

THE



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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART V.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA.

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 Vic., Cap. 67.

The Council met at Government House on Tuesday, the 5th April 1870.

PRESENT:

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

Major General the Honourable Sir H. M. DURAND, C.B., K.C.S.I.

The Honourable JOHN STRACHEY.

The Honourable Sir RICHARD TEMPLE, K.C.S.I.

The Honourable J. FITZJAMES STEPHEN, Q.C.

The Honourable GORDON S. FORBES.

The Honourable D. COWIE.

Colonel the Honourable R. STRACHEY, C.S.I.

The Honourable FRANCIS STEUART CHAPMAN.

The Honourable J. R. BULLEN SMITH.

The Honourable F. R. COCKERELL.

PAPER CURRENCY BILL.

The Honourable Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill for the further amendment of Act No. XIX. of 1861.

The Honourable Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Honourable Sir RICHARD TEMPLE then moved that the Report be taken into consideration. He said that the Select Committee had made no alterations in the Bill and

recommended that it should be passed. The Council would recollect that the object of the Bill was two-fold. The first object was to give power to the Government to appoint persons other than the Mint Master to be Head Commissioner of Currency; and the second object was to increase, from four millions to six millions, the amount to be fixed as the legislative limit of circulation. As he had recently on two occasions explained fully the scope and objects and propriety of the Bill, and as the Select Committee had made no alteration, he had no further remarks to make.

The Motion was put and agreed to.

The Honourable Sir RICHARD TEMPLE also moved that the Bill be passed.

The Motion was put and agreed to.

INCOME TAX BILL.

The Honourable Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill for imposing duties on Income and Profits. He said that the Report ran as follows:—

- ‘We have imposed the penalty for false statements in declarations or lists made or delivered under section 18 or 19, by reference to section 177 of the Penal Code.
- ‘We have provided that the instalments in which the tax is payable may be quarterly instead of half-yearly, and we have omitted as useless section 38.
- ‘We have made some verbal alterations, and recommend that the Bill thus altered be passed.’

He had so very recently given the fullest explanation in his power of the reasons for the Bill, and having also stated the scope of its provisions, he would not trouble the Council with any further remarks on the subject.

The Honourable Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Honourable Sir RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Honourable Mr. CHAPMAN—“This is the first time I have experienced any difficulty in voting in this Council.

“I readily admit that members who, like myself, are unconnected with the Executive Government, are allowed the utmost liberty of opinion on all questions that come under consideration affecting the administration of the country, and that we are allowed every opportunity for arriving at an intelligent conclusion on such questions.

“On the present occasion I feel the embarrassment of ignorance.

“On the afternoon of Saturday last we were summoned to hear the Honourable Sir Richard Temple read the lengthy discourse I now hold in my hand; and we are again summoned to-day to pass a law by which a limited but influential section of the community are to be subjected to an income-tax of $3\frac{1}{2}$ th per cent., being $1\frac{1}{8}$ th per cent. more than they now pay, and this at a time of profound peace and ordinary prosperity. Now, my Lord, this is not a light question, and I am conscious that I am no more qualified to sit in judgment on it than any other member of the public. No special information of any kind has been laid before us, and I must say that there is nothing in the Honourable gentleman’s statement calculated to assist us in arriving at a conclusion.

“As far as I can understand the gist of the case is this. Last year an oversanguine estimate of the opium-revenue was made. This year, the Government have thought it advisable to go into the opposite extreme, and to estimate that the revenue for the year we have now entered on will be one million less than the actuals for last year. To make up this deficiency, this additional income-tax is to be imposed. Now, I submit that neither the Government nor any other mortal man can foretell what the opium-revenue will turn out. If there is a surplus, which I understand is not likely, then I have no doubt we shall be told of it with great self-complacency by the Honourable gentleman next year. But if this most precarious source of income fails altogether, or diminishes in a most unexpected manner, I want to know whether the income-tax is to be the only support on which we are to fall back.

“ My Lord, it is some eight months since your Lordship’s Government awoke to the fact that, for years previously, you had been exceeding your income. I do not think it said much for the efficiency of the Financial Department that this chronic deficit should have remained so long undiscovered. But the course adopted by the Government met with general approval. They boldly faced the situation, took the public into their confidence, and made a clean breast of everything. We well know how generously and loyally the confidence thus invited was responded to, and how readily the small section of the community on whom alone the increased income-tax fell accepted the burthen. As for the unfortunate masses, the price of whose salt was raised, they were, and probably still are, in happy ignorance of all that has taken place, or have, perhaps, by this time, consoled themselves with the reflection that it was ‘ their *qismat* ’ or fate.

“ Such being the state of affairs, I think we were entitled to expect the Government would, on this occasion, prove that no effort had been spared to reduce the cost of administration, and to devise means by which the incidence of taxation might be more equitably distributed.

“ The Honourable gentleman’s statement is virtually silent on these two essential points. The reductions amount to half a million in Military, and over a million in Public Works’ expenditure.

“ Now, these reductions are of an obviously arbitrary and wholesale character, and could be effected by a stroke of the pen. What I think we had a right to expect was a clear statement showing the efforts that had been made to revise the expenditure on all the great branches of the administration. But there is a complete silence on this subject.

“ I find, by the tabular statement, that the total expenditure budgeted for is over fifty-five millions. This vast sum is lumped together under thirty heads. I submit it is quite impossible, in the absence of detailed estimates, to arrive at any sort of conclusion as to how much of this expenditure is necessary, and how much is not. For my own part, I entertain the belief very strongly that considerable savings might be effected under almost every head, by thorough and independent revisions. I believe there is an unnecessary amount of highly paid agency employed in supervising our administration, and that, in our efforts at retrenchment, we should begin at the top and not at the bottom.

“ I have formerly stated in the Council my opinion of the value of the control over the expenditure of subordinate Administrations exercised by the Government of India, and I now, on this important occasion, deliberately state that I believe this control to be of an unsatisfactory a character as it well can be. It consists in the Finance office at Calcutta or Simla endeavouring to negative or to reduce every single application for expenditure, and that without any knowledge of what the real requirements of the several Administrations are. It is a system of minute distrustful interference, which engenders a resentful spirit of opposition. In spite of all the efforts of the Department, charges of all kinds continue to increase, while the machinery of Government is impeded by the friction occasioned. I really believe this question of the relation in which the Supreme Government should stand towards their dependencies is the most important and most pressing State problem of the day, and yet my Honourable friend disposes of it in one short paragraph. He says (page 45)—

‘ Having now completed my exposition of the finances, I shall, before concluding, mention that the subject of the Financial relations between the Supreme Government and the several Local Governments is still under the consideration of the Government of India. I have of course formed and recorded my own opinion on the whole subject. But it is really not in my power to say anything regarding the matter on the present occasion, as I cannot tell what decision will be arrived at, or by what time, if formed, it could be carried out.’

“ My Lord, I do not think these remarks will satisfy the expectations of those interested in a solution of this important question.

“ So much for the expenditure. I now turn to the Receipts. And here, one cannot help being at once struck with the entire absence of fertility of resource that has been evinced. With the exception of some trifling alterations in the Tariff, of too comically small a character to refer to, there is literally nothing but this increase of income-tax.

“ My Lord, I believe this tax to be utterly unsuited to the circumstances of this country. I believe the small results obtained from it are quite incommensurate with the hostility it creates on the part of the few who are called upon to pay it, but who, nevertheless, constitute the intelligent classes of the community.

"The one redeeming feature in the tax is, that it falls on the Native traders, who, while they benefit perhaps more than any others from the security of our rule, would not, but for it, contribute at all towards the burthens of the State. Nevertheless, they generally succeed in evading their liability, and, in my opinion, they might be got at in a far more direct and effectual manner. As to the rest of the tax-paying classes, your own servants are almost the only ones who pay the uttermost farthing. I do not say they are entitled to any credit for doing so, because they have no means of escape. But it would surely be a simpler plan, if they are to be taxed at all, to subject them to a percentage-deduction all round. Whether this would be a politic measure it is not for me, as an interested person, to say. Another class who pay the full quota are the fund-holders. I think it is a mistake to tax this description of income. Practically, by doing so, you simply diminish the public credit, and will be obliged to borrow on proportionately less favourable terms. Then, as regards the mercantile and non-official European community, this class already contributes largely toward the Customs-revenue, and I cannot see the justice of specially subjecting our own countrymen to this impost. Lastly, with respect to the great landed proprietors and agricultural classes, I think the simplest plan would be directly to enhance their land-revenue.

"My view of the income-tax, on the whole, is this: It should, I think, be ordinarily maintained at a minimum of one per cent., if only with the object of keeping up the machinery requisite for its assessment and realization. It should be kept in reserve to meet the exigencies of a war or other unforeseen contingencies. I believe the loyalty of the people would induce them readily to pay, under such circumstances, what in ordinary times of peace and prosperity they consider to be an intolerable burthen.

"The conclusion I have arrived at is, that the Government have failed to satisfy us of the necessity for this extreme measure. Nor do I consider we can be satisfied that sufficient efforts towards retrenchment have been made.

"My Lord, I can truly say I have been much perplexed as to the course I should pursue on this occasion. After much anxious thought, I think that, constituted as the Government of this country is, I should not be justified in voting against the Bill. In refraining from doing so, I beg to disclaim all responsibility for a measure the reasons for which I have had no opportunity of making myself acquainted with, and which, on the face of it, is opposed to my own judgment."

The Honourable Mr. BULLEN SMITH—"My Lord, I have to move that, in clause 6, line 1, of the Bill now under consideration, for the words 'six pies per rupee,' there be substituted the words 'one per cent.' In doing so, I need scarcely say that I have no hope of success, presuming, as I must, that the policy which was enunciated to us on Saturday last comes before the Council, not as the personal views of the Honourable Member in charge of the finances, but as the views of your Excellency's Government collectively, and therefore, as such, likely to command a large numerical majority in this Council. It is therefore not with the hope of success that I propose this amendment, but with a view of formally availing myself of the opportunity which your Lordship decided this day's meeting of the Council would afford, for discussing the Budget which the Honourable Member in charge of the finances unfolded to us on Saturday last. I am sure the Council must feel indebted to the Honourable Member for the fulness and lucidity with which he placed before us the finances of the country, past and prospective; and the very recent date to which many of the returns are brought up shows no ordinary amount of care and diligence on the part of the Department over which the Honourable gentleman presides. Not less interesting, I am sure, must have been to the Council the able and weighty parting remarks of His Excellency the Commander-in-Chief, while the exposition of the views of Government in the matter of Public Works for the year now begun, with which your Excellency was good enough to favour us, will, I doubt not, be highly appreciated beyond these walls.

"I wish, my Lord, I could think that the mode by which the Honourable Member in charge of the finances proposes to provide for the service of the country during the current year would prove equally satisfactory, or, what is of more consequence, that the Budget should be found to have been framed on principles which, with reference to the circumstances of the country, would commend themselves as sound and equitable. I cannot hope that the Budget, as it now stands, will be considered to rest on any such good foundation; it will not, I fear, tend to promote confidence in the management of the finances, nor do I think that, in its present form, it merits the approval of this Council or the country at large. To several important items I feel myself constrained to take grave exception, and that new taxation which forms the subject of the Bill now before the Council, by which the Honourable Member has balanced revenue and expenditure and shown a small prospective surplus,

is, in my humble opinion, a measure of almost unexampled severity, and one which, although lying ready to hand, the public had a right to expect would not have been thus freely availed of, except under circumstances of the gravest necessity, and when all other legitimate means of provision had been tried and found insufficient. Very soon after I took my seat in this Council, the Honourable Member brought up, exceptionally, the state of the finances, and then obtained leave to double the income-tax for the remainder of the current year. To that measure I gave a silent vote of acquiescence, believing that there was then a pressing necessity for the impost, to enable the Government to tide well over the next few months, while reductions and savings of various kinds were being planned and carried out. But I believed the extra impost would terminate with the financial year. I did not expect its renewal would be asked at our hands, much less that the Honourable Member could meet this Council, as he did on Saturday last, with the astounding demand that this most unpalatable, and speaking relatively, this most unprofitable, tax should be raised to six pies in the rupee, or about $3\frac{1}{4}$ th per cent.

"In common, my Lord, with almost all who have troubled themselves to think about the matter at all, I have always considered this income-tax unsuitable to this country, and the more I have heard of its working the stronger has this opinion become. From the nature and habits of the people with whom we have to deal, it is a tax which never has brought, and I believe never will bring, into the coffers of Government anything like the amount it ought to bring, if fairly paid by all those who are supposed to come within its scope. It is therefore a tax which falls with peculiar severity on comparatively few, and it is a tax which is attended with much oppression in the rural districts, not only towards people who ought to pay, but to many whom the Government do not expect to contribute towards it. It will be in the recollection of the Council that, when the doubling of this tax, to which I have already alluded, was brought forward, our Honourable colleague, His Highness the Mahárájá of Jaypúr, described it as an odious tax, a description which, I believe, most aptly portrays the feelings of the people of this country towards it. This opinion of the Mahárájá was endorsed by an Honourable Member of your Excellency's Government, Sir Henry Durand, whose long experience in different parts of India ought not, in a matter of this kind, to be lightly esteemed. The Honourable member, Sir Richard Temple, took sharp exception to the opinion expressed by the Mahárájá and Sir Henry Durand, and was at pains to prove that the tax could not be 'odious to the people,' as it is not paid by them, but touches, and is paid by, only a limited class, say one in one thousand.

"Now, accepting the Honourable Member's statement of the incidence of this tax as given in November last, I would ask him with what justice he now comes to this Council and asks that the whole burden of his deficit be thrown upon this comparatively small section of the community, for this is really what the measure amounts to. This may be a convenient way of making up a financial statement, but it appears to me far removed from sound and equitable Finance.

"To us, who sit round this table and to many others, this new taxation, however unpalatable, involves nothing of privation, no decrease of expenditure; it represents probably nothing more than a smaller balance at our credit at the end of the year; but when I look at the extensive range of incomes to which this measure applies, it is impossible not to feel that, in many cases, the operation of this Act will be sadly different. Many of the fixed incomes to which this taxation will apply are, especially in the case of Europeans, notoriously straitened and insufficient, owing to the rapidly increasing cost of residence in this country. On such, the policy of the Honourable gentleman will fall with terrible severity, and will involve, to their recipients, a measure of anxiety, self-denial, and difficulty such as we here can but faintly appreciate. On a late occasion, your Excellency paid a high and well-deserved tribute to the officers who in various capacities carry out the work of administration over the length and breadth of this country. The generous words then spoken by your Lordship have, I doubt not, sent a thrill of pleasure through many a breast; but I would ask the Council to consider what effect the measure to-day before us is likely to produce. I believe, my Lord, that, as these officers have been loyal and zealous and true in the past, so they will be loyal and zealous and true in the future, but the weight of ever-present, ever-pressing, pecuniary anxiety is a burden which few men can long carry with impunity; it may not affect the character of the worker, but I believe it undoubtedly will sooner or later, and probably unknown to himself, materially affect the character of his work. And where, my Lord, I would ask, is this heavy direct taxation to stop? I, for one, distrust some of the figures on the revenue side of the Honourable gentleman's budget, and have correspondingly little faith in the item of surplus or in the prospect of relief at the end of the current year. This income-tax was in my opinion rightly described by one of the Honourable gentleman's

predecessors as a tax which, owing to its unsuitability to this country, ought either to be altogether laid on the shelf, or kept at a minimum, as a mighty engine of reserve, to be used only in the hour of direst need. But when we fined our Finance Minister, in a year of profound peace and amidst circumstances by no means abnormal, putting forth his hand and freely using this powerful weapon to rack-rent, so to speak, a comparatively small section of the population, and thus summarily end his difficulties, it appears to me that we may well be alarmed at the prospect which is in store, should the financial out-turn of the current year resemble that of many of its predecessors, and the fair vision of surplus which has been paraded before us prove altogether delusive.

“Passing on to that paragraph of the Budget which relates to Customs, I find some not very important changes, to which no exception can fairly be taken; but I also find retained the one important item which I think ought to have been eliminated, alike with reference to that sound, and in the end remunerative, policy which would abolish all export-duties, and to the peculiar circumstances of the particular trade. I allude to the export-duty on rice. When dealing with this subject some years ago, Mr. Massey, who was then in charge of the finances of India, gave a very distinct pledge that, if at any time this duty appeared to be operating prejudicially to the trade, Government would not be slow to grant relief, even in the middle of a financial year. It was lately my duty, in another capacity, to urge on the Honourable Member now in charge of the finances, that the time had arrived when he might fairly be called upon to redeem that pledge and let the export go free. I pointed out that the Burma rice-trade had of late been one attended with heavy loss, and urged that a duty which at the time amounted to about six per cent. on the Home selling-value, if not the cause, must at least be considered a material aggravation, of that loss. These views were amply borne out by the report of the Chief Commissioner of Burma and by other competent authorities. As regards Bengal rice, I pointed out that our total export had fallen-off by one-third; that our China trade was gone, and that our export to other markets, which formerly were entirely dependent on Bengal for their supplies, had decreased, in some cases, by more than one-half. I pointed out the extreme severity of the competition to which our rice was now exposed, owing to the rapidly rising production of Saigon and Bangkok, from both of which places the export has enormously increased; and having done this, I hardly know what better case for relief could have been made out, or what better proof could have been offered, that the possible injury to trade, of which Mr. Massey spoke, was now in actual operation. It is with corresponding regret, therefore, that I find all representations have been in vain, and that the Honourable gentleman is determined to retain these export-duties, because he thinks there are signs of amendment, and because he thinks the depression has been caused by causes other than the duties. I must say that I cannot share the Honourable Member's sanguine expectations, and that the grounds of his hope in a bumper-crop in Bengal, such as we may not see again for years, and a famine in a far distant market, which latest accounts report to be already satisfied, are not exactly the grounds on which a prudent Financier would care to build. I view, my Lord, the retention of this rice-duty with sincere regret, and in my humble opinion it is rather an unseemly spectacle to see the Government of a great commercial country thus holding on tenaciously to what is, after all, but a trifling percentage of its income, and insisting upon weighting, up to the last, what I fear must be considered a dying trade.

“Passing next to the all-important question of Opium, I feel bound to say that the paragraphs of the Budget relating to this subject appear to be almost the most satisfactory part of the whole, inasmuch as I find in them evidence that the Government of India appears to be fully and practically alive to the precarious nature of this branch of the revenue, a branch which has of late years materially decreased in value, and one which I very much fear will go on decreasing until, if it does not become altogether extinct, it will at least cease to occupy the chief place it has long held in the fiscal revenues of this country. I know that the estimate of 975 rupees, which the Honourable Member has this year put down for the Bengal drug, has been arrived at with the utmost care, and I am not prepared to say that it will not be obtained, although, for my own part, I should have liked to see it at least twenty-five rupees lower, or rupees 950 per chest. I find that, putting all charges at a minimum, indeed on a basis on which European firms would not care to work, the price in China will have to rule at an average of 470 rupees to return to Calcutta the Honourable gentleman's average of 975 rupees. Now, the latest average quotation from China, received last Saturday, is 513 rupees, with a very weak market and every prospect of further decline. A maximum of forty dollars may appear a good and safe one, and I sincerely trust our calculations may not be disturbed; but when I consider that prices in China have, during last year, declined upwards of 120 dollars, that our prices here have, during the same period,

fallen from an average of 1,349 rupees on 4th April last year, to 1,085 rupees yesterday, and that, notwithstanding these greatly reduced figures, the trade has proved eminently unprofitable and shows no signs of assuming a healthy condition, I confess I am not without apprehension for the future, and cannot look forward with such confidence as I could wish to the maintenance in China of such a figure as will recoup a purchaser here at the Government average of 975 rupees. It seems, my Lord, that, go down as we may in our cost on this side, the fall in China more than keeps pace; and, looking to this steady reduction, it appears impossible to resist the conviction that the India-grown drug has now to compete with China cultivation to an extent far beyond what is generally supposed. This opinion seems generally accepted in China, and I see it reported in a recent paper, that the Government of that country, or at least its high officials, are not maintaining in this matter the merely permissive attitude with which they are generally credited; that on the contrary the high Mandarins find in this Native cultivation a source of great personal gain, are fostering it to the utmost, and declare their intention of frustrating, by increased export-duties, any reduction that may be brought about in the cost of the Bengal drug.

