SUPPLEMENT

TO THE

BOMBAY GOVERNMENT GAZETTE.

Published by Authority.

WEDNESDAY, 30TH 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 12th September 1863, at 11 A. 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. JUGONATH SUNKERSETT,
The Honorable Mr. A. D. ROBERTSON,
The Honorable Mr. M. H. SCOTT.

The Council proceeded to consider the Orders of the Day.

The PRESIDENT said that to enable His Excellency Sir William Mansfield to move the amendment of which he had given notice, he would *pro formâ* put the question that Section I. of the Bill to amend Act XXI. of 1848 do stand part of the Bill.

His Excellency Sir WILLIAM MANSFIELD said that on two occasions he had been prevented taking a course which would have led to delay, and afforded means for gathering the information of which they stood in need. This happened when he was acting in conjunction with the Honorable Mr. Frere when the Bill went to a first reading. At the last meeting of the Council a debate on the principle had been brought on informally by the learned Judge who had now left the Council, and he had then expressed his views on the measure at some length. But if the Council were now to consider the Bill Clause by Clause, there would be no opportunity of again discussing the principle of the Bill, and no opportunity therefore of rejecting the Bill as erroneous in principle. For if the Council once began considering the Report of the Select Committee, their doing so would imply that the Bill was correct in principle, and only needed revision as to its details. It was not to be supposed that the Council would discuss the details of a measure, if it disapproved of it as

erroneous in principle. He was anxious therefore that the details of the measure should not be discussed, and to adjourn such a discussion indefinitely, he thought it necessary that before the Report of the Select Committee was brought on for consideration, the amendment of which he had given notice should be put to the Council. If his amendment were moved, a discussion would be induced on the principle of the Bill in quite a formal manner; and this he believed would meet the views of his Honorable friends who differed with him about the measure. He would therefore ask permission to move that the consideration of the Bill to amend Act XXI. of 1848 (for avoiding Wagers) be adjourned to that day six months.

The PRESIDENT said that when the Report of a Select Committee is taken into consideration, it is not implied that members were precluded from discussing the principle of a measure. In taking the Bill into consideration Clause by Clause, they Honorable members would be quite unfettered, not only as to the number of times might speak on any given point, but also as to the subject of their remarks; so that there was nothing to prevent any amount of discussion on the principle of the Bill. It was very true that the former discussions on the principle of the Bill had been brought on in an informal manner; but the Bill itself was introduced under very peculiar circumstances, and he (the President) could not regret that Standing Orders had been set aside to enable the Bill to be carried through its earlier stages; for the interest which this Bill had aroused in so many different quarters sufficiently showed the importance which attached to it. This measure had been brought in by their late colleague the Honorable Mr. Westropp; and he was elevated to a seat on the Bench of the High Court so soon afterwards, that it would have been impossible for him to have stated his views on the Bill, if some of the Standing Orders of the Council had not been suspended in his favour. He (the President) had objected to the appointment of a Commission of Inquiry, because the appointment of such a Commission was a function that properly belonged to the Executive Government. If the Council of the Governor when assembled for Legislative purposes once trenched upon such duties, they would soon be involved in most inextricable confusion. For similar reasons he had not acceded to the proposal made by the Honorable Mr. Frere for the appointment of a Special Committee to inquire into the evils which it was the object of this Bill to remedy. Such inquiry was quite within the province of the Select Committee to whom the Bill was referred. The Select Committee were of course aware that it was not imperative for them to submit their Report so soon as they had done. They might have waited until they had collected sufficient evidence as to the evils complained of, to enable each one of the members of the Committee to sign the Report in token of his approval of the principle of the Bill, or else to express his disapproval by not signing the Report. As to the course to be followed by them today, His Excellency Sir William Mansfield would understand that though as a matter of convenience the principle of a Bill was generally discussed before the Bill was referred to a Select Committee, yet as a matter of right the principle might be discussed at any time. The regular course for the Council now was to put the Bill Clause by Clause.

His Excellency Sir WILLIAM MANSFIELD said that he would defer to His Excellency's ruling, as his only object was to re-induce a discussion on the principle of the Bill, and on no account have it set aside on a point of form. Under the views expressed by His Excellency, it would be competent for him to raise such a discussion after the question was put that the first Section of the proposed Bill do stand part of the Bill. He (Sir William Mansfield) could have no object in pressing his amendment before the question regarding the first Section was put to the Council. But while deferring to His Excellency's ruling he must take this opportunity of saying that it appeared to him that Her Majesty's Secretary of State, with a view of depriving this Council of the character of a Parliament contemplated that it should always be in Committee, in fact, as was shown by the care taken to direct the Council to abstain from any terms in their rules which should imply another sense. In short the Council was a Legislative Department of the Governor's Council.

The PRESIDENT said that the view expressed by His Excellency as to the intention of Her Majesty's Secretary of State that the Council should always be in Committee could scarcely be correct. Under Rule 21 of the Standing Orders the Council was empowered to appoint Committees for any purpose connected with its business, it was therefore to be inferred that the Council was not itself in Committee when it appointed a Committee. He (the President) had heard with surprise and regret His Excellency's remark that His Excellency and the Honorable Mr. Frere had been twice prevented from bringing on a discussion on the principle of the Bill. He would wish, therefore, before proceeding with the Bill, to ask the Honorable Mr. Frere how he (the President) had prevented as full an inquiry into the necessity for the measure as the Honorable Mr. Frere required.

The Honorable Mr. FRERE in reply referred to the 1st paragraph of the report of the Committee in which they have recommended that "the Bill if approved in its main principle by the Honorable Council should be passed without material departure from its present form," and stated that those words had been inserted by the Committee to enable him to question the necessity for the Bill at all. He had twice, when the Bill was first introduced, attempted to obtain evidence upon the subject before proceeding to legislate on it, and he had afterwards in Committee applied for further evidence, but all that he could get were the opinions of the Judges of the High Court, Mr. Kelly, Mr. Steel, and Mr. McIlwraith; all of them no doubt most valuable as opinions, but not, he thought, sufficient evidence for the Council to legislate upon, and he should therefore vote, as he had told the members of the Select Committee he should do, against the Bill, until he had further evidence of the necessity for it.

The PRESIDENT then put the question that the first Section of the Bill to amend Act XXI. of 1848 (for avoiding Wagers) do stand part of the Bill.

His Excellency Sir WILLIAM MANSFIELD moved that the consideration of the Bill to amend Act XXI. of 1848 (for avoiding Wagers) be adjourned to that day six months. He had already expressed his views on the subject on former occasions, and he would therefore reserve any further remarks he might have to offer until he had heard what any Honorable members who wished to oppose his amendment had to say against it.

The Honorable Mr. SCOTT said:—

"Sir,—I feel it to be my duty to oppose His Excellency's amendment. I regret exceedingly that the Council is deprived of the advice and assistance of the Honorable mover of this Bill, and I must crave their forbearance if I attempt very feebly to supply his place.

"It will be in the recollection of the Council that at our last meeting the debate on this subject was somewhat prematurely brought to a close by your Excellency's engagements elsewhere. I was anxious then, as I am anxious now, to make a few remarks in reply to what then fell from His Excellency the Commander-in-Chief. With every member of this Council, I always listen with the greatest possible respect to what falls from his Excellency's lips, and when I find my opinion differing from his, I am led very carefully to scrutinize the reasoning by which my own conclusions have been arrived at. As regards the present subject, I have so scrutinized with the greatest care all my reasoning; I have weighed with the greatest care all His Excellency's arguments; but I find myself still differing from him on every point.

"I may say at starting that the prevailing feeling in my mind as regards this subject, is one of intense astonishment that we should have found so much to say about it; that not only in this Council, but elsewhere, there should have been so much apparent excitement on the subject. In my innocence I supposed that there could be no great doubt as to the meaning of the word *time-bargain*, in the common mercantile acceptation of the term; and I imagined that as this Bill aimed merely at preventing the systematic evasion of an existing law, which for 15 years has stood upon our Statute Book unquestioned, nay, tacitly approved by those now so loud in opposition, no great discussion could take place upon its principle. Its principle is that of Act XXI. of 1848; of that of the English Act 8th and 9th Victoria, both hitherto unquestioned and unattacked; its Clauses of course I expected to have discussion about. I did not expect that the means by which it sought to obtain its ends would be equally satisfactory to all, and I expected a fight over these.

"Sir, a *time-bargain* in the common acceptation of the term (the Bill, be it remarked, does not use the term at all) is a *fictitious* sale of some commodity or security for nominal delivery at a future date; a *bet* upon the future value of such commodity or security; a simple gambling transaction. This is what I maintain a *time-bargain* to be. By a strange omission in Act XXI. of 1848, a door was left open for its evasion; by the dodge of agency it has been systematically evaded, and this omission it is the object of this Bill to supply.

"Sir, I venture to think that all the arguments which I have heard here; all which I have seen elsewhere; against the Bill, would have been in place had we been now about to pass Act XXI., but are sadly inappropriate now. I have not heard here, nor have I seen elsewhere, any proposal to repeal Act XXI., and I maintain that the only consistent course for those who oppose this Bill, would be to agitate for the repeal of Act XXI. There can only be two consistent courses with regard to this matter, either to advocate the repeal of Act XXI. or to support a Bill for rendering it effective. Surely, Sir, His Excellency and the opponents of this Bill will not say "Act XXI. has partially fulfilled its object. it has kept out of court the principals to a gambling transaction, it has so far done good, let us not draw the string too tight, let us still leave a loophole by which a certain amount of the evil thing may creep into our courts."

"When His Excellency the Commander-in-Chief last addressed the Council, he attacked the Report of the Select Committee as being a mere bundle of opinions, as containing no statement of facts supporting these.

"His Excellency said:

"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. Mellwraith, of Mr. Steel, but of real evidence we have not had one tittle."

"Now, Sir, I protest against this accusation as most unfair. The Committee have not laid before the Council all the evidence which they obtained, all the facts which came before them; it is manifestly impossible that they should do so, but I maintain that they have laid before the Council very full and sufficient evidence in proof of the justice of the conclusions at which they have arrived; they have given *opinions*, but they have given *facts* also.

"What is the evidence; what the so-called opinions which the Committee have laid before the Council? First there are the remarks of the Chief Justice, and these be it remembered are contained in no private communication, but in a judgment delivered from the Bench.

"What does Sir Matthew Sausse say?

"We regret very much that we are compelled even indirectly to afford the sanction of the Court to such transactions, but we are bound by the decisions on the English Act analogous to Act XXI. of 1848. We the more regret it because the plaintiffs are the persons who have enabled the defendant to engage in those wagers and time bargains, but, when this case was before the Court on the demurrer, the authorities that were then cited showed plainly that the Act does not exclude such an action as the present by an agent for brokerage and commission, and for money paid for losses, incurred by the person for whom he is acting, on wager."

"Then, Sir Joseph Arnould, what does he say?

"There can be no doubt that the evil against which Act XXI. of 1848, and the present Bil are aimed, prevails in the lower as well as the higher classes of the native community. I know this not only from ordinary experience and observation, which can leave no doubt on the point to any resident in Bombay who does not close his eyes and ears to all that is passing in daily life, but also from the fact that in my judicial capacity suits arising out of gambling transactions have come before me, involving members of the lower as well as of the higher classes of the native community. There can be no doubt whatever that Act XXI. of 1848 has been, and is constantly being, systematically evaded by the intervention of shroffs and native bankers."

"Then, Mr. Justice Couch, and what does he say?

"In answer to your 3rd question, whether the evil against which Act XXI. of 1848 and your Bill are aimed, prevails in the lower as well as the higher classes of the native community, I can say that my experience leads me to think that it does, and facts have been proved before me in Court, showing that the clerks and servants of the native merchants are in the habit of making time bargains, and that in some cases it has led to the committing of crime. To your 4th question, whether Act XXI. of 1848 has been evaded by the intervention of shroffs and native bankers, my answer is that it undoubtedly has, and not only been evaded, but the practice of gaining and wagering has, I think, been greatly promoted and encouraged by the combination amongst them, and the rules they have made for their conduct with respect to time-bargains. This was illustrated by several cases tried by me, in which it appeared that a writing was drawn up, and signed by the various shroffs and native bankers, or their representatives for regulating time-bargains in cotton, and providing for the fixing of the prices at which they were to be settled. This writing required that the price should be fixed, having regard to the actual price of cotton; but on an occasion when the price had arisen to a great extent, the shroffs, after several meetings and great discussions, fixed the price at a much lower sum, with the view, as it appeared, of promoting an easy settlement of the bets, and I think also of preventing the practice of making bets in this manner by their agency from receiving a check or discouragement."

"Sir, are these a mere bundle of opinions? they are the statements of opinion undoubtedly, but they are the statements of facts also, and of what facts? these:—

1. That the Courts are bound by the law as it now stands to afford their indirect sanction to gambling contracts. That, as one of the Judges more strongly puts it "Act XXI of 1848 has been, and is constantly being, systematically evaded by the intervention of shroffs and native bankers."

2.—That the evil against which Act XXI. and this Bill are aimed, prevails in the lower as well as in the higher classes of the native community, and that in some cases it has led to the committing of crime.

"The Council will observe that I am laying before them not what the Judges state as matters of opinion, but as matters of fact which have been proved before them.

"Sir, had the Judges only favoured us with their *opinions*, I conceive that there might have been worse grounds for legislating to supply an omission in the existing law, than the unanimous opinion of such men as now sit on the Bench of Her Majesty's High Court.

"Then, Sir, we come to the letter of Mr. Kelly, one of the most eminent Solicitors of the High Court, and what does Mr. Kelly say? I would call His Excellency's attention to this, that Mr. Kelly ventures on no opinion at all. He merely states facts, and facts very pregnant with information. He says—

> "I have on such occasions sent out, on behalf of a client, upwards of 60 notices in one day, and at the same time sent out 10, 20, or as many as 50 notices for other clients. On one particular occasion, I think, I must, in the course of two or three days, have sent out at least 350 notices."

"Then we come to the letters of Messrs. McIlwraith and Steel, and here I must crave the forbearance of the Council if I refer for a moment to a personal matter. It has been most industriously circulated outside that I endeavoured to represent to the Committee and through them to the Council, the minds of these two gentlemen as representing those of the mercantile community of Bombay. Sir, my colleagues in the Committee know that I never did anything of the kind, they know that I merely brought forward the letters of these two gentlemen as giving the views of two merchants of great experience in Bombay, of about the two oldest members of the Chamber, of two valued personal friends whose advice and opinion I had asked for my own satisfaction.

