

12th January, 1893.

Sir Lepel Griffin's article in the *Fortnightly* of this month confirms in so striking a manner some of the most important statements contained in the paper of which the above is a reprint, that I have ventured, with the permission of the Editor of the *Asiatic Quarterly Review*, to append here the following remarks.

Sir L. Griffin says "I have never seen Aboar Rahman since the 11th August, 1881, when, at the close of long and anxious negotiations, he was received under the walls of Kábul by Sir D. Stewart and myself; and, immediately after the interview, we left to overtake the army which had already commenced its homeward march." Doubtless those negotiations involved much anxiety, since their object was to secure the least derogatory terms possible for our withdrawal from Afghanistan; to obtain the Amir's aid in enabling the force under Sir F. Roberts to reach Kandahár in time to relieve the British garrison besieged in that city, and to arrange for the remainder of our troops returning to India unmolested. All this occurred however in 1880, and it is doubtless through inadvertence that 1881 has been stated in Sir L. Griffin's article. The Amir's attitude he graphically depicts in the following sentences:—"He believes that he holds his throne by divine right. Instead of his attitude being that of a man under immense obligations to our Government, he has adopted *à la hant en bas* style, which is aggravating to the Foreign Office at Calcutta." Evidently, the Amir took a different view of the situation, and considered that we had, by seeking his assistance for escaping from a difficult position, placed ourselves under obligations to him.

The Afghan character is also forcibly described thus:—"The Afghan has a very tenacious memory for injuries, and he never fails to avenge them, should an opportunity occur. The Afghans are fierce, bloodthirsty, fanatical, and treacherous. Their highest virtue is courage, which they possess in a conspicuous degree."

Our embarrassing situation in the late war, when we called on the tribal chiefs to come and confer with us on the future government of their country, is also characteristically described, thus:—"When we were in Afghanistan we found it almost impossible to negotiate with any compact body of tribal chiefs, either in the Kohistán, Kabul, Jallálabád or Ghazni districts.—The Baluchis are as amenable to authority as the Afghans are the reverse.—Sir R. Sandeman held the Baluchi tribes in the hollow of his hand, by obtaining the confidence of their chiefs.—I doubt whether the English could govern Northern Afghanistan with comfort or credit."

On the other hand, some passages in Sir L. Griffin's article are somewhat enigmatical, while others again seem irreconcilable with historical facts. The writer says, for instance:—"The idea of selecting Abdur Rahman as a ruler of Northern Afghanistan, exclusive of Kandahár and Herat, had been approved by Lord Lytton, and the sagacious policy of the Viceroy in this selection, and the admirable manner in which it was developed by

him, have never received sufficient acknowledgment. The idea was a bold one and it was eminently successful." Now, Abdar Rahman having declined to entertain our proposal that Kandahár and Herát should be excluded from his kingdom, and such exclusion not having taken place, it is difficult to understand the drift of the above passage. Again the writer says: "Confronting Abdar Rahman with his own (inflammatory) letters, I presented him with what was literally an ultimatum, which he was wise enough to accept." But it is well known that the British Ultimatum of 1880, demanding territorial concessions, was not accepted, but was, on the contrary, entirely ignored.

The following, however, are passages which will doubtless be read with very great interest, seeing that they disclose the grounds of our present dispute with Abdar Rahman, and hint at what must follow, if that dispute be not satisfactorily settled:—"Afghanistan is the most important outwork of our Indian Empire, and we cannot afford to allow it to remain closed to us, as at present. We know very well what we want. First in importance may be placed an English Minister at Kábul, with officers as agents at Kandahár and Herát. Secondly, we require the extension of the railway to Kandahar, and telegraphic communication between Kábul, Herát, and British India. . . . It is quite certain that we do not desire again to occupy Afghanistan: it is equally certain that, if we occupy, we shall have to annex."

* That the above conditions will not be complied with by the Amir, is likewise quite certain; seeing that if Abdar Rahman accepted them, he would cease to be Amir, and we should once more have to deal with the numberless tribes of Afghanistan. If, therefore, Sir L. Griffin has spoken with authority, as his tone would imply, a third Afghan war may be considered as imminent.

J. D.

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A RECENT CRIMINAL PROSECUTION IN BENGAL

(Reprinted from THE LAW MAGAZINE AND REVIEW.
February, 1893.)

THE *Law Magazine and Review* for 1892 contained articles and letters on the administration of justice in India, which disclose the existence of a most deplorable condition of things in that country.* The practice followed by the Government of vesting Judicial powers in its Executive officers has resulted in complaints against the conduct of such officers being submitted to themselves or to other Executive officers for adjudication, whence difficulties have arisen in the way of obtaining redress for wrongs suffered at their hands, which have proved practically insuperable. A case has just occurred in Bengal, which strikingly illustrates how Government servants possessed of such powers may, with perfect impunity, commit the most flagrant acts of injustice and illegality.

A wealthy landowner, Raja Surya Kanta Acharya, was summoned in May last by the Assistant-Magistrate of Mymensing, to answer charges brought against him by the District Magistrate† under various sections of the Penal Code, amounting in substance to his having, in building his palace, encroached on 18 inches of the public road, and closed a drainage channel. The trial commenced on the 21st June, and while witnesses for the prosecution were being examined, the prosecutor, in his capacity of District Magistrate, directed a number of labourers, accompanied

* See No. CCLXXXIV., for May, *Fusion of Executive and Judicial Powers in India*; No. CCLXXXV., for August, *Judicial Independence in India*; and No. CCLXXXVI., for November, *Letters to the Editor on Judicial Independence in India*.

† He is also the District Collector of Revenue.

by an armed police force, to break down a portion of the wall of the Raja's palace and to excavate a drain in its grounds. In the meantime, the following words passed between the Assistant-Magistrate who was trying the case and Mr. M. Ghosé, counsel for the Raja.

Asst. Mag. : "Where is the Raja? I want him to appear. I want to put questions to him."

Counsel : "The Raja's personal attendance has been dispensed with, and we appear for him. We are authorised to answer any question that may be put."

Asst. Mag. : "I want to examine him."

Counsel : "If you insist on his appearance, he will be bound to appear; but you know the ideas and prejudices of the people on this subject."

Asst. Mag. : "If the Raja is above those prejudices, why should he not appear?"

Counsel : "His attendance has been excused by the District Magistrate. Why should he now be forced to appear?"

Asst. Mag. : "I can reverse that order."

Counsel : "Of course you can. I am sure, as a judicial officer, you will not do anything which will harass and annoy and compel him to come, except for a good object."

Asst. Mag. : "I think it a good thing for the Raja to appear. I insist on having the Raja before me to-morrow."

Counsel : "I will advise him to appear, but respectfully protest again, and submit that his attendance is unnecessary."

Asst. Mag. : "He has brought it all on himself."

Counsel : "That is a statement made on an *ex parte* view of the case."

Asst. Mag. : "I wish the Raja to attend and to remain present, and stand in the dock."

Counsel : "Will you insist on the Raja standing in the dock?"

Asst. Mag. : " Yes, he must stand here like any other man."

Counsel : " You have the power, but it is a question of discretion and judgment. I respectfully submit, it would not be a wise exercise of your power to compel him to stand in the dock."

Asst. Mag. : " I have decided to issue a process if he is not produced to-morrow. I shall issue a warrant."

Counsel : " Permit me to remind you that our Indian Courts are accustomed to respect the prejudices of the people of this country in these matters. Pray re-consider the matter."

Asst. Mag. : " He must attend to-morrow."

Accordingly, the next day, when the trial was resumed, the Raja entered and stood in the prisoners' dock, and the Assistant-Magistrate, after staring at him for some time, attended to another case in which a low-class criminal was made to stand in the dock by the side of the Raja, and was sentenced to one year's imprisonment. No question whatever was put to the Raja ; and, at the end of the day's proceedings, he was not allowed to leave the Magistrate's Court until he had given a surety of 1,000 rupees and his personal recognisance for a like sum to attend the next day. On returning to his palace, he was served with an order of the District Magistrate not to repeat the public nuisance by filling the drain or building up the wall.

On the 23rd June the Assistant-Magistrate proceeded to examine the Raja ; but the Raja's Counsel objected to the examination on the ground that no evidence had been adduced to justify it ; and, although the objection was over-ruled, the Raja declined to answer the questions put to him. Later, the Assistant-Magistrate stated that, acting on the advice of the District Magistrate, he dispensed with the personal attendance of the Raja, and cancelled the bail-bond executed the previous day.

On the 25th June a new Pleader appeared for the prosecution, and asked for an adjournment, on the ground of his requiring time to read the papers in the case. The Counsel for the defence protested against the delay as harassing to the Raja; but his objection was over-ruled.

