SUPPLEMENT

TO THE

BOMBAY GOVERNMENT GAZETTE.

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SATURDAY, 19TH SEPTEMBER 1863.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament, 24 and 25 Victoria, Chapter 67, is published for the information of all whom it may concern :—

The Council met at Poona, on Saturday the 29th August 1863, at 3 P. M.

PRESENT:—

His Excellency Sir H. B. E. FRERE, K.C.B., Governor of Bombay, Presiding.
His Excellency Sir W. R. MANSFIELD, K.C.B.,
The Honorable Mr. W. E. FRERE,
The Honorable Mr. J. D. INVERARITY,
The Honorable Mr. H. L. ANDERSON,
The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,
The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,
The Honorable Mr. A. D. ROBERTSON,
The Honorable Mr. M. H. SCOTT,
The Honorable Mr. M. R. WESTROPP.

The Council proceeded to consider the Orders of the Day.

The Honorable Mr. WESTROPP *presented the Report of the Select Committee upon the Bill to amend Act XXI. of 1848 (for avoiding Wagers).*

His Excellency Sir WILLIAM MANSFIELD observed that the Report of the Select Committee could scarcely be considered at this meeting of the Council, as the provisions of Rule 25 of the Standing Orders had not been complied with in regard to it. The Report should have been in the hands of the members three days before the Council met, but it had not been circulated more than two days ago; and for his part he had not had time to read through the whole of it, until the morning of the day on which they met. If the Report had been before him for a longer time, he would have proposed an amendment to the motion for considering the Report of the Select Committee. But, as it was, he had not had the opportunity of sending to the Secretary a copy of his amendment, as was required by the Rules.

The object he would have had in view in proposing an amendment, would have been to re-introduce a discussion on the principle of the Bill. This could not now be done, unless the Council would alter its ordinary procedure, and permit him to move his amendment, and so give the Mover of the Bill an opportunity of saying all that he had to say in favour of it. He (Sir William Mansfield) trusted the Council would allow him to do this, if it were only for the purpose of hearing his Honorable and learned friend. The Honorable members were aware that they would shortly lose the services of the Honorable Mr. Westropp. However much they might congratulate him on his elevation to the Bench of the High Court, still, they could not but regret the great loss the Council would sustain, in losing his most valuable assistance, and though the Honorable gentleman would no doubt make provision for the charge of his Bill after he had himself left the Council, still it was not to be expected that any other Honorable member would be able to say so much in support of the measure, as would be said by him whose peculiar property it was. It was well known that he (Sir W. Mansfield) was opposed to the Bill; and the course he advocated was therefore adverse to the policy he might adopt in his own interest. But the interest of the Public required that all that could be said for the measure, should be said by those most competent to say it, and for this reason he would ask permission of the Council to propose an amendment to the first Order of the Day. If this permission were granted, an opportunity would be given to the Mover of again discussing the principle of the Bill.

The President said that such an amendment as was contemplated by Sir W. Mansfield, could only be moved when the Council was in Committee on the Bill itself, considering it Clause by Clause, and was not in form as a motion on considering the Report.

The Honorable Mr. Westropp asked for leave to make a few remarks in reply to His Excellency the Commander-in-Chief, and said that he felt much indebted to Sir William Mansfield, for his kind wish to give him an opportunity of discussing the principle of the Bill, and thought it probable that the President and Council would, as the present was the last occasion in which he would have an opportunity of addressing them, extend to him a similar indulgence. Consistently with his statement, on the first reading of the Bill, that he had no desire to carry the Bill through the Council with undue haste, or to shun inquiry into the alleged necessity for it; it was his intention now to move that the consideration of the Report be adjourned until the next meeting of Council. Having heard from his Honorable friend Mr. Scott, that the Bombay Chamber of Commerce had the measure under their consideration, he thought it most desirable that they should have a sufficient opportunity of canvassing its provisions, and that the Council should be informed of the result of those deliberations. It would be highly useful to the Council to be informed of the views of so important and influential a body. Those views might be communicated through his Honorable friend Mr. Scott, he being a member of the Chamber of Commerce, and they would, of course, meet with the most attentive consideration. Henceforward the Bill would be in the charge of his Honorable friend Mr. Scott, who would, no doubt, treat it with all the care and anxiety due to an adopted child. He (Mr. Westropp) thought it a very healthy sign that so much discussion had taken place outside this Council with regard to the Bill. Considerable diversity of opinion seemed to exist as to its merits. The more it was criticized, the better pleased its author would be. He had no wish to force on the Legislature or community a Bill, either erroneous in principle, or faulty in detail, nor would he be above receiving a good suggestion for its improvement, from any quarter whence it might come. He considered, however, that many of the objections made to the measure were untenable in principle, and many were founded on a misapprehension as to its scope and effect, and as to the existing state of the law, both here and in Great Britain. For instance, an impression had gone abroad that a man who had no cotton actually in hand was making a time-bargain,—that is to say, a wagering agreement within the meaning of Act XXI. of 1848, if he contracted to deliver a certain amount of cotton on a certain date. This is not necessarily the case. If there were an intention to deliver, the transaction was perfectly genuine. It is only when, *at the time of making the contract*, there is no intention of delivering the cotton, but simply an arrangement to receive the difference between the contract price and the market rate, or any other conventionally ascertained rate at the time of pretended delivery, that the transaction is a wagering agreement within Act XXI. of 1848, and assumes the character of a bet on the price of cotton at a certain date. A merchant making a *boná-fide* contract to sell or deliver, may enforce its performance, or sue for damages for its breach, whether or not the party bound to deliver had the commodity in his possession at the time of making the contract. The present Bill does not in any respect alter or affect that right of the vendor or purchaser. He (Mr. Westropp) would here refer to a passage in the 13th paragraph of the Report: "Your Com-

