasons.' I ought then to explain how it came to pass that in this and other sections I moved amendments of the law which I am now unable to sustain. The circumstances under which the Bill was introduced merit the indulgence of the Select Committee, and justify me in expressing the hope that the letter of the Government of Bombay dated 5th September, 1894, will in every detail receive their attention. The position was this. A commission appointed by the Government of India recommended certain alterations of the Bombay Acts and of other general Acts. The Bombay Government recorded its opinion on these proposals. The Government of

India considered their letter, and entrusted to me, as a member of this Council but not as invested with any authority by the Government of Bombay, the present Bill dealing exclusively with the local law of Bombay. Until the Bill reached the Government of Bombay as a Bill before this Council, that Government did not officially know the final views of the Government of India on the scope of the Bill. Even the Government of India had not then finally made up its mind upon section 8 of the draft Bill, as the correspondence laid on the table shows. I have explained the position, not to complain of the procedure, which fully suited the Government of Bombay and was practically forced upon us by the heavy work of last session and the demands of more urgent legislation, but in order to press home my request that the Council and its Select Committee will give a patient consideration to any belated amendments of changes of the Bombay law now proposed by the Government of Bombay. If the views of the Government of Bombay commend themselves to this Council, as I trust they will, instead of 10 sections you will have some 16. Sections 5, 7, 8 and 9 of the Bill will be slightly amended, section 6 will be materially altered, section 10 will go out, and four fresh sections of the existing law will be added to those which are under amendment, namely, sections 36, 44 and 52 and 54 as now proposed by the Government of Bombay. I do not intend to trouble the Council at present with detailed explanations of the necessity for these additions to the Bill, which, with the exception of sections adding to sections 13 and 15 of the Act, will merely legalise the existing procedure, but I believe that I am correct in saying that the Government of India has no objection to any of the changes proposed which the Select Committee may approve, and I shall try to satisfy the Select Committee upon each point, with a full explanation with which I need not now weary the Council.

"In conclusion I will not affect to conceal the fact that the Act passed in 1879 was regarded as a novel, and according to some opinions a dangerous experiment. Having taken part in the working of the Act in two districts, and knowing the opinions formed about its benefits by Judges like Mr. Justice Ranade and the late Sir Maxwell Melvill, as well as by the Deccan raiyats themselves, I need not disguise my belief in the success of the main provisions of the existing law; but I do not presume to force my opinions upon others. I respectfully submit to this Council the proposition that the Act, whether it be sound in principle or not, has been the law for fifteen years, and that transactions have taken place and are taking place upon the basis that it is the law. The Local Government asks this Council to amend the law in a few particulars in the spirit

of or in furtherance of the existing law, and I trust that a generous confidence will be extended to the responsible local Administration which has to apply the Acts, and that this Council will take all the suggestions of the Bombay Government into its consideration and be content with my adducing satisfactory proof before the Select Committee, and hereafter if the need arises before the Council, as to the expediency of the amendments, without, after this lapse of years, challenging the principles of existing law. With these remarks I beg to move the resolution which stands in my name."

The Hon'ble MR. MEHTA said:—"My hon'ble friend Mr. Lee-Warner, who is in charge of the Bill, seems to me to be very much in the position of a one-ton steam-hammer brought from a great distance to crack a nut. I cannot but deplore the decision under which Government have resolved not to grapple in this Bill with the larger questions of agrarian indebtedness, but to confine themselves only to minor matters of detail. There is no doubt that, as a measure of judicial relief, the existing Act has largely answered its purpose. It has brought justice nearer to the home of the raiyats, and the justice done is substantial as well as equitable to both parties. It is also more cheap and perhaps more speedy. It enlists the sympathies of both classes and largely obviates bitterness of feeling. It has strengthened the hands of the weak and given them confidence, while at the same time it has not destroyed credit, where credit was not a fiction. It may even be said that it has not so far checked *bonâ fide* loans, and only discouraged speculative and usurious business. It has created responsible feeling about the raiyat's claim to his land. These are no small advantages, and some of the amendments now proposed will go to improve and strengthen the Act. But such legislation does not go to the root of the matter of the raiyat's indebtedness. The saukar is not the head and front of the offence. The Commission of 1891 has pointed out that the rigidity and inelasticity of the revenue-system have much to answer for. Though it is open to revenue-officers to grant remissions and suspensions, and though the Government of Lord Ripon advised a policy of well-judged moderation in this respect in practice, the rigidity and inelasticity are not slackened. As the executive will not thus move, is it not necessary that there should be some provisions in the Act by which, just as there are special Courts to adjudicate equitably between the raiyat and the usurious saukar, there should be special Courts to do the same between the raiyat and the rigid State landlord? It would be enough that the revenue-officers should themselves form the Courts, but in these Courts they must decide questions of remission and suspension, subject to equitable rules similar to those enacted for relieving the raiyat against the pres-

sure of the saukar. If it is not the intention to shelve more comprehensive legislation as it was at one time hoped would be undertaken, I trust that these questions of larger policy going really to the root of the evil may be efficiently dealt with."

The Hon'ble SIR ANTONY MACDONNELL said:—"I had not intended intervening in this debate, but I wish to say, with reference to the remarks which have fallen from the Hon'ble Mr. Mehta, in which he expressed his regret that the Government has not, in connection with this Bill, grappled with the great question of agricultural indebtedness throughout India, that that question has been before the Government. The Government is at present engaged in discussing that question in those parts of India in which it presents its most complex and difficult features, and I trust that, before this Council ceases its sittings in Calcutta, I shall be able to break ground in the matter and to introduce a Bill in connection with one important aspect of the question in the Central Provinces. The other parts of India will follow in due course. I make these remarks in order to show the Hon'ble Member that the Government is not neglectful of its duties on this great question."

The Motion was put and agreed to.

CANTONMENTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Cantonments Act, 1889, be referred to a Select Committee consisting of His Honour the Lieutenant-Governor, the Hon'ble Lieutenant-General Sir Henry Brackenbury, the Hon'ble Mohiny Mohun Roy, the Hon'ble Sir Griffith Evans, the Hon'ble Sir Frederick Fryer and the Mover. He said:—"It is not necessary that I should say anything with regard either to the provisions of this Bill, the circumstances under which it was introduced, or the controversy to which it has given rise. Every Member of the Council must be familiar with all these matters, *usque ad nauseam*. It is, however, my duty in making this motion to supplement the information which is already in the possession of the Council by one statement. You are all aware that the objections which have been taken to the Bill have centred mainly around what is known as the third section.

"It has been represented—and it is no part of my duty at present to express any opinion as to whether it has been rightly or wrongly represented—as imposing an unmerited slur upon an honourable profession, but, at any rate, there has been a very strong expression of public opinion adverse to the proposal contained in that section. The Government of India and Her Majesty's

Government in England, in deference to that very strong expression of public opinion, after carefully reconsidering the case, have come to the conclusion that the existing law sufficiently covers the points intended to be covered by that section, and that therefore it is unnecessary to press for its enactment. Under these circumstances, if this Council will permit the Bill to be referred to a Select Committee, I will be prepared when the third section comes before the Committee to move its omission from the Bill."

The Hon'ble SIR GRIFFITH EVANS said:—"In order to a right understanding of this Bill, and to an intelligent consideration of the question whether it is desirable to refer it to a Select Committee for consideration of details and amendments, it is necessary to consider its history and origin, as well as its subject-matter. The appalling fact that out of the European army in India of about 70,000 men there were 28,000 admissions into hospital in 1892 for venereal diseases, and the average period of treatment in each case was for over 29 days, shows how grave the responsibility of this Council is in considering any proposed legislation which may in the slightest degree affect for good or for evil this calamitous state of things. This means that the Army of India is rotting. It renders unnecessary any apology on my part for taking up the time of the Council.

"I will endeavour to trace the origin and history of this Bill from the published blue-book containing the report of the Committee appointed by the Secretary of State in 1893 to consider this matter, and the questions and answers in Parliament on the subject. Before 1888 there had been in force in India, under the Contagious Diseases Act and statutory rules framed thereunder, a regular system for registration, licensing and periodical examination of prostitutes, and the army prostitutes were said to have been put under the orders of the various commanding officers, and their examination was compulsory and enforced by legal penalties. A well known military circular of 1886 roused public attention in England to this state of affairs. The English Contagious Diseases Acts had been already repealed. Questions were asked in the House of Commons, and in answer to one of those questions Sir John Gorst on the 8th of March, 1888, replied that reports on the Contagious Diseases Act were expected from India, and added:—

'But the Secretary of State has no power to withdraw the matter from the cognizance of the Legislative Council of the Governor General and the Legislative Councils of Madras and Bombay, to which the duty of making laws for India has been delegated by Parliament.'

"A debate took place in June, and on the 5th June, 1888, it was resolved that 'in the opinion of this House any mere suspension of measures for the compulsory examination of women and for licensing and regulating prostitution in India is insufficient, and the legislation which enjoins, authorises or permits such measures ought to be repealed.' This resolution was communicated by the Secretary of State to the Government of India, and on the 5th September, 1888, the Legislative Council repealed the Contagious Act of 1868, and the Cantonments Act of 1889, which had been introduced in 1888, was passed in October, 1889, and rules thereunder were passed in 1890. The Government of India also issued executive orders prohibiting the system and practice which had been in operation under the old Acts. After the publication of the proposed rules of 1890, Messrs. Stansfeld and Stuart, two members of Parliament, addressed a letter to Lord Cross stating that they did not see any words in the Act limiting or directing the method of exercising the powers, and suggesting that it would be possible under the new rules to set up the old system. In reply, Sir John Gorst, on the 6th of March, 1890, said :—

'I am desired by the Secretary of State for India in Council to reply to your letter of the 14th of February. With regard to your complaint that there are no words in the Act limiting or directing the method of the exercise of the power given by the Act of making rules, it is right in the judgment of the Secretary of State that no such words should be embodied in the text of the Act. The effect of such words would be to make the validity of every order issued under the Act a matter of controversy depending on the various interpretations of which its language might be held to admit. The Secretary of State prefers to rely on the consideration that the Viceroy, for whose acts the Secretary of State is responsible, will not use the power in the manner you suggest as possible.'

"The rules were accordingly passed unaltered. They were described in the report of the majority of the Committee of 1893 as being in themselves compatible either with the old system of compulsory examination or the intended one of voluntary examination. But they were supplemented by numerous orders of the Government of India, prohibiting periodical examination of women and compulsory examination. These orders appear, however, in some cases not to have been sufficiently promulgated and in other cases not to have been understood, and no sufficient steps appear to have been taken by way of supervision to ascertain whether they were in fact being carried out. In 1892 the Free Church of Scotland and other religious bodies sent in protests to the Home and Indian authorities stating that the old system was being carried out under the new rules. This was denied by the military authorities, they being under the impression that their orders had been properly carried out. But the

complaints being reiterated, and an enquiry in India having shown there were grounds for them, a departmental committee was appointed by the Secretary of State on the 20th of April, 1893, 'to enquire into the rules and regulations in the Indian cantonments and elsewhere in India with regard to prostitutes, and the treatment of venereal diseases, in order to ascertain and report how far they accord with the resolution of the House of Commons of the 5th of June, 1888.' This Committee consisted of Mr. Russell, the Under Secretary for India, and Messrs. Stansfeld and Wilson, members of Parliament, and Sir Donald Stewart and Sir James Peile, members of the India Council. They were divided in opinion, the majority consisting of Messrs. Russell, Stansfeld and Wilson. In the report of the majority dated 31st August, 1893, it is said :—

'There ought to have been such a republication of all such orders as would have prevented the resuscitation of the former system. It appears to us that the only effective method of preventing the systematic practices which have been maintained in co-operation with these rules is by means of express legislation.'

"The minority differed, and reported that they considered legislation unnecessary and undesirable for the reasons given in the Secretary of State's letter of the 6th of March, 1890. They said that there would be prostitution whatever steps might be taken, and that the resolution of 1888 objected only to coercion, that there would be venereal diseases, and that there must be hospitals, either separate buildings or separate wards for the treatment of it, that the periodical and compulsory examination of women had been already prohibited by departmental rules in June, 1892. There was no reason to doubt that, renewed attention having been called to the matter, those rules would be carried out.' On the 20th September, 1893, in reply to a question asked in the House as to whether it was intended to proceed with early legislation as recommended, the answer was given that it was intended to do so, but that the details would have to be considered and further reports received. On the 23rd of April, 1894, Mr. Stansfeld asked a question whether a certain despatch from India had been received, and what action was about to be taken. The answer given by the Secretary of State for India was as follows :—

'A despatch has been received and carefully considered by Lord Kimberley in Council. In his reply, which was sent on the 1st of March last, he informed the Government of India that in his opinion the only effective method of preventing a revival of the old practices inconsistent with their orders and with the resolution passed by the House of Commons on the 5th of June, 1888, was to proceed by way of legislation.'

'He requested them to undertake the necessary legislation as soon as possible, and indicated the form in which he wished those effected. To avoid the possibility of any further misconception of orders, he requested the Government of India to issue a resolution "explaining the policy of that regulation, and prohibiting all practices as different from rules and regulations inconsistent with this policy."'

"On the 12th of July, 1894, this Bill was introduced into the Legislative Council, and from the Statement of Objects and Reasons it appears that it was introduced in obedience to the direct orders of the Secretary of State. In introducing the Bill, the Legal Member said that it was a Bill which had been introduced—

by direction of Her Majesty's Government with the object of complying, if the Legislative Council should think fit to do so, with the requirements of the majority of the Commission which sat on the question of the examination in cantonments. That Commission reported by the majority of three to two that legislation was necessary in order to carry out the resolution of the House of Commons on that subject, and the result of that decision is that Her Majesty's Government has expressed a wish that this Bill, which has been practically, though not formally, drawn in England, should be introduced for the consideration of the Legislative Council.'

"You will observe that this is a very singular Bill; it is introduced by a member of the Executive Government for the consideration of this Council, not as having any merits but simply as having been ordered by the Secretary of State for India. It is further to be observed that it goes far beyond the resolution of the House of Commons of the 5th of June, 1888. This resolution was complied with by the repeal of the Acts which authorised or permitted the compulsory system then in vogue. It is to be observed also that the Departmental Committee was not directed to offer any opinion as to what steps should be taken, but only to report upon a question of fact, namely, whether the existing practice was consistent with the resolution of the House of Commons. Their recommendation is apparently officious and entitled to no weight, except to what may attach to the personal opinion of these three gentlemen. As to the merits of the Bill itself, it does not appear to possess any. The operative part of it consists of two sections. As to section 3, I need say little, as it has been abandoned, but I think I am bound to say that, had it not been abandoned, it would be very difficult for any member of this Council to approve of it. It is unnecessary, as all compulsory examination not authorised by law is already illegal and an offence under the Penal Code. It would have placed almost insuperable difficulties in the way of medical men treating these women as they ought to be treated for these diseases; it was a wanton insult to the whole body of medical men in the service of Government, and placed them in much

the same position as a criminal tribe for which special penal legislation is necessary. When once the Government of India had become aware of the fact that, owing to defective promulgation, misunderstanding, and want of supervision, their orders had not been carried out by their officials, it becomes clear to everybody who is acquainted with India that there could be no danger of the continuance of this state of things. It is absurd to suppose that the Government of India and the Military Departments are not able to control those who are under them, and the earnestness and *bonâ fides* of their intention so to control them is not doubted even by the majority of the Committee. I rejoice that the Secretary of State has yielded on this point. I do not doubt he has yielded to strong representations from the Executive Government, and the thanks of all India are due to the Executive Government for this. But I do doubt if he would have yielded had he not been confronted by the additional obstacle interposed by the independence of this Council. The Government of India cannot be blamed for introducing the Bill, and leaving it to the Council to adopt or reject. But had this section not been dropped it would have been the clear duty of this Council to reject it, and this duty I doubt not they would have discharged.

"As regards section 2, this, too, in my opinion is unnecessary for the reasons set out in the letter of the Secretary of State of the 6th of March, 1890. It is also objectionable for the reasons set out in the same letter, but I am inclined to think that, notwithstanding it is unnecessary and in some respects objectionable, it may be desirable to pass this section of the Bill with such verbal modifications as may prevent it from going beyond what was resolved on by the House of Commons, accepted by the Government of India, and agreed to by the Legislative Council in 1889, but we must take good care that there are no words in it so vague and wide as to prevent the enactment of such rules under the Cantonments Act as may be necessary for the health of the army, and as do not involve the revival in any form of the system then condemned.

"It is not desirable that any rules should be passed under the Cantonments Act which should have the effect of giving legal sanction to any portion of the system then condemned. Although the Secretary of State has the absolute executive control, and can therefore see that no rules are passed which could have this effect, yet it appears that, owing to the unfortunate carelessness of the Government of India in enforcing its own orders, an impression has arisen in England that there is a desire or intention in India to revive the old system by means of rules. This impression may give trouble in the House of Commons. It may be allayed by this otherwise unnecessary Bill. As the

Secretary of State for India has consented to this unnecessary manacle being placed upon his hands and those of the Governor General in Council,—I say upon his hands as well as those of the Governor General in Council, because no objectionable rules could be passed without his sanction,—I do not think that it is worth while for this Council to fight over such a measure, provided it can be satisfied that it will work no harm, but will merely embody in legislative form that which has been already agreed to. But there is a heavy responsibility on this Council to see that the words of this section do not go further than what I have indicated. The responsibility lies upon us, and we cannot avoid it by a reference to any orders from the Secretary of State. The position of this Council is defined by law. It and the Secretary of State are alike the creatures of Statutes passed by the Imperial Parliament, and each has its duties and responsibilities. The Secretary of State has the supreme executive control with all its responsibilities. This Council has entrusted to it the duty of passing such laws as under all the circumstances of the case seem to it best for the interest of India. As regards the position of this Council I adhere to what I have said in the debates which took place last month on the Cotton Excise Bill, and I do not propose to weary the Council by repeating those observations, but I desire to add somewhat to them.

"Before 1853 the legislative power was entrusted to the Governor General and the Executive Council. In 1853 legislative councillors were added, and in 1855 the Council so constituted asserted in no uncertain terms its legislative independence. Subsequently, when the Government of India was taken over directly by Her Majesty's Government, the powers which had been vested in the Board of Control and the Court of Directors were transferred to the Secretary of State in Council, and in 1861 the present Council was constituted by imperial Statute. But there is no indication that it was intended to give the Secretary of State any control over this Council more than was possessed by the old Court of Directors and Board of Control. In the debate in the House of Lords in 1861 the question of the desirability of giving full legislative powers to this Council was discussed, and the contingency of their refusing to pass measures recommended by the Executive Government of India was considered, and the conclusion that was come to by the then Government was that if the Council as constituted did refuse to pass measures introduced by the Government of India, it would be a sign that there was some very grave objection to the passing of those measures. The despatch of Sir Charles Wood of the 9th August, 1861, shows the same thing.

"The power of the Council to refuse to pass any measure is not, I understand, denied by anyone, but it is suggested that it is their duty to bow to the opinion of the Secretary of State as to the desirability of the measures introduced. These views I cannot accede to as regards any portion of the Council. This Council must always treat with respect and consideration resolutions of the House of Commons, or expressions of opinions of the Secretary of State in Council or of the Executive Government. But they cannot evade the responsibility of deciding in the end for themselves what course should, in the interests of the country, be pursued. Such decisions must be come to in full consideration of all the circumstances, and of the position of India as regards England, the difficulties which may arise from their action, and the undesirability of unnecessary opposition either to the Secretary of State or the Executive Government. But we must remember also that the Secretary of State, however honest and well-meaning, is only human and is subject to extreme pressure at times from the exigencies of party warfare. We must also remember that if India ever becomes a party football, or the sport of faddists in England, the question whether a democracy can govern an Empire will have to be answered in the negative.

