

*Thursday,  
19th September, 1889*

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

**Vol. XXVIII**

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

1889

VOLUME XXVIII



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

The Council met at Viceregal Lodge, Simla, on Thursday, the 19th September,  
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P R E S E N T :

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

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

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

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

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

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

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

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

The Hon'ble Bááb Khem Singh Bedi, C.I.E.

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Report  
of the Select Committee on the Bill to consolidate and amend the law relating  
to Cantonments be taken into consideration.

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the fol-  
lowing amendments be made in the Bill :—

i.—That in section 26, clause (28), for the words and figures “under section 25 or of  
rules made under this section”, in lines 5 and 6, the words “or rules made  
under this Act” be substituted.

ii.—That for section 28 the following section be substituted, namely :—

“28. The Local Government may, by notification in the official Gazette and subject  
to any conditions as to compensation or otherwise which  
it may see fit to impose, extend to any area beyond a  
cantonment and in the vicinity thereof—  
Extension of certain enactments  
and rules to places beyond canton-  
ments.

(a) any enactment which, with or without restriction or modification, has been  
extended to the cantonment or any part thereof under section 25, or

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(d) any rule in force in the cantonment or any part thereof under clause (12) or any of the following clauses of section 26, as well as any direction there in force under sub-section (4) of section 27;

and the enactment, rule or direction specified in the notification shall, so long as the notification remains uncanceled, apply to that area as if the area were included in the cantonment."

iii.—That in section 31, for the words "the powers conferred by this Act or any rule thereunder", in lines 8 and 9, the words "powers conferred by or under this Act" be substituted.

He said:—"I should explain that the object of these proposed amendments is to correct an oversight which occurred in the revision of the original Bill by the Select Committee. It was proposed by that Bill to extend enactments to cantonments *by rule*. Under the revised Bill enactments are to be extended *by notification*. The necessity of making certain consequential amendments in other parts of the original Bill was unfortunately overlooked by the Select Committee. It being desirable to move these amendments, I have, after consultation with His Honour the Lieutenant-Governor of the Punjab and the Hon'ble the Law Member, considered it expedient to indicate that, where cantonment regulations are extended to an area beyond the limits of a cantonment, there may be cases in which it may be proper to award compensation to persons who may be injuriously affected by their extension."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY then asked for leave to postpone the Motion that the Bill, as amended, be passed.

Leave was granted.

#### FOREST BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887, be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Muhammad Ali Khan, the Hon'ble Mr. Crosthwaite and the Mover.

The Motion was put and agreed to.

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## BILL TO INDEMNIFY CERTAIN WITNESSES.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to indemnify certain witnesses. He said :—

“ By order dated the 16th of October, 1888, a Commission was appointed, under Act XXXVII of 1850, to enquire into certain charges of the corrupt receipt of money and of improperly borrowing money, made against Mr. Arthur Travers Crawford, of the Bombay Civil Service, and Commissioner of the Central Division of that Presidency. That Commission was appointed by the Governor in Council of Bombay, without whose sanction Mr. Crawford was not removable from his office, and who was of opinion that, in the words of the Act, there were good grounds for making a formal and public enquiry into the truth of the imputations of misbehaviour against him.

“ In reporting its proceedings to the Secretary of State, the Bombay Government writes :—

