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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1881.

WITH INDEX.

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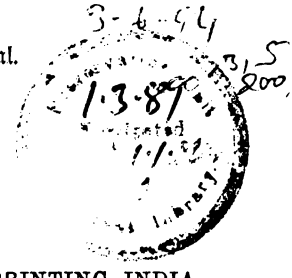

CALCUTTA:
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1882.

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 Friday, the 11th March, 1881.

PRESENT:

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

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

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

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

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES presented the third Report of the Select Committee on the Bill to define and amend the law relating to the Transfer of Property.

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Bill to amend the North-Western Provinces Rent Act, 1873, be passed. He said that, on the last occasion, when the report of the Select Committee had been taken into consideration, he gave a brief explanation of the changes which had been made in the Bill; but, if any hon'ble member wished for any further explanations, he should be happy to give them to the best of his ability.

The Motion was put and agreed to.

FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS moved that the Report of the Select Committee on the Bill to provide for the better government of Fort William be

taken into consideration. He said that the principal change made in the Bill was to transfer to the Governor General in Council and the Commander-in-Chief the powers conferred on the Local Government by the Bill as it was originally introduced. Fort William had never been considered to be under the superintendence of the Local Government; and the Select Committee had, therefore, transferred the exercise of the powers under the Act to the Governor General in Council. There was another slight change in the first section of the Bill, so as to make it clear that sutlers and followers should be amenable to the jurisdiction under the Act, whether they were subject to military law or not. In the next place, the schedule of the Bill had been considerably altered; but the changes which had been made in it were rather of a formal than of a substantive character. It appeared doubtful whether the schedule covered all the offences which were included in the regulations for the government of the Fort which now existed. The wording of the schedule had been somewhat enlarged, and it now covered all the ex ing Fort-regulations; but, as it appeared necessary to make provision for ture contingencies, it was provided that the Commander-in-Chief, with the sa ction of the Governor General in Council, might make rules relating, not only to matters included in the schedule, but to other matters of a like nature. Another change had been made in the sixth section of the Bill, with regard to which he should have something to say when he moved the amendment of which he had given notice. At present he begged to move that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. REYNOLDS then moved that, in section 6 of the Bill, the words "non-commissioned officer or" be omitted. He said that these words were not in the draft of the Bill as originally introduced, but were introduced because the Committee were under the impression that the military authorities desired that non-commissioned officers should be vested with the power of making arrests without warrant. It had subsequently, however, been ascertained that the military authorities did not desire to press the proposal to invest every non-commissioned officer with this general power, though it would always be in the power of the Governor General in Council to confer upon any non-commissioned officer the right to arrest under this section.

The Motion was put and agreed to.

The Hon'ble MR. REYNOLDS then moved that the Bill as amended be passed. The Bill had been published in the Gazette, and the Select Committee were of opinion that the changes made by them were not of sufficient

importance to require re-publication. If the Council concurred in this view, he believed there was no reason why the Bill should not be passed.

The Motion was put and agreed to.

ALLUVION BILL.

The Hon'ble MR. STOKES presented the second Report of the Select Committee on the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

DEKKHAN AGRICULTURISTS RELIEF ACT AMENDMENT BILL.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Dekkhan Agriculturists Relief Act, 1879, and for other purposes. He said that this very exceptional piece of legislation had been found, in the working of it, to require amendment in several particulars; but the amendments were not of very great importance, with the exception of one, relating to the registration of documents. Some practical difficulty had arisen on this point, and it had been found that it would be quite sufficient, instead of the documents in question being registered and a copy kept in full, if they were simply ear-marked to prevent any falsification after a certain date. In working the Act, the Special Judge appointed for its superintendence brought to notice certain other alterations necessary for the working of the Act, and the suggestions made were considered by the Government of Bombay with the aid of their law officers, and the result was that MR. GIBBS had now to ask for leave to introduce a Bill to amend the Act. Should leave be given to introduce the Bill, he should then further apply to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to introduce the Bill and refer it to a Select Committee. It was very necessary that the Bill should be introduced before the Council proceeded to Simla.

The Motion was put and agreed to.

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

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. GIBBS then introduced the Bill, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson, Grant, Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

FACTORIES BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to regulate labour in Factories be taken into consideration. He said that it would be desirable, perhaps, that he should notice briefly the changes that had been made in this Bill in Select Committee, as there had been no discussion of its provisions since the Report was presented last year.

The first change to be noticed was with regard to the definition of "factory." Those Members who were in the Council at the time when the Bill was introduced would, no doubt, remember that there had been some discussion on the subject of this definition. The matter had been further discussed in the Select Committee, and the conclusion arrived at was that a factory should be defined to mean any premises where work was carried on for not less than four months in the year, with the aid of steam, water or other mechanical power, and where not less than 100 persons were employed at one time. He supposed that the Committee could hardly have framed any definition which would not be open to criticism; but it had been hoped that the definition given in the Bill would include all factories to which it was desirable that the law should apply, and sufficiently exclude all temporary workshops and other places in which children were employed for too limited a time to make protection necessary. It was now urged that the definition went too far in respect of one or two industries; but, if the amendment which the Hon'ble Mr. Rivers Thompson proposed to move should be carried, the definition proposed would, if he recollected rightly, be no longer objected to by any of the Local Governments.

The next point mentioned in the Report was that Crown factories had been brought under the operation of the Act, which followed in this respect the British law on the subject. This had been another subject of discussion when the Bill was introduced, and the conclusion to which the Committee had come on full consideration was, that Crown factories should be brought within the scope of the Act, but that the power to exempt them temporarily, in cases of emergency, should be reserved to the Government. It was quite necessary that such power should be reserved in order to avoid great inconvenience and mischief. It would be sufficient to instance the case of the Mint, and of the powder and gun manufactories in time of war, to show the necessity for such a provision.

He now came to section 7 of the Bill. It would be seen that the Committee had abolished the distinction which had existed in the Bill as originally introduced, between "children" and "young persons," and that the time for the employment of young children had been extended from six to nine hours. He would briefly explain the reasons for these changes. The Bill in its original shape had allowed "young persons" to be employed for eight hours, and "children" for only six, the last-mentioned provision being in accordance with the English law. On closer examination, however, there appeared to be good reasons for extending the time of employment of children in this country. In the first place, it was beyond question that factory-labour in India was not so severe or continuous as at home. Then, at home, a child who worked in a mill for six hours was obliged by law also to attend school for three hours of the day, and he was, therefore, employed in one shape or the other for nine hours out of the twenty-four. In this country, supposing that children were not employed for more than six hours, it could hardly be expected, in the existing state of education, that they would attend any school, because a great many of them would have no school within reach which they could attend, and because, if they had, it was extremely improbable that their parents would send them to it. If they were not allowed to remain in the factory, they would either be turned out to absolute idleness or to seek for manual labour elsewhere. A further consideration, and one entitled to much weight, was that, if the labour of children were limited to six hours, great facilities would be given for evading the law. Mills in this country never worked for less than twelve or fourteen hours, and it would be impossible to prevent a child who had worked six hours in one factory from going to work six hours in another. He said that it was impossible to prevent this, because any elaborate system of registration and inspection, by which a check might be put upon it, would lead to worse evils than the evasion of the law itself. Those were the grounds on which the hours for the labour of children had been extended, and the majority of the Committee thought that nine hours was not too great an extension, provided that one hour's interval was allowed during that time for food and rest. This extension having been determined on, there was no longer any object in maintaining a distinction between young persons and children.

A few words would not be out of place as to the manner in which it was intended that the Act should be worked. The great object of the Committee had been to reduce to the utmost possible degree all interference with the employers of labour. With this object the Bill provided that, if an Inspector found a child employed in any factory whom he believed to be under the prescribed minimum limit of age, or a person employed as an adult whom he

believed to be a child within the meaning of the Bill, he might prohibit the employment of such child, unless the employer could produce a certificate showing the child to be of proper age, from a duly empowered surgeon, and that such prohibition should remain in force until the necessary certificate was obtained. If the mill-owner employed such child or person after the prohibition without obtaining a certificate, he would be liable to prosecution. It would be seen from this that no mill or factory owner would be exposed to trouble from the law, unless he acted in neglect or defiance of a warning. As in mills and other factories the work was generally carried on for twelve hours and often for more, it would be necessary to employ the children in shifts. The Inspector, therefore, had only to know to what shift a child belonged, and to ascertain that a shift never worked for more than nine hours, in order to satisfy himself that no child was being employed for more than the time allowed.

