INDIAN LEG. COUNCIL DEBATES

Vol. 7

1 June - 16 Nov.

1861

Charter Act would require to be remodelled and revised ; but this would take time, and the arrangement now proposed could be made under the Bank's present Charter Act with some modifications. The Bill had been lately put into his hands, but he proposed to have it printed and circulated to the Members, and to furnish copies of it to the Directors of the Bank and others early next week ; and he hoped that there would be no objection to a suspension of the Standing Orders with a view to the Bill passing through all its stages on Saturday next.

MR. SETON-KARR gave notice that he would on Saturday next move the second reading of the Bill " for the registration of Nijjote and Khamar lands as well as of Ryotty tenures involving the immediate occupation of the soil for the purposes of cultivation or for other purposes."

ARTICLES OF WAR (NATIVE ARMY.)

SIR BARTLE FRERE moved that 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" be referred back to a Select Committee consisting of Mr. Harington, Mr. Forbes, and Mr. Erskine, with an instruction to propose any amendments which they might consider necessary before the Bill was again brought before the Committee of the whole Council.

Agreed to.

The Council adjourned.

Saturday, August 31, 1861.

PRESENT :

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General*, Presiding.

Hon'ble Major-General Sir R. Napier,
H. B. Harington, Esq.,
H. Forbes, Esq.,
C. J. Erskine, Esq.,
Hon'ble Sir C. R. M. Jackson,
and
W. S. Seton-Karr, Esq.

CIVIL PROCEDURE.

THE PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill " to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from Mr. Singer, attorney for Mahomed Kadir Ali of Lucknow, praying for a definition of the meaning of Section XV Act XIV of 1859, as regards gold mohurs and rupees.

CIVIL PROCEDURE.

THE CLERK also presented a Petition from Moung Tom of Akyab, praying that a course of procedure for causes for matrimonial rights and for divorce be introduced into the Bill to amend Act VIII of 1859 (the Code of Civil Procedure.)

MR. SETON-KARR moved that the above Petition be printed.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

MR. HARINGTON presented the Report of 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."

SALTPETRE.

MR. HARINGTON presented the Report of the Select Committee on the Bill " to regulate the manufacture of Saltpetre and of Salt educed therefrom."

BANKS.

SIR BARTLE FRERE moved the first reading of a Bill " to enable the Banks of Bengal, Madras, and Bombay, to enter into arrangements with the Government for managing the issue, payment, and exchange of Government Currency Notes, and certain business hitherto transacted by the Government Treasuries." In doing so,

he said it was not necessary that he should enter into any details, as the objects were fully stated in the annexure to the Bill which had been for some days in the hands of Honorable Members. It was there explained that the Charter Acts under which the Banks of Bengal, Madras, and Bombay acted, did not permit those Banks to take advantage of the power which was given by the Currency Act to Government to enable them to carry out the designs of that enactment. Pending the enactment, therefore, of a fresh Charter Act, this Bill was prepared in order to enable the Banks to undertake the management of the business connected with the Currency scheme. He would not detain the Council farther than to state that, after the Bill was read a first time, it was his intention to move that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day.

The Bill was read a first time.

SIR BARTLE FRERE moved that the Standing Orders be suspended.

SIR ROBERT NAPIER seconded the Motion.

SIR CHARLES JACKSON asked, if the Bill had been laid before, or drawn by, Counsel.

SIR BARTLE FRERE replied that the Bill had been laid before the Advocate General, and drawn in accordance with his opinion.

The Motion was then put and carried.

SIR BARTLE FRERE moved that the Bill be read a second time.

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

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee after a verbal amendment, and, the Council having resumed its sitting, was reported.

SIR BARTLE FRERE moved that the Bill be read a third time and passed.

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

STAMP DUTIES.

MR. HARINGTON moved the first reading of a Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties.)" He said, objections having been taken in various quarters to some of the provisions and Articles of the present Stamp law, and an amendment of that law being deemed necessary, the Government of India lately appointed a Committee, consisting of the Honorable Member for Bengal, Mr. Fitzwilliam, the highly respected and intelligent President of the Chamber of Commerce at Calcutta, and himself, to consider the matter and to propose such modifications of the existing law as the Committee so appointed might consider advisable. The result was the Bill to the first reading of which he had now to ask the assent of the Council. The Bill did not profess to embrace a general revision of the Stamp Acts of 1860, but was confined to such alterations in those Acts as appeared to be of sufficient importance and urgency to call for immediate legislation. The proposed alterations were not very numerous, though some of them would be found to be of considerable importance. Looking at the quantity of business before the Council to-day, as shown by the Orders of the Day, he would not occupy the time of the Council by going in detail through all the proposed alterations in the existing law, or by entering into a lengthened explanation of the grounds on which they were recommended for adoption. He hoped that the Bill would be printed, and that copies would be in the hands of Honorable Members in the early part of next week, and he believed that, as regarded most of the alterations proposed, they would be found to explain themselves. Under these circumstances, he would content himself with remarking at this time, that the most important amendments proposed in the existing law, were introduced and intended for the relief of the mercantile community and those engaged in the production and delivery of articles of

commerce, and with noticing only a few of the more important amendments Under the existing law, letters of cover or memoranda of Insurance which generally preceded the execution of policies of Marine Insurance, and letters of hypothecation which accompanied document Bills of Exchange, were held to be chargeable with the same amount of Stamp Duty, letters of cover, as policies of Insurance, and letters of hypothecation, as deeds of mortgage. This double charge of Stamp Duty, as it might be called, was complained of, and he thought not without reason, as excessive. It was proposed that both instruments or letters should be charged with a uniform rate of one anna. Engagements to cultivate, produce, and deliver articles of commerce were chargeable under the existing law at the same rate as bonds. This had had the effect of doubling the amount of Stamp Duty to which the contracts entered into by the smallest classes of ryots and others, when parties to such engagements, were liable under former enactments, and the higher duty pressed very heavily upon these classes. A considerable reduction was proposed in respect of all such engagements when the amount advanced did not exceed 200 Rupees. Then the provisions of the present law, which related to the delivery or taking or receiving of Foreign Bills of Exchange drawn in sets, were considered too stringent, and some relaxation of them was deemed just. He might also mention that a most important alteration was proposd in the 1st Article of Schedule A in the part which related to loans made by bankers for short periods. Under the Clause of the Article, as it now stood, it was only when the loan was made upon the deposit of notes or other securities of the Government of India, that the comparatively light duty of two or four Rupees was chargeable. In all other cases the same Stamp was required as for a bond. It was proposed to extend the Clause of the Article so as to embrace loans on Railway Scrip, shares in Joint Stock Companies, warrants for goods deposited in Bonded or other warehouses and assignments of produce or other goods. This would be a great advantage to the banks generally. The option of using to a greater extent than was now allowed, adhesive instead of fixed Stamps, had been asked for, and the Bill contained a provision on the point, which he hoped would sufficiently meet the requirement. It was proposed to give a discretionary power to the Governor-General of India in Council, to authorize the use of adhesive Stamps where not now allowed, and he thought that the public might be assured that, in the exercise of this discretion, the Government of India would be found prepared to consult the convenience of the public to as great an extent as was consistent with the security of the public revenue.

The Bill also contemplated an increase in the amount of the public revenue derived from the sale of Stamps, by requiring that certain deeds, instruments, and writings, which were not now chargeable with Stamp Duty, should not henceforth be exempted. The amount of Stamp Duty proposed to be charged on such deeds would be found to be generally light, and he ventured to hope that the Council would agree with him that the deeds, instruments, and writings, which it was now intended to bring under the operation of the Stamp laws, were all legitimate and proper subjects of taxation in the manner proposed, and that no sufficient reason existed for their enjoying immunity any longer. Under this head were included certificates for the collection of debts on succession granted by the Civil Courts under Act XXVII of 1860, and applications to the Collectors of Customs at the Presidency Towns, on which it was proposed to charge a small uniform rate of one anna. It was also proposed that receipts for money or other deeds, instruments, or writings executed to Government or to any officer of Government, should be placed on the same footing as receipts, deeds, &c., executed to private individuals. There seemed no reason for the distinction which at present existed. The only other proposed alteration which he

would particularly notice, was in the Article of Schedule A which related to Bills of Exchange payable on demand. It was proposed to do away with the half anna stamp and to charge a uniform rate of one anna on all such Bills, for sums exceeding ten rupees. Bills of Exchange for sums not exceeding ten rupees payable on demand would be exempted. At present there was no exemption. This latter alteration in the existing law was proposed in consequence of a representation from the Manager of the People's Bank. It was believed that the proposed exemption would prove a great benefit and convenience to large classes of the community, and it was hoped that any loss to Government consequent thereon would be more than met by the uniform rate of one anna proposed for cheques of a larger amount than ten rupees.

The alterations in the existing law, by which the mercantile community and the other classes referred to would chiefly benefit, were proposed for the most part by Mr. Fitzwilliam to whom he considered that the Committee and the Government, and he thought he might add the public at large, were greatly indebted for the valuable assistance which he had rendered in the preparation of this Bill. Much valuable information and advice and some very useful suggestions had also been received from Mr. Dunlop, the able Manager of the Agra and United Service Bank, and he gladly availed himself of the present opporunity of publicly acknowledging his obligations to that gentleman. He would now move that the Bill be read a first time.

The Bill was read a first time.

LIMITATION OF SUITS.

SIR CHARLES JACKSON said that, in consequence of the absence of the Honorable and learned Chief Justice, he begged at his desire to postpone the second reading of the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits)" until Saturday next.

Agreed to.

REPEAL OF REGULATIONS AND ACTS.

MR. HARINGTON moved the second reading of the Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure."

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

ZEMINDARY DAWKS (BENGAL).

MR. SETON-KARR moved the second reading of the Bill "to improve the system of Zemindary Dawks in the Provinces subject to the Government of Bengal."

MR. HARINGTON said, it was his intention to vote for the second reading of this Bill unless, in the course of the debate which might ensue upon the present Motion, he should hear any reason which should lead him to think that he would be acting wrongly in so doing. He approved of the object of the Bill, and he quite concurred in what had fallen, if he recollected rightly, from the Honorable Member who had brought in the Bill, to the effect that it was desirable that that which they had been told had been done by the Magistrates of some districts in the direction of this Bill without any authority of law, should for the future be brought under regulation and rule, or, in other words, under legislative enactment. Leaving matters of this kind to the exercise of individual discretion was seldom free from danger and mischief, and hardship or mischief often ensued. He found it stated in a letter from the British Indian Association which formed one of the annexures of the present Bill, in reference to what they had been told had been done by some Magistrates, that "although the Committee of the British Indian Association believed the alteration had not been wholly unattended with advantage, they have heard of exorbitant demands by the Magistrates in certain cases." But though willing to allow the Bill to be read a second time to-day and published for general information, he thought it right to mention that, if it should hereafter be made to appear

that the Bill involved a contravention of the terms of the famous permanent settlement of Bengal, he should consider himself at full liberty to vote against the third reading of the Bill—the vote he intended to give to-day notwithstanding.

In the letter from the British Indian Association to which he had already referred, the Association in paragraph 3 said :—

"They are, however, firmly persuaded that if the co-operation of the zemindars with the Magistrates in the distribution and disbursement of the funds, so much desired by the district authorities and the Lieutenant-Governor, were secured, with due regard to the legal position and liabilities of the former, (that is, of the Zemindars) the result would certainly be of the most desirable description."

Further on in paragraph 6 they said :

"The Committee are aware that in many places Government Dawks have been established for the purpose of general communication, and they think that in such places the Zemindary Dawks may be discontinued without detriment to the Public Service in justice to and to the great relief of the landholders and Public Officers. Indeed in such cases the Zemindary Dawks are superfluous, a source of unnecessary expense to the Zemindars, and are manifestly opposed to the terms of the law."