"The opinions of the members of the Chamber of Commerce, to obtain which this debate was adjourned for a fortnight, I hoped we should have in time, and I am glad to say that, though late, I was enabled this morning to put a first instalment of these opinions in the hands of the Members of this Council.

"I have to apologize for this digression.

"Now, what do Messrs. McIlwraith and Steel give as the fruits of their lengthened experience as Bombay merchants, as merchants in the conduct of large transactions, and in daily communication with large numbers of native traders?

"They state that all classes of the community, the penniless as well the wealthy, indulge in these gambling transactions; that owing to the present defective law, these pernicious transactions are almost exclusively confined to one agency, that of the shroffs; and that they have a most disturbing influence on the operations of legitimate commerce.

"These Sir, they state as the facts which their experience has proved to them, and they then stated their opinion and their hope with regard to this Bill. Their opinion that it would go to remedy the existing evil, and their hope that it might speedily become law.

"But, Sir, I would refer to more valuable evidence still which the Committee had before them. They were assisted in their deliberations by my Honorable colleague, Mr. Premabhai Hemabhai, whom I regret not to see here to-day, and who is probably better able to advise on such a subject than almost any other person in the Presidency; had he been here. I purposed appealing to him, as I now do to my Honorable friend on my right, Mr. Rustomjee Jamsetjee Jejeebhoy, for confirmation of the truth of all the statements set forth by the Committee, and of the justice of all their conclusions.

"Then, Sir, the Committee had the benefit of the great experience of the Honorable and learned mover of this Bill—and in support of his assertions that these gambling transactions had greatly increased insolvency, Mr. Westropp gave, not his own assurance merely, but extracts from the records of the Insolvent Court.

"For one moment, Sir, I may be permitted to allude to myself—I would only say that I would have made but a poor use of all my experience as a Bombay merchant, did I not know a good deal about the questions which the Committee had to consider, and I believe firmly that they have arrived at a right decision upon all these questions.

"These questions I take to have been the following:—

1. Whether Act XXI of 1848 is, or is not systematically evaded?
2. Whether the system of time-bargaining prevails among the lower as well as the higher classes of the community?
3. Whether it is productive of evil?
4. Whether it has a disturbing effect on the legitimate operations of commerce?

"Sir, the Committee have replied in the affirmative to all these questions, and they base their conclusions not on a mere bundle of opinions, but upon what I venture to call very full and satisfactory evidence.

"Sir William Mansfield in his speech a fortnight ago proceeded to speak of the shroffs, and wanted to know what they had to say on this subject. I can tell him, what I was unable the other day to do, what they said in 1848. I hold in my hand a petition to the Governor General in Council which is dated 6th June 1848, and which was signed not only by almost all the influential European and Native firms of that day, but by all the principal shroffs also, by in many cases the very men whose names appear at the foot of the bond or agreement which forms Appendix G of the Committee's Report—I beg his Excellency's special attention to this fact. I find attached to this petition the name of my Honorable colleague Mr. Premabhai Hemabhai, and I find also the honored name of Mr. Rustomjee Jamsetjee's father.

"Now, what did the European and Native merchants, together with the principal Bombay shroffs, find to say about *time-bargains* in 1848? With the permission of the Council I will read extracts from their petition. It was as follows:—

To the Right Honorable the Earl of Dalhousie,
Governor General of India in Council.
The Memorial of the undersigned European and Native merchants and inhabitants of Bombay.

Shewth,—That your memorialists, who are largely engaged in the trade and commerce of India, and deeply interested in its prosperity and well-being respectfully crave leave to draw the attention of your Lordship in Council to a most pernicious class of transactions now extensively carried on throughout India under the protection of law and familiarly known as opium gambling.

That the transactions above referred to consist of wagers to be determined by the market price of opium at some future day, or by the average amount that will be realized at a forthcoming Government sale. They are entered into in various forms, sometimes in the shape of a contract to buy a certain number of chests of opium to be delivered at a future day at a fixed price per chest, there being no intention to deliver or receive the opium, but on the understanding that the difference in value between the price fixed in the contract and the market price at the time of the delivery, shall be paid.

That gambling in opium as above, though comparatively speaking of modern origin and until recently confined to the wealthy and a few, has lately spread itself as a system of speculation throughout India, and is now keenly engaged in by goomashtas, clerks, petty dealers, petty brokers, and even the lowest menial servants; and transactions are carried on to the extent of millions of rupees, without the least consideration being given by the parties to their ability to adjust their losses, should they happen to be on the losing side.

That it is difficult to exaggerate the mischievous consequences which do and must result from so extensive a system of gambling pervading a whole community. In the first place, all legitimate commerce in the article, the subject of this unhealthy speculation, is destroyed. The honest dealer and exporter is driven out of the market, by the drug being forced up to an undue value having no reference to the demand; and his operations, which should be protected and encouraged, are made to give way to the purpose and combinations of a body of gamblers. Numbers who engage in it have no means of paying their losses when incurred, and recklessly go on in the hope of retrieving themselves. False appearances, deceit, trickery in every shape are resorted to, to preserve their credit and turn the market in their favor, and finally barefaced repudiation or insolvency affords a channel of escape from liability.

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That an invaluable blessing would be conferred upon India, its commerce and its inhabitants, if the protection now afforded by law to gambling contracts were withdrawn, and if the law in this respect were placed on the footing on which it now stands in England, in conformity with the suggestion thrown out by the Lords of the Privy Council to that effect in delivering their judgment on the above case of *Ramlall Thackoorseydas* versus *Soogunmull Dhoondmull.*

Your memorialists, therefore, pray that your Lordship in Council will be pleased to pass an Act introducing, and making applicable to the territories subject to the Government of the East India Company, the 18th Section of the 8th and 9th Victoria, chapter 109, together with such other provisions as may seem advisable to your Lordship in Council, for the more effectual suppression of gambling in India.

And your memorialists will, &c.

"In 1848 there appears to have been very little doubt as to the true nature and tendency of the time-bargain system.

"His Excellency has taunted us with applying hard words to the shroffs. Sir, I have never used such hard words, nor have I ever heard such hard words used by others, as they themselves in the petition from which I have quoted apply to those who indulge in these time-bargains. I appeal to all the members of the Council informed upon this matter. I appeal to the whole community, whether there is a single word in the above petition which does not apply to the present day.

"It was in answer to this petition that Act XXI. was passed, that Act which some of those who petitioned for it have since contrived successfully to evade by that loop-hole which we now seek to close. It is but fair to say that this petition was signed when most of the shroffs were crushed, or nearly so, by the gigantic speculations of one man, and it was in a time of adversity that they saw thus clearly the evils of the system in which they had been engaged.

"Sir William Mansfield then went on to say that no member of this Council had much time to devote to its duties, that stolen minutes were all we had to spare, and in this remark at any rate I feel that I must agree with him. His Excellency then proceeded to consider various analogies which had been brought forward in this discussion; upon these I am not careful to enter, they are but uncertain friends at the best, and apt to turn into very dangerous enemies when least expected.

"Sir William then brought a charge against Mr. Westropp and myself to the effect that we admit that this Bill would under certain circumstances protect dishonesty; that, as put by Sir Joseph Arnould, it would enable a man to escape the consequences of a first immorality by the commission of a second. Sir, I in no degree shrink from this admission. I give great weight to Sir Joseph Arnould's words, but I consider them nevertheless more fitted to captivate by their sound than to convince by their reasoning.

"The promoters of this Bill seek to put an end to these gambling transactions: to effect this, they resort to no penal exactments, though for these precedents may be found; they simply endeavour to place all such transactions beyond the pale of the law; they say "gamble if you will, but do not appeal to our courts to decide your bets; have your code of honour if you will, but expect no assistance from the law;" to this I would add, "I trust that code may fail you, as it has failed you hitherto."

"Further we say, "if any of you have received from another a sum of money or other valuable thing for the carrying out of an immoral transaction which the law will not recognize, the law will equally refuse to recognize an advance for such a purpose, and will consider the advance a loan which you may be forced to return to the giver."

"Sir, I humbly submit that there is no injustice in this, but I as frankly admit that I would gladly part with Sections VII. and VIII. If I could find any better way of making the Act effective I would gladly part with them, as I would gladly part with that pest, the *common informer*, or with the system of *Queen's evidence*, could the ends of justice be otherwise attained.

"The Committee have, however, failed to discover any other means of rendering the law effective, except by a resort to penal enactments. The Honorable mover of this Bill, with all his experience, has similarly failed, and I think I may fairly challenge those who quarrel with those provisions, to find us better ones; if they can, we shall adopt them.

"His Excellency the Commander-in-Chief then appealed to our pity for the shroffs, who would, he said, be left by our Bill "absolutely at the mercy of dishonest and designing men."

To this I can only reply, "serve them right, if they enter into such transactions with such men. If they deal with men whom their own code of honour will not bind, their losses be on their own heads. If there be not sufficient honour among them to enable them safely to indulge in such transactions, let them give them up," and if this be the conclusion arrived at, I for one say "so much the better."

"I will not do more than merely recall to the recollection of the Council the striking though somewhat shocking precedent adduced by the Honorable mover of this Bill at the last meeting of the Council.

"His Excellency then came to the statements of the merchants whose letters are attached to the Report, and with reference to these proceeded to say :—

> "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."

"Now, Sir, on this point I must take leave to join issue with His Excellency, and with all the greatest economists of the age too, if need be. All the reasoning in the world cannot reason away a fact, and this I maintain to be a fact, as within my own knowledge, though happily proved by evidence other than mine, that from time to time the operations of the gamblers in the Bombay bazaar have so affected prices as for the moment to paralyze the operations of legitimate traders; on this point I appeal for support to my Honorable friends Messrs. Rustomjee Jamsetjee Jejeebhoy and Premabhai Hemabhai.

"The Council will find the following very significant sentence in the minutes by the Chamber of Commerce just laid upon the table.

> "One of the most influential members of the mercantile community thus writes. 'The value of this influence (that of the time-bargainers) we can estimate, but it will puzzle theorists to determine the extent of the illegitimate means which may be resorted to, by the losers for instance, to arrange the market, and thus bring about fictitiously low rates on settling day; thus saving them from loss, or reducing the amount of it. We have ourselves been solicited to purchase (fictitiously,) a quantity of cotton just before settling day at Rs. 40 to 50 below the market rate; and the same request was, we believe, made to many other firms.'"

"The house which I myself represent has more than once been besought on various pretexts to enter the market in order to support prices for settling day, and though we and others declined, merchants were found to do the work.

"His Excellency then went on to imply that this is a Bill for the protection of Bombay merchants. This temptation of self-interest is one easy to make, not always so easy to rebut even by those conscious of rectitude; but, Sir, I entirely repudiate it for myself, and on behalf of all my brother merchants who think with me on this matter. We come forward not to trammel, but to untrammel the great trade of this Presidency, and because we are ourselves interested in that trade, because we know more about it than outsiders, are we at every time to have the imputation of self-interest cast in our teeth?

"His Excellency holds that a merchant's duty, a merchant's business, is always to be combating difficulties—one other statement in which I can agree with him, but this I take it is pretty much the common lot of all of us. He goes on to say, however, that he cannot understand what "*undue influences*" are; that there can be no undue influences as affecting markets. Sir, I think the Council will now understand what undue influences may be. When merchants find all their calculations on the prospects of markets, the prospects of politics, and the position of the great primary question of supply and demand, upset by the operations of gamblers in the Bombay Bazaar, then I can say, an undue influence is at work. How can I reason on the necessities of native shroffs? How assess from day to day the comparative influence of the Bulls and the Bears? He would be a heaven-born merchant indeed who could claim to do this successfully.

"I had thought of making some reference to the minutes of the members of the Chamber of Commerce now on the table, but it seems better to defer doing so until the opinions of the whole Chamber have been elicited. I will therefore now only call upon the Council to negative the amendment of His Excellency the Commander-in-Chief."

The PRESIDENT said that he had that morning received a letter from the Honorable Mr. Premabhai Hemabhai, who was unable to attend at this meeting of the Council. He would request the Under-Secretary to read this letter.

The Under-Secretary read the following letter:—

"To H. M. Birdwood, Esq.,
Under Secretary to Government.

"Sir,—I have the honour to request you will be pleased to lay this communication from me, before the Honorable Council of the Governor of Bombay for the purpose of making Laws and Regulations, with reference to the Bill now before them to amend Act XXI. of 1848.

2. "I entirely concur in the views of the Honorable Sir Joseph Arnould expressed in his reply, dated 1st ultimo, to a letter from the Honorable Mr. Westropp, and would accordingly have Sections V., VI. and VII. of the Bill omitted altogether as encouraging double immorality.

3. "The chief object of introducing this Bill, I understand, is to prevent the machinery of Courts of Justice being employed in enforcing wagering contracts either directly or indirectly, and I am of opinion that that object would be sufficiently gained by Section II. of the Bill as it now stands.

4. "I am further of opinion that Section VIII. of the Bill is superfluous, for Legislative enactments are held to be prospective, except when they are expressly made retrospective.

5. "I think it desirable to add one Section to the Bill to define what shall be considered gaming or wagering contracts, within the meaning of the Act. A good definition of the phrase in the Act itself, would, I am persuaded, save a great deal of litigation, especially in the Mofussil, where the Judges and Advocates are not trained lawyers, and remove from the minds of native merchants all apprehension of *bonâ fide* contracts being liable to be set aside as wagering ones."

I have the honour to be, &c.,
(Signed) Premabhai Hemabhai."

Bombay, 9th September 1863.