There was one point in the Bill connected with the provision of an hour's interval in the day's work which had been the subject of some criticism, and which MR. COLVIN might briefly explain. The Bill provided that the times at which the intervals from labour should be allowed, and the length of each interval, should be fixed by the Local Governments for each factory after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof. It had, apparently, been understood by some of those concerned that the Committee meant that the Local Government should, of its own motion, regulate and determine for each factory the intervals to be allowed for rest and food. But what the Committee had intended, and what the Act allowed, was that in each factory the owner should himself determine the period or periods of rest and give notice thereof to the Inspector, and, if there were no reason to object to them, that the Local Government should declare that those should be the intervals allowed. That was the intention of the Act, and MR. COLVIN thought that the Committee could scarcely have gone farther to meet the wishes of the mill-owners. It was necessary that the intervals allowed for food and rest should be given at fixed and stated times; otherwise, it would be impossible to ascertain by any inspection whether the provisions of the law on this subject were being complied with.

A further point to be mentioned was that the Bill gave power to the Local Government to require a register to be kept of children employed in a factory; such a provision would be necessary to the successful working of the law. He did not think much explanation was needed in regard to the provisions of the Bill relating to the fencing of machinery; this part of the Bill had met with general approval. He might, however, by way of showing that such a provision was not unnecessary, refer to a statement he had received through the

kindness of the Commissioner of Police in Calcutta, showing the number of accidents in mills in the town and its suburbs during the year 1879. In the town there had been 19 accidents and three deaths, and in the suburbs 21 accidents and one death. It was clear, therefore, that provisions for the proper fencing of machinery were not wholly uncalled for.

He had thus far turned his attention to what the Committee had done: it might be desirable to say one or two words regarding what the Committee had not done. It had not provided for other matters relating to factory-control, such as ventilation and sanitation. Both in Bombay and Madras, opinions had been given in favour of doing something in this direction; but, after full deliberation, the Committee thought that no such necessity had been shown to exist as would justify their proposing to add anything on these subjects to the general Act which they were considering. The Committee were informed that, in Bombay at any rate, the Municipal Act allowed the Government sufficient power in these matters. Even if that should not be the case, they still were of opinion that these matters had better be dealt with by local legislation, and that there was no occasion to insert them in the present Bill, which was intended to apply to the whole of India.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said that he had had the honour of serving on the Select Committee, but he was free to confess that he was not altogether in favour of the Bill which was now before the Council. He was humbly of opinion that any authoritative intervention between labour and capital in a country where manufacturing industry was in its infancy was not at all desirable. It appeared, however, that, in Bombay, competition among the factories had come to such a stage that legislative interference in the interest of the operatives was considered by the Local Government to be very much needed, though, as he understood, there was considerable difference of opinion among the outside public. On the other hand, the Bengal Government and intelligent public opinion here held that such a measure was not only unnecessary, but that it would be positively injurious. European capital and European energy were being gradually drawn into this country to its immense advantage, and any uncalled for legislative intervention between labour and capital was, it was believed, sure to operate as a check in that direction, and such a result could not but be considered as a misfortune to the country. The best course, no doubt, under existing circumstances, would have been to have maintained the permissive character of the Bill as it was originally framed, and to have allowed discretion to the several Local Governments to extend it to their respective Provinces, according to their local necessities. He might here observe that, in matters of far greater importance, Local Govern-

ments were allowed the fullest exercise of their discretion, and surely a question of this nature could have been safely left in their hands. The majority of the Select Committee on this Bill had, however, decided that it would be unjust to impose restrictions on Bombay, and allow other provinces to enjoy exemption from them; that was to say, because the peculiar condition of one province needed a certain law, the rest of the country must, perforce, be subjected to it, though the result might be injurious; or, in other words, to suit the requirements of one province, other provinces must suffer. He confessed that he did not see the justice of this decision. India was a vast country, and the circumstances and conditions of the different parts varied as much, perhaps, as their geographical position. What might be good for one part of the country could not necessarily be good for another, and in the practical administration of the country the Government fully recognised this principle. It was contended that the restrictions were so moderate that they could not but be needed in any part of the country. In Bengal, in the absence of any great competition, self-interest led the capitalist as well as the labourer to work in harmony and with mutual good-will, and any legislative interference, he submitted, was wholly uncalled for. But forced legislation of the kind contemplated might, on the contrary, create friction and discord, by tempting both classes to stand too rigidly on their respective legal rights, and thus, perhaps, strangle a young industry which had opened the means of livelihood to thousands of the poorer classes of this province. He would, therefore, strongly, but respectfully, deprecate such superfluous legislation. In conclusion, he begged to observe that, if the amendments of which he saw notice had been given by the Hon'ble Mr. Thompson were carried, they would, no doubt, to a certain extent, modify the effect of the Bill; but he must be permitted to say that he should prefer if the original permissive character of the Bill be preserved in its integrity.

His Honour THE LIEUTENANT-GOVERNOR suggested that it would simplify matters if further discussion was postponed until the amendments were moved, of which notice had been given.

His Excellency THE PRESIDENT agreed with His Honour the Lieutenant-Governor, but observed at the same time that he could not rule any member to be out of order who desired to speak on the Motion then before the Council.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON said the Council would observe that there were several amendments in his name which he would move in the order in which they came. He had listened with attention to the remarks which had fallen from his hon'ble friend Mahárájá Jotíndra Mohan Tagore, and,

though he did not wish at this point to continue the discussion which had been raised as to the principle of the Bill, he would, prior to introducing his amendments, submit that it would be in the recollection of the Council that, when the proposal was first made for a measure for regulating labour in factories, it was of a very much more stringent nature than anything which was now in the Bill. At any rate, the Government of India were in possession of a great deal of information in the reports from the different officers, which, if they were all carried out, would have imposed restrictions of a very wide and large character, not only as regards labour in factories, but in connection with ventilation, sanitation and other matters, which might have entailed frequent and detailed inspection and interference. Even now, after the report of the Select Committee, when two years had been given to the consideration of the measure, in proposing to consider the report the Government of India had taken into consideration many points which were brought to notice in the later reports in connection with the Bill; and no one would pretend to say that the introduction of the amendments which he was about to move would not materially and very largely reduce the nature and extent of the supervision to be exercised. Everything he would now urge in the way of amendments was in the direction of relaxation and reduction of the restrictive character of the Bill, in the desire to meet the reasonable wishes of those who objected to a very stringent measure, while still maintaining the view of the Government that some kind of legislation was necessary to protect those who could not protect themselves. With these remarks he would proceed to move the amendments.

The Hon'ble MR. RIVERS THOMPSON then moved that, in the short title to the Bill, the figures "1881" be substituted for "1880."

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, to the first section, the following clause be added, namely:—

"and shall come into force on the first day of July, 1881."

He said that it was contemplated originally that as soon as the Bill was passed it should come into operation. But, considering the novel character of the Bill in this country, and that arrangements would have to be made for giving effect to the law, and that millowners, agents and managers would need to acquaint themselves with the requirements of the Bill, it was thought that a few months' time should be given to make the necessary preliminary arrangements.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, in the definition of "factory," after the word "premises," the words "(other than premises situated on, and used solely for the purposes of, a tea or coffee plantation)" be inserted. He said that the suggestions to exempt tea and coffee plantations from the operation of the Bill came from Madras and Assam. Sir Steuart Bayley, the Chief Commissioner of Assam, in reporting upon the Bill, represented that it would be very desirable to exclude tea-estates in Assam from the operation of the law, because, practically, in such cases the work was done almost entirely out of doors; it was not confined to the limits of a close factory; and, if the law was extended to tea-factories in Assam, it would be applied to work done under very different circumstances from the labour requred in cotton, jute, and other factories in India.

The Hon'ble Member read extracts from Sir Steuart Bayley's report in support of his contention, and concluded by saying that the considerations which applied to labour in tea-estates were in the same sense applicable to coffee-plantations. The Government had reports from competent authorities in Madras to this effect.

The Hon'ble MR. MEWBURN said he thought that indigo-factories should be included in this amendment. Including the process of packing, the manufacturing season in indigo-factories extended over four months, and, as the Bill now stood, those factories would come under the operation of the Act. It appeared to him that the same arguments which applied to the exemption from the Bill of tea-estates would apply to indigo-factories, and the exemption was the more desirable because there was an increasing amount of machinery now being used in the indigo-industry.

