Saturday, 25th February, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

Saturday, February 25, 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

EMIGRATION.

THE CLERK reported to the Council that he had received a further communication from the Home Department, forwarding a Despatch from the Secretary of State for India, concerning emigration to the Island of Saint Kitts.

THE VICE-PRESIDENT moved that the above communication be printed.

Agreed to.

CARNATIC ESTATE.

THE VICE-PRESIDENT presented the Report of the Select Committee on the papers relating to certain judgments delivered by the Judges of the Supreme Court at Madras in the matter of an application on behalf of Gunsham Doss, a claimant against the Estate of the late Nabob of the Carnatic, for the purpose of preparing a statement of the circumstances under which Act XVI of 1859 was passed, and of reporting generally on the subject.

STAMP DUTIES.

MR. SCONCE presented the Report of the Select Committee on the Bill "to consolidate and amend the law relating to Stamp Duties."

CUSTOMS DUTIES.

MR. WILSON moved the second reading of the Bill "to amend Act VII of 1859 (to alter the duties of Customs on goods imported or exported by Sea)."

MR. SCONCE said, he did not by any means intend to make any opposition to the second reading of the Bill. On the contrary, he was prepared, while accepting the principle on which the Bill was drawn, to adopt the wise and judicious exposition of motives and objects for modifying the laws relating to Customs Duties as made to the Council this day week, by the Right Honorable Gentleman. Possibly as to details there were one or two points which he thought required some further consideration, as for example the duty on tobacco. In other respects he had no remarks to make with reference to the subject matter of the project. He might find some cause of regret that the Right Honorable Gentleman felt himself unable, in a greater degree, to apply to a portion of our exported products the principle which was applied so successfully to opium and saltpetre; namely, to get as much as we could out of foreign countries in aid of our internal expenditure. It was true that here, as in all national and international relations, we were met with conflicting principles. We were certainly bound to abstain from injuring ourselves, and it might amount to uncompensated injury if we placed so high a duty on the export of indigo, jute, hemp, or hides, as would drive them out of the foreign market. After all, it was but a question of degree, and a moderate duty might be uninjurious, and at the same time a material source of revenue. While he was not prepared to say that the Right Honorable Gentleman had not used a wise discretion in the arrangements proposed in the Bill now before the Council, nevertheless the opportunity should not be lost sight of to benefit ourselves at the expense of foreign nations. In the sense in which he now spoke, England was a foreign nation. Our first duty was to India, and to replenish the Exchequer of India by whatever means might be least onerous to ourselves. But, besides, whatever obligation might lie in the general consideration of commercial and financial relations, it appeared to him we had special cause to attempt to lay a tribute on foreigners, especially England. We heard the other day from the Right Honor-

able Gentleman, and certainly we all assented to the remark, that England exacted nothing in the shape of political tribute from India; the public income of England was assuredly in no way assisted by remittances from India. But this admission did not state the whole matter arising from the connection of the two countries, and in fact India did yield a large tribute to the general wealth and resources of England—contributing a very large proportion of her annual exportations, for which not only no adequate return but no return at all was made. Perhaps this fact was not so prominently noticed as was desirable for the welfare of this country. All who had studied the external commerce of Bengal knew that, in the normal position of our commercial relations, taking merchandise and treasure together—for, as the Right Honorable Gentleman rightly reminded us, there was no difference between a trade in treasure and a trade in goods—Bengal sent out annually a value of three or four millions in excess of her imports. He might easily illustrate this by reference to the returns from the Custom House of Bengal, but he would ask the attention of the Council to the more complete return of the commerce of all India as communicated to the Council by the Right Honorable Gentleman on Saturday last, which exhibited the following results of the comparative trade between the two countries: for the five years ending in 1839, we exported merchandise and treasure in excess to the amount of four millions; for the five years ending in 1844, £3,800,000; for the five years ending in 1849, £4,700,000; but in the five years ending in 1854, a remarkable change took place, the excess on the same side being only £300,000; while more remarkable still, in the five years ending in 1859, we did not send in excess, but received over and above our exports, imports to the amount of £3,500,000. He would not at this time attempt to explain wholly the cause of this recent change in our commercial relations. One prominent cause might be that, in late years, instead of England receiving supplies from India, supplies had been obtained there. By-and-bye when things came round, he apprehended that the trade-balance would also fall back to its former condition, and that, whether the total imports and exports were large or small, there would still be an excess to be remitted to England. He apprehended that this remittance must have some effect on the commercial condition of the country. It seemed to him that the first direct effect of this would be to deprive us of so much treasure, and thus enhance the value of money; next to depreciate the exchange by the demand for bills, and reduce it below par, giving, as it might be, only 1s. 10d. for our rupee; a third effect, and a very common one, would be to lower prices by carrying to and forcing upon foreign markets a larger quantity of our products than those markets would have taken off while commerce was in a state of equilibrium. He did not presume at that time to consider this question, but mentioned it simply in this sense, that foreign countries—England and possibly, might justly be called upon to contribute towards our revenue.

There was another matter which, with the permission of the Council, he would allude. Speaking as he desired to be understood, with only an imperfect acquaintance with the financial affairs of this country, and with only very limited and indirect means of becoming acquainted with those affairs, he would desire to express his thorough conviction of the magnitude of the present public embarrassments. However apparent the paradox, it was because of the sudden and unprecedented magnitude of the public charges that he was most hopeful of the pressure being effectually and rapidly relieved. The Right Honorable Gentleman had informed the Council that the expected deficit chargeable both in India and in England, upon the revenues of India for the year about to close, was £9,290,000, or nine crores and twenty-nine lakhs of Rupees; while for the coming year it was not safe at this time to calculate on a lower deficit (exclusive of the broad measures of relief lately announced to the Council)

than six and a half crores. But he should prefer to consider our embarrassments from a closer point of view. A mere deficit was not in itself an independent basis of financial investigation. It was but the result of two elements, that is, the difference resulting by a comparison of the public charges with the public income; and it seemed to him that the Council would be better enabled to appreciate the gravity of the present financial crisis by directing their attention especially to the absolute amount of our charges and our receipts.

He very deeply felt that, in the remarks which he offered to the Council, he groped in the dark; and, if there was simplicity in the confession, it was not the less true; he desired to be put in possession of further knowledge than his opportunities permitted him to acquire. What then was the charge upon the revenues of India for the year 1859-60? This charge, it would be remembered, broke up into two sections, an Indian charge and an English charge. Now, on Saturday last, the Right Honorable Gentleman showed them that the total sum chargeable in the local accounts was estimated at £41,770 000, or forty-one crores and seventy-seven lakhs of Rupees; and that the total sum chargeable in the accounts at home would amount to five millions and a half. The result would give a total charge of £47,277,000. This charge of £47,277,000 constituted then the total charge on the Indian revenue during the present year. In looking back to the year 1856-57, he found, from a return printed in 1858, by order of the House of Commons, that the total sum chargeable on the revenues of India for that year did not exceed £30,000,000. The result appeared, therefore, from those two statements, that on the third year from 1857 our charge had risen from thirty to forty-seven millions; that was a charge of seventeen millions over 1857, an increase of fifty six per cent. He should therefore consider, looking at the magnitude of the increase, that some special information should be afforded to the Council as to the items which constituted the total charge, that the Council might have the means of judging whether so remarkable an addition to the public burdens should become a permanent charge on the revenues. But, moreover, the returns of the House of Commons, from which he had taken the charge for 1856-57, exhibited a revenue, the total of which did not exceed £30,000,000. It now appeared that the revenue for the present year amounted to £37,700,000. So that instead of a revenue of £30,000,000 as three years ago, we had now seven millions more; but that was not enough, and it would appear a further supply of £10,000,000 must now be produced. It seemed to him most important to bring these matters before the Council. The very fact that the revenue had improved to the amount of seven to eight millions in three years, should make us careful to consider whether it was now necessary to increase the permanent revenue of the country, not only up to the sum now received, but beyond it to any indefinite amount. He had not hesitated to speak upon that point, feeling as he did on the matter. He, however, might have brought forward a difficulty which did not exist, and arose only in his own misconception.

There was also one other point on which he would make a few remarks. The Right Honorable Gentleman referred to a Financial Despatch of this Government, which was published in the course of October last, and signified to the Council that some errors existed for which the Executive Council were not responsible. It might be remembered the Despatch itself embodied two accounts, one an abstract account of revenue and charges, and the other an account of cash-balances. It was to the latter that he (Mr. Seonce) wished now to call attention. The return was headed by two items—an estimated revenue to the amount of three crores and seventy-five lakhs was on one side of the account, and a general charge of about forty crores on the other. But there were also one or two other items on which it seemed to him desirable that they should have some special information. He thought that this account, and

accounts of a similar kind, might have been drawn on some sounder principle than seemed to him to have been followed. Be that as it might, he found one charge put down as payments to Railway Companies amounting to six crores and twenty lakhs. He did not understand, from the exposition made by the Right Honorable Gentleman, if any provision was being made for the payment of this. He could Judge, from the aggregate charge exhibited in the two estimates, that the forty-one millions estimated by the Right Honorable Gentleman did not embrace the six millions supposed to be payable to the Railway Companies. It was not enough for him to know that the Railway Companies had at one time or another paid into the coffers of the State money on which these payments were made. If Railway payments were made to Government, and Government spent these payments for its own purposes, when the Railway Companies demanded repayment of the deposit, undoubtedly Government must be prepared to meet the demand from other sources. He confessed he read with some astonishment, in a return made to the House of Commons, that it was considered unnecessary to include a provision for the payment of these deposits, because new payments would correspond with the demands anticipated. It was clear that, if the charge was made on the credit of a past deposit, Government would have to take it up in the disbursements of the present year. It seemed to him, and he only spoke from a very limited knowledge, that to whatever amount the State was indebted to Railway Companies, the payment of that debt should be charged in the public accounts. And for himself, he should be glad to see an account of the total sums paid in year by year, and a corresponding exhibition of the sums annually re-paid. Railway works were too extensive, and involved too enormous an outlay, to admit of the public overlooking the necessary returns of payments and disbursements.

There was also another item of a similar character in the cash statement for September, to which he would allude, namely, the fifty lakhs payable in discharge of the debts of the Nabob of the Carnatic. He might be mistaken, but, he thought that, if payable at all, it was strictly a charge for the present year.

He had thought it incumbent to make these remarks which he had ventured on, but not with any feeling of opposition to the second reading of the Bill, as he thoroughly admired the principle on which the Bill was framed.

MR. WILSON said, he was afraid that the concluding remarks of his Honorable friend would hardly bear out the criticisms with which he had preceded them. He (Mr. Wilson) was not sure that he quite understood his Honorable friend in all the observations which he had made, because he found that one part of his remarks was somewhat contradictory to another. His Honorable friend complained, because we did not attempt to throw the burden of taxation on foreign countries. He (Mr. Wilson) thought that the time had gone by for such ideas being entertained, and it appeared strange to him that in this enlightened age such an opinion should have been mooted. His Honorable friend must know that our products were exposed to competition in foreign markets, and the mere effect of an export duty being levied upon them would prevent their encountering so severe a test, subject as they would be to the rivalry and competition of the whole world. Whatever duty we imposed upon them, it was obvious that that impost must be an additional charge on the goods, and probably be the means of excluding them from the market altogether. He could assure his Honorable friend that, if any method could be devised for taxing foreign countries, that would be a discovery so novel that any politician might justly be proud of it. As he said before, it was an unique fact that this country had almost a monopoly in the opium trade with China. But the revenue derived from that article could not be considered as a tax on a foreign country, but simply in the shape of a profit on the product of this country.

His Honorable friend went on to say that he was afraid the affairs of India in relation to England were not in a wholesome condition, because he found that the balance of trade was in favor of England, and also suggested that taxing the exports and increasing the imports would be the means of removing impediments. He (Mr. Wilson) thought that these two observations were not in accordance with each other. His Honorable friend went on to say that, although we did not pay a political tribute to England, yet we paid something equivalent to it, because the balance of trade was in favor of England. Now, his Honorable friend must bear in mind that they must not take the direct trade between two countries as conclusive evidence of the balance of trade between those countries. They must also include with the direct the indirect trade. The shipments hence of opium to China were paid for again by the shipments of tea to England. The goods sent from this country to Australia were met again by Bills on England. To take two isolated countries would only give an inadequate and isolated notion of the trade between them. He would assure his Honorable friend that he might rest well satisfied that there could never be any lasting balance between two countries. If India did not get paid for her products at rates which remunerated her, India would not long continue a losing trade, but the best guarantee against such a state of things was the satisfactory, rapid, and grand progress which her commerce had made for some years past.

His Honorable friend had alluded to the statements of income and expenditure to which he (Mr. Wilson) had referred on Saturday last. His Honorable friend had stated that he required further and fuller information on the subject. He (Mr. Wilson) regretted his Honorable friend had not given specific notice of his question, as he (Mr. Wilson) would have been only too glad to have come prepared with full and detailed statements of the past and estimated future income and expenditure of India. His Honorable friend said that the total charge of the Indian Empire for this year might be estimated at forty-seven millions. In that he (Mr. Wilson) believed his Honorable friend was correct, as well as in the statement of the revenue for 1857. There was no question but that the increase was large. His Honorable friend must be aware of the increase of eight millions in the military expenditure for this year, and he must also bear in mind that in 1857-58 much land revenue was not collected.

But his Honorable friend went on to advert to the account rendered and published in September last. Here he might say his Honorable friend was confounding two separate and distin t things. There were two distinct accounts, the one of income and expenditure, which had nothing to do with the other, which was an account of cash balances of different years. His Honorable friend complained that no notice had been taken of the six millions issued for Railway purposes. That ought not to have been put down as expenditure, and it would have been perfectly erroneous so to have placed it. His Honorable friend was right in saying that it was a charge on the present year, but it was merely a cash disbursement to the Railway Company received during the year. His Honorable friend had said that he would be glad to see an account showing the amount received from and disbursed to the Railway Companies. That was an account which he (Mr. Wilson) had it in his power to furnish, and which he would be most happy to do whenever he wished. There was never a large balance in the hands of Government; about twenty-two millions had been paid in, nearly the whole of which had been expended on Railway purposes.

He (Mr. Wilson) was not aware that there was any other point to which his Honorable friend had adverted, and would, in moving the second reading of the Bill, take the opportunity of stating that, when the Bill came under a Committee of the whole Council next Saturday, it was his intention to propose certain amendments, which would be printed and circulated to the Members in the course of the week.

