

Wednesday, February 26, 1862

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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 26th February 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding*.

His Honor the Lieutenant-Governor of Bengal.

His Highness the Maharaja of Puttiala, K.S.I.

The Hon'ble Sir H. B. E. Frere, K.C.B.

The Hon'ble Cecil Beadon.

Major-General the Hon'ble Sir R. Napier, K.C.B.

The Hon'ble S. Laing.

The Hon'ble W. Ritchie.

The Hon'ble H. B. Harington.

The Hon'ble H. Forbes.

The Hon'ble C. J. Erskine.

The Hon'ble W. S. Fitzwilliam.

The Hon'ble D. Cowie.

The Hon'ble Raja Deo Narain Singh Bahadoor.

The Hon'ble Raja Dinkar Rao Rugonauth Moontazim Bahadoor.

GOVERNMENT SEAL.

The Hon'ble MR. ERSKINE moved that the Report of the Select Committee on the Bill to amend the Law relating to the use of a Government Seal be taken into consideration, and that the Bill, as proposed to be amended by the Select Committee, be passed.

The Motion was put and agreed to.

BANK OF BENGAL.

The Hon'ble MR. RITCHIE presented the Report of the Select Committee on the Bill for regulating the Bank of Bengal, and moved that the Rules for the Conduct of Business be suspended, that the Report be taken into consideration, and that the Bill, as proposed to be amended by the Select Committee, be passed. He stated that the amendments in the Bill had already partly been published in the Gazette, and the additional amendments were not of a very important character. The new arrangement with the Bank would take effect on the 1st of March, and for that reason he was desirous that the Rules should be suspended, and the Bill be passed at once.

His Excellency THE PRESIDENT declared the Rules to be suspended, and the Motion for the passing of the Bill with the amendments of the Committee was put and agreed to.

PRESIDENCY BANKS CONSTITUTED GOVERNMENT TREASURIES.

The Hon'ble MR. RITCHIE presented the Report of the Select Committee on the Bill to provide for the payment, at the Banks of Bengal, Madras and Bombay, respectively, of moneys payable at the General Treasuries of Calcutta, Madras and Bombay, and moved that the Rules for the Conduct of Business be suspended, that the Report be taken into consideration, and that the Bill, as proposed to be amended by the Select Committee, be passed. He stated that the object of the amendments in this Bill had simply been to make it clear that the Act should have operation only so long as the agreement to which it referred remained in force. The same necessity existed in this case as in the other for the suspension of the Rules.

His Excellency THE PRESIDENT declared the Rules suspended, and the Motion for the passing of the Bill with the amendments of the Committee was put and agreed to.

STAMP DUTIES.

The Hon'ble MR. HARRINGTON presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamp Duties, and moved that the Bill, as proposed to be amended by the Select Committee, be published in the official Gazettes of the several Presidencies and taken into consideration that day six weeks. He stated that, since the Bill had been published, very considerable alterations had been made, and the Select Committee had proposed some further very important changes. It was desirable, therefore, that before the Bill as it now stood was considered by the Council, the public at large, and particularly the commercial classes who would be principally affected by the provisions of the Bill, should have an opportunity of learning their nature and offering their observations on them. If the Bill were re-published for six weeks, there would be still time for it to be brought into operation before the 1st of May.

The Motion was put and agreed to.

WHIPPING BILL.

The Hon'ble MR. BEADON introduced the Bill to authorize the punishment of whipping in certain cases, and moved that it be referred to a Select Committee.

The Hon'ble MR. HARRINGTON said that the active part he had taken in the preparation of the Bill of last year sufficiently proved that he was not opposed to the principle of the present Bill, and that he could not object to its being referred to a Select Committee. Mr. Cowie had on a former occasion stated that, except in the case of juvenile offenders, he was opposed altogether to corporal punishment. But Mr. Cowie's dislike of it probably did not exceed his own. He (MR. HARRINGTON) assented to the Bill, not because he liked corporal punishment, but because, in the present state of civilization among three-fourths of the population, and in the present defective state of prison discipline, he was satisfied that corporal punishment was still a necessity in this country. As regarded a great majority of the criminal population, it was a more humane punishment, had more power as a deterrent, and was not more demoralizing than imprisonment. In this opinion

he was confirmed by some of the oldest and most experienced officers, among whom he might mention the present Governor of Bombay, the present Lieutenant-Governor of the North-Western Provinces, and the Bombay Sudder Court; and he thought that, when Mr. Cowie read the correspondence which had taken place on the subject of last year's Bill, he would modify his opinion, and come to the conclusion that at present this punishment could not be altogether done away with, contrary to the opinion of the local authorities. If the case had to be considered solely from the European point of view, he should not be disposed to give his assent to the Bill. At the same time, it should be borne in mind that all classes of persons in the presidency towns were subject to corporal punishment for certain offences, and that that punishment was provided by the Articles of War for the European and Native Soldiers. MR. HARRINGTON then adverted to some objections to the form of the Bill, and to the details wherein it differed from the Bill of last year, and noticed particularly the change in the title from flogging to whipping, and the change in the instrument of punishment. But he expressed his willingness to agree to whatever instrument was shown to be least likely to cause permanent injury, or an injury greater than was intended by the legislature.