The Honorable Mr. Frere said that he was obliged to the Honorable Mr. Scott for his admission that the intention of the supporters of the Bill was to say to the gamblers, "you may gamble as much as you like, but you must not call upon our courts to aid you in recovering your bets," as that admission would save him the trouble of showing that the Bill would not put a stop to gambling in time-bargains. It is now admitted that it is not intended to do so, it is only intended to keep the suits out of court. With this admission, he could very well understand that the Bill would be a great benefit to the Judges of the High Court; it would lighten their labours; and might claim their approval, but why Mr. Kelly, who he considered did not issue his 350 notices in two or three days without deriving some benefit from them should approve of it, was more difficult to be comprehended. But apart from these considerations, he was not yet satisfied of the necessity for the measure. We were told that it was necessary, because the evil of gambling prevailed in the lower as well as in the higher classes of the native community, and has, among the clerks and servants of native merchants in some cases, led to the commission of crime; and secondly, that time-bargains have had the effect of causing great fluctuations in the *bonâ fide* markets for the commodities, the nominal subjects of such transactions, more especially the case with cotton, the price of which has at times been enormously increased by the operation of the time-bargain system. That in support of these two positions we have not had a tittle of evidence; we have had the opinions of Judges of the High Court, of Solicitors, of Merchants, but they were mere opinions, and if opinions were all that were wanted, he would not pay the Council so bad a compliment as to think that there were not Honorable members there whose opinions should have more weight in that Council than any they could obtain elsewhere.

The opinions of the Judges, he begged to say, were not evidence; the opinions they arrived at were not formed when they were trying the question whether this Bill should be passed or not, but they were formed when they were trying some other issue; the opinions they formed were incidental to some other point; they were not their decisions upon the point before the Council.

The Committee had heard from Mr. Westropp that much of the insolvency in Bombay was caused by time-bargains, but no single instance had been produced, that time-bargains had ever led to insolvency or to the commission of crime. But even granting that it was proved that they had led to the commission of enormous crimes, the promoters of the Bill did not wish to put a stop to time-bargains. They say, "gamble as much as you please, but you must not call upon our courts to aid you in recovering your gains."

The evil still is to continue and of course all its accompanying ills. All that the time-bargainers are to be deprived of is the means of recovering their gains in court.

We are next told that time-bargains have a bad effect upon the legimate trade in cotton, the price of which has been at times enormously increased by the operation of the time-bargain system; if that increase can be prevented by this Bill we can understand why the Merchants should approve of it. The only evidence, the Honorable member said, that he had seen in the whole case was to this point, and proved the very contrary to be the case. It was furnished by the notes of the Honorable Mr. Justice Couch's decision in the case of Volumchund Maneckchund *vs.* Thucker Vussunjee Juvraj. It had not been laid before the Council, but the Honorable Mr. Westropp had allowed him to see it. The case was a clear time-bargain, and the dispute had (according to the agreement of the sixty shroffs so well known to the Council as Appendix G) to be decided by "the assembly" it appears that the meeting was adjourned from time to time until the fifth meeting, when a committee was appointed by which after great deliberation, (the Honorable member believed from evening until after day light the next morning) the price was fixed at Rs. 186 per candy; the market price at that time was Rs. 235. In previous years the price had always been fixed at within 2 or 3 per cent. of the market price. but on this occasion the market price of cotton had risen so high that the committee appeared to have been afraid that if they adopted it as a standard the price would be fixed so high that it would not be paid, and so Rs. 186 was adopted as being as much as could be got. This, if it proved anything, he (Mr. Frere) contended proved that the legitimate market injured the time-bargains; certainly not that the time-bargains injured the legitimate market, for there was no question but that the rise in the price of cotton which caused "the assembly" that sleepless night was a fair and legitimate rise in the market itself. Mr. Frere then remarked that the Honorable member on his left (Mr. Scott) had just referred to the petition of the principal European and Native merchants and shroffs in 1848 against time-bargains, as showing that then even they were opposed to them. Mr. Scott had already in answer to a question put by Mr. Frere said that Ramlall's name was not to that petition, and the Council must not give too much weight to the virtuous indignation of those who signed it. To those who recollect 1848, it is well known that all these men or at any rate several of them, had been dallying in time-bargains with Ramlall, but Ramlall had been too clever for them, and they burnt their fingers. Had Ramlall been ruined, and made such a petition as this, we probably should have heard the other side of the story from those who were not restrained from gambling until the smart they felt proved to them the enormity of the evil Ramlall had committed in winning their money from them.

The Honorable Mr. Scott here interrupted Mr. Frere, and said:—

"I beg your Excellency's permission to say a few words in explanation of that which has just fallen from Mr. Frere and which may otherwise mislead the Council. I ask this, because, with the exception of my Honorable friend Mr. Rustomjee Jamsetjee Jejeebhoy, I am probably the only member of the Council now present who knows the facts of the case.

"It has been the custom of the shroffs to nominate a committee of their number to decide authoritatively as to the price ruling on the settling day, and for some time this decision was given pretty honestly, and in conformity with the price of cotton in the market, whether that had been unduly influenced or not. Last year, however, a band of very powerful shroffs stood to win heavily on a fall in prices; they relied, I believe, and my friend Mr. Rustomjee Jamsetjee Jejeebhoy suppports me in this, on the assurance of their astrologers that on settling day the price of Dhollera cotton would be Rupees 160 per candy—it turned out to be Rs. 240, and after five successive nights of stormy discussion, this committee of shroffs staggered their constituents and the public by declaring the price to be Rs. 180; they had gone too far, and I believe no settlement, or one only to a slight extent, took place; this was what I referred to, when I said their own code of honour had hitherto failed them."

The Honorable Mr. Frere thanked Mr. Scott for the explanation, and added:—they had the assertion but no proof that time-bargains had led to the commission of crime, and that it had the effect of causing great fluctuations in trade, while the only evidence they had was the other way. When the object of the Bill was not to put a stop to gambling, but only to keep the suits out of the courts, he thought he was justified in asking for proof of the position taken up by the promoters of the Bill, and in calling upon them to show how, so long as they allow people to gamble as much as they like, they would prevent the crimes which they said were concomitant on gambling in time-bargains; or how, so long as the gambling continues, they expect to heal the diseases they find in the legitimate market; and until that proof was given he would certainly vote against proceeding with the Bill. In conclusion he

called upon the Council not to be in too great haste and pass the Bill that day; lest, as they had only that morning received opinions from the Chamber of Commerce, and were promised further opinions hereafter, they should first pass the Bill and after that have to consider the opinions of the Chamber of Commerce.

The Honorable Mr. ANDERSON said :—

"I, Sir, would also speak on this motion. It was my desire, as it was that of my Honorable friend Mr. Scott, to have addressed the Council at the last meeting, after the speech of His Excellency the Commander-in Chief. Your other most urgent engagements, Sir, rendered necessary an early adjournment of the Council, and we were deprived of the opportunity of endeavouring to diminish the mischief which His Excellency's observations, in our opinion, were calculated to create. I greatly deplore the fact, I believe that the majority of this Council greatly deplores that His Excellency should have been able to indulge in much vehement assertion, in many strong reflections on his opponents, should have been able to extend the sanction of his high position and great ability to practices which we deem to be of great detriment to the public interests, and with the exception of the very few hurried observations which my Honorable friend Mr. Westropp was able to thrust in before the adjournment, that His Excellency's speech should have remained for several days without an answer. This circumstance, Sir, has no doubt afforded the keenest delight to the Tejiwallahs and the Mundewallahs, the gamblers and the stags, of the Bombay market. It has been to them, without doubt, a matter of serene satisfaction, that they should have so eminent a supporter in their attempts to evade the law, the law both of the Imperial and the Indian Legislatures; but the spectacle is one which I, and I believe, this Council generally cannot contemplate without pain. I shall not detain the Council with vain regrets. I shall address myself to His Excellency's statements, and I trust to be able to show that in his speech there was not one argument susceptible of proof, not one conclusion deducible from the premises, not one assertion consistent with actual facts. The speech was doubtless one which would have achieved a great success in a more popular assembly. His Excellency in his anxiety to avoid Eastern models, had adopted the occidental type of eloquence, and however little his tempestuous enthusiasm may impress the educated few who sit round this Board, it would probably have exercised a remarkable influence on the ingenuous race which inhabits the great republic of the West. It would probably have induced sympathising multitudes to abandon all prudence and all policy to the winds, and to follow their temerarious leader to whatever extremity he might wish to hurry them. As I listened to His Excellency's sonorous periods, I thought of another great soldier, whose career was sketched nearly eighteen hundred years ago, by an immortal pen, and it seemed to me that although we had not weighed our Hannibal, he had expended himself and that *fias declamatio* was the result. His Excellency commenced with a statement that he knew very little about the matter under discussion. I will not dwell on this, however inconsistent I may deem the admitted zero of the knowledge with the obvious boiling heat of the advocacy. His Excellency sought for information, but he could only get opinions. He had the opinion of Sir Matthew Sausse, of Sir Joseph Arnould, of Mr. Couch, of Mr. Westropp, of Mr. Scott, of Mr. MacIlwraith, of Mr. Gavin Steel. But he did not want opinions, he wanted facts. One might almost suppose that His Excellency regarded a fact as a material substance estimable by avoirdupoise. Does His Excellency really believe that Sir Joseph Arnould and Mr. Couch have evolved the opinions they have expressed, from the depths of their inward consciousness; that they have adopted the arachnean process of spinning conclusions from their own bowels; or are those opinions, as I contend, the result of a large induction of facts, do they constitute the evidence of experts? 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statement may have merit. It is extremely difficult to deal with such evolutions and convolutions, and I am afraid that the supporters of the Bill can only oppose to His Excellency's lubricity the Johnsonian dictum, "That we have found him a reason, and that we are not bound to find him an understanding." But I now advance to what I presume is the centre of His Excellency's position, that the provisions of this Bill are at variance with the principles of free trade and with the spirit of modern legislation. I am certainly most unwilling that any act of mine should be in opposition to free trade, a cause associated with so many illustrious memories and so many immortal names, and I must repudiate in the strongest terms which the laws of debate will permit, the assumption that there is any real connection between free trade and gambling contracts. I shall not weary the Council with a dissertation on Political Economy. I would invite its consideration to a few facts, and to the conclusion to be drawn from those facts. The present Bill is an attempt to vindicate and to give that complete action to Act XXI. of 1848 which its authors contemplated. Act XXI. of 1848 in effect extended to India those provisions of the 8th and 9th of Victoria, Cap. 109, which related to wagers. That Act was passed in 1845. I beg the particular attention of the Council to that date. In the previous year 1844, the same Parliament passed the 7th and 8th of Victoria, Cap. 24, which abolished the offences of forestalling, regrating, and engrossing. These practices had been prohibited by severe penalties under the Athenian laws and by the Lex Julia de Annonâ of the Roman law. They were prohibited by a series of English statutes commencing from the reign of Henry III., and they were offences at the common law. By an Act of George III. the latter statutes against these practices were repealed, but the more ancient statutes remained, and they were still offences at the common law. In 1844 all the statutes against these practices, practices against which Sir W. Blackstone had written, were repealed, and the offences were abolished on the simple but most sufficient ground, that the statutes were in *restraint of trade*. In 1846 the same Parliament repealed the corn laws. Now I would ask, whether any one versed in the political literature of England, will contend that if there had been anything in the Wagering Act in restraint of real free trade, it would have been passed by that very Parliament which the year before abolished the offences of forestalling and regrating, and the year after consummated the great victory of Free Trade by the repeal of the corn laws? The year 1845 was the year of the agony of the discussion, it was the year in which Lord John Russell announced his renunciation of a fixed duty, which he had preferred to a graduated scale, and declared himself in favour of a total repeal; it was the year when the Legislature was in the very throes of that great birth which was witnessed in the next Session. The law of 1845 is still upon the statute book, it is a modern Act. It might have been supposed from His Excellency's speech that we were discussing "wager of battle," a most ancient form of appeal only abolished in 1819 after the celebrated case of Ashford *vs.* Thornton. I repeat that the Wagering Act is a modern Act, and that there is nothing in more recent legislation at variance with it. If there be, let the Act be named. On the contrary the spirit of this Act of 1845 has been maintained. By the Bankrupt Consolidation Act of 1849 a bankrupt is not allowed his certificate who has lost £20 in one day or £200 in one year by wagering. In 1853 by what is commonly called Cockburn's Act, the law was rendered still more stringent, and it is a clause in that Act which has been imported into the present Bill and constitutes the part to which Sir Joseph Arnould has objected. To that I shall hereafter advert. The only statute which by any ingenuity can be construed as opposed to the spirit of the Wagering Act, is the Act of 1860 for repealing Sir John Barnard's Act. On that I will say a few words. I have observed that Sir John Barnard has been spoken of in terms of something like contempt. Whoever does so cannot be a real student of history. Sir John Barnard was a man of the greatest consideration in his day. How highly his character and ability were esteemed may be gathered from Speaker Onslow's remarks. He was listened to with respect in a senate which included such statesmen as Walpole, and Pulteny, and Sir William Wyndham, and Sir William Yonge. Lord Stanhope speaks of him as the model of a British merchant. His Act which was passed in 1734 contained various pains and penalties against stock-jobbing, it was a product of the same feeling which a few years before had enacted the tremendous measures against the South Sea Directors and the Bubble Companies. The Act was made perpetual a few years afterwards, and remained for nearly 130 years on the statute book, when having become inoperative, and because it contained pains and penalties, it was repealed. But I would beg the Council to mark that when it was repealed, the present Attorney General, Sir W. Atherton, expressly stated that time-bargains on the Stock Exchange would be dealt with under the Wagering Act."

Sir W. Mansfield.—"Did any body else in that debate express the same opinion?"

Mr. Anderson.—"I really cannot undertake to say. Probably after the Attorney General,

or as he then was, the Solicitor General, had delivered an opinion on a dry point of Law, no one thought it necessary to express the same opinion. It is sufficient for my purpose, that the present Attorney General held that there was nothing in the repeal of Sir John Barnard's Act inconsistent with the Wagering Act, and I confidently contend that I have shown that there is nothing in that Wagering Act which can be pronounced inconsistent with the spirit of modern legislation.

