

Saturday, February 9, 1861

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form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

#### PORT BLAIR.

MR. SCONCE moved that the Bill "to regulate the administration of affairs in Port Blair" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, Mr. Forbes, and the Mover.

Agreed to.

#### MALACCA LANDS.

MR. SCONCE moved that the Bill "to regulate the occupation of land in the Settlement of Malacca" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

The Council adjourned.

*Saturday, February 9, 1861.*

#### PRESENT :

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

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq., C. J. Erskine, Esq., and
Hon'ble C. Beadon,	
Hon'ble S. Laing,	Hon'ble Sir C. R. M. Jackson.
H. B. Harington, Esq.,	
H. Forbes, Esq.,	

#### PEPPER DUTY (COCHIN).

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "to provide for the collection of Duty of Customs on Pepper exported by Sea from the British Port of Cochin."

#### PETITION OF KHOSHAL MUNDUL.

THE CLERK presented to the Council a Petition of the Indigo

Planters' Association, praying that a full enquiry be made into the matters stated in the Petition of Khoshal Mundul, and that the Council will take such measures as may be necessary and expedient to prevent the reception of Petitions containing such unsubstantiated charges against any party, as are put forth in the Petition referred to.

SIR CHARLES JACKSON said that, in rising to move that this Petition be printed and referred to the Standing Orders Committee, he begged leave to make a few observations. Sometime ago, one Khoshal Mundul and others presented a Petition to this Council, containing serious charges reflecting on the character of a gentleman, an Indigo Planter in the Mofussil, Mr. Hills. The Petition charged him with instituting false and vexatious suits against them for rent, without making any demand, and without placing gomashas in the villages to collect them. It also stated that the Petitioners were unwilling to go to the factories of this gentleman to pay in their rents, from fear of ill-treatment there, and of their accounts not being fairly settled, and of full credit not being given for the payments made by them. These, no doubt, were very serious charges against Mr. Hills. That Petition was ordered to be printed on the Motion of his Honorable friend to his left (Mr. Sconce), and the consequence was that we now had a counter Petition, answering *seriatim* those charges, and concluding with a prayer, *first*, that a full enquiry should be instituted into the matter; and, *secondly*, that some course should be adopted to prevent the reception of such Petitions by this Council. Now, although he thought the Petitioners had good ground to complain, he (Sir Charles Jackson) must confess that he could not concur in the prayer of their Petition. *First*, as to the institution of an enquiry, it should be remembered that we had no time to undertake such business. The public would seem to think that we did nothing more than sit here once a week for the purpose of passing laws, and seemed to be unaware

that Members of this Council sat from day to day in Select Committees on the Codes and Bills now pending before the Council. Besides, such enquires were not the legitimate business of this Council, and, supposing it were so, he (Sir Charles Jackson) doubted if we had any power to examine witnesses on oath, or carry out an enquiry of the kind.

Nor did he agree with the Petitioners in the second prayer of their Petition. He should be sorry to say anything which might be construed into a desire to restrain the freedom of petitioning. He believed that the freedom of petitioning to this Council was quite as important as the freedom of debate in the Council itself, and should not be in any way restrained. But he thought that the Petitioners had very good ground to complain of the printing of Petitions containing such serious charges against individuals therein named, and he understood from the gentlemen who had called upon him yesterday, that their objection was, in fact, directed against the publication, by the Council, of this Petition. Upon that point, he (Sir Charles Jackson) really thought that it would be very useful if we passed some Standing Order to the effect that any Honorable Member who moved the printing of a Petition, should be deemed answerable for the propriety of printing it. He believed that a great deal more was printed by order of the Council than was either useful or necessary, and that, he thought, was a great consideration in these hard times. In making these observations, he did not mean to reflect at all on the Honorable Member for Bengal. It had grown to be quite a habit, and it had become a mere matter of form in this Council—and he (Sir Charles Jackson) had been guilty of it himself—to move that Petitions presented to the Council should be printed without any knowledge of their contents. He had no doubt that his Honorable friend (Mr. Sconce) had moved for the printing of the Petition in question, as a mere matter of form, without having read it. He (Sir Charles Jackson) thought it very necessary to pass some Standing

Order on the subject, for just observe the state of the question at present. It was just this. The Council having ordered the Petition to be printed, the Clerk of the Council, under the Standing Orders, had no discretion in the matter; whereas, if the Clerk had had such a discretion, the present case probably would not have arisen. On the whole, therefore, he thought that this Petition should be printed on the principle of fair play, and that it should be referred to the Standing Orders Committee.