The Hon'ble RAJAH DINKAR RAO said that he did not think that corporal punishment ought to be inflicted for all offences. He would confine the punishment to cases of theft committed after a first conviction of the same offence, and even in such cases would inflict the punishment only on the Court being satisfied that the offender looked to theft and imprisonment in jail as a means of support. In such cases he would administer the punishment at the expiration of the imprisonment.

The Hon'ble MR. ERSKINE said that, unwilling as he was to see this punishment inflicted, yet, being persuaded that it could not yet be dispensed with throughout all India, he felt himself bound to support the introduction of the Bill.

The Hon'ble MR. COWIE stated that his aversion to corporal punishment, except in the case of juvenile offenders, was based on the belief that it was the duty of the State, in dealing with its criminals, to endeavour to combine reformation with punishment, and on the persuasion that an adult criminal could not be reformed by beating him. It was said that some natures were insensible to every other form of punishment. But this would involve the theory that, if you found a man a brute, you must treat him as one, and this was contrary to all modern systems of dealing with crime. He had carefully studied the Bill, and found his objections strengthened by its details. Several of the gravest offences, such as perjury, forgery, dacoity, and rape, which were severely dealt with by the Penal Code, might, under certain circumstances, expose their perpetrators to a whipping, in addition to the punishment provided by that Code. To such criminals he thought a certain amount of solitary imprisonment with restricted diet should be awarded, together with the hardest labor which their health could sustain, and he

thought that a Medical Officer would be better employed in carrying out that system than in inspecting a whipping. He considered that the Penal Code, as it stood, should have a fair trial before any attempt was made to add to or improve it. With respect to the title of the Act, he thought that the word "whipping" was adopted from English Acts which treated of the punishment of juvenile offenders. But he did not see what punishment the term "flogging" properly designated, if it were not such a punishment as was provided by this Bill.

The Hon'ble MR. FITZWILLIAM stated that he partly agreed with the supporters of this Bill, inasmuch as he could not object to the punishment of whipping for minor offences, such as assaults, petty larceny, and the like, if the punishment were guarded as was contemplated by the 7th, 8th and 9th Sections of this Bill. But he objected strongly to the substitution of whipping for the punishments provided for such offences as were enumerated by Mr. Cowie. There were seventeen such offences specified in the Bill, crimes of great magnitude, for which the Penal Code provided very heavy punishments. The Penal Code, he considered, had well provided for those offences, and he was opposed to the introduction of this Bill, which contemplated the addition or the substitution of other punishments.

The Hon'ble MR. FORBES said that he had formerly supported the principle of this Bill, and he saw no reason now to change his opinion. But he had some objections to the details of the Bill, which he should reserve for the consideration of the Select Committee. With reference to Mr. Fitzwilliam's objection, it must be remembered that the Penal Code only affixed a maximum of punishment except in two cases. The Court was at liberty, in cases not of an aggravated nature, to adjudge a very short period of imprisonment, and this Bill would enable it to substitute whipping for that.

His Honor THE LIEUTENANT-GOVERNOR said that he was opposed to the principle of this Bill, because he was opposed to flogging as a general punishment. The question, however, was a very large one, and he would not enter into a discussion of it. The Law Commission had expressed their opinion against it, and in that opinion he concurred. It had been said that flogging, for petty offences, would save men from demoralization in jail. But this Bill provided for the infliction of flogging besides imprisonment in jail, and that, he thought, cut away all ground for its support. He could understand why a man should be flogged and let go. But here he might be imprisoned, it might be, for four years and eleven months, besides being flogged. He regarded the measure as a retrograde one, and therefore was compelled to oppose it.