And in paragraph 7 :—

"The Committee, however sincerely trust that whatever changes may be proposed in the law, with a view to give effect to the above plan, the rates may be so levied as not to form an addition or subsidiary to the Sudder jumma. The amount may be collected separately, and in such manner as may not in any way affect or contravene the integrity of the permanent settlement. This is a point on which the Committee feel the Zemindars will lay considerable stress, and they trust its importance will not be over-looked by His Honor."

The extracts which he had read from the letter of the Association, showed how wary they were in writing on the point, and how careful not to commit themselves. Looking at this Bill in the light of the very able Minute recorded some years ago by the Honorable and learned Vice-President of this Council as a Member of the Supreme Government, when it was proposed to put a light tax upon the Zemindars of Bengal for improving the Chowkeedaree or village Police, he (Mr. Harington) did not think it at all clear that the present Bill was not open to the same objection as the impost just mentioned. The Income Tax Act of last year which applied to the Zemindars of Bengal equally with all other classes, might be quoted as a precedent in support of the present Bill ; but it must be remembered that the extension of that Act to the Zemindars of Bengal was defended entirely on the ground that it imposed not a local or a partial law, but a general law for the whole country and for all classes. This was clearly not the character of the present Bill, and he was disposed to think that it rather belonged to the same category as the measure formerly objected to by the Honorable and learned Vice-President. He (Mr. Harington) hoped that the Zemindars of Bengal, looking to the object of the Bill and to the benefits which it might possibly confer upon them, would waive all objections and cordially accept the Bill. He would not say more on this subject at present. It had appeared to him that he could not properly support the Bill by allowing it to be read a second time without making some allusion to what might hereafter be brought forward as a very serious, and it might be, an insurmountable objection to the Bill.

MR. SETON-KARR said that, if the Honorable Member for the North-Western-Provinces or any other gentleman could persuade him that the principle of the Bill was likely to contravene or impugn any of the fundamental principles of the Perpetual Settlement, he would be the first person to withdraw it. But he had been very careful to avoid this, and he believed that the fears expressed by the British Indian Association arose in this way. Some energetic and impulsive Magistrates had recommended that quotas or fines imposed for the purposes of these Zemindary Dawks should be realised in the same way as arrears of revenue; that is, that the amount should be simply tacked on to the Sudder jumma, and the estate be sold

off in default of payment. Now he had guarded against this by providing that the method laid down in Regulation XX of 1817 should not be departed from, and that dues and fines should be leviable by distraint and sale, and in default of property, should be commutable to one month's imprisonment. He had also altered the wording of Section 1, and for the words "are repealed" had introduced the words "shall cease to have effect in the Provinces subject to the Government of Bengal." He might state, too, that it would be in the power of the Executive Government to abolish Zemindary Dawks as superfluous on lines where there was already a Government Dawk. It was quite unnecessary to keep up a double set of Dawks on one and the same line. As regards the views, dated the year 1856, of the learned Vice-President whose absence he regretted, they were actually laid before the Lieutenant Governor and before the Government of India when it lately gave its assent to the main principles of this Bill. Any other question of detail could be considered in Committee, and he was quite content that, as the Bill was to apply only where the Permanent Settlement was in force, the principle of the Bill should stand or fall by the terms of that great Settlement.

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

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

MR. SETON-KARR moved the second reading of the Bill "for the registration of Nij-jote and Khamar and other such lands as well as of Ryottee tenures involving the immediate occupation of the soil for the purposes of cultivation, or for other purposes."

Mr. HARINGTON said, before addressing himself to the merits of this Bill, he wished to make a suggestion to the Honorable Member who had charge of the Bill, which he hoped that the Honorable Member would adopt. If the suggestion which he had to make were adopted, it would be unnecessary for them to proceed further with the Bill. It was a matter not of conjecture only, but of fact, that in a very brief period this Council, as at present constituted, would cease to exist. How brief the period might be, it was impossible to say. But this he thought was very certain that this Council, as now constituted, would not last long enough to carry the Bill through its several stages. The Bill was a very important one. It was a Bill which deserved much consideration, and it could not possibly be hurried through the Council. If the Bill were read a second time to-day, it must be published under the Standing Orders for eight weeks. It must then be considered by a Select Committee, and afterwards by a Committee of the whole Council. He repeated, therefore, that there seemed no probability of this Council, as at present constituted, lasting a sufficient length of time to carry the Bill through all its stages. The Bill, which would abolish this Council, as now constituted, would give the Governor-General of India in Council power to establish local Legislatures, and though he had no authority for saying so, he took it for granted that, contemporaneously with the establishment of what he might call the Imperial Legislative Council, a local Legislative Council would be created for the Lower Provinces of Bengal. The object of the establishment of local Legislatures was to provide a better means for legislating for local matters, or for making local laws, and that was obviously the character of the present Bill. It was clearly a local Bill. A Bill more entirely local in its character could scarcely be framed, and that being its character, it could be better dealt with by a local Legislature than by a Council constituted as this Council was. The great difficulty which he felt in dealing with the present Bill arose from his want of information on the subject to which the Bill related. An intimate acquaintance with the peculiar tenures of Bengal—of the numerous, and, as he might call them, strange and complicated tenures which were to be found in some of the districts—was absolutely necessary to ascertain

the bearing of the Bill, what would be its effects, and how it would work. On these points he was obliged to confess that he was extremely ignorant. He did not wish to speak disparagingly of the knowledge of other Honorable Members ; but he thought it probable that with exception to the Honorable Member for Bengal, his want of information was shared in, more or less, by every Honorable Member present. The Legislative Council which, as he had said, would probably be established in a short time for Bengal would not labor under the same serious disadvantage. That Council would doubtless be composed of gentlemen, European and Native, quite familiar with the subject of the Bengal tenures, with the character of the country, and with other matters, a knowledge of which was necessary to a right understanding and for the consideration of this Bill. Some of these gentlemen would have passed the whole of their official lives in Bengal, and others might have a personal interest in the Bill. He thought that a Council so constituted would be much better qualified to deal with a Bill of this nature than this Council constituted as it was at present, and the suggestion which he had to make to the Honorable Member for Bengal was that he should withdraw the Bill and leave the Honorable the Lieutenant-Governor of Bengal to cause it to be introduced as one of the first Bills to be brought into that local Legislature over which there could be no doubt he would most ably preside. The Honorable Member for Bengal would probably think that it would not be courteous or respectful to the Honorable the Lieutenant-Governor of Bengal to adopt the course which had just been suggested without a previous reference to the Honorable the Lieutenant-Governor. He (Mr. Harington) felt that it would be quite proper that such previous reference should be made, and he hoped that the Honorable Member for Bengal would undertake to communicate on the subject with the Honorable the Lieutenant-Governor of Bengal, and to inform him of the suggestion which he (Mr. Harington) had made and of the reasons of it. It might be said that, on the establishment of a separate Legislative Council for Bengal, this Bill could be transferred to that Council. But he did not think that it would be fair to the local Council that the Bill should be sent to it with the principle of it, as it were, already affirmed by reason of the Bill having been read a second time in this Council, and that, too, in the absence of the Honorable and learned Vice-President, and when they had only just a quorum. It seemed to him that, if the local Council were called upon to deal with the Bill at all, they should have power over it from its commencement or first introduction. The same remarks applied equally to the Council which would take the place of this Council. It was impossible to say how that Council would be constituted, and if the present Bill were referred to it, the same want of information might be felt which constituted so great a difficulty in dealing with the Bill at the present time. If, however, the Honorable Member for Bengal should not think it right to adopt the suggestion which he (Mr. Harington) had made, he should be very glad if the Honorable Member would allow the Motion for the second reading of the Bill to lie over until Saturday next. He felt that he must almost have exhausted the patience of the Honorable Member, and he took this opportunity of expressing his obligations to the Honorable Member for the kindness and courtesy which he had shown in not bringing on his Motion for the second reading of the Bill on an earlier date. He (Mr. Harington) believed that it was entirely out of consideration for him, that the Honorable Member for Bengal had not put down the Bill for a second reading on Saturday last. He had hoped that during the present week he should have been able to command a little time which he might have devoted to a more careful consideration of the Bill than it had previously been in his power to give to it ; but the revision of the Bill relating to the Articles of War had been very unexpectedly thrown upon him in conjunction with other Members. This was a

very long Bill and the revision had occupied two entire days. Other more pressing work had also required his attention, and the consequence was that he had been unable to give that amount of attention to the Bill which he could have wished, and to seek for the information which he required to enable him to decide what course he ought to pursue in respect to the Bill. This was his reason for asking for the postponement of the Motion for the second reading of the Bill for another week.

MR. ERSKINE said, he had come down to the Council that morning without any intention of opposing the second reading of this Bill. On the contrary, he was willing that it should be read a second time, in order that it might be published as usual for the information of all who were interested in its provisions. But he had just learned from the Honorable Member for Bengal that, if the Bill were now read a second time, it was his intention to pass it through all its stages, if possible, under a suspension of the Standing Orders. That was a proposal which he (Mr. Erskine) was by no means prepared to support. The Bill was one of much importance. The questions involved in it called for careful study. Like the Honorable Member for the North-Western Provinces, he had been prevented by the great press of work recently thrown on Honorable Members, from giving as full consideration as he wished to give to the different provisions of the Bill and their probable effects. His own present impression certainly was that there was a good deal in those provisions, the expediency of which must at least be regarded as very questionable. At the same time, since the Bill had been introduced to the Council with the approval both of the Lieutenant-Governor of Bengal and of the Supreme Government, he (Mr. Erskine) was very unwilling to oppose its progress on the strength of any opinions formed without full deliberation or without giving a clear account of the reasons which obliged him to dissent. This—if found to be necessary—might be done with better effect when the Bill had been published, and when the opinions of those personally concerned in it had been elicited. He had no wish therefore to oppose the second reading. But he must repeat that he should not thereby hold himself pledged in any way to support any proposal for passing the Bill through all its stages under a suspension of the Standing Orders, or even to any of the provisions of the Bill as now drawn.

SIR BARTLE FRERE said, he was not aware that it was the intention of the Honorable Member for Bengal to do more than ask the Council to affirm the principle of the Bill to-day. If, however, the Honorable Member did intend to do more than that, he (Sir Bartle Frere) must say that he agreed with the Honorable Member for the North-Western Provinces in objecting to such a course, though not on the grounds put forward by that Honorable Member, because we were not bound to look forward to the future possible status of this Council. He thought we should go on with things as they were, and not stop on account of what might happen in the future and set aside any measure of importance which had been recommended in the manner that this Bill had been. It was a Bill to which the Government of Bengal attached great importance, and we were at present not called upon to consider its detailed provisions but only its principle. The principle of the Bill, as he understood it, was simply to enable parties interested in certain lands to make a sort of registration of the rights appertaining to such lands, and to give legal validity to that registration up to a certain point. Now in all the discussions which had taken place of late relative to the land tenures in Bengal, he thought that any one who was accustomed to the system of other parts of India must be struck with the absence of all official registration of rights and liabilities connected with the land which was universal elsewhere in India. Moreover, looking to the fact that the difficulties which landowners and the Government of Bengal had of late ex-

perienced, were in a great measure attributable to the absence of that sort of registration, he was disposed to view with favor any measure which went in the direction of securing such a desirable object. He should wish to confine his agreement with the Honorable Member for Bengal up to this point—namely, that so far as the registration provided by this Bill was concerned, it was a desirable object, and one which the Government ought to promote. With regard to the details, he trusted that the Honorable Member did not intend to hurry the Bill through the Council without allowing time for considering all its important bearings, not only because there were many of us who were imperfectly acquainted with tenures of this description in Bengal, but because we were not quite sure of the views entertained by the parties who were most interested in the matter. He understood that one very influential Association representing a large portion of the landed interest in Bengal, had expressed themselves favorably regarding the Bill. But he was not sure that that sentiment was universal, and he trusted that the Honorable Member would allow such time for the consideration of the Bill as would give all parties the fullest opportunity of considering it. With these views he purposed to vote in support of the Motion for the second reading of the Bill, reserving to himself, as the Honorable Member for the North-Western Provinces had done, the right of opposing any of its details when we had before us the opinions of those interested in the matter.

