INDIAN LEG. COUNCIL DEBATES

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1861

Article 102 was passed after an amendment.

Article 103 was passed as it stood.

Articles 104 to 108 were passed after amendments.

Articles 109 to 120 were passed as they stood.

Articles 121 and 122 were passed after verbal amendments.

Articles 123 to 146 were passed as they stood.

Article 147 was passed after a verbal amendment.

Articles 148 to 165 were passed as they stood.

Article 166 was passed after the inclusion of Article 81 among the Articles to be promulgated.

Article 167 was passed after the insertion in the blanks, (on the Motion of Sir Robert Napier) of the 1st November 1861, as the date from which the Articles should take effect.

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

The Council adjourned at 6 o'clock, on the Motion of Sir Robert Napier, till Saturday the 7th instant.

Saturday, September 7, 1861.

PRESENT:

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

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

CRIMINAL PROCEDURE.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

RECOVERY OF RENT (BENGAL.)

THE CLERK presented a Petition from the Landholders' and Commercial Association of British India, regarding 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)."

THE CLERK also presented a Petition from the British Indian Association relative to the same Bill.

MR. HARINGTON moved that the Clerk of the Council be requested to read the Petitions when the Council went into Committee on the Bill.

Agreed to.

INCOME TAX.

THE CLERK reported to the Council that he had received a communication from the Financial Department, forwarding papers and a Resolution of the Government of India thereon, relative to the working of the lump assessment in the cities of Allahabad and Benares.

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON presented the Report of the Select Committee on the Bill "to amend Act XXI of 1860 (for the registration of Literary, Scientific, and Charitable Societies)," and gave notice that he would, at a later part of the day, move for a suspension of the Standing Orders, with a view to passing the Bill through all its stages to-day.

TOBACCO AND PAWN (BENGAL).

MR. SETON-KARR rose and said—

Sir,—In moving the first reading of a Bill "to provide for the imposition of a tax on Tobacco and Pawn in the Districts subordinate to the Government of Bengal," I think it necessary to explain briefly why the measure has been entrusted to me, instead of to one of the Honorable Members for Government. I have no doubt that the Honorable Member for Government, or the Honorable Mr. Laing, whose absence we all so much regret, would have introduced such a Bill with a far greater mastery over financial principles than I can pretend

to, but as I have carefully considered the confidential communications on the subject, and as I was present at the conference held by the Lieutenant-Governor with the experienced Members of the Board of Revenue, I shall endeavor, to the best of my ability, to give an explanation of the objects and reasons of the Bill.

The Bill forms part of a new scheme of taxation, in which the local Governments will be left to impose certain taxes and raise certain funds, in the manner and from the sources best suited to the peculiarities of the Provinces subject to its control. I believe, Sir, that I am violating no confidence in stating that this principle will be generally extended, and that a certain gap, to use the expression, will be left in the assignment for public works in the Imperial Budget, which will have to be filled up from purely local sources. I would suppose, for example, that one crore of rupees had been set aside for the public works of any Presidency: of that sum twenty lakhs would be deducted and defrayed by local taxation. Or, to use another form of illustration, each Government would be set down in the Imperial Budget for a certain sum for public works, which sum, when raised, would be re-assigned to the Presidency from which it had been drawn.

These being the general principles applicable to each Government, it is still left to the Governors of Presidencies to select their own subjects for taxation and to levy the proceeds in the way each Governor may think best. In this view, while looking for a fit subject to commence with, it had been deemed desirable not to press unduly on any one particular manufacture, or kind of produce, or branch of industry, or source of trade. And Tobacco had appeared to be just such a subject, as largely consumed by a great many classes. I shall not now stop to fix the precise point at which Tobacco ceases to be a necessary of life and becomes a luxury; nor shall I venture to decide the merits of a great controversy which took place about a year ago between some able leaders of the English press and an eminent physician: to lay it down, whether smoking is beneficial or injurious, whether it deadens or whether it refines the intellect, whether it enervates or whether it soothes and calms the frame. I would observe, however, that Tobacco, though of general, is not of universal, consumption; it is now wholly excluded from our jails; it is not touched, I believe, by one of the finest and most manly of all races in British India, the Seikhs; and there is no article of which the use increases more in ratio to the means of the consumer. It is sufficient, I think, for purposes of taxation, that the article is largely consumed by many classes, and that a tax on it can be imposed with fairness and, in some shape or other, be collected with certainty and ease.

I would here observe further, that nearly all the remarks I shall have to make will be as applicable to Pawn as to Tobacco. Few Honorable Members but may have noticed a Pawn garden in a morning drive outside Calcutta. The garden is closely matted in, not only on all four sides, but at the top, so as to exclude the hot rays of the sun. But in taxing Pawn there is no present intention of taxing the Betel or Areca nut, which is grown in gardens of a totally different description.

If I were myself to hazard an opinion about the use of Tobacco, I should say that it held a middle place between Salt and Opium. Salt is a positive necessary used by the very poorest classes. Opium is a drug or medicine, it is largely exported from this country, or is only consumed within it by certain persons, or in moderate quantities. In considering the way in which the tax on Tobacco should be levied, three methods had suggested themselves to the consideration of the Government of Bengal. The first was to make use of the adequate establishments already existing in several districts for the cultivation of the Poppy and the manufacture of Opium. There is a large staff of Agents, Deputy Agents, and native subordinates, whose skill and experience could readily have been turned to account in those Districts where Tobacco is cultivated as well as the

Poppy. Had it been determined to introduce or extend this system, I could have had no doubt whatever of its ultimate, or even its immediate financial success. We should have had the same system of well regulated advances under the guidance of able and practised officers; the same assiduous culture by agriculturists who would have been quite free to take advances or to leave them; the same extent of reasonable supervision; the same skill in manufacture and care in transport; and, finally, the same direct profit to Government and to the cultivator, which will, I trust, be the invariable result of a sound system, conducted on the true commercial principles of mutual dependance and mutual interest.

But this system would have required an extension of Establishments, to other districts in which Tobacco and not the Poppy is grown. There would have been a great outlay in salaries, and in the erection of manufactories, drying and store houses, and the like, which outlay the Government could now ill afford; and the system, at best, could only have been known to the community by that word "monopoly," so jarring and unpleasant to English ears. The existence of two other monopolies in our financial system appears to me the very reason why we should not, at this period of our rule, be seeking to establish a third, and I may be pardoned for saying that I hardly would wish the Government to attempt a monopoly of a good administration: even here I would advocate the principles of free trade, and would desire to see any British Government only the first of competitors in a race, where the prizes must eventually fall to a vigorous and just administration which is based on wise and well-considered laws.

The next method which was suggested, was to license the sale of the manufactured article; and this method had certainly some features which merited attention and promised success, while it had none of the inconveniences attending a monopoly. It would not, on that score, have engendered secret discontent: it would not have again presented Government to the eyes of the community in the shape of a huge trader, who, holding the scales of commerce in one hand and wielding the staff of authority in the other, appeared to regulate and influence the market, to direct the administration of justice, and to amend the law, as best suited his interests; and it would not have afforded an unfailing point of attack to the assailants of the present or of future Governments, in India and England. The manufactured article is exposed for sale in bazaars, by dealers of certain classes, and could, in such places, be easily reached by the tax-gatherer. But if the license were to be a mere license to sell the article without reference to its quantity, the tax would be very unproductive: while, if there were any attempt to graduate the scale of licenses, and to distinguish between the wholesale and the retail dealer, a door was at once opened to endless fraud, evasion, enquiry, and annoyance. This had been thought likely to be the case in the discussions regarding the original License Bill, within which it was once proposed that Tobacco should be included. Then there was the danger both of active opposition and of sullen and passive resistance. Instances of combination by the communities of large cities, which take the form of shutting up all the shops and of refusing all supplies, are not unknown in Indian history, and I believe the Honorable Member for the North-Western Provinces must have heard or known of several such instances in the course of his career. In one case, indeed, the population of a large city, on some trifling cause of complaint, has been known to walk out into the fields, bag and baggage, and actually to have spent a fortnight in the open air. In addition to this danger, there was fear lest taxation in towns and bazaars might lead to extensive smuggling, and to secret sale in the interior of the districts, so that we might have largely to increase our preventive establishments, and to depute the tax-gatherer into the inmost recesses of rural villages. On the whole, then, the system of licensing

the manufactured article was, in Bengal at least, not thought worth a trial.

There remained, Sir, the third plan of taxing the plant under cultivation, according to the area and extent. This has none of the odium which must be encountered by a monopoly, and is not so much exposed to the dangers arising from combination. Tobacco is grown in particular districts, and in particular parts of particular districts, which are well known to the local authorities. The plant is cultivated mainly by substantial ryots. When growing, it is very easily recognized and can scarcely escape research. Combination amongst agriculturists, scattered in different villages, would be very unlikely, and the grant of licenses would enlist those who had paid the money, on the side of Government, and would lead to the speedy detection of those who had not. The demand of a higher rent on the more valuable kinds of produce is already familiar to the ryot, and he almost always pays more to his zemindar for land cultivated with sugar-cane, mulberry, or tobacco, than for lands covered with rice plants. But it is not on this ground that I defend or base the tax, though the above facts may familiarise the ryot with it when first brought into existence. The ryot is quite sharp enough to perceive that the incidence of taxation *must* fall on the consumer, and that he has only to add the cost of the license to the price of the plant, in order fully to reimburse himself. Here, Sir, I trust that I shall not be met with any objections to the tax on the ground that it "infringes the Perpetual Settlement." No settlement, that I know of, permanent or temporary, has ever been made with those who smoke Tobacco, any more than with those who drink country spirits, or eat *gunja;* and yet it is on tobacco-smokers that the incidence of this taxation must eventually fall. Of course, there will still be the danger of smuggling, whether by land or sea, but this is almost the only real danger to which this mode of collection is exposed. No mode could be devised against which some objections could not be brought, and the taxation of the plant under cultivation has the acquiescence of the best and most practical public officers.

I shall now, Sir, proceed to explain the details of the Bill. From certain documents appended to the Report of the Indigo Commission, it is shown that the produce of Tobacco varies from about fifteen Rupees to forty Rupees or even fifty Rupees a beegah. The fair average is about twenty-five Rupees. These documents had been compiled from returns given by official and unofficial gentlemen, and had every guarantee for accuracy. It had, therefore, been thought that a tax of five Rupees a beegah or of four annas per cottah on such a return, would not be excessive. This is the amount proposed to be fixed by the Bill. With regard to the article Pawn, the information is still incomplete, though enquiries are now being carried on; but from what has transpired hitherto, it is thought that double the rate charged on Tobacco will not be immoderate, or eight annas a cottah. There are provisions with heavy fines against illicit cultivation, and the agency of the zemindars, talookdars, and under-tenants, and their naibs and servants, is here called into play. A penalty of five hundred Rupees is proposed for neglect to give information to the nearest Magistrate, or the nearest police officer; and police officers themselves are also made responsible for early information under somewhat similar penalties. The language of the Opium laws has been here introduced bodily. They are well known: they are very stringent: and their very stringency has prevented all attempts at evasion: while the penalty, from its mere severity, has very rarely been imposed. A provision is also made for the grant of one half of the penalty to the informer, and for an appeal in all cases of fine: the cases, moreover, being decided by Courts or officers not in any way connected with the tax or its collection.

Then comes a Section, which, whatever may be the feelings which the other parts of the Bill may excite, will, I hope, be regarded with unmixed

gratification. An annual statement of the gross proceeds of the tax, of the cost of collection, and of the expenditure thereof in public works, must be published, for all persons to see, in the Official Gazette at the close of every year. As regards the chance of smuggling, I have perused with interest a valuable communication furnished to the Lieutenant-Governor by my friend the Honorable Member for the North-Western Provinces, pointing to the difficulties of preventing the import of Tobacco. If the Tobacco tax should be established in Oude and in the North-Western Provinces, there will be little temptation to smuggle Tobacco into Behar or Bengal. Should it not be established, the remedy will be to re-organize the old Customs Line which guarded the importation of salt from Allahabad into Behar. As regards the Eastern Frontier, it will be not more difficult to watch the importation of Tobacco from Nepal or from the Hill countries, than it is now to watch the importation of Opium. There will certainly remain the country which borders on the Madras Presidency towards Ganjam, and the whole line of the South-West Frontier Agency. But in regard to this I can only say that the local Government must be prepared to use the means at its disposal and, if necessary, to increase the means and the agency to the requisite efficiency.

In regard to smuggling by sea, the importation of foreign Tobacco is already sufficiently met by the existing Customs laws. As regards Tobacco brought from any Indian port to Calcutta, it must be remembered that by an Act passed in 1848 all Indian ports are declared to be one and the same, and it has therefore been thought expedient to introduce into the Bill a provision, empowering the Government to tax Tobacco imported from Madras, Bombay, or any other Indian port, at rates corresponding with those imposed on the cultivation of the plant by the present enactment. In short, whatever may be the dangers to be apprehended from smuggling, they are not such as to bar the present experiment; the Government must be prepared to meet the smuggler wherever he may show himself, by land or water, as best it may.

These, Sir, are the main provisions of the Bill, and I believe that it will have the merits of harmoniousness and of expediency, as well as of productiveness. Under the sanction conveyed by the Governor-General in Council, it will be in harmony with the new system which has been lately inaugurated, and which, if financial questions were formerly a sealed book, will soon, I trust, leave them an open letter. It will place at the disposal of each Government a sum drawn from its own Provinces and its own subjects, in the mode best suited to their social peculiarities, and will enable their ruler, while he imposes the burdens, to confer, at the same time, a larger portion of benefits. It will be a guarantee to the community that the sum raised from their industry, their profits, and their increasing wealth, shall no longer be swallowed up in the unseen abyss of the Imperial Treasury, but shall be spread widely over the face of the country in visible and tangible works, either improving the natural communication by water, or rendering the existence of a four-wheeled carriage in the very heart of a Bengal district no longer an impossibility or an absurdity: saving us from the danger of too much water or of too little; preserving sheets of cultivative and fertile plains teeming with every kind of produce from threatened inundation, or again, creating fruitful water-springs in a dry and barren ground.