"I am well aware, my Lord, that it is not open to me, as a mere Additional Member of this Council, to make any specific proposal as to ways and means; but I feel how much easier it is to find fault than to amend, to pull down than to build up; and therefore, with your Lordship's permission, I would in a few sentences briefly sketch one legitimate way in which our Finance Member might, in my opinion, have found his way out of his difficulties. It appears to me, my Lord, that while some portion of these difficulties may be attributed to bad management in the past, a further portion to the decline in Opium, and other unforeseen causes, it will not be denied that our late free expenditure on Public Works has had much to do with the present deficit; in a laudable desire to pay as much as possible out of revenue, we have been exposing that revenue to a strain greater than it can bear. I do not know what amount has been spent on Public Works during the last three years, nor can I say how much of this expenditure has been ordinary and how much extraordinary. I believe, however, that several millions have been spent on the new system of barracks for European troops, and that, in accordance with instructions from the late Secretary of State, the whole of this has been debited to revenue. Dealing, as we are, with a revenue not equal to our pressing wants, this is a mode of adjustment which seems to me eminently unfair and unreasonable. If the Department over the practical details of which the Honourable Member on my left (Colonel Strachey) presides does its duty; if the Government of India gets full value for its money, these barracks should be good for many a year to come, and this being so, although they are not strictly speaking reproductive works, I have seen no sufficient reason assigned why their whole cost should fall upon the years of their construction. Looking to the terms upon which this Government can borrow, and to the by no means immoderate amount of its existing debt, I am clear that all works such as these should be paid for by terminable loans, specially contracted for the purpose, the interest of the whole being regularly written-off each year to revenue, together with such proportion of the capital as might be determined upon. True the other mode of adjustment was ordered by the late Secretary of State, but the Honourable Member must have seen long ago that such an order was more than his revenues could bear, and if he had advised your Lordship to represent this strongly to the present Secretary of State, with a request for permission to borrow, in the manner indicated, the sums already taken from revenue and all further requirements, then I think the Honourable gentleman would have done his duty fairly towards the tax-payers of this country, and would have brought before the Government and the public a very different Budget from that of Saturday last.

"In conclusion, I have only to apologise to your Lordship and the Council for taking up so much time. My excuse must be that this is the only opportunity I shall have of putting on record my strong objection to the new taxation which the measure now before the Council proposes to put upon a limited section of the population, and especially on the European community, on whom, as the Honourable the Financial Member of Council knows right well, this taxation will chiefly fall."

The Honourable Mr. Cowie—"MY LORD, a tolerably long experience in this Council enables me to say that what is by courtesy called a discussion on the Budget is no discussion at all, inasmuch as no amount of argument will alter the foregone conclusions which have been arrived at. All that Honourable Members can do is to ventilate their individual opinions, and this I will briefly attempt to do. I must express my unqualified surprise at the poverty of invention which, in the face of an estimated deficit, can find no remedy but two or three turns of the screw of the income-tax. Surely, my Lord, there must be other and preferable roads of taxation open to the Finance Minister. Why is not a tax imposed

on tobacco? In a country where every man, woman, and child smokes, and where the Government has, for generations, been so successful in a monopoly of one drug, it would not be difficult to establish another. Then, there is a succession-tax which I have advocated before, in this place, and which I may call an income-tax on the dead, with the advantage that the dead will not wince under it, as the living are certain to do under the tax we are now considering. I am aware that an attempt at a succession-duty is made in the Court Fees Bill, which establishes a charge of two per cent. on all probates and administrations, but that will be chiefly confined to the Presidency towns and to estates of Europeans.

"Lastly, my Lord, at the risk of being charged with rushing in where a Finance Minister fears to tread, I will mention a much larger field for taxation. I have often wondered for how long the Government of this country is to be bound by a law passed seventy-seven years ago. We see great and various changes at home and in Europe, of laws which were once deemed perpetual, and I ask, why is Lord Cornwallis's settlement to be like the law of the Medes and Persians which cannot be changed? The landholders under that settlement have had the value of their property increased by British protection and the enormous expansion of British commerce, and I suggest that the time is come when they should contribute their fair proportion to the revenue of the country.

"As I have not given notice of any amendment, I cannot now propose one. Had I done so, it would have run in this strain—that the income-tax be fixed at two per cent., and that it be an instruction to the Finance Minister to lose no time in devising another mode of taxation to provide for the alleged deficit in 1870-71. As it is, my Lord, I shall support the Honourable Mr. Bullen Smith's amendment, and I cordially endorse what he has so ably said."

The Honourable Mr. STEPHEN said that he had been called upon to give his opinion on the matter before the Council. He had very little indeed to say. He had heard with much concern the remarks that had fallen from Mr. Chapman. He could not but feel that there was a considerable amount of weight in them. He did not possess, and it was hardly to be expected that he should possess, that knowledge of Finance or the position of the Government, which would enable him to give an opinion much worth having, of the means by which the exigencies of the Government should be provided for. But he did feel that, although, as a consequence of past operations to which he had had nothing to say—although under the circumstances in which we stood—it might be necessary, and he had no doubt it was necessary, on the present occasion, to impose the tax which Sir Richard Temple had suggested, it was a most grievous necessity. He (Mr. STEPHEN) felt sure there was no member of the Government who was not sensible of this, and who would not wish, as soon as any means could be devised of a more satisfactory kind, to do away with this tax.

The Department under his charge was one which had less connection with finances than any other; but if it should be in his power to contribute in any degree to lessen the cost of maintenance of the establishment for the administration of justice he would feel the greatest satisfaction in doing so. He did not wish to enter further on the subject before the Council; but he did not like to give quite a silent vote. He thought that, if the non-official members knew the amount of labour—of real and earnest labour—expended on these figures, the amount of care which the Government had taken to scrutinize the various items of expenditure, and if they could also realize the extreme difficulty of adjusting the financial arrangements of four or five different Governments, and of the entire alteration of principle within the short space of some six or seven months—if they were fully aware of these difficulties, they would feel that great consideration was due to the way in which the Financial Department had done their duty. He did not say that the present Budget was one with which the public ought to rest satisfied. He had already said that Government ought not to rest satisfied. But in introducing a change of principle in the finances of a country like this, of which the finances were far more difficult to regulate than those of any other country, great indulgence was due to the Government when they showed, as they were showing, an honest endeavour, a sincere desire, to institute a state of things that would tend to more satisfactory results in future.

The Honourable Mr. STRACHEY—"The Honourable Messrs. Chapman, Bullen Smith, and Cowie have told the Council—I may say have complained—that no sufficient reason has been given by Sir Richard Temple and the Government for the conclusions that have been arrived at, that this heavy and most unwelcome measure of taxation is really necessary; and they have given us to understand that they are not satisfied that this heavy deficiency which we have to make good could not have been made good by some other unobjectionable means. My Honourable Colleague will doubtless make his own reply to the observations that have

fallen from those Honourable Members, but I should like to say something to show the grounds on which I consider that the propositions made by Sir Richard Temple, and which have been accepted by the Executive Government, ought also to be accepted by the Council and the public. To appreciate the validity of these grounds, I think it is first necessary to come to a definite understanding as to what the causes of this deficit, not only in the present year, but still more what the causes of these constant deficits of past years, have really been. In the first place, I will tell the Council what, in my opinion, have not been the causes. I think that this at any rate is quite clear, that the deficits in which we find ourselves have not arisen from any falling off of any great branch of our national wealth. I think it essential that there should be no misunderstanding on the part of the Council or of the public on this point; for nothing could be more mischievous than an erroneous supposition that our deficits had in any way arisen from the decay of public resources. The figures before the public show that, in the last six years, our gross revenues have increased from £45,000,000, to nearly £53,000,000, in the year which has just expired. The receipts of the year 1869-70 were larger than the receipts of any previous year in the history of India, and this, except to a quite secondary degree, was not owing to the imposition of fresh taxation, but to the fact that every great branch of our revenue, excepting Opium (and I am not at all satisfied that even Opium is an exception) has gone on steadily improving. I will take the five main sources of revenue for the five years preceding the year just terminated. I omit the year 1866-67, because it was a year of eleven months only, and no proper comparison with other years can be made. I find, taking these great sources of revenue (I omit assessed taxes, for this obvious reason, that there have been constant changes in the system under which they have been levied)—Land, Excise, Customs, Salt and Stamps,—that there has been a constant increase of revenue. Thus, the land-revenue, which in 1863-64 was £20,300,000, has risen, in 1869-70, to £21,500,000; in the coming year, 1870-71, it is estimated at £21,000,000; and although these figures at first sight seem to show that a falling-off in the land-revenue is anticipated, in reality there is nothing of the kind; for, as my Honourable Colleague, Sir Richard Temple, has explained, the land-revenue of the past year was swollen to the extent of several hundred thousand pounds by the adjustment of the proceeds of the sale of waste-land. If that had not taken place, the land-revenue of the coming year would have been greater than in any year preceding. Under the head of Excise, the revenue, which was £2,000,000 in 1863-64, has risen in the past year to £2,240,000, and we except to get a little more this year. The customs-revenue, which gave us in 1863-64 £2,300,000, gave us in 1869-70 £2,400,000, although last year was a year of depressed trade, and, in a great part of India, of scarcity and famine. In these figures of the past year we ought also to take into consideration that, in the beginning of the year, reductions in the tariff-value of many of the most important articles of trade were made to the extent of fifteen per cent. If that had not taken place, we should have obtained some £150,000 of additional revenue; and in that case, the customs-revenue of the past year would have been larger than that of any previous year, with the exception of 1868-69, a year of extraordinary prosperity; and even in that year the receipts would have been only about £100,000 more than last year. The revenue from Salt has increased from £5,000,000 six years ago, to £5,800,000 last year; and the revenue derived from Stamps has increased from £1,700,000 in 1863-64, to £2,400,000 last year. The total result under these great branches of revenue was, that our receipts had increased from £31,500,000, to £34,400,000 in five years; and they will, according to the prepared estimates, stand at about the same amount in the coming year. That is, our revenues have grown £3,000,000 in the course of the last five or six years.

“I said that Opium is a possible exception; yet it must not be forgotten that, in the year just closed, we obtained close on £8,000,000. It is true that this was a small return compared with that of the three preceding years, when it varied between £8,900,000 and £8,400,000. But if we go further back than three years ago, £8,000,000, or even £7,000,000, would have been considered a magnificent revenue to be derived from Opium. If we add the receipts from Opium to those derived from the other great branches of revenue to which I have just been referring, the receipts of the year just closed are equal to or exceed the average of the five years preceding. Adding the receipts from Opium to the figures before quoted, the total receipts have increased from £38,350,000 six years ago, to £42,360,000 in the year just past. That is to say, notwithstanding the falling-off in Opium compared with the receipts of the previous three years, there has been a large increase of revenue. The receipts under these great heads have given us, in the year just closed, £4,000,000 more than they gave us five years ago. I repeat, therefore, that this deficit has not been caused by any falling-off in the resources of the country.

“What, then, have been its causes? How has it come to pass that, in this period of peace and prosperity, we find ourselves in this great difficulty, involving the necessity of these unwelcome measures of fresh taxation and of retrenchment? I gave my opinion on that point in the debate which took place in this Council in November last. I then said that the difficulties and uncertainties of Indian Finance were, in my opinion, the temporary accidents of an imperfectly developed financial system. For years past, every year has regularly ended in a deficit, and the obvious reason has been that, although the growth of the revenues has been very great, the growth of expenditure has been still more rapid. Doubtless it is true that expenditure must go on increasing with the improvement of the administration. This is inevitable; but I think it clear that the increase has gone on at a far greater rate than was either right or necessary, and we may find proof that this has been the case, in the fact that, although only some six or seven months have elapsed since we became aware of the serious difficulties of our financial position, we have been able to reduce our estimated expenditure for 1870-71 by £1,500,000 below that of the past year, and by £2,200,000 below that of 1868-69. And the main reason of this great increase of expenditure was this, that we really did not know that we were expending more than we could afford. At the beginning of every past year, the Financial Department has laid before the Financial Member of Government an estimate of income and expenditure, which the actual experience of the year has proved to be totally untrustworthy; and the truth is that for some years past, we have all, Government and the public alike, been living in a sort of fool’s paradise, accepting these imaginary figures as facts, and congratulating one another on the excellent state of the exchequer. The result has been perfectly natural. Although we have had a constantly increasing revenue, we have fallen into serious financial difficulties, and have now to bear the burden of fresh taxation and the other evils which financial difficulties always bring. Anyone not acquainted with the facts might suppose, from the remarks of the Honourable Messrs. Chapman and Bullen Smith, that the Government had been doing nothing to put matters on a more satisfactory footing, and that we had been drifting on from bad to worse, without any effort to put things straight. Nothing could be more unjust than a supposition of that sort. It is now only six or seven months ago since the Government told the public, in the most unreserved manner, everything that we could tell regarding the real condition of our affairs. I am sure the Council will agree with me when I say that at any rate we did our best to conceal nothing. The figures now before the Council show that, if the measures then begun had not been taken, we should have ended the year just closed with a deficit of more than £2,000,000. But the result of the measures taken then, and the measures taken since my Honourable Colleague resumed charge of the finances in the beginning of November last, is this, that we hope to reduce expenditure in the coming year by £1,500,000 below that of the year just completed, and by £2,200,000 below that of the year previous; and, even if no addition were now to be made to the income-tax imposed in November last, we should, in the coming year, levy more than a million of additional taxation above that which was imposed a year ago. We have, therefore, in the course of the last few months, taken measures which will have the effect, in the coming year, of improving the balance between income and expenditure by more than £2,500,000.

“Under these circumstances, I must say that I think it most unjust to talk as if the Government had been doing nothing. It is unquestionable that the measures already taken have not been enough. If the income-tax had remained at two per cent.—and, in spite of the amendment proposed by the Honourable Mr. Bullen Smith, I do not suppose there is anybody in India who really expected that it would be possible to reduce it below that amount in the coming year—we should still have had a deficit of about £750,000 to make good. It will be doubtless said—indeed it has been said to-day—that, after the experience of the past, what confidence is it possible to place on these estimates of the future now laid before the Council? If the public had the opportunities which we have had, of knowing the labour which has been bestowed in the framing of these estimates and the system under which they have been framed, I believe that they would agree that the estimates of the present year are really as good estimates as it is possible for the Government to make. Thanks to the untiring industry and ability of Mr. Chapman, the Financial Secretary to the Government, to which I have more than once borne public testimony, these estimates have been framed in a totally different manner from anything attempted before. The new arrangements under which they have been prepared were referred to by your Excellency in the discussion which took place in November last; and having been inaugurated under your Excellency’s orders, when the Government was at Simla last year, I can say, from what I know of them personally, that I believe they deserve the confidence of the public.

“For my part, I am quite satisfied that an additional sum of about £750,000 must, by some means, be provided for the service of the coming year. The question is, how is this sum to be provided? It has been suggested that it should be obtained by a further reduction of expenditure. It has been said, why should we not diminish, by another £750,000, the grants for Public Works? I think that the Council and the public ought clearly to understand what has been done already in this direction. The actual charges of the Public Works Department, ordinary, for 1868-69 were £6,270,000; the Budget-grant for 1869-70 was £5,800,000. Owing to the reduction made last September, the actual expenditure in the past year was diminished to £5,000,000. In the coming year it is proposed to reduce this further to £3,998,000; that is, to some £1,800,000 below last year, and £2,270,000 below the actual charges of 1868-69. It must be remembered that the whole system of the Department of Public Works in this country has been constituted on the assumption that very large sums of money have every year to be expended, and it is impossible suddenly to make great and fundamental changes in the organization of a Department like this, without involving ourselves in enormous loss. The result even of the reductions already made, although doubtless considerable relief has been given by the transfer of establishments to extraordinary works provided for by loans, has been that the existing establishments are largely in excess of those really required for constructing the works in progress. Works are going on from one end of the country to the other, the stoppage of which is impossible without incurring excessive loss; there can be no question that great loss has been incurred already, and for confirmation of this statement we need not go further than Calcutta itself. It is impossible to go out of our houses without seeing huge half-finished buildings remaining untouched for want of funds. When large sums of money are thus locked up, the cost to which the country has been put is for the time completely thrown away. In some provinces, in the coming year, almost the whole of the grants will be devoted simply to the maintenance of existing works, and throughout India nearly the whole expenditure will be for the maintenance of existing works, or for the completion of works already commenced; for although many of the works on which expenditure is being incurred are called new, in reality the actual new works are very few indeed. The proportion of the grants expended on works commenced for the first time will be something extremely small.

“I am quite convinced that to cut down Public Works expenditure still further would be nothing short of ruinous, and the question rather is, whether it has not been cut down too low already.

“The Honourable Mr. Chapman has stated that he believes there is hardly any branch in the public service in which further reductions might not be made. All I can say in reply is, that we have been doing our best to make reductions in every branch of the service, and considering that we commenced only six or seven months ago, we have been on the whole more successful than we had a right to expect. Every possible, every reasonable, reduction will go on; and in the estimate of the coming year, credit has been taken for all the reductions we are certain of making; a great many others may probably be made, but we have no right to enter in the estimates anything of which we are not reasonably certain. The conclusion seems to me inevitable that £750,000 is required, and that this sum cannot be gained in the coming year by further reduction of expenditure.

“Now what means are at our disposal for raising this amount? The Honourable Mr. Bullen Smith has told us that we ought to borrow: it is true that he did not tell us in so many words that we ought to borrow to meet deficiencies in the ordinary expenditure of the year, but he told us that we ought to borrow to meet the cost of the great military works in progress. If there is a question that has been debated *ad nauseam*, both in this Council and outside it, and at Home, it is whether these military works ought or ought not to be paid for out of borrowed money. I do not think it necessary to take up the time of the Council in going over this question again. The conclusion was deliberately arrived at two years ago by the Government of India and the Secretary of State—and I think I may say that it was distinctly approved by Parliament—that it is not right to borrow for these works; that there was no more reason to call these particular works extraordinary, and to treat them exceptionally and borrow money on account of them, than it would be to borrow money for any other necessary works required for the increasing wants of the administration. I think, for my part, that the conclusion was perfectly and undoubtedly right; and that there were no grounds for calling these works extraordinary, more than many other works we could mention. I think, therefore, that my Honourable friend's proposition amounts to this, that we are to borrow money to cover a deficit in the ordinary expenditure of the year.

“As to the propriety of borrowing money under such circumstances, I will, with your Excellency's permission, read to the Council two paragraphs of a despatch which we sent to the Secretary of State only a few months ago, and which was published to the world last October. The Government there wrote:—

‘We are satisfied that there is only one course which we can properly follow. We must no longer continue to make good the deficit of each succeeding year by adding to the public debt. And we must determine, whatever be the difficulty of the task, that there shall, henceforth, be no room for doubt that, in time of peace, our income will always be in excess of our ordinary expenditure.

‘This, which, under all circumstances, would be the duty of our Government, is, at the present time, a duty of great and unusual urgency. Our ordinary debt is now more than ninety millions. Our revenues are already liable for meeting the guaranteed interest on a railway capital of nearly one hundred millions.* We are embarking on a system of borrowing for the construction of irrigation-works and railways, under the direct management of the Government, which will add, every year, very large sums to our liabilities. We confidently expect that this system, by means of which we hope to cover India with a net-work of railways and canals, will add immensely to the national wealth, and, ultimately, to the resources of the Government. But, whatever precautions we may take to secure economy of construction and the good management of these works, and to ensure the early development of the revenues which they will yield, a long time must necessarily elapse, during which the payment of the interest on the loans contracted for these great undertakings will form a heavy, and probably, an increasing, burden on the resources of the State.

‘Under such circumstances, nothing could be more injurious to our credit in the money-markets of the world, than that we should borrow money to supply our ordinary expenditure in time of peace.’

“After such a statement as that, published seven months ago as the deliberate determination of the Government, how could we now tell the public that we have abandoned that principle, and that we now propose to borrow money to make good a deficit incurred in our ordinary expenditure in a time of peace? It seems to me that to do this is absolutely out of the question. The practice of borrowing money to meet financial difficulties such as those in which we now find ourselves is one utterly subversive of any proper financial system. If we had any great calamity to deal with, the case would have been very different; but, as I have endeavoured to show, we have a magnificent and constantly growing revenue, and an expenditure which the reductions already made prove to be, to a great extent, under the command of Government. How can any one say, under such circumstances, that we ought to borrow to meet this deficiency?