MR. SETON-KARR having risen to address the Council—

MR. HARINGTON rose and said that, if the Honorable Member had risen for the purpose of replying to the two Honorable Members (Mr. Erskine and Sir Bartle Frere) who had previously spoken on the merits of the Bill before the Council, he must remind the Council that he had not yet discussed the Bill itself, but had confined himself, in what he had previously said, to a suggestion that the Bill should be withdrawn with a view to its being brought before the Legislative Council which was shortly expected to be established for Bengal, or, if the Honorable Member for Bengal did not feel disposed to withdraw the Bill, that the Motion for the second reading should be allowed to lie over until Saturday next. Before the Honorable Member for Bengal spoke by way of reply to other Honorable Members on the merits of the Bill, he (Mr. Harington) should wish to say a few words on the subject of the Bill.

SIR BARTLE FRERE thought that the Honorable Member for the North-West Provinces was entitled to address the Council on the Bill, and that the Honorable Member for Bengal should confine himself at present to declaring whether he was willing or not to accede to the suggestion which had been made by the Honorable Member for the North-Western Provinces.

MR. SETON-KARR said that he was unable to adopt the suggestion of the Honorable Member for the North-Western Provinces for the withdrawal of the Bill. Looking also to the time which had already elapsed since the Bill was read a first time, he felt bound to state distinctly that it was his wish to press his Motion for the second reading to-day ; and he should therefore feel obliged if the Honorable Member would favor him with an expression of his views now.

MR. HARINGTON said, there were two questions which he wished to ask the Honorable Member for Bengal before entering into the merits of the Bill. He had given the Honorable Member notice of his intention to put these questions. His first question was, whether the provisions of Sections XII and XIII Regulation IX of 1833 were acted upon in Bengal, and whether the village accounts therein mentioned were regularly submitted ? His second question was, whether if the provisions of the two Sections, to which he had referred were not acted upon in Bengal, what was the reason of their not being acted upon ? The accounts which were required to be kept under these two Sections, were intended to show amongst other things the quantity

of land in every Ryot's cultivation, and the rent paid by him for the land so cultivated, and they acted therefore, when kept, as a Register of the land in every Ryot's occupation. In the North-Western Provinces, where these village accounts were regularly kept and submitted at stated periods, they were always referred to when information was required in regard to any Ryot's cultivation or in respect to the land in any Ryot's occupation.

MR. SETON-KARR said that his answer would be both satisfactory and unsatisfactory. Section XII of Regulation IX of 1833 prescribed that the accounts, which it was incumbent on the putwaree or village accountant to keep, were to be kept in triplicate: one set was to be given to the canoongoe, an officer of the same kind as, but of higher grade than, the putwaree; one set was to go to the Collector; and the third was to remain with the putwaree himself. Section XIII of the same Regulation laid it down that the said accounts, instead of being periodically delivered once in six months, should be given in at such times as the Board of Revenue might direct. But these provisions had not been complied with, simply because in the greater part of Bengal, and certainly in that part of it with which he was practically acquainted, village officials such as the putwaree did not exist. He had had an opportunity of conferring with an officer of considerable experience, just arrived from the district of Jessore, who confirmed his (Mr. Seton-Karr's) impressions on this head, and whose knowledge tallied with his own. It was true that in the late discussions on the subject of the peculiar tenure known as "Ootbundy," the existence of a village functionary termed the *Halsanna*, had been brought prominently to notice, but this official was not in any way subordinate to the Revenue Authorities, and was more the servant of the Zemindar, than the protector of the Ryot, such as the putwaree was intended to be. Some years ago, he (Mr. Seton-Karr) had had occasion to enquire into the whole law and practice regarding canoongoes and putwarees on a reference from the Board of Revenue to the Government, and he found that in a large part of Bengal even the names of these village accountants did not exist. They existed, he believed, in Cuttack, and nominally in some of the Behar districts, and certainly in that of Purneah. But they did not actively or regularly discharge their functions, and little more remained of them but the name and shadow. These then were the reasons why the Sections alluded to were now useless and inoperative.

MR. HARINGTON thanked the Honorable Member for Bengal for the answers which he had given to his questions. He was aware that in Bengal there were no regular putwarees as there were in the North-Western Provinces; but he had always understood that there were persons in every village in Bengal who really did keep the village accounts, and who, to some extent, discharged the functions of the office of putwaree as it existed elsewhere. He proposed hereafter to allude more particularly to the Sections of the Regulation to which the questions put by him to the Honorable Member for Bengal referred. He would now address himself to the Bill before the Council. Looking to the quarter from which that Bill had proceeded, and fully appreciating the motives which had doubtless led the Honorable the Lieutenant-Governor of Bengal to cause the Bill to be introduced into this Council, it would have been a source of great pleasure to him if he could have given to the Bill a cordial and unqualified support. He said this on public grounds alone; but he might be permitted to add that his private feelings would also lead him to support the Bill. Every Honorable Member must be sensible of the very great difficulties with which the Honorable the Lieutenant-Governor of Bengal had had to contend, and with which he had still to contend, in carrying on his Government, owing to the unfortunate events of the last few months to which it was not necessary that he should more particularly allude on this occasion, and he thought that there was almost

a personal duty resting on every Honorable Member at this time to support the Honorable the Lieutenant-Governor of Bengal, and to render him every assistance in overcoming his present difficulties so far as assistance could be afforded by means of legislation. This was certainly his own feeling. But there were many reasons which prevented him from supporting the Bill as he could have desired. It was not his intention to oppose the Motion for the second reading of the Bill; but though he was willing to allow the Bill to be read a second time, it must be upon the distinct understanding that he did not by so doing affirm the principle of the Bill or admit its necessity or expediency, and that he reserved to himself the right, should he have the power, of opposing the Bill at any future stage and of voting against the third reading if the Bill ever got through a Committee of the whole Council. After what had fallen to-day from the Honorable Member for Bombay and the Honorable Chairman, he did not think that, whatever might have been the intentions of the Honorable Member for Bengal on the point, he would now attempt to hurry the Bill through the Council by a suspension of the Standing Orders. He (Mr. Harington) certainly could not agree to any proposition to that effect. Many interests might be seriously affected by the Bill, and it was absolutely necessary and only right that the Bill should be published for the prescribed period of eight weeks, in order that all those whose interests might be affected by the Bill should know what was in contemplation, and should have an opportunity of coming up to this Council with any representations that they might have to make on the subject of the Bill, of stating their objections to the Bill, and of proposing any alterations in it that they might consider proper. He should take it for granted therefore, that the Bill would be allowed to run the regular course fixed by the Standing Orders.

In considering this Bill, a very serious objection, a very great difficulty in the way of the adoption of the Bill, met them at the outset. When they referred to the annexures of the Bill, they found that the Bill had not the support of the Sudder Court and of the Sudder Board of Revenue, and that it had been introduced in opposition to the opinions of those authorities. The Sudder Board of Revenue, in deference apparently to the Honorable the Lieutenant-Governor of Bengal, had certainly expressed themselves with some qualification; but the Honorable the Lieutenant-Governor of Bengal would appear to have regarded the views of the Sudder Board of Revenue, equally with the views of the Sudder Court, as adverse to the Bill, for he said he regretted to find from the reports submitted by the Sudder Court and the Board of Revenue that difficulties were supposed to be in the way of the measure which he had suggested for the registration of Nij-jote lands and other holdings of a similar description.

The Sudder Board of Revenue said—

"The Board cannot disguise from themselves that the measure is attended with many difficulties, connected especially with the necessity of obtaining the exact record of specific areas and boundaries of the lands to be registered, and the facilities which will arise, especially in the present temper of those immediately interested in such a measure, for continued litigation and opposition and fraud."

Then followed this paragraph :—

"Still it appears to the majority of the Board that, unless they can establish the impracticability of the scheme, it is their duty to afford such assistance as lies in their power to Government, and with this view I am desired to submit, for consideration and orders, the following plan of Sub-Divisional Register."

The Sudder Court had expressed themselves much more decidedly. They said—

"Neither does it appear to the Court that a law on this subject, of the nature specified, would be practicable or expedient. The Court is unable to see why any special law should be made for lands of one sort rather than another. The ordinary Registration law is open to all, and all parties are at liberty to take advantage of its provisions. Moreover, a

Registration of the kind suggested in your letter would be useless in the great majority of cases of the nature for which it is intended, namely, those in which the right to grant the land, on the part of the grantor, the Ryot is denied by the Zemindar, and in all these cases the parties would be referred to a Civil suit, and the law would, as to them, be inoperative.

The Court is clearly of opinion that transactions relating, to use the words of Government, to the Nijjote lande of a Factory or other Ryotee or other rights in land, granted for the purpose of cultivation or other purposes, require no further protection of law than is given to them at present."

These were the opinions of the constituted advisers of the Honorable the Lieutenant-Governor of Bengal in matters of this nature—of officers of great ability, of considerable standing in the service, and of large experience, all of whom had passed the whole or the greater part of their official lives in Bengal, and they were consequently intimately acquainted with the peculiar land tenures of the country, with the character of the people, and with many other particulars, a knowledge of which was essential to a right understanding of this Bill and of its possible effects. Surely with these opinions before them the Council should consider well before they placed this Bill on the Statute Book. The gentlemen to whom he had spoken on the subject of this Bill, all concurred with the Sudder Court in condemning the Bill as impracticable. They said that it was impossible the Bill could work, and that proper machinery for carrying it out did not exist, and could not be obtained without incurring a very heavy expenditure. These were the opinions of Native as well as of European gentlemen. He wished to ask, in whose interests was the Bill introduced? Was it introduced in the interests of the landholders? He believed that the landholders, as a body, not only did not want the Bill, but that they would be found to be strongly opposed to it. Was the Bill introduced in the interests of the Ryots? It did not appear to him that, as a class, the Bill would benefit them, and they were not told that the Ryots had asked for the Bill. Was the Bill introduced in the interests of the Indigo Planters? Assuming that such was the case, would the Bill, as drawn, satisfy them? He had seen several letters in the newspapers on the subject of the Bill, which appeared to have been written by Indigo Planters, and judging from the contents of these letters, it might be said of the present Bill, as might have been said of a former Bill which had been introduced in the same interests, that those for whose benefit the Bill was intended "damned it with faint praise." They might form some idea as to the degree of satisfaction which this Bill, framed as it was at present, was likely to afford to the Indigo Planters, supposing the Bill to have been introduced in their interests, from a remark contained in a letter from the Secretary to the Landholders and Commercial Association to the Government of Bengal, which had recently been printed and circulated. He believed that this Association represented the Indigo Planters as a body. Paragraph 5 of the letter to which he was alluding said :—

"Of course rules would have to be made as to the evidence which should satisfy the Collector before he registered the fact of possession."

Was the Honorable Member for Bengal prepared to lay down such rules? The Council had not attempted any thing of the kind in the Codes of Civil and Criminal Procedure in the preparation of which they had recently been engaged, and he thought they would hardly undertake to frame rules of the nature mentioned for the guidance of the Collectors in carrying out the provisions of the Bill before them. The paragraph went on to say :—

"And there may be practical difficulties in the way of identifying the land in the absence of surveys and of village records in Bengal; but generally speaking, the Committee believe that this can be done sufficiently for the purpose, and if the Collectors were bound to give a certificate of the Registration within twenty-four hours of its being required, and the Police acted at once on the production of such certificate, the Committee believe that the grievances of which the Planters have had such reason to complain last season would not again occur."

