

Friday, March 31, 1871

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA
LAWS AND REGULATIONS.

VOL 10

Book No. 2

March to Dec.

1871

PL

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 31st March 1871.

P R E S E N T :

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

His Honour the Lieutenant Governor of Bengal.

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

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

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

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble F. S. Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble W. Robinson, C. S. I.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE moved that, in the Bill for imposing duties on income, section 22, for the words 'three-fourths,' the words 'nine-tenths' be substituted. He said, if the Council would refer to that section, they would perceive that, when a house-holder lived in his own house, he was assessed to the income-tax on the rack-rent of the house. From the rack-rent certain charges which always fell on house-holders had to be deducted, and the question was, what should be the amount of deduction allowed? The Committee proposed that twenty-five per cent., or one-fourth of the rack-rent, should be allowed on account of such charges; afterwards the Government found that the amount of deduction should be one-tenth, for this reason that, when house-holders let their

houses, one-tenth of abatement was allowed from the actual rent received. This had always been understood, and it was recognized in the executive rules and still stood in the rules for the coming year. That being the case, it was clearly proper to treat house-holders occupying their own houses in the same manner. He therefore had to propose to the Council, on behalf of the Government of India, that the amendment which he now moved be adopted, so as to place house-holders occupying their own houses in precisely the same position, neither more nor less, with those who let their houses.

His Honour the **LIEUTENANT GOVERNOR** was not competent to give a valuable opinion on this point. He had only just found the section to which the amendment referred. But he would not be justified in withholding from the Council information which he had received from an experienced officer, namely, that the provision of the Bill that houses occupied by owners should be assessed at the rack-rent operated somewhat hardly on some house-holders. As the section stood, it provided that the rent of the house would be taken to be the sum for which it was "worth to be let." But in India, as in other countries, it was extremely difficult to say the rent at which a house was worth to be let. In England, some of the great Ducal castles were assessed at £200 a year, because no one could be found to lease them; whereas in India this provision operated very harshly in regard to some poor decayed families, who, under its operation, were assessed at a much higher sum than they could afford to pay a tax upon. Even a poor man, who could scarcely afford to clothe and feed himself, might have his house assessed at £50 a year. The abatement in London from the gross rental was twenty-five per cent. and not ten per cent.

The Motion was put and agreed to.

The Hon'ble **SIR RICHARD TEMPLE** also moved that, in section 39, the words "or to produce any accounts" be inserted. This was a mere verbal improvement in the section, of which the intention was clear.

The Motion was put and agreed to.

The Hon'ble **SIR RICHARD TEMPLE** then moved that the Bill as amended be passed. He said:—"My Lord, though this is an important motion, I do not desire to say anything more than what has been already said in support of it. After the votes passed by the Council on the 27th, I presume that we may infer

that the Bill will today pass into law. If so, this will be the fourth Income Tax Act for which I have had to obtain legislative sanction, acting on behalf of the Government of India, and in the due execution of my financial duty. Having, then, on four successive occasions (March 1869, November 1869, April 1870 and now March 1871) had to trouble the Council with arguments in support of taxes on income—to all which arguments I consistently adhere—I shall not now further trespass on the indulgence of the Council.”

His Excellency the COMMANDER-IN-CHIEF said that, after the expression of his opinion on a former occasion, he did not require to say any thing more regarding this Bill, which might be considered as passed, beyond this, that he should very gladly vote for any other Bill which would effectually touch the rich capitalists and would not be unjust to the European community.

He would take this opportunity of making a few remarks upon the statements which had been made to the Council by His Hon'ble friends Colonel Strachey and General Norman, with regard to the Public Works and Military Expenditure, on some points with which his office was to a certain degree connected.

With reference to the question of Railways, there had been some difference of opinion regarding the gauge. It was a question on which there had been much serious controversy; it was not on that point that he intended to speak now. He would merely say that, having decided the point in favour of a narrow gauge, with which he did not altogether agree, he trusted that the very urgent demand for a Railway from the sea-board of Bombay to Pesháwar would be complied with. He had stated to the Government frequently, and years ago, his conviction of the urgent necessity of completing a Railway to Pesháwar, and he could not too strongly repeat his conviction of that necessity.

With reference to the construction of barracks, he was glad to see, in the statement made by Colonel Strachey, that only four millions sterling had been expended upon the new barracks; and he hoped that, on a close investigation, it would appear that a really smaller sum than this had been expended on the new double-storied barracks; he hoped in the course of time to see every soldier properly housed.

He believed that it was the accepted opinion in Europe, that the successes of the Prussians in recent years were due very much to the intelligence and education of the soldiers in the rank and file, and the opinion had been growing for a good many years in England, that we were called upon to do everything

in our power to promote the moral culture and education of our soldiers. There was no doubt that there was very great improvement in the *matériel* of our soldiers over former years, but when a soldier came to this country, he left a great deal which made his life agreeable as a soldier's life. In England, he was in a garrison town, where he had the society of his own class and public amusements. If he was a social man, he could go to places where he could get a glass of liquor, and it was to be hoped he did not always get too much; he always had agreeable places to go to, where he could be amused; he had a well lighted library and a recreation-room.

When the soldier came to this country, the regiment arrived nearly destitute of everything likely to promote his amusement. He had known of cases where regiments came to India almost without any books, and they had no means of establishing their regimental institutions for comfort and amusement, except through the action of the canteen, which required time to accumulate money. Under these circumstances, he thought it must be clear that the soldier required a good many conveniences and a good deal of accommodation in this country to compensate him for what he left behind. There was no doubt that the accommodation for soldiers had been very much improved of late years, and that the Government had a desire to improve it; but to provide shelter for the whole Army was, of course, a very great work, and that was what had to be done after the mutiny. It was desired, besides placing the soldier above the influence of malaria at night, to give him good places of amusement, good libraries and gymnasiums. A theatre also was not thought out of place, as being, when conducted properly, an excellent mode of instruction; a mode of instruction for people in early days before they had books, and which was still very useful, though in a less degree, to those who had few means of literary culture. It was desirable to give accommodation for privacy, so that a few men might quietly read, or write letters, without going half a mile in the sun to the regimental reading-room, which could only be visited conveniently in the morning or evening, and was generally dimly lighted. It was also desirable that these rooms should be under the barrack-roof, so that a Captain of a Company, who took an interest in his men, might have occasional meetings for reading or lectures; the men might also get leave to hold occasional prayer-meetings in the company day or recreation-room. This and such like accommodation was intended to be provided in the new barracks in the lower stories, and he thought that it was not correctly stated that the whole of these lower stories could not be utilized. He thought that when an investigation was made into the cost of barracks on the old, and those upon the

new, style, if to the former were added all the buildings for recreation and comfort—subsidiary buildings as they were called—the cost of the old barracks would be raised to quite as much as the cost of the new barracks, bearing in mind the increased rates of building, and that sanitary demands had increased the space that was considered necessary for soldiers.

He considered that one of the greatest sanitary improvements which had been made was, that the soldier had been allowed greater space, amounting now to 90 feet per man, an improvement which had conduced very greatly indeed to the health of the men and had diminished mortality.

It could be easily understood that, if the soldier had no more shelter than the mere space for his bed, perhaps on a dusty mud floor, and had no change but from the barrack to the parade or the guard-room, he would look to the canteen or the *bázár* for his amusement, and it was that condition which it was the desire of Government and those interested in the case of the soldiers to remove where it still existed.

He was very glad to learn that the Resolution quoted by General Norman, which had given him some uneasiness, was not intended as a reversal of Lord Lawrence's policy, but simply a modification of it, so that the buildings might be suited to the climate in which they were placed, and that where sound sanitary reasons recommended double-storied buildings, they would be allowed.

There still remained several points on which the health of the Army would be very much improved, and one of these, of great importance, was the water-supply. He was happy to say that that point had come under the attention of Government for the station of Pesháwar, where good water was urgently required. There were other places, also, where improvement on this point was much wanted.

The other point which he had promised to notice was the necessary protection of the country. Some thirty years ago, he was sent up on duty to Dárjiling, and he had to walk sixty miles to get there; he found there only a few huts and three or four Europeans. He had visited the settlement a short time ago, and found the whole place cleared and covered with tea-gardens, and a large number of European cultivators settled there. From there, he skirted the frontier, and found the slopes of the hills, ranging along the whole breadth of the country, equally suited to this valuable cultivation, which at Dárjiling was passing down into the deadly Terai, and converting it into a garden.

For a thousand miles of frontier, there was land suited for the cultivation of tea, and many hundreds of European planters engaged in that cultivation.

The country thus embraced by this border might be said to be 75,000 square miles in extent, but it was in proximity to a number of wild tribes, who for the first time had come into contact with civilisation.

They disliked the approach of civilisation, but coveted the property that accompanied it, and would try to possess themselves of that property.

He considered that it was our sacred duty to protect those who had purchased their lands and embarked in industrial pursuits, and also the Natives of the country, who were helpless and liable to be slaughtered like sheep or carried into captivity; and he considered that the demand for protecting the frontier would increase, and with that increasing demand we ought not to venture on further military reductions.

He considered that a valuable cultivation, such as that in Assam and Káchéár, deserved the greatest protection.

He could not, he thought, overstate the value of good European planters. If there was no population in the place, the planter collected one round him. If there was one, he obtained influence over it for good, if he were a just God-fearing man.

He could obtain more resources out of the country than the Magistrate or revenue officer.

He considered these settlers most valuable, and that the State should do everything to protect and foster a cultivation which, in twenty or thirty years, might make India independent of China.

The Hon'ble SIR RICHARD TEMPLE said:—"I desire, My Lord, to offer a few words of explanation on a particular point. As the Council knows, the word 'permanent' was inserted in the original draft of the Statement of Objects and Reasons, and was cut out of the revised copy as presented to this Council before the introduction of the Bill. I now observe that the insertion of the word is described in some quarters as a mistake committed by the Legislative Department. But I wish to say that the mistake (if it was a mistake at all, on which point I do not pronounce,) was not one for which my learned friends of the Legislative Department are at all responsible. For I alone am responsible on that point, and I desire to claim my responsibility accordingly. *Adsum qui feci.*"

His Excellency THE PRESIDENT said:—"As this is the last stage of this Bill, and as I have not yet had an opportunity of making any remarks in Council as to the measures which, during a considerable period, the Government have thought it necessary to take to improve the financial position of the Empire, I wish, in the first place, to recall to mind, as briefly as possible, the state of things which has occasioned the necessity for these measures, to endeavour to explain what their effects have been, and also to shadow forth, as far as I can, what I think ought to be the future policy of the Government.

"I can assure the Council that to myself and to my colleagues, the period of the last two years has been one of the greatest anxiety. During that time unusual, and perhaps what may be termed severe, measures have been undertaken; but I shall be able to show that the circumstances of the case rendered those measures inevitable, and that the result has been all that was anticipated.

"In making this statement, I fear that I shall be obliged to mention many facts and circumstances which are well known, and have often been referred to in Council. But on the last occasion on which the financial measures of the Government can be discussed during the present year, it will not be out of place to bring back many of them to recollection, for I wish most earnestly to press them upon public attention.

"In September 1869, eighteen months ago, after a long and anxious consideration of the financial position of the Empire, we felt it to be our duty to inform the Secretary of State that we were about to take an unusual and an almost unprecedented course.

"We informed His Grace that the Actuals of 1868-69 which were then brought to our notice would show a deficit of nearly two millions and a quarter, the budget estimate delivered in March 1868 having anticipated a surplus of a quarter of a million.

"We said that, on further investigation, we believed that, if the then state of things were allowed to continue, the deficit for 1869-70 could not be less than £1,700,000, the estimate made in March 1869 being for a surplus of £50,000.

"We said that an accumulated deficit of nearly six millions had occurred in the three previous years, and that if the present condition of affairs were allowed to remain unchecked, it was not unlikely that, at the end of that year, the accumulated deficit during four years of peace might approach to the

sum of nearly eight millions. We said that, while this accumulated deficit for three years had been as we described, our cash balances had declined from $13\frac{3}{4}$ millions to $10\frac{1}{4}$ millions; much lower than they had been for years; that during this period of three years the permanent debt of the country had been increased to nearly $6\frac{1}{2}$ millions, of which not more than three millions had been spent on reproductive works, and that we considered that this state of things was not one of temporary difficulty, but had assumed an aspect of chronic financial danger.

“ We said that great works were in hand, works which it was our duty to pursue and which were not only necessary, and would ultimately be profitable, but which must for a time place a heavy burden upon the resources of the Empire; and we summed up by saying that we believed that nothing less than an advantage of nearly three millions, on both sides of the account, would suffice to place the finances of the Empire in a satisfactory state.

“ We refused to make good ordinary expenditure by borrowing.

“ We thought that the honour and credit of the Empire were at stake. We said that great evils existed, and we intended to remedy them.

“ In pursuance of these declarations made to Her Majesty’s Government, we lost no time, but proceeded to act at once.

“ We announced several measures of importance. We took the serious, and in most cases the objectionable, course of ordering extensive reductions in expenditure and of increasing the burdens of the people in the middle of the year.

“ The Secretary of State had told us, in a despatch written in January 1869, that he entertained sanguine hopes that it might be possible to bring the whole military charge to a sum of one million and a half below its then amount.

“ We proposed reductions in military charges which, had they been effected, would have produced, eventually, a saving of nearly a million a year. We believed, and still believe, that the greatest part of the recommendations that we then made on the highest military authority at our disposal, could be carried out without impairing the efficiency of the European or Native Army.

“ We at once took a course which, though necessary, we regretted. We reduced the Public Works Department expenditure to the extent of £900,000,

raised the income-tax by one-half, and increased the salt-tax in Madras and Bombay. We ordered such measures of severe economy in the various Civil and Military Departments that the result has been that my hon'ble friend was able to say, in stating the Actuals of the year, that instead of the deficit which he had expected of £1,700,000, he could announce a surplus of £118,000.

“So far for the measures of 1869.

“When we came to consider the prospects of 1870-71, our difficulties did not decrease; the sudden and very large reductions that we were obliged to make in the Public Works Department could not be carried further consistent with the possibility of continuing work at all; many of the proposals which were made as to Military reductions, were under consideration between us and Her Majesty's Government; some have been adopted, others have been altogether declined, some have been referred back to us and are still not finally decided. We felt it would be necessary under these circumstances to add to the resources of the Empire for one year. We considered long and anxiously whether it would be better to invent new taxation or to increase old and well-known burdens. We hoped, and our hopes have been realized, that the great pressure would be only of a temporary character. I am not going to fight the old battle over again as to whether we were right or not in imposing a high income-tax. Everything has been said that can be said on that point, and I will only repeat that, having considered the matter most carefully, we declined to terrify the people by new forms of taxation; we refused to lay additional imposts upon industry and commerce, or to increase the burthens of the poor. We endeavoured to extricate the Empire from a great difficulty by the only mode which we considered possible, and we asked the comparatively well-to-do to contribute to the revenue about one million of money for one year, by means of an enhanced income-tax. The effect of all these measures exceeded our anticipations and the result was a surplus for the past year of £900,000. By these means two years of surplus were obtained, and we gained time to consider, to elaborate, and to inaugurate, measures which we trust are calculated to a great extent to secure us against a recurrence to that position which has caused so much trouble to the Empire and such anxiety to the Government.

“A great deal has been said with regard to reduction in expenditure. On this point much misapprehension appears to exist: we have been frequently charged with neglect of duty in connexion therewith. We said in the despatch

to the Secretary of State of September 1869 that we conceived, as between the then state of things and the future, that we were bound to endeavour to obtain an advantage of three millions. What has been the result? We have not quite attained our object, but we are not far from it. The general expenditure of the country has been reduced from £52,000,000 in 1868-69 to our estimate of £49,000,000 for 1871-72. To this we must add in fairness £656,000 of receipts, which have been handed over to the Provincial Governments under the eight heads of revenue surrendered. But, in truth, we have so far attained our object, that we shall obtain in less than three years an advantage of two and half millions caused by reduction in our expenditure alone.

“The Council must feel that during this time we incurred a deep and heavy responsibility; but having presided over all these consultations, I am glad to be able to offer my hearty thanks to my able colleagues, who throughout the whole of that anxious time have cordially supported me in the objects I have had in view.

“In the early days of the crisis, we had the advantage of the experience and advice of two eminent men, Mansfield and Durand. One has gone to his rest amid the lamentations of a nation; the other, I rejoice to see, has been by the favour of his Sovereign called to the Upper House of the Legislature, and I hope that in Parliament he will continue to give to his country, as he did here, the advantage of his administrative ability and great professional knowledge.