It will be the first attempt at local taxation on a more extended scale than the taxation of ferries, or of roads, or of the inhabitants of towns and cities, for mere purposes of conservancy and police; but I sincerely hope that, if the first, it will be only the first in a long series of experiments, in which the administrators of other Provinces may obtain a signal triumph over repugnance to taxation, and may exhibit a fertility of expedients, a skill of resources, and a power of adapting means to ends, in a third field, besides those two in which administrative qualities have

hitherto shone conspicuous; a field other than the establishment of revenue systems on broad and comprehensive principles, or than the pursuit, detection, and punishment of crime.

SIR BARTLE FRERE said, he believed the first reading of this Bill required to be seconded. In doing so, he would take the opportunity of stating that it was part of a general measure only in so far as it was one of those schemes of local taxation which was described by Mr. Laing in his Budget Speech in April last, when he said that it was proposed to leave to the local Governments to tax those sources of Revenue which could not conveniently or properly be made subjects of Imperial taxation. Tobacco was one of these objects of taxation, which, after very detailed enquiry, it was found impossible to deal with as the subject of any general measure, and it was one which the Lieutenant-Governor of Bengal considered likely in this particular Province to prove most fruitful. It was not, however, the intention of the Government of India to introduce any general measure for the taxation of Tobacco throughout India. It might be peculiarly applicable to Bengal, but must not be taken as a safe precedent to follow in other parts of the country. With these remarks he begged to second the Motion for the first reading of the Bill.

The Motion was carried and the Bill read a first time.

LIMITATION OF SUITS.

THE VICE-PRESIDENT moved the second reading of the Bill "to amend Act XIV of 1859 (to provide for the limitation of suits.)"

MR. HARINGTON said, referring to the somewhat prominent part which he had considered it his duty to take in opposition to the Bill introduced into this Council in the month of April last for suspending the operation of the Act which the present Bill had been brought in to amend, he deemed it right at once to rise and say that it was not his intention to oppose the Motion for the second reading of this Bill. With the permission of the Council, he would briefly explain his reasons for the course which he considered it proper to adopt in respect to this Bill. The Bill had been introduced by the Honorable and learned Chief Justice of Her Majesty's Supreme Court at Calcutta, who was the highest judicial authority in India, and he was so, not only from the high position which he held, but also from his eminent talents, his profound legal knowledge, and his large experience. From long practice at the bar and as a Judge, the Honorable and learned Chief Justice, who had brought in this Bill in his capacity of Vice-President of this Council, must possess a practical acquaintance with the subject of the law of limitation and with the working of that law, far beyond any other Honorable Member of the Council except the Honorable and learned Judge opposite (Sir Charles Jackson), and he must be well aware of the practical bearing and effect of the legislation of 1859 upon the class of suits to which the present Bill related. The Honorable and learned Vice-President having then taken upon himself the responsibility of introducing this Bill, and having strongly recommended the Bill for their adoption, he (Mr. Harington) felt that the Bill was not one which could be lightly treated by this Council. Whatever might be the views of individual Members, he did not think that the Council would be justified in throwing out the Bill upon the motion for the second reading, or without further enquiry. Whatever might be the ultimate fate of the Bill, it seemed to him that the Bill deserved at the hands of the Council full and careful consideration.

Like the Honorable and learned Vice-President, he had had the honor of being waited upon by a deputation consisting of the Master and several Members of the Calcutta Trades' Association, who had discussed with him in temperate language and in a candid and intelligent manner what they regarded as the defects of the present law and the necessity which appeared

to them to exist for a change in it, such as that proposed in the present Bill. He felt very much obliged to these gentlemen for coming to see him and for the information which they had given him. He thought it was much to be regretted that public bodies like the Calcutta Trades' Association and others interested in matters which formed the chief subjects of legislation in this Council did not communicate more frequently with the Members of the Council. He ventured to assure them, on the part of the Members of any Council that might be established in the place of the present Council, ready access at all times and, at least, a patient hearing. Much public benefit must result from such communications. They would often prove the means of removing misunderstanding and of imparting valuable information to the Members of the Council, not perhaps otherwise attainable, and which Honorable Members would find most useful in the discharge of their important functions. Had the Calcutta Trades' Association bestirred themselves when the Bill which was now Act XIV of 1859 was republished in the early part of 1859 for two months for general information, and had they then represented to the Council what had been urged by the Members of the Association in their recent interviews with the Honorable and learned Vice-President and himself, it was quite within the limits of possibility that the result might have been to obviate the necessity of further or fresh legislation at this time. He would not allude to the neglect of which he thought that it must be admitted the Calcutta Trades' Association had been guilty at the time to which he was referring, namely when the original Bill was under consideration, further than to say that any laches committed by the Association at that time would not of itself constitute a sufficient reason for refusing relief now if any adequate cause for altering the law could be shown to exist. He was much influenced in the course which he was at present pursuing by the consideration that the Act of 1859, as orginally framed by the Law Commissioners, and as read a first and second time in this Council, proposed to allow six years as the period of limitation for the institution of suits of the nature of those referred to in the present Bill, and that the period was reduced to three years when the Bill was passing through the Committee of the whole Council. The Calcutta Trades' Association had, therefore, high authorities in support of their objection. They had also succeeded in making a convert of the Honorable and learned Vice-President, which was another very strong point in their favor. With regard to himself, he was not prepared to admit that the arguments employed by the gentlemen who waited on him, or the facts stated by them, had carried conviction to his mind or satisfied him that the part of the Act complained of by the Calcutta Trades' Association was wrong and ought to be altered ; but he was bound to acknowledge that his confidence in this particular part of the Act was not as great after his interview with these gentlemen as it was before. Against the present Bill there was the fact that, although the law of limitation in respect to Bills for articles sold in retail might be six years in England, in Scotland it was only three years, and in France it was only one year, and they were not told that in these two countries the shorter periods of limitation allowed caused any inconvenience or were found to be too short to admit of tradesmen recovering their just dues by process of law, if necessary, or that trade was injuriously affected in consequence. For his own part he should have thought that quick returns which the present law was calculated to promote, must be much more advantageous to tradesmen generally than the present system of long credit which often necessitated and, it could not be denied, did lead to exorbitant prices and, he presumed, fewer sales, and proper provision being made for keeping claims alive and in the case of absence from the country, on both of which points he believed that the Act

Mr. Harington

of 1859 contained ample provision, the effect of the shorter period of limitation must, he should have supposed, be to strengthen instead of weakening the hands of tradesmen in recovering the amount of their bills from dilatory customers. He had suggested this to the Members of the Calcutta Trades' Association who had waited upon him, but he was surprised to find that they did not agree with him. Then, he wished to call attention to the fact that notwithstanding the discussion which took place in this Council and in the newspapers in April last, when it was proposed to suspend the introduction of Act XIV of 1859, the Calcutta Trades' Association stood alone for some time in their opposition to the Section to which the present Bill referred. After a time a Petition, by no means numerously signed, had been received from Benares, and now at this late period a Petition had come in from the Trades' Association at Madras. So late had this Petition been received that copies of it were not yet in the hands of Honorable Members; at least he had not received a copy. He had not read the Petition from Madras, but looking to the length of time which had been allowed to elapse before that Petition was presented, he was led to think that it had been given in now very much because the Madras Trades' Association considered themselves bound to stand by their Calcutta brethren. From the Bombay Trades' Association no complaint of the Act had been received, and the Council were justified in inferring from their silence that they did not agree with the Calcutta Trades' Association. With exception to Benares, none of the large towns in the Mofussil, if he recollected rightly, had petitioned against the particular Clause of the Act to which the present Bill related. One of the Judges of the Sudder Court at Agra had written to him to say that he was very averse to extending the term of limitation beyond what was provided by the Act; and a high judicial officer in Oude had expressed a hope that the Council were not going to let the limitation Act XIV of 1859 be knocked on the head all over India because the old system most suited the interests of some one class. The general opinion in the Mofussil certainly seemed to be in favor of retaining the Act as it now stood, and if it should appear that there was really no general desire for a change, he thought that the Calcutta and Madras Trades' Associations could scarcely expect this Council to alter a very important provision of the law simply to meet their convenience. He was prepared to admit that a case had been made out for enquiry, but, at present, not for more than enquiry; and he would therefore vote for the second reading of the Bill in order that it might be published for the information of the public. This was the only way in which they could elicit an expression of public opinion upon the Bill. Under the Standing Orders of the Council, a Bill must be read a second time before it could be published, but in voting for the second reading of the Bill he must not be understood as affirming its principle or as admitting its necessity. He was glad to find that the present Bill was not open to what appeared to him to be one of the greatest objections to the Bill which was introduced in the month of April last. He had always thought that that Bill went far beyond the necessity of the case. All that the Calcutta Trades' Association asked for was, not a suspension of the entire Act XIV of 1859, but simply that a particular Section of the Act might be modified. Nevertheless, on this application, the Council had suspended the operation of the whole Act for a period of nearly eight months,—and then he would ask them to consider the circumstances under which the suspension had taken place. It was directed at a time when only a very small section of the community could take advantage of it. In fact, the suspension was known in time to be of use only to the inhabitants of Calcutta and its immediate neighborhood. Meanwhile hundreds, nay thousands of suits had been instituted in all parts of the country. The parties who brought these suits, when they heard what had been

done, and found that had they only waited a little they might have deferred the institution of their actions for several months, were naturally dissatisfied, and complained that the same opportunity had not been given to them which had been afforded to others. But this was not all. When the Bill introduced in April last was under consideration, he ventured to point out to the Council that, if they acted as was then proposed, they would shake the confidence of the public in the legislation of the Council, and would lead the public to think there was no certainty in the laws passed by them,—and such had really been the effect of the Bill to which he was referring. From more quarters than one he had received letters asking what were the intentions of the Council in respect to Act XIV of 1859, and whether it was intended that that Act should really come into operation on the 1st January next. In the uncertainty that prevailed as to what might be the future law of limitation, those who had suits to bring did not know what to do. The Council having at the last moment suspended the operation of the law on one occasion, it was felt that the same thing might occur again, and he might mention that an application had been made to the Honorable the Lieutenant-Governor of the North-Western Provinces, in which he had been asked to put forth some proclamation which should have the effect of assuring the public mind on the point, and of removing the present feeling of doubt and uncertainty. But the Honorable the Lieutenant-Governor could not, of course, know what were the intentions of this Council, or what they might do. He (Mr. Harington) hoped that the fact of the present Bill being confined to a single Clause of Act XIV of 1859 would satisfy the public that there was no intention of altering any other part of the Act, and that the rest of the Act would really take effect from the 1st January next. It had been alleged that the large number of suits which he mentioned to have been instituted just before the date fixed for Act XIV of 1859 to come into operation, showed that he (Mr. Harington) was wrong in the grounds of his opposition to the Bill brought in to suspend the operation of that Act in the month of April last, and an inference had been attempted to be drawn from the fact of the large number of institutions unfavorable to the Act and as indicating a general dislike to its provisions throughout the country. But he contended that the number of suits instituted at the period referred to afforded no ground for either the allegation or the inference just mentioned. If the large number of suits brought just before the time originally fixed for Act XIV of 1859 to come into force, proved any thing, it proved this, that the people throughout the country were perfectly acquainted with the requirements of the law and that they were careful to conform to the same. Perhaps he might be asked why, if the people did not dislike the Act, they waited until almost the last moment before bringing their suits. The answer which he would give to this question would be that those who asked it, could know very little of native character. The people were aware that up to a certain time they were quite safe, and they saw no reason for bringing their suits before. Had twelve years been allowed instead of the period mentioned in the Act, exactly the same thing would have happened. Those who had had any experience in the Civil Courts in this country must have observed that the great majority of cases were not instituted until the period of limitation allowed by law was on the point of expiring. He did not know that this dilatory habit was confined to the people of India. He found from a paper which had been sent, he believed, to every Honorable Member of this Council, that a highly respectable and very intelligent European gentleman, Mr. Hills, had similarly deferred the institution of the suits which he wished to bring until just before the time fixed for Act XIV of 1859 to come into operation. Had he known in time of the suspension of the Act, he doubtless would have waited as others had done

but he had told the Council that the information reached him too late to admit of his acting upon it. He (Mr. Harington) must repeat that no inference unfavorable to Act XIV of 1859 could fairly be drawn from the number of institutions towards the end of April and in the early part of May last. All that the fact of those institutions showed, as he had said, was that the people generally were well aware of the provisions of the law, and that those who were interested in complying with its requirements, took very good care to keep within the law.

MR. SETON-KARR said that he would offer no opposition to the second reading of the Bill. He had not the honor of a seat in Council at the time of the first reading, but he had taken the trouble to make himself acquainted with the able arguments then advanced on both sides. He was not sure, however, whether these changes from twelve to three years, and then back again to six, tended to inspire confidence in our legislation. In reply to two gentlemen of the Trades' Association, he had certainly said, in a general way, that he had no great disinclination to see six years established, but the present Bill rather split the principle into two; it expressly excluded suits for the hire of animals, vehicles, boats, or household furniture, as well as suits for rents for any buildings or lands. He quite conceived that good reasons might be given for this division, but, as the Bill stood, Messrs. Cook and Co. or Messrs. Hunter and Co. would have to sue in three years, while other tradesmen could have their time enlarged to six years. With these remarks he should not oppose the second reading.

MR. FORBES said that he had no intention of doing otherwise than voting for the second reading of this Bill, but the remarks which had been made by his Honorable friend the Member for the North-Western Provinces, regarding the inconveniences that had arisen when the limitation law was suspended in April last in consequence of all but those living in Calcutta having been obliged to bring their suits to suit the terms of the then existing law and in ignorance of any intention to suspend its operation, led him to wish to suggest to the Honorable and learned Chief Justice that some arrangement should be made to prevent the occurrence of similar inconvenience on the present occasion. In Madras the inconvenience referred to had been felt no less than elsewhere, and in their annual report on the administration of the year, the Government had accounted for a great increase in the Stamp revenue by referring to the number of suits which had been brought towards the end of April in anticipation of the new law of limitation coming into operation.

