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P. L.

thought that the same term should prevail in this country. Therefore, though he was quite willing to pass the Bill as regards that particular Section, he was not prepared at present to agree to the suspension of the whole law, for there were many points in it which required careful consideration, and he would wish that the Bill should stand over till the next Meeting of the Council.

After some further discussion, the consideration of the Bill was postponed.

The Council adjourned till Tuesday the 30th instant at 5 o'clock in the afternoon.

Tuesday Evening, April 30, 1861.

PRESENT :

Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

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

REPEAL OF REGULATIONS AND ACTS.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Right Honorable the Governor-General had given his assent to the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter."

LIMITATION OF SUITS.

THE CLERK presented a Petition from the Landholders and Commercial Association of British India, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits).

Also a Petition from certain native inhabitants residing in the suburbs of Calcutta, praying for a postponement of the operation of the above Act.

THE VICE-PRESIDENT said that, as these Petitions related to the Bill which was about to come before the Council to-night, he begged to move that the Clerk be requested to read them at length.

The Motion was carried, and the Petitions read accordingly.

The Order of the day being then read for the adjourned Committee of the whole Council on the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARINGTON said that he had employed the short time which had elapsed since the adjournment, on Saturday last, of the further consideration of this Bill, until to-day, in looking into the papers connected with the passing of Act XIV of 1859, which this Bill had been brought in to amend by suspending the operation of that Act from the 5th May next until the 1st January 1862, and the result had been to confirm the doubts previously entertained by him as to the sufficiency of the ground shown for the proposed suspension of the law, certainly to the extent to which this Bill went. But before proceeding further, he felt that it was due to the Calcutta Trades' Association, on whose Petition they were now acting, that he should at once call attention to the fact that the Petitioners in their Petition had not asked that the operation of any part of Act XIV of 1859, much less that the operation of the entire Act should be postponed by the suspension of the Standing Orders, and by the passing of a temporary law pending future legislation. The Petitioners merely took exception to a single provision contained in Act XIV of 1859, and they asked the Council, in proper and respectful language, to amend that provision. This was all that the Petitioners prayed for. Their perfect right to come up to the Council with such a prayer did not admit of a moment's doubt. The Petitioners considered themselves aggrieved by a law passed by this Council, and using, as had already been observed, proper and respectful language, they asked the Council to remove what they, the Petitioners, regarded as a grievance by amending the law. Nothing could be more reasonable or proper in itself than this. Petitions of a

similar nature were constantly presented to the Council—and what he would ask was the course of action usually—he might say almost universally—observed on the presentation of such Petitions. The course was this. The Clerk of the Council having reported to the Council that he had received such a Petition, some Honorable Member rose and moved that the Petition be printed. Thereafter any Honorable Member, who thought proper, brought in a Bill to amend the law, either in the way prayed for by the Petitioners, or in any other way which he might consider preferable. The Bill was read a first time without debate, and, if it appeared unobjectionable in principle, it was read a second time also. The Bill was then referred to a Select Committee for report, and published for a certain period for general information and in order that the public at large might have an opportunity of making themselves acquainted with the provisions of the law proposed to be enacted, and of stating any objections thereto,—and so exceedingly anxious had the Council always been that the public should have every opportunity of being heard upon the Bills before the Council, that it almost invariably happened that Bills remained before the Select Committees, to which they were referred, far beyond the period fixed under the Standing Orders. The Bill, which eventually became Act XIV of 1859, was in this way before the public for more than three years previously to the Select Committee making their report upon it. The Bill having been reported upon by the Select Committee, was taken into consideration by a Committee of the whole Council, by which its details were finally settled. The Bill was then read a third time and passed, and the assent of the Governor-General having been given to it, the Bill became law. This was the course of action observed on Petitions presented to the Council of the nature of the Petition of the Calcutta Trades Association. This was the course which Bills, introduced into the Council, usually ran under the Standing Orders of the Council, and he thought that it was a proper and sensible course, and one highly advantageous and useful to the public. He submitted that it had never been the practice of the Council on a Petition, such as that now before them, which simply took an objection to a single provision of an Act of this Legislature, passed after the observance of all the formalities which he had just described, and which asked only for a modification of that one provision, to suspend the Standing Orders, and to pass hurriedly through its several stages a Bill to postpone for a long period the operation of the Act to which the Petition related, not because they had made up their minds that the law objected to, was a bad law—not because they had satisfied themselves on this point—but in order that they might have time to consider whether there was any force in the objection which had been urged to the particular provision of Act XIV of 1859 complained of by the Calcutta Trades' Association, and in order that other parties might have an opportunity of bringing forward objections to other parts of the Act. This he understood was what they were now asked to do. He must repeat, however, that this was not the petition of the Calcutta Trades' Association. The prayer of their Petition was much more reasonable in its character. Seeing reason to believe that a particular provision of the new law of limitation would injuriously affect certain classes of tradesmen, they prayed that that provision might be amended, but they did not ask that this should be done by means of any special legislation, or with greater speed than was usually observed in the amendment of laws passed by this Council, and he (Mr. Harington) could not understand why the Council should go out of their way to do what the Petitioners had not asked them to do. He could not understand why the Council should volunteer this Bill, and more especially why they should carry the Bill beyond the particular Section of the Act to which the Petitioners objected. The Petitioners had not asked that their case might be made an exceptional one ; they seemed quite willing to wait the usual of course

legislation in this Council, and he certainly saw no sufficient reason for their deviating from that course on this occasion. Let him remind the Council how differently they acted in the case of the Recovery of Rents Bill brought in last year by his Honorable friend the Member for Bengal, whom he was very glad still to see in his place, though it was for the last time. That Bill also related to a question of limitation, and was introduced to amend one of the limitation Clauses of Act X of 1859. In so far, therefore, the case of the Petitioners, to which his Honorable friend's Bill related, ran on all fours with the case of the Petitioners now under consideration. Two, or he believed three Petitions were presented to the Council against the Clause of the Act to which he had just referred, and prayed for relief. The first of these Petitions was presented on the 31st July 1860, and was ordered to be printed. The second Petition was presented on the 8th September 1860, and the same order was passed in respect to it. On the 15th September, the Honorable Member for Bengal brought in a Bill to amend the Section of the Act complained of by the Petitioners. A third Petition was presented on the 22nd September, which was also ordered to be printed, and on the same day the Bill was read a second time. On the 29th September, the Bill was referred to a Select Committee in the usual course. On the 8th December, the Select Committee made their report. On the 15th December, the Council resolved themselves into a Committee of the whole Council upon the Bill which was reported upon the same day. On the 22nd December the Bill, after being recommitted, was read a third time and passed, and on the 26th of December the Bill received the assent of the Governor-General. This Bill, therefore, although it also related, as he had said, to a question of limitation, and affected a very large and a very important class of the community, was not hurried through the Council, but passed through its several stages at the regular intervals of time in accordance with the Standing Orders. The error in Act X of 1859, which the Bill of his Honorable friend, the Member for Bengal, was introduced to rectify, was obvious upon the face of the Act, and there could be no doubt of its injurious effects in respect to those reached by it. The case of the parties affected by that Bill was very much stronger than the case of the Petitioners before the Council. They did not pretend that the Section of Act XIV of 1859, of which they complained, would operate as a denial of justice in their case, which was really the effect of the Section of Act X of 1859 which the Bill of last year was brought in to amend, and yet the Council did not think it necessary to depart from the usual course of legislation in favor of that Bill. The Standing Orders were not suspended in order that it might be pushed rapidly through its several stages. The Bill took the regular course. The evil complained of was remedied in what he might call a perfectly constitutional manner, and no just ground of complaint was afforded to any one. It certainly appeared to him that, instead of hurrying through the present Bill in the hasty manner that they were now doing, they would do well to follow the careful and deliberate course observed in the case of the Bill to which he had just been referring.

