

Thursday, March 14, 1878

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

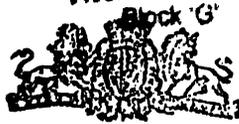
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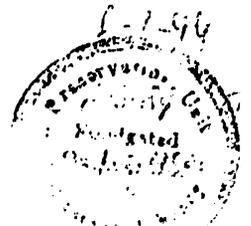


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1879.



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 Thursday, the 14th March, 1878.

P R E S E N T :

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

His Honour the Lieutenant-Governor of Bengal, C.S.I.

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

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.O.M.G., C.B.

The Hon'ble Sir J. Strachey, K.C.S.I.

Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. O. Hope, C.S.I.

The Hon'ble T. H. Thornton, D.O.L., C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble G. C. Paul.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

ADDITIONAL RATES (CENTRAL PROVINCES) BILL.

The Hon'ble SIR JOHN STRACHEY presented the Report of the Select Committee on the Bill for the levy of Additional Rates on Land in the Central Provinces.

The Hon'ble SIR JOHN STRACHEY also moved that the Report be taken into consideration. He said that in making this motion he had only a few observations to make on the provisions of the Bill. The measure, as the Council was well aware, was part of the new taxation scheme lately brought forward by Government to enable it to meet the expenditure which must be incurred for the relief and prevention of famines. The present Bill was not passed at the same time as the other measures, because some further reference to the Chief Commissioner of the Central Provinces had been necessary, and the information which was required in order to admit of its provisions

being drafted was not then complete. This information had since then been obtained, and the Bill had been drafted in accordance with it. The practice of levying cesses in addition to the land-revenue already existed in the Central Provinces, but the present cesses were collected under engagements which had been entered into by the people at the time of settlement and not under powers conferred by any law. Now that steps were being taken for meeting famine expenditure by the imposition of taxation in addition to the land-revenue, it was necessary that there should be a law to authorize its collection, and that law would be contained in this Bill if it should be approved by the Council. In drafting its provisions the recent Acts had been followed as closely as possible, and even their wording had been, for the most part, adhered to. There was one point only in which the Bill differed at all from those Acts, and that was not one of principle, but of practice only, the object of which was to regulate the manner in which effect was to be given by the Executive Authorities to the provisions of the law. The principle of the Acts already passed was that all proprietors of land should be taxed at the rate of one per cent. of the total rental of their estates. Now, in the Upper Provinces, proprietary title in land was, generally speaking, free from complications. It was, for his present purposes, a sufficiently correct description of it to say that the entire rental of every estate was divided into two equal shares, one of which belonged to the proprietor (whether a single individual or a co-parcenary body), and the other share to the State, that was to say, that each person, whether the land owned by him was much or little, received half of the rental of the land, and paid the other half to the Government. But in the Central Provinces the nature of proprietary rights in the soil was not so simple. Those Provinces lay between the zamíndárl tenures of Bengal on the North and the raiyatwárl holdings of Southern India on the other side, and the tenure of the land in them was much affected by their situation. In the districts which adjoined Bengal, the superior owner of an estate enjoyed the whole of the rent. In the Southern and Eastern parts of the Provinces a large share of the proprietary profits was retained by the tenants, and the zamíndár or patel received only a part of the rental. Between the zamíndár and the lowest class of tenant there were various intervening grades who participated, more or less, in the proprietary profits. Some of these different tenures occurred in almost every village; in many several, and in some villages all, of them could be found. Obviously, the profits received by landlords in any part of these Provinces varied inversely to the extent of the subordinate tenures which might exist, and their liability to pay the rate now proposed should vary, in justice, according to their share of the profits. A málguzár, for instance, might very reasonably be called upon to pay the full cess in respect of tenures-at-will; but it would hardly

be fair to call upon him to do so in respect of lands where perhaps twenty or thirty or more per cent. of the rental never reached him, but was intercepted by the owners of intermediate holdings. To prevent any injustice of that sort the alteration which had been mentioned was introduced into the Bill. That alteration, as compared with the Bills passed for Northern India, would be found in section 6, clause (a), and the object was to enable the Chief Commissioner, in assessing the tax, to follow the proprietary rights into the hands of all the different classes who enjoyed a share of them, and to take from each of those classes what would be a fair contribution from them according to the proportion of the rental which they enjoyed. It had been ascertained from the Chief Commissioner that there would be no practical difficulty in applying such a rule. The Select Committee had therefore no hesitation in laying upon the Local Government the duty of making these proportional assessments. The fair and reasonable nature of such a provision was so self-evident that he need not take up the time of the Council with any arguments in support of it. The Bill, he might add, had received the cordial concurrence and approval of the Chief Commissioner of the Central Provinces. As in all its provisions, except the one which SIR J. STRACHEY had now explained, the Bill was nothing more than a simple re-enactment of the measures which had quite lately been passed,—and passed by the Council after full deliberation and discussion—and as it was evidently desirable that this, the only remaining legislative measure rendered necessary by the recent extension of taxation for the purpose of meeting expenditure on famines, should also be passed without delay, he hoped the Council would accept the recommendation of the Committee and would allow the Bill this day to become law.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ARMS BILL.

The Hon'ble SIR EDWARD BAYLEY moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Arms, Ammunition and Military Stores be taken into consideration. He said that, in presenting the Report of the Select Committee, he had called the attention of the Council to the very considerable alterations which had been made in the details of the Bill, and for the present he would say no more upon that subject. He wished to address himself on this occasion rather to the objections which had been taken to the principle of the Bill. They had been told that no case had been made out for the Bill; that it was apparently entirely unnecessary. One

representation which they had had from the British Indian Association went so far as to say that no facts or arguments had been adduced to establish the necessity for such rigorous legislation. Well, he really did not know what evidence would satisfy every one. He thought he had been at some pains, when he moved for leave to introduce the Bill, to show how urgently the necessity for some such measure had been for many successive years persistently pressed upon the Government of India by almost every Local Government and Administration. He mentioned also certain statistical facts which proved the existence of a large and increasing traffic in the very description of arms which it was most undesirable should be introduced into India; and the Council had still been told that no case had been made out. So far as he could understand, the only statement to contravene the evidence he then adduced was, first, that the importation of arms and the value of arms had been diminishing during the last five or six years, instead of increasing; and in the second place, that a great number of people had been destroyed by wild beasts. He did not in the least propose to controvert either of those statements; but he had taken pains to show, when he introduced the Bill, that he was perfectly aware of the fact that a diminution had taken place in the actual imports of arms, and he gave the reason for it, that was to say, that the Government of India had put into force certain powers which they possessed under the Customs Act of absolutely prohibiting the importation of arms of a certain description. Well, that was a very useful power, and one which the Government proposed to retain. It would supplement very effectively the provisions of the present Bill. But he also pointed out that it was one which by itself was very easily evaded, and that the Local Governments were not satisfied with it; that they asked for more power, and were not apprehensive that these additional precautions would be abused. He went further, and had told the Council that the Government of India were in possession of information which showed that the importation of arms would, if the existing law were not supplemented by a fresh and more stringent legislative enactment, very soon be very largely and injuriously increased. He thought himself that that was sufficient evidence of the necessity for the Bill, even if it had not been supplemented by the very definite expression of opinion by his hon'ble friend the Member in charge of the Military Department, whose opinion on a subject of that character should, SIR EDWARD BAYLEY thought, be received as decisive. However, if more evidence was wanted,—that is, if those who had denied the necessity for the Bill wanted more evidence—he would say that this Bill had now been published; it had been commented upon with very great care, he was gratified to say, by a large number of local officers, and he had noted something of the result. A great many, in fact a large majority, of the officers who had been consulted had not

taken any notice at all of the principle of the Bill or the necessity for it. But he might say that in their remarks almost all of them had implied their approval of the Bill. But a considerable number of those officers had gone out of their way in express terms to approve of the Bill and to declare the necessity for it. He would mention some of them—

The Panjáb Government thought the provision for controlling the possession of arms a wise and salutary one.

The Commissioner of Dehaját considered the Bill salutary and called for.

The Commissioner of Múltán thought the provisions of the Bill salutary and urgently called for.

The Commissioner of Jalandar thought the Bill urgently needed.

General Keyes had long since pointed out the need for amending the law and approved the Bill.

The Inspector-General of Police approved of the Bill, and urged that it should be made more stringent.

In Bengal *the Commissioner of Dacca* had no doubt of the expediency, if not of the necessity, for controlling the present facility for acquiring arms.

The Commissioner of the Presidency Division called the provisions of the Bill good and suitable.

One of the most distinguished Judicial officers in Bengal, *Mr. Field*, goes out of his way to call it a wise and necessary measure.

In the Birárs, *Sir R. Meade* entirely approved of the provisions of the Bill.

The Commissioner of the Haidarábád Assigned Districts thought the Bill admirable in intention and scope, and admirably drawn.

In Bombay *the Government* approved of the Bill generally.

The Commissioner in Sindh did the same.

The Commissioner of the Central Division had for years advocated a similar Arms Act.

The Commissioner of the Northern Division thought the Bill would undoubtedly meet a great want.

In the North-Western Provinces *the Government* approved of the Bill subject to some amendments.

The Commissioner of Jhánsi called it an excellent and very necessary Bill.

In the Central Provinces *the Chief Commissioner* thought the necessity for the Bill as an imperial measure was proved.

In Madras *the Government* approved the principle of the Bill.

One Collector, *Mr. Thomas*, said he had himself recommended a Bill on the same lines.

Another, *Mr. Webster*, said the measure was imperatively required.

Well, SIR EDWARD BAYLEY hoped, although he could not expect to satisfy every one, that these expressions of opinion might be taken as sufficient. He could say that almost every officer who had been consulted had either, as he had said, expressly or impliedly approved both the principles of the Bill and the direction in which it went. There was actually only one exception, and all that was necessary to say of it was that the exception seemed to prove the rule. Sir William Robinson in Madras had no doubt taken the exact line which the British Indian Association had taken. So much for the necessity for the Bill. They had been told, it had been said in some quarters, that the Government had brought in the Bill under the influence of a scare. Well he thought he had shown, and the papers had shown to the Committee, that, so far from this being the case, for at least eight successive years the Government had been pressed to pass a Bill precisely on these lines; that they resisted doing so until the necessity for it was absolutely shown. So far from the Bill being passed under a scare, he might say, that some of the most important information showing the necessity for the Bill had only been received since it had been introduced.

He would not trouble the Council with any further general details of the Bill. There were a number of objections taken, and he was bound to say that some of them had been taken with great force, and had proved very useful to the Committee in settling the details. He might class them into three classes, first, that the Bill was too stringent, unnecessarily severe, and that a portion of it was not workable. He was bound to admit, and he had pointed out when the Bill was introduced, that there was a slight oversight in drafting; that the Bill in its original shape had certainly been made somewhat rigid by the old provision as regards the proclaimed districts having been removed. But that had been altered in Committee by the restoration of this provision. In the next place they were told that the Bill was too severe. He had pointed out how largely the Committee had modified the severity of the Bill by amendments which they had made. He had himself assented to those amendments; but he thought that if they erred in any way, they erred, perhaps, somewhat in the direction of over-relaxation. Personally, however, he was contented

with the Bill as it stood, with the exception of a trifling verbal amendment which he proposed to move on the present occasion. Then, again, they were told that some of the provisions of the Bill were not clear; the objection thus taken was doubtless good, and the Committee had done their best to remedy the defect. He trusted that the Council would, on looking over the Bill in its present shape, be willing to agree, first, that a case had been made out for a Bill, and for a Bill drawn on the lines of the present measure; and, secondly, that the Bill had been shorn of most, if not all, of its objectionable features. At any rate, he must thank the Committee for the very patient attention they had given to its provisions and the trouble they had taken to make the Bill workable.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY, with the permission of His Excellency the President, moved the following amendment:—

First, that in section 17, clause (b), for the words "except a license for possession," the following be substituted, namely:—

"granted in a place to which section 32, clause 2, of Act No. XXXI of 1860 applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place."

Secondly, that in section 17, clause (c), for the words "except as aforesaid," the words "other than a license for possession" be substituted.