The Hon'ble MR. RITCHIE stated that the supporters of the Bill greatly regretted the necessity for this Bill, but they entirely believed that the circumstances of the case fully justified the measure. If they might consult their own feelings, corporal punishment would find no place in their Courts. The opponents of the measure, no doubt, were supported by very high authority, and by none higher than that of the late Lord Macaulay. But he could not but

believe that Lord Macaulay had acted more on English prepossessions than on Indian experience, in declaring at once and altogether against the punishment. He believed—and most officers of experience, including some of the most humane men in the country, had said—that imprisonment to some classes carried so little dread, that whipping was absolutely necessary as a more sharp, summary, and effectual punishment. Without it the jails would be overcrowded by prisoners for long terms of imprisonment, fostering habits of idleness and dependence. The main objections to the punishment were, that it was cruel and degrading. But as to the cruelty, the legislature must control that; and as to the degradation, while he admitted that among the population of cities, degradation might be felt, there were large classes of the population elsewhere, by whom it was not felt, and on whom at the same time the punishment operated as a deterrent, while it saved them from the contamination of a jail. In some cases, when awarded with imprisonment, the objection of the Lieutenant-Governor seemed to apply. But he thought that with the classes he had mentioned, the punishment could be amply justified if it saved them even from a part of the imprisonment which they must otherwise undergo. Objections had been taken to the title of the Bill. He thought the title immaterial. But the word “whipping” had been used in all the English Acts since the time of Henry VIII, and was not confined to the punishment of juvenile offenders. Mr. Fitzwilliam, he thought, had been answered by Mr. Forbes. The Penal Code provided the maximum of punishment, except in one or two cases, and it was in the discretion of the Court to reduce the punishment even as low as a single day’s imprisonment; so that flogging might be awarded, not in lieu of a lengthened imprisonment, but in lieu of a very short one.

The Hon’ble MR. LAING said that he saw no objection to the principle of the Bill, and when he found practical men stating, as the result of their experience, that the punishment was necessary, he could not allow abstract rules, which were applied to other countries and other people, to induce him to abolish the punishment here. In England the re-action against flogging had been caused by the extent to which it had been carried in the Army and Navy. The degradation which it involved, was felt when self-respect was outraged. But in a country like Egypt, for instance, where men made it a point of honor not to pay taxes, unless they could show marks that payment had been extorted, no such degradation was felt. Even in the highest public schools in England, some of the most distinguished men whom the country had produced had suffered corporal punishment, yet they were not degraded by it, because disgrace was not attached to it in those schools. But in schools where such punishment was not usual, its infliction might entail disgrace. They must therefore discard abstract theories, and regard the lessons of experience. The jails could not provide the means for the supervision and reformation of all the criminal population, and it would often be more cruel to shut a man up in jail, associate him with bad companions, turn him out with a bad character, and leave his family destitute while he was imprisoned, than to punish him at once by a flogging.

The Hon'ble SIR ROBERT NAPIER said that he could speak on this subject from practical experience, having had charge of 2,000 prisoners ; and he believed it was admitted that they were kindly treated. But he was convinced that, in the case of most of them, it would have been better if they had been flogged and discharged. Among the poorer classes in the country, there were some who found a better dwelling and better food in jail, and who were willing to endure restraint rather than labor ; such persons would often court imprisonment in jail. He did not approve of the provision that flogging should be an additional punishment, but on the whole he felt bound to support the Bill.

The Hon'ble RAJAH DEO NARAIN SING said that the punishment of flogging was abolished by the Regulation II of 1834, and was subsequently re-introduced, as a punishment for larceny only, under Act III of 1844. The Statement of Objects and Reasons of this Bill did not show why it was abolished, and then re-introduced. If crime was increased since flogging was abolished, let the punishment be restored. But if it were introduced on the supposition that additional punishments would deter men from crime, he might, refer, in proof to the contrary, to the condition of Native States, and especially Nepal, where, although adultery and theft were punished with instant death, and slight crimes were visited with severe corporal punishment, crime remained unchecked, and those very offences were still committed. He did not, therefore, think it advisable that flogging should be added to imprisonment.

The Hon'ble SIR BARTLE FRERE said that the Council had to consider the principle of this punishment and the principle contained in the Bill. Flogging was not a better punishment than some others ; fine, for instance. But they had to do with cases where no fine could be imposed, and some kind of corporal suffering must be inflicted. Moral treatment would be preferable where it was practicable. But where it was not, they were compelled to have resort to some species of bodily suffering. This was the answer to Mr. Cowie's objection. They acted under the necessity of the case. As to moral treatment, great progress had been made ; and no one was better entitled than the Lieutenant-Governor to speak on this subject, as he had been connected with prison reform almost from the time of this first coming to this country. All men had learned by experience not to go too fast in that matter. The general results of the experiments hitherto made had been good, but there had been some frightful mistakes. He alluded particularly to the system of solitary confinement as once attempted in America. It had proved utterly inefficacious ; and in some cases had caused the total loss of reason. One instance of the kind was enough to make them pause. The Government was bent on improvement, but the problem which had not been sound easy in England, was beset with peculiar difficulties here. The prisons built in England at the time when the first Report on Prison Discipline was published here, had in some instances cost from £500 to £1,000 for each prisoner. The error had been corrected in later prisons, but recourse had been had to some degree of corporal suffering, and he believed that, in this country also, it would be found necessary for