“From the time the serious character of the situation was recognized, each Member of the Government evinced the most earnest and hearty desire to remedy, as quickly and as effectively as possible, the unsatisfactory state of things.

“At first, my hon’ble friend Mr. Strachey was in charge of the Financial Department; on him devolved the duty of inaugurating our early measures.

“When the Financial Member, Sir Richard Temple, resumed his office, he entered as heartily into our objects as if he had been with us when our first efforts were made.

“It was not to be expected that such measures as these could be effected without encountering most violent opposition. We were quite prepared for that.

“I am not going to discuss the questions as to the suitability to India of a high income-tax. I am not going to revive, if I can help it, old and worn-out discussions. As far as the Press of this country is concerned, I fully admit

that if it was the opinion of the gentlemen who conduct public organs that evils and oppression did occur by reason of the levy of this tax, it was their duty to expose them. That we turned no deaf ear to the complaints thus made is fully proved by the action we have taken during the present year, by which we have reduced the numbers of the payers of income-tax by more than 50 per cent.

“I was much struck the other day by the very strong observations that were made by my hon’ble friend Mr. Inglis, who is intimately acquainted with the circumstances of the North-Western Provinces. He presented to the Council his experience of the working of the tax. His account was alarming.

“It is impossible to overlook such a statement made by so eminent an official. We are about, therefore, to request the North-Western Government to furnish us with a catalogue of the cases which have directly or indirectly come to their knowledge showing either oppression or maladministration as connected with the levy of the income-tax. We are also about to ask that Government to supply us with the names of the individuals concerned, and the officers to whom this information has been conveyed. We shall ask who the subordinate officials are that were referred to, and what are the reasons why the Administration is unable to control or to prevent the abuses described. We shall further ask whether these alleged evils and demoralization are supposed to be confined to the assessment and collection of the income-tax only, or extends to the collection of other branches of the revenue. We shall further ask him whether, if these evils are found to exist with regard to the collection of this and other branches of revenue, any remedies can be suggested to prevent their recurrence. I can hardly conceive that a more important series of questions could be put to a Government, and I have no reason to doubt that the Lieutenant Governor of the North-West will give his most earnest attention to them.

“I make this statement to show that the Government will never turn a deaf ear to representations of oppression and evils connected with the administration of our revenue, come from what source they may, but will ever be ready to make the most stringent enquiry, and if evils are proved to exist, to administer at once an effective remedy.

“The hon’ble gentleman who sits beside me (Mr. Robinson) drew the other day a gloomy picture of the future of the people of India as regards taxation.

“It is true, and we must recognise the fact, that as civilization and wealth spread, so must the burdens of the people increase, not in proportion

to increased riches, but to a certain extent. But my hon'ble friend used on that occasion the term 'crushing taxation,' which I think requires some notice.

"I admit the comparative poverty of this country, as compared with many other countries of the same magnitude and importance, and I am convinced of the impolicy and injustice of imposing burdens upon this people which may be called either crushing or oppressive.

"Mr. Grant Duff, in an able speech which he delivered the other day in the House of Commons, the report of which arrived by last mail, stated with truth that the position of our finance was wholly different from that of England.

"In England,' he stated, 'you have a comparatively wealthy population. The income of the United Kingdom has, I believe, been guessed at 800 millions per annum. The income of British India has been guessed at 300 millions per annum. That gives well on to £30 per annum as the income of every person in the United Kingdom, and only £2 per annum as the income of every person in British India.'

"I believe that Mr. Grant Duff had good grounds for the statement he made, and I wish to say, with reference to it, that we are perfectly cognisant of the relative poverty of this country as compared with European States.

"But as a matter of fact, are the people of India heavily taxed? Figures are not always satisfactory, and calculations of this kind must be to some extent open to cavil; but still as statisticians accept the facts that I shall state, we may consider that they represent, pretty fairly, approximate accuracy.

"I have made from trustworthy documents a comparative statement of the incidence of imperial taxation in India, and in some European States, England excluded. I have deducted from the resources of the Indian Empire all those sources of revenue which cannot strictly be called taxation. I have deducted land-revenue, for the reason that it is not taxation, but is that share of the profits of the land which the Government, in its character of chief proprietor, has from time immemorial deemed it its right to demand. The opium revenue is excluded, because no one in India pays it. I have also deducted contributions from Native States, the receipts received in the Army, Postal, Telegraph, and all the Spending Departments. The result is, that the revenue received from taxation proper in India amounts to $14\frac{1}{4}$ millions from a population of 150 millions, which gives a result of 1s. 10d. per head per year. I have followed the same investigation with regard to five European States, some of which are not the richest, and I find that, while Indian taxation is but 1s. 10d. per head per year, the subjects of the Sultan are paying 7s. 9d.; those of the Emperor of Russia, 12s. 2d.; the inhabitants of Spain, 18s. 5d.; Austria, 19s. 7d.; and

Italy, 17s. It must be remembered, however, that a shilling bears a larger proportion to the income of a labourer in India than to that of a labourer in any of the countries mentioned, but still there is no such difference between the value of labour here and in Europe as is represented by the difference of taxations that I have described. Notwithstanding, the financial credit of our empire is far better than that of any of those States to which I have referred. I have mentioned these facts to show that the term 'crushing taxation' is wholly inapplicable to the countries subject to the authority of the Government of India. At the same time I am far from saying that this happy state is not right. I believe it is. The greatest security to Government is given by the feeling entertained by the people that they are lightly taxed. And by avoiding as much as possible additions to the burdens of those who contribute to the interests of the State, we add much to the safety of our rule.

"I will now refer briefly to a few of the accusations that have been made, sometimes in this and other Councils, but more generally by the Press, in places of public resort, and in conversation, against the conduct of affairs by the Financial Department of the Government of India. As these accusations have been clearly made and oft-repeated, there can be no mistake about them. The Government of this country is in one respect in an unfortunate position, for there is no assembly or any means of discussion similar to that which prevails in other countries, whereby members of Government can give an immediate reply to statements made, and administer on the spot the negative to extravagant and inaccurate assertions. We are often obliged to wait for weeks and months before an answer can be given to even the most absurd accusations.

"One of the main objections taken to the conduct of the Government is that the public was unnecessarily alarmed in September 1869.

"This broad assertion is incapable of the slightest proof.

"The deficit estimated in September 1869 was £1,727,402. To meet this, the following measures were adopted :—

	£
The income-tax was raised so as to produce in excess of the original estimate	350,000
The salt-duties in Madras and Bombay were increased by $\frac{2}{3}$ ths, producing an excess of	185,000
The Public Works expenditure was reduced by	898,453
And severe economy was enforced in the Civil and Military Departments, producing, say,	300,000
TOTAL	1,733,453

d

“The year resulted in a small surplus of £118,668. That there was this surplus and not the estimated deficit is obviously due to the measures adopted upon the revision of September 1869, and to no other cause. It is simply silly to make the success of those measures the ground for condemning them.

“Another charge made is that the accounts and estimates presented to the public by the Financial Department are untrustworthy and inaccurate to an extraordinary degree.

“As far as account goes, there is no foundation whatever for the allegation that any inaccuracies have occurred. Practically, the accounts for years past are believed to be absolutely correct. Within a certain margin it cannot however be said that they are altogether *complete*. A complete account and an accurate account are two different things. We are aware that transactions in the various departments and the various provinces may not have been completely adjusted. The matter is one of exceeding difficulty, and it is to be feared that, however we may manage for the future, it may be found very difficult to reconcile all such past inter-departmental, inter-presidential, and inter-provincial transactions. I do not say that it would be possible to compile the accounts of the last ten years into one, and present the whole as a perfectly true account. This is much to be regretted, and the system cannot be said to be satisfactory so long as such a blot remains. I do not however apprehend that these are the errors that have been so repeatedly referred to. As far as the accounts go, they are absolutely and substantially correct, and the margin of incompleteness is exceedingly small.

“But I have observed that a great many remarks have been made in which an extraordinary confusion of idea seems to prevail with regard to estimate and account. It is impossible to conceive anything more different in nature than the estimate of the Financial Department for the ensuing year and that of the account of the same Department for periods which have passed. Account is a record of fact, estimate is a matter of opinion and forecast; there is as much difference between an account and an estimate as there is between a good eight-day clock and the divining rod of a magician. An American humourist, Mr. Artemus Ward, gave a very sound advice to his disciples when he said—‘Never prophecy unless you know.’ Now unfortunately my hon’ble friend is obliged to prophecy when he does not know, when he cannot know, and when no one else knows. And when gentlemen accuse the Government of extraordinary inaccuracy in estimating, they forget this, that an estimate is a matter of opinion and is to a great extent a prophecy. My hon’ble friend Sir Richard Temple described with

great force in his financial statement the difficulties that are to be met in this respect. The Indian estimates are an aggregate of facts, collected over an immense area by a large body of officers. These facts are carefully adjusted, compared with the estimates of former years, analyzed and summed up; and from this mass of evidence deductions are drawn. Owing to the peculiarity of some of these chief items of revenue,—items which hardly exist or are totally unknown in many countries,—the difficulty is vastly increased. It is not possible to avoid error. The most sagacious man cannot foretell the price of opium for a month, far less for a year, and opium produces nearly one-sixth of our revenue. The land-revenue (which gives two-fifths of the revenue) is also subject to risks which no man can foresee. The traffic receipts of the Railways fluctuate considerably, and depend to a great extent on the general prosperity of the country. The customs revenue fluctuates also to a great extent according to the condition of the people.

“ We have been advised to meet the difficulty by what is called ‘ sanguine estimating.’ I think it is quite right in estimating to leave such a margin as will in our opinion secure our calculations from some of the disturbing causes which I have mentioned; but sanguine estimating, which informs the country beyond or within the facts that are in our possession, for the object of diminishing or increasing taxation, is in my opinion nothing less than dishonesty. I am sure my hon’ble friend Mr. Robinson would be the last man to recommend anything like dishonesty; but what he appears to suggest is that we should disregard the facts which were laid before the Government and come to a different conclusion from that which we thought these facts would warrant. I cannot help thinking that if we had taken that course, we should not have been acting in accordance with the principles which ought to guide us in all our transactions. We think we know a good deal about finance, but certainly we do not know any thing about ‘ financing;’ and it is our duty to present the public with the most accurate results we can obtain, and the soundest opinion we can form. We never can and never will take any other course.

“ But with regard to this accuracy of estimate, the Secretary of the Financial Department has supplied me with a curious statement, showing the comparison of English, and also the Indian, Estimates with Actuals.

“ The English Accounts are on the average better than the Estimates, whereas, hitherto, the Indian Accounts have been on the average worse than the estimate. It is intended to take precautions against a recurrence of this, but it of course involves some additional severity in providing ways and means. But the Indian Estimates appear to approximate more closely to facts

than do the Estimates in England. It is curious that if we compare the English Estimates for the last ten years with the Actuals, we find that the annual average difference of actual from estimate was £2,132,700 on a revenue varying from 70 to 74 millions. In India the annual average difference from estimate was £1,874,600 on a revenue varying from 41 millions to 50 millions; so that we find that, notwithstanding all the difficulties which lie in the way of the Financial Member in laying his statement before the public, his estimate does not compare unfavorably as to accuracy with that made by the Chancellor of the Exchequer.

“ It has frequently been stated that a great deal of our misfortune has arisen in that we have given undue liberty to the Public Works Department in the way of expenditure.

“ Let me remind the Council as to what has been done in this respect. It is probable that some useless works have been stopped, but at the same time a great many useful undertakings have been unavoidably postponed. The fact remains that, whilst in 1868-69 the expenditure was £6,272,000, and in 1870-71 £4,797,000, for the present year it is £3,802,000; so that the expenditure in the Public Works Department has been reduced by nearly one-half in the period named.

“ But the most serious charge made is, that the public was unnecessarily taxed in 1870-71, that is in the present year; that there was no necessity to raise the income-tax to the extent it was done, and that the surplus of nearly a million which had been obtained shows that grievous error was committed. If after what has occurred we had been over-careful, and taken our estimates of revenue somewhat low in order to make security doubly sure, even as “ skilful surgeons cut beyond the wound to make the cure complete,” we should not have been much to blame. But we did nothing of the kind. The estimates on both sides were as near the known facts as we could put them. As my hon’ble friend has reminded the Council, the surplus which has been attained this year has arisen from one special cause, namely,—Opium. We had no right to take it otherwise. We took it at Rs. 975 a chest. There had been a steady fall in price for months; we consulted all the authorities which were available, and I know that my hon’ble friend opposite (Mr. Bullen Smith) entertained the same gloomy anticipations as we did with regard to price for the remainder of the year. But on this particular occasion, while the estimate was being prepared, we had the advantage of the advice of Her Majesty’s Minister in China, Sir Rutherford Alcock, a man who had spent his whole life in that country; he gave us, in this very room, at great length, his

views as to the course that he thought the opium trade was likely to take. Nothing will tend more to show how untrustworthy are any forecasts with regard to opium when I state that on this particular occasion we were in possession of better intelligence, and what might have been supposed more accurate information than we ever had before.

“ However, all the great authorities were wrong. The market, soon after our estimate was made, took an unexpected turn ; prices rose, and the result was, that in the article of opium alone we have received about £900,000 more than we expected.

“ I will not condescend to notice certain unworthy charges which have been made against the Department, such as ‘ cooking accounts’, ‘ adjustments made to suit convenience’, and ‘ credits taken which did not exist’. They are utterly baseless and reflect no credit on those who made them. Had some of them been uttered against the Directors of a respectable Company, the probability is that they might have subjected those who made them to those liabilities which the law provides as a protection against libel and defamation.

“ But I have said enough to show that in reality there was no unnecessary alarm in September 1869 ; that the accounts of this great Empire are as correct as accounts of so complicated a nature can be ; that in accuracy our estimates compare advantageously with those of other countries, and that unless we had been prepared to endure another year’s deficit, and, I may say, financial disgrace, the measures of last March were absolutely indispensable.

“ I now propose, with the permission of the Council, to advert briefly to our future prospects. I do not mean to indulge in any boastful or over-sanguine anticipations. I know how uncertain is the future, and especially the Indian future, and how possible it is that the cerulean atmosphere which now hangs above our heads may turn to clouds and storm. But as to our duty in the present aspect of affairs, we entertain a very decided view. Our public duties are many and various. There are duties with regard to our Native and European Services, and towards those men who serve Her Majesty so well in the several departments of the State. There are duties which have been today referred to by His Excellency the Commander-in-Chief with regard to providing for the comfort and health of our European Army, which we have conscientiously discharged and which we hope to continue to discharge. There are various duties which the Government must always perform towards commercial and industrial enterprise and also with regard to national defence.

“There is a great deal of nonsense talked about despotic rule in India. If despotic rule means the unrestrained and unregulated will of any one man or of any body of men, I say no such thing exists. Here, private right and individual liberty is guarded as strictly as it is in any country in the world. Freedom of action and of thought everywhere prevails. But we cannot conceal from ourselves the fact that we administer a system of Government under which the rulers are appointed by a Sovereign who by her responsible Ministers rules in a far and distant land.

“By this very fact are our responsibilities vastly increased; for rulers who are nominated without consultation with the people whom they govern are bound to exercise more circumspection than those who derive their powers from popular representation; and a deep obligation is placed upon us to govern with firmness but mercy, with kindness and with care, those weaker natures which are entrusted to our rule.

“In administration, taxation must always form a leading feature. When you touch the pockets of the people, you touch at once their feelings and their hearts.

“The people of this country never had the power of self-taxation, and I am not at all clear that if they had, they would have made a proper use of it. But for good administration in India, vast funds must be provided, great expenditure must be incurred, and Government must be carried on with much strength and some splendour.

“In view of these facts, our clear duty is to refrain from imposing any burden upon the people of this country beyond that which we can honestly say is necessary for good government and for the permanency of that rule which we believe is calculated to confer benefits upon the nation.

“How are we to avoid unnecessary taxation? We can avoid it by absolutely setting our faces against anything in the shape of waste; by rigid economy; and by retreating from many of the extravagancies which have from time to time been committed. If we set ourselves firmly to this task, we shall certainly accomplish it.

“The most variable sources of expenditure have been made over to Local Governments, by which more economy and care will be exercised, and which I have reason to hope will not increase unduly the burdens of the people.