Now if the present Bill were to pass a second reading to-day, without pretending to make a very exact calculation, he might say that the three months for which it must, under the Standing Orders, be published, would not have expired till the 7th of December, a Select Committee could not report upon it till the 14th, it would not pass through a Committee of the whole Council till the 21st, nor be read a third time and passed till the 28th, or only three days before the present law of limitation would, but for the passing of this Bill, come into operation, and it was obvious that parties out of Calcutta would be in precisely the same position as they were in April last, and would be obliged to bring their suits in ignorance of whether the present Bill would become law or not.

SIR ROBERT NAPIER said, he intended to vote in favor of the Bill introduced by the Honorable and learned Vice-President, because he had learnt from various sources that it would materially affect the interests of a large portion of the commercial community in India. He could not pretend to go into the whole history of the case; he could only view it by such light as common sense could throw upon it. What was the purpose of a law of limitation? The Honorable and learned Vice-President had explained clearly that it was to protect the purchasers of goods from demands being brought against them after such a long period of time that

proof of those demands having been already satisfied, might have passed away. He (Sir Robert Napier) could see no other object of such a law. In England six years had been found a proper limit, and the reasons for having such a long period there existed tenfold in this country. Various reasons had been given why the Act should not be altered. Some theoretical objections had been made regarding short credits and low prices. The Honorable and learned Vice-President, however, showed, the last time that the subject was discussed in that Council, that credits and prices could not be affected by it; but if they could, it had long ago been settled that the best thing you could do for trade was *to let it alone.* It was also urged that the objections to the law had come in at too late a period to be attended to. He thought that the Council ought to be very much obliged to the gentlemen who had come forward even at the eleventh hour to prevent them from perpetuating an inexpedient law. It had also been said that, if the Act were altered, it would shake the confidence of the public in the Council. But our laws were not like the laws of Darius. On the contrary, if a law was found to work badly and a Government, after listening patiently to complaints against it, altered it for a better one, such a proceeding would increase rather than diminish the confidence of the public. He should, therefore, gladly support the Honorable and learned Vice-President's Bill.

SIR BARTLE FRERE said, he had very little to add to what had been said by Honorable Members with regard to this Bill, as it was his intention to vote for the second reading. He had only one point to notice, in the hope that it would elicit the opinion of the Honorable and learned Vice-President, so as to enable parties at a distance to make up their minds on the subject. He believed that no such provision as a limitation of suits was known in the Common law, and that it was therefore only a matter arranged by Statute, and the period of limitation was essentially an arbitrary one. He had gone through the discussions on this subject, and could not meet with any statement of the reasons why the period of limitation was originally changed from twelve years to three, nor why it was now intended to revert to six. He confessed that, if they were now legislating on the subject for the first time, he should have been inclined to agree to the period now proposed, and to consider that the period which was in force within the limits of the Supreme Court and which was shorter by half than the period obtaining in the Mofussil, was a good period to fix as an experimental measure. But it was a different matter when the period of three years had been deliberately fixed, and he should like to know the reasons both for preferring three years to twelve years in the original Bill, and also for now reverting to six. He thought it would be satisfactory both to the Members of this Council and to parties at a distance to know the views of one or both of the Judges on the subject. There was another point which he hoped would not be forgotten. It had been referred to by the Honorable Member for Madras who had observed that the publication of the Bill for three months, according to the ordinary course, would bring us to the end of the year when the new law of limitation would come into operation. Probably two months would be sufficient to allow for the publication. It was only in the Presidency towns, and the larger towns in the interior, that opinions might be expected to be expressed with regard to the Bill, and for this purpose two months would be amply sufficient.

MR. FORBES said, he would beg leave to suggest to the Honorable and learned Chief Justice to introduce a Bill and to pass it through all its stages to-day, to extend for a period of six months the operation of the Section to which his Bill particularly referred.

THE VICE-PRESIDENT said that, if Honorable Members were willing to pass such an Act, he was quite prepared to introduce it, but that must be

done to-day. Or he was quite ready—though he was not sure if the Council would agree to such a course—to suspend the Standing Orders and pass the present Bill at once. He did not think that those persons who had commenced their suits would be injured by such a measure, or that they would be throwing away their money by having brought those suits which must in ordinary course be tried and determined. The great difficulty in this case in point of time was in regard to those persons who would be in uncertainty whether to commence their suits or not, such as the tradesmen in Calcutta, who would be obliged against their wishes to institute their suits against their creditors, otherwise their actions would be altogether gone.

With regard to what had fallen from the Honorable Member of Government, he could only inform him that there was no fixed period of limitation of suits in Common law. The Government provided Courts to administer justice between party and party, and a person might go into Court at any time. But to prevent creditors from laying by their claims until the debtors might have lost their receipts for the payment of those claims, or when the witnesses to the transaction might be dead, a law was passed which provided that suits should be brought in such cases within six years after the cause of action had accrued. Honorable Members would bear in mind, moreover, what he had observed before, that the cause of action did not accrue till the time of credit given had expired, whether that time was twelve years or twenty. Therefore a law of limitation had nothing to do with the question of giving credit.

With regard to Act XIV of 1859 it was brought in by Sir James Colvile and published in 1855. It was allowed to lie over four years before it was taken up by the Council. The period of limitation in respect of retail bills was originally fixed at six years, which was subsequently reduced to three years. Although the Bill was passed in 1859, or, as he had said, four years after it had been introduced, it was not allowed to come into operation till after two years, *i. e.*, till 1861. Shortly before the time fixed for the commencement of the Act, some gentlemen connected with trade came forward and represented that they had just become aware that the Act was to come into force, and that they would have no time to communicate with their debtors scattered all over India, and that they would be unable to recover their claims without immediately instituting actions against them. The Council, therefore, suspended the operation of the Act, and in so doing did, he thought, perfectly right, although he (the Vice-President) was not there then to justify what had been done. If the Council had not done so, lakhs and lakhs of Rupees would have been lost to the trading community. The Honorable Member for the North-Western Provinces had said that the suspension of that Act had caused a great want of confidence in the legislation of the Council. He (the Vice-President) would ask the Honorable Member, who were the persons who had been damaged by it? The only persons said to be damaged were those who had been obliged to bring actions, and how were they damaged? They had brought their actions, and recovered their dues. The only injury of which they could complain was that they had not had the opportunity of postponing their actions.

MR. HARINGTON here interrupted the speaker and said that the want of confidence which he mentioned as having been caused by the legislation of April last, was felt not so much by those who, supposing Act XIV of 1859 would come into force upon the date fixed for its taking effect, had brought their suits accordingly, but by those who had suits to bring. In the uncertainty which prevailed as to what might be the future law of limitation, they did not know what to do; whether they should bring their suits, or defer the institution of them.

THE VICE-PRESIDENT resumed. He thought that people ought to know that an Act would come into force on the date when it was stated it would come into force. He did not think that

people would feel a want of confidence in the Legislature when it found that it had passed an Act which would operate unjustly, and suspended it. He did not think that there ought to be any want of confidence in the Legislature when the people found that the Legislature was carefully watching over the interests of those for whom it was bound to legislate. Now, what was the hardship referred to by the Honorable Member for the North-Western Provinces? It could not have been the suspension of the law, but the law which had been suspended. The Honorable Member had said that these persons complained because they were obliged to bring their actions within three years, and yet the suspension of the Act which required their actions to be brought within that time was spoken of as a great hardship.

MR. HARINGTON here remarked that what he meant to say was that the parties who, not knowing of the suspension of the Act, had brought their suits within the period prescribed by law, contrasted their case with those who, being aware of the suspension of the Act in time to take advantage of the suspension, had obtained a delay of nearly eight months, and the result was a feeling of dissatisfaction. These persons felt that the same advantage ought to have been allowed to all or to none.

THE VICE-PRESIDENT resumed. He thought that that was a very vague ground of complaint. It was in the nature of the "dog in the manger" to complain that others were not obliged to bring their actions as they had been. Besides, when we suspended the Act, those people were at liberty to proceed with their actions if they chose. All that they could say was that they were obliged to bring their suits sooner than they wished. The Honorable Member for the North-Western Provinces observed, however, that people in this country, as every where else, did not like to bring their actions until the very last moment, a clear proof that they did not want the period to be shortened. But however that might be, that was what had been complained of, and that was what he proposed to alter by the effect of this Bill.

As to what should be the fixed period of limitation, that was a matter in which those persons who were engaged in commercial pursuits were the best judges. We had been told by the Trades' Association in Calcutta that, if we reduced the period to three years, we should be doing a serious injury to trade. We were now told the same thing by the Trades' Association in Madras. Now these gentlemen, who were engaged in trade, concurred in saying that three years was too short a period. They were not similarly circumstanced in India as they were in England, where they were represented in the House of Commons. He thought that this Council should listen, and willingly listen to, and take the advice of—he did not mean to say, be implicitly guided by—those persons engaged in a particular business who would be affected by any particular law. He did not think that we should stand by our own knowledge of things. Now what was the particular hardship in extending the period from three to six years? None had been proved. On the other hand, the Petitioners had pointed out that, if we did not alter the period of limitation, we should be doing them a serious injury. We ought, then, to listen to their complaint, unless we found that, by altering the law, we should be doing injustice to others. Looking to the law in England where the period of limitation was six years, and where less difficulties existed, he did not think that any one would be injured if we increased the period from three years to six years which was already the law in the Presidency towns, and which was still the law in England.

With reference to the remark of the Honorable Member for Bengal, he would merely observe that the hiring out of buggies and horses or boats stood on quite a different footing from goods sold by retail dealers. The Honorable Member had said that Messrs. Cook and Co. would be barred from bringing their suits after three years, whereas Messrs. Wilson and Co. would

not be so barred. But Messrs. Cook and Co. had not represented that they would be injuriously affected by it, and therefore the Council might very well conclude that three years was ample time for the recovery of money due for the hire of buggies and horses and boats. So also as to rents of houses ; no one had pointed out that three years was too short a limitation, besides which, the landlords in Calcutta had the law entirely in their own hands, and could take out a distress-warrant whenever their rents were not paid.

Under these circumstances he saw no objection to the alteration of Act XIV of 1859 as proposed by this Bill. But, as pointed out by the Honorable Member for Madras, if the Bill were proceeded with in the usual course, its publication would not expire so as to enable the Council to pass the Bill before the 14th of December next. Even if the publication was to be for two instead of three months, should there be any delay in the opening of the new Council, the Petitioners would not know how to act if Act XIV of 1859 were allowed to come into operation, as it now stood, on the 1st of January next.

He proposed, therefore, to refer this Bill, if it passed a second reading to-day, to a Select Committee in view to its publication in the Gazette, leaving it to the new Council to deal with it as they thought proper; and if Honorable Members would give him their support, he would at a later part of the day move for a suspension of the Standing Orders to enable him to introduce and pass through all its stages forthwith a Bill to postpone the operation of so much of Act XIV of 1859 as related to retail bills.

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

STAMP DUTIES.

MR. HARINGTON moved the second reading of the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)."

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

FLOGGING.

The Order of the Day being read for the third reading of the Bill "to provide for the punishment of flogging in certain cases"—

MR. HARINGTON moved that the consideration of this Bill be postponed till after the consideration of the other Bills which stood in the Orders of the Day.

Agreed to.

MALACCA LANDS.

MR. HARINGTON moved that the Bill "to regulate the occupation of land in the settlement of Malacca" be read a third time and passed.

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

PORT BLAIR.

MR. HARINGTON moved that the Bill "to regulate the administration of Port Blair and other Settlements in the Andaman Islands" be read a third time and passed.

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

MERCHANT SEAMEN.

MR. FORBES moved that the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)" be read a third time and passed.

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

ARTICLES OF WAR.

The Order of the Day being read for the third reading of the Bill "to consolidate and amend the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army"—

SIR ROBERT NAPIER moved that the Bill be re-committed to a Committee of the whole Council for the purpose of considering certain proposed amendments therein.

Agreed to.

The Bill passed through Committee after amendments in Articles 78, 79, and 89, and, the Council having resumed its sitting, was reported.

SIR ROBERT NAPIER then moved that the Bill be read a third time and passed.

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

RECOVERY OF RENTS (BENGAL).

MR. HARINGTON moved that the Council resolve itself into a Committee 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);" 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 two Petitions, which were presented to-day, having been read as usual by the Clerk of the Council —

MR. HARINGTON said, as he understood that there was no intention of pushing the Bill to which the Petitions just read related, through the Council to-day, he would now move that those Petitions be printed.

THE CHAIRMAN said that, as the Bill was not to be passed to-day, it appeared to him that it would be better to postpone the further consideration of the Bill until the Council had an opportunity of considering the Petitions.

MR. SETON-KARR said, with regard to the two Petitions which had just been read, that he wished to state that an amendment imposing a penalty of twenty-five per cent. on any sum decreed as rent, when such rent had been withheld on frivolous and absurd pretexts, had been already prepared by himself, and had been laid before the Council. It had the approval of the Lieutenant-Governor of Bengal, and, if passed, would certainly remove one of the objections taken in the Petitions.

MR. HARINGTON suggested that the Sections objected to by the Petitioners might be adopted to-day merely *pro formâ*. This would dmit of thea Bill being republished for general information, and they might hereafter take into consideration the objections urged by the Petitioners to the amendments proposed by the Select Committee on the Bill together with any other amendments which might be considered necessary. He believed he was right in saying that, under the Standing Orders, amendments proposed by a Select Committee could not be regarded as forming part of a Bill until they were ordered to stand part of the Bill to which they related by a Committee of the whole Council.

THE CHAIRMAN said, he did not think that the Council could go into Committee upon the Bill and pass the Sections *pro formâ*, and then allow the Bill to be republished without leading it to be supposed that the Sections had been adopted by them. That was a course which he could by no means approve, particularly after the Petitions which had just been read. The better course would be to postpone the Bill until after the objections taken by the Petitioners had been fully considered. He could understand the first part of Section III, which provided :—

"When rent is payable by an under-tenant or ryot at a certain rate or rates according to the quantity of land held or cultivated by him, and such under-tenant or ryot is not restrained by express agreement from requiring a measurement of such land, and shall have given notice to the person to whom the rent of such land is payable that he requires the same to be measured, and such person has refused or neglected to make or to be present at such measurement, such under-tenant or ryot may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under the said Act X of 1859, and shall pass an order either allowing or disallowing the measurement, and if the case so require, enjoining attendance of such person, or excusing his attendance."