The object of the amendment was to impose a license for possession of arms of all kinds in those parts only of the country which had been already disarmed under the provisions of Act XXXI of 1860. His motive, he must explain, in bringing forward the present amendment, was partly a financial one, although that was not his principal object. He hoped to be able to show to the Council, looking at the matter from a financial point of view, that the privilege of possessing arms in parts of the country which were already disarmed, and to which alone he now referred, was a legitimate source from which to derive revenue, and that it was a point of some importance in connection with the late measures for extending the financial powers and responsibilities of the Local Governments. He said that, as a source of Imperial revenue, the receipts from fees of this kind would, no doubt, be quite insignificant, but from a Provincial point of view they were not without importance. As an illustration of this importance, he might mention that in the North-Western Provinces, with which he was best acquainted, it was calculated that such fees levied upon a very moderate scale would yield not less than one lakh of rupees a year—a sum which would be very valuable as an addition to the Provincial finances. It would be difficult in his opinion to find any other way of raising such

a sum which would be open to fewer objections. For levying such fees was taxing a luxury, and had all the merits of that kind of taxation. He knew, of course, that there were tracts of country where, from the great numbers of wild beasts or the proximity of turbulent neighbours or from other dangers, arms were a necessity,—a necessity and not a luxury. Where this was the case, no one could recognise more fully than he did that we ought to do nothing whatever which could in the slightest degree interfere with the means of protection which the people really required in those tracts. But such parts of the country were exceptional, and they could be sufficiently provided for under the powers of exemption which the Bill conferred on the Government. Leaving them out of sight for the present, and speaking of the disarmed tracts to which alone his amendment would apply, he affirmed, without hesitation, that the privilege of possessing arms was a luxury. It was usually sought for, not so much on account of the protection afforded by the arms, as because they enhanced the dignity of the wearer, and conferred upon him some kind of personal distinction. He could recognise no reason for exempting persons who wished for a privilege of that sort from paying something for it. He would go farther and say that he could hardly call to mind any more suitable and legitimate means of obtaining revenue than that of calling upon people who desired such marks of distinction to pay for them. Such a source of income fulfilled all the conditions which were required in taxation. The amount payable would be certain and easily known by every body. No one need pay it at all who found it inconvenient to do so. And those who did pay would contribute in proportion to the advantages obtained by them. Exception had, he knew, been taken to the proposal on the ground that it might offend against another fundamental rule of taxation by compelling the tax-payer to pay more than was likely to find its way to the treasury. It had been said that, to levy fees on licenses for the possession of arms might give opportunities for oppression and extortion, and might do more to enrich the underlings of the Magistrates' Courts than the public treasury. SIR JOHN STRACHEY thought that this objection would not be found good upon examination. He had already said that the operation of his proposed amendment would be confined to those districts in which the possession of arms was prohibited, and in which there was no intention of relaxing that prohibition. In such places it was impossible to dispense altogether with licenses. Section 15 of the Bill made provision for the grant of such licenses, and it was obvious that without them the Government had no means of keeping itself informed, or of controlling the number, of arms which were from time to time in the hands of the people. But if licenses were required at all, the objection to charging fees for them lost all its force; because it was not the fee charged which gave the opportunities of speculation,

but the necessity of applying for and obtaining a license which had to pass through the hands of subordinate officials. But in his humble opinion, speaking of the Provinces to which alone it would apply, he believed that those anticipated dangers had really no existence whatever; certainly not more than in most other forms of taxation which might be named—in octroi-collections, in inland customs-collections, and in license-tax collections. He believed that the only effect of charging fees for the possession of arms would be to add by the amount of those fees to the cost of obtaining them. This additional cost was very far, in his opinion, from being a disadvantage; for the Council was now considering the case only of those parts of the country where it had been determined, on grounds of political expediency, that the people ought not generally to be in possession of arms, and where a cheap and abundant supply of them was on no grounds desirable.

He had dealt now with the only objection which he had heard to the proposed levy of duties on these licenses. He wished to add some very important evidence in confirmation of the arguments by which he had sought to support his amendment. In the North-Western Provinces, this special subject had undergone very long and careful consideration, and the result had been to elicit the strongest possible opinions in favour of the measure which he was advocating. So far back as 1870, Sir W. Muir, the then Lieutenant-Governor, appointed a Committee of the most experienced officers to consider the best way of adding to the revenues. That Committee made various recommendations, and, amongst them, advised the imposition of a duty on arms-licenses; and SIR J. STRACHEY would, with the permission of His Excellency, read a short passage from the Committee's report:—

“ 85. It is unnecessary to propose any further taxation for actual requirements. The Committee desire, however, to point out that a legitimate source of income may be found by enforcing fees on the issues of arms-licenses. Arms in this country are in the great majority of cases used as a means of increasing the dignity or supporting the rank of the Natives who wish to carry them.

* * * * * * *

The probable income arising from this source is conjectural only. It will probably be not less than £10,000 per annum.”

Sir W. Muir entirely approved of that recommendation, and, in June, 1871, submitted a proposal to the Government of India for carrying it into effect. In the letter which he wrote to the Government of India he said—

“ The Lieutenant-Governor concurs generally in the views of the Committee. The scale of fees and the suggested rules for issue of licenses appear suitable, but the Local Government might, His Honour thinks, receive power to vary these, within certain limits, from time to

time, as may be found expedient. For districts that have not been disarmed the scale is perhaps too high, and there it might be reduced one-half.

“The Lieutenant-Governor is further of opinion that in all parts of the country which have been disarmed, licenses should be required, not only to carry, but to possess, arms.

“Exemption will be readily granted in parts of the country where prevalence of wild beasts or other danger may render it expedient that arms should be possessed or used.”

The proposal thus made was not carried into execution. It was brought forward originally by Sir W. Muir under the impression that it was absolutely necessary to provide further means of meeting Provincial charges. But the condition of the Provincial finances having turned out better than was expected, it was dropped. In 1876, when SIR J. STRACHEY was Lieutenant-Governor of the North-Western Provinces, the question was again taken up. It was discussed by a number of the most experienced officers of the Government of the North-Western Provinces, and they were unanimously of opinion that it was extremely desirable to charge license-fees for the possession of arms. He himself entirely concurred in the view thus taken, and he was in a position to say that the same opinion was held by the present Lieutenant-Governor of the North-Western Provinces. Thus, in the North-Western Provinces three successive Lieutenant-Governors and, he believed, all their most experienced officers, had during the last eight years, expressed strong opinions in favour of the amendment which he was now asking the Council to adopt. He hoped that a measure which had such strong authority to support it would be approved by the Council that day.

The Motion was put and agreed to.

The Hon'ble SIR E. C. BAYLEY moved—

That to section 32 the following words be added, namely :—

“Any person refusing or neglecting to produce any such arms when so required, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.”

He said the amendment was really one of a technical nature. He had mentioned, when presenting the Report of the Select Committee, that a clause had been introduced in section 32, requiring persons in possession of arms to produce them when required. But by mistake no penalty was affixed to the section by means of which it could be enforced. The amendment of which he had given notice was simply intended to correct the error.

The Motion was put and agreed to.

The Hon'ble SIR EDWARD BAYLEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Leave was granted.

PANJAB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. STOKES then presented the Report of the Select Committee on the Bill to amend the Panjáb Laws Act, 1872.

NATIVE PRESS BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved for leave to introduce a Bill for the better control of publications in Oriental languages. He said :—" My Lord, copies of the Bill which has been framed for this purpose, have been already circulated for the perusal of Hon'ble Members, together with a statement of the objects which it is intended to effect, and of the reasons which have led to its being prepared.

" For reasons which I will state presently, it will be my duty to ask the Council, in the event of my present motion being adopted, to proceed at once to the consideration of the provisions of the Bill with the view of its being passed at this day's sitting, and I will therefore endeavour to explain, as fully and as clearly as I can, the considerations which have influenced the Government in bringing forward this measure.

" Now, my Lord, the object of the Bill which I desire to introduce, is to place the Native newspapers, or, to speak more correctly, the newspapers which are published in the vernacular languages of India, under better control, and to furnish the Government with more effective means than are provided by the existing law, of repressing seditious writings which are calculated to produce disaffection towards the Government in the minds of the ignorant and unenlightened masses. Another object is to check a system of extortion to which some of our Native feudatories, and many of our Native employés, are exposed by the rapacity of unscrupulous Native editors.

" My Lord, this measure has not been resolved on without most careful and anxious consideration, both on the part of the present Government, and on the part of the Government of your predecessor. It has not been resolved on

without much reluctance; for, directed as it is against a particular class, it involves a description of legislation which is opposed to the traditions, and is repugnant to the principles, upon which the administration of British India has been conducted during a long series of years, and which would not have been resorted to except for very cogent reasons. It is only because, in the opinion of the Government of India, the evil against which this measure is directed is one of great and increasing magnitude; because it is calculated to lower the *prestige* of the Government, and to weaken its hold on the esteem and affections of its subjects; and because the existing law does not furnish any adequate means of dealing with it, that the Government have decided to have recourse to special measures for its repression.

“My Lord, when the Press of India was liberated by the Government of Sir Charles Metcalfe from the restrictions which had previously been imposed upon it, and when it was placed in the position of freedom from State interference, which, with the exception of one brief interval of a single year, it has occupied since 1835, the Native Press was a thing of comparatively little importance. In one of the Minutes written at that time, Mr. Macaulay states that the papers printed in the languages of India were few, and exercised very little influence over the Native mind. The entire circulation of Native newspapers throughout the country did not then exceed three hundred copies. Since those days a great change has taken place. Newspapers printed in the vernacular languages are published in most of the large towns in Bengal, Bombay, the North-Western Provinces and the Panjáb, are read and studied by considerable numbers of people, and exert an influence over the popular mind which it is difficult to exaggerate.

“My Lord, it is not my wish to include the whole of the Native Press in the charge which I am about to prefer against individual members of it. I know that that Press includes many respectable papers, which are doing a useful work, and which are entitled to every encouragement that the State can afford to them. It is not against this class of newspapers that the present measure is directed. But there is a large and increasing class of Native newspapers, which would seem to exist only for the sake of spreading seditious principles, of bringing the Government and its European officers into contempt, and of exciting antagonism between the governing race and the people of the country. This description of writing is not of very recent growth; but there has been a marked increase in it of late, and especially during the last three or four years. During the past twelve months it has been worse than ever, the writers gaining in boldness as they find that their writings are allowed to pass unpunished. Their principal topics are the in-

justice and tyranny of the British Government, its utter want of consideration towards its Native subjects, and the insolence and pride of Englishmen in India, both official and non-official. There is no crime, however heinous, and no meanness, however vile, which, according to these writers, is not habitually practised by their English rulers. According to them, 'the Government is not a just, but a monstrous Government. As monsters are said to eat their own children, the English Government is destroying its own children, namely, its subjects.' According to them, 'avarice, frugality and cunning characterize all the acts and measures of Englishmen.' According to them, 'their rulers violate with pleasure the laws and regulations which they have enacted.' According to them, 'the British Government is continually breaking its promises. A history of the non-fulfilment of promises by the British Government would be the whole history of the last hundred and fifty years.' According to these writers, 'one of the objects of the English authorities in maintaining and enhancing the salt-tax is to enable their own countrymen to import English salt into this country, and to enrich them at the cost of the Natives.' One writer ironically affirms that 'neither the laws of nature, nor the civil laws of India, provide any punishment for those Europeans who kill Natives. The laws of nature ascribe such fatal incidents to destiny, and the civil laws are helpless because Europeans are the dominant race.' Another writer asserts that 'all laws are applicable to Natives alone, and not to Europeans. Europeans are enabled to kill Natives with perfect impunity.' Another alleges that 'of those diseases which generally prove fatal, one is the European plague, which is daily spreading over the country, and for which no remedy has yet been found. We refer to the readiness of Europeans to assault, and sometimes murder, Natives.' Another writer compares the English Government in India to a beautiful, but unprincipled, woman—

" 'whose charms and attractions are irresistible, but who is cunning, deceitful and cruel at heart. All men are in love with her. Now she lends her graces to one lover, and now to another, and thus causes the rivals to fight together and perish. At her first advent in India she was not very attractive, as her beauty had not fully developed. But when gradually her beauty was fully developed, whoever looked at her was entrapped. Men saw with their own eyes how she had already dealt with a number of their fellows, and knew that she was selfish, and an enemy of their faith, yet they were foolish enough to court her, and dig their graves with their own hands. All the great Native Chiefs of India, including the Kings of Delhi, one after another, fell a victim to her charms, and she pitilessly robbed them of all their estates and property. She next turned her attention to the Chiefs of the middle class, and relieved them of all they had except their wearing apparel.'