“We have secured the imperial revenue from main elements of uncertainty, and if we follow the dictates of prudence, I am sanguine enough to believe that that normal increase of resources which the growing prosperity of the

country must yield may be made, and can be made, to suffice for future imperial wants.

“ But we must look at the matter in a practical point of view. We must recollect that our future liabilities are heavy, and that among other things the growing charge for interest is exceedingly serious.

“ My hon'ble friend Sir Richard Temple has stated that, since 1869-70, we have borrowed ten millions of money, throwing a permanent charge upon our revenues of £450,000 a year. The registered debt of India will this year amount to 106½ millions, and we have to pay guaranteed interest on Railways to an amount of nearly 90 millions more.

“ In this view of the case it is necessary to consider our future liabilities and the danger they involve if they are not boldly and judiciously dealt with. No one who is aware of the facts I am about to adduce can come to any other conclusion than that the day is far distant when anything in the shape of what is called ‘ financial pressure ’ will cease, and that all those who have to administer the finances of this country for the future must administer them with the most watchful care.

“ In the despatches which were submitted to the Secretary of State last year with regard to Railways and Irrigation, a variety of works of the highest importance were named.

“ In Irrigation we suggested works, either commenced or not yet in progress, which will cost 39 millions, three millions of which have been already spent, leaving for further expenditure under this head a sum something like 36 millions.

“ The Railways we recommended, even if they are to be constructed on the most economical principles, must cost from 26 to 28 millions. Additional capital will probably still be wanted by the guaranteed Companies to the amount of some eight millions.

“ We have lately inaugurated a system of lending money to Municipalities which, we believe, will contribute much to the health, wealth, and comfort of the inhabitants of towns. It is possible that we shall be called upon to advance to Municipalities in the next few years a sum amounting to ten millions. We have introduced a Land Improvement Bill this year, which will also throw an additional charge upon our loan funds, and it is probable that we shall spend three millions or more under this head.

“ Speaking roughly, and looking forward according to our present lights, we cannot think that anything less than a sum of 85 or 90 millions will be required

to be borrowed for those purposes which we think indispensable to the improvement of the country and the welfare of the people. This is an enormous charge, but I firmly believe it can be met without difficulty, and that, if rightly dealt with, the works can be carried on without throwing any serious burden upon our general revenues.

“As to Railways, we believe that most of the lines which we have suggested can be made in a manner in which they will not be likely to create any permanently inconvenient charge. This can only be done in one way, namely, by materially lessening the original cost. Indeed, there is an absolute necessity for this. The future lines are never likely to bring in the return of those now in existence. The richer districts are already occupied by Railways; the great arterial lines are completed; nearly 5,000 miles are open through the best parts of the country; they impose a charge in the shape of guaranteed interest on our revenues over and above the nett traffic returns of £1,856,000. We propose to build 5,000 miles more, and I believe we can do it; but not one of these can be expected to produce the returns of the Great Indian Peninsula, the East Indian, or the Eastern Bengal Lines.

“Now, suppose that we continue to build Railways at anything like the cost of the existing lines, it is not too much to say that, at the end of fifteen or twenty years, we should possibly find ourselves paying out of revenue, instead of £1,856,000, something like three or four millions of interest.

“We may expect a certain steady increase in our traffic, but there is no symptom of a sudden rush or outburst of Railway returns such as we have often witnessed in Europe or America. It is true that, since the year 1867, there has been a steady increase on the East Indian Railway of nearly half a million of tons of goods traffic in four years; but on the Great Indian Peninsula I find that in the year ending June 1867, with 815 miles of Railway open, they were carrying 1,046,000 tons, and in the year ending 30th June 1870, with 1,200 miles of line open, they were carrying only 1,057,000 tons of goods. On the Madras Lines at the same period, with a considerable additional number of miles open, they were carrying, in the year ending 30th June 1867, 373,000 tons of goods, whereas in the year ending the 30th June 1870, they only carried 354,000 tons. The Sindh Line in the same year carried 201,000 tons of goods, and fell off in the year 1870 to 80,000. On the Panjáb Lines no substantial difference occurred between those periods; but the Great Southern of India carried, in the year ending June 1867, 70,000 tons of goods, and in the year ending June 30th, 1870, with an increase of mileage, only 66,000 tons. The Native passenger traffic bears very much the same proportion to that of the goods on all our Railways. In the last days of 1867, there were 3,909 miles

open, and in the end of 1870 there were 4,730 miles open. The goods traffic on all our Lines increased only from 2,900,000 tons to 3,500,000. The entire traffic now on our Indian Lines is 4,700,000 tons, or about one-fourth of that on the London and North-Western, with four times the mileage.

“ It appears to be doubted whether the Lines that we propose will be sufficient to carry the traffic, and it is held by some that we ought to continue to construct on the five feet six inch gauge.

“ It is said that the present gauge is not too broad, nor the stock too large. I would ask the Council to compare, for a moment, the 1,000,000 tons yearly of the traffic of the East Indian Railway, with the ten million tons of the Midland Railway in England, on a not very different length of line; or to compare the 300,000 tons of traffic on the Madras Lines, with the 1,400,000 tons of the London and South-Western, on an equal length of line, and then ask whether it is necessary to build Railways stronger and bigger in every respect for Indian traffic than those that are carrying these enormous loads.

“ It is interesting to calculate what would have been the result if we had built some of our smaller Lines on the plan which we suggest. The following comparative statement of actual and probable charges will show that a considerable saving might have been effected; and that instead of paying two per cent., they would be paying nearly five per cent.; whilst the Imperial Revenue would be saved a sum of £730,500, whilst the requirements of the public would be equally satisfied:—

Smaller Lines.

RAILWAY.	Miles open.	ACTUAL BROAD GAUGE.			PROBABLE NARROW GAUGE.			
		Capital, Millions.	Net Income.		Capital, Millions.	Cost per Mile.	Net Income.	
			Amount.	Per cent. on Capital.			Amount.	Per cent. on Capital.
			£.		£	£		
Madras ...	83½	10	285,000	2½	5½	7,000	285,000	5
Great Southern ...	168	1½	32,500	2½	4½	4,500	32,500	4½
Bombay and Baroda ...	307	7½	200,000	2½	2½	8,000	200,000	8
Sindh ...	108	2½	7,500	1½	2½	7,500	7,500	1
Panjab ...	252	2½	35,000	1½	1½	7,000	35,000	2
Delli ...	302	4½	115,000	2½	2½	8,000	115,000	4½
TOTAL ...	1,971	28½	675,000	2	13½	...	675,000	4½
Net charge per annum make up five per cent. ...		£748,000			£17,500			

Saving per annum £730,500.

f

“This ought to prove how cautious we must be in embarking in new lines, and how carefully we must count the cost if we are to continue to discharge our duty to this country in constructing these indispensable means of communication.

“Every day confirms the soundness of our decision in adopting a narrow gauge. An able writer, who has been discussing the question in the Bombay Newspapers, entitles his letters ‘10,000 miles of Railway for 5,000.’ But I say ‘Railways at £6,000 or £7,000 a mile, or no Railways at all.’ We believe that the gauge we have adopted of three feet three inches will meet every requirement, and I cannot conceive why we are to construct lines which are and must be far above the requirements of the country for a great number of years, when we can show that the system which we recommend will do for us all we want. If a gentleman of small means, who proposed to start upon a journey, purchased an elephant in order to carry a donkey-load of baggage, I am afraid that his friends would consider him to be possessed of that limited amount of intelligence which nature has bestowed upon the humbler animal.

“The great objection which has been urged to the system is the ‘break of the gauge;’ I admit it is serious, but I believe it has been greatly exaggerated. The cost of transshipment has never been placed above the cost of carriage of more than about twelve or fifteen miles, and in some respects, as regards the Native passenger traffic, and in other ways, by good arrangement, the inconvenience can be reduced to a point that will be hardly felt.

“As far as Irrigation is concerned, we hope to be able to take somewhat the same course that we have done with the Railways, and keep down as far as possible the first cost of the works. The estimates will be made and carefully criticised, and I may say, without fear of contradiction, that the officers who are engaged in designing these great works are, in this particular branch of their profession, as experienced Engineers as any in the world. I have no reason to believe that the estimates which they have made, and the opinions which have been formed, will in any serious degree be contrary to the anticipated result.

“But, beyond this, we must use every effort to make all these irrigation works really productive and self-supporting.

“We must establish a system of irrigation and finance that will throw the main burden for the repayment of the capital and interest expended on these works upon the land which benefits by them. We must follow the same principles which have been adopted by every other country in the world in which similar undertakings have been constructed. We must take such measures as will oblige

the people who are enriched, whose lives are preserved, and whose wealth is augmented, by these works, to contribute in a fair proportion to the cost of their construction.

“ We desire to individualize as much as possible each work, in order that the public may be made fully aware of the terms under which it is constructed, its cost and its returns. We desire to separate as much as possible the finance of our reproductive operations from the ordinary finance of the Empire.

“ We have endeavoured to give effect to some of these principles in the Canal Bill which is now before the Legislative Council, but which I regret to say we have not altogether succeeded in making acceptable to the public.

“ I am surprised at the resistance with which our intentions in this respect have been met. Everybody seems to desire irrigation, but many seem to desire that somebody else should pay for it. But as a matter of principle, the people in Madras should not pay for the enrichment of the Panjáb, nor the people of Bengal for the irrigation of Sindh. Unless the Government is supported in organizing a system by which these works can be constructed without placing further serious charges upon Imperial Revenue, I greatly fear many of these important operations may not be undertaken at all, or if they are undertaken, they may run the risk of being stopped before they are finished. We wish to make these works as self-supporting and as independent as possible ; in fact, to put them in such a position that if war, famine, financial difficulty, or other misfortune occurs, they will continue to progress, and go on even to completion.

“ But if we continue, or rather attempt (for these works are only in their infancy), to construct them on the system of mixing up their accounts with the ordinary accounts of the Empire ; if we think we can pay the interest of the capital expended on them out of the revenues of the year ; if we do not extend to their finance, generally, the severest and most business-like principles ; we shall possibly have in a few years to witness, either financial difficulty, or the stoppage of some of these great and beneficent works.

“ Why did some of the great Railway works in India progress during the whole of the mutiny ? They were carried on under great difficulties ; but the work progressed even in districts which were disturbed ; we know this was due to the lines being independent of Government, and because their finance was entirely removed from the ordinary revenue and expenditure of the country.

We can take the same course with our State works ; but unless we can put them somewhat in the same position, and make them self-supporting and independent of the ordinary circumstances and fluctuations of revenue and expenditure, we shall I fear be doomed to disappointment.

“ With regard to Municipalities, we propose to make loans to them for carrying out works of improvement, but we do not intend to make advances of this nature without careful investigation, and until we have first ascertained that ample provision can be made and security given for the repayment of both interest and capital. I believe there will be no objection to, or difficulty in, carrying out this scheme, and I have no reason to think that the Municipal bodies themselves will be unfavourable to it.

“ Under the Land Improvement system we have to extend the well known system of Takkávi, and put it under more precise rules ; and it is not probable that there will arise the smallest cost to Government under this head. By these and no other means can all these great works—whether Irrigation, Railway, Municipal, or Land Improvement Works—be carried on, without, as far as we can judge, throwing any very heavy charge upon the future resources of the Empire.

“ I am afraid I have already detained the Council too long and must hasten to conclude.

“ For the future, then, in regard to ordinary expenditure, we shall ever labour to attain in each year such a small surplus as will show the world that our finances are in a satisfactory state.

“ We do not propose to estimate distinctly for a surplus, neither do we propose to tax the people for such a purpose. But the finances of a country cannot be in a perfectly healthy state unless the receipts of the Government somewhat exceed the expenditure in each year.

“ Surplus means sunshine, certainty, reduction of burden, and extension of important works. Deficit means clouds, uncertainty, hesitation, increase of taxation, and the stoppage of much good and useful work. Be it large or be it small, those evils must always to a greater or less extent occur. We shall therefore continue to exercise the most rigid scrutiny into every branch of our expenditure. We must also exercise that continual care which is essentially necessary to secure us against its constant growth.

“ With this object we ask, and I do not think we shall ask in vain, the generous support of all those who are concerned in the conduct of Indian administration. We are bound to act on our belief, that if increased cost takes place under

certain heads of expenditure, which I fear is to some extent probable, it must be met by reduction of expenditure under others.

“I ask, therefore, the various Governments and the various Heads of Departments not to bombard the Government with applications and demands for increased expenditure except in cases of the most urgent necessity.

“We are determined not to run into debt nor to borrow for ordinary expenditure. We expect that in our efforts we shall receive unanimous and hearty support. We say to the public,—‘criticise severely every part of the expenditure; discuss it; offer opinions about it; do not advocate petty parings and savings in small details, but devote your criticisms to general expenditure and to the large establishments, for there it is that safety is to be found.’

“We labour for two objects which must command universal support: first, to restore Indian Finance to a healthy state; and, secondly, to avoid any further increase of imperial burden.

“For the present, at least as far as I can judge, we have secured the first, and for the second we must ever and constantly labour if we are to attain success. I will not, as I said before, further refer to the violence of the various attacks which have been made upon the Government because we endeavored to do our duty. In the success of our schemes we can well afford to forget the acrimony with which they have been assailed. My hon’ble friend (Sir Richard Temple) has sustained an amount of odium, and has endured an amount of abuse, which to him would have been perfectly intolerable had he not known that his object was good and that success was nigh. I say of the terms in which my hon’ble friend has been assailed, that a great deal of it has been cowardly and almost all of it unjust.

“Whether it will continue I know not. But one thing I know, that when all these misstatements and this abuse and odium are forgotten; when all the malice and uncharitableness that has been expressed towards men who have been honestly doing their duty has passed into oblivion, the future historian of India will be forced to record that, in eighteen short months, the finances of a mighty empire were rescued from a state of chronic deficit and certain danger. That in six months, not without great sacrifices and much risk, equilibrium between revenue and expenditure was obtained; that in the following year substantial surplus was shown in the imperial accounts. That all this was effected, not by swelling the burdens of the masses; not by cheese-

paring and cutting down the pay and allowances of the humbler servants of the Government; not by wild and temporary reductions which so impair efficiency that they ultimately lead to greatly increased expenditure, but by increasing for one year the burden of taxation, four-fifths of which fell only on the well-to-do part of the population and from which the very poor escaped.

“ He must also record that this end was also attained by a calm and critical search into our expenditure and by great reduction of outlay; and that future security was gained by associating with ourselves in financial responsibility a large amount of local authority and local interest.

“ He will have to record that during this year, those great works of irrigation and preparations for the commencement of a new system of Railways have been pushed vigorously on, and that in many ways, though a reduction in our military charge has been effected, our military strength has been materially increased. New and improved arms for the Army have been provided; large and costly defences have been added to our principal harbour, and in many other ways our defensive strength and that of our military marine have been increased. No other story than this can ever be told except at the expense of truth; and be it now or hereafter, wherever it is really known and impartially discussed, I am certain we shall receive that full meed of public approval which is the highest reward of public service.”

The Motion was put and agreed to.

CUSTOMS DUTIES BILL.

The Hon'ble SIR RICHARD TEMPLE also moved that the report of the Select Committee on the Bill to amend the law relating to Customs Duties be taken into consideration. With His Lordship's permission, he would just read to the Council the Report of the Select Committee on this Bill. The Report said—

“ We have expressly declared that no opium shall be exported from British India, unless it be covered by a pass.

“ We have also introduced a clause providing for the levy of duties on goods crossing the frontiers of the foreign European Settlements situate on the coasts of the Presidencies of Madras and Bombay.

“ We have added to the schedule of repealed enactments Acts VI of 1844, schedules A and B, and XXIX of 1857, section 2.”

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

COLONEL the Hon'ble R. STRACHEY said :—" My Lord, I am unwilling to allow this Bill to pass without saying a few words regarding it. If I did not know that it was impossible for the Government to give up the revenue which it is proposed to raise under the Bill, I should have opposed it, at all events in part, for the same general reasons that have led me to vote for the measure just passed, namely, that I think there are certain descriptions of taxation which are essentially bad, as I think there are others that are equally good. Among taxes that I regard as essentially bad are Export duties, and such duties we are asked to assent to by the present Bill.