"I would now recall the attention of the Council to the fact, that the principal question under discussion is, whether parties having made wagers, shall be permitted directly or indirectly to enforce them in a Court of Law? His Excellency the Commander-in-Chief regards the refusal of this permission as a pain and penalty. Let us inquire how this question has been regarded by other high authorities. The Council is aware that previously to the statute of 1845, actions could be maintained under the common law of England on wagers. In Scotland it was different, the Judges declined to try actions on gambling contracts or "sponsiones ludicræ." But looking only to England, it is not uninstructive to observe how the Judges regarded such actions. I will pass over what may be termed the extreme cases, such as the wager as to whether a player having touched a man at backgammon was compelled to move it, in which action Chief Justice Holt called in the groom porter, and decided according to his opinion, or Lord Ellenborough's refusal to try an action regarding a wager on a main of cocks, or Lord Tenterden's refusal to try a similar action relating to the prowess of the dog "Billy." I pass over these extreme cases, and will take first the opinion of Lord Mansfield, as delivered in the well known cases of Da Costa *vs.* Jones. It is the judgment principally relied on for the assertion that wagers, excepting—*first*, when the interests and feelings of third parties are affected; *secondly*, when decency is outraged; *thirdly*, when public policy is affected—are maintainable at the common law. Lord Mansfield held that wagers could be so maintained. He rejected the claim in the particular instance, because decency would have been outraged by the trial,—(the case related to the sex of the Chevalier D'Eon)—but he distinctly stated his lament that wagers were not void as gambling contracts. I recommend that opinion to the consideration of the Honorable Mr. Frere, who has expressed an opposite view."

Mr. Frere.—"I beg the Honorable Member's pardon. I have not done so. What I say is, put down gaming and wagering, but as long as you do not do so, do not shut your courts against actions on wagers."

Mr. Anderson.—"That view does not appear to me consistent with Lord Mansfield's opinion, but it is a view which only requires to be stated, it does not demand an answer. I proceed with my review, and I would draw the attention of the Council to the celebrated case of Good *vs.* Elliott.

"This was the case in which that consummate Judge, Mr. Justice Buller, stood alone against his three colleagues in an attempt to show that actions should not be maintained on wagers. The case related to a wager as to whether Susan Tye had bought a waggon of David Coleman. Sir Francis Buller argued—1*st*, that the wager was void at common law as relating to the affairs of a third party; 2*nd*, that it was void by the Statute 14, George III. Cap. 48. He was over-ruled on both points; but his three colleagues Lord Kenyon, Mr. Justice Ashurst, and Mr. Justice Grose, all concurred in considering it would be better if wagers could be declared void at law. It is universally admitted, that Sir F. Buller's argument on the common law in effect narrowed the list of wagers on which actions could be maintained, and with respect to his view as to the intent of the 14 George III., Cap. 48, I would submit a brief remark. That statute was without doubt directed against wagering policies of insurances, and Sir F. Buller's colleagues relegated the operation of the measure to such policies. But it cannot be concealed that the language of the statute is very wide. It provided that no insurance should be made on the life of any person, "or on any other event" wherein the person for whose use or benefit or on whose account such policy should be made should have no interest, *or by way of gaming or wagering*. There is a case in the books which appears to have been plainly decided in accordance with Sir F. Buller's view of this statute. The case is Patterson *vs.* Powell (9th Bingham), in which an agreement on payment of £40 to receive £100 if Brazilian shares reached a certain price on a certain day, signed by several persons, each for himself, was declared void as a wagering policy. After the expression of Mr. Justice Buller's opinion, Judges were in the constant habit of evading the rule that actions could be maintained on wagers, some declined to try such actions as frivolous, others, and this practice was admitted to be allowable, placed them at the bottom of the list, and tried all other actions before them, but the favourite device was to pronounce the subject matter of the wager to be adverse to public policy. At length in 1844, a Committee of the House of Commons, of which Lord Palmerston was Chairman, recommended that the law of England

relating to actions on wagers should be assimilated to the law of Scotland, and in accordance with the views of that Committee the Act of 1845 was passed. I now come to Ram Lall's case, on the decision of which two millions sterling depended. On the ground that the law of 1845 had not been extended to India, Sir E. Perry delivered his opinion in favour of Ram Lall. His judgment is an admirable example of the high judicial faculty of holding fast to the plain question of law, unmoved and unembarrassed by specious appeals founded on considerations of public policy on the one hand and of morals on the other. But in holding that actions could be maintained on wagers, this distinguished Judge made the followning remark :—

> "It is, I think, to be deplored that the commonlaw has taken this course, and I have always regretted that the fine judical arguments which Mr. Justice Buller brought forward in Good *vs.* Elliot, against the validity of wagers generally, were not allowed to prevail, and that the Judges are compelled as a general rule to devote the public time, and to lend all the powerful machinery of Courts of Justice, to the enforcement of the contracts of mere gamblers."

"Sir David Pollock, the Chief Justice, took a different view, and the decision of the Court being against Ram Lall, an appeal was preferred to the Queen in Council. Lord Campbell, in delivering the judgment of the Privy Council, made the following remark :—

> "I regret to say that we are bound to consider the common law of England to be, that an action may be maintained on the wager, although the parties had no previous interest in the question on which it is laid, if it be not against the interests or feelings of third persons, and does not lead to indecent evidence, and is not contrary to public policy. I look with concern and almost with shame on the subterfuges and contrivances and evasions to which Judges in England long resorted in struggling against this rule, and I rejoice that it is at last constitutionally abrogated by the Legislature, an event which probably would have happened much sooner, without the abortive attempt to accomplish the object by judicial decision."

"Now, the noble Lord, when he made these remarks, was Chancellor of the Duchy of Lancaster in a Free Trade administration. He died the year before last, Lord Chancellor in another Free Trade administration. In a subsequent part of the judgment of the Privy Council, the same noble Lord made the following remark, to which I would request attention :—

> "It is for the Legislative Council at Calcutta to consider how far it may be conducive to the benefit of our Indian Empire to introduce into it the provisions of the Statute 8 and 9, Victoria, Cap. 109."

"On that suggestion, and in compliance with the petition alluded to by my Honorable friend Mr. Scott, a petition from the leading European and Native mercantile firms in Bombay, the Legislative Council of India passed Act XXI. of 1848, the provisions of which we are endeavouring to vindicate by the present Bill.

"Another action of Ram Lall's came before the Court in Bombay, and Sir E. Perry, being then Chief Justice, gave judgment for Ram Lall. The Puisne Justice, Sir W. Yardley, dissented, on the ground that Ram Lall's acts constituted fraud. In the course of Sir W. Yardley's opinion, I find the following expressions :—

> "I think it a sufficient misfortune that Courts of Justice ever recognized contracts of hazard entered into neither for the benefit of commerce nor for the purpose of providing in some measure against the uncertainty of life or against the destruction of property by fire, but I know not any principle of law or morals which calls upon us to give effect to practices and contrivances such as those resorted to by the plaintiffs in this action."

"Another appeal was preferred to the Queen in Council, and the judgment of Sir E. Perry was confirmed, but in delivering the decision of the Privy Council, the Right Honorable Baron Parke (now Lord Wensleydale) stated that their Lordships disapproved of these wagering transactions, "which happily are now put an end to." The Privy Council by these words gave the sanction of its approval to Act XXI. of 1848.

"I have thus endeavoured to show that there has been a remarkable harmony of opinion among the highest Judicial authorities as to the inadvisability of permitting actions to be maintained on wagers, and this harmony of opinion is entirely opposed to the views expressed by His Excellency the Commander-in-Chief.

"His Excellency has honoured with some sarcastic notice a few remarks which I submitted to the Council on the first reading of the Bill in opposition to his views. I am

quite prepared to defend the statements which I made on the former occasion, but I am unwilling to detain the Council on a matter which may be deemed merely personal. My explanation will therefore be brief. My argument was in answer to His Excellency's views, that modern legislation did not deal with immorality. I coincided to some extent with this view, but I stated, that there was always an exception when immorality was obviously detrimental to public interests and public order. I instanced the suppression of lotteries, of gaming-houses, and notorious night-houses. On lotteries I shall touch immediately, and to gaming-houses His Excellency did not advert. On the third point His Excellency has condescended on a misapprehension. He states, that "with a happy audacity" I said that the Legislature interfered with prostitution. I really said precisely the reverse. I said the State shrunk from interference with prostitution, but that it did suppress night-houses, because this brought immorality to a point detrimental to public order and the public interests. But enough on that subject. I proceed to lotteries. His Excellency placed his assertion in opposition to mine, but I think the very facts which he stated, and which he read out of that formidable book, the *Encyclopædia Britannica*, will show that I was right. I stated that lotteries were discontinued because they were demoralizing; His Excellency stated they were discontinued because they were not deemed a proper mode of raising a revenue.

His Excellency Sir W. MANSFIELD.—"I added that it was held to be a wrong thing to excite the people to gambling for such a public purpose."

Mr. ANDERSON.—"That seems to me equivalent to saying that lotteries were held to be demoralizing. His Excellency admits that private lotteries were suppressed in Queen Anne's reign as public nuisances, and he states that the people never after that evinced a desire for private lotteries."

Sir W. MANSFIELD.—"I said that they never in any way entered into the habits of the people."

Mr. ANDERSON.—"I accept the correction. The question then is, did they or did they not enter into the habits of the people? I assert the affirmative of that proposition. But I would first remark, that while it is true private lotteries were declared public nuisances in Queen Anne's reign, a fact quite on my side, public lotteries were declared public nuisances by the 11th and 12th of William III. Cap. 17, and all grants, patents, and licenses given in connection with such lotteries pronounced contrary to law. It has hence always been necessary to have the sanction of an Act of Parliament for a lottery. But there was an Act in George the 2nd's reign against private lotteries, and in 1778 in the reign of George III. an Act was passed, making all lottery office keepers take out a license and fining them £50 if they sold under a sixteenth of a ticket. This last fact shows how strong was the passion of the poorer classes for lotteries, whether public or private. In 1802, the private lotteries called "little goes" were suppressed under very severe penalties. In 1808, a committee reported strongly against lotteries as a ruinous mode of filling the Exchequer. But ruinous to what, to whom? Not to the Exchequer, for never was a revenue raised more easily. The free cities of Hamburgh and Frankfort to this day have lotteries on far more favourable terms to speculators than the English lotteries, and they clear ten per cent. of the total sum subscribed. Not ruinous to the Exchequer but ruinous to the people. In 1826 the last State lottery was drawn, but in 1832 and 1833 three lotteries, called the Glasgow Improvement Lotteries, were sanctioned through misapprehension by Act of Parliament. This fact is impressed on my memory, because I was a boy at school at the time, and had a share in two-sixteenths, which produced shares in two blanks. Finally, the Law had to be directed within the last few years against racing sweeps, a species of lottery which had become extensively popular. I think then, I may contend without arrogance, that I was entirely right in my views as to lotteries, and that His Excellency was by consequence entirely wrong.

"Then with reference to the "Qui tam" actions and the Running Rein case. I explained at the last meeting, that stakes can, but that bets cannot, be recovered by action. It is a matter of very small importance, but His Excellency was mistaken in supposing that the "Qui tam" actions arose out of, or were connected with, the Running Rein case. His Excellency will find an Act passed in March 1844, staying process against the defendants in those actions for three months or until the close of the Session. On the other hand it is well known, that the Derby is never run until the end of May, and that it was the fact of Running Rein coming in first in that race, which led to the trial of Wood *vs.* Peel.

"I am now led by His Excellency's remarks to Sir J. Arnould's objection to a part of this Bill. It is impossible for me, who remember that gentleman's brilliant University career, and who know him as the author of one of the few really scientific Law Treatises produced by

English Lawyers, to speak without deep and unfeigned respect of any opinion he may express, and I am glad to think, that even if the clause to which he objects be struck out, the Bill will still be a good Bill. But I do not think, I need hardly say with great submission, for I do not regard it as an enviable position to be opposed to an able and accomplished Judge, that I can quite concur in his argument. It is put with considerable point, that to allow a man to recover by process of law money which he has lost by a wager, is to permit a man who has committed one immorality to commit another. But as a question of morals, if a contract be illegal or void as in the matter under discussion, it can be no greater immorality for A to recover what he has lost, than for B to keep what he has gained. There can, as a question of morals, be no real distinction between permitting A not to pay what he has lost, or permitting him to get back his deposit from C the holder of the stakes, and permitting him to recover from B the winner of the bet. As a question of law, I believe the maxim to be this, the contract being illegal or void, it is a case of "par delictum," and when the fault is thus equal, the law says "potior conditio possidentis," let him who has, keep. If A has not paid, let him not pay. If B has received, let him keep. I remember a decision of Lord Ellenborough's in Palyart *vs.* Leckie, alluded to in Chitty on Contracts, which supports this view. But it is evident here that the law adopts this course simply because it offers the easiest solution, and not because morality is at all affected. The real questions are—1*st*, Are certain practices opposed to the public interests? 2*nd*, Should the Legislature discourage them? If it be assumed that these questions are answered in the affirmative, I contend it is the duty of the Legislature to take care that the discouragement is efficient. If, to give the loser the right of recovering from the gainer of the wager would operate as the most complete deterrent from the practices, I should not be scared from enacting such a provision by the phantom of a second immorality. There is a provision of this kind in Cockburn's Act, and the Imperial Legislature would never, I think, be deterred from efficient action by objections which partake in some measure of a sentimental character.