It was to the period of time within which this letter asked that the certificate of Registration should be granted on which the Police were immediately to act, to which he wished to call the attention of the Council. Twenty-four hours was the time mentioned. The first process under the Bill brought in by the Honorable Member for Bengal, was the issue of a notice to all persons concerned for fourteen days. He really thought that, when the Landholders Association asked that the certificate of Registration might be granted within twenty-four hours from the time it was required, they were either trifling with the Government, or, if they supposed that what they had asked for was practicable, they must be as ignorant of the landed tenures of Bengal as he (Mr. Harington) admitted himself to be.

SIR BARTLE FRERE here interrupted the speaker and said, he thought he must have misunderstood the part of the letter which he had quoted. What he (Sir Bartle Frere) understood it to mean was that the certificate should be granted within twenty-four hours of its being required after registration had taken place.

MR. HARINGTON said, he did not see how the part of the letter referred to by him could bear any other construction than that which he had put upon it. It asked that the certificate, on which Police action was at once to be taken, should be granted within twenty-four hours after it was required, that was, as he understood the request, within twenty-four hours after application was made to the Collector under the Bill. What else could be intended?

The Honorable Member who had brought in this Bill, seemed in his preliminary remarks not to have denied that there might be some force in an objection which had been taken to the Bill, that it would prove a dead letter; but then it was said that in that case the Bill would do no harm; and he had heard it suggested in other quarters that, looking to the circumstances under which the Bill had been introduced, if the Bill would do no harm, and if it might do some good, they ought not to refuse their assent to it. But he could not subscribe to these views. He did not think that they ought to put a new law upon the Statute Book, particularly a law of this kind, simply because it might do good and could not do harm. He thought they ought not to pass any law until they were satisfied not only that it was required, but that real practical benefit would certainly result from its enactment. He had been much struck with a remark in a letter which had beeu lately shewn to him from a gentleman holding a high official position at Bombay. It was to the effect that if we lost India, our epitaph should be "lost from over-legislation." He certainly thought there was a great disposition to over-legislate at the present time, and this Bill appeared to him to be in the direction of over-legislation. He had remarked not very long ago that what India wanted was, rest from legislation. With this Bill before them, he could not refrain from repeating the remark. He felt quite sure that this Bill would do no good. He wished he could feel as certain that it would not operate in the other direction, and that it would do no harm. In this country laws of the character of the Bill before them were almost always perverted by designing men to bad purposes. Some little time ago, in speaking on the subject of Act IV of 1840, he had said that that Act had been so perverted, and he found a confirmation of his remarks in the annexures of the present Bill. In the letter of the Sudder Court, to which he had already referred, the Court said—

> "Act IV of 1840, though a very good law theoretically, (and the present Bill might also theoretically be regarded as a very good Bill) is often made the means by which gross injustice is committed when worked by inexperienced Magisterial Officers, and the Court are of opinion that, if the Civil Courts, on being certified by the Magisterial Authorities of quarrels regarding lands, were to enquire summarily into them, less injustice would be done, and every other object of the law would be attained."

He feared that similar complaints would hereafter be made of the pre-

sent Bill, should it be allowed to pass into law. Indeed were he called upon to give a title to the present Bill, he should be disposed to call it a Bill to sow dissension, to promote litigation, and to fill the pockets of the Police and the Ameens or Officers who would be employed to make measurements under the Bill. And here he must express his surprise that, after all the abuse that had been lavished upon the Police of Bengal, they should propose to entrust to this class of officers a most difficult and delicate task, namely that of giving or maintaining possession under the certificates of registration which were to be granted under this Bill. To give the Council an idea of the class of men who would from necessity be employed to make the required measurements under the Bill, he might mention that in what were called Mahalwar Settlements, when, after the boundaries of the Mahal had been settled, the Ameens were called upon to put in the chuks, if they found that from some bad measurement they could not get in all the chuks which were required to be entered, instances were not wanting of their putting one chuk over another; that was, in their Maps they piled one piece of land upon another. While on the subject of measurement, he might state that he had been informed by those who knew something of these matters, that the expense of effecting a registry under this Bill would be very great, so much so that the costs alone, including Stamp Duty, Ameen's wages and fees, would to a considerable extent render the law a dead letter. This was an objection which had been very strongly urged against the Bill. The Honorable Member who had brought in the present Bill justified its introduction on the ground that the cases which it was intended to meet, required a more summary Procedure than could be had under any existing law. In the remarks with which he introduced the Bill, he said—

"However summary might be the Procedure under Act IV of 1840 something more summary still was seen to be required."

But did the Honorable Member seriously think that the Procedure under the present Bill would be more summary than it might be, and was under Act IV of 1840 when that law was properly worked. If Act IV of 1840 was not properly administered and delay took place under it, the fault was not in the law, but in those who administered it. He could not conceive any more summary Procedure than was provided by Act IV of 1840, that was to say, if it was intended to do justice. The only more summary investigation which he could imagine was no investigation at all. A certificate of registration might then be granted within the time mentioned by the Landholders' Association, but justice could not be done. Under Act IV of 1840, the Magistrate was required to fix a day for the attendance of the parties with their documents and witnesses. The Magistrate might fix as early a day as he pleased. He was not obliged to allow fourteen days, the time fixed in this Bill. On the attendance of the parties on the day fixed with their documents and witnesses, it was the duty of the Magistrate to take up the case, and after examining the parties and their witnesses and any documents exhibited by them, to determine the fact of possession, and at once to carry his order into execution. He would ask the Honorable and learned Judge opposite (Sir Charles Jackson) who had had large experience in such matters whether, supposing that justice was to be done, it was possible to devise any more summary mode of procedure than this. He (Mr. Harington) certainly could not find that a more summary procedure was laid down in the Bill before the Council. Mr. Harington then proceeded to notice some of the details of the Bill, which he considered defective or open to objection, such as the want of proper rules for giving notice to all parties concerned, or who might have an interest in the matter in dispute, and the absence of any power to contest the Ameen's measurement or identification of the land, registration of which was required. On both these points he said the Bill appeared to him to require amend-

ment. He believed that the Honorable Chairman had pointed out what was the real want of Bengal, that was, not this Bill, but a field survey such as had been made in the North-Western Provinces, and such as he understood was now being made in the Madras Presidency. In some parts of Bengal he was informed such a survey had been made, and where it existed, disputes such as those which seemed to have led to the introduction of this Bill, seldom arose. It was where this survey had not been made, that no proper village records had been or could be kept, and he believed that it was the absence of this survey more than any thing else which prevented the observance, in the parts of lower Bengal in which it was supposed this Bill would prove most useful, of the provisions of the law of 1833 to which he had referred in the early part of these remarks. The making of such a survey would, no doubt, be a work of time, and it would cost much money, but nothing else would prove really effectual or remove the state of utter confusion which he was informed now existed. The Sudder Court had pointed out, in their letter already referred to, another great cause of many of the disputes regarding the occupation of land in the lower Provinces of Bengal, which often proved so difficult of satisfactory determination. They said—

"What is most required is, that parties should use greater caution than they at present do in taking lands from Ryots who have no power to grant them, and this want of caution no legislation can cure."

In other countries people were generally careful not to invest their money in law suits. They made proper enquiries beforehand. In this country, in the eagerness to get land, the ordinary precautions seemed to be often neglected. Difficulties and disputes then arose, for the removal or adjustment of which legislation was asked for. But the law generally proved ineffectual and complaints were made against the Government, when the fault really lay in the conduct of individuals.

MR. SETON-KARR said that, in replying to the objections taken by the Honorable Member for the North-Western Provinces, to the principles and to some of the details of this Bill, he should endeavor to occupy the time of the Council no longer than was absolutely necessary to answer those objections, and to illustrate his object. As regarded the expediency of leaving this Bill for the local Council, he would observe that the Lieutenant-Governor and some of the local authorities were in favor of this Bill, and wished it to be passed speedily into law, and the Lieutenant-Governor might surely be trusted when he urged this enactment as one that was both practicable and expedient. He (Mr. Seton-Karr) thought too, that the Honorable Member had underrated the effect of his own Revenue experience and knowledge of land tenures acquired in other parts of India, as well as his ability readily to understand and master what had been termed the intricate and perplexing land tenures of Bengal. He (Mr. Seton-Karr) often thought that great harm was done by Revenue officers insisting on the diversity of names, or dwelling on local and provincial phraseology in regard to land tenures, instead of looking out for the identity of tenures, rights, and customs, which lay hid beneath the surface, and which identity could be shown to exist in different and remote parts of India. A strange and uncouth nomenclature was a matter more for the orientalist and the student of philology. What the practised official should look for was the similarity to be found in points regarding the dominion of the soil, the different co-existing rights, and the nature of the landed interests in the province of Oude or elsewhere, as well as in the districts of Bengal. There was often much real identity, where there was strange diversity of names, and he was glad to confirm his opinion on this point by the authority of such an able and experienced officer as Mr. George Campbell, the author of Modern India and the present Judicial Commissioner of Oude.

With regard to what had fallen from Honorable Members as to undue haste in pressing on the Bill, he could only say that, knowing the wish of the Lieutenant-Governor to forward this enactment, and not knowing the duration of this Council, he was certainly anxious that the matter should not go to sleep. He had not the least wish to prevent any of those interested in the Bill, whether Native Zemindars or Ryots, from becoming acquainted with its provisions and from stating their objections. But he was in earnest that there should be no unnecessary delay. And in this view, without now saying anything definite as to any suspension of the Standing Orders, he should endeavor to the best of his power to carry out the second reading.

He should now address himself to the nature of the objections taken by the Board of Revenue and by the Sudder Court to the proposed enactment, on which objections the Honorable Member for the North-Western Provinces had placed much reliance. No one could more respect than he did the officers who were now filling those high and important situations, nor have a better opinion regarding their ability, experience, and great practical knowledge. But, with all respect and deference, it appeared to him that the Members of the Board had somewhat misapprehended the object of the Bill, or, at least, had not understood the nature of the agency by which it was intended to work the measure. The Board said, that they

> "understand the object of the proposed measure to be to secure to the rightful occupant of lands, irrespective of the size of the tenure, the assistance of the Police in maintaining his rights without the necessity of an enquiry, which under present circumstances the Police cannot, with propriety, undertake."

And again, further on, they said that—

> "Understanding it to be a Police measure, they would place its execution in the hands of Magistrates and their subordinates."

But the object of the Bill was the very reverse of this. It was intended to bar the agency of the Police as much as possible. The grant of the certificate, after certain preliminaries, was to be entrusted to the Collector, or subordinate officer having the powers of a Collector; the local enquiry would never be entrusted to any Police Officer, the increasing number of Sub-Divisions would enable the Bill to be worked; and all that the Police would be bound to do, would be to maintain in possession, without any enquiry, the person who produced a certificate of registry. The Police Officer would have nothing to do in that case, except to identify the land of which the certificate would give clear and distinct particulars.

Then, as to the objections raised by the Judges of the Sudder Court, the letter of their Register said that—

> "Transactions relating to the Nij-jote lands of a factory or other ryottee or other rights on land, granted for the purpose of cultivation or for other purposes, required no further protection of law than was given to them at present."

This was the very point on which he (Mr. Seton-Karr) ventured with all respect to join issue. The experience of last year had abundantly proved that some further protection, some more summary mode of proceeding was required, than even the well known Act IV of 1840. Cases came on in numbers, in which disputed questions of fact, and even law, had to be put regularly in issue; documentary evidence had to be adduced, and witnesses summoned, and though every means was taken to secure promptitude of decision, in some cases, a month or even six weeks did elapse, from the institution in the first Court to the decision in appeal, at a critical time when a week or fortnight was of paramount importance.