" 'The extracts which I have read, are specimens, extracted haphazard from a great number, of the manner in which the British Government and the

English race are habitually aspersed and held up to the contempt and hatred of the people of India. Of late, however, a further step has been taken, and a beginning has been made, in the direction of inciting the people to upset the British Ráj by denunciations, sometimes open and sometimes covert, of the alleged weakness and timidity of the English, and their inability to maintain their present position in India.

“‘England,’ it is said, ‘has no efficient army. Like her, Carthage, too, possessed immense wealth, but that could not save the great commercial city of ancient days from a complete downfall. While Government, is always ready to make a show of its power in fighting with weaker foes, such as the King of Abyssinia, and the Gáros and the Lushais, a policy of subsidizing is always resorted to in dealing with the Amír of Kábul, and one of conciliation adopted towards the barbaric Chief of Khilát. The rule of our country has passed into the hands of foreigners, and we have lost all our independence. However, we must buoy ourselves up with hope under the pressure of the present calamity, and not despair. Seeing that such mighty Kings as Vikrámaditya, Rámchandra and Rawana have passed away, the short-lived Kings of the present times have no stability.’”

“The *Kasht Vildáni*, a newspaper published at Púna, compares the English Government in India to a cunning traveller, who, passing by the door of a hospitable and kind-hearted gentleman, asks his permission to rest at his door for a short time, and gradually contrives to oust him and usurp his house and property; but there will be no great difficulty in driving out the usurper if all men jointly make a bold effort to do so. The Natives should gird up their loins and devise measures for improving the prosperity of the country.

“I will not take up the time of the Council with further extracts. I think it will be apparent from what I have read, that the description of literature to which these articles belong, is eminently calculated to unsettle the minds of the people, and to make them disaffected towards their rulers. While I say this, I do not for a moment desire to imply that the Government distrusts the loyalty of the great body of Her Majesty’s Indian subjects, or that these writings correctly represent the sentiments entertained by the people generally. Indeed, I have very little doubt that there is a good deal of mere froth and vapour in these foolish and mischievous articles; but in India, as in other countries, writing of this description finds numerous readers, and ought not to be allowed to go on unchecked.

“My Lord, it cannot be said that the state of things which has arisen has taken the Government altogether by surprise. That such a state of things would be one of the results of granting complete freedom to the Press in this country, was predicted many years ago by men whose honoured names have long

been household-words in Anglo-Indian history. I doubt not that many of the Members of this Council are acquainted with the remarkable Minute which Sir Thomas Munro, one of the ablest of the many able Statesmen who have aided in consolidating British rule in India, recorded on this subject in 1822. I well remember the interest with which this Minute was reperused at the time of the Mutiny, and how impossible it was not to be struck by the almost prophetic character of the utterances which it contained. But Sir Thomas Munro was opposed to granting freedom to any section of the Press. He regarded the unrestricted freedom of even the English Press, which in his day was indeed the only Press worth considering, as inconsistent with the maintenance of our rule. Since that time circumstances have greatly changed; and I do not believe that that far-seeing and sagacious Statesman, if he were now among us, would counsel the re-imposition of restrictions upon the English Press. However this may be, I do not rest my argument on the policy of restriction advocated by Sir Thomas Munro. I rest it upon the opinions of men who were parties to the policy of liberation which was carried out in 1835, and who, it is evident from their writings, did not overlook the possibility that such a state of things might arise, as that with which the Government of India are now called upon to deal. Both Sir Charles Metcalfe and Mr. Macaulay, the one the originator, and the other the draughtsman and the eloquent defender, of the Act of 1835, while arguing strongly in favour of a free Press, advert to the possibility of circumstances arising which might compel the Government of the day to resort again to legislation of a restrictive character. Their language is general, and it is evident that, while they contemplated the possibility, they did not attach any great importance to it; but there was one Member of that Council, one who has only lately passed away, full of years and honour, after an unusually lengthened official career, prolonged into a ripe old age, one whose name will long be remembered in this Presidency, who, while assenting to Sir Charles Metcalfe's measure as being well-suited to the circumstances of the time at which it was passed, predicted in the plainest terms the evils which have resulted from granting unrestricted freedom to the Native Press.

“ My Lord, these are Mr. Prinsep's words :—

“ I do not go quite so far as to say broadly, and without reserve, that I do not apprehend danger to the State from the Press of India being free. I see no immediate danger in the present state of things, nor, in the future, danger such as the existing laws would provide for better than the laws made especially for the purpose when the danger threatens. Therefore, I cordially assent to the repeal of the laws; but I think the eye of Government will require to be kept continually upon the Press, and especially upon the Native Press; for it is capable of

being made an engine for destroying the respect in which the Government is held, and so undermining its power.

'At present, this Press is nothing, and the controlling or influencing it would be an easy task, were Government disposed to direct its efforts to do one or the other; but if we let it grow till the danger from it is imminent, we may then find it a giant to wrestle with.'

"Again:—

"So long as discussion is carried on in English, it is no more formidable than similar discussion in England and America. The Government will have its advocates as well as its assailers; and, considering that a vast proportion of the best informed of those who mix in the controversy, will be employes of the State interested in maintaining it as an object of respect, I have little fear of the spirit that would prevail, or of the effect of having this branch of the Press entirely free. But the case is not quite the same with the Native Press. It may take a malignant turn, calculated and designed to set the whole population against us.'

"My Lord, that a considerable section of the Native Press has taken a malignant turn, calculated, and in some cases designed, to set the whole population against us, would, I think, be sufficiently proved by the writings of which I have read specimens to the Council, even if it had not, as it has, become a matter of notoriety which is frequently discussed in the English newspapers, and by the more respectable Native newspapers.

"My Lord, I have said that the existing law is inadequate for the suppression of the evil which this Bill is intended to remedy. The existing law is contained in an Act of 1867, which provides for the registration of printing-presses and newspapers, and in a section of the Indian Penal Code which makes seditious words or writings punishable. Now, this section of the Penal Code really furnishes a very inadequate means of dealing with such writings as those with which this Bill is intended to deal. In the first place, the explanation which has been added to the section, renders the penalties inapplicable to any case in which there is not an obvious intention on the part of the writer to counsel resistance to, or subversion of, the lawful authority of the Government. Therefore, to much of the writing to which I have drawn the attention of the Council, this law would not apply; for there is a great deal of it, which, though very mischievous in its effects, cannot be said to come under the category of counselling resistance to lawful authority, or subversion of that authority. It will, perhaps, be said that, if so, the proper course is to amend the Penal Code, and to provide therein suitable penalties for those who, without advising rebellion, inflame the minds of the people against their rulers. I am sure that the Council will not for a moment suppose that this very natural question has not been deliberately con-

sidered by the Government; but, after the most careful reflection and consultation with our Law Officers, and with the Local Governments, the conclusion which we have arrived at is, that no such amendment as could be made in a Penal Code, which is necessarily of general application, would adequately and properly meet the peculiar requirements of the present case. The distinction made in the section to which I have referred, between writings which indicate a manifest intention on the part of the writer to instigate resistance to the authority of the Government, or subversion of that authority, and writings which, while expressing strong disapprobation of the acts, or conduct, or policy, of the Government, are not inconsistent with a disposition to render lawful obedience to the Government, is a very reasonable and proper distinction. It would, of course, be possible to introduce into the Penal Code a provision rendering penal all writings calculated to inflame the minds of the people against their rulers, irrespective of the intention of the writers; but such a provision must be of general application, and, like the rest of the Penal Code, it must be essentially punitive. The principle of the Bill which I desire to lay before the Council, is a different principle. For reasons which I will explain presently, the provisions of the Bill will apply only to one class of writers, namely, the writers in the vernacular Press, and the measure is not so much a measure of penal, as it is a measure of preventive, legislation. The machinery by which it will work, is a machinery of checks, rather than of penalties. Its object is to check mischievous writings of the nature of those to which I have alluded, not by penal sentences, but by requiring the offenders, or those in regard to whom it may be apprehended that they are likely to offend, to engage and deposit security for their good behaviour, or by merely warning them; and it is only in the event of the engagements being broken, or the warnings being disregarded, that the penalties which the Bill provides will be put in force. Another very serious practical difficulty is, that no amendment of the law which left the repression of these offences to depend upon a successful prosecution in a Criminal Court would meet the case adequately; and this remark applies, not only to that class of cases which, as I have said, is not covered by the Penal Code, but also to those cases to which the provisions of the Penal Code are expressly applicable. Even if it were perfectly certain that in every case a conviction would be obtained, the political effect of such trials would be bad. They would be certain to create a good deal of excitement, and would invest the accused with a fictitious importance in the eyes of their more ignorant countrymen, which it is desirable to avoid. What is needed, is a procedure more summary, and, as I have said, framed rather with a view to prevention, than with a view to punishment.

“My Lord, considerations of a somewhat analogous character, although not exactly similar, render it advisable in the opinion of the Government of India that, while we are enacting a law for the better control of the Native Press in the general interests of the State, we should take the opportunity of repressing more effectively than can be done by the Indian Penal Code, the crime of extortion when practised by an unscrupulous journalist. We have evidence on which we have every reason to rely, that threats of newspaper attacks are not unfrequently resorted to by unscrupulous Native editors as a means of extorting money from Native Chiefs and other Natives of rank, and from high Native officials. Such persons often shrink, and not unnaturally shrink, from entering upon a criminal prosecution before the ordinary Courts. In their case, also, we need a remedy more summary, and which the injured persons will be less indisposed to resort to.

“I will now endeavour to explain, as briefly and as clearly as I can, the provisions of the measure which I propose to lay before the Council. In the first place, I may remark that the Bill is restricted in its operation to publications printed in oriental languages, or in fact mainly to publications in the vernacular languages of India. I will refer again to this point presently.

“Then the Bill is essentially an enabling Bill. Its chief provisions will take effect only in those parts of India to which they may be especially extended by the Governor General in Council, and will cease to have effect in those parts whenever the Governor General in Council so directs. For instance, it is not at all probable that the chief provisions of the Bill will, for the present at all events, be extended to the Presidency of Madras, as we know that hitherto the vernacular Press of that Presidency has been altogether inoffensive, and there are no grounds whatever for bringing it under restrictions. Wherever this is the case, the position of the Native Press will practically be the same as it is at present. And not only is the Bill mainly an enabling Bill in regard to its extension to particular Provinces or parts of India, but the application of its chief provisions is permissive, and depends upon the discretion of the Executive Government; and the enforcement of the checks and penalties for which it provides, rests with the Local Government, and not with any inferior authority. In regard to the system of checks which the Bill establishes, I cannot do better than read to the Council the remarks made on this point in the Statement of Objects and Reasons:—

“*First.*—The Magistrate may, with the previous sanction of the Local Government, require the printer or publisher of any such newspaper to enter into a bond binding himself not to print or publish in such newspaper anything likely to excite feelings of disaffection to the Government, or antipathy between persons of different races, castes, religions or sects, and not to

use such paper for purposes of extortion. The Magistrate may further require the amount of this bond to be deposited in money or securities.

‘Secondly.—If any newspaper (whether a bond has been taken in respect of it or not) at any time contains any matter of the description just mentioned, or is used for purposes of extortion, the Local Government may warn such newspaper by a notification in the Gazette; and if, in spite of such warning, the offence is repeated, the Local Government may then issue its warrant to seize the plant, &c., of such newspaper, and when any deposit has been made may declare such deposit forfeited.

‘Thirdly.—As the provisions regarding the deposit of security and the forfeiture of the deposit would, perhaps, be found to press unduly on some of the less wealthy newspaper proprietors, clauses have been inserted enabling the publisher of a newspaper to take his paper out of the operation of this portion of the Act for such time as he pleases, by undertaking to submit his proofs to an officer appointed by the Government before publication, and to publish nothing which such officer objects to.

‘Any publisher may, if he chooses, do this at the time when he is called upon to deposit security; and if he does so, no security can be demanded from him.

‘Again, if he does not choose to avail himself of this provision at that stage, he may subsequently, in the event of a warning being issued against him, offer such an undertaking, and if the Magistrate accepts it, the proceedings are at an end.

