INDIAN LEG. COUNCIL DEBATES

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P. L.

him to postpone ths Motion, of which he had given notice, for the adoption of the Report of the Standing Orders Committee on the Petition of the Indigo Planters Association relative to the Petition of Khoshal Mundul and others.

NOTICES OF MOTION.

MR. BEADON gave notice that he would next Saturday move the first reading of a Bill "to provide for the punishment of breach of contract for the cultivation, &c. of Agricultural produce," and also of a Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter.")

RELIGIOUS ENDOWMENTS.

SIR BARTLE FRERE moved that Mr. Beadon be added to the Select Committee on the Bill "to repeal Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code."

Agreed to.

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that Sir Robert Napier be added to the Select Committee on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON said that, in the absence of the Honorable Member for Madras, he had the honor to present to the Council a paper received from the Government of Fort St. George relative to the Bill introduced by him to amend Act VIII of 1859, known as the Civil Procedure Code, and to move that the paper be printed and referred to the Select Committee now sitting on the Bill.

Agreed to.

MR. HARINGTON said, he had also received a letter from the Secretary to the Government of the North-Western Provinces with enclosures, on the subject of the working of the same Code, and he begged to move that extracts from those papers, so far as they related to the Bill already alluded to as having been brought in by him to amend Act VIII of 1859, be printed and referred to the Select Committee on that Bill. The papers were voluminous, and he did not consider it advisable or necessary to put the Government to the expense of printing the whole of them. They would lie on the table, and any Honorable Member who wished to read them would have an opportunity of doing so.

Agreed to.

PRISON AT THE NEILGHERRIES.

SIR CHARLES JACKSON gave notice that he would next Saturday ask the following question:

What progress has been made in erecting a Prison at the Neilgherries, and what accommodation such Prison will afford for European and American convicts sentenced to Penal Servitude?

The Council adjourned.

Saturday, March 2, 1861.

PRESENT:

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

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

PAPER CURRENCY.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association, concerning the Bill "to provide for a Government Paper Currency."

And a Petition from the Bengal Chamber of Commerce, concerning the same Bill.

MR. LAING said, he proposed to move that the above Petitions be read

when we came to consider in Committee the Clause to which they related.

THE CLERK reported to the Council that he had received, by transfer from the Home Department, a copy of a Despatch from the Secretary of State, regarding the preparation of Codes of Civil and Criminal Procedure for the Courts established by Royal Charter.

SIR BARTLE FRERE moved that the Despatch be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

BOMBAY MUNICIPAL ASSESSMENT.

MR. ERSKINE (in the absence of Sir Charles Jackson) presented the Report of the Select Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a fund for Municipal purposes in the Town of Bombay)."

FINANCES OF INDIA.

MR. ERSKINE said that, before the Council should proceed to the other business of the day, he wished to put a question to the Honorable Financial Member of Government, relating to a matter of some public importance. In the comparative statement of receipts and expenditure lately published by order of Government, under date the 19th of February 1861, there was an item of £474,324 entered as a charge against the Government of India on account of loss by exchange in Railway transactions in 1860-61; and what he wished to ask was, whether the loss of this sum by exchanges in 1860-61 was due to any specific and irrevocable engagement between Government and the Guaranteed Railway Companies? what would be the probable results of that engagement in future years? and whether anything was to be done to restrict such a charge in connection with new Railway undertakings?

MR. LAING said that the loss under the head of Exchange in Railway Accounts was, no doubt, entered in a way which appeared to be rather obscure, and which he thought ought to be corrected in future accounts. The loss arose from a Clause in the contracts with the Railway Companies, by which they were entitled to pay in Sterling money at the rate of 1*s.* 10*d.* per Rupee, so that the loss in question really amounted to so much discount on the Capital raised through the Companies. The effect was almost precisely the same as if the guarantee given to the Railway Companies had been 5½ per cent. on the actual, instead of 5 per cent on the nominal Capital. Such was the contract with existing Companies, which, of course, could not be broken through. It would certainly not be resorted to if the Government were obliged to raise the money themselves for future operations. He could not say what the amount would be in future years, because it would depend entirely on the amount which the Railway Companies might be able to raise under their existing contracts. He might observe, however, that the Government had written home on the subject with a view to guard against such a disadvantageous rate of exchange being given in any future arrangements which might be made with Companies.

BREACH OF CONTRACT.

MR. BEADON moved the first reading of a Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce." He said that the object of the Bill, of which he now proposed to move the first reading, was to extend (with certain modifications) to the wilful breach of contracts for the delivery of agricultural produce the provisions of Act XIII of 1859, to punish breaches of contract by artificers and workmen; and the effect of the Bill, if it were

passed into law, would be that persons who entered into contracts for the delivery of such produce, if they fraudulently break them, instead of being only subject to a civil action for damages, would also, if they persist in their refusal, be liable to penal consequences.

He need not remind the Council of their proceedings of last year, when, in consequence of the excited state of some of the indigo districts of Bengal and the imminent risk of disturbance, a temporary Act was passed, giving the Magistrates power to take cognizance of complaints made by Indigo Planters against ryots for breach of their then existing engagements, and the Government of Bengal was enjoined to appoint a Commission for the purpose of enquiring into and reporting on the system and practice of indigo planting in Bengal, and the relations between the Planters and the ryots.

A Commission, as the Council knew, was appointed, and, after a careful enquiry, protracted through a period of nearly three months, submitted a report, which, together with a paper recorded thereon by the Lieutenant-Governor, had recently been laid on the table.

Of the manner in which the Commissioners performed their delicate and responsible duty, he was hardly called on to speak. Testimony had already been given in this place by a learned Judge, who was no longer a Member of the Council, to the strict impartiality and great ability with which the enquiry was conducted. And, however opinions might differ as to the conclusions to which the majority of the Commission and the dissentient members had arrived, and the recommendation they had severally made, there could be no question that the report and the documents which accompanied it present a most valuable mass of information drawn from all available sources, and afforded to every one the means of forming a satisfactory judgment as to the causes which led to the recent rupture between Planters and ryots, and to the means necessary for placing the relation of these two important classes on a sound and satisfactory footing.

He would now briefly advert to the recommendations made by the members of the Commission. Those of the majority were—that the number of Magisterial Sub-divisions should be increased, that a better Police and Civil Courts of prompt and effective procedure should be provided, and that attention should be paid to the working of certain Clauses in the Rent Act. The majority were opposed to the appointment of Honorary Magistrates, to the employment of special agency for the adjustment of indigo disputes, to the continuance of Act No. XI, or the enactment of any other summary law, and to the registration of indigo contracts. The minority, on the other hand, while they agreed as to the necessity for an organic improvement in the Police, proposed that the people of Bengal should be disarmed, that the law should provide more effectual punishment for the instigation of affrays, that an Act should be passed to make the breach of engagements to cultivate and manufacture indigo criminally punishable, and that a special agency should be employed to settle disputes connected with indigo, and to report on indigo affairs to the Government.

The Lieutenant-Governor, in his able review of the Report of the Commissioners, had entered very fully into all these recommendations, and had given at length his reasons for adopting some and rejecting others. For these he (Mr. Beadon) would take the liberty of referring the Council to the Lieutenant-Governor's Minute, observing only, by way of a general statement of what had been done that the number of Magisterial Sub-divisions had been increased, so that now in the indigo districts of Nuddea and Jessore there was not a spot more than 25 miles distant from a Magistrate's Office, while the average distance was, of course, much less; that the appointment of Honorary Magistrates and Justices of the Peace in every District had been sanctioned by the Government of India; that measures

had been taken, and, if the law should be slightly altered, as he intended hereafter to propose, would speedily be completed, for the establishment of a Civil Court of summary jurisdiction without appeal in every rural District where such a Court was required ; that the reform of the Police, on the principles embodied in the Bill now before the Council, would be proceeded with as soon as possible ; that a project of law for the general registration of contracts, including of course those relating to indigo, was already under the consideration of the Council ; and that provision had been made in the Penal Code for the punishment of persons who instigated affrays.

He now came to the immediate subject of the Bill, and in order to put the Council in possession of the grounds on which a somewhat similar measure had been proposed by the dissentient minority, he would read an extract from their Minute :—

" Then we are of opinion that while on the one hand effectual measures have been taken for the protection of the ryot, on the other hand the just interests of the Planter should be guarded and cared for.

The precarious nature of the crop in Lower Bengal, the critical emergencies which arise on the cultivation of indigo, have been shown in the Report ; similar emergencies may arise even in the manufacture. Thus it is possible, and does actually happen, that the Planter is involved in sudden difficulties through no fault of his own. His ryots may have taken advances, and then refuse to sow ; or they may delay to sow within the few hours during which alone the sowing for a season's crop will be possible. There is hardly any other product, the culture of which is liable to such a crisis as this. Then, in the midst of the manufacturing season, the hired laborer may absent himself, or, contrary to agreement, strike for higher wages. The ryot (especially if, as suggested, he received a considerable payment, whether a crop is cut or not) may refuse to exert in the case of inundation or destructive accidents. Now it appears to us, that wherever the conduct of any business is from its nature critical ; wherever breach of contract would, if not immediately redressed, cause irreparable loss or inconvenience to the opposite party ; the policy of the law has been to render such breach of contract liable to criminal penalties. Such has been the principle followed in the case of domestic servants, of workmen, of railway laborers, and, as we understand, in the case of coffee-planters ; and recently this appears to have been the principle which guided the Legislature in passing the summary and temporary Act for indigo cultivation during the season of 1859. If the principle has been correctly described above, then we submit that it applies in the case of the cultivation and manufacture of indigo cultivation as much as to any case whatever. Indeed, we believe, that in none of the cases in which the principle has been sanctioned, is the business more critical, or the inconvenience more immediate, or the loss more difficult of reparation, than in the case of indigo cultivation.

We would therefore recommend that the Act XI of 1860, rendering breaches of contract to cultivate indigo criminally punishable by the Magistrate, be made permanent with certain modifications. And we would extend it to breaches of contract to manufacture indigo, so that a ryot who has engaged to cultivate, or a laborer who has engaged to manufacture, may be by law compelled summarily to fulfil his engagement.

If it be urged, in opposition to the enactment of such a law, that the crop is unremunerative to the ryot ; that the ryot is not practically free ; that force and violence are already used ; that the police are inefficient ; that the planter is already the stronger party ; then we would beg that the matters previously urged may be borne in mind ; and we submit that these objections, however applicable under the system heretofore existing, will not apply to that reformed system which we seek to introduce. If the improvements which we urge shall be carried out (and unless they are carried out, more or less, we fear that the very existence of indigo cultivation at all will be jeopardized), then we submit that the cultivation will be remunerative to the ryot, that the ryot will be a perfectly free agent, that force and oppression will no longer be possible, that the police will not be inefficient, and, lastly, however powerful the planter may have heretofore been, yet he is not now the stronger party, as compared with the ryot. Indeed, the ryots have shown themselves to be aware of their own right and interests, and resolute in using their physical force and numerical strength in resistance to any thing like coercion.

Then it may be objected, that the new Civil Procedure is prompt and summary ; that the old delay of the law is now done away with, and that the present law will afford the planter all the redress he can require. Now, we are fully sensible of the improvement which has been effected in the Civil Procedure, though it remains to be seen whether justice will in practice be speedy. But facility and speed in obtaining justice are not sufficient in cases where the breach of particular contracts is specially and peculiarly productive of loss or inconvenience. In cases of this class, the law has prescribed criminal penalties in order to deter parties from breaking such engagements. It is the moral effect of threatened punishment that is needed. At the Presidency of Calcutta there are Small Cause Courts, and every possible facility for obtaining justice, still the criminal penalties are

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needed for servants, who abscond from service, and for workmen who desert their work."

The minority went on to observe—

"Further, it may be said, that if a law of this nature be enacted for indigo contracts, it may be equally required for silk contracts, and perhaps other similar contracts: doubtless this is true. And if the just protection of the silk interest, or other interest similarly circumstanced with indigo, should require a special contract law, such lawful assistance might, we think, with good policy be conceded."