The Court also said that they were unable to see "why any special law should be made for lands of one sort rather than another," and that "the ordinary registration law was open to all." But the ordinary registration law was one only for title and not for possession, and it was not the object of this Bill to make a special law for any

one sort of land. It was intended to give all persons the option of registering *that* possession in all sorts of land, which was valuable, because it brought the possessor into immediate connection with the very *soil*, and which conferred on him the dominion thereof, to deal with it as he might please, for agricultural or other purposes. No distinction was attempted to be set up between lands held as the *khas* lands of a Zemindar or lands obtained from any Ryot who held them as *jote*. All were alike open to registration as to the possessory right. And native Zemindars might use this law if they wished to establish a Haut, to erect an alms-house, or to lay out a garden or a pleasure ground, on lands taken from ryots for that end.

Then the Honorable Member for the North-Western Provinces had asked in whose interests this Bill had been brought forward ? and to this he (Mr. Seton-Karr) at once would reply, that it had been proposed for the relief of European gentlemen who were now laboring under difficulties of no ordinary kind. In making this avowal, he denied that the Bill was intended to injure the Zemindar or the Ryot. Both might take advantage of it, and the Act, if passed, might be extended from the districts of Jessore and Nuddea where it would first operate, to any part of the country where any Zemindar or proprietor, Native or European, wished to cultivate, in security, sugar-cane or cotton, or any one of the higher kinds of agricultural produce.

The Honorable Member had asked him if he were prepared to lay down rules for the grant of the certificate, and he replied that, to the best of his ability, and with some help, he had laid them down already. The Honorable Member had talked of the European landholders, as wishing to have the matter decided off-hand, in the short space of twenty-four hours; but if he would look at Section VI of the Bill, he would see that fourteen days had been allowed for other persons to appear and to object to the grant of a certificate. Since the letter to which the Honorable gentleman had alluded, was written, the Landholders' Association had seen and commented on the Bill, and had not urged the least objection to these necessary provisions. As regarded the details of the enquiry, it would be seen that abundant notice would be given to all parties interested in the lands to be registered. One notice would be sent to the village; another to the thannah; a third to the local cutcherry of the Zemindar when this person had an interest in the matter; and he (Mr. Seton-Karr) should introduce a verbal alteration to the effect that, in transfers of actual Ryottee tenures, due notice must be sent to the Ryot. This would prevent attempts on a large scale at encroachment or undue appropriation. In cases where the transfer was from Ryot to Zemindar, whether European or native, no harm could thus be done to the former, and registration would not take place without his consent. It was true that if the Ryot colluded with a Zemindar not his own, and made over his *jote* or *jumma* to him, the other Zemindar to whom the Ryot really owed rent, and on whom he was dependant, might be prejudiced, but care would be taken that this latter person should be duly advised; and after all, no harm could possibly be done to the superior or Zemindary tenure. The person purchasing or leasing a *jote*, whoever he was, acquired by so doing only the status of a Ryot; he was subject to the same liabilities of measurement, enhancement, and payment of rent. He might defend his right with greater pertinacity, superior knowledge, and more powerful influence, than a mere agriculturist; but for all his wealth and influence, he was a Ryot while he retained such possession.

He took this opportunity of observing, with reference to what fell from the Honorable Member for Bombay, that, in proposing this Bill, he intened that where these questions of right were raised, the Collector or other officer was to hold a summary enquiry: when, if he thought the objections frivolous or vexatious, he would grant the certificate: if he thought they rested on some substantial basis, he

would refer the parties to the Civil Court. But, on conferring with the Lieutenant-Governor on this point, he had altered the Bill, so as to confine the enquiry to the mere point of possession. The power of enquiring into a question of right or interest, could not be defined with sufficient stringency; and as the Bill neither altered nor conferred any title, it could not injure or defeat any right. The Collector would therefore be bound to ascertain that the applicant was in possession and nothing more.

As to the general argument that this law would be a dead letter, all he could say was that, if it were dead, it would injure no one. If, on the other hand, it was regarded as likely to be a huge engine of chicanery, encroachment, and fraud, he had to observe that this might be vaguely predicated of any law whatever, intended to be worked in the interior of the country. No law, that the wit of the Statesman, or the experience of the best Administrator, could devise, might not be perverted or mis-used by interested or designing persons to the injury of others and to their own undue advantage. And if we were to pause in legislation, because, at some time, a law might be put to an unfair use, never contemplated by its framer, in order to suit a purpose, we might as well stop and shut up the Statute books at once.

It had been said repeatedly that the law of 1840 was sufficient. But that law came into operation only where there was a dispute, and in times of excitement. The advantage of a Registration law would be that the grant of certificates might go on, gradually and peacefully, in times when there was no excitement, under formalities just sufficient to give protection to all persons, and not cumbrous or intricate enough to cause injurious delay. Months or, it might be, years after the certificate had been granted, a dispute arose; and it would then only be necessary for the registered person to produce his certificate, in order to be kept in possession against all the world, till ousted by a decree of Court.

The Honorable Member had also dwelt on the expense and on the qualifications of the Ameens who might be sent to identify the lands. The expense would be diminished as much as possible, and the Ameens would be no better and no worse than those who were now deputed to make such enquiries in cases of various kinds instituted in all other Courts. The Collectors must work with such tools as they could get, and there was no reason to apprehend that the Ameens would enter on these enquiries in a worse spirit than they had done on any other enquiries hitherto. Besides, the Collector or other Officer might identify the land himself, if he had time to spare.

The Honorable Member for the North-Western Provinces had further said that, without a field survey, the Bill would be useless, and that rights and tenures in Bengali villages, were so confused and complicated, that it was next to impossible to ascertain and define them with precision. But something had been done to demarcate villages and estates by the survey which was now completed in most districts of Bengal. Estates, where they were interlaced after a fashion which had been designated "a diversified piece of mosaic," had been carefully marked off, and if three or more estates were entwined in one village, their bounds were known. If it were meant that no man could enter a village, and by any enquiry satisfy himself of the nature and extent of each person's holdings therein, he (Mr. Seton-Karr) ventured to impugn the correctness of this idea. Certainly, if Ryots combined to withhold information, and to deny that which a Zemindar or purchaser had a right to know, the task would not be an easy one. But if the Ryots did present themselves, he maintained that not only the rights, but the family history of each Ryot, the extent of each field, and the precise nature of the dependency on each Zemindar, could be ascertained with the most minute exactness. In every village there were men who could point out every field and its owner, and he might say that he had known this within his own personal experience.

Mr. Seton-Karr

He (Mr. Seton-Karr) would then say that this law could be worked without trusting to the dangerous agency of the Police; and that the Police could be subsequently employed here just as well as in identifying lands decreed by the Civil Court or in a suit for possession. He admitted the law to be intended primarily for operation in the districts of Jessore and Nuddea, and for the relief of the European Planter-Zemindars; but he trusted he had shown that it was open to all parties to use it, and that it might be found advantageous to those who, in other parts of India, had engaged in Agricultural or Commercial pursuits. He believed honestly that the law could be worked to the relief of the Europeans, with the approval of the authorities, without encroachment on the rights of the peasantry, and without prejudice to the interests of the Zemindar; and he ventured to hope that the Council would not oppose the second reading of an enactment which might be safely entrusted to the keeping of the practical officers into whose hands it would fall, and which might, in a reasonable measure, contribute to the security of property and to the peace of the districts.

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

CRIMINAL PROCEDURE.

MR. HARINGTON moved that the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" be read a third time and passed.

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

FLOGGING.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to provide for the punishment of Flogging in certain cases;" 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.

SIR BARTLE FRERE said, he would put it to the Honorable Member for the North-Western Provinces, whether there was any necessity for pressing this Bill on to-day.

MR. HARINGTON said that, seeing that this Bill was intended to form part of the Penal Code, he thought it was desirable that, if it was to be passed at all, it should be passed so as to come into operation simultaneously with that Code and with the Code of Criminal Procedure, that was the 1st Jan. next.

The Motion was put and carried.

Section I provided as follows:—

"Every male person who is convicted of an offence mentioned in any of the following Sections of The Indian Penal Code, may be sentenced to the punishment of flogging, namely—

Intentionally giving or fabricating false evidence—giving or fabricating false evidence with intent to procure conviction of a capital offence—giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment—false charge of an offence with intent to injure.	Chapter XI, Sections 193, 194, and 195; also Section 211, if the proceeding instituted be for an offence under Section 377 of the said Indian Penal Code, or the offence falsely charged be such an offence.
Assaulting or using Criminal force to a woman, with intent to outrage her modesty—rape—unnatural offences.	Chapter XVI, Sections 354, 376, and 377.
Theft—theft in a building, tent, or vessel—theft by clerk or servant of property in possession of master—theft after preparation made for causing death or hurt, in order to the committing of the theft—extortion by threat of accusation of an offence punishable with death or transportation, &c.—putting person in fear of accusation of offence, in order to commit extortion—robbery—attempt to commit robbery—voluntarily causing hurt in committing robbery,—dishonestly receiving stolen property—dishonestly receiving property stolen in the commission of a dacoity—habitually dealing in	Chapter XVII, Sections 379, 380, 381, 382, 388, 389, 392, 393, 394, 411, 412, and 413; also Sections 454, and 457, if the offence intended to be committed be punishable with flogging under this Act.

stolen property—lurking house trespass or house breaking in order to the commisson of an offence punishable with imprisonment—lurking house trespass or house breakin; by night in order to the commission of an offence punishable with imprisonment.	
Forgery—forgery of a record of a Court of Justice, or of a public Register of Births, Power of Attorney, &c.—forgery of a valuable security or will—forgery for the purpose of cheating forgery for the purpose of harming the reputation of another.	Chapter XVIII, Sections 465, 466, 467, 468, and 469.

SIR CHARLES JACKSON said, it was not his intention to renew the discussion which took place on the second reading of this Bill, as he considered that the principle was then established that it was desirable, as a general rule, to retain the punishment of flogging. But still he thought it remained for the Council to lay down some principle in accordance with which the punishment of flogging was to be awarded to certain offences and not to others. It would be doing something to lay down as a principle, that a man should be flogged only for heinous offences, or for degrading offences, or if he were an old offender. If the Section were confined to the last two classes of offences, he (Sir Charles Jackson) would not have much objection to offer to the Bill at this stage. But he must say that he was at a loss to understand upon what principle the particular offences specified in the third part of the first Section had been selected. It appeared to him that, if Honorable Members were to write the names of all the offences against property on slips of paper, and put them into a hat, and then draw a certain number of them out at random, the selection would be just as consistent with principle, as the offences actually selected and now forming the third part of the first Section of the Bill. It was difficult to suppose upon what principle theft and lurking should be punished with flogging, and extortion and Criminal breaches of trust should not be visited with that punishment. Sir Charles Jackson here read the description of the offences recited in the margin of the third part of the Section (theft, &c.), and remarked that a man might commit a breach of trust, which was a much more serious offence than those which he had just read, and ruin a whole family, and yet he was to be exempt from the punishment of flogging. As he said before, he saw no principle in the Section, and he should therefore move in the first place, to omit "379, 380. 381" which related respectively to theft—theft in a building, tent, or vessel,—and theft by a clerk or servant of property in the possession of his master.