He would now pass on to the history of Act XIV of 1859. Some Honorable Members were probably not aware that it was nearly twenty years since that Act was first conceived ; but such was the fact.* Various amendments of the existing law of limitation were proposed prior to the year 1842, when the Indian Law Commissioners took the matter in hand, and in the year just mentioned, they prepared a project of law which—with considerable modifications no doubt—eventually became, he might say, Act XIV of 1859. Amongst the Law Commissioners, whose names were signed to the original draft Act, were Mr. Amos and Mr. Cameron, two eminent English lawyers. The Law Commissioners having proposed only one year's limitation in respect to certain actions, for the institution of

which six years were now allowed in the Presidency towns, and twelve years in the Mofussil, at least on this side of India, the then Chief Justice of Calcutta suggested that the provision was comprehensive enough to embrace a great number of cases, in which the limitation of one year would be found too short. On this suggestion the Law Commissioners made in their report these remarks :—

"In this country the incomes of men or their means for discharging the debts they incur for subsistence, lodging, labor, &c., and the accommodations and supplies they require from day to day in the ordinary course of life, are, for the most part, received monthly, and it is expedient that they should be applied as they are received, to meet those current charges. It is, we conceive, very much for the general interest, to promote the early settlement of such debts. This may be done in some degree, by barring the demand for them after a reasonable time. When the debt ought to be settled within a month, a year seems to be a reasonable time to allow for seeking the assistance of a Court to compel payment, provided the debtor was within the reach of process. And it is here to be observed, that all the time the debtor may have been absent from the Company's territories, and, therefore, beyond the reach of process, is to be excluded in computing the period of limitation, which is a great extension of the English law, by which a limitation that has begun to run continues to run, notwithstanding subsequent absence."

The Law Commissioners then quoted from Burge :—

"By the law of Scotland, actions of debt, not founded upon written obligations, held to include merchant's accounts, both wholesale and retail, workmen's wages, servant's wages, aliments furnished to a family or domestic establishment, and house rents, where the lease is verbal, must be pursued within three years."

This was the period of limitation now complained of by the Calcutta Trades' Association. The Commissioners went on to say—

"By the French Code, actions by keepers of inns and taverns on account of lodging and board, by the artizans and work people for payment of their daily labor, &c., are prescribed in six months, and actions by merchants for commodities sold to persons, not merchants, and by servants hired by the year for their wages, &c., are prescribed after a year.

"We at present adhere to our opinion of the propriety of the limitation we proposed, and have continued it in the draft now submitted. But we have requested the Trade Association of Calcutta to consider the subject, and to communicate to us any observations that may have occurred to them upon it, as one in which they are particularly interested, and on which it is desirable to know the conclusions to which their experience leads them. We have not yet received a reply from them, and we do not think it necessary to wait for it; if we are favored with a report from them, we shall submit it for the consideration of your Honor in Council."

Shortly after the submission of this report, the reply of the Calcutta Trades' Association to the communication which had been addressed to them by the Indian Law Commissioners, was received. With the permission of the Council he would read what they said.

"We are honored with your letter, dated the 3rd Instant, favoring us with extract of a proposed Act of the limitation of suits in the Courts of Her Majesty and of the East India Company, specifying certain suits which, subject to certain exceptions, it is intended should not be admitted in the Courts unless they are instituted within one year from the time the cause of action arose.'

"We have also been favored with your note of the 19th Instant, forwarding your office copy of the proposed Act for the information of the Committee of the Trade Association, which we represent.

"As no exceptions are given in your letter, we conclude that you wish us to state such as appear to us to be desirable, and also to offer such remarks as we may think proper to lay before the Commissioners.

"We accordingly proceed to submit such observations and exceptions as we have to offer.

"Suits for debts on account of wages of servants, artizans and laborers—it is very desirable that these claims should be, as they usually are, promptly settled. For hire of animals and vehicles, these accounts, like tailors' and shoemakers' bills, though demanded monthly, are frequently not paid for years, and where such accommodation is allowed, it would be bad to disallow the tradesman's claim after the expiration of a year, by debarring him from suing in the Courts for its amount, when he finds no other course will obtain payment.

"The same remarks will apply, though not so strongly, to retail supplies of victuals and articles of daily consumption, for tavern bills, for bills for board and lodging, and for lodging only, for the rent of buildings, and on any other account, subject by established customs to settlement by the month or a shorter period.

"By supplies of victuals and articles of daily consumption, we understand butcher's, baker's, milkman's, butterman's and other bills of a

similar nature, connected with the usual monthly bazar account, but not articles of consumption obtained from European and native Tradesmen, such as beer, wines, hams, cheese, tea, &c. In Great Britain, the limitation to one year would, doubtless, apply to bills for groceries, but in this country, the European establishments, such as D. Wilson & Co., W. W. Robinson & Co., G. W. Bright & Co., and others, also the establishments in the China Bazar, could not be subject to this limitation.

"We understand by the printed Act herewith returned, that in all cases where actual payment cannot be obtained within the year for bills coming within the meaning of the proposed Act, a written acknowledgment of their correctness, and a promise to pay in such as may suit the nature of the transaction, will be sufficient to form an exception.

"We hope that the case of persons absconding shortly after having contracted a debt, and not being again heard of within the year, will be considered an exception.

"Also where persons have left Calcutta and gone into the Mofussil, and have been applied to for payment, by letter, but without success, such letters being, in many instances, systematically neglected, these persons to be considered as having absconded, for purposes of this Act, proof being given of despatch of such demand through the Post Office, and of its delivery by the Mofussil Post Office peon, of which the Post-Masters' certificate shall be deemed sufficient proof.

"We of course see that the effect of the law, if it be so passed as to affect all trades, for it is the custom of almost all trades in Calcutta to demand payment monthly, will be to limit credit to one year or even a shorter period, which would be very desirable, if practicable, but which, in many cases, it is not under the system which at present obtains."

On this letter the Law Commissioner observed :—

"It will be perceived that the Trade Association approve generally of the principle of the proposed limitation, and of the object intended by it, which they consider to be very desirable, if practicable, but they think that in some cases, it may not be practicable under the system which at present obtains.

"The Association mentions certain cases, in which they think it would be hard to disallow the tradesman's claim after the expiration of a year, but they immediately afterwards notice a provision of the proposed Act, by which the anticipated hardship will, we conceive, be sufficiently guarded against, if ordinary diligence be used.

