

Saturday, March 9, 1861

*INDIAN LEG.
COUNCIL
DEBATES*

Vol. 7

5 Jan. - 25 May

1861

P. L.

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

The Motion was then put and carried.

PRISON AT THE NEILGHERRIES.

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

The Council adjourned.

Saturday, March 9, 1861.

PRESENT :

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

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

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from the Indigo Planters Association, concerning the Bill "to provide for the punishment

of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

MR. BEADON moved that the Petition be printed.

Agreed to.

RECOVERY OF RENTS (BENGAL).

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

MR. SCONCE moved that the Petition be printed.

Agreed to.

DIVORCE.

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

MUNICIPAL ASSESSMENT (MOULMEIN, &c.)

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

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

Agreed to.

MERCHANT SEAMEN.

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

MR. ERSKINE moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

' SMALL CAUSE COURTS.

MR. BEADON postponed the Motion (which stood in the Orders of the Day) for the second reading of the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)".

POLICE.

SIR BARTLE FRERE moved that the Council resolve itself into a Committee on the Bill "for the regulation of Police within any part of the British Territories in India to which it may please the Governor-General in Council to extend its provisions;" 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 verbal amendments in Sections I and XX, and, the Council having resumed its sitting, was reported.

MUNICIPAL ASSESSMENT (BOMBAY).

SIR CHARLES JACKSON moved that the Council resolve itself into a Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay)"; 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 V, and with the insertion in Section VII of words fixing the 15th April 1861 as the date of the commencement of the Act; and the Council having resumed its sitting, the Bill was reported.

PRISON AT THE NEILGHERRIES.

The Order of the Day being read for Sir Charles Jackson to enquire what progress has been made in erecting a Prison at the Neilgherries, and what accommodation such Prison will afford for European and American Convicts sentenced to Penal Servitude—

SIR CHARLES JACKSON said that, before putting this question, he wished to say a few words in explanation. In August 1855, the Legislative Council passed an Act, substituting Penal Servitude for Transportation in the case of European and American Convicts. That Act was passed on the distinct understanding that a Jail would be erected in one of the Hill Stations of India. Indeed, that Act would not have been assented to at all by the learned Judges then on the Bench, without that understanding. In 1859, hearing that no progress had been made in the erection of this Jail, he ventured to ask the Executive Government what steps had been taken in the matter. He had given notice of his intention to ask the question on one Saturday, and he asked it on the following Saturday, when he was answered by the Honorable and learned Vice-President, who was then the Fourth Ordinary Member of the Supreme Council. The Honorable and learned Vice-President brought down papers and gave a full explanation of what was proposed to be done. He stated that a Jail was in course of erection at Ootacamund, partly as a Prison for Europeans sentenced to Penal Servitude, until a larger Prison could be constructed in Jackatolla solely for the use of Europeans. On that occasion, he (Sir Charles Jackson) remembered that the Honorable and learned gentleman thanked him for having put the question, and said that he hoped it would expedite the business. In April of last year, he (Sir Charles Jackson) was at Ootacamund, and the first thing he did was to go and look at this Jail. He found that the building had been proceeded with to as high as his hands could reach. But the cause of the delay was quite

apparent, for part of the top of a hill had been selected, and after removal of a little earth, it was discovered that the hill was a solid rock, and it was consequently necessary to blast away this rock to form a platform on which to build the Jail; and in fact, when he saw it, the further erection of the building was suspended because it was feared that the blasting would injure the walls. He must say that the Jail was an excellently contrived one. It consisted of two stories, each of which contained eighteen cells, nine on each side of a corridor, each cell being intended for the accommodation of only one man. It appeared to him (Sir Charles Jackson) that the accommodation was certainly too small, and he immediately pointed out to the very able gentleman who was superintending the erection of the Jail, that the accommodation would not be sufficient for Calcutta alone; and he now found he was correct, for he (Sir Charles Jackson) had obtained a return from the Jailer, showing that there were now thirty-three European Convicts in Jail. He (Sir Charles Jackson) was then informed that, in addition to these cells, there was a room over the entrance, originally intended, he believed, for the accommodation of the Jailer or for some other purpose, that would hold three or four more Convicts, providing accommodation for only forty Convicts altogether. Still that would not be sufficient for the number of Convicts from Calcutta, Madras, and Bombay. He (Sir Charles Jackson) then enquired about the Jackatolla Jail, and was told that Sir Charles Trevelyan had stopped the further progress of that building.