“Then, a suggestion has been made by the Honourable Mr. Cowie: he has told us that we ought to put on a succession-duty and a tobacco-tax. I will not attempt to discuss at present the propriety of these recommendations; they have been repeatedly made on previous occasions; they have been discussed by the Local Governments and authorities throughout India; and about two years ago the Government published in the *Gazette of India* (unless I am very much mistaken in my recollection) the reasons which led the Government to believe that the imposition of these taxes would be inexpedient; and, if I remember rightly, the Secretary of State, having considered all that was to be said on both sides of the question, expressed his concurrence in the conclusions at which the Government had arrived. But whatever the real merits of these suggestions may be, this is plain, that to adopt these suggestions now would give us no immediate and present relief. We want £750,000 for the service of the year just commenced; and this is certain, that no succession-duty and no tobacco-tax which we can now set agoing will give us the relief we require. Then, I ask, what means remain to us to get this £750,000? My Honourable Colleague, Sir Richard Temple's answer has been that the only way in which we can meet this immediate deficit is by making an addition to the income-tax. I am sure that no one can regret more than I regret this necessity; but I believe it to be the only measure that is at this moment practicable. I agree with very much that the Honourable Mr. Chapman said as to the injustice involved in levying this tax at the high rate proposed. I may say, for myself, that if I did not honestly believe that we have every right to expect that this heavy burden will really be only a temporary one and that we may reasonably hope that it will not last beyond the present year, I should

* Including the capital not yet paid up.

be disposed to say that nothing should induce us to give our consent to it. My Honourable Colleague said that he could make no promise whatever regarding the duration of the tax, and he was quite right to say so; for, on such a point, it is impossible for the Member in charge of the Finances to make any promise. No one can tell what the future may bring forth, and what new circumstances may arise to make the fulfilment of promises impossible. But I think that, if peace and tranquillity be maintained and the country remain as prosperous as now, the public will have a right to expect that this tax shall not continue at the high rate which is now proposed. I have always maintained the expediency of maintaining the income-tax at a low rate of assessment as a permanent part of our financial system. I have said before now in this Council that I believe the wise course to adopt is, while we enjoy peace and tranquillity, to bring our income-tax machinery into the best possible order; to learn by experience how it can be worked with the least amount of objection; and, while we accustom the people to the tax, to keep the rate at which it is levied so low that it shall not be felt as a seriously heavy burden. We shall then at any time be able, in case an emergency should arise requiring an immediate increase in our resources, to add one or two millions a year to our income merely by raising the rate of income-tax by one or two or three per cent.; but if, in time of peace and prosperity, we increase the income-tax to an excessive amount, I agree with the Honourable Mr. Chapman that we shall have shut ourselves off from almost the only certain and immediate source of financial relief to which we can have recourse in times of danger or serious difficulty.

“When, in 1860, Mr. Wilson proposed the imposition of an income-tax at the rate of four per cent., the country we all know was suffering from one of the most tremendous convulsions that any country ever went through. At the present time, not only are we suffering from no such convulsion, but, with the possible exception of Opium, our revenues are in a flourishing condition.

“I have said what I believe to be the real cause of our deficits. I have said that I believe them to be the consequences of the inefficient financial system of past years, under which, almost without being conscious of the fact, we have gone on year after year spending immense sums of money beyond our income. The justification of the income-tax now proposed is, that it is required for a purpose which, although very emergent, is one only of temporary necessity. It is required to tide over a temporary difficulty which we see no immediately available means of meeting in any other way that would not be still more objectionable. But it may be asked, what security is there that the deficit will be temporary, and that this heavy burden will continue for a short time only? I answer that, supposing of course no great emergency or danger arises which we cannot now foresee, we have every right to expect that our revenues will go on becoming more productive, and we know, also—and I am sure that your Excellency will unhesitatingly accept the responsibility of this—that a stop will be put on the constantly increasing expenditure which has been going on for many years past.

“We have every right to anticipate, in the coming year, improved revenue and decreased expenditure. But suppose these anticipations are not fulfilled, what security have we then for the future? I answer that this question has already come under the serious consideration of the Government, and it is the duty of the Government to adopt measures which shall increase the resources or diminish the responsibility of the Imperial Government to an extent sufficient to remove all our financial difficulties. How this is to be done it is not for me to say; but if not done, the Financial Department of this Government will deserve everything bad that the public can say of it.

“As to the general principles which alone will lead us to financial security, I, for my part, have for years past had no doubt. On more than one occasion I have publicly declared what I believe on this point, and there can be no impropriety if I declare it once more now; but I beg the Council to understand that neither the Government nor any member of the Government except myself is in any way responsible for anything that I am now about to say. I give my personal opinions on this point for what they may be worth, and I hope no one will attribute to them an authority to which they make no pretension. It has been my firm conviction for years past that we shall never put our finances into order by the imposition of a heavy income tax, by a succession-duty, by a tobacco-tax, or by any other form of imperial taxation which has ever been suggested. I am convinced that it is idle to suppose that financial safety can be obtained by any such means. I have already acknowledged the immense improvement made in our accounts and the preparation of our estimates, but it is clear that we want something more. No improvement of accounts and estimates, however necessary and important in themselves, will ever enable us to remedy, by themselves,

the present unsatisfactory condition of our finances. I am satisfied that there is only one remedy possible, and I believe its efficacy to be certain. If any one wishes to know what that remedy is, let him read the debates which took place only a few weeks ago in the Council of the Governor of Madras on the Bills to provide funds for expenditure on objects of local public utility and improvement.

"I can hardly express too strongly my sense of the value of the service that the Government of Madras has rendered to India by the introduction of these measures, and by the declarations which His Excellency the Governor and the most eminent members of his Government have made on the policy on which those measures are founded. The Madras Government has set an example, which I sincerely hope may be followed in all parts of India.

"In the course of the debate on the income-tax, which took place on the 19th of November last, I took occasion to say that there were two reforms, without which it appeared to me our financial position would never be placed on a satisfactory basis. The first was the necessity of carrying out the principle that imperial revenues should not be expended for purely local purposes; that local roads, schools, works of sanitary improvement, and so forth, must be provided for from local sources and not from the income of the State. I said that the neglect of this principle had been, at the same time, a fruitful cause of our financial difficulties and a constant obstacle to the real progress of the country, and that it was a principle, the persistent neglect of which would lead the finances of the richest country in the world to inevitable ruin.

"The Madras Government has virtually admitted the principle thus asserted. It has admitted that the time is coming when local funds, not imperial revenues, should make provision for local roads, schools, sanitary works, dispensaries, hospitals, minor civil buildings and the like. The Honourable Mr. Arbuthnot, who introduced these measures, did me the honour to quote the passage to which I have just referred, and he declared it to be in accordance with the principles on which the proposals of the Madras Government were based. I am convinced that it is only by carrying out this principle that we shall succeed in placing our finances in a satisfactory state. But there is one condition without which success will be impossible, and without which the attempt to transfer local burdens from imperial to local resources will do more harm than good. This is the condition to which the Honourable Mr. Chapman just now adverted in another form, and to which I also adverted in the debate which took place in November last. I then urged the necessity of giving to the Local Governments, with whom the actual administration of nearly the whole of India rests, and without whose co-operation no real economy is possible, some real incentives for maintaining an equilibrium between income and expenditure, and for placing a check on the constantly increasing demands on the general revenue of the empire. These demands, as I said before, are frequently of such a character that they cannot be refused, and the only way in which they can be met is by transferring to the Local Governments the responsibility of meeting them, and giving to those Governments the means of meeting them. Until every Local Government has a certain income of its own, out of which (subject of course to such general rules and such general control on the part of the Imperial Government as may be necessary) it has to provide for a certain portion of the public expenditure, I feel satisfied that our finances will never be put into a satisfactory condition. These two matters, the transfer of certain charges from Imperial to Local Funds, and the giving to the Local Governments powers and responsibilities which they do not now possess, are essentially connected. If we deal with them properly and together, we shall find the way out of our present difficulties; but if we attempt simply to throw off imperial burdens by transferring them from Imperial to Local Funds, we shall meet with every kind of opposition. If, on the other hand, while we obtain relief for the imperial revenues, we give to the Local Governments that reasonable control over their own expenditure, and free them from that vexatious interference in matters of detail, of which they now complain so bitterly and reasonably, I believe that we shall receive cordial co-operation in the serious work before us. My conviction is, that our financial system requires radical and fundamental changes, and I believe that one inevitable and most desirable result of such changes will be, that we shall then obtain, as a natural consequence, a more equitable distribution of the public burdens. We shall then, I hope, find that certain great classes, which now almost entirely escape both imperial and local taxation, will be made to contribute towards meeting charges which now press heavily on the revenues of the empire, and which ought to be provided for from local resources. I confess (to give only one example of what I mean) that I cannot think without feelings of extreme dissatisfaction that the classes on whose industry and intelligence the progress of the country mainly depends, should now be forced to pay a heavy income-tax and customs-duties for the purpose of making roads,

and schools in the interior of Bengal, and that they should thus be forced to relieve the landlords of the richest and least heavily taxed province in India from the necessity of discharging their duties towards the poorer classes of their countrymen. It would be easy to give other illustrations to show the injustice which follows from our existing system, under which we strive to meet, from imperial revenues, the local wants of this vast country."

Major General the Honourable Sir HENRY DURAND—"The Honourable Mr. Bullen Smith has done me the honour to refer to what fell from me in the course of the debate in November last. On that occasion, when my Honourable Colleague, Sir Richard Temple, imposed an augmented income-tax and an augmented salt-tax, I said that I concurred in the imposition of such an income-tax for reasons which I specified. I said that, when the income-tax was first imposed, it was distinctly stated that it was a purely temporary tax; that when it was reimposed by Mr. Laing it was regarded as a purely temporary tax; and finally, in fulfilment of that pledge, Sir Charles Trevelyan removed it as a tax not fit for ordinary purposes—not suited to anything but a State emergency. At the same time I entirely agreed with His Highness the Mahārājā of Jaypūr—and I do not retract one syllable of what I then said—that the income-tax as a tax was, as the Mahārājā said, odious to the country, unsuited to the people, and very poor in its return. Therefore, I entirely concurred with the Mahārājā of Jaypūr, and, at the same time that I felt in that manner towards the tax and towards its incidence, nevertheless I felt bound to support it, simply because misfortunes had fallen suddenly on us, with a rapidity and force for which no one was prepared, and it was very difficult to meet such an emergency on the spur of the moment in a manner more adapted to my own views. Therefore, as a case of pure necessity, I supported the measure. Well, on the present occasion I have very much the same reasons for supporting what is now done. Although I feel that, in the course of six months, there has been added to taxation an amount about equal to what Mr. Wilson imposed, and that, in adding that taxation in the short space of six months, it adds very much to the burdens of those on whom it falls; still I cannot but bear in mind that when a financial policy is in full swing it is extremely difficult for the Financial Member suddenly to alter and as suddenly to reverse it. The fact is that, when the gear of financial machinery is in work, it is no easy job at once to alter it. And therefore, on the present occasion, for the same reasons for which I then supported the tax—although I am as hostile as ever to it, for I see no reason in the course of six months to change my opinion that it is only properly a war-tax and should be reserved for very great emergencies—I feel bound to support the imposition of an addition to the income-tax. In saying this, I feel that a very great deal has fallen from the Honourable Messrs. Bullen Smith, Cowie and Chapman, with which I entirely concur. Of course, in matters of Finance we act very much as in matters of war. I suppose no two generals would fight a battle in the same way, and possibly no two men will deal with a financial difficulty in the same way. I dare say most of us have our own theories; still, considering the circumstances and difficulties which surround our Honourable Colleague in this instance, and also bearing in mind how very moderate is the amount which he calculates on as a surplus, how he has limited the taxation which he imposes, which is barely absolutely enough to cover the deficit, the anxiety he has evinced not to impose more than what is absolutely necessary is beyond dispute.

"There are many points on which I might touch in connection with this small surplus; but I do not, for some reasons, feel quite sure that I shall be wise in going much further than what I have done. Although His Excellency the president particularly invited the members of his Council, charged with the supervision of the different Departments, to give public expression to the financial state and prospects of their Departments, and although I myself should have no hesitation in doing so with respect to the particular Department in my charge; yet, whilst admitting fully the power of the Governor General to suspend the Rules of this Council, I cannot forget that the Rules of the Council are in no way changed, and that there is a very stringent restraint put on the debates and discussions that may take place in this Council. Even if I could use the suspension of the Rules in this way as a direct justification for what I might say with respect to the financial affairs of the Army and the reductions and retrenchments contemplated, I cannot but feel that there are other matters which put a still further restraint on the Military Member of the Council. At the present moment, questions of Army reduction and Army changes have gone before Parliament under the direction of Her Majesty's Secretary of State for War. The Council will see that it is perfectly impossible, in a matter so complex and so vast as the organization of the Army, that there should be perfect unanimity on the changes which can be effected with a view to retrenchment without touching efficiency; also, bearing in mind the differences which arise from regarding the subject from such

distinct points of view as may occur to the mind of the Secretary of State for War, charged with imperial considerations, and having enormous responsibilities laid on him; bearing in mind how great is the responsibility, and that, comparatively, we are in a position of subordination, I think that all I can do is to assure you how great the labour has been, how earnest, how searching, and how uncompromising, with a view to secure the utmost amount of Army reduction compatible with perfect efficiency and general security. I could, without difficulty, make an exposition which would not only bear out our earnest endeavours to carry out the commands of the Secretary of State with a view to reduction, but also prove that my Honourable Colleague, when he has put before the country and the public this estimate, in which he comes forward with an extremely moderate surplus and touches very little on what may possibly accrue from military economies, how moderate and cautious has been the financial estimate put before the Council. I shall abstain from following that course for reasons I have already stated. Many of these communications are at present before Her Majesty's Government up to the present moment; as to several of those communications we have received nothing in the shape of the views of Her Majesty's Government. We are therefore in a state of suspense, but we are perfectly ready to carry out whatever is directed, consistent with the safety and political security of the country and the thorough efficiency of the whole Army.

"I should have felt inclined, in connection with various matters which my Honourable friend Mr. Strachey has brought forward, to continue to tax the time of the Council with something more in the way of observations, but with regard to many of these subjects we are not in a position to deal with them. For instance, Sir R. Alcock's treaty, which affects our Opium, is at present before Her Majesty's Government, and it would be hazardous here to express opinions. In fact, I am not quite sure that the Legislative Council is either the proper or the best place to discuss questions touching the constitution of the Government and the organization of the Army. I feel an extreme delicacy in accepting the privilege offered by your Excellency. I think such delicate questions are more securely considered in the Executive Council, and that the rules laid down for the Legislative Council do not favour general disquisitions. But of this I am sure that there will be no want, on the part of the Government, not only to endeavour in every branch, in every Department, to strive to secure reforms and economy at the earliest possible date, but also to repose the most entire confidence in every subordinate Government, and in every subordinate Administration, that they will heartily and cordially assist in the labours of the Supreme Government.

"There is just one point I should like to touch upon, because it is in connection with what I on a previous occasion mentioned. Sir Richard Temple in his statement notices that the desire has been often expressed that there should be promulgated, annually, correct and detailed accounts of loans for reproductive works and of their application. I somewhat regret that such an account cannot accompany this statement. I look on it as of great importance; for when we are spending large sums on Railways, Canals, and every form of reproductive works, great care is necessary that we should enjoy the confidence of the money-market by showing that the money is not only expended, but that it is expended on reproductive works. I am anxious to see that account in full detail, showing works past, works present, the amounts expended, and the returns on the works; so that there shall be a clear and definite conception as to what works are really reproductive works, what are partially reproductive, and what are only nominally so. Now I see no difference, in a large class of these works, between ordinary and extraordinary; therefore, I am extremely anxious that that account should come forth as early, and in details as full, as possible, so that the data should be before capitalists, and they could, if they took the trouble, be perfectly certain what we were doing, and on what security they were lending their money."

The Honourable SIR RICHARD TEMPLE—"I shall follow the example of my Honourable Colleague who has just spoken (Sir H. Durand), and ask the Council to excuse me when I decline to enter into the many questions of policy which have found place in this debate, but which are fitted for the Executive rather than the Legislative Council. I shall confine myself to the Income Tax Bill which is now before the Legislative Council, and shall advert to the salient points made by the speakers who have preceded me in reference thereto, following the order of the speeches.

"The first speaker, the Honourable Mr. F. S. Chapman, said that having found the last Opium-estimate to fail, we now run to the opposite extreme in framing the present estimate of Bengal Opium. This can only mean that the present estimate is too low, and that the unduly low estimate of Opium is one cause of the necessity for imposing the income-tax. Since uttering that opinion the Honourable gentleman will have heard the opinion of the

speaker who followed him, Mr. Bullen Smith. Now, from his position in the mercantile world, Mr. Bullen Smith is an authority on this subject; and he has told us that this estimate is not at all too low, and is, if anything, not quite low enough. Would that I could think that this estimate will prove much too low! While we are debating here, advices are coming in from China, which show that the decline anticipated by that estimate is but too surely continuing, and is likely to continue further. With such a prospect before us, our only consolation is that we have duly provided for such a decline. The prices may still go on falling month by month; they may drop gradually from Rs. 1,100 or 1,090 a chest to Rs. 860, and still our estimate may be realized. I appeal to every merchant who knows this trade as to whether the contingency of such a fall is not sufficiently probable to require to be looked at in the face, and to be considered in the estimate. And I venture to deny my Honourable friend's allegation that I have rushed into any extreme in the estimate of Bengal Opium. Further, as the Honourable gentleman comes from Bombay, he must be aware that I have still greater uncertainties to provide for in respect to the Malwa or Bombay Opium. Did I not prove in my financial statement that the proverbial uncertainty of Opium culminates in the doubts which surround the Opium-trade of Bombay? Have we not in 1868-69 received little when we should have received much; and in 1869-70 much when we should have received less? Do not the fluctuations of that trade occur in inverse ratio to all probabilities? But looking to the circumstances of that trade, to the unfavourable accounts of the crops—accounts received on the eve of the Budget—I say that if any prediction about Malwa Opium could be justified, it would be this, that there will be some decline.

“Then the Honourable gentleman remarked that it was not creditable to the Government of India that deficits should have remained so long undiscovered. But did they remain undiscovered? As the Honourable gentleman was not in this Council when my Budget of 1869 was produced, I may remind him that the whole burden of that statement, from beginning to end, was the existence of deficit extending over several years. I exhausted many forms of explanation in demonstrating the deficits. In the year which was drawing to its close when I made that statement, the actual deficit turned out greater than the deficit estimated, by reason of special circumstances which could not be known till the year had actually closed. But did the excess of deficit remain long undiscovered? Not at all. It was known within a few weeks, as fast as the information could come by post or telegraph. Here, again, I must deny my Honourable friend's allegation of deficits remaining undiscovered.

“The Honourable gentleman then alludes to insufficiency in the reductions of expenditure. Of course, he cannot but acknowledge the reductions I show in the Army and the Public Works. But he allows no credit for these reductions, which he says are effected by a stroke of the pen! Why, I cannot conceive an expression more inapplicable than this to military reductions. Does he think that such an interest as the military defence of the Empire can be thus lightly dealt with? Does he not know that, of all possible reductions, military reductions are those which demand the gravest thought, the most laborious consideration on the part of the Government? By that remark he does scant justice to the efforts we have made in order to obtain even that modicum of financial result which has now been displayed. And, as regards Public Works does he suppose that it has cost us no effort, no sacrifice, to stop so many important works, to check so many material improvements?