"This seems to be undoubtedly the position of the non-official members; but it has been suggested of late that the official additional members are in a different position, and that they ought either to vote in accordance with the wishes of the Executive Government, or resign. This is, so far as I know, an entirely novel doctrine. Over and over again during the many years I have sat in this Council official members have voted against the Government of India upon important measures, and it has never been suggested to them that they were failing in their duty or that they ought to resign; nor did they, in fact, resign. Lord Ellenborough, in the debate of 1861 to which I have above referred, said their Lordships 'would hardly be aware of the entire and absolute independence of the gentlemen of the Civil Service; that they might depend upon it that they could not induce gentlemen of high character and position in the Civil Service to enter the Council if it were once understood that they were always to vote with the Government. There was no independent gentleman in India who would take the appointment on that condition, and they would be compelled to resign their situations. If the Governor General obtained successors to them, they would be persons of an entirely different kind, whose opinions would carry no weight, and who would, in fact, bring discredit on the Council.' What was then said of the Civil Service is equally true now.

"This is the view which, so far as I am aware, has always obtained as regards the duties of the official additional members, although no doubt they would naturally and rightly be loth to vote against the Executive Government unless the gravity of the occasion demanded it, or the strength of their convictions. As regards the position of the Executive Council, that is different. Owing to their dual capacity of being members of the Executive Council and of the Legislative Council, they are frequently placed in a difficult position. It has been said that if they cannot vote with the Executive Government they ought to resign; but I think this is too broad a statement. There is no legislative enactment which could compel them to resign, nor is there any, so far as I am aware, which could justify their dismissal or removal from office on account of their refusing to vote for a measure which has been approved of by the majority of the Executive Council. I quite admit that there may be circumstances in which the difference between a single member of the Executive Council and the majority is so great, with regard to the course to be pursued, that he is wholly unable to work in harmony with his colleagues, and that it might be under the circumstances the right course for him to resign. But there might be other circumstances in which the point of difference was one which, though of great importance, was a narrow—an isolated—one which would not interfere with his working harmoniously with his colleagues as regards their general executive duties in the administration of India. I think it must be left as a matter for determination between an Hon'ble Member himself and his colleagues as to what course he should pursue in each particular instance. However it may be when a member of the Executive Council finds himself in a minority in the Executive Council, that is a perfectly different matter from the position which arises when the Secretary of State issues orders for certain Bills to be passed. It may well happen that the whole of the Executive Council are in accord in their objections to passing such a Bill. It would be, I think, a novel and unconstitutional doctrine to lay down that under those circumstances every member of the Executive Council who could not conscientiously vote as the Secretary of State desired him to do should do so or resign. This is a deliberative body, and no power is given to the Secretary of State to direct the votes of any member of it. In the debate of 1855 on the Administrator-General's Bill, it was pointed out by the then Legal Member that, under the law as it then stood, it was a misdemeanour for any official of the Hon'ble Company to refuse to obey the orders of the Court of Directors; but it was pointed out by him that this must relate to executive and not deliberative acts, otherwise it would follow that the Judges, being servants of the Company, would be liable to an indictment if they do not give judgment

in any particular manner which the Court of Directors might order. This question is one which ought never to arise; it was not, I think, intended that the Secretary of State should usurp the initiative legislation and send out Bills here to be passed. This appears by the proceedings of Parliament in 1853-1861. Up to 1874 the Government of India appears to have conducted its administrative legislation without direct reference to the Secretary of State, except on important matters. In 1874 the Secretary of State directed that no measure should be brought on or introduced into this Council without its having been previously submitted to him. Gradually the Secretary of State seems to have been assuming a legislative initiative, which I do not think it was ever intended by the constitution of the Indian Government that he should assume. He has done so by virtue of his supreme executive control, but I think it is in the nature of a usurpation and is unconstitutional, and, if he persists in this course, it will infallibly lead to the straining of the whole machinery of the Government of India. So much as to the position and duty of the Legislative Council and its various component parts.

"As to this particular measure, the responsibility that lies upon us to see that we introduce into the law no words which may prevent the passing or render doubtful the legality of rules which can be made for the health of the army, without contravening either the letter or the spirit of what has been already agreed to, is enormous. We should be careful that we do not place any legislative bar to the recommendations of the Army Sanitary Commission being carried out. Common humanity and the efficiency of the army requires this. We must also beware lest we play into the hands of that strange band of fanatics who seem to regard venereal disease as a kind of *sacra lues*, a scourge of God upon incontinence which it is impious to interfere with. The tax-payers of this country too have a right to demand that the efficiency of the army which it taxes their resources so heavily to maintain is not wantonly sacrificed. In saying this I have no desire to revert to the old compulsory lock-hospital system which the British Army Sanitary Commission has declared to have broken down as a sanitary measure, and which is in other respects objectionable, but only to enforce those precautions which the Sanitary Commission has recommended, and which can be enforced without directly or indirectly reviving the condemned system. I think that very small verbal alterations will be necessary for this purpose, and I am, therefore, willing that this Bill should be committed to a Select Committee which will be able to judge what alterations, if any, are necessary to be made.

"We must bear in mind that, so long as we maintain a large European army in India under conditions of enforced celibacy, where only a proportion of them can be given leave to marry, we cannot hope that prostitution will cease in cantonments; for, as the apostle says and the experience of all ages testifies, 'all men have not the gift of continence;' and the examination for the British army enquires only into the health, height and chest measurement and does not include any examination as to their fitness to enter into celibate orders. Yet, once enlisted, celibacy is compulsorily imposed by Government upon the major part of them. Also there is in India a regular caste of hereditary professional prostitutes, an immemorial caste, with their own laws of succession, recognised by our Courts; and it is shown by the evidence taken by the Committee of 1893 that by far the larger proportion of the prostitutes in cantonments belong to this class.

"If for the safety of the Empire and consideration for its finances England is bound to maintain this state of things, the least we can do, in common humanity and justice to the soldiers whom we place in such a position, is to adopt such measures as are possible to mitigate evils arising from diseases which seem at present to be inseparable from prostitution. I hope that in time much may be done to decrease the spread of these diseases by means of women doctors, who have of late been admitted to medical degrees. When there are a sufficient number of medical women to attend to the treatment of the diseases of women, we may hope that much of the difficulty attending the examination of women will be removed.

"The element of shame and degradation which exists when such examination is conducted by men will be removed, and as no women, even prostitutes, can desire to suffer from this dreadful disease, we may hope that they will voluntarily resort in large numbers to hospitals superintended by women, and that women themselves, moved by compassion not only for their sister women, but for the unborn generations of innocent infants at present doomed to hideous disease, will join the men in taking determined steps to check the sacrifices to the Moloch of syphilis. The subject is one of national importance. The disease strikes at the vitality of the race—sooner or later the English nation must deal with it."

The Hon'ble MOHINY MOHUN ROY said:—"May it please Your Excellency,—This little Bill seems to have drawn upon itself a large amount of condemnation. All the Provincial Governments and other Indian authorities who have been consulted and who have expressed an opinion upon the policy

and provisions of the Bill have denounced it in language more or less strong. There was faint praise for it from a single individual, a Judge of the Madras High Court, who dissented from the Chief Justice and other Judges. With this exception, there was condemnation in every expressed opinion with which I have been furnished. I may now say at once that I share in that opinion and consider the Bill wholly unnecessary and vicious in principle.

"There are only two provisions in it, contained in sections 2 and 3. The second section proposes to curtail the power and discretion which the Governor General in Council has, under clause (*21*) of section 26 of the Cantonments Act, 1889, of making rules to provide for 'the prevention of the spread of infectious or contagious disorders.' Now, is any legislation at all necessary for this purpose? The Governor General in Council need only be told by the Secretary of State for India not to frame rules 'containing any regulation enjoining or permitting any compulsory or periodical examination of any woman by medical officers,' and he will, we have no doubt, loyally abstain from making any such rules. Legislation should never be resorted to except in a case of necessity or clear expediency; and certainly not where the object is easily attainable otherwise. Abstention by mandate is far more simple and suitable than legislation by mandate. The proposed legislation implies that the Governor General in Council may frame objectionable rules under the Cantonments Act, unless his hands are tied up. Now there is no reason to suppose that any Governor General will frame such rules contrary to the express mandate of the Secretary of State, or that full confidence should not be reposed in him where women of a particular description are concerned.

"I would, therefore, humbly suggest that this Bill be dropped. Section 3 of the Bill is abandoned. Nothing remains except to tie up the hands of the Governor General in Council, which can be done better and more simply by mandate than by legislation."

The Hon'ble MR. PLAYFAIR said:—"My Lord, I have waited for the second reading of this Bill with considerable anxiety, and I have listened with much interest to the remarks that have been made by the Hon'ble Member in charge of the Bill. He has relieved the Council, in my opinion, of what might have proved to have been a very undesirable discussion, by withdrawing the third section of the Bill, and the Hon'ble Member would have completed the feeling of satisfaction that his action has created had he seen his way, on behalf of the Government of India, to withdraw the Bill entirely. My Lord, in addition to the severe criticism that has centred round section 3, to which the Hon'ble Member in charge of the Bill has referred, I find myself justified in

saying that there exists outside of this Council a strong sense of opposition to the second section of the measure, not only because it is considered unnecessary in itself, but also because it seeks to prohibit the Governor General in Council from issuing a certain class of rules under the Cantonments Act, the Governor General in Council, as I understand the position, not having made such rules, and having already decided that no such rules shall be made. The action initiated by the present Secretary of State of thrusting Bills of legislation upon this Council marks a new departure that would rob the Council of its recognised constitutional privilege and duty. It is against such an invasion of the constitutional rights and duties of this Legislative Assembly that I have been requested, my Lord, by the constituents I have the honour to represent in this Council—the Bengal Chamber of Commerce—to enter an emphatic protest. In the present instance the trespass upon the established rights of the Council is aggravated by the nature of the legislative measure put forward. The present proposal has conveyed the idea to the mind of the community that Her Majesty's Government does not trust the Executive of the Government of India The feeling pervades the community that if this imputation is accepted the prestige and dignity of the Government becomes lowered, and the confidence of all classes in the government of the country is weakened. This spontaneous. expression of feeling on the part of the community, my Lord, is only in harmony with the opinion prophesied with remarkable accuracy by Sir William Harcourt so far back as 1879, when from his place in the House of Commons he said it was important to observe that there was one principle admitted by every Secretary of State and assented to by Lord Salisbury in 1876, and it was that, as a general and almost unvarying rule, the initiative in Indian measures, and particularly measures of finance, should belong to the Governors General in Council, that they should not be dictated to from the outside, but that they should come from those who were most likely to be informed about the interests of India. And Sir William Harcourt added that this was necessary for two purposes—to maintain the authority of the Government of India in India, and to maintain the confidence of the people in that Government. These remarks no doubt received the approval of his audience, as sound common sense. If the action of the Cabinet as interpreted by the Secretary of State for India reflects an alteration on the part of the right hon'ble gentleman's views, I can only wish, as Lord Salisbury once remarked, that those violent evolutions, which hon'ble gentlemen in the position of statesmen make of opinions they had previously professed, had for their subject some matter of less importance than Imperial interest, and less liable to be injured by expressions of opinion than the interests of the Indian Empire.

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"I am gratified, my Lord, to discern without doubt from the opinions expressed by the English and Native Press, and by the European and Anglo-Indian Defence Association,—a recognised mouthpiece of an influential section of the community,—that there is in this country no want of confidence in the intentions of the Government of India to uphold the wishes of Parliament in respect to the control of cantonments, and that the introduction of this Bill has been in consequence condemned by that portion of the people of this country which perhaps my hon'ble friend, Mr. Lee-Warner, will permit me to describe as articulating public opinion. I trust, therefore, that if the opinion of the entire Council is not now taken by a division upon the question of the constitutional principle involved in the introduction of this Bill, it will be understood that it is because those members who, like myself, are opposed to the Bill, consider that by the withdrawal of section 3 Government will perceive that section 2, when modified, as it must certainly be, is not worth retaining. While I am among the first to deplore the recurrence of differences of opinion between the Secretary of State and the Legislative Council of the Government of India, I cannot but feel that if the independence of this Council is to be invaded and defeated by the Secretary of State, and the relationship of its Members to the Secretary of State is to be reduced to the level of Court assessors, whose opinion must be listened to but need not be accepted or allowed any weight in the decision of the case, the sooner the duties and privileges of the Council are defined by a new and revising Act of Parliament the better. As the law at present exists, I understand Members do not occupy such an invidious and false position, and if the law were altered I feel sure Government would experience extreme difficulty in finding non-official members who would consent to serve."

The Hon'ble MR. LEE-WARNER said:—"My Lord, the Hon'ble Mover of this motion refrained from offering any observations upon the provisions of the Bill at this stage, and had his example been followed, I should also have refrained from making any observations, but the remarks which have been made, added to those of the reports which are before the Council, would leave an impression that all authorities, official and non-official, as well as that great body of opinion, the Press, are unanimous in condemning this Bill as unnecessary and unsound. I am not of that way of thinking, and therefore do not think it would be honest for me to keep silence on this occasion. I should have found it impossible to have voted for the third section of this Bill, but subject to any modifications which may be considered necessary, and which will not destroy the purposes of the Bill, I am in favour of sections 1 and 2. It has been observed that it is 'unnecessary' to legislate because the Government of India

in its executive capacity has declared that it does not mean to use the powers which the Legislature has conferred upon it. But I submit that that is no answer. History writes itself in its largest letters on the Statute-book, and if the legal powers that the Governor General now possesses do extend to the regulation of those matters which this Bill proposes to withdraw from his executive authority, I think it cannot be held 'unnecessary' by legislation to remove those powers which have been conferred by legislation. This, then, opens the real question whether the powers that the present law gives are powers which should be possessed, even if they are not used, by the Governor General in Council or not, and here I admit that there is room for difference of opinion; but it has always been my experience in sitting upon cantonment committees and elsewhere that the powers conferred by the Cantonments Act of 1889 were wholly insufficient. It must always be borne in mind that the cantonment is not a part of the district which is separated from other parts of the district by a Chinese wall. It is a mere arbitrary division, which is marked off very often only by a red line on a map to which the public more often than not have no access, or by a few posts which have sunk below the level of the surrounding country. In Belgaum, for instance, there is an important cantonment which is under the Madras command but situated in the Bombay Presidency. The Native State of Sangli laps it round, and just outside your British Cantonment you have foreign territory into which your regulating powers would have to be introduced if they were to be used with effect for the purposes of the Cantonment. Are the advocates of these laws for compulsory examination of prostitutes prepared to insist that we should urge the Native State to adopt our special legislation and introduce into Sangli the same laws as you require for the Cantonment? Again, in Poona there are two bodies, the city and suburban municipalities, whose roads and jurisdiction run right into each other and in and out of the cantonments. Are you prepared to force on these bodies regulations for the control of prostitutes if they don't approve of them? The fact is, that you cannot undertake this policy of restriction and examination without extending the area of the powers which you now possess, and which are confined to cantonments. I submit, in short, that powers such as those which this Bill withdraws could not, if they existed, be properly exercised with any completeness or sufficiency in the narrow area of a cantonment, unless legislative power was given to extend them elsewhere. For these reasons it seems to me that these powers, being inadequate, might well be withdrawn. But I go further, though I do not expect others to agree with me. I confess that I do view with some alarm the argument to which reference has been made by my hon'ble and learned friend that the prostitutes to whom he referred are heredi-

tary castes. Our whole legislation proceeds on the principle that the liberty of the subject is to be preserved, and that you have no right to inflict on the meanest subject a personal degradation. The case is not altered if you are dealing with a caste. Our law has never yet recognised legal disqualifications due to the caste system. We have no right to treat either a caste or individuals as outside the pale of our consideration and the influence of our rule of equality. I confess that I cannot help thinking that those powers which I have not heard defended—I allude to the powers of compulsory examination and perhaps of compulsory registration—have departed to some extent from the ethical and humanising spirit of our legislation in India, and I view with some alarm that departure from the true standard of our legislation. This may appear to you mere sentiment. I only ask the Council to bear with me if I entertain this view as a matter of principle, and it does not agree with their judgment. For these reasons I think that, subject to such changes as may be found necessary, the general principles of sections 1 and 2 might be approved, because they withdraw powers which are incomplete without an extension of them which this legislature will not grant, and because they bring us back to the sounder principles of our altruistic legislation.

"I have only one word more to say. The question has been raised regarding the duty of various sections of this Council. I am entirely in agreement on this point with one sentence in the speech of my hon'ble friend Sir Griffith Evans when he said that 'it must be left to every member of this Council to decide for himself what line he must follow.'"

The Hon'ble MR. CLOGSTOUN said:—"My Lord, the question before the Council is practically whether legislation shall be taken to ensure for the women of India, of all classes, the most debased in evil, or the most exalted, that perfect freedom and security of person which has been extended to the women of England. The necessity of legislating on the point is a matter of doubt as the existing law grants the same rights, but I accept frankly the policy which the legislation embodies, and which is the policy not of the Secretary of State but of the people of England of all parties—a policy which must command the sympathies of the Council. I am unwilling to impose on the women of India any disabilities not imposed on their sisters in England. I think it necessary to add that prostitution is not limited to castes in which the trade is hereditary."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, in supporting the motion that the Bill may be referred to a Select Committee,

without going into the history of the Bill, so fully and ably elucidated just now by the Hon'ble Sir Griffith Evans, I may at once express my disapproval of the measure now before the Council. Personally speaking, I have had no experience of the working of the law in cantonments either as it now stands or as it stood before 1888. But I have before me the opinions of a very large number of officials of the Government who, either from personal experience or from information gathered, have almost unanimously arrived at the conclusion that the Bill under discussion, if passed into law, would be 'cruel, immoral, oppressive and inexpedient.' My Lord, I am inclined to share in the opinion that 'we should legislate for men as they are and not as they ought to be,' and when it is declared that 'out of an army of 80,000 Europeans, some 30,000 are in hospital daily with venereal,' I must at once say that such a state of things could hardly have been due solely to what the promoters of the Bill are pleased to call the State regulation of vice. There is a very cogent truth embodied in the following observations made by the Acting Magistrate of Ahmedabad :—

'Private soldiers are young men taken from the classes least habituated to exercise of self-control—classes who in their natural state marry very early in life. You take such men, you do not allow them to marry, you feed them well—better in most instances than they have been accustomed to be fed, and you give them a sufficient amount of physical work to put them into good condition, and no more. It is asking too much to expect that a large majority of such men will exhibit the continence of the cloister.'

"The evil, therefore, is inherent in the manner in which the army in India is recruited and kept up, and the remedy, if any is to be found, must be sought elsewhere than in any legislation of the present kind.

"My Lord, as regards section 3 of the Bill, I think it was wholly uncalled-for, and I am glad to see that steps have been taken to expunge it. I believe that few medical officers would have been so zealous for the welfare of the army as to take, at the risk of loss of their appointments, to the hardly agreeable work of examining diseased women against their will, especially when it had been forbidden both by law and by the executive orders of the Government they serve. The reasons, therefore, which seemed to have suggested section 3 of the Bill were rather of a theoretical than of a practical nature.

"There is, therefore, not one redeeming feature in the Bill which ought to justify its being passed either in its entirety or in an amended form. At the same time I cannot believe, as has been alleged in certain quarters, that the persons who moved the British House of Commons on this matter were actuated by no other motive than a 'criminally hypocritical desire for cheap

notoriety for themselves.' It is, indeed, quite as wrong to impute any other but the highest motives to these philanthropic persons as it is to say that if a portion of the Native Press, or for the matter of that a portion of the Native community, be in favour of the Bill, it will be because they will not be very sorry to see the effective force of the British Government in India weakened. If I remember aright, the Bombay Corporation, amongst the members of which are counted some of the most high-minded Anglo-Indians and Natives of the country, advocated some years ago a line of policy similar to that laid down on the Bill before us, and one cannot say that in doing so that Corporation was moved by any such disloyal motives as the desire to see the efficiency of the army impaired. Indeed, the very motives of self-preservation would induce the leaders and representatives of public opinion in this conntry to wish that the effective force of the British Government in India might be rather strengthened than weakened. Moreover, they are acute enough to see that, as the numerical strength of the army must and will be kept up, they are deeply interested as tax-payers in the control of diseases which add largely to the number of men invalided from year to year. As a matter of fact, I think I am right in saying that the weight of Native public opinion as expressed in many influential quarters and in my Province is strongly against the Bill."