Under these circumstances, he (Sir Charles Jackson) thought it his duty to call the attention of the Executive Government to the matter as forcibly as he could. It was now clear that the Ootacamund Jail would not be sufficient for the accommodation of all the European and American Convicts, and that consequently the present objectionable system of making Europeans serve out long periods

of imprisonment in Jails in the Plains would have to be continued. He thought it was a matter which deserved the serious consideration of the Government. He thought the imprisonment of Europeans and Americans to long periods of Penal Servitude in Jails in the Plains of India was nothing more or less than sentencing them to a lingering torture. The passing of such sentences was also a matter of the greatest embarrassment to a Judge, who knew, in fact, what such sentences of Penal Servitude amounted to. He thought that, if Government was prepared to say that they would provide accommodation for European and American Convicts sentenced to Penal Servitude by proceeding with the erection of the Jail at Jackatolla, that would be sufficient. But if they were to say that, in the present state of the finances, they were not prepared to do this, he thought that it was a matter for the grave consideration of this Council whether the Penal Servitude Act should not be repealed, and some other punishment substituted for it.

MR. BEADON said that, so far as the question of the Honorable and learned Judge was intended to remind the Government of the necessity of providing for the accommodation of European and American Convicts sentenced to Penal Servitude, he could only say, as a Member of the Government, that he was much obliged to the Honorable and learned Judge for having called his attention to the subject. He had no doubt that it would be attended with good effect. At the same time he regretted that he was under the necessity of declining to answer the particular questions which the Honorable and learned gentleman had asked. Not that there was the slightest disinclination on the part of the Government to put the Honorable and learned gentleman in possession of all the information connected with the subject which it was in their power to afford, either by placing the papers at his disposal privately, or forwarding them officially to the Judges of the Supreme Court, if they saw fit to apply

for them in the usual manner. But the Government did not think it expedient, and did not feel itself at liberty, in the present state of the question as regards the functions of this Council, publicly to answer questions unconnected with Legislative measures before the Council. If the Honorable and learned gentleman thought proper, on perusal of the papers, either to bring in a Bill relating to the law of Penal Servitude or otherwise, he would of course be at perfect liberty to do so. In the meantime, he (Mr. Beadon) could assure him that the subject engaged the attention of the Government.

SIR CHARLES JACKSON said, the answer which he had received placed him in a somewhat awkward position, because, according to the Standing Orders, he believed there could be no debate on a mere question such as he had put. Of course, when he put his question, he thought there would be no objection to supplying the information it called for. Could he have anticipated that any objection would be made, he should have put his question in the form of a Motion. Now, however, he thought it very desirable that there should be a decision on the matter, and he proposed to alter the questions he had asked, and to mould them into the form of a Motion. But before doing so, he begged to know from the Chair, whether that would be a proper course, or whether, according to the Standing Orders, a notice of Motion was necessary.

THE VICE-PRESIDENT said, he was not aware that any notice of Motion was necessary in a case of this kind. He thought that this case fell under the 37th Standing Order, which provided as follows :—

“ Except in the cases in respect of which special provision to the contrary is made by these Orders, it shall not be necessary to give notice of a Motion ; but, if a Motion be made without notice given at a previous ordinary Meeting, the Council, upon the Motion of a Member, or the President of his own authority, may order the discussion upon such Motion to stand over, and to be inserted in the Orders of the Day for the next ordinary Meeting.”

Mr. Beadon

SIR CHARLES JACKSON then said, if that be so, he begged to move that a Message be forwarded to the Right Honorable the Governor-General in Council, requesting his Lordship in Council to inform this Council what progress had been made in erecting a Prison at the Neilgherries, and what accommodation such Prison would afford for European and American Convicts sentenced to Penal Servitude.

MR. LAING said, he would state in a few words the reason why the Members of Government were obliged to resist the Motion of the Honorable and learned Judge. The information asked for was of itself such as could very properly be given, and in fact would be given at once if it were applied for by the learned Judge individually, or by the Judges in the usual manner. But to return a distinct and public answer to the question put by the Honorable and learned Judge in his place in the Legislative Council, opened a very large constitutional question as to what was the position of this Council as an organ of public opinion, like the British House of Commons, in requiring information from the Government on matters of general policy not being subjects of immediate legislation. Now upon that question he wished it to be distinctly understood that he expressed no opinion whatever, nor, as he believed, was it the desire of his colleagues to do so. But it was notorious that the question had been raised on a larger matter, the Mysore Grant, and was now under the consideration of the authorities at home ; and he thought that the Members of Government would be wanting in their duty if they were to accede to any thing which would in any manner be establishing a precedent and thus fetter the question whilst it was pending and before it was finally settled. The delay could be for a very short period before it was decided whether this Council was or was not to be an organ representing public opinion like the House of Commons, and he would put it to the Honorable and learned Judge, whether it would not be better by common consent not to raise the question