some years to inflict it. As to the details, he agreed generally with the Lieutenant-Governor and the Rajah Dinkar Rao, and would draw a distinction between offences. In the conviction for the first offence of perjury, or forgery, the Court might ultimately find that it was mistaken. In respect of theft and robbery, the punishment should be in substitution of imprisonment. There were many classes for whom this was the mildest punishment and the most humane.

His Highness the MAHARAJAH of PUTTIALA stated that he agreed in the views of Mr. Beadon on this subject.

The Hon'ble MR. BEADON said that he would not enter at present into the details of the Bill. Nothing but absolute necessity would lead the Government to resort to a measure of this kind. That such a necessity existed, might be concluded *a priori* from the condition of a large portion of the population; and from the returns they had received from public officers. Mr. Cowie had observed that the reformation of prisoners should be attended to in conjunction with their punishment. Undoubtedly this was desirable, but at the present time the primary object must be the prevention of crime, carrying on reformation contemporaneously as far as possible. When imprisonment was resorted to every effort must be made to render it reformatory. But this Bill would obviate the necessity of imprisonment in many cases. Objection had been taken to the title of the Bill. Mr. Ritchie had truly said that that was immaterial. But the title did distinguish the present Bill from the Bill of last year. Flogging with a rattan was likely to create more permanent injury than the punishment contemplated by this Bill. He could not concur with Mr. Ritchie respecting the opinion of Lord Macaulay, for he gathered from the Report of the Law Commissioners that they considered the punishment of flogging advisable in some cases, and abstained from recommending it because the Government had so recently abolished the punishment by the Regulation II of 1834. He did not gather from that Report that Lord Macaulay was opposed to the punishment under all circumstances.

The Hon'ble MR. RITCHIE stated, in explanation, that he had not referred to the Report of the Law Commissioners, but to the note of Lord Macaulay to the Penal Code published in 1837.

The Motion was put and agreed to.

BELIGIOUS ENDOWMENTS.

The Hon'ble MR. BEADON introduced the Bill to enable the Government to divest itself of the management of religious endowments, and moved that it be referred to a Select Committee.

The Hon'ble RAJAH DEO NARAIN SINGH said that, as the proceeds of land, set apart in times past for the maintenance of Mahomedan and Hindoo religious edifices, had been misapplied and misappropriated to other uses the Government, under Regulation XIX of 1810 of the Bengal Code, and No. VII of 1817 of the Madras Code, took the management of these funds into its own hands, and had since most honestly and efficiently administered them.

thus showing a strong contrast to the Hindoos and Mahomedans, who before the dominion of the British destroyed each other's temples whenever they were sufficiently powerful. Government, on the contrary, had administered these funds without evincing the slightest religious prejudice; both sects therefore owed Government a deep debt of gratitude. No member of either sect had complained of Government's administering these estates, and there seemed to be no grounds for Government's divesting itself of their management. The position of Government, with reference thereto, was analogous to that of the trustee of a minor or incapable person. As however Government had determined on taking this step, let the management be transferred to the Courts, so that the responsibility might still rest with the Government. In this Bill the rules for the appointment and the duties of Committees of Management and Trustees were clearly laid down, but he would suggest that it should be provided that, when any "interested individual" or "member of the Committee" should accuse the manager or trustee of malversation or misfeasance, his plaint should be written on unstamped paper, and that the officer in whose Court the petition was filed should dispose of the case summarily, and at once put a stop to the malpractices of the defendant. If the complainant were put to any expense, people would, rather than subject themselves thereto, wink at the malpractices of the managers; for, besides the price of the stamp, should the plaintiff fail to prove his charges, he would also have to pay defendant's costs and few were inclined to go to any expense for a religious purpose. If, for the above reasons, people should connive at the malpractices of the managers, the latter would be emboldened to commit still greater enormities, until the legitimate expenditure would be curtailed, and eventually the temples would be ruined. It was however possible that, if every kind of check were removed, people might bring charges against managers for the sole purpose of annoying them: this might be obviated by empowering the collector to institute a summary enquiry with a view (if the charges seemed to him well founded) of sending the case for trial to the Civil Court, and if on the contrary the charges appeared to him merely trumped up to annoy the defendant, of finally disposing of the case.