" And I have a special reason for desiring to draw the attention of the Council to this subject in a pointed manner. It is a misfortune which the form of the Government of this country almost necessarily imposes on us, that our administration is altogether conducted by a separate official class, without that most useful co-operation of the non-official classes, which is possible under other systems of Government. I do not of course under-value the aid which is given to the Government by my hon'ble friend on my right (Mr. Bullen Smith), and the other commercial gentlemen, who, from time to time, have sat in this Council, but as we were reminded in very plain language a few days ago, this is not a House of Commons and the Government is not carried on by this Council, but by the Executive Government; and my hon'ble friend will, I am sure, agree with me in recognizing the fact that a seat in this Council gives very little power of controlling the practical administration of the country, or of directing its policy.

" I do not intend to give the Council a lecture on the art of Government, and I do not propose to suggest any remedy for the difficulty I have stated. What I wish to do is, to draw attention to the fact that there is very much left to be done in the way of reforming the commercial taxation of India, and that it is a serious error, to which a Government constituted such as ours is will necessarily be prone, to exaggerate the relative importance of administrative reform and to neglect what is really due to economical reform. I have no hesitation in declaring my own belief that in the last eight or ten years this has actually happened, and that the whole of the available resources of the State have been applied too exclusively to administrative improvements, in themselves no doubt valuable, but not more valuable, to say the least of it, than the other class of improvements to which I have referred. If, as I hope, the Government of India has, after recent events, resolved to do its utmost to check that incessant expansion of the Civil administrative charges which I lately discussed

at some length, it will assuredly be its duty to regard the demand of an enlightened customs policy as among the very first objects to claim attention, when the natural further growth of the revenues permits it. If then I may venture to offer advice on such a subject, it would be that the first measure which the Government of India should seriously take up after a permanently healthy condition of the finances has been established, is the complete reform of the Tariff and the removal from it of the blots which now so greatly disfigure it.

“The worst of these blots no doubt are to be found in the Export Tariff. And I should perhaps explain to the Council why I have said that export duties are essentially bad, for no doubt those who first imposed them, and now retain them thought and think better of them, than I do. I regard it as an axiom in taxation that it shall as far as possible fall on the fund destined to supply consumption and not on that which supplies production. An Export duty necessarily falls on the producers. To tax the export of rice, is to do what is virtually equivalent to rendering the soil on which that rice was grown less productive. To tax the export of cotton goods manufactured in India is to do what, in its result, in no way differs from any material obstruction thrown in the way of such a manufacture. By the imposition of such taxes, the inducement to the production of the things taxed is reduced in India, and an additional stimulus is given to competition in other countries. It is of course true, that among export duties that is least noxious, which is imposed on any article having a virtual monopoly in its markets. But as a fact all experience proves that nothing has such a monopoly. India can tell the tale of its saltpetre trade destroyed by export duties. Is India also to destroy its export rice trade? Will it stimulate to the utmost the production of other dyes to compete with its indigo? Will it drive its own sugar out of its own markets for the benefit of the Mauritius? Even in that commodity of which India apparently has the most important monopoly, opium, the competition of the local Chinese market, is already beginning to be felt, and there are those who foretell the ultimate destruction of our export of this drug. Only today I have read of a commencement of opium production in the United States of America. But whatever is the immediate consequence of export duties in special cases, it is quite certain that the necessary tendency of the growth of knowledge, the spread of commerce, and the increase of competition, is to bring all producers more and more nearly to a level, and to reduce more and more the special advantages of any of them. Under such a competition, the law which has for other purposes been called a law of Natural Selection, will eventually destroy the industry which is weighted the heaviest, and export duties will thus constantly be tending to destroy the commerce of the country that imposes them.

“The gross receipts from the export duties for the year 1870-71, reckoned from the actual accounts of the first eight months by adding one-half, would be £528,000. Of this, two articles, grain and seeds, paid £465,000, and all others £62,500. Among these last have a place, by a refinement of barbarity, two of the very few manufactures of which India can boast. Cotton goods and leather pay £21,000 together. Indigo, oils, lac, and spices, articles requiring either to be manufactured and specially dealt with, to fit them for the market, figure for £28,500. I confess that I am at a loss to supply the arguments by which the retention of such duties can be justified in preference to refusing an infinite variety of petty administrative demands, among which I am quite content to class requirements for public buildings and such matters, which have been allowed to swallow up the money that to my mind would so vastly better have been applied to getting rid of these senseless and positively mischievous hindrances to the growth of the wealth of the country. The refusal to supply funds for the Godavery works and the Karáchi harbour, for instance, would have permitted of the abolition of all export duties except those on grain and seeds, and if the choice had been left to me in such a matter I should have had no sort of hesitation in taking off the duties. Of course I don't say that of all expenditure that might be stopped that which I have mentioned would be the best to select, but I accept the test of a practical application of my principles, and I have said where I could find a reduction which would suffice in the absence of any better.

“I do not know that I should be disposed to agree with my hon'ble friends who have spoken of the grain duties as being those which most demand attention, though I fully assent to their condemnation of them absolutely. I regard that duty as the worst which is most in the nature of a class duty, and which at the same time is least productive. Now all these little productive export duties are essentially class duties and inflict special injury on a small body of persons employed in particular trades. Inasmuch as the rice duty falls on a large area it is less obnoxious and not more, and it partakes more of the character of a general tax on agriculture. I fear that the true reason we hear more of it than of other worse duties, is that it affects a greater number of influential persons who can complain, and not that it is really more obnoxious to censure.

“And here I would say a word as to how bad a test of the character of a tax is mere *absence* of complaint. The sugar production of the North-West Provinces, to take an instance that has been lately referred to in this room, may be utterly strangled by export duties levied hundreds of miles away

in the Panjáb, Central Provinces and Rájputána, of which the grower of the cane probably never even heard. And so it may readily be with all industry. The poison is absorbed into the system imperceptibly, and the victim dies without a struggle it is true, but not the less surely.

“The sugar duties of which I have just spoken are without doubt the most discreditable relic of the dark ages of taxation that yet subsists in India. A ten per cent. *ad valorem* duty is deliberately retained on the export of British sugar into Rájputána, and into our own territories on the wrong side of the customs line drawn across northern India, by a Government, which has for years past preached to the very States on whose borders this tax is levied; the impropriety of doing this very thing which is defended to the present day chiefly, because it yields £120,000 or £130,000 which it would be inconvenient to give up. I have rejoiced to hear the head of the Government say that he thinks this is among the matters first to be put to rights, in any future revision of the public burdens, and I cannot see how there can be a difference of opinion on the subject. These sugar duties have been defended, by persons who should have known better, on the ground that no one complained of them. It shows a truly melancholy want of insight into, or consideration of, the action of such imposts, on the part of those who supervise this part of the administration, to find these duties in existence at the present day, and I trust that another year may not elapse before some step at least is taken towards extinguishing them.

“And before I leave these export duties, let me ask why is it that the cotton goods manufactured on one side of the Húglí are taxed, while the jute on the other goes free? Why does the cotton grown side by side with the indigo, escape the duty which the other staple pays? The reply is obvious. The customers of the jute mills and the purchasers of the cotton live in England, and can make themselves heard, and have made themselves heard and feared. Here, for such reasons as I have mentioned and in the absence of the natural defenders of the suffering interests from the councils of the Government, the true principles of taxation have too long been neglected for the sake of obtaining a revenue really insignificant in amount, and the necessity for which might quite easily have been avoided, by proper firmness in refusing the expansion of expenditure.

“But I fear that my bill of indictment against the customs duties does not end with the export tariff. As I before said the true test of character of a customs duty is that it shall fall on consumers. Now there are several items

of the import tariff, and one an important one, that does not comply with this condition. The first on the list is metals. It is true that iron is taxed lightly at one per cent., but all other metals are taxed at $7\frac{1}{2}$ per cent., and almost in all cases such metals are in truth used in manufactures, and are not in any true sense articles of consumption. Naval stores come under the same description, also hides, and paints and colours, and there may be others, which for the most part stand at $7\frac{1}{2}$ per cent.

“Railway materials, I need not say, come under the same condemnation, but this duty is yet more objectionable; for it is either paid by the Government in the form of guaranteed interest in case of materials used on an open line, or if for a new line it is charged to the capital account of the Railway, and is converted into debt-bearing interest at 5 per cent. for ever. Now that the Government is about to commence Railway construction, the absurdity of this duty will perhaps become more obvious, and I hope that it will not make its appearance in another tariff. The aggregate of the five items which I have named is £225,000.

“Excluding these items, I find that the ten largest amounts, of which the lowest is £15,000, yield together £1,441,000, and that all the rest, 39 in number, together give only £134,000. The whole list comprises 54 items. I cannot consider that it is desirable to maintain such a tariff as this, several of the items of which do not produce £1,000. Among the most miserable of the list are the two last additions to it, the mere mention of which will, I think, sufficiently indicate the spirit which has governed the commercial policy of the Government in late years—corals and lucifer matches.

“Many of the items in the tariff are moreover open to objection as being class-taxes. Such are the duties which exclusively, or nearly exclusively, fall on the Europeans resident in India, and of these a long list might be enumerated. Although it would, no doubt, be indefensible to place Europeans in a better position than the natives of the country in these matters, yet to do the converse is still more indefensible; and I consider that many of these duties press most unjustly on the class to which I belong, and I think that I should be neglecting my duty in this Council, and to that class, if I did not say it in perfectly plain terms. The European has at least as much claim to my sympathy in matters of taxation as the sugar-grower of Northern India, or the indigo-grower of Bengal, or cotton-spinner of Bombay. In all these cases I affirm, are grievances in the matter of taxation far more onerous than those of which we have, within the last few weeks, heard so much, and having this distinctive character that they are as real as the others were imaginary. And I

may add that for my own part I should be glad to hear the voice of the House of Commons require the Government of India, if it were necessary, which I hope and indeed believe it will not be, to do what is necessary for the removal of evils such as I have mentioned in the interest of Great Britain, for she has a great interest in them, and may justly defend it, as well as in the interest of India itself.

“I am of course quite aware that it is not possible in a summary way to take off these duties, and I am anxious not to be supposed to suggest such a course. But what I affirm is, that the first occasion should be taken to reduce the list, and to carry out the other reforms of which I have spoken; and that such an occasion can only be found by a resolute determination on the part of the Financial Administration that there shall be no addition to the expenditure which shall prevent these necessary fiscal reforms. A distinct and positive policy must be adopted and acted up to, or nothing in this direction will be possible. I am too well aware of the incessant and insidious demands for money for mere administrative purposes, and I know the difficulty of resisting these demands, and I repeat, therefore, with special emphasis what I believe to be the only rule of action that can lead to success.

“Neither am I satisfied that even this amount of reform is all that we can fairly hope to see carried out. I go further still.

“And in the first place, I reject entirely the doctrine that we do well to maintain a high rate of duty on the piece-goods imports. Whether Manchester be selfish or not, and no doubt it has been loudly asserted, it is not for me to say; but this I know that the men of Manchester gave England free trade and understand the real requirements of commerce and progress vastly better than those statesmen who put export duties on such products as tea, and coffee, and grain, as well as on the few manufactures India ever had, and who maintain transit duties in the heart of our own provinces to this very day. I say then that those who ask for a reduction of the duty on piece-goods may at all events possibly, and to my mind have actually, a very substantial ground on which to base their argument, quite apart from mere personal interest, though no doubt this is one of the motives of those who object to high duties, and a motive which is a perfectly proper one.

“The truth is, and it lies on the surface, that exports are best paid for by imports, and that if a fair return in the shape of imports is not taken, the export trade is carried on at a disadvantage. Everything which enlarges the consumption of imports opens the way for a further production of exports.

Now, obviously the best way of enlarging consumption is to reduce price, and even a very small fall of price may in a very important degree influence the total amount of trade. In the particular case of piece-goods, moreover, every increase of consumption tends to add to the demand for the raw material, and thus in another way to stimulate Indian production.

“ And let me here further remark that it by no means follows that a duty is not mischievous because it only adds one, two or three per cent. to the cost of goods. It is precisely these small amounts which in the end determine whether trade is possible or not; and in the present condition of commerce, with its vast extent and close competition, it is altogether erroneous to say that a duty is not important because the rate is low.

“ Nor does this finish my demands in behalf of the commerce of India. I do not affirm that it can at present be said to be within the limits of the practicable to make all the ports of India entirely free; but this is certain, that there is hardly any sacrifice of present administrative progress, that I can conceive of, that would not be a reasonable price to pay for the vast benefit of complete freedom of the export and import trade of India. The customs duties at the present time are not of a magnitude to render this idea in any way chimerical. The whole amount at stake is about $2\frac{1}{2}$ millions. Of this there is some portion that it might reasonably be thought right to retain; and though I have no specific plan to propose, I should conceive that some system might be adopted by which a certain revenue could be obtained by stamps on the documents relating to the import and export of goods. So far as this were possible, it would reduce the sacrifice to be made. Now, even if this amounted to two millions sterling, I can at once indicate a possible source for meeting it. When I placed before the Council a statement of the recent growth of the public expenditure, I also noticed that there had been a growth of the revenues in the last ten years of something like £3,900,000, after allowing for increase of charges of collection, but that of this amount £2,700,000 had been eaten up by growth of civil charge. Let the revenues then continue to increase as in the past, let reasonable attention be given to the due assessment of the land revenue, and the proper protection of the rights of the State to share in the profits derived from land in conformity with ancient usage and theoretical justice, and let the growth of civil charges be stopped for ten years, and the difficulty is removed. And without taking any extreme view, it seems to me quite reasonable to look forward to such a growth of the revenues as shall render possible, if not such a complete adoption of free trade as I myself would advocate, at all events a fair approach to it.

“ I need not speculate on the probable results of such a policy, if carried out; but I may point to the wonderful effects of the adoption of a modified form of free trade by England, and say that it seems to me certain that the greatest benefit would be obtained by following a like course in India.

“ I should perhaps mention that the suggestion that I have put forward of a possible complete or almost complete abolition of customs duties in India is not due to me. It originated, so far as I am concerned, with Mr. Robert Knight, a gentleman to whom the best interests of Indian finance and commerce are much indebted. If in some particulars I do not adopt his views, yet it is a simple act of justice to bear testimony to the value of one of the few real critics to whom the Indian administration can look for assistance in the onerous task that rests upon it.

“ In conclusion, I will only further observe that I look forward to the action of the newly constituted Department of Agriculture and Commerce as likely to be of the greatest service in giving effect to such modifications in our commercial taxation, as the further consideration of this important matter may show to be desirable. In support of this expectation, I will read a portion of the despatch of the Government of India to the Secretary of State, proposing the constitution of the Department of Agriculture and Commerce:—

‘ We are convinced that if there had been a department, the special business of which was to make itself thoroughly acquainted with all facts of importance regarding the commercial transactions of India, to observe intelligently the operations of external and internal trade, and to watch the effect produced upon the commerce of the country by our fiscal system, our legislation would have been very different from what it has actually been. If such a department had existed, we doubt whether the export duties which we now levy on some of the main staples of agricultural produce, and even on articles of Indian manufacture, could have been imposed or maintained. If such a department had existed, it could never have tolerated the continuance of duties such as those which are still levied on sugar exported from the North-West Provinces across the Inland Customs line. Those duties are transit duties of the worst description, levied on one of the most important articles of agricultural produce in Northern India.’

“ After such an expression of opinion on the part of the Government of India, I confidently hope that the very important questions to which I have called the attention of the Council will receive the attention they deserve, and in a spirit conformable to the suggestions I have ventured to make.”

His Honour the LIEUTENANT GOVERNOR said, he must express some surprise at the commencement of Colonel Strachey’s address, as he commenced by reproaching him for having in a small and humble way adopted the

course which he himself had taken on this occasion. The only difference in respect to the course taken by HIS HONOUR and Colonel Strachey had been, not only in respect of the greater humility and mildness of HIS HONOUR'S remarks, but in this, that he had tried to stick to his last. If this were the proper time, HIS HONOUR might have taken some notice of the observations that had been made with regard to the position of Members of this Council who were not also Members of the Executive Government of India; but, as far as this Bill was concerned, warned by the previous lecture he had received, he would hold his tongue.

COLONEL the Hon'ble R. STRACHEY said he had not made the slightest allusion to His Honour the Lieutenant Governor, and therefore really did not know to what His Honour referred.

