

*Thursday,
17th October, 1889*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVIII

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

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VOLUME XXVIII



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

The Council met at Viceregal Lodge, Simla, on Thursday, the 17th October, 1889.

P R E S E N T :

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

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

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

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. CROSTHWAITE presented the Report of the Select Committee on the Bill to amend the Central Provinces Land-revenue Act, 1881.

CENTRAL PROVINCES TENANCY BILL.

The Hon'ble MR. CROSTHWAITE also presented the Report of the Select Committee on the Bill to amend the Central Provinces Tenancy Act, 1883, and the Central Provinces Local Self-government Act, 1883.

BILL TO INDEMNIFY CERTAIN WITNESSES.

The Hon'ble MR. SCOBLE moved that the Bill to indemnify certain witnesses be taken into consideration. He said :—

“ Since the introduction of this Bill I have received a considerable number of telegrams and other communications from various parts of the Bombay Presidency, urging that British honour and British prestige require that the indemnity given by the Bombay Government should be maintained in its integrity, and that the adoption of any other course will be fraught with evil results. Public meet-

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ings have also been held in several places at which resolutions to a similar effect have been passed; and in many vernacular and other newspapers articles have been published in which the same view has been expressed with more or less vigour and ability.

“ I desire to speak with all respect of these manifestations of public opinion, though there doubtless may be some room for supposing that the agitation is not altogether spontaneous, and that public opinion is not really so deeply stirred as it is represented to be. But I quite admit that there is a great deal to be said in favour of the view thus put forward; that the course which Government has felt itself constrained to adopt cannot but be distasteful to many members of a large and influential class; and that it would have been much easier to have looked at the matter entirely from the point of view of the incriminated officials, and given them the complete immunity which is now claimed on their behalf.

“ But there is another point of view which those who remonstrate against our action seem to me to have entirely left out of sight, but which the Government of India, looking dispassionately at the whole history of the case, could not fail to consider. The indemnity given in this case, as in every other of which I can find any record, was conditional. The Masters in Chancery, who furnish the precedent on which most reliance is placed, were required to ‘ fully and truly discover and disclose ’ their misconduct before a competent tribunal; and more recent legislation makes a certificate from the examining authority a condition precedent to the grant of the indemnity. I think it must be admitted that this is a proper condition to make, and had an indemnity Bill been proposed in this Council before the Commission began its labours, I should certainly have insisted on the insertion in the Bill of such a condition. Had this been done, those who have read the report of the Commissioners will probably agree with me in doubting whether the necessary certificate would have been granted to a good many of the witnesses. I have no desire to rekindle a painful controversy, but when I find such expressions as these used in the report,—‘ We think the story of these witnesses is disproved by considerations of a broader kind, its extreme improbability and its inconsistency with undoubted facts and with contemporary documents,’—‘ The contradictions and improbabilities apparent on the face of the evidence deprive it of any title to credibility,’—when I find that some witnesses are described as ‘ untrustworthy,’ and the evidence of others stigmatized as ‘ false,’ and that these were the deliberate opinions of an exceptionally strong Commission, the members of which had the advantage of seeing and hearing the

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witnesses, and observing their demeanour, I cannot but come to the conclusion that some of those who now clamour so loudly for complete indemnity might possibly not have obtained any at all. In granting indemnity against suits and prosecutions to all alike, without reference to the fulfilment of the above condition, the Government of India has thus possibly extended, rather than narrowed, the limits of the original promise. We were by no means bound to assume, in the face of the Commissioners' report, that the evidence given was, in every instance, 'the truth, the whole truth and nothing but the truth.' That we have done so is immensely to the advantage of many of those concerned, and no objection has been taken to the course which we have considered it expedient to pursue in this respect. But if the right to waive an essential term of the indemnity in favour of any of the witnesses is admitted, this admission surely carries with it the concession of the right to determine whether the condition has been so completely fulfilled as to require, *ex debito justitiæ*, that the full indemnity ought to be granted.