The Hon'ble SIR BARTLE FRERE agreed in the principle of this Bill, but suggested that it might be sufficient to repeal the Regulations, and leave the Regulations respecting the future administration of the Trusts to the Local Legislatures of Madras and Bengal, providing for the North-Western Provinces in this Council. He understood that this course had been recommended by Mr. Forbes.

The Hon'ble MR. FORBES said that he had intended to make this proposition, but that he understood that it was considered that this subject affected the religion or religious rites and usages of certain classes of Her Majesty's subjects in India, and therefore could not be taken up in the Local Councils without the sanction of the Governor-General.

His Excellency THE PRESIDENT said that it was his opinion that the subject of this Bill brought it within the provision of the 19th Section of the Councils' Act, but if there were a desire to deal with the subject in the Local

Legislatures, the sanction of the Governor-General would not, without grave cause, be withheld.

The Hon'ble MR. BEADON said that he understood the Rajah Deo Narain Singh not to object to the principle of the Bill. The details could hereafter be considered. But he did not see any sufficient reason why applications to the Courts under the proposed Act should be on unstamped paper, or heard in any special way prior to the institution of a suit. This would be opposed to the principle of the Bill, as it would be perpetuating the connection of Government with these endowments. He believed that it was not competent to the Local Legislatures to take up this Bill without the sanction of the Governor-General, and it was on that account that he had introduced the Bill in this Council. But he had noticed a newspaper report that a similar Bill had been introduced into the Madras Council.

The Hon'ble SIR BARTLE FREERE said that he had only contemplated the Local Legislatures dealing with the details of the administration of the Trusts.

The Hon'ble MR. FORBES, in explanation, said that a Native Member of the Madras Council had moved for certain papers with a view to introducing a Bill, but the Government had declined to furnish them, as they saw that the subject had been taken up in this Council.

The Hon'ble MR. RITCHIE said that he understood that the restriction in the 19th Section of the Councils' Act extended as much to the introduction, without the sanction of the Governor-General, of any Bill respecting the religious rites and usages of the people, into this Council, as into any Local Council.

The Hon'ble MR. BEADON stated that he had omitted, in moving for leave to bring in the Bill, to mention, as he might have done, that he did so with the sanction of the Governor-General. Probably that was inferred from his being a Member of the Executive Government. He doubted, however, if this Bill fell within the prohibition of the Act.

His Excellency THE PRESIDENT said that the Bill would apply to many cases in which the rites and usages of the people were not concerned. But, on the other hand, there might be other cases in which they were concerned, and therefore it would be the more prudent course to treat this as a Bill to which the Act applied.

The Motion was put and agreed to.

AFFIDAVITS, AFFIRMATIONS, etc.

The Hon'ble MR. RITCHIE introduced the Bill to amend the law relating to affidavits, affirmations and solemn declarations, and moved that it be referred to a Select Committee with instructions to report in two months.

The Motion was put and agreed to.

HUMEERPOOR BILL.

The Hon'ble MR. RITCHIE introduced the Bill to remove the District of Humeerpoor in the North-Western Provinces from the operation of the General Regulations, and moved that it be referred to a Select Committee with instructions to report in two months. He said that he had ascertained that Mr. Harington had doubts as to this necessity of this measure, and if in the Select

Committee it was found that so strong a measure was not required, there could be no objection to remodelling the Bill to the necessity of the case. On this understanding, Mr. Harington would not oppose the Bill. The object, as stated, was to bring the administration of justice at Humeerpoor into uniformity with its administration in the rest of the Division of Jhansi, of which it formed a part. Mr. Harington thought that a more advantageous change might be made, and his suggestion would be communicated to the Lieutenant-Governor of the North-Western Provinces.