farther at present, and to be content to take the information sought for, which could be given to him individually or upon the application of the Judges. Should he, however, persist in his Motion, he (Mr. Laing) had no alternative but to give his vote very reluctantly, and at any risk of being misconstrued, against a principle which, under the circumstances stated, he did not feel himself at liberty as a Member of the Government to concede at present.

MR. SCONCE said, he would state very briefly why he should vote in support of the Motion of the Honorable and learned Judge. It was to him (Mr. Seonce) a matter of amazement to expect that this Council could accept the excuse which had been put forward as a ground for the refusal of the Honorable Member of Government (Mr. Beadon) to answer the question of the Honorable and learned Judge. We were told that it was better to abstain from any proceedings which involved the direct action of this Council, because some other authority, we knew not who, had raised, certainly not with our complicity, the question as to what were to be the powers of the Council. The form in which this appeal had been made to us appeared to him to amount to this, that any action which this Council thought fit to take, and had successfully taken, in order that the Council should be better informed on matters forming the subject of its deliberation, should not be pressed in the shape of a Motion, because an opinion was entertained elsewhere that the Council had no power to do so. Why, it was as much as telling us that we, who were entirely satisfied as to our own authority, were going beyond the limit within which, in the opinion of others, the power of this Council was restricted, and that the proceedings of the Council should be, as it were, in abeyance till that doubt, not arising within the Council itself, should be elsewhere decided. Was not this as if a Relief Committee in the North-West should tell any man who was fainting from famine, that they must first get medical advice as to his power to live on short commons ?

That seemed to him to be precisely the way in which this Council had been treated. To keep back any information which the Council considered it essential to be possessed of, appeared to him to be a matter of bad policy, and in a manner contemptuous of this Council. He, for one, assuredly had no desire to encroach upon the authority of the Executive administration. But he could not help thinking that what the Honorable and learned Judge asked for was purely legitimate information, information intimately connected with recent proceedings of this Council, and information indeed directly bearing upon the Code of Criminal Procedure which was now about to come before the Council for final consideration. These were shortly his reasons for supporting the Motion of the Honorable and learned Judge.

MR. ERSKINE said that the course pursued by the Honorable Member of Government had taken him altogether by surprise. He had come down that morning to the Council without the least suspicion that they would be called on to discuss a question of privilege. As the question had been raised, however, it would be unbecoming in him not to say something as to the reasons which must influence his own judgment. The Honorable Member of Government who spoke last (Mr. Laing) had deprecated the raising afresh of the point thus again disputed, while the powers of the Council were under consideration in England. But who had raised this point afresh ? Who, after thankfully answering a question on this very subject in 1859, now refused to answer it at all in 1861 ? Who, after answering on one Saturday questions not relating to legislative measures before the Council, refused on the next Saturday to answer the Honorable and learned Judge on the plea that he had no right to ask such questions ? This was not the way in which to promote the smooth and useful working of the Council. There could be no doubt about former usage and precedent, as a reference to the Proceedings of the Council would amply prove. And even on other grounds ; would any one

maintain that, if the Honorable and learned Judge was doubtful as to the working of a system of Penal Servitude in India, he must prepare a Bill on the subject and bring it forward in the Council, and that the Government should then give him information; but that they should not give him information beforehand, so that he might judge whether a Bill was required or not? He could see no ground in precedent, or policy, or reason, for such a course, and should therefore vote in support of the Motion of the Honorable and learned Judge.

MR. HARINGTON said, his views as to the powers and duties of this Council had been explained by him more than once, and were well known to the Council. On the present occasion, he did not propose to recapitulate what he had formerly said on this subject, but should confine himself to the Motion before the Council. With the Honorable Member for Bengal, and the Honorable Member for Bombay, he must confess, he was greatly surprised at the refusal of the Executive Government to furnish the information required by the Honorable and learned Judge (Sir Charles Jackson.) So far back as 1855, an Act was passed by this Legislature for substituting Penal Servitude for the punishment of Transportation in the case of Europeans and Americans. He understood that, at the time this Act was passed, a promise was given by the Executive Government to provide a suitable place at one of the Hill Stations in which Europeans and Americans, sentenced to Penal Servitude, might undergo the sentences passed upon them; but up to the present time the promise had not been fulfilled, and Europeans and Americans, so sentenced, instead of being sent to a Jail at one of the Hill Stations, were kept in the Jail at Calcutta and subjected to what had no doubt justly been called by the Honorable and learned Judge the torture of confinement in that Jail. This could not be right. The Honorable and learned Judge having satisfied himself that little, if any, progress had been made towards the erection of a suitable

