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ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

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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.

1874.

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VOL. XIII.



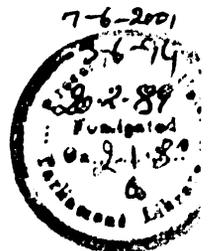
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1875.



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

The Council met at Government House on Tuesday, the 21st April 1874.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I.,
presiding.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

His Highness the Maharájá of Vizianagram, K. C. S. I.

The Hon'ble Rájá Ramánáth Tagore.

The Hon'ble R. A. Dalryell.

The Hon'ble B. D. Colvin.

BURMA COURTS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for the further amendment of the Burma Courts Act, 1872, and moved that it be referred to a Select Committee with instructions to report in two months. He said that the Council would observe that the Bill in their hands was a very simple one, and was intended for the purpose of compassing the three objects which he had mentioned before. The object of section one was to give the Chief Commissioner the power of creating a Court of Appeal within any district which was not superintended by a Deputy Commissioner; section two was for the purpose of relieving the Recorder of Rangoon from certain forms and requirements of the Code of Criminal Procedure which were not suitable to his Court; and section three was for the purpose of reviving certain Acts which were found wanted in British Burma.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure. He said this was a matter

that consisted almost entirely of details—and details mostly or altogether of a small character—the explanation of which he should not attempt, because it would take up a great deal of time and would produce no good. But he wished, with the permission of the Council and before they were asked to proceed to the consideration of the Report, to mention the principles upon which the Select Committee had proceeded. First, he would say, that they had received an enormous number of suggestions for the amendment of the Code. He did not exaggerate when he said that they had been poured upon them by hundreds. That this should have been the case was easily intelligible. The Code was a great work, having an enormous number of ramifications, and had already been the subject of three or four text-books; and it was part of the daily life of an immense number of officials who were testing it in every possible way. The question was in what way should the Committee deal with these suggestions.

First they thought it their duty not to embark upon any examination of the broad principles of the Code. There was one influential quarter from which they had received an invitation to proceed to such an examination. They were invited by the British Indian Association to reconsider those parts of the Code which dealt with appeals from acquittals, enhancement of sentences, summary trials and so forth. Well, the Committee considered that it would be wrong for them upon such a Bill as this to treat such subjects as thrown open. It seemed to him that the Select Committee, or indeed the Council itself, would be doing a wrong thing if, on mere abstract arguments without any proof at all of the ill-working of the Code, they were to reargue that which had been so recently and deliberately settled. In the memorial of the British Indian Association there was no instance adduced of the harsh or injurious working of the Code. All that had been given were abstract arguments which he wished to treat with all respect and which would properly be adduced if the principles of the Code were now being discussed. But these arguments must have been present to the minds of the Council when they determined to pass the Code into law. They certainly were present to the mind of the Secretary of State when he determined that the Code ought to be law, because a memorial couched in the same terms or something very like them was forwarded to the Secretary of State before he gave his assent to the Code. Before the Council proceeded in the direction indicated, there ought to be evidence of practical injustice or hardship on such a scale as would justify legislation. The officials as a body seemed quite satisfied with the working of the impugned parts of the Code and nobody had adduced any evidence against them. It was indeed open to any member of Council to move amendments which should have the effect of raising any of these important questions, and

to ask the Council to discuss them. It was another question whether they would succeed. For his own part, he thought that, affairs standing as they did, the Council ought not to discuss them. At all events the Select Committee were clear that they ought not, and they had not done so.

A great many of the other suggestions received were found when examined to resolve themselves into mere matters of drafting. Now amending the Code was one thing; re-drawing it was a totally different thing. In the course of years the Code would no doubt be re-drawn. Then it would be for those who had to perform that work, to consider whether the suggestions made were improvements. We should be only confusing people if we placed side by side with the more substantial amendments a number of alterations adopted for the purpose of making the language clearer without altering the subject-matter.

Again, a number of other suggestions received were in the nature of speculative doubts on the construction of the Code. They were things which occurred to all reasoning men in the course of their working, but the Committee had looked to see what was the substantiality of the doubts, and what the probability that if, and when, those doubts were raised the Courts would not decide according to the intention of the framers of the Code. And they had not proposed any alteration except where they thought that there was reasonable probability of an embarrassing decision.

The result was that the Committee had selected, from the suggestions received, some thirty or forty in addition to those which were in the Bill as introduced into the Council. And he thought it would be found that every one of these alterations was either founded on some decision by a Court of Justice—by a High Court—or on some material discussion in a High Court, or on the suggestion of some gentleman whose official position gave great weight to what he said and who showed from his own experience that some difficulty or some doubt had arisen which would become more and more embarrassing unless the opportunity of amendment was taken. These were the principles which had guided the Committee in their selection of the very numerous suggestions made to them.

The Report went into the details of the amendments. Hon'ble Members would study it for themselves if they cared to know exactly what had been done. But what he had stated might be useful as a guide to the principles upon which the Select Committee had proceeded.

BURMA FISHERIES BILL.

The Hon'ble Mr. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to regulate Fisheries in British Burma.

Leave was granted.

PORT-DUES ACT AMENDMENT BILL.

The Hon'ble Mr. HOBHOUSE also introduced the Bill to consolidate and amend the law relating to Ports and Port-dues, and moved that it be referred to a Select Committee with instructions to report in three months. He mentioned when he asked leave to introduce this Bill that there were two objects which the Government had in view. One was to enable the levy of a reasonable sum for what we called Hospital port-dues; and this sum was designed to answer the expenses incurred by the authorities in ports for tending sick seamen. The other was to extend certain provisions of the Ports Act to the navigable channels leading to the ports, which were now extended under the general Act only to the ports themselves. There was a third object which he inadvertently forgot to mention at the time, namely, to extend to other ports in India certain provisions now in force in the ports of Calcutta, Madras and Bombay for the arrest of deserters from foreign vessels. Some practical difficulty had arisen in this matter in the ports of British Burma, and some complaints had been made, particularly by the Italian Government, that our law was not sufficient to enable the commanders of foreign vessels to keep their seamen to their duty. In the three ports he had mentioned sufficient provision existed for such cases, and we now desired to extend the same provisions to other ports.

He had also mentioned that the opportunity would be taken of seeing whether the law relating to ports and port-dues could be usefully consolidated. The law was found to be contained in no less than twenty-two enactments. That circumstance spoke for itself. He therefore now presented what appeared to be a long Bill, but what was in fact mainly a repetition of that which was already in the Statute-book. If the Council would look at the first schedule of the Bill they would see a tabular statement of the charges on ships. That statement was the result of the examination of a number of local Acts. Different rates were chargeable on vessels at different places, and again at different periods of time. He thought it would be a much simpler and clearer method to reduce the several local Acts into one Act, and to set forth by means of a tabular statement those rules which now took effect under different Acts. Nearly the whole of the Bill including that

schedule consisted, apart from the new objects he mentioned, of a re-arrangement of the present law and some shortening and simplification of its language.

He did not mean to say that the process of consolidation led to no alteration of the law. It constantly did so when a number of local enactments were passed into a general one. But the alteration was only in the way of giving greater local extent to provisions already in force in some places. At present the law on the subject stood as it had been passed in fragments for different parts of the country; and different arrangements had been made at the suggestion of local authorities. No doubt they had been made to suit the accidental circumstances of the ports of those particular places. But on examination many of them were found applicable to all ports. And therefore under a consolidation Act it naturally and easily came about that a provision now extending only to Calcutta, for instance, was extended to other Indian ports.