The Hon'ble MR. HARINGTON said that, on the understanding mentioned by Mr. Ritchie, he would not offer any opposition to the introduction of this Bill or to its reference to a Select Committee. The understanding upon which Mr. Ritchie was willing to introduce the Bill had relieved him from a great difficulty, and rendered it unnecessary for him to trouble the Council at this stage of the Bill with any lengthened observations upon the principle of the Bill. On reading the extract from the letter of the North-Western Government, annexed to the Statement of Objects and Reasons, it at once occurred to him that the anomalous state of things therein referred to as arising out of a divided jurisdiction, and the correction of which was stated to be the chief, if not the only, object contemplated in the introduction of the present Bill, might be at once and easily removed by a transfer of jurisdiction from the Bundelkund to the Jhansi authorities, without having recourse to the extreme measure of excluding from the operation of the General Regulations, as proposed by the present Bill, a District which had been subject to those Regulations almost from the time that the Province of Bundelkund, of which Humeerpoor formed a part, was ceded to the British Government by the Peshwa, that is, for a period of nearly sixty years. There was an immense difference between bringing a territory, on its first acquisition by the British Government, under what was called the Non-Regulation system, and continuing it for a time under that system, and, to use a word which had become a term of art, de-regulationizing an old Regulation District, and leaving it to be governed by law, of which this Council had little, if any, knowledge. He believed that there was considerable difference of opinion as to what was meant by de-regulationizing a District, and as to what was the effect produced by that process upon a District to which it was applied. Some imagined that, in the de-regulationized District, all Acts and Regulations of Government were done away with, and that what he might call home-made laws took their place. Others considered that the District was simply excluded from the operation of the Regulations, and that the Acts of Government, previously in force in the District, continued in force therein. It was not necessary now to enquire which of these views was correct. He had considered it right to say so much on that occasion upon the principle of the Bill. He gave no opinion at present upon another question raised in the extract of the letter from the North-Western Government, to which he had already referred, namely, as to the desirableness or otherwise of a separate judicial establishment.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS SETTLEMENT).

The Hon'ble MR. FORBES introduced the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca, and moved that it be referred to a Select Committee.

The Motion was put and agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

The Hon'ble MR. FORBES introduced the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil), and moved that it be referred to a Select Committee.

The Motion was put and agreed to.

LICENSE TAX REPEAL.

The Hon'ble MR. LAING moved for leave to bring in a Bill to repeal Act XVIII of 1861 (for imposing a duty on Arts, Trades, and Dealings), and moved that the Rules for the Conduct of Business be suspended, and that the Bill be introduced and passed. He spoke as follows :—

In proposing a Bill for the remission of taxation, before the period of the regular Budget, I am taking a course which is only to be justified by special circumstances. The reason is this. The License Tax—a tax affecting four or five millions of the humbler classes of artizans, mechanics, and petty traders, has now reached a point where it is just possible to stop it, but where the delay, even of a few weeks, would see it in full operation.

To postpone decision, therefore, would have been practically to decide against the tax-payer, and it became the duty of the Government, at the first moment when they acquired the moral certainty that the tax was no longer indispensable, to come to a decision whether or not to allow it to be enforced.

His Excellency the Governor-General will, I have no doubt, state to the Council the general and political reasons which have led the Government to the conclusion that the License Tax should be repealed and immediate action taken ; and I shall confine myself to stating the grounds on which, as a Financier, I have felt justified in recommending the measure now before the Council.

In arriving at its decision the Government have been influenced by no misgivings as to the soundness of the principle on which the License Tax is based, or as to the perfect facility of collecting it without opposition.

In principle nothing can be more just than that the class of tradesmen and artizans in towns and villages, who have so greatly benefited by our rule, and whose condition, I am happy to think, is daily improving with the prosperity of the country, should contribute in some just proportion towards the support of the State.

In practice also it has been the uniform rule of Native Governments, both Hindoo and Mahomedan, to enforce direct taxes of this description on the trading classes. Without going back to the records of the early Hindoo history, or even to the Institutes of Akbar, it may suffice to say that, when the British rule was recently extended to the Punjab and Sindh, a long list of taxes on every

conceivable art, trade, and profession was found in existence, at rates far heavier than those of the proposed License Tax. Nor are such taxes confined to India. They are general throughout the East and familiarly known in almost every country of Europe, so that the exemption of British India is almost a solitary instance of financial forbearance on the part of a Government.

So generally was this known, that not a whisper of opposition to the tax has reached the Government, and there cannot be the least doubt that, if the law passed last summer be allowed to take its course, 50 or 60 lakhs will be paid into the treasury in the course of the next six months without disturbance or any overt manifestation of discontent.

Under these circumstances, the Government believe that a License Tax is now, and will be at any time hereafter, a perfectly legitimate work of raising revenue whenever additional revenue is indispensably required.

At the same time it is equally clear that, without indispensable necessity, it is not desirable to impose new taxes at all, and least of all a new tax which affects a great many persons and produces very little money.

With three classes as proposed, at 1, 2 and 3 rupees respectively, the average License Tax paid by each individual would probably not exceed $1\frac{1}{4}$ rupee, so that the tax-gatherer must call at 4 or 5 millions of doors to collect £500,000 or 600,000 of revenue.