His Honour THE LIEUTENANT-GOVERNOR supported the suggestion made by his hon'ble friend Mr. Mewburn. He had, in fact, himself intended an amendment of this sort, but he had consulted one of the leading indigo-firms in this city as to whether the exception, in the definition, of factories which were not worked for more than four months would be sufficient to exclude indigo-factories, and the reply he got was that the actual process of manufacture was very seldom carried on beyond ninety days; and the assumption was that the Select Committee, in making that exception, had the case of indigo-factories in view when they adopted the period of four months. But since then notice had been given of an amendment including the processes of transport and sale, and it appeared that the adoption of that amendment might bring the whole manufacturing process in indigo-factories within the scope of the Act, and he, therefore, considered it necessary specially to exempt indigo-factories from the operation of the Bill. He did not understand that it was ever intended to

bring the manufacture of indigo under the Act; it was carried on chiefly in open places and often in the open air, and it seemed to be a sort of labour which had no relation to labour in ordinary factories, and no complaint had ever been received which would warrant interference with the indigo-industry. He believed machinery was now used for beating up the indigo in the vats, where formerly labourers would continue up to their waists in water for hours, and machinery had also been used for some time for pumping water into the vats, but in neither case would children be brought into contact with machinery.

The Hon'ble MR. COLVIN remarked that the Select Committee had not intended to include either indigo-factories or cotton-ginning factories within the scope of the Bill; in point of fact, it was thought that the exception as to four months would exclude both those descriptions of manufactories. But if, as he understood from what had fallen from the hon'ble Mr. Mewburn, the period of four months mentioned in the definition was not sufficient to except them, he knew of no reason why they should not be expressly exempted from the operation of the Bill.

The Hon'ble MR. RIVERS THOMPSON having declared his willingness to accept the suggestion of the hon'ble Mr. Mewburn, the amendment was put and agreed to in the following modified form :—

"that in the definition of factory, after the word premises, the words '(other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation)' be inserted."

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, in the same definition, after the word "use," the words "transport or sale" be inserted. He said that these words were proposed to be included with the acquiescence of His Honour the Lieutenant-Governor of Bengal, and were necessary to secure the application of the Act, not only to the manufacture of every article for local use, but also for articles intended for transport or sale: they gave completion to the section, and were necessary to secure that full effect should be given to the operation of the law.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, for the words "eight years" and "fourteen years," wherever they occurred, the words "seven years" and "twelve years," respectively, be substituted; and that, for the words "eight or fourteen years," in section 16, the words "seven or twelve years"

be substituted. He said that it was an important amendment. It reduced the age of the employed from eight and fourteen years, the period during which protection was afforded under the Bill, to seven and twelve years, respectively. As hon'ble members would see, the proposal was all in the direction of leniency towards the employer; and as it had been represented to the Government that the age of seven was more in consonance with the practice of the employment of children in this country, and that the reduction of the age would remove some difficulties in giving effect to the law, the Government was willing to concede the point.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, for the word "shall," in the first line of section 3, the words "may in its discretion" be substituted. He said that section 3 of the Bill related to the appointment of Inspectors. The Bill as it stood required the Local Government to appoint an Inspector for carrying out the purposes of the Act, and in default of such appointment the Magistrate of the district, in virtue of his office, would be the Inspector of the district. As originally contemplated, the second clause of the section was intended to meet the case of factories outside the Presidency-towns. If a single factory existed in a district, it would have been unnecessary and undesirable to appoint a special Inspector for work which might be as usefully and satisfactorily done by the Magistrate of the district and his subordinate officers. It had been represented to the Government of India, by His Honour the Lieutenant-Governor of Bengal, that, in carrying out the Act in Calcutta and its neighbourhood, he would desire very much to be left more free in the selection and appointment of the agents he would employ in carrying out the law. In his opinion, the requirements of the law would be more satisfactorily attained with less objection as to interference, and in a way which would go far to meet any opposition which might be raised by the proprietors and managers of mills, if the work of supervision and inspection was in the hands of an officer of Government who had the general executive authority in the town and its suburbs, and who would be under the orders of the Local Government in carrying out the details connected with this measure. It seemed to MR. THOMPSON that, even if the section had remained as it now was, it would always have been in the power of a Local Government to proceed by way of appointing the Magistrate of the district to do this duty. Although the first clause of the section made it obligatory upon the Local Government to appoint an Inspector, it said that the Government should appoint such person as it might think fit to perform the duties of that office; and he did not know whether it would not have been quite competent, if the Local Government thought the Magistrate to be the best person to be so appointed, to say that the Magistrate of the district should

be, within the limits of his jurisdiction, an Inspector of factories for the purposes of the Act. However, to make it quite clear that option would be given to the Local Government in this matter, the Government of India was willing to accede to the wishes of the Lieutenant-Governor by eliminating the obligatory provision of the first clause of the section and leaving it to the discretion of the Local Government either to appoint a special Inspector, or to invest the Magistrate of the district with power to supervise the working of the law.

His Honour THE LIEUTENANT-GOVERNOR thought it well to explain why he laid stress on the alteration of section 3. He, and he thought everybody on this side of India, had the strongest possible objection to the appointment of a special officer as an Inspector. They felt that it would be very difficult to find proper persons to fill the office, and, if such appointments were made obligatory, the Government would in all probability soon be brought into a state of antagonism with the owners and managers of all the factories in the Province. No doubt, it was supposed that the option of appointing a Magistrate to be the Inspector was included in the section, but he could not believe that that was the real intention of the section; for in that case a distinction would not have been drawn between Inspectors specially appointed and Magistrates acting as such in default of such special appointment: the section would not have gone on to say that, where no Inspector was appointed, the Magistrate of the district should be *ex officio* the Inspector. If, under the section as it stood, the Local Government had the option of appointing a Magistrate to be the Inspector, it would entirely meet his views, but he was advised that that was not the legal construction of the section. HIS HONOUR thought the Magistrate was the proper person to be entrusted with the duties of Inspector under the Act, and he was sure that no owner of a factory would raise any objection to casual inspection of a factory and its machinery by a responsible and highly-paid officer of Government like the Magistrate, and the Government would feel satisfied that the inspection so made would be an honest and good and proper inspection. He hoped and believed that the amendment now proposed would fully satisfy the manufacturing interests in Bengal. He considered it of great importance that this question should be settled: it had now been agitated for five years, and he hoped that this would be a real and lasting settlement of the question, and not a mere postponement of the agitation. He thought this section as it was now proposed to be amended would answer all the purposes of the Government, and afford quite sufficient security to the manufacturing interests of the community, to the employer and labourer.

His Excellency THE PRESIDENT remarked that, in his judgment, he thought that it would be perfectly open to the Local Government, even if the section had not been altered, to have appointed a District Magistrate to act as an

Inspector. He did not wish to put any interpretation of a legal nature upon the point, because he should thereby be going beyond his proper sphere in the presence of legal gentlemen much more competent to speak than he was; but he thought it was perfectly clear that the first paragraph of the section left it entirely free to the Local Government to appoint any person whom it thought fit, and, consequently, as it appeared to him, the Local Government, if it wished, might in every case appoint a District Magistrate to discharge the duties of Inspector. However, as he found that there was a doubt upon that subject in the mind of his hon'ble friend the Lieutenant-Governor, he was quite willing to agree to such an amendment as would clear up any possibility of doubt upon the point, especially as his hon'ble friend had pointed out the difficulty which would arise in this country in obtaining really competent men, except at great cost, to fill the individual and special office of Inspector under the proposed Act.

HIS EXCELLENCY, therefore, had no difficulty in acceding to the amendment suggested by his hon'ble friend, and which he believed only made more clear what would have been in the power of any Local Government under the Bill as sent up by the Select Committee.

He had only one more remark to make, and that was that, while he was perfectly willing to agree to that amendment, he was certainly not prepared to give up inspection altogether, because to do so would be to give up that without which all experience showed that any measure of this kind would be a perfectly dead letter. As to the persons who exercised the inspection, HIS EXCELLENCY was most anxious to leave that to the discretion of Local Governments, being quite confident that, when the Bill was passed, they would put its provisions into fair and proper execution.