"I am not therefore greatly concerned to refute the argument which has been based on an appeal to British honour and British prestige. Those priceless possessions will, I venture to think, be best maintained by a close adherence to what is most conducive to public rather than individual interests. But I may be permitted to say that I scarcely understand the moral attitude taken up by the apologists of the incriminated officials. They insist that the Government must scrupulously adhere to its plighted word, while they appear to recognize no such obligation on the part of its servants to the Government itself. The argument amounts practically to something like this:—Any promise made to mamlatdars must be kept at any cost: but mamlatdars must be allowed to break laws, and to violate duty, with impunity. Indeed, they are held up to admiration as patriots and martyrs because of what seems to me an absolute want of moral sense, first of all in paying bribes, and afterwards in holding their tongues about the system of corruption which they themselves had rendered possible, until they could speak without the slightest risk of danger to themselves. The men who did this, be it remembered, were not poor raiyats—in the words of the Bombay Government, 'they were astute and educated native officials, who drew their inferences from known facts, and who, when they paid considerable sums to secure favours, did not recklessly throw their money away, or give up their hardly earned savings, without satisfying themselves that they would derive some advantage from the payment.'

"I think the aspect of the case which is thus presented has been somewhat lost sight of by the apologists of these officials. It is to me almost in-

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conceivable that not one man should have been found among them with sufficient courage and honesty to come forward and denounce the system of corruption which he found prevailing. But we are told 'a dumb helplessness seems to have pervaded the official class. A sense of the inevitable necessity of buying favours caused many to come forward with money who were quite free from corrupt inclinations.' To my mind this is an altogether insufficient excuse. If the moral fibre of native officials in the Bombay Presidency is thus weak, it requires to be strengthened, and it is not likely to be strengthened by the indiscriminate retention in office of men who have shown themselves thus deficient in courage and a sense of honour. The Bombay Government has drawn a distinction between two classes of witnesses—those who offered to pay, and those who consented to pay under compulsion. In accepting this distinction, and consenting to the continued employment of the latter class, the Supreme Government has, I think, gone as far as it could go with a due regard to the interest of the public service. The dismissal with compensation of the less venial offenders will, I hope, teach the lesson that tame submission to an 'energetic and dominating personality' is not a sufficient excuse for dereliction of duty, and that service and obedience are due not to the individual but to the State and to the law.

"It is said by a body no less respectable than the Poona Sarvjanik Sabha that 'the alleged evil of continuing men in office who made payments to Mr. Crawford cannot under any circumstances be compared with the evil results of the violation, even partial, of its pledge by the Government, and the loss of confidence it will generate and the sure risk incurred in that it will be impossible evermore to detect corruption in high places.' I have already dealt with the first part of this argument; as regards the rest I will only say that I trust the action of Government will inspire officials and others with the best sort of confidence—confidence to pursue the right course in spite of all hazards—confidence that the ear of the Sirkar is always open to the truth—and that thus corruption in high or low places will be rendered impossible of detection because it will be impossible for it to exist. I cannot, however, bring myself to believe that the state of things which has necessitated the present legislation will ever be reproduced, or that a similar paralysis of public spirit is likely to occur again among the educated and ambitious classes from which our subordinate service is recruited.

"I have noticed with regret that in some quarters an attempt has been made to draw a distinction between the punishment meted out to Mr. Crawford and that awarded to the witnesses who testified against him. This distinction, it is asserted,

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rests upon difference of race which has prompted difference of treatment. In answer to this unfounded suggestion it is sufficient to say that while Mr. Crawford has been dismissed from Her Majesty's service without indemnity or compensation, the witnesses against him, even if not retained in the service, obtain both indemnity and compensation, and the advantage is therefore altogether on their side.

“ So far therefore as the persons affected by this Bill are concerned, I think substantial justice has been done. I am not surprised that the settlement is not considered satisfactory by some of the witnesses and their friends, and I am not astonished that there has been a good deal of fervid eloquence expended on the subject: but I think the public generally will be disposed to accept the solution at which we have arrived as just and reasonable, and will give the Government credit for having honestly attempted to reconcile the observance of a somewhat inconsiderate promise with the maintenance of that high standard of duty without which public employment, especially in Oriental countries, is only too apt to degenerate into a means of practising oppression and extortion.”