I need not say that such a mode of raising revenue is not desirable, if it can be avoided, especially in a country where we have to work with very imperfect instruments, and where every rupee taken from the tax-payer may cost him another rupee in time and trouble, or worse still, in many cases may be made an instrument of oppression and extortion. The classification of 4 or 5 millions of persons, even into three simple classes, is a serious operation, which of necessity involves much labor on our already over-worked officials, and much trouble and annoyance, with occasional unavoidable injustice, to the persons affected by it.

Accordingly, it is quite clear that such a tax ought not to be imposed at all, unless it is likely to be permanently needed and retained as part of our regular financial system.

As long as a doubt existed on this point, the Government refrained from acting. To restore a clear and *bona fide* equilibrium in the finances of India, is an object of such paramount importance that all other considerations must give way. But without anticipating the more full and accurate statement which will accompany the Budget in April, enough is already ascertained to satisfy us that the License Tax is no longer required for the purpose of restoring an equilibrium.

The state of the cash balances affords an unerring test of our real position, as there have been for the past year no Loans open, and no accumulation of arrears or liabilities. All that has to be allowed for is the return to England of the £1,000,000 which was sent here in bullion last spring, under appre-

hension of the possible results of the famine, and of about £2,000,000 more which will be due to England on the balance of accounts of the year.

Of the total expenditure of the Empire about £9,000,000, in round numbers is paid in England for Home charges, stores, interest on debt, guaranteed railway interest, etc., of which we pay here for England about £7,000,000 in constructing railways and on other accounts, so that a balance of about £2,000,000 is due by India to England to square the accounts of the year and establish an equilibrium.

Setting aside this £2,000,000 and the £1,000,000 remitted in bullion, as belonging to England, our Indian cash balance on the 1st of the present February was £15,400,000, having been £12,680,000 on the corresponding day of 1861, and £14,280,000 at the commencement of the current financial year on the 1st May 1861.

The inference is irresistible that during this period our receipts have more than equalled our expenditure.

The detailed returns which are now coming in under the new and more accurate system of account and audit, fully confirm the general result indicated by the cash balances, more especially as regards the buoyancy of the principal branches of revenue, which appear to have been habitually and largely underestimated under the old system, and there is no reason whatever to make us doubt the continuance of this buoyancy in the ensuing year.

I should be sorry, however, to say positively that we have a surplus beyond what is required for giving up the Income Tax; still less to specify its amount, or base on it any further proposals for remission of taxation, for it is just possible that between now and April something might occur to diminish the cash balances, or otherwise affect our calculations.

It is well known that the Government do not regard the enhanced rate of Customs duties on imports of manufactured and semi-manufactured goods as a proper part of our permanent financial system, but as a temporary expedient to meet an emergency, and therefore it will be our wish to reduce those duties, if on a full review of our position at the end of the financial year we see that we can do so with safety.

But in the meantime it can be no objection to refraining from imposing a new tax like the License Tax, which we do not want, that we are not quite in a position to say positively whether we shall be able to remit another existing tax which is in full operation. In matters of taxation change is of itself a great evil and the occasions are rare indeed when it is good policy to impose a new tax for the sake of getting rid of an existing one. There is one change which is always salutary, namely, to be able to reduce taxation by the exercise of a wise economy and by the buoyancy of existing revenue arising out of general prosperity, but beyond this, to avoid changes as much as possible should be the policy of every prudent financier.

It is by these means that we are now enabled to arrest taxation at the very threshold of five millions of doors. Since the estimates of the year 1860-61 were framed, or in the course of two years, the revenue of India will show an increase on those estimates of upwards of £3,000,000, while the expenditure will have been diminished by a still larger amount. I cannot but hope therefore that the result now proposed to the Council will be accepted as an encouragement to proceed in the same course, as an earnest of further progress in the same direction, and above all as a practical proof of the sincerity of our professions when we say that we have no wish to impose unnecessary burdens on the people of India.

In the present instance we give up 50 or 60 lakhs, which are, I may say, as good as in our treasuries, for no conceivable motive, except that of tenderness for a large body of tax-payers. Indeed a small portion of the tax has been already collected, and this we shall return to the agreeable surprise, I have no doubt, of those who, when they paid their rupees, little expected ever to see them back again.

If there be, as I have often heard, an impression on the minds of some classes of the Native population, that there is no end to the new taxes, and that it is our policy to extract from them all we can, it is by *facts*, not by *professions*, that such an impression can alone be removed.