But the Section went on to say—

"If such proprietor, after the issue of an order enjoining his attendance, neglects to attend either in person or by agent, it shall not be competent to him to contest the correctness of the measurement made in his absence;"

and by Section IV it was provided—

"If the Collector shall issue an order enjoining the attendance of the person to whom the

rent of any land is payable either by himself or by his agent under the last preceding Section of this Act, or if the Collector shall issue an order enjoining the attendance of any under-tenant or ryot under Section XXVI of the said Act X of 1859, such person or such under-tenant or ryot shall be bound to attend in obedience to such order; and if such person or such under-tenant or ryot shall fail to attend, he shall be liable to the penalty in that behalf provided by Section 174 of the Indian Penal Code, and for the enforcement of such penalty the Collector may exercise all the powers of a Magistrate."

According to the ordinary law, if a party to a suit, being the plaintiff, did not enter appearance, the suit was dismissed; or if he were the defendant, the case was decreed against him *ex-parte*. In like manner, if a landlord refused to attend the measurement of his land, the measurement should be carried out in his absence and he should be bound by it. But he failed to understand why a landlord should be liable to six months' imprisonment under Section 174 of the Penal Code, because he failed to appear when his land was measured.

What we were called upon to do now was to pass this Bill *pro formâ* and publish it as approved by the Council, when we had hardly had time to consider the Petitions presented to-day. His present impression was that the Clauses objected to were not proper Clauses; at least Section IV was not so. He should, therefore, suggest that the consideration of the Bill be postponed.

MR. HARINGTON said he had all along doubted the expediency of passing this Bill, or, indeed, of making any changes at the present time in Act X of 1859. He was not prepared to say that alterations might not be required in the Act, but he thought that further information was required, and that the only satisfactory way of dealing with the Act, and with the various suggestions which had been received in respect to it, would be to appoint a Select Committee to consider the Act and these suggestions, and to propose such modifications as might be deemed advisable. As a preliminary measure it might be desirable to send a Message to his Excellency the Governor-General in Council, asking His Excellency to call upon the Lieutenant-Governors of Bengal and the North-Western Provinces, and through them upon the local officers, for a full report of the working of the Act and of any amendments which they might be prepared to recommend. These reports, as soon as received, might be laid before the Select Committee which he had suggested should be appointed, and be considered by that Committee. This was, he thought, the only way in which the various questions connected with Act X of 1859 which had arisen, could be satisfactorily considered and disposed of. Under these circumstances he ventured to suggest that the present Bill should be withdrawn.

MR. SETON-KARR objected strongly to withdrawing the Bill. He wished to explain how the amendments complained of in the Petitions had been engrafted on Mr. Sconce's original Bill. It was found, by last year's experience, that the provision of Section XXVI of Act X of 1859 was insufficient to procure the necessary attendance of ryots whenever the zemindar wished to measure the lands. The right of the zemindar to measure lands was distinctly recognized by the Section in question and certain formalities were prescribed therein. But these formalities had not effected the desired object. If ryots, as had been the case, absented themselves in a body, or never went near the zemindar's agent, there was absolutely no one who could point out any place where the measurement should begin. If only two or three ryots attended, the zemindar might make a beginning, but the passive resistance of a whole body literally stopped all attempts at going on. To remedy this, a penalty had been introduced by him for non-attendance, and this had first taken the shape of a fine. But it was pointed out by the Honorable Member for the North-Western Provinces that a Section in the Penal Code affixed a severe penalty to non-compliance with the lawful requisition of any public servant, and this penalty was accordingly resorted to as being ready at hand, and was introduced as an amendment. As re-

gards the application of the same penalty to the zemindar who failed to attend when the ryot claimed a measurement, there seemed at present no reason why the two should not, in this respect, be placed on an equality. The amendment was not the introduction of a new principle, but a supplement to the Rent Bill which distinctly recognised the right of the landholder to make a measurement. The other amendment imposing a penalty of twenty-five per cent. was, if new to the Rent Bill, quite in accordance with established principles of law, and with the practice of certain other Courts. But he (Mr. Seton-Karr) had no objection to the postponement of the Bill in order that any objections taken by the Landholders' Association, or the British Indian Association, might be duly considered. If the sense of the Council took this course, he should offer no opposition.

MR. HARINGTON said, after what had fallen from the Honorable and learned Chairman, it was clear that the amendments which had been proposed by the Select Committee could not be passed into law without a republication of the Bill. He understood that this was also the opinion of the Honorable Member for Bengal. The amendments in question had been proposed in consequence of a representation received from the Government of Bengal; and having been informed that they were considered necessary, he (Mr. Harington) had agreed to them. The Honorable Member for Bengal had given notice of another very important amendment to render ryots cast in suits for land-rent liable under certain circumstances to penal damages. This amendment, even if adopted by the Council, could not form part of the law until it had been published for the usual time. He understood that several other important amendments were considered necessary, one of which was in the Section under which a tenant might acquire a prescriptive right to the possession of the land held by him. The Sections which formed the entire Bill as brought in by the late Honorable Member for Bengal, were of comparatively small importance, and he believed that little, if any, inconvenience would be experienced if the passing of those Sections should be delayed for a short time. He thought, therefore, that as the Bill, framed in such a manner as would satisfy all parties, could not possibly pass into law to-day, the better course would be, as previously suggested by him; to withdraw the present Bill and to bring in a new Bill containing all such alterations in the existing Act as, after full consideration, might be deemed necessary or proper, and he would make a Motion to that effect, or if the Bill could not be withdrawn at the present stage and the Honorable and learned Chairman would move that the further consideration of the Bill be postponed, he would support the Motion.

The further consideration of the Bill was then postponed, on the Motion of the Chairman.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved that the Standing Orders be suspended to enable him to carry through its remaining stages the Bill "to amend Act XXI of 1860 (for the registration of Literary, Scientific, and Charitable Societies)."

MR. ERSKINE seconded the Motion, which was put and carried.

SIR CHARLES JACKSON then moved that the Council resolve itself into a Committee on the Bill; 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.

SIR CHARLES JACKSON moved that the Bill be read a third time and passed.

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

PUBLIC CONVEYANCES.

The Order of the Day being read for a Committee of the whole Council on the Bill "for regulating Public Conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations in the Settlement of Prince of Wales' Island, Singapore, and Malacca"—

MR. HARINGTON said, this Bill had been very materially altered by the Select Committee; in fact, the Bill, as it had left the hands of the Select Committee, was a new Bill. It was very desirable, therefore, that it should be published on an early date. As the Bill now stood, it could not pass into law without republication. It was contrary, he believed, to the practice of this Council to republish any Bill which had been amended by a Select Committee until the amendments proposed by the Select Committee had been considered and adopted by a Committee of the whole Council; but it had been suggested to him that, if the Council would agree to suspend the Standing Orders, the Bill might be published in the form in which the Select Committee had proposed that it should be passed before going through the Committee of the whole Council. It certainly appeared to him that this would be the most convenient way of dealing with the Bill, and he begged, therefore, to move that the Standing Orders be suspended to admit of his moving that the Bill be republished for two months before being further considered.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Bill be republished for two months before being further considered.

Agreed to.

SALTPETRE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate the manufacture of Saltpetre and of Salt educed therefrom;" 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 verbal amendment in Section XVII and after filling up the blanks in Section XVIII with the 1st December 1861 as the date of the commencement of the Act; and the Council having resumed its sitting, the Bill was reported.

MR. HARINGTON said, this Bill had undergone no material alteration since it was read a second time and published for general information, and as it was very desirable that the Bill should come into operation on an early date, he would ask the Council to allow the Standing Orders to be suspended to admit of his moving to-day that the Bill be read a third time and passed.

MR. FORBES seconded the Motion, which was put and carried.

MR. HARINGTON then moved that the Bill be read a third time and passed.

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

LIMITATION OF SUITS.

THE VICE-PRESIDENT asked to be allowed to suspend the Standing Orders in order to enable him to bring in and pass through all its stages a Bill "to postpone the operation of a portion of Clause 8, Section I, of Act XIV of 1859 (to provide for the limitation of suits.)" He said that he made this Motion in accordance with a suggestion made by the Honorable Member for Madras who had pointed out the difficulty which would arise if the Council were not prepared until the 14th December next to pass the Bill, which was read a second time to-day, to amend Act XIV of 1859. He (the Vice President) did not propose now to suspend the operation of the whole Act, but simply that part of it which related to retail bills. The Bill read a second time to-day could then be gone through in the regular course, and might be dealt with in such a manner as the Legislature of the day might see fit, *i. e.*, either read a third time or thrown out. If it

were read a third time, no harm would have been done by the passing of the Bill which he now proposed ; and if it were thrown out, the only objection that could hereafter be made was that a part of Act XIV of 1859 had been allowed to come into operation six months after the other part, and that during that period retail bills were made subject to the same law of limitation which had heretofore for a long time prevailed in the Presidency towns and which still prevailed in England.

MR. FORBES said that, as he had suggested the measure, perhaps he might be allowed to second the Motion for the suspension of the Standing Orders.

The Motion was put and carried, and the Bill was read a first and second time on the Motion of the Vice-President.

THE VICE-PRESIDENT then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

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

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

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

FLOGGING.

MR. HARINGTON moved that the Bill " to provide for the punishment of flogging in certain cases" be read a third time and passed.

SIR CHARLES JACKSON said that, when he left the Council last Saturday, he certainly did not intend to do more that day than record his vote against the third reading of this Bill. But since that time he had had an opportunity of consulting gentlemen whose professional acquaintance with this subject entitled them to offer a correct and valuable opinion upon it, and he must say that, anxious as we all were last Saturday, and notwithstanding all that we then did to mitigate the asperities of this Bill, we had been really working in the dark and had passed an enactment through Committee more severe than any of us had intended. He had made enquiries and had had the opportunity of looking at certain documents on the subject recorded in the Office of the Medical Board, and the result of his enquiries showed that the state of things described in the letter from the Magistrate in the North-Western Provinces which he read last Saturday, was not confined to those Provinces. He observed from the papers which he had obtained from the Medical Board, that flogging with the ratan had formerly been the cause of death in several instances in Bengal, and in one case when only twenty-five strokes were administered. He had, moreover, the authority of a medical gentleman of eminence in this town for stating, that he saw a man flogged in Bengal, who, after thirty stripes, was laid on the ground, and his back was then covered over with earth by way, he supposed, of mitigating his pain, and after an interval—being quite helpless and unable to walk—he was taken up by each shoulder, and dragged to the hospital, his legs trailing along the ground. Now, if this was the result of thirty stripes with a ratan, he (Sir Charles Jackson) was sure that we had been legislating a good deal in the dark. He was surprised that the Government had not laid before the Select Committee on this Bill the result of the enquiries instituted under the direction of Lord Dalhousie in 1851 and 1852. It appeared that the attention of the Government was at the time called to the fact of deaths resulting from flogging. Lord Dalhousie then directed an enquiry to be held, and we all knew how thoroughly he went into any question which attracted his attention. He (Sir Charles Jackson) had procured some of the papers on the subject from the Medical Board, who appeared to have ascertained the opinions of the Assistant Surgeons all over the Presidency. The enquiry involved three points, namely, 1st, as to the use of the ratan on the back. 2ndly, whether the ratan was a better weapon

than a cat-o'-nine-tails, and 3rdly, as to the benefit of medical advice being obtained before the prisoner was subjected to flogging.

He had brought with him a few of the replies. He would now read part of the report of Dr. Wilson, Civil Assistant Surgeon of Rampore Bauleah in 1850. He would read an extract to show what the effects of the ratan were when well laid on, and not to show that such flogging was now general. Dr. Wilson said :—

"The following instances of death or severe illness after flogging occurred at Bauleah in April and May of 1833. The punishment was inflicted on natives with a *bate* or ratan on the back part of the chest; the results in these cases may in some instances be attributed to neglect.

Case 1st.—Ramlochun, thirty stripes on 8th of March, cured in eight days. The sores broke out again, but he was not sent to the hospital till his back was in a mortified state. He died on the 2nd March, symptoms of inflammation of the chest having followed the mortification of his back. Mr. Civil Assistant Surgeon Burt, in a letter, attributes this circumstance to the position of the man while flogged, recommending the hands and arms to be tied in a horizontal position during such punishment.

No dissection is recorded nor any detailed account of the case.

Case 2nd.—Surroop Chowkeydar, twenty-five stripes on the 17th March. In this case every remedy was tried from the first to prevent sloughing, but two gangrenous sores three inches by six, accompanied with severe inflammatory fever, proved fatal on the 4th of April.

No dissection nor detailed account of this case.

Case 3rd.—Robie, thirty stripes on 29th March 1833. On the 12th April seized with chrysipelas spreading over the trunk. He remained in a bad state and died on 21st May. The immediate cause of death was bowel complaint and cholera, but from the first he was in a weak and hopeless state. Dissection revealed adhesions between the lungs and ribs, opposite where the stripes had been inflicted, showing that inflammation had existed there and in every probability caused by the flogging. No record of details of this case.

Case 4th.—Fukeer Mahomed, fifteen stripes, severe fever and pain in the chest ensued; by bleeding, &c., these were somewhat subdued, but cough and purulent expectoration proved fatal on the twentieth day.

On dissection, the lungs were found a mass of disease and adhesions in the front and back part of the chest.

Cases 5th and 6th.—Ghattee and Dratree, twenty-fives stripes each, were not immediately sent to the hospital, and from exposure the wounds became unhealthy and sloughed. Both recovered.

Mr. Civil Assistant Surgeon B. Burt declared his opinion to be that thirty strokes of a ratan or less, inflicted on a native man of sound constitution, will occasionally cause inflammation of the chest and death, and immediately endanger life or cause the seeds of fatal disease to spring up which otherwise might have been dormant for years. Mr. Civil Assistant Surgeon B. Burt further expressed his opinion that in cases third and fourth the inflammation was directly excited in the chest by the floggings; and particularly regarding case fourth, in which fifteen stripes had been inflicted, that the punishment did not appear to have been inflicted with undue severity, but that the man was weak, and that a constitutional tendency to disease of the lungs existed and was developed by the flogging."