And they came to this conclusion :—

"We would then make the breach of a registered contract to cultivate indigo punishable by a Magistrate, but not any other contract except a registered one. It would be very desirable to make the terms of such contracts explicit, so as to include the whole process of cultivating, from the ploughing to the cutting, and delivery at the factory. We do not think that registration of agreements on the part of coolies to manufacture indigo would be necessary. We would, however, have breaches of such agreements punished by a Magistrate in the same manner as breaches of contract on the part of workmen or domestic servants."

He would not take up the time of the Council by reading the arguments brought forward on the other side of the question by the majority of the Commission, because these arguments were epitomised in the Lieutenant-Governor's Minute, whose opinion, adverse to the proposal, was thus expressed :—

"Two members of the Commission, in a separate Minute, recommend the enactment of a law rendering breach of an indigo contract, on the part of a ryot, a criminal act punishable by the Magistrate. The majority of the Commission strongly object to any such law, and I fully concur in their objection, for the reasons they assign. No one-sided legislation is ever justifiable, and I believe such legislation in the end generally injures the interest it is meant to favor. An indigo contract differs in no respect from any other sort of contract for the delivery of goods. To subject either one of the two parties in such a contract to be treated as a criminal, for what is acknowledged by the general law not to be a crime, seems to me quite indefensible. All the arguments above urged against any special legislation for indigo business at all, apply with peculiar force against special penal legislation, in a sense contrary to all the received principles of distinction between Civil and Criminal Law. In 1810, in 1832, and in 1835, in India and at home, the highest Authorities have concurred in rejecting such a law.

Indeed, a proposition for such a law seems to me to follow strangely upon the result of the Commission's Inquiry. The whole Bengal indigo system has been upon its trial, and though only four out of five Commissioners have signed the Report, I do not understand that the fifth Commissioner, who represented the Planters, differs from his colleagues substantially, in regard to the findings on matters of fact; and he has signed with another member a separate paper, which, in my judgment, is as conclusive against the system as the body of the Report itself is. The result is, that the ryot is found guilty of nothing, and that his complaints are in the main fully established. It would be natural, upon such a finding, to discuss some project of a special law of protection in his favor; but to follow up a verdict in favor of a successful complainant by a sentence of subjection to a special penal law, making him criminally liable for what no other person is criminally liable, does seem to me to be somewhat hard upon him.

I agree with the majority in thinking that, in the interest of the Planter, such one-sided legislation would be unwise. The Planter's present difficulty is to get ryots to agree to cultivate indigo, and he must succeed in that, before he can talk of punishing them for not cultivating. If the object were to make indigo cultivation still more unpopular than it is to stigmatise it by making those who undertake it liable to be treated as criminals, might be a wise measure; but as the object is the contrary, I cannot think it would be a wise measure."

So far as this Bill was concerned, he (Mr. Beadon) thought he could show that the Lieutenant-Governor's objection, that the indigo ryot would be made liable to punishment in a way in which no other person was liable, did not apply. The Lieutenant-Governor further condemned the proposed law as unjust to the ryot and injurious to the Planters themselves. With respect to injustice towards the ryot, he (Mr. Beadon) would observe that such a law could be said to be unjust only in case it were made retrospective in its operation, and applicable to the breach of contracts already existing; whereas this Bill was purely prospective in its nature, and applicable only to contracts which might be made after it came into force. Every ryot would be at perfect liberty to enter into such contracts or not as he pleased, with full knowledge of the consequences of his act. It might also be said with some show of reason, that such a law would be unfair if it were

to apply only to indigo ; but this was not the case. As to its being injurious to employers, he thought it must be admitted that employers were the best judges of what would conduce to their own interests. A general desire had been expressed for such a law, and it had appeared to the Governor-General in Council, that to capitalists engaged in developing the resources of India, especially in turning to account its boundless agricultural capabilities, the success of whose operations depended upon the honest performance of their contracts by a multitude of persons raised little, if at all, above the condition of day-laborers, of weak moral perceptions, easily seduced from honest courses, rarely possessed of means to repair the damage caused by their default, and very apt at concealing such means as they possessed, some special protection was necessary.

Such protection had long been enjoyed by masters against their servants, and it had recently been extended by this Legislature to masters and employers against workmen and artificers who have received an advance, and wilfully failed to execute their stipulated work, as well as against petty contractors employed in public works ; and he saw no good reason why such protection should not be given to Planters, Manufacturers, and others against those who, after receiving advances for the delivery of produce, wilfully neglected to perform their part of the agreement. A question indeed had been raised, whether Act XIII of 1859 was not so worded as to admit of its being extended to indigo districts, and put in force against defaulting indigo ryots ; but as such an application of the law was, no doubt, beyond the intention of the Legislature who passed it, it had not been thought proper to act on that view ; and, indeed, the Act, as it stood, if made applicable to indigo contracts, would be open to much objection.

It was not intended, however, to confine the action of the Bill to contracts for the delivery of indigo ; it had been framed, so as to embrace all kinds of agricultural produce, and its provisions were equally applicable to tea, sugar, coffee, cotton, and other valuable staples. The Government had recently received from the managing proprietor of extensive sugar-works in the Ganjam district, an urgent appeal for such a law, pointing out in forcible terms the injury to which he was exposed, and the impossibility of protecting himself, except by means of a summary penal law, from the fraud of those who contracted under advance, to supply him with the material of his manufacture, and then parted with their produce to others.

He would read a part of the letter which had been addressed to the Government by this gentleman, Mr. Boothby, Managing Partner of the Aska Sugar Concern, under date the 29th October 1860. He said :—

"In forwarding a copy of the letter noted in the margin, together with proceedings of the Madras Government, I have the honor to submit an urgent appeal to the Governor General in Council for the protection of the interest committed to my charge.

It will be seen from this correspondence, that I have long had reason to complain of the inadequacy of the law to deal with cases of fraudulent misappropriation of cash advances to ryots for sugar-cane planting, and not only am I still compelled to urge this complaint, but a recent decision of the Court of Sudder Adawlut at Madras has had the effect of placing this establishment in a very critical position.

In the month of May last, I had occasion to send in charges of fraud against certain ryots, who, having in the first instance taken advances for planting sugar-cane, had subsequently not only assigned their crops over to my Agents to examine them, but in the presence of the said Agents, had loaded the produce thereof on carts with the avowed intention of taking it to the factory, and yet, instead of doing so, stopped at a village on the road, and sold the produce to native sugar-dealers.

The copy of the proceedings in this case, which I have now the honor to enclose, will show that the charge of fraud was fully substantiated, and that the guilty parties were sentenced to fine and imprisonment with hard labor in irons.

This sentence, fully approved of by Mr. Forbes, the Collector and Agent to the Governor of Fort St. George, in Ganjam, has been quashed by the Court of Sudder Adawlut, although Mr. Forbes made the matter the subject of special appeal to the Sudder Court, in order to show that, as it had been proved that the identical goods, shown, as belonging to the Aska Concern, had been sold to other parties, a fraud

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had been committed, and that therefore it was a case for Criminal and not for Civil process, as decided by the Sudder Court."

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"And to show that I am not merely anticipating an evil, I can state that the case mentioned, in which I sent in charges of fraud, was only one out of a very large number of similar cases. From cane plantations of the value of 1,30,000 Rupees visited by me and my Agents, and assigned over to us as the property of the concern, fully 20,000 Rupees worth of the produce was not delivered to the Factory, being fraudulently disposed of elsewhere; and if this occurred previous to the decision of the Court of Sudder Adawlut, that such conduct is not Criminal, what must be expected under present circumstances.

In this District, no plea can be advanced in excuse of the ryots for such conduct, as they are wholly and entirely free agents in receiving these advances and cultivating sugar-cane—in fact, it is they who importune us for advances, which we give them on infinitely easier terms than they can get elsewhere; and as regards the price we pay the ryots for the raw material, it is confessedly a highly remunerative one, we having increased it just 30 per cent. in the last ten years.

With regard to the amended Civil Code lately introduced, without undervaluing it in the least, and indeed thankfully acknowledging it as a great boon, I would beg to submit that it cannot meet the requirements of such cases as those of which I have to complain; and until an Act is introduced, by which they can be dealt with summarily before a Magistrate, it is vain to look for any abatement in the system of deliberate fraud so rife at present in this District, and which the Collector Mr. Forbes has pointed out as being 'as demoralizing to the ryots as it is vexatious and injurious to merchants.'"

He thought that these extracts showed pretty clearly, that the want of a law to compel the performances of such contracts by the fear of penal consequences was not confined to the indigo districts.

The Indian Law Commissioners held that, in general, a mere breach of contract ought not to be an offence, but only the subject of a civil action, and few would be disposed to differ from them. But to this general rule, they admitted exceptions, and accordingly the Code provided for the punishment of certain breaches of contract, and left untouched the special laws which provided punishment for servants who left their employment or neglected their work, for seamen who deserted their ships, for artificers and others who failed to perform their stipulated engagement, for defaulting contractors on public works, and others. The question then was simply, whether ryots and others who, on consideration of an advance, agreed to deliver a certain quantity of indigo or other produce, ought not to be brought within the category of these exceptions? He thought that ample ground had been shown for answering this question in the affirmative. There was no difference in principle between the case of a mason who contracted to build a stable, or a laborer who engaged to work for so many days, and that of a ryot who engaged to deliver produce. That a ryot was a laborer, whatever else he might be, there could be no doubt. It was for the produce of his labor that he contracted, and his field was no more to him in fulfiling his agreement than his skill and tools to the workman, or his capital to the petty contractor.

If a ryot took an advance from an Indigo Planter and engaged to deliver a certain quantity of produce, intending at the time not to fulfil his engagement, he was held to be guilty of cheating. But how could such intention be possibly proved? and what was the extent of the difference in point of moral guilt, between a man who made an agreement, intending at the time to break it, and one who made an agreement in good faith and resolved, an hour or a month afterwards, to play false? It was not, however, the object of this Bill to bring such default within the definition of cheating, but simply to follow the precedent of the Act of 1859, and compel either the performance of the agreement or the payment of damages, and to punish the defaulter only in the event of his default being persisted in.

He would now offer a few remarks on the details of the Bill.

It applied only to contracts under advance. In this he had followed the principle of the Act of 1859, but he was satisfied that, by limiting the operation of the penal law to contracts made on consideration of an advance, he dealt with the only class of cases in which exceptional measures for the preven-

tion of fraud were called for, and at the same time afforded indirectly an inducement to ryots and others to contract without advance ; and if, by this means, the system of advances so universally prevalent in India, were to any extent discouraged, it would be an unquestionable benefit.

The Bill then followed generally the model of Act No. XIII of 1859, but Clauses had been added analogous to those introduced into Act XI of 1860, for preventing on the one hand the exercise of fraud or force in obtaining contracts, and on the other the abetment of the breach of them. But the most important Clause was that which defined exactly the nature of the contracts that could be made the subject of complaint under the Bill. In the first place it was confined to contracts in writing duly witnessed, whereas the Act of 1859 included mere verbal contracts. Then it referred only to contracts that might be made after the Bill became law. It had been represented to him strongly by gentlemen interested on behalf of the Indigo Planters, that the law ought to have a retrospective effect and apply to the breach of all contracts already entered into, or at any rate of contracts that have been made since the temporary Act of 1860 expired. But apart from general consideration, there were two special reasons which must prevent him from proposing the Bill to the Council, except as a prospective measure. The one was, that in the Proclamation published by the Lieutenant-Governor in September last, with the sanction of the Government of India, a promise had been made to the ryots that their then existing contracts would not be made the subject of another summary law : the other was that the character of many of the engagements that had been put forward in support of complaints preferred under Act XI of 1860 was not such as would justify him in asking the Council to make the breach of them penal. Then it was provided that the Bill should not apply to any contract not filed in the Magistrate's Office within a month from execution. This he admitted was an imperfect substitute for registration, but it was impossible to frame a satisfactory law applicable only to contracts for the delivery of agricultural produce, and in the meanwhile the fabrication of contracts, long after the alleged date of execution, would be prevented. The Bill was framed so as to include contracts only for one year, and for produce valued at fifty Rupees. A desire had been expressed that these limits should be extended, and he would have no objection to such extension if sufficient grounds were shown for it. The object in fixing the duration of the contract was to discourage the making contracts for an indefinite period ; but if the custom were to give contracts for two or more years, so long as it was for a fixed period, he saw no great objection to the change. The reason for assuming a limit of fifty Rupees was that the operation of the Act might be confined to persons as nearly as possible in the condition of laborers and in the same class of society as those affected by the Artificers' Act. If there were not some limit, the law might be put in force by one trader against another with whom he had made an agreement ; but he was not prepared to say that the limit might not be enlarged to some extent, and he would leave that point open to future consideratian.