"mittee have been unable to discover that any instance has occurred in which the Courts have "held an agreement to have been one by way of gaming or wagering, in which such decision "has been overturned or even impeached. The burden of proving that a transaction is an "agreement by way of gaming or wagering, lies on the party who alleges it to be so, and "your Committee do not apprehend that the Courts will be henceforward less strict than they "have hitherto been, in requiring clear proof of such an allegation." A party defending himself under Act XXI. of 1848, or the present Bill, must raise a special issue, putting forward the enactment on which he relies, so that the plaintiff may not be taken by surprise at the trial. He (Mr. Westropp) knew some few cases in which there could be little doubt that time-bargains had, even since the passing of Act XXI. of 1848, been successfully sued on by the principals, the very full measure of proof which the Court requires that the transactions were mere wagers being wanting. But he had never known, nor had he been able to discover any converse case in which a *bonâ fide* transaction had been ruled to be a wagering transaction. There was not, he believed, the slightest ground for alarm on the part of the mercantile community, that any such decisions would be made. In a case of doubt the Courts would be bound to support the validity of the contract. It had been said at the debate on the first reading by Sir William Mansfield, that the present Bill was opposed to the principles which guided modern legislation, but surely there could not be any more signal error than that statement. The repeal by the Stat. 23 and 24 Vic. c. 28 of Sir John Barnard's Act, (7 and 8 Geo. 2, c. 8,) and of the Act which rendered it perpetual, had been elsewhere cited as an instance of modern legislation contrary to the principle of this Bill, and it had been asserted that time-bargains instock were now recognized as valid by the law of England. That was quite a mistake. Time-bargains in stock are, in common with all other wagering agreements, still subject in England to the 18th Section of the Stat. 8 and 9 Vic. c. 109, and are therefore null and void, and incapable of being enforced by suit. That statute was left untouched by the Stat. 23 and 24 Vic. c. 28. Sir John Barnard's Act was moreover, of a character widely different from the present Bill. That statute imposed a penalty of £500 upon persons entering into contracts or agreements upon which any premium, or consideration in the nature of a premium, should be given or paid for liberty to put upon, or to deliver any public or joint-stock, or other public securities whatsoever, or any part, share, or interest therein, and also all wagers and contracts in the nature of wagers, &c., and declared that all such contracts and wagers, &c., should be null and void. The fifth section of it confounded legitimate transactions with wagering transactions, and subjected to a penalty of £100 any person who voluntarily compounded by paying or receiving the difference for not delivering, transferring, or assigning stock according to contract. The crowning injustice of that Act lay in its 8th section, which actually subjected persons contracting to sell stock, which they were not possessed of, or entitled to at the time of making the contract, to a penalty of £500, and further subjected the broker who negotiated the contract to a fine of £100. So that although the vendor might have fully intended to procure and deliver at the appointed time the stock, yet inasmuch as he was not possessed of or entitled to it, at the time of making the contract, he was liable to a fine of £500, and his broker to a fine of £100. That statute also compelled any person to answer, upon oath, bills preferred against him in Chancery seeking a discovery of offences against the statute, and it contained many other oppressive and complicated provisions. Amongst others it introduced that pest of society, the common informer, whom it allowed to recover penalties from persons offending against its provisions. In advocating the repeal of Sir J. Barnard's Act, the Solicitor General expressly said that there was no intention of intermeddling with the Statute 8 and 9 Vic. c. 109, sec. 18, or of rendering time-bargains in stock valid. The existence of the Statute 8 and 9 Vic. c. 109, sec. 18 enabled the Legislature of England to repeal the oppressive and unjust Statute 7 and 8, Geo. 2, c. 8, (Sir J. Barnard's Act,) without detriment to the public, and without encouragement to the gambler in stock. From the 33rd year of the reign of Henry the Eighth, down to the present time, the efforts of the British Legislature have been directed with assiduous care against gambling and gaming houses. From time to time gambling, as might be expected, exhibited itself in different phases, sometimes in the form of faro, then as basset, afterwards as roulette, hazard, &c. Each was successively put down by the Legislature as the exigency arose. When it was discovered that the arm of the law, as constituted by the Statute 8 and 9 Vic. c 109, and the succeeding statutes, was not long or powerful enough to reach and strike down gambling in the last phase which it assumed, namely, that of betting offices, Sir Alexander Cockburn, then Attorney-General, determined to rid Great Britain of that nuisance, introduced and carried the Statute 16 and 17 Vic., c. 119, which at once laid the axe to the root of this evil. That Act commenced thus:—"Whereas a kind of gaming has "of late sprung up tending to the *injury* and *demoralization* of improvident persons by the "opening of places called Betting Houses, or Offices," &c. That was the solemn and deliberate expression of the opinion the Lords and Commons of England of the character of gambling in the year 1853, and not either in the middle or dark ages as some of the opponents of the present Bill would appear to suppose. The evil was extensive and popular, but nevertheless Parliament did not for one moment hesitate as to the propriety of crushing it. How then, can it be said with even the show of truth, that the present measure is contrary to the spirit of recent Legislation. No political economist either in 1853, or since, has condemned the Act for the suppression of betting offices. It not only punished those who kept or advertised such establishments, with heavy penalties of fine and imprisonment, with or without hard labour, but its 5th Section, compelled the refund of any deposit on any bet received by the keeper, manager, or assistant of any such establishment. The principle, therefore, of the 7th and 8th Sections of the present Bill is fully sanctioned by that Section of the Betting Office Act, which there, as in the present Bill, is applied to the go-between. A reference to the enactments already mentioned, and to the numerous Acts mentioned in the Report of the Committee, especially in the 15th paragraph of it, must satisfy any reasonable person that the British Legislature has never flinched in its determination to keep down the vice of gambling with a strong hand, and that the present Bill is in full accordance with the current of modern legislation. As it is in England, so it is in France. The French Code prohibits the maintenance of actions to enforce gambling contracts, Turning, then, to India, we find that gambling is discountenanced by other Acts besides Acts XXI. of 