The Hon'ble MR. BULLEN SMITH said it was not his intention to have troubled the Council with any remarks on the present Bill, as, in face of the financial position which they had been more or less discussing for the last three weeks, he felt that any request for a remission of duties would hardly have met with favourable consideration. As a merchant of British India, however, he could not but express his thanks to the hon'ble Member, Colonel Strachey, for the practical and, in the main, he believed, thoroughly sound views on this subject with which he had favoured the Council in the interesting speech just delivered, on which, however, time did not permit him to dwell. The services of the hon'ble Member to India had, over a long course of years, been neither few nor small, and he ventured to say his speech of this day would be remembered among them; when we got, as he trusted we soon should, into smoother times, financially speaking, and when we were able to point to a tariff-table free from the blots which had been this day so clearly pointed out, then he trusted it would not be forgotten, and he at least was not likely to forget, that the hon'ble Member, all unconnected though he was with commerce in any special manner, brought the evils of existing duties before this Council more fully and forcibly than he had ever before heard them here submitted. He did not deny that to him, personally, there was source of satisfaction in Colonel Strachey's speech; for having recently incurred the anger of the hon'ble Member of Government in charge of the finances—anger accompanied by a somewhat ungenerous and certainly an ill-founded retort—because he ventured to hint at disregard of fiscal principles in the matter of the existing rice-duty, it was certainly comforting to find his views so well supported, and to hear Colonel Strachey testifying to this defiance of sound principles in language much more plain than he had ventured to employ. By way of elucidating the little misunderstanding

between the hon'ble Member and his Honour the Lieutenant Governor, he would, in reply to the hon'ble Member's direct reference to him as to what he found his position as an Additional Member of this Council, simply say that he entirely accepted the definition of that position as stated by his hon'ble friend, and that he accepted it as unhesitatingly and fully, as he rejected and repudiated the definition of that position given on Monday last by the hon'ble Member opposite (Mr. Stephen), a definition which his whole experience of this Council led him to feel certain was not concurred in by the head of the Government.

The Hon'ble SIR RICHARD TEMPLE had no idea that this extremely small Bill would have led to any discussion. Of course his honourable friend Colonel Strachey's observations were valuable, and as they emanated from a Member of this Council who was not a Member of the Executive Government, they were pronounced without any reserve. But with the permission of the Council, he (SIR RICHARD TEMPLE) would refrain from entering into the matter, inasmuch as what he might say was clothed with official and executive responsibility. He hesitated to speak on such points, except he was announcing the views and wishes of the Government of India. As regards the general question of customs-duties, a reference to the debates of the Council during this session would show that the general subject of Colonel Strachey's remarks had already been set forth to the Legislative Council and the public by three at least of the Members of the Executive Government, and also by His Lordship the President. He did not say that with the view of disparaging the value of his honourable friend's remarks, but to show that the matter was not one which had been overlooked, or which had escaped attention. Indeed, it was one which had been and was under the special consideration of the Government. It might be hoped that, when the time came for the discussion and passing of practical measures based on principles such as those enunciated by Colonel Strachey, the Council would have the benefit, not only of his speech, but of his vote. But that probably could not be, as the honourable Member was about to quit India. Another honourable Member, Mr. Bullen Smith, connected with great commercial interests, also supported in the strongest manner the views expressed by Colonel Strachey; but he (SIR RICHARD TEMPLE) must remind the Council that this was a question of financial possibility, and that the means of removing the defects pointed out might partly depend on the extension or continuation of other measures of taxation. It was a question entirely of means, and he hoped that, on the next budget-day, honourable Members connected with these important commercial interests would be good enough to bear in mind the principles in our Tariff just enunciated on the present occasion.

As regards the particular customs duties which had been referred to, he must remark that it should not be inferred that the Government of India had been, in past years, at all inattentive to the interests of commerce in this respect, for as a matter of fact there had been, within the last five years, several Commissions appointed for the revision of the Tariff. Those Commissions were composed of gentlemen called together from all parts of the country, assisted by the most eminent mercantile men of the presidency towns. Even in his own time there had been a general revision of the Tariff, and it was to be observed that there had been a constant revision of small duties, just of that class to which reference had been made. Even up to the time of the last budget, this process had been going on, and he would refer the Council to his exposition of two years ago, when he explained that no less than one hundred and thirty articles had been wiped off from the Tariff, and that the duties had been reduced from 10 and 15 per cent. to $7\frac{1}{2}$ and 5 per cent. He did not say that there might not be any other important articles in the Tariff which required revision, but he thought that the Council had a right to hope from the past action of the Government that their action in future would be equally satisfactory.

As regards the remark as to the spirit in which the revisions had been made, it might perhaps be inferred that the Government of India had been actuated by a severe and grasping spirit in the matter of its commercial taxation. But he ventured to affirm that any such inference would be in the highest degree unjust to the Government of India, and that this would be apparent from comparing the Customs Tariff of this country with the Customs Tariff of any other country in the world. To show that he was not singular in this view he would conclude by quoting the remarks of his predecessor, Mr. Massey, who had been for a long time Chairman of the Committees of the House of Commons, and had a very large knowledge and experience of the history of England in regard to its commercial policy. What Mr. Massey said on the last occasion when he made his financial exposition in this Council was—

“Again, it is asked, why not repeal your customs duties? my answer to that is, our customs duties are the lightest of any country in the world.”

After one or two remarks, as if anticipating the general objections which had just been raised, he said—

“In the like spirit, the Government will be always prepared to remove or lighten any duty which in any perceptible degree checks the prosperity or interferes with the interests of commerce. But do not sacrifice your customs duties to the idea that you are imitating, when you would be only mimicking, the policy of Sir Robert Peel and Mr. Gladstone. The policy of

these Statesmen was as sound and practical as it was grand and imposing; and the customs duties of India are adjusted on principles strictly in accord with that policy. You may keep what you have got with a safe conscience."

The Motion was put and agreed to.

CONSOLIDATED CUSTOMS ACT AMENDMENT BILL.

The Hon'ble SIR RICHARD TEMPLE also moved that the report of the Select Committee on the Bill for the further amendment of the Consolidated Customs Act be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE also moved that the following section be inserted in the Bill after section 2 :—

"3. All goods found on board any boat in excess of the boat-note or Custom-house pass, whether such goods are intended to be landed or to be shipped on board any vessel, shall be liable to confiscation."

And that the number of the following section be altered accordingly.

He said this amendment had been suggested by the Revenue Authorities as being necessary to prevent the possibility of certain smuggling in reference to salt.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NATIVE MARRIAGE BILL.

The Hon'ble MR. STEPHEN moved that the report of the Select Committee on the Bill to legalize marriages between certain Natives of India not professing the Christian Religion be taken into consideration. He said this was now a Bill for legalizing marriages between members of the Bráhma Samája. Originally, the Bill, as the Council were aware, was of a much more general nature, and was received with considerable disfavour by the Local Governments to which it was referred. They all agreed that, if the Bill was confined to the immediate object for which it was introduced, there was no objection to its being passed, and it was clearly desirable that such an Act should be passed. He had supposed that the matter might be settled to-day; but he had

just received a deputation from a part of the members of the Bráhma Samája,—which it appeared was not altogether unanimous—who said that they had not an opportunity of considering the Bill, although the leading members of the sect had approved of it, and that they wished to do so before the measure which was likely to affect their interests to a considerable extent became law. That appeared to be a perfectly reasonable suggestion, and accordingly, if he now moved that the report of the Select Committee be taken into consideration, the Bill could be published for general information. There was no immediate hurry in regard to the matter, and it could be passed while the Government was at Simla. The Bill provided an extremely simple form of marriage, of which these persons could avail themselves. The essential part of the measure was, that the parties to the marriage must be of the ages of eighteen and fourteen respectively; that they must be unmarried, and, if the woman was under the age of eighteen, she must obtain the consent of her parents or guardians, and if they married again during the existence of the first marriage, they would be liable to the punishment provided by the Penal Code in that behalf.

The Motion was put and agreed to.

INDIAN EVIDENCE BILL.

The Hon'ble MR. STEPHEN presented the report of the Select Committee on the Bill to define and amend the Law of Evidence. He said:—

“I feel that I owe an apology to your Lordship and the Council for requesting their attention to a second speech upon a purely legal subject after the one which I delivered a week ago upon the Limitation Act. On this occasion, however, I have to explain the position of a measure perhaps as important as any that has been passed of late years by the Indian legislature, inasmuch as, if it becomes law, it will affect the daily administration of both civil and criminal procedure throughout the whole country. Moreover, the subject-matter to which the Bill refers is one of deep and wide general interest, for a Law of Evidence properly constructed would be nothing less than an application of the practical experience acquired in Courts of law to the problem of inquiring into the truth as to controverted questions of fact, however imperfectly it may have been attained.

“This is the object which has been kept in view in framing the Bill which the Committee append to their report, and which I am now to describe in a general way to your Lordship and the Council.

“ I will state, in the first place, the history of the measure down to the present time. So far back as the year 1868, the Indian Law Commissioners drew a Draft Evidence Act, which was sent out to this country, and introduced and referred to a Select Committee by my friend and predecessor Mr. Maine. The Bill was circulated for opinion to the Local Governments, and was pronounced by every legal authority to which it was submitted to be unsuitable to the wants of this country. In this view the Committee concur for reasons which I need not state in detail on the present occasion, as they are fully stated in the report which I present to-day. I may observe in general, however, that the principal reasons were that the Bill was not sufficiently elementary ; that it was in several respects incomplete, and that, if it became law, it would not supersede the necessity under which judicial officers in this country are at present placed of acquainting themselves by means of English hand-books with the English law upon this subject. The Commissioners' draft, indeed, would hardly be intelligible to a person who did not enter upon the study of it with a considerable knowledge of the English law. Under these circumstances, a new draft was framed, which we now propose to print and circulate, and on which I hope to receive the opinions of the Local Governments and High Courts in the course of the summer, say, by next September, so that their criticisms may be deliberately weighed, and the measure may be finally disposed of by this time next year.

“ The report of the Committee explains very fully the scheme of the Bill, which, of course, is of considerable, though not, I hope, unwieldy, length, and enters fully into the reasons which have led us to adopt its leading provisions. I will not weary the Council by going into all these questions on the present occasion. I will confine myself to saying that I trust that those who will have to criticise the Bill will begin by studying the report, which has been drawn up with great care, and which, as well as the Bill itself, forms a connected and systematic whole. The general object kept in view in framing the Bill has been to produce something from which a student might derive a clear, comprehensive and distinct knowledge of the subject, without unnecessary labour, but not, of course, without that degree of careful and sustained attention which is necessary in order to master any important and intricate matter. It is by this standard that the Committee in general, and I in particular as the member in charge of the Bill, desire that it may be tried.

“ With this reference to the Bill and the Report of the Committee, I proceed to discuss the general questions connected with the subject, and to mention a few of the leading features of the measure.

“I suppose that I may assume as generally admitted the necessity which exists for legislation on the subject of evidence in British India. It would be exceedingly difficult to say precisely what, at the present moment, the law upon the subject certainly is. To some extent—it is far from being clear to what extent—and in some parts of the country—though questions might be raised as to the particular parts of the country—the English Law of Evidence appears to be in force in British India. Whatever may be the theory, it both is and will continue to be so in practice; for if the English Law of Evidence has not been introduced into this country, English lawyers and quasi-lawyers have, and they have been directed to decide according to the law of justice, equity, and good conscience. Practically speaking, these attractive words mean little more than an imperfect understanding of imperfect collections of not very recent editions of English text-books. It is difficult to imagine anything much less satisfactory than such a state of the law as this. A good deal may be said for an elaborate legal system, well understood and strictly administered. A good deal may be said for unaided mother-wit and natural shrewdness; but a half and half system, in which a vast body of half-understood law, totally destitute of arrangement and of uncertain authority, maintains a dead-alive existence, is a state of things which it is by no means easy to praise.

“Legislation thus being necessary, in what direction is legislation to proceed? A gentleman, for whose opinion upon all subjects connected with Indian law and legislation I, in common with most other people, have a profound respect, said to me the other day in discussing this subject: “my Evidence Bill would be a very short one. It would consist of one rule, to this effect—All rules of evidence are hereby abolished.” I believe that the opinion thus vigorously expressed is really held by a large number of persons who would not avow it so plainly. There is, in short, in the lay world, including in the expression the majority of Indian civilians, an impression that rules of evidence are technicalities invented by lawyers principally for what Bentham called fee-gathering purposes, and of no real value in the investigation of truth. I cannot admit that this impression is in any degree correct. I believe that rules of evidence are of very great value in all inquiries into matters of fact, and in particular in inquiries for judicial purposes; and that it is practically impossible to investigate difficult subjects without regard to them.

“It is worth while to illustrate this point a little, because the necessity for rules of evidence rests upon it; but strong proof of it is to be found in the fact that in all ages and countries there have been rules of evidence. In rude times and amongst primitive people, the task of arriving at the truth as to matters of

fact was regarded as so hopeless and difficult, that rude arbitrary substitutes for any sort of rational procedure were provided in the shape of ordeals and judicial combats. Where people began to obtain glimpses of the true methods of investigation, they seem to have considered as almost supernatural skill what in our days would fall within the scope of average police officers or attorneys' clerks. The delighted wonder which was displayed by the Jews, according to the apocryphal story of Susannah and the Elders, at what a legal friend of mine used to call 'that very feeble cross-examination of Daniel's about the trees,' is a good instance of this. At a later period, arbitrary rules of evidence began to be formed. Such a fact must be proved by two eye-witnesses; such another by four; such another by seven. To say nothing of European systems, in which such rules were in force, the *Hedáya* is full of them. These rules were never introduced in their full force into England, but the system which was adopted, or rather which grew up by degrees, was of a very mixed and exceedingly singular character. Part of it consisted of rules declaring large classes of witnesses to be incompetent. Part was intimately connected with the English system of special pleading, which was so contrived as to define with extreme precision the facts upon which the parties differed, or were, as the phrase goes, at issue. Part were the result of the practical experience of the Courts, and these were by far the most valuable portion, in my opinion, of the English Law of Evidence. Most of the other rules have indeed been cut away by legislation, and the rules which still remain may fairly be taken to be the nett result of English judicial experience in modern times. In the most general terms, these rules are—

- 1, that evidence must be confined to the issue ;
- 2, that hearsay is no evidence ;
- 3, that the best evidence must be given ;
- 4, rules as to confessions and admissions ;
- 5, rules as to documentary evidence.

“I have two general remarks to make upon them.

The first is that they are sound in substance and eminently useful in practice, and that, when properly understood, they are calculated to afford invaluable assistance to all who have to take part in the administration of justice.

“The second is that I believe that no body of rules upon any important subject were ever expressed so loosely, in such an intricate manner, or at such intolerable length.

“It is necessary to prove the first of these propositions, in order to justify the recommendation of the Committee that the substance of the rules in question should be introduced in the form of express law into this country. It is necessary to prove the second proposition, in order to justify the attempt made in the Bill to reduce the rules to order and system.