‘ The information concerning Mr. Crawford's alleged malpractices was in the first instance furnished to Government by certain Native gentlemen and officials of high position, who did not admit that they had themselves paid bribes, and who are not suspected of having done so. They mentioned the names of the persons who, as they believed, had given money, and supplied particulars of some of the transactions. To push the enquiry a stage further, and to procure more positive personal and detailed information, it became then necessary to obtain the statements of the men alleged to have themselves paid money; and to effect this it was requisite to give a definite assurance to the officials concerned that their admissions should not be used to their own ruin, and that they would not be prosecuted or punished by Government if they fully, freely and truthfully disclosed what they knew and what they had done. It was obviously of no avail to believe or hope that Native officials who, as Government had good ground to suppose, had paid bribes would voluntarily come forward and without any promise of immunity would make confessions which might ensure their immediate degradation, dismissal or prosecution in the Criminal Courts, the more especially when, in order to render their own safety absolutely secure, they had only to resolutely deny all cognizance of any payments. The Government was therefore placed in the predicament that it must either give the suspected offenders a promise that, if they spoke the truth, they would be granted immunity from evil consequences, and obtain on this condition such evidence as they could or would give; or refuse to furnish any such guarantee and find itself left powerless and unable to take any action in the presence of what it believed to be a system of widespread and pernicious corruption, and of great and criminal abuse of power. With these alternatives before us, we felt no hesitation in deciding that in the circumstances the preferable, indeed the essentially necessary, course to adopt was to authorize the offer of indemnity to witnesses.’

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"The indemnity which, under the stress of these considerations, was actually offered, by the Inspector-General of Police on behalf of the Government, ran in these terms :—

'Mr. Ommanney is empowered to promise immunity from prosecution to any person giving evidence, and, in cases of payments for promotion or to obtain or avoid transfers, may guarantee immunity from official or departmental punishment or loss, subject to the stipulation that the evidence given is the truth, the whole truth, and nothing but the truth.'

"The indemnity was therefore twofold—it was a promise not only of exoneration from criminal liability, but also of complete freedom from dismissal from office or degradation such as would ordinarily follow admitted corruption. Such an indemnity, it is clear, could only be made good by legislation in this Council or by Parliament. It was beyond the powers of the Bombay Government. The extent to which it should be recognized has been a matter of long and anxious consideration both by the Government of India and the Secretary of State. The conclusion arrived at is that, while the first part of the indemnity may be confirmed by enactment, the second part must be dealt with administratively. My hon'ble friend Mr. Hutchins will presently explain the manner in which this is to be done : it is my task to submit to you the grounds and the scope of the proposed legislation.

"Both in England and in India, the corruption of public functionaries is an offence. An old Statute—5 & 6 Edward VI, c. 16—is directed 'against buying and selling of offices,' among the offices particularly indicated being those which 'in any wise touch or concern the administration or execution of justice, or the receipt, controlment or payment of any of the King's Highness treasure' or revenue. This Act and all the provisions therein contained were extended by 49 George III, c. 126, to 'all offices, commissions, places and employments belonging to or under the appointment or control of the United Company of Merchants of England trading to the East Indies.' By the Act for the better government of India, 21 & 22 Vict., c. 106, s. 64, it is provided that all enactments applicable to the officers and servants of the East India Company in India are to remain applicable to the officers and servants appointed or employed in India after the transfer of the Government of India to the Crown. There can therefore I think be little room for doubt that the earlier Acts to which I have just referred apply to all persons holding public appointments under the Government in India at the present day of the character which these Acts were intended to reach. By these Acts it is provided that 'if any person shall purchase or bargain for the purchase of or

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give or pay any money, fee, gratuity, loan of money, reward or profit, or make or enter into any promise, agreement, covenant, contract, bond or assurance to give or pay any money, fee, gratuity, loan of money, reward or profit, or shall by any way, means or device contract or agree to give or pay any money, fee, gratuity, loan of money, reward or profit, directly or indirectly, for any office, commission, place or employment specified or described in the said Acts, or within the true intent and meaning of the said Acts.....or for any appointment or nomination thereto, or resignation thereof, or for the consent.....or voice.....of any person.....to any such appointment, nomination or resignation,' he shall be guilty of a misdemeanor, and be 'adjudged a disabled person in the law, to all intents and purposes, to have, occupy or enjoy' the office which he had obtained or sought to obtain by such corrupt means. The Penal Code also, as I need scarcely remind the Council, contains provisions whereby the acceptance or obtaining of any gratification by a public servant 'as a motive or reward for inducing by corrupt or illegal means any public servant to do, or to forbear to do, any official act, or in the exercise of his official functions to show favor or disfavor to any person,' and the abetment of any such offence by a public servant, are made punishable by fine and imprisonment.