He would give one or two instances to illustrate what he meant. Look at section seventeen of the Bill. It provided that for the purpose of preventing or extinguishing fire in any port to which this Act extended, the Conservator might require the Master of any ship of more than five hundred tons burden to place at his disposal such number as he required not exceeding three-fourths of the crew. That was a provision in use in the port of Calcutta. It was obvious that the same necessity must exist, and the same provision must be equally useful, in other ports. Therefore, it was a provision which he thought the Council would agree should be extended to the ports all over India. Again, section thirty-seven we had taken also from one of the Calcutta Acts. It was a section which enabled the Local Government to make stringent rules with regard to inflammable oils. There might be ports into which no inflammable oils entered, and to them of course the provision would be useless; but in all others it would be useful. Again, in section forty-five, there is a provision which was passed last year for the ports of British Burma. There, they were gradually bringing ports within the operation of the Ports Act; but the Government had no power to declare the amount of dues to be taken from vessels entering such ports. Therefore, besides the notification bringing a port within the Act, it was necessary to have an Act of Council on every occasion. The same processes were requisite in other parts of India, only the inconvenience was not so conspicuous, because the process of creating ports under the Ports Act was not going on so fast as in British Burma. Still such a thing would take place from time

to time, We therefore proposed to extend the same principle to the whole of India, and to provide that, when a port was brought within the operation of the Act, the maximum amount of port-dues should be declared by the same notification which extended the Act to that port. Again, in section forty-seven there was a power, which the Local Governments of Madras and Bombay possessed, that for the purpose of keeping the accounts of port-dues, a number of ports might be treated as constituting a single port. That seemed to be an exceedingly useful provision, tending to simplify accounts, and probably to render the administration of the ports more vigorous. There appeared to be no reason why that provision should not be extended to other parts of the country. Again, section fifty-six was a section found in several local Acts, namely, that no port-due should be chargeable if a vessel left a port and was compelled by stress of weather to re-enter it. He thought the examples that he had cited were sufficient to show the Council how it came about that in the process of consolidation there was an alteration of the law almost necessarily effected.

He would now explain to the Council what the Bill consisted of. Schedule I he had already explained. There were eight parts or chapters in the Bill, and if the members would cast their eyes down the margins of the sections they would see that very nearly the whole of the sections were repetitions of the existing law. In the first five chapters he thought there was nothing substantially new, except that the Bill compassed one of the objects he mentioned of extending the Ports Act to the navigable channels leading to ports, and that it extracted from the local Acts sections of universal applicability and made them into general provisions applicable to all ports. In Chapter VI he had explained the reason for the introduction of section forty-five. But he did not mention a matter of detail in respect to this section, that there should be a maximum amount fixed in the Act itself within which the Local Government should fix the maximum port-dues. It was so done in the Burma Port-dues Act that he had mentioned. We provided that the Local Government should fix the maximum dues, but that maximum should be within the limits of a statutory maximum. There, it was provided that the statutory maximum should be four annas for every ton of burden of vessels of the burden of ten tons and upwards. Whether that provision would be applicable to the whole of India Mr. HOBHOUSE could not tell. Probably it would not; probably we should have to fix a statutory maximum by reference to the actual maximum prevailing in the different localities. At present the clause did not fix any maximum. It must be for the Select Committee to consider how that could best be done.

The same part of the Bill provided for another object which he had mentioned, the important object of hospital port-dues. That was provided for by sections sixty, sixty-one, and sixty-two. Section sixty proposed to empower the Local Government to order that there should be paid in respect of every ship lying in any port, within a reasonable distance of which there might be a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thought fit. Then the next section provided that such port-dues should be applied in support of any hospital or dispensary or otherwise for giving medical aid to seamen in the port. And section sixty-two enacted that port-clearances might be refused until all hospital port-dues incurred had been paid. That had been the law in Calcutta since 1867. It had been found to work well here, and would probably work well elsewhere.

Chapter VII consisted only of penalties, and in it we had exactly followed the existing tariff of penalties. And Chapter VIII consisted of one or two miscellaneous provisions, amongst which was the third object which he had mentioned, namely, to give greater facilities for dealing with deserters from foreign ships. This clause had been taken, he thought *verbatim*, from the existing Bengal Act, and it was already law in the ports of Calcutta, Madras and Bombay.

He did not think it was necessary to call the attention of the Council to any more of the details of the Bill.

The Hon'ble MR. COLVIN said he was quite ready to support the primary purposes of this Bill as set forth in the Statement of Objects and Reasons, and as had been explained by the hon'ble and learned member in charge of the Bill; and he thought the consolidation of the numerous existing Acts relating to ports would be accepted on all hands as an obvious improvement. But as the Bill was somewhat lengthy and had only just been placed in his hands, he was not prepared to offer an opinion as to the detailed provisions to which the hon'ble member referred. As he proposed to refer the Bill to a Select Committee with instructions to report in three months, MR. COLVIN would have an opportunity of doing so at a later stage, and he had no doubt that others interested in the subject would make their views known in the usual manner. He begged to support the motion.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the local Gazettes of Calcutta, Madras, Bombay and British Burma.

The Motion was put and agreed to.

SALT LAW AMENDMENT BILL.

The Hon'ble MR. ELLIS moved for leave to introduce a Bill to amend the law relating to Salt, and said that, if this permission were accorded him, he would then ask His Excellency the President to suspend the Rules for the Conduct of Business, and move that the Bill be taken into consideration. Perhaps it would be the simplest plan merely at present to ask for leave to introduce, and if he obtained such leave, he would enter into an explanation of the object and detailed provisions of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS applied to His Excellency, the President, to suspend the Rules for the Conduct of Business.

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. ELLIS introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS would premise that, although entitled generally "a Bill to amend the law relating to Salt," it did not affect the general Salt-duties of India. It was in fact fiscally a very small measure, but it was a measure of great administrative importance. As the Members of the Council were aware, there ran through a part of India an Inland Customs-line, some 2,400 miles in length, and composed of an impassable hedge or other barrier, with openings at intervals of a considerable distance, through which alone any traffic could pass. These openings were guarded by Customs Preventive Officers, whose duty it was to take care that no salt or other dutiable article should cross the barrier, unprotected by a proper and sufficient pass. He would say that the Department had been supervised with every care for the protection of the people, and that the organization which had been created by Mr. Hume, and had since been efficiently maintained by Mr. Batten, was as good as could be devised, and the supervision exercised was as vigilant as in such cases it could be. But it was not to be denied that, with all the control and supervision which we could bring to bear, there must in some cases be oppression, and it was obvious that the hindrance to traffic and trade must be intolerable. Under these circumstances, it was of course the object of the Government to get rid of any portion of the customs-line that could possibly be dispensed with, and the present Bill proposed to effect this object as far as we were able now to carry it out.

Besides that line of nearly 2,400 miles, there was also another line of 136 miles of preventive police posts on the frontier of Bengal, where it abutted on the district of Ganjam and the south-east corner of the Central Provinces. The late Lieutenant-Governor represented last year, with great force, the excessive hindrance to trade that this line of posts was, and he said that the hindrance amounted almost to a total stoppage of the interchange of commodities between the Central Provinces and Orissa. In Madras also, the authorities complained that the traders of Ganjam were checked and hindered in their dealings with the Central Provinces, owing to the exit for their salt through Orissa being barred on account of the risk to the Bengal revenue. Then, again, the Government of India had had reason to complain of the Ganjam traders making use of a gap between the Inland line and the Police posts of Bengal, and in order to stop the smuggling into the Central Provinces, it would have been necessary, unless some measure of this kind had been devised, not only to maintain the present posts, but actually to increase their strength. The Government of India, therefore, had for some time been desirous of abolishing so much of the great customs-line as separated one Province of British India from another, and also the whole of the minor frontier line to which he had just referred. But until now it had not seen its way to do so. The Bill did not contemplate the abolition of the whole line. Over two-thirds of the line separated British territory and Native States, and could not now be dealt with. That portion of the line, therefore, which stretched from the Northern Indus down to Burhánpur in the Central Provinces must remain for the present untouched. But he hoped by this Bill to get rid of a line of nearly 800 miles, stretching round the western side of the Central Provinces and Birár, and the southern portion of the Central Provinces, to the boundary between Orissa and the Madras Presidency. In that object he thought he might rely on having the concurrence of every member of the Council.