The Motion was then put and carried, and the Bill read a second time.

REGISTRATION OF ASSURANCES.

MR. FORBES moved the second reading of the Bill "to provide for the Registration of Assurances."

MR. SCONCE said, he had no intention of opposing the second reading of this Bill. He only wished to state that, with respect to the particulars of many of the Sections, he did not hold himself bound to what might be called the principles on which the Bill, as it now stood, was framed. He knew the anxiety of his Honorable friend opposite (Mr. Forbes), and the general opinion that it was necessary to legislate on the subject, and when the Bill came under the consideration of the Select Committee, possibly the best opportunity would be found by discussing the various propositions which the details of the Bill involved. Possibly, too, the question might arise, whether it would not be expedient to consolidate this Bill with that in charge of the Honorable and learned Judge on his right (Sir Charles Jackson), for the prevention of fraudulent transfers of property. He would only shortly state one or two points on which it appeared to him, the Bill, as it now stood, was objectionable. He would first refer to Section IX. He was not prepared to adopt the principle that all transfers of moveable property above fifty Rupees should necessarily be registered. To compel the registration of all such loans seemed to him to throw objectionable impediments in the way of commercial operations. Again, the language of this Section seemed indistinct, for bonds would come under this Section, and he thought that bonds could hardly be called transfers of moveable property.

Another matter to which he wished to allude was the mode of registration, and the effect of registration. Deeds were by Section XIV to be registered according as the Registrar might or might not personally know the parties who came before him. If he did not personally know the parties, he would require the attendance of witnesses whom he knew to prove the identity of the parties. It was quite a wrong course to depend on the mere knowledge of a Registrar. A Registrar here to-day would be gone to-morrow; and whatever importance was attached to his knowledge, would be lost.

It would be again found in the 25th Section of the Bill, by which the authenticity of a Deed was proposed to be secured, that the signature of the Registrar should be evidence that the parties to the instrument and the persons who testified to the identity of such parties actually appeared before such Registrar and registered such instrument or testified to such identity. He did not think a dead signature could be judicially received as evidence of the actual appearance of any of the parties. It could not, in the course of judicial proceedings, be accepted without other evidence. By this Bill mere registration gave absolute force to any transaction. It bound all parties at all times. This was done without any enquiry or without any provision for enquiry, and involved no giving of notice, so that, whatever might be the objection taken, the mere fact of the registration having been effected carried with it the property registered and established the obligation expressed in a bond.

In the 37th Section all claims were to be enforced by a simple petition. The mere presentation of a petition involved no subsequent enquiry. There was a reserve that, if the Court should think the instrument was not conclusive to the effect to be given thereto, or that judicial enquiry to warrant execution was otherwise necessary, the party making the application should be referred to a Civil action. But one Judge might think one way, a second another way. The provision was too indefinite. The Section itself gave no assurance that justice would be done.

Further, it would be found in Section XXXVIII, that no party to a registered instrument, enforced as

required by the Act, should be allowed to dispute the Act ascribed to such party in such instrument, or the obligation attaching to him thereunder. Thus no one was to be allowed to charge any party with fabrication or falsehood in the transaction after registration. The mere fact of a party's name being there was conclusive. No one whose property was filched from him by false personation could assert that plea, because the deed was registered.

These were some of the grounds of his objection. He might mention others, partly technical and partly material, but he would content himself at present with saying that the above considerations induced him to assent to the second reading with great qualifications as to several of the provisions of the Bill.

THE VICE-PRESIDENT agreed with the Honorable Member who spoke last, that there were many serious objections in the Bill as it now stood. He would follow the example of the Honorable Member by not opposing the second reading of the Bill, but reserving to himself the right of urging his objections hereafter. He thought it impossible that the Bill could pass in its present state. It was a Bill to provide for the Registration of Assurances. It appeared to him that a Bill of that kind ought to be general in its operation; but one of the Sections expressly provided that the Act should not be in force within the limits of the jurisdiction of the Courts established by Royal Charter. Now, if the Bill was a good Bill for the Mofussil, it ought to be a good Bill for the limits of the Supreme Courts. If it threw such difficulties in the way of trade or commerce, or of carrying on the ordinary transactions of life as to render it necessary to exclude it from the limits of the Supreme Court, it would be scarcely applicable to the Mofussil. Section IX provided that—

"No transfer of immoveable property, and no transfer of moveable property exceeding in value fifty Rupees, any of which instruments may have been executed after the passing of this Act, shall be valid, unless the same be registered within the period of time prescribed by this Act, provided always that the transfer shall operate from the time of its execution, and not from the time of its registration, and that if such deed be not registered within the time prescribed, it shall be void and of no effect from the time of its execution."

Then there was an interpretation Clause, which declared that—

"The word 'transfer' should import every kind of instrument by which any property or interest therein is alienated, conveyed, assigned, or transferred, or given absolutely or partially, or conditionally, or on the happening of any future event or contingency, or on the failure to do any act or pay any money, or by way of mortgage or pledge."

It seemed from this, that the word "transfer" would include all contracts for the payment of money. The exception contained in Section XXXIX, which provided that nothing in the Act should be held to extend to Bills of Exchange, or to any other negotiable instruments or mercantile documents, or to written agreements known as pottahs and kuboolyuts between landlords and their tenants, or to contracts between ryots and others for the cultivation or delivery of indigo plant—proved that, with these exceptions, all contracts for the payment of money exceeding fifty Rupees were intended to be included. They would therefore have to be registered within thirty days before the Registrar by all the parties thereto. No person could register a document, unless all the parties attended before the Registrar. If the Registrar did not personally know any one of the parties, the party must get some one to accompany him for the purpose of identifying him to the Registrar. The parties might be put to great difficulty in finding such a person, and all this was required to be done for the registration of a document for the payment of the small sum of fifty-one Rupees. But that was not all. Even after all these requisitions had been complied with, the Registrar could not register, unless the instrument required to be registered should have been received by the Registrar through a vakeel. Section XVIII provided—

"Where it may be inconvenient for any parties to an instrument, the registration of which

is required, or the heirs, representatives, or assigns of such parties, to appear before a Deputy Registrar personally for presentation of such instrument for registration, such instrument may be presented for registration to the District Registrar, by means of one of the vakeels of the Civil Court, duly constituted for that purpose by the said parties, their heirs, representatives, or assigns. But no instrument shall be received by the District Registrar from the parties themselves, their heirs, representatives, or assigns, without the intervention of a vakeel."

So that, if a poor person wished to register, he would be compelled, not only to find a person who was personally known to the Registar and could identify him, but he must employ a vakeel or lawyer. This would prove a great hardship, and would impose upon every one who entered into a contract for the payment of any sum above fifty Rupees the obligation to employ a lawyer.

Again, no provision was made for the case of native females (purdah ladies), who could not go to the Registrar.

He thanked the Honorable Member for Bengal for alluding to Section XXV, and agreed with the Honorable Member in the remarks he had made on it as to the inexpediency of making the signature of the Registrar to the entry in the Register Book evidence of the identity of the parties.

By Section XXXIII again an appeal would lie from the Deputy Registrar to the District Registrar, whose decision would be final. But the appeal must be presented within thirty days, and Section XXXVII went on to show how claims founded on registered instruments were to be enforced. It provided that—

"All claims founded on registered instruments not affected by other instruments subsequently registered, or by decrees of Court or public sales, shall be enforced on application to the Court having jurisdiction in the matter of such instruments on a miscellaneous petition. But if it be found that the instrument is not conclusive as to the effect to be given thereto, or that judicial enquiry to warrant the enforcing the same is otherwise necessary, the party making the application shall be referred to a civil action."

Then came Section XXXVIII, which provided that—

"No party to a registered instrument, sought as above to be enforced, and no heir, representative, or assign of such party, shall be allowed to dispute the Act ascribed to such party in such instrument, or the obligation attaching to him thereunder."

Certainly there was the permission to appeal to a Civil Court, but what use would that be in the case of false personation. If a man were to personate him (the Vice-President), and bound him over to pay eight or nine lakhs, was he not to be allowed to dispute it, because the transaction was registered, and because it was signed by the Registrar? This was taking the jurisdiction entirely out of the hands of the Appellate Courts, and placing it in the hands of the Registrar. It simply amounted to this: that a man's name once attached to the register, and countersigned by the Registrar, he was for ever debarred from disputing it, even though it might have been forged. Frauds might easily be committed, and yet no one was to be at liberty to dispute the contract after it had been registered, though it might have been obtained by fraud. Suppose a man intending to bind himself for five hundred Rupees, should, by fraud, be induced to sign a contract for five thousand Rupees, believing it to be one for five hundred Rupees, he could not dispute the contract after it was registered.

He felt himself to be under great obligation to the Honorable Member for Madras for bringing in this Bill. He thought that all transfers of immoveable property, whether into Presidency towns or elsewhere, ought to be registered; but he reserved to himself the right of objecting to the registry of all contracts. It was desirable to throw every impediment in the way of the production of forged documents. But he thought that this might be done by requiring all actions on unregistered documents to be brought within a very short period after the contract was broken, and by rendering it compulsory to register certain classes of documents, and those not to be performed, say within a year or six months. If the party did not choose to register the documents, the time for bringing an action might be limited to three months. This would serve the same purpose as taking it to the

Registrar. Under the present Bill, however, it might arise that a bond above fifty Rupees was to become due in a week, or a fortnight, yet the party could not sue till the document had been taken to the Registrar and filed. Thirty days were allowed for the purpose, and the contract might be broken before the expiration of the period limited for registration. He (the Vice-President) pointed out these objections merely with a view to their being taken into consideration; but, as he had before stated, he had no intention of opposing the second reading of the Bill.

SIR CHARLES JACKSON said, that, in assenting to the second reading, he also wished to reserve to himself the right of objecting hereafter to some of the provisions of the Bill. He objected to that part of it which required the registration of all transfers of moveable property exceeding in value fifty Rupees. He did so, on the broad ground that it would operate as a check upon trade and seriously interfere with the ordinary transactions of life. He would endeavor in Committee to restrict the operation of the Bill as regards personalty to those prolific sources of fraud and perjury, voluntary deeds, marriage settlements, and wills.

SIR BARTLE FRERE said, he so entirely agreed with the Honorable and learned Vice-President as to the obligations of the Council to the Honorable Member for Madras, and there seemed so little difference of opinion on that point, that he would not say all he intended in illustration of the many evils which this Bill was calculated to obviate. Like the Honorable Gentlemen, however, who had preceded him on this subject, he thought great alterations would be required in the details of the Bill. That did not, however, diminish their obligations to the Honorable Gentleman who had brought it in. There seemed to him (Sir Bartle Frere) to be two ways by which such a subject could be dealt with. One by a tentative measure applicable to some particular class of Courts or to some particular portion of the Empire. Those who had most experience must be aware that, in dealing with the interests of the whole of India in subjects of this magnitude, even the most learned and the most comprehensive mind must feel the difficulty of striking out at once a complete and perfect measure, and there was much to be said therefore in favor of dealing with this subject tentatively. The course to be followed in such case would be that, after trial of a measure already in force in the Lower Provinces, or the Punjab, or any other single division of the Empire, the measure might be extended to other parts of the country. But there were in practice some very considerable objections to this course of proceeding; and, on the whole, he preferred the other mode of dealing with such questions, which was, that the legislation should be general only as to the main features of the Bill, leaving it to the local Governments and to the local Courts to determine upon the details and the precise mode of proceeding. Thus the general law would enact that certain classes of documents should not be recognised in Courts of law, unless they were registered. Who should register them, and in what manner the details of registration should be carried out, might then be left to the local authorities who might be empowered to make rules on the subject. He (Sir Bartle Frere) thought that in many parts of the country there would be found various descriptions of machinery for registration in good practical working order. In many parts of the country where Mahomedans were numerous, or where the Mahomedan rule had been long established, there were Kazees who made most efficient Registrars, and who might be made useful for all practical purposes. Kazees would be found in almost every district in those parts. In other parts, amongst a purely Hindoo population, you would find no Kazees, but there were Officers who held similar appointments under the ancient Hindoo machinery of administration, and who still acted as village and district Registrars to the whole community. Again, he (Sir Bartle Frere) did not see why the Bill should not have effect within the jurisdiction of the Supreme

Courts, the Judges of which, after due consideration with reference to the more complicated system with which they had to deal, might lay down the precise mode for registration with much greater accuracy and fulness of detail than could be obtained, or would be at all convenient in a general measure, which was to be applicable to the whole of India. Whilst rendering, in common with the other Members of the Council, his hearty acknowledgments to the Honorable Member for Madras for the service he had done in bringing in this Bill, he would suggest to that Gentleman to make the provisions of the Bill as general as possible, and to provide for giving power to the Local Governments and to the Supreme Courts, as far as the jurisdiction of those Courts extended, to frame the rules, and provide the machinery for registration.

MR. FORBES remarked that, when he introduced the Bill under discussion, he said he did not propose it as a perfect measure, but in the confident expectation that, if the Council allowed it to pass a second reading and to go before the country, all the imperfections it possessed would be rectified by the suggestions of the general public. He accepted with great gratitude the first instalment of aid and advice which had been given by the Honorable and learned Vice-President, the Honorable Member on his left (Sir Bartle Frere), the Honorable and learned Judge opposite, and the Honorable Member for Bengal. And if he did not now reply to all the objections urged against the details of the Bill, it was not because he could not give explanation which would, to a greater or less extent, remove those objections, but because he thought it better that further discussion should be avoided, and that this Bill should go before the country with the unanimous consent of the Council to its general principle, leaving its details for consideration in Select Committee. He would only further remark that there was an object in introducing this Bill with such stringent provisions as it now no doubt contained. They might easily be modified in Committee; whereas if they were introduced hereafter, it would necessitate the republication of the Bill. He would again thank the Honorable Members for their assistance and advice, to which he need not assure them he would give full attention and consideration when the Bill came before the Council.

The Motion was then put and carried, and the Bill read a second time.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for regulating the establishment and management of Electric Telegraphs in India"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee, after a verbal amendment in Section XVI, on the Motion of Mr. LeGeyt; and the Council having resumed its sitting, the Bill was reported.

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to empower Magistrates to decide certain disputes between Contractors and Workmen engaged in Railway and other works"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I was passed after a verbal amendment.