"This being the state of the law, the Bill which I ask leave to introduce provides that no suit, prosecution or other proceeding shall be commenced or continued against any person in respect of any cause of action or charge arising out of any admission of an offence in any statement made or evidence given before the Crawford Commission, or in any enquiry undertaken by direction of the Governor of Bombay in Council in connection with the proceedings of the said Commission. We thus give legal force to the first part of the indemnity. I trust the Council will agree with me in thinking that, in any legislation which we may sanction in this respect, we should endeavour to give the fullest possible effect to the undertaking into which the Bombay Government has entered with regard to these witnesses. I do not go the length of saying its *ipsissima verba* must be observed: but, broadly, I think we ought to do all that we reasonably can to keep faith with all those who, on the strength of this indemnity, made admissions which have brought them within the grip of the law.

~~"It has been questioned in some quarters whether this Council has power~~  
to pass such a Bill, and whether there is any precedent for such legislation. I think these objections have no real foundation. In the first place, under section 22 of the Indian Councils Act, this Council has power to repeal, amend

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or alter any laws or regulations (including all but certain reserved Acts of Parliament) which were in force in India in 1861; and it has therefore full authority to repeal entirely, and *à fortiori* to modify the operation of, the Acts to which I have referred and which are not among those reserved. With regard to the second point, the power to make laws for all persons, and for all Courts of Justice, and for all places and things within Her Majesty's Indian territories, given by the same section of the Indian Councils Act, includes the power to pass an Act of Indemnity, which is merely a formal and convenient method of exercising the prerogative of pardon. But, if positive precedent be needed, it may be found in the Acts of Parliament relating to corrupt practices at parliamentary and municipal elections, or, to take the latest instance, in the Act passed last year with reference to what is popularly known as the Parnell Commission. It is true that the course which English legislation has usually taken of late has been to offer indemnity before the commencement of the proceedings to witnesses who shall make 'a full and true disclosure touching all the matters in respect of which they are examined' and to make the indemnity depend on the certificate of the Commissioners that the condition has been fulfilled; and it may be regretted that this course was not adopted in the present case. But that which may be lawfully done beforehand is not rendered unlawful by being done afterwards. The validity of the indemnity is not impaired by its being granted *ex post facto*; and it is competent for the Legislature to exercise, instead of delegating, its authority, and to dispense with conditions when the means of fulfilling them are no longer available. The Commission being dissolved, its certificate cannot now be procured, and this Council must take its place. Under these circumstances, I have no hesitation in asking the Council, instead of directing a new enquiry, to extend the benefit of the indemnity to all the witnesses who gave their testimony on the faith of its protection.

"It has not been deemed necessary to provide in the Bill for the validation of the official acts of the disqualified officials. A clause in the Statute of Edward VI enacts that 'all judgments given, and all other act or acts executed or done by any person or persons so offending by authority or colour of the office or deputation which ought to be forfeited or not occupied or not enjoyed by the person so offending, after the said offence by such person so committed or done, and before such person so offending for the same offence should be removed from the exercise, administration and occupation of the said office or deputation, should be, and remain good, and sufficient in law to all intents, constructions and purposes, in such like manner and form as the same would or ought to have remained and been if this Act had never been had or



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made' ; in other words, that the disability of the officer by reason of his having obtained his office by corrupt means shall not, in itself, be sufficient reason for setting aside any of his judicial or other proceedings which are unassailable on other grounds."