The Motion was put and agreed to.

The Hon'ble MR. KENNEDY withdrew the Motion that, to section one, the following words should be added, namely:—

"except the territories for the time being administered by the Lieutenant-Governor of Bengal."

He said that, after the amendments which had been made in the Bill, and after His Honour the Lieutenant-Governor of Bengal had expressed his willingness to accept the Bill as it now stood, he did not feel justified in moving it.

The Hon'ble MR. KENNEDY then moved that, in section two, in the definition of "factory," at the end of the first clause, before the word "and," the words "composed wholly or in part of cotton" be added. He said that there seemed to him to be some kind of evidence that, in cotton-factories, evils had sprung up in the treatment of the children who were employed in them.

He did not say that the evidence was very large, but still the authorities at Bombay seemed to be satisfied that a case had been made out with respect to the factories there, all of which, or almost all of which, were cotton-factories. As far as he could discover, in the manufactories established on this side of India, no such complaints seemed to have been raised or substantiated. At one time it was proposed that the extension of the Bill should be entirely in the discretion of the Local Government, so that where evils occurred they could be repressed. Where it was necessary that the Bill should be brought into operation, there the Act without further legislation might have been enforced. That, however, seemed to have been displeasing to the inhabitants of Bombay. There the industry was one which, at any rate in the opinion of the local authorities, did require legislation. But here the manufacture of cotton existed to a comparatively very limited extent. The Bombay people protested vigorously and earnestly against the partial application of the law. They maintained that they would have been subjected to a disadvantage while the manufacturers of Bengal would be exempt from any restriction; in point of fact, that there should have been perfect equality in capacity of construction between the two Presidencies. MR. KENNEDY was not sure that that was an absolutely conclusive argument. If Bengal had so worked its labourers that regulation of factories was not necessary, it was hard that its manufactures should be made to bear a part of the inconvenience caused by the greater rapacity of the Bombay mill-owners; and, as far as he could discover, the owners of manufactories here had not given ground to say that these restrictive regulations were required. The effect of his amendment would be that, leaving equality between the two Presidencies, the legislation would only affect those who were supposed to have made it necessary. Besides, there was this great and unusual advantage for the future quiet and well-being of the manufacturers here. Manufactures, other than cotton, which were conducted in this country, were not in general likely to interfere with any great and powerful manufacturing interest in England. There could be little doubt that the manufacturers of England had looked upon the cotton-manufactures of India with by no means a friendly eye. He did not say that motives of personal interest actuated those who suggested restrictive measures of this kind, but hon'ble members knew how much personal interest tended to induce persons to take a strong view in any matter; and one could easily understand that restrictive measures in respect to the employment of children would affect the owners of cotton-mills in Manchester when those children were permitted to be employed without restriction in rival establishments. MR. KENNEDY had no personal interest in any species of manufacture in India. He had seen too frequently the result of the tendency to intervention on the part of the legislature in India to make him think it a very safe mode of investment for himself; he had, therefore, studiously avoided

it; but he was anxious to see, as far as possible, the industry of the half-starved population of the country developed. He thought that, where the legislature found wages at the miserable rate that they were in most parts of India, anything which could give greater employment they ought carefully to avoid discouraging; and therefore it was that he was anxious, as far as possible, to reduce the action of the Bill, which could hardly, in his mind, fail to exercise a dangerous influence on the further extension of manufactures.

The Hon'ble MR. GRANT said that the amendment before the Council seemed to him to raise the whole question whether the Bill should be permissive in its character or compulsory, or, as he preferred to say, universal in its application. He had been much impressed with what had fallen from his friend Mahárájá Jotíndra Mohan Tagore as regards the industries of the country, but, as a member of the Select Committee, MR. GRANT could assure the Council that the considerations which had been brought forward by the hon'ble member had not been lost sight of. It had been thoroughly recognized that the population of this country was almost entirely dependent upon the produce of the land; some, indeed, thought it was fast outgrowing the resources of the land; and the dread was always present that, unless some timely remedy was provided, nature would restore the balance by some terrible calamity. The Committee had been fully alive to these considerations. But there were other important matters to be thought of on the other side of the question. In the first place, there were representations from the Bombay Millowners Association and other public bodies to which Mr. Kennedy had referred, and with His Excellency the President's permission he would read extracts from some of them which, the Council would see, went further than his hon'ble and learned friend might have led the Council to understand. The Puná Sarvajanik Sabhá thus put the case:—

"Such permissive enactments of measures by the Imperial legislature are always fraught with great disadvantages. The measure, if necessary in principle, must be made obligatory upon all provinces of India. The adoption of the other course leaves the responsibility of introducing such measures upon the local executive authorities, which responsibility ought not to be laid upon them; and, what is worse, it burdens particular provinces by placing them at a relative disadvantage to the other provinces of the Empire. If the measure is only called for by the circumstances of one province, the local legislature, influenced as it is more directly by local opinion, should be entrusted with the responsibility of enacting a purely local law. The necessity of protecting children from overwork is, if real, universal, and should be recognized and legislated upon as such. Even as it is, the law will not affect mills established in the Native States of Haidarábád, Indore, Bhaunagar and other places, and will thus favour these mills at the expense of those in British territory. To increase the partial character of the enactment advisedly, by making it forcible to apply the measure to Bombay and not to Madras or Bengal, will still further aggravate this injustice. In the general interests of the country,

we submit the permissive character of the enactment must be expunged and the measure made universally applicable to all provinces."

Then there was a similar representation from the Millowners Association, subsequent to the publication of the Select Committee's report :—

"The Bill, as originally proposed, would have been a grave injustice to the Bombay factories, which would have been placed under a serious, if not ruinous, disability in their competition with other places in India, into which it was apparently the intention of the Local Governments not to introduce the proposed law. The views of the Select Committee of the Council of the Governor General, therefore, on this point have the entire approval of the Association."

It seemed to MR. GRANT that these were pleas which, in common fairness, the Committee could not pass over. The term "permissive" had a very seductive sound, conveying a sense of fair dealing and adaptation to local circumstances, which gained for it much popular favour. But it must not be forgotten that permission to some meant additional restrictions to others, and in no case could it be right to permit what the law declared to be wrong. If it was wrong that children should be worked more than a certain number of hours on one side of India; if it was wrong that machinery should remain unfenced and unguarded ; similar practices must equally be condemned in Calcutta and everywhere else. These were some of the considerations which prevailed with the Select Committee in recommending that the operation of the Bill should be made compulsory or universally applicable.

There was only one other point, as to the origin of the Bill, to which he (MR. GRANT) would wish to refer. He could find no trace of its alleged origin in representations from the Manchester Millowners. He would refer to a debate which took place in the House of Lords in 1875 on the motion of Lord Shaftesbury. It would appear that attention had been first drawn to the subject in a report upon factories by Mr. Redgrave, and very possibly Miss Carpenter's mission to India had something to do with the agitation which arose on the subject. She, no doubt, discovered that some of the factories in India were open to the objections which had been brought against the unrestricted employment of children in English factories. The result was that a commission of enquiry sat at Bombay, and took a great deal of evidence and discovered the existence of some abuses. There had been no such commission on this side of India, and it was quite possible that, if there had been, it would not have discovered the abuses which existed in Bombay; it was also very possible that in some of the inferior factories the management, if not so bad as in Bombay, might have been found to be no better. No doubt some of the better factories in and near Calcutta were as well managed as was possible. He himself had the pleasure of visiting some of these factories last year; and

certainly nothing could have been better kept or more satisfactory to the eye. But human nature was very much the same in Calcutta as in Bombay; and it would be very sanguine to expect that there were no abuses in factory-management here. He would only add that, if any body found reason to complain of the present Bill, he had only to compare its provisions with those which existed in any other part of the world in order to satisfy himself of the very mild character of the present legislation.