The Hon'ble MR. HUTCHINS said :—

“ It was certainly not to be expected that this Bill or the limited indemnity which it provides would give universal satisfaction, and I am not at all surprised at the multitude of protests and memorials which it has elicited. Still I venture to express my concurrence with my hon'ble friend in the hope that the course which the Government of India has determined to take will command general approval outside the Bombay Presidency, or perhaps it would be more correct to say outside a certain limited class within that Presidency. Our decision was not arrived at without much anxious consideration, without carefully balancing the evils which unfortunately confronted us on every side; and I wish to take this opportunity of discussing in some detail one or two of the principal arguments which have been urged in support of the demand for complete immunity, in order to show that they have not been overlooked and why I think they may be disregarded.

“ Perhaps the most formal and elaborate statement of these arguments is contained in the letter from the Poona Sarvajanic Sabha from which my hon'ble friend has made a quotation, but the other communications which we have received proceed upon the same lines. I wish to note, in the first place, that the Sabha formally admits, and the same concession has been made almost universally, that the guarantee given by the Bombay Government 'in respect

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of place or office was *ultra vires*.' This is a point of the very greatest importance, for, as I shall presently show, it forms the basis of the action taken by the Government of India.

" It would not have occurred to me to notice the argument that Your Excellency's Government is itself responsible for the 'inconveniently wide guarantee' but for the fact that I am supposed to have endeavoured to defend the Government against such an imputation on the occasion when this Bill was introduced. I am not surprised to find that my arguments were considered unsuccessful, as I am quite unconscious of having offered any with this object: it did not occur to me that the Government of India could be deemed responsible or that there was any necessity to defend it. But, as the point has now been raised, I must just say this—the imputation of responsibility on the part of Your Excellency's Government is based solely on the assumption that 'the Local Government *must* have kept them informed of all its proceedings,' and that therefore, well knowing the 'inconveniently wide' form of the indemnity offered, they confirmed it by their acquiescence. This assumption is not only unfounded but distinctly contrary to fact: the Government of India had no knowledge of the terms of the indemnity until after the criminating statements had been obtained.

" But then it is urged that, even apart from our own responsibility, the Civil Courts would not allow a principal—meaning Your Excellency's Government—to repudiate a guarantee given 'by inadvertence' by his agent. Now, if 'by inadvertence' is to be taken as equivalent to 'without proper authority,' this statement of the law is, to say the least, very questionable. I will not, however, stop to consider that point. It is enough for my purpose to say that, assuming the correctness of the principle enunciated, in the case supposed the utmost the Courts could do would be to award damages for any breach of the guarantee. To say nothing of other Members of your Government, Your Excellency yourself has distinctly stated that we intend to give pecuniary compensation to all those guaranteed officials who have been or may hereafter be dismissed. Until the precise measure of this compensation has been settled it is obviously idle to say, as some of the memorials do, that such dismissal will involve 'prospective poverty.' I am now able to announce that by a telegram which has just arrived the Secretary of State has authorised us to continue to these dismissed officials the full pay which they were receiving.

" A great point has been made of the precedent of the Masters in Chancery in 1725; it has been referred to as if it were absolutely binding. In the first place, it is somewhat significant that the only precedent is more than 160

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years old and occurred 84 years before the Statute of 49 Geo. III was passed, though no doubt the Statute of Edw. VI was in force. I trust the purity of the administration has made considerable advances in the course of the last century and a half: we do not now regard official corruption as venial, but, in its true light, as one of the most heinous offences. Then, again, the Masters can only have been four or five in number. Their legitimate fees gave them a handsome income, they had no magisterial powers, and there was little reason to apprehend that they would abuse such powers as they possessed: whereas the indemnity which we are now considering was offered wholesale and actually passed to more than forty individuals invested with magisterial powers and, as I fear, by no means unlikely to abuse them. But the essential distinction between the Masters and the Mamlatdars seems to me to be this: the Masters obtained an antecedent statutory indemnity about the validity of which there could be no question, whereas the indemnity on which the Mamlatdars rely was admittedly *ultra vires* and the legislature is now called upon to decide whether or not it ought to be ratified in every case. It may well be doubted whether, even in 1725, Parliament would have consented to indemnify an unlimited number of officers against all possible loss; and, now that it has become necessary to appeal to the Legislature to validate and give effect to such a wholesale guarantee, it seems right that we should pause and consider whether it is one which we ought to ratify to its fullest extent and in every case without exception. My hon'ble friend has quoted a passage from the Sabha's address in which it insists that the evil of retaining in the service of the State all the incriminated officials cannot be compared with the evils which will result from a violation of the pledge illegally given by the Local Government. That is mere assertion, and an assumption of the very question which this Council is called upon to decide. I have already said that we are confronted by evils on every side; and the question is, in this conflict of evils what is the best course to be pursued? How can we best preserve the honour of Government and the sanctity of a plighted though improvident promise, and yet at the same time vindicate the purity of the administration and fulfil our obligation to provide impartial tribunals and protect Her Majesty's subjects from being placed at the mercy of a magistracy which has shown that it is not altogether free from the taint of corruption? It is natural that the Mamlatdars and their friends, and perhaps to some extent the classes of society from which they are drawn, should denounce a broken engagement as incomparably the greater evil; but would the raiyats and the humbler classes express the same view if they could make themselves heard? I certainly think not. At all events that is not the view

