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

THE Council met at Government House, on Wednesday, the 17th December 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir R. Napier, K C.B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble C. J. Erskine.
The Hon'ble W. S. Fitzwilliam.
The Hon'ble D. Cowie.
The Hon'ble Rajah Deo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble A. A. Roberts, C B.

RULES FOR THE CONDUCT OF BUSINESS.

His Excellency THE PRESIDENT moved that the Report of the Select Committee appointed to consider all proposals to alter or amend the Rules for the Conduct of Business, be taken into consideration. HIS EXCELLENCY said that he wished to make a few observations in explanation of this Report and the amendments it proposed in the Rules for the Conduct of Business, as he understood that some misapprehension and mistakes existed as to the intent and effect of the amendments which the Council had recommended to be adopted. Those misapprehensions had not found expression in that Council; but occasions might arise in which it might be necessary to remove public misapprehensions which had not found an echo there, and the present, he considered, was one of those cases. For it was manifest that most serious prejudice to the interests of the country might arise, if mistaken views of measures adopted by that Council, or as to the constitutional position of the Council to which Parliament had delegated the duty of legislating for India, were permitted to exist; more especially if misapprehension existed as to the motives and intentions of those to whom the duty of government was entrusted. He considered that it was the more necessary for him to notice the mistakes that had been made, because they appeared to

to have arisen from the meagreness and insufficiency of the statement which he had made in laying the Report on the table. But in truth he (the Governor-General) was well aware of the trivial nature of the changes made in the Rules, and he knew also that the other Members of the Council were equally aware of the nature of those changes. It appeared, however, that he had not sufficiently considered that others were ignorant of the real state of the case, nor the temptation to speculate on the relations of the Council which that ignorance presented. The public had been told that this Report was proof of a design, or a foul conspiracy, on the part of the Secretary of State and the Governor-General, to deprive the Council of some part of its privileges, and to curtail its authority. It was difficult to know how to deal with statements of this kind. If he dealt with them seriously, he might be open to the imputation that he had been led into taking undue notice of a piece of harmless pleasantry. But if no notice were taken, his silence might be construed into an assent to the truth of a statement involving charges not lightly to be treated. He felt, therefore, on the whole, that the less objectionable course was to notice the charges. It would be admitted by all candid persons that when the Council, or a Committee of the Council, was engaged in framing or amending Rules for the Conduct of Business, that was not a time when the question as to the best constitution of the Council could be properly raised, or the question whether the constitution given by Parliament was the best that could be framed. Whatever opinion might be formed on those points, the Rules must necessarily be framed in conformity to the constitution as it existed, and not to the constitution as it might be altered. He would enquire what proof there was of a conspiracy between himself, as Governor-General, and the Secretary of State. The first recommendation of the Committee was that the Governor-General should have authority to direct the publication of a Bill, though no vote had been previously taken from the Council, on the motion for leave to bring it in. The charge of conspiracy, in respect of this recommendation, rested on the assumption that this power was an innovation, or a departure from the existing practice; and that this innovation or departure from existing practice had been adopted on the recommendation of the Secretary of State. The Council would observe what foundation there was for these assumptions. The question had arisen before the Committee, how Bills should be dealt with when the ordinary sitting of the Council was suspended. The same question had been considered when the Rules were first framed, and the original Rules accordingly provided that a "Bill may be sent to the Secretary "when the Council is not in Session, and the Governor-General in Council may "order its publication, together with the Statement of Objects and Reasons which "accompanies it. In that case it shall not be necessary to move for leave to bring "in the Bill, and if the Bill be afterwards introduced, it shall not be necessary to "publish it again." Those Rules had been transmitted to the Secretary of State; and, in order to prevent misapprehension, he (the Governor-General) would state that that was done in the ordinary course of business, and before he assumed office. The Secretary of State observed that the Rule which he had read apparently infringed the privileges of the Non-Official Members, and placed them at a disadvantage in relation to the Official Members. The objection was felt to be perfectly

perfectly sound, and the inference was, that the Rule ought to be cancelled; but the Committee had to consider what the practical effect of having no Rule of the kind would be. One of the Rules provided that the progress of Bills introduced into the Council should ordinarily be suspended for three months, in order that they might be published. This Rule had been adopted in order that Bills might be circulated and published in all parts of India, and that all the various authorities and inhabitants might have opportunity to represent their objections to every proposed measure; and having regard to the great extent of the country, he (the Governor-General) did not think the period to be excessive, but considered that it ought to be strictly adhered to in all except special cases. But if it were adhered to, and no Bill could be published till leave had been moved for to bring it in, then it would be necessary either to call the Council together at great inconvenience, in order to deal with motions which, in nine cases out of ten, would meet with no objection, or else to adopt the principle that all Bills should be delayed till a Meeting of the Council for general legislation; the result of which would be a postponement of Bills introduced at one sitting till the following year. The Council had therefore thought that, in order to obviate inconvenience to Members and to the public, the Rules for the publication of Bills should be adhered to, but that the publication might be permitted, as before, when the Council were not sitting. The only difference in the new Rule was the substitution of the Governor-General for the Governor-General in Council, and the reason for that was, that it removed the existing anomaly of an advantage to the Official over the Non-Official Members. This Rule, it was supposed, would be less objectionable than the former one, but, thanks to the entire accord which existed, and he hoped would always exist, between him and his advisers, the alteration would, in fact, amount to a distinction without a difference. Such was the ground on which the charge of conspiracy had been made in respect of this Rule. Another ground for that charge had been the elimination of the term "Session" from those parts of the Rules in which it occurred. He scarcely understood on what theory the independence of the Council was supposed to be compromised by this change. That theory must imply that the power to prorogue, which existed under some constitutions, was a power reserved in the interest of the body which was subjected to its exercise, so that a body which was always at hand, and may be called together at any time, was less independent than a body that was liable to prorogation! This was a novel doctrine, and it might be asked how it would act in the present Council. In laying the Rules on the table, he (the Governor-General) had adverted to the occasion when the High Court was instituted. If he had been debarred by the Rules of the Council, or by his own act, from calling the Council together, he must have exercised the power vested in him by section 23 of the Councils' Act, and passed an ordinance to meet the difficulty. That was a power, like every other power entrusted to him by Parliament, which he should exercise whenever he thought it necessary to do so. But he was desirous, as far as possible, of dealing with the legislation of the country only with the help of those Gentlemen whose assistance Parliament had given

given him, and whose criticisms and suggestions were always of the greatest possible use. Then, as to publicity being given to the proceedings of the Council, it never yet had been, and he hoped it never would be, his lot to preside over a Government which had not more to gain than to lose by publicity. He was sorry to have thus to trouble the Council with these observations; but it was important to remove the misapprehensions to which he had adverted. If confidence were shaken in that Council, or in the Government, the evil would be far greater than would arise from any measure that either might adopt.

The Hon'ble MR. COWIE said that, irrespectively of the satisfactory explanation which His Excellency had given of the alterations in the Rules, he felt bound to repudiate the charge that he, as an additional Member of the Council, had forfeited his independence by continuing to hold his seat under them. He believed that, under those Rules, he had the right of introducing any measure into the Council, and he believed that it would receive courteous attention and impartial consideration from the President and the Members. Further, he had the right of expressing an opinion, and of voting on every measure which others might bring forward. That was the position which the late Lord Canning had explained, when he did him (MR. COWIE) the honor of offering him the seat in the Council, and with that position he was content. He had considered that he was only a Member of the Council of the Governor-General for the purpose of making Laws, but he found, from the Despatch of the Secretary of State, that he was a Member of the Council of the Governor-General, and he must express his acknowledgments for the compliment.

The Hon'ble MR. FITZWILLIAM stated his concurrence with the sentiments expressed by the Hon'ble Mr. Cowie.

The Hon'ble MR. HARINGTON said that the Rajah Dinkar Rao had expressed to him his satisfaction with the alterations which it was proposed to make in the Rules, and which he thought would identify the ordinary and the additional Members, and place them on a more equal footing.