"His Excellency the Commander in Chief has stated, that the operations of these bazaar betters are what merchants must be prepared to encounter, and that no restrictions should be placed upon them by the Law. He has also enunciated some theories as to demand in Liverpool and supply in Bombay. I am relieved from the necessity of examining His Excellency's views on these points by the speech of my Honorable friend Mr. Scott, who has stated with far greater clearness, precision, and authority than I could contribute to the discussion, much that I should have liked to have said. I shall therefore content myself with the statement of my belief, a belief shared in, I imagine, by every merchant in Bombay, that the wagers we wish to discourage do interfere with the legitimate operation of supply and demand. I further believe, that this Bill will not affect *bonâ fide* contracts for future actual delivery. Our late colleague Mr. Westropp has stated, that during all his experience, he had never known a *bonâ fide* agreement pronounced by the Judges to be a gambling contract. He called on the Honorable Mr. Premabhai to state whether he had ever known such an instance, and that gentleman, who is the most skilled witness on the subject in Bombay, admitted that he never had. But His Excellency ventilated a doctrine on which I would wish to submit a few words. He stated, that the difficulties and puzzles arising from these transactions, which the law has sought to discourage, are what merchants must deal with, that the clever man succeeds and that the stupid man is ruined. I really do not know to what extremity such a doctrine might lead us. His Excellency's energy would, I believe, drive a coach and six through the statute of Frauds. Those wagers have been declared void by the Legislatures of England and India, but His Excellency says, let them flourish, to prohibit them is to interfere with free trade. If the law is not to interfere to the prejudice of clever men, I would invite attention to the case of the King *vs.* De Berenger. It is always a painful case to allude to on account of the suffering it caused to the heroic Cochrane. But while I firmly believe in the innocence of Lord Cochrane, I am equally convinced of the guilt, I ought to say the wisdom, of Mr. Cochrane Johnstone. What did Mr. Cochrane Johnstone do? He bought heavily into certain Stocks. What did De Berenger do? He went to Dover, put on a red coat, star, and cocked hat, and called himself Colonel De Bourg. He gave out that Napoleon had been killed by the Cossacks, that the Allies are marching on Paris, and that there would be peace in a few days. The news was sent by express to London. Numbers believed the narrative. The Stocks rose. Cochrane Johnstone sold out, and made a good thing of it. But what of that? He was only a clever man. The gentlemen on the Stock Exchange, who became virtuous with their losses, were simply stupid men. But if some who steer by the old lights, were to urge, "But in this case there was falsehood," then would come from the gentleman opposite that urbane "argumentum ad hominem" which has been so frequently employed in these discussions. "Does any one mean to assert that he has never taken

advantage of some absurd rumour current in the bazaar, that he has never shaken his head about the news from America, that he has in no way ever contributed to the 'suppressio veri.' Why this squeamishness about De Berenger?" I am tempted by His Excellency's admiration of cleverness to offer another illustration. It is well known that audiences of different nations regard plays from different stand-points. In the tragedy of Othello, as Macaulay remarks, the sympathies of an Italian audience are with Iago, those of an English audience with Othello. When the same play is acted before an American audience, the moral deduced is the extreme impolicy of marriages between members of different races. So if the Merchant of Venice were played before His Excellency, the principle asserted in the play would, in his opinion, be the inviolability of wagering policies. Indeed, if there were an appeal to His Excellency, I make no doubt he would treat Portia's decision as a mere evasion. He would tell Antonio, "you are simply a stupid man, and the Hebrew gentleman is a clever man, you must abide by the terms of the agreement, and the decision of the Court below is reversed."

"But His Excellency after arguing that to prevent the evasion of the Law would be to interfere with Commercial morality, proceeded to lay aggressive hands upon Justinian. In his long speech there was nothing so astounding as this. His Excellency has spoken of my happy audacity, but I really must be permitted to designate as infelicitous temerity, the courage which quotes Justinian in favour of gambling contracts. I should have as soon expected to hear Moses quoted in favour of Polytheism, or Mahomet in favour of Monogamy, or John Calvin in favour of Mariolatry, or John Wesley in favour of Horse-racing. I should be ashamed to parade before the Council any mere "Fourth Form" learning, and I will only allude by a word to certain passages in the "miles gloriosus" of Plautus, in the second Philippic of Cicero, and to the "seu malis vetita legibus alea" of Horace. But to come to Justinian himself, there are laws against gambling both in the Digest and the Code, and in one of the novels there are constitutions to the following effect, that a loser could recover money lost in gambling from the gainer, that his heirs could recover from the gainer or the heirs of the gainer, within thirty years, that if the loser or his heirs did not choose to come forward, the Pater or Defensor of the Town could recover from the gainer or the heirs of the gainer, and lay out the money for the benefit of the Town. Whatever then Justinian meant by "Suum cuique tribuere" quoted by His Excellency, he could not possibly mean anything in favour of gambling contracts. I really think His Excellency should spare us these "purple patches," he should recollect that he is addressing scholars, and if he must have a Latin quotation, I would commend to him a very familiar one which he will find in the Eton Grammar; "Vir bonus est quis? Qui consultat patrum, *qui leges juraque servat*"—only that perhaps it would not be exactly infavour of his views.

"I have now finished my comments on His Excellency's speech. I have detained the Council much too long. I am glad therefore to leave unsaid much which I had intended to submit on the mercantile side of the question, and am perfectly content to leave that part of the case where it has been left by the very able speech of my Honorable friend Mr. Scott. I have therefore addressed myself chiefly to the question in its legal aspect. I take my stand on the impregnable position so well assumed by Sir Joseph Arnould, that it is not expedient that the machinery of our courts should be set in motion for the enforcement of gambling contracts. I have endeavoured to show that there has been a remarkable harmony of skilled opinion on this point. I have endeavoured to show that there is nothing in this Bill at variance with the principles of free trade or the spirit of modern legislation. But I will go further than this. It is our duty as legislators to protect the material interests of the inhabitants of this country, but it is also our duty to take care that we do not sanction by our approbation a low moral standard of conduct. Holding these views, I heard with sorrow the sordid doctrine regarding cleverness enunciated by one member of the Government, with the approbation apparently of another member of the Government. I should myself be very reluctant when a large body of enlightened native gentlemen has petitioned the Legislature of India to discourage what they deemed pernicious practices, and when the Legislature has in compliance with that petition framed a law, I should be very reluctant to permit that law to be evaded with impunity. But such is the question presented to us. The present Bill has been opposed with excessive vehemence and intensity by one who occupies a high and important position, and who brings to that position very various attainments, and great force of character. I may consider His Excellency's address to be deficient in real knowledge of the subject, but it would be disingenuous, it would be idle in me to deny that his objections are urged with great point, vigour and subtlety, and that to any measure which may evoke his

antipathy, he is a most formidable antagonist. He has not only opposed this measure at every turn with unsparing activity, but he has succeeded in arraying against it a large portion of the public Press. I trust I never shall exhibit the miserable affectation of pretending to be indifferent to the strictures of the Press. I hold on that subject the same opinion which Johnson held regarding belief in ghosts—"They who deny it with their lips, confess it by their fears." But on the other hand, I should be utterly unworthy of that honour which I prize most highly, and which I owe solely to the kindness of our President, the honour of a seat in this assembly, if I were basely to shrink from the advocacy of what I believe to be a wholesome measure, because an able officer had opposed it, and an able press had endeavoured to write it down. And if I know anything of that great service to which it is my privilege to belong, if I have rightly appreciated the intelligence, and the public spirit of the independent members of this Council, I am confident that whenever His Excellency the Commander-in-Chief, with that "proud precipitance of soul" which is his characteristic, dashes into headlong opposition to a practical and useful measure, there never will be wanting men prepared to confront him in the debate, and to control him in the division.

The Honorable Mr. Robertson said that he should content himself with voting in support of the motion that the first Section stand part of the Bill.

The Honorable Mr. Jugonnath Sunkersett said :—

"Mr. President,—As I was unable, much to my regret, to be present at the last meeting of the Council, when some interesting discussion took place in connection with the Wager's Bill, I should like to say a few words on the subject on the present occasion, though, after having heard so many able speeches from my Honorable colleagues, it would, I fear, appear presumptuous in me to indulge in any comments. Nevertheless, as a member of this Honorable Council, I cannot refrain from giving utterance to my views on so important a Bill as that under notice, and would therefore crave your Excellency's permission to make a few observations.

"I think it is desirable to check, if possible, the evil which, it is admitted on all hands, exists of gambling or wagering in time-bargains, but I doubt if the Bill proposed will have the effect of doing so. As I understand the law to be now, it is entirely a question of honour between the parties, whether the wager shall be paid or not, because the losing party cannot legally be compelled to pay the money directly, and if he chooses to give his shroff or banker a notice not to do so, the banker cannot be compelled to pay it for him, nor would he be at liberty if he chose to do so after notice, and the loser may recover the money deposited from the shroff or banker. It is a fact well known to the native mercantile community, that more than a year ago certain native banking houses in Bombay were great sufferers by time-bargains. They held on for a time, with a view to evade payment, if possible, knowing that they could not by law be compelled to pay. But they soon found that their mercantile credit was in consequence seriously and injuriously affected. So in order to uphold their credit, they were compelled to make the payment. They look upon it as a debt of honour, and for their own credit, they are obliged to pay. Such being the case, I do not think that any law will avail in checking the evil. Surely if such is the state of the law, and gambling is still carried on, the promoters of this Bill must be more than ordinarily sanguine, if they think the measure now proposed will put an end to such gambling. I, for one, believe that this Act will only call forth a little more ingenuity in the native mind, and that a scheme will very soon after its passing be found for evading the new law, as successfully as the old law was evaded.

"The time-bargainers can easily find means of preventing its being called a time-bargain by making false purchases of opium, cotton, or other goods of merchandize from some friends or others, to make it appear as a *bonâ fide* transaction, and thus the goods may pass into as many as ten hands and yet in the end it is nothing more than a time-bargain.

"It is most difficult to tell when a contract is a time-bargain, and when it is not. Many time-bargains are couched in precisely the same terms as *bonâ fide* contracts for the sale and purchase of goods; and the principal danger and difficulty in carrying out the stringent proviso of this Act, will be found, I apprehend, in ascertaining whether the contract before the court was or was not a time-bargain. The word time-bargain used in the original draft is, I see, changed in the amended Bill into wager, gambling, and contract, intended to abide a particular event, yet, I think the scope is nothing more than to prevent time-bargains in fact.

" Where a question only affects the actual parties to the contract, as is the case under the existing law, it is not of so great importance; but when third parties are to be bound by it, I think there should be no doubt whatever as to whether the transaction came within the definition of a time-bargain or not.

" Money may be paid by a banker under the express direction of his principal without his knowing or having reason to know that the contract of which the money is paid is a time-bargain; but as the law will stand, if this act is passed, should it afterwards be found that the contract was really a time-bargain, the banker will have to refund with full costs what he paid innocently.

" If I am wrong in this view, I shall be corrected; but as I read it, the 7th Section of the Act will go as far as this. At all events the addition of the word " knowingly" would remove all doubt in the matter.

" I think it should be clearly understood, that, before a person is made liable to repay any money in this way, it should be proved not only that the transaction on account of which the money was paid was a time-bargain, but that he knew that it was a time-bargain at the time when he paid the money.

" As I said before, I am anxious to give my support to a measure of the kind, because I think gambling in time-bargains is carried on to a large extent, and that the practice ought to be discouraged. Whether it is possible to check the practice by legislation, or whether it is expedient to make the attempt to do so, is a question on which I will not enter now. But I cannot, after well considering the matter, come to any other conclusion than that the Bill now proposed as it stands, may not have the desired effect. However, if some amendment were made by which it should be provided that only persons who acted with a full knowledge that they were infringing the law, were made responsible, I should not object to the Bill being passed."

The Honorable Mr. Rustomjee Jamsetjee said that he entirely concurred in the remarks made by the Honorable Mr. Jugonnath Sunkersett.

His Excellency Sir William Mansfield said—" Sir, I will now, with the permission of the Council, reply to the speeches that have been made by the Honorable members who have opposed the amendment which I have had the honour to move. The Honorable Mr. Anderson began his speech by saying that he had wished to have answered the remarks made by me at the last meeting of the Council. As we all know, he was prevented from speaking on that occasion by an event which called for the attendance of the Honorable members at another place. But though the Honorable Mr. Anderson did not reply to me on that occasion, and expresses his regret at the delay, it seems to me that that regret must be in some measure tempered in his mind by the opportunity it has afforded him for long labour and preparation. I think that no one who has listened, as I have, for more than an hour to the attack which he has been pleased to make on me, and on those who are on my side of the question can doubt that. I say, that no one who has done this, will for a moment suppose that the Honorable gentleman has not sought to make good use of the time that has elapsed between the last meeting and the present, in ransacking all the means that were available to him for the purpose of intensifying the attack with which he has favoured me. It must have been my misfortune at the last meeting of this Council to have said something which has called down the wrath of my Honorable friend; but if I did, I think the Council will agree with me in thinking that he has repaid me in full measure for any offence of which I may unconsciously have been guilty. For my part, my Honorable friend's volubility, the manner in which he has introduced irrelevant matter and discursive anecdotes having nothing to do with the question before us, has reminded me of nothing else than of Mrs. Quickly's description of Falstaff's diseases; and I think on examination we shall find that his eloquence was fired by personal feelings only; and so far as the argument in the present case was concerned, it has left the debate where it found it; for I cannot recall that from the beginning of his speech to the end of it, my Honorable friend ever once spoke on the merits of the question, or attempted to refute what had been said against the Bill as being erroneous in principle. He has tumbled over many obsolete Acts of Parliament and judgments, but without touching the real question before us. It was no doubt more convenient for him to make a personal attack than to speak to the Bill. But whether he was justified in taking up our time in this manner, is for the Council to judge. The most prominent part of the Honorable Mr. Anderson's speech was that in which he arrayed against me the opinions of great lawyers of the present and of past ages. But we must not allow ourselves to be misled by what any lawyers, however great, may have thought or said. It is most unsafe to quote