The Hon'ble MR. RIVERS THOMPSON said that, though the amendment of his hon'ble and learned friend was directed simply to confining the application of the Bill to cotton-factories, in his speech, and in the observations which had fallen from the hon'ble member who had just spoken, the general question had been raised as to the permissive or compulsory character of the Bill. MR. THOMPSON had very little to add as regards the question of principle to what the last speaker had already stated to the Council. If the hon'ble member's amendment was carried, it was obvious that, while the law would have a general application in Bombay, where cotton-factories abounded, its operation on this side of India would be extremely limited. Now, it was contended by the Bombay Government, on representations which appeared clear and convincing, that the exclusive or partial application of the Bill to any one place or presidency would be an unreasonable application of the law. The objection taken by the learned mover of the amendment, that there were factories on this side of India to which no kind of restrictive legislation should be applied, might be generally true on the assumption that the work in factories here was humanely and properly conducted. But he (MR. THOMPSON) wished to remind the Council that the Bill in its present form was one of the most lenient and slightly restrictive which could possibly be framed; and that, in dealing with the necessity for protecting children of tender years against over-work and oppressive work, the Council had good justification for the procedure in the several representations which had been made while the Bill had been under consideration; and, if the fact was admitted that in many places young children were over-worked and confined to their labour for hours beyond reasonable limits, the Bill, if it was to be enforced at all, should be applied everywhere where children of those years were employed. If the mills on this side of India had not been proved to be badly conducted,—he believed from all he had heard that they were conducted in the most satisfactory manner,—still the very fact that children between the ages of seven and twelve were employed in such factories, the medical testimony being very conclusive as to the hours beyond which such children could not be allowed to labour without injury to their health, made it the duty of Government to exercise such interference as was needful to regulate their labour in factories of every

description. Dr. Blake, an officer of large medical experience, found a case in which children were made to work for thirteen hours a day, and the time allowed for rest and meals was insufficient. He found a large percentage of the children in a reduced condition, the percentage of such children being three times larger in factory-children than in others. MR. THOMPSON thought that no one would dispute the fact that children of the age to which the Bill applied were much too young to be employed on continued labour in mills at the discretion of employers. The eagerness of severe competition on one side, and the cupidity of parents on the other, were both incentives to continuous labour in factories; and now that arrangements were being made in some places for keeping mills at work for the whole 24 hours by the aid of the electric light, he thought it right that children in this country should be protected by law from any such continued labour as would injure their health. He must oppose the amendment.

The Hon'ble MR. GIBBS desired to say a few words in regard to the Bombay Commission to which reference had been made. The appointment of that Commission was necessitated because, on that side of India, cotton-mills had started up with much greater rapidity than in the other provinces, and it was thought necessary to have an inquiry of that nature to see whether there were really any of the very objectionable practices which had prevailed in the mills in England. He was, however, happy to say that, having himself inspected some of those mills, and perused the reports received from time to time, he believed that, in the great majority of them, the arrangements were anything but what could be objected to. He thought his hon'ble colleague, Major Baring, was present at the time when he (MR. GIBBS) took Lord Northbrook to see the working of one of those mills; and, on coming out, His Lordship said that, if all the Bombay mills were similar to the one he had inspected, no factory-legislation would be needed. The real fact was that an Act of this description was required for those small factories where the small amount of capital and other such causes made the owner get as much as possible from the labourers who were employed in it; but he believed that there were a large number of highly respectable mills where the work was very properly conducted. The children employed in those mills were as happy as possible, and in some of them there were very good schools in which the children were kept engaged for two or three hours a day. One of the difficulties connected with this question was the practice of little children being carried with their parents to the mill. It was impossible for the people, at least on the other side of India, to leave their little children at home; necessity made the women, if not the men, take their whole families with them, and the result of the children being taken to the mills involved their getting put

to some light work which they otherwise would not have been put to; and for that reason, if not for any others, it was necessary to have some proper rules carried out for regulating the work of children. It was for the inferior classes of factories that the operation of the Act was more especially called for and Government inspection considered necessary.

His Excellency THE PRESIDENT said that he felt himself entirely in accord with the view taken by his hon'ble friend Mr. Thompson. He did not think that it would be possible to accept the proposed amendment. He had no doubt that it was brought forward in the most perfect good faith by Mr. Kennedy, but he could not help thinking that it would be regarded at Bombay as another mode of practically exempting, at all events, Bengal from the operation of the Bill. We had decided not to do that; we had made considerable concessions with the view of meeting the feelings and opposition of the manufacturing-industry in Bengal, and he did not think that, under those circumstances, it would be desirable to go back from what had been thus practically determined; for that, in HIS EXCELLENCY'S opinion, would be the result if the proposed amendment were adopted.

He had only one word more to say. His hon'ble friend Mr. Kennedy had alluded to the desire expressed by the manufacturers in England for the adoption of legislation of this kind in India. He was quite aware that Mr. Kennedy did not for a moment attribute the course taken by the Government of India to any undue pressure from that quarter, and HIS EXCELLENCY could only say for himself that, having come out here not very long ago from England, no motive of that kind had anything whatever to do with the support he gave to the Bill, and that he felt it his duty, in the office which he had the honour and the great responsibility of filling, to look at such questions mainly from an Indian point of view, and to regard all subjects in the interests of this great country with whose government he was connected. He could truly say, therefore, that that was the motive which guided him in the support which he had given to the Bill. The subject was not a new one to him. It was one with which he had been occupied in England for a long time since the commencement of his public life, certainly not in the interests of the manufacturers, but in those of the working classes. He himself believed that the practical result of legislation on the subject had been beneficial to the manufacturers as well as to the labourers; at all events, the fears entertained in the beginning by the manufacturers in England, and which were very similar to those now entertained in India, had completely died away, as he knew from long and intimate intercourse with manufacturers in his own part of the country; and he could not help thinking that, if the Bill was worked as he trusted it would be worked,

it would be found to place no injurious restrictions on manufacturers in this country, while it would afford a reasonably fair protection to the children of the working classes, and, as regards the fencing of machinery, to all persons employed in mills of any description. That was the sole reason why he gave his support to the Bill, and he should be exceedingly grieved if any notion got abroad that the Government of India, in this respect, were in the least degree influenced by a mere desire to meet any wish, if such wish did exist, on the part of manufacturers in England to place restrictions upon their competitors in this country. That was not the view he took at all events, and he was quite sure that none of his colleagues were influenced by it in their support of the Bill. He regarded the measure entirely upon its merits, and he believed it would be found to confer great benefits upon both classes—the employers and the employed.

The Hon'ble MR. KENNEDY wished merely to say, in reference to the observations which had fallen from His Excellency the President, that His Lordship was not responsible for the original introduction of the Bill, and that, though he could not doubt His Lordship's statement that he and his colleagues were acting quite in accordance with their conscientious convictions as to the necessity for the present legislation, he remained under the impression that the original inception of the measure had been much influenced by Parliamentary pressure.

The Motion was put and negatived.

The Hon'ble MR. KENNEDY then moved that, to the definition of "employed," the following words should be added, namely:—

"Provided that no child, one or both of whose parents is or are employed in the factory, shall be deemed to be employed unless wages are paid for the work which he performs."

He said that this amendment stood in rather a different position. Their hon'ble colleague Mr. Gibbs had just alluded to the fact that a large number of women who worked in the mills had no mode of providing for the care of their children while they themselves were so engaged. The result was that the children were taken to the mills, where the natural imitative instinct of children and their restlessness would almost infallibly induce them to take part in what was going on. It would be very difficult to prevent children, if permitted to go into the mill, from doing something that might be called work. It would be hardly possible, unless the children were altogether excluded from the mills and turned loose into bázárs, to avoid the owner being occasionally technically guilty of the offence of having them employed under

circumstances which the law prohibited. One was not always sure of the discretion of the persons who had to carry out the law. Of course, the Magistrate or other authority was bound to act under the law and to carry it out; but where there was an unintentional breach of the law, where it was not done wilfully, a discreet person would take care to overlook it. But one could not always depend on such discretion. One case which he would mention was perhaps within the recollection of His Honour the Lieutenant-Governor. The commander of a river-steamer, going along one of the great rivers of India, saw 20 or 30 coolies shivering on a sandbank in the middle of the river, with the river rising at the time. He sent his boat and rescued the men, who were half-starved and had before them a speedy prospect of being drowned. He took the men along with him, and reported their arrival to the Magistrate of the nearest station. The Magistrate, in his zeal for the protection of the coolie, took him out of the steam-boat and sent him for trial to Calcutta for having coolies on board his steam-boat who were not entered in his manifest or register. He was bound to say that, when that case came into the hands of the then Advocate General, he very speedily dealt with the case. In legislation of the restrictive character of this Bill, it was desirable, as far as possible, to provide for cases which might naturally occur, and where a little indiscretion on the part of the officer concerned might cause considerable inconvenience, and especially in places where the inspecting officer would not be the Magistrate of the district, but a special Inspector. It seemed to be a principle of human nature that, where a person was appointed for carrying out a particular crotchet, he would be sure to find cases demonstrating the necessity for his existence; if there were no infringements of the law, the existence of the Inspector was hardly justified, and therefore it seemed to him that the Council ought, as far as possible, to guard against the possibility of children, who would otherwise be left to idle in the bázár or left at home without the protection of the parent, being held to be subject to the provisions of the Act, at a time when they were under the eyes and protection of their parents, unless they were persons whose labour was remunerated.