‘As regards books, pamphlets, &c., printed in British India, containing matter of the description above referred to or used for purposes of extortion, the Bill gives the Local Government a power to seize them and the presses at which they are printed.

‘Newspapers and books published out of British India but circulated in British India remain. And in regard to them the Bill provides—

‘first, that if they contain matter of the nature already referred to, or are used for purposes of extortion, the Local Government may seize them; and

‘secondly, that the Governor General in Council may prohibit their importation altogether. The only other points calling for special notice are, that an appeal is given to the Governor General in Council against anything done by a Local Government or any inferior authority; that declarations of forfeiture and other proceedings under the Act are made final and conclusive, subject only to such appeal; and that penalties are provided for printing or publishing a newspaper without executing a bond or making a deposit after such bond or deposit has been required, and for breach of an undertaking to submit proofs to a Government officer.’

“I have said that, in restricting the operation of this measure to the vernacular Press, and in exempting the English Press from its operation, the Government of India are taking a course which involves a departure from the policy by which it is usually guided, and indeed from the policy which has been followed in all previous legislation regarding the Press in India. The restrictions which were imposed upon the Press previous to the passing of the Act of 1835, were imposed alike upon the English Press and upon

the vernacular Press. The Act, liberating the Press, which was passed in that year, was applicable alike to the vernacular and to the English Press; and when the freedom of the Press was for a time suspended during the Mutiny, the suspension was applied equally to English as to vernacular newspapers. Indeed, the first paper to which the provisions of the Act then passed were applied was the *Friend of India*, which had long been justly regarded as the leading and the most able English journal in India. When reporting the passing of the Press Law in 1857, Lord Canning's Government said that they had thought it right to make no distinction between the English and the Native Press, and that on this point they agreed with Sir Charles Metcalfe, who, in the course of the discussion of the Press question in 1835, wrote:—

“ I think that in all our legislation we ought to be very careful not to make invidious distinctions between European and Native subjects. ’

“ The despatch of 1857 goes on to say:—

“ We do not clearly see how any distinction of the sort could be really carried into effect; for there are more than one newspaper in the English language written, owned and published by Natives, almost exclusively for circulation amongst Native readers. And although we have no fear that treasonable matter would be designedly published in any English newspaper, we have to guard in these times against errors in discretion and temper, as well as against intentional sedition. ’

“ My Lord, I will not pretend to say that this part of the question is perfectly plain and simple, or that, in advising the course which we have determined on after very careful consideration, we are not laying ourselves open, in some degree at all events, to the charge of class legislation, and of making what by many will be regarded as an invidious distinction. It would have been very easy, but I do not think that it would have been just, to make the application of the Bill general, and, for the sake of not laying ourselves open to the charge of creating invidious distinctions, to include the English Press in its operation. My answer is that nearly forty-three years have elapsed since the passing of Sir Charles Metcalfe's Act, and nearly twenty-one years since the passing of the Press Law of 1857; that throughout that period the English Press has been, on the whole, a loyal and, notwithstanding many imperfections, a valuable instrument and aid to the Government; while for many years past, and especially in recent years, a section of the vernacular Press has been chiefly remarkable for its disloyalty. It must, moreover, be borne in mind that the publications of the vernacular Press are circulated among a class of the population far more ignorant than those classes which are reached by the English papers, and are therefore calculated to be much more

mischievous in their effects. Such publications as those to which I have alluded, appeal to the ignorant and the unenlightened. They influence and pervert the minds of the young, and go far to counteract the benefits of the education which we are endeavouring to impart to them. They constitute, in fact, a mischievous and poisonous literature, embarrassing to the administration, subversive of authority, and in every way injurious to those to whom it is addressed. In framing this measure in its present form, the Government of India has been influenced by a consideration of the facts with which it has to deal; and after carefully weighing those facts, it has come to the conclusion that it would not be right to inflict upon the most important and the most valuable section of the Press, a liability to checks and penalties which it has in no way merited. In connection with this question, we must not forget that the circumstances of the present time are very different from the circumstances of the time when the despatch of Lord Canning's Government was written. Then, a large part of the country was in a state of rebellion, and precautions were necessary, which are not needed in quieter times. Nor should it be overlooked that, in one important respect, this measure is free from the objection to which I have been alluding. Newspapers and other publications in the English language, published by Natives, are as much exempted from the operation of the Bill as are similar publications published by Englishmen. As a rule, all publications in the English language are addressed to, and are read by, a more educated class than are the readers of vernacular publications, and consequently, even if they were obnoxious to the same objections as characterize several of the vernacular papers, they would be far less mischievous. But, as a matter of fact, there is an essential distinction between the tone and language adopted by the most hostile of the English newspapers, and that adopted by the worst section of the vernacular Press. The vast majority of papers published in English, including those published by Natives, however violently they may attack men or measures, always attack them on their individual merits, treating them as accidental blots upon our system; whereas the vernacular papers too frequently treat the persons and the things which they denounce, as the types and necessary results of a foreign rule, and assail our system as a whole.

“ My Lord, I have nearly completed the task which I undertook when your Lordship desired me to lay this Bill before the Council. I feel bound to say that it is not without sincere regret that I find myself engaged in the duty of actively promoting an enactment which, in the minds of many persons, will throw grave doubts on the value of the measures which have been taken for the advancement and diffusion of education among the

Natives of this country. I do not share in those doubts. My conviction is that the more steadily we persevere in our exertions for the promotion of sound education, the more surely we shall counteract evils of the nature of those against which this Bill is directed; and I trust that, both in making those exertions and in repressing those evils, the Government will receive the co-operation of the respectable and well-disposed classes of the Native community. Our earnest hope is that the mere existence of this law will in itself suffice, or will in a great measure suffice, to repress the mischief against which it is aimed, and that the actual enforcement of its provisions will be a thing of very rare occurrence. As Englishmen, brought up in a free country and accustomed to the advantages of a free Press, the Members of the Government of India have no desire to place undue restrictions on the Press of India. In resolving on this measure, they are entirely influenced by their sense of the necessities of the case, and of the responsibility which devolves upon them for the maintenance of authority and order; and I believe that the Council and the public generally will agree with me when I say, that it is better that a measure of this nature, which is essentially a measure of precaution, should be introduced at a time when the country is peaceful and undisturbed, and when the minds of men are calm, than that it should be postponed to some period of disturbance, when it would be attributed to panic, and when it might be necessary to make its provisions more stringent, and possibly more comprehensive.

“And now, my Lord, one word as to the reasons which have induced the Government to adopt the unusual, though not unprecedented, course of introducing this Bill without the customary notice, and of recommending that it should be passed through all its stages at a single sitting of the Council. We consider that to have dealt with this question in the manner in which projects of law are ordinarily dealt with, would have been inexpedient, on the ground that it might have given rise to agitation, and during the period which would have been occupied in passing the Bill, might not improbably have intensified the evils which the measure is intended to repress.”

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT then introduced the Bill.

The Hon'ble SIR ALEXANDER ARBUTHNOT having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The PRESIDENT declared the Rules suspended.

The Hon'ble SIR ALEXANDER ARBUTHNOT then moved that the Bill be taken into consideration.

The Hon'ble MR. MORGAN said:—"My Lord, as the provisions of the Bill now before the Council have not been published, it has of course been impossible to obtain any idea of the manner in which it may be received by the non-official public, of which I am to a certain extent a representative. Anything that I may say, therefore, must be considered only as a non-official view of the Bill as far as I myself am concerned, and indeed as regards the details of the Bill, they have only been before the Members of this Council, other than the Executive, so recently, that I cannot pretend to enter into any discussion of them. As to the general principle of the Bill, however, I think, after what has fallen from the Hon'ble Mover, that necessity has been shown for legislation in the direction now proposed. Although it would be highly undesirable that any check should be placed upon fair discussion or reasonable criticism either of Government measures or the acts of individual officers, the Bill now before the Council does not, as far as I understand, propose to place any such check. The papers which will come under the operation of the Bill, as far as I can judge from such extracts as have come to my notice, do not attempt to discuss or criticise either men or measures, but are made up of monstrous statements and virulent invective; statements so monstrous that, in the mind of an educated reader, they would only rouse a smile or provoke disgust. To the class, however, to whom these papers are read, the mere fact of the statements being in print conveys a belief that they are true, and it therefore appears necessary that a check should be placed upon their indiscriminate dissemination.

"Under these circumstances, I have pleasure in supporting the Bill, the general provisions of which appear suited to the object in view."

The Hon'ble MR. PAUL said:—"My Lord, as I intend to vote in favour of the measure which at the present time engages the attention of this Council, I venture to make a few remarks in reference to it, and in support of the propriety of subjecting newspapers published in the Oriental languages to summary control by competent authority. It may be readily admitted that it would be unjust to interfere with or retard social progress and mental improvement, depending in some measure on the diffusion of knowledge through the medium of vernacular newspapers, by closing or interrupting such channels of thought and instruction under legislative sanction. But a cursory study of the provisions of the Bill will show that this is not the intention of the Legislature. A broad distinction exists—and has been recognized in the Bill—between publications honestly conducted and devoted to useful and beneficial objects and those

which have mischievous and misleading tendencies and abound in calumnies; and this distinction should be observed in order to correct any misconception which may arise as to any supposed intention on the part of this Legislature either to interfere with the liberty of the Press or to stifle free discussion. It will, I think, be acknowledged with equal readiness that this Government has been pre-eminently distinguished by its steady and unceasing labours in the cause of education and the enlightenment of the people, and that its administration has assured to all classes security of property and the full enjoyment of personal liberty. In the face of these exertions and benefits, it will be idle to suggest the possible existence of any unworthy motive for the introduction of the present measure, which circumstances of a deplorable nature have forced upon the Government. I may take it as axiomatic that it is necessarily incident to every permanent system of government to make provision, not only for its continuance, but for its secure continuance. As the good-will and esteem of the people are indispensable to such continuing security, it is evident that it is proper to prohibit and restrict all malicious attempts to produce disaffection by creating and fostering ill-will and discontent on the part of the governed, and by rendering the Government itself odious to the people. And here, my Lord, before proceeding further, I may be permitted to read, as germane to the subject, a passage from an accomplished and learned author:—

“The State and Constitution being the common inheritance, every attack made upon them, which affects their permanence and security, is in a degree an attack upon every individual, and concerns the rights of all. It is, therefore, a maxim of the law of England, flowing by natural consequence and easy deduction from the great principle of self-defence, to consider as libels and misdemeanours every species of attack by speaking or writing, the object of which is wantonly to defame, or indecorously to calumniate, that economy, order and constitution of things which make up the general system of the law and government of the country. Opinion is strength, and the good fame of government is necessary to obtain this opinion. The distance is not very great between contempt of the laws and open resistance to them. Defamation of this kind is more dangerous, inasmuch as it appeals to the passions, rather than to the reason, of the multitude; it unsettles the minds of the people, relaxes the authority of the rulers, and impairs the reverence due to the laws.’

“Many of these observations apply with redoubled force to a government which rules over an immense and mixed population composed of persons of different races and religions, of different habits and characters, whose allegiance cannot but materially depend on their general good opinion of, their good-will and respect for, that Government. The privilege of writing and publishing with freedom is doubtless inestimable. So long as that privilege is exercised honestly and fairly, with a view to benefit society, and with reference to subjects of common and public interest, it will be cherished and maintained wherever

free institutions exist and flourish. But the privilege itself is subject to this limitation, that it must not invade the undoubted rights of others. In the case of private individuals and classes, their character and reputation must be respected; and in the case of a Government, its constitution must not be wantonly attacked for purposes of injury and mischief, nor its good name maliciously aspersed. The principle of protecting character is ancient, it having been declared by the laws of Solon 'that the liberty of the citizen would be imperfect were his character unprotected.'

"Having made these general observations, I now turn to the causes which have led to the introduction of the Bill. I have in my hand translations of upwards of one hundred and fifty extracts from papers published in the vernacular languages, which I have read carefully, and that reading has satisfied me that these publications contain matter falling under the following heads:—

1. Seditious libels, malicious and calumnious attacks on the Government, accusing it of robbery, oppression and dishonesty, and imputing to it bad faith, injustice and partiality.