juridical opinions in considering any legislative measures. It is seldom that the purely legal view can be reconciled with the political view. For nothing is more certain than that great Judges have not as a rule been good law-makers. The exceptions to the rule are very few, and must be sought so far back as the reign of Queen Elizabeth, when it is true that a great lawyer was also foremost in the van of Legislators. In modern times, if we except Lord Mansfield, perhaps the only lawyer who took a leading part in general administration was Mr. Perceval. I may be charged perhaps with inapt illustrations, and I may be subject again to such criticism as I have this day met with, but seeing how few the instances have been in which men trained and in great practice as lawyers have exercised a beneficial influence on the laws of their country, or owing to previous education have been able to take enlarged views of reform and administration, I do think that it is trifling with the good sense of the Council to refer it to the opinion of Judges, as has been done by the Honorable gentleman, as if we were to be absolutely bound by them, while our judgment remains unconvinced. But I have been charged with quoting Justinian in support of time-bargains. I say that my quotation from Blackstone which contained the line from Justinian was completely misapprehended, and therefore misrepresented by the Honorable Mr. Anderson. I quoted Blackstone not because the quotation immediately affected time-bargains, but because the words I quoted expressed in a simple manner and on the greatest authority that first principle of natural law that every one is entitled to to receive his own. It was because I thought that Mr. Westropp's Bill, if it became law, would infringe that first principle of natural law, and would prevent some persons from receiving their own, that I pointed out that it was in violation of the first principles that should always guide those who are engaged in the responsible duty of legislation. And if by quoting the appropriate words of Blackstone that were ready to my hand in support of my argument, I laid myself open to the charge of having been guilty of an act of "infelicitous temerity," I am not sorry for it, but sorry only for those who have brought such a charge. If my infelicitous temerity drives me to protect any class of my fellow-subjects who may have no other advocate to plead their cause, and are about to be injured by attempts at class legislation, then all I can say is, that I thank God for the quality. Again I say, at the risk of repeating myself, that the proposed Bill is not only contrary to first principles but to the whole tenor of modern legislation. I have before said that it is of the same kind as the usury and sumptuary laws, which the enlightened legislatures of modern Europe have swept from their statute books. This was once faintly denied, but the denial cannot be maintained. The result of the old usury laws was to prevent money from receiving its proper value, and their object was to prohibit the payment of inordinate interest; but it was at length found that they were a very great inconvenience and they were abolished, and it came to be understood that they had been a measure of great oppression and had actually increased instead of diminishing the amount of interest on money lent; and so it would in time be with the present Bill if it were ever to become law. Every one admits that Act XXI. of 1848 is a dead letter; and the Honorable Mr. Jugonnath Sunkersett even goes further and says that "Legislate as you may, you cannot prevent time-bargains." If the present Bill were passed it would soon be found that it would place such restrictions on legitimate speculation that traders would find it necessary to evade its provisions in order to trade at all. At present commission agents take two kinds of commission. There is the commission *del credere*, which covers all risks, and there is the ordinary commission which covers ordinary risks. It was found very convenient to have this distinction; but if the proposed Bill becomes law the shroff in all cases will have to run extraordinary risks, and therefore to charge enormous *del credere* commission to cover the risks, whatever may be the character of the time-bargains, legitimate or otherwise. For in every case the shroff will be the scape-goat either of the winner or loser of the time-bargain. It will be vain to hope to keep up such a system. The attempt to do so can only be pronounced as Quixotic. It is not to be supposed that the community at large will stand quietly by while the Legislature is engaged in persecuting a particular class when the community at large knows no evil. It is not to be wondered at that this class should have received a large amount of abuse from another class. There never have been successful merchants or bankers who have not been abused as a class; but then the abuse has generally come from the public. The case is now very different, and I hope, therefore, that if this Council divides upon my motion, Honorable members will remember that we are asked to legislate, not on behalf of the public, who have no grievance that require redressing at our hands, who have made no complaint whatever, but that we are asked to defend one class of merchants from another.

"And we must remember too that all the evidence that has been furnished to this Coun-

cil has been that of persons in whose interest the present Bill was framed; that is, of persons who wished to avoid the difficulties that were a part of their profession, and who will be said to be jealous of the success that had crowned the efforts of others which may interfere with their profits. I have been at some pains to supply the want of information displayed in the Report of the Select Committee, and to supplement that Report by some facts on which the Council may rely. I am happy to be able now to read to you some evidence on the other side. It has been given by a sagacious and experienced native servant of Government in the Revenue Department. I am delighted to call attention to the great powers of research shown in this evidence, and to the effective manner in which the connection is traced between the legitimate operations of trade and those transactions about which the discussion has been raised. Thus we see in this evidence a soundness of view and a care for the real principles of economical science, which I would strongly recommend to the attention of my two Honorable friends opposite.

"It will be found moreover, that in the opinion of large classes the exercise of undue influence is by no means confined to the abused shroffs. I had a conversation with this native gentleman yesterday, and the following are the notes that I took down in writing, while he spoke:—

"Time-bargains immediately affect trade in a most important manner, and this effect begins with the grower.

"Thus as soon as or even before the crop of cotton begins to appear, the first buyer of cotton visits the land. He forms his notions as to what the cotton will be worth on a given distant date. So does the grower.

"The first data are thus acquired for sales and time-bargains, the latter forming a most important and real trading feature in the former. To interfere therefore with the time-bargains will interfere with the early arrangements made with the grower, who requires security against risk and must have ready money. By means of an initiative time-bargain before the crop is gathered, the grower is able to grasp the advantage of the market without risk.

"This is the more strongly shown by the fact that sales have been made frequently by the riot, even before the crop was sown, or the land prepared. This occurs both to the wealthy landholder and the poor ryot.

"A true time-bargain is made by him, viz. on a given day to deliver the cotton grown on his farm at a place, say Dhollera, for a given sum. The time-bargain therefore depends on accidents of season, the due housing of the crop, the change of the prices.

"If the ryot performs his part of the contract the risk falls on the buyer, the ryot having profited by the early circumstances of the favourable market. Thus the legitimate time-bargain is immediately favourable to the improvement of the country.

"Thus we have here had time-bargain the first.

"The second time-bargain will include delivery at a distant place from the local merchant, who we will say has gathered his cotton together at Dhollera. He now makes time-bargain the second with the merchant at Bombay, who must pay for the further risk of delivery, travelling, fluctuation of price.

"The bargain must be a speculative one, as its operation extends over several months. A price settled months before is to be given on delivery irrespectively of all chances or risks.

"Here we have time-bargain the second, all on account of the same parcels of cotton.

"The Bombay merchant then holds his cotton which is either on the journey or in his warehouse. He either exports himself, or makes time-bargains for delivery at certain dates to those engaged in the export trade, which he may consider most profitable to himself.

"The seller for delivery in such time-bargains is satisfied with certainty. The buyer takes the risk of rise or fall in the market. Therefore, the grower and the small agent or petty intermediate merchant are guarded against uncertainty, while the capitalist runs the risk; but makes large profits according to his risk.

"All time-bargains depend as regards frequency on the value and extreme demand for commodities. At one time there were more time-bargains in opium; now, owing to cotton having become so valuable, and owing to the fluctuation of price in Liverpool and New York, cotton is more a source of time-bargains than opium. But in fact time-bargains take place in every description of commodity which

may either be exported or imported. It is absurd to say that time-bargains cause the prices of cotton to rise. Prices depend on value as fixed by the distant markets where the commodity is demanded.

"If time-bargains are injurious to trade in cotton, how is it that everywhere in the Presidency, the breadth of cotton is so immensely increased, as for instance in Kattywar where this year three times the amount of cotton has been sown as compared with last year.

"The system of time-bargains is the machinery with which small traders are able to meet the competition and enormous pressure of the great capitalist. Owing to the high profits gained in cotton, every one wishes to have a share. The time-bargains make the little people who deal in cotton to have fair play. Without them the great exporting capitalists would have it all their own way, and would influence the market according to their own ends. In considering this question it is most important to discriminate between the private interests of the expecting merchant, and those of the growers, the agents and the petty merchants, who carry on the local trade of supply.

"The latter complain of the tremendous pressure put on them by the exporting firms. The petty sellers have no correspondents in England, and they are compelled to sell to the firms established in Bombay, and often at enormous loss. Thus it is known that on the same day, cotton of the same description has been sold by two parties, by one for 13*d.* a pound, by the other for 19*d.* a pound. It is to meet the pressure which causes such results, and consequently loss, that time-bargains are of so much use. The risk of awaiting the final results of sales at Liverpool is such that the majority of people prefer to make their time-bargains and so save themselves.

"We hear time-bargains abused; but in fact every contract for delivery at remote dates is a time-bargain. Thus the Commissariat makes a time-bargain when it gets a contractor to undertake to furnish produce which is not yet grown for a term of years, and therefore to run all the risk of the season. This is clearly demonstrated in a time of high prices, when the contractor either has to buy produce for the Commisariat to complete his contract at a great loss to himself, or to pay a heavy fine to Government in compensation for non-execution of contract.

"It is therefore impossible to do away with time-bargains such as have been described, and which enter into every sort of trade, and it would be difficult if not impossible to discriminate between such legitimate time-bargains and those of a mainly gambling character.

"The soucars are indeed alarmed, and expect the most serious interference in all operations of exchange if the Bill be passed. They consider there will be no end to the attempts at fraud, and the numberless vexatious suits which will be the consequence. The business of the lawyer will be very much increased. If time-bargains are abolished to prevent gambling, legitimate trade will also be hindered. If they are prevented merely to stop operations on account, the result will be that much cotton will be kept in hand, not for the purpose of the market, but to represent transactions which may and will cause the cotton to be delivered to a dozen different parties on the same day.

"There is no doubt many purely gambling time-bargains take place, but they cannot be separated from the legitimate ones."

(Sir William Mansfield accompanied the reading of this paper with a running commentary showing the urgent necessity of not trampling on the ryot, and of not sacrificing the smaller traders to the power of the large capitalists, and also drawing marked attention to the fears of the native bankers as respects interference with Exchange and the increase the Bill will give to litigation instead of diminishing it as expected by the Judges.)

His Excellency continued—"I have given this evidence which I have collected myself. Now I will read you some perfectly independent evidence which strangely corroborates the opinion of the native gentleman in the Revenue Department, the more especially as the letter I quote is clearly the work of an enlightened British merchant. I allude to a letter signed "Alpha" which appeared in the *Times of India* of the 5th September; and I say that the coincidence is the more important, because it is impossible that the gentleman whose opinion I have just given can have had any communication with "Alpha" on the subject, while the points taken by the two authorities are different. I will only add that I have not

the slightest idea who "Alpha" is, but that he also has fairly tried to fill up the lacunæ of the Report of the Select Committee. His letter is as follows:—

"*To the Editor of the Times of India.*

"Sir,— Although the Select Committee have not thought proper to take into account the views and opinions of the natives, I have had the curiosity to inquire of several of them what they thought of the Bill. One was a wealthy and respectable Parsee merchant. I asked him what he thought of the Bill; he stated he though it decidedly bad and mischievous. He replied by stating a case which applied to transactions of his own, where such a Bill would interfere with what he considered legitimate trade. On one occasion, being desirous to operate in cotton and ship to Liverpool, he was deterred from doing so, thinking the business too risky—*too near gambling* considering the immense change in price that might take place before his cotton arrived; but the thought struck him that he might reduce the risk, *the gambling element*, by making use of time-bargains. He reasoned this way :—"Cotton is so high now in Bombay, that a rise in Liverpool is not likely to cause a more then corresponding fall here. If I enter into a time-bargain here at the same time as I ship to Liverpool, I am likely to secure a profit by the transaction, and if I don't make a profit my loss will not be overwhelming. If anything happens to the Liverpool market, I lose on my shipments; but if my reasoning, as shown above, is correct, I gain somewhat more on my time-bargain. If, on the contrary, the Liverpool market is higher when my cotton arrives, I gain on my shipments and lose somewhat less on my time-bargains. but if the sircar put down time-bargaining, I shall be compelled either to ship cotton with more risk than I am inclined to take, or else to go out of the market altogether." I said to him then, "But you might sell actual cotton for future delivery instead of in the form of time-bargain;" to which he replied, "How can I sell cotton for actual delivery at a certain date unless I went into the market at that date, and obtained it first? and if, instead of doing that, I agree to give the party to whom I sell, the money necessary to do that himself, does it not come to the same thing ?" I could not deny his argument.

"The second native I consulted was a rich cotton dealer. I asked his opinion of the Bill. He also highly disapproved of it. He said, "The sahib loq say that time-bargains make high prices; I am a dealer in cotton; how can I wish anything that makes high prices done away with?" But I said, "irrespective of that can you show that trade would be interfered with by suppressing time-bargains?" "Truly yes," he replied, "take my own case. I have plenty cotton up-country bought, at a high price, but which cannot get to Bombay till after the rains. I cannot afford to take the risk of what may happen in the market during six months on my own head, and I sell cotton in a time-bargain for November, thus securing the profit now ruling and lessening my risk." "But," said I, "could you not gain the same end by selling a part of your cotton to arrive for actual shipment, supposing time-bargains were done away with?" To which he replied, "The sahib must be laughing at me. How can I get as much money for my cotton in that way? The bales come here in the end of October, and if I was obliged to sell them to an actual shipper to England he could only give me such a price as he could afford, taking into account the chance of the American war ending before the cotton was sold in Liverpool, say next March; whereas a time-bargain could give me such a price as he could afford, taking into account the chance of the war ending before November, the due date of the contract. The sahib must see that by the latter plan I would get a much better price, and thus I protect myself against heavy loss; for if, when my cotton arrives, the price is higher than when I sold, I have to pay a balance to the party I sold to, but I have the benefit in the increased value of my cotton when it comes to market; but if the price is lower, then the balance handed to me by the party I sold to, indemnifies me for the fall in value of my cotton. For this reason, sahib, I think that if the Government do away with time-bargains they will interfere with my trade. I do not enter into time-bargains for the purpose of gambling, but in order to reduce the risk there is in trading in cotton at present."

"The third and last native I consulted, was an intelligent, highly-educated native engaged in the export trade. His opinion also was unfavourable to the Bill. He said, "No doubt if time-bargains were abolished, I and others who ship cotton would

get it on better terms,—at least so long as the real tendency of the market is upwards; but I do not think it fair to the producer and dealer in cotton that Government should step in, and deprive them by law of one-half of their customers, thus compelling them to sell the other half on their own terms. If time-bargains are suppressed, as the Government appear to desire, it is virtually a suppression of all trade in cotton which has not for its ultimate object the shipment of cotton to England. No man can then buy cotton in Bombay on speculation with the purpose of selling it again, without the ridiculous restriction that he is to go through the trouble and expense of receiving and re-delivering the cotton. If he compromises the transaction by receiving, or paying, the difference, he has saved the expense and trouble, but Government says he is to have no security that his bargain shall be carried out. For is not this exactly descriptive of a time-bargain? Now there are a great many people desirous to trade in cotton when such profits are going, but not speculative to risk a venture in the article when the risk has to endure till the cotton is sold in Liverpool, but who are willing to buy cotton in Bombay for re-sale at a certain fixed date not so far off. But as there is no consumption in Bombay, such transactions must be speculative,—that is, the purchase must be intended to be re-sold; and if the buyer and seller agree to save the expense of delivery and re-delivery by paying over the balance in cash, why should the Government step in to prevent them? Such a transaction comes clearly within the limits of trade, and falls clearly beyond the limits of State interference. If Government makes such compromises illegal, it must make all compromises in mercantile transactions illegal also, which would lead to a pretty state of things." What could I say in reply?

"I have thus endeavoured to supplement to a certain extent the Committee's Report, by giving a glimpse at native ideas of the Bill. I think it must be admitted there is some reason in what they urge, and some proof that time-bargains are not pure gambling.