The Hon'ble MR. MEHTA said:—"As the principle and general provisions of the Bill are open to discussion on this motion, I should like, my Lord, to offer a few remarks on them before it goes into Committee. In the Statement of Objects and Reasons, prominence is given to the fact that the Bill has been introduced in Council by the direction of the Secretary of State for India. In view of this declaration, it would not be inappropriate or out of place if I venture to indicate briefly the position which I conceive myself to occupy as a Member of this Council in proceeding to consider it. In any discussion of this sort, it would be futile not to bear in mind that the constitutional Government of England is not only based on law and statute, but is also controlled by practice, usage, and precedent which have, in numerous direct and indirect ways, often modified, and often over-ridden and gone beyond written and unwritten law; and it must be conceded at once that the supreme and absolute authority for the government of this country vests in Parliament. Even this proposition may be rightly carried further by identifying Parliament in the last resort with the House of Commons. As pointed out by so careful a historian as the late Professor J. R. Green, one of the two constitutional principles discovered and applied by one of the most sagacious of English statesmen, John Pym, has been established by the acknowledgment on all sides since the Reform Bill of 1832

that 'the government of the country is really in the hands of the House of Commons and can only be carried on by Ministers who represent the majority of that House.' I think this proposition not only indicates the position of the House of Commons as the predominant partner, but also defines both the extent as well as the limitation of the authority and responsibility of the Secretary of State for India as one of the conjoint body of Ministers forming Her Majesty's Government, or that body still unknown to the law, the Cabinet. The House of Commons exercises its predominant authority in the government of this country through its responsible Ministers so long as they possess its confidence, and it cannot be forgotten that, subject to this limitation, the Secretary of State for India has the authority of the House to sustain him and the responsibility to carry out its behests by all lawful means open to him. August as the office of Viceroy is, it cannot be gainsaid that he is not independent of the authority vesting in the House and working through its responsible Ministers. It cannot be otherwise under the system of English constitutionalism, and any co-ordination of authority would be subversive of its most fundamental principles. This subordination is by no means, however, inconsistent with the possession of a large and sometimes preponderating measure of influence which the views, opinions, and recommendations of so highly placed an official cannot fail to command in the final decision of Indian questions. It is said, however, that it involves the loss and derogation of prestige. I confess I fail to understand this argument. The superior authority of the Secretary of State, not to speak of Parliament and the House of Commons, is an incident which has been most vividly and constantly familiar to the Indian mind, and the appeal from the Government of India to the Secretary of State has been one of the most common of Indian experiences. Not only has it not involved loss of any prestige, but it has not unfrequently given great content and satisfaction. I remember an instance in connection with the Contagious Diseases Acts themselves. Over ten years ago the Bombay Municipal Corporation declined to contribute to the expenses of a lock hospital, and the Government of Bombay tried to levy it illegally and forcibly by withholding the amount from its contribution to the cost of the city police. The Corporation appealed to the Government of India in vain. From that decision it appealed to the Secretary of State, and the success of its appeal was and always has been a source of great gratification. So far as the natives of this country are concerned, we must take care not to be carried away by the bait of so tempting a phrase as Home rule. Home rule to us, for a long time to come, can only mean the substitution of the rule of the Anglo-Indian bureau-

cracy for that of the House of Commons and the Secretary of State as controlled by it. Under either rule the country cannot always be safe against the occasional attacks of powerful interests, but after all it is safer to rest upon the ultimate sense of justice and righteousness of the whole English people, which in the end always asserts its nobility, than upon the uncontrolled tendencies of an officialdom trained in bureaucratic tendencies, and not free from the demoralising prejudices incident to their position in the country.

"But, while fully conceding the supreme authority of the House of Commons and its responsible Ministers, I do not think that that supremacy is in any way inconsistent with the entire and unfettered freedom and independence of this Council within itself and within the scope of its legitimate functions. Its legislative powers are a purely statutory creation, and the question of their interpretation is not complicated by any mysteries of unwritten law of usage and practice. There is nothing in its creative statutes or in the declarations of intention and policy surrounding them to justify the supposition that this Council was designed to be a deliberative body without the power or freedom of deliberation, or of carrying that deliberation into effect. The remedies and safeguards against both paralysis of legislation on the one hand, and of mischievous activity on the other, have not been provided by making it impotent for all free or deliberative action; but they have been carefully constructed in other ways. Against paralysis of legislation the right of Parliament to continue to legislate for India is unreservedly retained; and there is, besides, a power given to the Viceroy to meet cases of urgency by the promulgation of ordinances having the force of law. The abuse of legislative activity has been sought to be safeguarded by the power vested in the Governor General of giving or withholding his assent, and the power of the Crown, signified through the Secretary of State, to disallow any laws made by the Council. The extent of the powers of the Council is besides cut down in various directions under section 22 of the Act of 1861. Beyond these restrictions, carefully planned, I conceive that there is nothing to prevent any Member of this Council from joining in its free deliberations, and shaping his action according to the best of his independent judgment. It does not follow that practical considerations of prudence and discretion should be banished from his deliberations or his decision: it is, however, a question for his own free judgment to determine how far he should yield in any particular case on a balance of advantages to the dictates of policy and expediency.

"In applying myself to the discussion of the principle and general provisions of this Bill, I venture to think that the fact of the Bill being introduced by

the direction of the Secretary of State does not deprive me of the right of free and independent judgment within the walls of this Council. At the same time I do not feel bound to oppose it simply because of that circumstance, irrespective of its own intrinsic merits. So far as regards its underlying principle, it seems to me that it has been recognised by this Legislature when, following the repeal of the English Contagious Diseases Acts in 1886, and in consonance with a resolution of the House of Commons in that behalf, the Indian Acts were repealed in 1888, with the full concurrence of the Government of India, whose opinion was formed after enquiry. It is well to bear in mind what was said at the time of the passing of the Repeal Bill with regard to the powers under the existing Cantonments Acts. Sir Charles Aitchison, who was in charge of the Bill, said: 'It is proposed to abandon the powers conferred by clause (7) of section 27 of the Cantonments Act of 1880 and the corresponding Acts in Madras and Bombay, and to take power to make rules to exclude from cantonments persons suffering from contagious or infectious diseases, and to organize a system of voluntary hospital relief for patients suffering from such diseases. In the meantime, pending the necessary steps preliminary to legislation, the cantonment authorities have received executive orders that the existing rules are to be so worked that there shall be no compulsory examination of women, no registration of women and no granting of licenses to practise prostitution.' The policy of the repeal was thus declared to be entire; and it seems to me that the underlying principle of the Bill before the Council is in consonance with its existing legislation. There is no question of retracing the legislative steps taken in 1888, and the immediate object and principle of the Bill, embodied in sections 2 and 3, is to provide against a violation of the legislative will of this Council declared in its previous legislation. It seems to me that there is full justification for what is proposed to be done by section 2. When the new Cantonments Act of 1889 was passed, a mistake which is very common in Indian legislation was made, *viz.*, that of giving indefinite power to the executive authorities to make rules and regulations, even when there were admitted limitations which could be enacted in the Act itself. Assurances and understandings are made to take the place of definite provisions, but it not unfrequently happens that they are forgotten or, what is still more dangerous, interpreted in all sorts of wonderful and unexpected ways. The Cantonments Act of 1889 gave Government power to make rules for 'the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals.' Objections were raised to the dubious character of the section giving this power and the rules made under it. Assurances, as usual, were given that the rules could not be

misused or misinterpreted; and all the direct warnings to the contrary were dismissed as unworthy imputations on the loyalty and discipline of public officers. But what has happened in other similar cases happened in this. The rules were flagrantly disobeyed or innocently misconstrued—I believe it has been suggested from a stern sense of duty, but it does not matter so long as the misinterpretation remains an established fact. To my mind, the proposed section is designed to do what ought to have been done in the very first instance in the Cantonments Act. I can see nothing derogatory to the greatness or prestige of the Viceroy in Council in carrying out this object. It is always very much better to do by definite and systematic legislation everything that can be so compassed rather than leave it to be accomplished by the vagaries of individual and uncertain discretion. It is no derogation to the authority of the Viceroy that he should in his Legislative Council give legislative fixity in preference to his doing the work as Viceroy in his smaller Council, when the matter is one in which there is to be left no further room for discretion or variation. From this point of view I venture to regard section 2 as unobjectionable and proper.

"But looking at the matter from the point of view as I have done, section 3 does not seem to me to be a desirable or appropriate sequel to section 2. I at once admit that many of the arguments which have been urged against it are founded on exaggeration. It is absurd to suppose, as has been advanced, that the section would place the safety and security of every medical officer at the mercy of women of doubtful character. Our Criminal Courts and their special criminal procedure are so constituted that the fear of false charges and false convictions against the class of persons likely to be affected by the section is reduced to the very lowest point, and a Cantonment Magistrate specially is not likely to err on the side of the prosecution in such a matter. The argument that it is a most unusual procedure to provide in an Act for the legal punishment of an officer of Government is equally futile, for the Indian Penal Code devotes a whole chapter to offences by or relating to public servants, and section 166 is a comprehensive section devoted to the punishment of public servants for disobeying any direction of the law. It is also not quite correct to say that section 354 of the Indian Penal Code already covers the offence made punishable by section 3, for, as outraging the modesty of the assaulted woman is an element of the offence, it is possible to argue before a Cantonment Magistrate that no prostitute or immodest woman could possess modesty. But from the view I have ventured to take of section 2, namely, that it properly defines within limits consistent with the legislation regarding the repeal of the Contagious

Diseases Acts the power to make rules under the Cantonment Act, it follows that it is sufficient to render invalid any rules going beyond the legitimate purpose of the Cantonments Act, and thus withdraws all supposed sanction from acts which but for those rules would be exposed to the operation of the ordinary penal law. I do not think that prostitutes should have any further protection from compulsion or any other illegal act than what the law affords to other people. It seems to me, therefore, that section 3 should be omitted from the Bill. I am glad, therefore, to hear the declaration made by the Hon'ble the Legal Member with regard to that section.

"I should like to add, my Lord, one word as to what I have read in the papers circulated, and I am sorry to say I have heard from the lips of Sir Griffith Evans in Council to-day regarding the people who are supposed fanatically to have promoted the proposed legislation. Very strong and very harsh language has been showered upon them. But I think it should be borne in mind that the sentiment and feeling actuating these people are only a phase of that puritanical severity of character which has not been a little instrumental in contributing to the freedom, the prosperity, the greatness and the nobility of the English people."

The Hon'ble SIR ANTONY MACDONNELL said :—"My Lord, I shall not trespass on the patience of the Council for longer than I can possibly avoid; but I am not willing to give a silent vote on this occasion. My hon'ble friends, Sir Griffith Evans and Mr. Playfair, practically and in effect maintain that this Bill has not come before the Council in a regular and constitutional manner; that it is in fact the product of improper dictation by the Secretary of State; and I understand Mr. Playfair to say that the measure should be entirely dropped. That was the impression which my hon'ble friends' addresses left on my mind; but I am not prepared to accept their views of the facts as the natural view, nor to subscribe to all their inferences.

"Sir Griffith Evans has given the Council a statement of the genesis of the Bill with which I have little to find fault. But still for the better exposition of my argument I wish to briefly run over the main points in the history of the case. The starting point is the resolution of the House of Commons of 1888 which has been read here to-day by Sir Griffith Evans. That resolution was accepted by the House of Commons after a full debate without a division, and was unreservedly adopted by Her Majesty's Government. Some Hon'ble Members may regard that resolution with dissatisfaction, but there can be no doubt at all that it expressed the deliberate decision of the House of Commons;

and I venture to say that to-day no responsible Member of either House of Parliament would venture to rise in his place and propose that it be rescinded. That resolution, accepted by Her Majesty's Government, was transmitted in due course to the Government of India for enforcement. The immediate effect was the repeal of the Contagious Diseases Acts, and the issue of orders by the Governor General in Council to enforce the resolution without any reservation. In due time the Government of India was called upon to say whether effect had in practice been given to the resolution of the House of Commons and the orders of Her Majesty's Government in connexion therewith. The reply was that effect had everywhere been given to these orders, and that the system and practice at which the orders were aimed had been everywhere prohibited, and were no longer anywhere in operation. The sequel of the business is known to all. The Government of India had been misled; its confident statement that all the prohibited practices had everywhere ceased was found to be inaccurate, and evidence was produced which undoubtedly shewed that the prohibited system was in force to a greater or less extent in some important cantonments at the very time when the Government of India was, with complete honesty of belief, maintaining before the world that the system had everywhere absolutely ceased. The result was a recommendation to Her Majesty's Government by the official Committee that as the executive orders of the Government of India had failed of success, as these orders had been disobeyed, and as it was essential to prevent the possibility of such failure in future, legislation was necessary. And Her Majesty's Government, concurring in that view, called on the Government of India to undertake legislation on certain lines. For doing this, for addressing that requisition to the Government of India, the Secretary of State is charged by my hon'ble and learned friend with improperly dictating to this Council.

"But, my Lord, the proceedings of the Legislative Department will, I believe, furnish numerous examples of legislation by the Government of India at the instance of the Secretary of State: although, as popular feeling was not aroused in connexion with them, we heard nothing then about the Secretary of State's dictation. We hear of it in regard to a measure in connexion with which we have made some mistakes and resent being told that we have done so. In point of fact, we in India do not approach this matter entirely without prejudice. We have been placed in a false position by circumstances, over which we ought to have had, but had not, sufficient control; and we are perhaps somewhat unreasonably ready to resent the interference of anybody, even of that high authority who is most competent to set us right with English public opinion on the subject.

"My hon'ble friend's quarrel with the Secretary of State is that he has required us to take such steps as shall place us in touch with English public opinion, and put our effective control in future beyond the reach of being defeated by design, accident, or chance. But my hon'ble friend has admitted that in the circumstances the Government of India could not do otherwise than introduce the Bill into this Council. In this I quite agree. It would not have been possible for the Government of India to meet the Secretary of State's requisition with a blank refusal to move in this Council at all. If the Government of India, when called upon by the Secretary of State to legislate, had declined to introduce this measure into the Council, and to take an expression of public opinion upon it in the ordinary way, then the Government of India would, having regard to all that had passed in this connexion, been not only wanting in courtesy to Her Majesty's Government, but would have exposed itself to most invidious comments and most unpleasant suspicions. The Government of India in the circumstances could not possibly do less than introduce the Bill—I notice that my hon'ble and learned friend nods acquiescence in that statement. And, as Sir Griffith Evans has said, that introduction happened to be accompanied by a perfectly frank exposition of the situation as it then existed. Since then events have moved, if not with special rapidity, at all events with ample significance. Subjected in the regular constitutional way to public criticism, the Bill has not passed scatheless through the ordeal, and the result is that the Government of India, with the concurrence of the Secretary of State, has decided to drop the third section, to which great objection has been raised.

"Now, these are the broad facts of the case, and on them I would ask Hon'ble Members to conclude that there has been no breach of the privileges of this Council, and no violation of our rights. It is no doubt pleasant that the tedium of our debates should be now and then enlivened by such a speech as we have heard to-day from my hon'ble and learned friend. But I would ask Hon'ble Members, as practical men, not to permit their judgments to be deflected from the substantial issue. To introduce a measure to the notice of this Council is one thing, to force it upon the unwilling acceptance of the Council is an entirely different thing. Here the main issue is: Has the Secretary of State forced a measure on this Council when the repugnance of the Council and public to it has been made manifest in the legitimate way? The answer is to be found in the declaration which the Hon'ble the Legal Member made at the beginning of this debate; and I therefore do ask the Council not to go behind the record, but to accept that declaration as so far disposing of a ques-

tion, which has now lost any constitutional importance it ever threatened to possess, in a way which is alike becoming to the dignity and the unquestioned independence of this Council and to the position of the Secretary of State.

"I now come to the second section of the Bill, which the Hon'ble Mr. Playfair and the Hon'ble Mohiny Mohun Roy say should be dropped. In regard to the section I assume for the purposes of the present discussion that we accept as governing our action the principle of the House of Commons' resolution. If we accept that principle as a rule of practice, and this we have done, then let us accept it honestly and unreservedly. If we accept the principle in this sense—and who will say that he accepts it in any other sense ?—can it be said that section 2 of the Bill goes beyond the resolution? It seems to me that it is impossible to say so; and that the section does not more than translate the principles of the resolution into legal language. On what grounds, then, are we asked to refuse to embody in our law a principle which we accept? As I understand the objection, the ground is that the proposed enactment is unnecessary, and that it implies distrust of the Government of India. If so, it is the Governor General in Council (who alone has power to make rules under the Act) that is distrusted: and his best friends might well leave it to him to resent anything that he may feel to be an indignity. His friends need not be more sensitive for his honour than he is himself. But, as I have already explained, the Government of India do not come to the consideration of this matter with a perfectly clear record. They accepted the resolution of the House of Commons, they issued orders that it should be carried into effect, they believed that their orders had been obeyed; and, in all good faith, they reported that the decision of the House had been fully complied with. As a fact, it was not so. In some instances, and in some respects, that decision had not been complied with. So far the worst that can be said of us is that we meant well, but failed to enforce our intentions upon those in whose hands lay the carrying of them into practice. But, if we now do as some of our friends would have us do, shall we not expose ourselves to an infinitely more serious accusation, to a suspicion of our good faith, to a suspicion that touches our honour? If we now hesitate to embody in legal and binding form the principle which we say that we accept, and have endeavoured honestly, if not wholly with success, to act upon, shall we not expose ourselves to the suspicion that our acceptance of it was half-hearted, that our failure to secure compliance with it was not entirely unintentional, and that we now refuse to do anything that may prevent us from evading its operation so soon as the attention recently drawn to the matter shall have subsided? My Lord, I yield to no Member of this Council in my solicitude for its

prestige and independence, but I ask even those Hon'ble Members who, unlike myself, think that our dignity has been threatened, whether it is worth while to expose ourselves to the risk of such a suspicion as I have now stated on a mere point of offended dignity. The real truth is that it is in its history that the whole sting of the matter lies. Had the Government of India, as the Hon'ble Mr. Mehta has said, when framing the Cantonments Act inserted this section, in ordinary course in pursuance of the Commons' resolution, not a voice would have been raised against it. What our critics now object to is—not what we are asked to do, but being asked to do it. Surely it is unreasonable to object to doing what we should have had no objection to doing of our own motion, merely because we are pressed to do it by an authority external to this Council! If you are going to resent what you consider to have the appearance of dictation from Her Majesty's Government, at least wait to do so till you can honestly object on the merits to what they would have you do. What is proposed to-day is to give the formal sanction of a legislative provision to a principle laid down by the House of Commons and accepted by the Home Government and the Government of India. At present that principle nowhere finds a place in our statute-book. No doubt we may think that its enforcement might be left with safety to the Executive Government. But so might the enforcement of a thousand and one other principles which it is nevertheless thought advisable to invest with the solemnity of a legislative enactment. We now propose to place the operation of this principle beyond the discretion of a changing executive. We wish to have it formally recognized by the Legislature: and thus to ensure that it shall never be set aside by anything less formal than an Act of that same Legislature, done after due notice and public discussion. In view of all that has passed upon this subject, and in view of the great importance which Her Majesty's Government attach to this principle, the wish is surely not an unreasonable one. For these reasons, my Lord, I shall support the Bill as now amended by the omission of the third section, and shall vote for referring it to a Select Committee."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY said:—

"So much has already been said to-day that there remains comparatively little for me to add, but there are a few remarks which I think it necessary to make. In the first place, the general tone of the debate from all except official members of Your Excellency's Council has rather contained an assumption that the Secretary of State has been forcing action upon the Government of India in the direction of the abolition of what may be called 'State legislation for vice.'