2. Libels on Government officers.

3. Contemptuous observations on the administration of justice, pointing to its alleged impurity and worthlessness.

4. Libels on the character of Europeans, attributing to them falsehood, deceit, cruelty, and heartlessness.

5. Libels on Christians and Christian Governments, and mischievous tendencies to excite race and religious antipathies.

6. Suggestions and insinuations which their authors believe fall short of seditious libels by reason of the absence of positive declarations.

"In addition to these general characteristics, I find that mis-statements, exaggerations, and allegorical tales, intended to sketch real incidents, but based purely on imagination, have been introduced to support or give colour to the varied (and I might almost add inexhaustible) calumnies to be met with. Other prominent features must not be lost sight of, such as bestowing praise on the late Muhammadan rule, maintaining its superiority over British rule, representing the dominant race as debased, demoralised and ignorant. I cannot resist the temptation of reading a specimen of inflated conception of Native excellence. 'Are there not thousands of educated Natives before whose intelligence, judgment, courage, justice and moral conduct the abilities of the best

civilians fall into insignificance, like the gleams of a candle before the resplendency of the Sun !'

"Having attentively considered these extracts, I am irresistibly led to the conclusion that it is intended by these publications to disseminate disaffection, to excite evil prejudices, to stir up discontent, and to produce mischief of the gravest order; in short, to render the Government, its officers, and Europeans generally, hateful to the people. These are evil purposes, which should be repressed with a strong hand, and their contrivers restrained from all further attempts to administer their subtle poison to the lower orders of the people, to saturate their minds with evil thoughts, and to arouse their evil passions. The moral atmosphere, surcharged with threatening clouds, and tainted by these vicious productions, must be restored to its natural and normal purity.

"The evils to which I have adverted are, I fear, too wide-spread to be checked or suppressed by prosecutions under the existing law; and even if it be assumed that prosecutions would be effective in repressing them, it must be admitted that much time would be lost in applying such remedy and realizing its salutary results. As time is of the very essence of every remedy by prevention and restraint, I am entitled to assert that prosecutions for all practical purposes will be found unavailing. It follows, then, that in conformity to the principles I have enunciated, this Legislature is under the necessity of making provision for the better protection and security of Government and for the public welfare in a manner suited to the emergency, so that the remedy may be summary and its application immediate. The Bill before us contains provisions which I think are well calculated to supply the desired remedy; and I maintain that the time has fairly arrived for action—further forbearance may be fraught with danger. It may probably be alleged that the provisions of the Bill are stringent; but I consider that the means to be used for the suppression and extinction of the evil courses to which the newspapers under notice have resorted should be as powerful and as effective as if the Government were called upon to deal with a plague, a pestilence, or other grievous calamity. In the course of my professional career, I have been a zealous and unflinching advocate of the freedom of the Press; and I have the satisfaction of believing that, in according my support to the present Bill, I am, in no way, departing from a firm adherence to the true principles which regulate that freedom. To protect and encourage journalism conducted with ordinary care and for honest purposes might be deemed a privilege. To curb by reasonable and necessary means the unbridled license of obnoxious and degraded publications which seek to spread disaffection and dissatisfaction,—and which may be used by wicked and designing men to produce discontent amongst the poor and ignorant to their own detri-

ment—and to denounce them fearlessly, should be considered by every right thinking man and by every true citizen an imperative public duty.”

The Hon'ble MR. EVANS said:—“My Lord, I should always view with great jealousy any restraint upon personal liberty and freedom of speech which did not appear to be necessary for the safety or well-being of the community, but I give my unqualified assent to this Bill, stringent as its provisions are; for I think it is necessary under the existing state of things. No person can claim to have any right to follow the trade or calling of spreading disaffection or extorting money, for these are admittedly crimes. The only question is, whether it is necessary to arm the executive with special powers for the prevention of this class of crime, instead of leaving it to be punished through the agency of the ordinary Courts of Justice. The main evil to be provided against is this. An unceasing stream of false and malicious charges is being daily poured out by the vernacular Press against the English Government and the English race. The poor and ignorant millions are told that all their misfortunes are due to England and the English, who cruelly and heartlessly oppress them, and the prospect of better days is held out to them if they could only be quit of their oppressors. My Lord, the condition of the toiling masses is in every country one involving much hardship. But their lot is bearable as long as they believe the comparative hardship of it to be due to natural causes beyond their control, and to the condition of the world they live in. Hard and toilsome though their lives be, they may still be loyal as long as they believe that their governors have their interests at heart and desire to deal justly by them. But when these poor ignorant and credulous masses have it daily dinned into their ears that all the evils of life, even their very poverty, are due to the heartless rapacity and injustice of an alien race of oppressors, they cannot but come to believe the oft-told tale; for they are but children with no means of judging for themselves as regards matters outside their daily life. When once they come to believe this, their lot becomes intolerable in their own eyes. A prospect of ease and contentment as of the Golden Age is before them, and nothing stands between them and their happy future except the hateful English race. Thus their minds are poisoned and their contentment destroyed, and they are left ready tools for plotters and conspirators. Of the power of the Indian Government to deal sternly and effectually with any attempts at rebellion I entertain no doubt and feel no fear. But I do feel that it would be a cruel policy to allow these poor and ignorant people to be goaded to rebellion, confident in our power to slay them, should they yield to the temptation. The object of the proposed Bill is to prevent the dissemination of the poison of disaffection—a subtle poison which, like the seeds of disease, floats in the air and

is communicated from man to man, by placing the centres of infection under control.

“This object cannot be obtained by prosecution in the ordinary Courts. Moreover, a prosecution by its publicity disseminates the poison. If it were necessary to destroy clothes infected with the plague, no sane man would ask that they should be brought into a crowded public Court to have the question of their infectiousness tried.

“Great liberty of speech is conceded to prisoners and their advocates, and they are allowed to use any arguments which they choose in their defence; and these reports of trials are by our law specially privileged and may be printed with impunity. It is right that this should be so; but it is one of the reasons which render a public prosecution an undesirable method of dealing with these cases, for in punishing the prisoner, you disseminate the poison. When special evils like this have to be dealt with, it seems wiser to meet them by special legislation than to alter the general criminal law or procedure. I do not think this Bill can fairly be objected to as class legislation. Publications in English are not subject to its provisions. Publications in the vernacular are. The reason is that English is in India, to some extent, a learned language, and a knowledge of it represents some amount of education. When Latin was the language of the learned in England and the rest of Europe, it was thought no harm to print classical works containing the praises of the Republican form of government as the best possible, and little exception could have been taken to a learned treatise upholding that view. But had any one published a treatise in the vulgar tongue informing the masses that they would be happier if they substituted that form of government for the one they lived under, he would have been speedily laid by the heels. Publications in English do not reach that class which is ignorant and credulous enough to be injured by the sort of stuff extracts from which have been read to us to-day.

“Even had there been no special urgency, I should have been glad to see prompt measures taken to abate the evil. That there is special urgency at present from the disturbed state of the political horizon and the agitation of men’s minds by wars and rumours of wars, and from the increased activity of the sedition-mongers, no one can deny. That urgency has seemed to the Executive Government sufficient to warrant them in asking the Council to pass the Bill at once. Believing that the evil is great, and the necessity for its immediate abatement urgent, and that the remedy proposed is the right one, I have no hesitation in voting for the Bill.”

The Hon'ble Mr. THORNTON said:—"Although in common with other Members of this Council I have not forgotten that I am an Englishman, and, in common with Englishmen, regard the free press of England as an inestimable benefit; and although I have given proof of the sincerity of my professions in having been instrumental, in 1865, in withdrawing the censorship which had been maintained since 1857 over the vernacular press of the Panjāb, I am not the less sensible of the necessity for the legislation we are now considering. For some time past I have become painfully conscious, as indeed almost all who have had experience in district and provincial administration must be, of the increasingly seditious tone of certain of the vernacular newspapers, and of the grave evil resulting from the dissemination of their disloyal and libellous productions among the ignorant populations of India.

"It is therefore my very decided conviction that, whatever may be the case in countries or amongst peoples differently circumstanced, the security of this Empire demands that the Executive Government shall be vested with complete power for promptly repressing and preventing the circulation of disloyal and seditious vernacular publications.

"And, my Lord, I am the more disposed to assent to the exercise of this controlling power by the Executive Governments of India in the present case because, so far as my local knowledge extends, I can confidently assert that the writers or editors of the disloyal articles of which we complain no more represent the real feelings of the people of India than Dr. Kenealy may be said to represent the true sentiments of Englishmen. My experience is to the effect that they are for the most part disappointed ex-employés of the Government, broken-down vakils, disappointed candidates for Government service, or ex élèves of Government institutions, who, after having been educated by the State at an enormous cost, are indignant because, at the close of their academical career, they have not been presented *instantly* with a lucrative Government appointment. But, it may be argued, if such is the case, if the disloyal effusions of which complaint is made do not represent the real feelings of the people, why care about them? To these arguments the answer is, that there is such a thing as undermining a sound structure; and this process of undermining the loyalty of our ignorant and very impressionable populations has been long going on in several parts of India, and is beginning now to have effect in that very loyal part of Northern India of which I have personal knowledge.

"Then I have heard it said, why does not the Government, instead of resorting to the strong measure of introducing a Press law, endeavour to counteract the effects of seditious writings by contradicting their mis-state-

ments, or by establishing or inspiring organs of its own to proclaim the benefits and advantages of British rule? To this it may be replied, that in newspaper warfare, unlike the situation at Plovna, the power of offence is immeasurably greater than the power of defence. Moreover, in such warfare there is no convention against the use of unfair weapons, and writers of the class we are considering do not hesitate to resort to weapons of attack which no Government, nor indeed any writer of respectability, would deign to use. Then, again, these writers derive much of their popularity and influence by adopting a ribald tone and piquancy of style which would be wholly inappropriate in any journal of the higher class; in a word, it would be as impossible to counteract the pungent scdition of some of our Native newspapers by utterances in official or non-official *Moniteurs*, as to counteract the effects of spicy paragraphs in *Vanity Fair* by dignified sentences in the *Standard* or the *Morning Post*.

“But lastly, it will doubtless be urged—supposing all this to be true, why not make use of the ordinary tribunals, and prosecute the offending papers under the existing law of treason or of libel? This question has been so fully discussed by the Hon’ble the Mover and the learned gentlemen who followed him, that I need do no more than repeat that it is obvious that by launching State prosecutions against offending editors, the Government would be giving increased publicity and importance to the very publications it is desired on public grounds to stifle and destroy. No; in the case of the rank poison with which we are dealing, as in many other cases, prevention is far, is infinitely, better than cure.

“In these circumstances I have no hesitation in according my full support to the measure before the Council, and I accord that support in the confident assurance that the powers conferred will be used with justice and moderation, that they will never be used for the repression of full and free discussion of the measures of Government or the conduct of its officials, but only of those publications which, in the language of the preamble of the Bill, ‘contain matter likely to create disaffection to the Government or antipathy between persons of different castes, religions or sects in British India, or have been used as a means of intimidation and extortion.’ Under ordinary circumstances I should have been disposed to complain of the shortness of the notice given to the Additional Members of Council of the intention to bring forward this important measure and the short time allowed for its consideration; but under all the circumstances of the present case, I recognise the necessity for prompt action, and the difficulty of giving longer intimation of the provisions of the Bill.”

The Hon'ble MAHARAJA JOHNDRA MOHAN TAGORE said :—" My Lord, as an advocate of the liberty of the Press, and as one who would not like to see any restrictions put upon it, I cannot but express my great regret that some of the low-class vernacular papers have taken to a course which, to say the least, is extremely reprehensible. I must take this opportunity most emphatically to repudiate, on the part of the educated Natives of India, all sympathy with such writers, who, from whatever motive, attempt to excite something like a feeling of disaffection against British Rule. The educated Natives do not even know of the existence of most of these newspapers. It is, however, I believe, a known fact that much of this class of writing proceeds from folly and a spirit of braggadocio rather than anything else. Yet that some sort of check should be put upon this abuse of the liberty of the Press I cannot deny; but whether the provisions of the existing laws are not sufficient for the purpose, is what I am not in a position to judge. Those who are responsible for the good government of the country seem to think that, considering present circumstances, they are not. For this reason, without giving any opinion regarding the detailed provisions of the Bill just placed before us, I deem it my duty to give my humble support to the action of Government, the more so as it is not likely to affect the better class of our journals."