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which has prevailed with the Government of India, nor will it, I think, commend itself to this Council. We feel that duty forbids us to follow the very simple and easy course of upholding the guarantee in its integrity, and we have resolved to undertake the infinitely harder task of discriminating between the officials who have shown such a want of moral rectitude or such weakness of purpose as to be unfit to be retained in any responsible post, and those from whom the money may be taken to have been extorted by actual pressure or undeserved threats. In the former case the letter of the illegal pledge must be broken; we cannot but apprehend that they will abuse a position which they have obtained by corruption: they will therefore be dismissed, but they will receive very ample compensation. But the guarantee will be preserved in its integrity in every case in which this is possible with due regard to the interests of the public at large.

“ During the last few days I have been considering, with a view to discriminate between them, the individual cases of a large number of these Mamlatdars; and before I conclude I wish to notice two other points which have been very strongly urged on behalf of many of them. The first is that bribery was rampant, that unless there had been an organized system of purchasing offices the individual would never have dreamt of offering a bribe. This has been gravely urged as if in itself it were tantamount to extreme pressure, but it is obvious that it is nothing of the kind. No one would pay for what he can get gratuitously. It would be no defence to a charge of theft that the wrongful abstraction was the only means the thief had of acquiring the property which he desired. I am aware that many of these Mamlatdars only sought what they considered legitimate promotion, and I do not at all suggest that their offence falls within the same category as theft, although a man may commit even theft in respect of property to which he believes himself legitimately entitled. But I refer to theft only as a forcible illustration of a principle and to make it clear that no one can justify his purchase of a coveted office simply by showing that he could not have gained it without payment. The Government of India will require much more evidence of pressure than the mere existence of widespread corruption.

“ The other argument is this—that the incriminated officials have not been put on their trial as the rules of the service require; that they ought to be formally charged with having paid money without extreme pressure and allowed to adduce evidence that they really paid under compulsion. If this argument is a sound one, if we are bound to hold an exhaustive enquiry in each case, there will be a very

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serious prolongation of what has long ago amounted to a grave and deplorable scandal ; but it seems to me that the argument is one which cannot be admitted for a single instant. Every one of these men has confessed to the commission of a criminal offence. Even those whose payments do not clearly come within the purview of the Statute are undoubtedly guilty under the Indian Penal Code, which they were pledged to administer righteously and effectually. The mere payment of the illegal gratification affords ample justification for their dismissal from the public service : it is only out of grace and policy and our wish to fulfil, as far as possible, even an illegal promise, that any one of them can be retained. And, if their retention is itself a matter of grace and policy, it follows that we are under no obligation to permit any further investigations : the question whether we will take extenuating circumstances into consideration at all, and, if so, to what extent and within what limits, is itself a matter of grace and policy also. As a matter of fact, however, I may say that in almost every case we intend to proceed on the facts as disclosed by the offender's own statement, and I do not see how he can complain of that. No doubt the result may be that those dismissed may not be the very worst offenders ; but we cannot help that. Almost anything would be preferable to a further prolongation of the scandal, and, so far, we have only directed dismissal in those cases which the Bombay Government submitted first, and which may be presumed to be of the most glaring character."