“First, then, as to the proposition that the rules in question are substantially sound, and do far more good than harm, even in their present confused condition. The proof of this is, I think, to be found in a comparison between the proceedings of English Courts of Justice and those of countries which have no such rules, and between the proceedings of English Courts in which these rules are, and those in which they are not, understood and acted upon. As a preliminary remark, I think I ought to observe that the knowledge of these rules possessed by English lawyers is derived far more from the daily practice in the Courts than from theoretical study. Many English lawyers know by habit, almost instinctively, whether this or that (to use the common phrase) is or is not evidence, although they have hardly given the theory of the matter a thought. Practice, therefore, and not theory, affords the true test of the value of these rules. In fact, the clumsy, intricate, ambiguous, and in many instances absurd, theory by which the rules of evidence are connected together came after the eminently sagacious practice which they were intended to justify and explain. What is the practical effect of these rules? I may perhaps be permitted to answer this by referring to a book which I published in 1863 on the criminal laws of England, and which contains, amongst other things, an analysis of several celebrated trials, English and French. One object of that analysis was to contrast the effect of the presence and absence of rules of evidence; and I think that any one who would take the trouble to compare those trials together carefully would agree with me in the conclusion that the practical effect of the English rules of evidence in those cases was to shorten the proceedings enormously, and at the same time to consolidate and strengthen them, keeping out nothing that a reasonable person would have wished to have before him as materials for his judgment. The French system, on the other hand, which dispenses with all rules of evidence, got, at least in those cases, no other result from the want of them than floods of irrelevant gossip and collateral questions enough to confuse and bewilder the strongest head. Again, compare the proceedings of an ordinary Court of criminal justice with the proceedings of a court-martial, in which the rules of evidence are far less strictly enforced and less clearly understood. An ordinary criminal Court never gets very far from the point, but a court-martial continually wanders into questions far remote from those which it was assembled

to try. Nothing, for instance, is more common than to see the prosecutor change places, as it were, with the prisoner, or to find collateral issues pursued till the Court finds itself engaged in determining, not whether A was guilty of a military offence, but whether Z told a falsehood on some perfectly irrelevant subject. In a case which I well recollect, B testified against A. B being cross-examined to his credit stated a fact not otherwise relevant to the inquiry. Z denied the fact which B affirmed, and made further statements which were contradicted by intermediate letters of the alphabet. No Judge can possibly be expected, by the mere light of nature, to know how to set limits to the inquiries in which he is engaged; yet if he does not, an incalculable waste of time and energy, and a great weakening of the authority of his Court, is sure to follow. Active and zealous advocates, who have no rules of evidence to restrain their zeal, would have it in their power to pervert the administration of justice to the basest purposes, and to inflict immense injury on every class connected with it, directly or remotely: that might, and often would, in such hands be made the excuse for tearing open old quarrels and reviving questions laid at rest, and giving fresh animus to scandals long since exploded; and the main question would frequently be lost sight of in a cloud of irritating and useless collateral issues. I may be excused for referring to my own experience at the Bar in illustration of this. Appeals against orders of affiliation used invariably to produce an amount of perjury and counter-perjury which I should think it would be difficult to exceed in any country. In certain parts of the country, it was a point of honour for the friends of the putative father and of the mother, respectively, to 'go to session to swear for him, or her,' as they used to say. No one who did not take part in such cases could imagine the strange ramifications of falsehood and contradiction into which a hotly-contested case of this kind would spread, or the number of imputations thrown on the honesty and chastity of the different witnesses, male and female. If it had not been for the rules of evidence, the reputations of half the population of the village would have been torn in pieces. The rules of evidence kept matters to a point, and so minimized the evil; but the parties, the witnesses, and the attorneys, all appeared to me to be, one more anxious than another, to fight the matter out till the very last rag of character had been stripped off the back of every man, woman, and child, whose name was in any way brought into the discussion. The French Courts display this evil in an aggravated form. In the Work to which I have already referred will be found an account of the trial of a monk named Leotade for murder. If disposed of under the English rules of evidence, it could hardly have taken more than a day or two at the most. In the French Court, it lasted for, I think,

about three weeks, and branched out into all sorts of subjects. One witness, in particular, was discovered to have seduced a girl seven years before, and letters from her to him were read to throw light on his character. He naturally wished to give his own account of the transactions, but was stopped on the ground that a line must be drawn somewhere, and that the Court chose to draw it between the point at which an irrelevant slur had been thrown on his character and the point at which, had he been permitted to do so, he might have given an equally irrelevant explanation.

“ It is not, however, merely for the purpose of confining judicial proceedings within reasonable limits that rules of evidence are useful. They are also of pre-eminent importance for the purpose of protecting and guiding the judge in the discharge of his duty. There is a sense in which it may be said with perfect truth that even legislative power is unequal to the task of abolishing rules of evidence. No doubt, it is competent to the legislature to provide that no rules of evidence shall have the force of law; but unless they expressly forbid all Courts and judges to act upon any rules at all, or to listen to any arguments as to the manner in which they shall exercise the discretion with which they are invested (propositions too absurd to state or to discuss), the judges infallibly will hear, and will be guided by, arguments upon the subject, and these arguments will be drawn from the practice of English Courts. Moreover, the Courts of Appeal will exercise their own discretion in the matter, and thus, by degrees, the system would grow up again in the most cumbrous, chaotic and inconvenient of all conceivable shapes. The plain truth is, that there is only one possible way of getting rid of the law of evidence, and that is by getting rid of the administration of justice by lawyers and returning to the system of mere personal discretion.

“ It may be that some persons would like this policy, but I suppose it is one which I need not discuss.

“ So far, I have considered the rules of evidence merely as they conduce to the important practical objects of keeping proceedings to the point, and of protecting and supporting the judges. I must now say a few words on their value as furnishing the judge with solid tests of truth. I fully admit that their value in this respect is often exaggerated and misconceived; but I think that, when the matter is fairly stated, it will be found that they have a real, though it may be described as a negative, value for this purpose. There are two great problems on which the rules of evidence throw no light at all, and on which they are not intended to throw any light; and it must be admitted that those problems are by far the most important of any which a judge has to solve.

No rule of evidence that ever was framed will assist a judge in the very smallest degree in determining the master question of the whole subject—whether, and how far, he ought to believe what the witnesses say? Again, rules of evidence are not, and do not, profess to be rules of logic. They throw no light at all on a further question of equal importance to the one just stated. What inference ought the judge to draw from the facts in which, after considering the statements made to him, he believes? In every judicial proceeding whatever, these two questions—Is this true, and, if it is true, what then?—ought to be constantly present to the mind of the judge; and it must be admitted, both that the rules of evidence do not throw the smallest portion of light upon them and that persons who are absolutely ignorant of those rules may give a much better answer to each of these questions than men to whom every rule of evidence is perfectly familiar. I think that a more or less distinct perception of this, coupled with impatience of the exaggerated pretensions which have sometimes been made on behalf of the rules of evidence, are the principal reasons for the distrust and dislike with which they are at times regarded. This dislike, I think merely a particular application of the vulgar error which in so many instances leads people to deprecate art in comparison with nature; as if there were an opposition between the two, and as if art in all cases did not presuppose and depend upon nature. The best shoes in the world will not make a man walk, nor will the best glasses make him see; and in just the same way, the best rules of evidence will not supply the place of natural sagacity or of a taste for and training in logic; but it no more follows that rules of evidence are useless as guides to truth, than that shoes or glasses are useless as assistances to the feet and to the eyes. The real use of rules of evidence in ascertaining the truth consists in the fact that they supply negative tests, warranted by very long and varied experience, as to two great points, the relevancy of facts to the question to be decided by the Court and the sort of evidence by which particular facts ought to be proved. They may in the broadest and most popular form be stated thus:—

“If you want to arrive at the truth as to any matter of fact of serious importance, observe the following maxims:—

“First, if your belief in the principal fact which you wish to ascertain is to be, after all, an inference from other facts, let those facts, at all events, be closely connected with the principal fact in some one of certain specific modes. Secondly, never believe in any fact whatever, whether it is the fact which you principally wish to determine, or whether it is a fact from which you propose to infer the existence of the principal fact, until you have before

you the best evidence that is to be had; that is to say, if the fact is a thing done, have before you some one who saw it done with his own eyes: if it was a thing said, have before you some one who heard it said with his own ears: if it was a written paper, have the paper before you and read it for yourself. This exception—qualifications and explanations apart—is the true essence of the rules of evidence, and I think that no one will deny, either that these rules are in themselves eminently wise, or that they are by no means so obvious and self-evident that the mere unassisted natural sagacity of judicial officers of every grade can be trusted to grasp their full meaning and to apply them to the practical questions which arise in the administration of justice, with no assistance from any express law. I do not wish to exaggerate, but I must add, that I attach considerable moral and speculative value to these rules. If they are firmly grasped by Courts of Justice, and rigidly insisted upon in all practical matters which come before the Courts, they will gradually work their way amongst the people at large, and furnish them with tests by which to distinguish between credulity and rational belief upon a great variety of matters which will be of vast importance. I ought to add that the good which they are calculated to effect can be obtained only by erecting them into laws and rigorously enforcing them. When this is done, I feel confident that experience will be continually adding to the proof of their value.

“So far, I have tried to prove the proposition that the English rules of evidence are of real solid value, and that they are not a mere collection of arbitrary subtleties which shackle, instead of guiding, natural sagacity. I pass now to the next proposition, which is, that these rules are expressed in a form so confused, intricate and lengthy, that it is hardly possible for any one to learn their true meaning otherwise than by practice, an inconvenience which may be altogether avoided by a careful and systematic distribution. For the proof of this proposition, if indeed it is disputed, I can only refer in general to the English text-books on the subject. They form a mass of confusion which no one can understand until, by the aid of long practice, he learns the intention of the different rules, of which they heap together innumerable and often incoherent illustrations. I am far from wishing to impute this as a fault to the industrious, and in many cases distinguished, authors of these compilations. They, like all other hand-books, are intended for immediate practical purposes, and are mere collections of enormous masses of isolated rulings, generally relating to some very minute point. It was necessary, therefore, that they should be arranged, rather with reference to vague catch-words with which the ears of lawyers are familiar, than with reference to theoretical principles which it has never been worth any lawyer's while to investigate.

“The condition of the law of evidence, as well as the condition of many other branches of the law of England, affords continual illustrations of the extraordinary intricacy and difficulty which arises from the combination of the very greatest practical sagacity with an absence of sound theory, or, what is still worse, with the presence of unsound theory. No one who has not seen it could possibly imagine how obscure the meaning of a clever man may become when he is forced to squeeze it into the terms of a theory which does not fit it and is not true. I will give one or two illustrations of my meaning. The expression ‘hearsay is no evidence’ early obtained considerable currency in the English Courts. In a general way, its meaning is clear enough, and, what is more, is true; but, when considered as the scientific expression of a general truth, from which rules can be deduced in particular cases, it is inaccurate, faulty, and obscure to the last degree. The objections to it are, that both ‘Hearsay’ and ‘Evidence’ are words of the most uncertain kind, each of which may mean several different things. For instance, hearsay may mean what you have heard a man say, and this is its most obvious meaning; but it is difficult to imagine a grosser absurdity than the assertion that no one is ever to prove, in a judicial proceeding, any thing said by any other person. ‘Hearsay,’ again, may be taken to mean that which a person did not perceive with his own organs of perception; but this is not the natural sense of the word, and it is almost impossible in practice to divest a word of its natural meaning.

“The word ‘evidence’ is also exceedingly ambiguous. It may mean that which a witness says in Court. It may mean the facts to which he testifies, regarded as a groundwork for further inference. Notwithstanding this, the phrase ‘hearsay is no evidence,’ being emphatic and easy to recollect, stuck in the ears and in the minds of lawyers, and has been taken by many text-writers as the principle on which their statement of the most important branch of the law should be arranged. They accordingly took to describing as hearsay every fact of which evidence was by law excluded; in short, they turned ‘hearsay is no evidence’ into ‘that which is not evidence is hearsay.’ They did not, however, do this expressly; they did it by describing as exceptions to the rule excluding hearsay all cases in which evidence was admitted of anything which would have been excluded but for such exceptions. This is so intricate a statement that I can hardly expect the Council to follow me, but I will give an illustration of what I mean. The question is, whether a piece of land belongs to A or B. A says that it belongs to him, because his father C bought it from D, who bought it from E, and he produces the deeds by which E conveyed the land to D and D conveyed it to C. Now, as D and E are not parties to the suit between A and

B, and as A cannot of his own knowledge know anything of the transaction between them, English text-writers call the deed between D and E 'hearsay;' and, according to Mr. Pitt Taylor, the rule which permits such deeds to be given in evidence is the third exception to the rule which excludes hearsay. One of the Judges, if I am not mistaken, called such evidence 'written hearsay,' and so indifferent are English lawyers in general to the abuse of language for the sake of momentary convenience that it probably never struck him that this was a contradiction in terms. I think, however, that it is hard to expect people to understand, bear in mind, and follow out in all its ramifications a system which employs language in such a peculiar manner as to call ancient deeds 'written hearsay.' To talk of hearing a document is like talking of seeing a sound.

"I now turn to the ambiguity of the word 'evidence,' to which I have already referred. As I have just said, 'evidence' sometimes means a fact which suggests an inference. For instance, it is common to say,—'Recent possession of stolen goods is evidence of theft;' that is, the fact of such possession suggests the inference of theft. At other times, and I think more frequently, 'evidence' means what a witness actually says in Court, or that which he produces. For instance, we say the evidence which he gave was true. I might occupy, I will not say the attention, but the time, of your Lordship and the Council for hours if I were to attempt to describe the amount of confusion and obscurity which the neglect of this simple and obvious distinction has thrown over the whole subject. I will content myself with observing that it produces the effect of giving a double meaning to every expression into which the word 'evidence' is introduced. 'Circumstantial evidence,' 'hearsay evidence,' 'direct evidence,' 'primary evidence,' 'best evidence,' have each two sets of meanings, and the result is, that it is almost impossible to arrive at a clear and comprehensive knowledge of the whole subject, or see how its various parts are related to each other, without an amount of study, thought, and practical acquaintance with the actual working of the rules of evidence which few people are in a position to bestow upon the subject.

"I may appear to be detaining the Council unduly upon merely verbal questions, but I think that it is a common fault to under-rate the importance of accurate language, particularly in regard to the fundamental terms of any particular branch of knowledge. In regard to law, I have not the least doubt that a very large proportion of the intricacy and difficulty which attach to it is due to the fact that proper pains have never been bestowed on the definition of its fundamental terms. What could be made of Euclid if we were not

quite sure of our meaning when we spoke of a point, a line, a circle, parallels, and perpendiculars? such a defect would render geometry impossible, and the defect which makes large parts of the law almost unintelligible, and beyond all measure cumbrous and unwieldy, is precisely analogous to it in principle. I believe that, if its fundamental terms were defined as clearly as the term 'law' was defined by the late Mr. Austin, the study of law would become comparatively easy, and in many cases attractive for its own sake; that its bulk might be diminished to a degree of which people in general have hardly any conception; that the expense of its administration might be greatly diminished, and that comparative certainty might do away with a very large amount of needless and harassing litigation.

"I shall now proceed to describe, shortly, the principles on which the Draft Bill of the Committee has been framed. In the first place, we thought it necessary to fix the sense in which the fundamental terms of the subject should be understood, and for that purpose we define 'fact,' 'evidence,' 'proof,' 'proved,' and some others as to which I will content myself with a reference to the report. It seemed to us that the remainder of the subject would fall under the following general heads:—

- 1.—The relevancy of fact to the issues to be proved.
- 2.—The proof of facts, according to their virtue, by oral, documentary, or material evidence.
- 3.—The production of evidence in Court.
- 4.—The duties of the Court, and the effect of mistaken admission or rejection of evidence.

"These heads would, we think, be found to embrace, and to arrange in their natural order, all the subjects treated of by English text-writers and judges under the general head of the Law of Evidence. I will say a few words on their relation to each other, and on each of them in turn.

"The main feature of the Bill consists in the distinction drawn by it between the relevancy of facts and the mode of proving relevant facts. The neglect of this distinction by English text-writers, no doubt, arises from the ambiguity of the word 'evidence,' to which I have already referred, and is the main cause of the extreme difficulty of understanding the English law of evidence systematically. I will shortly illustrate my meaning. A says, 'Z committed murder.' First of all, this is a fact—something which could be directly perceived by the sense of hearing and distinctly remembered afterwards. Now, whether this fact is or is not relevant in a particular case depends

upon a variety of circumstances. If the question is, whether A was guilty of defaming Z by accusing him of murder; or whether Z had a motive for assaulting A, because A said that he had committed murder; or if Z is accused of murder, and the object is to show that, when A charged him with it, he behaved as if he were guilty, and in many other instances which might be put, the fact that A spoke those words is clearly relevant. But if the question is, whether Z actually did commit murder, the fact that A thought so or said so, generally speaking, is not relevant. Supposing, however, that the fact is relevant on some one of the grounds just mentioned, or on any other ground, whatever be the ground on which the words are relevant to the matter under inquiry, it is obvious that the words themselves ought to be satisfactorily proved, and the rule of English law—and we think it is a wise rule—is that they must be proved by the assertion of some witness that he heard them said with his own ears. English text-writers throw together these two classes of rules under the head of Hearsay. They lay down the general rule that hearsay is no evidence, meaning by it that certain classes of facts called hearsay are to be treated as irrelevant to the determination of particular questions, and it is necessary to look through a long list of exceptions to that rule in order to see whether, in a particular case, A's statement may or may not be proved. If you find that it can be proved, the question is, how can it be proved? and you propose to prove it by a witness who says that B told him that he heard A say so. Again, you are told, 'hearsay is no evidence;' but this time the expression means, not that the fact is irrelevant, but that the testimony by which it is proposed to prove the fact is improper. One extreme inconvenience of this is, that the most important part of the English law of evidence is thrown into the most intricate and inconvenient of all possible forms, that of a very wide negative, of most uncertain meaning, qualified by a long string of exceedingly intricate exceptions.