The Motion was put and agreed to.

HIS EXCELLENCY then moved that the amendments proposed by the Select Committee be adopted.

HIS EXCELLENCY said that, as there was an obscurity in the new Rule 29, he would move that it should stand as follows:—

"*Any Member may move that a Bill which has been amended by the "Council be re-published, and if the Council so decide, the President may "order the Bill to be re-published for such period as he shall see fit.*"

The Motion was put and agreed to.

BREACHES OF CONTRACT.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill relating to Breaches of Contract committed in bad faith, be taken into consideration. In making this Motion, he begged to offer a few words on the reasons which had led the Committee to the conclusions of the Report; or, rather, he should perhaps say, on the reasons which had led himself, for it was possible, and indeed probable, that different Members had reached the same conclusions by different routes. It would be seen that, in the Despatch from the Secretary of State for India, which was printed with the papers accompanying the Bill, the Secretary of State expressed a hope that the Bill would be withdrawn, and then intimated a doubt whether any legislative interference in commercial transactions, with the view of coercing one of the parties to a contract, could be productive of good. The language of the Secretary of State was not directly imperative, and, on the whole, for various reasons, the Committee thought it their duty to consider the possibility of amending the Bill, and if he individually might avow any other motive besides the wish that a subject of such great importance should meet with full discussion, it would be the desire that no measure introduced by the late Mr. Ritchie should be lightly thrown aside. It would be better first to consider the Bill apart from the objections of the Secretary of State. The Council would remember that Mr. Ritchie introduced it avowedly as a measure of compromise. He inferred, from the language which Mr. Ritchie used in the debate on its introduction, that he would have preferred a Bill like that brought in by the present Lieutenant-Governor of Bengal, a measure, that was to say, making Breaches of Contract criminally punishable, but more general than Mr. Beadon's Bill, which applied only to Contracts for the delivery of agricultural produce. The Secretary of State, as was well known announced his intention of disallowing the first Breach of Contract Bill, and hence Mr. Ritchie was compelled to confine himself to a Bill prescribing a proceeding of a civil nature in point of form, but of a criminal nature in respect of the penal consequences incurred by an unsuccessful defendant. He thought, however, it would always be found that when you were dealing with a distinction so old and so universal as that which separated Criminal Law from Civil, it was not possible to mix together the provinces of jurisprudence which lay on either side of the boundary, and that you would be obliged to take up a position on one side of the line or the other. It was his strong impression that, if the Committee had felt there was any use in amending the Bill, it would have emerged in a shape closely resembling that of the measure introduced by the Lieutenant-Governor; for, when they came to the examination of details, and attempted to put the machinery of Mr. Ritchie's Bill into working order, they would have found it defective in one respect, in the omission of provisions for sufficiently full notice to the defendant of the character of the charge brought against him. It would have been contrary to all principle, and, as it struck him, to one's most elementary instincts of justice, to inflict a penalty so severe as hard labour on a man who had not been amply warned, before the trial commenced, that

that he would be exposed to this consequence if he did not succeed in rebutting the accusation of fraud. No civilized nation, so far as he was aware, had ever relieved an accuser from the duty of giving this warning. A French Act of Accusation was a voluminous history, not only of the alleged offence, but almost of the whole life of the accused, and, in England, until comparatively recently, the law was so anxious that prisoners should come into Court with full preparation, that a large percentage of persons accused escaped scot-free for want of a precise description of the charge in the indictment. The Committee, therefore, if it had amended the Bill, had two courses open to it. Either it must have compelled the plaintiff, in such a proceeding as the Bill contemplated, to put into the pleadings a full account, with all particulars of mode and time, of the fraud with which he taxed the defendant, or else it must have been provided that, whenever in the course of a civil suit for Breach of Contract it became clear that the question of fraud would be raised, the proceedings should at once be interrupted, and the accused bidden to attend on a subsequent day, with his means of disproof, if he had any. In the first case, the inquiry would differ only in name from a criminal trial; in the second, it would be a criminal investigation added on to a civil suit. He had attempted to show that legislation on that subject would necessarily, in the long run, turn out to be criminal legislation, because it explained the stress laid by the Committee on the passage in the Despatch, in which the Secretary of State objected to any inquiry into the motives of the defendant, and into the reasonableness or otherwise of his excuses for non-performance. It was scarcely necessary to point out to the Council that such an inquiry was, in fact, the great characteristic which distinguished the administration of Criminal law from the administration of Civil Law. In the assessment of civil penalties, no excuse could be listened to; if the suit were for Breach of Contract, the only question was, whether the contract had been performed: if it had not been performed, though even through the most unmerited misfortune, the full consequences of non-performance must follow without abatement. But, under Criminal Law, whether an act drew down a penalty at all depended entirely on the motive with which it had been done; and he ventured to say that there was not one act of which Criminal Law took cognizance, which, if the motives of the actors shaped themselves in a particular way, or lent themselves to a particular excuse, might not become justifiable and even laudable. For those reasons the Council would not, he thought, fail to come to the conclusion that, when the Secretary of State objected to an enquiry into motives, he objected not only to Mr. Ritchie's Bill in its present shape, but in any shape it could possibly assume. Then came the question, how far beyond this did the objections of the Secretary of State extend. He understood the Secretary of State to object to all general criminal legislation against Breaches of Contract. But comparing the language of this Despatch with that of former Despatches on the same subject, he did not understand him to object to partilar legislation. He meant by particular legislation, legislation directed to the enforcement, by the authority of the Magistrate, of a certain class of contracts, or of

of contracts between persons belonging to a particular class. There were, he believed, samples of such legislation in the jurisprudence of every country. In England there was the Statute, or rather the series of Statutes, regulating the relations between employers and labourers, and the Statute which applied to Merchant Seamen. In India they had the Calcutta Artificers' Act, and there had been many Laws and Regulations of that kind which had expired or had been repealed. In all this legislation, there seemed to be little question of motive. Breaches of Contract by persons falling under these Statutes did not appear to be criminally punished on account of their peculiar immorality, for it would be absurd to maintain that a Breach of Contract by a mariner is more immoral than by any body else; but, as he supposed, the legislator took his stand on the interests of society, and declared that society could not afford to allow these particular contracts to be lightly broken. Of course, such legislation must always be sparingly resorted to, and only on the clearest grounds; both because it was exceptional and because it rested on a ground (the interest of society) which had always furnished the greatest number of pretexts for tyranny. But still, in spite of all its disadvantages, he confessed that he infinitely preferred particular to general legislation on these subjects. Of course, general legislation had advantages of its own. If you wish to conceal your true object, you can do it much more easily by general legislation than by particular legislation. If you wish to avail yourself of broad general propositions about the duty of punishing fraud, wherever it may be detected; propositions which it was extremely invidious to deny, and extremely dangerous to affirm, you can call them to your aid much more effectually when you are meditating general legislation. But in particular legislation you have this compensating advantage, that you know where you are going to. You can measure the consequences of the steps you take, and you can retrace them if they disappoint you. If he felt himself called upon, which he did not, to raise objections to Mr. Ritchie's attempt at general legislation, he should rest his doubts less on the grounds urged by the Secretary of State, than on grounds which it was not easy to describe in precise language. He should deprecate such legislation less on account of results he foresaw, than on account of results which he did not and could not foresee. Knowing, as they all did, that all the modern progress of society seemed to be intimately connected with the completest freedom of Contract, and in some way almost mysteriously dependent on it, he should shrink from tampering with so powerful an instrument of civilisation; and if he were unfortunately compelled to propose a measure like Mr. Ritchie's, he should feel like a physician employing a remedy which might indeed cure the disease, but which might also revolutionise the constitution. There were no such dangers as these attending particular legislation. In that, as you must always be aware that the measures you contemplate are irregular and exceptional, you are likely to assure yourself before you interfere, that a case has been established for interference. When you do make up your mind to use your remedy, you can exactly proportion it to the evil which has to be removed; and as the sphere of its operations would probably be limited, you can judge and observe of its working.