I shall endeavour, by briefly tracing the history of this, to show that for more than seven years the Secretary of State and the Government of India have been acting in complete accord in this matter, and that, in at least one instance, the initiative has come from the Government of India. There has also, I think, been an assumption that the action at home has been due to a very small party of what have been called English faddists. My hon'ble friend Sir Griffith Evans spoke of this Government becoming the sport of English faddists or of a band of fanatics. I think, my Lord, that that shows a want of appreciation of what is going on at home. I take it that there are few matters on which there is a stronger feeling than there is on this question of what is called 'State legislation for vice' or 'State protection of vice', or, as it has otherwise been called, 'official purveying of immorality.' It is not confined in Parliament to the House of Commons, as I shall show presently, and I do not think that there can be anything more significant as to the great force of that body of public opinion than the fact to which my hon'ble friend Sir Antony MacDonnell has alluded that the resolution of the House of Commons of 1888 was passed unanimously in the House without a single voice of dissent; and the fact that from that day to this, although numbers of Members of the House of Commons were well aware of, and have had repeatedly brought to their notice, the state of the British army in consequence of venereal disease, not a single one of them has ever got up either to challenge that resolution with a view to getting it done away with, or to move that something should be done to protect the soldier. Having made that remark, I shall now pass on briefly to refer to the history of the matter, bringing out somewhat more in detail than has already been done by my hon'ble friends, Sir Griffith Evans and Sir Antony MacDonnell certain points in that history.

"And first I will say that this matter with regard to India did not begin with the resolution of the House of Commons. It began in 1887 in the House of Lords, where the Bishop of Lichfield called attention to the existence of official regulations for the provision of prostitutes in regimental bazars, British and Native. The Secretary of State sent this out to the Government of India; he apprehended that the system was indefensible and must be condemned; and he called for full reports. It was in sending home these reports that there was brought to notice that circular which I think I must read the first paragraph of, unwilling as I am to do so. It was a circular memorandum of June, 1886, in which the Quarter-Master General stated that His Excellency the Commander-in-Chief desired him to give prominence to certain points which

appeared to be specially deserving of consideration by the military and medical authorities in every command. Amongst these points was the following:—

'In the regimental bazars it is necessary to have a sufficient number of women, to take care that they are sufficiently attractive, to provide them with proper houses, and, above all, to insist upon means of ablution being always available.'

"In sending this circular home to the Secretary of State, this Government wrote:—

'We admit without reserve that the blots upon the present system are so serious as to call for our earnest consideration and for an immediate and thorough revision of existing arrangements.'

"They pointed out that—

'abuses had arisen gradually and unobserved out of arrangements designed in good faith, and with the single desire to save unborn generations from one of the most terrible of all diseases, to protect the health of our soldiers, and to maintain the efficiency of our army by the mitigation of the evils of prostitution.'

"Any one who is opposed to what may be called State provision for immorality must, I think, admit that the Government had, after sending home that circular to the Secretary of State, an exceedingly bad case to start with. A long discussion then commenced, and while that discussion was going on, but previous to the resolution of the House of Commons, the Government practically repealed the Contagious Diseases Act. They wrote home in March, 1888, stating that the Government of India had decided to suspend the operation of the Act in the towns of Madras, Bombay, and Bassein (in Lower Burma), the only towns in which it was then in operation. The Act had been withdrawn from operation in Calcutta in 1881, and since that date venereal disease had become more prevalent, and also more virulent in character, than it was while the Act was in force. But, in view of public feeling at home and of the decision upon the question at which Parliament had arrived in reference to the United Kingdom, and which had been adopted by the Secretary of State for the Colonies, the Government of India did not consider it any longer desirable to maintain the Contagious Diseases Act in the restricted areas in which it was in force at the time their despatch was being written. Here we have the Government of India taking the initiative, in consequence of what they knew to be the state of public feeling at home.

"There now remained, therefore, only the military cantonments in which there was left any means of controlling venereal disease. In June, 1888, the House of Commons passed that resolution which has been read to you, and

I must say that I was surprised when I heard my hon'ble friend Sir Griffith Evans say that there was no resolution of the House of Commons behind this Bill."

The Hon'ble SIR GRIFFITH EVANS:—"I referred to section 3 of the Bill."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY:—"I beg the Hon'ble Member's pardon; I understood him to refer to the Bill itself. Section 2 of the Bill does practically give effect to the resolution of the House of Commons. Well, the Secretary of State sent out that resolution to us, and said:—

'It will, of course, receive at your hands that careful consideration which a resolution of the House of Commons deserves, and I request that its terms may be communicated to the Governments of Madras and Bombay.'

"The Government of India immediately forwarded this resolution to the Quarter Master General in India and to the Local Governments, and said:—

'Pending the issue of the revised rules, the Government of India desire that, in view of the recent resolution of the House of Commons on the subject, the existing rules shall be so worked that there shall be no compulsory examination of women, no registration of women, and no granting of licenses to practice prostitution.'

And in October, 1888, they informed the Secretary of State in a despatch that the practice of allowing the residence of prostitutes within regimental limits had been abolished throughout India, and that all the circulars relating thereto had been cancelled, while, pending the approval of the revised Cantonment Rules framed under the new Bill which had been introduced into the Legislative Council in October, 1888, all compulsory examination of women, all registration of women, and granting of licenses to practise prostitution, had been put a stop to, and the hospitals in which prostitutes may be treated were to be worked in future as voluntary institutions. Well, we brought in the new Cantonments Bill on the 1st January, 1890. It was brought into force with the approval of the Secretary of State and under it we issued certain rules. Now, I do not think it is necessary for me to read rule 4, but what I must do is to point out what were the terms of the protest of Messrs. Stansfeld and Stewart, Members of Parliament, against that rule. They said—

'It seems to us that under this regulation a prostitute supposed to be diseased may be induced to enter the hospital under the threat of expulsion from the cantonment, and that being once within its walls she may be kept prisoner there for an indefinite time and submitted to a personal examination under the same compulsion.'

'Whilst, if she only leaves after the medical officer has pronounced her free from the disease, she may have to resume her vocation within the cantonment upon the certificate of health and with the license of the authorities.'

'We submit to Your Lordship that, if our interpretation of the proposed new regulation is correct, they may be used to set up again a system of compulsory examination of prostitutes, and to regulate and license within the cantonment the calling of those prostitutes who submit to periodical examination and to certify and license those who are pronounced to be physically fit."

"The Secretary of State in the most loyal manner then stood up for the Government of India and said—

'the Secretary of State cannot see anything in the rules to lend colour to such an insinuation, and he is unwilling to attribute to the Government of India an intention to evade or to allow any of its officers to evade the explicit instructions which he has issued, unless some solid ground can be afforded for such an accusation.'

"In this instance the Secretary of State stood loyally up for us, and declined to admit for a single moment that it could be our intention to do anything contrary to his instructions or to the resolution of the House of Commons. We ourselves wrote to the Secretary of State reminding him that under rule 4—

'any examination necessary to this end would be made only with the express consent of the person supposed to be suffering from infectious or contagious disease, and that if such person were unwilling to enter hospital he or she would be at liberty to quit the cantonment, and by so doing to escape the necessity of submitting to medical examination or treatment.'

"You will see the importance of Messrs. Stewart and Stansfeld's protest with reference to what I shall bring out directly. The Government of India now abolished separate lock hospitals, and established cantonment general hospitals for the treatment of persons in cantonments of both sexes, and for the treatment of all diseases.

"They laid it down that 'the cantonment hospitals are intended for men and women, in-door and out-door patients, and for sickness of all kinds. They are not confined to infectious and contagious diseases only.' And they sent instructions to the Commander-in-Chief—

'That venereal disease is not to be treated by station or regimental authorities in any way differently from any other contagious disease.

'That on a medical authority certifying that a person is suffering, or supposed by such medical officer to be suffering, from a contagious disease, that person has the option

of either (i) going to hospital, or (ii) leaving the cantonment; but (iii) such a person cannot be compulsorily sent to hospital.

'That prostitutes are not allowed to reside in regimental bazars, or to accompany regiments on the march.

'That no separate register or list of prostitutes is allowed to be kept in station bazars or any special examination of them to be permitted other than would take place in the case of any other contagious disease; nor any other action tending to convey the idea that they are in any way licensed or countenanced by Government.'

"The matter then stood thus: the Government of India had abolished by executive orders lock hospitals; the residence of prostitutes within regimental limits; prostitutes accompanying troops on the march; compulsory examination of women, or any special examination of them; the granting of licenses, and the registration of women. If the orders of Government were obeyed, prostitutes had the same position in cantonments as any other member of the civil community. They had no special privileges and were subject to no special liabilities or penalties.

"At this stage there came out to India two ladies who were delegates of the American 'World's Woman's Christian Temperance Union' and of the 'British Committee for the abolition of State regulation of vice in India, and throughout the British dominions.' They visited ten of the Indian cantonments and made a report. That report found its way to the Secretary of State, and the Secretary of State appointed a Committee of five, of which two were Messrs. Stansfeld and Wilson, Members of Parliament; the other three being Mr. George Russell, Under Secretary of State for India, and Sir Donald Stewart and Sir James Peile, Members of the Indian Council. The Committee took the evidence of the ladies, and the Secretary of State sent that evidence out to the Government of India for report. The Government of India felt that under the circumstances the mere report of the military authorities or the report of the Government of India itself to the Secretary of State would be insufficient; that such reports would not carry sufficient weight upon this subject, and accordingly they appointed a special Commission composed of men, none of whom had ever had anything to do with the working of the Cantonments Act in any way. The Commission consisted of Mr. Ibbetson, of the Punjab Commission, Surgeon-Colonel Cleghorn, Inspector-General of Civil Hospitals in the Punjab, and a Native gentleman, Moulvie Samiulla Khan. It was in the hot weather; the Secretary of State was pressing us, and these gentlemen only had time to go to three cantonments out of ten visited by the ladies above named. The report which they made I may say to a great extent exonerated the cantonment authorities from any wrong action, but it did not

altogether do so. I will read the only portion of the report which tells against the cantonment authorities:—

'The prohibition against the residence of prostitutes in regimental bazars was for some time misinterpreted at Meerut, and has been wholly disregarded at Umballa; the orders forbidding them to accompany regiments on the march or in standing camps have been in numerous instances violated or evaded; and in both cases the permission to so reside or to accompany the regiment has been made conditional upon attendance at periodical examinations, which the women would probably not have attended spontaneously. Periodical examinations of all the women in cantonments have been held until recently at both Meerut and Lucknow; and at the former place the rules of July, 1890, have been used to enforce attendance at examination, on penalty of being compelled to leave cantonments.'

"I invite special attention to this last sentence; because it shows that the exact thing had come about which Messrs. Stansfeld and Stewart, in their letter to the Secretary of State, had anticipated would come to pass.

"The report continued:—

'At the latter place' (Lucknow) 'the attendance seems to have been absolutely voluntary, save in so far as it may have been affected by traditions of the former system; but women newly coming into cantonments have been examined by the doctor, under a procedure which to them amounted to an order of the Cantonment Magistrate.'

"We sent home this report to the Secretary of State. The Secretary of State laid it before his departmental Committee. We sent Mr. Ibbetson and Surgeon-Colonel Cleghorn home to give evidence before that Committee. As has been pointed out, the report of the Committee was not unanimous. Three members forming the majority signed the report. The minority, Sir Donald Stewart and Sir James Peile, did not sign the report of the majority, but signed a separate report. The majority of the departmental Committee reported, amongst other things, that a system of periodical examination in effect compulsory had been maintained during various periods extending from 1885 to 1893; that the numerous official orders and regulations, speaking generally, failed to effect the intended abolition of the old system of regulated and licensed prostitution; and that the continuous system of periodical examination and the practices incidental thereto, and the statutory rules, so far as they authorise or permit the same, do not accord with the accepted meaning and intention of the resolution of the House of Commons. And they said, in the words which Sir Griffith Evans has already quoted,—

'It appears to us that the only effective method of preventing those systematic practices which have thus been maintained in co-operation with those rules is by means of express legislation.'

"The Secretary of State having expressed a similar opinion as to the need for legislation, draft alternative Bills were prepared in India and sent home; and the outcome of this was the Bill now before Council, which is the result of the Secretary of State's decision upon the alternative drafts of the Government of India. Now, in forwarding out to us this report, and in writing to us on this subject, the Secretary of State entirely and completely exonerated the Government of India from having done anything wrong. He assured the Viceroy that he was—

'quite satisfied that it was the intention of the Government of India to carry out the resolution of the 8th June, 1888, both in the letter and in the spirit. The action taken to comply with the resolution is detailed in Lord Lansdowne's Despatch No. 148, of 11th July, 1893, and, so far as executive orders could effect this object, the instructions issued leave little to be desired. It was only because I found that the evidence taken by the Committee showed that these orders had not proved sufficient that I was disposed to concur with the majority of the Committee that legislation would be necessary.'

"And he went on to say that—

'On a careful review of the evidence and reports, I am satisfied that the orders issued by your Government have, in some instances, been disobeyed, and that practices which were allowed under the old system, but which are clearly inconsistent with those orders and with the resolution of the House of Commons, have been continued until a comparatively recent date. There may be room for difference of opinion as to the extent to which this occurred, but it must be remembered that these reports deal only with ten cantonments, and it is probable that similar practices were allowed in some of the other cantonments of all three Presidencies, which were not included in the late inquiries. Having regard, therefore, to the failure of executive action to carry out the intentions of your Government, I have no alternative but to conclude that the only effective method of preventing a recurrence of such practices is by means of legislation.'

"Now, after the above assurances by the Secretary of State, I think that the Government of India may rest perfectly happy in its mind, and need not feel that, if this Bill is passed, there is any loss to their dignity or prestige, or anything derogatory to their honour. The Secretary of State has pointed out most clearly that he considers we have been right from first to last, and that it is because executive orders are not sufficient to give effect to the resolution of the House of Commons that this legislation is considered necessary.

"The period which I have thus briefly sketched extends over the tenure of office of three Secretaries of State, Lord Cross, Lord Kimberley and

Mr. Fowler, and of three Viceroys, Lord Dufferin, Lord Lansdowne and the present Viceroy.

"Successive Secretaries of State have considered it right to obey the strong expression of public opinion which has found vent upon this subject; successive Viceroys with their Councils have thought it right to carry out the instructions of Her Majesty's Government; and two successive Commanders-in-Chief have loyally endeavoured to carry out the instructions of the Government of India.

"Had the executive orders of successive Commanders-in-Chief been equally scrupulously obeyed, this Bill would never have been before us. Unfortunately there were men whose zeal outran their discretion; we must give them every credit for the best of motives, for the honest desire to do what in them lay to save the soldier from suffering and disease. But their action has led to this Bill. It is, I think, clear from what the Secretary of State has said that the Bill, though it appears to be so, is not aimed against the Government of India, but against those who have disobeyed the orders of that Government. It is through their mistaken zeal that this Bill and the discussion upon it have come about; that a handle has been given to the belief that the existing Cantonments Act is insufficient, and that the resolution of the House of Commons must be supported by further legislation.

"In introducing this Bill the Government of India have given the last proof of their determination to work in accord with Her Majesty's Government, with whom rests the responsibility for the line which has been taken in regard to the abolition of all protective measures against venereal disease.

"My Lord, I do not know what is in the minds of that strong party at home which is opposed to any protective measures.

"It may be that they think that if this loathsome disease is allowed to run its course in our ranks, the awful horrors of our hospitals, the sight of comrades rotting to death, will so frighten men that they will not dare to indulge their passions. But, even if this be true, at what a price of misery to generations yet unborn will the end they aim at be gained! It is, however, now too late to discuss the policy. If protective measures for the soldier were to be adhered to, the Secretary of State and the Government of India should have made their stand when first the matter came under discussion in 1887, and the Government of the day should have opposed the resolution of the House of Commons of 1888. This was not done. I think they must have felt that in

face of the Quarter Master General's circular of 1886 they had not a sufficiently clear conscience to enter upon such a campaign.

"They knew the intensely strong feeling at home against 'official purveying of immorality;' and the compliance of Her Majesty's Government and the Government of India with the spirit of the resolution has led on, through a series of executive orders prohibiting all protective measures, to the present Bill, which we may hope closes this unpleasant chapter. The Bill will not, in my opinion, have any operative effect; but I have endeavoured to show that it is the inevitable sequence of a series of previous events.

"The action thus taken must be judged by its future results. It is only right to say that there is great difference of opinion among the highest authorities as to the value of protective measures. If the abolition of such measures proves harmless, we can but rejoice; if it leads to conditions such as some of us fear it will lead to, I have but little doubt that, when this is made clear, the strong sense of the British people will, in the long run, prevail, and that that which is right will be done."

His Excellency THE COMMANDER-IN-CHIEF said:—"My Lord, after what has fallen from some of my hon'ble colleagues, specially from my hon'ble and gallant friend Sir Henry Brackenbury, I hope I shall not be misunderstood when, speaking as the representative of the army, I say that I hail legislation in this case as a relief to the officers of the army, as it is more likely to lead to thorough and satisfactory examination into each particular case than can be secured under executive order. It is almost impossible for the military executive authorities to watch and answer for the action taken in every particular case by every corps or station, or to be sure that every order is carried out in its entirety. At this Council the military authorities have been blamed; though the references have been kindly and considerately made, yet they have been blamed for reporting that practices had been stopped which, under the inquisitorial search made at certain cantonments, by the ladies referred to by the Hon'ble Military Member, proved to be still existing. If the law of the land fixedly lays down pains and penalties for any definite act in contravention of the well-known resolution of the House of Commons, the means of putting that law into force will be open to all who choose to become its champions, and each individual charge will be sifted with that care and that strong common sense of which I believe our British Courts of all degrees to be the strongest and fairest exponents. I, therefore, my Lord, can conscientiously support the Bill as it has been put before us to-day."

His Honour THE LIEUTENANT-GOVERNOR said:—"I wish to express my satisfaction at the turn which events have taken on this occasion, and, as the senior official Additional Member of this Council, to offer my thanks to Your Excellency and Your Excellency's Government for the measures that you have taken to avoid plunging it into a conflict which I believe would have strained the allegiance of official members of the Government to the breaking point. I wish also to say a very few words in support of the remark made by the Hon'ble Sir Griffith Evans with regard to the criticism which section 2 of this Bill should receive in Select Committee. Sir Griffith Evans remarked that he thought there was danger lest it should be allowed to contain such vague and wide words as would prevent the passing of the rules which are necessary for the health of the army. I share that fear, and the remarks recently made by Hon'ble Members of the Executive Council who have lately spoken have shown still more forcibly what reason there is for fear on this subject. We have before us the words 'compulsory examination,' and it seems to me quite clear that there should be some understanding as to what the precise meaning of 'compulsory examination' is. The Hon'ble Sir Henry Brackenbury mentioned the case of women who were allowed to live in cantonments on the condition that they should present themselves for examination. Mr. Stansfeld it appears considers this to be compulsory examination. I do not consider it compulsory, but voluntary, examination, and I have no doubt that there will be a considerable conflict of opinion on this subject, a conflict which I trust that the Select Committee, by a more precise definition of the word 'compulsory' and other similar words, will be able to avoid. We heard mention of a rule being passed that women of this class were not to be allowed to travel with troops on the march. If the order had been that the women were not to be provided with regimental carriage, I could understand it; but how it can be supposed that the regimental authorities are to see that women of this class do not follow a regiment on the march I cannot understand, and I think rules of this kind will be not only out of place and disastrous to the health of the troops, but could not possibly be carried out. We have a phrase in this section 2 that the rule shall not contain 'any regulation enjoining or permitting any compulsory or periodical examination of any woman.' I admit that there must be no compulsory examination, but it would be perfectly monstrous that any regulation should be made which might have the effect of preventing the voluntary examination of women. And therefore I think that the wording in that respect requires careful consideration. I should like further to say, with regard to the remarks made by my hon'ble friends Mr. Lee-Warner and Mr. Clogstoun, that I do not understand how they can reconcile their great regard for the liberty of the

individual with what seems to me to be even more important and deserving of consideration—the liberty of the public—the protection of the public, I mean, from the ravages of a disastrous disease which can be prevented, which is distinctly contagious, and which ought to be treated, in my opinion, in the same way as small-pox and other contagious diseases, which no regard for the liberty of the individual now prevents nations from interfering with in their regulations for quarantine, and which we should equally protect ourselves against in our regulations for cantonments. I trust, my Lord, that the Select Committee will feel themselves at liberty to pass this section through such a careful examination as may secure us from the continuance of words of this kind and also from such phrases as 'sanctioning the practice of prostitution'—words which are vague and meaningless, and such as should not exist in any legislation which may be passed."