On the 27th, when the trial was resumed, witnesses for the prosecution were recalled and examined, although the Counsel for the defence objected to this renewed examination on the ground that the Pleader for the prosecution had intimated on the 23rd that the prosecution had closed its case. Later on the 27th, the Assistant-Magistrate read out a charge, accusing the Raja of having, by an illegal omission, caused mischief within the meaning of Section 432 of the Penal Code, and also of having infringed District Board Bye-Law No. 2. The Counsel for the Raja asked whether the Court would call on the defence to meet any of the other charges referred to in the summons, or any other charge whatever, to which the Assistant-Magistrate replied:—"I do not call upon you to meet any other charge than those I have mentioned." Thereupon, Mr. Ghose called his witnesses, and the case was concluded at 2 p.m. on that day.

The Raja then filed a written statement setting forth, *inter alia*, that the prosecution had been instituted and carried on without any reasonable cause, and amounted to a malicious prosecution, that there never was any nuisance or encroachment likely to cause a nuisance; that the prosecutor must have been aware of the fact, and that he continued the prosecution in the hope of getting a conviction which might tend to justify his illegal proceedings in the eyes of the Government; that, with regard to a "proceeding" or statement signed by the prosecutor and placed on the record of the case, the assertion made in it that telegrams had been sent by or on behalf of the Raja to the *London Times* and the Viceroy, and that nearly

500 rupees had been spent by the defendant on the 21st June in sending telegrams, was absolutely devoid of foundation and should be expunged from the record.

On the 29th June the Assistant-Magistrate delivered his Judgment, in which he acquitted the Raja of the charge under the Bye-Law aforesaid, but convicted him under Section 432 of the Penal Code, and sentenced him to pay a fine of 500 rupees or undergo twenty days' simple imprisonment.

The Raja appealed from this Judgment to the Sessions Court of Mymensing on the following and other grounds:—

That the Assistant-Magistrate had been illegally and improperly influenced in his Judgment by instructions and advice, written as well as verbal, given from time to time by the prosecutor;

That the Assistant-Magistrate ought not to have permitted the prosecutor to converse with him out of Court or to advise or instruct him in any way regarding the case;

That the Assistant-Magistrate, in ordering him to attend and stand in the dock, acted in an illegal and unwarrantable manner, and that the sole object of doing so, as a reference to the proceedings would shew, was to insult and annoy him, and with no other object whatever;

That the Assistant-Magistrate ought not to have placed on the record the "proceeding" or statement drawn up by the prosecutor, containing matters of prejudice against him and his Counsel.

The appeal came for hearing on the 6th August, when the Judge handed to Mr. Ghose, Counsel for the Raja, a letter he had received from the prosecutor on the subject of the appeal. Later, the Judge handed to Mr. Ghose a printed paper which had also been forwarded by the prosecutor; after looking at that paper, Mr. Ghose said: "I ask your Honour not to read that paper judicially, as it relates to a matter which the High Court has already

disposed of, and with which we have nothing to do in the present appeal."

(The matter alluded to, it may be well to explain, was a petition of the Raja praying the High Court to set aside the District Magistrate's order of the 22nd June forbidding him to rebuild his wall. A rule had been granted calling on the District Magistrate to shew cause why that order should not be quashed, and was made absolute on the returnable date, the 5th August.)

Mr. Ghose expressed surprise at the letter which Mr. Phillips, the prosecutor, had written to the Judge, and said that it contained a variety of statements, the correctness of which he had no hesitation in challenging. Mr. Ghose then proceeded with his appeal, and after shewing that the offence of mischief was not made out, contended that the conviction under Section 432 of the Penal Code must necessarily fall through.

The Judge: "But if the conviction for mischief is not sustained, why should the Raja not be convicted for a public nuisance under Section 290?"

(This question was suggested by a note of the Assistant-Magistrate attached to Mr. Phillips's letter to the Judge, in which the Assistant-Magistrate said: "If I had given my decision under Section 290, I should certainly have convicted.")

Mr. Ghose: "I must express my surprise that Mr. Hallifax, the Assistant-Magistrate, should have so far forgotten himself as to oblige Mr. Phillips with a note such as he wanted, more than a fortnight after the decision of the case. In this note Mr. Hallifax not only says that he intended to convict the Raja of a public nuisance, but ventures to accuse those who have alleged that the Raja was acquitted of that offence, with 'wilful perversion of truth.' I am one of those who made the allegation, and I emphatically repeat that Mr. Hallifax acquitted the Raja

of that offence, in spite of anything which Mr. Hallifax may now choose to say to the contrary to oblige Mr. Phillips. We have nothing to do with Mr. Hallifax's intention expressed more than a fortnight afterwards. The question is what is the legal effect of Mr. Hallifax's action, having regard to what transpired in his Court. . . . Mr. Hallifax is young and inexperienced, and the responsibility of this sad exhibition on his part must attach to someone else who ought to have known better."

Mr. Ghose concluded by asking whether the Judge wished him to go into the grounds bearing upon the *bona fides* of the prosecution, and the remaining grounds of appeal, one of which raised the very important question whether Mr. Phillips, as District Magistrate, had the power, which he professed to possess, of interfering with the Judicial discretion of a subordinate Magistrate during the pendency of a case.

The Judge : "I think it would be wiser in me not to go into any of those questions. I think I ought to confine my judgment to the facts and the law bearing upon the conviction itself."

The Government Pleader then addressed the Court for the prosecution; and Mr. Ghose, in the course of his reply, observed that it was an insult to the understanding of the Court to argue, as the Government Pleader and Mr. Phillips had done, that the offence of "mischief," as defined in the Penal Code, included the offence of "public nuisance," as defined in Section 268 of that Code: finally he applied for authenticated copies of Mr. Phillips's letter to the Judge, and of the printed paper he had also forwarded. The Judge granted the application regarding the letter, but said he would have to consult Mr. Phillips regarding the printed paper, and that Mr. Phillips had acted improperly in writing to him while the appeal was pending.

The Judge then said that he would deliver Judgment after reading the decision of the High Court on the rule which had been made absolute on the previous day; whereupon Mr. Ghose observed that the decision of the High Court in that matter had nothing to do with his appeal. Ultimately, on the 25th August, the Sessions Court of Mymensing gave Judgment, setting aside the Assistant-Magistrate's conviction, and ordering the fine, if paid, to be refunded.

Thus terminated this extraordinary prosecution, the proceedings in which were marked throughout by unfairness and illegalities of a most startling character; and the Raja, in the existing system of Criminal administration in India, was left without any practical means of obtaining redress for the great wrong done to him. A groundless Criminal charge had been got up against him; his palace wall was broken down and his grounds were invaded in a manner specially calculated to imply insult and to lower his dignity in the eyes of the people; he was illegally made to attend before the Assistant-Magistrate and stand in the prisoners' dock by the side of a low-class criminal brought up for sentence; he was himself sentenced to Criminal punishment upon an obviously fictitious charge, while the prosecution was unjustifiably protracted by harassing proceedings and adjournments, which subjected him to prolonged mental suffering, and to a heavy expenditure estimated at some 20,000 rupees.

That the object of the prosecution was not the removal of a nuisance, is clearly shewn by the following and other incidents, which are recorded in the proceedings. When the Raja was charged with committing a nuisance by the closing of a drain, he immediately submitted a proposal for removing the alleged nuisance, but his proposal was rejected before it was read, and the prosecution was forthwith entered upon, accompanied by the wanton act of violence already mentioned. This incident, considered in connection

with the indignities deliberately inflicted on the Raja in the course of the proceedings,—with the illegal interference of the prosecutor with the discretion of the presiding Magistrate,—with the attempt of the prosecutor to influence the Sessions Judge at the trial of the appeal,—altogether betrays an intensely hostile feeling, for which no adequate cause was apparent.

The Raja (who is the head of an ancient Brahmin family) is said to be popular in society, with Europeans as well as with his own countrymen; and he is held in the highest estimation by the people at large. In August last the Lieutenant-Governor of Bengal, when laying the foundation stone of the Mymensing Water Works, the erection of which is due to the Raja's liberality, said:—"The many acts of utility and charity of Raja Surya Kanta Acharya merit the esteem of the public, and he is reckoned as the leading benefactor of the District." The Chairman of the Municipality had just before referred to some of the Raja's beneficent works, the Shutea Bridge, the Muktagacha Chantable Dispensary, his contributions in aid of the Medical College building, the Northbrook Hall, the Imperial Institute, Lady Dufferin's Fund, and the extension of the railway to Mymensing.