place of confinement for European and American Convicts in pursuance of the promise given in 1855, asked the Government for certain information which he understood the Honorable and learned Judge to require—not to gratify a mere idle curiosity—but to enable him to judge whether the law should remain as at present, or whether some fresh legislation might not be necessary to relieve European and American Convicts from the torture which they were described as undergoing during their protracted confinement in the Calcutta Jail. The object which the Honorable and learned Judge had in view was surely a very proper one, and he (Mr. Harington) considered that the course which the Honorable and learned Judge had taken in seeking the information which he required from the Supreme Government, by means of his present Motion, was perfectly legitimate. He (Mr. Harington) did not understand how the information asked for by the Honorable and learned Judge could be refused. On former occasions, when information was required by Honorable Members to enable them to judge of the working of any particular law, or whether the modification of any existing law was necessary, it had never been withheld. In the course of last year, he had himself moved that an application should be made to the Governor General in Council for certain returns to show the working of a particular Section of the Rent law (Act X of 1859.) It was proposed by some Honorable Members to discontinue the privilege enjoyed by landlords under that law of bringing their suits for arrears of rent on Stamp paper of one-fourth of the value required for regular suits. It was thought that the law operated unequally and injuriously, and that landlords should be placed in respect of civil actions on the same footing as other suitors. He (Mr. Harington) did not agree, and in order to show that there was no ground for any change in the law, he moved for certain returns which the Supreme Government were asked to obtain and lay before the Council. The application was at once complied with,

and the returns, which had been received in consequence, showed, he thought, that he was quite right in the view which he had taken. Had it been otherwise, he should probably have based a proposition for an alteration in the law upon the returns which had been communicated to them. As it was, no change in the law seemed called for. He could see no objection to the Motion of the Honorable and learned Judge, and he should certainly vote in favor of it.

MR. BEADON said, his reasons for opposing this Motion were precisely the same as those which induced him on the part of the Government to decline answering the Honorable and learned Judge's questions. As he (Mr. Beadon) had said before, there was not the slightest indisposition on the part of the Government to give him the information he sought; and he must deny that there was any foundation for the opinion expressed by the Honorable Member for Bengal, that the Government had shown or intended any contempt to this Council by his refusing to answer the questions. It was not the object of Government to withhold any information from this Council, and every Member who chose could have access to the papers relating to any question coming before the Council. But the Government objected to being called upon through the Council to publish information which, on public grounds, they might consider it unnecessary or inexpedient to make public. The Honorable Member for Bombay had observed that the information for which the Honorable and learned Judge had asked had been refused, although it might have been required to enable him to determine as to whether it would be necessary for him to bring in a Bill on the subject. That, he (Mr. Beadon) begged to state, was a misapprehension, for, as he had said before, the information was at the disposal of the Honorable and learned Judge personally, or of the Judges of the Supreme Court, on application being made for the same in the usual manner.

THE VICE-PRESIDENT said that, on Saturday last, when, on behalf of the

Honorable and learned Judge (Sir Charles Jackson), he postponed the question which stood in the Orders of the Day, he understood the Honorable Member of Government (Mr. Beadon) to say that he was not prepared to answer the question. He (the Vice-President) thought that that statement was rather ambiguous, as he was not sure whether the Honorable Member was unprepared to answer the question for want of information, or because he was not prepared to admit the principle of any Honorable Member taking the liberty to ask such questions. He therefore put it to the Honorable Member, whether he objected to give the information, or was not prepared to do so at that time. He understood the Honorable Member to say that he would obtain the necessary information and should be prepared to answer the question to-day. [MR. BEADON—No.] He certainly did not understand the Honorable Member to say that the application of the Honorable and learned Judge would be refused. But that was not very important. Whether the Honorable Member at that time admitted the right of Honorable Members of this Council to ask for information from the Executive Government, or not, was not material on the present occasion. We must act for ourselves and think for ourselves. But he (the Vice-President) was very much surprised to hear from the Honorable Member of Government (Mr. Laing) that, though the Government had no objection to give the information, still it was justified in refusing to do so on another ground, namely, that a great constitutional principle was involved in it which had to be settled at home. What was the great constitutional principle referred to? He (the Vice-President) knew of none. He remembered that he had made a Motion relating to the Mysore Grant, and that Motion was carried in the affirmative, to the effect that the Government of India should be requested to furnish the requisite information on the subject. Let us see what was the answer of the Government on that occasion. It was