Hon'ble members would remember that the reason for maintaining this great customs-line was the differential rates of duty. To go into the question of those differences would involve a review of the whole taxation of India. Such a review was in no way necessary on this occasion. We assumed these differences of duty as a fact, and our object in this Bill was, not to equalize the salt-duties, but to abolish the customs-line. The problem, therefore, was how to abolish the line with the least risk to the general revenues, and the least disturbance of the existing channels of trade. He would now explain how it was proposed to effect the object, and, in doing so, he would observe that the measures to be taken were two-fold. In the first place, there was in Western India a duty of one rupee and thirteen

annas on salt in the Presidency of Bombay outside the line, and in the Central Provinces and in Birár inside the line a duty of three rupees. We had to see how we could take away the line between the two without preventing a rush of the lower taxed salt, so as to drive out of consumption the higher taxed salt, which now paid a duty of three rupees. The matter, here, was comparatively easy, as we were able to avail ourselves of the railway, and the mode proposed was a graduated scale in the shape of a mileage rate on railway-borne salt, so as to shade off the difference between one rupee and thirteen annas in Bombay and three rupees at Jabalpur. We found we could do this by imposing, in addition to the tax of one rupee and thirteen annas in Bombay, a tax of seven-tenths of a pie per maund per mile on the 320 miles of railway between the frontier station of Ráver and Jabalpur, so that an additional duty of one rupee two annas and eight pies, added to the duty of one rupee and thirteen annas per maund in the Bombay Presidency, would, within four pies, make up the three rupees duty at Jabalpur, which remained untouched. So also on the line of railway towards Nágpur. We proposed there also to adopt the same course and impose a mileage rate, which in this case was only six-tenths of a pie per maund per mile; as by that extra levy we were enabled to attain, at Nágpur, 225 miles from the frontier station of Nárágáon, three pies in excess of a duty of two rupees and eight annas. The duty, therefore, would here be reduced from three rupees to two rupees and eight annas. Otherwise we could not expect the present flow of salt from the west to continue; it would be thrown out by salt coming in from the Madras side at lower rates of duty, and, besides losing revenue, we should have a disturbance of the ordinary channels of trade, and the railway would carry less salt. It was therefore resolved that it would be better to lower the duty in Nágpur and the surrounding parts, rather than disturb the existing sources of supply by attempting to maintain, at Nágpur, a duty so high as three rupees per maund. In making the arrangements necessary to carry out this scheme, we had been assisted by the co-operation of the Government of Bombay, and we had received most cordial help from the Agent of the Great Indian Peninsula Railway Company. It was obvious that it was not necessary to enlist the direct co-operation of the Railway Company's officers, because it was practicable to levy the tax by officers of the Government at the various stations; but the advantages to the Railway Company and the public, and indeed to the Government, were so great by combining in one levy the mileage-rate of customs-duty, and the mileage-rate for railway-transit—having, in fact, one officer instead of two to do the work—that we thought it better to ask the Railway officers to do it, so that the public might be free from all interference from Customs officers except such as would be necessary in the way of check and control. There would

thus be no direct interference of the Customs officers between the place of manufacture on the Western Coast and the Central Provinces and Birár. The loss of revenue calculated from this reduction of duty was only Rs. 1,32,000, supposing that the consumption remained at its present figure. But he had every hope that by lowering the duty there would be some, if not a much larger consumption of salt, and, therefore, the loss would not be so great as had been suggested.

The other portion of the question was somewhat more difficult. On the Eastern Coast there was no railway to help. There was on the Madras side a duty, as in Bombay, of one rupee and thirteen annas, but on the other side of the Frontier was a duty of three rupees and four annas, the rate current in the Lower Provinces of Bengal; nor was the distance so great that we could confidently fix a graduated scale of duty without great risk of the lower paid salt of Madras driving out the higher taxed salt imported into Calcutta. We had therefore, in this instance, to do more than lower the rate in one province; we had to raise the rate in another. It was with the greatest reluctance that we asked the Madras Government to agree to increase the rate of duty on salt in one of their districts; for we felt that the advantage to be derived from this measure would be derived chiefly by other provinces than that of Madras. But still, as it was found absolutely necessary to raise the duty in some portions of the northern part of Ganjam, we applied to the Madras Government to know whether they objected to the imposition of a small increase on the present rate of duty. The requisition was restricted to the smallest amount practicable; and MR. ELLIS might state that, even now, experienced officers well versed in all the circumstances of the Salt-duty in Lower Bengal, said that the amount of extra duty about to be imposed in the Ganjam district of the Madras Presidency was too small, and that there was risk of Ganjam salt superseding the salt of Orissa and of Calcutta, and thus proving detrimental to the revenue. But the Government of India was prepared, out of consideration for the views of the Madras Government, to accept some amount of risk; and in fixing the duty at the low rate proposed there was some risk. If it should hereafter be found that this anticipation was realized, it would be necessary to take other measures. But for the present, we were prepared to take our chance of the risk pointed out.

The mode in which it was proposed to do away with the frontier-line between Madras and Orissa was this. The duty in Orissa would be lowered by a scale descending from three rupees and two annas on the northern frontier of Orissa, where it would meet the rate of three rupees and four annas

prevalent generally in the Lower Provinces of Bengal, until at the boundary of Ganjam, the lowest rate leviable in Orissa would be two rupees and four annas. In Ganjam, we came to a somewhat different system. The Madras system was not to charge a duty separately as in Bengal and Bombay, but to charge what was called the selling price—the price at which salt was sold to the public. The supposition upon which that price was fixed was, that the duty was one rupee and thirteen annas, the same as in the Bombay Presidency; but the selling price, including the cost of manufacture, was two rupees. Here we had to see what was the lowest possible amount by which the Madras price might be raised to prevent Ganjam salt at lower rates displacing the higher taxed salt of Orissa and Bengal generally. We fixed as a minimum two rupees and four annas as the selling price, the selling price being now two rupees. Therefore, the most which would be imposed in any place in the Madras Presidency was an extra charge of four annas per maund, and that only at one station, the station nearest to the Orissa frontier. In the next station, Ichapur, we graduated the duty by fixing the selling price at two rupees and three annas. Therefore the whole measure of alteration of the Madras rates of duty was an extra imposition of four annas at one station, and of three annas at another station in the northern portion of the Ganjam district. Beyond that, the Madras duties remained untouched, and there was no increase to the general rate in the Madras Presidency.

MR. ELLIS was quite aware that logically a graduated rate of duty could not be supported. Of course there was no logical reason why salt as it went farther should pay a higher rate of duty. But practically that was the only mode in which we could get rid of what had been described as an intolerable nuisance, the customs-line, and he thought that the proposed mode was quite defensible where the object to be gained was so important, and could not be otherwise attained. He would add, as showing that the object of this imposition of extra duty was not to increase the revenue, that the Government of India had determined to allot the annual sum of Rs. 20,000 for expenditure in the Ganjam district, that sum being, so far as we could estimate, the amount of additional taxation on the salt manufactured there for home consumption. The Madras Government was naturally and properly very reluctant to see any additional taxation imposed on any portion of the people entrusted to their care. But feeling that this great administrative reform could not be carried out without incurring the risk of loss of revenue greater than the Government of India could reasonably incur, they gave their assent to the proposal to impose this small additional duty.