Now it is, to say the least, not creditable to the Government of Bengal that so distinguished a member of the community, for whose protection that Government is directly answerable, should have been wantonly subjected by Government servants to the outrageous treatment related above; and, in this connection, the following circumstance deserves particular attention.

On the 21st June, the Lieut.-Governor received from the Raja a telegram informing him that the Assistant-Magistrate had ordered the Raja to appear before him the next day in a Municipal case, and to stand in the prisoners' dock; and that the motive was "to disgrace him in the eyes of the

people."* The Lieut.-Governor had thus the opportunity of preventing the intended indignity, and his not having prevented it, nor, subsequently manifested any displeasure at the unwarrantable conduct of his subordinates, must create the impression that their conduct had at least his tacit permission, if not his approval. This is certainly a serious flaw in the record of a high official; at the same time the circumstance just mentioned strongly tends to support it, while the following considerations further confirm the painful impression expressed above.

Among the prominent measures recently initiated by the Government, the following have created widespread dissatisfaction, namely :—

The abolition of Trial by Jury in Bengal for offences against the person ;

The appointment of a Government officer to assess municipal rates and taxes in Bengal ; and

The imposition on the Municipalities in Bengal of financial burdens hitherto borne by the Imperial treasury.

The first of these measures deprives the people of the protection of a tribunal which had their confidence, and exposes their lives and liberties to Courts presided over by Government servants, untrained in law and in the spirit of impartiality required for the proper administration of Justice.

The second measure takes from the Municipalities their most legitimate function, and converts them into hollow bodies, calculated to create the misleading notion that Indian communities exercise some measure of local self-government.

The third is a financial measure of an anomalous character, inasmuch as it increases local taxation, without the safeguard against abuse which is provided by the Constitutional right of Municipalities to assess local taxation.

It is not intended here to discuss these measures, and the above remarks are submitted only to shew that the

questions involved are of a nature to provoke strong popular opposition. Such opposition has, in fact, already been loudly manifested in India, where the agitation is spreading and growing in intensity. One of the steps adopted by the Government for overcoming the opposition of Municipalities has been to cause Official members of those bodies to be elected for presiding over them.

Now, the Municipality of Mymensing, ever since its foundation in 1886, invariably elected a non-official member as Chairman; but when a vacancy occurred in that office soon after Mr. Phillips's appointment to the District, he had his name proposed at the election by his subordinate, the Deputy Magistrate, who presided on the occasion. Thirteen votes out of fifteen, however, were given against Mr. Phillips, and, in a letter which he afterwards addressed to the Deputy Magistrate on the subject of the election, he referred to the Raja's influence over the Municipal Commissioners as being injurious to public interests.*

This view of the Raja's personal influence seems to have been adopted by Mr. Phillips, even before he had any official connection, and consequently any intimate acquaintance, with the affairs of the District, seeing that, in a Report for 1890-91, the year which preceded his appointment, he inserted remarks in which the following sentences occur:—"The Raja appears to be *facile princeps* in power and influence. I think he is a man of energy and determination and considerable force of character. . . . It is said that he shews want of sympathy for his tenantry;" then referring to "the Municipality of the sub-division of Muktagacha, the Raja's native village, Mr. Phillips goes on

Soon after this defeat the Government prepared a Bill (to amend the Municipal Act of 1884), authorising the Executive at any time to deprive a Municipality of the power of electing its Chairman, without assigning any reason, or even alleging any necessity for the change. The Bill, revised in Committee, now approaches its final stages.

to say: "The Raja is Chairman, and, as his influence is paramount, he may be said to be the Municipality." Further, he remarks with reference to Mymensing: "A single powerful rich man can smash a Municipality with litigation. This deters the Municipality from effecting improvements which they would otherwise effect."

It will be seen from these reports that the Raja had been represented to the Government as a man with whom it would be necessary to reckon in case any measure distasteful to the community had to be carried. Under all these circumstances, and especially in view of the umbrage taken at the Raja's personal influence, it is quite probable that, if the prosecution had been successful (and a conviction would certainly have been secured but for the intervention of the barristers from the High Court), further indignities would have been devised and inflicted on the Raja for effectually lowering his social position and weakening his personal ascendancy over his fellow subjects.

At the time when the prosecution of the Raja was planned, the Government were preparing to bring out the three important measures already mentioned, and which, as they had good reason to believe, were certain to provoke strong opposition. There is nothing extraordinary, therefore, in Government servants striving to weaken such opposition by all the means in their power. On the other hand, no circumstance has come to light shewing that any private feeling of enmity had been entertained against the Raja, either by the two Mymensing Magistrates or by the Lieut.-Governor. His persecution, therefore, by the former, and the countenance lent to it by the Lieut.-Governor, seem intelligible only on the ground that the object was to destroy the Raja's influence, and thus to weaken his power of opposing the distasteful measures which the Government were about to launch against the community to which he belonged.

A very remarkable feature in this case is the course pursued by the Sessions Judge, who, while stigmatising as "improper" the prosecutor's attempt to influence him in his Judgment, unhesitatingly yielded to that attempt so far as to call on the appellant, at the prosecutor's request, to answer a charge of nuisance which formed no part of the order appealed against. Then, after alleging that Section 423 of the Criminal Procedure Code gave him power to substitute a conviction for nuisance, as suggested by the prosecutor, he declared his intention of not availing himself of that power, because, he said, among other reasons: "I am of opinion that it is desirable that these proceedings should come to an end here." Why, and for whom this was desirable, the Judge omitted to mention, but the motive must have been strong, since it induced him to decide for the appellant, while his opinion was apparently in favour of the respondent.

This very extraordinary conduct, however, becomes intelligible when it is considered that, had the Assistant-Magistrate's order been affirmed, the case would have gone up on appeal to the High Court, where there is little room to doubt that an exhaustive and authoritative decision would have been given on all the grounds of the appeal, while the Sessions Judge evinced a strong aversion to discuss the following, namely:—

That the prosecution was unjustifiable and unwarrantable from every point of view;

That the Assistant-Magistrate had been illegally and improperly influenced in his Judgment by the instructions and advice of the prosecutor;

That the Assistant-Magistrate ought not to have permitted the prosecutor to converse with him out of Court or to advise or instruct him in any way regarding the case;

That the Assistant-Magistrate in ordering the appellant to attend and stand in the dock, acted in an illegal and

unwarrantable manner, with the object of insulting and annoying him, and with no other object whatever ;

That the Assistant-Magistrate ought not to have placed on the record, proceedings drawn up by the prosecutor, containing matters of prejudice against the appellant and his Counsel.

Now, it is an open secret that the Government particularly desire that appeals to the High Court, in cases where the conduct of Government officers is questioned, should, as far as possible, be prevented ; and the course followed by the Sessions Judge was well calculated in the present case to give effect to that wish of the Government.

To the public at home, and to the English Legal Profession in particular, the course of action described may appear scarcely credible ; but it should be borne in mind that a Sessions Judge in India is not necessarily a lawyer ; he is a member of the Covenanted Civil Service, officially vested with Judicial powers, but directly answerable to the Government in the discharge of his duties. The result of this anomalous system of Judicial administration, in the present instance, has been that two Government servants, charged with improper and illegal conduct, have evaded judgment, while a highly respectable member of the community, placed under their care, has suffered grievous wrongs at their hands, and is left without any available means of obtaining redress. And yet, this is the system which the Government of India have been at such pains to elaborate during the last thirty years.

It might well be asked, what motive could the Government have had in devising methods so well calculated to defeat the ends of Justice and to support arbitrary rule ? Inquiry into the circumstances leads to the conclusion that the motive was essentially a FINANCIAL MOTIVE. It is not necessary to suppose that the members of the Government

were insensible to the value of purity in the administration of Justice; but, under financial pressure, they appear to have acted pretty much as ordinary mortals have sometimes acted under similar difficulties—they have overlooked moral obligations in their anxiety to provide for financial exigencies; and these exigencies having unfortunately been constantly increasing, ever since the irresponsible form of Government inaugurated in 1858-61 has been in operation, moral considerations seem now to be almost entirely lost sight of. Measures violating the plainest principles of Justice, such as the *Northern India Rent and Revenue Acts* and the *Bombay Revenue Jurisdiction Act*,* are devised for enforcing arbitrary fiscal demands; and even undisguised spoliation is resorted to, as proved in the cases mentioned in the *Law Magazine and Review* for May last.