“Then the Honourable gentleman says that I ought to have shown more reductions in the Civil Departments, or to have explained what is intended in this direction. But surely he must know, being himself connected with one of the Local Governments, that, as regards civil reductions, the Local Governments have to be consulted; that the civil establishments are bound up with a variety of local interests; that such reductions in detail are most difficult for the Supreme Government to arrange. And what form would he wish large reduction to take? Would he wish to reduce the salaries of the Civil Service, or to discharge subordinate establishments, or to abolish important appointments, or to close some courts, or to cheapen prison-discipline, or to retard education? But this Council well knows how difficult it is to accomplish much reduction in these respects at a period when public opinion demands administrative reform and general improvement, and is, in effect, constantly requiring us to increase, rather than to reduce, expenditure. Despite of efforts for reduction in these Departments, every practical man is aware that this cannot be effected speedily. In one respect only is considerable retrenchment immediately practicable, namely Police, and here we do show real reduction. Besides, I explained in my financial statement on Saturday last that, by various civil reductions, we had gained nearly a quarter of a million. And that this has

been effected always with trouble, and sometimes at the risk of causing discontent in many branches of the service, is too well known to require description here.

“But if the Honourable gentleman implies, and I think he does imply, that the Government have been remiss in this matter, then I must remind him of what he said in this very speech, and in a recent speech on the 12th of March last, in which he dwelt on what he deemed the vexatious efforts of the Financial Department to cut down existing expenditure, and to refuse all new and proposed expenditure. I really cannot understand how we are to be simultaneously chargeable with remissness and with over-zeal.”

“As regards the income-tax, the Honourable gentleman thinks that the traders might be got at in a more direct manner. But what manner can be more direct than an income-tax, he does not indicate, nor can I imagine. He says it would be simpler to tax officials by subjecting them at once to deduction of salary. But this is precisely the method which is already adopted. He considers it unjust to subject our own countrymen specially to this impost. But they are *not* specially subjected; they are so subjected in common with their Native fellow-subjects. He remarks that the income-tax-paying classes already contribute a proportionably large part of the customs-revenue; but of this the other classes also contribute a fair and full share. As regards the agricultural classes, he thinks that it would be better, instead of assessing them to income-tax, to raise their land-revenue at once. I heard this with surprise; how can a member of this Council, so experienced as my Honourable friend, speak of such a thing as the enhancing of land-revenue in the teeth of settlement-engagements to the contrary?”

“I am told that the income-tax is odious, unjust, unequal and unproductive. As to its odiousness I need not offer remark, as each member of this Council can judge for himself. But as to its injustice or inequality, I say that, on the contrary, despite imperfections, there is an element of justice and equality in the measure which forms one of its principal recommendations. As to its alleged unproductiveness, I need only observe that, since 1860, it has (including license-tax) first and last brought nearly eleven millions sterling into our exchequer up to date, and that two millions are expected from it in the current year. I should rather say that it has proved a productive tax.”

“I am not sure whether I understood rightly the Honourable gentleman's remarks about the income-tax affecting the value of the public securities. But this much I may remark, that in India, the funds usually do rise after the introduction of an income-tax, because people see that the Government is resolved to pay its way, and possesses the power to carry out that resolution. After the first income-tax in 1860, the funds rose; they stood higher than ever after the income-tax of 1869, and at this moment they are again rising.”

“I pass on to the speech of the Honourable Mr. Bullen Smith, and I must acknowledge the just and considerate manner in which he alluded to the labours and services of the Financial Department.”

“He reminds us that, in November last, he voted for an income-tax on account of the proved necessity which existed. That, indeed, is the precise ground on which I ask him to vote for it now. I gather, however, that he thinks that the necessity hardly exists now or has become mitigated. But in fact it still exists, and that, too, in an aggravated form. The Opium difficulty, great in November last, is greater still now. The trade, depressed in November, is still depressed. The reductions of expenditure, commenced before November to avert deficit, have been carried on to an extent fully equal to our anticipations; and still there would be deficit without fresh income-tax. In short, the continued existence of necessity is indisputable.”

“The Honourable gentleman mentions the expectation he had that the extra impost would end with 1869-70, and his astonishment at the new demand now made. I have observed it stated, too, beyond the walls of this Chamber that some assurance in some sort had been given by Government to the effect that the additional tax would be soon discontinued. I am not aware of any such assurance. And certainly I gave none such, either directly or indirectly, either in March or in November 1869.”

“He urges that the income-tax should be a measure of last resort in the direst need. I know that this view is often held, but I cannot give my adhesion to it. On the contrary, I say that, so long as the rate is moderate, the tax is an excellent one; that many other of our taxes are far more objectionable. I admit that the rate now proposed is high, but I prefer even this to several other taxes which have been proposed; and I should regard some of these latter as a last resource, to be adopted after the high income-tax had been tried and found

insufficient. In other words, I distinctly prefer, in the first instance at least, the high income-tax to those alternative proposals.

“The Honourable gentleman, accepting a definition of mine to the effect that the income-tax falls on certain classes only, asks, why should these be selected to bear the burden? I answer, because these classes are the richest and the best able to bear the burden.

“Then, he draws a touching picture of the straits to which the middle classes are driven in order to make both ends meet, and asks, how can they bear income-tax? But it does not occur to him to consider that, if the middle classes do not pay, some other classes must. Then, what classes? why, manifestly, the poorer classes. But their straits are still more severe: their difficulties in making both ends meet must be greater still. And they deserve pity even more than the classes above them. And yet it is to the poorer classes that my Honourable friend’s policy would transfer the burden.

“The Honourable gentleman reminds me very justly of the representations made to me some months ago by the Chamber of Commerce regarding the falling-off of the rice-trade, and the apparent loss of the China rice-trade, as reasons for remitting the export-duties, which duties, nevertheless, I propose to retain. Since that time, however, the trade has improved generally, and an exportation to China has begun again. He adds that such duties do not afford a foundation whereon a financier should build. But I did not lay this foundation, nor have I built upon it. I found these duties existing, indeed of long standing. Is there a sufficient case for remitting them at a time of difficulty? This is the practical question, apart from all other considerations. Herein the main point is whether these duties are *per se* injuring the trade. I say that, as yet, looking to the statistics of exportation, to the circumstances of the trade, to the range of prices, to the state of foreign markets, no such injury is proved to have been caused by the duties. Whenever such injury can be shown, I shall be prepared to reconsider the question.

“But as he objects to the income-tax, the Honourable gentleman feels that he must propose something in its stead; and what is it that he proposes? Why, he proposes to defray the expenditure for building barracks by means of terminable loans. This, of course, is nothing more than staving-off difficulties by borrowing, and borrowing too in an objectionable form. Simple borrowing is perhaps too hollow an expedient to be even proposed. So these loans are to be terminable. But what if we were unable to discharge them on their termination? The difficulty would only recur in a more aggravated form. Besides, the Government of India last year distinctly declared that it would not borrow for barracks; it gave reasons for that declaration; it added that this declaration was made with the approval of Her Majesty’s Government. Are we so dead to all sense of consistency as within one year to recede from declarations so announced? My Honourable friend thinks that this generation should not pay for the barracks. And why not? Are we not enjoying the benefits of works paid for by those who went before us? Will not those who come after us have plenty of works to pay for without paying for our works? Indeed, it is but too easy to foresee that, at the rate at which improvement is going on, they will have as much as or more than they can do, to pay for their own works. The best principle is that each generation should, as fully as possible, pay for what it orders.

“I next advert to the speech of the Honourable Mr. Cowie. He says that I ought to have proposed either a tobacco-tax or a succession-duty. He can hardly be unaware that both those taxes have been repeatedly considered. And indeed they are still worthy of consideration. He has doubtless seen the voluminous printed papers on these subjects. But, as regards a succession-tax, it would be wholly insufficient to meet the difficulty. Indeed, its amount would be so precarious that I could not have estimated any figure worth estimating, for the first year especially. A tobacco-tax would yield something considerable no doubt. But then, to substitute this for an income-tax in this emergency would be to shift the burden from the rich to the poor. Do not the poor pay enough already in this country? Here indeed lies the gist of the controversy. Here is the emergency, here is the burden. How is the burden to be borne? I say it should be borne by the rich and the comparatively well-to-do. Those who oppose me say that it should be borne by the poorer classes. This Council can judge between us. We have not so much fear of injustice being done to those classes who have wealth and intelligence—who, at the very least, possess means greater than those of the average population—who can always make their voices heard through a Free Press, both English and vernacular—who are to some extent represented in this Council. They are capable of guarding their just interests. But it is for the Government of India to watch over the interests of all classes, high and low, and, among other things, to see that

undue burdens do not fall on those poorer and humbler classes who will submit like dumb animals, as it were, and who cannot make themselves heard.

“The Honourable gentleman then urges that we might obtain more revenue by revising the permanent settlement of Bengal. What more can I say than that this would involve a breach of faith.

“I shall now advert to the speech of my Honourable Colleague Mr. Strachey. He animadverted on the discrepancies which have often occurred in India between estimates and actuals, and appeared to think that one cause of extravagance has been the too favourable construction put from time to time on the facts and figures by the Financial Department. I am not myself prepared to admit this altogether as regards the past; and certainly, as regards the present and immediately preceding periods, my Department has never ceased to urge on all parties concerned the necessity of reducing expenditure. At all events, whatever we may or may not have told you in the past, we tell you now that, however difficult it may be to reduce expenditure, yet this must positively be effected, unless deficits and corresponding fiscal burdens are to be perpetuated. For two years and more, one main reason of the doubt as to whether we were in surplus or in deficit, arose from the controversy as to whether barracks and other items of Public Works expenditure should or should not be counted as extraordinary expenditure. As to the other discrepancies between actuals and estimates, on which my Honourable Colleague animadverted, I say that the only way of judging how far the Financial Department has or has not been free from blame is to refer to the items of discrepancy in detail, and to the causes of the same, as set forth year by year in the financial statements made to this Council. I should not at all shrink from such reference, knowing well that the differences are all more or less susceptible of explanation. It has more than once been pointed out in this Council that such discrepancies occur in other countries besides India; perhaps in all countries. Yet sure I am that in no country can the difficulties of correctly estimating be greater or indeed so great as in India. Not only have we to deal with a variety of Local Governments within the country itself, but we have to amalgamate the accounts kept in two countries, England and India. A large portion of the business and of the expenditure is conducted, not in this country itself, but thousands of miles away. Again, with a scattered heterogeneous empire like this, often with much perplexity of interests and with many departmental complications, and, above all, with frequent reforms or changes of system, peculiar cases run on pending over lengthened periods, and, on being determined, involve financial adjustments; and it is these sort of adjustments which often disturb our accounts and baffle our estimates. The many changes of late years have doubtless been beneficial, but they have had this drawback, that they have rendered the task of keeping our books and accounts straight extraordinarily difficult. That our officers and establishments have made no mistakes, is more than I could venture to say. But I affirm that, if successes be balanced against failures, and merits against demerits, the result will be found not otherwise than creditable to our Department. I do not say that my Honourable Colleague meant to infer that our financial officers had failed in their works. I hope indeed that he did not. For, if any such inference were to be implied or intended, no greater injustice could be done to a laborious and deserving body of public servants.

“My Honourable Colleague mentioned various things which the Financial Department ought to, and doubtless would, succeed in managing; adding that, if we were to fail therein, we should deserve all the evil that could be spoken of us. Now, I will make no absolute promise of any kind, either as to remission of burdens, or reduction of expenditure, or avoidance of discrepancies. I will promise nothing save this, that whatever financial trouble may arise, its causes and circumstances shall in due course be explicitly explained to this Council. I will not even express any hope, save this one, that whatever may betide, my Department will be found to have done its duty.

“My Honourable Colleague has stated his view to-day as to the financial advantage to be derived from changes in the financial relations between the Supreme and the Local Governments. I have already asked the Council to excuse me when I decline to enter into this subject, as I deprecate the discussion in this Council of matters which are under the consideration of the Executive Government. I shall only now remark that, as regards financial benefit, after obtaining greater financial independence than at present, the Local Governments would have no golden road open to them which is not open to them already, or which is not open now to the Supreme Government. The Local Governments, even with greater freedom than heretofore, could not materially improve the finances, except in one or all of three ways; either they must reduce expenditure, or they must improve existing sources of revenue, or else they must impose new taxation. There are no other ways save these. Now, as regards

reduction of expenditure. I presume that they effect this already as well as they can; certainly as much as they would if they were more left to themselves. As regards the improvement of existing revenue, they doubtless do their duty herein already to the best of their ability. As regards additional taxation, they certainly might do more in that way. But would such additional imposts prove to be always desirable? Would the people always escape from injury and exaction?

"I share the belief entertained by many authorities, that the lower classes have already got nearly as much taxation as they can properly bear. If the concession of financial freedom to the Local Governments were to lead to any considerable increase of local taxation, I should not regard the change of system as an unmixed good. I say this without at all prejudging the pending question as to a greater degree of 'localization' or 'decentralization' of Finance. I quite appreciate the excellence of the example recently set by the Madras Government in regard to municipal administration in the interior of the country; but we must not forget that, among other things, an example has been set of adding to taxation.

"The last speech which I have to notice is that of my Honourable Colleague, Sir Henry Durand. And here I must admit the fair consideration which, though consistently and conscientiously differing with me on some points of financial policy, he has shown towards my Department, and the just appreciation he has evinced of the difficulties with which I have been, and still am, surrounded.

"And now, to conclude. I have been charged with poverty of invention in not having invented anything save an income-tax wherewith to avert deficit. I have heard the same phrase used several times by Honourable Members in the course of debate to-day. If this charge were at all correct, I might have hoped that my poverty would be enriched by fertility of suggestion from others. But, after all, what has actually been suggested? Why, a tobacco-tax, which would shift the burden from the rich to the poor; a succession-duty, which would yield nothing like enough to meet the difficulty; a re-arrangement of the perpetual settlement, which would involve a breach of faith; and a borrowing, which would render extrication from our difficulties almost impossible! Reviewing the alternative courses suggested, I certainly cling to my preference for the course we have actually adopted. As for borrowing, whether the loans be temporary or permanent, terminable or interminable, I regard that as the poorest of all resources. Compared with that, an income-tax is rich indeed! In short, the main points of our Finance are plain and simple enough, and no recondite devices are required for hitting them. One or other of three things is open to us, in order to preserve our Finance from pressing emergency. Either we may reduce our expenditure, or we may enhance our taxation, or we may borrow. Now, speaking in behalf of the Government of India, I say that, of the three, we prefer the first, namely, reduction of expenditure, and will primarily attempt that; but failing that, we are sometimes driven to try the other, namely, additional taxation. But the third, namely, borrowing for the ordinary service of Government and for ordinary expenditure, we will *never* resort to so long as any reasonable resource may remain to us.

"I regret to find so many objections urged against our measures; but rather than multiply arguments in their defence, I would point to the stern facts as disclosed by the figures of the Budget. Those who differ with us may not to-day be convinced by our arguments; but I trust that they will ultimately be convinced, when they consider that after deficits of several successive years—after improving the finance of the year just closed to the extent of a million and a half by our own direct action; after further improving, by similar action, the finance of the year now commencing to a further extent of a million and a half; after a total improvement of full three millions; after all these results obtained by increased income and reduced expenditure—we were still threatened with a deficit of one million and a third, which deficit we are forced to cover by additional income-tax."

His Excellency THE PRESIDENT—"I am not surprised at the various criticisms that have been made, and made with great ability and force, on the proposals which have been submitted to this Council.

"It is very easy to find fault with the imposition of any new or additional tax, but it is not so easy, in the face of great financial difficulty, to propose an efficient substitute; and in considering this question, we must bear in mind the fact that the finances of this great Empire, with which we are trying to deal, and which we are endeavouring to put upon a sound basis, have been, and are up to this moment, in an unsatisfactory condition. It has been repeatedly stated—but a great truth can hardly be stated too often—that from the year 1866

"With regard to the Army, I have been informed by the Military Department that, if the proposals which we had made had been carried out, the Military Estimate would stand this year at a sum of something like £12,093,037 instead of the item which we have at present, namely, £12,480,000.

"As Sir Henry Durand showed, it is impossible for us to enter into a discussion of this matter at this moment; but it is fair that the public should know that we believe that a sum less by £450,000 than the sum we shall have to pay this year would have been sufficient for the military service of the Empire.

"We are not without hope that, though certain of our proposals may be objected to, a financial result somewhat similar to that which I have mentioned may be ultimately obtained, but it can have little or no effect on the Budget of 1870-71.

"Enormous difficulties beset the question. I find no fault with the Home Government for the course they have taken; they have had other considerations to bear in mind beyond those of Indian financial convenience or necessity.

"Any alteration of the European Force in India necessitates, to a certain extent, changes in the organisation of the British Army, and therefore it is quite right that the Home Government should view the matter as a whole; and though we may not agree with them in many of the conclusions at which they have arrived, it must always take time to discuss any particular line of action with regard to the European Army in this country.

"We believe that we are right, and we hope that at no very distant time the principle upon which we have made our proposals with regard to the European Army will be accepted, and that the only thing which will be left for discussion between us and the authorities of the War Office will be questions of detail.

"I now wish to refer very briefly to a few of the objections that have been taken to the financial proposals of the Government.

"They have been replied to at considerable length by two or three of my Honourable Colleagues, but it is my duty also to refer to them.

"Two or three of my colleagues appear to entertain the opinion that there are means by which the finances of the country could be improved other than those which have been adopted by the Government. I believe that there are other means, and very good means too, but I do not think that any of those particular measures which have been suggested would tend to the desired effect.

"One Honourable Member proposes that, in the matter of salaries and allowances, we should begin from the top instead of the bottom. If this means a general reduction in the pay and allowances of the Indian servants of the Crown, then I say that I am not at present in favour of such a measure.

"But I am not aware that any satisfactory proposals have been made for the decrease of salaries, great or small.

"With regard to the reduction of appointments, I may say that almost the only reductions in this respect which have taken place are those of the Police, and now that this matter has been referred to, I should like to make one or two remarks, as very erroneous ideas seem to be generally prevalent with regard to the action of Government in this matter.

"A great deal of correspondence took place between the Government of India and the Local Governments on the subject of Police reduction. We made many suggestions as to how these necessary reductions might best be effected. These suggestions were much objected to in some instances by several Local Governments. We told them, however, that they need not consider themselves bound specially to carry out the suggestions made, and that if the same financial results could be obtained in a manner more consonant with their views, and which did not interfere with the efficiency of the Force, we should be glad to consider them.

"The consequence was, that a reduction even greater than what we proposed in those various communications with the Local Governments took place.

"But what has been the personal effect of reduction in this branch of the service?

"We hear most lamentable stories of the great hardships which have been committed, and how numerous officials of long standing in the service have been sent adrift without any provision whatever.

"Let us ascertain the real facts of the case as regards the Police.

"All the reductions to which I have referred as having been carried out by the Local Governments affect altogether only 61 officers.

"Of this number, 39 have already been re-employed in various ways, 7 are waiting for re-employment, and the remainder, that is the difference between 46 and 61, have not been recommended for re-employment. So that, in the matter of reduction of appointments, the Government of India cannot be accused of any harshness in the proceedings that have been taken in respect to the Police. Nearly every efficient officer has already been provided for.

"It has been said by one or two of my colleagues in the debate, that, in their opinion, the Native traders could be got at in an easier manner than by the income-tax.

"It is very easy to say—'get at the Native trader'; but I am not sure that any proposals have been made for taxing this particular class in a fairer way than by an income-tax.

"It is thought that the Native traders can be reached by putting on direct taxes on articles of prime necessity, or by license-duties, and adopting other financial measures of a like kind; but I believe firmly, that if you want to make the Native trader pay his fair share of taxation, you can do it as well through a well regulated and rigidly assessed income-tax as in any other way.

"I am perfectly aware of the great objections that are urged to taxing trades and professions; they are objections that are incident to an income-tax in every country, the main objection being that the rogue escapes while the honest man pays. I am afraid the evil must always remain, and can only be mitigated by careful administration.

"Then, a proposal has been made directly to enhance the land-revenue. I cannot conceive any recommendation that could be made of greater magnitude than this.

"An Honourable Member said that the proprietors of the Province of Bengal under permanent settlement do not pay their fair share of taxation.

"That may be the case, but I own that, though it is, in my opinion, quite proper to tax the land for local purposes—for roads, education, police, and the like—I believe no Administration would venture, in respect of imperial wants, to interfere with those settlements, as between the Government and the landed proprietors and occupiers, which have been in existence for so many years, have been the subject of such solemn contracts, and to which the faith and honour of the Government are pledged; and therefore I do say that, though there are additional charges which it is fair to put upon the land, yet any attempt to disregard the settlement and agreement with the occupiers and proprietors, for the purpose of increasing imperial resources, is a proposal which, in my opinion, ought not to be contemplated.