The Hon'ble MR. HUTCHINS said :—

"I think I should take this opportunity of explaining the part taken by the Home Department of the Government of India in this most unfortunate matter of the Bombay Māmlatdārs, who, under the influence of a guarantee against loss, have made statements to the effect that they paid money to Mr. Crawford or to others whom they had reason to regard as his agents. And perhaps I should first explain why the Government of India did not at once take the matter into its own hands. It is one which deeply concerns the internal administration of the country and the character and conduct of the officials by whom that administration is carried on. In ordinary circumstances, therefore, it should have been settled by the Government of Bombay in communication with the Government of India rather than with the Secretary of State. The case of Mr. Crawford, however, had to be disposed of by the Secretary of State, and in accordance with the usual course it was reported directly to His Lordship by the Government of Bombay. The cases of certain Māmlatdars had been brought into prominence owing to their having given evidence before the Commission on Mr. Crawford, and the Government of Bombay in their despatch of 15th February, to the Secretary of State, after intimating the suspension of six officials from judicial functions, showed very clearly that they had before them a long and complicated investigation in the conduct of which they ought to be left perfectly free. They said :—

'The officials with whom we have thus dealt were those who, when examined before the Commission, stated that they had paid money in order to obtain appointments to which were annexed magisterial powers or powers of a higher class than those which at the time they gave the bribes they were exercising. Numerous other officials in similar posts gave evidence before the Commission to the effect that they had paid money to Mr. Crawford or his alleged agents, but their cases are more complicated, and in respect of them a decision can only be arrived at after mature deliberation and careful consideration of all the circumstances in each individual instance. The circumstances in the different cases are so complex and various that they can only be appreciated on deliberate consideration of the entire case. The final disposal even of the question of the native officials who have now been suspended from the exercise of magisterial powers must await our general judgment on the case as a whole. The function which this Government is now called on to discharge is in its essence a judicial one, and in our opinion no intermediate

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order should now be passed which would prejudice our final decision, and all incidental questions must remain undecided, save as to provisional and necessary arrangements, until that judgment is arrived at.'

" On the 1st March the Government of Bombay submitted the report of the Commission on Mr. Crawford, together with their own opinion, but meanwhile and subsequently various direct communications passed between the Secretary of State and the Government of Bombay regarding the subordinate officials who had given self-inculpatory evidence. So long as such direct correspondence continued, the Government of India felt that their interference was highly undesirable and might produce awkward, perhaps even mischievous, consequences. It was not until the Secretary of State announced his final decision that they considered themselves free formally to intervene.

" The decision of the Secretary of State was contained in a telegram addressed to the Government of Bombay and dated 7th August, which runs as follows :—

' On further consideration, I am of opinion that the case of Mamlatdars must be governed by the spirit of Statute 49 George III, and consequently the order passed by you must be revised. Mamlatdars and other officers proved to have paid money to obtain their offices, or promotion or other official favours, must be dismissed altogether from Government service, unless their cases fall within the second of the two classes into which incriminated officials are divided by paragraph 2 of your Revenue Despatch of 3rd May, 1889. They must be compensated in money for failure of Government to fulfil a pledge which has been found to be out of the power of the Government to perform. In doubtful cases, Sindekar included, and also as to compensation, consult Viceroy before deciding.'

" In this decision the Government of India substantially concur. Stated shortly, its effect is that those who paid money spontaneously cannot be allowed to remain in the service of the State, and that only those can be retained whose payments were virtually extorted. This Bill will indemnify all against suits and prosecutions, but it will not relieve any who made corrupt payments without any extreme pressure from the other penalties which they have incurred under the Statute 49 Geo. III, c. 126. It is not considered right that the guarantee against official or departmental punishment or loss should be maintained in all cases. The rights and liberties of Her Majesty's subjects must not be left at the mercy of Judges or Magistrates who have corruptly purchased their offices and powers. The dismissed men, however, will be given pecuniary compensation for this partial nonfulfilment of the guarantee.