The Supreme Courts and their successor the High Courts occasionally interfered with the acts of the Executive in India, when these came under their cognizance and were found to be illegal; and the restraint thus exercised over the action of the Government has all along been resented by it as intolerable. So long ago as 1822, the following sentence was indited in a Minute of the Government of Madras:—"It is absolutely necessary for the good government of this country and the security of the revenue, that the jurisdiction of the Supreme Court should be more strictly limited, and that it should be completely

* * The practical effect of these enactments is shewn in the following fact relating to one of them:—A landowner in the Bombay Presidency having, in an appeal to the High Court, proved that the assessment on his land greatly exceeded the sum demandable under the regulations of the Government, a Bill was introduced in the Legislative Council, removing all matters connected with the land-revenue and the conduct of Revenue officers, from the cognizance of the Law Courts. The member in charge of the Bill urged in its defence that "if every man is allowed to question in a Court of Law the incidence of the assessment on his field, the number of cases which might arise is likely to be overwhelming."

debarred from all cognizance in any shape of the acts of the Government."

The same spirit has since moved the Indian Executive; and their efforts to weaken and destroy the powers of the High Courts have been almost incessant, their latest move in that direction being the *Madras City Civil Court Act*, 1892. When that measure was first brought out in the form of a Bill, the Judges of the High Court of Madras condemned it as "a proposal to place the continued existence of the original side of the High Court at the discretion of the Executive Government." This objection was met by amendments which conferred on the City Court a concurrent jurisdiction with that of the High Court, and vested the latter with the discretion of deciding, when a case is submitted to it for trial, whether it ought not to have been brought in the City Court. This concurrent jurisdiction, however, has been denounced by the High Court Judges as being objectionable; and no necessity has been shewn to exist, for the creation of the new Court; while the enactment, as amended, is still calculated to have the evil effect of diverting suits from the Chartered and independent High Court, to a tribunal created and controlled by the Executive; a course which is encouraged by the lower scale of fees settled for the City Court. Whether the Legislative Council of the Governor-General, in passing the Act in question, has not exceeded its powers, remains to be tested. Meanwhile the measure constitutes a further step taken by the Executive towards the destruction of Judicial independence in British India.

J. DACOSTA.

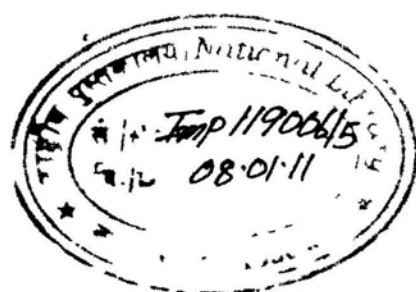
P.S.—The Indian mail delivered on 31st January brought the published copy of a Resolution of the Bengal Government on the subject of Raja Surya Kanta's memorial

presented in September last. The Lieut.-Governor considers that "the prosecution of the Raja need not have been instituted"; that Mr. Phillips's "indiscretion" was aggravated by the fact that he instituted a Criminal prosecution for a nuisance, "without any complaint having been made to him" on the subject, and "without consulting any medical authority or sanitary expert," as to the existence of the alleged nuisance; that Mr. Phillips's action throughout was "indefensible, and characterised by a regrettable want of discretion, suavity, and common sense"

"At the same time, Sir Charles Elliott is convinced that there is no justification whatever for any imputation on Mr. Phillips's motives in conducting this prosecution. . . . The Lieut.-Governor has no doubt that he acted in what he conceived to be in the public interest, and in good faith, and in perfect integrity of motive and honesty of purpose."

It is difficult to conceive how a Magistrate, who brings an unfounded charge without having taken steps for ascertaining its truth, and who then resorts to illegal devices for securing a conviction, can be found to have acted in the public interest, in good faith, and in perfect integrity of motive. The Lieut.-Governor, at all events, does not explain by what process he arrived at that conclusion, while the published proceedings of the trial disclose no ground for His Honour's allegations regarding the Magistrate's good faith, integrity, and honesty of purpose. In view of these circumstances the Government Resolution can scarcely fail to raise considerable doubt and perplexity in the minds of its readers, and to create the impression that its author is not entirely unconcerned in the general course of action and the motives which it is attempted, in that document, to justify.—J. D.

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THE BENGAL TENANCY ACT.

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THE Earl of Selborne, referring, on the 28th April last, to the Evicted Tenants' Commission, said that nothing equally unconstitutional had been done since the reign of James II. ; that the Commission was appointed to inquire into the private concerns, the exercise of proprietary rights of individual members of the Community, with a view to overruling those property rights, to undoing that which had been done in the due and regular course of the law, according to some scheme which the Commission was to suggest. His Lordship added that the pretext for the Commission was as false and hollow a pretext as had ever been put forward ; that the effect was to override all the Acts of Parliament that had been passed on the subject during the last fourteen years ; that surely the landlords had rights as well as the tenants, and that the rights of the landlords were recognised and guaranteed by law.

"If any circumstance could be imagined," Lord Selborne went on to say, "which could justify an inquiry into the private rights of property, it would be indispensable that in the first place, it should be a Parliamentary inquiry, with full powers to conduct it according to the rules of evidence, into every circumstance that might tend to bring out the truth. Secondly, it must be a Judicial inquiry, and thirdly it must be an impartial inquiry. If it were judicially conducted, of course it would be without any foregone conclusion. What was the effect of the whole

business? It was to disturb settlements, to unsettle the minds of the people, and to set one of the worst precedents ever heard of at the hands of an English tribunal."

* These very grave charges, which brought at once a declaration that the Government were not going to introduce a Bill for carrying out the recommendations of the Commission, are quoted here for their remarkable appositeness to the Rent Commission in Bengal, on whose recommendations a Bill was framed, which was eventually passed as the Bengal Tenancy Act of 1885.

The effect of that Act is to deprive landowners of the proprietary rights conferred on them by the Permanent Settlement of 1793, by transferring those rights to a class of middlemen created by the Act and empowered by it to rack-rent the cultivating tenants. The object of the measure is to undo what the Permanent Settlement has done towards limiting the fiscal demand on land, without an overt repudiation of that compact. Repudiation had been attempted on several occasions, and the last time that the question came before the Council for India a member expressed his dissent in the following words. "*We have no standing ground in India except brute force, if we forsook our character for truth.*" It was then decided to gain the coveted financial advantage by a circuitous way, through the complicated machinery of the Bengal Tenancy Act, which, on the pretext of protecting the cultivating tenants, virtually diverts the bulk of the profit yielded by the land into the hands of the above-mentioned class of middlemen who, not being a party to the Permanent Settlement, can claim no limitation of taxation under that compact.

It should here be remembered that, when the Permanent Settlement of 1793 imposed on land the excessive assessment of ten-elevenths of the rental, and made the attachment and sale of an estate the penalty for a single hour's delay in the payment of the revenue, the Government of India,

with the concurrence of the Crown and Parliament of Great Britain, pledged itself in the most solemn terms never to increase its fiscal demand on the land then settled, and to leave the adjudication of disputes to Courts of Law presided over by "Judges who, from their official situations and the nature of their trusts, should be wholly uninterested in the results of their decisions, and bound to decide impartially between the Government and the proprietors of land, and between the latter and their tenants." (See *Reg. II.*) It was further stated: "The Governor-General trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruit of their good management and industry."

Many estates, in subsequent years, were attached for revenue and sold by the Government to men able to satisfy the revenue demand from other sources, until the land, improved by their capital and industry, yielded the necessary produce. The present return of land in Bengal is, therefore, the fruit of the capital and industry which its proprietors, on the faith of the British Government, expended in improving their property. Not only is that fruit now confiscated under the Tenancy Act, but the estates themselves must, through the impoverishment of the landowners, become liable in greater number than heretofore to attachment and peremptory sale, when the Government may acquire cultivated land considerably below its cost. A judgment of the High Court of Bengal, which was affirmed on appeal to the Privy Council on the 6th of February last year, shews that the Bhowanandpore estate, in the fertile district of Monghyr, was purchased by the Government at a revenue sale for the sum of one rupee.

An essential part of the Act consists of clauses empowering the Executive to make a Cadastral Survey of the country,

and to settle the record of rights, the rents payable by tenants, and all disputes relating to land. The opposition offered to these inquisitorial and dictatorial clauses has hitherto prevented the survey from being carried out, except in an experimental way. In one of the four estates selected for the experiment some 20,000 petitions of objection were laid, and 3,852 suits instituted. Of 447 decisions of the Executive 271 were appealed against, and upwards of a hundred were reversed or altered. The cost of the survey in that estate was 294,328 rupees, or 10½ annas an acre; in another estate the rate was 17 annas.

Of the cost of the projected survey and settlement the Government have decided that the State is to bear one-eighth, and the owners and tenants the other seven-eighths, in equal shares, but the latter would be subjected to additional expenditure, the landowners, to that of entertaining the large establishments of surveyors, land-measurers and their subordinates as customary, and the tenants, in addition to a similar charge on a smaller scale, would have to follow the settlement officers in person, to the neglect of their proper work in the fields. If, moreover, the boundless litigation which the survey is certain to produce, its cost and uncertainties, and the corruption and oppression inseparable under present conditions from such proceedings in India be considered, the dismay and consternation in Bengal at the announcement that the Cadastral Survey is shortly to be undertaken will easily be conceived.