1848. Look at Sections 56 to 66 of the Presidency Towns Police Act (XIII. of 1856). These Sections deal very severely with gambling. Section 66 indeed goes somewhat further than he (Mr. Westropp) would feel inclined to go. It authorized a police officer to apprehend without warrant any person found gambling with cards, dice, counters, money, or other instruments of gaming in any public street, place, or thoroughfare, or publicly fighting cocks, or present as a spectator of such cock-fighting, and such person is declared liable to a fine of 20 Rupees, or to imprisonment with or without hard labour for any term exceeding one month, and such instruments of gaming *and money* shall be forfeited. The 56th Section renders the keeper of a gaming house liable to a fine of 500 Rupees, or to imprisonment not exceeding three months. The same Section subjects any person who advances or furnishes money for the purpose of gaming with persons frequenting such house, &c., to similar penalties. A person found playing in such a house is, by the 57th Section, liable to a fine of Rupees 200, or imprisonment for one month. If he (Mr. Westropp) had penned his Bill in the spirit of Act XIII. of 1856, he would have fined and imprisoned shroffs who enabled parties to enter into time-bargains. It was certainly rather hard that a party of poor natives sitting down to a rubber of whist on the Bombay Esplanade, should render themselves liable to a fine or imprisonment, while rich shroffs might with complete impunity set at defiance an Act of the Legislature, and injure the honest and fair-trading mercantile community, and the manufacturers and consumers of cotton everywhere by their gigantic system of betting on the price of that commodity. The information received by the Committee, and the knowledge of the facts expressed by several members of it, warranted him in making that statement. The Report found that statement to be true, and left no question open, except whether the principle of Act XXI. of 1848, was correct. The Report was so framed in order to give any member of the Committee who might disapprove of Act XXI. of 1848, the opportunity of voting on that ground against the second reading of the Bill. Is any Honorable member prepared to bring in a Bill to repeal Act XXI. of 1848? Has that Act or the Stat. 8 and 9 Vic., c.109., sec. 18, on which it is founded, ever been condemned? He who is prepared to condemn them or the Betting Office Act, must be prepared to demand their repeal, and the right of free gambling, and the great principle of non-intervention with gambling-houses and betting-offices. He (Mr. Westropp) trusted that no member of that Committee would be found to advocate such a course, contrary alike to morality, good policy, and to the whole course of British Legislation. For several years Act XXI. of 1848 was effective. No wholesale evasion of it had taken place until 1858 or 1859. The defect in Act XXI. of 1848 became apparent in 1859, when the decision referred to in the Statement of Objects and Reasons for the present Bill, in the suit of Joravermull Sewlall against Byramjee Dadabhoy was made, establishing the right of the shroff to recover money paid, and brokerage and commission in respect of time-bargains entered into by him on behalf of his constituent. Thenceforth the evasion was wholesale, and time-bargains became, through the instrumentality of the shroffs, more rife than ever. It would be no answer to the present Bill to say, "Act XXI. of 1848 has become *effete*: let it remain so." It is not *effete*; it still prevents principals from suing each other on wagering contracts of any description. To keep it unamended on the Statute Book would be to render the Courts of Justice the accomplices of the shroffs in the evasion of the Act, and to hold out a premium to the latter at the expense of their principals; in fact, to say to the agent that he might carry out, by the connivance of the law, a wagering contract, and to the principal that he might not. The only manly, straightforward, and consistent course for an opponent of the principle of the present Bill, will be to advocate a repeal of Act XXI. of 1848; and he (Mr. Westropp) apprehended that if any person had the temerity to propose a measure for the repeal of Act XXI. of 1848, or of the Stat. 8 and 9 Vic., c. 109, Sec. 18, and the like Acts, he would find very few thinking persons who would concur with him in thus encouraging and legalising gambling in all its branches. For his part he was content to rely on the Report of the Select Committee, and on the statements of the Judges of the High Court, who had rightly laid the whole of the mischief occasioned by time-bargains at the door of the shroffs. The shroff in fact held the same relation to the makers of time-bargains, as is held by receivers of stolen goods to thieves. If there were no receivers of stolen goods there would be few thieves, and if there were no shroffs, there would be few makers of time-bargains. The persons who engage in time-bargains with the aid of shroffs are of two classes: first, those who have no credit of their own, and require the guarantee of the shroff in the bazaar; and, secondly, those who, though possessed of ample means and credit, are ashamed to let it be known that they engage in such disreputable transactions. Neither of these parties would gamble in cotton or opium, if there were no shroffs to give them credit, and to hide them from shame. But in saying that he hoped his Bill, if passed, would put an end to such gambling, he must be understood as saying so *sub modo.* No legislation could perhaps extinguish gambling. But the impossibility of obtaining complete success is not a reason for abstaining from legislation in any case. Partial success, partial prevention, is all that can be attained in most cases. So long as human nature is what it is, so long will murders and robberies be committed. But it is still the duty of the Legislature to do what it can to put down such crimes, and so it is the duty of the Legislature to repress, so far as it can, an immorality injurious to community, and to the course of legitimate trade. With respect to the present frame of the Bill, he (Mr. Westropp) would remark that, although he fully concurred in the recommendation of the Select Committee that the Bill should be passed without any important alteration, yet he was not disposed to show any superstitious or obstinate adherence to its details. Should a majority of the Council be of opinion that Section 1 was too wide in its scope, and that the Bill should throughout be confined to contracts collateral to wagering agreements on the price or value of cotton, opium, or other articles of merchandize, in the same manner as the 7th and 8th Sections of it are, that alteration might be easily made, and he would gladly assist his Honorable friend Mr. Scott in remodelling the measure. But, for his part, he thought it safer to leave the Bill as it was. It would not affect any legitimate or *bonâ fide* transactions. There was a great deal of Hindoo and other ingenuity in Bombay, and if the Bill were narrowed in its scope, or too strict a definition of a collateral contract were attempted, a way might be opened for parties to evade its provisions, and those of Act XXI. of 1848. He would now put himself in order by moving that the further consideration of the Bill be deferred until the next meeting of the Council."