"They rightly understand that by this provision in all cases where actual payment cannot be obtained within the year for bills coming within the meaning of the proposed Act, a written acknowledgment of their correctness, and a promise to pay will be sufficient to form an exception. It will be observed on reference to the draft that a simple acknowledgment in writing, signed by the party liable, or a payment of any part of the amount due within the period of limitation, will be sufficient to open a new period of limitation within which the debt may be recovered by judicial process.

"The Association indeed would seem to be content with the provision, except in the case of persons absconding shortly after having contracted a debt, and not being again heard of within the year, and in the case of persons having left Calcutta and gone into the Mofussil who have been applied to for payment by letter without success."

The Law Commissioners then went on to notice the provision contained in the Bill prepared by them in respect of absence, all the time of which they pointed out would be excluded in computing the period of limitation, which they remarked was a great extension of the English law in favor of the creditor, and they concluded their report by observing that upon the whole they found no ground in what was stated by the Calcutta Trades' Association to alter the recommendations they had already offered on the subject.

The papers which he (Mr. Harington) had just read, would show the Council at how early a period the particular attention of the Calcutta Trades' Association had been called to the proposed amendments in the law of limitation, and if that Association failed closely to watch the subsequent stages of the Bill brought in to amend the existing law, there was the less excuse for any oversight on their part. It was right, he should mention, that the Section in the draft of the original Bill, which prescribed one year's limitation for the class of suits described therein was, doubtless, not so general in its wording as the Section of the Act of 1859, of which the Calcutta Trades' Association now complained, and many suits which would fall under that Section would probably not have been affected by the Section of the original Bill ; but it was clear from the concluding paragraph of the letter of the Calcutta Trades' Association, which he had read, that the Association thought it quite possible that the Bill might be so drawn as to reach every trade, for they said that "it was the custom of almost all trades in Calcutta to demand payment monthly."

The dates on which Act XIV of 1859 passed through its several stages, were mentioned by the Honorable and learned Vice-President on Saturday last. It might be convenient that he (Mr. Harington) should repeat them. They were as follows:—The first reading of the Bill took place in July 1855. The Bill was read a second time on the 28th of the same month, and referred on the same date to a Select Committee for report. The report of the Select Committee was presented on the 8th January 1859. On the 22nd January 1859, the Bill was brought under the consideration of a Committee of the whole Council, and was reported, after several lengthened discussions, on the 12th February. It was recommitted on the 19th February, and ordered on the same day to be republished for two months for general information. On the 30th April, the Bill was recommitted, read a third time and passed, and on the 5th May, the assent of His Excellency the Governor-General was given to the Bill. During the whole of this long interval from the first introduction of the Bill until it passed into law, no Petitions were presented against the Bill by the Calcutta Trades' Association, or by the corresponding Institutions at the other two Presidencies, although the Bill was twice published for general information and with a view to elicit opinions and objections. Petitions against parts of the Bill, other than the part complained of by the Calcutta Trades' Asssociation, were presented from other quarters; but to that particular part of the law, if he recollected rightly, no objection was taken by any one, certainly not by any of the Trades' Associations, and although it was two years to-day since the Bill was read a third time and passed, they were now asked for the first time, by a Petition presented only last week, to alter a most important provision in the Act. Had the Petitioners applied for an extension of the time which the Act allowed for the institution of old claims which would be affected by the new limitation, to enable them to obtain a hearing for a number of suits, the cognizance of which would otherwise be barred, on the ground that they had really overlooked the particular Section of the Act which related to old claims, or that unexpected obstacles or impediments had arisen in the way of their instituting claims, which had been allowed to lie over for considerable periods, he should have felt more inclined to listen to their Petition, though he could not admit the sufficiency of the reason assigned by the Petitioners in one of the Petitions which had been read to them to-day for not having preferred their claims in a competent Court within the time allowed by Act XIV of 1859, namely that they had been embarrassed by the working of the Income Tax. But the Calcutta Trades' Association did not say that they had overlooked the particular Section, to which he had just been referring, and they had not asked for an extension of the time allowed in that Section. As already noticed, their prayer was for the amendment of the law itself. So far from the particular Section relating to the institution of old claims not being generally known throughout the country, he had reason to believe that the very contrary was the case, and as the best proof that could be given that he was right in what he had just stated, he was credibly informed that thousands of suits had lately been instituted in order to save them from the operation of the new law. The suitors in these cases, never imagining that the Council would agree at the last moment to suspend the operation of the Act, had felt that they had no alternative but to institute their claims, and they had instituted them accordingly at a great expense on account of stamp paper and other law costs, which they might have avoided, had they been aware that the operation of the Act would be postponed for several months. The consequence would be that the persons who had been driven into Court by the imperative terms of the law, would find themselves placed in a worse position than those who, whether from carelessness or otherwise, had overlooked the law, and for whose

Mr. Harington

benefit the present Bill had been introduced. He did not think that this would be right, and it appeared to him that, if they passed this Bill, they would be bound to indemnify all those who, not knowing that such a Bill would pass, had incurred the expense of prosecuting or defending actions which had been brought only in consequence of the stringent terms of the Act, the operation of which it was now proposed to suspend until the commencement of next year. He believed he might say that the new law of limitation was very generally approved of throughout the country. Both Regulation and non-Regulation officers spoke highly in its favor, and he understood that it had been extended to most of the non-Regulation Districts. The minds of the community generally had become familiarized with the provisions of the law. Doubtless all the mercantile and other transactions of the last two years, which were subject to the Statute of limitation, had been regulated with reference to the new law, and the various suits reported to have been recently instituted bore testimony to the fact that there was a very general expectation and assurance that Act XIV of 1859 would take effect from the date on which at the time of the passing of the Act it was appointed to come into operation, namely the 5th May next. Under these circumstances, it seemed to him that it behoved the Council to pause and to consider well before they passed a Bill, the effect of which would be to throw the whole country back again, for some months at least, upon the old, and what he had hoped, might now be regarded, as the exploded law—upon a law which was condemned as a bad law upwards of twenty years ago, and declared to require large amendments,—and to deprive the country for a considerable time of a law which took twenty years to mature and pass, which was generally considered an excellent law, and to only a single Clause of which had any objections been taken up to this time. But this was not all. A further effect of passing the present Bill would be, that it would unsettle men's minds as to the future, for no one would know what was eventually to be the law of limitation, and the community, in regulating their transactions which might be affected by the law of limitation, would have no certain law to guide them. Suits which ought to be brought, might be held back. Suits which might safely be held back, might be brought. In short, no end of confusion would ensue, and, as remarked by him on a former occasion, he feared that much injustice might be committed. He could not help thinking that proceedings, such as those in which they were then engaged, were calculated seriously to shake the confidence of the public in their legislation as showing there was no certainty in it, and in themselves as a legislative body. People would think that that legislation must have been of a very hasty, ill-digested and ill-considered character, which could be shaken by a Petition like that of the Calcutta Trades' Association, or which could not stand the ordeal of such a Petition as that, and the suspension of the operation of which could be so easily and so expeditiously procured. Who would care to study their projects of law, when a Petition presented by a small—though it might be a very respectable and influential Section of the community—could, at any time, even just when an Act passed years before, after much deliberation, was about to come into operation, obtain its suspension without any enquiry being made, and that, as he had said before, not because the Council were satisfied that the law was bad, for, so far as he understood the general feeling of the Council, opinions were the other way, but in order that time might be gained to consider whether those who passed the law might not possibly have been wrong in one of the provisions. He did not mean to say that their laws were to be like the law of the Medes and Persians, which altereth not. If error had been committed, let it be shown, acknowledged, and rectified. In nothing, perhaps, was the imperfection of human wisdom and understanding more conspicuous than in the work of legislation. This was abundantly tes-