The fact that the English public recently subscribed a large sum for the relief of the sufferers from famine in the North-West Provinces, must have done more than a ship-load of tracts and proclamations to convince all intelligent and fair-minded Natives of the reality of English sympathy with India.

In like manner the *fact* of the Government giving up 60 lakhs of revenue to avoid putting on a new tax, which no one approves, and which every one has made up his mind to accept as an accomplished fact, cannot, I think, fail to satisfy every candid mind that we do not impose taxes recklessly or maintain them without necessity.

I have only to add that, personally, it is a source of gratification to me, as I am sure it will be to all the Members of the Council, that the improved state of our finances should have been ascertained just in time to enable His Excellency the Viceroy to adopt, consistently with perfect prudence, as one of the last acts of his administration, a measure so entirely in accordance with its whole spirit and policy.

His Excellency THE PRESIDENT said that the Council must have heard with satisfaction the statement of his honourable colleague, Mr. Laing, showing, as it did, so promising an aspect of the revenue, and that the proposed remission of taxation could be made with perfect prudence. He wished to offer a few observations respecting the selection of this particular tax for remission, and the mode in which the determination of Government had been made public. It always

happened that, when a Government was in a position to remit taxation, there were as many claimants for the benefit as there were remonstrants against new taxes when further taxation was required. On this occasion the Government, feeling itself able to remit taxation, had carefully considered whether the remission should be made from direct or indirect taxes,—from those which affected internal industry, or those which bore upon foreign commerce. Now this License Tax had peculiar claims, for, by remitting it, the Government was able, not only to relieve a large class from new payments, and that class one not so well able to bear taxation as others, but also to cut short those tedious processes of classification and assessment which the Tax required, and which involved much that was scarcely less harassing to the people than the taking of money from them. That was a strong reason. But he must repeat that which was stated by Mr. Laing, that in no quarter had there been any indication of soreness or irritation at the imposition of this Tax. Before deciding on its remission, the precaution had been taken of communicating by telegraph with the Local Governments, to ascertain if there were any difficulty in its remission. Had any discontent (not to speak of resistance) been apparent, it might have been a question if it would be a wise or dignified course at that moment to withdraw the Tax. But no answer which had been received indicated that any Local Government had experienced any difficulty in the imposition or collection of the Tax. It was only fair to the people of India to make this statement. With respect to the mode which the Government had adopted of notifying the remission of this Tax, no one felt more strongly than himself, the obligation and desirableness of departing as little as possible from the Rules of the Council, or the inexpediency of the Executive Government taking the initiative in a measure which might properly come from this Council. He should have been glad if the remission of this Tax, which the Legislative Council had imposed, had first been heard of at that table. But the case was one for immediate action. For although in Bengal no progress had been made in the collection of the Tax, the collection was going on in two divisions of the North-Western Provinces, and also in Oude, in the Punjab, and in the Madras and Bombay Presidencies. The classification, moreover, was in full progress everywhere; and as the object was not only to remit taxation, but also to avoid troubling the people vexatiously, immediate action was necessary. The decision of Government was taken; the Resolution of the 21st instant was adopted and published; and information was at once conveyed to the Local Governments. This having been done, the Government had taken the earliest opportunity of coming to this Council with the Bill which his hon'ble colleague proposed to introduce.

His Excellency THE PRESIDENT then declared the Rules for the Conduct of Business to be suspended, and the Bill was introduced, read by the Secretary, and passed.

The following Select Committees were named :—

On the Bill to authorize the punishment of whipping in certain cases—the

Hon'ble Messrs. Beadon, Ritchie, Harington, and Cowie, and Raja Deo Narain Singh.

On the Bill to enable the Government to divest itself of the management of religious endowments—the Hon'ble Messrs. Beadon, Ritchie, Harington, and Forbes, and Rajah Dinkar Rao Rugonath.

On the Bill to amend the law relating to affidavits, affirmations and solemn declarations—the Hon'ble Messrs. Ritchie, Harington, Forbes and Erskine.

On the Bill to remove the district of Humeerpoor in the North-Western Provinces from the operation of the [general Regulations—the Hon'ble Sir Bartle Frere, and Messrs. Ritchie, Harington and Erskine.

On the Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca—the Hon'ble Messrs. Ritchie, Harington and Forbes.

On the Bill to extend Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts, legal process issued by authorities in the Mofussil)—the Hon'ble Messrs. Ritchie, Harington, Forbes and Erskine.

The Council adjourned till Wednesday, the 5th of March, at 11 A.M.

M. WYLIE,

*Deputy Secretary to the Government of India,
Home Department.*

CALCUTTA ;

The 26th February 1862.