It

It was not for him to say what legislation of the kind he had been describing was called for by the circumstances of particular localities in India, or by the practices and habits of particular classes; but if exceptional measures had to be resorted to, and they were of that nature, he should think that they could secure what, no doubt, was one of the most efficient means of moral education —the exact performance of contracts—without disturbing principles and distinctions which had been established for so many centuries, and which seemed to strike root the deeper as the world grew older.

The Hon'ble MR. ERSKINE said that the Report bore his signature with those of others, and it was not, of course, his wish to oppose its adoption. At the same time, as the recommendation of the Report was that the Bill to which it related should be withdrawn, and as he had concurred, not many months ago, with a majority of the Council in thinking that the Bill ought to be sent to a Select Committee, in order that it might be made the foundation of an enactment, it seemed right to take this opportunity of stating shortly the circumstances under which he now acquiesced in a different course, and the extent to which his own views remained unchanged. The discretion of the Committee, in dealing with this Bill, and the position of the Council in regard to it, had been affected since the last discussion of the measure, by the receipt of the Despatch to which reference had already been made, from the Secretary of State. The tenor of that Despatch was such that it had not only materially affected the deliberations of the Committee, but had, of necessity, determined their proposals. Such being the case, it was impossible to make a statement on this subject without alluding to that communication. His allusions to it would be made with a proper respect for the authority from which it emanated. In considering this Despatch it appeared to him that one important point to be ascertained at the outset was, the extent to which it really dealt with the great problem which, in one form or another, had repeatedly during the last two years been discussed by them; and the extent to which it dealt only with one attempt to effect a partial solution of that problem; or in other words, and in spite of the warning they had received against general propositions, how far the arguments of the Despatch were directed against the principle which underlay all the special measures and projects of law that had been before them, and how far those arguments were confined, so to speak, within the four corners of this particular Bill. Now, the principle which lay at the root of the several recent projects for legislation might, as he understood it, be stated in some such words as these:—That acts of fraud—or if the technical definition of "fraud" were objected to, of bad faith—done to the known wrongful injury of others,—that such acts so committed in Breach of a Contract may rightly be punished as criminal offences, like acts of a similar kind committed in the making of a contract, or on other such occasions. This seemed to be the broad principle which lay at the root of the whole question, and only if it were assented to would the next consideration arise—whether it was desirable and prudent to make legislative provision for the punishment of such acts as offences. Only after both of these questions

questions had been decided affirmatively would it be necessary to give attention to subsidiary points relating to the special form of Bill required for this purpose and the various details of such Bill. Indeed, were it not contrary to recent experience to do so, one might have assumed that willingness to enter on the minor details implied acquiescence in the larger principles. In reading carefully through this Despatch, then, in order to determine what portions of it must be treated as objections to the general principle just stated, and what portions were merely objections to provisions peculiar to this Bill, it seemed to him that three portions only treated directly of the former; namely, the 5th paragraph, a portion of the 9th, and the concluding portion of the last; and even these did not seem to be very decided. The 5th paragraph, for instance, merely seemed to raise a doubt whether that which it described as the principle of the Bill could be universally applied in its full extension, and whether there was any precedent for such an application of it. But it was obvious to remark (without enquiring how far the supporters of the Bill would go in applying it) that there are many principles which are confessedly just and right, and which, nevertheless, cannot in practice be applied everywhere and at all times, without exception. And further, with all respect for the observation which had fallen from his hon'ble friend (Mr. Maine), if no principle could be true unless it had been embodied in some existing Code, there would be an end of improvements in legislation. The next paragraph to which he had referred was paragraph 9. That seemed at its commencement to suggest merely the great difficulty of defining "fraud" or "bad faith" and of determining questions regarding it. There was no doubt as to the difficulty. Had the question not been one of the most difficult in criminal jurisprudence, it would, no doubt, have been satisfactorily settled long ere this. But the Council, he believed, would not recognise the mere difficulty of any attempt as an adequate reason for not making it. A passage followed in the same paragraph, which had been quoted by the Select Commitee, but to which his hon'ble friend, he thought, had given a construction wider than it should be made to bear. The words of the Committee are, that they thought the enquiry there referred to imperatively required by the principle of the Bill before them; and rightly. But it did not appear that the Secretary of State, in objecting to enquiries into motives, was alluding to enquiries in criminal cases for which the Bill did not provide. The only other paragraph to which he had alluded was the latter portion of the last. In regard to this he might observe, that it was expressed in such guarded terms that he thought, if only a fair latitude of construction were allowed, hardly any Member of the Council would hesitate to adopt the words as his own. It could hardly be said, therefore, that the arguments in the Despatch, as affecting the broad question before them, were either direct or emphatic. They were numerous and decided, no doubt, as regarded this particular Bill and its details. Most of them are recapitulated in the first portion of the concluding paragraph. But he believed he might say, with truth, that all of them had been urged on the attention of the Council, before they decided that the Bill should be referred to a Committee. If, however, the Select Committee had not in this way many new arguments to consider, they had at least the assurance that these arguments had been held to be fatal to this Bill, or

or any modification of it, by an authority without whose concurrence it could not, even if passed, continue to be law. For this reason they concluded that it would be useless to proceed with the Bill; and for this reason—and this reason only—he had concurred in that recommendation, although his own views remained unaltered. In the course of this discussion they had been reminded that mere general assertions of principles were apt to be of little avail. There were occasions, however, on which it was most important that general principles should be openly re-asserted. This seemed to be such an occasion. During their former discussion it had been suggested that it was contrary to the spirit of modern legislation to increase the severity of the Criminal Law. He had then ventured to dissent from that view. It was, indeed, the tendency of recent legislation to mitigate the severity of punishment; but it did not seem to be equally its tendency to diminish the number of offences. On the contrary, as he formerly urged, when the standard of morals rose among a people, the number of acts was increased which the public conscience condemned, and which the public feeling would support the law in punishing. As commerce expanded, the danger was more clearly felt of offences against credit, against commercial morality, and against general trade; and that this was felt to be so practically in England might be inferred from recent Acts relating to frauds, to breaches of trust, and to reckless insolvents. His views on these matters were of little importance; but his allusion to them had elicited an expression of concurrence from their lamented colleague, Mr. Ritchie, whose opinions had a value altogether their own. And another Member of the Council, now no longer present, Mr. Laing, had taken the same opportunity of expressing strongly his sense of the importance of this question in its relation to the moral feelings of the people. He had urged that it was unwise to import into India nice legal distinctions, which served rather to puzzle than to enlighten or satisfy the consciences of simple men. And he had quoted in illustration of this argument an instance to which His Honor the Lieutenant-Governor likewise had more than once referred, that the law ought not to lay down that it was right to punish fraud if you could prove that the intention to defraud originated five minutes before a man signed a contract, but wrong so to punish if he could prove or raise a presumption that the intention originated five minutes later. Mr. Laing urged that subtle distinctions of this kind should not be encouraged, but that more weight should be given to the broad maxims of common sense and natural equity. This seemed to be just. It was important that the voice of the law on these points should be clear; that its provisions should be brought, as far as possible, and as fast as possible, to support the plain rules of honesty; and that it should be felt to restrain all men from immoral practices in connection with civil contracts, and to hold no man free to recede from his compact to the known wrongful injury of his neighbour, merely because he could not abide by it without some loss or inconvenience to himself. These were some of the considerations which made him, while acquiescing under the circumstances in the Report of the Select Committee, desirous to make it clear that his own views remained unchanged. He trusted that it was so also with others; for an indication that the convictions and desires of the Council still tended in the direction

direction of an amendment of the general law, would be advantageous in more ways than one.