tified by the numerous declaratory and explanatory Acts, and Acts to amend Acts which were to be found in the Statute Books. But constant changes in the laws of a country must be bad and highly injurious to the country and the community at large, and he contended that no law which had been passed after full consideration, should be modified, unless upon the clearest proof of error, or unless circumstances had so entirely altered, that the law was no longer applicable, much less should any suspension of the operation of a law be permitted, unless upon the occurrence of an emergency which should appear to leave no alternative. He could not perceive that any such emergency had arisen at this time, which rendered necessary, or which would justify the passing of this Bill. He did not propose to enter at this time into the large questions, as to whether limitation laws were just, expedient, or politic laws or not, or as to whether the plea of limitation was an honest plea, or a plea of which an honest man could ever properly avail himself, or as to whether it was or was not an Utopian idea to suppose that a healthy state of credit could be produced by means of a limitation law. But confining himself to Act XIV of 1859, he must be allowed to say, that, looking to the great care, consideration and labor bestowed in the preparation of that Act, of which he could speak from personal observation, having been a Member of the Select Committee ; remembering how anxiously and carefully every Section of the Act had been discussed and weighed, and bearing in mind the great and able men who had taken part in the preparation of the Act, the Honorable and learned Vice-President and his learned predecessor Sir J. Colvile, the Honorable and learned Judge opposite (Sir Charles Jackson), and his learned predecessor Sir A. Buller, Messrs. Amos, Cameron, Millett, Eliott, Borradaile, Ricketts, and Currie, the present Lieutenant-Governor of Bengal, and others, he did not think there was much likelihood of their having fallen into error in settling the provisions of the Act, and he felt sure that they ought not to allow their confidence in the soundness of the Act to be disturbed or weakened by the Petition, which had been presented to them on the part of the Calcutta Trades' Association.

With regard to the Trades' Association, he must say he thought that they could not have sufficiently considered the Act, and that they had complained of the Section of the Act, mentioned in their Petition, without adequate cause. The Petitioners in the last paragraph of their Petition complained of the *ex post facto* character of Act XIV of 1859. No doubt, it was an *ex post facto* Act, inasmuch as it applied to claims created before, as well as to claims accruing subsequently to, the date fixed for the Act to take effect ; but the Act contained a Section which allowed two years from the date the Act passed for the institution of old claims, which, at the time, was considered quite sufficient by the Council. The Act would, in no way, interfere with tradesmen giving their customers any length of credit that they pleased. So long as it was agreed that a sum of money was not to be considered as due, and therefore not payable, until a certain time, until that time expired, there could be no cause of action. It was scarcely necessary to add that the period of limitation began to run only from the time when the cause of action accrued. It seemed to him that the Calcutta Trades' Association must have overlooked Section IV of the Act. That Section provided that—

"If, in respect of any legacy or debt, the person who, but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy or any part thereof is due, by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission ; provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them."

In connection with this Section, he might mention a circumstance which would show the Calcutta Tradesmen that, when the Bill was before the

Council, he was not unmindful of their interests. Originally there was a second proviso to the Section which he had just read, which required that in every case in which the acknowledgment mentioned in the Section could have been registered by virtue of any law or regulation in force at the time and place of the signing of the acknowledgment, it should be registered within three months from the date thereof. From a remark which fell from the late Honorable Member for Bengal, he (Mr. Harington) saw at once how injuriously this proviso would affect the tradesmen of the Presidency towns in respect of their up-country customers, and he moved in consequence the omission of the proviso. In speaking on the Motion, he instanced the case of a Calcutta tradesman applying by letter to an Officer in a distant station for payment of a bill which had been sometime due, and receiving a reply acknowledging the debt and containing a promise to pay. He pointed out that this acknowledgment and promise would not avail to exempt the claim from the operation of the law of limitation, or to give the tradesman the benefit of the Section, unless the reply was registered; but that the Officer could scarcely be expected to go through the form of registration, and that the formalities required by law for registering deeds would prevent the tradesman from fulfilling the conditions of the Section as it now stood. The Council agreed with him, and the proviso was ordered to be struck out. He repeated that this would show the Calcutta Tradesmen that their interests and convenience had been kept in view by the Council in settling the details of the Bill. As Section 4 of the Act was now framed, no tradesman ought to experience any difficulty in keeping his outstanding claims alive. Every acknowledgment of a debt would give a new starting point, and if an acknowledgment, which might justly be demanded, was withheld, it was for the tradesman to consider, whether the time had not arrived for instituting an action. Then it seemed to be supposed by some tradesmen that absence at home on furlough, which, in the case of both Civil and Military Officers, often extended to three years, might cause a just claim to be barred under the operation of the new law of limitation. A reference to Section 13 of the Act would show at once that this was entirely a mistake. That Section declared that—

"In computing any period of limitation prescribed by this Act, the time during which the defendant shall have been absent out of the British territories in India, shall be excluded from such computation, unless service of a summons to appear and answer in the suit can, during the absence of such defendant, be made in any mode prescribed by law."

He believed he was right in saying that there was no mode prescribed by law for serving a summons on a defendant who was out of the country. Considering therefore that, with all these safeguards, the tradespeople of Calcutta could not be injuriously affected by the operation of the Section of Act XIV of 1859 referred to in the Petition of the Calcutta Trades' Association provided they were commonly vigilant and active and properly mindful of their own interests, he could see no reason for any modification of that Section, and as this was the only Section complained of by the Calcutta Trades' Association, it followed he thought that there could be no ground for their going on with the present Bill. He begged therefore to move that the further consideration of the Bill be postponed until the 1st January 1862. He would only add that, if any Honorable Member would take upon himself the responsibility of bringing in a Bill to amend Act XIV of 1859, he would give the Bill his best consideration. He would not promise to support the Bill, but he should probably not object to allow the Bill to be read a second time without binding himself to the principle of it, in order to give the public an opportunity of expressing their sentiments upon it.