His Excellency THE PRESIDENT said :—

"It certainly did not surprise me, any more than it surprised my hon'ble colleagues, to find that this measure, during the three weeks which have passed since it was introduced into Council, has excited a considerable amount of public discussion, and has encountered, from some quarters, a good deal of adverse criticism. The circumstances of the case are not of a kind which need render us particularly susceptible or ready to complain of such criticism. We have never represented the measure itself, or the arrangements by which it is to be accompanied, as more than the most hopeful settlement of a question full of difficulty in itself, and rendered still less easy of solution from the fact that the Government of India was not called upon to intervene until the eleventh hour, by which time the situation had become very seriously complicated. All that we claim is, as I ventured to point out the other day, that the solution which we have proposed is, upon the whole, the most reasonable one of which the circumstances admit, and the most just in regard to the various interests affected by our decision. If I were to be called upon to criticise the criticisms which have been directed against our action, I should be inclined to say that most of them were apparently made entirely with reference to the interests of

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one of the parties concerned, and that the interests of all the rest appear to have been almost completely ignored. For we have a right to insist that in dealing with this important matter we had to take into consideration, not only the manner in which the reputation of the Bombay Government will be affected by a departure from the engagement offered to the inculpated Mamlatdars, but the duty which we owe to the people of this country, of whom we may surely say that their interests are largely involved in the maintenance of the purity of the public service which we have endeavoured to uphold. In respecting the engagement of the Bombay Government we have gone as far as we could, and I cannot help thinking that those who have taken exception to the course which we are about to adopt have not given us sufficient credit, either for the length to which we have gone in making good the guarantee under which these officials gave their evidence before the Crawford Commission, or for the motives which led us to stop short of a complete and literal fulfilment of that guarantee. In regard to the former of these points one would almost have supposed, from reading some of the observations to which publicity has lately been given, that it was the intention of the Government of India to make no attempt whatever to compensate the dismissed Mamlatdars for the loss of the emoluments of the offices of which they will be deprived. My hon'ble friend Mr. Hutchins has stated to Council how we propose to deal with this part of the case. Our proposals, which have received the consent of the Secretary of State, will, I cannot help thinking, be regarded as conceived in a most liberal spirit, and as affording the strongest proof of our desire to make good, to the utmost of our ability, the engagement of the Bombay Government.

“ In regard to the argument that the guarantee, having once been given, should have been made good, even at the cost of retaining in public employment persons who, by their own admission, had incurred a statutory incapacity for serving the public, I will venture to make one observation only. I earnestly trust that those to whom this view of the case commends itself will consider carefully the import of the arguments which they may advance in support of their view, and the legitimate conclusion to which they will find themselves committed if they push those arguments too far. I own that it is not without misgivings that I have noticed the readiness which has been shown in certain quarters to assume that the Government of India, sooner than be a party to even a slight and limited departure from the guarantee given by the Bombay Government—a guarantee which, remember, has been held on the highest authority to be illegal and *ultra vires*—should have recourse to legislation for the purpose of retaining in official employment persons tainted with corruption. The reckless use of language of

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this kind appears to me to show a complete disregard for the interests of that section of the community which, if these persons had not been deprived of their offices, would have depended upon them for the due administration of justice, and which would surely have had a right to complain if it had been called upon to submit itself to the judgment of functionaries whose integrity, after what has taken place, would always have remained liable to be called in question. This is, however, only one aspect of the case. But we run the risk of finding ourselves face to face with a much more serious one. It appears to me that those who contend that the conduct of which these dismissed officials have been guilty is not conduct deserving of serious reprobation, or calculated to unfit them for the discharge of important judicial and administrative functions, are striking a serious blow at the standard of public morality in this country. The argument is, in fact, this, that what would be regarded in other countries as a complete disqualification for the tenure of a position of public trust, or responsibility, is not so regarded in India; that public corruption is more tolerable here than it would be in England; and the inference is suggested that Native public opinion is callous or indifferent upon this point, and that we ought to be content that it should be so. I cannot conceive any line of action more calculated to have an unfortunate effect on the public mind here and elsewhere. It has been the policy of the Government of India to increase, from time to time, the opportunities offered to the Indian subjects of Her Majesty for serving the State in important and responsible positions. I for one rejoice that this should have been the case, and it is for this very reason that I should deplore any action on the part of persons, representing themselves to be the friends and spokesmen of the Natives of India, which might lead to the belief that public opinion here was lukewarm in regard to this all-important question of official purity. The Government of Bombay is given credit, and deservedly so, for the manner in which it attempted to deal with corruption when the person suspected was a high English official. I trust that the Government of India will at least not be censured for having declined to tolerate the continued presence in the public service of Native officials who have been shown beyond all doubt to be tainted with the same corruption."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved the following amendments in the Bill :—