MR. SCONCE said, he had very little to say with reference to the Motion just made. Indeed, he believed, the Council were already satisfied as to the only ground upon which he had made the Motion referred to by the Honorable and learned Judge; and that, as supposed by his Honorable and learned friend, it had been proposed simply as a matter of form. He (Mr. Sconce) had looked upon the prayer of the Petition as one, in the opinion of the Petitioners, requiring legislation; and it was simply that that prayer might be brought before the Council, that he had moved that it should be printed. He was sure that the Council were satisfied that, in making that Motion, he had neither adopted the language of the Petition nor concurred in its concluding prayer. He was unwilling to deprive the Petitioners of the benefit of petitioning the Council; and in making the Motion referred to, his object had been simply to bring the case formally before Honorable Members.

THE VICE-PRESIDENT said, it was not his intention to occupy the time of the Council at any length, or to oppose the Motion of the Honorable and learned Judge. But he wished to call the attention of the Council to the Standing Orders, as they now stood. Much attention and consideration had been bestowed in the preparation of them, and especially upon that portion of them which related to Petitions. It was the great object of the gentlemen by whom they were prepared that every one should have an opportunity of presenting a Petition to the Council.

They considered that this Council was not a representative body, and that there might be a difficulty in some cases in getting Petitions presented by individual Members. It was therefore provided by Order No. 24, that all Petitions should be transmitted to the Clerk of the Council. The first Section of the Standing Orders, relating to Petitions, provided as follows :—

"Petitions to the Legislative Council must relate to matters connected with the business of the Council. Every petition shall be superscribed 'To the Honorable the Legislative Council of India,' and shall be dated and signed by the petitioner or petitioners. It shall be in respectful and temperate language, and shall conclude with a distinct prayer."

The Petition under reference did relate to the business of the Council, for, without expressing any opinion on the subject matter brought before the Council by the prayer, it must be admitted that it was a proper one for their consideration. It was as follows :—

"That your Honorable Council will be graciously pleased to empower Collectors of Revenue to receive money tendered by ryots on account of rents due by them to zemindars, putneedars, ezardars, and others entitled to receive the same, which money shall, from the date of such tender, be held to the credit of the tendering ryots."

No doubt the Honorable Member for Bengal, when he moved that the Petition be printed, was not aware that it contained reflections upon the character of any private individual. The Petition complied with the Standing Order which provided that a Petition must be in respectful and temperate language and conclude with a distinct prayer. In England Petitions were generally presented by Members. But as this Council was not a representative body, it was provided that, if the Petition were framed in conformity with the Orders, it should be brought under the consideration of the Council by the Clerk of the Council. The Standing Orders were as follows :—

"If in the judgment of the Clerk the Petition be framed in conformity with Order No. XXII.,

*The Vice-President*

he shall bring the petition under the consideration of the Council by reading the abstract thereof, and the prayer or the substance of the prayer of the Petition, whereupon such Petition shall be deemed to have been received by the Council.

If in the judgment of the Clerk the Petition be not framed in conformity with Order No. XXII., or if he have reason to doubt the authenticity of any signature thereto, he shall certify the same on the back of the petition, and shall report the fact to the Council, in which case the Petition shall not be received by the Council, except upon the Motion of a Member."

The Orders then proceeded :—

"Any petition received by the Council may, upon the Motion of a Member, be disposed of in one or more of the following ways :—

1. It may be ordered to be printed.
2. It may be referred to the Select Committee sitting on any Bill to which it relates.
3. It may be referred for report to a Select Committee to be appointed specially for that purpose.
4. If no motion be made upon such a Petition, the Petition shall be laid upon the table, and afterwards deposited by the Clerk amongst the Records of the Council."