It had been his intention to give an appeal from the decision of the Magistrate, but on full consideration he had come to the conclusion that it was best for all parties that the Magistrate's decision should be final ; and this was the more suitable, as he proposed that the powers of a Magistrate under the Bill, should be exercised by the Judge of a Small Cause Court, wherever such a Court might be established in the interior.

He had been asked, what security the Bill gave to ryots against being cajoled or forced to enter into contracts, and the answer he gave was that the Bill provided for the consequences of such fraud or force if attempted, and that the registration of the contracts in the Magistrate's Office would, at any

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rate, afford evidence of the timely assertion that such contracts had been made. It had been abundantly shown, too, that the people, when once acquainted with their rights, were well able to assert them; while it must be remembered that employers, if they had heretofore resorted to illegal means to protect themselves, had had no adequate protection of law, such as it was now proposed to give them.

The Bill was read a first time.

SMALL CAUSE COURTS.

MR. BEADON, in moving the first reading of a Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)," said that he would remind the Council that, when that Act was brought up before the Council for third reading, it was recommitted with a view to the addition of a Clause which provided that no Judge of any Court constituted under that Act should exercise any Civil jurisdiction, except under the provisions of the Act. That Clause was introduced on the Motion of the Honorable and learned Vice-President, in order to prevent the local Governments from investing one Moonsiff with the powers of a Small Cause Court Judge because he was considered fit to exercise them, and withholding them from another Moonsiff because he was considered unfit; and he (Mr. Beadon) believed that no one in the Council doubted that the object was a right one. But it was not then foreseen what the effect of the Clause would be, and he would now describe it. The Lieutenant-Governor of Bengal, on being requested to consider how the wishes of the Government of India and the Legislature in regard to the establishment of Courts of Small Causes in the Mofussil might best be carried out, addressed a letter to the Government of India through his Secretary, on the 17th of November last, from which he (Mr. Beadon) would read the following passage:—

"The plan which the Lieutenant-Governor had formed was to appoint four, five, or six, say on an average five, Judges of a Small Cause Court in each District experimented upon, one in each Sub-Division; and to make these Judges also Principal Sudder Ameens and Sudder Ameens of the District. This would have given them a good deal of work besides the Small Cause Court work, which alone would not occupy a great part of their time, and it would have relieved the Judge of much appellate work. To these powers he proposed to add also revenue powers, to enable the Small Cause Court Judges to try Civil suits for rent, &c., and Magisterial Judicial powers, without, of course, any Police powers. In this manner these Judges would have been Civil and Criminal Judges in all Departments within their Sub-Divisions. It seems to the Lieutenant-Governor that the effectiveness of the Judicial Administration would be very greatly increased by such an arrangement; whilst some saving might have been effected towards meeting the extra expense, by abolishing the Sudder Ameen and by reducing the number of Moonsiffs, whilst the present District Principal Sudder Ameen would have stood for one of the required number of Sub-Divisional Judges. On consultation with officers of judicial experience, well qualified to judge, he found that, besides the expense, the only difficulty anticipated was the paucity of experienced Judicial Officers fit for the very responsible office of Small Cause Court Judge; but this, though fatal to a general and simultaneous introduction of the scheme, was not fatal to the experiment.

"On looking, however, more closely into the Act, the Lieutenant-Governor found, to his very great disappointment, that it contained a Clause which prohibits a Judge of a Small Cause Court being also Judge of any other Civil Court. He apprehends that this Clause of the Act must be considered fatal to the measure, for the mere Small Cause Court work, which now only occupies a part, and no great part, of the time of, on an average, nine Moonsiffs, could not occupy all the time of five Judges, even with the addition of Criminal work; and a Sudder Ameen, and one, or sometimes two, Principal Sudder Ameens, would have to be retained, as formerly.

But, if His Excellency in Council does not think this objection fatal, the scheme can be tried still in one or two Districts, for which the Lieutenant-Governor believes a sufficient number of competent instruments are available. The expense may be estimated at less than 50,000 Rupees a year for each District."

He (Mr. Beadon) need hardly say that it was impossible for the Government, under present circumstances, to incur so large an expenditure; and

unless Small Cause Court Judges were empowered to perform other judicial duties, so that their time might be fully occupied, and the number of other Judges diminished, the project of establishing Small Cause Courts in the Mofussil must necessarily fall to the ground. Under these circumstances, he did not think that the Council would have any objection to the repeal of that Clause, especially if assurance were given by law or otherwise, that the practice which that Clause was intended to prohibit should not be resorted to. With these observations he begged to move that the Bill be read a first time.

The Bill was read a first time.

PAPER CURRENCY.

MR. LAING moved that the Council resolve itself into a Committee on the Bill "to provide for a Government Paper Currency;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I (the repealing Clause) was passed after a verbal amendment, and with the insertion of the "1st day of March 1862" in the blanks for the date from which the repeal should take effect.

Section II was passed after a verbal amendment, and with the insertion of the "said 1st day of March 1862" in the blanks as the date from which the prohibition against the issue by any body, corporate or person, of notes, &c., payable to bearer on demand, should come into operation.

Section III provided as follows :—

"There shall be established by the Governor-General of India in Council a department of the Public Service, to be called the Department of Issue, either in connection with the Mints or otherwise, and from and after the day of there may be issued from the said Department, as hereinafter provided, Promissory Notes of the Government of India payable to bearer on demand, for such sums, not being less than twenty Rupees, as the Governor-General of India in Council shall direct."

MR. ERSKINE said, he understood that it had been the intention of the Honorable and learned Judge, who was unfortunately and unavoidably absent, to propose that the minimum denomination of notes to be issued under this Section should be for ten Rupees each. Under the circumstances, he (Mr. Erskine) did not wish himself to offer any remarks on this point at present. He would merely ask the Honorable Member in charge of the Bill, on behalf of the Honorable and learned Judge, whether or not he considered that the point might now be reconsidered with advantage.

MR. LAING said, he should first move that the Petitions which had been presented to the Council to-day be read at the table.

The Motion was carried, and the Petitions were read accordingly.

MR. LAING then said that, if the Honorable and learned Judge (Sir Charles Jackson) had not been prevented from attending to-day, he understood that it was his intention to have moved an amendment for retaining notes of ten Rupees. It would perhaps be therefore convenient that he (Mr. Laing) should state the course which the Government proposed to take. There could be no doubt that our Currency would be left in a very imperfect state, if there should be no medium of exchange but Silver for amounts lower than twenty Rupees. In a country like this, as had been stated in the Petitions, by far the greater number of transactions were for smaller sums. Therefore, in making a new system of Currency for all India, it was obvious that the minimum denomination should not be too high. With this view the Government at first intended that notes as low as five Rupees should be issued. But the view taken by him and others was that the present was merely a tentative measure, and that we should go on slowly and cautiously, as there would be considerable difficulty in familiarizing the great majority of the people to a Paper Currency, instead of the existing Silver Currency. But great doubt existed whether the premature introduction of

notes of so low an amount among a population generally ignorant of such matters and extremely suspicious of any novelty, before they had become familiarized with paper money by the circulation of larger notes, might not defeat the object in view by creating a prejudice against paper money altogether. Without venturing to speak very confidently of himself, for his experience of India had extended over only two months, he was decidedly under the impression that a Gold Currency would be more readily received, and more acceptable to the Native population in the interior than a small Note Circulation. A Gold Currency would also have the advantage of carrying its own intrinsic value about with it and thus circulating freely from one end of India to the other, which small Notes never could do. For these reasons it had been thought wiser to omit Notes of five Rupees from the Act—at any rate for the present and until the experiment of sanctioning a partial use of Gold had been tried. But the Government had no wish during the progress of this experiment to deprive any District which now had ten Rupee Notes of the convenience attaching to them, and he thought it better therefore that a discretionary power should be given of issuing Notes to the limited extent of ten Rupees in those Presidency Districts or Circles where they were already in circulation, or where a strong case might be established for their introduction. On the whole, therefore, he was disposed to substitute "ten" for "twenty" Rupees at the end of this Section, and he proposed to introduce, after the words "such Promissory Notes" in Section XI, the words "of such denominations as shall be prescribed by the said Regulations not less than ten Rupees," so as to meet the case of country Circles where it might be desirable to issue only Notes of the larger denominations.

As regards the other point referred to in the Petition of the Chamber of Commerce, relative to the adoption of a Sovereign instead of the Gold Mohur Currency, it was premature to discuss it, as the whole measure had to be referred to the authorities at home before it was acted upon; but the subject should have his best consideration.

MR. HARINGTON begged to ask the Honorable Member of Government opposite (Mr. Laing), what were the words which he proposed to introduce in Section XI?

MR. LAING said, he proposed to insert the words "of such denominations as shall be prescribed by the said Regulations not less than ten Rupees," after the words "such Promissory notes."

MR. HARINGTON enquired what were the Regulations referred to in the proposed amendment?

MR. LAING replied, the Regulations to be published by the Governor-General in Council under Section IV.

MR. SCONCE said that he should much regret if the communities that had become accustomed to ten Rupee Notes should be deprived of the convenience experienced in the circulation of notes of that denomination. But even adopting the plan now proposed by the Honorable Gentleman, the alternative was, not to make Notes for ten Rupees legal tender. He would ask the Council to reflect for a moment the very great hardship that a compulsory issue of Notes of the denomination of ten Rupees, if made legal tender, would inflict on the poorer classes of the inhabitants. If he thoroughly understood the practical effect of the whole measure, the result would be that Notes would be circulated, not only in all the Presidency Towns, but also, for example, to the farthest verge of the Presidency of Bengal. The limits of the Presidency Circle which would be first formed were entirely undefined. It might include Calcutta, Assam, or Rangoon. It was a smaller matter to say that it would include Patna and Dacca. What he wished to say was that, however people in Calcutta might be benefited by the use of these Notes, it was quite a different thing to force them elsewhere—Assam, for instance, where means of converting the Notes were not provided. As it was, you would force Notes of a low denomination for the purpose of

continuing the circulation in places where ten Rupee Notes had been already issued, but to the prejudice of other parts of the country where Notes of any denomination were a novelty, and where no opportunity was secured to the people, on whose hands they threw the Notes, to turn them into money. In Calcutta a person had only to cross the street to get cash for his Note. So far, undoubtedly, the issue was a matter of convenience. But how very different would it be elsewhere. After all, what benefit was there to be derived from it? Twenty years ago the circulation of ten Rupee Notes of the Bank of Bengal was not more than one per cent. and is now three per cent. of the entire issue. He would not deprive Calcutta of the advantage which it now possessed; but when you came to throw these ten Rupee Notes over the whole country, it became quite a different thing. He need not remind the Council of the opinion almost universally entertained in England against the introduction of £1 Notes. It was only three years ago that the question was reconsidered in England, when a Committee was appointed by the House of Commons to enquire and report upon the operation of the Bank Acts. The Committee, he believed, unanimously reported that the law which prohibited the circulation of Notes below the denomination of £5 should be adhered to. Some of the witnesses examined were by no means in favor of the Bank Act: witnesses like Mr John Mill and Mr. Newmarch, who both, he need hardly say, were of the greatest authority on such questions as these, and both were nevertheless strongly opposed to the introduction of £1 Notes. In speaking against the proposition of issuing such Notes, Mr. Newmarch adopted the very strong expression that the measure would be received in England with horror. Here, excluding the Presidency Towns, a Paper Currency was almost unknown in the interior of the country. Your measure, as regards the wish and convenience of the people in general, was wholly experimental and tentative. You could not tell now how far twenty Rupees, or even fifty Rupees Notes would be acceptable to the general community, and it seemed to him to be only wise and prudent to watch the progress of the introduction of Notes of the higher values before you adopted a low denomination: yet you now propose that your ten Rupee Notes should be thrust involuntarily into the hands of all men, and at the same time afford no facility for cashing them.