"The Honourable Mr. Bullen Smith made some very interesting remarks on these matters, and I must say that, though I disagree with the criticisms and the strictures which he uttered on the conduct of the Government with regard to the Budget, I listened to his speech with great pleasure, for I never heard opinions expressed with greater clearness, frankness, and moderation.

"With regard to taking the duty off shawls, that is, financially speaking, a very small matter.

"The reason why this duty has been removed this year is owing to certain negotiations and treaty-engagements we have come to with the Mahárájá of Cashmere.

"As the duty on shawls has been levied hitherto, it operated as a transit duty on the Cashmere fabric. We thought, therefore, after all we urged on our feudatory States in India on this subject, that we had no possible pretext for maintaining any duty, either in the shape of customs or excise, which could in the least degree partake of this character.

"There was an additional reason for taking this course. The Mahárájá of Cashmere has, with the greatest liberality, complied with our request for the opening up of a free trade between India and those territories which lie to the north of the Cashmere State; and so completely has he agreed to our proposals, that, during the ensuing year, we shall be able to appoint Commissioners to lay out the trade route throughout the whole of these wide districts, from our border in Lahoul to the border of Turkistán.

"That route will be placed under the absolute control of Commissioners, one of whom will be appointed by the British Government, and one by the Mahárájá of Cashmere.

"He has disclaimed all intention of charging any duty on goods that travel by the demarcated road, and he has done more than that in consenting to the framing of such rules as will provide a certainty of peace and safety to all traders who pass along that route.

"The present Ruler of the Yarkand State has despatched an Envoy to the Government here; he is now in Calcutta. He has, on the part of his Government, expressed himself entirely satisfied with this arrangement, and promises that he will second our efforts as far as possible.

“He came with a particular request that a British officer should be deputed to visit the Ataligh Gházi during the ensuing summer, in order that these matters might be discussed, with a view to ascertaining how the trade between India and Turkistán might be improved.

“Therefore, this matter with regard to shawls, though it is of little financial importance, is, as you will see from what I have stated, of some political and commercial significance.

“With regard to the duty on the export of grain, all I can say is that, in considering these matters of finance, when we are asked to relieve suffering interests, we must first consider what the general financial necessities of the Empire are. If we look in other directions we may find duties even more objectionable than those we levy on home-grown corn. I believe the burdens we place on our own sugar, by the operation of the internal customs-laws, are less easily defended than even the export duty on rice. All I can say is, that I hope the day is not far distant when export-duties will cease to be a portion of our financial resources, for nothing can be more objectionable, either in principle or in practice, than these duties; and I believe that they throw a much heavier burden upon trade than they bring in to Government.

“The only other proposal made as a substitute for the income-tax is to lay a tax on tobacco.

“Now, it is quite true that, in many civilised countries, tobacco is considered to be a very proper object for taxation; but I must remind the Council that tobacco in India is really an absolute necessary of life, and that, if you put a tax upon the production of tobacco, you tax the two great necessities of life in this country, namely, salt and tobacco: I am not prepared, even in the present state of our finances, to advocate the imposition of a burden upon such a prime necessary of life as that is. Well, then, let us see how our present system of taxation falls on the people at large. Taking the Land-revenue.—It is quite true that the land-revenue is paid to a great extent by proprietors, and it is very difficult to say what portion of it comes out of the pockets of the occupier; but we must all admit that a very large portion of it does come out of the pockets of the poor cultivator. I never will admit that the land-revenue is anything but a rent belonging to the State. Whether it be a tax, or whether it be a rate, the greater portion of it is paid by the poorer class.

“In our Customs, one article under that head, namely, the duty on cotton piece goods, amounts to something like £800,000. That must be paid almost entirely by the poorer classes. The duty on salt, namely, £6,000,000, is also paid almost entirely by the masses. Seeing that these great items of revenue, too, are paid by the general population of the country, I own that I do not consider we should be justified, looking to that great fact, in placing, unless some very great national exigency required, any very heavy additional charge which would fall upon almost every individual throughout the country.

“These, then, are the principal objections to the recommendations that have been made from various quarters; and it really comes to this, that, as we are situated at present, unless some great radical change takes place in our whole financial system, there is no other resource, except the income-tax, of which we can avail ourselves at the present moment for extricating ourselves from the difficulties in which we have been placed: therefore, when my Honourable friend the Financial Member is twitted for want of invention and poverty of resource, I can only say that, after every possible proposition was discussed most fully in Council, we came to the conclusion that, however some of them may be fair subjects for consideration in the future, in the present crisis it would be impossible to adopt any of them with any hope of bringing in that amount to the Exchequer, during the present year, which is necessary to create anything like an equilibrium in our finances.

“If I am asked whether I think the main principles of future Budgets should be the same as the present, I would frankly confess that I do not think so, and I agree with Mr. Strachey that there is great room for improvement.

“With that view the Council will observe that we have increased the income-tax for the present year only, and if it is found necessary to continue it, either in a decreased form or in its present amount, it will involve the necessity of further legislation; but I believe that, if we ever hope to place our Imperial Finance upon a real sound and final basis, we shall have to take a course somewhat different from that which we have been hitherto following.

“In considering these great questions, we ought to endeavour to see whether we may not gradually and carefully import such principles into our Finance as will lay the foundation at some future day—probably when we are all past and gone—of some such system of

Local Finance as is adopted in every other civilised country in the world, and which I am not disinclined to believe has been practised from time to time in some of the districts in India.

“It would be very improper, and perhaps impossible, for me to say more upon this subject. Every man must be aware of the insufficiency of provision that is made in India for the great objects of education, for providing internal communications, for sanitation, for all those civil buildings which are necessary for the decent administration of justice and for many other public purposes. Everybody must be aware of this, and that, if it is attempted to carry out all these great objects, increased taxation is necessary. I believe that increased taxation would be much more palatable if it were levied under the control and sanction of local authorities, and if the people who paid it were made sensible, by daily experience, of the benefits they derived from such taxation. All I can say is, that if greater economy can be obtained in this way—if provision for increasing wants can be made; if its result should be to give greater and more freedom of action to Local Governments and District Authorities, and to relieve the Supreme Government of a large amount of work which I believe it can but inadequately perform—the question is well worthy of the consideration of every Administration and every Local Government, and will, I believe, when it comes to be understood, receive the general support of the country.”

The Honourable Mr. BULLEN SMITH'S amendment was put and negatived.

The Honourable SIR RICHARD TEMPLE then moved that the Bill as amended by the Select Committee be passed.

The Motion was put and agreed to.

CUSTOMS' DUTIES BILL.

The Honourable SIR RICHARD TEMPLE presented the Report of the Select Committee on the Bill to amend the law relating to Customs' Duties. He said that the object of this Bill was to remove a number of petty articles from the Tariff. They were—Blacking, Carpets, Chemicals, China and Japan ware, Coach-builder's materials, Felt, Gold-leaf (Europe), Grass-cloth, Horns, Jute-manufactures, Lac, Marble (wrought, other than statuary), Shawls, Tallow and Grease, Telegraph-stores, Trunks and Boxes. The whole of these items at present brought in a very small amount of duty, and their retention in the Tariff seemed undesirable. The Statement of Objects and Reasons appended to the Bill was as follows:—

- ‘The sixteen articles which this Bill proposes to strike out of Schedule A either bring in a very small amount of duty, or are subject to duty under other heads in the Tariff. When they are subject to duty under other heads of the Tariff, it is not intended to remit that duty but only to simplify the Tariff by cutting out superfluous heads.
- ‘Galvanized iron is much more valuable than other iron. The Bill separates it from other iron in the Tariff.
- ‘Beads and False Pearls are not always made of glass. Hence they have been removed from the head of Glass.
- ‘Matches to a considerable value are imported into India, and seem a fit article for the payment of import-duty.
- ‘The export-duty on shawls acts as a transit-duty on Cashmere shawls exported from India. The Government of India are urging Native States to remit their transit-duties; hence it is desirable to strike this article out of the Tariff. Shawls manufactured in British India will get the benefit of the exemption. The amount involved is small.’

The Honourable SIR RICHARD TEMPLE applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Honourable SIR RICHARD TEMPLE then moved that the Report of the Select Committee be taken into consideration. He said that it ran thus:—

- ‘We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations to which the Bill to amend the law relating to Customs' Duties was referred, have the honour to report that we have considered the Bill.
- ‘We have saved Act No. XX. of 1867, which provides for the transshipment, without duty, of goods arriving in steamers at Calcutta, Madras, and Bombay.
- ‘We have made no other changes, and recommend that the Bill thus amended be passed.’

The Motion was put and agreed to.

The Honourable Sir RICHARD TEMPLE also moved that the Bill as amended be passed.
The Motion was put and agreed to.

NORTHERN INDIA CANAL AND DRAINAGE BILL.

Colonel the Honourable R. STRACHEY presented a preliminary Report of the Select Committee on the Bill to regulate the construction and maintenance of Public Works for Irrigation, Navigation, and Drainage. He said that the Bill had not been taken into consideration in detail, but a revised draft had been put before the Select Committee, which they considered should be sent to the Local Governments and Administrations before the Bill was taken into consideration.

OBSOLETE ENACTMENTS BILL.

The Honourable Mr. STEPHEN moved that the Report of the Select Committee on the Bill for the repeal of certain obsolete enactments be taken into consideration.

The Motion was put and agreed to.

The Honourable Mr. COCKERELL moved the following amendment :—

That the following enactment be inserted in the Schedule, Part II :—

XVI. of 1838.	Bombay—Judiciary.	In section five the words "without further costs of stamps to the parties except on new exhibits if any such should be allowed to be filed," and from and including the words "but if an appeal" to the end of the section.
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He said that the amendment was rendered expedient by a provision in the Court Fees' Act which had rendered the enactment obsolete.

The Honourable Mr. STEPHEN expressed his approval of the amendment.

The Motion was put and agreed to.

The Honourable Mr. STEPHEN then moved that the Bill as amended be passed.

The Motion was put and agreed to.

HINDÚ WILLS BILL.

The Honourable Mr. STEPHEN moved that the Report of the Select Committee on the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns be taken into consideration. He said—"I am extremely sorry that the course of business renders it necessary that I should address the Council at this late hour. The Bill was under the consideration of the Council in the month of January last. On that occasion the Council determined, on the motion of the Honourable Mr. Cockerell, that the Bill should be referred back to the Select Committee for six weeks, in order that they should consider the propriety of extending its provisions to the Lower Provinces of Bengal. The Committee having presented their Report on that reference, it now becomes my duty to move that it be taken into consideration.

"The position of affairs in respect to this Bill is somewhat peculiar. I consider it necessary, on account of the great importance of the subject, and because the Bill relates to the Lower Provinces, where we are now sitting, to bring this matter to the notice of the Council before it leaves Calcutta for Simla. But for this circumstance, I should have thought it my duty to postpone the consideration of the Bill; for the Council has not as yet an absolutely complete set of materials upon which to form their opinion as to the question at issue. The matter was referred for consideration to the Lieutenant Governor of Bengal who took steps for procuring the opinions of persons acquainted with the feelings of the people in such matters, and issued a circular on the subject. Several of the answers to that circular have not yet been received, and the Bengal Government itself has not yet expressed an opinion. On the other hand, an opposition to which I do not wish to attach too much weight, but which I am far from wishing to undervalue, has been excited in certain quarters against this Bill. The Select Committee received memorials drawn up by various persons; from a Body called the Bharatabershya Sonatona Dharma Rokhini Sobha; from the British

Indian Association and others, and from a considerable number of persons who shared the views of that Association. Moreover, several of the district officers had reported that there was a considerable feeling among certain sections of the community against one particular provision of the Bill, that, namely, which relates to perpetuities. Under these circumstances, the Government have thought it best that I should not ask the Council immediately to pass the Bill. I ask them to take it into consideration, and when we have received the information to which I referred, then to proceed to the passing of the Bill. In particular, I think the Council has a right to an expression of opinion from the Government of Bengal. Mr. Cockerell has an amendment on the paper, and has suggested that, as a large part of the Bill is unopposed, we might pass that part of it omitting the section relating to perpetuities, and reserving to the Council the right to legislate hereafter on that subject. With regard to that, I put myself in the hands of the Council. I do not myself think that the course which Mr. Cockerell suggests is, on the whole, the one best suited to the public convenience; but I have no strong personal objection to the adoption of that course, provided always that it is fully understood that, in postponing the enactment of this particular section under these circumstances, it is not to be supposed that we have abandoned the opinions lately expressed by us on the subject of perpetuities, or that there shall be any objection, at a more convenient time, to pass an enactment on the subject. Whether, however, the one course or the other is adopted, I consider it necessary, at the expense of inflicting some inconvenience on my colleagues, to refer to the observations made on the Bill in the communications received by the Council, so as to show that they are founded on a misconception of the nature of the particular provision objected to, and, if possible, to induce those who have advanced opinions hostile to the Bill to change those opinions.

“But before I proceed to that point I must make a few remarks on one or two of the minor alterations suggested by the Committee. It was proposed to extend to the wills of Hindús that section (54) of the Succession Act which provides, in accordance with the English law, that legacies made to attesting witnesses shall be void. I propose to omit that provision, because a considerable number of those who have advised us on the subject state that it is the custom of Hindú society that a person interested in a will becomes an attesting witness, and that the effect of the enactment would be to render void a large number of legacies, and thus introduce great inconvenience and considerable discontent. The Committee think that that objection should prevail. We arrived at this conclusion with the greater readiness because the history of the English law on the subject shows that the provision is a vestige of a principle now generally exploded. The provision is founded on cases decided early in the eighteenth century. These cases decided that a person interested in establishing the validity of a will was an incompetent witness, and creditors, the payment of whose debts was provided for in the will, were regarded as interested and, therefore, as incompetent witnesses. Those decisions proceed on the old principle of excluding every witness who was interested in the subject under dispute. The law as laid down by the Judges was somewhat modified by an Act passed in George the Second's reign, and afterwards by the Wills' Act of 1838. There, it is enacted that the will itself shall be good, but that the interest under it of such an attesting witness shall be void, unless indeed he were interested as a creditor. Independently of the Wills' Act of 1838, the general principle of rejecting the testimony of interested witnesses has been generally given up, and I do not know why this particular application of it was retained. Upon the whole, therefore, as the operation of that section of the Succession Act will cause inconvenience to Hindú testators and legatees according to the customs of the Hindús, and as the principle on which the section is founded is bad, there is no reason why it should be retained in the Bill.

“Another alteration occurs in the proviso relating to the effect of the proposed Act upon the testator's control over maintenance charged against his estate. We have so worded that provision of the Bill as to make it quite clear that, on the one hand, our intention is not to take away any power which the testator now possesses, of depriving particular individuals of maintenance, but on the other, to give the testator no additional power of deprivation. We wished, in short, to leave the whole Hindú law entirely untouched, and to leave all rights to maintenance as they stand.

“With these observations, I pass to the question of the prohibition of perpetuities, which has excited so much opposition. The section of the Succession Act on this point provides that gifts shall be void unless the property vests in some person within eighteen years after the conclusion of a life in being at the death of the testator. I may observe, to begin with, that this somewhat extends the testamentary power which, according to the last decision of the High Court, is possessed by Hindús in regard to making wills. Under these

decisions a will is regarded as a gift. It is also held by the High Court that a gift must be made to a person in being; therefore, according to the latest authoritative exposition of the Hindú law, and irrespective of the English law of perpetuities, a Hindú testator cannot make a gift by will to an unborn person. That is how the matter stands at present. It is true that an appeal has been preferred against that decision; but such is the established law at present. The section against perpetuities, which we propose to apply to Hindú wills, gives greater power to testators; for it allows a man to make a gift which is not to vest till eighteen years after the expiration of a life in being at the death of the testator. Since then the existing law of the land, as it has been expounded by the High Court, does not authorize gifts to unborn persons, whilst what we propose to substitute for it does admit of gifts to unborn persons, it is an indisputable fact that we propose to a certain extent to extend the power of testamentary disposition of property, as declared by the High Court to exist at present under the Hindú law.

“I have already mentioned the character of the opposition to this provision. Part of it is due either to misconception or misrepresentation. This admits of the clearest possible proof.

“In the first place, let me say what the Bill does not propose to do. It does not propose to interfere with deeds of gift. It does not propose to interfere, for reasons to which I shall presently refer, with charitable or religious bequests. It does not propose to interfere in the slightest degree with the law of adoption or inheritance. And that leads me to the subject of the misconception and misrepresentation abroad in respect to this Bill. I may first refer to the memorial of the Bharatabershya Sonatona Dharma Rokhini Sobha. That memorial contains the following passage—

‘The principle on which the English law has proceeded, in refusing to permit the creation of perpetuities, is that, according to that law, no man is the absolute owner of property to do with it as he pleases. The exact opposite of this principle is the rule of Hindú law.

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‘And it is according to that law, as well as to the law of adoption, that a man destitute of male issue authorises his wife to adopt a son, another on failure of the first, a third on failure of the second, and so on, and delays the vesting of his property till the last adoption; and even in anticipation of premature death of his begotten son, though surviving him, a Hindú is allowed by his law to permit his wife to adopt a son on his (the begotten son’s) demise without male issue, and, failing him, to adopt another son and successor in his stead (4§). Consequently, the proposed enactment, by which it would be impossible for a Hindú to delay the vesting of property bequeathed by him beyond the lifetime of a person living at the testator’s decease and the minority (eighteen years) of some person in existence at the expiration of that period, will deprive the Hindú subjects of Her Gracious Majesty to provide for the continuance of the presentation of the oblation of food and libation of water by means of adoption, which is enjoined by the *Sástras* as an act obligatory to be performed, not optionally, but *positively*, by every Hindú destitute, or likely to be destitute, of male issue in the male line (5||), as, henceforward, no Hindú testator shall be at liberty to delay the vesting of his property in his adopted son or lastly adopted son, who does not exist at the time of the testator’s death, but may be adopted several years after his demise. Thus, the proposed enactment is not only an encroachment upon the Hindú law and religion, but is calculated to strike at the foundation of one of the essential parts of the ordinary as well as the transcendent law of the Hindú in general.’

“I am very glad that that statement is made, because it enables me to contradict it emphatically, and to expose the misconception upon which it proceeds. Nothing could be further from the intention of the Governor General in Council than to interfere in any way with the law of adoption. But this Bill, as it stands, has no reference whatever to that subject. Even if it is possible to create, by adoption—though I do not believe that it is—a species of perpetuity, this Bill will not interfere with it; for no provision of the Bill has said anything about adoption.

“If, however, the Bill did impose upon the power of adoption the limits which it imposes upon gifts by will, it would not narrow the power of adoption, for that power could not be exercised at a period so distant as that to which the vesting of a gift by will may, under this Bill, be deferred. Under the supposition in question, an adoption might be made at any time during the life of a widow or within eighteen years afterwards, and, during all this period, any number of successive adoptions might be made. This, I apprehend, would go

beyond the existing Hindú law. By that law, as I understand, adoption must be of a living person by a living person; therefore, if the widow has power to adopt fifty persons in succession, all those persons must be living in order to be adopted, and she must of course be alive in order to adopt. I have the fullest confidence in the correctness of these assertions, but the point is one on which the Committee wish to avoid every possible risk of misconstruction or misapprehension. We have accordingly, much against the will of those who are responsible for the artistic merits of the draft, inserted an express provision which is in these words:—‘Nothing herein contained shall affect any law of adoption or intestate succession.’

“And now I come to the question of perpetuities. I addressed the Council at great length on this subject two months ago. I have nothing to take from what I then said, but I have something to add to it in order to remove misunderstandings. The main question which has to be considered is this. How is the section which we propose to apply to Hindú wills related to the existing Hindú law with respect to the creation of perpetuities *by will*? I lay particular emphasis on the words ‘by will,’ because I find that a great deal was made of the omission of that word in one of my former observations on this subject. I am speaking, not of perpetuities in general—not of perpetuities created by deed, nor of perpetuities created by gift *inter vivos*—but of perpetuities created by will; that is, by an instrument ambulatory during the life of the testator, and which becomes irrevocable only at his death. Having gone through all the authorities on this subject, I am happy to say that the real difference between me and those who have criticised this measure with such warmth and spirit is small. I affirm that the Hindú law nowhere confers the power to create a testamentary perpetuity; they affirm that it nowhere prohibits the creation of testamentary perpetuities; and therefore, the true question between us is, what inference is to be drawn from the silence of the Hindu law on the subject? I affirm that the inference is, that testamentary perpetuities should be forbidden; they affirm that the inference is, that they should be permitted.