"No one who has not gone through the process of learning the law by mere rule-of-thumb practice can imagine the degree of needless obscurity and difficulty upon this point, of the existence of which he becomes gradually conscious. It would be perfectly fair to say to almost any English text-writer, 'you tell me, at enormous length, what is not evidence; but you nowhere tell me what is evidence, except, indeed, in large compilations, which point out what has to be proved upon particular issues, and which it is as impossible to read or remember, as it is to read or remember any other mere works of reference.'

"I hope that we have been able to avoid this, and that the second chapter of the Bill will be found to state specifically, and in a positive form, what sorts of

facts are relevant, as being sufficiently connected with the facts in issue to afford grounds for an inference as to their existence or non-existence. I will not weary the Council by mentioning those rules, and I will content myself by referring to the Bill and to the report. But I may shortly illustrate them by reference to a passage from a modern historian, which will relieve the dulness of a very technical speech. The passage to which I refer is a short summary, by Mr. Froude, of the grounds on which he believes that Mary Queen of Scots murdered her husband.

“As Mr. Froude is not a lawyer, he certainly wrote what I am about to read without reference to rules of evidence. I think the fact that he did, in fact, unconsciously observe them illustrates very strongly the truth of my assertion that they are no more than the result of experience and practical sagacity thrown into a categorical shape. I need hardly say that I use the passage merely as an illustration, and without any notion of adopting Mr. Froude’s opinions, or asserting the truth of his facts. I am concerned merely with their relevance.

“‘She (Mary) was known to have been weary of her husband, and anxious to get rid of him.’

“(By our draft, facts which show motive are relevant).

“‘The difficulty and the means of disposing of him had been discussed in her presence, and she had herself suggested to Sir James Balfour to kill him.’

“(Facts which show preparation for a fact in issue are relevant).

“‘She brought him to the house where he was destroyed; she was with him two hours before his death;’

“(Facts so connected with the facts in issue as to form part of the same transaction are relevant).

“‘and afterwards throw every difficulty in the way of any examination into the circumstances of his end.’

“(Subsequent conduct influenced by any fact in issue is relevant).

“‘The Earl of Bothwell was publicly accused of the murder.’

“(Facts necessary to be known in order to introduce relevant facts are relevant).

“‘She kept him close at her side; she would not allow him to be arrested; she went openly to Seton with him before her widowhood was a fortnight old. When at last, unwillingly, she consented to his trial, Edinburgh was occupied by his retainers. He presented himself at the Tolbooth surrounded by the

Royal Guard, and the charge fell to the ground, because the Crown did not prosecute and the Earl of Lennox had been prevented from appearing.'

" (Subsequent conduct influenced by any fact in issue is relevant).

" A few weeks later, she married Bothwell, though he had a wife already, and when her subjects rose in arms against her and took her prisoner, she refused to allow herself to be divorced from him.

" (Subsequent conduct. Motive).

" A large part of the evidence consisted of certain letters which the Queen was said to have written. Mr. Froude, in passages which I need not read, alleges facts which go to show that she tried to prevent the production, and to secure the destruction, of these letters. An illustration as to subsequent conduct meets the case of a person who destroys or conceals evidence.

" Finally, Mr. Froude observes: 'In her own correspondence,' though she denies the crime, there is nowhere the clear ring of innocence which makes its weight felt even when the evidence is weak which supports the words.'

" The letters would be evidence under the section relating to admissions, and Mr. Froude's remark is in nature of a criticism on them by a prosecuting Counsel.

" In English text-books, so far as my experience goes, these rules and others of the same sort are nowhere presented in a compact substantive form. They come in, for the most part, as exceptions to the rule that evidence must be confined to the points in issue. In fact, they can be learned only by the practices of the Courts, though they are as natural and lax as any rules need be if they are properly stated.

" From the rules which state what facts may be proved, we pass to those which prescribe the manner in which a relevant fact must be proved. Passing over technical matters—such as the law relating to judicial notice, questions relating to public documents, and the like—these rules may be said to be three in number, though, of course, numerous introductory rules are required to adopt for practice. They are these—

" 1. If a fact is proved by oral evidence, it must be direct; that is to say, things seen must be deposed to by some one who says he saw them with his own eyes. Things heard by some one who says he heard them with his own ears.

“ 2. Original documents must be produced or accounted for before any other evidence can be given of their contents.

“ 3. When a contract has been reduced to writing, it must not be varied by oral evidence.

“ These rules, as I have said, are subject to certain exceptions, and require certain practical adjustments; but I do not think that any one who has had practical experience of the working of courts of justice will deny their substantial soundness, or indeed the absolute practical necessity for enforcing them.

“ Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.

“ That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases—probably the vast numerical majority—the judge has to conduct the whole trial himself. In all cases he has to represent the interests of the public much more distinctly than he does in England. In many cases he has to get at the truth, or as near to it as he can, by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm judges with a general power to ask any questions, upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the judge, especially in criminal cases, not merely to listen to the evidence put before him, but to inquire to the utmost into the truth of the matter. We do not think that the English theories, that the public have no interest in arriving at the truth, and that even criminal proceedings ought to be regarded mainly in the light of private questions between the prosecutor and the prisoner, are at all suited to India, if indeed they are the result of anything better than carelessness and apathy in England.

“With respect to the question of appeals, we have drawn a series of provisions, the object of which is to prevent mere mistakes in procedure from destroying the value of work properly done, as far as it goes. We have gone through the various cases in which, as appears to us, the question of the improper admission or rejection or omission of evidence can arise; and have provided that, whenever any Appellate Court discovers the occurrence of any mistake, it shall not reverse the decision of the inferior Court, but shall either strike out what is redundant, or supply what is defective, as the case may be, and give judgment accordingly.

“I have addressed your Lordship and the Council at great length, but not, I think, at greater length than the importance of the matter requires. I have only to add that I propose to proceed with the Bill when the Government returns to Calcutta, and that I hope before that time to receive the criticisms of the Local Governments upon the measure.”

The Hon'ble Mr. STRACHEY said that, although it was not customary, he should like to say a few words on this occasion. The Hon'ble Mr. Stephen, in introducing a measure not long ago for which he was virtually responsible, said that he might be allowed to say that it was an admirable measure, because he was not the author. So Mr. STRACHEY might say, for all the non-legal members of the Committee on this Bill who signed the Report, that this was an admirable Report, and the Bill was an admirable Bill, because we had nothing to do with their preparation. The general feeling of the Committee—he could at least answer for himself—had been that, being allowed to put their signatures to this Report was something for which they had to be thankful. As one who made no pretensions whatever to being learned in the law, he should not attempt, under any circumstances, to criticise the details of the Bill; but he thought the very fact of being unlearned in the law made one rather more than less able to appreciate and testify to the value of this measure. Like most members of the service to which he belonged, the greater part of his Indian life had been passed in administering justice in Courts of one sort or another. He therefore felt that he could speak with some experience as to the probable operation of such a measure as this; and it was simply and solely from this practical point of view that he could venture in any way to criticise Mr. Stephen's Bill. He believed the truth was that, although a learned Judge might get on pretty well without a complete code of evidence, the unlearned Judge felt the want of it at every step. No doubt, if the law of evidence, as applied to the administration of justice, consisted in the observance of certain forms—a doctrine which was most sedulously prac-

tised by Sadr Courts that he could name—it would be worse than having none. But he felt convinced that what the Hon'ble Mr. Stephen had said was most true; that a rational form of the law of evidence was the greatest possible help that we could afford to a Judge unlearned in the technical language of the law. When MR. STRACHEY looked at this Bill, and thought of and remembered his own work in former times, when he began his service as an Assistant Magistrate and Collector, till he turned a sort of sham High Court Judge, he felt how thankful he and others would have been for a Bill of this kind. For anything he knew to the contrary, Mr. Stephen's Bill would be picked to pieces, as he had picked to pieces the work of the Law Commissioners. But speaking generally, without entering into details, he believed that this Bill would commend itself practically to men accustomed to administer justice in Indian Courts, as a measure thoroughly adapted to the circumstances of the country.

In a recent speech on the Income Tax Bill, Mr. Stephen referred to the great codes of law which of late years had been introduced into India, and in regard to some of which we need not fear comparison with any country in the world, which had been given to us by the labour and intellect, not of our Indian officers, who had had no training and learning for such studies, but by certain eminent men, selected in England for the special purpose. This Bill, MR. STRACHEY thought, was another of those important measures, and was the work of one of those eminent men; and when Mr. Stephen had passed this Bill, he would have performed for the administration of justice a work which would be the most valuable service that could possibly have been rendered to this country.

The Hon'ble MR. ROBINSON said that, after the very full exposition of the Bill before the Council, which had been given by learned and hon'ble members, it was not possible that any useful remarks should be made by one whose knowledge of this intricate part of the science of the law was as limited as his.

He merely endorsed all that the Hon'ble Mr. Strachey had said of the probable benefit which would be conferred by the Bill on the administrators of the law.

But he would venture to state here, in respect to a matter with which he was more familiar, that as the Head of the Police for one of the Presidencies for many years, he had long been fully conscious of the very great want that existed of a set of simple authoritative and instructive rules for conducting, before

Courts of Justice, criminal cases such as fell to the lot of public officers in the course of their daily work.

To his mind the Bill before the Council promised to provide very effectually for this want, and he thought it would be very heartily welcomed by many of the working men in the country, as likely to become a simple and instructive, as well as a very useful, manual for their own instruction and guidance, and for the assistance of their subordinates.

The Hon'ble Mr. INGLIS wished to say, briefly, that he thought the Evidence Bill introduced by the Hon'ble Mr. Stephen would be of the very greatest benefit to the country.

He did not intend to go into the question as to whether any of its provisions were opposed to the technical rules of evidence observed in the Courts in England. He did not feel competent to give an opinion about this. The principle of the proposed Bill, as he understood it, was that the object of a trial was to get at the truth in the best and shortest way possible; not to give an opportunity to contending Counsel to display their ingenuity in twisting the rules of evidence for the benefit of their respective clients. If, in following out this sound principle, it had been found necessary to put aside any of the technical rules of evidence observed in the English Courts, it was a step in the right direction.

In the majority of the Mofussil Courts there was nothing deserving of the name of a Bar, and if a Judge were to rely on the Counsel employed by the parties to bring out all the points at issue in a case, or for the examination of the witnesses, he would be guilty of a very serious neglect of his duty. He had in the majority of cases to act as Counsel for both parties, as well as to be Judge between them. He thought that the authoritative acknowledgment of this fact, by the provisions in the proposed Bill, which empowered a Judge to ask any questions upon any facts relevant or irrelevant, at any period of the trial, would be most useful.

He thought, also, that the Bill would be of much assistance to the Subordinate Judges of the Mofussil Courts, when one of the parties to a suit had brought up a clever Barrister to conduct his case, who, relying on the slight knowledge the Judge might have been able to acquire of the English law of evidence, was inclined to take undue advantage of this by raising questions as to the admissibility of the evidence produced by the other side. This Act would

enable the Judge to decide all questions of the kind at once, by a reference to a short Act at his elbow, instead of having, as now, to wade through volumes of decisions, many of which might not be in his library.

At the present time, we had no law of evidence for India. Some Judges admitted all kinds of evidence; others tried to regulate their proceedings by so much of the English law as they had been able to pick up by a study of some of the many voluminous treatises published on the subject. The result was general diversity of practice, and the want of some fixed principles which should guide all the Courts had long been felt.

He believed that this Bill, if it become law, would supply this want; it gave a complete, authoritative and concise manual of the law of evidence, easily understood, and capable of being applied to all questions which might arise in the course of a trial, even by a man sitting for the first time as a Judge.

His Honour the LIEUTENANT-GOVERNOR said that, at this stage of the proceedings and at this time of day, he would confine himself to testifying to the reality of the evils which had been described by the Hon'ble Members who had preceded him: he would content himself by simply saying that, in this respect, there was no doubt that the present state of things was one of the greatest confusion, and there was clearly a necessity to provide against the base, bastard caricature of English law which the lawyers were inclined to impose on the Courts in this country. He thought that, if we must choose between a new Code of Evidence and abolishing the lawyers, he should vote for abolishing the lawyers, always excepting, of course, his hon'ble and learned friend. But as that could not be done, it might be necessary to see whether we could not make an intelligible and simple Law of Evidence. Mr. Stephen said that the ancient law of evidence was of the most technical and artificial character. The direction to which all improvement had tended was to cut away those technicalities, to introduce free-trade in evidence and to give only common sense rules for the guidance of the Judges. But still, all men were not sensible, and all Indian Judges were not sensible, and it might therefore be necessary to supply a Code of Evidence. If, then, we must have a Code of Evidence, His Honour believed that no man was more competent to draw it out than Mr. Stephen; and His Honour was gratified that at the end of the Bill were inserted one or two sections to the effect that whatever the Judge did should not vitiate the proceedings. In that sense he thought a Code of Evidence would be very valuable. But he would venture also to suggest that, if we could not altogether abolish the lawyers, there should be a section to

the effect that no lawyer should open his mouth with respect to the question of the admissibility or inadmissibility of evidence. Then he thought this Code would be of the very highest importance, and of the greatest use for the guidance of the Judges.

The Hon'ble Mr. STEPHEN felt very much gratified at the terms in which Hon'ble Members had been pleased to speak of the merits of this Bill. He could hardly suppose that His Honour was serious in the suggestions he had made at the conclusion of his speech.

BROACH TALUQDARS RELIEF BILL.

The Hon'ble Mr. CHAPMAN moved that the report of the Select Committee on the Bill to relieve from incumbrances the estates of Taluqdárs in Broach be taken into consideration. He said it would be in the recollection of the Council that the persons in whose behalf it was proposed to pass this Bill were five in number; that they were representatives of Rájput families of great antiquity; that their estates had become much encumbered, and that the Government had promised to advance the amount (some five lákhs of rupees) requisite to discharge their liabilities.

Most of the creditors were in the possession of lands which yielded them a very high rate of interest on the capital advanced, and they were naturally reluctant to give them up and receive payment. He hoped he should not be wounding the susceptibilities of the admirers of our system of civil justice, when he said that the process of taking each creditor into Court and compelling him to receive payment would be so tedious and expensive, that it would practically be impossible to afford the desired relief by this means. Therefore, the Government had decided on introducing this Bill, which was identical with the law in force in Oudh, and substantially the same as that which had been so successfully worked in the adjoining Collectorate of Ahmedábád.

The estates would be vested in a manager appointed by Government, and he would have power to call in and adjudicate on all debts. Since the Bill had been introduced, he had seen two representations against it. One in the shape of a petition from the principal creditors concerned, addressed to this Council; the other, in the form of a letter from Mr. Jeverilal Umiashankar to the Editor of the *Times of India*. The letter from Mr. Jeverilal contained, he thought, all that could possibly be said against the Bill, and was a fair, but hostile, criticism, temperately expressed. The objections amounted to this. The creditors disliked extremely having their claims investigated by a special

officer, and said that they would not be satisfied with anything short of the full amount of them. Now, of course, the very issue to be decided would be as to what was the correct amount. The Government had no kind of fiscal interest in the matter; and there was no reason to suppose that the officer whom they would appoint to specially investigate these complicated accounts, which had been running for many years past, would act otherwise than fairly and impartially.

The Hon'ble Mr. ROBINSON had been unable to join in the report of the Select Committee on this Bill, because he thought that it contravened a very important principle of our administration in the old settled provinces. It was likely to introduce a bad precedent and cause much uncertainty and confusion as well as heart-burning amongst disappointed bankrupt proprietors, if similar aid and protection were withheld from them when solicited on equally cogent grounds.

The object of the Bill was to remove from the cognizance of the law courts the private transactions of a number of zamindars in provinces which, for several generations, had been subject to the ordinary administration of justice, and to place the interests of their creditors at the disposal of some unusually constituted tribunal with no defined procedure. He observed, too, that most of the creditors were naturally very apprehensive as to the treatment which their interests would receive.

Without entering into the instances which had been dwelt on as showing extortionate dishonesty on the part of creditors, he would only observe that we had only the debtors side of the story before us, and he gathered that the courts had not had the cases before them yet.

The discussion before the Council had caused serious apprehension in his mind. The Hon'ble mover of this Bill was prepared to advocate a general measure whereby Local Governments, even in settled provinces, should be empowered to listen to arguments of so-called policy and benevolence, and interfere in a manner which, he thought, would be subversive of very important interests.

The discussion before this Council which followed showed that the sentiments of the majority of Hon'ble members were now in favour of such interferences with the administration of civil justice, although the Hon'ble Mr. Strachey observed, in the debate on the Oudh Bill, that the consequences of such a general measure might be very mischievous indeed.