The Doctor then proceeded to give his own opinion on the subject, and expressed himself to be strongly averse to the use of the ratan. He (Sir Charles Jackson) was perfectly astonished, when he read these papers from the Medical Board, to find out what the effect of flogging with a ratan was. To show what the effect of the ratan might be, he would read the description of a *post mortem* examination held on a prisoner flogged to death with twenty-five stripes in the beginning of 1852; but it was fair to state that the person thus flogged had been recently discharged from hospital where he had been treated for an injury of the leg. The description was as follows :—

"In the vicinity of the shoulder-blades on each side of the spine, there was a patch of skin denuded of its outer covering and bordered externally by a slightly livid color. Each patch was of a quadrangular form, 7¼ inches in length, and 5¾ in breadth. The whole of the patch was not entirely denuded of the scarf skin, there being two or three separate streaks with intervals of entire skin. On making several incisions into the flesh, it was observed that the whole of the back extending from the neck to the hip bones, and transversely within two inches of each side of the body, and almost down to the spine and ribs, was one mass of softened and disintegrated substance, the condition of which may perhaps be better expressed in the language of the bystanders "Gosht gull gya" "Koochul hogea." The flesh was every where infiltrated with a sanious fluid. In some places it had a peculiar pale look, in others reddish, in others dark-red, and in several parts very livid almost black; that covering the shoulder blades was particularly remarked as being quite black—it very much resembled the section of a half putrid liver."

The description then went into the whole case with which he would not trouble the Council. He would only draw attention to the following account :—

"The heart was congested externally but pale within, and contained but a very little blood, showing that death arose from (asthenia) exhaustion. On dividing the substance of the heart the right cavity was found nearly filled with a whitish-grey fatty looking substance, soft in consistence. Semi-transparent and elastic processes of the mass lay entangled in the muscular bands and valve of the cavity ; the left cavity also contained a thin layer of a similar substance which fell out on removing the heart ; the great vessel of the body proceeding from the heart also contained a thin layer of the same."

The report of the *post mortem* examination concluded as follows :—

"Hence, from the remarks above noted, I think I am justified in concluding that the flogging was the direct cause of death by producing such vital prostration of the whole system as to cause the effusion of fibrin within the cavities and valves of the heart whereby the proximate cause of death was produced."

The material point which he wished to bring to the notice of the Council was this. He had ascertained that the ratan used which produced this vital decay and exhaustion—at least that the weapon generally used in Bengal—was a four feet ratan and not longer ; and therefore it was clear that when we were astonished the other day by the effects of a 5½ feet ratan and thought we were doing something material in limiting its length to 4 feet, we did not go far enough to prevent brutality.

He should now read a report of Mr. Woodcock, the Inspector of Prisons in the North-Western Provinces, dated 1850, to show how the ratan marked prisoners flogged with it. He said :—

"I am therefore of opinion, 1st, that the sufferer from a flogging on the back (an undefined space from the nape of the neck to the hips) is as obviously and indelibly branded for life as he was by the process of godna on the forehead which has been abolished by Act II of 1849."

The second was a point which had also been referred to by Dr. Wilson, and was as follows :—

"That the infliction of a flogging on the back and its frequent consequences, sloughing sores, is, from its proximity to vital parts, a dangerous punishment."

It appeared therefore that severe floggings were not confined to the North-Western Provinces alone, and that the application of a ratan to the back was most dangerous and branded the man for life. He had the authority of a medical gentleman of extensive practice in this town for saying that the Bill as it now stood, providing for flogging on the back, was a retrograde measure and ought to be altered. This would be seen from the result of the enquiry to which he had referred. Lord Dalhousie did not act in this matter as Governor-General of India, but as Governor of Bengal ; and it appeared from the Circular issued to the Medical Officers that he laid down two rules which were as follows :—

"1*st*.—That no prisoner hereafter shall be flogged without the opinion of the Civil Surgeon being first taken as to whether the case is one in which that punishment can be safely administered.

2*nd*.—That, as a general rule, stripes should be inflicted upon the breech and not upon the back, proper measures being adopted to guard against the blows falling upon every other than the part intended to receive them."

He believed that those were very wise and humane suggestions which we could not do better than incorporate into this Act. Another result of this enquiry by the Medical Board was a strong opinion on their part that the ratan was a preferable instrument of punishment to the cat-o'-nine-tails.

He was disposed to oppose the Bill under any circumstances. But as the majority of the Council were in favor of it, and as this was the last day on which the Council, as it was now constituted, would sit, he hoped that they would agree with him in the proposals which he had to make for the improvement of the measure. He should move that the Bill be recommitted ; and that being done, that an amendment be introduced providing that the punishment should be inflicted on the buttocks instead of the back. He objected to flogging altogether, but

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if it was to be retained, he would have it inflicted on the buttocks as the most humane proceeding and in accordance with the medical testimony which he had adduced. Then again, although he had proposed last Saturday, when he found from the letter which he had read from the Magistrate in the North-Western Provinces that the ratan used was about five and a half feet in length, to fix the length of the ratan by this Bill at four feet—and in doing so he had thought that he was effecting a great improvement—yet he now found that the length must be still more shortened, and he should propose that it be limited to three feet six inches in length, to be administered by one man.

His next amendment would be to reduce the number of stripes from thirty to twenty-four ; and lastly to adopt the suggestion of Lord Dalhousie that, before a person was flogged, medical opinion ought to be taken as to whether he was in a fit state to undergo that punishment. One of the most remarkable points connected with the punishment was that it was most unequal, and depended a great deal on the feelings of the officer by whom the sentence was carried out, the constitutional strength of the man who inflicted it, and the physical condition of the patient. He trusted that the limitation of the punishment to twenty-four stripes would prevent disastrous consquences from the inequality of the punishment as it affected particular cases. He would now move by way of amendment on the Motion of the Honorable Member for the North-Western Provinces, that the Bill be recommitted to a Committee of the whole Council.

SIR BARTLE FRERE said, it was not his intention to oppose the recommittal of this Bill, and he hoped that steps would be taken to bring the Bill to be more in accordance with his own views. But he thought it only due to those who had voted with him that he should make a few remarks on the history of this measure. His Honorable and learned friend opposite (Sir Charles Jackson) was not here when the discussion on the subject first arose, and would therefore pardon him for going through what took place in that Council a little more than a year ago.

Macaulay's Code omitted flogging from among the punishments which it recognized. It appeared afterwards, however, during the long discussion that took place regarding Macaulay's Code, that the abandonment of flogging was premature, and that the state of the country and of the people did not admit of its being entirely dispensed with. It was not, however, until after the mutiny that the punishment of flogging was introduced into the Draft Code by the Select Committee of this Council to whom the Code had been referred for consideration. When the Code came before a Committee of the whole Council on the 18th August 1860, a debate ensued on this subject, from which he would quote :—

"*Sir Mordaunt Wells* said, he did not approve of the punishment of flogging adults. It was inconsistent with the spirit of modern legislation and inapplicable to a civilized country.

The Chairman said that, in many parts of India, large bodies of natives regarded imprisonment as tantamount to the punishment of death. To such persons flogging was a most merciful punishment, and he therefore thought it would be advisable to retain it.

Sir Bartle Frere concurred with the Honorable and learned Chairman, and said that he could speak from his own experience that flogging was a very useful punishment particularly in several parts of the country where the people were in a state of semi-barbarism, and where they could not bear an amount of imprisonment which was absolutely trifling to men of more civilized habits. A very short period of confinement in the best managed and most healthy jail was sufficient to kill a man who had been used all his life to roam in the *jungle* or desert. You could not fine men who had no property, and the most merciful punishment was to give a flogging for all but the most serious offences or for such as required only a very short imprisonment.

Mr. Harington also expressed himself in favor of flogging as a suitable and proper punishment for certain offences in this country."

Mr. Beadon concurred in the same view, and went on to observe :—

"He was quite sure that, if the Mofussil Officers were consulted, they would unanimously

declare in favor of the continuance of flogging as a punishment.

Sir Mordaunt Wells said, he would defer to the opinions of his Honorable friend opposite (Sir Bartle Frere) and the Honorable Member on his right (Mr. Beadon) that flogging was absolutely necessary as regards Natives. He objected, however, to flogging Europeans;"

but a motion he made on the subject was negatived upon a division.

On the 8th of September following the question again came up for discussion; on which occasion

"*The Chairman* explained that the course he proposed to pursue with respect to flogging was this. As flogging was not one of the punishments provided for by the Code as published, but had since the year 1857 been inserted in the Code as a new punishment, he did not think that the Council could pass the Code with the retention of flogging, without a republication of the Code; and this could not conveniently be done if the Code was to come into operation from the 1st of May next, as time was necessary to be allowed for the Code being properly translated and studied. He intended, therefore, to propose that the Code should stand as it was without the punishment of flogging, and to call for the opinions of the local Officers respecting the expediency or otherwise of its adoption."

That was a course in which, with the partial exception of Mr. Sconce (for he did not object entirely), the rest of the Council agreed with the Honorable and learned Chairman; and in the course of that debate, he (Sir Bartle Frere) expressed himself in the following terms, which, he thought, very nearly expressed the opinion of those who voted with him:—

"*Sir Bartle Frere* said that he would much prefer the last course suggested by the Honorable and learned Vice-President. It had been supposed that he (Sir Bartle Frere) and other gentlemen who objected to the omission of this punishment from the Code did so on the grounds that they had approved of the punishment in itself and desired to retain it permanently as a general punishment. Nothing could be farther from the truth. He was convinced he spoke the sentiments of every one in that Council when he said he was most anxious to see the punishment at once entirely and for ever abolished. His objection to its immediate abolition rested mainly on his belief that to many classes and in many parts of the country imprisonment or any other punishment which could be substituted for flogging was in reality the more inhuman of the two. There were vast numbers of wild tribes—men who never lived within four walls and who pined and died when removed from their native jungles or deserts. To these men imprisonment for even a very short period and with the lightest possible discipline and best treatment was simply a sentence of lingering but certain death."

He then mentioned some cases in which we could not dispense with it, and went on to observe as follows:—

"But while for cases such as these and a few others, he (Sir Bartle Frere) thought that flogging must necessarily be retained as a punishment for many years to come, he would be glad to see it omitted from a Code such as that on which they were engaged, which was intended to be a complete scientific and permanent work, and a standard of general penal jurisprudence for this time and this country. Believing that you could not at present dispense with flogging without incurring the necessity for resort to expedients which, though they appeared more humane, were really more cruel to vast masses of our Indian subjects, he would be glad to see the punishment omitted from the Code as a barbarous and obsolete punishment, and placed in an Act by itself as if it were only tolerated as a temporary and exceptional expedient applicable to particular classes and conditions."

Those views met with the concurrence of the Council, and a Committee was appointed, and the only further mention that had been made on this subject was when the second reading of the Bill was moved on the 22nd of December last, on which occasion

"*Sir Charles Jackson* said, he would ask the Honorable Member to postpone his Motion on two grounds. The first was a personal ground, namely, that from the pressure of his duties in Court, he had not had time to give the matter that attention which it deserved. The second was, that as the learned Chief Justice, who had devoted so much care upon the Penal Code, with which this Bill was proposed to be incorporated, was absent, he (Sir Charles Jackson) was desirous to have his assistance in the consideration of the measure,"

and so it lay over until it lately came forward again.

SIR CHARLES JACKSON explained that the Bill was discussed again in January of this year when he opposed the second reading.

SIR BARTLE FRERE thanked the Honorable and learned Judge for the correction. On referring to the debate in question, he (Sir Bartle Frere) observed that the Honorable and learned Judge was alone in opposing the second

reading of the Bill, and what he then stated did not alter the view which had been taken by the rest of the Council when this Bill was brought in. He really thought that, considering the nature of the measure and all that had passed on the subject, the Council had now some ground to complain that what had recently been brought forward by the Honorable and learned Judge was not earlier laid before the Select Committee which could have dealt with it more appropriately than the Council at the present moment could do. He did not think it necessary to go minutely into the arguments for or against the punishment. The course which had been originally proposed for taking the opinions of the local Officers was adopted, and very voluminous reports had been received from all parts of the country. He had looked through these papers, and it was only in those received from the Noth-Western Provinces that he found any great difference of opinion as to the expediency of inflicting corporal punishment. From what was said by the Honorable and learned Judge opposite (Sir Charles Jackson) on Saturday last and to-day, he (Sir Bartle Frere) did not wonder that difference of opinion should exist in the North-Western Provinces, for it appeared that the mode of inflicting the punishment there was very different from what was usual in other parts of India, and that the Honorable and learned Judge and himself had been in fact talking of two essentially different punishments. He must say he did not lay so much stress as had been laid by the Honorable and learned Judge on those very harrowing details of the cases referred to by him as having occurred in Bengal in 1833 and subsequently up to 1850, for it appeared from what he had read that at that very time measures were taken—and he (Sir Bartle Frere) hoped effectual measures—to correct the abuses of that system. He did not think it logical to quote the abuses which had led to the appointment of a Commission, with any reference to what was the practice at present, ten years after all the recommendations of the Commission had been carried out and the abuses corrected. If the Honorable and learned Judge had any instances to adduce since the issue of Lord Dalhousie's Circular, he (Sir Bartle Frere) should be happy to hear them.

SIR CHARLES JACKSON begged to explain that the reason why he referred to those cases was not to describe what the present practice of flogging was, or the result of flogging at present, for he really had little knowledge on the point; but his object was to show what the effect of the ratan had been and could be, and thus support his amendments for the reduction of the size of the ratan, and of the number of stripes, and for the opinion of a medical officer being taken as to the capability of a person to bear flogging before he underwent that punishment.

SIR BARTLE FRERE resumed. Well, these were three points on which it was impossible not to agree with the Honorable and learned Judge. He had said that the punishment was unequal. This he (Sir Bartle Frere) most cordially admitted. But he would ask him to name any punishment which was not unequal. Imprisonment, transportation, or even death, were all most unequal punishments to persons of different constitutions, habits, and fortunes. It was impossible to devise any punishment which should be equal to all persons. As to the barbarity of flogging, he readily admitted that it was a barbarous punishment and one which he should be glad to see obliterated from our Statute book. But it was one which you could not dispense with without being guilty of substituting for it one of greater barbarity to a large class of your subjects to whom long imprisonment was nothing less than death. The question, therefore, was, what would you do to make corporal chastisement a punishment which a civilized government would be justified in inflicting? In this matter he differed very strongly from the Honorable and learned Judge and other Members. He would have left the precise mode and circumstances under which the punishment could be

inflicted to be dealt with by the local Governments so as to throw on them the duty of seeing that it should be a punishment which a civilized government would not be ashamed to inflict. But that was a course to which the majority of the Council objected, and they preferred to proceed as in England by prescribing by law the minutest particulars relating to the punishment, and leaving to the officers who had to administer the law a discretion only as to the extent of the punishment.