“In the first place, I must make good my assertion that there is no difference between us as to the fact that there is no authority by Hindú law for the creation of perpetuities, except in the single case of perpetuities by gift for religious or charitable purposes.

“I will proceed to give, shortly, the evidence in support of that assertion; and the first witness I shall produce is one of the gentlemen to whom the Government of Bengal applied for information on this subject, Bábu Bhudeb Mukerjee, an Inspector of Schools in this neighbourhood, of whom I will say that no one can read his note on this subject without seeing that he is a man of marked ability and knowledge. I say this with the more confidence because he differs from me in his conclusions, and thinks that it will be better to permit perpetuities. He says, in the first place, that wills have no distinct place in Hindú law, and he adds that the state of the Hindú law on the subject of wills is exceedingly rudimentary, and then goes on to say—

‘The Bill proposes to apply sections 100 to 103 to Hindú wills. These limit the testator’s power. But the power limited is not in measure, but in time. They make perpetuities void. Strong objections have been raised to these sections. I shall remark upon them in brief as follows. That perpetuities are not disallowed by Hindú Law is apparent from what has been said with respect to the very rudimentary condition of that law on the subject of wills. There is nothing in Hindú law either for or against perpetuities.’

“There you have an express assertion that the Hindú law says nothing on the subject.

“Next I refer to Pandit Iswara Chandra Surma. He says—

‘I am aware that the creation of perpetuities is not in unison with the spirit of the advanced civilization of the West. Personally, I am opposed to it. But when it is sanctioned by the *Sástras*, and the community at large are very much in its favour, and when no evil has been known to have resulted from its operations, it does not appear to me that there are sufficient grounds for legislation on the subject.’

“When this opinion was received, as he referred to the *Sástras* and gave no authority, he was asked by Mr. Eden, the Secretary to the Government of Bengal, to state what *Sástras* he referred to. He then says—

‘I do not think that there is any distinct text expressly sanctioning the creation of perpetuities; but in the face of the rulings above alluded to, no such text is necessary, for those rulings constitute the absolute law for Bengal.’

“He then quotes the authorities to which he refers as follows—

“It should not be alleged that, by the texts of Vyása (‘A single partner may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family. Separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole, to give, mortgage or sell it’), one person has not power to make a sale or other transfer of such property. For here also (in the very instance of land held in common), as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure.

“But the texts of Vyása (section 27) exhibiting a prohibition are intended to show a moral offence, since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

“So, likewise, other texts (as this, ‘though immovables or bipeds have been acquired by a man himself, a gift or sale of them *should not be made* by him unless convening all the sons’) must be interpreted in the same manner. For here, the words ‘should’ ‘be made’ must necessarily be understood.

“Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null, for a fact cannot be altered by a hundred texts.

“Accordingly (since there is not in such case a nullity of gift or alienation), Nareda says—‘when there are many persons sprung from one man who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth’ (Chapter II).

“These texts assert only that a man is the owner of his own property, and that a man who owns an undivided share in family property can alienate that share without the consent of his co-sharers. Therefore, this gentleman argues that testamentary perpetuities are sanctioned by the *Sástras*, because the *Sástras* affirm the power of alienation *inter vivos*.

“These are the only authorities on which the Pandit grounds the right of creating perpetuities by will. Now, if you are to get an authority in favour of the right of creating testamentary perpetuities out of a text which asserts the power of a co-sharer in family property to alienate his undivided share, you may make anything out of anything.

“Another gentleman, Bábu Jaykissen Mukerjee, who is a Member of the British Indian Association, gives the following account of the matter—

“Although the power of making testamentary bequests is not expressly recognized by our *Sástras*, the legal validity which they give to alienations, however sinful, by gift or sale *inter vivos*, of one’s property, ancestral or self-acquired, to the prejudice of one’s heirs, has naturally, in the absence of any prohibitory law, been construed into a tacit recognition of such a power; and we find that, from a very remote time, the Hindús of Bengal have exercised the power of making wills. Where a deviation from the rules of inheritance was intended, a dying man’s wishes with regard to the disposal of his property after death were formerly, in most cases, orally given; and it was only in the rare cases of very wealthy persons that recourse was had to the more formal process of recording them on paper, in the form of *niyama-patras* or *dána-patras*, which were faithfully carried out after their death. With the increase of wealth and other changes in the circumstances of the country, the more formal mode of will-making has gradually found favour with the community; and a natural desire in the owner to preserve his immovable property in its integrity, safe from the effects of minute sub-division or from any acts of improvident waste, and to provide at least for the easy maintenance of his heirs and their descendants, has made will-making among the Hindús of Bengal more general than before. The absence, however, of any rules regarding the execution and attestation of wills, and the accordance of the same legal effect, equally, to oral and written wills, give rise to the perpetration of fraud and to ruinous litigation, which it is now time to obviate as much as could be done by legislative enactments. The present Bill, so far therefore as it declares all nuncupative wills null and void, must be hailed as a salutary measure of reform.’

“The fact is, as I stated at considerable length on the last occasion, that this is a matter in which the Hindú law is completely silent, and that it is silent because the whole subject belongs to an order of ideas altogether foreign to Hindú law.

“Assuming, then, that the Hindú law is silent on the subject, the question arises, what are the inferences from this silence? There are two sets of inferences; the first is a legal inference, and the second a legislative inference. With regard to the legal inference, it is a question for the Courts of Justice to determine. I said a good deal before as to the inference which, in point of fact, the High Court in Calcutta and the Privy Council had drawn from the state of the law on the subject. But let the legal question be decided how it will—whether the Privy Council should ultimately hold that the silence of the Hindú law authorized the creation of testamentary perpetuities, or that there is no foundation for them at all—I say the fact that the Hindú law is silent leaves the whole question open for legislation and gives us a clear right to legislate. Much has been said of the obligation of the British Government not to interfere with the religious institutions of the Hindús. I fully admit that. It is the bounden duty of the Government not to interfere with the *old and cherished and conscientious* feelings and institutions of their Hindú subjects. I think we should have no moral right to break up the laws relating to the Hindú family or the custom of adoption; we should have no moral right to interfere with their religious establishments, at all events in their present state of feeling, and I admit that we ought to consider that, in these matters, our legislative discretion is bounded by the general principles of Hindú law. But I never will admit that it is our duty to preserve unaltered every legal right of every kind which our Courts may happen to recognize as being vested in Hindús, especially when such rights arise from the silence of the Hindú law and the partial and incomplete application of the English law to India. This is a state of things for which it is our duty to legislate with a view to what we must regard as the best interests of those for whom we have to legislate.

“Before I leave this part of the subject, I may refer to one argument to which I referred before. It is the argument that the Hindú law not only does not sanction testamentary perpetuities, but has provided no means to give effect to them. This is a substantial difficulty. If we are by law to sanction so strange a power as that of creating perpetuities, we must provide the machinery, and the machinery which the English law has provided is the machinery of Uses and Trusts, and much else with which I need not trouble the Council; but if we find that this machinery is not provided by the Hindú law, that proves that perpetuities are by Hindú law impossible. It is too much to ask us to supply, out of the English law, the machinery required to effect what the English law regards as a bad object. You cannot take a portion of the English law on the subject. You must take the whole law or none at all; and anybody who knows anything of the English law on the subject and its extreme complexity, will admit that it is not desirable to introduce it into this country. This argument has been advanced by Sir Barnes Peacock, and is really conclusive against testamentary perpetuities being permitted by Hindú Law; and this is in point of fact admitted by the British Indian Association. That Association, some leading members of which are intimately connected with the case of *Tagore v. Tagore*, speak as persons considerably interested in the question, and consequently great weight attaches to what they admit as against themselves. I wish to call the attention of the Council to one or two paragraphs in their memorial. They say—

‘The Chief Justice holds that the question of ‘perpetuities’ is altogether alien to and impossible to Hindú law—and this because ‘there are no means provided by the Hindú law for creating a perpetuity.’ Your memorialists respectfully submit, that there are the same (at any rate analogous) means admissible under the Hindú system (aided by English judicial procedure) to effect such a purpose, as were anciently to be found in the English law before the invention of ‘Common Recoveries,’ and before imposition of the forensic device of a rule to thwart perpetuities:—the liberty or license was *then*, your memorialists are well advised, possessed by English testators, to annex perpetual arbitrary conditions and limitations to the enjoyment of and succession to property. Moreover, the difficulty in any view is at once entirely dispelled by recognizing the application to Hindú dispositions, of those two qualifications and exceptional devices, each creatures and equitable inventions of English judicature, namely, the ‘trust’ in its integrity (at least unshorn of its chief characteristics), and the executory devise.’

“These gentlemen thus admit that the Hindú law knows nothing of perpetuity; that it provides no means for the protection of perpetuities if they can be created. But they say, ‘you have the means—trusts and the like; lend us them, and our wills will stand as well as

yours.' That is an ingenious way out of a difficulty. But I say, if you are to take the English law, take it in its integrity; if you take the English Law of Trusts, take it subject to the rule against perpetuity; if you take the Statute of Uses, take the decisions which governed its application; if you take the Statute De Donis, take the Law of Fines and Recoveries with it and the disentailing Act by which they were abolished. You will then introduce into India the most intricate, complicated and difficult law that ever existed on any subject; but at all events you will be consistent. But these gentlemen ask to be allowed to adopt just as much as will enable them to carry out their wishes and to reject the rest. That is like playing the game of heads I win and tails you lose, which is an exceedingly pleasant game if you can get any one to join you.

"I have now done with the first inference drawn from the silence of the Hindú law, that the whole matter is open to legislation. The second question is, how are we to legislate? That throws us back on general principles of policy, and to the general spirit and temper of Hindú society as applied to this subject. When I last addressed the Council, I said that no system could be more opposed to the creation of perpetuities than the Hindú system; I meant, of course, to the creation of *testamentary perpetuities*; and I think any one who looks at the report of my speech will say that it is clear that I did mean that, or else that I contradicted myself twenty times over within the space of twenty sentences. It is stated that I did contradict myself during the whole of that speech, and that my arguments were therefore entitled to no attention. I shall not answer that remark, except by saying that, in describing the Hindú law as opposed to perpetuities, I meant that it is opposed to the creation of perpetuities by will, and I say so still. There are two different views of the nature of property. You may regard property, either as the property of a family, or as the property of an individual. Each of these views is perfectly consistent. According to the first view, property is the property of the family in general; the head of the family is the managing member of the property, and the property is to descend, according to certain fixed rules of descent, from generation to generation, the family remaining undivided and undisturbed. That theory obtained for many centuries, and does still obtain to a great extent throughout the whole of India. But that theory is not peculiar to India; it obtains in many other countries. It obtains at this day to some extent under the *Code Napoleon* in France. It obtains, however, throughout India, and, subject to one very great exception, it obtains in Lower Bengal. This exception is that, in Lower Bengal, under the *Dáyabhága*, the right of alienation exists. A man has the power, without the consent of his heirs or co-sharers, to alienate, either the whole inheritance, or his own particular share. Now, I affirm that the theory of family property, whether modified or not by the power of alienation, is altogether inconsistent with the creation of testamentary perpetuities. Apart from the power of alienation, this is self-evident. If the law is that the property is always to remain in the family and to go down from generation to generation according to the prescribed course, it is clearly inconsistent that the head of the family should have the power of altering that course of succession.

"I know that it is affirmed that this does not apply to Lower Bengal, because of the power of alienation which prevails under the *Dáyabhága*. That is a complete misconception. I know perfectly well that the head of the family, or a co-sharer, has the power to alienate the inheritance, or his share; and if he voluntarily gave away his property and received no consideration for it, he would no doubt have the power, in that indirect manner, to disinherit his family; and, so far as that power extends, the individual theory of property prevails, and the family theory is given up. There is, however, no necessary connection between the power of alienation and the power of disinheriting a family by will. Suppose the proprietor sells his property, and simply changes its form by taking land instead of money or money instead of land, the substituted property would descend, according to law, in the same way as the original property; and thus, except in the rare case of a free gift to a stranger during the life of the ancestor, the power of alienation does not involve the power of altering the course of succession. That is still the case in France. If a man, there, has ten sons, he can alienate only one-eleventh of his property, and the rest must descend to his sons in equal shares. But that places no restraint upon alienation. If, for instance, a man with ten sons sells land for 100,000 francs, his ten sons would get ten-elevenths of that sum; so that the only way by which the parent could effectually disinherit his family would be by making a gift for no consideration during life, or by destroying the property which he possessed during his life; the mere changing of the form of property would not change the right of the sons to inherit, and would not give the owner any greater testamentary power than he would have possessed if he had not alienated. The principle, therefore, remains whether the power of alienation does or does not exist. In lower Bengal, the family theory of property

does exit, subject to the power of alienation and to whatever changes may have been introduced by the gradual introduction of wills; and the family theory, on which the whole system is based, is, as I said before, radically inconsistent with the power of a testator to create a testamentary perpetuity.

"No doubt, however, the power of making wills, however introduced, has, to a certain extent, introduced into Lower Bengal what I have called the individual theory of property. Let us then consider how this theory affects the question of testamentary perpetuities. The individual theory of property obtains where each individual holds property for the time being absolutely. How is that theory related to the power of creating a testamentary perpetuity? Some of the Memorialists appear to think that it involves such a power. This is the view of the *Bharatabershya Sobha*. They say—

'The principle on which the English law has proceeded, in refusing to permit the creation of perpetuities, is that, according to that law, no man is the absolute owner of property to do with it as he pleases. The exact opposite of this principle is the rule of Hindú law. See the text of *Nareda*, 2 Colebrooke's Digest, London Edition, p. 101, B. II, Ch. IV, Sloke 6.'

"Considering the importance which the Hindú law attaches to family-rights, the assertion of the *Sobha* seems a strong one. I will, however, accept it and see to what it leads. I have been told that I do not know much of Hindú law. I will try to learn; but I think I may claim to know something of English law, and it is certainly very new to me to hear that the English law asserts that no man is absolute owner of his own property. What is absolute ownership? It is an unrestricted power, secured to a man by law, of doing what he likes with a thing to the exclusion of all others. From this definition it follows that ownership can exist only during life, and must terminate at death, for the dead have no powers and human law cannot affect them. Now, absolute ownership in this sense is certainly well known to English law. I had always supposed that a man might do what he pleased with his own in England, as much as anywhere else. Take, for instance, this watch. It is, I have always supposed, and do still suppose, my absolute property. I may use it as I please; I may give it away; I may throw it into the river, or sell, or pledge or destroy it. But over and above the power to derive every advantage from it which a man can derive from a thing, I may also, on my death, say who is to succeed me in the enjoyment of those advantages, and I may, by the Succession Act, limit its possession to some one person for life, and after his death to his eldest son absolutely, on his attaining his majority. That I call being the absolute owner of property. If some one were to tell me 'you are not the absolute owner, because you cannot direct that five hundred years hence some person must wear that watch in one pocket and not in another,' I should say that such a man was talking nonsense. Property exists while we live, and ceases the moment we die; and it is utterly impossible, by any device, to increase the enjoyment of property beyond life. No doubt you may give a man, at death, the power to regulate, after his death, the enjoyment of what used during life to be his property; but this is a different thing from property. It is not a proprietary right at all, but a power to limit the proprietary rights of other people. A man, I say, is absolute owner of a thing when during the whole course of life, he can do with it what he pleases; on the other hand, he is not the absolute owner if his enjoyment of the thing is restricted. Suppose my watch is what is called in England an heirloom; that it is vested in Trustees, who are to hold it upon trust to permit me to use it during my life, and to permit some one else to use it after my death, and so on, from generation to generation. Should I, in that case, be the absolute owner of the watch or not? Certainly not. The individual theory goes to this extent, that each successive generation has, for the time being, the whole property, and is the absolute owner of the subject-matter of proprietary rights. In so far as this is not so, you interfere with the individual theory; you make the living man the servant of the dead, and you prevent each generation, as it comes into being, from owning the property which it uses. The theory of absolute ownership, in short, is utterly opposed to the theory of testamentary perpetuities. Testamentary perpetuities make absolute ownership impossible as far as they extend. Therefore, whether you take the family theory or the individual theory of property, you cannot justify the creation of testamentary perpetuities. In either view of the case the practice is indefensible, and would not be permitted in any country which legislated consistently upon either principle. The family theory is opposed to testamentary perpetuities, because the power to create them enables an individual to alter the course of descent which the law has fixed for property. Testamentary perpetuities are opposed to the individual theory of property, because they prevent any one man during his life from being the absolute owner of any one thing, and

subject him to the will of a dead person. In neither of these theories can you find justification of this power of the creation of testamentary perpetuities. The attempt to create such perpetuities arose when the one theory was declining and the other theory was coming in; when the managing member of family property began to consider himself as the perpetual sovereign of the family, for which he was to legislate for all future time. That, I believe, you will find to be the source of this practice, which flatters very nearly every weakness of the human mind. It flatters the love of power, for it enables a man to make laws after his death. It flatters posthumous avarice, for it enables a man under its influence to think of his property as existing from generation to generation after his death according to his will. It flatters posthumous vanity by making a man think that he is wiser than those who will come after him, and that he, in 1870, is better able to direct what course should be followed in the year 2070 than those who will then be living.

"I am referred by the British Indian Association to the Roman law, to the Dutch law, and to some other laws, as supplying precedents in favour of their views. I do not profess to know every thing about all laws; I know a little of the Roman law, a little more of the French law, and something of the English law. In the Roman and French law, the practice of testamentary perpetuities gradually introduced itself, and under those systems it was found necessary to restrain the practice by legislation. But with regard to the English law I speak with more confidence; and although the British Indian Association say that they are well advised on the subject, it appears to me that they are in point of fact very badly advised in some of the assertions which they make. The Memorial says that the device of Common Recoveries put an end to testamentary perpetuities:—

'Your memorialists respectfully submit, that there are the same (at any rate analogous) means admissible under the Hindú system (aided by English judicial procedure) to effect such a purpose, as were anciently to be found in the English law before the invention of 'Common Recoveries,' and before imposition of the forensic device of a rule to thwart perpetuities:—the liberty or license was *then*, your memorialists are well advised, possessed by English testators, to annex perpetual arbitrary conditions and limitations to the enjoyment of and succession to property.'

"The memorialists are thus advised that, before Common Recoveries were invented, testamentary perpetuities were permitted in England. Whoever advised them thus advised them wrong. At the time when Common Recoveries were invented, and long afterwards, land could not be devised at all in England, and personal property was never capable of being entailed. The question of perpetuities arose, not in connection with wills at all, but in connection with deeds. Common Recoveries were invented in the reign of Ed. IV, and down to the 32nd of Henry VIII., many years afterwards, no Englishmen could make a will of land. The right to do so was created by the 32nd of Henry VIII.: consequently, the Association is quite misinformed as to the English law upon the subject; but as they wish to know how the law stands, I will shortly refer to the facts, omitting exceptions and qualifications which would have to be introduced in a complete account of the subject. For some time after the Conquest, land could neither be devised nor aliened. It was granted for the life of the tenant on the condition of military service. By degrees, the power of alienation was introduced. The Judges tried to extend, and the nobles, who were then in possession of the principal legislative power, tried to prevent, it. In order to effect this object, a practice was introduced of granting land to a man 'and the heirs of his body.' The Judges held this to be a conditional gift, which became absolute when the condition was fulfilled by the birth of an heir of the grantee's body. To meet this, an Act, called the Statute De Donis, was passed in the time of Edward I.

"It provided that gifts in the form in question should be strict entails, and that the land should descend to the heirs of the grantee's body without power of alienation. Blackstone gives an account of the way in which this Act worked.

'Thus much for the nature of estates-tail: the establishment of which family law (as it is properly styled by Pigott) occasioned infinite difficulties and disputes. Children grew disobedient when they knew they could not be set aside: farmers were ousted of their leases made by tenants in tail; for, if such leases had been valid, then under colour of long leases the issue might have been virtually disinherited; creditors were defrauded of their debts; for, if tenant in tail could have charged his estate with their payment, he might also have defeated his issue, by mortgaging it for as much as it was worth: innumerable latent entails were produced to deprive purchasers of the lands they had fairly bought; of suits in consequence of which our ancient books are full: and treasons were encouraged; as estates-tail were not

liable to forfeiture, longer than for the tenant's life. So that they were justly brauded, as the source of new contentions, and mischiefs unknown to the common law; and almost universally considered as the common grievance of the realm.'