"In conclusion, let me beg of the members of the Legislative Council to lay to heart the remarks of Lord Palmerston, who ought to know something about these matters, when arguing the other day against Government interference with tenant right in Ireland—a question certainly less directly connected with trade than time-bargains in produce in Bombay. He says, "How can the Government increase and promote the prosperity of a country? Not by forcible legislation—not by interfering in the transactions of men. The object of Government ought to be to remove obstacles, to remove freedom from industry, to give security to life and property, to leave buyer and seller, the hirer and letter to settle their own bargains, unshackled by law and uninterfered with by the Executive."

"These remarks were loudly applauded by the British Senate; they are golden words and singularly appropriate to the case of the threatened Bill.

ALPHA."

Now this evidence is particularly valuable, for "Alpha," who is evidently possessed of great practical knowledge, admits that certain time-bargains are gambling transactions. The Honorable gentleman who is so fond of racing analogies will admit that both as described by the native evidence and by that of the British merchant, these bargains come under the designation of "a hedge." They are continually used to correct the excessive risks caused by extraordinary fluctuations of the market, and the very gambling character of the legitimate trade. This letter and the conversation I had with my friend confirm me in the idea which I have all along entertained that if time-bargains were abolished it would be only the great export firms that would be benefitted. There is also a fear that many of the poor cultivators in the interior would be ruined, or at all events terribly crippled if the proposed Bill were to become the law of the land, and rigorously enforced. I think moreover that after what it has now heard, the Council will feel satisfied that more evidence on both sides is required before fresh legislation would be justifiable. The evidence already given to the Council by the promoters of the Bill, is, as I have before remarked, of an eminently unsatisfactory character. We have been told for instance that Mr. Kelly's letter disclosed an alarming state of things. But what does this letter disclose? why that *at one of the fixed times* mentioned in the agreement signed by the 60 shroffs, Mr. Kelly issued a large number of notices. Mr. Kelly's notices were evidently not normal but exceptional, because of the price of cotton having been declared by the shroffs to be lower than could be justified by the state of the market at a particular date. He does not issue that same number of notices every day, but he issues them once and only at the suit of the interested parties to meet a most unusual contingency; and

therefore it is perfectly absurd to put forward this letter, as being in any way an index as to the real state of the case in regard to the frequency of time-bargains. The argument based on Mr. Kelly's letter is illusory and leads to an erroneous conclusion, and no opinions given on the faith of his letter can hold water for an instant. Again, it is very generally said in native society, that it is strange that English merchants only have been asked their opinion about time-bargains. This is said freely in the native press, and I have been reminded of it by native gentlemen. I ask, whether to an outsider the fact that only Englishmen have been consulted is not calculated to bear the appearance which it undoubtedly does to many of the members of the native society. There is all the more reasons therefore why my amendment should be adopted by the Council; for I would appeal to the Councilas composed of English gentlemen and native gentlemen of the highest honour, whether it is not demanded by common justice that the shroffs should be allowed to speak, if only in their own defence. But now to recur to another point. I have been taunted over and over again both here and elsewhere, and again today, by the Honorable gentleman with inconsistency, because I have not moved for the repeal of Act XXI. of 1848. But the persons who assert that I have been inconsistent, are those who have failed in their own arguments. There is no device more common in rhetoric than to charge an antagonist with inconsistency for not following some course of action which was really quite independent of the point at issue, for not doing something which is quite foreign to his purpose. I am right in calling the taunt that has been used a mere rhetorical device. But the mischief attached to such assertions is that while they can be easily met by the person who is attacked, the public, which has not time to weigh arguments, sometimes allows itself to believe that there is some truth in the assertions so repeatedly brought forward. These assertions are accordingly repeated as they have been repeated in the present instance *usque ad nauseam*. I think it only right therefore to maintain that whatever may be the opinions of Judges and other persons as to the necessity of rendering Act XXI. of 1848 an effective Act. I have a perfect right to declare my own opinion with respect to this Bill actually before us without any regard to that which it is said to amend. What have I to do with Act XXI. of 1848? It is a piece of old lumber, a corpse. "Is it a corpse set up for show, galvanized at times to go?" The Act XXI. has doubtless failed in its object. It is defunct. Therefore it is a fallacy to say that this new Bill is to supplement what is really a dead thing.

"The Bill is in fact an entirely new measure containing a principle new and strange to Act XXI. That principle, as Sir Joseph Arnould says, sanctions a double immorality. I say, therefore, it is entirely vain to refer me to Act XXI. when my business is to defeat the Bill before the Council on account of its unusual and mischievous character. I am not to be frightened out of my resolve by all the mere opinions that may be marshalled against me. And besides, how am I to know that the opinions of the Judges of the High Court are really against me after all? Mr. Justice Couch is very guarded in what he says. Sir Joseph Arnould may almost be said to be on my side of the argument; and from the silence of Sir Mathew Sausse, I am entitled to presume, that although he thinks legislation necessary, he has not spoken out, because he really disapproves of the Bill as it stands. We certainly have a right to know the opinion of the Honorable Chief Justice on that part of the Bill objected to by Sir Joseph Arnould. The Honorable Mr. Anderson gave us many quotations from judgments delivered in various Courts of law in favour of his view of the present question. But I can also refer to the Bench of the late Supreme Court of Bombay, which lays down very positively that the practice of entering into time-bargains is sanctioned according to Hindoo Law.

"This opinion was recorded by the late Supreme Court so lately as 1862. It is surely too much to expect that Hindoos, whose present system and habits date from a period older by several centuries than the Christian era, in fact the most conservative of nations, will suddenly change their old practice in regard to time-bargains, when their own law, which they believe to have a divine origin, did not discourage such contracts.

"Now, this opinion of the late Supreme Court that I have alluded to, shows very clearly that the practices with which we have rashly attempted to intermeddle, are part and parcel of the habits of the people, of a people too that has shown itself to be the most conservative on the face of the globe. We should surely pause before we destroy at one blow a system that has flourished, and with profit too to the poorer classes, for the last 2,000 years. The very failure of Act XXI. of 1848 shows us that fresh legislation in the same direction will do no

good. We should look at the present question as legislators, not as lawyers. We should attempt before arriving at any conclusion to grasp all the circumstances that should influence our decision. It is not sufficient to consider whether that Act XXI. can be rendered effective. But will it do any good, not to one class, but to the whole community, to be affected by the new law, which is meant to infuse a new vitality into Act XXI.? I am convinced that if Mr. Westropp had been brought up and lately acting as an administrator and not as a lawyer, he would not have made the mistake of attempting to pass the present measure. So convinced am I of his thorough and searching impartiality, that I feel sure that if he could have had the information which would have enabled him to take a more extended view of the whole question, if he could have seen the other side of the shield, he would not have been so zealous in the matter as he has been. As a lawyer he had been brought into contact not only with the worst side of human nature, but with the immediate effects of certain gambling transactions. He has exaggerated ideas in consequence of the iniquity of the shroff, and he did what seemed to him his best to root out this iniquity. But had he enjoyed a wider field of view, he would have learned to look on the question in a more liberal spirit. He would have seen how injuriously his Bill would affect the poor ryots in the Mofussil, who have no one to speak for them: and his love of justice and fair dealing are are so genuine and deep-seated in his nature, that it is not to be doubted that he would never have introduced this unhappy measure. But to turn to another matter. The Honorable Mr. Anderson has thought fit to defend himself today, with regard to the possible influence of the Press on him. But it was quite unnecessary for him either to defend himself or the honourable service to which he belongs in such a particular. I trust that I have in nothing that I have said allowed any personal considerations to have weight with me. What I have sincerely wished to do has been to give my help to every proposal that is fitted either to improve the morals or protect the liberties of my fellow-subjects, and to resist measures, which, like the one before us, have a contrary tendency. I must say that I was startled when I was charged with stating what was not the case when I said that the present Bill was at variance with the course of modern legislation. The Honorable Mr Anderson's argument was that a similar measure was passed by the British Parliament in A.D. 1845, and that too by a Parliament which had shown itself in the years A.D. 1844 and 1846 to be a very liberal Parliament, and by no means behind the spirit of the age. But the Council must remember that in 1846 the parties in England underwent a great change under the guidance of Sir Robert Peel, in short, conversion Because the Parliament of 1846 was a converted Parliament, it was not to be concluded that that Parliament did not act under pressure. There is no doubt that the great change in our ideas, on all subjects connected with liberal measures in respect of trade and so forth, have taken place since then. Much of the old leaven remained and had to be got rid of. As for instance, we saw in the opposition made by the shipping interest, headed by Mr. Lindsay, to the repeal of the navigation laws. As a matter of fact the English measure of the 7th and 8th Victoria belonged altogether to the old law, and I will content myself with simply stating this as a fact, and will not further reply to the taunts which have been levelled at me for reminding my opponents that they had the political economists against them. I will only say this, that if such a measure as the present is contrary to the doctrines of the political economists, when it is viewed only in such a light as may have been furnished them by the state of society at home, what would it be if viewed from the point of Indian Society. We all know that in Paris, or in London, or in New York, a man's actions are shrouded by the very crowd in which he lives. He may do anything he likes. He may gamble up to the very roots of his hair, and no one know anything about it. But here on the contrary things are very different. Men live in glass cases. We all of us know more or less what our neighbours are about. Now, I should like to know in this matter of time-bargains, who is guiltless? Who is guiltless of going beyond the legitimate operations of trade, as it is called? Where are you to define trade and gambling in these days of banks and shares, of old land companies and new land companies, of speculations of all sorts in which we see great fortunes made in a very short time? Who is there that resists the temptation?

"I ask, when the Siren time-bargain trips along the Stock Exchange in her crinoline with its hoops of gold, and festooned with bank-notes, who is there that resists her charms and forbids himself from all dalliance? I ask, who is guiltless in this matter, who is able to throw a stone at his neighbour, who is there that has not a beam in his own eye when he tries to take out the mote from another's? Who is there that if precluded by position from entering into the speculations does not feel his mouth water and wish that he too also had the opportunity! I say, Sir, that it is impossible to stop short at cotton and opium, you cannot legislate against a small class, and it would be the height of injustice to overlook the general consideration, and

to direct your legislation against a small section of those who conduct trade operations. I will notice one objection which has always appeared to me ludicrous in the extreme; still it may have weight with portions of the public, and as it was referred to by my Honorable friend Mr. Frere it is well not to pass it by. Thus I have read not without a smile in several prints, that time-bargains ought to be put down, because they add much to the business of the courts, and that the Judges ought to be saved from the trouble caused by the additional suits which are so added to the file; in short that their convenience should be consulted in this matter.

"Now supposing that the proposed Bill would give the Judges less to do, a by no means ascertained fact, I would ask, is that any business of ours? What have we to do with reducing the files of the High Court? No man has a greater respect than I have for the lessons which flow from the lips of the Judges. I have before said that I consider the temple of Justice to be in the largest sense the great hall of education for the people. It is for the Judges by their judgments to teach the people what is righteous, and it is again their duty to enforce that teaching by punishing crime when it is brought before them. It is not for the legislature to relieve the Judges of this duty. I must say, whenever I have seen the ludicrous statement I have noticed, I have been forcibly reminded of a passage in one of Congreve's plays, in which Millamant disposes of her lovers. She says: "Dear me, what are lovers? when we use them up, we make more." And so I say, when we use up our Judges, let us make more. If the number of existing Judges does not suffice for the work of the High Court, let us make more Judges, but do not let us seek artificially to reduce their work. I would not close my remarks without again referring to the surprise which was originally effected by this Bill, and to the absolute necessity of not committing ourselves to legislation, when we are without a sufficiency of facts on which to ground it, and of not admitting a principle which is contrary to our notions of honesty.

"Thus my Honorable friend himself, Mr Anderson, evidently doubts the propriety of admitting that principle.

"He was obliged to apply all the strength of his subtle and powerful intellect to break down the objections he felt. Let me recommend the Honorable gentleman when referring again to this question to recollect the lessons of morality he learned in his childhood. I therefore call on the members of the Council to put away the notion of class legislation and to vote with me on my amendment, and to recollect that this is not merely a question of stopping gambling on an Exchange, but that it is one in which is concerned the welfare of the poor as well as the wealthy; it is one in which are concerned the development and expansion of the country at large, and it is one in which an undue interference has been attempted with laws and customs which are 2,000 years old.

The PRESIDENT said that it had not originally been his intention to take part in the debate on His Excellency Sir William Mansfield's motion; but he thought he should now do good service to the Council if he recalled to their recollection the exact position in which they stood in regard to Mr. Westropp's Bill. In the first place he must remind them that the Bill was not a Government Bill. It was introduced by their late colleague, Mr. Westropp, as a Bill which his experience at the Bar showed was necessary to enable the Courts of Justice to carry out the existing law. It had been doubted during the course of the debate whether the Chief Justice was in favour of the proposed Bill or not. He (the President) had good reason to believe that the Chief Justice considered the subject of the Bill to be one which called for the careful attention of the Legislature; they had before them proof that the other Judges on the Original side of the High Court held similar views. While on this point, he (the President) must remark with reference to what had fallen from the Honorable members who opposed the Bill, that in taking this view the Honorable Judges could have no other object to prevent the time of Courts of Justice being taken up in deciding the disputes of gamblers. It was also patent to the Council that several of the more influential members of the mercantile community including four members of that Council were in favour of some legislation on the subject though they were not agreed as to the form which such legislation should take. There could then be no doubt that the subject came before them, recommended to their consideration by the highest judicial and mercantile authorities in the country. Whether the Bill before them was such a measure as the exigencies of the case required was of course quite a different question. His Excellency Sir William Mansfield apparently denied the gambling character of time-bargains, still he (the President) thought there could be little doubt that the practice of entering into time-bargains was a gambling practice and not legitimate trading.

(Here Sir William Mansfield interrupted His Excellency and intimated that he must have been misunderstood; that the point he took, was that in practice it was quite impossibleto separate the legitimate and necessary operations of trade from the gambling transactions.)