Then this Bill had been described—not by the Honorable and learned Judge opposite—but had been generally described and spoken of—as a Bill to legalize and introduce flogging. On the contrary, he thought that, if properly described, it was a Bill to restrict flogging to an extent to which in practice it had never hitherto been restricted since India had come under British rule. There was not a solitary crime for which this Bill provided flogging, which could not at this present moment be more severely punished with flogging under the existing law than it would be by the present Bill. These were points which he thought should not be forgotten; and in agreeing in the course which the Honorable and learned Judge proposed, he would beg to recall to his recollection the opinion which he (Sir Bartle Frere) expressed on Saturday last, when he spoke of the ratan being a more formidable weapon than a cat-o'-nine-tails. The Honorable Member for Madras had pointed out that the ratan had been used formerly in Madras, and having been found too severe and uncertain in its operation, it was abolished, and a cat-o'-nine-tails substituted for it. The Honorable Member for Madras had also stated that five stripes of a cat-o'-nine-tails were substituted by law as the equivalent for one stroke of the ratan. The cat was made in and issued from the arsenal, and was always of uniform size. It was an instrument of punishment devised by military men as an effectual and serious punishment for soldiers in full health and strength, so that it was clearly a real and severe punishment. At the same time it was required to be a punishment which should not inflict permanent injury on a soldier, or subject him to long detention in the hospital. Hence we had every reason to believe that it was not a punishment which could produce the dreadful results described by the Honorable and learned Judge as liable to follow the use of the ratan. We had not proceeded with this Bill altogether in want of knowledge. He (Sir Bartle Frere) had pointed out to the Honorable and learned Judge that the amendment which substituted the ratan for the cat, and which the learned Judge had proposed in the sincere belief that it would mitigate the punishment, only multiplied it five times, as shown by the practice obtaining in Madras, and thus changed the instrument from one which every body who knew anything about it believed to be severe but incapable of inflicting permanent bodily injury, into one which the Honorable and learned Judge had described and, he feared, with too much reason, as capable of inflicting the most frightful injuries, and even death.

With regard to the other point—the mode in which flogging should be inflicted—he had pointed out that it was provided by the Bombay law that it must be inflicted on the bare back. The change which the Honorable and learned Judge proposed would make it, if possible, a much more barbarous, degrading, and indecent punishment. Even in our public schools it was not so inflicted on a grown-up lad; and you had, moreover, this serious objection to it, that you were obliged to use this ratan and prevented from using the ordinary cat-o'-nine-tails universally in use in the British army and throughout one-half of India and which was not found open to the serious objections urged by the Honorable and learned Judge. On these two points he begged to differ from the amendments proposed by the Honorable and learned Judge. He believed that they were necessarily connected. If you legalized the ratan, you could not safely inflict the punishment on the back, and even on the buttocks it was not unattended with risk, while punishment with the cat

could only be safely inflicted on the back. But he should be glad to discuss the matter more fully, if necessary, in Committee.

MR. HARINGTON said, he was quite willing to agree to the recommitment of the Bill, and he would gladly adopt any amendments which the Honorable and learned Judge (Sir Charles Jackson) might think proper to propose, having for their object the mitigation of such parts of the Bill as might be considered too stringent or severe, and which might have the effect of diminishing the possibility of abuse. With regard to one of the amendments of which the Honorable and learned Judge had given notice, he might observe that on Saturday last the Honorable Member for Bengal had moved that corporal punishment might be inflicted either on the buttocks or on the back. The amendment was supported by himself and the Honorable Member for Madras, but was rejected on a division, the Honorable and learned Judge voting with the majority against it. He was not prepared for a re-opening to-day of the discussion on the principle of the Bill, but, however painful such a discussion might be, he should not regret the present debate if the result should be the introduction of any amendments into the Bill which might afford greater security that its provisions would not be abused. Until he heard the letter which had been read to them by the Honorable and learned Judge (Sir Charles Jackson) he could not have believed it possible that such a mode of administering corporal punishment as that letter described was possible or could be adopted by any officer. With the Honorable Member of the Government who had just spoken (Sir Bartle Frere) he should most heartily rejoice if corporal punishment could, without producing any ill effect, be abolished throughout the country; but it was the opinion of large numbers of old and experienced officers that the time had not yet come when the punishment could be dispensed with.

The Bombay Sudder Court said—

"The Judges do not doubt that any one who would at present abolish the punishment of flogging in India, would be unfit to legislate for the people in their present state of civilization, and as Mr. West has observed, to assume the existence of a state of society in which flogging would be an inappropriate punishment, however desirable such a state of society may be, will not forward its existence by one day."

They had here the deliberate opinion of one of the highest Courts in the country as to the necessity of the punishment in the present state of civilization in India, and the same opinion was, he believed, very generally entertained. In moving the first reading of the Bill, he stated that he supported the Bill not because he liked the punishment of flogging—for he disliked it—but because he considered it to be a necessary punishment, and, as regarded large masses of the people, a more merciful punishment than imprisonment, and therefore he would retain it. Individually, as he believed he had said before, he was opposed to the punishment of death, and he should be glad if it could be abolished, but he felt that, if capital punishments were abolished, human life would be less secure than it was at present, and that seemed a sufficient reason for retaining the penalty of death amongst the punishments prescribed by the Penal Code. The Honorable Member of the Government on his left (Sir Bartle Frere) had pointed out that there was scarcely any punishment which might not produce effects never contemplated or intended. If enquiries were made it would probably be found that mere imprisonment in jail had very often produced death or been the immediate cause of shortening many lives. For many years, and it might still be the case, a large number of prisoners became blind while in jail. The blindness was considered to have been brought on by confinement in jail, though what was the immediate cause of the loss of sight was not known. But no one ever thought that, by reason of the fact just mentioned, however deplorable it might be, imprisonment ought to be abolished altogether. So as regarded the administration of corporal punishment, supposing that punishment to be necessary, the abuse of the law which authorized the punishment was not a

sufficient reason for its being done away with. The records of Government would show that formerly capital punishment was carried out in a very improper manner, and instances were not wanting of great barbarity in executing the sentence; but the punishment was not abolished on that account. Proper measures were taken to put a stop to what was wrong; and rules having been laid down for the guidance of the officers on whom the painful task of carrying out the sentence devolved, they heard no complaints now. Lord Dalhousie had adopted a similar course in respect to the infliction of corporal punishment at the period referred to by the Honorable and learned Judge (Sir Charles Jackson), and it was worthy of remark that although Lord Dalhousie had before him at the time he issued his orders, the medical opinions which had been read to the Council by the Honorable and learned Judge and he must have been aware that at that time corporal punishment might be inflicted for certain offences throughout the country, he did not propose to abolish the punishment notwithstanding what had been said by the medical officers as to the consequences which occasionally attended its infliction. In the year 1834, by a Regulation passed during the Government of Lord William Bentinck, corporal punishment was abolished throughout the Bengal Presidency, but not at Madras and Bombay, and, after the lapse of ten years, they were obliged to revive the punishment in Bengal for the offence of theft. Only to-day the Council had passed a Bill under which any soldier, convicted of disgraceful conduct, might be sentenced to corporal punishment by a General, District, or Garrison Court Martial, or by a Commanding Officer of a regiment who had the same powers of punishment as a District Court Martial. Could they, he would ask, consistently allow a soldier to be flogged and to receive fifty lashes for disgraceful conduct, and at the same time declare that no civil offence, whatever might be its character, should be punishable with corporal punishment? The fact of the punishment being retained in the Articles of War showed its necessity as regarded certain military offences, and he (Mr. Harington) considered it to be equally necessary in this country for certain civil offences, though in settling the present Bill it was obviously quite proper that such provisions should be introduced as would render the mode of administering the punishment as little objectionable as possible.

Sir Charles Jackson's Motion for the recommittal of the Bill was then put and carried, and the Council accordingly resolved itself into a Committee upon it.

Sir CHARLES JACKSON then said, the first amendment he had to propose was the substitution of the words "on the buttocks" for the words "on the bare back." The Honorable Member for the North-Western Provinces had stated that he (Sir Charles Jackson) was one of those who had voted last Saturday against a similar amendment proposed by the Honorable Member for Bengal. But the Honorable Member for the North-Western Provinces had omitted to state that he (Sir Charles Jackson) was the first to point out that flogging with the rattan on the back was likely to cause serious injury, while flogging on the breech was a more degrading punishment. After hearing the arguments on both sides, he certainly had voted for the punishment on the back on the ground of the degradation of a flogging on the buttocks. But he was now prepared to admit his error. The case stood on quite a different footing from what it did last Saturday, for it seemed that this was one of the questions which was a subject of investigation under Lord Dalhousie's Government in 1852, and the result was the issue of Lord Dalhousie's order that the punishment should be inflicted on the breech instead of the back.

Mr. SETON-KARR said that he was glad that the Honorable and learned Judge had become a convert to his views. He (Mr. Seton-Karr) had fortified himself with the authority of Lord Dalhousie when the question was under discussion last week, but the

learned Judge had now managed to disinter the papers on which that opinion was in part based. He trusted that the Council would perceive the advisability of ordering corporal punishment to be inflicted on the posteriors, as it was quite clear that much injury might be caused to the muscles of the back, or even to life itself, if the stripes were inflicted on the back. As to the degradation, it mattered very little at the time whether stripes were inflicted on the lower part of the person or on the back: but it mattered a great deal afterwards, because scars on the back remained long visible, sometimes even for life, and were seen whenever any man took off his clothes to bathe. As to the size of the ratan he had no objection to the reduction to three feet six inches as proposed.

SIR BARTLE FRERE said, he thought that this point was essentially connected with the other as to the instrument with which the punishment ought to be inflicted. If you allowed a ratan to be used, whether you made it five and a half feet or four feet, you would put it in the power of a strong man to inflict a thoroughly brutalizing punishment. Moreover, if you used a thick ratan, it would cause a great bruise; whereas if you used a thin ratan, it would be a sharper and consequently more severe instrument and would cut into the flesh. Before Honorable Members decided on this point he would beg them to look at the experience of the Madras and Bombay Presidencies. We had the authority of the large Presidency of Madras for the abolition of the ratan and the substitution for it of a cat-o'-nine-tails; and the same had been the case at Bombay. He might appeal to the Honorable Members for Madras and Bombay whether they had ever heard of such a thing as a prisoner dying or being seriously or permanently injured from the effects of a flogging with the cat? You had, moreover, the experience of the Army where this punishment had been inflicted for a great length of time past without the possibility of fifty or even a hundred stripes seriously endangering life. The atrocity which used to be committed by a boatswain's cat was owing to the use of quite a different instrument.

SIR CHARLES JACKSON said, the cat used on board a man-of-war was an awful instrument. He could speak from his own knowledge that it was so in 1842, for he had then been shown one.

SIR BARTLE FRERE said, he was not speaking of the cat used on board ship, but of the military cat. He did not think that the amendment proposed by the Honorable and learned Judge would mend matters, while the indecency and barbarity of the punishment, as proposed by him to be inflicted, would be much greater; and he would put it to the Honorable and learned Judge whether it would not be better to adopt the cat instead of the ratan.

SIR CHARLES JACKSON said, he could only assure his Honorable friend that he was most anxious, as he believed all Honorable Members were, to come to a proper conclusion on the subject. When he addressed the Council last Saturday, the opinion was pretty general that the ratan was preferable to a cat. He believed with the Honorable Member of Government that, if a cat were used in the ordinary way, it would be a very light punishment. But if it were used sometimes separating the tails between each stroke, instead of having thirty stripes, you would have thirty multiplied by nine, or two hundred and seventy stripes. If he could only be convinced that the cat-o'-nine-tails inflicted less bodily injury than the ratan, he could have no objection whatever to the adoption of the former; but the opinion of the Medical Board in 1852 was the other way. As for the indecency of the punishment if inflicted on the buttocks, that was an objection to the punishment generally, in which he fully concurred; but he saw no help for it if flogging was resorted to after the medical testimony which he had adduced and which went to show that flogging with the ratan on the back was likely to cause death.

SIR BARTLE FRERE said, if the cat-o'-nine-tails were adopted, it need

not be inflicted on the buttocks; and as to which of the two was less severe, he thought we should on that point ask the opinion of gentlemen who had been in charge of jails. He would appeal to the Honorable Member for Bombay whose duty it had been for some time to visit the jails weekly. Apart from that, however, we had before us testimony which, he thought, ought to weigh with the Honorable and learned Judge. Take, for instance, the reports from the North-Western Provinces in which a considerable diversity of opinion appeared to exist. In the letter from the Secretary to the Government of those Provinces it was said :—

"The Lieutenant-Governor does not concur with those who denounce the Bill in terms of unqualified condemnation. He thinks with Mr. Ross and Mr. Gubbins, Judges of the Sudder Court, and with the majority of the Judges and Magistrates who have given expression to their views, that there are classes of offences which corporal punishment will be more efficacious to prevent, than the penalties of imprisonment and fine; and His Honor conceives that the character of the criminal population in this country, generally, is so low, that the infliction of stripes will, in very rare cases indeed, be felt as degrading to the individual, however painful physically."

Among those who objected to the punishment was Mr. Hume, the able Magistrate of Etawah, who, though opposed to the principle of corporal punishment, had expressed himself as follows :—

"In conclusion, should flogging temporarily be revived, he recommends that the use of ratans be prohibited, and the use, instead, of a cat-o'-nine-tails of an uniform size, weight, and shape, be rendered compulsory."

He had stated the reasons which led him to object to the use of the ratan on the buttocks. He did not wish to divide the Council on the question.