His Honour the LIEUTENANT-GOVERNOR said it seemed to him that this amendment was intended to provide for a matter of some difficulty. No doubt, there were cases in the papers before the Council showing that it was the habit of women labouring in factories to bring with them to the mill children who were too young to labour for wages and too young also to be left at home, and these children were undoubtedly employed in some slight and unimportant work in the factory,—helping their parents, holding baskets, and doing work as an amusement rather than a labour. He did not think it was the intention of

the Select Committee to bring these children under the operation of the law. At the same time, the definition in the Bill did seem to include such children, and it seemed to His Honour that the amendment of his friend was really called for. The managers of mills should not be held liable to penalties for work done in this way.

The Hon'ble MR. COLVIN said that, as a reference had been made to the motives which actuated the Select Committee, he should explain that the case of the children mentioned had not been overlooked, but that the Committee had decided the question in the way in which the Bill dealt with it, because it was considered that to admit any such amendment as the hon'ble member proposed would lead to much greater inconveniences than those which that amendment was intended to prevent. It would be quite impossible for any Inspector to decide whether a child was working for wages or not, as long as it was possible for two or three rupees to be added to the wages of the father or mother on account of work done by a child. Again, the amendment, as it stood, would allow any number of children to be employed in piece-work, and in that case it could not well be said that they were working for wages, even if the money were paid into their own hands. Looking, therefore, to the inconveniences which would arise from framing the Bill in the manner proposed by this amendment, he thought that the Select Committee had good reason to believe that much less mischief was likely to result from leaving the section as it stood than from altering it in the manner proposed. He thought it better, therefore, that the Bill should be left as it stood.

The Hon'ble SIR DONALD STEWART said that, while he was inspecting a harness-factory recently, he happened to observe the very circumstance to which the hon'ble Mr. Colvin had just alluded. A father was accompanied by three or four sons of ages varying from twelve to six or seven; their work was piece-work; the children got no wages at all, and the father received himself the entire sum due for the labour of the family. This, he thought, was an illustration in favour of leaving the Bill as it now stood, and he was told that state of circumstances was common in many establishments throughout the country.

The Hon'ble MR. RIVERS THOMPSON thought the acceptance of this amendment would entirely vitiate the working of the Act for reasons which had been given by the hon'ble Mr. Colvin and exemplified by Sir Donald Stewart. As the Bill stood, all children up to the age of twelve years would be under the protection of the law whether they worked for wages or not. The object of the amendment was to exclude those children from the operation of the Bill who accompanied their parents to the factory but received no wages. Such a

system would only entail confusion, and would end in all such children being put to work. The Council could not, in legislating, provide for every special case to secure the good sense and tact and temper of those who had to administer the Act, and the instance of the river-steamer, referred to by his hon'ble and learned friend, went only to show that there were sometimes in the world very foolish people, and that one could not always rely on the good sense of the police and other authorities in dealing with public matters. He thought that the amendment which it was now proposed to introduce would in the end result in a great number of children being employed on no wages, but, though not working for wages, they would be subject to all the over-work and hardship which it was the object of the Act to repress.

His Excellency THE PRESIDENT observed that he had certainly taken the same view of the case as his hon'ble colleague Mr. Thompson. It appeared to him that the amendment, if carried, would practically render the Bill nugatory altogether, especially as it seemed to be the habit of persons in this country to take their children to the factory with them. Under those circumstances, it would be almost impossible, as it appeared to him, ever to get a conviction under the Act, if the proposed amendment were adopted. Of course, it was impossible to be certain that there would not be found from time to time official persons who would act in a very foolish manner; but HIS EXCELLENCY thought that no legislation could provide against such a case of exceeding folly as that quoted by his hon'ble friend Mr. Kennedy, and which could not seriously be used as an argument against legislating in the sense which the legislature of the country might on the whole think right. It must be borne in mind that no prosecution under this Act could be instituted except under the authority of the Inspector, and that the Inspector was either appointed by the Local Government, or else he was, as it was desired should be the case in Bengal, a District Magistrate. It was also provided, in section 3, that the Inspector "shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf," and it was thus distinctly pointed out that the Inspector should take his orders from the Local Government. HIS EXCELLENCY was sure that Mr. Kennedy did not think that any Governor or Lieutenant-Governor in India would be likely to act in the manner in which the Magistrate to whom he alluded acted, and certainly he (Mr. Kennedy) could not think that anything of that kind would be permitted under the firm rule of his hon'ble friend the Lieutenant-Governor of Bengal. It seemed to HIS EXCELLENCY, therefore, that to adopt the proposed amendment would be to render the Bill altogether a sham. It was said of the late Mr. O'Connell that he used to boast of being able to drive a coach and four through any Act

of Parliament; but HIS EXCELLENCY was of opinion that it would not require all the knowledge and legal acumen of Mr. O'Connell to drive a coach and six through this Act if the amendment of his hon'ble and learned friend were adopted.

The Motion was put and negatived.

The Hon'ble MR. KENNEDY then moved that the first clause of section 16 be omitted. He said that was a provision which, though it was copied from various English Acts, seemed to him not to be so necessary or proper here as in England. It was an illustration of the mistakes likely to occur from forcing on one state of society the law suitable for another. In England there was the assurance of a good system of registration of births, so that any millowner or employer could ascertain with sufficient certainty what the ages of the persons were whom he wished to employ. Here they had only the very uncertain testimony of the parents, which the Magistrate might not always accept; and the medical evidence handed to the Select Committee showed that there was the greatest possible difficulty, and no possibility of certainty, in forming an opinion as to the age of any particular child, at least if it were to remain living. If one had the opportunity of making a *post mortem* inspection, considerable certainty might be attained; medical men might form an approximate opinion from the appearance of the dentition; they might form a conjecture from the general form and development of the body, but no certain deduction could be drawn from such an examination. The only true and infallible test was the appearance of the bones of the pelvis, the examination of which could only be made by means of a *post mortem* examination,—testimony to that effect was given by more than one medical officer,—and he deemed the interest of humanity hardly would sanction this test. Under these circumstances, it did seem that, if the employer had formed a reasonable impression from such examination as he could obtain that the child had attained a certain age, it should indemnify him where, as in this country, there were no certain means by which the age of the child could be proved. As he had already pointed out, in England no person need accept an employè whose age was not to be gathered from some of the documents which the modern registration-system required on the birth of every child; and, therefore, the matter stood on a different footing in this country. If the opinion of the Court should be formed on some evidence, medical or other sufficient test, there might not be so much objection; but the mere opinion of the Court, without any reason for such opinion, ought not, in the circumstances of this country, to shift the burden of proof on the defendant.

The Hon'ble MR. RIVERS THOMPSON said that, in the absence of a complete and scientific system of registration of the birth of children in this country, he admitted that the question of deciding the exact age of a child was one of some difficulty in practice, but he supposed hon'ble members would agree that the desired information could be obtained for the purposes of the Act without going to the extreme length which his hon'ble and learned friend had suggested. The provision of the Bill which was under consideration was taken from the English law, and was therefore proof of the practice in England in such cases. He believed, too, it was not exceptional in cases of this kind that the burden of proof should be thrown on the employer of labour in the factory. Under the fourth section of the Bill a prosecution might be instituted for employing any person whose employment had been prohibited until the age of such person had been certified to be above the minimum age. The question would then come before the Court on the application of the Inspector under section 16; but even then it went no further, unless, in the opinion of the Court, which pre-supposed some kind of examination, there was any doubt, and then the burden of proof was thrown on the employer. It was only at this stage of the proceedings that the certificate of a surgeon competent to give an opinion was required to arrive at a satisfactory conclusion as to the ages of children between the ages of seven and twelve years. MR. THOMPSON thought that no great hardship or burden was thrown upon the employer by such a procedure.