The Hon'ble MR. COLVIN said :—" My Lord, I am unwilling to prolong the proceedings of to-day's meeting unnecessarily, but I do not wish to give an altogether silent vote in favour of the measure under consideration. The Native Press has perhaps nowhere allowed itself greater license than in that part of the country in which I have been employed, and no one can hold a stronger opinion than I do in favour of the necessity of placing some restraint upon the uncontrolled liberty which it now abuses. A portion of that Press has hitherto applied its powers to little beyond inculcating hatred and distrust of the existing Government, to fostering class animosities, and to attacking (often, I fear, from no very worthy motives) public and private individuals. It is fortunate that its influence is not equal to its ill-will, as the number of people who read newspapers in the North-Western Provinces is still very small. But its power is likely to grow, and there is this peculiar evil attached to it, that instead of representing any existing public opinion, the vernacular Press, so far as it goes, tends to create one, and that, an opinion which is as hostile as can be to the Government and the ruling class in the country. The conviction that some check is required, which has been so generally expressed here to-day, is shared by many in those Provinces, and, speaking from my own personal knowledge, I am confident that the measure now proposed will be cordially and generally approved by a large majority of those who are responsible for preserving tran-

quillity and contentment in that part of the country. Nor do I believe that it will be disliked by any but a few needy and discontented men whose occupation will be gone when they can no longer libel and threaten with impunity."

His Honour THE LIEUTENANT-GOVERNOR said:—

"MY LORD,—The subject before the Council appears to me to be one regarding which there is very little to be said; for it is a matter regarding the merits of which I can conceive the existence of no two opinions. What there was to say has been so ably and logically said that I find myself with but little to add, like my hon'ble friend Mr. Colvin. However, I feel that I ought not to give a silent vote in respect to the passing into law of a measure such as that before the Council, and this the more from the fact that I have had occasion to bring before the Government of India instances of the licentiousness and sedition of the vernacular Press, and to urge the necessity of bringing that Press under control, and making it powerless for mischief.

"The evil has long been felt by the Government of Bengal, and I believe by nearly all the other Local Governments. My predecessor, Sir G. Campbell, very strongly stated on several occasions his conviction that measures for controlling the vernacular Press were called for.

"I can very plainly foresee the misrepresentation and abuse to which the Government of India exposes itself by its determination to deal with this question in a bold and unflinching spirit, and I therefore desire, as a Member of this Council, to take upon myself my full share of responsibility for the measure.

"An attempt has been made by several very unscrupulous members of the Native Press to mislead the people into the belief that what Government desires to check is, not sedition, but fair criticism of public men.

"This is an assertion which I most emphatically deny and repudiate. What Government does object to is the sedition and gross disloyalty of some of the vernacular papers, and their attempts to sow the seeds of disaffection to the British rule in the minds of ignorant people.

"There have been laid before the Government extracts from the vernacular papers which establish the constant use of language of this description, and show that they habitually attack and misrepresent the Government under which they live in peace and prosperity in terms intended to weaken the authority of Government, and with a reckless disregard of truth and fact which would not be tolerated in any country in the world. The writings to which I allude have nothing to do with personal attacks. The personal

abuse, the falsehoods, the scurrility and the exaggerations which are applied to individual officers may well, as heretofore, be left to the ordinary action of the law courts, or be treated with the contempt they deserve. But it has been prominently stated that even this practical irresponsibility for personal abuse is a public mischief, and is used for the purpose of extorting money or frightening timid subordinates from a proper discharge of their duties. But it is not on this ground that I desire to support this measure. What I do recognise, and long have recognised, as a fact, is, that the licentiousness of the Press has, under false ideas of freedom and independence, been allowed to reach a stage which promptly calls, in the interests of the public at large, for the interference of the Legislature.

“I entirely agree with the Hon'ble Mover of the Bill in thinking that the whole of the vernacular Press is not open to these charges. I believe with him that there are many such papers conducted by respectable men on excellent principles; but the law proposed cannot injure them. If papers do not write sedition, or endeavour to incite disaffection towards the Government, or endeavour to extort money by intimidation, their position will be no worse when this Bill has become law than it was before. If they do publish matter of this objectionable character, then it is the plain duty of Government to interfere with them in the interests of the public, and I am sure that the public will have no sympathy with them.

“I can quite understand that the Government of India has, as the Hon'ble Mover of the Bill has stated, felt some difficulty in applying a measure of this sort to a portion of the Press and exempting another portion. But the difficulty, it seems to me, is imaginary rather than real. The papers published in this country in the English language are written by a class of writers for a class of readers whose education and interests would make them naturally intolerant of sedition; they are written under a sense of responsibility and under a restraint of public opinion which do not and cannot exist in the case of the ordinary Native newspapers. It is quite easy and practicable to draw a distinction between papers published in English and papers published in the vernacular, and it is a distinction which really meets all the requirements of the case, and should not be disregarded merely because some evil-disposed persons may choose to say that Government has desired to show undue favour to papers written in the language of the ruling power.

“The Press must be treated on its own merits. Had the English Press of India been in style and tone what it was twenty years ago, I for my part should have had no hesitation in voting for its inclusion in the present Bill. But I know

nothing that has improved more of late years than the tone of the Anglo-Indian Press. It no doubt attacks Government measures and Government officials, and often very undeservedly; but, as I have said before, it is not this sort of criticism to which Government objects or desires to control. On the whole, the English Press of India, whether conducted by Europeans or Natives, bears evidence of being influenced by a proper sense of responsibility and by a general desire to discuss public events in a moderate and reasonable spirit. There is no occasion to subject that Press to restraint, and therefore, naturally enough, it is exempted. It would be a sign of great weakness on the part of Government to bring it within the scope of this measure merely to meet a possible charge of partiality. If it should ever happen that the Anglo-Indian Press should adopt a tone calculated to excite feelings of disaffection to the British rule, I shall be amongst the first to ask for its inclusion in a law of this sort.

“My Lord, I will not take up the time of the Council any further. I have never lost an opportunity of stating my opinion on the subject we are now discussing, and I hope that I have explained with sufficient distinctness the grounds upon which my opinions are based. But even if I did not entertain these opinions as strongly as I do, I should consider it my duty, when told by Your Excellency, as Head of the Executive Government, that on full and calm consideration it had been determined that a measure of this sort was necessary for the maintenance of peace and order, to give it my hearty support.”

The Hon'ble SIR JOHN STRACHEY said:—“My Lord, I have a special reason for wishing to add a few observations of my own to those that have already been made on the Bill before the Council. Not long ago I was Lieutenant-Governor of one of the great Provinces of India, and some years previously the government of another Province was entrusted to me. The questions which are dealt with in this Bill have consequently been frequently brought home to me in a very practical shape. I have had to look on powerlessly at the mischief that has been going on, and have deplored the neglect with which it has been treated by the Government. I have known that this neglect has not been caused by indifference, but by the natural disinclination, which happily all Englishmen feel, to do anything which shall have even the appearance of interfering with the liberty of the Press, and if I myself now thought that this Bill was really open to such a charge, I should have been unable to give it my support.”

“I deny that this measure will infringe that liberty. Liberty of the Press means liberty of discussion, liberty for the free expression of thought and opinion. But liberty does not mean unbridled license; it does not mean

unlimited permission to let loose on the land a never-ending stream of abuse of all the institutions by aid of which society is held together; abuse of those things respect for which is indispensable for the preservation of the lives and property of every one; abuse of the Government, of the administration of justice, of the whole English race, and of all it does or desires to do. Respect for the liberty of the Press does not require that we should permit the writers of these scurrilous pages, which it is a misuse of language to call newspapers, to go on constantly telling the loyal and honest, but ignorant, people of India such things as those of which we have heard examples to-day. That Englishmen 'have the privilege of killing Natives with impunity;' that they are 'more mischievous to the Natives than snakes, and kill them with as much indifference as one kills a reptile;' that 'pimping is the only calling which the British Government does not yet practise;' that we have robbed the Chiefs of India of everything but the clothes they wear, and that the time is close at hand when this vile race, which has lost its courage and its military power, will have nothing left to them, but to abandon India to the victorious Russians, and flee for their lives. Nor does respect for the liberty of the Press require that we should allow blackmail to be levied on Native Princes and ladies, and on honourable Native gentlemen, who must pay the demands of these men or be held up to public infamy. Without dwelling on the political mischief caused by the calumnious and seditious language which constitutes a main staple of some of those productions of the Native Press against which the present Bill is directed, it seems to me clear that there is precisely the same justification for a law which shall prevent these abuses, as there is for laws against obscene publications, or against defamatory and seditious and obscene public dramatic performances.

"It has been proved by long experience that the existing law is altogether insufficient to supply the necessary check on these productions, and if there were no other reasons, public decency alone would require that such things should be stopped. I believe there is no country in the world where they would be tolerated. Among communities with a more advanced civilisation, legal enactments are hardly necessary for their prevention. Public opinion either makes them impossible, or at once brings upon their authors a just condemnation which goes far to render them harmless. Here, unfortunately, it is different. A small class of corrupt and malignant writers exists in India, as elsewhere, for no country is free from these pests of society, and there is here no compensating power of healthy public opinion to check their excesses. The honest journalist has nothing to fear from the present measure. He will be as free as he has ever been, to give expression to his opinions, to discuss the

action of the Government and its officers, to advocate those measures and doctrines of which he approves, and to censure those that he condemns. The limitations under which he may do this will, in no respect, differ from those that apply in England. I cannot describe those limitations better than by quoting the words in which a distinguished English Judge stated the law on this subject a few years ago :

“ ‘The public journalist,’ he said, ‘is entitled to canvass the acts, the conduct and the intentions of those who may be entrusted from time to time with the administration of the Government by the Crown.

‘He is entitled to canvass and, if necessary, to censure those acts. He is entitled to comment on, canvass and, if necessary, censure the proceedings of Parliament. He is entitled to criticise and condemn the acts of public men. He is entitled to point out any grievances which he may think the people labour under, and argue for their removal, and suggest what remedies may occur to him for the purpose. He is entitled not only to publish, but to comment on, to criticise, and, if necessary, to condemn, the conduct of Judges and their decisions ; nay more, even the verdict of juries are not exempt from fair and reasonable criticism.

* * I have told you within what limits a journalist may exercise his opinion and his talents ; but I should tell you also the things which he is not permitted by law to do. He must respect the existence of the form of Government under which he enjoys and exercises those very extensive rights and privileges to which I have referred. A public journalist must not, either covertly or openly, devote the pages of his journal to overthrow the Government. * * He must not sow disaffection and discontent generally throughout the land. * * He may, as I said, comment on the acts of the Government, and criticise them severely ; he may, as I said, canvass and criticise proceedings in Courts of Justice, and the conduct and demeanour of the Judges who preside ; but he must not devote his journal to the purpose of bringing the administration of the law generally into contempt, and exciting the hatred of the people against the law ; neither can he legally devote the pages of his journal to excite animosities between different classes of Her Majesty’s subjects.’

“These are the principles by which the British Government desires to be guided in this country also. They are the principles by which its action has been guided in the past, and by which it will continue to be guided in its relations with the Native Press, should the measure now before this Council become law.

“It is a cause of regret to the Government that any such change of system as that now proposed should be rendered necessary by the circumstances of this country. But it is obvious that more must be left in India to the Executive Government, and less to the restraining power of public opinion, or of the Judicial Courts, than would be right in England. In the present instance, as in many others, a restraining power supported by a legal sanction may be found necessary by the Executive Government, though the fact of that power existing may not improbably act so as to prevent its being put into operation.

“There is no danger in these days that an English Government will fail to act in accordance with the principles of the English law which I have stated; or that it will apply in a harsh or illiberal manner the powers with which it is now proposed to invest it. If the principles and the practice of the Government be thus regulated, it will be impossible for any one to say that any infringement has been made in the legitimate liberty of the Press. But while I affirm this, I wish also to add that the Government on its part can tolerate no infringement of its legitimate authority. To us has been entrusted the guardianship of British supremacy in India, and we are resolved to transmit that trust unimpaired to those who follow us.”

The Motion was put and agreed to.