MR. FORBES said that, as he had been appealed to by the Honorable Member of Government, regarding the effects of corporal punishment in Madras, he would say that he certainly never had heard of any case in the remotest degree similar to that which had been described by the correspondent of the Honorable and learned Judge whose letter he read to the Council on Saturday last; but he (Mr. Forbes) was quite sure that he should be doing foul wrong to the Magistrates in the North-Western Provinces, if he supposed for one moment that corporal punishment was ordinarily inflicted in the manner which had been described. In Madras the instrument of corporal punishment had been the ratan up to the year 1831 or 1832, and up to those years thirty-nine stripes of the ratan might be awarded. In one of those years, the instrument was changed to the cat-o'-nine-tails, and five stripes of the latter were substituted for one stroke of the ratan, so that a hundred and ninety-five stripes with a cat-o'-nine-tails became the limit of punishment instead of thirty-nine strokes with a ratan.

It had been his (Mr. Forbes') misfortune in the course of his service to see punishment inflicted to the full extent of the law, and he would say that he never saw a prisoner who had received the punishment who was not perfectly able to walk away, and it was because it was the opinion of the executive officers in Southern India that corporal punishment as now inflicted with a cat-o'-nine-tails was a comparatively light and inefficient punishment, that he had on Saturday last voted for the general introduction of the ratan.

He (Mr. Forbes) must remind the Honorable and learned Judge that, if the cat-o'-nine tails were substituted for the ratan in this Bill, he must be prepared to increase the number of stripes, as twenty-five lashes with a cat-o'-nine tails would be really no sufficient punishment for crime, and hardly more than might be inflicted on a school-boy.

MR. SETON-KARR said that, when this question was before the Council last Saturday, he observed that he proposed the ratan for Bengal as indigenous, and familiar to Magistrates and to the native officials. He had no objection to the adoption of any amendment allowing the use of a cat-o'-nine-tails in Bombay and Madras. But he would plead for the retention of the ratan in Bengal.

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MR. ERSKINE said, the Honorable Member of Government having appealed to him as to the practice in respect to flogging in the Bombay Presidency, he (Mr. Erskine) must say that he could fully confirm the statement of his Honorable friend on this subject. Like other Members of the Council he had been taken quite by surprise when certain descriptions had been read to them by the Honorable and learned Judge on his right (Sir Charles Jackson) relative to the mode in which the punishment of flogging had sometimes apparently been inflicted in the North-Western Provinces and in Bengal. He had never heard of anything of the kind in Bombay; and he was glad to be able to affirm with great truth that he did not believe anything of the kind had occurred there. At the same time this discussion certainly served to show more clearly than ever the wisdom of an amendment proposed by his Honorable friend (Sir Bartle Frere) on Saturday last, to the effect that discretion should be left to the local Governments, and the responsibility imposed upon them, of prescribing exactly the nature of the instrument to be used and the mode in which the punishment of flogging should be inflicted in each Presidency. He believed that the rules now in force on these points in Madras and Bombay had been drawn up in a humane spirit, and that they were applied with as much humanity as was compatible with the object of the punishment. He should therefore be glad to support his Honorable friend's amendment if it were again brought forward to-day, as he thought the rules now contemplated would enhance the severity of the infliction in Western India.

THE CHAIRMAN said, he was sure we were all anxious to make this punishment as little barbarous as possible. The question now before us was not whether flogging was or was not absolutely necessary, but how it ought to be inflicted. He thought that we were all deeply indebted to the Honorable and learned Judge for the investigation which he had made, the result of which was to show that flogging with the ratan on the back could not be inflicted without endangering life. He never conceived that the punishment could be administered in the mode in which it had been described by the Honorable and learned Judge. He (the Chairman) was not present at the discussion which took place last Saturday. But he had read the debates, and the Honorable and learned Judge had been kind enough to favor him with a sight of the letter which he had read. Nothing could exceed the painful account therein described of the scientific way in which the punishment appeared to have been inflicted. The question at present was simply whether the punishment should be inflicted on the bare back or the buttocks. The Honorable and learned Judge had suggested that it should be on the buttocks, and he (the Chairman) thought from the medical evidence which he had read, that flogging on the buttocks was attended with less danger than on the bare back. He would only suggest that, if it was to be on the buttocks, it should not be on the bare buttocks but through some light garment over the buttocks. He believed it was so suggested when an Act was proposed for punishing boys in 1853. On referring to Act I of that year, which was an Act for providing in the Presidencies of Fort St. George and Bombay for the punishment of males of tender age for petty thefts, he found it enacted that every Magistrate, &c.,

> "shall on conviction of theft of property not exceeding in value fifty rupees, if the person convicted be a male and shall appear to him, by inspection or other evidence, to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice, sentence such person to corporal punishment with a light ratan, not exceeding ten stripes, to be inflicted on the bare palm of the hand, or through a light garment on the back."

He should vote for the substitution of the word "buttocks" for the words "bare back," and then he should move to add the words "through a light garment." He thought it very indecent to see grown-up men flogged on the

bare buttocks. Whether these amendments were carried or not, he would not vote in support of this Bill for reasons which he should give presently.

SIR CHARLES JACKSON thanked the Honorable and learned Chairman for his suggestion. He quite agreed to it and had no objection to incorporate it with his amendment.

The question was then proposed that the words "through a light garment on the buttocks" be substituted for the words "on the bare back."

SIR BARTLE FRERE said, he did not intend to divide the Council on the question. He would only remind the Honorable and learned Judge opposite (Sir Charles Jackson) that he was going to make the punishment for many parts of India far more degrading, more barbarous, and more severe than it now was.

MR. HARINGTON said, he hoped Honorable Members would not form an opinion unfavorable to the Magistrates of the North-Western Provinces generally from the letter which had been read to them by the Honorable and learned Judge opposite (Sir Charles Jackson) or, indeed, base any judgment upon that letter. He, of course, could not take upon himself to assert that the mode of administering corporal punishment described in that letter was practised nowhere or had never been adopted in the North-Western Provinces. He had remarked on a former occasion that he could not suppose that the writer of the letter was drawing a picture of the infliction of corporal punishment from his own imagination, but that he must be understood as relating only what he knew to have occurred. He felt, however, he might say that the practice was by no means general. Doubtless, as he had said before, the Honorable the Licutenant-Governor of the North-Western Provinces, on reading the reports of last week's and to-day's debates, would consider it his duty to institute a full enquiry on the subject, and he (Mr. Harington) hoped to have the honor of laying the result of such enquiry before the Council. Meanwhile he would ask Honorable Members to suspend their judgments and not to form an unfavorable opinion of the Magistrates of the North-Western Provinces in consequence of what had been stated by the writer of the letter which had been read to them.

SIR CHARLES JACKSON said, with reference to the statement of the Honorable Member of Government, that it certainly placed him in a most embarrassed position to be told that he was making the punishment for parts of India more degrading, barbarous, and severe than it now was. Surely every one knew that our great object was to adopt the least objectionable punishment, and he thought it hard to be told that we were aggravating the punishment as it now was. If the Honorable Member of Government thought it would be any relief to him, he would presently have an opportunity of voting in support of a Motion for the reduction of the number of stripes.

The question was put and agreed to.

Section V, as amended last Saturday, 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 if an appeal is preferred within fifteen days from the date of the sentence 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."

MR. HARINGTON moved the substitution of the following words for the words in italics :—

"by a Court whose sentence is open to revision by a Superior Court, the flogging shall not be inflicted until two months from the date of such sentence, if an appeal is preferred within fifteen days from the date of such sentence, unless the sentence shall have been sooner confirmed or an appeal from it shall have been sooner rejected."

The Motion was carried, and the Section as amended then passed.

SIR CHARLES JACKSON went back to Section VI, and moved the

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substitution of the words "three feet six inches" for the words "four feet."

SIR BARTLE FRERE said that here again he must say it was not his intention to divide upon this question also. He would only again point out that, whether the length was four feet, three feet, two feet, or even if you came down to eighteen inches, if you armed a strong man with an instrument one blow with which the Honorable and learned Judge had shown might inflict death, by diminishing its length you would not decrease its power to inflict injury far greater than you intended. However you might limit its circumference, it was a far more formidable weapon than a cat-o'-nine-tails.

SIR ROBERT NAPIER said, he did not quite agree with the remark of his Honorable colleague that the punishment would be more severe with a thin than a thick ratan. If the instrument of punishment were thick—such, for instance, as an inch, or three-quarters of an inch, in diameter—it would bruise the flesh and cause serious injury, and for this reason he (Sir Robert Napier) had recommended the circumference to be limited to three-quarters of an inch, and consequently the diameter to a quarter of an inch. If the thinner instrument punished more than the thicker one, then the thin cords of the cat would be worse than the ratan, but in his opinion such was not the case : he had never heard of a man dying from being flogged with the cat. The size of the cat was prescribed by law in minute details.

Regarding the part where the punishment was to be administered, it was well known in the Upper Provinces that natives felt the shame and degradation of being flogged on the buttocks so deeply, that nothing would induce them to complain of such punishment, where they would have to show the marks in a Court of justice. The amendment of the Honorable and learned Vice-President had rendered the punishment less objectionable than before, and therefore he (Sir Robert Napier) had not opposed it.

SIR CHARLES JACKSON said, the question now was whether the length of the ratan should be reduced from four feet to three feet six inches. We all knew from our school experience the sensible difference between a long and short ratan.

SIR BARTLE FRERE said, the Honorable and learned Judge would see the difference between the two instruments, if he struck a horse with a whip and if he struck the same animal with a cane. He would repeat that he should prefer the cat on the back, as the more equal, less dangerous, and less barbarous punishment of the two.

MR. HARINGTON said, he understood that the opinions of the Medical officers which had been read to them by the Honorable and learned Judge (Sir Charles Jackson) were in favor of the use of the ratan rather than of the cat.

SIR CHARLES JACKSON assented, and the Motion was put and carried.

SIR CHARLES JACKSON then moved that the number of stripes be reduced from thirty to twenty-four.

MR. HARINGTON said that, so far from thirty stripes of a ratan being considered too many, the general opinion seemed to be that the maximum number should be larger. He saw no reason for making any change in the Bill in this respect, and should vote against the Motion to reduce the number.

MR. SETON-KARR said that twenty-four was an insufficient number in the case of thieves ; that the number of thirty was a maximum ; and that no cause had been made out for the reduction. He should feel it his duty to oppose the amendment.

The question being put, the Council divided :—

Ayes 5.	*Noes* 3.
Sir C. Jackson.	Mr. Seton-Karr.
Mr. Erskine.	Mr. Forbes.
Sir Robert Napier.	Mr. Harington.
Sir Bartle Frere.	
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So the Motion was carried, and the Section as amended was then passed.

SIR CHARLES JACKSON moved the addition of the following words to Section II:—

"No sentence of flogging shall be carried into execution unless a Medical Officer of Government shall certify that the offender is in a fit state of health to undergo such punishment."

MR. FORBES moved by way of amendment the insertion of the words "if available" after the word "Government."

MR. FORBES' amendment being put after some slight discussion, the Council divided:—

Ayes 6.	*Noes* 2.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Erskine.	The Chairman.
Mr. Forbes.	
Mr. Harington.	
Sir Robert Napier.	
Sir Bartle Frere.	

So the Motion was carried.

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

The Council having resumed its sitting, the Bill was reported.

MR. HARINGTON then moved that the Bill be read a third time and passed.

SIR CHARLES JACKSON said that, after the long discussion which had taken place on the subject of this Bill, he would not detain the Council with any lengthened remarks in opposing the third reading of it. He would merely observe that he considered the Bill a most unhappy *pendant* to the Penal Code. That Code, which would be handed down to posterity, and be the real glory of this Council, would now unfortunately have tacked to it one of the most unhappy Acts ever passed by the Council.

THE VICE-PRESIDENT said, he had a very few words to say in support of the vote he was about to give. He had certainly very much changed his opinion upon the subject of this punishment since the year 1858. Up to that year flogging was not allowed in Bengal except in certain specified cases. Under the Act of 1844 flogging was a punishment which might be inflicted for petty thefts and was rather intended to provide for the case of persons of tender years than of mature age. By Act III of 1844, therefore, corporal punishment might be said to have been abolished altogether in Bengal. It continued in force in Madras; and under the Code which was passed in Bombay in 1827, flogging was authorized as a punishment in certain cases. In 1858, just after the mutinies, it appeared that a number of jails were overcrowded, and it became necessary to substitute flogging for imprisonment in certain cases. But this Bill went farther. It provided for flogging in addition to imprisonment in many cases. In 1853 an Act was passed for the Presidencies of Madras and Bombay similar to that passed for Bengal in 1844, whereby boys of tender years were allowed to be flogged rather in the nature of school discipline than of ordinary criminal justice. After the mutiny had broken out and prisoners had been released from the jails in which they were confined, it was considered necessary to substitute corporal punishment for imprisonment in certain cases rather than overcrowd the jails. Here the matter rested until the question was revived, as had been correctly stated by the Honorable Member of Government, in the course of the discussions which took place on the Penal Code, and the Clause in that Code which related to flogging was struck out in Committee (among other reasons) for those stated in the following remarks of the Honorable Member of Government:—

"Believing that you could not at present dispense with flogging without incurring the necessity for resort to expedients which, though they appeared more humane, were really more cruel to vast masses of our Indian subjects, he would be glad to see the punishment omitted from the Code as a barbarous and obsolete punishment, and placed in an Act by itself as if it were only tolerated as a temporary and exceptional expedient applicable to particular classes and condit ons. The course, therefore, which seemed to him best was that suggested by the Honorable and learned Vice-President, to refer the subject for the consideration and report of the local authorities,

and to permit by separate enactment flogging in those cases only where the reports might show it was necessary to retain it for such reasons as he had described."

Now this Bill gave the power of flogging generally. There might be certain wild tribes on whom it might be necessary to inflict flogging. But we had not been told so by the local Governments. The only answers we had received were from Bombay, Oude, and the North-Western Provinces. We had no answer from Bengal or from Madras. In the North-Western Provinces many of the Officers seemed to be in favor and many of them against the Bill. Those who were against it thought that flogging would not deter persons from crime; and then we had an opinion of the Judicial Commissioner of Oude who said—

"But still I think that, as was said by one of the Deputy Commissioners (Captain Thompson), in a large proportion of thefts and such crimes, flogging alone cannot be effectual unless it is carried to the point of brutality."