The Rt. Hon. Sir Richard Garth, who was Chief Justice of Bengal when the Tenancy Bill was framed, said, on being consulted on the subject: "Some pains have been expended upon the argument that the Government, in case of necessity, has a right to interfere with vested interests, although created by so solemn a compact as that of the Permanent Settlement. I consider this argument quite superfluous. I take it to be clear that any Government, in

case of a real emergency, has a right, so far as it is necessary, to interfere with vested rights, to whomsoever they may belong and howsoever they may have been created. But I take it to be equally clear that, without some such necessity, no Government is justified in interfering with the vested rights of any class of its subjects, more especially when those interests have been created and defined, after due consideration, by the State's own legislative enactments. I see no such necessity, and I am bound to say that, among the complaints on behalf of the ryots, which have been published by the Government in connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind."

"Whilst I yield to no man in the earnest wish to see all necessary and wholesome reforms carried out, I confess I view with horror and dismay the revolutionary provisions of the present Bill. It appears to me absolutely cruel, to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usages which have been sanctioned by the Courts and the Legislature for nearly a century; to unrip a solemn settlement of vexed questions, which was made by the Legislature no later than twenty-three years ago [viz., Act X. of 1859]; and all this, not for the purpose of meeting any actual complaints, or rectifying any proved abuses, but merely to place the ryots in a position which certain well-meaning, but, as I think, mistaken members of the Rent Commission, imagine they occupied in the year 1793.

"If it be necessary, as a matter of public policy to deprive the landlords of their rights, let us be honest enough about it and say so; but do not let us attempt to thrust such a blind pretence down the throats of an intelligent people."

"When we consider that, upon the strength of those views, it is now seriously proposed to deprive the land-

owners of this Province of rights and privileges which they have enjoyed for nearly a century; to relegate them to a position far inferior to that which they occupied before the Permanent Settlement; to unsettle and re-establish upon an entirely new footing the relations between landlord and tenant; and to upset a settlement of those relations, which was arrived at in 1859 and confirmed ten years later by another Act of the Government—I think that the Bengal public has at least a right to inquire upon what authority those views are founded and how far they are consistent with the opinions of the many distinguished men who, as Judges, Statesmen, and Legislators, have administered and explained the law during the past ninety years.

“And in answer to this inquiry the public may be surprised to learn that, as to some of the proposed changes, they are based upon no authority at all; as to others, that the views of these gentlemen are founded upon their own construction of the Regulations of 1793 and of the Act of 1859—entirely without regard to the construction which has been put upon those enactments by the Courts of Law and the Legislature; and, as to all, that their views are not only inconsistent with the opinions and the policy of the last three generations, but the laws and usages which have prevailed in Bengal since the time of the Permanent Settlement.”

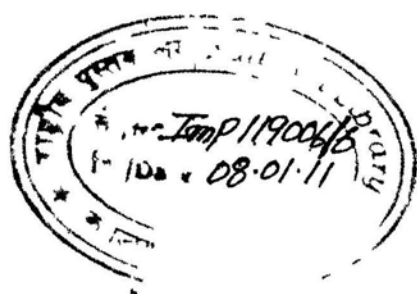
I can only hope that the weighty words of the learned Chief Justice will receive their due consideration at the hands of those who, whether in India or at home, are responsible for the maintenance of “our character for truth;” and in conclusion I would quote the following impressive remarks uttered by the Maharaja of Durbhunga in the speech he delivered at the Legislative Council of India, on the day on which the Bengal Tenancy Bill was enacted:—“I yield to no one in my desire to see the ryots protected from oppression; but it is my deliberate opinion

that this Bill will not accomplish that object. On the contrary, I believe that the constant intervention of revenue officers in all the details of agricultural life will lead to the most widespread confusion, and will be as disastrous to the ryots as to the zemindars themselves. I view with the deepest concern the outlook before us. I dread the passions and animosities which this litigation will kindle and inflame. We are embarking rashly on a sea of change, and many will be shipwrecked on the voyage. Such vast innovations cannot be introduced into the rural economy of the Province without exciting great commotions. I can only hope that these anticipations may not be realized; but whatever may be the result, I have, at any rate, the satisfaction of feeling that I have acted as the true friend of my country and of the Government in warning you of the political dangers which, I believe, underlie the proposed legislation."

JOHN DACOSTA.

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THE FINANCIAL CAUSES OF THE FRENCH REVOLUTION AND THEIR PRESENT BEARING UPON INDIA.

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August, 1893)

BARON FERDINAND DE ROTHSCCHILD'S two Articles, published under the heading of *The Financial Causes of the French Revolution*, contain passages which so aptly represent the present state of things in India, that they deserve the attention of all who are concerned in the safety and welfare of our great dependency. The similarity in the causes of Financial disorganisation and popular discontent in the two countries will perhaps best appear from extracts of the Articles being placed in juxtaposition with statements on the same subjects relating to India.

The distinguished writer in the *Nineteenth Century* for March, in referring to "the many causes which tended to keep the Royal Treasury in a condition of chronic distress," says:—

"Incessant and, as a rule, useless and disastrous wars, the erection of costly palaces, and a disregard for the most elementary principles of economy, constituted a perpetual drain on the resources of the country."

The disastrous Afghan wars of 1838 and 1878, the numerous trans-frontier expeditions undertaken since 1876, the construction of railways and roads for introducing troops into Afghanistan, and the sums of money paid to its rulers and tribesmen for lessening their opposition to our advance, have drained the Indian Treasury of considerably more than a hundred millions sterling. The construction of faulty irrigation works which failed to earn the interest on their cost; the purchase of Army and Railway stores on systems opposed to the most elementary principles of

Economy; the erection of palaces and public offices in remote mountain regions, to enable Governors annually to retire from the seats of Government and the centres of population—expenditure under these several heads have imposed excessive burdens on the resources of the country, and contributed to keep the Indian Treasury in a condition of chronic distress.

"The sense of wrong rankled in the hearts of the people, the cleavage between them and the governing classes became wider and deeper; but as tradition and custom still made them inclined to believe that their hard lot was part of the proper order of nature, they bore their yoke sullenly but with more patience than might have been expected."

Those who have resided in Indian cities, or among rural populations in India, will be struck with the analogy of feeling entertained by the two peoples, as described in this extract; while outsiders may come to the same conclusion from a perusal of the native and Anglo-Indian press in every Province of the Empire. The cleavage between the people and the governing race is becoming wider and deeper under the unsympathetic system inaugurated in 1858-61, which the natives have nick-named *Naksha-ki-raj*, or "rule by reports," with the intention of showing up the absurdity of ruling a vast Empire from a distant land, through reports of Indian officials, manifestly written under injunctions as to their tenor and tendency.

Tradition and custom have induced the millions in India to bear their yoke with more patience than might have been expected; but increased facilities of communication and the spread of knowledge through the press have awakened a sense of wrong in the hearts of the people, which is fast altering their attitude towards their rulers.

"The rulers of France did not seem to understand that there is a limit to the extent of taxation even in the richest country, and that there must be a certain element of justice in its incidence,

"even under the most autocratic rulers, if ultimate bankruptcy and ruin are to be avoided."

Taxation in India has been pushed to the limit where enhanced assessments discourage industry and cease to produce additional revenue; at the same time the depreciation of silver and the ever-increasing expenditure of the Government are being officially urged as reasons justifying increased taxation. The incidence of the taxes is glaringly unequal, the Income Tax falling lightly on the rich and being oppressively felt by the industrial classes; while the Salt Tax, which is inappreciable in the expenditure of the wealthy, stifles the poor of an article essential to health, and produces intense suffering among the rural population and the working classes in general.

"It is true that her bad financial condition did not greatly injure the credit of France, and her pecuniary needs were supplied by loans. But however freely one can borrow, the time must come when the debt has to be repaid; and the bridge by which difficulties are temporarily surmounted, becomes so over-weighted by its constantly increasing burdens, that it must some day collapse into chaos beneath."

The credit of the Government of India is now almost as good as that of the United Kingdom, although the liability of that Government towards its creditors is strictly limited, by Act 106 of 1858, to the revenues of India. This limitation, however, seems unheeded under an impression that the British Government would, in case of necessity, assist the Indian Exchequer in fulfilling its obligations. On whatever ground that impression may rest, it should be remembered that the British constituencies are largely composed of working men, and poor men, and that their consent to bear additional taxation must be obtained before the British Government can be in a position to grant relief to the creditors of India. Meanwhile, the Indian debt is steadily increasing, while the revenue is on the decline.