The Hon'ble RAJAH DINKAR RAO said that he had already objected to this Bill when it was introduced. The subject in the second paragraph of the Select Committee's Report (relative to the Despatch of the Secretary of State) was of great importance. There was no necessity for such a separate Act as the present, and it was desirable to withdraw this Bill as recommended by the Committee.

The Hon'ble MR. COWIE said that the Report of the Select Committee on the Contract Bill was, with great propriety, drawn up in such a way that it could be conscientiously signed by all five Members; but as one of them he might be allowed to record his sincere regret at the very narrow ground to which the Secretary of State's Despatch had limited the Council in that matter, and he expressed a hope that the Executive Government would, by argument and reasoning, prevent that Despatch being treated as final. He avowed himself an advocate of a Contract Law which should treat a fraudulent contractor, whether he be the employer or the employé, with the same stern justice which modern legislation now awarded to the fraudulent bankrupt and the fraudulent trustee. An esteemed friend who knew much more of India than he ever should himself, had told him that such a Contract Law could not be worked in the Mofussil, because the Courts were not competent; in other words, that juvenile Magistrates and aged Sudder Ameens were not equal to the nice task of discriminating between intentional fraud and accidental or unintentional liability, or of defining where accident ended and criminal fraud commenced. If that were so, which he, without Mofussil experience, was not competent to say, he thought the community of India, in calling for a Contract Law, were entitled, at the same time, to demand a great improvement in the Courts which would have to administer that law: and he hoped the earnest attention of the Executive Government would be given to those two wants. Such measures would not only conduce to the material prosperity of the country, but would add to the ease and comfort with which it might be governed.

The Hon'ble MR. ROBERTS agreed with the Select Committee that, in the face of the Despatch of 9th June last from the Secretary of State for India, it would be neither for the public interest, nor for the dignity of the Council, to proceed with a project of law which, if passed, would certainly be annulled in a few months; but he was of opinion that the Select Committee should have attempted to determine the exact effect of that Despatch on their own deliberations, and on the deliberations of the Council. There was no question of the power of Her Majesty to disallow laws made by the Governor-General in Council, but it was extremely doubtful whether the Indian Councils' Act permitted of interference by the Secretary of State with the deliberations of the Council on questions pending before them. In the present case leave had been obtained, under the Rules for the Conduct of Business, to introduce the Bill to which the Secretary

Secretary of State had objected; the Bill had been referred to a Select Committee, and was coming under discussion when, almost *in limine*, the Secretary of State expressed his disapproval of the principle of the measure, and requested that it might be withdrawn. That which had been done in the present case might be repeated on any other occasion, and, practically, the power of legislating for India would be transferred from this country to England. This did not appear to have been the intention of Parliament: the restoration of the power of legislation to the minor Presidencies; the extension of the provisions of the Act for making Laws and Regulations to the Bengal Division of the Presidency of Fort William; and the nomination of Non-Official Members, European and Native, to the Councils of the subordinate Governments, and also to the Council of the Governor-General for purposes of general legislation, all seemed to indicate that it was the intention of Parliament to give full scope to legislation in India: to allow projects of law to originate out here; to permit free discussion and deliberation to those who, from local knowledge and experience, were the best judges of the fitness and applicability of the measures proposed; to leave it to them to decide whether such measures should be brought on the Statute-book or no, and simply to reserve to the Sovereign the privilege of disallowing any law if deemed necessary to do so. In his opinion there was nothing in the Indian Councils' Act which permitted interference on the part of the Secretary of State with measures under discussion, and he (MR. ROBERTS) thought that this point of privilege should be first determined, and that, in the meantime, the Bill for Breaches of Contract in bad faith should remain in abeyance. He proposed to move an amendment to that effect.

The Hon'ble MR. FITZWILLAM said, looking to the Report of the Select Committee, he agreed with them that, under the circumstances, it would be better, both for the public interest and the dignity of the Council, that the Bill should be withdrawn. He regretted, however, to find that the principle upon which the Bill was based was likely to be abandoned. Laws providing for the criminal punishment of fraudulent Breaches of Contract occupied a prominent place in the judicial system of every commercial country in the world. Why then, he would ask, is India to be deprived of them? Trading transactions could not be carried on with safety without mutual confidence. Surely then, it could be only just to all parties to a contract that they should be protected against fraud on either side. His own experience in commercial transactions in various parts of the world had convinced him of the advantages of such laws, and he did not hesitate to express the opinion that it was to the interest of both Natives and Europeans that such laws should be enacted. It was not a class question; it was one in which every resident in India was deeply interested. Without some protection of this kind he believed that the great industrial interests of this country could not expect the assistance of European capital for their extension or development. He had heard it objected that such a Contract Law, as provided in the Bill before us, might be used as an instrument of oppression. That could not be the fault of the law. If such was the case, it must be the fault of the administration of the law. And if those who had the administration

administration in their hands were not competent for their duties, then he agreed with his hon'ble friend, Mr. Cowie, that it was the duty of the Government to appoint officers who were so. The hon'ble and learned Member, Mr. Maine, not only saw difficulties in the way of legislation upon this subject, but he thought that there were still greater unseen difficulties to be contended with. He thought we had better deal with those before us; they were perhaps formidable enough. And he again repeated his opinion that a contract law, or, at any rate, the provision of criminal punishment for fraudulent Breaches of Contract, was absolutely necessary for the interests of those who embarked capital or supplied labour for the promotion or development of the industrial interests of India. Without it European and Native capital would, he believed, be found unavailing.

The Hon'ble MR. ELLIS said that he did not share in the regret expressed by the hon'ble Members who had spoken, at the withdrawal of this Bill, because he was opposed to the Bill itself, and should have voted against its becoming law. The objects which it had been supposed would have been secured by the Bill were an improvement in public morality in regard to the fulfilment of agreements and contracts, and the protection of European capital in India, and thereby the encouragement of European settlers in the interior of India. If he thought either or both of these objects likely to be secured by the Bill, he should share in the regret expressed at its withdrawal, but as he did not think the Bill likely to promote these important objects, he was satisfied that its withdrawal would not be an evil. He did not think that the large masses of the lower classes against which this measure was directed would be improved morally by it, because they would not be slow to discover that this Bill, under the disguise of a civil law, contained in regard to themselves criminal punishments; and they would perceive that the measure afforded protection, not to those classes which recent enquiry had shown required protection, but to a class numerically small yet really powerful and self-reliant, who had already the legitimate influence due to their wealth and intelligence. To that class, which the Bill in question, and all recent legislation on the subject of Breaches of Contract, were intended to assist, he did not think that the Bill would have proved beneficial. He thought that there were other methods than legislation by which any unfortunate class differences might best be set at rest. And although it might be contended that the latitude of the provisions of the Bill would not have been made use of injuriously, he had not so good an opinion of human nature as to believe that men could be entrusted generally with great power without danger; and he did believe that this Bill, if passed into law, would have afforded unscrupulous men means of oppression. It was for that reason that he rejoiced at its withdrawal, and that he did not share in the expression of hope that legislation upon this subject would be speedily re-attempted. In making these remarks he begged that he might not be misunderstood. He valued as much as any one the introduction of European capital, and Europeans of education and energy, into the interior of all parts of India. He had seen districts which were in a languid condition gain new life by the arrival of independent European