Section II restricted the jurisdiction of Magistrates to cases in which the amount in dispute did not exceed two hundred Rupees, and in which the claim was not preferred within two months from the date on which the cause of action arose.

SIR BARTLE FRERE said, he would put it to the Honorable Gentleman who had charge of this Bill, whether the limit of time (two months) within which the claim was required to be preferred, reckoning from the date

on which the cause of action arose, was not too restrictive? The contractor or other employer often kept a running account with the workmen, and he (Sir Bartle Frere) thought that a limit of two months might be often taken advantage of, for the purpose of preventing such claims being disposed of under this Act. He would propose a limit of six months.

The Motion was carried, and the Section as amended then passed.

The remaining Sections and the Preamble and Title were passed as they stood; and the Council having resumed its sitting, the Bill was reported.

CARNATIC ESTATE.

THE VICE-PRESIDENT said, in rising to move the Resolution (of which he had given notice) on the subject of Act XVI of 1859, and of the judgments of the learned Judges of the Supreme Court at Madras, in the case of Gunsham Doss, he confessed that he did so with considerable reluctance. He felt that he was standing on very delicate ground in asking the Legislative Council to consider the language used by the learned Judges with regard to that Act. But inasmuch as the learned Judges, in delivering their judgments, had used language which was wholly unwarranted by the facts, and which seriously reflected upon the Council, and inasmuch as those remarks had been placed upon the records of Government, he felt it was a duty which they owed to themselves to take such a course as would show to the whole world that they had not been guilty of that unjust and improper legislation which the learned Judges had imputed to them. If it were said that the course he was about to adopt was unusual, he could only say that the language used by the Judges was wholly unprecedented. He would read passages from the judgments of both the learned Judges. An application was made to the Supreme Court at Madras on behalf of Gunsham Doss, one of the claimants against the estate of the late Nabob, to postpone the hearing of his claim, on the ground that he and many other claimants were injuriously affected in the prosecution of their claims by the Act, and that they were about to petition the Secretary of State for India to procure the disallowance of it, and to petition Parliament to repeal it. The learned Judges, in granting the application, thought it was their duty to make the remarks of which he complained on the character and policy of the Act in question, though the learned Chief Justice admitted that he was rather going out of his way in doing so. The Chief Justice said:—

"This consideration leads me out of our ordinary province, which is merely to expound the law as we find it, and not to remark upon its general character and policy. But, called upon as I am under the peculiar circumstances of this case, I am bound to declare my opinion that the legislation complained of is of the grossest *ex post facto* character, and that it violates the first principles of legislation and of justice. '*Nova constitutio futuris formam debet imponere non præteritis.*' This application then, and the proposed petition, are to be supported on public grounds; the case of the petitioner is the case of the community at large; for if such legislation is allowed to stand and to serve as a precedent for future legislation, then the rights of every person throughout British India are in jeopardy, and we no longer live under the shelter of the British Constitution."

Now, he (the Vice-President) could scarcely have imagined that a learned Judge, who must be supposed to be free from all irritation or excitement, arising from personal or party feeling, could allow himself to declare that the case of a petitioner was the case of the public, and that if the Act was allowed to stand, the rights of every person were in jeopardy, and that we no longer lived under the shelter of the British Constitution. This was language that no British Judge, sitting on the Bench, ought to have used.

Sir Adam Bittleston, in delivering his judgment, said:—

"True it is that the Legislative Council have not assumed to set aside the decision of this Court in the particular case in which it was pronounced, but they have made the very nearest approach to so doing by hurriedly interposing an enactment to nullify that decision as to all the subsequent cases standing on the list for

hearing which would have been governed by it. This is a grave matter on public grounds. It is obviously fatal to any confidence in the administration of justice in any of the Courts of this country, if, as soon as a decision adverse to the wishes or interests of Government is pronounced, the Legislative power may be invoked by the Executive authority (the two being very closely allied and linked together) to interpose and nullify such decision."

If the learned Judge meant to insinuate, by the passage which had just been read, that the Legislative Council was under the influence of the Executive Government, and ready to nullify any decision that might be adverse to the wishes or interests of the Government, he (the Vice-President) would say that such an insinuation was as illiberal as it was unjust and unfounded. The learned Judge should know that every Member of this Assembly was quite as independent and free from the influence of the Executive Government as the learned Judge himself.

He (the Vice-President) would not trouble the Council by going minutely into the case, because the Report of the Select Committee had already been circulated, and had for some days been in the hands of the Honorable Members. But he thought it right to draw the attention of the Council to the circumstances under which the Act in question was passed.

In 1855, on the death of the Nabob, his interest in the revenues of the Carnatic lapsed to the Government. Previously to his death he had been allowed to enjoy one-fifth of the revenues. The Nabob died greatly in debt, and there was every reason to believe that his assets would not be found sufficient to meet his liabilities. The Madras Government proposed to make provision for the members of the Nabob's family, and to pay the just debts of the late Nabob. The East India Company were under no obligation to provide either for the family or servants of the late Nabob, or for the payment of one single farthing of his debts. But it was considered that the creditors might have supposed and been induced to lend money to the Nabob, under the belief that his interest in the revenues would not lapse to Government on his death, but would descend to his successors. In sanctioning the proposal of the Madras Government, the Court of Directors wrote to the following effect in a Despatch in the Political Department, under date the 19th March 1856 :—

"We entirely agree in the liberal intentions of the Madras Government in favor of the family. We approve the proposals, that a handsome allowance should be given to the Prince Azeem Jah Bahadoor ; that the debts incurred by him as Naib-i-Mooktar should be investigated by a Commission, and such of them as are deemed legitimate paid by Government ; that the same course should be pursued respecting the debts of the late Nabob, his personal property being first appropriated towards their liquidation."

Nothing could have been more fair or more liberal than this. But when the Court of Directors consented to pay the debts, they expressly stated as regards those which might have been contracted by Prince Azeem Jah, that it was only such of them as should be deemed legitimate by the Commissioners who might be appointed to investigate them. He (the Vice-President) should have stated that the Court of Directors added—

"We shall only add that, in the adjustment of debts, the utmost care should be used to exclude fictitious or improper claims, that only sums should be admitted which can be proved to have been advanced ; that, in regard to articles sold, only the fair market price of the day should be allowed, and that our Standing Order, limiting the interest in such cases to a maximum of six per cent. simple interest, must be scrupulously observed."

Now, there was no hardship in this. The offer of the Government was a voluntary one, and if the creditors, entertaining doubts as to whether they would ever be fully paid, had charged interest at the rate of from twenty to twenty-five per cent. on account of the risk, that was no reason why the Government, when it took upon itself the payment, should be bound to pay any more than was really due to them, together with a fair and reasonable rate of interest, from the time the advances were made. It appeared to him that

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this was a most liberal offer on the part of the late Court of Directors.

It was at first supposed that the most expedient course would be to issue a Commission to investigate and decide upon the claims, and the Government of Madras proceeded so far as to appoint Commissioners for the purpose; but it was afterwards considered by that Government that the decisions of the Commissioners might not be viewed with satisfaction by the creditors, and that the Supreme Court would form a more satisfactory tribunal. That suggestion was sent up to the Government of India, and was subsequently laid before this Council, and a Bill was prepared and introduced to enable Government to carry out the intention of the Honorable Court of Directors. It was thought right that the creditors should have the means, if they preferred it, of enforcing their claims against the estate of the Nabob, and therefore the Bill allowed any creditor to institute a suit in the Supreme Court for the administration of his assets. In such a suit, however, the claimants would have had to look to the assets of the Nabob, and to those only. They were not debarred, if they pleased, from proceeding against the estate of the Nabob to recover their debts with arrears of interest for eighteen or twenty years, at the rate agreed upon, which was in many cases between twenty and thirty per cent. The Bill provided for the payment, by the East India Company, of those creditors who were willing to receive in full discharge of their claims the amount that should be ascertained to have been fairly and justly due to them from the late Nabob. That was the gist of the Bill referred to. He would not run the risk of misleading the Council by giving his reading of the Act, but would refer to the very words of it. It recited that the East India Company were willing to pay in full, to such of the creditors as should be willing to accept the same in the manner hereinafter mentioned, all such debts as should be proved to have been fairly and justly contracted by the said Nabob, or on his behalf, during his infancy, by the said Azeem Jah as Nabob Regent, such debts to be estimated in respect of monies at the amounts which might be proved to have been actually advanced or paid by such creditors respectively, and in respect of goods supplied or other matters, at the amount which should be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with interest on such debts, at a rate not exceeding six per cent. per annum. It then enacted by Section XIV that any person claiming to be a creditor of the said late Nabob, who, within the period of three months from the passing of the said Act, should file in the Office of the Registrar of the Supreme Court a written declaration, stating that he was willing to receive in full discharge of all his claims against the said late Nabob, or any property to which the said Nabob, at the time of his death, was entitled either at law or in equity, or which was liable either at law or in equity, to satisfy the debts of the said Nabob, such amount as should be ascertained by the said Supreme Court to have been justly and fairly due to him from the said late Nabob at the time of his death, or to be a charge upon such property, and to remain unpaid, the amount to be estimated in respect of monies at the amount which should be proved to have been actually advanced to or paid for the use of the said Nabob; and in respect of goods supplied or other matters at the amount which should be proved to have been the fair and actual value thereof at the time when such debts were incurred, together with such interest (if any), not exceeding the rate of six per cent. per annum as should be awarded by the said Court; and that he was willing to give up any mortgage or security which he might hold upon any part of such property as aforesaid, or which should have been charged with the said debt—should be entitled, upon giving up such mortgage or security to the Receiver, to have the amount of his claim ascertained by the said Court in manner thereinafter mentioned.

Now, it turned out that Prince Azeem Jah, during the minority of

the late Nabob, had contracted debts to a large amount. It appeared that the Nabob's father died in 1825 greatly in debt, to the extent of some eighteen or twenty lakhs of Rupees. The East India Company, being desirous to free the estate, appointed Prince Azeem Jah to be Naib-i-Mooktar or Regent, and agreed to lend him thirteen and a half lakhs of Rupees, namely, four and a half lakhs in cash without interest, and nine lakhs in Company's Paper. With this liberal aid and five lakhs of Circar funds, the Naib-i-Mooktar paid off eighteen lakhs of Circar debts, bearing twenty-four per cent. interest, and reported to Government in 1826 that he had done so, and that the Circar owed nothing.

"Government then exacted a solemn promise from the Naib-i-Mooktar, that he would incur no fresh debt without their knowledge. This promise he gave in the most express terms, and repeated in several letters.

"Government also ordered him to inform all who had had money dealings with the Circar that, in future, they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from, or recognized as binding upon, the Nabob's income, and the Naib-i-Mooktar in reply assured Government that he had given this warning accordingly. This was in 1827."

He was now reading extracts from the Advocate General's letter of 30th May 1859, appended to the Report of the Select Committee, which were borne out by documents subsequently sent in by him. The Advocate General went on to say—

"Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government (which, at his request, had increased the monthly allowance by fourteen thousand Rupees), that the Circar was quite free from debt; that there was no occasion whatever for contracting any fresh debt; that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one lakh of Rupees annually, to form a fund for the expenses of the young Nabob's majority.

"Nay, more, from 1833 to 1842, the Naib-i-Mooktar every year reported to Government that he had laid by this one lakh for the purpose; and in August 1842, when the Treasury was found to contain but one lakh instead of nine lakhs, the Naib-i-Mooktar sent in a memorandum, showing that the missing eight lakhs had been expended, not for the Nabob's use or in necessary expenses, but chiefly in loans to his (the Naib-i-Mooktar's) relations, namely, five lakhs and upwards to the Begum his mother, sixty thousand Rupees to Gholam Moortaza Khan, &c."

When the Nabob attained his majority in 1842, instead of finding nine lakhs in the Treasury, as he had been led to expect, for the immediate expenses of his installation, marriage, &c., he found but one lakh, and he also found that it was attempted to saddle him with twenty lakhs of debt. He repudiated altogether these debts, which the Naib-i-Mooktar had contracted. Subsequently, however, he agreed to pay five lakhs out of the twenty, which he did merely out of regard to his uncle, protesting, at the same time, that that debt was never contracted for his use or benefit, and that he was under no moral obligation to pay it. But still he agreed to pay the five-lakh debt. The other fifteen lakhs were represented by what were called Tunkhy Cutcherry Bonds.

In the year 1859 a claim, preferred by Sham Doss, under the provisions of Act XXX of 1858, came on for adjudication before the Supreme Court at Madras. In the course of the hearing of that case, the Court expressed an opinion, that the words "fairly and justly" meant only what was just and fair between borrower and lender, that is, between the Naib-i-Mooktar and the creditors, and not as between the Naib-i-Mooktar and the Nabob. It was quite clear that the Nabob himself never intended to pay these Tunkhy Cutcherry Bond debts; and had he continued to live, no portion of the revenues of the Carnatic would ever have been applied in discharge of a single farthing of this debt. The Government, in undertaking to pay the debts of the Nabob, never intended to pay any other than those which the Nabob himself was liable to pay: nor did the Legislative Council intend by Act XXX of 1858 to render the Government liable to do so. By the words "fairly and justly contracted by the Naib-i-Mooktar," the Legislature meant not all debts contracted in the Nabob's name, but such as were fairly a

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justly contracted as between the Naib-i-Mooktar and the Nabob, that is, fairly and justly contracted by the Regent, for the use or benefit of the Nabob. The learned Advocate General offered to prove the circumstances under which the debts, incurred by the Prince Azeem Jah, were contracted, and to show that those debts had never been contracted for the use or benefit of the Nabob, and that the money borrowed had not been applied to his use or benefit. But the Court refused to receive the evidence, and expressed their opinion as to the construction to be put upon the Act. Prince Azeem Jah himself was examined, and stated that the debt in question was his own personal debt, for which he alone was responsible. The Court were of that opinion, and gave judgment in favor of the Government. No appeal could therefore be brought to ascertain whether the Court's construction of the Act was correct or not. The Madras Government suggested to the Government of India to amend the Act, if it was not their intention to be held liable to pay all debts contracted by the Naib-i-Mooktar ostensibly for and in the name of his nephew, although really raised by the Prince for his own purpose, and from which his nephew derived no advantage. They remarked that, according to the construction which the Court had put upon the Act, judgment must be given against the Government for a sum amounting to between thirty and forty lakhs, if the claimants should succeed in proving to the satisfaction of the Court that the money, whether raised for or applied to the use of the Nabob or not, was borrowed in his name, and that evidence to that point would of course not be wanting. The Government of India, in referring the matter to the Honorable Member for Madras, with a view to his bringing in the necessary Bill, did not do so because the decision of the Court was adverse to the Government; on the contrary, it had been in favor of the Government. What they wished was that the Legislature should declare what their real intention was in passing that Act. The Legislative Council never intended to make the East India Company pay the private debts of the Naib-i-Mooktar. It was to prevent the creditors from acting upon the construction which the Court had put upon the Act, and coming forward upon some future day and bringing a host of witnesses to prove that the money had been borrowed in the name of the Nabob, notwithstanding the Naib-i-Mooktar had sworn that these were his private debts, and that the money was not even ostensibly borrowed in the name of the Nabob.