So that, had no Motion been made on the subject of the Petition in question, it would have been laid upon the table and deposited by the Clerk among the records of the Council. It was very desirable that Honorable Members should have an opportunity of reading and considering Petitions presented to the Council ; but it was not to be expected that they could do so at the very moment of their being brought before the Council. Therefore, as a general rule, it had been the practice for Petitions relating to matters of any importance to be printed and circulated, so as to give each Member an opportunity of reading and considering them. The great objection to this Petition was that it contained reflections upon the character of Mr. Hills, and charged him, amongst other things, with having instituted false and vexatious suits against the Petitioners. Probably this Petition ought not to have been printed and circulated, without the attention of the Standing Orders Committee having been drawn to it. The Honorable and learned Judge had said that, because

the Council had ordered the Petition to be printed, nothing more could be done in the matter. But the 134th Standing Order provided as follows :—

“When any paper ordered by the Council to be printed may appear to the Clerk of the Council, by reason of its containing matter reflecting upon the character of individuals, or for any other reason, unfit for publication, either wholly or in part, it shall be the duty of the Clerk of the Council, before causing such paper to be printed, to bring the subject to the notice of the Standing Orders' Committee. Thereupon the Committee shall give such directions concerning the printing or publication of the paper as to them may seem fit; and report thereon to the Council.”

It was to be observed that this was to be done after the paper had been ordered to be printed. No doubt, if this matter had not escaped the attention of the learned Clerk of the Council, he would have brought it to the notice of the Standing Orders Committee, who might have ordered all names to be omitted, or made some other order on the subject. It was an unfortunate circumstance, but he was quite sure that it was merely through inadvertence that the matter had escaped him. He had frequently drawn his (the Vice-President's) attention to particular passages in Petitions reflecting upon the characters of individuals, in consequence of which he himself had not moved to print the Petition, and in several cases he believed that Petitions had not been printed for similar reasons.

With reference to the proposed change in the Standing Orders, he was quite willing to consider the matter; but he thought that the Committee could hardly propose any Standing Orders better adapted to the circumstances of the case than the present. It would be better if all Petitions were couched in general terms, instead of containing complaints against private individuals; but this could scarcely be expected, looking to the class of persons by whom Petitions were frequently prepared. He had no objection to referring it to the Standing Orders Committee to consider whether any remedy could be suggested, with a view to pre-

vent a recurrence of the matter complained of. Probably, it might be provided that no Petition, though ordered to be printed, should be published or sold, except on the express Motion of a Member, who should be considered responsible that the Petition was a proper one for publication. He was anxious, however, not to do any thing which might throw any impediment in the way of petitioning. If the matter were referred to the Standing Orders Committee, as proposed, he had no doubt that it would receive their best attention.

SIR BARTLE FRERE said, he so entirely agreed with what had fallen from the Honorable and learned Vice-President, that he had little to add on the general question now before the Council. But he would go farther and put it to his Honorable and learned friend opposite (Sir Charles Jackson) whether he would not be considerably abridging the utility of this Council by throwing upon individual Members the responsibility of judging whether Petitions which reflected on individuals should or should not be printed. In this particular case he did not understand, from what he recollected of the Petition, that there was anything in it, the printing of which could in itself have been objected to, supposing even it had not attracted the attention of the Honorable Member for Bengal or of the learned Clerk of the Council. He (Sir Bartle Frere) had the honor to be acquainted with the gentleman whose name was mentioned in the Petition, and from his knowledge of his character he should have considered it most improbable that this gentleman could have committed any illegal or oppressive act. On the other hand, had he not known the gentleman, he should not have supposed the charges made against him in themselves improbable until he had seen his reply to those charges. But he (Sir Bartle Frere) doubted whether it was a safe or prudent course to hold Members responsible for printing Petitions, because some of the allegations contained in them might be libellous as regarded pur-

ties unknown to them. He (Sir Bartle Frere) would ask Honorable Members if it would not be putting upon individual Members of the Council an invidious and dangerous task in requiring that they should satisfy themselves with regard to the statements in a Petition, in each case in which a Petition was brought before the Council. In other respects he quite agreed with the Honorable and learned Vice-President, and he hoped that the Honorable and learned Judge opposite (Sir Charles Jackson) would not throw any further responsibility on each Member than was now provided by the Standing Orders.

SIR CHARLES JACKSON said, he had carefully guarded himself, in what he said, from anything which might be understood as a wish to obstruct the right of petitioning, and the only responsibility he wished to impose upon Members of this Council was, that, whenever a Member moved that a Petition should be printed, he should be responsible that the Petition was a proper one to be printed. He did not think that that abridged the privileges of Members. His observation was entirely confined to the printing of the document.

The Motion was then put and carried.