The loss which would be incurred on this side by the abolition of the customs-line and the consequent reduction of duty in Orissa had been so variously estimated that he was almost afraid to give the figures. Generally it had been put at about five or six lakhs of rupees, against which we might set off a saving in the customs establishment, and no inconsiderable amount due to the future increase in licit consumption of salt in the Central Provinces. He believed also that the Ganjam trade would receive a considerable impetus in consequence of its deliverance from the trammels of the customs-lines, and that the Orissa traders would be enabled to open out communications with the Central Provinces, which had been almost wholly stopped, and that thus the general traffic and the revenue from salt would alike derive benefit.

It remained only to explain why he had ventured to ask His Excellency the President to suspend the Rules of the Council. The reason was not so much that the Government would be deprived, by a short delay, of a small additional revenue in Ganjam; but because, as soon as it was known to the trade that the duty would be raised, it was natural that traders would cease to send salt from Bombay to the Central Provinces, and there might be an undesirable dearth of salt in those districts. For these reasons he asked permission to suspend the Rules, and would move that the Bill be at once taken into consideration.

He believed he had explained sufficiently the provisions of the Bill, but he would briefly refer to the several sections, and he would point out how they would provide for the measures he had explained. The first section affected the district of Ganjam in the Madras Presidency. It provided for the future selling-price being fixed at a sum not exceeding two rupees and four annas per maund. He had before stated that the selling-price was now two rupees, and we could not impose a higher rate without an alteration of the law. The section gave power to the Governor General in Council to fix a rate not exceeding two rupees and four annas. The price would not be two rupees and four annas uniformly; it would be at that price in only one station, while in another station it was to be two rupees and three annas, and in no other station would it be altered at all.

The second section had reference to the Bengal Presidency. There the salt-duty leviable as an excise in Orissa and other parts of Lower Bengal was necessarily by law the same rate as was levied as a customs-duty. We proposed in this part of the Presidency to lower the duty, and we did not propose to lower the rate of customs-duty; it was necessary therefore to give the Governor General in Council power to fix the duty in the province of Orissa at a lower rate than that fixed under the Customs Act.

The third section was necessary rather with reference to the mode in which the duty was leviable than with reference to its amount. The Governor General in Council had now legal power to lower the duty and to fix it at any sum not exceeding three rupees. The rate henceforth would be less than rupees three all through the Central Provinces to Jabalpur, but the mode in which the duty would be levied was new, and this required legal sanction.

The fourth and last section was simply to transfer to the present Act the sections regarding penalties which existed in the present enactments.

Having thus explained the scope of the Bill and its details, he had every reason to hope that the Council would be unanimous in ratifying the measure.

The Hon'ble Mr. COLVIN said the principal point which seemed to him to present itself for consideration with respect to this Bill was merely whether the alteration which it proposed in the Salt-duties in Ganjam, in Orissa, and in the Central Provinces, in order to effect the abolition, in part at least, of the cumbersome and expensive arrangement of our Inland Customs-line, was likely to create any such serious disturbances to the salt-trade in those districts as would counterbalance its claims to support as a means, if not the only means, of attaining that very desirable end, as well as on the more general ground of its being a step towards the equalization of the Salt-duties throughout India, although that was not its more immediate purpose. He could scarcely profess to pronounce a precise opinion as to how the graduated scale of duty proposed by the Bill would work; but the scheme seemed to guard carefully against any sudden fluctuation of price along the line, and he was not aware of any reason why the Council should hesitate to pass the Bill at once. He was, therefore, ready to give the Bill his support, and, in doing so, he trusted he should not be over-sanguine if he expressed the hope that what it proposed to effect along the southern portion of the Customs-line might, at some future time, be done in regard to the whole length of that line, and that the result of the approximation of the salt-duties in certain places might hereafter result in their general equalization throughout India.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE had to say but a few words in regard to this Bill. He remarked that he was not one of those ultra-philanthropists, who were not slow in raising a hue and cry against the salt-tax, and held that salt was not a commodity which ought to be taxed at all. He was not one of those sentimentalists who thought so. He was of opinion that all classes of the people should bear the burthen of taxation each according to its means and circumstances. He had gone over this Bill most carefully, and he did not see any objection so far as the provisions of the Bill were

concerned. The first section provided that salt in Ganjam, which was a part of the territories under the Madras Government, should be sold at a fixed price of two rupees and four annas per maund, which, though more than what they used to pay, was much less than what the people of Bengal paid as a tax on salt, and he did not think that the people of Madras would complain, considering the relief it would afford them from the exactions and oppressions of the Customs Police.

The second section of the Bill related to Orissa. The rate of tax upon salt was there fixed at a maximum of three rupees and four annas, and at a minimum of two rupees and four annas. That was not an increase of taxation. Three rupees and four annas per maund was the tax which the people of Bengal paid for their salt. The tax in Orissa was fixed on a graduated scale, ranging from three rupees and four annas to two rupees and four annas, leaving it to the discretion of the Government to fix the exact amount leviable at any place in that province. None was in a better position to do this satisfactorily than the Government; they would be able to exercise that power beneficially for the interest of the people, and he was quite sure that it would be so done.

With regard to the Central Provinces, the Bill provided for a mileage rate upon salt transported from the Bombay Presidency to the Central Provinces. No doubt this arrangement was a wise one, because, in taking salt from Bombay to the Central Provinces, the people who transported it were subject to the evils of the preventive line, but the fixed mileage rate would do away with those abuses.

He thought that this Bill should pass, because there was a decided advantage to the people, who would be free from the annoyances and oppressions of the Customs Preventive Officers. Indeed, taking the Bill as it was, he thought that it was more in favour of the people than otherwise, for its object was to confer upon them substantial benefit and not to bring in an accession of revenue. With these observations he begged to say that he was glad to support the Bill.

The Hon'ble MR. DALYELL said that on the last occasion on which the subject of salt-duties had been discussed in the Council, some five years ago, hopes were held out that at some future date the high rate of taxation in the northern provinces of India would be reduced. It was then stated that the seventy million people who paid the high rate consumed so little salt, that the sixty millions who paid the lower rate paid more revenue, although the rate of taxation was only one-half. It was indicated on that occasion that the

main reason which prevented the Government of India from equalizing the salt-duties all over the Empire, was the then critical state of imperial finance. He would fain hope, therefore, as his hon'ble colleague Mr. Colvin had just said, that the present Bill might be looked upon as an instalment of the larger measure to which MR. DALYELL had referred. His hon'ble friend Mr. Ellis had explained that the Bill would enable the Government to do away with a considerable portion of the customs-line which nearly encircled the Central Provinces, and to abolish entirely the salt-line between the Bengal and Madras Presidencies. It had also been estimated by the Salt Commissioner that the burden of the salt-tax would be very materially lightened to a population of something like three millions in the Central Provinces, and to a still larger population in Orissa and the Tributary Maháls. So far, then, as one portion of the Bill was concerned, it conferred an unmixed benefit on the poorer classes of the people, and no doubt would receive general support. MR. DALYELL confessed that he himself thought the measure might have been carried out without an increase of taxation and without the slightest risk of loss to the revenue. For in spite of the assertion made by very high authorities, that the high rate of taxation in Northern India did not interfere with consumption, he could not bring himself to that belief. At any rate in support of the view he had taken was a statement recently published in the last Administration Report of the Bengal Government, to the effect that the gross consumption of salt in Bengal had not increased during the past ten years notwithstanding a large increase in the population. If MR. DALYELL'S view was correct, any reduction of the higher rate of taxation must result in a very considerable increase of consumption, and would therefore probably eventuate in an augmentation of the revenue rather than in a diminution. This was often found to be the case when the rate of taxation on any article of general consumption in England was lowered. At the same time, with the strongly expressed opinions of those well versed in the subject before them, he could well understand that the Financial Department of His Excellency's Government did not feel themselves justified in taking the view which MR. DALYELL did, and that they were of opinion that the measure before the Council would involve a considerable sacrifice of revenue; and that, in order to meet that sacrifice of revenue, they had felt constrained to ask that the salt-tax should be slightly increased in that portion of the Madras Presidency from which the populations to which he had referred would mainly draw their salt supply in future.