The Judges talked of vested rights. They considered that all those creditors had a vested right, and they said, so far as he (the Vice-President) understood, that this Council had no right to take away the right. He (the Vice-President) did not admit that vested right, and thought that the decision of the Judges was wrong. If the Council did in mistake vest any right in the creditor, they did not vest it irrevocably. The sum at stake was nearly half a million, as the Advocate General had stated. The creditors could not have given credit on the faith of that Act, for those debts were contracted long before. But even admitting that the Legislature had made a mistake, they not only had the right, but were bound in justice to correct it by amending the Act. The Council heard last Saturday a most clear and lucid statement of the financial condition of the Government. What would the Right Honorable Gentleman think if he were told that, by a mistake of the Legislative Council, the Government had become liable to pay a crore or half a crore of Rupees more than he had included in his estimate, and that the mistake had created vested rights, and that the Act could not be amended. The Council did not interfere with any decision of the Judges, but simply declared that :—

"No debt contracted by Prince Azeem Jah, during the minority of the late Nabob, shall be deemed a debt or claim within the meaning of Act XXX of 1858, unless it shall be proved that it was necessary and proper that such deb should be incurred on behalf or for the use of the Nabob, and that it was so contracted; or unless the Governor in Council of Fort St. George shall dispense with such proof."

The latter words were inserted to enable the Madras Government to pay the five-lakh debt which the Nabob had undertaken to pay. The Nabob had himself paid a part of this debt, and would have paid the rest had he lived, and as the income, from which the Nabob would have paid this debt had he lived, had lapsed to Government, it was suggested that there was something like a moral obligation on Government to discharge this five-lakh debt.

He (the Vice-President) would urge it as a principle, that no man could obtain an irrevocable vested right by a mere mistake of the Council, or by an error of the Judges. When the Honorable Member for Madras brought in his Bill, he (the Vice-President) supported it, and stated that, whether the dictum of the Court was right or wrong, the Legislature were quite competent to come forward and declare what its intention was in passing the Act; or if the Act had been ambiguously worded, and the Court were warranted in the construction which they had put upon it, to express its meaning in clearer language.

The learned Judge talked of *ex post facto* legislation and of our no longer living under the shelter of the British Constitution. Fine sounding words no doubt! Did the learned Judge mean to say that the British Constitution did not admit of retrospective legislation under any circumstances? Formerly, in England, by a fiction of law, all Acts were held to relate back to the first day of the Session in which they were passed, and this was the law until an Act was passed in the 33rd of George the 3rd to alter the law. There was an Act passed for Ireland, imposing an export duty on rice. This was passed some time after the commencement of the Session, but retrospective effect was given to it, and it was held to be in force from the first day of the Session. In the interval between that day and the day of the passing of the Act, a person exported rice, and he was held liable for the duty. An appeal was preferred to the House of Lords, by whom it was held that he was liable to the duty by that retrospective law. Another case occurred, in which a person was arrested under a warrant. The warrant was a bad one, and in resisting it the man killed the Officer who went to execute it. Subsequently an Act was passed, confirming all judicial proceedings and rendering that warrant good. He was indicted for murder, and would have been liable to be sentenced to death for murder, for an act which was not murder at the time, but rendered so merely by the retrospective operation of the Act. He, consequently, received a pardon from the Crown. He (the Vice President) might cite many cases of this kind, but he would not detain the Council. By the constitution of America, express provision was made, that no *ex post facto* Act should be passed. That, however, was held not to apply to cases of retrospective Acts affecting Civil rights. There was nothing in the Constitution to prevent their passing a retrospective law, if consistent with justice. What was the Council then to do? As Legislators, they were bound to act upon the great principles of reason and justice. They would have been guilty of great injustice if they left the East India Company liable to pay half a million of debts for which they never intended to become liable. The Judges talked of decisions adverse to the interests of Government, as though these debts could be paid without imposing the burthen of them on the people. If the debts were to be paid at all, the money must be raised from the people. If, by a mistake of the Council, half a million of money had to be wrung out of the people by taxation, would it have been just to allow the mistake to remain uncorrected? Was it not better to amend the Act as had been done? If the Act of 1858 had not been amended, the Home Government would probably have compelled the Legislature to repeal it. This would not have been the first time that such an order had been received from Home. Honorable Members would recollect the order received in the case of Sir Thomas Turton's defalcations. In that case, under an authority from the Court

of Directors to grant relief to claimants under four Schedules, the Indian Legislature passed an Act, granting relief, not only to them, but also to creditors included in two other Schedules. This was going beyond what the Court of Directors intended; and the Home Government, remarking that the Legislature had committed a grave error in including the two other Schedules, ordered the repeal of the Act. If the Council had committed a grave error in passing the Act of 1858, were they not to rectify it? But, suppose the mistake was that of the Judges, suppose the Council had expressed their meaning clearly, and the Judges had misconstrued it, was not this Council justified in setting the matter right? The Judges complained that the Act had been passed hastily. He (the Vice-President) would only say that, if the mistake was to be corrected at all, it was necessary and proper that it should be done at once. If that had not been done, the Judges might have gone on passing decisions upon their erroneous view of the Act, and, in the course of three months (which was the shortest extent of time within which, under the Standing Orders, the Act could have been passed), nearly half a million of money might have been decreed away. The Council would then have been under the necessity of reversing those decisions, which would have been much worse than passing the Act hastily, or of leaving the Government liable to pay a large amount, for which it was never intended to make them liable. He felt so strongly that it would have been unjust to leave the Government liable to pay those debts, that, even if decrees had been passed, he should have been prepared, if necessary, to vote in support of an Act to reverse them.

There was only one point left for the consideration of the Council, and that was, ought any provision to have been made for the payment of costs incurred by the parties who had instituted their claims? There had been cases in England in which Parliament had interfered with vested rights. He remembered a case in which actions were brought by Mr. Russell, an informer against some Noblemen for penalties under the Gaming Acts to the extent of £100,000 or £150,000. An Act was passed, authorising the defendants to stop all proceedings in the actions upon payment of the plaintiff's costs. In that case the plaintiff was deprived of his right to the penalties. That right was as much a vested right as those of the creditors in the present case. Lord Mansfield had expressly declared, that the right of an informer, who sued for a penalty, was a vested right. There was another case, in which many of the newspapers through mistake had omitted to comply strictly with the law which required the name and address of the printer and publisher to be stated on the paper. It was a mere technical mistake, but the publishers of most of the newspapers had fallen into it, and very heavy penalties had been incurred. A common informer discovered the mistake and brought a number of actions for the penalties: but Parliament, notwithstanding the informer had a vested right in these penalties, passed an Act which allowed the defendants to stop the actions by paying the plaintiff's costs. In those cases the parties had infringed an Act, and had become liable to penalties for not doing that which the Legislature required to be done. There was no mistake on the part of the Legislature or of the Judges. Yet it was considered unjust to leave the parties liable to pay penalties for having inadvertently disobeyed the Act, and Parliament deprived the informer of his vested right in the penalties—and justly so. Reason and justice required that they should be exempted from the penalties, and there was nothing in the British Constitution to prevent it. In the present case, if the Government were liable to pay the debts, it was merely in consequence of a mistake either of the Legislature or of the Judges. The utmost the creditors could have done, if Act XXX of 1858 had not been passed, was to proceed against the Estate of the late Nabob, and they were not in a worse condition after the passing of Act XVI of 1859 than

they would have been if their debts had been expressly excluded from Act XXX of 1858. The only expense incurred by them, consequent on the passing of the Act of 1858, was in filing the particulars of their claims and the documents intended to be used in support of them, and in preparing for trial. There was a great distinction between the case under consideration and that of the cases to which he had referred. In the one, a penalty had been incurred for the infringement of a law. In the other, a right had accrued by reason of a mistake. It mattered not whether it was a mistake of the Council or of the Judges. Both were public servants, and there was no reason why Government should be bound irrevocably by the mistake of either, nor was it right that the people should have a burthen cast upon them by such mistake. It would be a sad thing if the British Constitution required that such should be the case. The Chief Justice, in the course of his judgment, had recourse to a fiction, and whenever he (the Vice-President) found a person resorting to fiction, he generally expected to find that he had a bad case on the facts. The Chief Justice said,

"That which the Court has declared to be the meaning of Act XXX of 1858, though the law was not so declared until the end of May last, has of course always been the meaning of the Act, and the applicant and the other claimants may well have supposed this to be its meaning."

Therefore, because the Judges thought that to be the meaning of the Act, the claimants must be presumed to have thought so too. But the question was, did they think so? Take the case of Sham Doss, who supposed he had a right of action, and went to the expense of endeavoring to prove his claim, though it was clearly a private debt due from Azeem Jah, as ultimately decided by the Court. Gunsham Doss was just in the same position, and if his claim or that of any of the other Tunkhy Cutcherry Bond-holders had been tried instead of that of Sham Doss, it would, no doubt, have met the same fate, and have been decided against him. He did not believe that Gunsham Doss or any one was ever misled by the wording of the Act, and he could not see any sufficient reason why they should have received their costs. In the cases to which he had referred, if the informers had gone on and recovered the penalties, they would have had their costs as a matter of right. But here the costs were in the discretion of the Court, and the parties would not have been entitled to costs even if they had recovered their demands, unless the Court had expressly ordered that they should have costs. The Government had voluntarily taken upon itself the payment of certain debts, and it did not follow that the Court would have given the claimants their costs, for surely if the Government came forward to pay the debts, there was nothing so unreasonable in their requiring proof of the debts as to render it proper to award costs against them.

Then, again, he thought he had satisfactorily shown that it was not the mistake of the Council, but an error of the Judges in putting a wrong construction upon the Act. The Council never intended to render the Government liable to pay these claims, much less the costs incurred in prosecuting them. In this view of the case, it was clear that, if the Judges had decided correctly, the claimants affected by this Act would not have recovered either their debts or costs. They were only in the same position after the Act of 1859 as they would have been before it, if the Judges had put a correct construction upon the Act of 1858.

Then there was another point to which the learned Judges referred. By Act XXX of 1858 a receiver was appointed. The Supreme Court under their Charter had a general power over costs. Section XXII of Act XXX of 1858 provided that—

"The Court shall issue an order for the payment of the amount so ascertained to be due, together with the costs of proving the debt, if it shall think fit to award costs. Provided that if the amount so ascertained to be due shall not exceed the amount specified in the notice

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under Section XXI., the Court shall not award costs to the claimant."

The Clause assumed that the Court had the power of awarding costs, and directed that, if they should award costs, the Court should issue an order for their payment, and Section XXV provided how this amount, found due with interest and costs, was to be paid. It enacted as follows :—

"The amount ascertained by the Court to be due to the claimant upon the investigation under Section XXII, together with such interest and costs (if any) as shall be awarded by the Court, shall be paid to the claimant by the said receiver within ten days after a copy of the order of the said Court shall have been served upon him. In case no sufficient assets belonging to the Estate of the said late Nabob shall be in the hands of the receiver to enable him to pay such amount, the same shall be forthwith paid out of the Public Treasury of the East India Company, and the said Company shall be entitled to be re-paid by the receiver out of any assets which may afterwards come to his hands. The judgment of the Court, as to the amount due to such creditor as aforesaid, for principal and interest shall, in taking an account of the debts and liabilities and of the estate and effects of the said Nabob in such administration suit as aforesaid, be treated as *primâ facie* evidence that a debt to that amount was due to such creditor."

The object of Sections XXII and XXV was to point out how the costs were to be recovered, if awarded, with a proviso that no costs should be awarded if the claim recovered should fall short of the amount tendered by Government.

The learned Advocate General said, that there were some doubts as to whether the Court could award costs to Government against the claimants ; and, in accordance with his suggestion and the recommendation of the Madras Government, the following Clause was inserted in the Act :—

"Upon any investigation under Section XXII of the said Act, it shall be lawful for the Court, except as otherwise provided by the said Act, to award costs to either party, and to cause the same to be levied in the same manner as costs in an ordinary suit."

The Judges complained of that as being a violation of the British Constitution. But they were not obliged to give costs, if they did not think it right to do so. The power was a discretionary one, and was intended to enable the Court to do justice to both parties. There was no hardship to any one. If the Court found any fraudulent or fictitious claims brought before them, they could compel the parties to pay costs ; whereas the claimants were not obliged to proceed to trial at all, if they considered their demands so untenable or so unjust that the Court, in the exercise of their discretion, were likely to award costs against them.

Then the Judges were a little offended at the recital that doubts existed, whether certain debts contracted by Prince Azeem Jah, during the infancy of the late Nabob, were debts within the meaning of the Act of 1858. It was stated by the Chief Justice that the Imperial Parliament never expressed any doubt as to the correctness of a judgment of a Court of law The assertion, as stated by the Select Committee, was made boldly, but it was not correct. He might cite many instances to the contrary ; but it was sufficient to refer to one well-known case, which, as well as the debate which took place upon it in Parliament, appeared to have been forgotten by the learned Judge. He meant Mr. Fox's celebrated Libel Bill. In the debate upon that Bill, the decision of the Court of King's Bench, in the case of the King against the Dean of St. Asaph, as well as the doctrine laid down by Lord Mansfield, were called into question and commented upon. Mr Fox at first moved for a grand Committee on Courts of Justice, to enquire into some late decisions of the Courts in cases of libel, but that motion was withdrawn upon the suggestion of the Attorney General. Mr. Pitt, in supporting that suggestion, remarked :—

"In the first place, if any intention were entertained of going into an investigation of precedents and authorities, with a view to framing a declaratory law, it would be a work of more time than the period of the Session afforded them any hope of completing before Parliament should be up. In the next place, he should not think it necessary or advisable to pass a declaratory Bill, stating not only what the law was, but also what it had been, because that would, in some sort, imply a censure on

the Judges, and indirectly accuse them of not having adhered to the law. The whole object, he thought, might be achieved by a short Bill enacting what the law ought to be, and thence regulating the practice in future."