He would repeat therefore that as £1 Notes were repudiated in England, we were the more bound in introducing a Paper Currency in India to regulate the circulation by the principles approved at home. To begin with so low a minimum as 10 Rupees seemed to him to be extremely dangerous. The Honorable gentleman (Mr. Laing), if he rightly understood, supported his amendment on the ground that it would be convenient to capitalists, such as Indigo Planters, to receive remittances in ten Rupee Notes, in order to pay away such Notes as advances upon produce. Now, he must say, if he had been in search of an argument to oppose the adoption of ten Rupee Notes, it would have been this. Conceive a ryot to whom an advance of ten Rupees was payable, to receive the amount by a Note. To him the Note was useless as a means of payment. To a ryot the first necessity was to break up the Note that it might serve for the satisfaction of the smallest transactions, for food, for clothes, for ploughs, for laborers, or for rent. And he must say that, as regards ryots or laborers, the experiment of a ten Rupee currency was, in his opinion, unjust and indefensible. Under this Bill such Notes would have the widest circulation, it might be against the wishes of the people and without the power of convertibility. He would ask the Council to contrast this scheme with the English practice. Here we were to have one office of payment in a circle that would embrace Rangoon to the south, and the remote Districts of Rungpore, Purneah, and Chuprah to the north, or others still more distant. But neither at the Bank of England, nor at any of the branches of the Bank, was

a Bank Note a legal tender of payment. Place the map of England on the map of Bengal and see the positions of the Bank branches. Branches of the Bank were placed everywhere throughout England, and at none of these places was the Note a legal tender. In England you would find that there was a branch Bank at Birmingham, one at Manchester, another at Gloucester, others at Bristol, Swansea, and Plymouth, others at Portsmouth, Norwich, and Leicester, others at Hull, Newcastle, and Leeds. In all there were twelve branches, and at every branch money payable might be paid in coin at the will of the party. But not only so; all Notes issued at the branches were required to be paid at the place of issue. He had not a recent statement of the Bank circulation in England. The statement which he had seen had reference to the issues in 1843, and he observed that out of a total issue of about eighteen millions, the branch Banks issued nearly six millions. Thus it happened that, throughout the surface of England, means were found for cashing Notes amounting to about one-third of the entire issue of the Bank of England.

He would not detain the Council any longer. He had stated at length the objections he entertained to the general issue of ten Rupee Notes, and unless they were not made legal tender, he could not support the Motion before the Council.

MR. HARINGTON said, he ought perhaps to have spoken before his Honorable friend, the Member for Bengal, and he had fully intended to do so, though he was not sorry his Honorable friend had taken precedence of him in the debate, for he had said much that he (Mr. Harington) proposed to say, and he had said it much better than he (Mr. Harington) could have done. He was very sensible that some amount of inconvenience must necessarily result in the Presidency Towns and in the immediate neighbourhood thereof from the withdrawal from circulation of the present Bank of Bengal Notes for ten Rupees, and from the prohibition against the issue by Government of notes of that denomination, contained in the Bill before the Council. He fully participated in the anxiety which had been expressed by the Honorable Member for Bengal to preserve to the Presidency Towns their present Bank Notes of the value of ten Rupees, and he should be very glad if some safe and practicable scheme could be devised which, without causing harm or producing injury or hardship elsewhere, should continue the use of this class of Notes to the Presidency Towns and other places in their vicinity. He was considering whether the words which the Honorable Member of Council opposite (Mr. Laing) proposed to introduce into a later Section of the Bill would admit of this being done, when his Honorable friend the Member for Bengal rose to address the Council. It might have seemed strange that he should have asked the Honorable Member of Council opposite (Mr. Laing) to what Regulations he alluded in his reply to the first question, which he (Mr. Harington) had considered it necessary to put to him, seeing he (Mr. Harington) was a Member of the Select Committee which had proposed the introduction of the provision which allowed of the issue of the Regulations referred to by the Honorable Member of Council, and he ought, therefore, to have been fully informed on the point. But he did not understand that the Regulations which the Government might frame under Section IV of the Bill would embrace the denomination, or have any thing to do with the value of the Notes to be issued under Section III, and it was this which led him to put the second of the two questions which he had asked the Honorable Member of Council. With reference to the Petitions which had just been read to the Council he might say that so sensible had he all along been of the inconvenience mentioned by the Petitioners as likely to result, in so far as the Presidency Towns were concerned, from no Notes being issued under the Bill of a lower denomination than twenty Rupees, and

so anxious had he been that that inconvenience should, if possible, be avoided, that when the Section of the Bill, now under consideration, was discussed by the Select Committee, he seriously deliberated whether he ought not to waive his objections to the issue by Government of Notes of the low denomination of ten Rupees, even supposing it to be insisted upon that those Notes should be a legal tender, and content himself with the exclusion from the Bill of the lowest denomination of Notes mentioned therein, that is, notes for five Rupees. He might have been brought to agree to the settlement of the question in this manner, had it not been for the fact which had been mentioned, both by the Honorable Member of Council opposite (Mr. Laing) and by the Honorable Member for Bengal, that of the entire Paper Circulation of the Bank of Bengal, the Notes issued by that Bank of the value of ten Rupees amounted to only 3 per cent. He regarded this as a very significant fact, and as tending to prove that even in the Presidency Towns, Notes of the value of ten Rupees were not very greatly prized, and that in those Towns there was no considerable demand for such Notes, nor any very pressing necessity for them. If the inference which he had drawn from the fact just mentioned, was correct, what demand, he would ask, was there likely to be amongst the natives in the Mofussil for small Notes? He had no hesitation in saying that, in so far as the Upper Provinces were concerned,—indeed he thought he might say beyond the Presidency Towns generally,—not only had the natives no wish for Notes of the low denomination of five and ten Rupees, but they had no desire for a Paper Currency at all, except, perhaps, as a means of remittance, and to be used in the same manner as Treasury Bills were used, that is, Bills payable on demand at particular Treasuries. He saw reason to believe that the natives would view the issue of a Paper Currency by Government, if coupled with the condition that the Notes issued were to be a legal tender even to the low denomination of ten Rupees, with considerable alarm and distrust. He found the belief which he had just expressed fully confirmed in the papers which had come up from Bombay. He quite concurred with the Honorable Member of Council opposite (Mr. Laing), that they should proceed most cautiously in the introduction of the present measure. He thought they would do well to avoid, at the first introduction of the measure, not only what might cause alarm or add to any present feelings of alarm, but also any thing which might bring them into collision with native prejudices and native habits which had existed for many generations, and that they should look to their Notes becoming acceptable to the natives from their own merits, and the advantages of a Paper over a Metallic Currency, which would soon become apparent, rather than attempt to force them upon the people by making them a legal tender. He had heard it said that the limited circulation of the Bank of Bengal Notes of the value of ten Rupees arose from the circumstance of those Notes not being a legal tender. But this objection applied equally to the other Notes issued by the same Bank, and yet they were not told that the same effect had been produced on their circulation. He could not believe that there was any force in the objection, because he found that with exception to the Bank of England, the lowest denomination of Notes issued by which was £5, the Notes of no Bank were a legal tender. They were told by their late Right Honorable Colleague, Mr. Wilson, that the Banks in Scotland all issued Notes, but they were not a legal tender; that the Notes of the English and Irish Banks were not a legal tender; that the Notes of none of the American Banks were a legal tender; that the Notes of the Bank of France were not a legal tender, and that in the United States, in the North American Colonies, in Germany, Mauritius, and Ceylon, Notes of a very small denomination were current, but not as a legal tender. It was certainly the case that in all those places

the issue of Paper Money was not a Government concern, as it was proposed to be here, but he did not think that that circumstance made any material difference, the more particularly as they were assured that the Government had no intention of forcing the issue of Paper Money. But as he had already said, he should be very glad if even the small amount of inconvenience which might possibly arise in the Presidency Towns from the discontinuance of Bank-Notes of ten Rupees value could be prevented without injury to other places. This he thought might be done in one of two ways, either by not making Bank Notes of the low denomination of ten Rupees a legal tender anywhere, or by making them a legal tender only within the limits of the Presidency Towns, and their vicinity within a convenient radius. If the Honorable Member of Council, who was now in charge of the Bill, would consent to either of these propositions, he (Mr. Harington) would vote in favor of the amendment before the Committee. His objection was not to the issue of Bank Notes for ten Rupees, but to their being made universally a legal tender.

THE CHAIRMAN said, he had not come prepared to discuss the question. He did not see any great difficulty in making ten Rupee Notes legal tender within the Presidency Towns only, or allowing them to be issued merely within the Presidency Towns. But the case was quite different, if they were to be introduced into or made legal tender in the Mofussil. The matter appeared to have been carefully considered by the Select Committee, in whose Report he found it stated as follows :—

"Your Committee have anxiously considered another point, namely, what should be the lowest denomination of Notes which should be issued as a legal tender. The disadvantage of issuing two sorts of Notes, one of which should be a legal tender, and the other not, seemed to be such that it was desirable to make all the Notes uniform in this respect."

From this he understood that it was intended that, whether the Notes were to be not lower than ten Rupees, or than twenty Rupees, they should all be made legal tender. Looking, therefore, at all the circumstances of the case, and referring to what had been so ably stated by the Honorable Member for Bengal, as to the effect of making ten Rupee Notes legal tender wherever the Government might think fit to issue them, he (The Chairman) was opposed to the Motion before the Council, unless the Government consented to make them legal tender only within the Presidency Towns. The Report of the Select Committee went on to say :—

"This being so, your Committee have thought that, on the whole, it would be more prudent not to authorize at present a lower denomination of Notes than for twenty Rupees. With a circulation of five and ten Rupees Notes, it appeared to several Members of your Committee, that there would be considerable risk of exciting suspicion and discontent among the mass of the community, who might be compelled to take payments in an unaccustomed medium, for which they could not readily obtain change without loss. If under the proposed provisions as to Gold, that Metal should come into general circulation, the use of small Notes would be, in a great measure, superseded by a medium, which, from its intrinsic value and power of uniform circulation, must be admitted to possess some important advantages over any form of small Note Currency. If, on the other hand, those apprehensions should be groundless, and after a short time, when the public are familiarized with the larger Notes, a spontaneous demand should arise for Notes of a smaller denomination, it will be easy to introduce a Bill, extending the limit below twenty Rupees."

Now that entirely accorded with his view of the subject. If, after the Bill had been tried, it should be considered necessary to reduce the minimum from twenty to ten Rupees, it would be easy to introduce and pass a Bill for the purpose. Concurring, as he did, with the Report of the Select Committee, it appeared to him that the Bill had far better stand in its present shape.

SIR BARTLE FRERE said that he thought the question was very much altered by the Petitions they had just heard read. These Petitions showed that there was a very strong

objection on the part of the mercantile community here, to give up the convenience they now possessed in Notes of a denomination as low as ten Rupees, and he had little doubt that, when there had been time for an expression of opinion from Madras and Bombay, the same feeling would be found to prevail there.