" To show the action taken since the telegram of the 7th August removed the objection to our formal intervention I cannot do better than read some

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extracts from a letter addressed to the Bombay Government by the Home Department on the 2nd instant :—

‘The last portion of this telegram directed that doubtful cases should be referred to the Government of India, and also the question of the compensation to be given to dismissed officials who had received guarantees of indemnity from the Bombay Government. The case has thus come directly under the cognizance of the Governor General in Council, and it has since been determined by His Excellency in Council, in communication with the Secretary of State and the Government of Bombay, that it is expedient to pass an Act of Indemnity to protect against suits and prosecutions those incriminated officials who stated under guarantee that they paid money to Mr. Crawford. But before such a Bill of Indemnity is introduced it seems desirable that the cases of all those who had publicly inculpated themselves before the Commission should be finally disposed of, such as had brought themselves within the purview of the Statute being absolutely dismissed, and the grounds on which the others might be excused being clearly ascertained. In this view it has become necessary for the Governor General in Council to satisfy himself as to the propriety of the orders passed by the Government of Bombay in every such case, and accordingly my telegrams of the 21st and 22nd desired that His Excellency the Governor in Council would proceed to review his classification of the officials in question, and submit in the first instance the names of those who should unquestionably be removed from office.

‘The Bombay Government’s Despatch of the 3rd May divided the incriminated officials into two classes :—

“the first comprising those \* \* \* \* who \* practically volunteered the payment of bribes to secure their own objects, \* \* \* \* the second including those who only paid under extreme pressure, in order to avoid unmerited degradation, unjust supersession or ruinous transfers, \* \* \* or \* \* \* \* to prevent \* \* \* \* the blasting of their official careers.”

‘Under the terms of the Secretary of State’s telegram of the 7th August those who come under the first category must be dismissed without delay, compensation for the loss of office being given to such as made disclosures under the guarantee offered to them through Mr. Ommanney and who have fulfilled the conditions attached to that guarantee. But those who fall under the second category need not be necessarily removed from office. It will comprise those cases in which payment of money was virtually extorted, and was not such a spontaneous and voluntary act as to bring it beyond doubt within the intention of the Statute. As regards these persons the Government of India will be prepared to declare that they have not incurred the disabilities enacted by the Statute and need not be disturbed in their appointments.

‘Your telegram of the 23rd August reported the names of seven persons as liable to dismissal under the orders of the Secretary of State. \* \* \* \*

‘All these persons gave evidence before the Commission, and their evidence is recorded in the Commissioners’ Report. In regard to them, therefore, the Government of India



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is in a position to pass orders. His Excellency the Governor General in Council has carefully considered the statements made by them at the enquiry, and fully agrees with the Governor in Council that they have incurred the penalty of dismissal provided by the Statute. In the last two instances only has there been any serious attempt to suggest oppressive treatment by Mr. Crawford, and in neither was there anything which even approaches to extortion. The Commissioners held in Vinzé's case that the suggestion was "altogether unfounded," and in Támbe's case that "as to the allegation that he was driven to give a bribe by being transferred and superseded, we find it to be groundless." All these seven persons must accordingly be dismissed as proposed.

'In your telegram of the 25th August, you reported the names of seven other officials as also liable to dismissal. \* \* \*

'All these persons received guarantees, but only two of them \* \* \* gave evidence before the Commission. Regarding the rest the Government of India are not in possession of any evidence on which they can come to a decision as to the category in which they should be classed. As regards Kumthekar, his own statements recorded at page 19 of the evidence before the Commission show conclusively that he gave money willingly to obtain an appointment and confirmation as Mamlatdar, and he must undoubtedly be dismissed. Bivalkar's case was not proceeded with at the enquiry, and his evidence in Drávid's case, printed at page 180 of the record, is not altogether conclusive. The Government of Bombay should proceed to deal with his case, as well as with those of any others who did not appear before the Commission, on such evidence as may be in their hands. Those whom His Excellency in Council may find to have made voluntary payments should be at once dismissed. Those cases in which the payment is held to have been virtually extorted should be reported for the information of the Government of India, together with the grounds on which such conclusion has been arrived at.

\* \* \* \* \*

'Lastly, it will be for the Government of Bombay to propose for the orders of the Governor General in Council the grant of such compensation to the dismissed officials as they think called for. The circumstances of each case should be fully stated so as to enable the Government of India to arrive at a decision.'