Mr. Fox consented to withdraw his motion, and afterwards introduced his Bill, which recited that doubts had arisen, &c., throwing doubts upon the decision in the case of the King against the Dean of St. Asaph. The Solicitor General remarked, that the manner in which the Preamble was worded did not appear to him to be free from objection, because he believed that what was there stated as a fact was not generally admitted. If he were to be governed by that which was the usual guide of Courts, precedent, he must say that doubts did not exist whether the right of Juries to give a general verdict in criminal prosecutions on a general issue joined extended to libels, so as to leave the Juries judges of the law as well as of the fact. Mr. Erskine declared that, sooner than consent to give up the Preamble, he would abandon the Bill for the present altogether, and leave it to the people of England to protect their rights themselves when on Juries, until a more favorable moment might arise, when Parliament would be prepared to recognise a clear unquestionable principle of law, that their rights in cases of libel were the same as in all other criminal trials, in none of which their privilege to pronounce a general verdict had ever been disputed. The Bill was subsequently passed, reciting the doubts. This showed that Parliament asserted the right to doubt the law laid down by the Judges of England, and even to declare not only what the law was, but what it had been. He thought that this Council might reasonably be allowed the privilege of doubting whether the Madras Judges were correct when they declared the meaning of the Council to be that which they never intended.

But to proceed. The construction of the Judges could not be appealed against. It was a mere dictum or expression of opinion given as a reason for refusing to admit the evidence tendered by the learned Advocate General. It was no more a decision that the language complained of, which was used by the Chief Justice as a reason for allowing the hearing of Gunsham Doss's case to stand over, and no one would, he (the Vice-President) thought, dispute the right of the Council to doubt or even to deny the correctness of that assertion. It could not be expected that this Council would pass an Act, declaring that the Government was liable to pay all monies borrowed by the Nabob Regent in the name of the Nabob, whether it was necessary or not to borrow them, and whether or not they were applied for his use, and then to enact that all such claims should be disallowed. It was more courteous to the Judges to recite doubts than to set up the opinion of the Council against that of the Judges, and to recite that the Judges had declared that to be the meaning of the Legislature which they never intended, and which their words did not express It was doubtful, to say the least of it, whether the Judges had put a right construction upon the Act, and it was perfectly justifiable to recite that doubts existed. The Judges had expressed an opinion one way, the Council and the Advocate General another, and thus the doubts were occasioned. The Council knew what their real intention was, and it was their duty to express it.

He would not detain the Council any longer, and without further remark would propose to move the Resolution of which he had given notice, with a view to its being placed on the records of the Council, as an answer to the charge which the learned Judges had brought against the Council. The terms of his Resolution were, that the remarks of the learned Judges of the Supreme Court at Madras on Act XVI of 1859, in delivering judgment on the 8th August 1859, on the case of Gunsham Doss, were unwarranted by the facts, and were wholly unjustifiable.

Mr SCONCE said, he rose with very great reluctance to state his inability

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to agree to the course proposed by the Resolution just moved by the Honorable and learned Vice-President, and his reluctance was so much the more, as the subject brought under discussion was held to involve the honor and justice of this Council He must, at all times, be unwilling to dissuade the Council from adopting measures directed to the vindication of its honor or the justice of its proceedings, nevertheless he was not satisfied that the course proposed to us on the present occasion was the best calculated to effect those objects.

One preliminary remark he would make. He was perfectly free to admit that the obligation which the Government was content the Legislature should impose on it, to pay the debts of the late Nabob of the Carnatic, was spontaneous and liberal. There was no question of forcing on the Government the payment of debts which it did not express itself willing to undertake. He was quite ready to admit, therefore, that under such circumstances the Executive Government might limit the terms of the law to which it was prepared to assent.

But in coming to the present case, as it arose upon the observations of the learned Judges of the Supreme Court, he must say that, as he understood the matter, it did not turn on the liberality of the Government, but on the jurisdiction given to that Court by the Act of 1858, and on the effect had on the suitors who came into Court under the invitation of that Act by the subsequent Act of 1859.

As a rule, it must always be objectionable in any Legislative Chamber, two years, or any longer period after the enactment of any law, to bethink itself of the grounds upon which the law was supposed to have been enacted, as if it were right and proper in the general case to pass a law first, and consider the reasons afterwards. Besides, it might happen that the constitution of the Council would be considerably altered, and it did happen in the present case that three of the Members now present took no part in the enactment of Act XXX of 1858. It seemed to him (Mr. Sconce) very undesirable that those Honorable Members should now be called upon to travel beyond their province, by interfering in a matter with which they had no connection.

Now, as to the more immediate subject of the present discussion, he must say that very great consideration should be given to the different position of the learned Judges of the Madras Supreme Court and of this Council. The Judges had before them nothing but two bare laws, and it was the duty of the Judges to interpret those laws, and the connection of the one with the other, from the express form of words in which they were drawn. But it was not so with the Legislative Council. This Council might be supposed to know its own meaning, and to be able to declare that meaning irrespective of the language which was intended but might have failed to express it. And, again, this Council was in a position to refresh its recollection, and even to re-assert the policy of its laws by referring to the communications, such as those received from the learned Advocate General of Madras, and the correspondence transmitted by him. But, obviously, he thought those means of interpreting the laws were not available to the Judges, and if available, it was not clear that they could have used them. He did not think it incumbent or proper for himself to offer his own construction of Act XXX of 1858, and what was more, he was thoroughly satisfied, from the remarks of the Honorable and learned Vice-President, that the view which he had expressed of the meaning of that Act now, he entertained at the time of its enactment. Nevertheless, it appeared to him that, when called upon to express his approval of the Resolution now submitted, it was his duty to look to the construction which the learned Judges put upon the two Acts of 1858 and 1859. He was not to question the competency of the Judges. To their jurisdiction claims arising under the Act were submitted, and he felt that the interpretation put

by the learned Judges on those Acts should be his own. He did not feel called upon to say any thing as to the language adopted by the Judges. Wherever it was objectionable, he had not to defend it. But, looking to the subject matter of their judgments, he felt bound to submit to the opinions of the Judges, that the latter Act contained provisions that very materially changed the provisions of the first law, and that claimants brought into Court, upon the faith of the Act of 1858, were injuriously affected by the Act of 1859. In this sense the Judges, as he understood, characterized the last Act as *ex post facto* legislation. That is they objected to it as retrospective legislation; saying further, that it violated the first principles of legislation and of justice; and that this case was a very bad case of the kind. Now, it might be that, as argued by the Honorable and learned Vice-President under various circumstances, laws of an *ex post facto* nature were occasionally passed by the British Parliament. Upon that point he would not enter. But he might safely say that the learned Judges of Madras repudiated *ex post facto* legislation in its broad and popular sense, and sure he was that no Honorable Member in this Council, certainly not the learned Vice-President or the learned Judge on his right, would be inclined to tell us that, in the sense referred to, the learned Judges were in error. He would call attention to what Section XIV Act XXX of 1858 required. All creditors who desired to avail themselves of the mode of adjustment offered through the Legislature by the Government, were required to lodge their claims within three months from the promulgation of the Act. They had little time to consider. All such claims must have been filed before the new Act came out in 1859, and therefore it seemed to him that, looking to the construction put by the Judges on the two laws, and seeing that in their opinion creditors suddenly pressed into Court by one law, were summarily ejected by the second; the Judges might well give expression to the opinion entertained by them as to the injurious and retrospective operation of the Act of 1859.

Further, it seemed to him that the question of the amount of costs cast on suitors, whose cases should break down from the more stringent tenor of the second law, might fairly influence the opinion of the Judges. For example, a petition had been presented to the Council by Narain Doss in which it was stated that he had incurred costs to the amount of sixteen hundred Rupees: and again, that under Section XIV of Act XXX of 1858, he had made over to the Receiver certain property mortgaged to him, and that this property had been sold, and the proceeds carried to the general estate. He (Mr. Sconce) was very averse to show how far the Act of 1859 differed from the Act of 1858. It could not be denied, however, that in words, at all events, the Act of 1859 went much beyond the Act of 1858. By the most recent law, proof was required from the creditor that the money lent by him was necessary for the use of the Nabob. Now, what reason was there to expect that the creditor would adduce any such proof? The Nabob was an infant, endowed with a kingly revenue: and it was in vain to expect that a creditor could justify a loan by showing the necessities of an infant so circumstanced. The Nabob appeared to have possessed several palaces, and to have been surrounded with a large retinue: and creditors might well be excused being ignorant of the expenses of an establishment concerning which the Regent, in a letter included in the printed correspondence, declared to the Government, from his ignorance of the unavoidable charges of the Nabob's establishment, he had become himself embarrassed. So far, therefore, he might say he was unable to agree that the learned Judges had erred in their apprehension that the Act of 1859 did import conditions varying materially from that of the first Act, and that, as regards the claims before the Court, it was of an *ex post facto* character.

He did not know whether it had struck Honorable Members, as it had

struck himself, that they had in this matter a succession of small seditions. There was the somewhat ineffectual *emeute* of the learned Judges against this Council, and there was the more successful explosion of the learned Advocate General of Madras against the decision of the Judges. He was well assured that he was correct in saying that the declaratory Act of 1859 was introduced at the suggestion of the Advocate General, in a letter written by him immediately after the dictum or opinion of the Judges had been intimated as to the bearing of Act XXX of 1858, and indeed the Select Committee had fully adopted the recommendation and views of the Advocate General in the Report recently circulated to us. Now, he ventured very earnestly to entreat the attention of the Council to what he was about to state. The Act of 1859 was based, as he had said, on the representations of the Advocate General. Now, two letters of the learned Advocate General had been printed for our use, one dated 30th May 1859, and the other dated 20th August 1859, and both gave very nearly the same representation of the circumstances under which the Regent contracted debts on behalf of the Nabob, his nephew, during his minority. He would refer the Council to the 6th para. of the second letter, in which it was said—

"As a general principle, there is no question that *ex post facto* legislation is highly objectionable, and so far the Judges' remarks must be submitted to be correct; but the Court seems to me not to have sufficiently considered the particular circumstances which called for and justified the passing of this particular Act, and which I shall here shortly re-capitulate, in case Government should wish to submit them for the consideration of Her Majesty's Secretary of State for India, in case the subject should be discussed in Parliament."

Here, it appeared to him (Mr. Sconce) that even the Advocate General supported the observation of the Judges as to *ex post facto* legislation; only he added, that the Judges did not sufficiently consider the particular circumstances of this case, and he went on to show what the circumstances were that the Judges overlooked. Now, he (Mr. Sconce) would say he was well satisfied that, if the Advocate General were present at this time to hear what he was about to state, the learned Gentleman would recede from the position he took up in his communication with the Government, and would acquit the Judges of not having sufficiently considered the facts which the learned Gentleman thought justified his opinion of the debts contracted by the Regent. It would be seen from the 8th and 9th paragraphs of the letter of 20th August 1859, and in the 20th paragraph of the letter quoted by the Select Committee, that the Advocate General endeavored to discredit the claim of creditors by showing that they had been warned by the Government not to lend money to the Regent, and that no such debts would be held to bind the Nabob, or be paid from his revenues. The latter paragraph was as follows:—

"Government also ordered him to inform all who had had money dealings with the Circar, that in future they must look for payment only to the individuals to whom they might lend money, and that no such debts would be discharged from, or recognised as binding upon, the Nabob's income, and the Naib-i-Mooktar in reply assured Government that he had given his warning accordingly. This was in 1827."

Here there could be no doubt of the meaning of the Advocate General. He plainly said that the creditors could not look for payment, because they had been warned by the Regent not to lend him money, and the Regent had assured Government he had so warned them. But he could have no difficulty in satisfying the Council, that the Advocate General misunderstood the facts of the case. In the 4th paragraph of the Regent's letter of 28th January 1828, at page 28 of the printed papers, would be found the statement that the Regent did make to Government: and it will be seen that as to himself he gave no warning at all. He wrote—

"I have at the same time explained to all the creditors that they must look for the repayment of such debts *as may not be incurred by the Circar* to those to whom their money has been lent."

He expressly excepted the debts that might be incurred by the Circar, that is himself, on the part of the Nabob, and intimated in the plainest language, that the warning given by him applied to debts contracted by others. Indeed, in the 3rd paragraph of the same letter the Regent reserved to himself the option of borrowing money; only he said it should not be a large sum. He would repeat then that the loans made by the creditors to the Regent could not be discredited on the supposition that they had been warned against any such transaction; and that the correspondence did not bear out the statement of the Advocate General upon that point.

But, again, he would show a very material misconception of the Advocate General on another point. In the 21st paragraph of the letter quoted by the Select Committee, the Advocate General wrote as follows:—

"Subsequently, and on several occasions, the Naib-i-Mooktar assured the Government (which at his request had increased the monthly allowance by fourteen thousand Rupees) that the Circar was quite free from debt; that there was no occasion whatever for contracting any fresh debt; that the income was not only ample for all necessary expenses, but sufficient to admit of his laying by, from 1833, a sum of one lakh of Rupees annually, to form a fund for the expenses of the young Nabob's majority."

Here the object of the Advocate General was obviously to intimate that, after a general warning had been given to all parties concerned against lending or borrowing money, the Regent had constantly assured Government that he had borrowed no money on behalf of the young Nabob, and that the Circar, that is the Nabob, was free from debt: and that accordingly, in the face of such assurance, the creditors were not entitled to consideration. Now, he would ask the Council again to refer to the printed papers for the disproof of this statement. At page 30, in a letter of 3rd January 1831, it would be found that the Regent admitted he had borrowed money to the amount of five lakhs and ninety-one thousand Rupees, or nearly six lakhs: nor was this all. The mere assertion by the Nabob, though repeated in subsequent letters, might not go for much: but what seemed to him (Mr. Sconce) to have a close bearing on the merits of this business was that the Governor of Madras, in repeated letters, recognised the existence of these debts, and permitted or required the Regent to repay the money borrowed out of the income of the Nabob. The letters to which he referred were those of 15th February 1831, 4th November 1831, and 19th March 1832. The case then stood thus—the Government disapproved of the Regent borrowing money on behalf of the infant Nabob, but at the same time his power to do so was admitted; he stood forth to the creditors as vested with that power, and with the sanction of the Government, the money lent was to be repaid. Was it the intention of the Government or of the Legislature that Government should disavow now the fairness of the debts that were contracted up to 1831? Suppose that any portion of the debt of five lakhs and ninety-one thousand Rupees, which had been borrowed up to 1831, was undischarged at the Nabob's death, then he feared that the Act of 1859 acted unfairly towards the creditors, by putting them upon proof which nearly thirty years before the Government of Madras had dispensed with.