In line 12 of the preamble, between the words " Council " and " statements " to introduce the words " and in the investigation and trial of certain criminal charges against one Hunmuntrao Raghavendra ".

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In line 5 of section 1, to substitute for the words "admission of an offence" the words "offence admitted by him".

In line 9 of section 1, to insert the words "preliminary to or" between the words "Council" and "in connection with".

At the end of section 1 to add the words "or in the course of the said investigation and trial."

He said :—"The first and fourth amendments are made at the request of the Bombay Government, who consider that the same indemnity which is given to witnesses in the Crawford case should be extended to those who gave evidence in the collateral proceedings against Hunmuntrao.

"The second amendment is suggested by the learned Advocate General of Bombay.

"The third merely supplies an accidental omission in the Bill as originally printed."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

OFFICIAL SECRETS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to prevent the Disclosure of Official Documents and Information be taken into consideration.

His Excellency THE PRESIDENT said :—

"Our hon'ble colleague, Mr. Scoble, on moving for leave to introduce this Bill, expressed his opinion that a measure of the sort has long been required in India. That opinion I entirely share: I have seen enough during the comparatively short time which I have spent in this country to satisfy me that, unless legislation of this kind is resorted to, the interests of the public are likely to suffer materially. It is scarcely necessary to enlarge on the consequences which must ensue if the kind of treachery which is involved in the disclosure of official documents and information, and in the procuring of such information by persons interested in publishing it, is allowed to remain unpunished ;

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and I believe that it is absolutely necessary for the Government of India to hold in its hand a weapon which can, if necessary, be used with exemplary effect against those who are guilty of such practices.

“ I trust, however, that I shall not be understood as suggesting that, in my opinion, it is upon punitive measures such as this that the Government of India should rely for the maintenance of that degree of secrecy which is indispensable for the proper conduct of certain classes of public business. I rejoice to think that those whose opportunities of divulging such information are greatest—I mean the members of the public service—deserve, as a general rule, the high reputation which they have earned for trustworthiness and discretion. The opportunities enjoyed by such persons for obtaining access to important public documents, and for making known their contents, are almost unlimited. Such information has, as we all know, an appreciable, and sometimes a very high, commercial value. We are well aware that persons are at all times to be found ready to encourage breaches of official confidence, and to throw serious temptations in the way of those who are in a position to commit them. It is, moreover, a matter of notoriety that what is sometimes spoken of as the enterprise of the public Press has of recent years, and not in India only, led to the encouragement of such misconduct. Under such circumstances it would be strange indeed if occasional breaches of good faith on the part of those whose daily duties afford them the means of acquiring official knowledge did not occur. This Bill will give us the power of punishing both the parties to such transactions,—the thief and the receiver of stolen goods,—and there is every reason to expect that the passage of the measure will have a salutary and deterrent effect.

“ I may perhaps be permitted to enforce what I have said by referring to a recent case in which a particularly scandalous disclosure of official information has taken place. A Calcutta journal, the *Amrita Bazar Patrika*, in a recent issue published what professed to be the text of a document described as one ‘ the original of which His Excellency will find in the Foreign Office,’ and as containing ‘ the real reason why the Mahárájá of Kashmir has been deposed.’

“ The document purports to be a memorandum submitted to the then Viceroy, Lord Dufferin, by Sir H. M. Durand, the Foreign Secretary, in May, 1888, and runs as follows :—

TO HIS EXCELLENCY,—I do not agree with Mr. Plowden, the Resident in Cashmere, in this matter. He is too much inclined to set Cashmere aside in all ways and to assume that if we want a thing done we must do it ourselves.