That brought him to the consideration of another portion of the Bill, and, holding the views he did as to the probable effect of a reduction in the higher rate of tax, he could not consider it to be entirely satisfactory. He need hardly

say that he referred to the first section of the Bill, which empowered the Executive Government to increase the price of salt in the Ganjam district of the Madras Presidency by four annas a maund, or $12\frac{1}{2}$ per cent. It had fallen to his lot on more than one occasion to be the exponent of the views of the Madras Government when it had been proposed on former occasions to increase the tax upon salt. So far back as 1867, as Secretary to the Board of Revenue, it had been his duty to explain that the augmentations of the tax which had taken place during the previous eight years had had the effect of raising it to a rate verging upon one which would prove repressive of consumption. Two years later, in 1869, as Secretary to Government, he had proposed to the Imperial Government on behalf of the Madras Government that the salt-duty in Madras should be raised from one rupee and eight annas to one rupee and eleven annas per maund, in view to assist in meeting the financial crisis then supposed, happily incorrectly, to be impending. The Madras Government on that occasion had eventually agreed to raise the price to the extent of five annas instead of three, although they anticipated some check on the consumption. The result fully proved the correctness of their view: for the salt-sales every year since that date had shown a considerable decrease. Under these circumstances, it was not surprising that the Madras Government should object to any further increase in the price of salt in that particular district in which the poverty of the lower classes made them least able to bear such a burden. At the same time, having in view the advantages to be obtained by a much larger portion of the population of the whole Empire, they had signified their approval of the measure. And MR. DALYELL desired to take this opportunity of expressing his appreciation of the careful and favourable consideration which His Excellency's Government had given to the Madras views, on this question—a consideration which had, in the first instance, resulted in the reduction of the amount of taxation by one-half, namely, from a proposed increase of eight annas to an increase of four annas, and which would further result in the actual amount of taxation being confined to an increase of four annas in one only of the four salt depôts of the Ganjam district, and to a still smaller rate of increase at another depôt. The grant, too, of an additional provincial assignment to the Madras Government for expenditure in the Ganjam district, was a further earnest that His Excellency desired to deal liberally with the people of Ganjam so far as was consistent with carrying out the administrative reform under consideration. It would doubtless then be satisfactory to His Excellency to be made aware that, so far as MR. DALYELL had been able to ascertain, the increase of the salt-tax which took place in 1869 had not had the same effect upon the consumption in the Ganjam district as it had in other parts of the Presidency.

In the year the tax was increased, the quantity of salt issued for use in the district was a little over a lākḥ of maunds, whereas in the year 1871-72, the last year for which he had received the returns, the salt taken up for home consumption amounted to one-and-a-half lākḥs of maunds. We might, therefore, reasonably hope that the present slight enhancement of taxation would not have the effect, to any extent, of depriving the poorer classes of Ganjam of what in this country was a very important necessary of life, though it might have the effect of slightly increasing the price. As to this increase of price, it must be remembered, however, that the State could only endeavour to secure the greatest happiness to the greatest number, and that the minority must be prepared sometimes to undergo some deprivation if a great benefit was secured to a large majority. This seemed to MR. DALYELL to be precisely the case on the present occasion. The advantage gained by the people of Orissa and a large part of the Central Provinces by obtaining a sufficient supply of salt for themselves and their cattle at a moderate price would be very considerable, and the benefits they would secure by the abolition of a portion of the customs-line were, as his hon'ble friend Mr. Ellis had said, incalculable.

To give the Council some notion of the oppression and annoyance caused by this line, he would ask permission to read two extracts from the reports, one from the Commissioner of Chhattisgarh and the other written by their late colleague, Sir George Campbell, when Chief Commissioner of the Central Provinces. Mr. Pedder said:—

“But high as is the duty, it would be paid cheerfully by the people, were it not for the system under which it is levied. Since the first introduction of the customs-line into Chanda in 1865, I have carefully watched its working, and, in giving the results of my experience, I would refer to Chanda as well as to Chhattisgarh.

“The customs-line runs along the western frontier of Chanda to the junction of the Wardha with the Waingunḡ; then crosses the latter river, and runs from south to north through the centre of the district, passing out at the Raipūr boundary. It then crosses the Raipūr district in a generally easterly direction, and runs partly through the Sambalpūr district, also with an easterly course, terminating east of the Mahánadī. Its total length in the Chanda district is 200 miles, and in the Raipūr and Sambalpūr districts 265 miles: and as customs jurisdiction extends over a breadth of 15 miles along the line, nearly 7,000 square miles of country in the three districts have been made subject to the intricate rules and heavy penalties of customs jurisdiction, and those rules are worked by a set of officials, who, as a body, are not of a high class, who have a direct pecuniary interest in making out cases of smuggling, and who practically are uncontrolled in the exercise of their powers. Along the 465 miles of road, travellers are liable to be constantly stopped and overhauled at the discretion of the customs peons; and over the 7,000 square miles of country, the possession, or the suspicion of the possession, of salt, carries with it difficulty, vexation and danger.”

Sir George Campbell writes :—

“ Throughout the Chief Commissioner’s tour, it has seemed to him that the customs-line has been felt by the people as a greater grievance than all other grievances put together; no one can travel along the valleys of the Nerbada and the Wardha without being liable to constant search by endless customs officers of low degree, posted at very short intervals, armed with iron search-forks of the nature of cheese-tasters.

“ Previous to the establishment of the customs-line, Chhattisgarh was the home of Banjáras, who used to take grain to the south in large caravans, and return laden with salt from the east coast, which they carried over all parts of Chanda and Chhattisgarh. The trade was a very important one, and rendered salt cheap and abundant in the wildest tracts. But the restrictions of the customs-line, not the duty on salt, have nearly destroyed this trade; many of the Naiks have been ruined, and most of the clans have emigrated,—a result deeply to be deplored.”

In conclusion, MR. DALYELL would wish it to be understood that it must not be supposed, from the remarks he had felt himself called upon to make on this Bill, that he was at all opposed to a salt-tax as a general measure of taxation. He felt that it was impossible to reach the mass of the population by a direct tax, and even if it were possible to do so, he felt convinced that indirect taxation was much more suited to the circumstances of the country. Salt was the only commodity which was universally consumed, and which could take the place in India of those commodities on which so large a portion of the revenue of Great Britain was raised with such great facility and with so little complaint; and he felt sure that if the tax was moderately and properly worked, it would operate as a moderate poll-tax, and there could be no objection to it. He would, therefore, support the measure before the Council, and would also state that he quite agreed with what had been said as to the necessity of suspending the rules and passing the Bill at once,—a course which had always been taken when the salt-tax had been raised on previous occasions, and if omitted now would be liable to lead to a considerable disturbance of trade.

His Highness THE MAHÁRÁJA OF VIZIANAGRAM said that from what had fallen from his hon’ble friends with regard to the Bill, the objects of which had been so ably explained by his friend the Hon’ble Mr. Ellis, he had only to say a very few words on the Bill.

Its main objects appeared to be a reduction of the salt-tax over a considerable part of the country, and he quite concurred in thinking that lowering the price of salt in Orissa and a large portion of the Central Provinces would have the effect of enabling the masses in those parts of the country to increase their consumption of this necessary of life; and that the measure, although involving a relief from taxation, would, he hoped, result in an increase of revenue. It was

of course a subject for regret that, in carrying out the measure, it had been found necessary to raise the salt-tax in the Ganjam district, but from his knowledge of that part of the country he was not of opinion that the increased tax was at all beyond what the improved circumstances of the people would enable them to bear. With the above remarks and observations he had much pleasure in supporting the Bill.