"The evil was aggravated by the exactions of a horde of greedy members of a tyrannical Executive. As late as 1779 the Abbé Very, one of the reporters of the Committee of Taxation, wrote that the Collectors of the taille had no other rule to go upon for its assessment than their own personal opinion as to the relative resources of each taxpayer. The Collectors formed their estimates arbitrarily, and any protest on the part of the taxed, gave rise to inquisitorial investigations which were often aggravated by private spite and jealousy."

The Land Tax, over the greater part of India, is periodically revised, and the Revenue Surveyors charged with the work, as well as the Collectors of the tax, are unrestrained in their operations, the Law Courts being debarred from taking cognizance of Revenue matters and the conduct of Revenue officers. The Collectors, moreover, being vested with Judicial and extensive summary powers, are enabled to act arbitrarily in their Executive capacity. The assessments, which were made under such conditions in the Bombay Presidency in 1869-73, were so oppressive (the enhancement often exceeding a hundred per cent.) that serious riots ensued, requiring military force for their suppression, and thousands of cultivators, stripped of their moveable property, were evicted from their fields and homesteads, and perished of want when the combined effects of impoverishment, contracted cultivation, and drought produced the appalling famine of 1876-79, the incidents of which will long be remembered with horror. The calamity and its causes were greater still in the Presidency of Madras.

The presence of the Land Tax Assessor, or the Collector in an Indian district, is invariably marked by the extortions of their numerous underlings who (to use Sir Auckland Colvin's graphic expression) "are scattered broadcast over the vexed villages"; and the same distinguished Revenue officer's well-known *Memorandum* of 1872 testifies to the

pressure that is put by the Government on the assessing officers, "to shew cause why their calculations should not lead to a larger rental," or basis for the Revenue demand.

"The most harassing and arbitrary tax of all was the Gabelle, and it may well appear inconceivable that, in a populous and civilised country, such an impost could be maintained at all.

... Carts and carriages were stopped on the highway and searched by the tax-collectors. no private house was safe from a visit from them night or day, and on the slightest suspicion they used the power of arrest that was vested in them. It has been stated that, during the first few years of the reign of Louis XVI., these arrests averaged 3,700 per annum; that upwards of 4,000 adults and 6,500 children were apprehended for smuggling salt and that 300 were condemned to the galleys."

This description of the *Gabelle* applies almost word for word to the salt duty in India, where the evil is intensified by the poverty of the people, and their inability, through difference of language and race, to make their suffering known to their rulers. The excessive duty induces smuggling and crime on an extensive scale; while the poor along the sea coast are cruelly persecuted for using salt-cruth scraped on the seaside, instead of duty-paid salt, which they cannot afford to buy.

The conveyance of salt furnishes constant opportunities for extortion, customs-posts being established along highways and navigable rivers, where carts and boats may be indefinitely detained on pretence of their contents and passes requiring strict verification.

The great rivers and the sea in India abound with good fish, whence a plentiful and cheap article of food might be obtained throughout the Empire, were it not that the inquisitorial and vexatious practices which are adopted for the protection of the Revenue, seriously interfere with the salting trade and the conveyance of salted goods. The following observations recorded by the eminent Economist, Jean

Baptiste Say, touching the *Gabelle*, are equally applicable to the salt duty in India :—" Thus taxation greatly reduced the enjoyment which salt is capable of affording, to say nothing of the mischief resulting from it—the injury to tillage, to the feeding of cattle, and the preparation of salted goods, the popular animosity against the collectors of the tax, the consequent increase of crime, and conviction, and the consignment to the galleys of numerous individuals whose industry and courage might have been made available for the increase of national prosperity."

Continuing our extracts from Baron Ferdinand de Rothschild's Article we come to the subject of forced labour.

" Though not directly a tax, the Corvée came within the spirit and had the result of taxation, and oppressed the lower classes as much as the Gabelle itself. The rural population had to keep the main roads in repair without being remunerated for their labour. They were forced from their fields at the time they could least be spared, occasionally having to travel twelve days to reach their allotted work."

Forced labour, though not legalised, is connived at and tacitly sanctioned by the Government throughout British India. The movement of troops and the tours of officials constantly lead to impressment, and result in much suffering and injustice. A few examples may suffice to illustrate the practice. A report of the Settlement Officer at Hoshiarpur in the Punjab, in 1876, contains the following statements :—
" The movement of troops takes place at the time of the spring and autumn harvests, and even when the zemindars [landowners] escape impressment, the numbers of Kamins [working men] forcibly taken up for the carriage of stores greatly interferes with the work in the fields. I would earnestly call the attention of the Government to the crying evil of this system of forced labour. . . . On all sides complaints reached me that men were seized indiscriminately, that they were excessively loaded and

underpaid, that is, that they are paid only for the marches they actually make, and no account is taken of the days spent at the Tehsil [where they are previously detained] and in coming from and going to their homes. I have been informed that, to avoid being constantly harassed, many proprietors have left their cultivation entirely to their tenants and become absentees, and that, if this state of things continues much longer, many of them are prepared to quit the country altogether. If the system of impressment and forced labour is to be maintained, it should be legally recognised and put under proper control."

Notwithstanding remonstrances, the practice continues unabated, and affords opportunities for much extortion, the agency employed in impressments being in the habit of seizing a greater number of coolies, carters, and boatmen than are wanted, and of releasing those from whom they receive a *douceur*.

The *Bombay Gazette* for November 22nd, 1876, relates how, in Lord Lytton's wanderings in the Kulu and Kangra districts, 1,500 coolies and 300 mules, impressed at a stage of the journey and detained for nearly a month awaiting the Viceroy's arrival, were ultimately made to march with their loads to the next station and dismissed with one day's pay. The writer describes the sufferings of the men and the animals during the weeks of detention, when they were left to live as best they could.

A third example might be added to shew how the same injustice and suffering result from the tours of minor officers. The following incident, reported from Bellary in December, 1877, was published in the Anglo-Indian press throughout India. A respectable farmer's carts and bullocks were forcibly carried off for the service of Lieut. Wilson, who held a Civil appointment in the district. This officer, on hearing that the subordinate, who made the seizure, had been prosecuted by the farmer, caused a charge

to be brought against the latter, in his own Court, for using insulting language at the time of the seizure, and sentenced him to imprisonment. The sentence was quashed on appeal to the Sessions Judge, but the farmer had meanwhile died in jail from the hardships inflicted on him in his incarceration.

In a second Article on *The Financial Causes of the French Revolution*, Baron Ferdinand de Rothschild records the events which connected the causes he had previously mentioned with the terrible results which ensued. "During the reign of Louis XIV.," says the writer, "the influence of Parliament had been overshadowed by the commanding personality of the King. . . . The first serious conflict arose, upon a religious question which stirred up public feeling and tended to bring into prominence the financial questions of the day."

"The King prohibited all remonstrance, and peremptorily called on the Parliaments to register his decrees without delay. . . . Louis XV. admonished the refractory magistrates in the following autocratic strain — 'It is in my person alone that the Sovereign power resides; it is from me alone that the Courts derive their existence and authority: it is to me alone that the legislative power belongs, without any division, and the whole public order emanates from me.' All competent observers regarded the outlook with profound anxiety, and foresaw the dangers that must follow upon the arbitrary proceedings of the King. Voltaire wrote in 1764 — 'Every-thing I see is sowing the seed of a revolution which must inevitably come.' Four years later Grimm wrote: — 'The disquiet which agitates the minds of men, and leads them to attack religious and political abuses, is a characteristic phenomenon which foreshadows an imminent and inevitable revolution.'"

In the time of the East India Company, their administration was periodically reviewed, and reforms were insisted

upon before a new Charter was granted to them. When after the Mutiny, the government of the country was transferred to the Crown, and the powers of the East India Company and the Board of Control were vested in a member of the Cabinet, those conditions, which had, under the previous régime, led to the removal of many abuses and constituted a wholesome check on the administration, ceased entirely to operate, and a Secretary of State was left to exercise supreme power, subject to such restrictions only as were provided in the Act (106 of 1858) under which the transfer was made. These restrictions required the Indian Secretary of State to consult his Council, to pass no order involving the expenditure of Indian Revenue without the concurrence of that Council, and when, in other matters, he differed with its majority, to inform the Council of his reasons for acting against their opinion. Subsequently Act 67 of 1861 vested the Governor-General of India in Council with the power of making laws. Other clauses in both Acts, however, enabled the Secretary of State to nullify the restrictions just mentioned, to assume the entire control of the Legislature, and to peremptorily call on the Governor-General in Council to register his decrees as laws. In his despatch of November 24th, 1870, the Secretary of State admonished the Governor-General in the following autocratic terms:—"The Government holds in its hands the power of requiring the Governor-General to introduce a measure, and to require all the members of his Government to vote for it." Thus the two deliberative assemblies created by Parliament for the better government of India have been completely over-shadowed, and the Indian Empire is ruled by a Secretary of State virtually responsible to no Constitutional authority.