The Hon'ble SIR ALEXANDER MILLER said:—"I do not know that I have much to say in answer to the numerous speeches which we have heard. I do not propose at this moment to go into any question of the terms of section 2. There is no motion before the Council that the Bill be not referred to a Select Committee, and under these circumstances I am not desirous of fettering the discretion of the Select Committee as to the terms in which they shall ultimately settle section 2. If eventually, when the Bill emerges from the Select Committee, section 2 is not in terms which commend themselves to the majority of this Council, it will be open to any Member of the Council to move an amendment when the report is taken into consideration. But in the meantime I should consider any remarks of mine as regards the words of that section as premature. I will only say that if His Honour the Lieutenant-Governor would like his name added to the Committee I have no doubt that the Council will be willing to agree."

His Honour THE LIEUTENANT-GOVERNOR:—"I should be glad if the Hon'ble Member would add my name to the Committee."

The Hon'ble SIR ALEXANDER MILLER continued:—"I propose therefore to add the name of His Honour the Lieutenant-Governor to the Members of the Select Committee.

"On the other question I do not intend to say one single word as regards the facts of this particular case. I am quite content to leave the narrative of the facts as you have heard it from other Hon'ble Members here. I have no doubt that we all know fairly well what the history of the case is, and I think

that it has been put as strongly and as fairly by my hon'ble friend Sir Antony MacDonnell as it can be possible for any one to put it. But I do desire to say a very few words on certain abstract questions which have arisen in the course of the debate. I had hoped that the announcement which I made at the commencement of this discussion would have avoided any necessity for any reference at all to the constitutional powers of this Council, but I am afraid that that hope has not been entirely realised. I think it would be very unnecessary for me to enter into any question as to how far a resolution of the House of Commons is to be treated as an utterance of Parliament. I think there is a great deal of misapprehension on that point, but it is not material in the present case, because the particular resolution of the House of Commons with which we are dealing was one which was accepted by Her Majesty's Government as it then existed, accepted by their successors and by the Secretary of State in Council, one as regards which I am perfectly satisfied that any attempt to treat it as non-existent would only result in its being re-affirmed, probably in stronger terms; but however that may be, I think it is an entire misapprehension of the state of the case to suggest that, because a measure has been brought before this Council at the request of Her Majesty's Government, that is either improper dictation on the part of Her Majesty's Government, or a yielding of its independence on the part of this Council. Her Majesty's Government, represented for this purpose by the Secretary of State, fill the double capacity of the old Board of Control and the old Court of Directors. It is matter of common knowledge that many Bills were submitted to the Legislative Council, as it then existed, at the instance of the Court of Directors.

"But I think that even better analogy is to be found in the relations of the two Houses of Congress. No historical parallel is exact, no analogy is perfect in all respects; but to my mind the position of this Council does not greatly differ, as between itself and the Secretary of State—or the Secretary of State in Council, as the case may be—so far as he represents the old Court of Directors, from the position of the House of Representatives at Washington with reference to the Senate. Now, let us suppose that a measure which the Senate was desirous of passing was sent down to the House of Representatives, and let us imagine, merely for the purpose of raising the question, that there was no member in that House who would have brought forward the measure in question if the thing had been left entirely to himself. Is it conceivable that it would be a proper course as regards the courtesy between the two Houses that that measure should not be laid upon the table of the House of Representatives for them to deal with it if they thought fit? I ven-

ture to think that such an occurrence never has happened and never could happen.

"I venture to think that similarly, in the case of the two Houses of Parliament, a Bill sent down from the Lords would be laid on the table and read a first time in the Lower House as a matter of course, even though there might not be a single member of the House who was desirous of seeing it become law; and I must say that, speaking for myself, whether I approved or disapproved of a measure which the Secretary of State desired to be laid before this Council, whatever course I might think it necessary to take when it came to be debated in Council, I should consider that I was wanting in courtesy to the Secretary of State and in my duty to the Empire at large if I were to interpose any obstacle in the way of submitting that measure to this Council for discussion. Therefore I entirely repudiate the idea that by laying this measure before this Council—even on the hypothesis that I did not desire that it should be so laid—I was in any way derogating from either my own independence or the independence of the Council.

"As regards the position of the Council, the matter is perfectly clear. This Council and the Secretary of State have equally the power of stopping any legislation for India. Unless they both agree, legislation cannot take place, and in that respect this Council is as independent as the Secretary of State, and no more so. Each is so far dependent upon the other that it cannot enforce any legislation without the consent of both. I do not see that that in any way derogates from the position of the Council at large or of its members.

"As regards the vote which each member, official or non-official, is to give, I can only say that I entirely agree with the principle embodied in the remarks which fell from the Hon'ble Mr. Mehta when he said that it was the duty of the Council at large, and therefore, of course, of each Member of the Council in particular, to vote in any particular case according to what he considered to be to the balance of advantage in that case. We can seldom get a counsel of perfection. It is absolutely impossible that large bodies of men who have to move together can get on without some difference of opinion. If they are to act in unison, some of them certainly will have to give in to a certain extent to the others, and the object in every case should be to find that *via media* which will give the largest possible advantage with the least disadvantage. I must say that on every occasion on which I have had occasion to give a vote

in the Council I have given it on that principle, and on that principle solely. But then you must not consider merely the particular point before you, and what might be the result of an academic discussion of that particular question. You must as practical men look at the consequences of your vote all round, and thereupon give that which you honestly believe will yield the largest amount of advantage. On that principle I am glad to find that there is no opposition to this Bill going into Select Committee, and when it comes out of Select Committee it will be time enough to consider whether or not we have successfully passed all the breakers which at one time seemed to threaten it."

His Excellency THE PRESIDENT said:—"I understand that there is no opposition to the reference of the Bill to a Select Committee, and therefore, after the full discussion which has taken place, I do not think that I need interpose with regard to the merits of the Bill. Further, as I cannot but think that the introduction of a discussion of great, and somewhat abstruse, constitutional questions as subsidiary to a measure which in itself excites strong feelings is somewhat inconvenient, and as I myself do not hold the appointment of Professor of Constitutional Law in this Council, I should have said nothing to-day had it not been for the persistent, and I think I may say somewhat unfair, use which has been made of the few remarks which I thought it necessary to offer in the discussion of the Tariff Bill. I know that it is somewhat tempting to take notice of a particular phrase, because it often avoids, or seems to avoid, the necessity of reading tiresome speeches, but it is a dangerous method of arriving at an exact knowledge of the truth. I suppose, for instance, that it would be impossible to deny that 'The Diary of Toby, M. P.,' is based on incidents that occur. All that I have to say at present is that when I find headings such as 'Legislation by mandate' made applicable to me in the sense that I have used words impugning the rights and privileges and independence of this Council, I must refer to the remarks I made on that occasion. I said:—

'Far be it from me to deny that it is within the competence of the Council to throw out any measure. It would be its duty so to act if the public weal was endangered. But, as I have endeavoured to point out, the vote of this Council, and, as I maintain, of every individual member of it, is given under the responsibility of doing nothing to dislocate the complicated machinery by which this great Empire is governed.'

"I see no reason to withdraw any of the words which I used on the occasion to which I refer, but I claim that these words should be read with the context. I had, as I have said, no intention of delivering a lecture on a constitutional point. What I desired to do, and what I think still was not unsuit-

able for me to do, was to call attention, in the words of the Hon'ble Sir Griffith Evans, to the full legislative responsibility which he stated to-day to be the fit and proper corollary of the full legislative authority which he claims. I wish to assure Hon'ble Members that I am too proud of being allowed to sit here as a Member of this Council not to wish to maintain its credit and prestige in every possible way that it is open to me, and I believe that I do so most effectually by not ignoring the whole of the conditions under which we sit here."

The Motion was put and agreed to, the name of His Honour the Lieutenant-Governor being added to those forming the Select Committee.

ACT V OF 1861 (POLICE) AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Bill to amend Act V of 1861 (*an Act for the Regulation of Police*) be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mahárájá Bahádur of Durbhanga, the Hon'ble Gangadhar Rao Madhav Chitnavis, the Hon'ble Mr. Lee-Warner, the Hon'ble Mohiny Mohun Roy, the Hon'ble Sir Frederick Fryer and the Mover, with instructions to report within one month. He said:—"My Lord, when asking in October last for leave to introduce this Bill I took occasion to point out the more important alterations which it proposed to introduce into the existing law. Those alterations have reference mainly to the treatment for precautionary purposes of localities which are in a disturbed or dangerous state. The existing law on the subject is contained in section 15, Act V, 1851, which runs as follows:—

'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary complement to be quartered in any part of the general police-district, which shall be found to be in a disturbed or dangerous state, or in any part of the general police-district in which from the conduct of the inhabitants he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of the district after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.'

"That section it will be perceived makes it obligatory on the Magistrate to levy the cost of additional police from all the inhabitants of the disturbed locality, even when some sections of the inhabitants are free from complicity in the disturbances in question: and it precludes the Magistrate from calling on any

interest or section of persons not actually residing in the locality, no matter how active their complicity in the disturbances may have been, from contributing towards the expenditure which their action may have made necessary. These are in our opinion inequalities and defects in the law: and it is proposed to remedy them by taking power to levy in certain well-marked classes of cases the cost of additional police from the turbulent portion only, and not, as at present, necessarily from all the inhabitants of the disturbed locality: and next to levy contributions from absentee owners of property there, when their action has caused or contributed to the disturbed or dangerous state of the locality. There are two other important alterations in the existing law proposed by the Bill, namely, the power to levy compensation for injury caused by the misconduct of the parties referred to, and to pay such compensation to the injured parties: and the power to regulate by license the conduct of processions, which, if not subjected to control, are likely to lead to a breach of the public peace.

"My object, my Lord, in introducing the Bill in October and postponing discussion upon its principles until now was that the various Local Governments and the public in all Provinces might have ample time to consider and digest and criticize its provisions. I have on the whole no reason to be dissatisfied with the reception which the Bill has received at the hands of Local Governments and their officers and of the Newspaper Press throughout the country. The various Local Governments are of opinion that the Bill will improve the existing law, and make it a more efficient instrument for the preservation of the peace. The Press, both Native and English, have discussed the Bill with a degree of moderation and thoughtfulness which I am glad to recognize and acknowledge. Some newspapers approve of the Bill; others criticize it adversely. Shortly put, their criticisms amount to this. The Bill is good in theory; the motives of the Government in introducing it are good; but the provisions which in certain cases limit pecuniary responsibility to the turbulent, to the exclusion of the peaceful, sections of the inhabitants of a disturbed locality cannot be properly worked; while the provision regarding the licensing of processions is an unnecessary restriction of the liberty of the subject. But although that is, I think, a fair interpretation of the spirit of the Press on this subject, I am bound to say that some opinions which have reached me are pronounced against the Bill, or rather against those portions of it which deal with additional police, and with the levy of compensation for injuries inflicted. This hostility proceeds, so far as I can as yet see, chiefly from Bengal. My Lord, I am sorry to say anything unkind of Bengal, with which I have been so long connected. But even my friends of the British Indian Association and

the Bengal Zamindari Panchayat must admit that it has been found necessary to make a good deal of use of section 15 of the Police Act in Bengal: that the hardships which the working of that section entail have become manifest and tangible in Bengal, especially in the eastern districts: and that many villages undergo real suffering owing to the arbitrament of the club, in agrarian disputes, being often preferred by those who ought to know better to the arbitrament of the law. I am, therefore, somewhat surprised to meet with opposition—not from the Government of Bengal, but from these influential Associations—in our endeavour to mitigate some of the hardships which the administration of a necessary law has hitherto occasionally entailed. While at the National Indian Congress, which met at Madras last month, the main provisions of the Bill are described as 'a very proper suggestion' in the way of amendment, though open to objection on the ground of the power they are thought to give the Magistrate, I am surprised to see them described by the British Indian Association as proposals 'which ignore the policy of all former legislation, and contravene all principles of justice and sound administration'; and again as proposals 'which are not only not called for but which seek to impose responsibilities and liabilities which are wholly arbitrary and unjust.' I think I shall shew that this forcible language has neither argument or fact to support it.

"Hon'ble Members of this Council who have had the time to scrutinize this Bill, and to make themselves familiar with the Act which it purports to amend, will, I think, have perceived that most of the objections which I have endeavoured to sum up are due to a misunderstanding of the existing law, and to an imperfect conception of the safeguards with which the operation of the Bill would be hedged round. But the objections which have been made render it necessary for me to examine the points in dispute with some fulness and I must ask the Council to bear with me while I endeavour to do this. I think I am right in saying that the employment of additional police is and should always be regarded as an exceptional measure. The Government expects that tranquillity shall ordinarily be maintained by means of the normal police staff: and when an application is made for an additional police-force, the first question which naturally occurs to the Government, which alone can sanction an additional police-force, is this, has there been any administrative or executive inefficiency to account for the application? The quartering of additional police is an exceptional measure, which, I think, ought not to be sanctioned unless it is clear that the existing force cannot meet the emergency. But if this is made clear, then, as the public generally ought not to be taxed because of the misconduct of an isolated area, an additional police-force may properly

be sanctioned at the cost of the turbulent locality, or of the sections of the community there which set the law at defiance. Here, then, my Lord, we have two initial safeguards: first in the exceptional nature of the proceeding; next in the scrutiny of the Local Government.

"Assuming that the Local Government is satisfied that an additional force is necessary as a temporary measure, and sanctions its entertainment, the question will then arise as to the apportionment of the cost. The more usual case no doubt will be that for which provision is made by the existing law, namely, that the cost should be spread equally over the inhabitants according to their respective means. This is right as a general rule, for two reasons: first, the inhabitants of a local area should be, one and all, responsible for the maintenance of order in that area; and next, when a locality is disturbed, it will be the case, much oftener than not, that all the inhabitants are involved; some siding with one faction, others with the other. But although no section of the inhabitants of a disturbed locality has a right to exemption from responsibility, yet circumstances do occur when an equal distribution of the cost of additional police produces unnecessary and undesirable hardships. These circumstances generally fall into two classes: when the disorder is created wholly or partly by absentee owners of or claimants to property in the village; next when there is a turbulent section and a peaceful section among the inhabitants. I do not mean to say that these cases are always easily recognizable: many such cases will occur when a clearly distinct dividing line cannot be recognized; and then as a necessary evil the innocent must be included with the guilty: and a general distribution of cost becomes unavoidable. But the line is often clear and well marked; as every Hon'ble Member, with knowledge of Indian rural life, knows from his own experience. When this is the case, when we can without reasonable doubt recognize and distinguish the innocent section or sections from the guilty section or sections and fix responsibility on the latter, then, I submit, that failure to recognize and act upon the distinction is not only intrinsically unjust and unfair, but often acts as an incentive to disorder.

"In short, in working a provision like that under consideration it may never be possible wholly to avoid including innocent persons with the guilty; and the sole object of the present proposal is to reduce the number of innocent persons thus included so far as circumstances permit. An enquiry into individual cases for the purpose of exemption from the assessment is out of the question; and still more impracticable is an enquiry into degrees of guilt. But when we can say with confidence that a class as a whole is innocent, and when we

know that the exemption of that innocent class will tend to restrain the other classes from further misconduct, by bringing home to them more vividly and sensibly their responsibilities for order, then justice and expediency alike demand that we should exclude the innocent class from the operations of this provision of the law. The authority to do this will act as a deterrent from crime and will powerfully help the maintenance of law and order.

"When we cannot distinguish between the peaceful and turbulent sections of a village-community, or when we can distinguish, but consider, for sufficient reasons, that it is better not to make a distinction, the existing law will prevail and the cost of an additional police-force will be borne by the whole tract, and to this, as I understand, no objection is raised. The objection taken is to the power of discrimination which our critics say we improperly confer on the Magistrate of the district. But, as our critics also say that the proposal to discriminate is 'a proper suggestion,' it would seem that their objection is not so much to the power being exercised as to its exercise by the District Magistrate. As a matter of fact, the Bill provides that the ultimate power shall be exercised not by the District Magistrate but by the Commissioner of the Division: but passing by that point it is manifest that the local enquiry must be made under the orders of one of two officers—under the orders of the District Magistrate or of the Sessions Judge. The criticisms on this Bill from Native quarters are in favour of the enquiry being made by Judicial Courts. But, my Lord, the whole business falls under the category of preventive action. Our object is not so much to punish anyone as to prevent a breach of the peace: and it would be a complete reversal of established procedure if a Judge, whose functions are restricted to the investigation and punishment of crime committed by individuals, were to be employed on the executive duties of taking precautions against the commission of crime by entire classes, or of determining the liability of such classes for the cost of preventive measures. The objections are suggested by the suspicions which the opponents of this Bill seem to entertain regarding the District Magistrate and his capacity for impartially holding the balance between parties in contentious circumstances or troublesome times. My Lord, I do not deny that Magistrates occasionally commit errors, just as Judges do; but our Magistrates and our Judges are drawn from the same class of public servants: and I say without fear of contradiction that the natural capacity of our Magistrates and their honest desire to do their duty impartially and fairly are not less than those of Judges, as I should be sorry to say that they are greater. The truth is, that on this part of the question a false issue has been raised. The issue is not between executive and

judicial procedure, but between taking the power proposed and not taking it at all. The procedure cannot, in the nature of our system, be other than executive: though the checks and safeguards on its proper and deliberate performance should be all that executive action allows of. If an executive enquiry must be made, as obviously it must, then no one can make it, except the Magistrate and his subordinates. The Bill provides that the Magistrate and his subordinates shall make it; that the Magistrate shall record his opinion as to the responsible classes; and that the decision of the question as to the assessment of the costs on particular classes or sections to the exclusion of others shall rest with the Commissioner of the Division. Of course, there always remains behind an appeal to the Local Government. I may add, my Lord, that it will be open to the Select Committee to discuss any further safeguard, which is not inconsistent with the fundamental principle of the Bill that the prevention and not the punishment of crime is the main object aimed at.

"So far as I have seen no exception is taken to the existing law which imposes on all the inhabitants of a disturbed locality the responsibility for the cost of additional police, and this involves the guilty and the innocent alike in one common responsibility. It is even maintained that such a common responsibility makes for good; being, it is said, in the nature of a pressure exercised on both parties to compose their quarrels; and one Native Newspaper has pushed this argument so far as to say that the party attacked should be coerced into making some concession from its rights for the sake of peace. But surely if there be only one turbulent party, and if that party can be clearly identified and divided off, and if by exercising pressure on it alone we can preserve the peace, and if there be no general and paramount reason for imposing the cost on all, it is rude and barbarous to impose the responsibility on an innocent section too. It is true that there must be two parties to a quarrel, but it is not necessary that both parties should be aggressive. It often happens that one party is active and the second only passive. Most of us have probably known of cases where one section of a village wished to live peaceably and pay their rents, but, owing to the turbulence of a minority siding with an aggressive land agent, were so harried that an additional police-force had to be quartered in the entire village. That is a state of things which violates our natural sense of justice, and weakens the motives which impel towards law and order.

"It has also been urged in some of the papers which have reached me that it is rarely or never advisable to distinguish between two parties to a quarrel when the subject of dispute is of a religious character. It has been said

that in such cases it is better for the Government, by treating both parties alike, to give no party the chance of saying that favour or partiality is being shewn to the other party. No one is more strongly impressed with the importance of that consideration than I am; but after all what does it amount to? It amounts to this, that the Government must be careful, on a review of the facts of each individual case, to adopt the course which is most prudent and conducive to the maintenance of order and to its own reputation and stability. It cannot be denied that cases may occur in which the Government would be justified, on considerations of expediency as well as of justice, in exempting certain sections of the inhabitants of a locality which had been the scene of a religious riot. Take the instance of Rangoon with which my hon'ble friend Sir Frederick Fryer is familiar. Here you had a fierce riot or series of riots lasting over several days between Hindus and Muhammadans, which necessitated the quartering of a strong body of additional police in that city. In that disturbance the Burman, the Christian, the Jewish, the Armenian and the Chinese populations took no part whatever: indeed they suffered severely. But they were all liable to pay the cost of additional police as well as the turbulent Muhammadan and Hindu communities. No doubt the peaceable creeds and nationalities profited from the protection afforded by the additional police against the recurrence of the riots; but who will deny that the interests of justice would have been better served and the recurrence of disorder as effectually, if not more effectually, prevented had the existing law allowed the cost of the additional police to be assessed on the riotous Hindu and Muhammadan communities alone? It is all a matter of prudent and effective administration; and I submit that this Council should not proceed on any assumption other than that the laws it makes will be prudently and fairly and effectively administered. I concede due weight to everything that has been written or that may be said in this Council Chamber to-day as to the danger involved in even the risk of a popular misconception of the attitude of Government in regard to religious disputes. That attitude should be one of absolute impartiality: it has been, and, please God, it always will be, an attitude of absolute impartiality. But the maintenance of the public peace and the bringing home of responsibility to those who break it are the first duties of every Government; and I hold that the provisions of this Bill will enable the Government to discharge these primary duties more humanely and effectively than they can at present.