MR. HARINGTON said, the Honorable and learned Judge having, in deference to the decision come to on the Motion for the second reading of this Bill, conceded the point that flogging was to be one of the punishments which might be awarded under the Indian Penal Code, it was unnecessary for him to trouble the Committee with any remarks in support of the principle of the Bill. But he considered he had cause to complain of the manner in which the Honorable and learned Judge had spoken of the labors of the Select Committee on the Bill. The remarks of the Honorable and learned Judge were any thing but complimentary to the Select Committee, and he (Mr. Harington) thought that they were not deserved. The Honorable and learned Judge seemed to think that the offences, for which it was proposed that corporal punishment might be awarded, had been selected very much at random; that they had been drawn as it were by lot. He could assure the Honorable and learned Judge that the Select Committee had most anxiously considered every one of the offences included in the Bill before it was so included. The Select Committee might have erred in their selection; it was possible they had done so; but it certainly was not from any want of consideration. He repeated that the selection of the offences for which it

was thought that corporal punishment might be properly awarded, had been the subject of much discussion and anxious consideration at the Meetings of the Select Committee on the Bill. The Honorable and learned Judge would strike out the crime of theft from the Bill ; but it appeared to him (Mr. Harington) that this was one of the offences which ought especially to be retained. In many cases in this country theft might be more properly and indeed more mercifully punished with corporal punishment than with any other penalty. The Honorable and learned Judge had expressed himself as if he thought that, on a conviction of the offences, included in the Bill, corporal punishment must necessarily be awarded ; but this was not the case. The character of the Bill was permissive, not imperative. Had it been otherwise, he (Mr. Harington) should have had some hesitation in supporting the Bill. The Bill left it discretionary with the Court which convicted a person who was found guilty of an offence for which corporal punishment might be awarded, to inflict the penalty or not as it might think proper. This was what was done in the Presidency Police Act passed only last year. Under that Act any person in a Presidency Town convicted of theft might be flogged. The Act did not say that he should be flogged, but that he might be flogged, and they had no reason to suppose that the discretionary power thus given had been abused. In determining whether an accused person guilty of an offence, punishable with corporal punishment, should be flogged, the Court or Magistrate would necessarily take into consideration many circumstances which could not be put into the law. The position in life of the offender would no doubt often be one of those circumstances. As a case in point, he would refer to what took place on the trial some years ago of Pate for striking the Queen. Pate who had been an officer in the Army, was liable to be flogged for the offence committed by him. But Baron Alderson, who tried the case, remittted the corporal punishment, because he did not consider the accused a fitting object for that punishment. He should vote against the Honorable and learned Judge's Motion.

MR. FORBES said that, in all such cases, we must have some regard to the existing law and ought not to be led into utterly ignoring it when we had not only no evidence whatever that the law had operated injuriously, but had the best reason for believing that the reverse had been the case. Now in the Presidency of Madras the crime of theft had been punished with flogging for the last fifty years, and we had the assent to the retention of the law, as it stood, which the silence of the Government and all the authorities of Madras regarding the Bill must be supposed to have given. He (Mr. Forbes) was very confident that there were no Executive Officers in the Province—and they were those who after all were best able to form opinions on such questions as the present—who would willingly consent to any modification of the present punishment for theft ; and as his own opinion quite coincided with what he believed was the general opinion of the Presidency with which he was more immediately connected, he should, to the utmost, oppose the Motion of the Honorable and learned Judge, to take away the punishment which the present law prescribed.

MR. ERSKINE said, he believed the question now related solely to the crime of theft, and the suitableness of flogging as a punishment for that crime. At the same time, since his Honorable and learned friend had referred in a marked manner to what he described as a singular want of method in the selection of offences to be made punishable with flogging under this Bill, and since his Honorable and learned friend had likewise drawn attention, some days ago, to what he regarded as a want of proper respect on his (Mr. Erskine's) part for the authority of English law, he could not help noticing that the Honorable and learned Vice-President, on the occasion of the second reading of this Bill, had stated that all the offences for which the punishment of

flogging was proposed by this Section were already punishable in that way according to English law. That statement would, he was sure, have due weight with the Honorable and learned Judge. Then with regard to theft in particular, he must again remind the Honorable and learned Judge that, just before this Bill was read a second time, the Council had passed an Act which allowed flogging to be awarded in cases of theft in the Presidency Towns. That punishment had been prescribed for that offence in the Municipal Acts some years ago, and the provision had very recently been re-enacted without opposition. Again, it had been objected that there seemed to be no reason why flogging should be adjudged for minor thefts when some more aggravated kinds of robbery were not made punishable in that way. But in this respect the Bill had been framed on what commended itself to him as a sound principle. It did not seem to be expedient that crimes calling for sentences of transportation or of imprisonment for long periods, should subject the offender to corporal punishment. When an offender was to be in the power of Government for such a length of time as admitted of a reasonable prospect of reformatory treatment being brought to bear on his character with effect, it would surely be inexpedient to commence that treatment by an infliction of this kind. Moreover, common thefts were often committed by very young persons, and by persons belonging to wandering or wild tribes, and even by professional thieves. For all of them flogging might be a more appropriate punishment than imprisonment in this country. These, he thought, were reasons for maintaining the present law to the extent proposed by the Bill. It had been approved by the Bombay Government; and, for his own part, he thought it his duty to oppose the Motion of the Honorable and learned Judge.

MR. SETON-KARR said that, without pledging himself to vote one way or the other in regard to all the classes of offences which the Honorable and learned Judge proposed to except, he thought that the case of theft was one to which the punishmenf of flogging peculiarly applied. We had had a law for flogging since 1844 in this country, and had found it very useful in the cases of young offenders. Certainly, the position in society of offenders should also be taken into consideration, but theft was usually committed by persons of a class not generally entitled to any tenderness on this account. Therefore, he should vote for the retention of this kind of punishment in cases of theft, and certainly in cases of forgery and perjury.

SIR CHARLES JACKSON said, he had only a few words to say in reply to what had fallen. Honorable Members first resorted to an argument *ad hominem*. They pointed out that there was an English Act passed in the reign of George IV, which gave the Supreme Court the power of inflicting corporal punishment for many such offences as these; and that, therefore, the punishment must be an appropriate punishment for such offences. He did not appreciate the logic of such an argument, but he begged emphatically to state that that was a law which every Judge of the Court within his recollection had declined to act upon. It might in fact be called an obsolete enactment. The next argument was that an Act was passed by this Council, a year or two ago, for the regulation of the Police in the Presidency Towns, which allowed of corporal punishment in cases of theft. He must say that he had no recollection of such a Clause in that Bill, and he was sure that his attention could not have been called to it. He was a Member of the Council at the time; and had he been aware of it, he should have opposed it. But the question was, whether the Council should pass a Bill with such a Clause as this as a precious *pendant* to the great Penal Code they had enacted. What he had said was this—and if the Honorable Gentlemen had answered it, it would have been something more to the purpose than what they had said. He had argued—and in doing so, he could assure the Council that he meant no

personal disrespect to the Select Committee—that if the offences had been written on slips of paper and put into a hat, and then drawn out at random, the selection of offences to be punished would have been just as consistent with principle as the selection which formed part of the Section as it now stood. He had put as an example the case of extortion, as it was a much more serious offence than some of those mentioned, and if Honorable Members had explained why and on what principle this crime was omitted from the Clause, and theft included in it, he should have been glad to hear them.

MR. HARINGTON remarked that extortion was included in the Bill.

SIR CHARLES JACKSON—No, simple extortion was not included; and why that should be so, if theft was to be punished with flogging, he was at a loss to understand. The Honorable Gentlemen, in speaking on this question, had made admissions which involved the general principle as to the propriety of flogging as a punishment, for they said that they would never allow it to be given in every case, and that the condition in life of the offender would be taken into consideration. He (Sir Charles Jackson) thought that these admissions laid bare a very weak point in their case. If flogging was not to be resorted to generally, the question whether it should be inflicted would be in practice often decided by very young and incompetent officers; and if the position of the parties was to be considered, then this law, in addition to its other defects, was one of that very objectionable class which was administered in one way for the rich and in another for the poor.

MR. FORBES said, he merely wished to say a few words with reference to the observation of the Honorable and learned Judge as to the Clause in the Presidency Towns Police Bill, which continued and extended the punishment of flogging, not having attracted his attention or the attention of the Council. The Bill was before the Council for several months, and although it finally fell into his (Mr. Forbes') hands, it was introduced so far back as when Mr. Currie was in the Council. He (Mr. Forbes) would also call to the recollection of the Committee that Sir Mordaunt Wells, who was temporarily a Member of this Council during the absence of the Honorable and learned Judge (Sir Charles Jackson), was a Member of the Select Committee on the Police Bill, and signed the Report, so that it could hardly be said that the Bill attracted no attention from the Council.

SIR CHARLES JACKSON—That accounts for my not having known about it.

MR. FORBES said that, although Sir Mordaunt Wells was a Member of the Select Committee, yet the Honorable and learned Judge (Sir Charles Jackson) had resumed his seat in this Council when the Bill passed through a Committee of the whole Council, and had been read a third time and passed.

SIR CHARLES JACKSON replied, he could only say, as he had said before, that the Clause in question had not attracted his attention, nor did he believe any debate took place on it, or else he should certainly have opposed it.

SIR BARTLE FRERE said, he should say a few words to justify the vote he was about to give, especially as regarded the principle on which the selection of offences included in the Bill had been made. To the classes of offences to which the Honorable and learned Judge proposed to confine the punishment of flogging, namely heinous offences, degrading offences, and habitual offences, he (Sir Bartle Frere) would add another, namely offences committed by persons for whom there was no other appropriate punishment provided in the Code. Now that, it seemed to him, would include theft committed by persons who had no property, and from whom you could not therefore recover a fine, or to whom, from their habits of life, ordinary imprisonment was really no punishment at all, such as common rogues or vagabonds; or again persons whom you could not punish with imprisonment without inflicting a greater amount of suffering than was intended by the mere privation of liberty. It was quite

true that the lower classes of offenders in large towns and civilized communities might be imprisoned with little injury to their health. But if you went into any part of the country where wild tribes were to be found, you would find large classes who positively could not be imprisoned for three months without very serious injury to their health and without the risk of endangering their lives. Now he would not refer to the case of the Andamans, though we all knew that you could not make an inhabitant of the Andamans live in a house and wear clothes, without risk of killing him. It might be said that that was an extreme case, and one for which we were not required to legislate. But there were jungly tribes in great numbers and in all parts of India, for whom you were required to legislate, and who could not be put into a Jail for any long period without serious risk of causing their death. This assertion was not lightly made, and he would cite but one case in point. In the town of Tannah, which was little more than twenty miles from Bombay, there was a Jail which was under the close supervision of officers of Government, and in it were frequently confined large numbers of the wild tribes from the Concan, the district nearest to Bombay. At the time he spoke of, the officer in medical charge of the Jail, Dr. Costello, a very able medical officer and most benevolent and excellent man, told him (Sir Bartle Frere) that he found it a difficult matter to keep some of these wild jungly tribes in imprisonment alive for even six months in succession. With the utmost care and attention to their diet and with every indulgence, they were apt suddenly to droop, sicken, and die. Now he would ask if that was a case in which the punishment of flogging would be an inhuman punishment? Was not the punishment of imprisonment, which was in fact a sentence of death to such poor creatures, far more inhuman? These were not isolated or doubtful facts. They were well ascertained by able scientific officers, and were true of all the wilder tribes, amounting to many millions, in all parts of India. It was in this point of view that it appeared to him that, when the Council was enacting a Code of laws for all India, it was necessary to provide a punishment which, however inapplicable it might be to the civilized portion of the inhabitants, was a far more merciful punishment than imprisonment to the less civilized classes; and he would put it to the Honorable and learned Judge whether he believed there was any serious danger of such a provision being abused. In such cases you must leave something to the judgment and discretion of your officers. He would ask the Honorable and learned Judge whether any bad consequences had resulted from the enactment in England of the law which still stood in the Statute Book—not an old law but one enacted within the memory of every Member there present, the Act of Geo. IV. He claimed the Honorable and learned Judge's experience of that Act as an argument in favor of the Bill before them, as showing that, where the means existed for punishing theft with imprisonment in proper Jails and by other means, the Judges need not and did not resort to flogging. Viewing the punishment in this light as a necessary evil—as a punishment for which the only substitute would be in many cases far more severe than was intended—he was compelled to vote against the amendment of the Honorable and learned Judge.