The Hon'ble Mr. ELLIS then moved that the Bill be passed, and said, after what had fallen from hon'ble members of Council, he had no hesitation in asking His Excellency the President to suspend the rules so as to permit the Bill to be passed. The remarks that had been made being generally in accord with what he had himself said, he need not refer to them at any length. He would state, with reference to what had been said by the Hon'ble Mr. Colvin, that it had been the object to take our measures so as to obviate any prospect of great disturbance to the course of trade. It was chiefly with that object the rate of duty in the southern portion of the Central Provinces had been lowered, otherwise there would be a chance of the Bombay salt being displaced by salt brought from the other side. And with a similar object we had graduated the duty on salt to Jahalpur, so as to prevent its displacing salt from Calcutta, except in the natural course of trade. The present Bill would confer on the salt of Western India no advantage, because at Jabalpur the salt would be chargeable with precisely the same rate of duty as now prevailed in that portion of the Central Provinces and in the North-Western Provinces beyond. As regards the increase of duty in Ganjam, to which the Hon'ble Mr. Dalyell had referred, it was not the object to regain a small portion of the loss we were likely to incur by lowering the duty elsewhere, but it was to prevent the lower-taxed salt displacing the higher-taxed salt that we were compelled to place a slight increase of duty on the salt in a very small area of the Madras Presidency. Had the object been an increase of our fiscal resources, we should hardly have presented to the district of Ganjam the sum which represented the additional taxation on that district. Had not steps been taken to prevent salt which paid a tax of one rupee thirteen annas a maund from passing into districts where salt paid three rupees and four annas, the abolition of the customs-line would not only affect the Government duty, but would disturb the course of trade. Therefore, both in Western India and in the Eastern Provinces, we had done our best to prevent such a disturbance.

His Excellency THE PRESIDENT said:—"Having heard the general approval which Members of Council have given to this Bill, and the expression of their opinion that it would be right to pass it into law immediately, in order to pre-

vent possible inconvenience to trade, I have no hesitation in suspending the Standing Orders, in order to allow the motion to be put, that the Bill be passed.

“ Before doing so, however, I wish to say a few words. The Council will remember that, in the autumn of the year 1872, the Government of India issued a circular to the different Local Governments and Administrations, calling for the opinions of local officers, both European and Native, of the greatest experience, as to the effect of the existing system of taxation upon the people throughout all parts of the country. The answers to that circular were circulated to the Members of the Legislative Council, and those who have paid attention to Indian finance will have observed that several taxes to which objections were expressed by the most experienced officers have since that time been modified or repealed. The officers of the Central Provinces pointed out that the customs-line, both to the north and south of those provinces, was one of the measures connected with taxation of which the people most complained. My hon'ble friend, Mr. Dalzell, has to-day explained in the graphic language which was characteristic of the late Lieutenant-Governor of Bengal, the manner in which the customs-line operates to check intercourse and trade between one side and the other of the hedge or barrier which extends along many hundred miles of country.

“ It has, since the year 1872, been in the mind of the Government of India at any rate to make a step towards the removal of this barrier. It is unfortunately out of our power to attempt to deal at present with the northern customs-line; but the removal of the southern customs-line appeared to us to be a feasible measure, and I am happy to say that, owing to the care and attention of my hon'ble friend Mr. Ellis, and to the co-operation of the Governments of Madras and Bombay, which I desire to take this opportunity of acknowledging, we shall, when the Council passes this Bill, be able to dispense with it.

“ The effect of the Bill, as has been pointed out in the course of the discussion, will be to reduce the tax on salt over a considerable extent of country. On the other hand, it will be necessary that the people in a portion of the district of Ganjam, in the Madras Presidency, shall submit to a slight increase in the tax in a very limited area; but at the same time the Government of India propose to devote the whole of the amount derived from that increase to the district that pays it, by making an additional grant for that purpose to the Madras provincial assignment. Moreover, the people of Ganjam are likely to benefit considerably from the removal of the customs-line. They will be able to obtain grain from the Central Provinces without the intervention and obstructions of the customs-line, and whatever extra charge they may have to

pay for salt will, I believe, be recouped by the free opening of their trade with the Central Provinces and Orissa.

“Some observations were made in the course of the discussion as to the general incidence of the salt-tax. I do not propose to go into that question; but to judge from the answers which we received to the Financial circular of 1872, the opinion expressed by Rájá Ramánáth Tagore and other members of Council to-day, that the salt-duties are not oppressive, is correct, for hardly one of the experienced officers, either European or Native, who were then consulted, gave their opinion against the tax. At the same time there is no doubt of the advantage, which, as has been pointed out by the Hon'ble Mr. Colvin, would arise from equalizing the salt-duties over the whole of India, not because those duties are at present excessive, but because their reduction to an uniform rate would enable the Government in times of emergency to raise funds for the service of the State in a safe and unobjectionable manner by increasing those duties.

“This Bill will, in addition to its primary object, also, to a certain extent, enable the Government to judge how far the arguments which have been used by some and not accepted by others, that the effect of reducing the salt-duties would be to increase consumption, are correct or not.”

The Motion was put and agreed to.

MAJORITY BILL.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM moved for leave to introduce a Bill to establish a uniform age of majority for persons domiciled in British India, and said, “my Lord, I have the honour to ask permission to introduce a Bill which was drafted during the last session of the Council here, and which in the interval that has elapsed since that time has been circulated for the opinion of the Local Governments and other authorities throughout the country. The expressions of opinion which have been thus obtained have encouraged me to persevere in bringing the Bill before the Council in the hope that the measure may, in some form or other, become law at an early date. The Statement of Objects and Reasons prepared in support of the Bill refers to the present unsatisfactory state of the laws regulating the age of majority now in force in this country. I do not propose to recapitulate what is there advanced. The law continues to be in the same uncertain state as it is there shown to be, and I believe I am right in saying that at this moment, for example, no one can state with certainty what is the age of majority for all purposes of a person resident in one of the presidency towns and possessed

of property situate in the Mofussil. I shall, therefore, make no further reference to the facts set out in the Statement of Objects and Reasons beyond taking the opportunity of correcting a mistake in that statement as to the age at which Muhammadans legally attain majority. It is there alleged in accordance with a dictum in Macnaghten's Principles of Muhammadan Law that, by that law, the age of majority is the end of the sixteenth year. I have since been referred to the original authorities on which Macnaghten's work is based, and from them it appears that the age of majority established by the Muhammadan Law is the end of the fifteenth year, or in certain cases even earlier.