"In pursuance of these instructions the Government of Bombay has already removed from the public service the eight officials whom the Government of India directed to be dismissed, and will shortly dispose of others who clearly do not fall under the category of persons who paid under great pressure. It cannot be imputed to the Government of Bombay that in removing these men they are breaking their own guarantee, for their promise has to this extent been overruled by the Secretary of State and the Government of India, and the whole question reduced to the single issue of fact whether the payment can or cannot be regarded as having been extorted. Where this issue is decided against the official his dismissal follows as a necessary consequence, and is the act not of the Bombay

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Government but of the appellate authorities which has enjoined the course of action to be pursued. Now that the line of action has been distinctly laid down and some of the leading cases finally disposed of, there is no reason why the Act of Indemnity should be further delayed. The disposal of some of the cases may occupy a considerable time, and it is possible that in some instances further investigation as to the circumstances which led to the payment may be required.

"My hon'ble friend has so framed his Bill as to indemnify against suits and prosecutions all who have confessed to making corrupt payments. In the matter of such statutory indemnity I agree that it is better not to allow the raising of questions whether the particular individual received a formal guarantee, and, if so, whether he has substantially fulfilled the condition by telling the truth, the whole truth, and nothing but the truth. These considerations, however, will materially affect his claim to pecuniary compensation for loss of office."

His Excellency THE PRESIDENT said :—

"The events which have rendered it necessary for the Government to legislate in reference to this subject are so familiar to the public that it is scarcely necessary to offer a lengthened explanation of them in this room, and I have very little to add to the statements which have been made by my Hon'ble Colleagues. The Bill before the Council has been prepared with the object of enabling the Government of Bombay to redeem, as far as it can be properly allowed to redeem, the pledge which was given on its behalf to certain persons implicated by their own confession during the course of the proceedings connected with the recent prosecution of Mr. Crawford. It is, I think, very desirable that there should be no misunderstanding as to the circumstances under which this guarantee was given. The Bombay Government had satisfied itself that there prevailed within a part of the Presidency a system of widespread corruption, encouraged, or deliberately connived at in his own interest, by an official high in the service of Government. Holding this belief, it determined to strike a blow at the system by proving the guilt of the person who was believed to be mainly responsible for its existence and in inflicting exemplary punishment upon him. The surroundings of the case rendered it highly improbable that the evidence necessary in order to obtain a complete disclosure of the facts would be obtained, unless those who were able to give such evidence received an assurance that they would be protected against the consequences of their own admissions. *Prima facie*, and putting on one side for a moment the purely technical and legal aspects of the matter, I think the case was one in which it was entirely for the Government of Bombay to decide whether such an assurance was or was not indispensable. The object

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aimed at by the institution of these proceedings was one of such vast importance, and the necessity of purging the public service of abuses as flagrant as those of which the existence was suspected was so urgent, that it does not seem to me that any complaint can, as a matter of principle, be made of the Bombay Government merely upon the ground that, in order to secure the conviction of the person whom it regarded, and rightly regarded, if his guilt was to be assumed, as by far the most conspicuous offender, it was content to allow others, whose guilt was, upon this assumption, infinitely less serious, to escape the punishment which they deserved. A promise of indemnity under such circumstances was not, therefore, it seems to me in the least reprehensible. Nor, on the other hand, was such a promise unusual, for cases must be familiar to us all in which such engagements are permitted to be given to lesser criminals in order to obtain the conviction of more serious offenders.

" I think, moreover, that we may go further, and say that the offence which it was desired to condone, considering the circumstances under which it was committed, was, in the case of a large number of the persons to whom the guarantee of indemnity was given, not of so heinous a nature as to justify the view that any grave miscarriage of justice would have been involved by allowing those persons to escape the punishment to which they had rendered themselves liable. It is difficult to read the papers which have been submitted to the Government of India in this connection without coming to the conclusion that the Bombay Government is justified in its contention that a large number, at all events, of the incriminated officials, are to be regarded rather as the victims of extortion than as willing parties to corruption. In regard to this point, I have only to add that the evidence disclosed before the Commission appears to show that there were different degrees of culpability amongst the persons by whom the guarantee of indemnity was accepted, and that it does not seem to be beyond our powers to distinguish between those whose offence may, for the reason which I have just given, be regarded as comparatively venial, and those who are guilty of corruption of a more serious kind.