Mr. LAING said, the consideration which he had been able to give this matter since Saturday last, had satisfied him that we ought to pass this Bill in the form in which it had been introduced by the Honorable and learn-

ed Vice-President. The real question at issue was, whether we should give the Petitioners the opportunity of recovering their claims, or allow their rights to be barred under a Statute of limitation greatly shortening the usual period, when they came forward, objecting to it, and saying they were taken by surprise. The question was not one of abstract legal principle or of moral right, but purely of commercial convenience. As a matter of right and principle, a man should pay a just debt after sixty as well as after six years. But convenience stepped in and said, there was a term beyond which accounts must not be kept open, and claims indefinitely suspended. That period had been fixed by the experience of the greatest commercial nation in the world, namely England, at six years, and various attempts to alter the period had been steadily resisted. Now all the theories that could be advanced, failed to satisfy him that the sound common sense of John Bull was far wrong in such a matter. It had been repeatedly attempted to alter the period in England, but the practical sense of the commercial community had induced them to adhere to that rule. If there was any difference in this respect between England and India, it was in favor of a longer period in India. The facilities of intercourse were much greater in England than in India. He therefore felt no hesitation in saying that no amount of abstract theory would weigh with him in a matter of this sort in comparison with the common sense of the commercial community. The Petitioners might have been supine formerly. Whatever the reason was, and whether they were right or wrong in not having been alive to their own interests at an earlier period, it was clear that a large portion of the commercial community in India objected to the law now, and had represented that their rights would be seriously affected by it. In that case there could be no doubt that the subject ought to be re-considered. Seeing therefore that the question must be re-opened, was it better, he would ask, that in the meantime we should let the Act come into operation, or suspend it? He thought there was the greatest possible advantage to be derived from the course proposed by the Honorable and learned Vice-President, of suspending the Act and leaving things just as they were. If this were not done, the inevitable result must be that a mass of suits would be brought to save actions from lapsing, which would otherwise not have been brought. He hoped he should not be offending his learned friends on either side of him, by saying that he was not such a great admirer of law-suits as to wish to see them multiplied. On the other hand, it would be equally embarrassing, where those suits were not brought, that the parties interested should be deprived of the opportunity of recovering their just claims, and debtors should be relieved from their legal obligations, by the operation of an Act which might be altered in three months. He therefore thought that all the arguments which could be urged, were in favor of the immediate suspension of the Act. He could not conceive that any man had a vested right in getting off the payment of his just debts. As he said before, it was a matter of purely commercial convenience that a line must be drawn somewhere or other. It therefore seemed to him that the whole argument of practical convenience was on that side, and the only thing in the shape of an argument on the other side was that it was very inconsistent and undignified for a Legislative Assembly to reverse a law passed by them.

MR. HARINGTON remarked, he did not say *reverse*, but *suspend the operation of* a law.

MR. LAING resumed. It came to the same thing. His argument was that there was a great practical convenience in suspending the law, and the only argument against doing so was drawn from the supposed dignity of this assembly. He could admit that argument if any violent pressure were forced upon us from without. If we had a large mob thundering at the door, or invading the Chamber, then he might

agree with the Honorable Member for the North-West that we should die like Roman Senators in our seats rather than yield an inch. But among the five or six very respectable gentlemen below the bar who were doing them the honor to listen to their proceedings, he saw no pikes or caps of liberty, and nothing in their demeanor to make him fancy that they were Robespierres or Dantons; and he really thought that we might deliberate upon what was expedient or proper on the present occasion without the imputation of yielding to intimidation or the risk of our motives being misrepresented. In all such cases we had only to do what was reasonable and sensible, and he thought that, by so doing, the character of this assembly would rise in public estimation. He would not trouble the Council with any further remarks, and would conclude with the expression of a hope that they would pass this Bill.

MR. SCONCE said, he could well understand that any person who entertained the strong opinions which had been expressed by the Honorable Member who had just sat down with respect to the change made by Act XIV of 1859 in the limitation applicable to suits brought to recover money due upon the sale of goods, should thoroughly concur in the necessity for passing the Bill which had been introduced by the Honorable and learned Vice-President. Upon that point he (Mr. Sconce) professed to have formed no opinion. It seemed to him to be sufficient to know that the law, of which they were now called upon at so short notice to postpone the operation till the 1st January 1862, was enacted two years ago, and that it had previously undergone much discussion by parties perfectly competent, as we might suppose, to give the whole question of limitation the best consideration. Without venturing to offer any opinion on the question whether the 8th Clause of the 1st Section of the Act (realization of claims for money on account of goods sold) should be confined to three years or be enlarged to six years, he felt himself bound to oppose the further proceeding of this Bill. The Honorable gentleman who had just sat down said that we should confidently rely on the opinion of the commercial community which they had expressed in favor of this Bill. On the contrary, he thought that the opinion of the commercial community, so far as that was to be gathered from their acts, was quite the other way. The law was not confined to Calcutta. It extended to Madras and Bombay; and, without considering, as he had no means of doing, what might be the effect of the law in those Presidencies, it seemed to him that the utter silence of the commercial communities of those Presidencies, as to the operation of the new law of limitation, by no means supported the opinion which had been expressed here. They seemed to him to sit down quite content with the law. He knew not, as had been said, whether the strong common sense of John Bull had induced the English people to fix the period of limitation at six years; but if it were so, he might ask the Council to recollect the old proverb that, when men changed their country, they changed their minds. The tradesmen of Madras and Bombay very probably agreed with the promoters of the Act of 1859. They probably felt that the Act was founded on a right principle, and if they were called on in any way to sacrifice the kindly feeling that might be supposed to be manifested in allowing debtors a longer accommodation, they might be sensible that, on the whole, the more stringent law would operate more to the public benefit as well as to their own advantage as creditors. But however that might be, no objection whatever had been taken to Act XIV of 1859 by the other Presidencies, and surely the inference to be drawn from this fact was quite different and of another kind than that pressed upon the Council by the Honorable gentleman.

Then the law affected the Straits also, and how would you deal with people there? Were they to be supposed to be dissatisfied also? He did not say whether this was a matter affecting the

dignity of this Council or not. But he could not help saying that, considering the weight which all legislatures attached to the stability of their enactments and the matured principles that determined their proceedings, it was a most material argument to say that we should not at the eleventh hour, within one quarter of the twelfth hour, without any previous intimation of dissatisfaction, suspend all the rules laid down for the conduct of the proceedings of this Council in order that we might postpone the operation of a law which he was justified in saying the vast majority of the people entirely accepted and were prepared to see carried out. He had no share in the enactment of the law which was now under discussion by the Council. The law was passed shortly before he had the honor of a seat in this Council, and so far he begged to be permitted to say that personally he had no interest in advocating one Section more than another. But he thought that a good deal might be said apart from anything he had yet said against the proposed suspension of the Act. It was not merely a question of a debtor not paying within any time what he justly owed. There was a good deal more in the Act than the relation of creditor and debtor. He would refer to the 1st Clause of the 1st Section of the Act which related to suits to enforce the right of pre-emption. By that Clause the period of limitation for the institution of suits to enforce the right of pre-emption was reduced to one year. Hitherto the law had allowed 12 years. Now, it was obvious that the operation of this new Clause necessarily corroborated the title of a purchaser whose purchase dated beyond one year. So that, as regards claimants to property on the ground of a right of pre-emption, all persons who had purchased any property, and whose purchase had been made for more than one year before the claim was preferred, had acquired a right by the Act which the suspension now proposed would nullify. He would also refer to Clause 2 which related to suits to set aside the sale of any property, moveable or immoveable, sold under an execution of a decree of Court or of Revenue Officers or for arrears of Government Revenue or other demands recoverable in like manner. In such cases the period of one year was also fixed. Therefore, up to the 5th May coming, such properties which might have been purchased beyond one year would be barred against any demand that might be made by an adverse claimant. If you relaxed the right which you had already created, it seemed to him that you injuriously invalidated the interests that had been acquired under that Clause. In the same manner he might refer to the 4th Clause which related to leases granted by the Revenue authorities, and accepted it might be in some degree under the guarantee offered by this Act. He knew not but there might be other interests which would be affected by the proposed suspension of this law, and that in his judgment was a very material reason why you should not suspend your Standing Orders and in the course of one hour injure those who might have acquired rights under the Act.