“The laws of all nations are agreed in recognizing the fact that immaturity of years constitutes to a greater or less extent a personal incapacity to do a legally binding act, and to be personally responsible for one's actions. But the age or ages at which such incapacity and irresponsibility shall cease are purely artificial, and even amongst races exposed to similar physical conditions greatly vary. Thus on the Continent of Europe at the present day the age of full majority in England is twenty-one, in France twenty, in Prussia twenty-five, in Spain twenty-five, in Denmark twenty-five, in Russia twenty-one, and so on. With, however, the exception of this country, I am not aware of any civilized state which does not possess a general law of majority affecting the body of its subjects, and regarded as the territorial law for all persons contracting in that country. The importance of some such uniform law is manifest in the matter of contracts. According to the law of England, the capacity to contract is determined by the law of the place in which the contract is made; and it is plainly equitable that a subject of such place contracting with a foreigner should not be required to look further than the law with which he is presumed to be acquainted, to ascertain whether the person seeking to contract with him is or is not competent to do so. Thus, a person in England about to contract with, say, a Prussian, has only to satisfy himself that the Prussian is over the age of twenty-one to be assured that he cannot afterwards seek to evade his obligations under the contract by pleading minority. In this country we find it difficult to say at what age such Prussian is first competent to contract. It is for reasons such as these that it seems desirable that in this country there should be an uniform age of majority established by law. This object is sought to be obtained by the Bill, which I have the honour to move for leave to introduce in the Council. The question what that age should be is a matter admitting of much difference of opinion, and which may be considered hereafter if your Lordship be pleased to entertain the Bill. In the same way it may then be determined whether it is expedient

to have one age of majority for all purposes, or whether it is preferable to have different ages at which persons may first become capable to perform different functions and incur different responsibilities. The question to which the Council will doubtless agree with me in thinking, I have now only to address myself, is whether it is necessary or expedient that there should be a legislative enactment for the purpose of rendering the law on this subject more simple and uniform. On this point I trust I may not be deemed to be out of order in referring to the opinions received from the authorities who, as I have already stated, have been consulted on the matter, and which opinions, I offer my best thanks to my friends, the Hon'ble Mr. Bayley, and the Home Secretary, Mr. Lyall, for kindly permitting me to see. I trust that I may not be thought presumptuous in saying that the Bill need not interfere with the religious rites of either the Hindús or the Muhammadans, and indeed on this point the ruling of this Council is explicit,—*vide* section 19, Indian Council's Act—

“ ‘Provided always that it shall not be lawful for any member or additional member to introduce without the previous sanction of His Excellency the Viceroy and Governor General, any measure affecting * * * * the religion or religious rites and usages of any class of Her Majesty's subjects in India.’

“ In fact, in the opinions of all the persons supposed to be affected by that interference, who have expressed their views on the matter to the officers of Government, no such fear exists. This is explicitly stated in the returns made by the Commissioner of Patna and the Government of Bombay respectively, as regards the Muhammadan inhabitants of Patna and Bombay. The one exception is in the case of the Muhammadan Literary Society to which I shall allude, but I need merely say with reference to that, that it is on this point in conflict with the opinions of the great Muhammadan communities of which I have spoken and of such men as Munshi Amír Ali, Khán Bahádur, and Sayyid Ahmad, Khán Bahádur, who had been good enough to favour me with their views on the question. Even in the Muhammadan religion the age of majority, as observed by the commentators of the Koran, “Durrúl Mukhtár” and “Tafsír Husaynî,” is as follows. The opinions of these two celebrated commentators are admitted and bowed to throughout the Muhammadan world of Europe and Asia.

In the Koran it is said—

[وابتلوا اليتامى حتى اذا بلغوا النكاح فان آنستم منهم رشداً فادفعوا اليهم اموالهم]

“ Which means ‘Try the orphans until they arrive at the age of puberty, and then if you see and find out that they are able and competent to find out the true path of their life-journey make over to them their property.’

“Tafsír Husaynî, commenting on the above—says: Before delivering up to children their property they should be tried, in the case of boys, as regards their judgment, intellect and capability in making bargains and taking care of their goods; in the case of girls, as to their knowledge of spinning, weaving, and proper management of domestic and household affairs in general, even if they have attained ‘bulúgh’ or the age of puberty. When boys and girls are found thoroughly able to judge good from bad, of understanding religious matters and managing their property efficiently, or, in other words, when they are found to have attained ‘rashad,’ namely, the true path, their property should then be made over to them. ‘Durrul Mukhtár,’ which is a fikah, namely, on which all the Muhammadans observe religious acts, rites, &c., says—

فان بلغ الصبي غير رشيد لم يسلم اليه ماله حتى يبلغ خمساً وعشرين سنة

“Which means, ‘Though boys and girls who may have attained ‘bulúgh’ or the age of puberty, be yet found not to have attained ‘rashad’ (the true path) or sufficiently able to look after their own interests properly at an earlier age, their property should not be made over to them till they are 25 years old. I shall not occupy the time of the Council with further commentaries, which are acknowledged by all the Muhammadans of India, Western Asia and Europe. I merely beg to add that there are innumerable authorities to support the above-mentioned views, which can be produced if required.—*Vide* Maalam uttanzil Baydhavi commentaries and fikahs.

“It is to be regretted that such high authorities should not have received that attention from the Muhammadan Literary Society which they deserved from a body who make it their avowed object to improve and raise the social and religious condition and status of their Society. Very likely the leading members of that community and its Secretary, Maulaví Abdul Latíf, Khán Bahádúr, overlooked their existence. Besides, such an acknowledged and highly respectable Muhammadan authority in Bengal, as my learned friend Munshi Amír Alí, Khán Bahádúr, has been good enough to send me the paper containing his opinion on the matter, which I beg to read—

“His Highness the Mahárájá of Vizianagram having referred to me for an expression of opinion upon a Bill introduced by His Highness in the Legislative Council to establish a uniform age of majority for persons domiciled in British India, I beg to remark that in my opinion on the age regarding majority prescribed in ‘Shar’a’ or Muhammadan Law is virtually with direct reference to young persons acquiring right for practising offices connected with religion, and that, therefore, there does not appear to me any objection for the civil authority to fix by legislative enactment a uniform age of discretion on attaining which individuals of all classes of Her Majesty’s subjects of either sex may exercise civil rights and privileges. I think too that the age of 18 years proposed in the Mahárájá’s Bill is most unobjectionable for starting in civil life.

“This principle has been in force regarding succession to landed estates under the provisions of Regulation XXVI of 1793, which, as far as I am aware of, has worked over the long period of 80 years without causing dissatisfaction.

“I assume that the scope and intention of His Highness' Bill is to extend the operation of Regulation XXVI of 1793, to all civil matters and transactions instead of landed proprietary simply, and I am inclined to believe that such extension will in its action be attended with convenience and benefit.

“Understanding then the proposed Bill as one for fixing a uniform age of majority for purely civil purposes and not for anything provided by the sanction of religious authority, I see no reason that there should be any objection to its passing into law.’

“And my learned friend, Maulavi Sayyid Ahmad, Khán Bahádur, to whom I had spoken several times on the subject in Benares, is of the same opinion. If I may be allowed on this matter to bring in my personal feeling and experience as a Hindú, I would say that the question of the age of majority is in no way regarded as a matter of religious sentiment by any sects or individuals of the creed to which I belong. Why, amongst all nations, even after a few days after the birth of a child, he undergoes a religious ceremony, namely, námakar-
nam or christening, but this religious ceremony, as it does not clash with his civil rights, will not be at all interfered with by the principle of this Bill. Manu, the greatest authority in the Hindú religion, whose institutes are highly approved of, nay even venerated in the western world, says, in the first sloka of the 4th Chapter,

॥ चतुर्थमायुषोभागमुषित्वाद्यं गृहीद्भिः ॥
॥ द्वितीयमायुषोभागं कृतदारोगुहेवसेत् ॥ १ ॥

which means, ‘one-fourth of man's life should be devoted for the accomplishment of education under the tutor to prosecute the worldly and holy studies. The second part of the life's portion should be entered in a married life.’