European settlers. Waste lands were speedily brought under cultivation; distant parts of the district were brought into relation with the more civilized central towns and stations; faults in the administration were pointed out and corrected, and the prosperity of the ryots kept pace with the rapid fortune of the settlers. These independent Europeans were able greatly to assist the Government officials, for they acquired information regarding the administration which was often concealed from the officials themselves. But it was because he had seen this, and because the laws, as at present existing, had been found sufficient to meet all the reasonable wants of this important class, that he would deprecate legislation on this subject, and the introduction of a measure such as that under discussion, for general application to all India. If any particular portion of India required special legislation, and he did not pretend to pronounce upon that point, it could be no reason for general legislation; which, to be necessary, and in the form taken by the successive measures which had been attempted and failed, must be based on the supposition that Natives in their dealings under agreement are generally dishonest, and required to be coerced into honesty by extraordinary laws. Another objection that he had to this Bill, and this had been, he believed, considered a recommendation of the measure, was, that it was drawn on the model of Act XIII of 1859 (the Artificers' Act). There had been much difference of opinion as to whether this Act had been of beneficial effect or not. He was disposed to think that it had not proved of much use in that part of India with which he was best acquainted. He held in his hand a return of the operations of that Act during one year, and from this it would appear that, in the districts of the Madras Presidency, the number of cases disposed of under that law had not averaged more than forty in each district. But in two of these districts where the decisions had been most numerous, namely, 297 in one district, and 115 in another, it had been ascertained that the provisions of the Act and its interpretation had led to acts of serious oppression. The Inspector General of Police, who had had the best opportunity of becoming acquainted with the working and practical effects of this Act, had called the attention of the Government to the necessity of a more careful superintendence of the working of Act XIII of 1859. To him (MR. ELLIS), therefore, the fact that the Bill which was about to be withdrawn was framed on the model of Act XIII of 1859 was no recommendation. He must repeat, that the laws at present in force appeared to him to afford sufficient remedies for the evils of Breaches of Contract, and he did not think sufficient ground had been shown for additional legislation on this subject. It was a remarkable circumstance that, in the south of India, in the face of rapidly rising cotton prices, contracts for the supply of cotton during the past year had been honestly fulfilled in the midst of great temptation, and that there had been no call for special legislation in consequence of the general bad faith of the Native producers, or their failure to fulfil contracts which left them only moderate profits, as compared to the large profits realized by purchasers. It was because he did not believe that this law was generally required, and certainly not in that part of India with which he was best acquainted, that he could not regret the withdrawal of this Bill. In support

support of his opinion as regards the south of India he begged leave to read an extract from a letter he had received from a gentleman who, for many years, had entered into large contracts with Natives for the supply of various kinds of agricultural produce :—" In Southern India we have no reason to com- " plain of the provisions of the law now existing for the fulfilment of con- " tracts, particularly those relating to the delivery of produce. The practice "here is to contract, not at a price determined years previous to the time " of delivery, but at the ruling rates at the time when the produce is ready for " delivery. This prevents serious misunderstanding between the parties, and " is an effectual protection to the interests of the two parties to the contract—the " producer has no inducement to attempt to evade his engagement, and the pur- " chaser obtains the produce for which he pays the ruling price of the day, which " must leave a reasonable profit since others engaged in the same trade are ready " purchasers at such price. It would not be safe to enact a law by which the needy " ryot would be exposed to be tempted to enter into engagements which might, " without any fault of his, deprive him of his liberty; injure the best interest " of his family; and to some extent be a social evil. Contractors in India must " act with the same caution and reserve in their dealings as others similarly " situated all over the world; they must look to the solvency of the party with " whom they deal. If for reasons best known to themselves, they depart from " this wholesome practice, they do of their free accord run certain risks for the " purpose of obtaining certain objects: their chances are fully balanced, and they " must be prepared to stand the consequences."

The LIEUTENANT-GOVERNOR of Bengal desired, as one of the Select Committee, to make a few observations as to the part he had taken in the discussion which had terminated in this Report; a document which he had signed, and in which, so far as it went, he entirely concurred. The origin of the Bill which it was now proposed to withdraw might be traced to the recorded remarks of the late Governor-General, Lord Canning, on the Report of the Bengal Indigo Commission in 1860. While concurring with the late Lieutenant-Governor in deprecating exceptional legislation, that is, such legislation as would confer on the Indigo Planters greater advantages than are given to other classes in making contracts, or in punishment of the breach of them, His Lordship suggested that, as the fraudulent Breach of Contracts by artificers or labourers, and of contracts for public works, was already cognizable by law, and punishable with fine and imprisonment, the same law might be extended to contracts for the delivery of agricultural produce; not Indigo alone, but all agricultural produce, when the Breach of Contract is fraudulent, and when an advance has been accepted. Early in 1861, on Lord Canning's return to the Presidency, the question was carefully and anxiously discussed, and it was then resolved that a project of law for the punishment of fraudulent Breach of agricultural Contracts should be brought before the Council in its legislative capacity. It fell to his (MR. BEADON'S) lot to frame and bring in the Bill; and though from the first he was inclined

clined to agree in what he understood to be Mr. Erskine's view, that the case could best be met by the addition of a clause to the Penal Code, defining the offence of fraudulent Breach of Contract, and making it punishable in the ordinary way, yet, on the whole, it was deemed expedient to shape the measure, as nearly as might be, on the model of the Act already in the Statute-book for the punishment of Breach of Contract by workmen; an Act, it might be added, which all were agreed could not by any force or ingenuity of construction be made to reach Indigo Contracts. In bringing this Bill before the Legislative Council, he distinctly stated that he was by no means partial to the particular form in which it was drawn, and he proposed that it should be referred to a Select Committee to be considered and reported on before publication, so that the Council might determine, in the first instance, the form in which it was most expedient that the Bill should appear. All that he asked the Council to do was (to quote the very words he made use of), "to affirm the principle, that persons in the condition of labourers, who freely received a *bonâ fide* advance of money, and in consideration thereof voluntarily contracted to cultivate or deliver produce, if they wilfully and without reasonable excuse failed to perform their engagements, and either persisted in their refusal, or would not pay such damages as the Magistrate might think reasonable, should be liable to punishment." It was important to remark that the Bill, among other things, provided that the contracts, the breach of which it was proposed to make penal, must be in writing, duly witnessed and stamped; that a copy of them must be deposited in the Magistrate's office within a month after execution; and that no Breach of Contract should be punishable if committed after the lapse of a year from the date of contract. The second of these conditions was admitted to be an imperfect substitute for registration, but it was hoped that, as a general measure for the registration of deeds was then before the Council, this defect might be corrected before the Bill became law. The Council affirmed the principle of the Bill by a large majority, and the Bill was referred to a Select Committee; but before the Committee could present a Report, there came a Despatch from the Secretary of State condemning the measure, partly because it dealt with Breaches of Civil Contract in a criminal way, and partly on account of its exceptional character. The Bill was accordingly abandoned. But Lord Canning's Government was so convinced of the necessity for providing, in some way or other, for the punishment of fraudulent Breaches of Contract, that, acting on a suggestion of the Chief Justice, it determined to make another attempt at legislation on the subject, an attempt such as would not be open to the objections brought against the former project, and would, it was hoped, meet with the approval of the Home Government. The result of this determination was Mr. Ritchie's Bill to which the present Report refers, a Bill which, as Mr. Maine had justly observed, was a compromise, and admitted to be such both by the author of the Bill and those who concurred with him in bringing it forward. The scope and object of Mr. Ritchie's Bill was to make punishable all Breaches of Contract committed in bad faith, provided a consideration of any kind had been received; and