With regard to the stress which had been laid on the opinion expressed by the Select Committee, he regarded this as a question not of principle, but of degree. The question was whether they should fix ten or twenty Rupees as the limit, and it was open to them to consider whether they should stop at even ten or twenty Rupees, or take a higher or lower denomination. He did not therefore feel precluded, on receipt of the Petitions now before them, from reconsidering the opinion to which he had agreed as a Member of the Select Committee.

In discussing this question, he thought his Honorable friends, the Members for Bengal and the North-West, had laid too much stress on the small proportion which Notes of low denominations bore to those for larger amounts, and had thereby undervalued the convenience of the small Notes to the public. He would instance the case of copper and cowries, which formed the small change of the poorer classes. No doubt, the proportion of total value which all the copper or cowries in circulation bore to the whole currency, was very small, but how great would be the inconvenience, especially to the poorer classes, if such copper or cowries were withdrawn, and ceased to be available in the smaller transactions of commerce.

He would not dwell on the arguments of his Honorable friend, the Member for the North-West, relating to the paper currency of America, France, and other countries, because the character of the currency was essentially different in not being both convertible and a legal tender. It was this latter characteristic which, it seemed to him, was the great safeguard to the poor man. He would take such an instance as that put by the Honorable Member for Bengal, of a poor cultivator, who had agreed for an advance and was forced to take it in a ten Rupee Note. If the Note were a legal tender, the receiver could not be a very serious loser. He could pay his rent or revenue with it, or he could pay any other debt. Unless the Notes were made a legal tender, it would be impossible to ensure their being always taken in payment of Government revenue, and this was a point of immense importance in a country like this, where so large a portion of the whole circulation passes every year through the Government treasuries which are scattered all over the country.

He would put it to his Honorable friend the Member for Bengal, whether the proposition of the Honorable Member of Government (Mr. Laing) did not meet all his objections? That proposition was that these small Notes should not be issued, save at places to be fixed by Regulations published in the Government Gazette, and no doubt great care would be exercised in extending the issue beyond the Presidency Towns. But they would be receivable every where, in payment of debts, or of Government revenue. Supposing therefore these small Notes got to Rangoon, as supposed by his Honorable friend, they would get there, not by being issued there by Government, but by the ordinary operations of commerce; and if any man received them in the ordinary course of business, he would be able to pay them away in payment of debts or taxes, and it was hardly possible they could long remain at a greater discount than a new coinage of Rupees or any other new form of metallic currency.

For these reasons he would comply with the prayer of the petitioners, and fix the limit at ten Rupees.

MR. LAING said, he wished to say but one word in order to remind the Council of the real point under discussion. From what had fallen from the Honorable Members for Bengal and the North-Western Provinces, he must say he was rather in a difficulty to know where he and they differed. The difference was reduced to this,

Sir Bartle Frere

whether, during the interval which must elapse before the experiment of a proper Gold Currency could be fairly tried, the Presidency Towns and Districts should be deprived of the ten Rupee Note Circulation which they now possessed. He thought not, and this was the question on which the Council would now divide.

The question being put, the Council divided :—

Ayes 4.	*Noes* 3.
Mr. Erskine.	Mr. Sconce.
Mr. Laing.	Mr. Harington.
Mr. Beadon.	The Chairman.
Sir Bartle Frere.	

So the Motion was carried, and the Section was finally passed with two other verbal amendments.

Section IV was passed after verbal amendments.

Sections V to VII were incorporated into one Section after the necessary and a few other verbal amendments.

Sections VIII to X were passed after verbal amendments.

Section XI provided as follows :—

"The Head Commissioner, the Commissioners, or Agents, and the Deputy Commissioners or Agents shall, in their respective 'Circles of Issue,' on the demand of any person, issue from the Office of Issue of their respective Circles, such Promissory Notes, on the terms following :—

First, in exchange for the amount thereof in Silver Coin of full weight of the Government of India ; or, *secondly*, in exchange for the amount thereof in Standard Silver Bullion or Foreign Silver Coin computed according to such standard at the rate of 979 Rupees per 1,000 tolahs of Standard Silver fit for Coinage ; provided always that the said Head Commissioner, Commissioners, Deputy Commissioners, and Agents shall, in all cases, be entitled to require such Silver Bullion and Foreign Coin, to be melted and assayed at the expense of the person tendering the same, and provided also that in all places where there is no Mint of the Government of India, it shall be optional for any such Head Commissioner, Commissioner, Deputy Commissioner, or Agents, to issue Notes in exchange for Silver or Foreign Coin under this Section ; or, *thirdly*, in exchange for other Notes of the Government of India payable to bearer on demand of other amounts issued within the same Circle. Provided also, that it shall be lawful for the Governor-General in Council, from time to time, to direct, by order to be published in the Gazettes of Calcutta, Madras, and Bombay, that Notes to an extent not exceeding one-fourth of the total amount of issues represented by Coin and Bullion as hereinafter provided, may be issued at such Offices or Agencies of Issue, as may be named in the order, in exchange for Gold Coin of full weight of the Government of India, or for Foreign Gold Coin or Gold Bullion computed at rates to be fixed by such order, and which rates shall not be altered without six months' previous notice."

MR. SCONCE asked, with reference to a remark made by the Honorable gentleman in presenting the Report of the Select Committee, whether it was the intention of Government to receive Gold Coin generally in lieu of Silver, or only to the amount of one-fourth as limited by this Bill ?

MR. LAING said, the Government could not come to any definite resolution in the matter, until they knew the views of the Home Government on the subject. At the same time the Government would do all they could to encourage the receipt of Gold at the treasuries to the extent that they might not be embarrassed.

THE CHAIRMAN asked if the Government had considered, whether inconvenience might not arise if any person should import a large mass of Bullion, demand Notes for them, and return them the same day for Coin. He thought that, in 1857 or 1858, there was so great an influx of Bullion in the Mint that the Officers there could scarcely coin Silver as fast as it was required. The practice now was to issue Mint Certificates payable at 30 days' sight for all Bullion brought for Coinage. It was not his intention to move any amendments on the subject. He only made the suggestion, in order that the Government might consider whether it would be necessary to take measures to provide against the possibility of being ever swamped by a large influx of Bullion.

MR. LAING said that the danger was so remote that the Government were quite willing to undertake the risk.

THE CHAIRMAN then referred to the last proviso in the Section, and suggested that, when the rate at which Gold was to be taken was

fixed for six months, the Commissioners ought to be bound to take it until the rate was altered.

An amendment, in accordance with the last suggestion, was adopted, and the Section was passed after some further amendments.

Section XII provided as follows :—

"The whole amount of the Bullion and Coin so received for Notes, shall be retained and secured as a reserve to pay such Notes, with the exception of such an amount, not exceeding four crores of Rupees, as the Governor-General in Council, with the consent of the Secretary of State for India, may, from time to time, consider as a safe limit, below which the Paper Circulation of India cannot fall, and the amount so fixed, shall be published in the Gazettes of Calcutta, Madras, and Bombay, and shall be invested in Government Securities, and the said Coin, Bullion, and Securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said Notes ; and the said Notes shall be deemed to have been issued on the security of the Coin, Bullion, and Securities so appropriated and set apart, as well as on the general credit of the Government. Provided that any Gold Coin or Bullion which may be received under this Act, may be sold or exchanged for Silver Coin or Bullion, to be so appropriated and set apart, instead of the Gold Coin or Bullion."

Mr. SCONCE said, he had, for facility of reference, caused to be printed for circulation among the Members, a paper containing the following Sections, which he proposed to move in substitution for Section XII :—

"It shall be lawful for the Governor-General of India in Council, with the sanction of the Secretary of State for India, to direct that a certain portion of the Coin and Bullion so received in exchange for Notes, not exceeding at any time one-half of the total sum of the Notes in any Circle issued, and not exceeding in the whole the sum of six crores of Rupees, may be invested in the purchase of Government Securities ; and the whole remaining Coin and Bullion, which shall not be so invested, together with the securities purchased as aforesaid, shall be held by or on behalf of the Head Commissioner in such manner as the Governor-General of India in Council may direct, and shall be exclusively reserved to provide for the satisfaction and discharge of the Notes issued.

If at any time the Head Commissioner or other person by whom the Notes of any Circle are issued or are payable, shall be unable, from the reserve of Coin and Bullion held as aforesaid, to provide for the payment of any Note, of which payment shall be demanded, such Head Commissioner or other person may demand, from any Officer in charge of a Public Treasury, such money as may be necessary to pay the Notes presented for payment, and such Officer shall be bound to pay to the Head Commissioner or other person the money so demanded.

Any order which the Governor-General of India in Council may, from time to time, make under Section XII of this Act, shall recite the date of the sanction given to the same by the Secretary of State for India, and shall be published in the Gazettes of Calcutta, Madras, and Bombay.

Any Gold Coin or Bullion which may be received under the provisions of Section XI of this Act, may, by the direction or with the sanction of the Head Commissioner, be sold or exchanged, from time to time, for Silver Coin or Bullion, and such Silver Coin or Bullion shall be held and reserved as aforesaid, instead of such Gold Coin or Bullion."

He wished to explain the grounds upon which he desired to make the Motion. One change of expression which appeared to him necessary was as to the security the public would be supposed to have on the general credit of the Government. It was now expressed as follows in the Bill :—

"And the said Notes shall be deemed to have been issued on the security of the Coin, Bullion, and Securities so appropriated and set apart, as well as on the general credit of the Government."

Now he did not think that it was enough to say that any man who had Notes, should suppose them to be issued on the credit of the Government. It was, no doubt, intended that out of the cash balances, the Government would pay Notes on demand, but the expression in the Bill as it now stood, hardly met that intention. This was therefore one point provided for by his amendment. It would be seen from the Despatch of the Secretary of State which had been printed and circulated some time ago, that Sir Charles Wood had suggested that the cash balances in the Indian Treasuries should be made available to meet any unforeseen demands in the payment of Notes, so that the Despatch had only suggested very much the same thing that he (Mr. Sconce) now proposed in not very different words. Paragraph 17 of the Despatch stated as follows :—

"It is, however, so indispensable in the first instance to establish confidence in the Notes, and

to satisfy the people of India that they can certainly at any time obtain payment of them in Specie that, beyond the reserves of Coin and Bullion in the hands of the Currency Commissioners, it should be provided that the cash balances in the Indian Treasuries should be available to meet any unforeseen demand for the payment of Notes; and arrangements should also be made for establishing credits on the Collector's Treasuries in favor of the District Currency Commissioners, for any difference between the amount of their issues and the cash balances in their hands. With these safeguards and precautions it seems impossible that a doubt can be entertained by any one of the perfect convertibility of the Note at all times and under all circumstances."

Another matter was as to whether four crores was a sufficient amount to be invested in Government Securities. He had no objection to having four crores, and the Council knew that he was by no means desirous of purchasing an inordinate amount of securities with the deposits of Coin paid in exchange for Notes; but, considering how closely the amount of four crores corresponded with the present excess of Note Circulation of the Banks, that might probably prove small. Referring to this matter, the Secretary of State, in the 18th paragraph of his Despatch, observed as follows:—

"As the Circulation of Notes is extended beyond the immediate neighborhood of Calcutta, (and the advantages to be derived from the system will be very incomplete until this is done), a much larger amount of Notes will be required; and under those circumstances the limit of the fixed amount may be raised. But, as this should only be done after full experience of the working of the system, I think it better that any change should be made either by legislative enactment at the time, or by an order of Government with the sanction of the Secretary of State in Council, to be published in the Gazette, power for doing this being contained in the Act which may be passed on the subject."

Looking then to the Circulation of Notes extending beyond the Presidency Towns, he thought that the limit of the investment in securities might be increased beyond the amount that would correspond with the present Circulation of the Banks. And besides it seemed to him desirable to determine the rule according to which such investment might be made. As the Bill stood, the whole amount of four crores might be at once purchased. But he thought it very objectionable for the Council to sanction this course, so that the Commissioners should go abruptly into the market and purchase so large an amount of the public securities. He thought it would be more fair to the public to make such purchases gradually, and therefore he proposed that the investment in securities should not exceed one-half of the amount of Notes issued.