" To the whole of these persons apparently, without reference to the degree of their guilt, a promise of indemnity was extended on behalf of the Bombay Government. No question can arise as to the *bona fides* of that guarantee, or as to the sense of duty which led the Bombay Government to give it. The question seems to have been regarded by that Government purely as one of policy, and it is evident from the correspondence which has taken place that no doubt ever arose in their mind with regard to the legality of the action which they were taking.

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"It was not until several months after the engagement had been thus entered into, and after the persons to whom it had been given had tendered their evidence, that the legality of the step was called in question. The point is one involving the interpretation of a Statute, and I will not take up the time of the Council in discussing it. It is sufficient to state that it did not occur at the time to the legal advisers of His Excellency the Governor that the Act of Geo. III was applicable to the case with which they were dealing, and I understand that even now, when their attention has been specifically directed to the matter, they are not prepared to admit the applicability of the Statute. Their interpretation of the Statute has, however, not been accepted by the Secretary of State, who has distinctly intimated that, in the opinion of Her Majesty's Government, the guarantee was *ultra vires* and illegal. The reasons alleged by the Bombay Government in support of their view have been carefully examined by our Hon'ble Colleague Mr. Scoble, and he has just stated fully the considerations which have led him, and which have led the Government of India, to concur with the opinion which the Secretary of State has expressed.

"What then is the position of the Bombay Government? Its good faith is not called in question for a moment; the objects with which it acted were objects which must commend themselves to all right-thinking persons, and, as I pointed out just now, the engagement given by them was not in principle abhorrent to our ideas of morality, or in practice unfamiliar to our judicial procedure. It appears to me that, under these circumstances, it is our obvious duty to give the Bombay Government every assistance in our power in order to enable it to redeem an engagement which it has been compelled to break. The faith of the Government of a great Presidency is not lightly pledged, and that pledge once given should be respected in the spirit as well as in the letter. I can conceive nothing more unfortunate than that an impression should be allowed to prevail in the minds of the people of this country that the Government of India, or any portion of it, is prepared to play fast and loose with a solemn engagement deliberately entered into by any person authorised to represent it, or to speak on its behalf, and I believe I am expressing the views of the Government of India, as well as those of the Secretary of State, when I say that it has been our desire in this instance, as far as it was possible to do so, to make good in all essential respects the undertaking on the strength of which these witnesses tendered their evidence to the Commission.

"It appeared, however, to the Secretary of State that there was a point beyond which our desire to redeem the pledge of the Presidential Government ought not to be allowed to carry us, and that that point was reached when the

[ *The President.* ]

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question became one of legislating for the express purpose of retaining in office, and in the discharge of judicial and administrative functions requiring the highest integrity for their proper performance, persons who had not only become legally incapable of serving the State, but who, by their own admission, had shown themselves guilty of deliberate and voluntary corruption, and consequently wanting in the qualities most essential to secure for them the confidence of the public. The Secretary of State believed that if the guarantee given in such cases was to be literally observed, if a law was to be passed with the object of relieving from a statutory disability men whose fault could not be regarded as a venial one, who were not in any sense the victims of extortion, but the willing aiders and abettors of corruption, a greater blow would be struck at the purity of the public service by the condonation of notorious guilt than by a partial departure from the terms of the bargain into which the Government of Bombay had entered. This view is that which the Government of India is ready to adopt. Except in the cases of some of the most gravely implicated officials, the engagement entered into by the Bombay Government will be literally fulfilled. In these cases we believe that, having to choose between a partial cancellation of the guarantee, and the retention in office of men self-convicted as unworthy of public confidence, a partial cancellation of the guarantee is the lesser evil.