Upon the whole, then, he was not satisfied to follow the course which the Resolution, moved by the Honorable and learned Vice-President, proposed, and he should vote against its adoption.

SIR CHARLES JACKSON wished to say a few words in answer to what had fallen from the Honorable Member for Bengal. The Honorable gentleman considered it inexpedient to call upon the Council, as now constituted, to consider the policy and character of the Act of 1858, inasmuch as only three of the Members present were connected with the passing of that Act. But the Honorable Member forgot that it was the Act of 1859 which was now attacked by the Judges,

and no less than seven Members now present were also in the Council when the latter Act was passed. Then the Honorable Member said that the position of the Judges was different from that of this Council. The former had only the bare words of two Acts before them. Whose fault was that? The learned Advocate General had offered to lay before them evidence which would have put them in possession of all the surrounding facts of the case, but they refused to receive that evidence. In answer to the remarks which the Honorable Member for Bengal had made on the subject of retrospective legislation and about the Judges having taken the popular view of the question, he would admit that retrospective enactments were, as a general rule, to be avoided. Now, if the present case was merely one of the nature suggested—namely of a suitor being brought into Court by one Act, and turned out of it by another—the case would have assumed a different complexion. But the questions were, *first*, whether the learned Judges were right in their construction of the Act of 1858; and, *second*, whether the claimants had any vested rights under the Act of 1858. He did not mean to follow the Honorable and learned Vice-President in his very able statement; but he would just observe that the learned Judges at Madras had lost sight of one very material fact in the case, namely, that Government were not liable to pay a single pice of these debts, and that their offer was a purely voluntary one. One would fancy, from the language of the learned Judges, that the creditors had advanced the money to Government, and that Government was really indebted to them. But it was nothing of the kind. Suppose the Act of 1859 had been incorporated with the Act of 1858, what right would any creditor have had to complain? If the creditors did not accede to the offer made by these Acts, they might proceed by suit, and enforce their legal rights against the Nabob's estate. The Court of Directors very liberally chose to give them something more than this legal right, and because that voluntary offer, putting the case most favorably for the claimants, was couched in ambiguous language, it was gravely contended that the Council had no right to explain what was the real meaning of the Court's offer, as the first Act was considered as giving the creditor a vested right. Now what did the real injury to the creditor amount to, putting it at the highest? Merely this, that the position of a creditor coming in under Act XXX of 1858 might possibly be altered by the Act of 1859, in respect of costs incurred under the original Act which might not be allowed under the new Act. He (Sir Charles Jackson) would say that the creditor had no right to complain, because the donor, as soon as he found the nature of his gift was misunderstood, corrected the mistake and set himself right; but he might perhaps complain if that mistake had altered his position, and had mulcted him in costs. But surely this question of costs was not a question involving the British Constitution. It was difficult to see how the creditors would, under any circumstances, have recovered these costs from the Government, even if they had made out their claim; and the learned Vice-President had shown the difficulty we should have been in, if we had thrown the costs on the Government—costs which, according to our opinion (though from courtesy to the Judges, we did not so express it), could only have been incurred under an erroneous construction of Act XXX of 1858.

The Honorable Member for Bengal then referred to the Petition of one Narain Doss, which he (Sir Charles Jackson) had not had the benefit of seeing. And from that it appeared the petitioner had given up land, which had been mortgaged to him, to the Receiver under the Act, in order that he might come in and prove his claim under Act XXX of 1858, and that the property had been taken possession of by the Receiver; while, on the other hand, the Act of 1859 deprived him of the chances of making out his claim. If these facts were true, he (Sir Charles Jackson) saw no difficulty, for the Receiver would, in such a case, be bound to give up the mortgaged property or its proceeds.

It was preposterous to suppose, and he did understand that the petitioner was bold enough to assert, that the Government was going to keep that mortgaged security, and at the same time oppose the claim of the petitioner. But, as he had said before, this was not a question of costs. If the Council came to the conclusion that their meaning had been misconstrued, they were not only justified in correcting it, but they were bound to do so, for they had a duty to discharge to the Government and the Public as well as to those creditors.

Then it was urged by the Member for Bengal, that the claimants were put to much greater difficulty by the later Act, and obliged to prove that their claims were necessarily incurred for the use of the Nabob, according to the Act of 1859. Well, that came round to the same question again, for such was the original intention of the Council, and we say, as stated in the Report of the Select Committee, we were bound to declare that original intention. But, as a matter of fact, there would be no great difficulty in proving that the debts were incurred necessarily, if the facts were so, for the claimants could obtain the evidence of the Regent Azeem Jah to prove it, and it is obvious that the interest of Azeem Jah himself would lead him to favor the claimant if he could, as he thereby discharged himself from liability. The Honorable Member had mentioned a letter from Azeem Jah, in which he stated that he did not know the affairs of the Circar; but that was evidently an excuse then offered to justify his conduct, and was a mere general statement not applicable to these creditors. He would very probably be able now to say whether the claims were received for the use of the minor, or not.

The Honorable Member for Bengal lastly went into a long detail of the statements made by the Advocate General and set out in the Report of the Select Committee, which he contended were in some points incorrect; but the Report of the Committee did not refer to the Advocate General's letters as conclusive upon any facts, but merely with the view of showing upon what statements this Council had acted in passing these Acts, and of explaining what they meant by the words "fairly and justly." He (Sir Charles Jackson) felt it impossible to add a single word to the very clear statement of the Honorable and learned Vice-President, but he thought it necessary to say these few words in answer to the observations of the Honorable Member for Bengal.

SIR BARTLE FRERE said, that after what had been stated by the Honorable and learned Vice-President and the Honorable and learned Judge opposite (Sir Charles Jackson), it was quite unnecessary for him to say anything regarding the vindication of the former proceedings of the Council, which was embodied in the Report of the Special Committee, and which appeared to him (Sir B. Frere) to be as complete and convincing as it was possible for such a statement to be. It was clearly very advisable that the Report of the Special Committee should be made as public as the statements of the Madras Judges, to which it was in effect a reply; but in considering how this could be done, it struck him that the motion now before the Council was open to some risk of leading to a rejoinder from the Bench of the Supreme Court at Madras, and the result might be a sort of altercation between the two bodies, which would not be conducive to the dignity of either, and could lead to no result, but such as must prove in every way injurious to the cause of justice and good Government.

Again, the motion would not meet the possible evil which had been glanced at by the Honorable and learned Vice-President, when he pointed out the injustice of making the Indian Revenue liable for the costs in this case. There was nothing definite on record as to the amount of those costs. They might be sixteen hundred Rupees, as conjectured by the Honorable and learned Judge opposite (Sir Charles Jackson), or they might be much more; but whatever their amount, it was quite possible and probable that an effort would be made by motion in Parliament, or some other means, to move the Secretary of State

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pay them, and it was very desirable that the Secretary of State should have the means of knowing exactly how the case stood, and of resisting such a claim.

He (Sir B. Frere) would therefore put it to the Honorable and learned Vice-President and to the Council generally, whether the better course would not be to forward the Report of the Select Committee to the Executive Government for the purpose of being transmitted to the Secretary of State, and leave him to deal with the case as he thought best.

THE VICE-PRESIDENT said, he scarcely thought that the course proposed would be sufficient. The Judges had attacked the Council, and the Council not only had a right, but was bound to defend itself. There was a very important principle involved in the question, namely whether, if that Council having made a mistake, and afterwards rectified it, they should be liable to the imputation of passing a law of the grossest *ex post facto* charac ter? or if the Judges should fall into an error in construing an Act, might not the Council correct the error without its being declared from the Bench, that the legislation was "of the grossest *ex post facto* character," that "it violated the first principles of legislation and of Justice," that "the rights of every person throughout British India were in jeopardy," and that "we no longer lived under the shelter of the British Constitution?" He (the Vice-President) thought that, after such an attack had been made on the Council, they were bound to justify their conduct and assert how unwarranted and unfounded was the charge made against them. His object was to send Home this expression of the opinion of the case with the other papers, so that the Secretary of State for India might see how the case stood, and know what was the opinion of the Council with reference to the Act after they had considered the remarks which the Judges had made upon it. The Judges had gone out of their way in making any such remark. There had not been the slightest necessity for their making any observations of the kind. If they had thought the claimants had grievances in the matter, they could have said so, and in granting the petition, have thus given the parties time to forward their case as desired. But to cast such reflections on those who made the laws upon which it was the Judges' duty to act, and telling the people that they would no longer live under the shelter of the British Constitution if the Government at Home should not order the Act to be repealed, was a monstrous and novel procedure on the part of any British Judge sitting on the Bench.

The Honorable Member for Bengal had said that the learned Judges had not the whole of the facts before them. If so, why did they express an opinion without having a knowledge of the facts? It was scarcely to be supposed that he (the Vice-President), holding the high office which he had the honor to fill, could wish to infringe upon the rights and privileges of the Judges; but he felt bound to say that, on this occasion, the learned Judges of Madras, in making such remarks as they had done from the Bench, had very far exceeded that liberty of speech which ought to be allowed to them.

He (the Vice-President), before he sat down, wished to allude to the remarks made by the Honorable Member for Bengal with reference to the letter from the Governor of Madras, dated February 16th, 1831, relating to the debts contracted by Prince Azeem Jah. In that letter the Governor in paragraph 4 said:—

"It is with great regret that I find myself compelled to observe that your Highness's general statement of the finances of the Circar, contained in your note to the Government Agent, dated 3rd January last, is confused and unsatisfactory, and that your explanation of the reasons for contracting so large an amount of debt is inadequate. These documents exhibit a state of things as contrary to the expectation which your Highness held out, as it is *conclusive* of the hopes in which the Government indulged, when your Highness entered upon the responsible office of Administrator of the Nabob's affairs, during His Highness's minority. Instead of having made a reduction in the Circar's annual expenses to the extent of Rupees 4,93,355, as proposed in your plan, dated the 6th December 1825, your Highness has, since that period, contracted debts to the amount of Rupees 5,91,810—a

debt which, one-fourth of your promised savings, if carried into effect, would have rendered it unnecessary to incur. Why these savings were not made, no sufficient reason is given."

To this Prince Azeem Jah replied in a letter, dated 1st March 1831:—

"Having thus made all the necessary statements, I have now the honor to state the primary object which I have had in view from my first appointment as Naib-i-Mooktar, and to assure which to your Excellency, I do hereby make a solemn promise, that I shall, by observing all the particulars hereinbefore stated, and by discharging all the present debts of the Circar by the end of the next year from the balance of the one-fifth of the last, present, and next years, save positively from the year 1833 a sum not less than 1,00,000 Rupees, but more, if possible, in the Nabob's Treasury."

So that the Naib-i-Mooktar did actually promise to save in three years sufficient, not only to have paid off the debts incurred, but also to leave a surplus of one lakh a year. But it appeared that, instead of their being nine lakhs in the treasury, as the Nabob expected, when he came of age, there was only one lakh. The Naib-i-Mooktar then admitted that he had taken the eight lakhs out of the Treasury, and lent part of it, upwards of five lakhs, to the Begum his mother, and the rest to other parties. Thus there had actually been a saving of nine lakhs, but as the Naib-i-Mooktar had withdrawn and lent, as he had said, nearly eight of those lakhs, there remained only a little more than one lakh for the Prince when he became of age. This showed that the statement made by the Advocate General was correct. But whether such statement were correct or not, was not the real question. The question was, did the Council make a mistake or did they not? and if they did make a mistake, were they right in correcting such mistake? or ought they to have allowed the mistake to go uncorrected, and left the Government liable to pay nearly half a million sterling, which they had never agreed or intended to pay? It is certain that this Council never intended to render the Government liable to pay the money borrowed by the Naib-i-Mooktar for his own use, even though he might have borrowed it in the name of the Nabob. The Honorable Court of Directors, not being liable to pay any of the debts, had surely a right to say what they would, and what they would not pay.

Again the Council did not interfere with the past; they did not nullify any decision passed by the Judges or declare what the law had been, but merely declared what should be the law for the future. The Act did not affect any debts contracted upon the faith of, or after the passing of the first Act. The point at issue was, whether the course taken by the Council justified the Judges in using the expressions under consideration.

On the only other point alluded to by the Honorable Member for Bengal, of the creditor who had sent in his mortgage deeds, he (the Vice-President) would remark that hte fact did not affect the question. If the creditor was a creditor of the Nabob's, he was entitled to recover his debt: if he was only a creditor of Prince Azeem Jah, he ought not to have sent in his mortgage deed. In that case, however, he would be entitled to have them returned, or if the property had been sold, he would be entitled to the proceeds. He felt sure that there could be no desire to do anything inconsistent with justice and equity.