His Excellency Sir William Mansfield then said: "Sir,—I desire to speak on this motion. I had intended to move an amendment which should re-open the discussion on the principle of the Bill, for the suppression of time-bargains before the Report of the Select Committee should be considered. The course pursued by my Honorable friend leads to the same purpose, he having informed us that the Chamber of Commerce are considering the questions involved in the Bill, and that this Council might therefore not think it expedient to proceed to a decisive vote, till we shall be favoured with the opinions of the Chamber of Commerce. Before coming to the merits of the question, I must first invite the attention of the Council to the position in which it stands. When the Bill was first introduced by my Honorable and learned friend, the Standing Orders were suspended to enable him to present it to the Council without the necessary notice. The remarks he then made were, owing to my previous want of acquaintance with the subject, entirely unintelligible to me, as I venture to think they were to some others in this room. When I obtained a further knowledge of the subject, I opposed the first reading of the Bill, because, amongst other reasons, it appeared to me that no facts had been laid before the Council which warranted us to proceed to legislate on the matter. In this opinion I was supported by my Honorable friend Mr. Frere. I maintain that we should not be surprised into legislation without being duly informed, in a regular manner, on all the facts which should lead to such a course. My Honorable friend opposite, Mr. Anderson, who supported the first reading, owned that until he had heard the Honorable Mr. Westropp's first remarks, he had been ignorant of the matter concerned. Considering the high official position of my Honorable friend, this is a proof that the facts were not to be found on the surface. He said that afterwards he had made some inquiries; but surely this is not the sort of proof on which we should commit ourselves to legislation. Well, having got thus far, the Standing Orders were again suspended, owing to the contemplated early removal of the Honorable member who had charge of the Bill to another scene, and the first reading was passed, although the Bill had not yet been translated. Thus, whereas some of the members of the Council complained that they were called on to legislate without information, so the class which was attacked by the Bill—the shroffs who had received such hard language from the Honorable Mr. Westropp—these men who perform the most important functions of trade and exchange; these men who are at the same time stigmatised as being like receivers of stolen goods might complain that they were absolutely taken by surprise. The Council is aware that, in his despatches and orders under which the Legislative Council is constituted, the Secretary of State has warned us that the danger we have to guard against most carefully, is hasty legislation. As yet we have had no facts laid before us, not a tittle of what can be called evidence. We have had the opinions of the Chief Justice, of Mr. Westropp, of Mr. Couch, of Sir J. Arnould, of Mr. McIlwraith, of Mr. Steel, but of real evidence we have not had one tittle. The shroffs have been treated to abuse and hard names; but we know that this is the lot of bankers and tradesmen of all degrees when they ply a lucrative trade, and insist on their dues. May we not, therefore, say, that to legislate without information, without evidence, and with opinions in the place of facts, is to render ourselves obnoxious to the charge of hasty legislation, against which we have been warned by the Secretary of State. In the face of contradiction I have always maintained that a Select Committee of this Council is not in a position to obtain the information, when it is of such a kind as that required by the measure under consideration. We are all of us men of business engaged in engrossing occupations. I appeal to all Honorable members present to bear me out in my remarks, that we can spare but a very short time in the twenty-four hours for Legislative business, and that it is a very serious matter when we have to attend to either meetings of the Council or Select Committees. In short, every such meeting is a matter of great personal inconvenience, simply owing to the manner in which our time is taken up. Now, I should like to know how a Select Committee of this Council, under such circumstances, could gain evidence on such points as this Bill involves? How can it have time to summon witnesses in the first place, and then to examine, and sift, and collate, and reduce the evidence in the second? It is evident that what is wanted for such a purpose, as I have maintained before, is to have a Government Commission of Inquiry, which would have a paid Secretary with no other business on his hands. I do not say that a Select Committee has not the necessary authority; it is not a question of authority, but a Select Committee has not the power and the capacity. Officially, it has all the authority required to conduct the inquiry; but I repeat that, practically, it is without the power for the reasons I have given, and that, therefore, it cannot conduct such an inquiry to a satisfactory conclusion. I now proceed to consider the value of certain analogies which were used in the last debate by my Honorable friend opposite (Mr. Anderson) in argument against my views. Thus the Honorable gentleman defended the Bill on the ground that lotteries had been abolished as a matter of public morality. But I deny the correctness of the analogy. Lotteries were abolished in England because, generally, they were State institutions for augmenting the public revenue; it was held that it was a wrong thing to excite the people to gambling for such a public purpose. In the time of Queen Anne private lotteries were voted to be a nuisance; but I am not aware that, of late years, or at the time that lotteries were abolished by law, it could be said that private lotteries in any manner entered into the habits of the English people. The exception of that very *dilettante* affair, the Art Union Institution, cannot certainly be quoted. It will be admitted that it is one thing to determine, whether a means of filling the public treasury is improper, and it is quite another to interfere with private speculation as is proposed by this Bill. It is true that when public lotteries were abolished, the opportunity was taken to include private lotteries also; but it was not against private lotteries that the action of the legislature was set in motion. (Sir William Mansfield here read an extract from the *Encyclopædia Britannica*, regarding the history of British lotteries.) Mr. Anderson, then, with a happy audacity instanced the case of prevention of prostitution, as an analogy which might be quoted, and he gave the example of the abolished night-houses as being a case in point of the interference of the Legislature. Really, unfortunate shroffs had something to complain of; by one Honorable member they were bracketed with receivers of stolen goods, and by another with the owners of night-houses. But really and truly the analogy, if pursued, is all on my side of the question. If the object is to protect the public morality, we should surely attack those who are guilty of the vice, instead of coming down on those who are assumed to be accessories. But the true analogy seems to be of the Lock