It was obvious that the passing of the Oudh 'Taluqdárs' Act had already operated in bringing forward proposals to relieve other improvident zamíndárs from the consequences of their follies or misfortunes, and he thought this Bill created a very serious and embarrassing precedent in this direction.

He was willing to admit that, in respect to the case of the Oudh Taluqdárs, there were political reasons for the action taken by the Government of India.

The Panjáb, too, was not an old settled province. And if the sale of land there were prohibited, no breach of faith with landholders' creditors virtually occurred.

He could conceive some other estates on the North-West Frontier to which this protection might be temporarily extended without creating the bad precedent.

But as respects the old countries subject to the Governments of Madras, Bombay, Bengal and the North-West Provinces in general, he thought no such action should be allowed.

The other precedent relied on by the Hon'ble mover of this Bill, was the action of the Bombay legislature in the case of the Ahmedábád Taluqdárs; but it afforded no precedent, and the action was quite local.

In that matter, if he understood it aright, the Government had to deal with tenants—who were hereditary, it was true, still tenants—with a life interest only in their estates, against which therefore creditors had but modified claims. The Government of Bombay wished to enlarge this estate into a full proprietary right; but these life tenants had burdened their estates, and it was quite equitable in the Bombay Government to adjust these probably irregular transactions in such a way as not to place the creditors in a better position against the new proprietors than they were when the debts were contracted. They therefore entered into a settlement with them before raising life tenures to full hereditary properties. But such was not the condition of the interest before us. The Ahmedábád case, therefore, afforded us no precedent.

He still thought that the only safe way in dealing with these questions was to relegate these claims to the ordinary courts of justice, where there was every reason to hope that they would be equitably dealt with. Otherwise, other claims on the public purse and for exemptions from civil liability would be urged on the Government and could not fairly be resisted.

His Honour THE LIEUTENANT GOVERNOR was constrained to vote with the Hon'ble Mr. Robinson against this Bill, unless he should now hear reason to change his opinion. He would have voted silently, except that it would not seem consistent for him to do so, having long thought that great political errors had resulted from the facility which existed for the transfer of landed property. Therefore, he should most gladly take part with any measure which should limit the facilities for such transfer. We were often burdened by strong-handed residents on the land, dispossessed men who considered themselves the real owners and were a source of weakness to us. But he was not convinced that the case laid before us was the same as the case he had described. He understood that these Taluqdárs were people of a different class: they were people of a superior class, who, he was inclined to believe, were possessed of but little political power. He gathered from the debates that had taken place, and from what had fallen from the Hon'ble Mr. Chapman, that the only reason which had been assigned for affording this assistance was that the Government of Bombay had promised to get these gentlemen out of their difficulties, and that similar measures had been adopted in one or two cases before. If such measures were adopted contrary to the law of the country, you introduced immense insecurity in regard to all landed property. He found that a petition had been presented from certain people who were creditors of these Taluqdárs, and they gave a very different character to the position of the Taluqdárs. They said that they were no members of an ancient family, but merely represented some very modern robbers.

He was not prepared to say that this account was the correct one. But he had heard nothing to induce him to vote in favour of this Bill, except the fact that these persons were members of ancient families. He thought that, if such pleas were introduced in England to assist ancient Dukes and other Noblemen, they would be scouted and would not be listened to; and he did not see why black gentlemen of ancient family were to be considered better than white gentlemen of ancient family, when both were equally improvident and good-for-nothing. Therefore, unless he was told that these gentlemen were of modern practical political influence, that if they were deprived of their estates through the action of our Courts it would be necessary to maintain a regiment of soldiers to keep them in check, he must vote against his Bill.

The HON'BLE MR. ELLIS would not detain the Council to argue upon the merits of the general policy mentioned by the Hon'ble Mr. Robinson, for that question was not now before the Council, and allusions to that policy

were out of place. Nor would Mr. ELLIS detain the Council to explain the special reasons why it was considered expedient to afford relief to the Thákurs who were the subject of this Bill ; because, although His Honour the Lieutenant Governor, owing to his not having then been a Member of this Council, had had no opportunity of hearing those reasons, other Hon'ble Members had had such opportunity, and had fully discussed them on previous occasions. He could not, however, refrain from a passing comment on one remark that had fallen from His Honour: He (Mr. ELLIS) would be very sorry if the only reason held to justify us in affording relief was the fact that, if we did not do so, a regiment of soldiers would be required to keep these Thákurs in order. Such a state of things, if it existed, would rather point to a different course of policy, and he could hardly conceive any argument that would be less likely to have the effect of inducing the Council to accede to a Bill of this kind.

There were one or two points on which Mr. ELLIS desired to correct misapprehension in the opinions that had been expressed by the Hon'ble Mr. Robinson. The Hon'ble Member was under an impression that the relief which it was proposed to afford to the persons who were the subject of this Bill, was a consequence of the step that had been taken in relation to the Taluqdárs of Oudh. But the fact was that this measure of relief had been under the consideration of the Government of India before the Oudh Taluqdárs' Bill was determined upon, and sanction had been given to the original proposal of the Government of Bombay in regard to the Thákurs of Broach before the Oudh Bill was under consideration of the Council.

With regard to one other question—the status of the Ahmedábád Taluqdárs—he would remark that many theories had been propounded regarding their legal position before the Bill of 1862 was passed. Some thought that, although these Taluqdárs were ancient proprietors, they had in a great measure lost their proprietary right, and that their status must be judged by the leases under which they held from Government, while others maintained that they were still proprietors. In all the discussions which had taken place, no one ever stated that they were merely “life tenants,” as the Hon'ble Mr. Robinson assumed ; and it would have astonished even those who held the strongest views against the Taluqdárs' rights to hear them so designated. Though the point was not material in discussing the Bill now before Council, he deemed it right not to allow it to pass unnoticed.

The Motion was put and agreed to.

The Hon'ble Mr. CHAPMAN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

STEAMER SURVEY (RANGOON) BILL.

The Hon'ble MR. CHAPMAN moved that the report of the Select Committee on the Bill to provide for the survey of steam vessels in the Port of Rangoon be taken into consideration. He said this Bill was nothing more nor less than the re-enactment of the law which prevailed in Calcutta, and was necessary for the safety of life and property.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

LOCAL RATES (OUDH) BILL.

The Hon'ble MR. STRACHEY moved that the report of the Select Committee on the Bill to provide for the levy of rates on land in Oudh be taken into consideration. Having already made he did not know how many speeches on this Bill, he did not think he need inflict another speech on the Council. The Council would observe that the Committee had proposed no important change in the Bill, with one exception. It was originally provided in section ten that seventy-five per cent. of the amount of rates assessed on any district should be assigned for expenditure in that district for the purposes of the public improvements detailed in the Bill. The Committee proposed that, instead of seventy-five per cent., the whole amount of the rates levied in any one district should be expended in that district. He was authorized to state that the Chief Commissioner of Oudh entirely approved of this change. MR. STRACHEY thought, also, that the Council would approve of it, and would consider it a great improvement on the original proposal. The principle was recognized, that the rates to be levied should be entirely expended for the benefit of the district on which they were imposed, and the purposes for which they might be expended had been distinctly laid down. The principal persons in the district, it was hoped, would, in such case, be induced to take an active part in the management of the funds, and in determining the works to be constructed; and a further important safeguard would be afforded by the section of the Bill which required the most complete publicity to be given to the accounts showing the manner in which the rates had been expended.

His Honour the Lieutenant Governor had said on a former occasion that he thought it would be deserving of the consideration of the Committee whether it was expedient that tenants with rights of occupancy should be made responsible to pay a share of the rate in the way proposed by the Bill. MR. STRACHEY

would observe that these tenants were few in number in Oudh, and he believed the fact to be, that it was really a matter of no great importance, either to these tenants or to their landlords, whether they were omitted from the Bill or not. The Committee was at first disposed to think that it was best to omit them ; but, on further consideration, it was thought not right to do so ; and mainly for this reason, that the local authorities were strongly of opinion that these tenants, who held at beneficial rates of rent, and who virtually intercepted a portion of the proprietor's profits of the land, should not be exempted. Considering that this was a matter of principle ; that its conclusion was undeniably equitable ; that the Chief Commissioner was very decidedly of opinion that it should be acted upon, and, moreover, that he assured us confidently that no difficulty whatever could be experienced in carrying this provision into effect, the Committee adopted finally the opinion that the views of the local authorities, who were the best able to judge of the point, had better be adopted.

HIS HONOUR THE LIEUTENANT GOVERNOR was entirely ready to defer to the opinion of the Chief Commissioner of Oudh and the Committee, as to the question of imposing a rate on occupancy-ryots. He had already admitted that, in principle, they were liable. He merely threw out the suggestion as a matter of convenience, as to whether, the amount being so small, it would be worth the trouble of collection ; but since it was thought better to retain the provision, he was not prepared to oppose it.

But as regards this Bill and the Bill for the North-Western Provinces, HIS HONOUR had expressed his opinion that it would be very desirable to make this a local, and not a provincial, Bill ; and he was gratified to find that that had now been done. And therefore he had no objection to this Bill, more than to suggest that there appeared to be some inconsistency in one portion of it. The proviso in section nine required these local rates to be brought into the accounts of the general provincial fund, and by section ten the amounts of these local rates were to be taken out again from the provincial fund and re-allotted to the several districts. The effect of that, he thought, would be to give the Bill a bad name as a provincial Bill, whereas it was a Bill for local rating, district by district.

The Hon'ble MR. STRACHEY said the point to which His Honour the Lieutenant Governor had referred was very carefully considered, both in regard to this Bill and the similar Bill for the North-Western Provinces, and the sole reason for retaining the ninth section was that, after great consideration, the conclusion was arrived at that it would simplify accounts if the rates were in the first instance credited to the general Fund, and the Local Governments

should make assignments from that Fund. He ought also to mention that, if His Honour would turn to section eleven, he would see that it was not absolutely laid down that in every case the whole of the rates levied in any District should under all circumstances be expended in that District. But if the money assigned was not expended in the year, that portion of the assignment which remained unexpended would, as the Bill stood, lapse to the general Fund, and the Chief Commissioner might, at his discretion, either re-assign it to be expended in the District, or apply it for the benefit of the Province generally.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

RAILWAY BILL.

Colonel the Hon'ble R. STRACHEY introduced the Bill to amend the Railway Act, and moved that it be referred to a Select Committee with instructions to report in two months. When he applied for leave to bring in this Bill he had explained generally the scope of its provisions. He would now observe shortly the main points to which the Bill referred. First, it was intended to extend the general term "railway" to branches and sidings, and to portions of a railway on which locomotives ran before the line was opened. Under the existing law, a railway was defined to be a railway for passengers and for goods, which excluded such portions of railways as had just been referred to. The next sections, from 3 to 7, referred to fencing and cattle-trespass. It had long been understood that it was necessary to make some alteration in this part of a railway, and it was now proposed that the Local Government, with the sanction of the Governor General in Council, would be authorized to make rules for fencing, so that the different characters of railway should be fenced in accordance with the actual requirements of such lines. The rules as to fencing, under the existing law, were extremely stringent, and generally admitted to be very much more than what was necessary as regards the Madras railway and other railways which the Government was constructing, in which the speed of the vehicles would be small. Section 8 authorized the making of subsidiary rules which could not now be made legally, and the local officers should have power to make such rules as should be found expedient. Section 9 was merely formal, for defining the authority for putting the Act into force.

The Motion was put and agreed to.

LOCAL RATES (NORTH-WESTERN PROVINCES) BILL.

The Hon'ble MR. INGLIS presented the report of the Select Committee on the Bill for the levy on land of rates to be applied to local purposes in the North-Western Provinces.

LICENSE (NORTH-WESTERN PROVINCES AND OUDH) BILL.

The Hon'ble MR. INGLIS presented the report of the Select Committee on the Bill for imposing a duty on certain trades and dealings in the North-Western Provinces and Oudh. He said it was not intended to proceed with this Bill. The Lieutenant-Governor of the North-West and the Chief Commissioner of Oudh considered it unnecessary to levy the tax proposed under it.

He had no doubt that Sir William Muir would, at the meeting of this Council which would take place at Allalabad next week, explain fully the arrangements he had decided on making for carrying on efficiently the several departments of the public service made over to him by the Resolution of the 14th December last, without having recourse to this tax.

The Hon'ble MR. STRACHEY wished to say only a few words. This Bill was originally drawn for the North-Western Provinces only. It was afterwards thought expedient to take power to extend it to Oudh, if such a course should hereafter be thought desirable, but as he stated to the Council on a former occasion, there was no present intention of putting the measure in force in Oudh. Consequently, so far as Oudh was concerned, the withdrawal of this Bill would in no way affect the former conclusions of the Government. It was, MR. STRACHEY thought, most satisfactory that the Lieutenant-Governor of the North-Western Provinces should be able to dispense with this Bill, and to satisfy himself that the existing local and provincial sources of revenue, supplemented, as they would be, to a small extent, by his hon'ble friend's other Bill for imposing rates upon land, would enable him to meet the great and growing wants of these extensive provinces. The Bill would in itself be an excellent one, supposing that further taxation of a portion of the trading classes were necessary; but it was most satisfactory that the Lieutenant-Governor should now find that it was not wanted. MR. STRACHEY hoped that this might be taken as an earnest of the desire, both of this Government and of the Local Governments, to practise a reasonable economy, and to avoid the imposition of all needless burdens, whether by imperial or financial taxation. Now that the proposed measures of new taxation for the North-Western Provinces and Oudh were almost complete, we were able to see pretty exactly what the amount of the new taxes would actually be.

His Excellency the Viceroy had given to the Council the other day figures showing the real remission of taxation in the coming year. MR. STRACHEY would repeat some of those figures, and would show what the nett result of the late financial measures of the Government would be in the provinces to which he had been referring. In the North-Western Provinces and Oudh, we had levied, this year, as income-tax £390,000. Next year, we expected to get £112,000. The reduction of income-tax would be £278,000. Against this sum there would be a set-off of about £67,000, the amount imposed by new taxation on the land. The actual total reduction of taxation would therefore be £211,000. This was the real result of the late measures in those provinces over which, since they had no legislature of their own, the Government of India exercised a more immediate control in matters of financial taxation. He confidently predicted that the results in all other provinces would be similar in kind. If anybody chose to say that the Government had done an unwise thing in relieving the people of Northern India of £278,000 income-tax, and imposing, instead of this heavy burden, an additional tax of £67,000 on the land, he was free to do so; the public would think much of his wisdom. That there should have been, at first, many misconceptions in regard to the policy declared by the Government in the Resolution of December last, was no matter for surprise. But MR. STRACHEY had sufficient confidence in the good sense and justice of his countrymen to believe that, when they learned the truth, we should hear no more of the assertions which had been so wildly made that the object and result of the measures of the Government were, not increased economy, but increased expenditure; and that we were imposing upon the people burdens of provincial taxation heavier than the burdens of imperial taxation from which they had been relieved.

HIS HONOUR THE LIEUTENANT GOVERNOR said that, as the Hon'ble Mr. Strachey had made a general statement, he would ask leave to take exception to one point in that statement, that in estimating the burden thrown upon the Government in the North-Western Provinces and the other Local Governments, Mr. Strachey had contented himself to take the burden thrown on the Local Governments for this year. But in estimating the change which had taken place in reference to the difficulties and responsibilities of the Local Governments, the Hon'ble Member had thrown out of sight what had been prominently put forward more than once, namely, the increased burden which must result from the expansiveness of certain Departments made over to the Local Governments; for if it was desirable that the Local Governments should continue in the path of improvement, it was absolutely necessary that they should expend somewhat more than had been expended in the year 1870.

As respects Bengal, his view was, that he should scarcely be able to maintain the Services which were made over on the reduced and economical scale of 1870; but it would be totally impossible to make new roads and other necessary improvements. We should find more than enough to do to maintain the Services in their present condition; but he believed we should not be able to continue in the path of improvement without some additional taxation. In fact, in the province of Bengal, he did not see his way to making a single improvement without some additional taxation.

The following Select Committee was named :—

On the Bill to amend the Railway Act—The Hon'ble Messrs. Strachey, Stephen, and Cockerell and the Mover.

The Council adjourned to Thursday, the 6th April 1871.

CALCUTTA,
The 31st March 1871. }

WHITLEY STOKES,
Secy. to the Govt. of India.