"My Lord, the British Indian Association takes strong objection to any responsibility being placed on absentee owners, because, they say, the Indian Penal Code makes the owner or occupier of land and his agents punishable when an

unlawful assembly or riot is committed for his benefit. 'The existing law therefore,' says the Association, 'takes a complete cognizance of all possible responsibility which might attach to anyone by the occurrence of a riot or other breach of the peace in any place, and there is no necessity whatever for a change in the law.' My Lord, that passage indicates that the Association fails to grasp the true nature and object of this Bill. The object of this Bill, as I have already said, is not the punishment, but the prevention, of crime. I cannot too strongly insist upon that difference. If the Bill involves the imposition of a cess on a particular village or section of a village, and is so far punitive, that is not the object of the Bill, but an incident, a wholesome incident, of its operation, which, for one reason, regard for the rights of the general tax-payer requires. The provisions of the Penal Code to which the Association refers deal with offences which have been committed. The object of this Bill is to prevent the commission of offences. When animosity arises in a local community, and when that animosity grows into a danger and threat to the public peace, this Bill says 'take timely steps to keep the peace by posting the policeman in the village.' The British Indian Association, unmindful of the proverb that 'prevention is better than cure,' say, if I am to take them at their word, 'let things take their course until the law has been broken, and then prosecute the lawbreakers.' That would, in the opinion of the Government of India, be an imperfect view of their duty.

"Having, I trust, shewn that, so far as concerns the discrimination between innocent and guilty sections in certain cases, the Bill does not contravene, but is in accordance with, the principles of justice, I will now say a few words on the equally baseless assertion that our proposals 'ignore the policy of all former legislation.' The proposals referred to are, I presume, the power to levy compensation for those injured by a riotous mob, and the power to assess the cost of additional police on a portion only of a turbulent community. Taking the latter point first, I invite the attention of the Council to section 25 of the Bombay Police Act, IV of 1890, which was passed into law under the auspices of Lord Reay's Government—surely, according to all shades of Native opinion, a sympathetic and liberal administration. That section runs thus:—

'Government may from time to time by notification direct the employment of additional police for such period as it thinks fit in any local area which shall appear to be in a disturbed or dangerous state, or in which the conduct of the inhabitants, or any particular section of the inhabitants, shall in its opinion render it expedient temporarily to increase the strength of the police. The cost of such additional police shall, if Government so direct, be defrayed, either wholly or partly, by a rate charged on the inhabitants generally,

or on any particular section of the inhabitants of the local area, to which the notification applies.'

"'Or on any particular section of the inhabitants of the local area:' I invite the special attention of this Council to these words; they show that the law in Bombay now is such as we propose it shall be on this point in Northern India: indeed, the law in Bombay is, if anything, more general, and gives the executive authorities a wider discretion than this Bill proposes to give. Surely the existence of such a law in the statute-book effectually disposes of the charge that the present proposal is unprecedented. We have obtained from the Government of Bombay a special report on the working of the Bombay Act; and, with Your Lordship's permission, I will read an extract from that report bearing on the point which I am now discussing. The two points on which the Bombay Government was requested to report were—

(i) the effect on the maintenance of order of the provision enabling the cost of additional police to be levied from the guilty portion only of the inhabitants of the local area which is in a disturbed or dangerous state; and

(ii) the procedure followed by that Government in determining whether the cost shall be levied on the inhabitants generally of the local area notified, or on any particular portion of them, with special reference to the question whether it has been found in practice easy or difficult to determine that only a portion of the particular community deserves to be assessed to the rate.

"With a view to furnishing an exhaustive reply on these points the Governor of Bombay in Council caused a statement to be prepared showing all the additional police posts which had been established in that Presidency under the Act, and shewing the results which had been attained on the two crucial points which I have mentioned to the Council. On the basis of the information so obtained, the Secretary to the Government of Bombay thus writes to the Government of India under date 22nd December last:—

'I am to state in the first place that the officers consulted are unanimously agreed as to the great value, as tending to restore order and repress crime, of the general power to impose additional police upon the inhabitants of a local area which is in a disturbed or dangerous state. Proceeding to the particular points referred to in paragraph 2 of your letter under reply, I am to state that the information before this Government leads irresistibly to the conclusion that the power to levy the rate from the guilty portion of the community is a most valuable instrument in preserving the peace.

'When it appears that, owing to the prevalence of crime, or of disturbances arising from religious or other excitement, it is advisable to take action under section 25 of Bombay Act IV of 1890, it becomes a question for the consideration of the District officials whether such crime or disturbances are traceable to any particular section of the community only or to the whole body of inhabitants. In coming to a conclusion on the point, District-officers are guided by any facts adduced in evidence in connection with the causes giving rise to the need for additional police, by facts which are within their knowledge, or on record in the past history of the locality, and by any other considerations upon which conclusions can safely be based. These reasons and the recommendations based thereon are submitted by the District Police Superintendent to the District Magistrate and come to Government with the further opinions of the Inspector-General of Police and the Divisional Commissioner. When there is any difficulty in determining whether only a portion of the community should be required to defray the cost of the additional police, the whole population would usually be included. Where liability is fixed on a particular portion, it is because careful local enquiry, and the circumstances of the crime or disturbances clearly point to certain castes or groups of persosas particularly implicated. That in each instance innocent persons may be included is a necessary evil, but in the opinion of the Governor in Council the clause restricting the incidence of the rate where manifestly innocent people can be distinguished and excluded is most useful in its practical application. Care and discrimination, as well as a knowledge of the locality, are necessary in order to ensure that the distinction between the guilty and innocent may be fairly drawn; but the Governor in Council does not consider that the difficulty, which must occasionally occur in tracing crime to its origin, and which may necessitate, in such cases, the levy of the rate from the whole community, can be held to outweigh the advantages of a provision enabling Government, when the facts are clear, to direct that the rate in payment of additional police shall be assessed upon that section of the community whose misdeeds have necessitated the strengthening of the force in a particular locality.'

"That, my Lord, is the result of actual experience of some of the provisions which this Bill contains. It is, then, not an unprecedented measure which I am recommending to this Council: it is not a leap in the dark which I am asking the Council to take; I am only asking the Council to advance on a road which has been already pioneered. It is, I believe, a fact that some of our best District-officers, European and Indian, have from time to time in practice and in pursuance of equity, if not of law, distributed the costs of additional police in special cases according to the principles embodied in the Bill. In these circumstances, I think, I need say no more to justify section 15 of the Bill in this Council.

"I now come to that clause of the Bill which provides for the levy of compensation for injuries inflicted—a clause which, like that which I have just discussed, is said to be unprecedented. But that is not the fact; the clause is adopted from the English Statute, 49 & 50 Vict., cap. 38. I wish to read to the

Council the preamble of this Statute. It runs thus:—'Whereas by law the inhabitants of the hundred or other area in which property is damaged by persons riotously and tumultously assembled together are liable in certain cases to pay compensation for such damage, and it is expedient to make other provision respecting such compensation and the mode of receiving the same; Be it therefore enacted,'—and so forth. It will thus be seen that my proposal is merely an adaptation of an ancient and existing principle of English law to the circumstances of this country. I am not, my Lord, as a rule in favour of patching an old garment with new cloth, or of mending our Indian laws with materials borrowed from English practice. But here we are dealing with principles which are alike acceptable to the Western and Eastern spirit as being in accordance with justice and reason. It is indeed urged that this provision of the Bill is unnecessary as the existing law affords to injured individuals a sufficient remedy by means of a civil action for damages. With that view I do not agree. The actual perpetrators of the injury committed by a riotous crowd are usually unknown; and, even if they were known, they are often bad characters and men of straw, while the sufferers are as a rule poor men, who cannot pay the costs of a civil suit. To relegate them in such circumstances to the uncertain issues and expense of a lawsuit is to give them no redress. I therefore regard this clause as a very valuable addition to the law in the interests of order. As the Bill stands, it is an alternative procedure to the quartering of additional police in any locality: but I wish to say that the suitability of that procedure is open to question. The object of such turbulence is often to injure a specified class or certain individuals. To ensure by fully compensating the injured that this object shall not be attained is to remove a powerful incentive to such turbulence: while to go further and provide that the compensation shall be paid at the cost of those who are responsible for the injury is to directly discourage such turbulence. I may add my Lord, that the Government of India will not press for adherence to the Bill as drafted in this point. There is high authority for thinking that the levy of compensation for injuries caused by a riotous mob should be in lieu of or in addition to the power of quartering police, and it will be open to the Select Committee to consider whether this change should not be made in the Bill.

"The other point to which I wish now to draw attention is the regulation of processions by license. This proposal has been adversely criticised as an unwarranted restriction on the liberties of the people. But the restriction, if restriction it can be called, is already in existence and has been in existence for 35 years without objection. The existing law on this subject is

contained in sections 30, 31 and 32 of the Police Act, V of 1861. Section 30 deals with the regulation of public processions; section 31 empowers the police to keep order on public roads: and section 32, which is consequential on the two preceding sections, runs as follows:—

'Every person opposing or not obeying the orders issued under the last two preceding sections or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music or for the conduct of assemblies and processions shall be liable on conviction before a Magistrate to a fine not exceeding two hundred rupees.'

"The Council will observe the words 'violating the conditions of any license granted by the District Superintendent of Police.' It is manifest that the section, as it stands, presupposes the issue of a license in certain cases; and that, therefore, the amendment now proposed introduces no new matter into the law. The law as it stands contemplates the issue of licenses in certain cases for the regulation of processions: but it contains no instructions on the point, and it is to remove this obscurity, and place the matter on a basis which all can understand, that the provision in question has been introduced into the Bill. I ask for no extension of the power, which is, indeed, indefinite, given by the existing law; and I would point out that the regulation of an indefinite power is a limitation and not an extension of that power.

"The other sections of the Bill deal chiefly with matters of detail and discipline with which I do not think I need detain the Council at any great length; but a few words are necessary, as these provisions seem to have been somewhat misapprehended by some authorities who have criticised this part of the Bill.

"I would first call attention to section 7 of the existing Act, which confer; on the superior police authorities the power 'to at any time dismiss, suspend, or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or fine any police-officer to any amount not exceeding one month's pay who discharges his duty in a careless or negligent manner.' Thus, as the law at present stands, the disciplinary powers vested in the controlling authorities are dismissal, suspension, reduction and power to fine a month's pay. In this respect the existing law has been found to be somewhat inelastic; and in actual practice various smaller punishments and impositions, such as confinement to quarters, extra drill, extra guard duty, and such like, have been found suitable as methods of enforcing discipline. But for the use of these methods the law makes no provision. It was possible to supply this omission in one of two ways. We might

either take power in the Bill to make rules regulating these matters and to attach a penalty to breach of such rules: or we might embody in the Bill the precise methods on which discipline might be enforced. The Bill as drafted follows the latter plan. It proposes to legalize these minor disciplinary methods, and thus strengthen the bonds of discipline, while legally securing better graduation of punishment. But the Government of India does not regard as of radical importance the precise method by which the end is obtained. So long as the end in view is secured, it is content to leave the method to the judgment and discretion of the Select Committee.

"Another provision connected with the internal discipline of the force is meant to affirm the legal responsibilities of a police-officer while under suspension. Doubts have been entertained whether, by the law as it at present stands, a police-officer, if placed under suspension, is not *ipso facto*, and so long as his suspension lasts, freed from his duty of obedience to his superiors. There can, I think, be no doubt as to its being desirable that a policeman although under suspension should remain subject to the obligations of duty and discipline till discharged from the service. A policeman while under suspension cannot well be turned out of barracks, while discipline in barracks must be maintained and insubordination or misconduct punished. It is therefore obviously desirable to make it clear that until a police-officer is discharged from the service he shall be subject to all the duties and responsibilities attaching to his position, and an amendment is proposed to that effect.

"There are, my Lord, a few other points of minor importance which it will be for the Select Committee to consider, but to which it is unnecessary for me to refer now, and I therefore bring my remarks to a conclusion by recommending this Bill to the acceptance of the Council as a measure conceived in a humane spirit, consonant with justice and precedent, calculated to deter the turbulent from the commission of crime, and conducive to the general maintenance of law and order.

"I now beg to move the Motion which stands in my name."

The Hon'ble MR. STEVENS said:—"I do not propose to detain the Council by any extended remarks on this subject, but I desire to say that, having had the experience of a District-officer's work for upwards of thirteen years, I wish to give the general provisions of this Bill my most cordial support."

1895.] [*Sir Griffith Evans; Sir Antony MacDonnell; Babu Mohiny Mohun Roy; Gangadhar Rao Madhav Chitnavis.*]

The Hon'ble SIR GRIFFITH EVANS said:—"I do not propose to make any remarks on this Bill at the present stage. It is quite evident that it is a Bill which ought to go before the Select Committee. The provisions of the Bill are numerous, and important points are raised which will have to be discussed in Committee. I also wish to say that the observations of my hon'ble friend Sir Antony MacDonnell are many of them weighty and require consideration."

The Hon'ble SIR ANTONY MACDONNELL:—"With Your Excellency's permission I should like to say that it was my intention to have the advantage of the services of my hon'ble friend Sir Griffith Evans on the Select Committee, and his name was put down with this object, but owing to numerous and important engagements my hon'ble friend asked that his name should be removed."

The Hon'ble MOHINY MOHUN ROY said:—"I do not wish to offer any remarks at present. I shall be in the Select Committee and shall have ample opportunity to consider the Bill in all its details."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, in supporting the motion that the Bill be referred to a Select Committee, I beg to submit that though this legislation has no doubt been taken in hand principally with a view to remove certain inconveniences arising from the present law, in meting out adequate punishments to the really guilty and giving discretionary powers to Magistrates to exempt innocent persons from the operation of the law, I must say that there are some objectionable features in the Bill which have been clearly pointed out by both the official and the non-official gentlemen who have hitherto expressed an opinion on the subject. Generally speaking, I would gladly hail any legislation which would confer powers upon executive officers to prevent disturbances that molest society. But I am always anxious that these powers should be no more than are absolutely necessary, and moreover must not be mere discretionary powers but should be so circumscribed as to be even beyond the suspicion of being abused. And, as regards this particular measure, there are certain provisions of the Bill which even some executive officers are inclined to regard with distrust and diffidence, and I doubt not that they will be carefully looked into by the Select Committee to which the Bill is this day going to be referred. The important nature of the Bill was no doubt recognized by the Hon'ble Mover, Sir Antony MacDonnell, when in introducing the Bill last October he wished the Bill to be taken up at Calcutta, by which time he said he would have felt the pulse of the public opinion in reference to it. I have therefore to thank the Government of India and the Hon'ble Mover for having thus given the public

the time and opportunity to express their opinion on a measure so important to all sections of the subject races that inhabit this vast Empire."

The Hon'ble MR. MEHTA said:—"I do not propose, my Lord, to oppose this motion, but I think this is the proper time to point out that the Bill before the Council contains an important set of provisions which are open to the strongest objection. I refer to sections 4 and 5. I have carefully listened to the speech of the Hon'ble Member in charge of the Bill, and, weighty and plausible as it is, his whole argument really comes to this, that, for the purpose of obviating a certain amount of possible injustice, it is necessary to take measures which may lead to much greater and serious injustice. Disguise it how you may, it is an attempt, under cover of executive measures for the preservation of order, to convict and punish individuals without judicial trial."

The Hon'ble SIR ANTONY MACDONNELL:—"I distinctly stated that individuals are not to be at all touched by the Bill."

The Hon'ble MR. MEHTA continued:—"I will ask Your Lordship's attention to the new additional words in these two sections, which, going beyond the existing law in section 15 of the Police Act of 1861, give power to a District Magistrate, not in his judicial but in his executive capacity, to convict or acquit individual persons, including absentee landholders, of causing or contributing to a disturbance of the public peace, death, grievous hurt, or damage to property, and to impose heavy fines in respect thereof. It is in its applicability to individuals that this Bill differs from the Bombay Act, which deals only with inhabitants *generally* of an area, or any *section* thereof, and also from the English Statute 49 & 50 Vict., c. 38. The minute of the Hon'bles Mr. Justice Ghose and Mr. Justice Banerji is instructive on this point. They say:—

'In making the above observations we have not lost sight of the fact that there are provisions in the English Statute-book (49 & 50 Victoria, c. 38,) apparently of an analogous character. But the analogy between the provisions now under consideration and those of the English Statute is more apparent than real. By the English Act compensation may be awarded for injury to property caused by riot out of the police-rate, which is a definite rate levied on all persons under well-defined conditions, the conduct of the injured party being taken into consideration in assessing the amount, and the interests of the police authorities being evidently allied to, if not identical with, those of the rate-payers, whereas the Bill before us provides for the levying of compensation by way of penalty to be summarily inflicted by the Magistrate on persons whose misconduct has caused or led to the injury to be compensated.'

"My Lord, I cannot conceive of legislation more empirical, more retrograde, more open to abuse, or more demoralizing. It is impossible not to see that it is a piece of that empirical legislation so dear to the heart of executive officers, which will not and cannot recognize the scientific fact that the punishment and suppression of crime without injuring or oppressing innocence must be controlled by judicial procedure and cannot be safely left to be adjudged upon the opinions and moral certainties of men believing themselves to be capable, honest, and conscientious. The British rule has trained the people of this country to the conception of law, and it has been a matter of just pride that the highest justification of that rule consists in its steady administration of justice in judicial form. I venture to say that nothing can be more unfortunate and impolitic than to depart from a policy so bound up with the good name and credit of the English Government. Empirical and retrograde as it is, this new proposed legislation would be no less demoralizing to the executive officers concerned. I have not the least desire to speak disparagingly of executive officers, most of whom, I have no doubt, are anxious to perform their duties conscientiously and to the best of their ability. But it would be idle to believe that they can be free from the biasses, prejudices, and defects of their class and position. It is a more common human failing than most people imagine to mistake suspicions, not unfrequently founded on prejudice and misleading, unsifted and incorrect information, for moral certainty. The provisions in question not only invest District Magistrates with power to act on their opinion, but to do so at a time when probably they would be labouring under irritation and excitement at the failure to preserve the public peace within their districts. The best of men are likely to go wrong under such circumstances, and District-officers can be no exception to this rule. It may, and no doubt will be, urged that the District Magistrate will not act without some enquiry, or, as I have seen it described in official documents, without careful enquiry. But, my Lord, a pretty long experience has taught me that, if you carefully probe these careful enquiries, they not unfrequently turn out to be hasty, prejudiced, ignorant, and unreliable assumptions and suspicions fostered by interested subordinates or other designing persons. I trust, my Lord, the Select Committee will carefully consider if it is right to expose the good name and fame of people to shame and obloquy under an *ex parte* procedure, devoid of the only sure safeguards which judicial procedure can alone supply for the vindication of honour and innocence. I observe, my Lord, from the papers that have been circulated that this aspect of the proposed legislation has not escaped attention. It is true that most executive officers, who cannot be blamed for entertaining a profound belief in their own capacity, judgment and wisdom, cheerfully welcome the pro-

posed legislation. It is refreshing, however, to find that at least one officer, admitted to be of long and varied experience as Magistrate and Inspector-General of Police, Colonel Bowie, Commissioner of the Nerbudda Division, Central Provinces, uncompromisingly denounces the measure. He says:— 'The provisions of section 15A are of a still more arbitrary character, and I would protest with the greatest earnestness against any such enactment. I believe it to be wholly unnecessary, and I feel sure that its effects would, if it ever were acted on, prove in the end most pernicious.' The Civil and Sessions Judge of the Hyderabad Assigned Districts, Mr. Obbard, points out that, 'if the guilty only are to be charged, their guilt should be established by some sort of public enquiry at which parties should be represented and witnesses heard, and that the grounds of the order should be such and supported by such evidence as to satisfy the public that the differentiation had been fairly made'. The comment of the Resident of Hyderabad on this opinion is instructive, for I believe it represents the gloss by which the real character of the proposed legislation is sought to be disguised.