and it empowered the civil Courts, in an action for Breach of Contract, to commit the defendant to jail on a charge of fraud, there to maintain himself, or, if maintained by the Government, to be kept to hard labour. The Bill was, in fact, based to a certain extent on the bankruptcy law under which a dishonest debtor may be imprisoned without the intervention of the criminal Courts. He (MR. BEADON) supported the introduction of that Bill, not because he entirely agreed in it, but because he approved of the general principle on which it was based; namely, that fraudulent Breaches of Contract should somehow or other be made punishable; but he pointed out at the time, as other Members of the Council also did, the objections that might be taken to the very wide scope of the Bill, and he urged that it should be confined to contracts made in consideration of an advance of cash. On the same occasion he again expressed a preference for some alteration of the Penal Code, whereby fraud of the description might be made directly punishable by a Magistrate. He was now free to admit that the Bill was reasonably open to most of the objections made to it by the Secretary of State. He quite agreed that it would not be expedient to punish criminally the breach of such contracts as those referred to in the 4th paragraph of the Despatch. He admitted that it would be wrong and dangerous to empower all the civil Courts, or any great number of them, to pass criminal sentence on the defendant in a civil action for Breach of Contract, especially without putting him on his trial. And he did not doubt that the definition of "bad faith," which the comprehensive character of Mr. Ritchie's Bill had rendered necessary, would give rise to extreme difficulty in dealing practically with such cases. Further, he could heartily concur, in a general way, in the doubts of the Secretary of State as to whether legislative interference in commercial transactions, with a view to coerce one of the parties to a contract, could be productive of good; but he was not the less firmly convinced that, when once a contract had been freely made in consideration of a sum of money advanced for a specific purpose, and when it had been publicly acknowledged by both parties and registered at the time, the fraudulent breach of such a contract was as justly the subject of penal legislation as fraudulent Breach of Trust, or the crime defined in the Penal Code under the head of cheating. He was quite of opinion, however, that any attempt at further legislation in this country would be unwise, and he might say, undignified, until something could be done to remove the strongly expressed objections of the Home Government, and convince it that the true interests of India and its people absolutely demand a law to punish fraud of this kind. As charged with the Executive Government of Bengal, it might become his duty to represent to the Governor-General in Council the necessity for such legislation; but as matters now stood, he did not consider that he was at liberty to take any other action in the matter. In offering these remarks he begged that they might be considered as applying only to the general question of criminally punishing fraudulent Breaches of Contract made in consideration of an advance, and not as in any way touching the special question of fraudulent Breaches of Contract by artificers and workmen. Contracts of this kind were provided for by a law which was already in force in the Presidency Towns, which had been extended partially

ally to the Mofussil, and which might be further so extended at the discretion of the Executive Government.

The Hon'ble MR. HARINGTON said upon the constitutional question which had been raised in the course of the debate, he deemed it proper to make a few remarks. This seemed the more necessary in reference to what had fallen from his honorable friend, Mr. Roberts, who considered that it was the duty of the Select Committee on Mr. Ritchie's Bill to have determined the effect of the Despatch lately received from the Secretary of State on the Bill. The right of this Council to pass any law it pleased, except certain laws which were expressly excluded from its jurisdiction, admitted of no doubt. But it must be borne in mind that no law passed by this Council had any validity until it had received the assent of the Governor-General, who might reserve any law passed by the Council for the signification of Her Majesty's pleasure thereon; and that, moreover, any law passed by the Council, even though assented to by the Governor-General, would at once become null and void and of no effect in the event of Her Majesty disallowing it. It might be very true that the Indian Councils' Act, to which his honorable friend, Mr. Roberts, had alluded, did not expressly authorise the Secretary of State for India to make any objections, or to give any advice in respect to any Bill or project of law before the Council, so long as the Bill or project of law was under the consideration of the Council; but he (MR. HARINGTON) thought that most honorable Members would agree with him, that the right to object or advise in respect to any pending Bill was inherent in the Secretary of State for India from the nature of his office. The Secretary of State had the same opportunities of knowing what Bills were brought before the Council which were enjoyed by the public at large; and if, as in the present instance, he entertained such serious objections to any Bill before the Council as should, in his opinion, prevent the Bill from passing into law (MR. HARINGTON) thought there could be no doubt as to his competency to state his objections to the Bill, and to advise that it should not be proceeded with. This was all that the Secretary of State had done on the present occasion. He had pointed out what appeared to him to be the objections to Mr. Ritchie's Bill, and had expressed a hope that the Bill would be withdrawn. Assuming then, that the course adopted by the Secretary of State was quite constitutional, on which point he (MR. HARINGTON) must repeat he thought there could be no doubt, it certainly did appear to him, and he believed most honorable Members would be of the same opinion, that the Secretary of State had best consulted the public interest, and what was due to the Council by communicating to the Council the objections which he entertained to Mr. Ritchie's Bill, and expressing the hope already mentioned; instead of waiting until the Bill had become law, and then advising Her Majesty to refuse her assent to it. Of course, it was open to the Select Committee to have recommended that the Council should proceed with the Bill notwithstanding the objections taken to it by the Secretary of State, and there was nothing absolutely to prevent the Council from going on with the Bill if they pleased to do so; but he (MR. HARINGTON) did not think that this would be a wise or expedient course for them to pursue. He considered

considered that the better course was that which the Select Committee had recommended, and he trusted that the Council would adopt the recommendation, and allow the Bill to be withdrawn. It was not his intention, on the present occasion, to enter in the merits of Mr. Ritchie's Bill. When the Bill was introduced he had expressed himself as strongly opposed both to the principle of the Bill, and to many of its details. He found most of the objections which he had taken to the Bill repeated in the Despatch from the Secretary of State. Other objections were taken to the Bill in that Despatch, which, it must be admitted, were of considerable weight. He (MR. HARINGTON) would have divided the Council against the introduction of the Bill had there been any chance of his succeeding, but finding that there was a majority against him, he had no alternative but to allow the Bill to go to a Select Committee. With regard to what had fallen from some honorable Members in favor of the introduction of a Criminal Breach of Contract Law, he would observe that, what they had now to consider was, not whether any new law relating to Breaches of Contract, in the direction of the Bill introduced into the late Legislative Council by His Honor the Lieutenant-Governor of Bengal, or of Mr. Ritchie's Bill, or in some other direction, should be brought in, but whether they should or should not go on with Mr. Ritchie's Bill. He might, however, remark that the honorable Members, to whom he had just referred, appeared to have overlooked the fact that the legislature of this country had very recently concluded a complete revision of the Criminal Law of India, and had introduced, as the result of that revision, a very carefully prepared Penal Code. This Code had been more than a quarter of a century under consideration before it became law, and some of the ablest and most eminent men in India had taken part in its preparation. It must not be supposed that the framers did not carefully consider the subject of Breaches of Contract, and how they should be dealt with. There was evidence indeed that the subject had been most fully considered by them. The framers of the Code had all the information regarding Indigo and other contracts which was possessed by the Council, and the conclusion at which they arrived was expressed in one of their notes, in which they said that they agreed with the great body of jurists in thinking that, in general, a mere Breach of Contract ought not to be an offence, but only to be the subject of a civil action. They then went on to point out the cases in which an exception might, in their opinion, be properly allowed. This part of the Code might be regarded as falling within the category of particular legislation which his honorable friend, Mr. Maine, considered was, in certain circumstances, allowable; but the framers of the Indian Penal Code did not deemed it right to include within their exceptions cases of the nature of those to which Mr. Ritchie's Bill was intended to apply. The Penal Code had not yet been twelve months in operation. No new circumstances had occurred, since its introduction, to show that it required amendment in so far as it related to Breaches of Contract. It was not stated that there had been any failure of justice in consequence of the provisions relating to such breaches not being sufficiently large or stringent. The Code contained some very strict provisions against the fraudulent alienation of property by persons against whom decrees might be passed