Even if these views were not adopted, there were various verbal amendments necessary in Section XII. But if the Honorable Member of Government to his right (Mr. Laing) was not disposed to adopt his amendments, it was not his (Mr. Scoone's) intention to press them.

Mr. LAING said, he must say he was rather surprised at the tone taken by the Honorable Member for Bengal, who was an advocate for the privileges of the Legislative Council. His (Mr. Laing's) principle was that the limit now considered to be prudent, should not be exceeded without coming to the Legislative Council to pass a fresh law; while the Honorable Member wished to give the Executive Government a discretionary power of extending the limit up to 6 crores, an amount which certainly far exceeded what could, under existing circumstances, be considered as safe. There was a large principle involved in this, namely, that paper money should not be created at pleasure by any Government, but should represent actual coin or bullion beyond a certain safe and fixed limit to be determined by legislation. If the circulation should greatly increase, it would be easy to come to the Legislative Council and propose a law to extend the limit of 4 crores; but at present no one could say that this limit could be exceeded without risk. At the present moment there was an issue of about 3½ millions in Notes at the three Presidencies, against which there was held one-fourth in specie by law, and actually a much larger proportion, so that an issue against securities up to even 4 crores, would greatly exceed the existing pro-

portion of paper issue, and it was only because the general cash balances were also liable that he had ventured to go so high as 4 crores in fixing the limit. But with this limit and the cash balances which seldom contained less than 11 crores liable, he really thought that the Government might be safely trusted to make their own arrangements as to the reserve of cash or bullion to be kept at each place of issue, so as to ensure the payment of their Notes. Nor could he (Mr. Laing) adopt his second Clause, which proposed to render it compulsory on Officers at the Government Treasuries to apply their cash balances in payment of Notes, however urgently they might be required for other purposes. It would be quite enough that the Government were bound to cash the Notes on demand under pain of committing an act of bankruptcy, and it was better to trust to this than to attempt to get an illusory security by passing Clauses which would certainly be set aside if such a crisis really came as obliged the Government to suspend payment. The other Clauses of the Honorable Member appeared unnecessary, the objects being already provided for by the Bill.

MR. SCONCE having then withdrawn his Motion, the Section was passed after some verbal amendments.

Section XIII was passed after verbal amendments.

Section XIV was passed as it stood.

Sections XV and XVI were passed after amendments.

Section XVII was passed as it stood.

Section XVIII was passed after amendments.

Sections XIX to XXI were passed as they stood.

MR. SCONCE asked the Council to go back to Section XVIII. He could not but entertain great apprehension as to the effect of this Section, more especially now that it had been determined to issue Notes for ten Rupees; and though not prepared at this moment with a specific motion on the subject, he desired to reserve to himself the right of proposing an amendment on any future occasion. By this Section, any Note paid into or held in a Mofussil Treasury, to whatever amount, might be paid out by the Government from that Treasury. Any party paying in coin into the central office of issue would, as a matter of course, receive Notes in exchange. The circulation of Notes that would gradually find their way into the interior, first to villages adjoining the city of issue, then to villages beyond those, and again from district to district, he had no desire to restrict. Such a circulation would be regulated by the convenience of the public; but it might happen that a party receiving Notes to a large amount would transmit them to a remote district, such as Rungpore or Purneah, for the purpose of being paid into the public Treasury as revenue. Or, again, to suit its own convenience, Government, by paying coin into an office of issue, might send Notes to any District Treasury. Thus Section XVIII, which made these Notes legal tender, would authorize Government to make all their payments in Notes, and the public Treasury would be in the position of forcing out supplies of paper beyond the convenience of the local community. What were the ordinary payments made in Treasuries? Salaries, pensions, advances to Commissariat Officers or Executive Engineers, and, in some Districts, advances for the manufacture of Salt and Opium. He would declare, as was done as respects the Branches of the Bank of England, that at all Government Treasuries, in payment of money due by Government, Notes should not be a legal tender. It seemed to him that the compulsory issue of Notes in the interior of a District by Collectors ought not to be permitted. No Honorable Member would venture to say that Government should be enabled by law to pay their pensioners, some of whom were cripples, by Notes. It would be wrong, cruel, and heartless to do so, and he would withhold the power. He had already stated his objections so fully, that he would not detain the Council any longer.

Mr. Laing

MR. LAING said that, as the Honorable Member did not propose to move any amendment at present, he would only say one or two words with reference to his objection. He (Mr. Laing) thought that the Honorable Member's argument, if carried out to its logical conclusion, would go to show that there could be no currency at all. His objection would apply equally to any system of Paper Currency, or any system of Gold Currency, for with either the poor man would be occasionally put to inconvenience in getting change. If that argument were to be conclusive, the only currency ought to be of copper or even of cowries. But the question was one of the balance of convenience, which in all civilized countries had led to the adoption of gold or paper to represent the higher values. A line must be drawn somewhere or other, but as the Honorable Member did not propose to go into the consideration of the matter at present, he (Mr. Laing) would reserve any further remarks he had to make on the subject.

MR. HARINGTON suggested that, if the Honorable Member for Bengal considered that the Section to which they had gone back should be amended, it would be better that the amendment should be brought forward and discussed at once, or if the Honorable Member wished further time for consideration he might ask the Committee to allow him to postpone any Motion that he might desire to make until the next Meeting of the Council. It was intended he believed that the Bill should go to England prior to being read a third time, and before its return to this country, the Council would probably lose the services of the Honorable Member for Bengal.

THE CHAIRMAN said, if the Bill was to go home, it should be sent in a shape in which this Council were prepared to pass it. Otherwise, the Bill would require to be sent home again. He, therefore, entirely agreed with the Honorable Member for the North-Western Provinces, that whatever discussion was to take place on the subject, should now take place in the Committee of the whole Council.

MR. LAING said, he would put it to the Honorable Member for Bengal, if his object had not been sufficiently attained by the very full discussion which had already taken place and which resulted in a division of 3 against 4 Members.

MR. SCONCE said, he thought we had not yet had a discussion on the subject of the payment of the Notes in the Mofussil Treasuries. The question as to legal tender had been only referred to, but substantially the discussion that arose on Section III was as to the value of the Notes. If the Council had no objection, he would propose that the consideration of this Bill be adjourned till this day week, and that the Bill, as it had now been amended, be reprinted for circulation among the Members.

MR. LAING said, the question as to legal tender was the real point about which we had been at issue. At any rate, he thought it far better if the matter were brought forward now and decided.

THE CHAIRMAN said, he entirely agreed with the Honorable Member (Mr. Laing.) He did not think that the amendments which had been made in the Bill were material in principle. If the Honorable Member for Bengal wished to re-consider the subject on other grounds, he would be quite at liberty to do so hereafter. But it appeared to him (the Chairman) that it would be much better to finish the consideration of the Bill to-day, as we were all prepared to decide upon the question, whether these Notes should be made legal tender or not.

MR. SCONCE said, he would defer to the opinion of the Council, and would not make a Motion.

Sections XXII and XXIII (which provided a penalty for making or having in possession paper of certain description) were omitted as being already fully provided for in the Penal Code.

MR. LAING moved the addition of the following Section to the Bill :—

"The words 'British India' in this Act shall denote the Territories that are or may be vested in Her Majesty by the Statute 21 and 22 Vic., c. 106, entitled 'An Act for the better Government of India,' except the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

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

WRECKED BOATS.

MR. SCONCE moved that the Council resolve itself into a Committee on the Bill "for the preservation of property recovered from Wrecked Boats"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

MR. BEADON said, that on the Debate on the second reading of this Bill, he had stated briefly the objections he felt to it, and had recommended his Honorable friend, the Member for Bengal, to withdraw it and prepare another Bill in accordance with what appeared to be the general view of the Council. His Honorable friend opposite (Sir Bartle Frere) had, at the same time, objected to the Bill on account of the complicated nature of its provisions, and because it created a special machinery to do that which properly devolved on the Magistrate. Objection was also taken by the Honorable and learned Vice-President to the provisions of Section V of the Bill, as well as to those of the 2nd Section, empowering the receiver to take people from their work, and keep them employed for an indefinite time in recovering a wreck. He (Mr. Beadon) had pointed out that the appointment of receivers all over the country, to be remunerated by fees and salvage, and empowered to appoint their own deputies, would be likely to give rise to great abuses. And on the whole, he believed that the Bill passed its second reading, on the understanding that it would be altered in Committee, so as to meet the objections that were urged against it.

But what was the case? The only alteration made in the Bill to meet these objections was the omission of Section V. In all other material respects, the Bill stood precisely as it was when read the second time, and as it appeared to him that in its present shape it could not be satisfactorily amended in a Committee of the whole Council, he felt that the only course he could take was again to recommend his Honorable friend to withdraw the Bill, and, if he objected, to oppose the Motion for going into Committee.

The Bill had evidently not received from the public or from the local Governments, the consideration which its importance demanded, and its scope seemed to have been in some quarters misunderstood. The Select Committee had received no reports or communications, except from Madras and Bombay; none from Bengal, none from Pegu, none from Punjab, or any of the other interior non-maritime Provinces, though they would all be affected by the Bill. It was true that since the Select Committee had made their report, the Lieutenant-Governor of the North-Western Provinces had expressed an opinion favorable to the passing of the Bill, though he admitted it was not much wanted, and some of the subordinate officers whom he consulted, objected to it.

The Madras Government did not seem to have consulted any of its officers in the interior, and had submitted only a letter from the Superintendent of Marine, whose observations are directed entirely to the operation of the Bill on wrecks at Sea, and who submitted a set of rules which, whether they have the force of law or not, appeared to him (Mr. Beadon) better adapted for the disposal of wrecked property than some of the provisions of the Bill. In like manner the Bombay Government had referred only to the Commander-in-Chief of the Indian Navy and the Commissioner of Customs for their opinion

on the Bill, showing that they regarded it as applicable only to maritime wrecks. Indeed, the Government stated that the Bill would be of no use in Bombay for the protection of the wrecks of river boats, except in Sind, but the Commissioner of Sind did not seem to have been consulted, and the case of the rivers on the western coast, which are all embraced in the Bill, seemed to have been overlooked.

As to the details of the Bill, he remarked that though its provisions were taken for the most part from the English Merchant Shipping Act, they differed from that Act in some important particulars, and not always for the better. Thus, in England it is only an Officer of Customs or Inland Revenue who can be appointed a receiver of wreck, unless it be convenient that some other person should be appointed, and then only by the Board of Trade. But under the Bill every Magistrate might appoint whom he likes to be a receiver, and as many as he pleases. Again the Bill empowered the receiver in case of wreck to require all persons present, and others whom he might summon, to assist in preserving the boat, the cargo, and the lives of the crew, whereas in England, the receiver could only claim the assistance of those who were present. Then the receiver under the Bill might appoint any person to be his deputy with authority equal to his own. In England, however, it was only Revenue Officers, Justices of the Peace, or Commissioned Officers, who could act in the absence of the receiver. Then again, under the 11th Section, the Magistrate was authorized to award salvage to the extent of one-fourth of the value of the recovered property. But this limit might be a great deal too high in some cases for the exercise of the judgment of a single Magistrate, and in other cases, it might be much too low to afford adequate remuneration. The clause in this Section which empowered the Sessions Judge to award higher salvage, had been struck out by the Select Committee, and he doubted if this were an improvement. In England all cases of salvage up to £200 must be decided by two Magistrates aided by a Marine Assessor, and cases above that value must go before a Court of Admiralty for decision. In England, again, all fees and salvage paid to receivers were carried to the credit of a general fund, but under the Bill they were to be kept as remuneration by the receivers themselves.

The Honorable Member for Bengal, when he brought in the Bill, had stated that it was founded on the representation of most of the officers in Bengal, whose Districts border on the great rivers, but no reason whatever had been shown for extending it to small nullahs, and other inland waters which its terms comprehend, and he (Mr. Beadon) thought it would be much better if the operation of the Bill, modified in some respects, were confined to the sea and tidal waters, and if in respect to wrecks in inland rivers, another and a much simpler Bill were prepared, empowering Magistrates to take charge of wrecks, and award a moderate salvage under such rules as might be thought proper.