'The Magistrate's decision,' says the Resident, 'affirming payment by certain persons only, determines the question of their liability to pay a certain tax; it does not purport to convict them of any offence.'

"One cannot refrain from admiring the grim humour of this joke. It is the old Tudor grim humour when they levied illegal taxes under the benign designation of benevolences and friendly loans. In this way you may brand a man as a rioter and an abettor of riots, you may brand him as a murderer and a criminal ruffian, and you may fine him as such, but he must smile and smile, because forsooth it is all a measure of taxation, or, as the Hon'ble Member now plausibly puts it, of prevention and not punishment of crime. The political obloquy which has rendered famous the names of the Star Chamber and the High Commission leads us to forget that in their own time both these bodies were honestly considered by the king and his advisers to be necessary instruments for checking the outrages of people whom they considered ill-conditioned, refractory and turbulent, and whom the ordinary Courts could not reach. In ordinary cases, where it followed judicial procedure, the Star Chamber was distinguished for the learning and fairness of its judgments, but as soon as it arrogated and practised the right of bringing turbulent people to their senses without judicial or public enquiry, and its means of enquiry were left without limit, it became the engine of tyranny and oppression which we have learnt to hate and dread. In making these remarks, I am not unaware that to a certain extent the sanction of the Commissioner or Local Government is required before final action. But,

while the *ex parte* and non-judicial character of the proceedings is not thus affected, it has further to be borne in mind that the sanction would in most cases be practically based upon the same reports and careful enquiries of the same set of officers whose recommendations are to be sanctioned. No reason has been given for the necessity of enacting so anomalous and extraordinary a measure. It is possible that the recent unhappy disturbances may have something to do with suggesting it. It is no doubt the first duty of a Government to preserve and to put down all attempts to disturb and break it. The strength of this Government to do this is beyond question. But without entering into the vexed questions of the character and responsibility of the recent disturbances, and without trying to draw any lessons or inferences from judicial trials like the recent ones at Poona, I may respectfully say that strength is not always usefully employed in devising harsher and harsher measures, but there are times when it shows at its best when tempered with calm discrimination, tact, and sympathetic treatment.

"There is also another set of important provisions in the Bill which require serious consideration—those embodied in sections 7 and 8, relating to the grant of licenses for assemblies or processions which, in the judgment of the District Magistrate, would, if uncontrolled, be likely to cause a breach of the peace. In the existing state of tension between certain portions of the Indian community, it is easy to conceive that errors of judgment in working such a measure arising out of prejudice or even the most perfect honesty of purpose may lead to just irritation and discontent. Experience also unfortunately shows that the mere existence of a power like this induces fanatical or fractious people to raise pretentions never heard of before on the chance of causing sufficient alarm to lead both timid or impetuous officers to interfere on the spur of the moment. The subject is a delicate one, and it would, perhaps, be desirable to await the conclusion of the labours of the Select Committee before discussing it at this stage. Only I may be allowed to express the hope that the Committee will bring to bear upon the consideration of the subject the care, wisdom, and impartiality which the importance of the question demands.

"Lastly, I would invite the attention of the Council to a suggestion made by two important Associations in connection with section 17 of the existing Act for the appointment of special police-officers. It deserves consideration, especially in view of an extraordinary proposal made by one of the Magistrates of the Bengal Presidency that 'it should be made clear in the Bill that ring-leaders on either side may be appointed special constables under section 17. * * Out here it is considered an indignity to be made a special constable.' I have always understood that it is not rioters, but peace-

ful citizens interested in the preservation of peace and order, who should be invited to become special constables. The matter is certainly one which deserves looking into."

The Hon'ble MAHÁRÁJÁ OF DURBHANGA said:—"The Bill under consideration is one to which I find it impossible to accord my support. The principle under which minor administrative changes are introduced side by side with innovations of such importance and fraught with such consequences as those contemplated by sections 4 and 5 of the Bill cannot, in my humble opinion, be too strongly deprecated; proposals such as those to which I have referred can lose nothing by the fullest and freest discussion. I can have no doubt the Government desire that discussion as keenly as any of those classes whose interests are likely to be affected by the Bill. But the attention of the public is apt to be distracted if the nugget is, as it were, shrouded from view in an envelope of comparatively worthless dross. The minor administrative changes contained in the earlier portion of the Bill are no doubt of a purely non-contentious character, and I shall not weary Your Lordship with any prolonged criticism of them. Under other circumstances, and if the Bill had proceeded no further, I should not have deemed it my duty to range myself upon the opposite side to the Hon'ble Member who is in charge of the Bill; but these unimportant items are not on the present occasion seriously put forward. They are not in reality part of the Bill at all; the gist of the Bill does not lie in their direction, and I have heard them described by many persons, although I myself hesitate to employ such a metaphor, as a mere red-herring drawn across the path. On the general grounds which I have indicated, therefore, I am compelled to record my judgment against the Bill as a whole, although I will venture to express a hope that the Hon'ble Member may be able to see his way in Committee towards the dropping of the two obnoxious sections in the body of the Bill. I cannot agree in thinking that the Bill as at present drafted is of a purely preventive character. The precedent is not one to which I feel that he can upon reflection accord his assent, and speaking, as I do, as a member of the public, I desire to protest against it. No one would, I venture to suppose, be more astonished than the Hon'ble Member himself if Reuter's Telegram Company were to inform us that Her Majesty's Government had determined to introduce a Bill amending and codifying the rules relating to the Royal Irish Constabulary, and that a provision was contained in one of its sections under which all persons having an interest in land in disturbed districts were rendered liable for the preservation of order in those districts. I confess I am unable to ob-

serve any difference between the Bill now under discussion and the suppositious case I am putting; but there are other reasons besides the general grounds with which I have been dealing which influence me in withholding my support from he Bill. Section 4, which is intended to replace section 15 of the Police Act of 1861, is the first to which I propose to direct my attention. The Hon'ble Member in charge of the Bill tells us in his Statement of Objects and Reasons that it has been recognized as desirable to allow a discretion to levy the cost of an additional police from those persons only whose conduct has rendered the employment of the additional force necessary. That discretion, which is as full as the meaning of the word permits, is given to the Magistrate of the district; and, so far as I am able to judge from the Bill itself, no appeal will lie from his order of apportionment to any higher authority, acting as he would be under this section in his capacity as an executive officer; he would not be subject to any control from the High Court or any other higher authority. The result of the amendment is undoubtedly to bring under the operations of the sections several classes of individuals who have hitherto only been liable under the provisions of other Acts. In considering the proposal I will, with Your Lordship's permission, first call attention to the law as it stands. Section 15 of the Police Act of 1861 runs as follows:—'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district which shall be found to be in a disturbed or dangerous state or in any part of the general police-district in which from the conduct of the inhabitants he may deem it expedient to increase the numbers of police.' These words are not altered in any way by the proposed new section, but I quote them advisedly. The section is intended, and clearly intended, to be preventive in its operation. The object of the section is to prevent, by the quartering of additional police, the recurrence of disturbance, and to secure that object by making the whole of the inhabitants of the district without distinction or difference vitally interested in the preservation of order. There is nothing of a penal character in the section as it now stands, and it was not until the introduction of the present Bill that any such interpretation has been put upon it. I will ask the Hon'ble Member in charge of the Bill whether any such penal interpretation is possible. It cannot surely be intended by him that a double punishment should be inflicted by the executive authorities as well as by the judiciary on breakers of the public peace. It is to be assumed—and there is nothing outrageous in the assumption—that the persons concerned in the affray which is to procure for the district its unenviable notoriety either have been or will be duly punished if guilty by a competant

Court of Justice. It is proposed by the Hon'ble Member to fine these persons in addition at the discretion of the Magistrate of the district. It may be that the persons, who, to quote the amendment proposed, have, in the opinion of the Magistrate, caused or contributed to the disturbance, may succeed in convincing the Sessions Judge of their entire non-complicity in the affair. Does the Hon'ble Member intend the section to apply to such cases?

"It does not appear to me that it could be restricted from such application as at present drafted. The apportionment is absolutely at the arbitrary discretion of the Magistrate. To him alone is left to decide what persons are free from blame and what persons are principals or accessories. I venture to submit that the measure proposed is a very strong one. As Mr. Allen, the Magistrate of Midnapur, an officer of much experience, observes:—

'The whole responsibility is thrust in a light-hearted way on the District Magistrate, subject only to confirmation by the Commissioner, who, as a rule, must have less local knowledge of the subject than even the Magistrate himself. The latter official is given a very free hand. Everything is left to his opinion, and that too at a time when junior civilians of sometimes under three years' service are officiating as District Magistrates. Before forming an opinion, the Magistrate is not bound to hold any enquiry, local or otherwise, nor need he call for or listen to any objections from the persons he proposes to tax. Even junior Magistrates acquire prejudices in favour of or against certain religions and callings, Hindus or Muhammadans, landlords or tenants, European indigo-planters or zamindars; surely it is under these circumstances hardly safe to vest Magistrates with such arbitrary and untrammelled powers.'

"The measure is in fact of so novel and drastic a character that it is incumbent upon its upholders to demonstrate its necessity in the strongest and most unmistakeable terms. A Magistrate is not infallible. His discretion may frequently err. It may even happen, though I am happy to think such cases are rare, that the Magistrate may adopt an attitude of antagonism to the Judge. Acting in perfect good faith, and as he believes in the best interests of the district of which he has charge, he may mark his sense of disapprobation of the finding of the Sessions Court by mulcting those persons whom that Court has acquitted, but who, in his opinion, are responsible for the outrage that has been committed. And he is at perfect liberty to do so under the provisions of section 4 in its present shape. Nay more, for the facts must be surveyed from every point of view; cases may even occur in which the Local Government may think fit to uphold the action of the Magistrate. In plain language the section gives the Magistrate of the District the power of redressing, if he so pleases, what he conceives to be a miscarriage of justice on the part of the

judicial authorities. Apart from the unmerited slur that the placing of such a power in the hands of the executive casts upon the judiciary, the Hon'ble Member's proposal to inflict a double punishment is wholly contrary to all the principles and maxims of law and justice with which I am acquainted. I ask the Government to pause before they give the force of law to such powers and invest them with the sanction of the highest authority in the land. It cannot be urged that the amendment proposed will in any way act as a deterrent. The section as it stands at present upon the statute-book is open to grave objections. It is frequently productive of great hardship and even greater injustice. It is at best only a clumsy method of attaining an object which so highly organized an administration as ours should have no difficulty in securing by ordinary judicial means. But, if the amendment proposed by the Hon'ble Member is carried into law, the hardship and injustice will be intensified a hundred fold. Granted that it be impossible to preserve order in a district without the quartering upon the inhabitants of additional police, the ordinary dictates of justice surely demand if the cost is to be borne at all by the inhabitants of the district, it should be borne by all alike. The Hon'ble Member's proposal is, that certain classes alone shall be liable for such costs, and that the determination of such classes and the apportionment of the costs shall rest entirely at the discretion of the Magistrate of the district. Two of the Judges of the Calcutta High Court made some most pertinent remarks upon this point. They said:—

'The vesting of Magistrates with such extraordinary powers in supersession of the ordinary Courts of law can be justified only under very exceptional conditions, and by pressing necessity. The Statement of Objects and Reasons discloses no such necessity, and so far as concerns the Bengal Presidency we are not prepared to say that any such necessity has arisen.

'Provisions of the kind under consideration are of an exceptional nature, and should not, we think, find place in an enactment applicable to the whole of British India, and relating to a subject with which their connection is but remote and incidental.

'In making the above observations we have not lost sight of the fact that there are provisions in the English statute-book (40 & 50 Victoria, c. 38,) apparently of an analogous character. But the analogy between the provisions now under consideration and those of the English Statute is more apparent than real. By the English Act compensation may be awarded for injury to property caused by riot out of the police-rate, which is a definite rate levied on all persons under well-defined conditions, the conduct of the injured party being taken into consideration in assessing the amount, and the interests of the police authorities being evidently allied to, if not identical with, those of the rate-payers, whereas the Bill before us provides for the levying of compensation by way of penalty to be summarily inflicted by the Magistrate on persons whose misconduct has caused or led to the injury to be compensated.

'The provisions under notice are no doubt intended to apply only to the guilty. But we have grave apprehensions that in their practical application they will not be limited to the guilty, but may in many cases, from the very nature of the enquiry, which will be only of a summary character, lead to the indiscriminate punishment of the innocent and the guilty. And the penalty being directed to be imposed upon a person only with reference to his means and irrespective of the extent of his complicity in the riot, it may, we apprehend, lead to great hardship, and its deterrent effect upon wrong-doers will be very small.'

"Again, has the Hon'ble Member considered the effects that his proposal will produce upon the rival religious communities in this country? Far from composing and conciliating angry and excited feeling, the Government will find itself, willy-nilly, in the position of a fomenter of religious discord. A religious riot having broken out in a district, it becomes the duty of the authorities to procure the punishment of the ringleaders, and as the present law stands, by rendering both sections of the communities liable for the preservation of order to prevent a repetition of the disturbance. But it does not require any painful effort of the imagination to foresee the mischievous results which will inevitably be produced by the new law. The Government of Bengal are themselves keenly alive to the grave consequences; for I note that they remark in their letter to the Legislative Department that 'there is danger of these powers being used in a one-sided way, and in such a manner as to produce the effect on the public mind of a victory for one side or the other.' The apportionment of the cost on a particular section, be they Hindus or be they Mahammadans, I care not which, can only result in renewed embitterment between the two factions. The feud will be perpetuated, and a most unfortunate impression will be created that the head of the district is in sympathy with one faction to the exclusion and detriment of the other. Nor will its effects be less harmful in the case of agrarian disturbance. The Magistrate by abandoning his attitude of impartiality, as he must needs abandon it if he elects to differentiate between the various classes, will let loose that very torrent of litigation and unrest which it is his duty to allay. I am happy to find that I am supported in the view that I have been putting forward by Mr. Forbes, the Commissioner of the Patna Division, whose experience and judgment as a Behar official of long standing are especially valuable in the present connection. I will quote the whole of his remarks upon the point, and I do so the more gladly, as I note that His Honour the Lieutenant-Governor has directed the particular attention of the Government of India in his covering letter—

'It seems to me,' he says, 'that the whole of sub-clause (*b*), and especially the sentence that I object to, has been drafted on the assumption that the measure of quartering

additional police is a punitive and not merely a preventive measure; for it practically makes it the duty of the Magistrate to enquire into and adjudicate upon the question of blame, and assess the cost accordingly. I am confident that the provision in its proposed shape will cause immense practical difficulties in the way of working the section.

'There is a further objection, based on wider grounds, to the law laying down that only such and such persons or classes are liable to assessment, and that such and such others shall not be assessed. In many cases it is expedient, in the interests of the public peace, that not only the agitating class, but also the class against whom the agitation is set on foot, should contribute. During the late anti-kine killing agitation in this division a question arose as to whether in particular instances the Muhammadans, against whom the agitation was raised, should or should not be assessed jointly with the Hindus who raised it. I decided, after full consideration, that both parties should pay their share of the costs on the ground that, if the Hindus were alone assessed, the Muhammadans might in their excited mood take advantage of the fact in an unfair manner. The more offence they could give in such a quiet occult manner as not to get themselves into trouble with the authorities, the better—from their point of view—for them. If the Hindus could be galled into committing a disturbance, the Hindus alone would be punished. If the Hindus through fear of consequences put up with the affront, the Mahomedans would score a point all the same. But the result of the decision referred to was in the end to induce the Muhammadans to take special care to give as little offence as possible to the religious feelings of the Hindus; and at the late Bakr-Id there was no perceptible increase in the number of customary kine sacrifices, as there undoubtedly would have been had a contrary policy been followed. And in several instances, where the feelings of either party got the better of their self-control, both sides immediately came in to the Magiste with a joint petition for forgiveness. The fact is that in matters of this kind, especially during times of religious agitation, the responsible authorities must be allowed a free hand in exercising their discretion. The law, as it now stands, if strictly read, does not permit the Magistrate to exempt anyone from bearing his share of the cost. This, though it has sometimes no doubt been hard on individuals, has in the interests of the community at large hitherto worked well. I admit, however, that it would be better if the law were more elastic in this matter, and if the authorities were allowed some discretion in the direction of exempting deserving persons. But the authorities must not be fettered in their use of this discretion. It is not merely lukewarm persons "who are not to blame," persons who are entirely indifferent one way or the other, who are to be especially selected for exemption from a share in the common burden. As a rule, it is only those who have rendered conspicuous assistance in preserving peace and allaying agitation who should be thus signally rewarded; nor is it only persons who "have caused or contributed to the disturbance" who are to be made responsible for the public peace in the future. All this would be right and proper enough if the measure were intended as a retributive one—as a punitive measure. But this is not, and it has never been, regarded as such by any previous legislation. The measure is a purely preventive one, the principle being to enlist the

whole public feeling on the side of order. The indifferent people who have not lifted a finger one way or the other are among those whose influence is particularly desirable to secure. And even if the measure is to be regarded as in any way a retributive one, these men cannot complain if they have to pay for their previous indifference.'

"These words, my Lord, are so weighty and well-considered that I feel it to be altogether unnecessary for me to add to them. But there exists a still more formidable ground for objection to the proposed amendments. For unless the Hon'ble Member in charge of the Bill can show that the classes he proposes to fix with liability are not amply affected by other acts and rendered properly amenable to the law for breaches of the peace, the necessity for his proposals must fall to the ground. As the British Indian Association have already pointed out in their representation to the Government—and they have stated the matter so clearly and concisely that I cannot do better than adopt their phraseology—sections 154, 155, and 156 of the Indian Penal Code make the 'owner or occupier of land' punishable whenever an unlawful assembly or riot takes place. But there is a statutory proviso that his liability is to be co-extensive with his or his agent's previous knowledge. Unless and until it is shown that he or his agent or manager, having reason to believe that such riot or unlawful assembly is likely to be committed, do not give information to the police and use all lawful means in their power to prevent it, neither he nor his representatives are liable to punishment. He is equally punishable if a riot is committed for his benefit, and in this case it is immaterial whether he has had previous knowledge or not if he or his local manager or agent do not use all lawful means in their power to disperse and suppress the riot. Nor are these the only means placed at the disposal of the authorities for the preservation of order. For Chapter XII of the Code of Criminal Procedure gives ample powers to Magistrates to prevent breaches of the peace likely to be caused by disputes relating to land and easements. Section 145 lays down the procedure where a dispute concerning land or other tangible immoveable property is likely to cause a breach of the peace. Section 146 empowers the Magistrate to attach the subject-matter of the dispute pending the determination of the rights of the rival parties by a competent Civil Court. Section 147 deals with disputes concerning easements, and section 148 with the question of local enquiries and costs. It is impossible to demand any fuller exposition of the law on the point. Here I quote the sections:—

'*Section 145.*—Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property,

or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

'The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

'If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction. Nothing in this section shall preclude any party so required to attend from shewing that no such dispute as aforesaid exists or has existed; and in such csae the Magistrate shall cancel his order, and all further proceedings thereon shall be stayed.

'*Section 146.*—If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession of the subject of dispute, he may attach it until a competent Civil Court has determined the right of the parties thereto or the person entitled to possession thereof.