There were one or two other points connected with the details of this Bill (if a Bill having but one Section could be said to have any details) on which he desired to say a few words. The Bill, as it now stood, provided that all suits now pending, or which should be instituted before the 1st January 1862, should be tried and determined as if Act XIV of 1859 had not been passed. It would be found, however, that Act XIV of 1859 applied to other matters than suits. It regulated the time within which execution of regular or summary decrees might be taken out, and therefore some special provision ought to be made to meet those cases.

On the whole he was unable to concur in the further proceeding and passing of this Bill.

Mr. FORBES said, he should not follow the Honorable Member of Council opposite in his argument in favor of making the law of limitation six years instead of three, because he did not consider that that was the question now before them; but he wished to state

very briefly why it was that the objections which he had to this Bill, when it was brought in last Saturday, had increased rather than diminished during the time he had had to consider it and from the opportunity he had had of comparing the Bill with the Petition from which it avowedly originated. At the first reading of the Bill he understood that it was brought in to afford relief to parties who represented that they had been taken by surprise at suddenly finding that the time within which they could bring suits for debts would expire in a few days, and who therefore prayed that the limit fixed by the law might be extended, so that they might have time to bring their suits, and not be exposed to loss through mere ignorance of the law. He (Mr. Forbes) thought that the demand was not one that the Council ought to accede to, or that asserted ignorance of the law, when the fullest facilities for becoming acquainted with it had been afforded, could be admitted as a ground for a postponement of its operation, and that a most inconvenient precedent would be afforded if they once admitted the principle. But on reading the Petition after it had been printed, he found that a postponement of the operation of the law on account of ignorance of its provisions, was not what the Petitioners asked for, and that what they really asked for was a permanent alteration of the law, so that the law of limitation should be changed from three years to six years. He was quite sure that this misapprehension of the object of the Petition arose from some mistake of his own, and not from any want of full explanation on the part of the Honorable and learned Chief Justice; but still, now that he was correctly informed of the true object of the Petition, he could not avoid expressing some surprise at finding how entirely different was the object of the Bill which was founded upon it. The Petition asked that the existing law should be changed. The Bill made no change in the law whatever. In fact, the Petition asked for what the Bill did not give, and the Bill gave what the Petition did not ask for. Now, why should they postpone the operation of a law which, with perhaps the simple exception of the Penal Code, was passed with more deliberation than any other law which had been before the Council, which was introduced by Sir James Colvile, and passed with the assent of the present Honorable and learned Chief Justice and the Honorable and learned Judge opposite after long and protracted discussion, and after being twice published to the world without drawing forth any objection? Why, he said, should they postpone the operation of such a law when nobody asked them to do so? It might be right that the law of limitation should be enlarged from three years to six years, but that was not the question now before them. He (Mr. Forbes) for his own part did not think that it would be well to enlarge it, and he had always heard those competent to give an opinion, admit that Act XIV of 1859 was one of the best Acts that the Council had passed. But, as he said before, that question was not before them. This Bill did not propose to enlarge the law. It only proposed to postpone its operation; and if on no other ground than that nobody had asked for the postponement, and, as far as they now knew, nobody wished for it, he should vote in favor of the Motion of his Honorable friend the Member for the North-Western Provinces in the hope of throwing out the Bill. If any Bill were hereafter brought in, founded on the present Petition, and enlarging the law of limitation, that Bill could be discussed on its merits; but no such measure was now before them, and he objected to a postponement of the operation of a good law when no ground for postponement was shown.

SIR BARTLE FRERE said, he thought that the Honorable gentleman who had spoken against the Bill had somewhat misunderstood the object of the Petitioners and of the Bill before the Council. It might be true that the Petition went at some length into the question of what ought to be the law of limitation, but it seemed to him the main object of the Petitioners was

contained in the first paragraph which was as follows:—

"That your Petitioners have only *recently* ascertained that Act XIV of 1859 is one liable seriously to affect the interests of Traders and others."

This was the point which made it necessary that we should take notice of this Petition. Had they asked merely for an alteration of the law as it now stood, he thought that the arguments which had been used by the Honorable Members for Bengal, Madras, and the North-Western Provinces, should induce us not to act hastily in altering the law passed two years ago. But what the Petitioners said was virtually this—"You have enacted a law which makes a considerable change in the period of limitation for the institution of suits to recover our debts, and we have only lately found it out." It was perfectly true that everybody was supposed to know the law, and that very ample notice had been given in this case. The alteration might have been known two years ago. But there was such a thing as giving too much notice; and from what was read by the Honorable Member for the North-Western Provinces, it appeared that this Act had been on the anvil for no less than twenty years before it was passed, that three or four years elapsed between its introduction into this Council and its passing, and that two years had been allowed before it came into operation. Now, certainly, all this notice was long enough. But it might reasonably be doubted whether it was not too long—so long, in fact, as to defeat the object of giving notice, and thus prevent people from being prepared for the Act when it actually came into operation. It was said, and it was perfectly true, that every means had been taken to make this Act public; but he would ask, were those means effectual? As stated by his Honorable friend opposite (Mr. Laing), it was not a question of abstract legal principle or vested right; but it was a mere question of commercial convenience and expediency. The Petitioners had represented that they had been taken by surprise, and he entirely believed them. Not only was this the case with the gentlemen who signed the Petition, but he was aware of other parties who were equally in the dark up to an equally late period. His Honorable friend the Member for the North-Western Provinces had observed that no Petition had come up from other parts of the country. But if other parts of the country had been in the same state of ignorance, we had not had time to hear from them.

Then his Honorable friend referred to the Bill for the amendment of the Rent law. That was not a case in point. The blot was not discovered till after the law came into force, and the course now proposed by the Honorable and learned Vice-President was the course and the only course which could be adopted, to prevent the necessity of our having to take the very inconvenient course we had been obliged to follow to rectify the error in Act X of 1859. This Act, as it stood, would virtually cut off the claims of a great number of people who did not know till lately that the Act would affect them.

MR. FORBES asked the Honorable Member to read the part of the Petition which stated so.

SIR BARTLE FRERE again read the first paragraph of the Petition, and went on to observe that the Petitions which had been read at the table to-night were precisely to the same effect.

MR. HARINGTON remarked that the prayer of the Petition of the Trades' Association was not to that effect.

SIR BARTLE FRERE resumed. The prayer of the Petition had been rightly described by his Honorable friend, but there were reasons why we should not hastily accede to such a prayer. There was no reason why, having delayed the operation of this Act for the past twenty years, we should not defer it a few months longer. But there were reasons why we should not hastily interfere with a material part of a law in the construction of which so much care and consideration had been bestowed. There was but one course open to the Honor-

able and learned Vice-President by which he could afford relief against the apprehended evil without causing loss or injustice to any one, and that course he took, namely to propose that the operation of the Act be put off a few months longer to give the parties time to take the necessary steps for the recovery of their claims. It appeared to him quite inconsistent with any sound principle of legislation to have acted hastily on any application to alter the terms of limitation. But this Bill did not alter the terms of limitation but simply postponed the new terms prescribed by the Act for a few months.