passed, and others colluding with them in fraud of creditors. These were calculated to be very useful in suits brought to recover damages for Breaches of Contract; and he thought that the penal provisions of the Code went in this respect quite far enough. Then they had lately given to the country a simple Code of Civil Procedure, which put aside all new technicalities, and aimed only at affording to parties in civil suits speedy and substantial justice. He believed that this Code was giving very general satisfaction, and was working exceedingly well. He heard, not long ago, of a suit having been instituted in the High Court to recover damages for a Breach of Contract. The sum sought to be recovered was large. The suit was brought, heard and decided, and execution of the decree obtained in full, in less than a fortnight. He was told that, under the former system, this suit would have occupied several months. This would show how great had been the reform effected by the introduction of the new Code of Civil Procedure. Then a large number of Small Cause Courts had been established, where suits for Breaches of Contract were most prevalent, and there could be no doubt that these Courts would materially contribute to the speedy and satisfactory determination of such cases. It seemed to him therefore that, instead of proposing fresh legislation, and that too of a novel and exceptional character, they should give the laws which they now possessed a fair trial. He contended that the Penal Code, and the new Code of Civil Procedure, had not yet had a fair trial. It was too soon to judge of their effects. If after a sufficient time had elapsed to admit of an opinion being formed on the subject—really practical, not merely theoretical— objections were found to exist in respect to any part of either Code, and an amendment appeared to be needed, by all means let the amendment be made. Some honorable Members had alluded, in the course of the debate, to the laws which had been recently passed in England for the punishment of Trustees and Bankrupts who might be guilty of fraud. His Honor the Lieutenant-Governor of Bengal appeared to think that those laws gave power to the Bankruptcy Courts to punish persons proved before them to have been guilty of any fraudulent conduct, but he (MR. HARINGTON) apprehended that this was not the case; all that the Court could do was to commit the offender for trial before the Court of Session, by which the trial was held with the aid of a jury. He had pointed this out to his honorable friend, Mr. Cowie, in some correspondence which he had had with him regarding Mr. Ritchie's Bill. It was in that correspondence that the remark relating to juvenile Magistrates occurred to which Mr. Cowie had referred. If he (MR. HARINGTON) recollected rightly, what he said was, not that some young Magistrates were not competent to the duties which they were now required to discharge, but that it would not be proper to devolve upon these comparatively young and inexperienced officers duties which at home were performed by old and experienced and trained Judges with the aid of a jury. He believed that he had added that a Sessions trial in every case of alleged Breach of Contract in this country would be most vexatious and harassing to all concerned, and would be almost an impossibility. He could not conclude without expressing the pleasure with which he had listened to the letter which had been read to them by his

his honorable friend Mr. Ellis. His own experience entirely confirmed what had been stated by the writer of the letter.

The Hon'ble RAJAH DEO NARAIN SINGH said that he had not received a copy of the Report, and could not therefore express any opinion on it. But he had already expressed his opinion on the Bill when it was introduced.

The Hon'ble SIR R. NAPIER said that there was but little left for him to say on this question, but as a Member of the Government which introduced the Contract Bill, he was unwilling to let the present Motion pass without remark. The admission which had fallen from his honorable friend, Mr. Harington, regarding the state of the civil Courts in the Mofussil within a recent period, afforded the best explanation of the grounds on which Mr. Beadon's Contract Bill was framed. The intention of that Bill was to provide for a class of contracts not within reach of the ordinary civil Courts. We were informed of individuals being subjected to Breaches of Contract by several thousand persons, for amounts separately so small that even a successful prosecution in a civil Court could only result in additional loss and expense, but no sufficient number of civil Courts could possibly be provided to deal with such cases promptly. The immunity from the civil Courts afforded by the great number of these cases, and the small amount involved in them, gave such temptation to, and facility for, Breaches of Contract that it appeared necessary to deter persons from committing them by a penal law. It was objected to such a law that it would lead to great oppression through the inefficiency of the Magistrates, but we had seen the exercise of summary laws in the Non-Regulation Provinces without such results. Of course, Magistrates entrusted with summary powers should be subject to the strictest supervision, and gross neglect, or deficiency of judgment, should be very severely dealt with. Summary laws and prompt administration of justice were much more suited to the character of the people of India than the protracted litigation of civil Courts. It was notorious in the Upper Provinces how much more the people regard those administrators who give them prompt decisions, even though they may not be invariably faultless, than those who give them the most perfect but long delayed and tardy justice. The object of Mr. Beadon's Bill was to meet the class of Breaches of Contract for which the ordinary civil law could not afford a remedy, and in that view he (SIR R. NAPIER) cordially supported it. But the Bill was not permitted to become law, and, as stated by Mr. Beadon, the Bill now before the Council was framed by our lamented colleague, the late Mr. Ritchie, as a compromise. He (SIR R. NAPIER) could not say whether he should eventually have assented to that Bill or not. Although there were several points in the Bill to which he entertained objections, he had consented to its being sent to a Select Committee, because a Contract Bill was wanted, and he hoped that this one might undergo such alterations as would enable him to support it. Regarding the constitutional question which had been raised, he might observe that it had pleased Her Majesty to invest the Secretary of State with authority over the Government of India, and it was surely better that he should intimate his objections to a measure

sure, the principle of which he was entirely opposed to, rather than that he should watch in silence the progressive steps of a Bill, and allow it to be matured, with the determination to reverse it as soon as the Government of India should be fully committed to it. Under the present circumstances the decision of the Select Committee appeared to him the best that they could have arrived at.

His Excellency THE PRESIDENT said that he had listened with the greatest interest to the instructive discussion which had taken place, and especially to the important statements made by the Hon'ble Mr. Cowie and the Hon'ble Mr. Fitzwilliam. In his position it would be the height of indiscretion to state any opinion until he saw his way clear to some course of action that would be effective and useful. On the whole, he agreed with the Hon'ble Mr. Maine in his statement of general principles, but he could not entirely concur with Mr. Harington as to the hopelessness of discovering a remedy for the state of things which had been depicted that day. At the same time when it was proposed to depart from that broad line of demarcation which separated civil from criminal enactments they should have strong proof, not merely of the necessity of such a course, but also that they would be supported by public opinion in England. It might be better to deal with particular cases by special enactments, so that they might guard against deviating from the ordinary principles of jurisprudence beyond that which the actual necessity of the case demanded. In this course, however, they must guard against any legislation which might degenerate into class legislation. Whatever mistakes the Council might commit, he believed that they would never forget the broad general principle that every class of Her Majesty's subjects in India had equal claims to their sympathy and consideration. He trusted that the Council would appreciate his motives in refraining from any decided expression of opinion. The Lieutenant-Governor had alluded to Act XIII of 1859, the Artificers' Act, and he (the Governor-General) must say that it was a proper subject for consideration whether the operation of that Act might not be extended beyond its present limits. If other special legislation were attempted it should be tentatively and cautiously, and they should first see if the evils complained of could not be overcome by other means. He had such confidence in the good sense of his countrymen, that he was persuaded the European community would agree that it was better, if existing laws could possibly achieve the object in view, first to try their operation; but if beyond those laws, other special legislation was necessary to meet any proved evils, it would be the duty of the Government to endeavour to discover what remedy could be applied. He could not pledge himself that a remedy should be discovered; but he could assuredly say that the Government would not fail from want of a sincere attempt to discover it.

The Hon'ble MR. MAINE, in reference to what had fallen from Mr. Roberts, said that the Despatch of the Secretary of State was not based upon any special provisions of the Councils' Act, but upon the general power of superintendence over the Government of India entrusted to him by Parliament. Whatever power he had over the Governor-General in Council he could exercise

exercise over the Council as now assembled, and it was surely more convenient that he should state objections which he felt to be fatal to a Bill prior to its passing, than that he should wait till the Bill had passed, and then disallow it.

His Excellency THE PRESIDENT said, that there did not appear to be any question of constitutional right involved in this matter. The course of the Secretary of State in reference to Bills before the Council, simply depended on questions of discretion. He had given no veto to the Bill, but had simply expressed his strong objection to it. Under the Rules of the Council, Bills were published prior to being passed, and it would not be a gracious proceeding in the Secretary of State, if he entertained strong objections to any Bill, to keep them back from the knowledge of the Council, and then to disallow it.

The Hon'ble MR. ROBERTS said that the question had not been raised by him, but was raised by the Report, from which it appeared that some doubt did exist as to the effect of the despatch on the deliberations of the Council. When that Report came before him, he had referred to the Indian Councils' Act, and so far as he could judge, it appeared that the Secretary of State had exercised a power that was not authorized.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the recommendation of the Committee be adopted.

The Hon'ble Mr. ROBERTS said that he should vote against the Motion.

The Motion was put and agreed to.

HIGH COURT BILL.