There could be no doubt from all that they had heard that Act XXI. of 1848 had been evaded. It had been objected to Mr. Westropp's Bill that while it purported to carry out Act XXI., it nowhere defined what a wagering contract was. But courts of law rarely found any practical difficulty in deciding what was a gambling transaction and what legitimate trading. There was always this broad distinction between them, that whereas gambling transactions always excluded as far as possible all exercise of judgment or skill as able to control the event—it was the object of legitimate trading to obviate as far as possible the operation of mere chance and to make the event of the transaction depend on the skill and judgment of the trader. Of course doubtful cases might arise, but there was this broad practical difference which it was never very difficult to recognize, and there could be no fear that such a Bill as was before them would interfere with legitimate trade. As to the cases dwelt on by His Excellency the Commander-in-Chief in the notes he had read them of his conversation with a native gentleman, it was sufficient to say the transactions described were not time-bargains and none of them could be in any way affected by this Bill. Then again, it had been said that the Bill was opposed to the spirit of modern legislation. Now, after all that they had heard today and on former occasions, he could not concur in this objection. If the Bill had enacted pains and penalties against gambling, it would perhaps have been opposed to the spirit of modern legislation, but it carefully avoided the enactment of all penalties. It said to the time-bargainers on behalf of the courts of law "we do not interfere with your bets or your bargains; but do not occupy our time in enforcing what seem to the court to be immoral transactions."

This was the principle of the Bill as it affected the courts of law. It was a mistake therefore to say that the Bill was of the same character as the usury and sumptuary laws. But though he approved of the principle of the Bill; he thought that His Excellency Sir William Mansfield had shown very satisfactorily that the information they possessed was not sufficient to justify legislation at the present moment. If the measure had been a Government measure, he (the President) would certainly have asked for more evidence in regard to it before sanctioning its introduction into the Council. And he would now put it to His Excellency Sir William Mansfield, whether it would not be better to adjourn the discussion until more evidence could be adduced, rather than shelve the Bill for the present at least by moving the amendment in the form in which His Excellency had moved it.

His Excellency Sir WILLIAM MANSFIELD said that he had no objection to the amendment being altered in any manner which might appear most appropriate to His Excellency the President. Sir William Mansfield added that he hoped that nothing that he had said in regard to the Judges of the High Court would be understood as implying that he did not entertain the highest respect for them.

The Honorable Mr. FRERE said that he trusted it was unnecessary for him to disclaim any intention of speaking with disrespect of the Judges of the High Court.. He had himself been too many years on the Bench for it to be supposed that he could entertain anything but respect for the Judges.

The question was then put that the consideration of the Report of the Select Committee on the Bill to amend Act XXI. of 1848 be adjourned to the next meeting after 15th October 1863.

Carried.

The PRESIDENT said that it was desirable that the consideration of the Rules for regulating the conduct of business at Meetings of the Council should be adjourned until the Rules as amended by the Select Committee had been a longer time in the hands of the Honorable members.

This was agreed to, and the Under-Secretary was also directed to have the olds Rule and

the revised Rules printed side by side, so that the modifications recommended by the Select Committee might be apparent at a glance.

The Honorable Mr. FRERE in moving the first reading of the Bill for the Relief of Insolvent Debtors, said :—

"An Act for the relief of Insolvent Debtors is a subject which has engaged my attention for many years When Zilla Judge at Dharwar about 1847, I brought the subject to the notice of the Judicial Commissioner. Subsequently, when Judge at Surat in 1852, I had an opportunity of urging it upon the Judges of the Sudder Adawlut; but no action was taken in the matter until 1857, when I was myself one of the Judges of the Sudder Adawlut, and in 1860, after I had left the Court, the subject was brought to the notice of Government, who in May 1861, asked the Judges to frame a draft Act to carry out their views.

The Judges however said that with every desire to assist in carrying out a measure so much needed, the difficulties to be encountered in framing an Act so as to adapt it to the circumstances of this country were so great, that they suggested the task should be undertaken by the Legislative Council.

"It is much to be regretted that we had not the assistance of the Judges of the Sudder Adawlut, who are of all people the most conversant with the wants of both debtors and creditors, in drawing out the Act; but as that was not procurable, Government in July 1862, understanding that no Bill for the Relief of Insolvent Debtors would be introduced into the Council of the Governor General for making laws, drafted one founded on the Act for Relief of Insolvent Debtors in Ireland 11 and 12 Vic., chap 21, and forwarded it for the criticisms of the Judges of the Supreme Court, and the Sudder Adawlut, the Revenue Commissioners, and Judges of Surat, Tanna, Poona and Ahmednuggur.

"The draft was generally objected to as being too close a copy of the Act of Parliament, too verbose, and containing phraseology unknown in the Acts of the Indian Governments, and containing clauses which were objectionable. I need not detail the provisions of the first draft nor point out wherein it differed from the present; suffice it to say, that the Bill was redrafted into the form in which it is now presented to the Council. This draft has also been referred for the criticism of the Commissioner in Sind, the Revenue Commissioner, the Honorable Mr. Justice Forbes, and Mr. Justice Newton, Messrs. Moroba Cannoba, Gopal Hurree and Trimulrao Venktesh; all of whom generally approve of it, but most of them have offered very valuable remarks, which I shall note hereafter, and many of which will require to be considered by the Select Committee, if this Bill be read a first time and referred to a Select Committee.

"The Act will certainly give relief to those debtors who having rendered themselves liable for what we consider usurious interest find the burden of their debts overwhelming, and are prepared to make the most just and equitable arrangement in their power with their creditors, such as a ryot I lately heard of, who originally borrowed Rs. 9 and was sued on a bond for Rs. 49-8-0, being the equivalent of 9 maunds of Bajeree principal and 1 candy and 13 maunds interest, at 9 pylees for the rupee. Or another who passed a bond covenanting to pay interest at Rs. 1531 per cent. per annum. But these men certainly will not be entitled to relief merely because the interest they agree to pay was usurious. The creditor no doubt ran great risk in lending the money, and he has a right to insure himself against it; and a fraudulent debtor or one who, knowing his inability to pay, shall have incurred debts, will be made to suffer for it; but relief will be granted and the Act is intended more particularly to apply to the unfortunate trader, who by unforeseen circumstances must fail in his engagements; and to the creditors of an unprincipled debtor who suppresses or alienates his property with a view to defraud his creditors. So that the Bill, it is hoped, will be a benefit to creditors as well as debtors.

"The Act as a relief to debtors accordingly provides (Section XIV.) that any person who has resided in the district 6 months and is unable to pay his debts, or any person in gaol on civil liability may petition for relief. While the creditor also who has obtained a decree against and inprisoned his debtor, provided he does not pay or adjust his debt within three weeks, may petition that his debtor be declared an insolvent and the Act be enforced against him. As may also the creditors of those who leave the jurisdiction of the court

or their usual place of business or abode with the intent of defrauding their creditors, or with that design fraudulently transfer their estate or suffer it to be taken in execution or appropriated.

"It is proposed to give the court power to remand an Insolvent to prison as well as to discharge him, and penal clauses are introduced (XLVII. and XLVIII.) for the punishment of Insolvents fraudulently concealing or destroying documents, and of those who have fraudulently or maliciously contracted debts, which will, I hope, secure punishment overtaking all who attempt to obtain the benefit of the Act for fraudulent purposes. It is possible that in Committee it might appear that Section 421 of the Penal Code already provides the penalty contemplated in Section XLVII. If that be the case it might be necessary to make some modification in that Section, though I confess I do not see how it could be conveniently arranged that an offence proved before one tribunal, the Insolvent Court, should be punished by another, the Criminal Court.

"The machinery by which the Act is to be worked consists as in England of Judges or Commissioners and Official and other Assignees; the District Courts being the Insolvent Court; and if further rules are required, the High Court have power to prescribe them, provided they are not opposed to the provisions of the Act.

"So much for the general outline of the Bill. With regard to the details, it has been suggested that the District Judge should not necessarily be the Judge of the Insolvent Court.

That if the Act is extended to Sind, that the Commissioner should have the power of prescribing rules for its procedure, as it is proposed the High Court should have elsewhere.

"That Official Assignees, instead of being appointed by Government, should be appointed by the Judge, and dismissed only with the sanction of Government.

"It has been suggested that six months residence in the district is not sufficiently long to entitle a person to claim the benefit of the Act. That the proceedings of the Court should be on stamped paper. That the Court should not be left to allow an unlimited time for filing the Petitioner's Schedule; and that a declaration should be added to Section XV. that an Insolvent making a false averment is liable to punishment.

"That Rupees 300 as the limit of the value of wearing apparel, working tools, and other necessaries of Petitioner and his family which are reserved to them, is too high, and that Rupees 50 worth would be sufficient, and that Rupees 500 is too large a debt for a man to owe to make his leaving the district to defraud his creditors the lowest act of Bankruptcy.

"It is objected against Section XXIX. that making a pension liable for debts is opposed to Act VI. of 1849, which exempts pensions from seizure by force of Law, and that in Section XLIV. (which I think will require alteration in other parts) Rupees 5 should not be fixed as the maximum amount of subsistence, but that there should be a sliding scale.

"It has also been suggested in Section XLVIII. to exempt from their discharge debtors who had borrowed money with which to pay fines inflicted on them by a Criminal Court. By paying that fine the Insolvent escaped imprisonment, and I am inclined to think that the provision would be a good one.

"Objections have been raised to the proviso in Section LXV. in allowing the Judge of the Insolvent Court to direct a decree to be passed against the Insolvent in any Civil Court in the district, and that it would be better, one thinks, that the Judge should pass the decree himself and another that he should direct the Assignee to file a suit rather than direct a Court, which might be the Small Cause Court, over which he has no jurisdiction, to pass a decree. I prefer the clause as it stands.

"Besides those which I have enumerated, other minor objections and suggestions of less material import have been urged on which I shall not dwell further than merely mention them, though I must express my thanks to all who, by giving their opinions and suggestions, have assisted me in introducing this Bill.

"It is suggested that a person who has taken the benefit of the Act should not be allowed to avail himself of it again for five years, except under particular circumstances. That the Schedule should be sworn to in open Court. The last clause of the Bill declaring all Regulations and Acts inconsistent with this Act to be repealed, has been objected to as a loose style of legislation. The objection is supported as we all know by the Lord Chancellor in his late famous speech upon the revision of the Criminal Law in England. But the clause may be supported as most comprehensive, though I should be obliged to any one who would point out *all* the parts of Acts and Regulations which, as inconsistent with this Bill, require to be repealed.

"That notice in the *Government Gazette* does not give sufficient publicity.

"That Schedule F. which refers to a "trader," is inconsistent with the rest of the Act.

"That property "in expectancy" is likely to give rise to question and difficulty.

"These, and whether the interpretation of time in the interpretation clause, and others which I need not enumerate, are all subjects which must engage the attention of the Select Committee."

"I must not however conclude without drawing your attention to Section LXVII. which provides that no person shall be liable for the debts of his parents and others to a greater extent than the property he inherits. This clause is particularly aimed at a provision of Hindoo Law, which makes a man responsible for his father's debts with interest, and his grandfather's without, though he may not have inherited a sous from either. The Judges of the Supreme Court, when the first draft was submitted to them, approved of this enactment as just in principle; but the then Judges of the Sudder doubted whether these provisions pertained to an Insolvent Law and suggested that the Legislature should consider well before passing an enactment which would so greatly affect the money-lenders.

"I have no doubt but that you will consider well before you pass this Section; but I am happy to think that Mr. Justice Forbes and Mr. Justice Newton, who have been Judges of the Sudder, approve of this draft, and Mr. Justice Newton has pointed out that in Madras it has been held that even under Hindoo Law a Hindoo son is only by law liable for his father's debts to the amount of the assets, the obligation to pay all debts with interest being in the opinion of the Sudder at Madras, as it was in Sir William Jones and Sir Edward Colebrooke's opinions, a religious and moral and not a civil obligation, and therefore one that Courts of Law cannot enforce. Without the weight of these great names the ruling appears to me so just that I have no hesitation in recommending the proposed Section for adoption.

"It probably may, as the late Sudder Court suggested, seriously affect money lenders; but when it is so clear that only a sentimental obligation can rest upon a son to pay his father's debts to a greater extent than the assets he received from him, and that the son in many cases derived no advantage from the debts his father incurred, though I have no wish to injure but rather hope to benefit the fair trader, I feel no compunction in suggesting that no son should be hampered by his father's debts, and that the son who has become so should be able to free himself from them, and I should be glad to think that no person seeking the benefit of this Act had a worse claim to relief than a son from so much of his father's debts as exceeded the patrimony he inherited.

"It has been suggested by Mr. Moroba Cannoba that as by Hindoo Law a man marrying a widow is liable for all her former husband's debts, the provisions of Section LXVII. should be extended to him. I do not feel quite so certain upon this point. Re-marriages are, I know, common among some of the Hindoos, and I was myself obliged to give a decree against the husband of a woman for her former husband's debts; but marrying a widow is not so natural a coincidence in a Hindoo's life as inheriting his father's property or debts. The question however may engage the attention of the Committee and the Council.

"With these remarks I will move that the Bill be now read a first time."

The question was put that the Bill for the Relief of Insolvent Debtors in the Presidency of Bombay, and for amending certain points in the Law of Debtor and Creditor be read a first time.

Carried.

The Honorable M. FRERE moved that the Bill be referred to a Select Committee consisting of—

The Honorable the ADVOCATE GENERAL,
The Honorable Mr. SCOTT,
The Honorable Mr. JUGONNATH SUNKERSETT,
The Honorable Mr. PREMABHAI HEMABHAI.

And the Mover, with orders to report at the first sitting of Council after the 12th January next. The object in naming so distant a day being to obtain as much consideration as possible for the measure by those whom it is more likely to affect than the members of that Council.

The Motion was put and carried.

His Excellency Sir WILLIAM MANSFIELD said that he would not now ask leave to move the Resolutions of which he had given notice, as the consideration of the Rules for the conduct of Business at meetings of the Council had been adjourned. He proposed however to move these Resolutions when the Report of the Select Committee on the Rules came on for consideration. Indeed he was sorry that the subject of the Resoluions had not occurred to him before, when the Report was prepared, as in such case he would if not objected to by the other members of that Committee, have included the matter in that Report.

The PRESIDENT adjourned the Council to Saturday the 19th September 1863, at 3 P M.

By order of His Excellency the Governor in Council,

H. BIRDWOOD,

Under-Secretary to Government.

Poona, 21*st September* 1863.