MR. WILSON said, he felt very great hesitation as to the line he should take in advising the Council upon the course which they ought to adopt with respect to the Motion under discussion. He thought they were in a position of great delicacy. On the one hand they had to uphold the dignity of their position as the only authorised law makers for this Empire, and on the other hand they must not forget the respect due to the dignity of the Bench. But the difficulty he felt was this, what practical conclusion would be arrived at by the course proposed to be taken? As his Honorable friend opposite (Sir Bartle Frere) very properly remarked, if this Resolution were passed, it could hardly be expected that the matter would stop there. He could only say for

Sir Bartle Frere

himself, that language of this nature, coming from the Bench, would rather raise in his mind an apprehension that the matter would not be allowed to rest where it was, if the Resolution were adopted. Was the Council obliged to support its own dignity by noticing the criticisms of the learned Judges? No doubt the quarter from which they proceeded was a high and influential quarter. But when Judges departed from their duty of expounding the law, as they frankly admitted they had, and passed strictures on those who made the law, the question arose, however high and dignified their position, whether the Council should notice any observations they made under those circumstances? Was it necessary for the dignity of this Council that they should do so? He did not think that the House of Commons would take such notice of a matter of this kind. If that Body were to do so, they would treat the matter as a breach of privilege, and the parties would have to answer at the bar of the House. But how far the House of Commons had the power of calling before it one of the Judges of the Superior Courts, he knew not, for he was happy to say that no case of this kind had ever occurred. Could not the Council rely upon the dignity of its own position? Was there nothing in public opinion to rely upon? Were the Council to be so fearful of their reputation that they could not rely upon the able statement which had been made to-day? The Council was still a new Institution, and he did not know how far, by law or by custom, it had the power to deal with questions of this kind. The British Parliament was the only authority competent to take the initiative to remove a Judge in England. He felt that the question was a good deal complicated, and that the danger would be rather increased by the course which this discussion had taken, by entering into the merits of the original case, and also into the proceedings of a long anterior period. The discussion could hardly be carried further without angry feelings being engendered, and, in the meantime, whilst the controversy was being continued, the Judges might be called upon to decide upon the merits of questions in dispute concerning those claims. He thought that the Council could not sufficiently thank the Honorable and learned Vice-President for his clear statement, and for the calm temper and high tone which he had adopted. He could not help feeling, however, that the dignity of this Council did not stand in need of any formal Resolution to vindicate it. To judge of this case, it was not necessary to go farther back than the period when the East India Company voluntarily offered to pay what no man could make them liable to do. Surely, when they did so, they had a full right to make any condition they pleased. If, in expressing their intention, any doubt existed, by reason of any mistake or ambiguity, it was not only justifiable, but the bounden duty of the Council to lose not a moment in correcting it. Nothing was more common in the Acts of the British Parliament than to read in the recital thereof the words "whereas doubts have arisen, be it therefore enacted." Therefore, on the merits of the case, he had no doubt. As to the policy of it, he would only say that it would be more consistent with the feeling of what was due to the dignity of this Council that the Honorable and learned Vice-President should rest content with moving that the Report of the Select Committee be received and sent to the Secretary of State. He begged that the Honorable and learned Vice-President would pardon him for offering this suggestion; the only justification he would offer for doing so was that he thought that it would be for the public interest if that course were taken.

THE VICE-PRESIDENT felt much obliged to the Right Honorable Gentleman for the remarks he had made, but he (the Vice-President) felt that they ought to do more than merely send up the Report of the Select Committee to the Secretary of State. The remarks of the Judges were made upon an application, that the hearing of the claim of Gunsham Doss might be

postponed until the first term of next year, or until such other time as the Court might think fit, on the ground that the claimant himself and a great number of the claimants were injuriously affected in the prosecution of their claims by Act XVI of 1859, and were about to petition Her Majesty's Secretary of State for India to procure the disallowance of this Act, and also to petition the Imperial Parliament to repeal it. So that the Chief Justice not only granted the application and postponed the hearing, as solicited, but also in effect backed that appeal, by declaring that the application and the proposed petition were to be supported on public grounds; that the case of the petitioner was the case of the community at large, for, if such legislation was allowed to stand, and to serve as a precedent for future legislation, then the rights of every person throughout British India were in jeopardy, and we no longer lived under the shelter of the British Constitution.

Thus, not merely deciding it was a case which ought to stand over, but actually backing that petition with a judgment in favor of it.

SIR CHARLES JACKSON said that the Council must do one of two things—they must either do something in the matter, or they must leave it alone. They could not leave it alone. They had heard that a Petition from those claimants was going Home to the Secretary of State, backed as it would be by the opinion of the Judges. Under these circumstances, the Secretary of State would expect this Council to forward to him their opinion in the case. Setting aside altogether all questions of a personal nature, this Council, whose Acts were liable to review at Home, had to explain the case for the information of the Secretary of State in Council. Then, if they were to do something, he thought it would be insufficient to send Home the Report of the Select Committee, as it would be only an exposition of the views of four of the Members of that Council. He was very anxious that they should be unanimous in whatever they did, and he would therefore propose that the Report of the Select Committee should be adopted by the whole Council, and forwarded to the Secretary of State. This would be a sufficient expression of their opinion in the matter.

THE VICE-PRESIDENT said, he would be very glad to adopt the suggestion of the Honorable and learned Judge. In doing so, it appeared to him that his object would be perfectly as well answered as by the course proposed by himself. Rather than act upon his own view, he was quite willing to assent to the proposition of transmitting to the Secretary of State for India the Report of the Select Committee adopted as unanimously as possible by the Council.

MR. WILSON rose to explain that he had no wish that the Council should refrain from expressing an opinion upon the matter. He only objected to their passing a Resolution in the manner proposed, as he thought that it would lead to endless altercation, which would have no good effect and add nothing to the dignity of their proceedings. It would be better perhaps to adopt the Report of the Select Committee, and then transmit it to the Secretary of State, who alone had the power of dealing with such matters.

The Motion was by leave withdrawn.

THE VICE-PRESIDENT then moved that the Report of the Select Committee be adopted and transmitted to the Secretary of State for India.

Agreed to.

THE VICE-PRESIDENT moved that Sir Bartle Frere be requested to take the Report to the President in Council, in order that it might be transmitted to the Secretary of State.

Agreed to.

NOTICE OF MOTION.

MR. WILSON gave notice that he would next Saturday move the first reading of a Bill for extending to the whole of India a system of well secured convertible Paper Note Currency.

REGISTRATION OF ASSURANCES.

MR. FORBES moved that the Bill "to provide for the Registration of

Assurances" be referred to a Select Committee consisting of Mr. Harington, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would next Saturday move the third reading of the Bill "for regulating the establishment and management of Electric Telegraphs in India."

Also the third reading of the Bill "to make provision for the speedy determination of certain disputes between Workmen engaged in Railway and other public works and their employers."

The Council adjourned.

This Leaf to be cancelled on the Issue of Part III.

STATEMENTS

REFERRED TO

BY THE RIGHT HONORABLE MR. WILSON,

IN HIS

FINANCIAL STATEMENT

TO THE

LEGISLATIVE COUNCIL,

On the 18th February 1860.

An Account of the Estimated Gross Public Income a

Income.		£ @ 2s. the Rup
Revenue, Land, Sayer and Abkarree	.....	21,000,59
Customs, exclusive of Duty on Salt	.....	2,680,70
Salt .. { Sales and Excise	3,032,049	
{ Duty on Salt imported into Calcutta	750,000	
		3,782,04
Opium	.....	6,066,12
Miscellaneous	.....	4,176,73
		37,706,20
Receipts from Railway Companies on account of Traffic in India	.....	330,70
		38,036,90
Excess of Expenditure over Income in India ..	.....	3,783,10
		£ 41,820,01

DIA.

Expenditure of India in the Year ending the 30th April 1860.

Expenditure.		£ @ 2s. the Rupee.
Cost of Collection of Revenue, comprising Charges, Collection of Land, Sayer, Abkaree, Customs, Salt, Opium, Post Office and Stamp Revenue, also Payments other than Charges, Collection, and Territorial and Political Pensions and Allowances to District and Village Officers and Enamdars, including Charitable Grants	.....	7,317,845
Charges on Revenue.		
Interest of Debt in India	.....	3,035,667
Military Charges in India, including Extra Levies, and Local Corps and Repairs and Construction of Buildings....	18,460,240	
Stores from England charged in the Indian Accounts	1,004,920	
		19,465,160
Marine Charges in India, including Public Works Charges	816,645	
Stores from England charged in the Indian Accounts	103,660	
		920,306
Civil Charges in India, including Civil and Political Establishments, Judicial and Police Charges, and Charges for Buildings, Road and other Public Works, except Military and Marine	8,898,890	
Stationery, Mint and other Stores from England charged in the Indian Accounts	292,170	
		9,191,060
Miscellaneous Charges in India	.....	1,839,981
		41,770,018
Interest to be paid in India on Railway Capital guaranteed	.....	50,000
		£ 41,820,018

Debt of the Government of India.

On the 30th April.	In India.	In London.	Total.	Interest payable.
	£	£	£	£
1834	37,827,715	3,523,237	41,350,952	1,959,59
1835	36,250,297	3,523,237	39,773,534	1,908,71
1836	31,821,118	3,522,925	35,344,043	1,638,58
1837	32,433,329	3,522,825	35,956,154	1,679,40
1838	32,266,553	1,734,300	34,000,853	1,589,11
1839	32,246,573	1,734,300	33,980,873	1,574,76
1840	32,750,696	1,734,300	34,484,996	1,596,63
1841	34,187,827	1,734,300	35,922,127	1,673,79
1842	36,670,173	1,734,300	38,404,473	1,799,82
1843	38,744,340	1,734,300	40,478,640	1,904,86
1844	40,149,150	2,299,600	42,448,750	1,962,85
1845	41,203,150	2,299,600	43,502,750	2,013,68
1846	41,592,249	2,299,600	43,891,849	2,032,39
1847	44,584,626	2,799,600	47,384,226	2,218,43
1848	45,957,614	3,899,500	49,857,114	2,337,52
1849	47,151,019	3,899,500	51,050,519	2,416,88
1850	50,035,268	3,899,500	53,934,768	2,525,11
1851	51,199,815	3,899,500	55,009,315	2,502,81
1852	51,215,193	3,899,500	55,114,693	2,548,48
1853	52,313,094	3,899,500	56,212,594	2,563,03
1854	49,762,876	3,894,500	53,657,376	2,250,18
1855	51,615,927	3,894,400	55,510,327	2,330,55
1856	53,848,927	3,894,400	57,743,327	2,439,05
1857	55,546,652	3,894,400	59,441,052	2,525,37
1858	60,704,084	8,769,400	69,473,484	3,027,70
1859	66,228,007	14,649,000	80,877,007	3,628,61
1860	71 202,807	26,649,000	97,851,807	4,461,02

Memo. of Surplus or Deficit in the Revenues and Charges of India (including Home Charges) from 1814-15 *to* 1859-60.

The entry for 1829-30 is taken from the Accountant General's Annual Report for that year. The entry for 1859-60 is according to the Regular Estimate. The rest of the entries are taken from the Parliamentary Returns.

Year.	Surplus.	Deficit.	Remarks.
	£	£	
1814-15	.....	102,992	Nepal and Mahratta Wars.
1815-16	.....	1,039,546	
1816-17	.....	369,005	
1817-18	.....	792,665	
1818-19	.....	1,380,059	
1819-20	.....	1,761,664	
1820-21	117,262	.....	
1821-22	610,698	.....	
1822-23	1,743,139	.....	
1823-24	.....	847,091	
1824-25	.....	2,961,147	First Burmese War and the Siege of Bhurtpoor.
1825-26	.....	4,953,918	
1826-27	.....	2,396,320	
1827-28	.....	3,151,144	
1828-29	.....	927,629	
1829-30	1,070,534	.....	
1830-31	109,199	.....	
1831-32	.....	207,581	
1832-33	.....	264,332	
1833-34	49,398	.....	
1834-35	.....	194,477	
1835-36	1,411,513	.....	
1836-37	1,248,224	.....	
1837-38	780,318	.....	
1838-39	.....	381,787	Affghan, Scind and Gwalior Wars.
1839-40	.....	2,138,713	
1840-41	.....	1,754,825	
1841-42	.....	1,771,603	
1842-43	.....	1,346,011	
1843-44	.....	1,440,259	
1844-45	.....	743,893	
1845-46	.....	1,496,865	First Sikh War.
1846-47	.....	971,322	
1847-48	.....	1,911,986	
1848-49	.....	1,473,225	Second Sikh War.
1849-50	354,187	.....	
1850-51	415,443	.....	
1851-52	531,265	.....	
1852-53	424,257	.....	Second Burmese War.
1853-54	.....	2,044,117	
1854-55	.....	1,707,364	
1855-56	.....	972,791	
1856-57	.....	143,597	
1857-58	.....	7,864,222	
1858-59	.....	13,393,137	
1859-60	.....	9,290,129	

Value of the Imports into British India from the United Kingdo and other Countries in each year, from 1834-35 *to* 1858-59.

Years.	Merchandise.			Treasure.
	From United Kingdom.	From other Countries.	Total.	
	Rupees.	*Rupees.*	*Rupees.*	*Rupees.*
1834-35 ..	2,68,22,216	1,57,88,849	4,26,11,065	1,89,30,2
1835-36 ...	3,13,54,106	1,64,64,372	4,78,18,478	2,14,64,6
1836-37 ...	3,83,05,042	1,70,64,860	5,53,69,902	2,03,61,6
1837-38 ...	3,21,06,633	1,82,18,078	5,03,24,711	2,64,01,0
1838-39 ...	3,50,59,300	1,73,47,467	5,24,06,767	3,01,09,1
Average of 5 years...	3,27,29,459	1,69,76,725	4,97,06,184	2,34,53,3
1839-40 ...	4,28,94,892	1,54,17,476	5,83,12,368	1,94,52,6
1840-41 ...	6,01,43,398	2,40,16,007	8,41,59,405	1,78,62,5
1841-42 ...	5,43,95,648	2,34,90,005	7,78,85,653	1,84,13,3
1842-43 ...	5,35,49,012	2,24,87,017	7,60,36,029	3,44,32,9
1843-44 ...	6,34,73,490	2,47,04,484	8,81,77,974	4,79,46,7
Average of 5 years...	5,48,91,288	2,20,22,997	7,69,14,285	2,76,21,6
1844-45 ...	7,95,21,795	2,80,18,864	10,75,40,659	3,75,24,7
1845-46 ...	6,47,71,431	2,61,03,363	9,08,74,794	2,49,59,5
1846-47 ...	6,42,04,045	2,47,62,600	8,89,66,645	2,93,99,2
1847-48 ...	5,79,02,284	2,80,73,886	8,59,76,170	1,97,33,9
1848-49 ...	5,51,21,104	2,83,26,938	8,34,48,042	4,20,45,0
Average of 5 years...	6,43,04,131	2,70,57,130	9,13,61,262	3,07,32,4
1849-50 ...	7,57,89,807	2,72,09,079	10,29,98,886	3,39,68,0
1850-51 ...	8,28,71,447	2,73,69,413	11,02,40,860	3,55,69,0
1851-52 ...	9,13,20,777	2,56,49,409	11,69,70,186	4,44,92,1
1852-53 ...	7,18,45,407	2,38,03,895	9,56,49,302	6,09,01,3
1853-54 ...	8,41,13,995	2,78,33,472	11,19,47,467	4,87,74,8
Average of 5 years...	8,11,88,286	2,63,73,053	10,75,61,340	4,47,41,0
1854-55 ...	9,76,57,483	2,93,46,409	12,70,03,892	2,02,89,4
1855-56 ...	10,89,08,096	2,93,96,354	13,83,04,450	11,29,38,4
1856-57 ...	11,29,33,550	2,75,48,373	14,04,81,923	14,39,84,8
1857-58 ...	11,64,64,352	3,23,80,575	14,88,44,927	15,69,31,3
1858-59 ...	16,85,69,087	4,50,95,392	21,36,64,479	12,70,11,2
Average of 5 years...	12,09,06,513	3,27,53,420	15,36,59,934	11,22,31,0

Value of the Exports from British India to the United Kingdom and other Countries, in each year, from 1834-35 *to* 1858-59.