The Hon'ble MR. MAINE moved for leave to bring in a Bill to continue in force Act XX of 1862 (to provide for the levy of Fees and Stamp Duties in the High Court of Judicature at Fort William in Bengal; and to suspend the operation of certain sections of Act VIII of 1859 in the said High Court) till the 1st July 1863. He said that Act XX of 1862 had been passed at the special meeting of Council, to which His Excellency had already referred. Its operation would cease on the 31st of December, and as the Government was not yet in possession of the opinions of the Judges as to the provisions of any permanent Act that might be required for the High Court, it was necessary to continue this present temporary Act for a further period of six months. He proposed at the next meeting of Council, to ask permission to proceed under a suspension of the Rules, so that the Bill might be passed at once.

The Motion was put and agreed to.

MUNICIPAL ASSESSMENT (STRAITS' SETTLEMENT).

The Hon'ble MR. MAINE moved for leave to bring in a Bill to authorize the extension of the term of office of the Municipal Commissioners in the Settlement of Prince of Wales' Island, Singapore and Malacca. He said that considerable inconvenience had been experienced in the Straits' Settlement from the Municipal Commissioners being elected only for a period of one year. After some correspondence with the Government of India, the Governor of the Straits was requested to prepare and submit a Bill extending the term of office to three years, and the Hon'ble the Recorder of Singapore having been good enough to prepare a Bill for the purpose, it had been forwarded to this Government for submission to the Council.

The Motion was put and agreed to.

MARRIAGE BILL.

The Hon'ble MR. HARINGTON introduced the Bill to provide for the solemnization of marriages in India of persons professing the Christian Religion, and moved that it be referred to a Select Committee. He said that leave to introduce this Bill was given by the Council in the month of February last. Their lat hon'ble colleague, Mr. Ritchie, on asking for leave to bring in the Bill, entered into a full explanation of the objects and reasons of the Bill. His remarks had been incorporated in the Statement of Objects and Reasons which had been printed and circulated, and it was unnecessary that he (MR. HARINGTON) should occupy the time of the Council by recapitulating them now. But a very important addition had been made to the Bill as proposed to be introduced by Mr. Ritchie. This addition, which was contained in Part IV of the Bill as now framed, was intended to meet the cases of the numerous classes of Native Christians who were scattered throughout the country. He thought there could be no doubt that the previous provisions of the Bill were altogether unsuited to large numbers of these persons, and that some special legislation was necessary in their behalf. It seemed to be generally admitted, that it was impossible for the persons to whom he was referring to comply with the formalities in respect to marriage contained in the existing law, and it was not pretended that they did comply with them. The consequence had been much irregularity in the solemnization of the marriages of these persons, and there were great doubts as to the legality of some of their marriages. The present Bill would give validity to all marriages, however celebrated, up to the date of the passing of the Bill, and, for the future, it was thought that the part of the Bill to which he was referring would afford to all classes of Native Christians who might choose to avail themselves of the same, a simple, convenient and inexpensive mode of solemnizing their marriages, and of establishing their marriages when proof might be required either in respect to the succession to property or otherwise. He (MR. HARINGTON) could not conceal from himself that the part which had been added to the Bill as prepared

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by Mr. Ritchie, was not free from difficulty, and some modification might be necessary before the Bill became law. There was no intention of hurrying on the Bill. The Bill would be published for the usual time, and ample opportunities would thus be afforded to the Local Governments, and to all persons interested in the Bill, of making themselves acquainted with its provisions, and of offering any remarks or suggestions that they might think proper.

The Hon'ble MR. ERSKINE expressed his gratification at hearing that it was not intended to press on this measure without affording full time for expressions of opinion. The subject was one that well deserved the consideration of the legislature; but it involved many questions of considerable difficulty, and it was desirable that it should be brought distinctly to the notice of the Local Governments.

The Hon'ble RAJAH DINKAR RAO said that the objections he had against passing this Bill, and his views respecting it, were as follows:—Section XLIII provides that it should be ascertained whether the persons intending to be married do not stand to each other within the prohibited degrees of consanguinity, and whether they have, or have not, a wife or husband, as the case may be, still living. It was necessary to know these points, and also whether both the parties professed Christianity. For it was often the case that persons on account of famine or quarrels left their homes. Deceit, force, or allurement were also sometimes the means of separating individuals from their relations. All this should be ascertained from the relations of the parties; the statement of the persons intending to be married should not be deemed sufficient proof. The enquiry could not, he (THE RAJAH) thought, be satisfactorily made by a person in Holy Orders, or by a person licensed to grant certificates of marriage between Native Christians. This task should be entrusted to the local civil authority, who should proceed as in cases of kidnapping, abduction, etc. No harm would be done if some delay in the performance of such marriage occurred in making these enquiries; and excitement, if any existed, would also be removed. It was possible that such persons, after the excitement was over, might repent and wish to go back to their relations and request their forgiveness and protection. The natural affection of the relations, even if their religion rendered it impossible to re-admit them into caste, might induce them to provide for their maintenance. It was mentioned in section XV that the father, mother, or guardian of any party has power to make objection to the marriage. But in case these persons were at a distance, how were they to hear of the intention and come forward within fourteen days, the time allowed by this Bill? The period allowed for enquiry should be allowed to the relations for the purpose mentioned. Care should be taken that no one who, by being a relation, or from his religious feelings, should object to the marriage, although he was not entitled by this law so to object, should be punished. Mention was made in section XLIII about the age of the parties, but it was necessary to know whether they were free according to their custom. He thought it would be well that this Bill should be referred to the Local Governments in order to ascertain the objections of the Native community

community under their respective Governments. It would be said that, on the publication of the Bill in the Gazette, any one might raise objections against it. This course might be better, but it seemed to be seldom adopted.

The Hon'ble MR. HARINGTON said that the suggestion made by his hon'ble friend, Rajah Dinkar Rao, that, in addition to the usual publication of the Bill, it might be advisable to call the special attention of the Local Governments to the Bill, seemed worthy of consideration, and he thought he might promise his hon'ble friend that his suggestion would be adopted. The remarks made by his hon'ble friend on some of the sections of the Bill would be fully considered in Committee.

The Motion was put and agreed to.

ABKAREE REVENUE LAW AMENDMENT.

The Hon'ble MR. HARINGTON introduced the Bill to amend Act XXI of 1856 (to consolidate and amend the Law relating to the Abkaree Revenue of Fort William in Bengal) and Act XXIII of 1860 (to amend the said Act XXI of 1856), and moved that it be referred to a Select Committee. He said, in introducing this Bill, he deemed it right to draw attention to the fact that the Bill as framed would apply only to the Presidency of Fort William in Bengal. He had intended to propose that the provisions of the Bill should be made of general application, but after consulting his honorable friends, Mr. Erskine and Mr. Ellis, he had come to the conclusion that it would be better to leave the Governments of Madras and Bombay, which had their own Abkaree Laws, to legislate for themselves, having first obtained the sanction of the Governor-General to their so doing. The previous sanction of the Governor-General would be necessary under the Indian Councils' Act in reference to the character of the legislation. Some addition to the Bill would probably be necessary to admit of the extension of its provisions to the Punjab and other Non-Regulation Provinces, but this might be considered in Committee.

The LIEUTENANT-GOVERNOR of Bengal enquired if the Bill related to Bengal alone, and if in that case it might not be left to the Bengal Council.

The Hon'ble MR. HARINGTON said that the Bill was introduced on the recommendation of the Government of Bengal, but it included the whole of the Bengal Presidency, both Bengal and the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to provide for the solemnization of Marriages in India of persons professing the Christian Religion—the Hon'ble Messrs. Harington, Erskine, Ellis and Roberts.

On

On the Bill to amend Act XXI of 1856 (to consolidate and amend the Law relating to the Abkaree Revenue of Fort William in Bengal) and Act XXIII of 1860 (to amend the said Act XXI of 1856)—the Hon'ble Messrs. Harington, Erskine, Ellis and Roberts.

The Council adjourned.

M. WYLIE,
Deputy Secy. to the Govt. of India,
Home Department.

CALCUTTA;
The 17th December 1862.

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