Then the Honorable Member for the North-Western Provinces observed that it would be "hard" on the parties who had relied on the Act coming into force, if we passed this Bill. He (Sir Bartle Frere) did not know whether he meant that it would be hard on the debtor or creditor. Suppose the debtor, under the belief that the Act would come into operation in a few days, and under the pressure applied in consequence by his creditor, had paid his debt sooner than would have been necessary if no alteration in the law took place, he (Sir Bartle Frere) did not think that that could be called a hardship on the debtor; nor did it appear to be a hardship upon the creditor if he were obliged to enforce payment sooner than would have been necessary if he had known we meant to pass this Bill. But the main argument which would have weighed with him, and to which the Honorable gentleman opposite (Mr. Sconce) had alluded, was that the Bill would shake the confidence with which the proceedings of the Council would be regarded by the public. He would ask his Honorable friend whether he thought we would do anything to lose public confidence when a large commercial body came forward and said that they did not know until recently of laws passed by us two years ago. Should we lose public confidence by attending to what they told us and by deferring for a few months the operation of the law; or were we more likely to lose public confidence by shutting our ears to what was a just complaint, and allowing the law to come into operation by surprise? He did not think the gentlemen who had signed the Petition were bound by the opinion given by the Association twenty years ago. The Association, as it was now constituted, was quite changed; he hoped that the gentlemen who signed the letter which had been read by the Honorable Member for the North-Western Provinces had made their fortunes and gone home long ago; and he doubted if any of them were now members of the same body. For these reasons he should vote in favor of the Bill, and he did not think that we should in any way lose public confidence by suspending the operation of the Act.

THE CHAIRMAN said, he thought that the Honorable Members who had opposed the proceeding of this Bill had been so clearly answered that, if he had not been the originator of the Bill, he should not have felt it necessary to say a single word on the subject. One of the objections urged by the Honorable Member for the North-Western Provinces was, that in a case of this kind, we ought not to act hastily, but with deliberation and care, in the same manner as we had done with regard to the Bill brought in by the Honorable Member for Bengal, to alter the law of limitation in Act X of 1859. If he really believed that Act XIV of 1859 had not been properly understood by the public in general, there could be no hardship, he thought, in postponing its operation until the 1st of January next, to admit of their attention being fully called to it. The Petitioners had represented that their attention had only lately been called to the fact that the Act would materially affect their interests; and he might mention that he had only this morning heard from the Solicitor to the Trades' Association, that he was not employed to call the attention of the Association to the Acts passed by this Council. The gentleman had also put into his hands a copy of the bye-laws of the Association, from which it certainly appeared that that was no part of his duty; and he had assured him that, not only was he till very

lately not aware of the existence of the Act, but the greater part of the Members of the Association also were equally ignorant of it as himself. Now what was the object of that Act? Before the Act was passed, any person having claims for goods sold, might bring his suit in a Supreme Court within six years, or in a Mofussil Court within twelve years. But this Act reduced the period of limitation to three years. Now suppose any person had sold goods in May 1858; if the Act had not been passed, he would have had three years more to bring his action in the Supreme Court, and nine years in the Mofussil. By this Act, however, if it were to come into operation on the 5th May next, he might be barred altogether of any remedy to recover his debt. Admitting that the gentlemen who had signed the Petition ought to have been aware of the Act, and that they had been very careless and negligent in not having read the Gazette and made themselves acquainted with the law, he thought it would be extremely hard, if, believing that they were really ignorant of it, we were to confiscate their claims and leave them remediless if they did not bring their actions before the 5th of May next. He understood that some tradesmen in Calcutta had outstanding debts to the amount of upwards of a lakh and a half, and it would be very hard that those gentlemen who did not bring their actions before the 5th of May should be deprived of their remedy to recover their claims if their debtors were not honest enough to pay them. He therefore thought it right to postpone the Act, and to give them full and ample opportunity to become acquainted with the Act.

Now the Honorable Member for the North-Western Provinces had said that we should go through the deliberative process, as we had not been asked to suspend, but to alter the Act. If that had been the case, a great deal of what the Honorable gentleman had so forcibly urged might have been applicable.

MR. HARINGTON observed, that was the prayer of the Petition.

The Chairman

THE CHAIRMAN. He was coming to that. But the fact was that we were merely suspending the Act to give the gentlemen the opportunity of communicating with their debtors. Now the Honorable gentleman had asked, what was more usual than to keep a debt alive, by getting a letter of acknowledgment from the debtor? But the tradespeople in Calcutta who had debts owing to them by parties residing in the Mofussil, would be barred altogether after the 5th of May. What opportunity would they have to communicate with their debtors in the Upper Provinces, the Punjab, and elsewhere? Therefore they had no alternative but to go to their lawyers for the purpose of instituting their actions, and the costs of action would eventually have to be paid by the unfortunate debtors. Why should we do that, and not give them time to write to their debtors that, if they did not pay in a short time, or acknowledge their debt, they (the tradesmen) would be driven to the necessity of suing them. He presumed that that was what most tradesmen would do. He had no doubt that tradesmen, like D. Wilson and Co. for instance, would be very sorry to be obliged to put a debtor to the expense of an action in the Supreme Court. He thought it would be better if they were allowed the opportunity of communicating with their debtors, and getting an acknowledgment in writing from them before the 1st of January 1862. He did not see what hardship there could be in giving them that opportunity, nor did he think that the dignity of the Council would be compromised by such a course.

Then it was said, that the Petitioners did not ask for a suspension but for an amendment of the Act. Because the Petitioners had asked us to change the period of limitation in the case of trade-debts from three to six years, was that any reason why we could not do anything else? We were not prepared at present to give them six years, and were we therefore to tell them "As you have not asked us to suspend the law, we will not do so?" He thought that it would not only be very undignified of

the Council, but that the Council would not be performing their duty honestly to the public, if it refused to give creditors time to communicate with their debtors in such a case as this. He had brought in this Bill, not to the extent of what the Petitioners had asked us, but because his attention had been called to the fact that gentlemen living in Calcutta and in the vicinity of the Legislative Council, were not aware of the existence of such a law. Probably there were several gentlemen in the interior of the country who were in the same position. We, who sat here as legislators, did not wait to be asked to do what was right. If we found that a law was about to come into operation before the people were acquainted with it, and if that fact had been brought to his notice, he should not have waited for a Petition, but should have acted on his knowledge, so that no man might have a right to complain of our having acted unjustly.

Then the Honorable Member for Bengal had said that, by passing this Bill, we should injure the rights of those gentlemen who claimed under pre-emption. They formerly had twelve years, and we had cut them down to one year, and therefore we had created for them a title of which we should be depriving them. The object of the Act, however, was to prevent their having that title.

MR. SCONCE said, he had spoken of the party who purchased, and not the party who claimed under pre-emption as against the purchaser.