"This was the system which was overthrown by the invention of Common Recoveries in the reign of Edward IV. That was the state of things, as described by Blackstone, at the time when these gentlemen who memorialized the Council say that they are well advised that English testators then possessed the liberty 'to annex perpetual arbitrary conditions and limitations to the enjoyment of, and succession to, property.' English testators never had the power to annex anything of the kind; for, first, we find that, at the time to which the memorialists refer, wills of land could not be made at all, and then, when long afterwards the attempt to introduce testamentary perpetuities was made, nobody had the power to make such a will as they describe. But it does not stop there. The power to make wills was introduced by degrees. I need not trouble the Council with describing the growth of Uses and Trusts; but when trusts came to be recognized by law, new attempts to create perpetuities were made, and the Courts of Justice had to devise new modes of defeating these attempts, as they had defeated the attempt of Parliament itself to introduce perpetual entails. All the history of England shows the evil of testamentary perpetuities. Even if the legislature were to provide for it, means would be found to defeat it, because of the evils which would be intolerable.

"Having thus considered the historical precedents referred to, I come to the question of general convenience. I have carefully read through every thing I could find on this subject, and every paper forwarded to me by the Bengal Government. I find a great deal said about the Hindú law and the English, Dutch and Roman laws, and I find references to all sorts of texts and *Sástras*. But there is one thing I do not find. I do not find one single remark which even claims to show that testamentary perpetuities would be convenient or suitable or beneficial for the public. I find a few remarks as to the disintegration of families, and provision for families, as if those who live now knew better how to manage property than persons who will be living when it has to be managed, perhaps, a hundred years hence. Why should this be expected? That is a simple question to which it is difficult to give an answer.

"I find in one paper that exceptions are taken to the account I gave of perpetuity. In that paper it is said—

'The whole proposition is a gross, arbitrary, and scandalous assumption. No man who desires to create a perpetuity for a moment thinks that he will thereby '*perpetuate his own enjoyment*' after 'he is dead and gone,' particularly 'by interfering with other people's enjoyment of it.' He may have different motives for what he may do; he may wish to make a permanent provision for his family, or to transmit his family name from generation to generation, or to found a religious trust for all time; but he must be considered a lunatic if he thinks that he will thereby '*perpetuate his own enjoyment*' after 'he is dead and gone.' Mr. Stephen only creates an absurdity in order to abuse it. It reminds us of the old saying—'give a dog a bad name and then hang it.' Then Mr. Stephen confounds accumulation without enjoyment with the perpetuation of enjoyment. The first is certainly objectionable, because it is opposed to the natural rights of man and to the essential condition of property. What is property for, if it is not to be used and enjoyed? and we should consider the man who would tie it up against all use and enjoyment an enemy to society.'

"They refer to the case I referred to and say—

'And, happily for the credit of human nature, cases like those of Thellusson and Assima Kumár are rare. In fact we doubt whether there is a third case of its kind in the whole range of English and Indian decisions. We would dispose of a testator who would thus tie up his property as a lunatic and therefore disqualified to make a will. The other man, who is solicitous to see his family well provided for, to guard against the dissipation of the family fortune, and to secure the continuance of the family name and prestige, acts on the impulse of nature, and is justly entitled to the sympathy of all honest men.'

"That argument goes a very long way, and it appears to me to come to this. Wise perpetuities should be permitted and foolish ones prevented. Courts of Justice are to say to testators, 'you may create testamentary perpetuities, but if, in the exercise of that power, you do anything that we consider absurd, we will treat you as a lunatic. We will consider, with reference to each scheme, whether it involves accumulation without enjoyment or the

perpetuation of enjoyment. We will always entertain the question whether you, the testator, are a mischievous lunatic or a rational man.' Surely this would be monstrous. Surely we ought once for all to lay down a rational rule on the subject. Of course the cases to which I referred are extreme cases, but it is by extreme cases that you test principles. You see the absurdity of letting a man tie up his property for ninety-nine years. Then, where do you stop? At sixty? At thirty? When you interfere at all, you give up the principle of absolute ownership as you understand it, and I defy you to find any other, except that of general convenience, to which I appeal. I say, let a man say how his property is to be enjoyed during the lives of those whom he knows and of those who come immediately after them, but do not let him make laws for unborn generations. You say, in virtue of the principle of absolute ownership of property, we will permit men to legislate as to the future disposition of their property for all future time, subject only to this, that if they legislate in a way which we think absurd, we will treat them as lunatics. Which of us deals with testators most liberally and rationally?

"It is said that such acts as those of Thellusson and Assima Kumár are rare. It may be very true that they are rare now, but that is because they are illegal; if they were not illegal, they would be just as common as rich avarice, rich folly, and rich vanity could make them. If men who know the probably illegality of such acts will take the risk of having their wills set aside for the chance of being able to do them, can it be doubted that, when their legality is established, you will have scores of such cases, or that they will create scandals which will disgrace the country for generations to come? In connection with this matter, I wish to refer to a remarkable paragraph in the paper by Bábú Bhudeb Mukerjee, to which I have referred before. He makes a very remarkable observation as to the causes of the desire to create perpetuities by will and the sources from which it arises:—

'Indeed, the desire to ensure their families against decadence is growing into strength among the influential classes of the Native community, as the old generation of men with fatalist ideas are giving way to others who bethink themselves of human means to avert or stave-off an impending evil. Not long ago there was a movement among certain members of this class in favour of a law of primogeniture. However repugnant to the natural sense of justice and to the time-honoured law and usage of the country that movement was, it hardly called forth one dissentient voice. The continued existence of certain great and rich families in a country is in itself a great good, and, under certain circumstances, it is absolutely necessary to the growth and preservation of a people. One may believe, therefore, that, where the law of equal division of property as well other causes are continually operating to disintegrate large estates, the instinct of the people may seek for some means by which to secure the continued existence of such estates among them. The desire to create perpetuities, as I have seen it manifested, does not seem to me to have sprung up from anything like a wish for posthumous legislation, or for protracting enjoyment of property beyond death. On the contrary, the desire for perpetuities, here, has much more to do with a weak hopelessness and apprehension for the future. It springs up from the same source which, some time ago, induced the movement for a law of primogeniture in favour of certain classes of the community, a movement which can in no way bear the interpretation that has been put upon perpetuities. Both are meant to counteract the disintegrating influences which are in active operation. Believing thus, I feel persuaded that the passing into law of the present Bill with the sections against perpetuities will be anything but a popular measure. It will appear to have deprived the Bengáli testator of a power which his own law gave him, and it will greatly increase endowments to idols for the beneficial use of the testator's descendants. The evil of locking up capital by religious endowments will thus be hastened. Section 105 is not made applicable to Hindú wills, and section 103 cannot interfere to prevent the appointment of *Seváyits* to idols in perpetuity, as the property rests in the idols at once and without delay.'

"Now, to whom do these remarks apply? They must be a small class and a wealthy class. I cannot refrain from one or two observations, which I hope may reach their attention.

"They wish to perpetuate their family names and estates. I do not say a word against old families or great estates. I can recognize both, where the members are men of sense and wisdom, as the natural bulwarks of the country as much here as in England. But there are two ways of perpetuating families, a natural and an artificial way. Perpetuate families by all manner of means, and make them proud of your name; preserve your family greatness, prestige, and power. But if you attempt to do so by endeavouring to set aside the natural

course of events, you will miserably fail. You cannot do it by trying to relieve your descendants of the anxieties and responsibilities which are the common lot of us all, and the great motives to all honourable exertion. We have most of us known, in England, cases in which attempts have been made to set up parchment fortifications against extravagance and folly, and, by the arts of the Conveyancer, to relieve a man from the natural responsibilities of life; but all such attempts have failed, and we have all seen cases in which names which ought to have been noble have been dragged in the dirt, and fortunes which ought to have been princely scattered in the gutter, in despite of all that could be done by the most skilful Conveyancers in England to avert the calamity.

“And I would say to all who, in this country, are making such attempts, do not trust to anything so weak and miserable as the protection which testamentary perpetuities will afford your families. If you want to perpetuate your families, trust to education, to vigorous manly labour, to an honourable ambition; point out to your sons the careers which are open to them; show them the bench of the High Court, the ranks of the Civil Service; tell them that science and knowledge of every kind have before them as wide and important a field in this country as in any part of the world, and in that way perpetuate your family and your names from one generation to another. It is the only way of doing it.

“I wish to pass on to Babú Bhudeb Mookerjee's remarks on religious endowments which I have just quoted.

“He says, and some of the memorialisists say with him, that it is inconsistent to permit perpetuities in connection with religious endowments and to prevent them for other purposes. That is a dangerous argument; for, although it may prove that the two stand on the same footing, it does not prove that either stands on a good one. They are in fact, however, essentially different. Testamentary perpetuities to individuals have nothing to do with the Hindú religion, but these gifts to idols have a great deal to do with it. The legislature ought not to interfere with the Hindú religion, and I, for one, never would make such a proposition, and should consider it improper and dangerous. It does not, however, follow that we are bound to imitate, in secular affairs, what we are obliged to permit in regard to religion. Being an Englishman, and having to assist in legislating for the Hindús, I think myself debarred from legislating on that subject. That being the state of the case, I should wish to act straightforwardly towards an institution with which I have no sympathy, and for that reason I do not propose to apply section 105 of the Succession Act to Hindú endowments. That section is copied from an English Act of George II. It provides that bequests for charitable purposes must be made by a will executed twelve months before the death of the testator. If we were to extend that provision, I should feel that it was a side-blow against Hindú endowments, and I would scorn to do anything by a side-wind which I could not do directly.

“That particular clause was originally intended as a preventive against the undue influence said to be exercised by Roman Catholic Priests on dying men. But that is not the state of things in this country; at least the papers before us afford no evidence of its existence. Let the Hindú laity come and say ‘protect us against our priesthood,’ and we will legislate fast enough; but in the mean time it is not only our policy, but our duty, to abstain from all interference with religious endowments. It is said that these endowments are used as a mode of providing individual perpetuities, and that a colourable gift to an idol is often made for that purpose. If that is so, it is a question for the Courts of Justice to determine whether such a gift is valid or not; it is not a question with which we can deal, sitting here. Whether such a will would be good or bad is a question on which I give no opinion, and must leave to the determination of the High Court should it arise. This Act will have no effect whatever on that question. It is said, also, that the question of testamentary perpetuities is still under appeal, and that we ought to wait for the determination of that appeal; but, it being admitted and proved that the Hindú law is silent on the subject, all that the Privy Council can say is that, there being no prohibition, they are permitted; and in this case, for the reasons specified above, we have, I think, a right to legislate.

“The Honourable Mr. Cockerell, I understand, agrees with me on the subject of perpetuities; but he has given notice of a motion for the omission of that clause for the present, in order that the Bill might be passed at once. To this proposal I have no very decided objection, and will place myself in the hands of the Council as to the course to be adopted.”

The Motion was put and agreed to.

The Honourable Mr. COCKERELL moved that the Bill be amended by substituting, in section 2, line 3, the figures “99” for the figures “103,” and that the Bill so amended be passed.

As the effect of this proposed alteration of figures was the omission from the Bill of those provisions of the Indian Succession Act which imposed a restraint upon the creation of perpetuities by will, it was necessary for him to join the two motions, in order to explain the apparent inconsistency of now proposing to set aside one of the chief recommendations of the Select Committee of which he was a member, a recommendation which he not only supported in Committee, but had, on the two previous occasions on which this Bill had come before the Council, strongly advocated.

He (Mr. COCKERELL) went entirely with his Honourable and learned friend (Mr. Stephen) in his condemnation of the sufferance of testamentary perpetuities, which it was now attempted to support by the alleged authority of the *Sástras* and the sanction of ancient usage.

We all knew what capital had, on many occasions of political agitation in England, been made out of the groundlessly raised cry of "No. Popery;" and if there—where, he ventured to say, the proportion of thoughtful men, men who could give a good and substantial reason for their belief in regard to any subject, was much greater than in this country—people were, to a great extent, led away by such an artifice, we should hardly be surprised to find that the cry raised by a comparatively interested few 'the *Sástras* are in danger' should have the effect of arraying against us in this matter such a consensus of opinion on the part of the Natives of Bengal, as was expressed in the communications received by the Council.

In dealing with a measure of this kind, we should not therefore be deterred, by a mere unreasoning opposition, even though the feeling which prompted it might seem to be general on the part of those for the regulation of whose affairs we proposed to legislate, from imposing, in the interests of the community, those restraints upon the capricious exercise of his dominion over property by the individual, which the experience of all civilized countries had shown to be needful.

Had the opponents of the proposal to prohibit, by legal enactment, the creation of perpetuities by will, been able to adduce any reasonable grounds for their opposition? They appealed to the authority of the *Sástras* and claimed for it the sanction of custom.

Even if time permitted he (Mr. COCKERELL) should hardly feel justified in attempting to add anything to the most able and interesting exposition of the case and to the exhaustive arguments of the learned mover of the Bill, as regards this alleged authority of the *Sástras*. Mr. Stephen had shown most conclusively that the authority claimed was, even according to the showing of the claimants themselves, of a purely negative character; that is to say, the utmost that could be truly alleged was that the *Sástras* did not contain any prohibition of perpetuities by will—the real fact being, as so ably argued by the learned member, that the ancient Hindú lawgivers, having no conception of such instruments as wills, were necessarily silent on the subject of testamentary capacity.

Then, as regards custom and usage, what were the facts of the case? It would perhaps be in the recollection of those members of this Council who took part in the debate on the Panjáb Tenancy Bill, that one of the strongest arguments against the allegation of a power of eviction of their tenants being vested in the landlords was that, to establish the existence of such a power, it must be proved to have been exercised, and that it was idle to assert that such power was derived from custom, unless the facts constituting such custom, namely, instances of the power being commonly put in practice, could be adduced. He (Mr. COCKERELL) would apply that argument to the present case, and contend that, in the absence of any proof of the power of creating testamentary perpetuities having been commonly exercised, the sanction of usage could not be reasonably claimed in support of such power. And he said that those who claimed the sanction of usage in this matter had failed to cite any illustrations of its existence.

It was very remarkable, he thought, that the only instances known to them of the attempt to create perpetuities by will had become the subject of litigation, thus showing, it was fair to assume, that, so far from the practice being recognized as sanctioned by usage, its effect had always been to call forth opposition on the part of persons interested in the equitable devolution of the property concerned.

Entertaining these views, he should not have hesitated to support the mover of the Bill, had he proposed to pass it with the clauses relating to perpetuities, and he should have greatly preferred that course to the one which he was now impelled to take in this matter.

But his Honourable and learned friend, for the reasons which he had just stated, was not prepared to proceed with the measure, and he (Mr. COCKERELL) was apprehensive that,

in that case, the proposed legislation, notwithstanding the great importance of its early adoption, might be indefinitely deferred.

Under this apprehension he had moved this amendment, and it would perhaps be useful for the correct appreciation of the proposal now before the Council if he briefly recalled to the recollection of his Honourable Colleagues the antecedent circumstances of the Bill.

In its original shape, the Bill omitted all reference to perpetuities, and their prohibition, as was clearly shown by the published papers relating to the measure, formed no part of the legislative scheme of Mr. Stephen's predecessor, under whose superintendence the Bill was framed.

The proposal to legislate for the regulation of the wills of Hindú testators was founded exclusively on the expediency of restraining the fraudulent practices and excessive litigation which were believed to result from the absence of such regulation. The application of clauses prohibiting the creation of perpetuities by will was an increment to the original Bill, which it acquired in its passage through Committee. Important and eminently desirable and expedient as he (Mr. COCKERELL) admitted that addition to be, he considered that the importance of the original object of the Bill was undoubtedly greater; and sooner than consign its accomplishment to the uncertainties of the future, he would for a time forego the legislative prohibition of perpetuities, and pass the Bill in its original shape, with the proposed extension of the local limits of operation. For the people of Bengal not only did not oppose the application to themselves of the main provisions of the Bill, but they were unanimously agreed that, if there was no restriction imposed on testamentary perpetuities, the proposed extension of the operation of the rest of the measure was on every account desirable.

There was, moreover, another aspect of this question which ought especially to commend itself to the favourable consideration of this Council at the present juncture. The immediate passing of this Bill would have the effect of opening up a new and additional source of revenue, which was so much needed in the financial year on which we had just entered. By the recently enacted Court Fees Act, a duty of two per centum on the amount involved was imposed on probates of wills. When the imposition of an *ad valorem* duty on such instruments was first proposed, it was objected that the tax would be most partial in its incidence, falling almost exclusively on Europeans, whose wills alone were at that time affected by the Indian Succession Act. The answer to that objection was that, on this Bill becoming law—and that event was then expected to occur very shortly—the tax would cease to be of a partial character, and then the rapid extension of the area of the incidence of that taxation might be confidently anticipated. He thought he might say that it was in view of these circumstances that the amount of that duty was ultimately fixed at two per centum.

It must be remembered, also, that a probate-duty was in fact a limited succession-duty.

After all that had been said to-day and on former occasions, as to the merits of making a succession-duty a part of our fiscal system, he thought that, considering the obvious advantage of gaining such experience of its probable effects as might in some degree be obtained from a tentative measure, such as the one now proposed, the adoption of the amendment would, when regarded from this point of view, be held to have much in its favour.

And even in regard to the question of perpetuities, the amendment held out some compensatory advantage. The correct principle of taxation was universally allowed to consist in such an adjustment of it as to make it reach the luxuries of the rich. He said, then, if the vicious luxury of creating testamentary perpetuities was to be suffered to exist, or rather if it was not to be prohibited by law, at least for a time, then let it at least be subjected to reasonable taxation. If we were deterred for the present from barring the indefinite postponement of the absolute enjoyment of the property of a Hindú testator, we might, at least, with advantage to the exchequer, provide that there should be no delay in the *vesting* of that portion of it, which, when this Bill became law, could be justly claimed by the tax-gatherer.

The Honourable Mr. STRACHEY said that he held a very decided opinion as to the course that ought to be followed on this occasion, and he hoped that the amendment before the Council would be rejected. He thought that, after all that had transpired, if we took the course of now striking out the clause relating to perpetuities, we should take a course little to the credit of the legislature. Mr. Stephen had shown, in the most forcible manner, that the objections to this part of the Bill were absolutely worthless, and that there was no foundation whatever for saying that testamentary perpetuities were in any way recognized by the Hindú law. At the same time Mr. STRACHEY agreed with Mr. Stephen that there was no necessity at the present moment for passing the Bill. He thought it quite proper that the

measure should stand over for further discussion, but he would much sooner see the Bill abandoned altogether than consent to pass it with the omission of this particular provision. It might be said that it would be open to the legislature hereafter to amend the law. As a matter of theory, that might be true; but as a matter of fact, it would be impossible to say how long the law would be left in its present unsatisfactory state.

With regard to the financial considerations to which Mr. Cockerell had referred, they seemed to Mr. STRACHEY to be of no importance. In the first place, the sum of money at stake must be, he supposed, from the nature of the case, quite insignificant; but if he was wrong, and the sum was important, still he could not consider that it would be right, on such considerations, to abandon what seemed to him a principle of the highest importance. He therefore thought the further consideration of this Bill should stand over.-

The Honourable SIR RICHARD TEMPLE said that he was not very well acquainted with the subject under discussion, but he would ask, what was the objection to pass the Bill without one particular clause? He was in favour of passing the Bill with Mr. Cockerell's amendment.

Major General the Honourable SIR HENRY DURAND said that he had assented to the introduction, into this Bill, of the clause to which the Honourable Mr. Stephen had referred, providing that nothing in the Bill should interfere with the law of adoption and intestate succession amongst the Hindús, and he did so merely to remove all possible objection to the passing of the Bill. That being done, he saw no reason why the Bill should not be passed at once as amended by the Select Committee.