Hospital, which is an institution to protect the immorality of those who actually cause and create prostitution. However, I do not wish to lay any weight on argument from such analogies; such analogies drawn from different things are always unsatisfactory. Let us proceed to the question itself. It was admitted on a former occasion, both by Mr. Westropp and Mr. Scott, that the Bill could not escape the charge of, to a certain extent, protecting dishonesty by releasing a man on certain grounds from discharging the obligations which he had incurred. I desire particularly to guard myself, and by no means to impute even by a shadow, more strength to the admissions of my Honorable friends than they intended to convey; but still I conceive that what was admitted is such a blot on the Bill that it cannot pass. Sir Joseph Arnould gives a modified support to the Bill, but he declines to entertain that portion of it to which I now refer. Thus he says, "The man who enters into a gambling contract is, it is conceded, guilty of an immorality; but the man who after having entered into a gambling contract afterwards breaks it, to avoid loss, is guilty of a second immorality. The State ought not to permit the machinery of courts of justice to be employed in order to protect from the consequences of one immorality a litigant whose only '*locus standi*' is a second immorality." (Sir William Mansfield then proceeded to attribute a like meaning to Mr. Couch, but was reminded by the Honorable Mr. Westropp that he must have misapprehended the clause alluded to in Mr. Couch's letter.) If I turn back to the Statement of Objects and Reasons accompanying the first draft of the Bill, I find that Sir Matthew Sausse may, perhaps, even side with me when he indicates he contemplated recommending to the Legislature that a certificate should not be granted to an insolvent for six months, if it should be discovered that the insolvent had been a party to a time-bargain. The Honorable the Chief Justice seems here to have hit upon the right principle if it be necessary to legislate on this matter, as he would thus render the principal responsible instead of the accessory. I have asked more than once for a definition of what is meant by collateral contract, but I have not as yet received an answer. I have asked whether a collateral contract includes the repayment of advances by a person who has borrowed money. When money is advanced to another person, is the party who advances it debarred from recovering it in any circumstances by the use made of it by the other party? It seems to me that when you once allow yourself to question the reason of a loan as an element to be considered in the question of the recovery of it, you place yourself in an unsatisfactory position, and are in danger of making a daring invasion on the rights of property. It is a most serious thing to make a precedent for exonerating a man from paying his engagements; if commercial morality is touched it is impossible to be answerable for the consequences, or if in any manner you interfere with the principle of original responsibility. The larger the transactions of the merchants, the more important are such considerations to them. The petty dealer may succeed in spite of a principle being violated, but not so the great merchant with his numberless customers and transactions. It is known that in the case of horse-racing no action will hold to protect the winners of bets; but I have asked, and without getting an answer, whether if money, which had been lent, were squandered in bets and races, the lender would be debarred from recovering it. My Honorable friend opposite on a late occasion, when touching the analogy of wagers on horse-racing, had said that they were generally settled by laws of honour. But in truth questions of horse-racing, which generally turn on facts such as the age of a horse, do frequently come into courts of law, and are settled there. Take, for instance, the very actions referred to by my Honorable friend which occurred in 1844, with respect to the age of the horse *Running Rein*, if I recollect rightly.