The Hon'ble MR. STOKES said that the clause in question was copied from the English Act of 41 Victoria, and a similar clause had been in force in England since 7 & 8 Vic., c. 15, was enacted. This, surely, tended to shew that the clause was needed for the proper working of a measure like the present Bill. No doubt, the general rule was that the prosecution should give evidence in support of the allegation against the accused. But the necessity of giving this evidence had been found, in the great majority of criminal cases, not only useless but inconvenient, and Parliament had, therefore, often interfered by expressly enacting that the burthen of proving authority, consent, lawful excuse and the like should lie on the defendant. About forty instances of this were given by Mr. Taylor in the seventh edition of his well-known work on Evidence. And there were instances of the same kind to be found in the Indian Statute-book. For example, in Act VII of 1880, the adaptation of Plimsoll's Act passed by this Council last year, section 5 threw the burthen of proof on the defendant shipowner or shipmaster who sent or took an unseaworthy ship to sea. So, under the Criminal Procedure Code, section 89, the burthen of proving reasonable excuse lay upon persons accused of failing to give information

of certain offences. No doubt, as Mr. Kennedy had observed, owing to the existence in England of legal registers of birth and baptism, it was easy to prove the age of most children. But nothing could be easier than the mode pointed out in the second clause of section 16 of the Bill, if only the word "of" were substituted for "under" in line 13, or the words "or over" were, as Mr. Kennedy himself proposed, inserted after that word. All the defendant would then have to do would be to obtain a declaration from the certifying surgeon, and that declaration would be admissible in evidence.

The Hon'ble MR. COLVIN said that he only wished to add one argument to those which had been already advanced by his hon'ble friend Mr. Rivers Thompson on the subject, and, in order to make that clear, he must refer again to the mode in which the Act was to be worked. The Act, as he had explained, was to be worked in this way. The Inspector was to visit factories, and, where he found a child who appeared to him to be employed in contravention of the law, he was not to prosecute, but merely to prohibit the employment of such child until a certificate of age could be obtained. If the owner of the factory, after that prohibition, continued to employ the child without a certificate, he would be doing so when he had good reason to believe that he was in the wrong, and it would not be unfair to lay upon him the burden of proving that he was in the right. He should not have neglected to obtain the certificate, unless he was prepared to prove the child's age otherwise. The great majority of prosecutions in which the ages of the persons employed came into question would be cases of the kind which he had referred to, namely, the employment of children in contravention of the law. But in all cases in which questions of age arose, though there was not in India any complete system of registration of births, an employer could always protect himself by the production of a certificate from the certifying surgeon, and then he would be in as good a position as an English millowner who had a copy of the registry of births.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE supported the amendment. The difficulties which existed in this country in producing evidence of the age of children were very great, especially in regard to the lower classes, who had no horoscope to prove the age of their children; therefore, he thought that, to throw the onus of proof in respect to the age of children upon the owner of a factory, was to require him to do that which was almost an impossibility. He thought that the first clause of the section would operate as a great hardship on the employers of children in this country.

His Excellency THE PRESIDENT said that, so far as he understood it, this was a question in which the physical mode of judging of the age of children

was much the same in India as it was in England, and that the difficulties were of the same kind. His hon'ble friend Mr. Kennedy had quoted the answers given by certain medical men to questions put to them. Members of Council would observe that the question put to those gentlemen was this—whether, in the absence of proof of date of birth, there was any rule or law of nature by which the age of a child could conclusively be certified to be within the age of seven and half, eight or nine years? And to this question more than one replied—"If you produce me the child, I will give you an opinion. I cannot tell you the age of the child conclusively, but I can do so approximately." Of course, it would be impossible to say that that child would be seven years old on the 11th of March, 1881, but it was quite possible to say that the child, for all practical purposes, might be considered to be either seven or eight or twelve. His hon'ble friend Mr. Kennedy referred to the English system of registration. His Excellency thought, if his memory served him correctly, that, when the English Factory Act was first enacted, in 1841,—and this clause would be found in the original Act,—the registration-system was not in perfect operation at the time, and that was the reason why originally the system of certificate by surgeons was adopted. Of course, as the system of registration had grown in England, the use of the surgeon's certificate had died out; but originally the English manufacturers were subject under their Act to precisely the same liability as it was proposed now to extend to this country; and, as his hon'ble friend Mr. Stokes had pointed out, there were a great number of cases both in English and Indian legislation where the same principle of throwing the burden of proof on the defendant had been adopted. Among others, if he was not mistaken, one was the English Passengers' Act, which was an Act of somewhat the same description as the Factories Act; and it would also be found that in many other Acts of a similar description, regulating the relations between employers and employed,—certainly in the Customs Act, regulating the relations between the Government and the importers of goods,—the same principle had been adopted. Under those circumstances, His Excellency thought that the Bill should stand as it was now sent up by the Select Committee.

The Hon'ble Mr. Kennedy said, in reply, that he thought the great majority, if not all, of those exceptional cases, in which the burden of proof was thrown on the defendant or the person accused, were those in which the thing to be proved was within his own personal knowledge, which he was the person who knew about or ought to have known about, and which other people could not know, such as offences under the Customs Act, and the like. But here the opinion of the certifying surgeon, which could always be

obtained by the Court, ought to be sufficient to warrant the burden of proof being thrown on the prosecution; for MR. KENNEDY's recollection of the Criminal Procedure Code and of the Evidence Act was that every certificate of a medical officer was, for most purposes, evidence in criminal cases. Therefore, he thought the first portion of section 16 of the Bill was unnecessary, and there was in the second portion of the section sufficient to throw the burden of proof on the millowner if the medical officer of the station, after examination, was of opinion that the child was under the specified age.

The Motion that the first clause of section 16 be omitted, was put and negatived.

The Hon'ble MR. KENNEDY then moved that, in the second clause of section 16, after the word "under," the words "or over" be inserted.

The Motion was put and agreed to.

The Hon'ble MR. KENNEDY withdrew the Motion that the following section be added to the Bill, namely:—

"Certain children to be deemed to be eight years old."

"20. Any child which has cut the four central permanent incisor teeth shall be deemed to have attained the age of eight years."

The Hon'ble MR. RIVERS THOMPSON moved that the Bill as amended be passed.

The Hon'ble MR. REYNOLDS said that, as a member of the Select Committee, he was unwilling to give a silent vote on this question, especially as he had felt obliged to dissent from the report which had been presented by the Committee. He believed he would not be in order, at this stage of the discussion, in offering any remarks on the principle of the measure before the Council. He would therefore confine what he had to say to the Committee's report, and especially to the important change which had been introduced into the first section of the Bill.

This change made the Bill applicable to the whole of British India. As the draft formerly stood, the only part of the Bill which applied to the whole of British India was the harmless statement that this Act might be cited as the Factories Act, 1880. The other sections were only to apply to those provinces to which they might be extended by the respective Local Governments.

He entirely agreed with the action of the Select Committee in doing away with the permissive character of the Bill. As a matter of principle, it seemed

to him extremely objectionable that the application of a measure of this kind should be made to depend on the individual opinion of a Governor or Lieutenant-Governor. And it was easy to see that in practice the permissive character of the Bill would be more nominal than real. Suppose (to put an entirely hypothetical case) the Lieutenant-Governor of Bengal were anxious to put the measure in force in these Provinces, but the Governor of Bombay resisted its introduction into the Western Presidency. The inevitable result would be an outcry from the Bengal millowners that they were unfairly handicapped; the Government of India and the Secretary of State would be unable to resist the appeal; and the Governor of Bombay, however reluctant he might be, would find himself compelled to give way and to authorize the introduction of the Act.

There was another argument which had seemed to him to point in the same direction. There was a very general opinion, at any rate outside this Council Chamber, that this legislation had been urged upon the Government of India from two very different and indeed opposite quarters,—that the voice was the voice of Exeter Hall, but the hand was the hand of Manchester. If there had been any foundation for this belief, it would follow that the instigators of the measure would not be satisfied with the mere passing of a permissive Bill; but would put pressure on the Government to enforce the Act in every part of the country in which a mill or a factory could be found. His Lordship had informed the Council that this opinion was unfounded, and he (MR. REYNOLDS) did not, therefore, desire to lay any stress on this argument. But, on every ground, he thought that the Select Committee were right in saying that the application of the Act ought not to be made to depend upon the discretion of any Local Government.