As far as testamentary perpetuities were concerned, his own experience was entirely in favour of the view taken by Mr. Stephen. SIR HENRY DURAND had read most carefully all the papers before the Council and had marked many of the passages which had been quoted. The conclusion he arrived at was, that it was quite a new kind of juridical criticism to say that, because a system of law omitted entirely to treat of a particular prohibition, the absence of any mention or notice of it was to sanction the very thing prohibited. If we accepted the proposition, that any law, by omitting to notice a particular subject, authorised the doing of that particular thing, it appeared to him to be contrary to all sense: he would vote against Mr. Cockerell's amendment. He thought the Council should proceed to the passing of the Bill.

The Honourable MR. COCKERELL then asked leave to withdraw his motion.

Leave was granted.

The Council then adjourned *sine die*.

WHITLEY STOKES,

Secretary to the Council of the Governor General,
for making Laws and Regulations.

CALCUTTA, }
The 5th April 1870. }

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following extract from the proceedings of the Governor of Bombay in the Legislative Department is published for general information :—

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of " the INDIAN Councils' Act, 1861."

The Council met at Bombay, on Tuesday, the 22nd March 1870, at mid-day.

P R E S E N T :

The Right Honourable SIR W. R. S. V. FITZ GERALD, G.C.S.I.,
Governor of Bombay, *presiding*.
The Honourable S. MANSFIELD, C.S.I.
The Honourable H. P. ST. G. TUCKER.
The Honourable the Acting ADVOCATE GENERAL.
The Honourable MUNGULDASS NUTHOOBHOY.
The Honourable A. D. SASSOON, C.S.I.
The Honourable BYRAMJEE JEJEEBHOY.
The Honourable VENAYEKRAO APPASAHEB of Koofundwar.
The Honourable A. F. BELLASIS.
The Honourable COLONEL M. K. KENNEDY.

The following gentlemen made the usual affirmation of office and declaration of allegiance on appointment as additional Members of Council :
The Honourable Mr. A. R. Scoble, Acting Advocate General ;
the Honourable Colonel M. K. Kennedy, R.E.

Affirmation of office, &c.,
taken by Members of Council.

The following paper was presented to the Council and read by the Secretary (Mr. John Jardine) : Letter from the Secretary to the Council of His Excellency the Governor General for making Laws and Regulations, No. 72, dated 7th February 1870, stating that His Excellency the Governor General declines to assent to the Municipal Loan Bill (No. 6 of 1869) as submitted, and suggesting that a new Bill be passed and sent up for His Excellency's assent :—

Paper presented to the
Council.

No. 72.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

FROM WHITLEY STOKES, Esq.,

Secretary to the Council of the Governor General
for making Laws and Regulations.

TO THE ACTING UNDER-SECRETARY TO THE GOVERNMENT
OF BOMBAY.

Dated Fort William, the 7th February 1870.

SIR,—In reply to your letter to the address of the Secretary to Government in the Home Department, No. 196, dated the 23rd October 1869, relating to the Bombay Municipal Loan Bill, I am directed to make the following remarks :—

- On the 30th of April 1869 the Government of India, intimating the decision of His Excellency the Governor General to withhold his assent to a Bill to empower the Bombay Corporation to raise a loan for temporary purposes, informed the Government of Bombay that it was prepared to lend the Bombay Municipality

Vide Letter from Secretary
to Government Home Depart-
ment, No. 2012, dated 30th
April 1869.

Legislative Proceedings, May 1859, No. 11. fifteen lakhs of Rupees at five per cent. interest, subject to the following conditions:—

(a). "That an arrangement shall be made for the repayment of the whole of the capital of the loan within ten years, with interest, in a manner similar to that laid down in the Bill submitted for the sanction of His Excellency the Governor General in Council."

(b). "That such arrangement shall be made binding on the Municipality by law passed by the local legislature, containing provisions making the payment of the Government debt, with interest, a first charge on the Municipal revenue."

3. The offer of the Government of India was accepted: the fifteen lakhs were accordingly advanced, and a Bill entitled "a Bill to secure the payment to Government of certain sums of money by the Corporation of the Justices of the Peace for the City of Bombay" was passed by the local legislature in July 1869. But instead of making the debt a first charge, it merely contains a Section (V.) providing that, if the Municipal Commissioner neglects to make any of the payments therein specified, the Chief Secretary to Government shall have power to direct any Government officer to detain in his hands, to the extent of the arrears, any Municipal moneys which he may then have in his custody or control, and to pay them into the Treasury or any Bank.

4. This Bill was sent up for the assent of His Excellency the Governor General, and thereupon the Government of Bombay was requested* to explain the reason for not providing that the repayment of the loan, with interest, should be a first charge on the Municipal revenues.

* Letter from Secretary to Government, in the Home Department No. 4202, dated the 15th September 1869.

5. Your letter No. 196, dated the 22nd October 1869, states in reply that the condition appeared objectionable for two reasons (1) because there were holders of debentures on the security of a portion of the Municipal revenues, and that to make the repayment of the loan the first charge on those revenues would not be fair to the debenture-holders; and (2), because the first charge was unnecessary, as the sums which would pass through the hands of Government Officers would amount to at least double the amount due to the Government of India.

6. With reference to these arguments, I am to remark that the former should have been considered before accepting the terms upon which the Government of India advanced the loan; and, as regards the latter, I am to observe that there is nothing whatever in Section V. of the Bill to enable the officer in whose hands the Municipal moneys may be, to pay them in to the credit of the Supreme Government. All he can do is to pay them into the Treasury or any Bank, and there (as His Excellency is advised) they would be subject to the claims of the debenture-holders under their debentures; of the Municipal Fund under Bombay Act IV. of 1869 Section 7, and Bombay Act IX. of 1867 Section 14; of the Justices (Bombay Act II. of 1865 Section 6); of the Municipal Commissioner's (Bombay Act VI. of 1863 Section 7, and II. of 1869 Section 7), and of the Port Fund (Bombay Act VI. of 1863 Section 7.)

7. Under these circumstances, His Excellency the Governor General declines to assent to the present Bill. But at the same time, I am to inform you that His Excellency would have no objection to assent to a similar measure, if to Section 5 were added the following words:—

"To the credit of the Secretary of State for India in Council, in preference to, and with priority over, all incumbrances and claims to such moneys other than those created under the provisions of this Act."

And if a corresponding addition were made to the preamble.

8. I am, in conclusion, to suggest that a new Bill, containing the additional words above proposed, be passed by the Bombay Legislature, and sent up for His Excellency the Governor General's assent.

I have, &c.,

(Signed) WHITLEY STOKES,

Secretary to the Council of the Governor General
for making Laws and Regulations.

The Bills and Orders of the day were then proceeded with.

The Honourable the Advocate General said he had the honour to ask that Bill No. I. of 1870, the object of which was "to enable Her Majesty's Justices of the Peace for the City of Bombay to assign part of the Municipal Fund to Educational and other purposes" might be read a first time; and he apprehended it would be unnecessary for him to address the Council at any length upon the subject. It appeared by the last Census of the City of Bombay, that in the year 1864 there were about 1,50,000 children of educable age within the Municipal limits of Bombay. And of that large number, it appeared from information furnished to him by the Director of Public Instruction, only 13,108, including Europeans and Eurasians, received education in any School; so it followed that upwards of 90 per cent. of the children of an age to go to school received no education at all. That was a state of things which could not be regarded with complacency by any one who had anything to do with Education or with the Municipal administration of Bombay; and accordingly in the year 1866, on the requisition of the then Director of Public Instruction, Sir Alexander Grant, the Bench of Justices voted Rs. 10,000 from the Municipal Fund to be applied towards the assistance and maintenance of vernacular schools in that city. In the following year, notwithstanding the success which had attended the distribution of that money—by which eight new Guzerathi and Marathi schools were established, and nearly 500 added to the roll of scholars attending those schools; notwithstanding the fortunate result accruing from that expenditure from the Municipal fund, the Bench were not able to renew the grant, being advised by Counsel, that, as the Act then stood, the appropriation of any portion of the Municipal fund to educational purposes was not sanctioned by law. The Bench of Justices, with the best intentions, were therefore unable to continue the grant which they had made in the previous year, but they now approached this Council with a unanimous resolution that Government be asked to pass a short Act to enable the Municipality to devote a portion of their funds to educational purposes; and it was in accordance with that resolution that this Bill was now presented. He (the Honourable Member) thought that would be sufficient to satisfy the Council as to one portion of the objects of the Bill, namely, that the Justices might be enabled to assign part of the Municipal fund to educational purposes. But the Bill went further than that, and contemplated that the Bench of Justices might be empowered to assign part of the Municipal fund to public purposes other than educational; and that feature had been introduced into the Bill, in order to place the Municipality of Bombay upon the same footing as that on which Municipalities in the Mofussil stood. By the first Section of Bombay Act II. of 1862, a majority of the Commissioners of Municipalities in the Mofussil were authorized to devote certain portions of their funds towards hospitals, dispensaries and other objects of charity; and it was to give the Municipality of Bombay the same power that this feature had been introduced into this Bill. It might be suggested that to give the Municipality this general power of devoting part of their funds towards public purposes other than those contemplated by the Municipal Act, would be giving the Municipality a dangerous power, and one which they might be induced to use unwisely; but he thought the Council would see that the safeguards provided by the Bill would be sufficient to prevent any misappropriation of public money, because it was provided by the Bill that the sanction of the Governor in Council to any such expenditure must be first obtained, and such sanction notified in the *Government Gazette*. And it was only after such sanction had been obtained that the grant could be submitted for the consideration of the Justices. There would then be ample notice to the community of any proposed appropriation of the Municipal Fund under this Bill. He (the Honourable Member) did not think it was necessary that he should detain the Council with any further observations explanatory of the objects of the Bill, and he therefore now moved that it be read a first time.

Bill read a first time and referred to a Select Committee. The Bill was then read a first time and referred to a Select Committee composed of:—

The Honourable Mr. Munguldass Nuthoobhoy,

The Honourable Mr. Bellasis,

The Honourable Mr. Scoble,

with instructions to report to the Council within fourteen days from this date.

On the question that the report of the Select Committee be printed in Guzerathi and Marathi, the "Noes" had it.

The Honourable Mr. Tucker said that it devolved on him to move the first reading of Bill No. II. of 1870, which was a Bill, "to enable the Government of Bombay to prescribe the Official Seals of the Magistrates" throughout the Presidency. The purpose of the Bill was so obvious that it would require very few observations from him, but he might state that throughout the Bombay Presidency, both within the territorial limits which formed the Ordinary Civil Jurisdiction of Her Majesty's High Court, and without those limits, there were laws which required certain acts to be done by Magistrates under their hand and seal, but except with respect to one particular portion of the territory, there was no law which prescribed the form of seal to be used. The law which applied to Zillah Magistrates it was now proposed to repeal, inasmuch as it had become unsuitable in consequence of the change which had taken place in the designation of the various classes of Magistrates; and it was proposed simply to give to the Government of this Presidency, power to declare from time to time what should be the kind of seal used by each description of Magistrate. That would seem to be the simplest way of providing what was necessary, and a law of this kind was requisite to enable all Courts to take cognizance without difficulty of the seals used. He apprehended there would be no opposition to the passing of this Bill, which was introduced to supply a manifest want, and he begged to move that it be read a first time.

Bill read a first time and referred to a Select Committee.

The Bill was read a first time and referred to a Select Committee composed of:

The Honourable Mr. Mansfield,
The Honourable Mr. Scoble,
The Honourable Mr. Bellasis,
The Honourable Mr. Tucker,

with instructions to the Committee to report within fourteen days from this date, and that the report be translated into Guzerathi, Marathi, and Canarese.

The Honourable Mr. BELLASIS moved the first reading of Bill No. 3 of 1870; and in doing so, said he had the honour to introduce a Bill, "to secure the payment to Government of certain sums of money by the Corporation of the Justices of the Peace for the City of Bombay." This Bill was in a very similar shape and form to a Bill which had already been discussed by this Council, and therefore would be familiar to most of the Honourable Members now present. In the statement of its

Objects and Reasons, the purport of this Bill was briefly, but he thought sufficiently, clearly set forth: "His Excellency the Governor General having declined to give his assent to the Bill No. 6 of 1869, passed by the Governor of Bombay in Council last year, on the ground that Section V. did not create a preferential and prior charge over moneys detained by the Chief Secretary to Government as empowered by that Section, the present Bill has been drafted creating such a charge by express terms in Section V. A corresponding alteration has been made in the preamble." These additions had been made in the present Bill to meet the wishes of the Governor General in Council, and they would be found in the Bill in the addition of these words in the Preamble:—"and for further securing the payments to the credit of the Secretary of State for India in Council of certain sums of money by the Corporation of the Justices of the Peace for the City of Bombay in preference to, and with priority over, all incumbrances and claims to such moneys other than those created under the provisions of this Act." Like words had been inserted at the end of Section V. of this Bill. Those were the only material alterations which had been made, and which rendered this Bill different from Bill No. VI. of 1869. These additional provisions would affect three sums of money, they would affect the Fifteen Lakhs Loan to clear off the liabilities of the Municipality; they would affect another sum required to clear off the balance due to Government on account of the Veihar Water Works; and they would affect, also, a third sum of money, to clear off the small sum due as the balance for the purchase of the land forming the Elphinstone Circle. He (the Honourable Member) was told by the Municipal Commissioner, that this last sum, was all but paid off, and in the course of three months would be liquidated. The monthly instalments of interest that would accrue on those

sums of money was Rs. 16,000 per mensem on the Fifteen Lakhs Loan; Rs. 14,600 per mensem on the Vehar Water Works debt, and Rs. 11,600 on the Elphinstone Circle loan, aggregating a monthly sum of interest of Rs. 42,200, or an annual sum of Rs. 5,06,400. The terms upon which these loans had been made were 5 per cent. per annum, and they were favourable to the Municipality which had already accepted them. The only persons likely to be affected by these new provisions in the Bill were some of the earlier Debenture-holders of the Municipality, and that to the extent of the preferential and prior claim secured to Government by this Bill. Since he (the Honourable Member) had been in that room, a letter from the Municipal Commissioner had been placed in his hands—which letter was now before His Excellency—making certain representations to the effect that this preferential and prior claim secured to Government by this Bill, might act injuriously upon the interests of those Debenture-holders, they having lent their money to the Municipality on the security of a certain portion of the Municipal revenue prior to this loan by Government. He (the Honourable Member) was not aware whether His Excellency would allow that letter to be read that day, and before proceeding, he (the Honourable Member) wished to be informed on that point.

His Excellency the PRESIDENT: As I understood at the time when the Bill was passed, the Debenture-holders of the Corporation, to whom the Honourable Member refers, had a claim specially upon the security of the House Rate and the Market Rate; and those two sources of revenue do not pass through the hands of any officer of Government. Consequently, the claims of these Debenture-holders will in no way be affected by a preferential claim being given to Government upon the other sources of revenue, namely, the License Tax and the Town Duties, which do pass through the hands of the officer of Government.

The Honourable Mr. BELLASIS observed that that was a point touched upon in this letter from the Municipal Commissioner.

His Excellency the PRESIDENT: It is obvious when you come to look at the Bill sent up to His Excellency the Governor General in Council, that it does fail in one respect, for it would be perfectly competent for the Municipality as the Act now stands hereafter to give a preferential claim upon those very sources of revenue which are, by the Act, charged with the payment of these sums to Government. There was an omission in the provisions, therefore, which the insertion of these words suggested by the Council of the Viceroy will rectify. It will be better however that the letter of the Municipal Commissioner should be read.

The Secretary then read the following letter:—

TO THE UNDER-SECRETARY TO GOVERNMENT,

LEGISLATIVE DEPARTMENT.

Bombay, 19th March 1870.

SIR,—I have the honour to request that you will lay before the Honourable Council the following observations on Bill 3 of 1870, now in charge of the Honourable Mr. Bellasis, entitled “a Bill to secure the payments to Government of certain sums of money by the Corporation of the Justices of the Peace for the City of Bombay.”

2. As to the first few words of the preamble, I submit it will be sufficient to set forth “whereas the Government of India has advanced the Corporation the sum of fifteen Lakhs of Rupees” the words in the draft “whereas” to “thereof” describe a state of things which no longer exists.

3. The latter part of the Preamble is intended to secure to Government a first lien “on certain sums of money” not on the whole Revenues of the Municipality.

The Act does not specify what those sums of money may be—but it is to be inferred from Section V. of the Act, that they are “moneys due to or accruing for the benefit of the Corporation which any Government Officer may at any time have in his custody or control.”

4. Of course I am aware that this Section alludes to the Accountant General, the Commissioner of Customs, the Commissioner of Police, and the Chief Magistrate, and that Government seek a first claim only on the sums of money passing through their hands, aggregating annually upwards of ten lakhs of Rupees.

5. But, it has been suggested that the words "*any Government Officer*" in Section V., may be held to include the Municipal Commissioner, and that thus Government might have a first claim on all other items of Municipal Revenue including the Rates and Taxes, passing through the Commissioner's hands, two of which at any rate,* have already been pledged to the holders of former Municipal Loan Debentures.

* The House Rate and the Market Revenue.

6. It is, I submit, essential, that the Section should be altered so as to leave no room for doubt on this point, for the Worshipful Bench would never consent to a wording which might, by any possibility, involve a breach of faith towards the holders of existing Debentures.

7. In conclusion, I have only to suggest with reference to Section IV. that inasmuch as the whole Elphinstone Circle Debt will be paid off by the middle of May or probably before this Bill becomes Law, there is now scarcely any need for legislation respecting it.

I have the honour to be,

Sir,

Your most obedient servant,

ARTHUR CRAWFORD,

Municipal Commissioner.

Bombay, 19th March 1870.

His Excellency the PRESIDENT: I see that the Government of India in the letter of their Home Secretary, dated the 15th September, admit that the Municipal Commissioner is not included in the Bill under the term "officer of Government," and I think it is quite clear that he is not an officer of Government. He is, though appointed by Government, an officer of the Municipality, and therefore I do not think it is necessary to insert any special provision in the Bill excluding him from being comprehended under the term "officer of Government." Consequently the words which are now to be inserted appear to me in no way to affect practically the security which the Debenture-holders of the Municipality have, inasmuch as their debt is charged upon certain sources of revenue which do not come through the hands of an officer of Government.

The Honourable Mr. Bellasis further stated that the explanation His Excellency had given, and which he believed was quite correct, would probably dispel any doubts the Debenture-holders of the Municipality might have entertained. He would therefore beg leave to propose to the Council that this Bill be read a first time.

Bill read a first time and referred to a Select Committee. The Bill was then read a first time and referred to a Select Committee composed of:—

The Honourable Mr. Scoble,
The Honourable Mr. Munguldass Nuthoobhoy,
The Honourable Mr. Bellasis,

with instructions to the Committee to report to the Council within one month from this date, and that their said report be translated into the Marathi and Guzerathi languages before being presented to the Council.

The Honourable Mr. MANSFIELD, who had given notice that he would move that the consideration of the report of the Select Committee on the Kurrachee Municipal Bill, presented to the Council at the Meeting held on the 24th September 1869, be postponed; now said that since he had come into the Council room that day, a packet of papers had been laid before him containing, amongst other documents, one with the observations of the Commissioner in Sind upon the draft Bill prepared for the Municipality of Kurrachee. But in the first place, he (the Honourable Member) would beg to ask His Excellency the President, what means there were for getting rid altogether of a Bill which had been introduced into the Council. In Parliament, at the end of each Session, there were a certain number of Bills which died a natural death without any discussion on them taking place; and he wished to know whether there was any similar process by which a Bill could be disposed of in this Council?

Mr. Mansfield obtains leave to postpone the consideration of the Report of the Select Committee on the Kurrachee Municipal Bill.

His Excellency the PRESIDENT: We are supposed to be in perpetual Session here, and I do not know of any rule here of the kind mentioned by the Honourable Member. But I apprehend the Bill can be disposed of otherwise.

The Honourable Mr. MANSFIELD said he would make a statement at the next meeting of the Council.

It was ordered that the consideration of the Report of the Select Committee on the Kurrachee Municipal Bill be postponed until the next meeting of the Council.

At two o'clock P. M. His Excellency the PRESIDENT adjourned the Council.

By order of the Right Honourable the Governor in Council,

JOHN JARDINE,

Acting Under-Secretary to Government.

Bombay Castle, 22nd March 1870.