(Here the Honorable Mr. Anderson stopped Sir William Mansfield, and intimated that he had alluded to wagers, whereas stakes were recovered at law).

In the course of this argument it has often been alleged that prices are injuriously affected by the abuse of time-bargains. I must take leave to join issue on that assertion, it being entirely opposed to all the notions of the greatest economists both of this and the last generation. It always happens that when the attempt is made to put on a restriction, we are told that the absence of it affects prices, and then all the banded strength of scientific writers is demanded to overcome the prejudice which has been thus caused. But, further, if prices are really affected by the abuse of time-bargains, it is necessary that the fact should be shown in evidence, and not merely be stated as an opinion. The truth is, the price of cotton depends on its value in the several markets: if there is a dearth at Liverpool, or New York, there is a rise in prices at Bombay. If the distant markets have a glut, Bombay experiences a fall of price, and markets are not really affected by fictitious pretences of sales. There is, indeed, one result of these time-bargains which I can easily understand being very disagreeable; it follows that the trouble of the great merchant is immensely increased by the gambling and puddling of 5,000 small speculators. But I should like to know what is the business of merchants, and what is it that causes the success and fortune of one, and the ruin of another? What is it but that one has the ability and the acumen to deal with difficult calculations and puzzling chances, while the other is without such qualities. But I should like to know what a time-bargain is. Let us suppose a great merchant borrowing £400,000 to take up cotton at 15 per cent. He despatches his cotton to Liverpool in the belief that when it arrives the price will have risen to such an amount that he will not only pay off the loan with its 15 per cent., but obtain a large profit besides. In short he backs time. What is this but a time-bargain on a great scale, which I take to be a very ordinary operation by which large fortunes are made. I draw attention to this as showing the great difficulty of discriminating in these matters. Where are you to draw your distinction? If you are to legislate against bargains in one form, you will have a great difficulty in escaping the other. I now proceed to look at what has been called the evidence. In the opinion of Mr. Kelly it is mentioned that he had sent out upwards of sixty notices for clients. What is the meaning of this? Do these notices affect the delivery of goods, or what? In short, what are these notices for?

(Here the Honorable Mr. Westropp explained the nature of these notices, saying:—The delivery mentioned in them is nominal. Such notices are of two sorts, one being from one shroff in the character of principal to another shroff in the same character pretending to call for delivery of the goods, but really only seeking to procure payment of the difference between the betting and the settling price. The other sort of notice is from a shroff to his constituent seeking reimbursement of money paid for him on account of losses in time-bargains and commission and brokerage on these bargains.)

I would ask what is the value of Mr. Kelly's letter to an outsider? If we go on to Mr. McIlwraith's letter we find him expressing very trenchant opinions; but all that he says is merely opinion, in which we are certainly not bound to agree. He is so positive that he does not think it necessary to enter into lengthened arguments. Again, Mr. Steel complains because so many people engage in these bets or bargains. Thus he says that the Bill "is certainly calculated to interfere with the liberty of the gambler, but on the other hand it will only secure the liberty of the merchant to trade at a market price free from undue influences." I should like to know what he means by undue influences. He might as well say that the difficulties of wind and weather are undue influences, or any other chance, without contending with which commerce would have no risks. In such case I suppose we should have a commercial Utopia. Every man would be safe, and every one would realise large fortunes,—in short, I imagine every one would be a merchant. But as I have said before, a clever man contends against influences of every sort; a stupid one cannot meet them. The former makes a fortune, the latter is ruined. That forms no ground for legislation. Why should the capitalist—the merchant—be protected more than others? In looking further down the documents I come to the agreement of the sixty shroffs. I read it, but I fairly admit to my Honorable friend that it is beyond me. If I look to the Bill in its amended form, in considering the first Clause, I accept my Honorable friend's declaration that, in the opinion of some of the gentlemen he has consulted, it may go too far, although such is not his own opinion. We may, therefore, assume, that if we get into Committee, some changes would have to be made in this Clause. I therefore, pass it by without further remark. With respect to the second Clause, if the Bill had stopped there, although I do not think it is needed, there would have been no occasion for strong opposition. There is do doubt that the commission and brokerage alluded to, come under the head of collateral contracts such as those objected to by the Judges. To the third Clause I have the strongest objection, as it seems to me to open the door widely to interference with property and the promotion of malicious suits, each of which would depend on the definition of wagering or gaming. It also appears to me that this Clause will not only affect opium and cotton bargains, but every description of jobbing in stock, or shares which shall not be made for ready money,—in short, of almost every transaction for what is called "the account." The fifth Clause seems to me liable to the same criticism. The sixth Clause declares that any advance made, or sum "of money, &c., entrusted to any shroff, &c., to abide the event of any agreement for paying or wagering, shall be recoverable by the depositor, &c., whether such depositor be or be not the loser, &c." I must urge again upon the Council that what is here stated is opposed to morality and the first principles of justice. It is impossible to dwell too strongly on this point, and that we must not invade the principle that every man shall recover his due. What does Blackstone say about this? "Such among others are these principles: that we should live honestly, "should hurt nobody, and should render to every one his due; to which three general precepts