“It is said in the Vedas, and very well known in the civilized world, that a man's age is 100 years, and when Manu said one quarter of the first portion of the life should be devoted for prosecuting the different useful and important studies for the accomplishment of a man as a bachelor is 25 years, and, even taking the present average of human life, it may be fairly said to be 75, and a quarter of that is a few months more than 18. From this it is plainly shown that the student should wait till 25 to complete his education, and then he may be called a major. But when the pandits gave the sloka—

॥ गर्भस्यः सप्तशोडशेयः आढनादस्तराक्षिः ॥
॥ नाम आवोढवाच्यत् पीगंडशेति राक्षते ॥
॥ परतोव्यवहारस्यः स्वतः पितरावृते ॥

which means 'from the moment God gives life till 8 years of age a child may be considered as if in the womb. From his eighth year till his sixteenth year he may be called a boy and then a youth; after that period he can begin to see for himself independent of his parents.' This sloka is from the *Nárada Smṛiti*; and about 100 years ago, when the pandits in their representation to Government made use of it to establish 16 years as the age of majority, they evidently gave it a wrong interpretation, because at the same place in the *Nárada Smṛiti* it is distinctly said thus—

॥ अप्राम व्यवहारस्य स्वतंत्रोपि हि न र्थभाक् ॥
॥ स्वतंत्रं तु कृतं ज्येष्ठे ज्येष्ठं गुणावयः कृतं ॥ १ ॥

which means that, although after attaining the age of puberty if you see that he is incompetent in looking after the affairs in general, you must not recognize him as a major, neither can he have any demand for his property. In the case of orphans the eldest son is merely called the head, but when he has sense enough and competent to look after the affairs properly in all purposes, it is *at that age* that he should be recognized as having attained *the age of majority*. In the words of the Committee of the British Indian Association, speaking for the Hindú community, the question of the limit of minority is not regarded as a matter of religion or conscience, and an alteration of it is not, therefore, open to the charge of religious interference on the part of the Government. The second ground of objection to the measure I am seeking to propose taken by the Muhammadan Literary Society here, is that the Bill may disturb the present law relating to marriage and divorce amongst the Muhammadans. To this I may now merely say that the Bill I propose to introduce will not attempt to interfere with such matters, but will be confined to the general status of a minor with reference to contracts and the disposal of his residence and education. Their Lordships the Judges of the High Court of Bombay have been pleased to say that they all consider that the thanks of British India should be given for such a needed measure. The late Hon'ble Mr. Justice Dwarka Nath Mitra, the only one of the Judges of the Calcutta High Court who furnished the Government with an expression of opinion on the measure, entirely approves of its general policy, and considers legislation on the subject to be absolutely necessary.' Similar opinions have been given by the Chief and Judicial Commissioners of Oudh, the Chief Commissioner of the Central Provinces, the late Chief and the Judicial Commissioners of Assam, the Chief and Judicial Commissioners of Coorg, the Commissioners of Orissa, Chutiá Nágpur, the Rájshahai Division and Patna, the Resident of Haidarábád, and the Hon'ble Mr. Beaufort and Mr. C. D. Field, the then Commissioner of Chittagong. If nothing else were sought to be attained by this Bill than

certainly as to the age or ages at which individuals can incur binding legal obligations, it would, I trust, in the admitted uncertainty of the laws on the matter now prevailing in the country, be favourably received by the Council. In the great department of contracts, the recent Act, which is now the general law of the country, has made the agreement of a person who has not attained the age of majority to which he is subject, absolutely void, and not merely voidable, or capable of being ratified on the attainment of majority as hitherto.

“It is obvious that if in any classes of cases it is uncertain what is the age of majority at which a person can make a binding contract, there exists a direct check on the freedom of contracting, and an inducement to persons contracting with those who may or may not be able to repudiate the engagement to exact for themselves such ultra-favourable terms as may compensate them for the risk they incur.

“The Judges of the High Court of the North-Western Provinces fully approve of the principle of the Bill. The members of the Board of Revenue of the North-Western Provinces have certain objections and state as follows—‘The Board have grave doubts of the policy of the measure proposed by the Maharájá of Vizianagram, and suggests that if the Government of India decide in carrying the Act through, that the work should be entrusted to the Law Member of the Council.’

“His Honour the late Lieutenant-Governor of the North-Western Provinces was of opinion that there is much weight in the Board’s objections. Therefore, to the Hon’ble Mr. Hobhouse, who is one of the greatest and most learned and eminent jurists in the world, I make over the charge of the Majority Bill, agreeably to the opinions of His Honour the Lieutenant-Governor of the North-Western Provinces and the members of the Board of Revenue of those provinces. I hope my friend the Hon’ble Mr. Hobhouse will kindly take charge of this Bill, and I shall be happy to give him any assistance that lies in my power with regard to this measure.”

The Hon’ble MR. HOBHOUSE said the Maharájá of Vizianagram had appealed to him to take up this Bill. MR. HOBHOUSE answered by saying that he should be very happy to assist the Maharájá in the progress of the Bill so far as MR. HOBHOUSE was able to do so. The Maharájá had, however, greatly over-estimated the amount of assistance which MR. HOBHOUSE could give him. He was, he grieved to say, not an eminent jurist. He was only a practising lawyer, of somewhat plodding habits, and some professional experience. Still, such as his faculties were, they were quite at the Maharájá’s

disposal; and he should be happy to promote the objects of the Bill so far as they ought to be promoted. Indeed, from a lawyer's point of view, the Bill contained nothing but good, because there would be great legal advantage in simplicity and uniformity as regarded the law of majority. The circumstances which the Mahárájá's industry had brought to light shewed that the law was not in a satisfactory state. It was anomalous that a Hindú should inherit property at one age, a Muhammadan at another age, and a Christian at a third age, seeing that the three were born and bred in the same climate, had like constitutions and capacities, and formed members of one community. It was very absurd that a person born on one side of the Mahratta ditch should attain majority at one age, and another, say his cousin, born on the other side of the ditch, at another age. All anomalies of this kind caused practical difficulties in administering the law. Therefore, so far as the Bill could be legitimately maintained, he should be happy to give it his support.

Of course a statesman's point of view differed from that of a lawyer, but with MR. HOBHOUSE'S present information he did not think there would be any political difficulty in proceeding with the measure. He had not seen the provisions of the Bill, and therefore he could not say whether he should approve it or not; before he could say that, he must look into the details. But he judged from the Mahárájá's speech that he would take care to steer clear of rocks, and to see that the feelings and sentiments of the people were not rudely encroached upon. He collected that the Bill would be confined to such matters as contracts and the custody of the property and person, and that it would not seek to affect such matters as marriage, divorce, adoption, or the performance of religious rites. Indeed, as regards the religion or the religious rites and usages of the people, a Bill could not, as his hon'ble friend had reminded them, be introduced by any member without the previous sanction of the Governor General, which, so far as he knew, had not been accorded. The Mahárájá had argued at some length that the question of majority would not touch any religious question, but MR. HOBHOUSE thought it would be better to provide expressly that it was not intended to interfere with the religious usages of any class of persons.

As to other matters, the Bill steered clear of the matters he had mentioned, and confined as it was in its scope, he did not see any reason why it should not be regarded as a measure of reasonable reform. He must ask the Mahárájá to keep charge of the measure, but either in his presence or in his absence, MR. HOBHOUSE would be glad to afford him such assistance as he could conscientiously give.

If then the Bill steered clear of the perilous matters he had mentioned, Mr. HOBHOUSE did not see any reason why it should not effect a very useful reform, not only by giving greater uniformity to the law, but by postponing the age of majority and providing a better measure of the capacity of a young man to manage his affairs, to bind himself by contract to decide upon his own residence and his own education.

The Motion was put and agreed to.

The Hon'ble Mr. HOBHOUSE, with the permission of His Excellency the President, moved that the Hon'ble Mr. Colvin be added to the Select Committee on the Bill for the further amendment of Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*) and for other purposes.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for the further amendment of the Burma Courts Act, 1872—
The Hon'ble Mr. Bayley and the Mover.

On the Bill to consolidate and amend the law relating to Ports and Port-dues—Major General the Hon'ble Sir H. W. Norman, the Hon'ble Messrs. Inglis and Colvin and the Mover.

The Council then adjourned to Tuesday, the 5th May 1874.

CALCUTTA,
The 21st April 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.