"By the publication of Turgot's memorials to the King, the people, for the first time, obtained some knowledge of the arbitrary fashion in which the revenue had been raised, and the still more

"iniquitous manner in which it had been spent. The financiers thought it was possible to separate the financial from the general reform of the system of government, and had no apprehension that the work of emendation once set on foot, would inevitably provoke a general revolution. The autocrats of this century differ immaterially from those of preceding ages, and are no more disposed to divest themselves of their absolute powers than their predecessors were."

The Indian Budget is discussed by the people with greater intelligence every year, and the disastrous effects of autocratic power and financial disorganisation, indicated in the above extract, cannot fail to arise in India as they arose in France, unless the system of government, which brought about the present situation, is amended before its evil results have further developed. The oft-repeated declaration, however, that autocratic power is indispensable in India for securing the Revenue, renders the work of emendation particularly difficult.

"The national deficit formed a hideous chasm which no means could be found to bridge over; the agricultural distress was terrible; the plebeian class were overtaxed; the domination of the upper classes was no longer bearable. The people, though clear-headed and logical under normal conditions, allowed their reason to run riot when their emotions became excited by an accumulation of wrongs. The revolution, whose causes were welded together as the links of a chain, was fated to come; and when it came, its history was inevitably destined to be written in letters of blood."

The danger of a revolution in India seems remote: the well-to-do classes, besides being deeply interested in the maintenance of order, are instinctively conservative, while the people generally are industrious, patient and law-abiding. At the same time their sufferings from oppressive taxation are increasing steadily, and it would be vain, under these circumstances, to expect that the time will not come

when the emotions of the people will become excited by a sense of accumulated wrongs; unless the chain, which links State extravagance and autocratic power with their inevitable consequences, is broken off by timely reform.

History has taught us that popular insurrection in India, when unaided by the soldiery, can always be put down by military force; and that mutiny in the Native Army need not be feared, so long as an overwhelming European force is stationed in the country. But complications in other parts of the world may, any day, necessitate the withdrawal of a portion of the English troops now in India, and it behoves us to enquire what effect such withdrawal would produce on the condition of the country.

From the Indian authorities we have favourable accounts of the spirit of our Sepoy army; but similar accounts were given during the administration of Lord Dalhousie, who himself declared that "the condition of the Native soldier left nothing to be desired;" and when officers wrote of "evil symptoms and of danger looming in the distance, they were denounced as defilers of their own nest, and as feeble minded alarmists." * To rely, therefore, on general reports regarding a point so delicate and important, would virtually amount to counting deception.

The last great revolution in India was the rebellion of 1857-58, when British supremacy trembled in the scale for upwards of a year. The rebellion, after careful enquiry, has been ascribed to three concurrent causes:—

I Widespread discontent produced among the Princes, the nobility, and the gentry, by our territorial annexations and the spoliation of private property.

II Long felt discontent among the Sepoys, due to frequent unjust dealings in the matter of their pay and allowances, and to a deep-rooted conviction that the

British Government were intent on Christianising the Indian population.

III. The withdrawal of English troops from India to meet the requirements of the Crimean and Persian wars.

Of these causes, the first has been kept alive to the present day by a systematic interference with the Treaty rights and the property of the Feudatory Princes, and by the continued spoliation of the Native nobility and gentry.

As regards the Sepoy army, the mutinous spirit which formerly moved it to resent every action of the Government which they considered as unjust to them, or as violating the pledges they had received, has not in recent years been openly manifested; but a large number of men, after spending a few years with their regiments, annually resign our service, and the country is thus being filled with a dangerous class of men, disappointed in their career, but trained as soldiers and possessed of a certain amount of military training.

The third of the above-mentioned causes is still enclosed in the womb of futurity.

In conclusion, I would call the reader's attention to the following facts, to shew how little the Authorities in India know of what is stirring in the depths of Indian Society. Within little more than a twelvemonth of the departure of Lord Dalhousie (who saw nothing left to desire in the condition of the Native soldier), the Native Cavalry at Meerut (where English troops, including Cavalry and Artillery, were stationed) rose as a body, slew every Englishman they met, made their way to Delhi, fraternised with the native troops there, and, in an hour, wrested from our grasp the Imperial City, a post scarcely equalled in military and wholly unequalled in political importance throughout the British possessions in India.

VERITAS.

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THE HOUSE OF LORDS AND THE BENGAL CADASTRAL SURVEY

(Reprinted from *THE LAW MAGAZINE AND REVIEW*,
August, 1893.)

TO THE EDITOR OF THE *Law Magazine and Review*.

SIR,—Lord Stanley of Alderley, on the 31st of July, asked the Indian Secretary of State—1°. Whether his predecessor, Lord Cross, had stated in a despatch, dated December the 24th, 1891, that half the cost of the Cadastral Survey in the Benares division had been defrayed from a special fund contributed by landholders, 2°. Whether that special fund had been contributed by landholders for an entirely different purpose; 3°. Whether the diversion from that purpose had been concealed by the Government in India, and been divulged only by the eventual publication of the above-mentioned despatch; 4°. Whether the Government had consequently been guilty of a breach of trust; and, lastly, whether the papers relating to the case could be laid before Parliament.

Lord Stanley's question, which involved a direct charge of misappropriating trust funds, received from the Government an answer evasive and defiant, but conclusively corroborative of the fact that the fund in question had been diverted from its legitimate purpose without the

consent or knowledge of the landholders by whom it had been contributed.

In that answer Lord Kimberley stated:—I. That he approved the Bengal Tenancy Act, and that the measure, in its working, came up to expectations; II. That he believed that good grounds had been shewn for the Cadastral Survey required by the said Act; III. That there was a strong feeling in the Province, that, in consequence of the absence of the survey, the ryots had been, in many cases, deprived of their rights; IV. That the quotation from Lord Cross's despatch was correctly given; V. That there had been no concealment about the expenditure of the money, the intention to spend it having been discussed in published reports of 1877 and following years; VI. That the Indian Legislature had, by Act XIII. of 1882, subsequently authorised the Government to dispose of the fund in any manner they thought expedient, VII. That there was no necessity to lay the papers on the subject before Parliament; and, lastly, that the noble Lord would find the whole matter described in the North-Western Provinces Administration Reports of 1876-77 and 1877-78.

In this answer the first two statements are mere expressions of personal opinion upon matters unconnected with the expenditure of the special fund, and entirely irrelevant therefore, to the question that had been asked; while the fact that the ryots had petitioned the Government, earnestly praying that the Bengal Tenancy Bill, with its Cadastral Survey clauses, might not be passed, exposes the groundlessness of Statement III. Statement IV. admits the correctness of the quotation given from Lord Cross's despatch, and Statement V. argues that the intention to spend the money having been discussed in certain published reports, there was no concealment about the expenditure. Statement VI. shews that, after the money had been spent, Government passed a Legislative Act authorising

themselves to dispose of it in any manner they thought expedient.

Now, the reports referred to in Statement V. are those voluminous Provincial Administration Reports which appear annually a twelvemonth after the close of the year dealt with, and which are, by reason of their great cost, out of the reach of the general public. A discussion continued in a series of those volumes, while it might elicit the opinions of different officials regarding the disposal of the special fund, would not afford timely information regarding the final decision of the Government and the action taken thereupon. Justice obviously required that the contributors should have been consulted, and their views on the diversion of the fund been considered, before action was taken in the matter. The intention of concealment, at all events, becomes manifest in the fact that, when the Government subsequently found it necessary to justify their action by a legislative measure authorising them to dispose of the fund for a different purpose from that for which it had been contributed, they omitted to state or in any way to divulge the purpose adopted by them, although it had then already been fully accomplished.

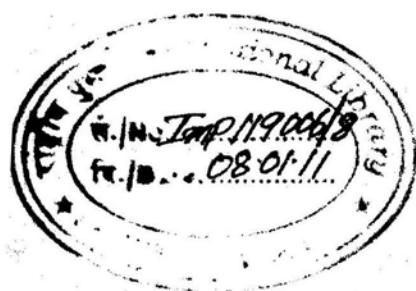
This little episode, whether it be considered in its financial bearing or its moral aspect, is certainly not creditable to our Indian Administration; and, unfortunately, it is by no means an exceptional instance, seeing the many cases of a similar nature which have been noticed in the *Law Magazine and Review*, and in other publications, in recent years.