But, if the Bill was to be made compulsory, this made it all the more necessary that its operation should be confined to those provinces (if such there were) in which it was really required. There was some evidence before the Council to show the necessity for factory-legislation in Bombay. If the Council were satisfied on this point, an Act might have been passed for Bombay, or this measure might have been transferred to the Bombay Council for consideration But in the Lower Provinces of Bengal he believed that the public voice was absolutely unanimous in saying that such an Act was not required. Now, this was not merely the selfish outcry of interested persons. The Native newspapers in Bengal (and all honour to them for it) were never backward in pointing out cases of what they thought to be oppression and wrong. It might be that they often evinced more zeal than discretion, that they acted upon incomplete or incorrect information, and that they sometimes imputed blame where none was

deserved. But, if factory-work in Bengal really involved such evils as the promoters of this Bill would have them believe, if the hours of labour were unreasonably long, if children were tasked beyond their strength, would the Press have been silent on the subject? Take an analogous case which recently occurred,—the case in which some benevolent persons called upon the Government to interfere to prevent European seamen being made to work in the sun during the hot season. No complaint was made by the seamen themselves; but when attention was once called to the matter the public voice unanimously declared that this was a hardship which ought to be redressed; shipowners and ship-captains themselves supported the call for interference, and a Bill to remedy the evil was introduced into the Bengal Council, and was passed without a single dissentient voice. Now, contrast this case with the criticisms which the Bill now before the Council had elicited. On the one hand, they had men disregarding their own interests in the cause of humanity, and supported in doing so by the unanimous voice of the press and the public; on the other, they had an universal condemnation of this measure as mischievous and unnecessary. Was mercantile enterprise more selfish on land than it was on ship-board? Were the opponents of this Bill confined to millowners and to shareholders in spinning companies? Were the remonstrances of such bodies as the Chamber of Commerce and the British Indian Association to be set aside as interested outcries? How did they account for the fact that in one case protective legislation was welcomed, while in the other it was repudiated? He confidently asserted that it was because in one case the grievance was real, while in the other it was imaginary.

Holding these opinions, MR. REYNOLDS would of course have been glad if this Bill could have been confined to Bombay. But he admitted the practical difficulty of passing such a measure for a single Presidency. He recognized the jealousies and heart-burnings which it would excite, and he acknowledged the duty of the Supreme Government to hold the balance with an even hand between the several Provinces of the Empire. It seemed to him of more practical importance to modify and soften down the objectionable features of the Bill, than to pass for Bombay a stringent law which perhaps might afterwards be extended, in an unmodified form, to Bengal. The amendments which had been accepted by the Council seemed to him calculated to reduce to a minimum the annoyance and interference with business which were inseparable from legislation of this kind; and, though he was not satisfied that any sufficient case had been made out for the enactment of a factory-law for Bengal, still, as the amendments he had referred to had been accepted, he did not intend to offer any opposition to the passing of the Bill.

His Honour the LIEUTENANT-GOVERNOR said that, as he had from the first opposed the Bill, believing that not the slightest ground existed for legislation in regard to the control of labour in the provinces under his government, he thought that he ought to state in a few words his willingness to vote for the passing of the Bill as now amended. Had the proposal been to pass the Bill as amended by the Select Committee, he should have felt it to be his duty to vote against its passing; for he believed that it would have been unjustifiable, and that it would have been very mischievous in its working. He had, however, represented his objections to His Excellency the Viceroy, and great concessions had been made in the direction which he desired. Admitting that some measure was required in some parts of the country, and that, for Imperial purposes, it was necessary to make the law one of general application, he believed that the amendments just carried, on the motion of Mr. Thompson, made the measure as little harmful to the industrial interests of Bengal as possible, and he must express his acknowledgments for the concessions made. He did not believe that any millowner would object to the occasional inspection of his factory by a Magistrate of standing and experience, and that they would accept the amended Bill. HIS HONOUR could only say that he would endeavour to see that the Bill was loyally and honestly worked in the interests of the employers and labourers alike.

The Motion was put and agreed to.

BENARES FAMILY DOMAINS BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to amend Regulation VII of 1828 be taken into consideration. He said that this Bill, as he had explained when he obtained leave to introduce it, had two objects principally in view. The first of these was to bring the law into accordance with the procedure which had gradually grown up within the family domains of the Mahárájá of Benares during the last fifty years.

Its other object was to ascertain and declare the law in force in the family domains, as those parganas were to be exempted from the operation of the Scheduled Districts Act and the Laws Local Extent Act. The Bill as now amended stated precisely what the law would be for the future in the family domains, and, in doing this, it made no change in the existing law, except in one rather important matter which he would shortly explain. The state of the law in the family domains after this Bill was passed would be as follows:—first, in relation to a certain portion of the matters which had been entrusted to the Mahárájá; that was to say, in respect of all matters connected with the realization of rent and revenue, the law would be regulated by the principle and spirit of the enactments for the time being in force in the North-Western Provinces,

and also by the letter of those enactments, so far as the letter should be applicable, and as the Local Government, with the concurrence of the Mahárájá, might direct. This concurrence of the Mahárájá was the point to which he had referred as important. The Mahárájá had never at any time previously exercised any control over the legislation relating to the family domains, and this privilege, which it was now proposed to confer upon him at the recommendation of the Government of the North-Western Provinces, was a matter of pure favour and grace, to which no claim could be shewn. The privilege was restricted to the laws relating to the collection of rent and revenue. In respect of all matters which had been entrusted to the Mahárájá, other than the realization of rent and revenue, his administration would be regulated by the principles and spirit of the laws in force in the North-Western Provinces, and by the letter of such rules as the Local Government might make. The Mahárájá's opinion would be taken in respect of such rules, but his concurrence would not be necessary. In respect of all matters relating to the general, civil and criminal administration of the Province, not only the spirit but the letter of the law in force for the time being in the North-Western Provinces would apply. MR. COLVIN had said that the law had been precisely declared in the Bill; he wished he could have added that it had been declared in a manner that was perfectly clear and readily intelligible. Unfortunately, this could not be done by a mere amending measure, and he was free to confess that the provisions of the Bill were somewhat complicated, and that the law might have been made much more plainly intelligible if it had been possible to repeal and re-enact Regulation VII of 1828. The Local Government, however, did not think that course desirable, and the Committee were unwilling to press it. The substance in such a case was more important than the form, and the law, as set forth in the Bill, was not really doubtful, though the statement of it in the shape of amendments of the old Regulation appeared obscure.

The only further observation he had to make was that, as the Bill stood now, it had been generally accepted by all the authorities concerned; he thought, therefore, that the Council might safely be asked to pass the measure.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

OBSTRUCTIONS IN FAIRWAYS BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions, and moved that it

be taken into consideration. He said that the Bill had been considered by the four Local Governments which it specially concerned, and had been generally approved by them as desirable and sufficient. Some few suggestions had been made and adopted. Thus, the Select Committee, in order to remove difficulties which had been felt as to the scope and object of the Bill, had limited its operation to obstructions in fairways leading to ports in British India. A section had also been inserted, corresponding to section 13 of the Indian Ports Act, and providing for the payment of compensation to persons who might suffer damage from the removal or prohibition under the Bill of obstructions (such as fishing-stakes) which they might, by long usage, have acquired a right to maintain or create. Each set of stakes was, relatively to the means of the fishermen, a valuable property, and necessary for the deep-sea fishing on which their earnings largely depended; and, in one instance mentioned by the Bombay Collector of Salt-revenue, the value of a small row of stakes which had been placed by the joint exertions of a number of poor fishermen, and removed under the Indian Ports Act, had been found to be Rs. 1,200. The Committee had also inserted a section to provide that any action which might have been taken by the Government before the Bill became law in any of the matters to which the Bill related should be deemed to have been taken under it. These were the only changes which had been made, and, if no hon'ble member proposed an amendment of the Bill, MR. STOKES had, under the rules, the right to move that the Bill be passed. As the season for placing fishing-stakes off the coasts of Bombay had, he believed, commenced, it was desirable that the Bill should without delay be brought into force in that Presidency.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

No amendment being proposed, the Motion was put and agreed to.

The Council then adjourned *sine die*.

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

CALCUTTA;
The 11th March, 1881.

C. H. L.

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