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'The more I think of this scheme the more clear it seems to me that we should limit our overt interference as far as possible to the organization of responsible military force in Gilgit. So far we can hope to carry the Durbar thoroughly with us. If we annex Gilgit, or put an end to the suzerainty of Cashmere over the petty principalities of the neighbourhood, and, above all, if we put British troops into Cashmere just now, we shall run a risk of turning the Durbar against us and thereby increase the difficulty of the position. I do not think this is necessary. No doubt we must have practically the control of Cashmere relations with those principalities, but this we already have. Indeed, the Durbar has now, since the dismissal of Lachmun Das, asked Mr. Plowden to advise the Gilgit authorities direct without reference to them. If we have a quiet and judicious officer at Gilgit, who will get the Cashmere force into thorough order and abstain from unnecessary exercise of his influence, we shall, I hope, in a short time, have the whole thing in our hand without hurting any one's feelings.'

"Up to this, the document is a substantially accurate reproduction of a minute actually written upon the above date by Sir Mortimer Durand, so much so that there can be no doubt whatever that it must have been communicated to the Press by a person who had had an opportunity of copying or committing to memory a part at all events of Sir Mortimer Durand's minute. A few words only have been misquoted, but they are not of material importance. I think Council will agree with me in considering that there is nothing in the passage which I have read which could be legitimately construed as revealing iniquitous designs upon the State of Kashmir on the part of the Government of India. It will no doubt be within the recollection of hon'ble members that, at the time when the minute was written, there had been considerable disturbances on the Gilgit frontier, that the Chiefs of Hunza and Nagar were in revolt against Kashmir, that Chaprot had been captured, and other places within the territories of the Maharájá threatened by the insurgents, who had defied the Kashmir authorities.

"These events had shown in so striking a manner the insufficiency and weakness of the frontier administration of the Kashmir Durbar, that proposals were submitted by the then Resident for the purpose of coming to its assistance. With this object Mr. Plowden advised the appointment of an English Political Agent at Gilgit, and he was further of opinion that it might be desirable to send British troops into Kashmir. These were the proposals to which the Foreign Secretary, in the document of which I have just read a part, took exception, and in the passages which follow in the original minute, which I have lately examined, I find that his objections to the Resident's proposals were throughout based upon the reason which he assigned at the outset,

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namely, that Mr. Plowden was disposed to rely too much upon British intervention, and not enough upon the efforts of the Durbar. Sir Mortimer expresses his belief that we should 'be able to improve and strengthen the position of the Kashmir authorities'; that any officer whom we send up 'should act with the consent and assistance of the Durbar'; that 'he should not take command of the Kashmir troops or get up any military expeditions'; and he was to 'give advice to the Governor in his present military difficulties' only 'if the Durbar wishes it'.

"Will it be believed that the whole of the portion of the minute from which I have taken these extracts has been omitted or suppressed, and that in lieu of it has been inserted the passage which I shall now proceed to read:—

'Altogether I think our first step should be to send up temporarily and quietly a selected military officer (Captain A. Durand of the Intelligence Department) and a junior medical officer. Both of them will have the support of the Durbar when and where it will be necessary, and they will not display any indiscretion, so that the Durbar may not have any hint of the work they are about to undertake, and they will have to obtain the consent of the Durbar in matters concerning military difficulties. Once we can establish a belief that our undertaking is nothing but the welfare of the Durbar, we are surely to attain our object. Time will show that my view is not a wrong one. In it lies, I venture to hope, the safe realisation of that object which was once contemplated in Lord Canning's time and afterwards it was abandoned after deliberation.'

"This extract, with the exception of the first line and a half, in which it is recommended that an officer should be sent up temporarily to Gilgit, is a sheer and impudent fabrication. Not only is it not to be found in Sir Mortimer Durand's minute, but it misrepresents him in all the most essential particulars. It has thus come to pass that, on the one hand, important passages of Sir Mortimer Durand's minute have been altogether suppressed, and, on the other, words have been ascribed to him which he not only never used, but which convey a meaning absolutely inconsistent with those which he actually wrote.