The Hon'ble Mr. STOKES said that it appeared from the preamble that one of the objects of this measure was to prevent the use of the so-called Native newspapers as a means of intimidation, and section 3 accordingly empowered the Magistrate to call upon the printer and publisher of any such newspaper to give a bond not to ‘use or attempt to use such newspaper for the purpose of putting any person in fear or causing annoyance to him and thereby inducing him to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, or to give any gratification to any person.’

But it had just been pointed out to him that this did not provide for what he believed was the common offence of misusing such newspapers for the purpose of intimidating public servants from discharging their public duties. The Penal Code, section 189, provided for punishing such offences when committed. The Bill should provide, as best it could, for preventing their commission without any judicial proceeding.

Mr. STOKES therefore begged leave to move that the following be added to clause (b) of section 3 :—

“ or for the purpose of holding out any threat of injury to a public servant, or to any person in whom they or he believe or believes that public servant to be interested, and thereby inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of his public functions.”

The Hon'ble Mr. PAUL remarked that this amendment had taken him by surprise, no opportunity having been afforded for the consideration of the provision which was now proposed, and under the circumstances he was not prepared to vote on the motion one way or the other.

His Honour THE LIEUTENANT-GOVERNOR observed that he was responsible for the amendment which had been proposed. He had brought to the notice of the Hon'ble Mover of that amendment what he conceived to be an omission in the Bill. The amendment before the Council was in respect of a matter regarding which many complaints had been received, and for which no provision had been made. He considered that exactly the same difficulties which applied to prosecutions for extortion in relation to private individuals would apply to prosecutions for offences of the character to which the amendment would apply, and if it was considered desirable to restrain the vernacular Press from making scandalous aspersions on the character of private individuals with a view of extorting money, he thought it was equally desirable to protect public officers in a similar manner from intimidation and threats in respect to the performance of their public duties. It was as inexpedient to leave the matter to be dealt with in the ordinary Courts in the one case as in the other.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill as amended be passed. He said—“ I am sure that Your Lordship and every Member of the Executive Government will have been gratified at the reception which the Bill has met with from the Council. There is only one point in connection with the discussion which has just taken place, regarding which I entertain any regret. I could wish that more of our Native colleagues had been present to take part in the debate; but I feel bound to say that we are greatly indebted to the one Native Member of the Council who has been able to be present, for his sensible and loyal remarks on the subject of the Bill. I feel sure that the observations which the Mahárájá Jotindra Mohan Tagore has made, will go forth to his countrymen—and especially to the educated portion of his countrymen—with considerable effect, and will exercise a most valuable influence on the discussions which we must expect to take place on this Bill. As my hon'ble friend, the Lieutenant-Governor, remarked, I have no doubt that the Government will not

escape attacks on the measure to which it has felt it its duty to resort; but I do not apprehend that in those attacks there will be a single word which will induce any Member of this Council to regret the part which he has taken in voting for and supporting the measure. After the very forcible arguments which have been advanced by my hon'ble colleague the Advocate-General; after the clear and lucid manner in which the points of the case and the arguments have been stated by my hon'ble friend Mr. Evans, and after the results of their practical experience given by Mr. Thornton, Mr. Colvin, the Lieutenant-Governor and Sir John Strachey, I think that we may allow this measure to go forth to the public with undiminished confidence, and with a sanguine hope that it will be received by the intelligent portion of the public, both in this country and in England, and also in those other parts of the world in which matters connected with India receive any sort of interest, as a measure which the Government was justified in passing, and in fact was bound to pass."

His Excellency THE PRESIDENT said :--

"After the exhaustive manner in which this measure has now been discussed, the clear and temperate statement of my hon'ble colleague who introduced it, and the able speeches we have heard from those Hon'ble Members who succeeded him, I find that I have but little need to trouble the Council with any additional remarks. It would not, however, become me to obscure my responsibility for a measure of this extreme importance by giving it a silent vote; and I must, therefore, make a further claim on the attention of the Council.

"I cannot but regret the necessity which, by some irony of fate, has imposed upon me the duty of undertaking legislation for the purpose of putting restrictions on a portion of the Press of this country. By association, by temperament, by conviction, I should naturally find my place on the side of those to whom the free utterance of thought and opinion is an inherited instinct and a national birthright. I should have rejoiced had it fallen to my lot to be able to enlarge, rather than restrict, the liberty of the Press in India; for neither the existence, nor the freedom, of the Press in this country is of Native origin or growth. It is an exotic which especially claims and needs, from the hands that planted it in a foreign soil and clime, protecting shelter and fostering care. It is one of the many peculiarly British institutions which British rule has bestowed upon a population to whom it was previously unknown, in the belief that it will eventually prove beneficial to the people of India, by gradually developing in their character those qualities which have rendered it beneficial to our own countrymen. For this reason, the

British rulers of India have always, and rightly, regarded with exceptional tolerance the occasional misuse of an instrument confided to unpractised hands. But all the more is it incumbent on the Government of India to take due care that the gift for which it is responsible shall not become a curse, instead of a blessing, a stone, instead of bread, to its recipients.

“ Under a deep sense of this great responsibility, I say distinctly, and without hesitation, that, in my deliberate and sincere conviction, the present measure is imperatively called for by that supreme law—the safety of the State.

“ We have endeavoured to base our rule in India on justice, uprightness, progressive enlightenment and good government, as these are understood in England ; and it is at least a plausible postulate, which at first sight appears to be a sound one, that, so long as these are the characteristics of our rule, we need fear no disaffection on the part of the masses.

“ It must, however, be remembered that the problem undertaken by the British rulers of India—(a political problem more perplexing in its conditions, and, as regards the results of its solution, more far-reaching, than any which, since the dissolution of the *Pax Romana*, has been undertaken by a conquering race)—is the application of the most refined principles of European government, and some of the most artificial institutions of European society, to a vast oriental population, in whose history, habits, and traditions they have had no previous existence. Such phrases as ‘ Religious toleration,’ ‘ Liberty of the Press,’ ‘ Personal freedom of the subject,’ ‘ Social supremacy of the Law,’ and others, which in England have long been the mere catch-words of ideas common to the whole race, and deeply impressed upon its character by all the events of its history, and all the most cherished recollections of its earlier life, are here, in India, to the vast mass of our Native subjects, the mysterious formulas of a foreign, and more or less uncongenial, system of administration, which is scarcely, if at all, intelligible to the greater number of those for whose benefit it is maintained. It is a fact which, when I first came to India, was strongly impressed on my attention by one of India’s wisest and most thoughtful administrators,—it is a fact which there is no disguising, and it is also one which cannot be too constantly, or too anxiously, recognised, that by enforcing these principles, and establishing these institutions, we have placed, and must permanently maintain, ourselves at the head of a gradual, but gigantic, revolution ; the greatest and most momentous social, moral and religious, as well as political, revolution which, perhaps, the world has ever witnessed. Now, if the public interpreters and critics of our action were only European

journalists, capable of understanding and criticising it from a European point of view, in reference to the known principles of European polity, and in accordance with the commonly accepted rules of European reasoning, then, I think, we might rationally anticipate nothing but ultimate advantage to the country, as well as to its Government, from the unrestricted expression of their opinion, however severely they might criticise, from time to time, this or that particular detail in the action of this or that particular administration. But this is not the case as regards those journals which are published in the vernacular languages. Written, for the most part, by persons very imperfectly educated, and altogether inexperienced; written, moreover, down to the level of the lowest intelligence, and with an undisguised appeal to the most disloyal sentiments and mischievous passions; these journals are read only, or chiefly, by persons still more ignorant, still more uneducated, still more inexperienced, than the writers of them; persons wholly unable to judge for themselves, and entirely dependent for their interpretation of our action upon these self-constituted and incompetent teachers. Not content with misrepresenting the Government and maligning the character of the ruling race in every possible way and on every possible occasion, those mischievous scribblers have of late been preaching open sedition; and, as shewn by some of the passages which have to-day been quoted from their publications, they have begun to inculcate combination on the part of the Native subjects of the Empress of India for the avowed purpose of putting an end to the British Ráj. This is no exaggeration. I have here under my hand a mass of such poisonous matter extracted from the various organs of the vernacular Press.

“After all that has been already said in description of it, I think it would be unnecessary to trouble the Council with the various illustrations which I had intended to bring under its notice. But here, for instance, is one typical specimen of the art of allegorical calumny described by my hon’ble and learned friend Mr. Paul:—In the Calcutta pice paper, the *Sulabha Samachar*, which has the largest circulation (about 5,000) of any vernacular paper in India, the Macgregor trial was travestied in an article on the 20th December. The prisoner is named ‘Mr. Rogue’ of the Factory at Kritantapur (‘the city of death’); the doctor whose evidence saves him from hanging is ‘Dr. Bribe’; and after the conclusion of the mock trial, the Judge, the Doctor and Mr. Rogue dine together, and afterwards go a-hunting.

“The articles that are actually and obviously seditious are, of course, much fewer in number; for there still remains a lurking suspicion that the provisions of the Penal Code under this head may some time or other be put

in force. Both in Bengal and in Bombay the worst inferences are generally concealed under the form of innuendoes. One Bengal paper, after saying that a 'mighty and wide-spread conflagration is often preceded by common smoke,' goes on to point out that the English, 'proud of the power of their bayonets, tread on the heads of the whole Indian population,' and that '25,000 Englishmen are ruling 250,000,000 Natives:' but the conclusion is wisely left to the reader's imagination. And again, another Bengal paper points out that the English themselves 'speak of the decline of their military power and the loss of their prestige as a nation;' and concludes that 'there is great reason to believe in the truth of the statement.' So, too, a Bombay paper, after declaring that 'England has become enervated from too much addiction to luxury, and therefore is not willing to encounter Russia in the field;' instances Alexander, Cæsar and Napoleon Buonaparte as examples that those who have attained the imperial dignity have come to a disastrous end, and prophesies the same result of the Imperial Assemblage at Delhi. The *Kiran*, of Bombay, after saying that 'England has been shewing a thorough effeminateness from the beginning of this war;' that a 'sharp communication from Russia was sufficient to cool its spirit;' that 'England has never been famous for heroism: according to the popular belief, it owes its great Indian Empire more to diplomacy and craftiness than to bravery;' goes on to say that England, yielding to the 'mere appearance of Russia,' her inactivity makes the Natives of India very uneasy about their own safety. And a week later the same paper declares that, as soon as victorious Russia gains a footing in India, 'the English will have no other alternative than to flee for their lives.'

"The *Arya Warta* follows the negative suggestive plan—'Don't nail his ear to the pump': it says—'If we were to write that the Englishmen in India are very few, and though Natives are not brave, but weak and unarmed, yet if they wish they can blow away the English even by their breath, and so to advise the Natives to unite and drive the English out of the country,' this advice would be 'pernicious to us' and 'treasonable.' The *Shiwaji*, a Mahratta paper, is somewhat more outspoken.

"But the most daring sedition is written in the vernacular papers of Upper India. The paragraph which the *Malwa Akhbar* publishes at one of the Mahratta Capitals (Indore) is striking. It gives, as a rumour that 'has perceptibly affected trade and the money-market' in Bombay, that Nána Sáheb is about to invade India with a Russian army, and 'will establish once more the dominions of the Peshwás through the auspices of the Czar', Satára, Baroda,

Nágpur, Jhánsi, &c., being formed into 'feudatory kingdoms acknowledging the suzerainty of the Peshwá.' The same paper, a fortnight later, speaking of the 'evil times' and 'gloomy days' of English rule, says significantly: 'we dreamt last night of a deer holding in his paw a lion and a tiger.' A little later, it declares that the main object of the English Government in this country 'consists in wheedling the people out of their money by all manner of tricks.' And, again, the same paper declares that 'a belief has lately grown up in the minds of the Natives that Native rule has many advantages;' 'the Hindús have begun to think the Mussulmans to be Natives;' the English 'will not be able to resist the progress of Russian arms in India;' 'our English military officers now think fighting to be a great sin,' and so on. Having in the intervening issue contented itself with declaring that the English in India 'consider Natives as beasts of prey and generally kill them as such; the oppressions of European officers have now become intolerable.' The same paper a fortnight later (in an article on the Russian occupation of Constantinople), makes a point out of the declarations of some English statesmen that the preservation of our Indian Empire is not of great importance to us; it declares that this is illustrated 'by the fable of the fox and the grapes!' And this is published in Holkár's capital, and doubtless read in every Court and every bázár of Central India.