Justinian has reduced the whole doctrine of law: *Juris præcepta sunt hæc, honeste vivere, alterum non lædere, suum cuique tribuere.*" The seventh and eighth Clauses are of similar character to the sixth. They alike tend to shield the dishonest man at the expense of the agent who acts by his order according to the nature of his business. I can only say that they appear to me to place the shroffs absolutely at the mercy of dishonest and designing men. The latter will always have it in their power to allege that an advance was made for wagering purposes, and the *onus* of disproof will be thrown on the shroff, or banker, who has given accommodation according to the custom of his house. It cannot be disputed that, with the exception of one or two acts, the course proposed to us to follow, is opposed to the whole spirit of modern legislation. I do not think that the Betting Houses Act, which was meant to meet very exceptional circumstances of the lowest class of population, can be quoted as a serious precedent. But further I deny that we ought to be bound by precedents in such a matter. We must look to what we consider right according to the first principles of morality, and we must refuse to be bound by one or two precedents of an exceptional character.. But there is another most important point. You must beware of an attempt to trammel and restrict the people too much. They can never improve in morals, and exercise a proper responsibility for themselves if they are bandaged and swathed in petty restrictions. A man must learn to appreciate the consequences of his own immoral acts, and by those consequences his improvement will be worked out. I consider that the Courts of Law at Bombay, where the lessons of justice are read by Judges of the highest character, and whose bar is led by lawyers of the highest honour and learning, afford the school where men can best learn to appreciate the consequences of their actions, and where, therefore, the object of this Bill can be attained without further legislation.

The Honorable Mr. WESTROPP in reply said that, knowing that the President and many members of the Council had a pressing engagement elsewhere, he felt that at that late hour he must content himself by noticing as briefly as possible the graver mistakes only into which His Excellency the Commander-in-Chief had fallen. Before adverting to them, he would, however, observe with reference to what His Excellency had said as to hasty legislation, that the motion with which he (Mr. Westropp) had concluded, ought to have protected him from the supposition that he desired the Council to proceed with this Bill without due deliberation. Sir William Mansfield had stated that in suits brought under Sections VII. and VIII. of the Bill, the *onus* would be thrown on the shroff or the winner of proving that the money sought to be recovered from the shroff or the winner was not advanced in respect of wagering agreements. His Excellency, however, was quite in error in supposing that such would be the case. Both with regard to those Sections and all the other Sections in the Bill, the *onus* of proving any advance or payment to have been made in respect of a wagering agreement, would be cast upon the party who asserted such to be the fact. If a shroff or any other man wilfully advanced his money for the furtherance of purposes immoral, and even now, under the ban of Act XXI. of 1848, it was but maudlin sympathy on the part of those who condoled with him on his inability to recover it. It would be difficult for any person, still rational, to furnish forth much compassion for a man compelled to refund money obtained upon a betting transaction, forbidden by the existing law both here and in Great Britain, beneficial to nobody except the idle gambler, and detrimental to many by its pernicious effect on the *bonâ-fide* market for merchandize. Cotton, which might fairly be deemed almost a necessary of life, ought especially to be protected from such illegitimate operations. Sir William Mansfield had asked whether money lent to a gentleman, which the latter afterwards squandered in wagers on a horse-race, could be recovered by the lender notwithstanding the present Bill. It certainly could be recovered by the lender if he did not lend it for that purpose. If, however, he lent it actually for that purpose, the first Clause of the Bill would prevent him from being able to recover it by suit. But inasmuch as His Excellency had put that question when he was dealing with the 7th and 8th Clauses of the Bill, he probably meant to ask whether money paid in respect of a lost wager on horse-race could under those Sections be recovered from the winner by the loser. It most certainly could not. Those Sections applied only to wagers or wagering agreements on the price or value of cotton, opium, or other articles of merchandize. So that if the loser of a wager on a horse-race thought proper to pay the amount, that transaction could not be re-opened. His Excellency seemed to hold that the 7th and 8th Clauses of the Bill were framed to protect the dishonest man at the expense of the innocent agent. Here again His Excellency's logic was at fault. The intention of those Clauses was to deter the agent—that is to say, the shroffs (who have with unbounded effrontery banded themselves together by a solemn league and covenant to set the Legislature at defiance, and to violate the law of the land)—from persisting in their illegal, immoral and mischievous purpose. Those constituents who availed themselves of this Bill in order to compel shroffs to refund, might be disreputable too. It was not, however, for their sakes that those Clauses had been framed, but for the benefit of the industrious and honest trader and the innocent manufacturer and consumer. The casual protection given to some dishonest and unsuccessful gamblers, was but a slender evil intermixed with a great good, namely, the discouragement of this especially mischievous phase of gambling. Leaving for the present the shroffs, those guileless and meritorious clients of His Excellency, and turning to his remarks on the 4th Section of the Bill, that ft established a novel and dangerous precedent in enabling Courts of Justice to inquire into the consideration of judgments, deeds, and other securities, he felt bound to inform His Excellency that there was nothing whatever either novel or dangerous in such a power. Courts are entitled to, and do constantly inquire into, the consideration for which a deed or other security is given, and if it appear on investigation that such a document has been given for any illegal, or fraudulent purpose, or *contra bonos mores*, it will be set aside or treated as null and void. Take as an example the shocking instance of a deed of settlement made in favour of a female, with a view to accomplish her seduction, and that the seducer gaining his object, and subsequently is vile enough to repudiate alike both the victim and the settlement—the law will not enforce it in her favor. The reason of this is that having been given in consideration of future illicit cohabitation, the deed was *contra bonos mores*, and is therefore null and void. This is not Statute Law; it is the Common Law of England. Even past cohabitation is not such a consideration as will support a simple contract. It will not, however, invalidate a deed or document under seal. It would be a useless waste of time at this late hour to multiply instances in which Courts of equity and of law rigorously investigate the consideration for which documents are given. Such powers are absolutely indispensable for the administration of justice, and have been exercised with benefit to the public and without complaint in the case of documents impeached on the ground of fraud, undue influence, immorality or illegality. In making that objection His Excellency had travelled into a region that was unknown to him. The Council was further told by him that this Bill would hamper all exchange operations. If this were the conclusion to which His Excellency had arrived, although he may have read the Bill, he most assuredly had not understood it. It had nothing whatever to do with exchange operations, or with any *boná-fide* transactions for "the account." Those which are not *boná-fide*—those, in simple language, which are mere time-bargains—are already void under Act XXI. of 1848. Again he was in error in supposing that betting offices had been the resort in England of the poor and humble only. Those offices had been used by persons of the higher and middle classes also, and the evil was considered so extensive, and the necessity for checking it so urgent, that the Act to suppress them was passed rapidly. It had worked well and met with the general support of Parliament. Who will venture to affirm that the common gaming-house, which, for centuries before the establishment of the betting offices had been declared by Statute Law to be a nuisance and indictable as such, was the special resort of the poor and needy? It was notoriously the resort of the rich, the improvident, and the idle of all classes. Next, as to Sir William Mansfield's objection that the Select Committee had not obtained any evidence which would justify the Council in amending Act XXI. of 1848, he would only mention that Act XXI. of 1848 was passed on precisely the same sort of evidence as that on which the Select Committee had relied in framing their report, namely, the experience of Courts of Justice. The agreement signed by the sixty shroffs was of itself sufficient evidence, established as its real character was in many cases in the High Court, viz: the treaty of sixty shroffs for the maintenance and encouragement of gambling on the price of cotton. Those decisions stand in full force and unimpeached. Not a single shroff now ventures to contend in Court that its character was otherwise. His Excellency, however, had said that the document was beyond his comprehension. No doubt it was intended to be so. That document had been purposely prepared so as not to disclose its true character further than could be avoided. The object of the sixty shroff who had signed it, was to throw sand into the eyes of the Court, and to make the Judges believe that the transactions to which the document referred, were of genuine character, and contemplated the actual delivery of cotton. It was not until after careful and searching investigation that the true character of the agreement had been discovered. Again, His Excellency, with a strange confusion of thought and language, had said that what the Committee had supplied to the Council were only opinions—not facts. But he (Mr. Westropp) would say, that what the Judges of the High Court certified under their hands, as having been proved in suits tried by them, was as good evidence, nay, far better than could be procured by a Select Committee or Government commission from other quarters, and was not a matter of opinion, but was entitled to be regarded as conclusive as to any facts within their cognizance, as the Judges would certainly hold any statement made by His Excellency the