I am, Sir,

Your obedient servant,

SCRUTATOR.

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OUR INDIAN FEUDATORIES

AND THE

ADMINISTRATION OF JUSTICE IN INDIA.

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I.

WHEN Lord Stanley of Alderley called the attention of the Government, in May last, to the injustice resulting from Executive Officers in India being vested with Judicial powers, and illustrated the subject by a recent case of grievous wrong wantonly inflicted on a distinguished member of Indian society, Lord Kimberley, the Indian Secretary of State, admitted that "it was contrary to right and good principle that the Civil and Judicial powers should be united in one person." But he declared that "the difficulty was that, if the present system were altered, it would be necessary to double the staff throughout the Empire, and that it was impossible at the present time to find the means of making the reform." In other words, that *the finances of the country were not in a condition to bear the additional expense*. This startling announcement that India is too poor to defray the cost of administering justice to her people, is deserving of particular attention.

For the last quarter of a century the Government have constantly represented the Indian Revenues in a favourable and promising light; and their latest *Financial Statement* shews that the year 1891-92 closed with a surplus of Rx. 467,000, while the aggregate surplus of the four years ending with 1891-92 amounted to no less than Rx. 6,804,000. It is true that the Estimates of 1892-93 and 1893-94 shew

deficits; but those untoward results are ascribed in the Statement, not to any falling off in the Revenue (which has on the contrary increased), but chiefly to three causes, namely, *loss by Exchange, increased Sterling expenditure, and increased Army expenditure*. The *loss by Exchange* is likely to be smaller than was anticipated, as the actual rate has so far ruled higher than the rate taken in the Estimates.

As regards *Sterling expenditure*, the heading comprises interest on Government loans, guaranteed dividends on railways, pensions and furlough allowances, and the Indian Secretary of State's salary and establishment; it also includes payments to the War Office, and the purchase of Army, Railway and other Stores. Of these six items of disbursement the first three are, from their nature, susceptible of no material reduction; but the fourth, viz., the Secretary of State's salary and establishment should, on the equitable principle adopted with regard to the Colonial Office, form no charge on the Revenues of India. This item, which is free from all Constitutional check at present, would, if dealt with on the principle referred to, come within the wholesome sphere of Parliamentary investigation. The fifth item, viz., the payments exacted by the War Office, has been repeatedly denounced by competent authorities as unduly heavy; and the cost of the Stores supplied by the India Office is believed, upon rational grounds, to be likewise excessive. A Commission appointed some years ago to report on certain Stores sent out for the port of Calcutta, found that they had cost some forty per cent. more than the sum for which they might have been procured through the ordinary channels of trade.

An equitable adjustment of the fourth and fifth items of *Sterling expenditure* and the adoption of a sound system for the purchase and shipment of Stores would relieve the finances of India to a very considerable extent; but the present difficulties of the Indian Exchequer appear to have

arisen chiefly from *Military expenditure* incurred in unsuccessful wars and expeditions undertaken for the subjugation of neighbouring tribes and principalities.

However flattering it might be to our national pride to see new territories added to our Empire, we cannot divert to such an object the resources of India, which are primarily and legitimately applicable to the wants of her people, without alienating our Indian subjects and endangering thereby the safety of our actual possessions.

Under all the above circumstances, the Secretary of State's answer to Lord Stanley, while it betrays a low estimate of the responsibilities of his Office, fails completely to justify the Government in refusing, upon financial grounds, to remove the blot which stains the administration of justice in India.

Moreover, the desired reform—namely, the Separation of Executive and Judicial powers—does not necessarily involve a question of finance. Supposing the number of officers, who now perform both functions promiscuously, were divided into two sections—the one charged with the assessment and collection of Revenue and general Executive duties, while the other adjudicated the criminal and litigious matters now dealt with by Revenue Collectors and their assistants—there seems no reason why double the number of officers should be needed, so long as the amount of work and the number of persons to do it, remained the same. On the other hand, it is not unreasonable to expect that division of labour would promote proficiency in each section, whereby the work in both departments would be done with greater expedition and skill; while the deplorable ignorance and partiality now so frequently displayed by Executive Officers when called to perform Judicial duties, would cease to disfigure our Indian Administration.

Furthermore, a scheme for effecting the desired reform without entailing additional expense on the State, was

submitted to the Government in July last by Sir William Wedderburn, Bart., whose successful career in the Indian Civil Service entitled him to a hearing on the subject. The scheme had been elaborated by an Indian District Collector and Magistrate of acknowledged merit, and approved by the Right Honourable Sir Richard Garth, late Chief Justice of Bengal; it was, nevertheless, refused at once, a proceeding which has naturally caused much surprise, seeing that it emanated from an able and trustworthy source, and aimed at terminating a state of things which the Government itself had just condemned in unequivocal terms.

The motive of the refusal, however, might be surmised from the fact that the fiscal demands in India, which have constantly increased since the Government of the country was transferred to a Cabinet Minister, became so oppressive that they could be recovered only by illegal processes. The question then arose whether the demands should be reduced to moderate dimensions, or the Collectors of Revenue placed above the Law. The Secretary of State unfortunately elected the latter alternative, and not only sanctioned Legislative measures removing Revenue matters and the conduct of Revenue Officers from the cognizance of the Law Courts, but vested Revenue Collectors with Judicial powers, which enable them to sit in judgment over their own acts, when these are called into question.

It will thus be seen that the reform now asked for, while it is imperatively needed in the cause of justice, cannot fail to involve serious financial consequences—a consideration which will doubtless account for the determined resistance offered to it by the Secretary of State. At the same time, it must be evident to all that, until Executive Officers in India are divested of their Judicial powers, and themselves made amenable to duly constituted Law Courts

controlled by the Chartered High Courts, the people will not have the means of appealing for protection and redress to Tribunals inspiring them with such confidence as that which they now repose in the decisions of the High Courts.

II.

The reform suggested in the foregoing pages would relieve our Indian fellow subjects of an amount of wrong and suffering which, judging from the frequency of the complaints recorded in recent years, may soon become intolerable. But even when that reform is conceded, an important section of the Indian people will still be left without a Court of Justice to protect their rights and their property—namely, the Princes and Chieftains generally known as our Allies and Feudatories.

Forgetful of the warnings given by the sanguinary rebellion of 1857, the Government, availing themselves of the *quasi* irresponsible powers acquired under the 21 and 22 Vict., c. 106, soon resumed the unscrupulous course of action which had brought that terrible retribution upon us. For a time territorial annexations were discontinued; but other methods were found for appropriating the wealth of our Allies and diverting the resources of their States from their legitimate channel—that of promoting the welfare and prosperity of their own subjects. Allegations of misrule in Native States, and the duty of protecting their subjects from oppression, furnished the British Government with pleas for interfering in their internal administration and acquiring control over their finances. In no instance had the people sought our protection, and while our interference constituted a flagrant violation of Treaties, the allegations themselves rested on the most flimsy ground, and often upon no ground whatever. When a public inquiry was demanded into the accuracy of those allegations, the request was generally ignored,

and threats, criminal accusations, and other modes of intimidation were resorted to for obtaining compliance with our requirements.

Solemn Treaties and written engagements exist between the Native States and the British Government; but when those Treaties are infringed by us, the stronger party, the other, or weaker party, has absolutely no means of redress: he is, moreover, warned by us against appealing to the Viceroy or Secretary of State, except through the British Agent posted at his Court; that is, through the very agency employed in perpetrating the wrong complained of. Can it be any matter for wonder that, considering their helpless condition, the wealth of Indian Princes and the resources of their States should have become objects of enterprise to so powerful and irresponsible a bureaucracy as the administrative system by which India is governed?

The recent case of the Maharaja of Kashmir furnishes a striking illustration of the tortuous policy which is pursued by the British Government towards our Indian Allies and Feudatories.

When the Punjab was occupied by the British, Gulab Sing, the grandfather of the present Maharaja of Kashmir, was, by a Treaty signed in 1846, confirmed in the possession of his territories on his paying £750,000 to us and his undertaking certain engagements which have all been faithfully executed. Indeed, Gulab Sing proved a most valuable ally during our great trouble in 1857; he sent a contingent of troops with artillery to co-operate with the British forces before Delhi; and, when offered an increase of territory in recognition of his assistance, he refused to accept it, saying that he had helped the British Government out of his loyalty and goodwill, and not with the object of receiving any remuneration. Gulab Sing died the same year, and our relations of amity with the Kashmir State continued uninterrupted during the reign of his eldest son.