"Now, the late Mr. Mill, a political thinker who had given much study to the administrative problems of this Empire, was undoubtedly one of the ablest, the most thoughtful, and the most eminent, advocates of *laissez faire* as regards the public expression of personal opinion. But even Mr. Mill recognised very distinctly the paramount necessity of restrictions upon the expression of opinion—as regards communities when they are in their nonage, and as regards individuals, in certain cases, one of which he thus defined: 'Even opinions,' he says, 'lose their immunity when the circumstances in which they are expressed are such as to constitute a positive instigation to the mischievous act.' And on this Sir James Stephen has observed that it is not only possible to throw the abetment of a crime into the form of the expression of an opinion, but that 'you may also throw it into the form of the statement of a fact, as was done by the courtier of Ahasuerus, who, when Haman got into disgrace, casually observed—'Behold also the gallows which Haman has set up.'

"I think the Council must have been satisfied, by the specimens which have now been submitted to its notice, that the vernacular Press is at present an adept in the treasonable art of instigating mischievous action, both by the expression of opinion, and the statement of fact. I am confident that there is

no Government in the world which would tolerate, no Government which could afford to tolerate, none which would be justified in tolerating, the unrestricted utterance of such language as is now addressed by the vernacular journals of this country to the ignorance, the prejudices and the passions, of a subject race. There is an excellent Society for the prevention of cruelty to animals. It is another of those British institutions which is, in its origin, foreign to this country, where, however, there is a wide field for its beneficent exertion. But I am persuaded that not even the most enthusiastic member of that Society would tolerate the continued existence and unrestricted activity of a wasps' nest in his garden, or hesitate to enjoin upon his household servants the timely extermination of venomous insects. I maintain that to prohibit the mischievous utterances of such journals as those from which I have quoted, is no more an interference with the liberty of the Press, than to prohibit the promiscuous sale of deadly poisons is an interference with the freedom of trade.

“ My hon'ble friend Sir John Strachey has reminded us that the liberty of the Press is not extended by British law to the literature of Holiwell Street. If, then, the members and officers of the Society for the suppression of vice, if the Legislature which passed, if the judges who apply, and the police who enforce, Lord Campbell's Act for the prevention and punishment of obscene publications,—if, I say, all these authorities be fairly open to the charge of interference with the liberty of the Press, then, and only then, can such a charge be reasonably brought against the Government of India, for having framed, recommended and resolved to carry, this Bill. But if, on the other hand, the freedom of the Press be not only compatible with, but to a great extent dependent on, that protection to public decency and private character of which, in free communities, a free Press is itself one of the strongest safeguards, then I maintain that this Bill, so far from being hurtful to the freedom of the Press in India, is a much-needed guarantee for the continued existence of it. I say that the continued existence of a free Press in India is incompatible with the continued existence of the evils which this Bill is intended to remove; and I say that whatever tends to the prevention of disease, or the correction of deformity, tends also to the preservation of health, and the prolongation of life. We have been taught by One on whose teaching the whole of Christian civilisation is founded, that it is better to pluck out the offending eye, or cut off the offending hand, than that the whole body should perish. But the class of unseemly and seditious publications which will come under the operation of this Bill are assuredly neither the eyes nor the hands of the Native Press of India. They are but foul blotches

and boils, virulent pustules and rank eruptions, on the least seemly parts of it. If, even in the most advanced self-governing societies, it be still the acknowledged duty of the State to provide by law for the repression of publications calculated or designed to pervert the mind and poison the sentiments of those whose characters are yet unformed and whose judgment is still immature, then I assert with confidence that there is no Government in the world on which that duty is more incumbent than the Government of India; and that the measure which, in our discharge of that duty, we have laid before this Council is an eminently just, as well as an urgently necessary, measure. For I maintain, without fear of contradiction, that the young people in England, for whose mental and moral protection Lord Campbell's Act was passed, are infinitely less ignorant, less easily influenced, infinitely better able to govern their own passions and guide their own conduct, than the helpless masses of our Native population, on whose behalf you are now asked to pass this Bill.

"It is not in the spirit of resentment for injuries that we propose to legislate. It is in the firm conviction that the maintenance of our Rāj is for the good of the people, that we seek to save the people from the ruin in which they would involve themselves by seditious agitations against it. We have no desire to resort to fine or imprisonment; but what we do desire, and what we regard as the plain duty of the Government, is to prevent the open preaching of sedition and rebellion amongst the most ignorant, excitable and helpless portion of its subjects.

"Within the last few weeks I have refused applications from two different Local Governments to permit the prosecution of local vernacular newspapers for obvious and rank sedition. And I will state my reasons for so doing. The law, as explained by the Hon'ble Mover of this Bill, is, in its present state, a very questionable instrument. The explanation of 'disaffection' may be taken to explain away almost any incitement to disaffection that is not followed by actual rebellion; so that the probability of securing a conviction would always be doubtful. But, though these considerations might well justify me in hesitating to sanction a prosecution under existing circumstances, it was not solely, nor indeed mainly, on these considerations that I have acted. Had the law been certain, and the temper of the jury such as would have rendered a conviction secure, still I should not have considered a prosecution desirable. What I desire is to *prevent*, not to *punish*, seditious appeals. A successful prosecution, even should it, in some cases, have a deterrent effect, would still invest the prosecuted journal with a mischievous notoriety, and an artificial

importance, calculated to give to its seditious teaching the very publicity which, in the interests of good government, we should desire to prevent. Every such victory would be a virtual defeat.

“ It is for these reasons that I came to the conclusion that legislation was necessary ; and that it behoved us to direct such legislation to methods of prevention, rather than of punishment. This conclusion has been adopted, after the most anxious consideration, with the unanimous approval of every Member of my Executive Council, and every Local Government in India except one, within whose jurisdiction the vernacular Press is wholly insignificant and unheeded.

“ It may, and by some persons it probably will, be regarded as an objection to this measure that it draws a distinction, and apparently an invidious distinction, between the Native and the English Press. It may be said, with perfect truth, that the very words which we regard as innocuous in an English paper will be deemed seditious in a vernacular journal, and that the Native editor may be ruined for repeating what the English editor has published with impunity. Well, this seems a very strong indictment against the Bill ; but the briefest examination of the circumstances for which we are legislating will suffice to dissipate the force of it. In the first place, let the real distinction be observed. The distinction is not between Englishmen and Natives, or between the English Press and the Native Press ; for many Natives publish their newspapers in English, and in very good English too. Some of the Native newspapers thus published contain excellent and valuable comments on public affairs. Some of them are also edited by men of acknowledged ability and culture, who certainly do not hesitate to criticise the English Government with an asperity and hostility which no other foreign Government in the world would tolerate for a moment. With these papers we do not interfere. Being written in English, they are *ex vi termini* addressed to a more or less educated audience, and a class that has at least the power, even if it have not always the will, to choose between the false and the true, between the evil and the good. From them we apprehend no political danger ; and we can trust to their improving education, as time goes on, to render their criticism fairer, and their judgment more according to knowledge. It is not, then, against Native papers, as such, that our legislation is directed. We confine our measures of restriction purely to the papers written in vernacular languages ; and we do so because, as I have said before, they are addressed solely to an ignorant, excitable, helpless class—a class whose members have no other means of information, no other guide as to the action and motives of their rulers ; and who, if such action and motives

be persistently misrepresented to them, are likely to give vent to their excited feelings in acts of disaffection, which cannot but be fraught with disaster to themselves.

“There is a very great difference between denouncing, in a debating Society of educated men, the existence of the Government established by law, and using the same language to an excited mob. There are certain physiological works which may be rightly offered to the study of medical students, but which no one would place before schoolboys. What is to competently educated men a subject only of scientific enquiry, becomes an instrument of danger and destruction in the hands of the ignorant. This distinction applies to our treatment of newspapers printed in English, and distinguished from those printed in the vernacular. The one class is addressed to people who can, more or less, judge for themselves; the other to those who are incapable of judging.

“There is, however, one aspect of the case which I have not yet touched upon, but which is scarcely less important than those on which I have been dwelling. It is the use made of the Native papers as a means of extortion for levying blackmail from Native Chiefs and persons of distinction, or as a means of intimidation applied to Native Magistrates and Judges.

“To Natives of distinction, the publicity of newspaper abuse is probably far more galling and intolerable than it is to any class of Europeans; and a Native would be very unwilling to add to this publicity by going into the Court and suing his libeller. It is probable, too, that these cases are but rarely noticed in the reports of our translators. Very lately there was a case pending in a Madras Court in which a member of the Carnatic Family charged a Native paper with having libelled him; but I could find no reference in the reports to the article complained of. We have had, however, not unfrequent complaints on this score. A Native gentleman of high position, writing to us from Peshawar, complained that the editors of certain vernacular papers habitually attack the character of innocent people who cannot afford to satisfy their cupidity. They force people to subscribe to their papers, and write against those who refuse to comply with their request. ‘Rájás,’ he says, ‘and Chiefs dread him (that is to say, the proprietor or editor of a vernacular journal), under the impression that he may write against them, as he did against their compeers. They, therefore, subscribe to his newspaper, and assign an annual sum of money to him. The editor calls over every year to each State, receives money, khillats and sumptuous meals, and comes back.’ This is not an isolated instance. I have quite lately received similar testimony from the editor of a most

respectable vernacular newspaper, who feels himself and his calling degraded and blackened by the malpractices of this baser sort of his own profession ; but I need not take up the time of Hon'ble Members by referring to other examples. The misuse of the Press, as a means of intimidating Native Judges and Magistrates, was strongly dwelt upon by Sir G. Campbell in a report urging on the Government of India a measure very similar to that which we have now been compelled to adopt. Quoting from the report of one of his most experienced Commissioners, he said—'There is, however, one aspect in which the present unbridled license of the Press is peculiarly injurious to Government ; for it affects the feelings of its Native officers and subordinates to an extent which is palpably detrimental to the thoroughly upright and fearless discharge of their official functions. I fear that there is not a Native Deputy Magistrate in the country who could deny that he is afraid of becoming the subject of personal attack in a Native newspaper. I know of scarcely any more exquisite, but certain, process of torture than that which begins with the publication of a scandalous attack on a public officer, and leads up to a call for explanation. Even if his explanation is accepted, he has gone through the ordeal, he has been mentally tortured, while his assailant has lurked in the darkness, and is beyond the reach of punishment. I say, without fear of contradiction, that this villainous misuse of the public Press affects the whole of the administration of justice by Native officers, and that in the exceptional state of this country it is monstrous to allow a system of uncontrolled Press-license to prevail, which is only suited (even if it is suited there) to nations in which independence and civilization are more thoroughly established.'

" Similar testimony is to be found in more recent reports, and is strongly repeated by the present Commissioner of Dacca. I trust, however, that I have now said and read enough to satisfy the Council that we have not undertaken the present measure lightly, or without the fullest and most anxious consideration. We must of course expect that by those people whose minds are governed by phrases, and who look upon the liberty of the Press as a fetish to be worshipped, rather than as a privilege to be worthily earned and rationally enjoyed, this measure will be received with dislike, and the authors of it assailed with obloquy. It is my hope, however, that the gradual spread of education and enlightenment in India may insure, and expedite, the arrival of a time when the restrictions we are now imposing can with safety be removed. I am unwilling to hamper the free influence of honest thought ; but I recognise in the present circumstances of this country, and the present condition of the populations committed to our charge,

a clear and obvious duty to check the propagation of sedition and prevent ignorant, foolish and irresponsible persons from recklessly destroying the noble edifice which still generously shelters even its vilest detractors. That edifice has been slowly reared by the genius of British statesmanship out of the achievements of British valour. It was founded by English enterprise; it has been cemented by English blood; it is adorned with the brightest memorials of English character. The safe preservation of this great Imperial heirloom is the first and highest duty of those to whose charge it is entrusted—a duty owed to the memory of our fathers, as well as to the interests of our children; to the honour of our sovereign, no less than to the welfare of all her subjects in India.”

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 20th March 1878.

CALCUTTA,
The 14th March 1878.

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D. FITZPATRICK,
Secretary to the Govt. of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Wednesday, the 13th March 1878, was adjourned to Thursday, the 14th March 1878.