'*Section 147.—Disputes concerning easements.*—Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of a thing in or upon any tangible immoveable property situated within the local limits of his jurisdiction, he may inquire into the matter, and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be: Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

'*Section 148.—Local Inquiry.*—Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem

necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid. The report of the person so deputed may be read as evidence in the case.

'*Order as to costs.*—When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, 146 or 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.'

"And it is, in fact, because the criminal responsibility of landlords in regard to unlawful assemblies and riots and the methods of preventing such offences when possible have been thus clearly and definitely laid down that the framers of section 25 of the Police Act of 1861 contented themselves with making provision with reference to the inhabitants only of the place in which a breach of the peace might occur. The existing law, therefore, as Mr. Vincent, the Magistrate of Burdwan, observes, provides amply and sufficiently for the preservation of the peace. It takes complete cognisance of all possible responsibility which might attach to any person by the occurrence of a riot. Where, then, is the necessity for a change in the law which the Hon'ble Member proposes? He proposes, in so many words, to provide for the recovery of the cost of the extra police-force from persons having an interest in land in the disturbed district. Does the Hon'ble Member seriously contend that it is intended to affect with such grave liability landholders who are not even residents in the districts in question, and who may be wholly free from blame, and indeed absolutely ignorant of the fact that riots had been committed on their estates? I am loth to put such a construction upon the words or to impute such an intention to the Hon'ble Member in charge of the Bill, but I am totally unable to place a different meaning upon the section. I am unwilling, I say, to put such a construction upon the language of the Hon'ble Member's amendment. I am unwilling to believe that it is seriously proposed to impose liabilities and responsibilities on principles wholly arbitrary and unjust.

"An affray takes place in a distant portion of an estate between Hindus and Muhammadans regarding the slaughter of the cow. The Hon'ble Member would give power to the Magistrate of the district to quarter an additional police-force in the disturbed portion and to recover the cost of the same from the zamindar, who might be a resident in Calcutta, or even absent in England. 'Any person or class of persons who in the opinion of the Magistrate have been free from blame' gives no discretion to the Magistrate in the case of

owners or occupiers of land. They are classed with the inhabitants of the district and are liable together with them, unless the Magistrate should think fit to apportion the cost among certain classes. Nor is this all. The words 'persons having an interest' are so vague and indefinite that it is impossible to restrict their application. As the Bill now stands, tenants, mortgagees and annuitants holding a lien on landed property fall within its operation, side by side, with zamindars and subordinate tenure-holders. Had the Government wished absolutely to discourage all traffic in landed property in the country, they could not have devised a more thorough method. I grant that the Hon'ble Member would be justified in proceeding with the proposal if he were able to make a strong case in its favour. But can he do so? I have shown that the existing law amply provides for the punishment of those zamindars who fail in their bounden duty to preserve the public peace upon their estates, while the inhabitants themselves are liable to contribute towards the cost of the extraordinary means which may be necessary for the restoration of order. Wherein lies the justification of saddling absentee landlords with a portion of the cost? Wherein lies its necessity? Does the Hon'ble Member, in a word, seriously contend that the mere possession of an interest in land of whatsoever character in a disturbed district is of itself a reason for liability? In other words, does he mean to say that the mere holding of land in a disturbed district is a penal offence? The Hon'ble Member has evidently failed to grasp the full purport of his proposals. Is it too much to ask that he will withdraw section 4 from the Bill? Such measures, as I have already said, can only be defended upon the ground of the most urgent necessity. The condition of the country is not such as to demand so drastic and coercive a remedy. I would remind the Hon'ble Member that, drastic and coercive as the Irish Crimes Act of 1887 was intended to be, its framers and its supporters shrank from incorporating among its provisions any section so novel and so entirely revolutionary as that which has been laid before us to-day. I cannot help recalling the noble and statesmanlike words of Henry Colebrooke:—

'It is of the utmost importance,' he wrote in 1808, 'it is essential to the safety of the State, to conciliate the great body, the landed proprietors, to attach to the British Government that class of persons whose influence is most permanent and most extensive, to render it their palpable interest to uphold the permanence of the British dominion, to give them a valuable stake in the administration of the country.'

"These words, although written when the century was yet young, are as true to-day as they were 87 years ago. I commend the attention of the Hon'ble Member to them, and I ask of what omissions or of what offences have the land-

owners of this country been guilty, beyond the undoubted fact that some of them do not live upon their estates, that they should be described by Government as a class 'who stir up strife or send agents to rack-rent, and oppress and so cause strife without incurring any danger themselves?' That there may be a landlord here and a landlord there who is guilty of such mean acts I do not deny. But let all such people have a chance of defending their character before being punished. I venture to submit that so sweeping and general condemnation is most unjust to the class to which I belong; that they are worthy of more consideration at the hands of an administration whom they have always loyally served and for whom they have made many sacrifices.

"I have already wearied Your Lordship too long, but I cannot close my remarks without a reference to the next section (5) in the Hon'ble Member's Bill, namely, that which empowers the Magistrate to award compensation to sufferers from the misconduct of the inhabitants of the proclaimed districts, or from those persons interested in land in those districts. I submit that it cannot in any way advance the interests of justice that a concurrent jurisdiction should be vested in a Magistrate to award damages for wrong done. The injured party has his remedies, both civil and criminal, open to him. I can conceive the Hon'ble Member feeling it to be unnecessary to give such powers to the executive authorities on the ground of the weakness or corruptness of the Civil and Criminal Courts. Are there such grounds in the present case to justify this belittling of the administration of justice? Nor is this all. The proposal of the Hon'ble Member is the more extraordinary in that it vests a Criminal Court with power to adjudicate finally upon questions of civil rights, and, as far as I am able to judge from the Bill, it goes even further and deprives the aggrieved party of the right of appeal, either to the District Judge or the High Court. I repeat that I can only appreciate the full force of the Hon'ble Member's proposal on the supposition that the administration of justice has proved a failure. That was the ground on which the Irish Coercion Bill was defended by its supporters. Is the Hon'ble Member prepared to adopt a similar line of defence? It is the only line of defence open to him. On all other grounds his proposals are not only utterly undefensible but opposed to all principles of justice as well as of jurisprudence. I appeal to the Hon'ble Member to withdraw these two sections (4 and 5) of the Bill. He stands last among those from whom I should have expected a measure of the kind that is now before us. I find him not only adopting the numerous Irish repressive Statutes as his model, but going far beyond their purview in his well-meant efforts to preserve the public peace. But the bugbear which he desires

to destroy is not in existence. It is a mere creature of imagination. The necessity which called for repressive legislation in Ireland is conspicuously absent in India. And in my opinion necessity of the most urgent and peremptory character should exist before such legislation is resorted to. It is because I feel that no such necessity has been demonstrated that I record my protest against a measure whose main provisions are so repugnant, not only to my convictions, but to all my conceptions of equity and justice."

The Hon'ble SIR JAMES WESTLAND said:—"As the first Member of Your Excellency's Executive Council who has an opportunity of speaking after the extraordinary observations which have fallen from the Hon'ble Mr. Mehta, I desire to enter a protest against the new spirit which he has introduced into this Council. I have never heard the conduct of the administrative officers of the Government, as a whole, mentioned here without admiration of the qualities they bring to the execution of their duty, and their anxious endeavour to do their work with even-handed justice. To-day for the first time within the walls which have been distinguished by the presence, through half a century and more, of the most eminent of the executive officers of Government, who have contributed to the framing and the consolidation of the Indian Empire, I hear them all arraigned as a class as biassed, prejudiced, utterly incapable of doing the commonest justice and unworthy of being relied on to do the duties which this Legislature imposes upon them. From Your Excellency downwards every executive officer falls under the ban of the Hon'ble Member's denunciations, and I for one protest against any Hon'ble Member so far forgetting the responsibility he owes to his position as to take advantage of it to impugn, by one general all-comprehensive accusation not only the capacity but even the honesty and fairness of the members of a most distinguished service—a service of which it is my pride to have been a member. Their reputation is too well established and too widely recognized to suffer from the calumnies directed against them. The Indian Empire itself is the witness to the capacity they shew in the administration of their duties: it would not last for one year if there were any truth in the accusations now made. I feel sure I can claim the concurrence of every member of Your Excellency's Council, Legislative as well as Executive, in utterly dissociating myself from the remarks which have been made, and which I conceive to very greatly detract from the reputation which this Council has justly acquired for the dignity, the calmness and the consideration which characterize its deliberations."

The Hon'ble MR. MEHTA:—"I should like with Your Excellency's permission to offer one word of explanation, as I believe the rules of the Council allow me to do. I have made no such general charges or imputations as have been attributed to me in the speech of the Hon'ble Sir James Westland."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, I think that in my opening address I went as near gaining the character of a prophet as it is in the power of a Member of this Council to attain to, seeing that I managed to anticipate and to discount every argument brought against this Bill. I might rest content with what I have already said; but I wish to add a few words by way of reply. I endeavoured to make it perfectly clear from the beginning that I regarded this measure as a measure of prevention and not as a measure of punishment, but the Bill has nevertheless been criticised as if it had been, notwithstanding my precise definition to the contrary, a measure of punishment and not of prevention of crime.

"The Government of India has endeavoured to proceed on the lines of the Act in operation for the last thirty years. It has endeavoured to adhere as closely as circumstances allowed to the wording of that Act, but I was astonished to hear the Hon'ble Mr. Mehta declare that, while the previous Acts in force in Bengal and Bombay deal with inhabitants of villages as a body, the present Bill deals with individuals. I have before me the Bengal Act and the Bombay Act, and I find that the Bill does not differ from them in that respect. The Bill deals with two classes of people—the inhabitants of the village and the owners of property outside the village. So far as the inhabitants of the village are concerned, we propose in certain circumstances to modify the operation of the existing law by exempting whole sections of those inhabitants from responsibility for payment of the additional police. Those circumstances would be of exceptional occurrence. I endeavoured to point out to the Council that the general rule would be that the cost would fall on the whole village, but that in exceptional cases the cost might be limited to particular sections. I made it specially clear that it was not the intention of the Government to give any power to deal with individuals either with the view of exemption or of punishment, unless it was a question of the responsibility of an absentee owner who fomented a disturbance. I was therefore surprised to find that the Hon'ble Mr. Mehta imputed to me intentions which I specifically disavowed, and which find no support from the Bill as drafted.

"Passing from that portion of the Hon'ble Mr. Mehta's speech in which he argued that the Bill now before us deals with individuals, I wish to again

insist on this, that the main principle of the Bill is prevention. When any opinions of individual officers are quoted to show that it will have a punitive effect, and that that is the main object of the Bill, all I can say is that these particular officers are not in the confidence of the Government. When I find that the opinion of one of these officers to whom the Hon'ble Mr. Mehta has referred is directly at variance with the opinion of the Bombay Government, in whose jurisdiction this proposal has been in operation for five years, I am compelled to abide by the views which the Bombay Government express in preference to the opinion on which the Hon'ble Mr. Mehta lays so much emphasis. I am willing to admit that in certain sections the wording of the Bill admits of improvement, and I intend from that point of view to propose certain changes in the Select Committee which will meet some of the remarks made by my hon'ble friend the Mahárájá of Durbhanga.

"In connexion with the question of outsiders, of absentee owners of property who may be responsible for a disturbance in the village, the Hon'ble the Mahárájá of Durbhanga has attributed to me feelings of hostility to the zamindars. That is a spirit which I entirely repudiate.

"I have known the Mahárájá for many years, and I think that, although we may have on some occasions differed in opinion, he will agree with me that I have never acted otherwise towards the zamindars of Behar and Bengal than in accordance with my honest conviction of what was the justice and consideration to which they were entitled. I can assure my hon'ble friend that nothing is further from my mind than to take up any position which would be hostile to one of the most important interests in the country. It is not so much the case of the zamindar whose interests should be as much bound up in the peace and contentment of his raiyats as those of the Government itself that I am contemplating, as the cases of farmers who take leases of villages and lands for short periods of time and make use of their opportunities for the purpose of forcibly extracting as much money as they can out of the people. They do not appeal to the Courts to enhance their rates, and they often rely upon force to carry out their wishes, rather than upon the resources which the law provides. When such persons as these from the safe vantage-ground of, say Dacca or elsewhere, maintain clubmen in a distant village, and in their endeavours to extract enhanced rents reduce the village to 'a disturbed and dangerous state' then it is not in consonance with my idea of justice and reason that the unfortunate villagers shall alone be responsible and that they alone should pay the piper while these gentlemen call the tune

This is one example of the sort of person whom I want to bring within this Bill, and I think the proposal ought to commend itself to the judgment of this Council.

"I have only one word more to say with regard to the objections brought against this measure on the ground that its procedure is executive and removed from the purview of judicial Courts. I can see no reason why an executive officer proceeding with care and caution should not ascertain the facts in such a matter as we are dealing with as well as the judicial officer. It is urged that a judicial officer has his mind abstracted from the excitement of the moment, and brings to bear upon the case an even judgment which an executive officer might not be able to do. But, without admitting the suggestion as to the inability of the executive officer to do justice in such a matter, as I have clearly pointed out, the executive officer on the spot is not the officer who will pass the final order in regard to special compensation, or the assessment of costs of special sections of the people; that will under the Bill be done by the Commissioner of the Division, who may be expected to deal fairly and dispassionately with the matter. As I have said, the principle of the Bill has been accepted as good, and, that being so, surely we can devise means whereby the officers who will be entrusted with the duty of giving effect to its provisions shall be properly guided and duly controlled.

"With regard to the observations which fell from the Hon'ble Mr. Mehta in regard to the public services of the Government, I had intended to make some remarks of the nature of those which Sir James Westland has addressed to the Council, but I will say no more except that I subscribe to every word that my hon'ble friend said upon that point."

The Motion was put and agreed to.

BURMA BOUNDARIES ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL also presented the Report of the Select Committee on the Bill to amend the Burma Boundaries Act, 1880.

EXTRADITION (INDIA) BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to confer on Presidency Magistrates and District Magistrates certain powers and authorities in relation to the surrender of fugitive criminals. He

said :—"The necessity for this Bill has arisen out of a difficulty in the wording of the Extradition Act. The Extradition Act of 1870 required certain executive acts, such as the enquiry into the identity of the persons whose extradition is claimed, and other acts of the kind, which in the United Kingdom are done by the Police Magistrate and Justices of the Peace, to be done in the colonies by the Colonial Governors. The effect of that in India is to require the heads of Local Governments to do these acts, and as they have no authority to delegate these functions they must perform them personally, so that when a fugitive criminal has landed in Bombay and is claimed for extradition from the British authorities, the whole proceedings have to be conducted by the Governor of Bombay personally. I need hardly say that this state of things gives rise to grave public inconvenience.

"The Act, however, further provides that, if by the Legislature of any British possession any law or ordinance is made for carrying into effect due provision for the surrender of fugitive criminals, then Her Majesty may by Order in Council direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications, as if it were part of the said Act.

"Some of the colonies where the inconvenience I have mentioned was felt perhaps earlier than in India have adopted the course of passing ordinances to invest their Police Magistrates with the powers which are given by the Extradition Act to Police Magistrates and Justices of the Peace in the United Kingdom, and then by getting an order in Council under the section I have read applying such law or ordinance they have succeeded in getting over the difficulty I have mentioned, "as regards the operation of the law with reference to the Governor personally. In looking up the matter we discovered that as long ago as 1877 an Ordinance of this kind was passed in Ceylon, and, as it appears to have worked well in Ceylon during the eighteen years that it has been in operation, the Government of India thought that that would act as a sufficient precedent on which to base the legislation which we now desire, and accordingly the Bill which I ask leave to introduce is practically copied from the Singhalese ordinance, except that it substitutes the words 'Presidency Magistrate and District Magistrate' for the words 'Police Magistrate,' which are found in the Ordinance, and are not applicable to India; and, if after it is passed an Order in Council is made directing it to take effect as if it were part of the Extradition Act, it will have the effect of relieving local Governors from

the necessity of performing these executive functions themselves, and of throwing them upon the proper persons for performing them, namely, the Presidency Magistrates in the Presidency towns and the District Magistrates elsewhere."

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.

LOWER BURMA BOATS BILL.

The Hon'ble SIR FREDERICK FRYER moved for leave to introduce a Bill to provide for the Registration of certain Boats in Lower Burma. He said:—

"This Bill has for its object the registration of certain boats in Lower Burma. These boats are used in the paddy trade, and the system in force in that trade is that rice millers make advances on the security of boats belonging to Burman boatmen, and the boats are hypothecated to the rice-millers until the advances are repaid. The boatmen also agree to carry paddy exclusively for the firm making advances until the advances are repaid by the delivery of paddy. The advances thus made to boatmen amount annually to over one hundred lakhs of rupees, and it is represented by the rice-millers that they suffer great losses owing to the absence of any system of registration for boats in Lower Burma, as they cannot readily ascertain whether the persons applying for advances are the real owners of the boats which they offer as security, nor is it possible for them to know whether there are any previous charges on the boats. For these reasons they have to demand high interest on their advances in order to protect themselves from loss, and, notwithstanding this, they are often heavy losers, their losses in one season having been estimated at twenty lakhs. These losses can seldom be recovered in the Civil Courts, as it often happens that a boat has been transferred several times over, and quite possibly the man to whom an advance has been made is not the real owner. As a consequence of the present system the rice-carrying trade shows a tendency to pass from the hands of Burmans into those of natives of India who own cargo boats, which are registered under section 79 of the Sea Customs Act, to ply in

the port of Rangoon. The main business of these cargo boats is in the port of Rangoon, but of late years their owners have entered into the paddy-carrying trade, and by registering their boats in the names of the rice-milling firms they can offer a better security for advances than the Burman boatmen.

"It would be a misfortune for Burma if the Burmans were driven out of the paddy-carrying trade which now furnishes employment to a large number of men as carriers and as boat-builders.

"The Bill is, therefore, needed just as much in the interest of the Burmans as in the interest of the rice-millers. The trouble of getting ownerships and transfers registered will be very slight, and it is proposed to keep the cost of registration as low as possible, and to expend all moneys realized under the Bill in providing for the cost of the registration establishment.

"The provisions of the Bill are briefly as follows:—

"Section 2 is intended to make the Bill apply only to boats of over sixty maunds burthen, which are the boats employed in the paddy trade, and boats not employed in the trade are exempted from registration.

"Section 3 gives the owners of paddy boats a period of six months from the date on which the Act may come into force in which to effect the registration of their boats.

"Section 4 provides for the appointment of Registrars of Boats and of the places at which boats shall be registered: ordinarily registration will be effected by the existing registration establishment.

"Section 5 lays down the procedure to be followed in registering boats and for the marks or brands which are to be affixed to the boats.

"This section is based on sections 1 and 2 of the Bombay Act (I of 1863), which provides for the registry of vessels plying on the river Indus.

"Sections 6, 7 and 8 regulate the issue of certificates of registration; the production of these certificates by the owners of boats and the issue of duplicate certificates are analogous to sections 3 and 5 of the Bombay Act.

"Sections 9 and 10 of the Bill are essential sections.

"Section 9 requires transfers and mortgages of boats effected by private contract to be registered, and lays down that all transactions by which such transfers or mortgages are made must be reduced to writing.

"Section 10 requires that transfers made otherwise than by the act of the parties must be reported to the Registrar of Boats within six months of the date of such transfer.

"Section 11 provides that when transfers are registered by a Registrar of Boats, other than the Registrar by whom such boat was originally registered, notice of the transfer shall be given to the original Registrar.

"Section 12 attaches penalties to failure to register or to produce the certificate of registration when its production is required under section 7.

"Section 13 gives the Local Government power to make rules, and I need only mention clause (5) of this section, which empowers the Local Government to provide by rule for the publication of an annual statement in the official Gazette showing all moneys paid or recovered under the Act, and the manner in which they have been expended. The object of this clause is to enable those who are interested in the registration of boats to see that the moneys received under it are expended in providing for the cost of the establishment for the registration of boats. That the moneys shall be so applied can be ensured by a rule under clause (2) of this section."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also introduced the Bill.

The Hon'ble SIR FREDERICK FRYER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English, and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 31st January, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 1st February, 1895.

Government of India Central Printing Office.—No. 481 L. D.—5-2-95.—330.—C. H. I.