Perhaps he owed an apology to the Council for having signed the Report of the Select Committee when he could not support the Bill; but the Report contained only a statement of what the Committee had done, and the Bill itself he had not signed.

MR. SCONCE said, he would take no objection to the opposition which his Honorable friend had made to this Bill, after having signed the Report of the Select Committee upon it. We had already had to-day a somewhat remarkable instance that Select Committees were not bound by their Reports; and, following that precedent, it was quite open to his Honorable friend to adopt the course he had taken. He (Mr. Sconce) hoped that the Council did not suppose that he had any intention of asserting that the Bill should be passed word for word as it now stood, and not otherwise. He thought that it was a safe and a sufficient Bill, but it was quite competent to any Honorable Member to propose any amendment he pleased. Before going more at large, as he wished to do, into the objections stated to the Council, and

without attaching much importance to the circumstance of this Bill being his own bantling, he did not think that the objections taken by the Honorable Member of Council to his right (Mr. Bendoh) were such as to prevent the Council from going into Committee on the Bill.

One objection was that the local Governments had not adequately considered this Bill. Now the local Governments had had the usual opportunity of considering the Bill, and he could not but think that, if the local Governments had not submitted any more objections to the Bill than they had, we might fairly conclude that they were willing to take the Bill as it stood.

Another matter noticed was, that the Bill was complicated, and that it applied to small rivers as well as to great ones. He would state generally the most important principle which he had attempted by this Bill to bring within the legal practice of the Legislature. It was that, when a boat was stranded, and the property of the owner was imperilled, the law declared that other persons should not appropriate the property in that boat at their discretion. Whether the river was large or small, it seemed to him to be equally necessary to make the abstraction punishable, so as to secure protection to the public. A child might drown in a small bucket as in a large tank. No one would say that, because a river was large, protection was to be afforded, and because a river was small, protection was to be denied.

Another objection was that the Magistrates would have a general power to select indiscriminately the classes from whom receivers should be nominated. Now he believed he could not inaccurately conceive the opinion of the Council, that the appointment of receivers might safely be left to the discretion of the Magistrates. Certainly, it was no defect of this Bill, that it did not go farther and attempt unwisely to determine the class of persons from whom receivers should be appointed.

Another matter which was made a strong point of by the Honorable Member was as to the duties of receivers. The Honorable Member said that the power to summon persons to assist was not given to receivers by the English Act. If the Council would turn to the 442nd Section of the Merchant Shipping Act of 1854, it would be seen that he had done no more in this Bill than adopt the English Act. That Section provided as follows :—

"The receiver may, with a view to such preservation as aforesaid of the ships or boats, persons, cargo, and apparel, do the following things, (that is to say)

Summon such number of men as he thinks necessary to assist him.

Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power.

Demand the use of any waggon, cart, or horse that may be near at hand.

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall, for every such refusal, incur a penalty not exceeding one hundred pounds."

Another objection was taken as to the amount of salvage. The Honorable gentleman had said that the Bill, as amended by the Select Committee in this respect, was no improvement. He (Mr. Sconce) would only say that, in endeavoring to meet the views of the Select Committee, he had consented to the omission of the latter part of the Section, which provided that, in cases where one-fourth salvage should appear inadequate, the Magistrate might refer the case to the Sessions Judge. The majority of the Select Committee was in favor of omitting that portion of the Section, but he was free to say for himself that he rather agreed with the Honorable gentleman, that the Section was more complete as originally drawn. He understood his Honorable friend to object to going into Committee upon the Bill, because it was not simple enough, and it was recommended to us that we should leave the question of salvage and other matters of importance to the discretion of the Magistrate. He believed that the Council

would not consent to adopt this non-regulation system of legislation.

He did not see that there was any other point in what had fallen from his Honorable friend, which called for any remark.

THE VICE-PRESIDENT said that, if he thought that by going into Committee there was a chance of the Bill being put into a shape which would meet the objections which he entertained to the Bill, he should certainly vote in favor of the Motion before the Council. But it appeared to him that the Bill was so drawn that we could hardly put it into shape in Committee.

The Honorable Member, when he brought in the Bill, said that the object contemplated by it was to regulate the mode in which property was to be recovered from wrecks, and the manner in which assistance was to be rendered to boats in distress. Now it appeared to him that this Bill was not confined to that class of cases. The Honorable Member had also said that the Bill was prepared from the Merchant Shipping Act of 1854. But it seemed to him (the Vice-President) that the Bill was hardly framed according to that Act, and it would be extremely difficult for us to deal with it in Committee without altering it altogether. Section I of the Bill authorized the Local Government to appoint or require the Magistrate of any District to appoint one or more receivers of wreck in such District, and so far he (the Vice-President) saw no objection. But the next Section authorized the receiver, when any boat was in distress, or stranded, or *sunk*, to summon any persons he pleased to assist him in the wreck. He (the Vice-President) did not know if there was anything in the English Act to compel persons to raise sunken vessels. Then again, with respect to the appointment of receivers, the Bill did not provide from what class of persons these officers were to be appointed. But the Bill provided that if the receiver, whoever he might be, could not, without inconvenience to himself, go to assist in the wreck, he might appoint a deputy. The words in the Bill were—

"The receiver, if unable to act as herein provided, may, by an order in writing, depute any other person to exercise the authority by this Act in him vested."

Now, the English Act was very cautious in this respect. It required the Board of Trade, with the consent of the Commissioners of Her Majesty's Treasury, to appoint any officer of Customs, or of the Coast Guard, or any officer of Inland Revenue, or, when it appeared to the Board to be more convenient, any other person, to be a receiver of wreck in any district. It then provided that, during the absence of the receiver from the place where any accident occurred, or in places where no receiver had been appointed under that Act,

"the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of Customs or of the Coast Guard, or officer of Inland Revenue, and also any Sheriff, Justice of the Peace, Commissioned Officer on full pay in the Naval Service of Her Majesty, or Commissioned Officer on full pay in the Military Service of Her Majesty, may do all matters and things hereby authorized to be done by the receiver, with this exception that, with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver and shall place the same in the custody of the receiver."

It did not give the receiver appointed by the Board of Trade power to appoint a deputy, but this Bill did so. Then the Bill provided that—

"Unless the person in charge of the boat shall decline his assistance, he shall require all persons present, and others whom he may summon, to assist in preserving the boat, the lives of the crew, and the cargo, and any articles belonging to the boat."

So that, if the receiver did not go himself, but sent a deputy, the deputy was to have the power of summoning whomever he pleased to assist in the wreck. Considering the class of persons from whom the receiver would be appointed, he (the Vice-President)

did not think that either the receiver or his deputy ought to be entrusted with such a power. It was to be borne in mind that the receiver was to be remunerated not only by a portion of the salvage payable on account of recovered property, but also by fees or salary payable out of a fund to be created by the proceeds of wrecked property which went to Government in consequence of its being unclaimed. That of course gave him an interest in the fund, and might induce him to summon parties at a distance who would be liable to a penalty if they refused to assist in the wreck, though there was no provision as to whether these parties, if they should assist in recovering the wreck, were to be at all remunerated for their trouble. Then if we came in Committee to consider the class of persons from whom receivers ought to be appointed, or the persons who ought to be appointed during the absence of the receiver, and the order of succession in which they were to be appointed, as was provided in the English Act, he was not furnished with the necessary information.

Then Section V provided as follows :—

"All recovered wreck or the value thereof, if sold, excepting such portion of such wreck or value as may be awarded as salvage under Section XI of this Act, shall be held on behalf of the owner, or if not claimed by the owner within one year from the recovery of the same, shall be at the disposal of the Government."

So that if the property were not claimed within one year, it became the property of Government, and the receiver had a lien upon it. It would be his interest, therefore, not to let the owner know about the property, as his object would be to secure his salary, and for that purpose to make as large a fund as he could. No provision was made in the Bill as to the mode of giving notice to the owner to enable him to know how his property might be recovered. Now all that was provided for in the English Act.

Then there was another important principle involved in the matter. Section VII provided as follows :—

"Upon the receipt of credible information, that any property recovered as aforesaid is secreted or in the possession of some person who is not the owner thereof, or is otherwise improperly dealt with, the Magistrate or the Head Officer of a Police Station in whose jurisdiction such person is found may grant a warrant to search for any such property, and to seize and detain the same for the purpose of being disposed of as provided in this Act."

Why should not that be left to the ordinary law ? And why should not the Magistrate be allowed to grant a search warrant in the usual way, that is, upon information given to him upon oath, instead of acting upon the receipt of credible information ? He (the Vice-President) thought that that was a very dangerous power to be given to the Head Officer of a Police Station. Section VIII then provided as follows :—

"Any person who *wrongfully* removes from any boat that may be in distress, stranded, or sunk, any part thereof, any part of the cargo or other articles belonging thereto, and any person who knowingly secretes any articles removed as aforesaid, shall, in addition to any punishment to which he may be subject for any offence committed by him, be liable to pay double the value thereof, and to a penalty not exceeding two hundred Rupees."

It would be necessary to define what was wrongful, and that would be a matter for consideration in Committee. Having done that, we should come to Section X, which provided as follows :—

"When any boat, cargo, or article as aforesaid shall be plundered, damaged, or destroyed by any persons riotously and tumultuously assembled, full compensation may be awarded to the owner of the property, to be paid by the inhabitants of the village or place in which the offenders reside, in such shares and in such manner as the Magistrate may direct. In any case in which the sum so awarded amounts to two hundred Rupees, an appeal shall lie to the Sessions Judge."

It appeared to him to be very hard to the inhabitants of the place where the offenders resided to make them answerable for an offence which might have been committed 100 miles off,

as they might be for instance in the case of Captain Bird referred to by the Honorable Member for Bengal in introducing the Bill.

Then we should come to Section XI, which provided as follows :—

"Salvage of recovered wreck may be awarded by the Magistrate in an amount not exceeding one-fourth of the value of the property recovered."

This Bill prescribed no limit whatever as to the amount of salvage cognizable by a Magistrate. According to the English Act, however, if the amount exceeded £200, the Magistrate could not interfere, and the matter would have to be dealt with only by a Court having Admiralty Jurisdiction. Then was the Bill to be applicable to steam-boats or flats which might be sunk up the river? If so, it might extend to the salvage of two or three lakhs of Rupees, as there had been a case, which was tried only the other day, of a steamer which was wrecked containing Indigo of the value of about two or three lakhs of Rupees. The attention of the Select Committee was called to this point by a communication from the Bombay Government, recommending that the Bill ought to include large boats navigating the seas as well as the small crafts navigating rivers. With reference to this communication, the Select Committee observed in their Report, that "we apprehend that there is nothing in the provisions of the Bill to confine its operations to the smaller class of boats which navigate rivers;" so that the Bill would apply to steamers. Having determined that point, we should have to decide whether there should be no appeal. There could be no question that we must allow an appeal in cases involving large sums of money, and there should be some provision similar to that contained in the English Act, which required cases of salvage above £200 to be decided by the Admiralty Court. There being no Admiralty or Vice-Admiralty Court in the Mofussil, we should have to decide what Court should take cognizance of such cases. Were we prepared to discuss that point in Committee, and was it not more properly a matter to be specially considered and reported on by the Select Committee and the framer of the Bill?

Then there was another important Section, which, after authorizing Magistrates to adjudge penalties and forfeitures, provided as follows :—

"All penalties imposed by such Magistrate or other Officer may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender found within the jurisdiction of such Magistrate or other Officer, by warrant under the hand of such Magistrate or other Officer."

Under this Section, therefore, the Magistrate was empowered, in default of payment, to send a man to jail, and the poor unfortunate man was liable to remain in jail until he paid the fine.