SIR CHARLES JACKSON said, he had spoken in reply just now, because he thought all Honorable Members who wished to speak had then addressed the Committee. He should now say but one word in reply with respect to what had fallen from the Honorable Chairman, who had contended that flogging was a more merciful punishment for persons belonging to certain wild tribes than imprisonment. If the Honorable Chairman put the case of those wild tribes as an exceptional one, justifying their punishment by flogging rather than imprisonment, he (Sir Charles Jackson) was quite willing to defer to his reasoning. But if the Honorable Chairman carried his

argument farther and said that, because flogging was best suited for Criminals belonging to such wild tribes, it ought therefore to be applied to all classes in India, he was unable to appreciate the logical sequence of such an argument, and must decline to accept it as one that should govern the question before them.

The question being put, the Council divided as follows :—

Aye 1.	*Noes* 6.
Sir Charles Jackson.	Mr. Seton-Karr.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived.

SIR CHARLES JACKSON then moved the omission of "392, 393" (robbery and attempt to commit robbery), of "411, 412" (dishonestly receiving stolen property and dishonestly receiving property in the commission of a dacoity), and of the words "also Sections 454 and 457 (lurking house-trespasses or house-breaking in order to the commission of an offence punishable with imprisonment, and lurking house-trespass or house-breaking after preparation made for causing hurt to any person) if the offence intended to be committed be punishable with flogging under this Act."

The Motion was put, and negatived.

SIR CHARLES JACKSON then moved the introduction of the following words :—

"No person shall be sentenced to the punishment of flogging in Section 379, 380, 381, 392, 393, 411, 412, 454, or 457, unless it is proved that he has been previously convicted of a Criminal offence."

MR. HARINGTON said, he could not agree to this proposition, which, if adopted, would defeat two of the most important objects contemplated in the introduction of the Bill, namely, to keep persons offending against the law for the first time from the contamination invariably attendant upon imprisonment in a Criminal Jail and to prevent the crowding of the Jails. There was little hope of reformation after a man had passed any time in a Criminal Jail. He generally came out a worse character than he went in, and there would be little advantage in flogging him for a second offence ; whereas if he were flogged for a first offence and allowed to return to his home without being subjected to the contamination of a Criminal Jail, there was hope that he might reform and become a useful member of the community.

MR. FORBES said, he should take two exceptions to the amendment of the Honorable and learned Judge. One referred to a point just mentioned by the Honorable Chairman, and he ought perhaps to apologize for trespassing upon the Honorable Gentleman's domain. If the wandering hill tribes to whom, as just now forcibly shown by the Honorable Chairman, confinement in a prison was tantamount to death, were to be subjected to corporal punishment only on a second or third offence, it was evident that their death during their incarceration for their first offence would leave it a matter of very little moment what punishment was prescribed for their second offence. Were the view of the Honorable and learned Judge adopted, the whole benefit anticipated from subjecting these tribes to corporal punishment instead of to imprisonment would be frustrated, and they would die during the period of their imprisonment for their first offence. But independently of that, it was universally admitted that the great object of all punishments was the repression of crime ; and if it were found that the punishment of flogging had a greater deterrent effect than any other punishment, and that those who had once been subjected to it were very seldom indeed subjected to it again, it was clear that it was the best punishment to award for a first offence, for there would then be little occasion to punish for a second, and the end of all punishment, namely the repression of crime, would have been attained. This point was referred to in the papers which had come up from Oude.

Mr. Forbes here read from those papers showing that, in the Lucknow

Division, while 2,050 persons were flogged once, only 65 were flogged on a second conviction—that, in the Baraitch Division, while 987 were flogged once, ten only were flogged a second time—that, in the Khyrabad Division, where 815 were flogged once, only one solitary criminal was flogged twice—and that, in the Baiswara Division, 755 were flogged once, and seven a second time. He thought that these statistics showed the good effect of flogging in preventing second and subsequent offences, and that it was therefore a much more merciful, wise, and safe punishment than having recourse to imprisonment and all its contaminating influences.

SIR CHALES JACKSON said that, if he believed, with the Honorable Member for the North-Western Provinces and the Honorable Member for Madras, that flogging was the greatest possible deterrent of crime, or that an offender would thereby be reformed, he should yield to the force of the argument of those Honorable Gentlemen. But he thought that was not the fact. In the case of children it might be so, but not in the case of grown men. Then, again, as to the hill tribes, he should not be surprized if their peculiar case was not brought forward in connection with every Section. But, as he had already observed, he had no objection to pass any Clause which would provide for the flogging of the members of those tribes as an exceptional case. Then, again, as to the statistics of the Honorable Member for Madras, he (Sir Charles Jackson) must say that nothing could so easily be made so inaccurate as figures. He should like to know what period of time was covered by those returns. If only one year, the number of persons flogged a second time was large. The returns could not cover any long period, he was certain; for the introduction of the present judicial system in Oude was very recent. In the absence of these particulars, and unless they were informed of the principle on which they were prepared, he must say that those statistics were not to be relied on.

Mr. Forbes

The question being put, the Council divided as follows:—

Aye 1.	*Noes.* 6
Sir Charles Jackson.	Mr. Seton-Karr.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived, and the Section was then passed,

Section II provided as follows:—

"The punishment of flogging shall form no part of the sentence passed on any offender of such an age or in such a state of health that the punishment is likely to cause a kind of suffering not ordinarily intended by a sentence of flogging, or any person sentenced to death, or transportation, or imprisonment for a period exceeding five years."

SIR CHARLES JACKSON said, he did not understand this Section. The language was apparently intended to be very delicate. He must say he could not gather what was intended by the words "likely to cause a kind of suffering not ordinarily intended by a sentence of flogging." He thought that a great deal of torture was ordinarily intended by a sentence of flogging. Then, again, the latter part of the Section was open to objection, for by Section I it was provided that a person committing rape or an unnatural offence should be flogged, whereas by this Section the Judge could not sentence the offender to be flogged if he were already sentenced to transportation or imprisonment exceeding five years. Now in every case a man committing such an offence would be transported or get imprisoned for five years; and the Clause, as it stood, was tantamount to saying that the punishment of flogging was not to be inflicted in those cases in which all were agreed that flogging would be the most appropriate punishment, namely degrading offences. Lastly, this Section was not consistent with Section V which provided that the sentence of flogging might be in addition to any sentence which the Court was authorized by the Penal Code to award.

MR. ERSKINE said, in regard to the first point, that words very similar to those to which the Honorable and learned Judge had taken exception, formed part, and had long formed part, of the Bombay Code. The meaning was that, if a person were suffering from disease—to put an extreme case for instance, if he were afflicted with leprosy—it was not intended that he should be liable to be flogged. He (Mr. Erskine) did not know that there was in the words any more mysterious meaning than that. As to the limitation of the terms of imprisonment in combination with which flogging might be awarded, he had already explained the reason which suggested that limitation, and which appeared to him to be a sufficient reason. In ordinary sentences it was desirable, when flogging was awardable, to use it as a substitute for imprisonment—or in order to subject any offender whom it was deemed inexpedient to imprison for a length of time, to the shortest possible term of confinement. When, however, the offence was so heinous as to call for a lengthened term of imprisonment, there should generally be a prospect of reformatory agencies being brought effectively to bear upon the offender; and it was important that his penal treatment should not begin with the infliction of corporal punishment.

MR. SETON-KARR confessed that he shared the doubts of the Honorable and learned Judge as to the precise meaning of the words alluded to, and he would prefer to see words introduced, showing that the state of health and ability to bear punishment were the points to be considered.

After some further discussion in which Sir Robert Napier took part, the words "who by reason of his youth or age is unfit for such punishment, or who is in such a state of health as to be unable to bear such punishment" were substituted for the words "of such an age, or in such a state of health that the punishment is likely to cause a kind of suffering not ordinarily intended by a sentence of flogging," on the Motion of Mr. Seton-Karr; and the Section, as amended, was then passed.

Section III provided as follows:—

"The punishment of flogging under this Act shall be inflicted with a ratan, and shall not exceed thirty stripes. In the case of an offender under the age of sixteen years, the stripes shall not exceed ten."

SIR CHARLES JACKSON said, he objected to this Section on several grounds. First, he objected to the word "ratan" as being vague. The species of ratan and its length should be mentioned. The Honorable Member for the North-Western Provinces might laugh; but he (Sir Charles Jackson) would read a letter from one of the Magistrates in the North-Western Provinces, and the Honorable Member would see that flogging was no laughing matter. The following was the description given in the letter as to the manner in which the punishment was inflicted:—

"In the Legislative Council, most of the Members are, I believe, ignorant of what the punishment they are about to authorize may, and, I fear not unfrequently, really *does* become.

In districts where flogging is a favorite punishment, you find a couple of specially powerful and thoroughly trained tent-pitchers* invested with the office of floggers. The man who is to be punished is stript and tied up to the triangle; one of the "clashees," also stript to his waist, (which is firmly cinctured) steps out, armed with a rattan about 5½ feet long, he takes two paces to the left of the triangle, measures the distance, so that the end of his weapon will exactly fall across the offender's body, makes a slight scratch on the ground with one foot to guide his after movements, steps back two paces further, firmly grasps in both hands the rattan, and then, swinging it round his head, and bounding forward to the line, delivers with the whole strength of his arm and the whole weight of his body, a blow that screeches through the air like a rifle bullet. An instant after there is a long lash on the body almost like a sword wound, from which the blood streams before the second blow descends.

The first "clashee" gives five such stripes, and the second then steps forward, to be again succeeded after five more stripes by the first, and so on till the torture, which I should say lasted fully a quarter of an hour, is concluded. The first twenty stripes are usually laid about an inch apart and just parallel to each other, and

* "*Clashees*," as they are called, selected because the practice of wielding huge mallets endues them with great strength in the arms.

the last ten are *crossed* over these. Strong man habitually faint at the second or third crossed stroke, and men have died, during the disturbances, from the effects of fifty well administered stripes."

He (Sir Charles Jackson) therefore thought it was not an unimportant matter to define the length of the ratan. He should say that a four feet ratan was quite long enough for the purpose. It would amount to a cutting and wounding if a longer ratan were used. Then again, was the punishment to be inflicted on the bare back or on the buttocks? If inflicted on the bare back in the manner described by the Magistrate whose letter he had just read, it was likely to injure the muscles. If inflicted on the buttocks, it would not do so much harm, but would be considered more degrading. He would now, however, move the insertion after the word "ratan," of the words "which shall not be of greater length than four feet, and the number of stripes shall not exceed thirty which shall be inflicted by one and the same man."

SIR BARTLE FRERE said, he would merely remark, with reference to what had fallen from the Honorable and learned Judge, that in the whole course of his experience he had never seen or heard of a judicial flogging having been administered in the mode described in the letter which had just been read. In Bombay the law provided that—

"The punishment of flogging shall be inflicted on the bare back with a ratan or such other instrument as may be authorized by the Sudder Fouzdarry Adawlut. No culprit shall suffer more than twenty-five stripes at one time or shall be sentenced to more than a hundred in one judgment."

As far as he recollected, it had been usual to inflict flogging with a cat-o'-nine tails. He believed it was barely possible that any marks could remain after a few weeks, and he was quite certain that no serious injury of the nature described by the Honorable and learned Judge, could ensue. He thought it would be very much better to insert the words "with such an instrument and in such a manner as shall be prescribed by the local Government" in substitution "for the words with a ratan and shall not exceed thirty stripes." He should even object to the four feet ratan.