Year.	Merchandize.			Treasure.
	To United Kingdom.	To other Countries.	Total.	
	Rupees.	Rupees.	Rupees.	Rupees.
1834-35 ...	3,05,69,730	4,93 64,473	7,99,34,203	19,47,407
1835-36 ...	3,97,53,038	7,13,11,917	11,10,64,955	10,81,093
1836-37 ...	4,91,54,702	8,32,47,130	13,24,01,832	26,39,340
1837-38 ...	4,35,38,221	6,88,89,580	11,24,27,801	34,06,563
1838-39 ...	4,51,31,593	7,26,16,100	11,77,47,693	34,79,058
Average of 5 yrs.	4,16,29,456	6,90,85,840	11,07,15,296	25,10,692
1839-40 ...	5,96,99,519	4,89,27,937	10,86,27,456	47,05,231
1840-41 ...	7,05,43,881	6 40,11 961	13,45,55,842	36,64,859
1841-42 ...	7,12,07,484	6,70,44,692	13,82,52,176	51,50,757
1842-43 ...	5,82,09,658	7,73,08 588	13,55 18,246	21,57,966
1843-44 ...	7,76,01,283	9,49,33,489	17,25,34,772	74,60,763
Average of 5 yrs.	6,74,52,365	7,04,45,333	13,78,97,698	46,27,915
1844-45 ...	7,24,06,197	9,34,95,927	16,59,02,124	1,10,68,402
1845-46 ...	6,65,89,433	10 36,97,303	17,02,86,736	81,60,284
1846-47 ...	6,51,16,865	8,84,37,510	15,35,54,375	71,38,696
1847-48 ...	5.63,38,267	7,62,85,708	13,31,23,970	1,42,60,380
1848-49 ...	6,19,19,593	9,89,65,425	16 08,85,018	2,53,97,425
Average of 5 yrs.	6,45,74,071	9,21,76,373	15,67,50,444	1,32,05,037
1849-50 ...	7,02,64,706	10,28,58,287	17,31,22,993	97,12,441
1850-51 ...	7,00,70,203	5,86,11,103	12,86,81,306	37,72,015
1851-52 ...	6,27,72,181	7,17,44,519	13,45,16,700	69,47,656
1852-53 ...	7,02,25,901	6,87,02,845	13,89,28,746	37,98,357
1853-54 ...	6,57,74,650	10,39,55,307	16,97,29,957	80,93,027
Average of 5 yrs.	6,78,21,528	8,11,74,412	14,89,95,940	64,64,699
1854-55 ...	6,65,26,859	10,28,99,108	16,94,25,967	96,99,057
1855-56 ...	8,92,06,633	11,32,97,939	20,25,04,572	57,99,399
1856-57 ...	8,70,43,498	13,04,65,709	21,75,09,207	1,24,27,398
1857-58 ...	9,71,17,029	15 29,39,034	25,00,56,063	81,94,372
1858-59 ...	9,92,25,965	17,06,65,038	26,98,91,003	64,10,062
Average of 5 yrs.	8,78,23,996	13,40,53,365	22,18,77,362	85,06,057

Statement showing the number of Estates sold in the permanently settled Districts of the Lower Provinces, from 1834-35 *to* 1858-59.

Year.	No. of Estates sold.	Sudder Jumma or Rent.	Average Sudder Jumma per Estate.
		Rupees.	*Rupees.*
1834-35 ...	953	4,81,403	505
1835-36 ...	844	9,50,608	1,126¼
1836-37 ...	1,774	5,81,902	328
1837-38 ...	1,101	7,89,436	717
1838-39 ...	1,133	5,36,677	473½
1839-40 ...	1,011	3,37,514	333¾
1840-41 ...	025	1,80,918	289½
1841-42 ...	759	2,75,754	363¼
1842-43 ...	762	2,60,492	341¾
1843-44 ...	947	1,69,299	178¾
1844-45 ...	658	1,53,683	233½
1845-46 ...	745	2,12,859	285¾
1846-47 ...	1,435	1,35,138	94
1847-48 ...	1,204	3,07,816	255½
1848-49 ...	1,117	3,07,253	275
1849-50 ...	1,508	2,13,923	141¾
1850-51 ...	1,248	5,79,036	464
1851-52 ...	925	1,30,139	140¾
1852-53 ...	854	95,874	112¼
1853-54 ...	097	1,14,608	164½
1854-55 ...	583	71,356	122¼
1855-56 ...	495	38,364	77½
1856-57 ...	549	63,219	115
1857-58 ...	556	59,371	106¾
1858-59 ...	494	14,493	29¼

Average of 7 *years.*

No. of Estates.	Sudder Jumma.
1,097	5,67,515

Average of 7 *years.*

No. of Estates.	Sudder Jumma.
604	65,326

Total Income and Expenditure of each Division of Territory, 1856-57 to 1859-60.

	Income.					Expenditure.			
	1856-57.	1857-58.	1858-59.	1859-60.		1856-57.	1857-58.	1858-59.	1859-60.
	Co.'s Rs.			Estimated.		Co.'s Rs.			Estimated.
Government of India	3,01,91,798	2,03,17,737	2,75,38,310	3,41,04,886	Government of India	11,00,63,623	13,64,25,088	18,88,83,417	17,41,47,672
Bengal ..	11,05,91,357	12,37,35,696	12,45,44,154	12,65,77,902	Bengal ..	4,06,12,856	4,32,55,198	4,29,53,464	4,33,16,349
North Western Provinces ..	5,27,40,232	3,04,55,896	5,46,42,592	5,53,25,000	North Western Provinces ..	2,22,15,001	2,31,77,535	2,68,50,465	2,41,25,000
Punjab ..	2,77,89,032	2,44,86,551	2,89,30,024	2,91,76,500	Punjab ..	2,22,03,162	1,62,87,030	2,01,98,351	1,92,01,600
Total ..	22,13,12,419	19,89,95,880	23,56,55,080	24,51,84,288	Total ..	19,50,94,642	21,91,44,851	27,88,85,697	26,07,90,621
Bombay ..	5,40,50,996	6,08,16,431	6,15,36,719	6,86,97,400	Bombay ..	5,62,41,859	6,63,10,212	8,10,92,072	8,12,60,160
Madras ..	5,76,70,497	5,66,20,366	6,24,58,383	6,31,80,400	Madras ..	5,66,54,248	6,61,01,114	7,49,72,479	7,56,49,400
Grand Total..	33,30,33,912	31,64,32,677	35,96,50,182*	37,70,62,088	Grand Total..	30,79,90,749	35,15,56,177	43,49,50,248*	41,77,00,181

30th January 1860.

(Signed) C. HUGH LUSHINGTON.

* With reference to the years 1858-59, the accounts of actuals in that year have been received from the several Accountants, in the Financial Department, but the general account is not yet completed in that Department. It is believed however that the above result will be found nearly correct.

Amount of Charges for Military, Civil Corps, New Levies, Police, and Military Public Works, stated separately as far as they can be, for the years 1856-57, 1857-58, 1858-59, *and estimated* 1859-60.

GOVERNMENT OF INDIA, BENGAL, N. W. PROVINCES, AND PUNJAB.

	1856-57.	1857-58.	1858-59.	1859-60.
	£	£	£	£
Military	5,973,784	8,524,561	11,477,220	8,202,380
Civil Corps,—Oude, Pegu, &c.	273,733	132,404	135,802	144,100
New Levies	256,783	483,374	1,393,657	1,430,860
Police	764,616	697,970	1,461,946	1,370,150
Total	7,268,916	9,838,309	14,468,625	11,147,490
Military Public Works	174,718	178,871	769,260	1,281,930
Total	7,443,634	10,017,180	15,237,885	12,429,420
Bombay.				
Military	1,879,895	2,568,726	3,767,941	3,927,365
Civil Corps	171,086	210,250	243,328	281,430
New Levies	0	0	0	0
Police	357,299	374,663	327,227	305,304
Total	2,408,280	3,153,639	4,338,496	4,514,099
Military Public Works	80,347	73,465	175,361	110,650
Total	2,488,627	3,227,104	4,513,857	4,624,749
Madras.				
Military	3,005,283	3,053,450	4,633,774	4,303,030
Civil Corps	0	0	0	0
New Levies	0	0	0	0
Police	150,418	177,490	204,411	240,057
Total	3,161,701	3,830,946	4,838,185	4,543,087
Military Public Works	119,492	140,444	127,711	135,425
Total	3,281,193	3,971,390	4,965,896	4,678,512
Total, exclusive of Public Works	12,838,897	16,822,894	23,645,306	20,204,676
Grand Total, inclusive of Public Works	13,213,454	17,215,674	24,717,638	21,732,681

Total Annual Expense of the Military Force of India, in each year from 1834-35, *according to the Annual Military Statements received from India.*

Year.	Buildings, Works and Stores and other Military Charges.	Total.	Remarks.
	£	£	
1834-35	1,164,692	7,041,162	These entries are taken from the Statement annexed to the Report from the Select Committee on Indian Territories, dated 29th June 1852, and include charges on account of Military Buildings.
1835-36	1,156,005	6,847,096	
1836-37	1,302,242	6,885,851	
1837-38	1,422,019	7,141,439	
1838-39	1,239,100	7,607,514	
1839-40	1,461,461	8,454,208	
1840-41	1,372,353	9,006,433	
1841-42	1,404,326	9,193,745	
1842-43	1,469,805	9,562,524	
1843-44	1,730,427	9,558,306	
1844-45	1,621,789	9,634,985	
1845-46	2,033,421	10,384,249	
1846-47	2,297,028	10,598,016	
1847-48	2 180,325	9,932,209	
1848-49	1,861,808	10,739,647	
1849-50	1,701,562	10,098,920	
1850-51		10,715,145	These entries are taken from the Statements of Receipts and Disbursements prepared in the Financial Secretary's Office and are exclusive of Military Works charges. Rate of conversion into £ at 2*s.* the Co.'s Rupee.
1851-52		10,552,776	
1852-53		10,963,249	
1853-54		11,691,465	
1854-55		10,624,149	
1855-56		10,653,135	
1856-57		10,858,963	
1857-58		14,746,737	
1858-59		19,878,935	
1859-60 Estimated...		16,432,775	

Statement exhibiting the Amount of Cash Balances in the Indian Treasuri on the 30th of April in each Year, from 1834 to 1859.

	£	
30th April 1834	8,441,438	
„ 1835	9,745,056	
„ 1836	10,838,146	
„ 1837	10,514,861	
„ 1838	10,622,093	
„ 1839	9,518,541	
„ 1840	9,465,676	
„ 1841	8,979,795	
„ 1842	8,430,799	
„ 1843	9,831,414	
„ 1844	11,021,357	
„ 1845	11,537,085	
„ 1846	9,554,057	At 2*s*. the Co.'s Ru
„ 1847	10,691,804	
„ 1848	10,037,626	
„ 1849	11,042,456	
„ 1850	12,433,234	
„ 1851	12,982,174	
„ 1852	15,032,078	
„ 1853	15,439,134	
„ 1854	13,778,608	
„ 1855	10,049,202	
„ 1856	12,846,222	
„ 1857	13,611,534	
„ 1858	14,411,359	
„ 1859	10,707,020	
„ 1860	Estimated. 15,073,000	Estimate

Assurances" be referred to a Select Committee consisting of Mr. Harington, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

NOTICES OF MOTION.

MR. LEGEYT gave notice that he would next Saturday move the third reading of the Bill "for regulating the establishment and management of Electric Telegraphs in India."

Also the third reading of the Bill "to make provision for the speedy determination of certain disputes between Workmen engaged in Railway and other public works and their employers."

The Council adjourned.

Saturday, 3rd March 1860.

PRESENT:

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. B. Harington, Esq.,
Hon. Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon. J. Wilson,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

STAMP DUTIES.

THE CLERK presented to the Council a Petition from certain Life Assurance Associations, praying that transfers or assignments of Policies of Life Assurance by endorsement or writing be exempted from Stamp Duty.

MR. SCONCE said that the subject matter of this Petition had already been provided for in the Bill relating to Stamp Duties now before the Council. He should therefore only propose that the Petition be allowed to lie on the table.

Agreed to.

PAPER CURRENCY.

MR. WILSON rose and said:—

MR. PRESIDENT,—Sir, when I had the honor, a fortnight ago to lay before the Council an exposition of the Financial policy of Her Majesty's Government of India, and to propose that the people of India should be subjected to some new imposts, in order to relieve the necessities of the State, I then gave an assurance, on behalf of Government and myself, that we were deeply imbued with the necessity of taking stringent and bold measures for securing to India at the same time such administrative reforms as were urgently required, not only in order to secure the greatest possible economy, but the greatest efficiency in the public service. In pursuance of the notice which I gave last week, I now rise to propose our first measure in redemption of the pledge I then gave. Sir, I believe there is but one opinion throughout India, and I will add at home, that the currency of this great dependency of the British Empire is in a most unsatisfactory state; there may be, and no doubt there are, many different opinions as to the mode in which its glaring defects can be best amended; but at least all are agreed that amendment is loudly called for. And I think Honorable Members will agree with the Government in regarding this as one of the most important reforms in administration, and as one calling for the earliest attention of the Government and the action of this Council. Sir, I must say that I know no question of greater importance to the commerce, the industry, and the material well-being of a country, than that of the laws which regulate its currency. If your monetary condition be unsound, the country will be exposed, in an aggravated form, to all those vicissitudes which overtake trade, for a time paralyze industry, and impoverish the people—if, on the other hand, it be based on sound and solid principles, we may rest contented that we have at least taken