Commander in Chief in regard to facts connected with military matters, of which his Excellency had personal knowledge. The facts of which the Judges spoke, were elicited on oath from witnesses, examined and cross-examined in a manner not attainable by any Government Commission, where the stimulus of litigation would not be present. As the statements of Sir J. Arnould and Mr. Justice Couch stood high in the Courts of Law, so did those of Mr. McIlwraith and Mr. Steel in the Courts of Commerce. Mr. Kelly had been requested by him (Mr. Westropp) to state how many notices in respect of time-bargains he had sent out at one of the periods of nominal delivery (settling days) mentioned in the agreement of the sixty shroffs. He replied that in two or three days he must have sent out at least 350 notices. He (Mr. Westropp) had seen many such notices in Court. They often, as a pretence, demand delivery, but really are mere stimulants to pay the difference. Others again demand reimbursement to the shroffs for moneys paid, or pretended to be paid, by them, on account of their constituents in respect of their wagering contracts. Mr. Kelly had then to deal with 350 recusants. He was only one solicitor amongst many similarly employed. Then, again, how many men must have paid without the gentle impulse of an attorney's letter? These considerations suffice to show, if it were necessary to prove that which is a matter of public notoriety, how wide-spread is the system of gambling in time-bargains nominally on the price of merchandize. It was too late for him to notice—with one exception however—the remaining arguments of Sir William Mansfield; but he had no doubt that his Honorable friends, Mr. Scott and Mr. Anderson, would effectually dispose of those passages in his speech especially pointed towards them, whenever they next had an opportunity of discussing the Bill and the Report upon it. He would, however say that although many other causes also tended to raise the price of cotton, and amongst these, the American war in particular, yet there could not be any doubt that the fictitious demand for cotton, added to the real demand, both being enormous in amount, had a general tendency to force the price upwards. The last mistake of Sir William Mansfield which he (Mr. Westropp) would notice was his extraordinary supposition that the Chief Justice sided in opinion with His Excellency. No doubt the Chief Justice was anxious to have the means of punishing the reckless principal by a future proviso in the Insolvent Act. But if Sir William Mansfield had read the extract from the Chief Justice's judgment, given in the Statement of Objects and Reasons for the Bill, he would have seen that the Chief Justice regarded the shroffs as the authors and fosterers of the evil, and, therefore, as the chief delinquents.

The question was then put that the first Order of the Day be postponed.

Carried.

The President adjourned the Council to Saturday the 12th September, at 3 P. M.

By order of His Excellency the Governor in Council.

H. BIRDWOOD,

Under-Secretary to Government.

Poona, 17*th September* 1863.