THE CHAIRMAN. But this Act was to enforce the right of pre-emption against a purchaser. The claimant to the right of pre-emption had henceforth to bring his suit to enforce his claim within a shorter time instead of a longer. Well, the holder at present, prior to the 1st of May, held under the old law. He had acquired no right yet, and our object was to prevent his acquiring a right under an Act of which the other party might be ignorant. We did not want to let the man have a right, by allowing the Act to come into force, and afterwards altering it. In that case he would have reason to say, "I have got my right, and you are going to interfere with it *ex post facto*." By passing this Bill, however, we should be telling the party, "We will not let you have a right, in consequence of the ignorance of the other party," which we could not do if the deliberative process advocated by the Honorable Member for the North-Western Provinces were to be gone through. On the other hand, supposing this Bill were not passed, and the deliberative process were gone through, as in the case of the Bill to amend the law of limitation in the Rents Act, was the Honorable Member for Bengal prepared to support the introduction of a Clause similar to Section II of the latter Bill, which provided that—

"Any suit or appeal instituted under Act X of 1859, which may have been dismissed or rejected on the ground that the suit had not been commenced within the period prescribed in Section XXX of the said Act, may be revived, if the order of dismissal or rejection shall be contrary to the provisions of the foregoing Section, and a Petition for the revival of the same shall be presented within four months" &c ?

Now, the Honorable Member for Bengal—and he (the Chairman) regretted to say so—would not be amongst us after to-day. We all admired his great ability and zeal, and the independence with which he had conducted himself during the time he had sat amongst us, and we all regretted that we were about to lose his assistance. But he would ask the Honorable gentleman before he left the Council, to say, when we were hereafter inundated with Petitions from those who had lost their debts, because they thought they had six years to recover them instead of three, what we should do on that occasion, if the present Bill were thrown out? He thought in such a case he should be obliged to decide against the parties to have the suits revived, telling them that, as the opposite party had gained a right, we could not give them any relief. To prevent placing ourselves in that position, he proposed to avoid going through the deliberative process, and to prevent creditors from instituting suits

against their debtors and putting them to all the expense of an action in the Supreme Court. He had no doubt that hundreds of such suits would be instituted in the Supreme Court in the next three or four days. Creditors must either do that or lose their debts altogether. Why should we drive them to that alternative? Let us act as straightforward and honest men. When we found that an Act passed by us had not been generally understood, and was likely to be injurious, should we wait until we were asked to do justice, or should we do it of our own accord? His view was this.—Before a law came into force, it was his duty to see that no injustice would be done by it. It was upon that ground that we postponed the operation of the Penal Code, because it had not been translated into all the languages of the country, and would be binding on persons who might not have known that they were committing offences under it, and would not be understood by the Judges who would have to administer it. But we were not inundated with Petitions from all parts of the country on that occasion. He believed that we should be doing injustice if we allowed the Code to come into force under those circumstances, and therefore without waiting for any Petition, he brought in a Bill to postpone the operation of the Code to the 1st of January next. He did not know that Act XIV of 1859 would act unjustly until the Honorable Member (Sir Bartle Frere) called his attention to it. The Honorable gentleman was kind enough to send him a copy of the Petition which he had received from the Trades' Association, and he (the Chairman) suggested to him the advisableness of postponing the operation of the law altogether, rather than let injustice be done by allowing the law to come into operation immediately. The Petition, therefore, merely called his attention to the fact. It was not because the Petitioners asked, that he did the particular thing they asked for, but he did it in the belief that, if there were persons in Calcutta who were not aware of the existence of the Act, there might be persons out of Calcutta, who most probably were equally ignorant of it. Now this was a law which did not affect the Trades' Association alone. It would affect all persons engaged in trade throughout the country.

For these reasons he thought it right to press on the Bill, and he hoped that the Council, after taking the whole matter into consideration, would agree with him that, in passing the Bill, they would be only doing what was just and proper, and that they might well overlook what had been said about their losing the confidence of the public. He thought we should rather gain than lose the confidence of the public, when they saw that we were not neglectful of their interests, and that we were the first to relieve them from the hardship to which they would otherwise have been exposed.

Then the Honorable Member for the North-Western Provinces had said that persons had been put to expense in buying stamps to bring in their actions. But these persons had brought their actions, and this Act could not prevent that.

MR. HARINGTON—And the opposite party?

THE CHAIRMAN said, he did not look at all to the opposite party claiming to be off his debt under a law of limitation. The only thing was that some gentlemen might have lost their receipts. He thought that if the debtor, believing that the creditor would be barred if his action were not brought within three years, tore up his receipts, then it would be hard. But he did not believe that any gentleman had torn up his receipts, in consequence of the passing of Act XIV of 1859. If there were any such gentleman, he was glad to say that there was a law in force which would protect them on their coming forward and giving their own evidence to prove payment. Therefore they would not be injured, merely because they had lost their receipts; and he thought on the whole, that it would be better to pass this Bill, which would do no harm, but which might protect several parties.

The question being put, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Mr. Laing.
	Sir B. Frere.
	The Chairman.

So the Motion was negatived, and the Section was ultimately passed as it stood.

THE CHAIRMAN then moved the addition of the following Section :—

"Sections XIX, XX, XXI, XXII, and XXIII of the said Act shall not take effect, or have any operation before the said 1st day of January 1862."

Agreed to.

The Title was passed as it stood, and the Council having resumed its sitting, the Bill was reported.

THE VICE-PRESIDENT moved that the Bill be read a third time and passed.

MR. HARINGTON said, he did not propose to occupy the time of the Council at this late hour by stating at length his reasons for refusing to give his assent to the Motion for the third reading of this Bill. He regarded the Bill as altogether uncalled for by the country at large. The Honorable Member of Government opposite (Mr. Laing), in some of the remarks which fell from him, seemed to have treated the Bill very much as if its operation would be confined chiefly to Calcutta; but the Bill was not merely a Calcutta Bill; it would affect the whole country, and looking upon it as a one-sided Bill and as calculated to cause immense confusion and to be the means of inflicting a very large amount of injustice, he felt that he could not properly be a party to the passing of the Bill. He should, therefore, say 'no' to the present Motion.

The question being put, the Council divided—

Ayes 6.	*Noes* 2.
Sir C. Jackson.	Mr. Forbes.
Mr. Erskine.	Mr. Harington.
Mr. Sconce.	
Mr. Laing.	
Sir B. Frere.	
The Vice-President.	

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

THE VICE-PRESIDENT moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

The Council adjourned, till Saturday, the 4th May, at 11 o'clock.

Saturday, May 4, 1861.

PRESENT :

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

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harington, Esq.,	Hon'ble Sir C. R. M. Jackson.

LIMITATION OF SUITS.

THE VICE-PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits.)"

BREACH OF CONTRACT.

THE CLERK reported to the Council that he had certified under Standing Order No. 27, that he doubted the authenticity of the signatures attached to two Petitions from ryots of Nuddea against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

THE CLERK presented to the Council a Petition from certain ryots of Beerbhoom against the same Bill.

SIR BARTLE FRERE moved that the above Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK also presented to the Council four Petitions from certain ryots of Moorshedabad against the same Bill.