#### PENAL CODE.

THE CLERK reported to the Council that he had received, by transfer from the Home Department, the following Despatch from the Secretary of State:—

“TO HIS EXCELLENCY THE RIGHT HON'BLE THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

MR LORD,—I have to acknowledge the receipt of your letter, dated 16th October, (No. 81), 1860, transmitting a copy of the Indian Penal Code, and in reply to express the great gratification of Her Majesty's Government that this important measure has been passed into law.

2. Her Majesty's Government have observed from the Proceedings of the Legislative Council the important part taken by Sir Barnes Peacock in carrying the Code through the Legislative Council, and they request that you will convey to him their sense of the high

*Sir Bartle Frere*

value of the service he has thus rendered to the Government of India.

3. I await your further report on the subject of the Code of Procedure for the Courts established by Royal Charter.

I have the honor to be, &c.,

(Signed) C. WOOD.

*London, 22nd December 1860.*”

SIR BARTLE FRERE said, he felt sure that the Members of this Council would not consider it as a mere matter of course that the document just read should be printed, a document the receipt of which would, he felt sure, be matter of pride and congratulation to all Honorable Members as recognizing the services of the Honorable and learned Vice-President.

THE VICE-PRESIDENT said, he felt much gratified by what had been said regarding himself by the Right Honorable the Secretary of State (Sir Charles Wood) and the Honorable the President of the Council (Sir Bartle Frere). He could not claim much credit to himself in this matter. He had simply exerted himself to carry through a Code which had been prepared by others. The Code, it was true, had been revised and altered in many respects by a Select Committee; but he did not consider himself entitled to any greater credit than his co-adjutors.

The Motion was then put and carried.

#### LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK reported that he had received a communication from the Home Department, forwarding papers from the Government of Bengal relative to the Bill “for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a license.”

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

#### MALACCA LANDS.

THE CLERK reported that he had received a communication from the Home Department, forwarding a copy

of a letter from the Governor of the Straits Settlement drawing attention (among other matters) to the urgent necessity for the passing of a law to regulate the occupation of land in the Settlement of Malacca.

MR. BEADON moved that the communication be printed.

Agreed to.

#### MERCHANT SEAMEN.

THE CLERK reported that he had received a further communication from the Governor of the Straits Settlement, relative to a proposed modification of Act I of 1859 (for the amendment of the law relating to Merchant Seamen).

MR. BEADON moved that the communication be printed.

Agreed to.

#### WRECKED BOATS.

MR. SCONCE presented the Report of the Select Committee on the Bill "for the preservation of property recovered from wrecked boats."

#### PORT-DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. FORBES moved that the Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah, within the Presidency of Fort St. George" be read a third time.

The Motion was carried, and the Bill read a third time.

MR. FORBES moved that Mr. Beadon be requested to take the above Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

#### PAPER CURRENCY.

MR. LAING said that it would be convenient to the public to know that the Bill "to provide for a Government Paper Currency" had been under the consideration of the Select Committee. He hoped that the Report of the Committee would be presented to the Council on this day week, when he should take the opportunity of making

a statement of the alterations which had been made.

The Council adjourned.

*Saturday, February 16, 1861.*

#### PRESENT :

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

Hon'ble Sir H. B. E. Frere,	H. B. Harrington, Esq.,
Hon'ble C. Beadon,	H. Forbes, Esq.,
Hon'ble Major General Sir R. Napier,	A. Sconce, Esq.,
Hon'ble S. Laing,	and C. J. Erskine, Esq.,

#### MYSORE FAMILY.

The following Message from the President in Council was read by the Vice-President :—

#### MESSAGE No. 258.

In continuation of the Message No. 248, dated the 21st of December, the President in Council has the honor to forward to the Legislative Council an abstract of the account, in which the stipends, which have, from time to time, been paid to the descendants of Tippee Sultan are debited, showing the total amounts paid and credited in each year, from the year 1799 to the present time.

By order of the Honorable the President in Council.

(Signed) W. GREY,

*Secy. to the Govt. of India.*

FORT WILLIAM,

*The 9th February 1861.*

#### STAMP DUTIES.

THE CLERK presented to the Council a Petition from certain Fire Insurance Associations, praying that Policies of Fire Insurance be exempted from Stamp Duty, or that at least the rate be not greater than that charged in England.

MR. BEADON moved that the Petition be printed. In doing so, he said that the Clerk of the Council had brought to his notice the fact of this Petition being about to be presented. No communication on the subject had been made by the Petitioners to Go-