The Honorable and learned Judge (Sir Charles Jackson) had called the attention of the Council to a letter which he had received from a Magistrate in the North-Western Provinces, and also to some orders of the Government of Bengal passed in 1852. Although he (the Vice-President) was a Member of the Government of India in 1852, he certainly was not aware of the correspondence which took place by the Bengal Government. He never conceived that the punishment of flogging was carried out to the extent described in the documents referred to. He certainly thought that the way in which the punishment of flogging was inflicted was as described in the Acts of 1844 and 1853 alluded to by him, *i. e.*, rather in the nature of school discipline than of ordinary criminal justice. Now it appeared from what had been stated by the Honorable and learned Judge that a question had been raised whether the punishment could be inflicted in that manner without having an utterly brutalizing effect not only on the person on whom it was inflicted but on the by-standers. Mr. Campbell, from whose opinion he had just quoted, went on to say:—

"It can only be effectually administered with certainty and safety under the immediate and close personal superintendence of the European officers, and I think that we must not too much turn our Judges into executioners. I look on this, in fact, as one of the principal difficulties of the system. The constant participation in such scenes must have more or less a brutalising effect on almost any man's mind, and must tend to perpetuate that harsh and severe feeling which, not unnaturally resulting from the scenes of 1857, it must now be our object to soften down and eradicate."

He thought that we were all of one opinion that this was not a punishment to be inflicted unless in cases of absolute necessity; and when the necessity for it was established, the next question to consider was how it could be best inflicted. If the punishment could not be avoided, then it ought to be mitigated as much as possible. Through the exertions of the Honorable and learned Judge, and, he might say, of all the Honorable Members, Clauses had been introduced into the Bill on Saturday last, to which, perhaps, the term barbarous could not properly be applied. We had also provided to-day that no sentence of flogging should be carried into execution unless a medical officer of Government, if available, certified that the offender was in a fit state of health to undergo the punishment, besides requiring the punishment to be inflicted in the presence of a medical officer if available. But if it was necessary to have all these safe-guards provided by the Bill, was it a punishment that ought to be inflicted at all, unless in case of absolute necessity? Now, had the case of absolute necessity been made out? The Government of Bombay had not put it as a case of absolute necessity. None of the Governments who had reported on the Bill, had put it as a case of absolute necessity; but they said that in the opinion of some officers it would be a very useful punishment, while others considered it necessary to deter persons from crime. One of the grounds put

forward by the Bombay Government was the cheapness of the punishment. But he did not think that that was a ground on which any Honorable Member would vote in favor of the punishment. It might be that it was required for wild tribes, but it was not stated in the papers that the Act was required on such a ground as that. Now, our powers as Members of this Council would quickly pass out of our hands, and he thought we ought not to let this Bill be passed unless we were satisfied that it was absolutely necessary. We should not have the power of retracing our steps if we discovered that we had committed a mistake in passing this Act, although there might be other Members who might do so. He was quite sure that the Honorable Mover of this Bill would not press it if he thought we could safely dispense with it. He agreed with the Honorable Member that what the people required was rest from legislation, and he would ask the Honorable Member to drop this Bill, and to see for a period of two or three years whether we could not go on under the Penal Code without adding flogging to the punishments prescribed by that Code. He was sure that the Honorable Member would not press the Bill unless he felt that his sense of duty required him to do so.

MR. HARINGTON said, referring to what had just fallen from the Honorable and learned Vice-President and to the appeal which the Honorable and learned Vice-President had made to him, he must remind the Council that he was not the sole framer of this Bill, nor the Mover of it in the sense in which Honorable Members who brought in Bills were the movers of the Bills framed or brought in by them. The present Bill had been prepared by a Select Committee which had been appointed by the Council to consider the subject of corporal punishment and to prepare such Bill as they might consider necessary. It was true that he moved the first reading of the Bill and that he was considered to be in charge of the Bill, but that had happened simply from the circumstance of his being the senior Member of the Select Committee to which the preparation of the Bill was entrusted. In making this statement he begged it to be understood that he shrunk from no responsibility which fairly and properly attached to him in connection with this Bill and with its preparation and introduction. He was quite prepared to bear his full share of responsibility in the matter; but he must repeat that the Bill was not his Bill; it was the Bill of the Select Committee appointed by the Council. He could assure the Honorable and learned Vice-President that, if he could conscientiously do so, it would give him very great pleasure to vote against the third reading of the Bill; but he was satisfied that in the present state of civilization in the greater part of India the Bill was a necessity, and that in many parts of the country corporal punishment was a more humane punishment than imprisonment. It was not because he liked the punishment of flogging that he supported the present Bill. As he had already said, he disliked the punishment, and he should be very glad if it could be safely abolished throughout the country; but he felt that the time had not arrived when this could properly be done, and therefore it was that he gave his support to this Bill. The Honorable and learned Vice-President had remarked on the fact that no opinion had been expressed by the Punjab authorities in favor of the Bill. But he was able to state that the authorities in the Punjab approved of the Bill, and he believed that they would regret exceedingly if the punishment of flogging were abolished in the Punjab from the time the Indian Penal Code was ordered to come into operation. The Oude authorities were in favor of the Bill, and, equally with the authories in the Punjab, would, he believed, regret if corporal punishment were ordered to be discontinued in that Province. The Honorable the Lieutenant-Governor and the majority of the Judges and Magistrates in the North-Western Provinces were in favor of the Bill. The Bombay authorities were also in favor of the Bill, and although no opinion had been expressed by the Madras authorities,

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they had the assurance of the Honorable Member for Madras that there was no wish for the abolition of corporal punishment in that Presidency, but the contrary. In the face of these opinions, however painful to him it might be to think that the last vote which he might ever give was given in favor of a Bill of this nature, he felt that if he withheld his vote for the third reading of this Bill he should be shrinking from his duty.

THE VICE-PRESIDENT disclaimed all intention of throwing the responsibility of the Bill on the Honorable Member for the North-Western Provinces. He was aware that the Bill had been prepared and brought in by a Select Committee specially appointed for the purpose by the Council.

SIR BARTLE FRERE said, in regard to the parentage of this Bill, he would beg to point out that the Honorable Member for the North-Western Provinces had not introduced it of his own choice or on his own responsibility. He had only acted in accordance with the general sense of the Council in taking charge of the Bill. The portion of the debates which he had quoted to-day showed that this Bill was originally an integral part of the Penal Code. When the Code came under the consideration of a Committee of the whole Council, it was pointed out by the Honorable and learned Chairman that only two courses were open to the Council. One of them was to omit flogging altogether from the Code and provide for it by a separate enactment after consulting the local officers on the subject; and the other was to introduce it in each case in which it was required.

The former course was adopted; and the Select Committee to whom was entrusted the duty of framing the Bill only did what would otherwise have been the duty of the Council at large. In regard to the opinions which had been expressed regarding the Bill, he drew a totally different deduction from what had been stated by the Honorable and learned Vice-President. Mr. George Campbell, the Judicial Commissioner of Oude, who was justly deemed a great authority, and whose opinion had been quoted by the Honorable and learned Vice-President, had observed in another place as follows:—

"We certainly, in former days, went a great deal too far on the side of excessive horror of degrading sentences, and threw away one of the cheapest, and, in many cases, most efficacious modes of punishment without supplying any adequate substitute. That the large use of flogging is an immense improvement on our previous practice, and very beneficial to the interests of justice and the morals of the community, I have no doubt. But that the great criminal question is thus solved, that we have found the *panacea* for all our difficulties, is one of those rough and extreme ideas, engendered by the mutiny, of which we must now rid ourselves."

Now he thought that that was an extremely just and sensible view of the case, and that he was justified in quoting Mr. Campbell as in favor of the Bill, and not, as the Honorable and learned Vice-President supposed, against it. So with regard to the opinion expressed by the Bombay Government; and he would ask to be allowed to observe here in passing that this was the opinion of one who had spent thirty-five years of his life in this country, and who was better entitled to offer an opinion on the subject than any man in India—a man who was known throughout India for his extreme humanity as well as for his ability as an administrator. He meant Sir George Clerk. The opinion of that statesman was as follows:—

"It should be a principal condition of all punitive measures, that the punishment be really a punishment. The penalty most frequently inflicted is 'imprisonment with hard labor.' The Honorable the Governor in Council considers it would be against all evidence to assert that such imprisonment is in India no punishment at all, but he cannot doubt that its efficacy is impaired in a greater degree than in Europe, by the fact that the mass of prisoners are better clothed, fed, and housed in jail than when they were free-men; that their primary wants are more amply satisfied; and that it is only with respect to their secondary wants, enforced abstinence from tobacco and other indulgences, that they feel the life of a jail at all irksome. The only classes to which imprisonment is a really severe punishment are certain rude tribes which inhabit mountains and jungles. On prisoners of these classes, confinement produces a mark-

ed effect, they droop and languish, and are subject to atrophy. With respect to these classes their imprisonment carries with it a greater degree of severity than the legislature contemplated; with respect to others its efficacy as a punishment is not sufficiently certain. The exception, then, as well as the rule, suggests the employment of another punishment either as an adjunct or a substitute.

The condition of certainty is perfectly fulfilled by flogging; it is plainly a punishment to which no human being can be insensible.

In proportion as a punishment is a reality, it is deterrent; it is deterrent not only to the recipient but to others. It must be very doubtful whether the description of prison life given by a released convict to his companion in his own village, can really present any formidable aspects, but the statement that he was flogged, is one which every imagination can realize, and the warning is only the more impressive when the sufferer shows the scars of recent punishment. And it must be borne in mind that the mass of criminals with whom our Courts have to deal are men altogether deficient in a moral sense, and on whom no punishment which does not inflict actual pain, can exercise any perceptible influence."

He thought, therefore, that as far as opinions went, they did not bear out the opinion of the Honorable and learned Judges but were pretty conclusive as to the necessity of maintaining corporal punishment as a punishment to be provided by law. He did not look upon this Bill with much more favor than the Honorable and learned Judge opposite (Sir Charles Jackson). He did not think that the Honorable and learned Judge's amendments had, after all, improved the Bill in any respect. It seemed to him that the amendments provided the very worst mode of inflicting this punishment. But however that might be, we had now limited the punishment to a considerable extent, and he hoped to see the day arrive before he left India, which could not be very long hence, when this punishment might be expunged altogether from our Statute book. At the present time, however, he hoped that nothing would deter us from continuing a punishment which our best informed local officers considered necessary. As for any of our officers liking the punishment, such a notion was peculiarly abhorrent to the feelings of an Englishman. In the few cases in which the Honorable and learned Judges had spoken of officers liking the punishment, he (Sir Bartle Frere) believed that the only feeling was anxiety to see justice done to a rascal. He believed that no one British officer out of a hundred went to see an execution of such a sentence without deep regret, and he was certain that the day when we could safely expunge it from our Statute book altogether, would be hailed as a bright day by every judicial officer in India.

The question being put, the Council divided :—

Ayes 6.	*Noes* 2.
Mr. Seton-Karr.	Sir Charles Jackson.
Mr. Erskine.	The Vice-President.
Mr. Forbes.	
Mr. Harington.	
Sir Robert Napier.	
Sir Bartle Frere.	

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

LIMITATION OF SUITS.

THE VICE-PRESIDENT moved that the Bill "to amend Act XIV of 1859 (to provide for the limitation of Suits)" be referred to a Select Committee consisting of Mr. Harington, Mr. Seton-Karr, and the Mover.

Agreed to.

MESSENGER.

SIR BARTLE FRERE was requested to take the several Bills read a third time to-day to the Governor-General for his assent.

STAMP DUTIES.

MR. HARINGTON moved that the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

HOUSE OF CORRECTION (CALCUTTA).

MR. SETON-KARR presented a preliminary Report from the Select

Committee on the Bill "for the better enforcement of discipline in the House of Correction at Calcutta," and moved that it be adopted.

Agreed to.

ZEMINDARY DAWKS.

MR. SETON-KARR moved that the Bill "to improve the system of Zemindary Dawks in the Provinces subject to the Government of Bengal" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and the Mover.

Agreed to.

BREACH OF CONTRACTS.

THE VICE-PRESIDENT said, he begged to explain that, as it was the intention of the Council to adjourn till the 16th of November, the Select Committee on the Bill "to provide for the punishment of Breach of Contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce," and the Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of Agricultural produce" would meet notwithstanding during the adjournment, for the purpose of preparing their preliminary Report, which would be kept ready for presentation to the Council at its next Meeting.

The Council adjourned at 5 o'clock, till Saturday, the 16th November, on the Motion of Sir Bartle Frere.

Saturday, November 16, 1861.

PRESENT:

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

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

MALACCA LANDS; PORT BLAIR; MERCHANT SEAMEN; ARTICLES OF WAR (NATIVE ARMY); BENGAL MILITARY ORPHAN SOCIETY; SALTPETRE; AND LIMITATION OF SUITS.

THE PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to regulate the occupation of land in the Settlement of Malacca;" the Bill "to regulate the administration of Port Blair and other Settlements in the Andaman Islands;" the Bill "to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen);" the Bill "to consolidate and amend the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army;" the Bill "to enable the Bengal Military Orphan Society to register under Act XXI of 1860 (for the Registration of Literary, Scientific, and Charitable Societies);" the Bill "to regulate the manufacture of Saltpetre and the sale of Salt educed in the refinement thereof;" and the Bill "to postpone the operation of a portion of Clause 8, Section I, Act XIV of 1859 (to provide for the Limitation of Suits)."

PROCLAMATION.

The following Message from the Governor-General was then read:—

"MESSAGE No. 289.

The Governor-General has the honor to forward to the Legislative Council the accompanying copy of a Proclamation by the Governor-General in Council, publishing the Act 24 and 25 Vic. c. 67 (called The Indian Councils Act, 1861), with an Extract of a Despatch in the Legislative Department from the Secretary of State, No. 14, dated the 9th of August 1861.

By order of the Right Honorable the Governor-General.

W. GREY,
Secy. to the Govt. of India."

FORT WILLIAM,
The 16th November 1861.

SIR BARTLE FRERE moved that the Clerk of the Council be requested to read the Proclamation and the Ex-