"I have already called attention to the suppression of those parts of the minute which most strikingly illustrate the moderation of the policy which found favour with the Foreign Secretary and which was approved by the Viceroy. When we come to the passages for which the writer has drawn upon his own imagination, we find a series of unfounded statements expressed in language which those who are familiar with Sir Mortimer Durand's style would not for a moment mistake for his, and abounding in suggestions to the effect that our policy in regard to Kashmir was governed by motives of

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the most sinister kind. Of such a description are the passages in which it is said that the officers sent to Gilgit are to conduct themselves 'so that the Durbar may not have any hint of the work that they are about to undertake', and the statement that, 'once we can establish a belief that our undertaking is nothing but the welfare of the Durbar, we are surely to attain our object',—an object which is subsequently described as that 'which was contemplated in Lord Canning's time, and afterwards it was abandoned after deliberation.'

"The newspaper version of the minute ends with the following words:—

'Eventually Major Mellis should go to Cashmere on the part of the Durbar and submit a mature scheme for the better administration of the State, which is at present very badly managed indeed. This scheme should include the outline of our arrangements for strengthening the Government policy.

'After the expiry of six months we will be in a position to decide whether the permanent location of a Political Agency at Gilgit, also a contingent of troops for the defence of the frontier for which the Durbar have already agreed to put their resources and troops at the disposal of the British Government.

'(Sd.) H. M. DURAND,

'6th May.

'Very well.

'(Sd.) DUFFERIN,

'10th May.'

"Upon these passages I have only to observe that the earlier portion is rendered with complete inaccuracy, Sir M. Durand never having recommended that Major Mellis should submit a scheme for the administration of the State, but merely that that officer should at a later date go to Kashmir in order to confer with the Durbar in regard to its offer of aid for the defence of the frontier. The concluding sentence is a pure fabrication, none of the words after 'policy' appearing in the original minute. The latter, I may add, received the Viceroy's approval, although not in the terms mentioned in the fabricated version.

"I have shown already what were the objects with which the Government of India proposed, in 1888, to intervene in the affairs of Kashmir, and

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within what narrow limits Sir Mortimer Durand, with the Viceroy's approval, was prepared to restrict that intervention ; and it is unnecessary for me to point out how full of mischievous and misleading suggestion are the passages which I have quoted from the spurious portions of his supposed minute.

“ The responsibility which rests upon those who are ready not only to give to the public documents which they are well aware could not have been obtained except by a distinct and criminal breach of trust, but who are not even at the pains to satisfy themselves that these documents are genuine, is a very serious one.

“ In the present instance the spurious information can have been published with no other object than that of persuading the people of this country that the recent action of the Government of India in Kashmir has been prompted by motives which have been repudiated in official documents of the first importance as well as by the public statements of the Secretary of State in the British Parliament. Not content with persistently misrepresenting the Government of India, the publishers of the article have not scrupled to present to the public a garbled version of a confidential note, written more than a year ago, in order to give an entirely distorted account of the then view and actions of the Government. Neither then nor at the present time has it been the desire of the Government of India to promote its own interests at the expense of those of the Kashmir State ; then, as now, it was our desire to see that State well and wisely governed, with a minimum of intervention on our part, and without any ulterior designs upon its independence. I am not without hopes that the sincerity of our motives will in process of time come to be understood even by those who have been misled by the persistent misrepresentation which has taken place in connection with these matters, and I believe that an exposure of the practices to which our critics have not scrupled to resort in the present instance may have the effect of, in some degree, opening the eyes of the public as to the methods which have been adopted for the purpose of prejudicing its judgment in regard to this important case.

“ I have thought it my duty to bring this matter to the attention of the Council, both for the purpose of affording an illustration of the kind of malpractice against which the Bill on the table is directed, and also because I think it should be generally known that the new law is intended to be put in force in such cases, and that those who publish official documents without authority will come within its scope, whether the persons by whom those docu-

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ments have been divulged are discovered or not, and whether the documents themselves are published in their entirety or, as in the present instance, reproduced in a garbled and truncated form."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th October, 1889.

J. M. MACPHERSON,

SIMLA ;

The 18th October, 1889.

Offg. Secretary to the Government of India,

Legislative Department.