"The test which has been adopted in order to determine in each case whether a more or less serious view should be taken of the guilt of the person concerned, has been that to which I referred just now. It is well described in the Despatch from the Bombay Government to the Secretary of State dated May 3rd, which divided the incriminated officials into two classes:—

'the first comprising those—a comparatively small number—who either practically volunteered the payment of bribes to secure their own objects, to gain undue promotion, or to escape the results of previous misconduct, or who on but slight provocation or under slender temptation paid money to purchase favours to which they had no substantial claim; the second including those who only paid under extreme pressure, in order to avoid unmerited degradation, unjust supersession, or transfers ruinous to their purse and destructive as they feared of their health, or who gave money in despair and on repeated applications to prevent, as they believed, the blasting of their official careers.'

"Adopting this distinction we have come to the conclusion that those officials of whom it cannot be said that the acts of corruption to which they have pleaded guilty were committed under compulsion, or pressure, must be suffered to take a part at all events of the consequences of those acts, and ought not to be relieved from the incapacity which the Statute of Geo. III imposes upon all persons guilty of such offences. Even in these cases, however, the Bombay



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[ *The President.* ]

Government will be authorized to make good, as far as may be, the assurance which it had given by the payment of an equitable compensation for loss of office to each official removed from the service. The position of the officials who fall within this category will, therefore, be as follows : The terms of the indemnity which they received were intended to shield them in three respects : it led them to expect, first, exemption from punishment for an indictable offence ; secondly, protection from private suits and prosecutions ; and, thirdly, retention of office in spite of a statutory incapacity. In respect of the first and the second of these engagements, the indemnity will remain intact. The third engagement we are unable to make good, except to the extent of offering to the persons concerned a pecuniary compensation for the injury which their professional prospects will sustain. The dismissal of some of these persons has already been publicly announced by the Government of Bombay.

“ In the case of those whose guilt is proved to be of a more venial kind, we propose, by means of a Resolution of the Government of India, publicly to confirm the engagement of the Presidential Government, and to announce that no steps will be taken to disturb them in the offices which they hold. The Bill now upon the table will protect both classes from the suits and prosecutions to which they have rendered themselves liable.

“ The solution which has been described by my Hon'ble Colleagues will, I trust, meet with the approval of the Council and of the public, not as being in all respects one upon which we can congratulate ourselves, but as being probably the best solution which the conditions of a very delicate and complicated problem permitted. We have endeavoured, as far as the circumstances allowed us, on the one hand to uphold the credit of the Presidential Government, and on the other, to defend the purity of the service, for the defence of which the Government of Bombay, in the face of much hostile criticism, instituted proceedings against one of its highest officials. The two objects were to some extent irreconcilable, and we have, much to our regret, been constrained to require from the Bombay Government in some cases a partial departure from the promises which it had made. I must, in fairness to that Government, insist upon the fact that, so far as the dismissal of these persons is concerned, it has been a reluctant agent, that it has throughout sought to respect in their integrity the pledges which it had given, and that it is only under the orders of a superior authority that it submits to the decision which has been explained to-day. The Secretary of State has already expressed in the strongest terms his admiration for the courage and singleness of purpose with which His Excellency the Governor undertook a task which must have caused him infinite anxiety. That admiration

[ *The President ; Mr. Scoble.* ] [ 19TH SEPTEMBER, 1889. ]

is shared by us, and we desire to go, as far as we can venture to go, in supporting the Government of His Excellency. If, to the extent which I have described, we stop short of a complete confirmation of the steps which it has taken, we do so with regret and out of regard for the very consideration to which he has himself given throughout these occurrences the foremost place—the purity of the public service of India.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE introduced the Bill, and moved, under rule 18 of the Rules for the Conduct of Business, that the Bill be taken into consideration at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 3rd October, 1889.

S. HARVEY JAMES,

*Secretary to the Government of India,*

SIMLA ;

*The 20th September, 1889.* }

*Legislative Department.*

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*Note.*—The Meeting fixed for the 18th September, 1889, was subsequently postponed to the 19th idem.