SIR CHARLES JACKSON said, this showed what a difficult punishment flogging was to deal with. He was sure the Honorable Chairman and no Member of the Council would permit a man to be flogged in the way described. But, if there was a Magistrate who had a liking for flogging, he could make it a dangerous means of torture. It was most unequal in its operation both as regards the Magistrate who ordered, the man who flogged, and the criminal who suffered.

MR. HARINGTON said, he might have smiled before he heard the letter which had just been read to them by the Honorable and learned Judge; but he certainly felt no inclination to smile after hearing that letter. He had listened to the letter with great pain. It was difficult to imagine any thing more inhuman, more cruel, or more improper than the mode of administering corporal punishment therein described. He could not have supposed that such a practice anywhere existed. He believed that the writer of the letter was not now in the country; but he had no doubt that the attention of the Honorable the Lieutenant-Governor for the North-Western Provinces would be attracted to the contents of this letter which would appear in the speech of the Honorable and learned Judge in the report of to-day's proceedings, and that His Honor would institute an immediate enquiry and take steps to put a stop to such a mode of administering corporal punishment wherever it was found to be followed under his Government.

SIR CHARLES JACKSON here interrupted the speaker and said the letter did not state that the mode of flogging which it described was general.

MR. HARINGTON resumed, he did not understand the writer to say that the practice was general, but he presumed that in the description given

by him, the writer was not drawing a picture from his own imagination, but was relating what he knew to have occurred, and he must repeat his conviction that His Honor the Lieutenant-Governor of the North-Western Provinces, on his attention being drawn to to-day's debate, would institute an enquiry and take proper steps in the matter. The Honorable and learned Judge had done him no more than justice, and he was sure he might say the same of every other Honorable Member present, when he declared his belief that they would never allow such a mode of administering corporal punishment to be adopted. When he brought in this Bill, he had stated that, during the whole course of his judicial service, he had no recollection of ever having awarded corporal punishment, and he would now repeat that statement. As a matter of duty, he had attended when corporal punishment was inflicted upon Soldiers, and in order to support the Captain of a Vessel in which he was a passenger he had been present when Sailors had been flogged, and he could truly say that it was a most painful sight. Indeed it was painful to witness any person undergoing punishment of any kind. The smile which had been noticed by the Honorable and learned Judge, had been produced in consequence of its seeming to him strange that the Honorable and learned Judge should consider it necessary to legislate in this Bill upon a point which had never been made the subject of legislation before, namely, as to the length or circumference of the ratan or other weapon which might be used for corporal punishment. Hitherto this had always been left to the Executive Government and it had been so left in the Police Act of last year to which he must again refer. But after the letter which had been read to them to-day, he could only say that, if the Honorable and learned Judge considered it advisable to fix by law the length and circumference of the ratan which might be used for the infliction of corporal punishment under this Bill, he (Mr. Harington) should most certainly not oppose any Motion that the Honorable and learned Judge might make for that purpose.

MR. SETON-KARR said that he had never witnessed or heard of flogging applied with such scientific barbarity, as he must term it, as described in the letter of the Honorable and learned Judge's up-country correspondent. He had however known of Magistrates who, more habitually than others, resorted to this mode of punishment, and who picked out strong limbed men for this duty, and instructed them to apply the cane with unusual firmness and skill. He certainly thought that, in this law, the Council should endeavor to define the mode of punishment, the number of stripes, and the length and kind of the weapon. He (Mr. Seton-Karr) had also seen scars left by flogging which had been inflicted years or months previously, and which seemed likely to last during life-time. He (Mr. Seton-Karr) preferred the ratan for Bengal as indigenous, and familiar to Magistrates and to the native officials.

SIR BARTLE FRERE said, he must repeat that he should object even to the definition of the Honorable and learned Judge. He should very much prefer to insert the words "with such an instrument and in such a manner as shall be prescribed by the local Government."

MR. FORBES said that, as this Bill was to form part of the Penal Code for all India, it was necessary that some uniform rule should be prescribed by law. If the matter were to be left to the local Governments, they might pass different orders upon it, and uniformity of punishment for each particular crime would be at an end. In the Madras Presidency a cat-o'-nine-tails was used. They were issued from the Arsenal, and were all alike; and when a cat was worn out, it was re urned and a new one issued in its stead.

SIR CHARLES JACKSON said that a cat-o'-nine-tails was an awful weapon. It depended on the knowledge of the person who used it. If the instrument used, in any way resembled a cat used in the Royal Navy,

thirty strokes would be an awful punishment ; and if the flogger with any cat-o'-nine-tails divided the tails between each stroke, the punishment inflicted with it would be very severe.

After some further discussion, Sir Bartle Frere's amendment was put, and the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Erskine.	Mr. Seton-Karr.
Sir Robert Napier.	Sir Charles Jackson.
The Chairman.	Mr. Forbes.
	Mr. Harington.

So the Motion was negatived.

SIR BARTLE FRERE then moved, that the words " shall be inflicted with a cat-o'-nine-tails" be substituted for " shall be inflicted with a ratan."

The question being put, the Council divided :—

Ayes 3.	*Noes* 4.
Mr. Erskine.	Mr. Seton-Karr.
Sir Robert Napier.	Sir Charles Jackson.
The Chairman.	Mr. Forbes.
	Mr. Harington.

So the Motion was negatived.

SIR CHARLES JACKSON'S amendment was then put that the words " and shall not exceed thirty stripes" be omitted, and the following words substituted for them :—

" which shall not be of greater length than four feet or of greater circumference than three-fourths of an inch, and the number of stripes shall not exceed thirty which shall be inflicted by one and the same man."

Agreed to.

SIR CHARLES JACKSON said that the Bill, as it now stood, did not provide whether the punishment was to be inflicted on the bare back or on the buttocks. Unless this was prescribed, a cause of action might lie in the Supreme Court if the punishment was administered in either one way or the other.

SIR BARTLE FRERE then moved that the words " on the bare back" be inserted after the words " shall be inflicted."

MR. SETON-KARR said, he would leave it to the discretion of the Magistrate, whether it should be on the bare back or on the breach. He should move by way of amendment that the words " or on the buttocks" be added to the words proposed by the Honorable Chairman.

MR. SETON-KARR'S amendment being put, the Council divided as follows :—

Ayes 3.	*Noes* 4.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Forbes.	Mr. Erskine.
Mr. Harington.	Sir Robert Napier.
	The Chairman.

So the amendment was negatived.

SIR BARTLE FRERE'S Motion was then put and carried, and the Section as amended passed.

Section VII provided as follows :—

" If the sentence of flogging is passed by a Supreme Court, it shall be executed in the presence of the Sheriff or of some other person appointed by such Court. If the sentence is passed by any other Court, it shall be executed in the presence of a Justice of the Peace, or an officer exercising any of the powers of a Magistrate.

SIR CHARLES JACKSON moved that the above Section, amended as follows, be transposed so as to follow Section III :—

" The punishment of flogging shall always be inflicted in the presence of a Medical Officer where the services of such an Officer are available. If the sentence of flogging is passed by a Supreme Court, and the prisoner is an inmate of the House of Correction, the sentence shall be executed in the presence of the Superintendent or Deputy Superintendent of Police ; and if the prisoner be an inmate of the Great Jail, it shall be executed in the presence of the Sheriff, Under-Sheriff or of some other person appointed by such Court," &c.

Agreed to.

Section IV provided as follows :—

" A sentence of flogging under this Act may be passed by any Officer exercising the powers of a Magistrate, or by any Officer having the powers of punishment which are given by any law for the time being in force to an Officer exercising the powers of a Magistrate, or by any Officer specially empowered by the Government. No sentence of flogging shall be executed by instalments."

SIR CHARLES JACKSON moved the substitution of the words "not inferior to a Subordinate Magistrate of the 1st Class" for the words "having the powers of punishment which are given by any law for the time being in force to an Officer exercising the powers of a Magistrate or by any Officer."

Agreed to.

The words "No sentence of flogging shall be executed by instalments" at the end of the above Section were (on the Motion of Sir Charles Jackson) transposed so as to stand at the end of Section III.

Section V was passed after an amendment, and the Clerk of the Council was authorized to strike out the word "said" wherever it occurred before the words "Indian Penal Code."

Section VI provided as follows :—

"In cases in which the punishment of flogging is awarded in addition to the punishment of imprisonment, the flogging shall not be inflicted till two months from the date of the sentence, if the sentence is open to revision by a Superior Court, unless the sentence shall have been sooner confirmed, or an appeal from it shall have been sooner rejected."

After some discussion, amendments were carried which made the Section run as follows :—

"In cases in which the punishment of flogging is awarded in addition to the punishment of imprisonment, the flogging shall not be inflicted if an appeal is preferred within fifteen days from the date of the sentence or until two months from such date, if the sentence is open to revision by a Superior Court, unless the sentence shall have been sooner confirmed, or an appeal from it shall have been sooner rejected. If an appeal is preferred within fifteen days from the date of the sentence and no order is received within two months from such date, the Officer entrusted with the execution of the sentence shall refer for orders to the Appellate Court."

Sections VIII and IX were passed as they stood.

MR. HARINGTON then moved that Sections IV, V, and VI be transposed so as to follow Section II.

Agreed to.

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

RECOVERY OF RENTS (BENGAL).

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)," in consequence of the absence of the Honorable and learned Vice-President.

COURTS OF REQUESTS (STRAITS' SETTLEMENT).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca ;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

The Bill passed through Committee after a few verbal amendments in Sections XX, XXI, and XXIV, in Forms B, C, D, and E, and in the Preamble, and, the Council having resumed its sitting, the Bill was reported.

MALACCA LANDS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate the occupation of land in the Settlement of Malacca ;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

PORT BLAIR.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate the administration of affairs in Port Blair ;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

MERCHANT SEAMEN.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to merchant seamen)."

Agreed to.

The Bill passed through Committee after a verbal amendment in Section II, and, the Council having resumed its sitting, was reported.

CRIMINAL PROCEDURE.

MR. HARINGTON moved that Sir Bartle Frere be requested to take the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" to the Governor-General for his assent.

Agreed to.

STAMP DUTIES.

MR. HARINGTON gave notice that he would on Saturday next move the second reading of the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to stamp duties)".

COURTS OF REQUESTS (STRAITS' SETTLEMENT).

MR. FORBES moved that the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca" be republished for two months. He said that many alterations had been made in the Bill in its passage through the Select Committee, and it was advisable that the inhabitants should have an opportunity of considering them before the Bill was finally passed into law.

Agreed to.

REPEAL OF ACTS AND REGULATIONS.

MR. HARINGTON moved that the Bill "to repeal certain Regulations and Acts relating to Criminal Law and Procedure" be referred to a Select Committee consisting of Mr. Forbes, Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

SETTLEMENT OF ENAMS (BOMBAY).

MR. ERSKINE moved that Mr. Harington be added to the Select Committee on the Bill "to facilitate the adjustment of unsettled claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such revenue."

Agreed to.

TOBACCO.

MR. SETON-KARR gave notice that he would, on Saturday next, move the first reading of a Bill for the imposition of a Duty on Tobacco in the Provinces subject to the Government of Bengal.

BANKS.

SIR BARTLE FRERE moved that Sir Robert Napier be requested to take the Bill "to enable the Banks of Bengal, Madras, and Bombay, to enter into arrangements with the Government for managing the issue, payment, and exchange of Government Currency Notes, and certain business hitherto transacted by the Government Treasuries" to the Governor-General for his assent.

Agreed to.

REGISTRATION OF NIJ-JOTE AND KHAMAR LANDS, &c.

MR. SETON-KARR moved that the Bill "for the Registration of Nij-jote and Khamar and other such lands as well as of ryottee tenures involving the immediate occupation of the soil for the purposes of cultivation or for other purposes" be referred to a Select Committee consisting of Sir Bartle Frere, Mr. Harington, Mr. Erskine, Sir Charles Jackson, and the Mover.

Agreed to.

The Council adjourned.