These were only some of the objections which he entertained to the Bill. If the Honorable Member in charge of the Bill was prepared with any amendments to meet them, he (the Vice-President) had no objection to go into Committee. The Honorable Member, when he brought in the Bill, had read the following extract of a letter from the Government of Bengal, which was dated the 28th May 1853, Lord Dalhousie being the then Governor :—

"In July of last year, a boat, in which Captain Bird of the 11th Native Infantry, and his family, were proceeding to Chittagong, was run aground on the coast, (there is every reason to believe intentionally), and before the boat became a wreck, three hundred or four hundred people from the neighbouring villages collected, and, together with the crew, broke open Captain Bird's boxes, and plundered the whole of his property, worth about three thousand Rupees.

* * * * * * *

"The Governor of Bengal is disposed to think that the provisions of the existing law, the construction of which is shown above to be open to doubt, are insufficient for the prevention of the heinous crime of wrecking and plundering boats, which has long been known to prevail along the great rivers of Bengal, and on the north-eastern shore of the Bay. His Lordship would take the offence out of the category of those punishable by a Magistrate, and include it specifically among those which are now declared by law to amount to gang rob-

bery. At the same time, His Lordship would render it incumbent on all owners and managers of land to give information of wrecks happening in their estates, and give authority to the local Government to raise a special police in places where the crime is found to prevail, charging the expense on the inhabitants. Lastly, His Lordship would empower the Magistrate to award salvage in cases of wreck or danger to the extent of a moderate proportion of the value of the boat and cargo."

It appeared to him (the Vice-President) that the Penal Code would meet all such cases as that above referred to.

For these reasons he thought it would be better to withdraw this Bill altogether and to introduce a new one.

MR. HARINGTON said, he had some hesitation in addressing the Council after what had fallen from the Chair, particularly at this late hour; but he must remark that it certainly did appear to him that the course which they had been asked to pursue in respect to this Bill, was a most unusual one. He would not say that it would be a very uncourteous course towards his Honorable friend, the Member for Bengal, who had introduced the Bill and had bestowed much labor upon it; but he believed he might say that it was altogether without precedent. He had had some experience in the proceedings of this Council, and he recollected no instance of the Council, after allowing a Bill to be read a second time, refusing to go into Committee upon it. He would refer the Council to what took place in the case of the Bill brought in by the late Honorable Member for Bengal (Mr. Currie), to regulate proceedings in lunacy in the Courts of Judicature established by Royal Charter. When the Council went into Committee upon that Bill, objections were taken which affected the whole character of the Bill; but the Council did not refuse to go on with the Bill on that account. On that occasion it was pointed out by the late Honorable and learned Chief Justice that it was open to the Council, on the motion for the second reading of the Bill, to have thrown it out, but they had not done so; on the contrary, they had allowed the Bill to be read a second time, thereby affirming the principle of the Bill, and had referred it to a Select Committee. This was what had been done in respect of the Bill now before the Council. No doubt several Honorable Members had spoken against the Bill, but he believed he was right in saying that no Honorable Member had voted against the second reading. The result of the discussion on the Bill to which he had just been alluding was that it was referred back to the Select Committee with certain instructions, the Honorable and learned Vice-President, who had taken the objections to the Bill, being added to the Committee. It was open to them to pursue the same course in respect to the Bill now before the Council, and he ventured to suggest that they should adopt that course rather than stop the Bill at the stage at which it had now arrived, which would be the result if they refused to go into Committee upon the Bill. If the Council had not confidence in the former Select Committee, a new Committee might be formed, or other Members might be added to the former Committee. Honorable Members might, of course, move any amendments they thought proper while the Bill was passing through Committee, and if they did not succeed in carrying their amendments, they might vote against the third reading. The Honorable Member of Council opposite (Mr. Beadon) seemed to think that two or three simple Sections were all that were required. He submitted that it would not entail much labor upon the Honorable Member to frame the few Sections which he thought might, with advantage, be substituted for the present Sections of the Bill; and if the Council agreed in adopting the Sections proposed by the Honorable Member, the Bill would pass into law, and they would avoid the loss of time which would be the consequence of their refusing to go into Committee upon the Bill. He did not understand either the Honorable Member of Council opposite (Mr. Beadon), or the Honorable and learned Vice-President to object to the present Bill on the ground that no Bill was necessary. So far from

The Vice-President

this being the case, the necessity of some Bill seemed to be generally admitted. The Bill before the Council had been introduced at the request of the Bengal Government, and in the absence of any statement to the contrary, they might assume that the provisions of the Bill were concurred in by that Government. The Governments of Madras and Bombay had not objected to the Bill, though both Governments had proposed certain alterations in it, and the Honorable the Lieutenant-Governor of the North-Western Provinces was favorable to the passing of the Bill, though it was admitted there might not be the same necessity for the Bill in those Provinces which there was in Bengal. He might add that the early departure from the country of the Honorable Member for Bengal would prevent his carrying any new Bill through the Council. For these reasons, he could not consent to stop the Bill at the present stage, and he should vote for going into Committee upon it.

MR. SCONCE, after noticing briefly some of the objections taken by the Honorable and learned Vice-President, said he hardly knew how the Council in general would be disposed to adopt the suggestion of the Honorable Member for the North Western Provinces. But if the Council thought it necessary, he (Mr. Sconce) had no objection to the Bill being referred back to the Select Committee for the purpose of being further amended.

THE VICE-PRESIDENT said, it was certainly not his intention to throw any difficulty in the way of the Honorable Member for Bengal. On the contrary, he was quite willing to assist the Honorable Member in putting the Bill into a shape that would meet the objections which he (the Vice-President) entertained to it as it now stood, if he thought that such a thing was practicable at this late hour of the evening.

He should be very sorry indeed to offer any discourtesy to the Honorable Member. He had no wish whatever to oppose the Motion for going into Committee, though, in assenting to that Motion, he did not desire to be bound to the third reading of the Bill unless it was amended, as he thought it ought to be, before it was passed by the Council.

MR. BEADON said that nothing was farther from his intention than to offer any discourtesy to the Honorable Member for Bengal. But he really did think that the best course for the Honorable Member to take would be to withdraw the present Bill, and to bring in another framed so as to avoid the objections stated by the Honorable and learned Vice-President.

MR. HARINGTON said, the adoption of the course suggested by the Honorable Member of Council (Mr. Beadon) would involve the necessity of a republication of the Bill, considerable loss of time, and above all, the loss of the assistance of the Honorable Member for Bengal of whose services the Council were shortly to be deprived.

The Motion for going into Committee was then put and carried; and after some further discussion, the consideration of the Bill was postponed, on the Motion of Mr. Sconce, and the Bill was referred back to the Select Committee for the purpose of being amended in accordance with the suggestions of the Honorable and learned Vice-President.

POLICE.

SIR BARTLE FRERE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "for the Regulation of Police within any part of the British Territories in India to which it may please the Governor-General in Council to extend its provisions."

PETITION OF KHOSHAL MUNDUL AND OTHERS.

THE VICE-PRESIDENT moved that the Report of the Standing Orders Committee on the Petition of the Indigo Planters' Association, relative to the Petition of Khoshal Mundul and others, be adopted.

SIR BARTLE FRERE said that, as no change in the Standing Orders was proposed by the Report, he had no objection to offer to its reception, but it contained some passages which seemed to him such as should not pass without explanation or remark.

The Report implied that in the case reported on there had been a mistake, not only in the publication and sale of a Petition containing libellous reflections on individuals, but also in its being printed and circulated to Members of that Council. As far as the publication and sale of a libellous Petition was concerned, he fully agreed with the Report; but he was not prepared to place in the hands of any Officer of the Legislative Council, or even of a Select Committee of the Council, the power to strike out all passages which might be considered legally libellous, and to print and circulate to the Members only so much of the Petition as contained nothing which could be construed into a libel. He did not wish the Legislative Council to claim or exercise any privilege above the law. But a statement which was in strict legal phrase a libel, might often have most important bearing on their legislative action, and relate to facts which they ought all to know; and it did not seem to him that the printing of such papers for their own use, as long as they were not published by distribution to others or sold, could by any possibility be objectionable. The libel was published by being put into a Petition and presented to the Council in a form accessible to all Members who chose to read it. And as long as the Council gave it no additional publicity, by distributing or selling the libel to others, the mere printing for the use of Members was an essential convenience and necessary to the discharge of their duties, and could not be reasonably objected to, while the omission of passages which, though strictly libellous, might be most important, might leave Members ignorant of the essential part of the Petition.

THE VICE-PRESIDENT said, he thought that the course which had now been recommended by the Standing Orders Committee was the course which had been adopted on previous occasions. When a Petition was presented to the Council by the Clerk, any Member might move that it should be printed. By a subsequent Standing Order, if the Clerk of the Court, before carrying out the order, found that the Petition contained any libellous or other matter that ought not to be printed, he was required to call the attention of the Standing Orders Committee to it, and the instruction would be for the libellous portion to be expunged, and the rest to be printed and circulated. If any Honorable Member was desirous of seeing the portion which had been omitted, he had only to apply to the Clerk of the Council to see the original Petition which would be deposited among the records of the Council. Now the Petitioners in this case, while complaining of the former Petition having contained reflections upon the character of a gentleman, had fallen into the very error they complained of, because their Petition contained reflections on the character of certain Officers of Government who were alleged, by means of incorrect reports, to have influenced the Government to pass orders injurious to the interests of the Planters. That was a very serious charge. As soon as we found that the Petition of Khoshal Mundul contained reflections upon the character of individuals, we did all in our power to retrace our steps. It was too late then to retrace our steps with regard to the Printing of the Petition, but we immediately went and stopped the sale of it, and got back every copy, with the exception of two copies which had been sent to the Secretary of the Indigo Planters' Association who had applied for them, and with the exception of those copies which, according to the Standing Orders of the Council, had been circulated among the Members of this Council and certain Government Offices. He had omitted on the former occasion to state that a copy of the Petition had been sent to the Librarian of the Calcutta Public Library, together with other papers which were supplied to the Library

free of charge. His attention had not been called to the circumstance at the time, nor was the learned Clerk of the Council aware that a copy had been sent to the Library until afterwards, when the Librarian was written to on the subject, and he very properly immediately returned that Petition. As the present Petition, however, had repeated the error of which it complained, the Standing Orders Committee had recommended that it should be dealt with in the same way as the former, namely, that it should be circulated only among the Members of the Council and the Offices of Government to which the other was sent, with the omission of the passage which reflected on the Officers of Government.

The Motion was then put and carried.

PRISON AT THE NEILGHERRIES.

SIR BARNES PEACOCK said, he had been requested by the Honorable and learned Judge (Sir Charles Jackson), who had been prevented by domestic affliction from attending the Council to-day, to postpone the question, which stood in the Orders of the Day, enquiring what progress had been made in erecting a Prison at the Neilgherries, and what accommodation such prison would afford for European and American Convicts sentenced to Penal Servitude.

The Council adjourned.

Saturday, March 9, 1861.

PRESENT:

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

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

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from the Indigo Planters Association, concerning the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

MR. BEADON moved that the Petition be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL).

THE CLERK presented a Petition from zemindars and landholders in Zillah Nuddea, praying for a modification of Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).

MR. SCONCE moved that the Petition be printed.

Agreed to.

DIVORCE.

THE CLERK presented a Petition from Lallchund Mookerjee, praying for the passing of a Divorce Act for Native Christians.

MUNICIPAL ASSESSMENT (MOULMEIN, &c.)

THE CLERK presented two Petitions from the inhabitants of Moulmein, concerning the Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon and to the Towns of Moulmein, Tavoy, and Mergui, and for appointing Municipal Commissioners and for levying rates and taxes in the said Towns."

MR. SCONCE (in the absence of Mr. Forbes) moved that the Petitions be printed and referred to the Select Committee on the Bill.

Agreed to.

MERCHANT SEAMEN.

THE CLERK reported to the Council a communication received from the Bombay Government, relative to the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)."