not that "you have no right to ask those questions." But it was to the effect that part of the question related to a correspondence with the Secretary of State, which was not then complete, and that it would not be politic to answer that part of it, but that the request of the Council would be referred to the Secretary of State, and that the other portion of the information required would be laid before the Council. The answer was in the following terms :—

"In reply to the Message from the Legislative Council, No. 182, the President in Council, with the concurrence of His Excellency the Governor-General, informs the Legislative Council, that the interests of the public service forbid his ordering that the papers asked for by the Resolution, which accompanied the Message, should be laid before the Legislative Council, with the exception of the account specified in the first clause of the Resolution, which will be prepared and furnished to the Council as soon as practicable.

The other papers specified in the Resolution relate to a correspondence with the Secretary of State for India, which is yet incomplete; and the President in Council does not therefore feel that he would be justified in transmitting them to the Legislative Council.

The request of the Legislative Council will, however, at once be made known to the Secretary of State.

The President in Council has the honor to inform the Legislative Council, in reply to the concluding clause of the Resolution, that no payment beyond what has been usual of late years to the family of the late Tippoo Sultan is provided for in any account or estimate, of which the results have hitherto been laid before the Legislative Council."

The account was subsequently made out and laid before the Council. It was of no use by itself, and therefore he did not move to have it printed. But the principle was admitted. Two of the questions were answered, and the rest were refused because the Government did not think that, under existing circumstances, they ought to give that particular information. Now, the Honorable and learned Judge came down to-day and told us that in 1855 an Act was passed substituting Penal Servitude for Transportation in the case of European and American Convicts, because there was no place to which they could be transported, in consequence of the Home Govern-

ment having refused to allow Convicts to be sent to the Colonies. No one ever thought or dreamt that a European Convict was to be kept imprisoned with hard labor in the plains of India for seven or fourteen years, or even for life, for Penal Servitude, by the Act in question, might be extended even to the term of a man's life. But the Act provided that Convicts sentenced to Penal Servitude should be imprisoned in such Jails as the Governor General in Council by a General Order should direct, leaving it to the Governor General in Council to provide proper Jails for the purpose. It was never intended that such Convicts should work out their sentences in a Jail in Calcutta or in the plains of India, though it was intended by the Act that they might be kept there as a place of intermediate custody. Now the thirty-three prisoners mentioned by the Honorable and learned Judge were merely on their road to Penal Servitude, and were now kept in the Calcutta Jail, until the Government could provide a suitable place for their working out their sentence. Was it not most reasonable and proper then for the Honorable and learned Judge, who had to sentence persons to Penal Servitude, when he found that they were still detained here, to enquire of the Government what progress had been made in the erection of a proper Jail? He (the Vice-President) believed that some of these persons had been confined in the Calcutta Jail for upwards of three years. Humanity dictated to the Honorable and learned Judge to come and ask this question. No objection was made by the Government to answering some portions of the questions relative to the Mysore Grant. The answer was given. But this question was one of vital importance to those who had the administration of justice in their hands, and also to every Honorable Member of this Council, whose duty it was to satisfy himself whether the preparations which had been made for carrying out the intentions of the Act of 1855 would be shortly completed.

But the learned Judge had been asked to withdraw his question until the

great constitutional principle had been settled, and some of the Members of Government objected to answer the question in the meanwhile, lest it should be drawn into an inconvenient precedent, and render the determination of the principle more difficult. He would ask, by whom was it proposed that this great constitutional question, as it was called—whether members of this Council were to be permitted to ask the Executive Government for such information as was necessary to enable them properly to discharge their legislative functions—was to be determined? Was it proposed that Parliament should deal with the question? We knew not whether they would deal with the whole subject of the Legislative Council this Session or not; and if the question were to be settled by Parliament, what harm could it do to give the information required? Or was it proposed that the question should be settled by the Secretary of State for India? He had heard of Constructions and Circular Orders being issued by the Sudder Court for the information and guidance of Judges and Magistrates and other Officers, so as to assist them in construing the law. But were we, standing here as men of honor and independence, to be asked to wait until the Secretary of State in Council or the Secretary of State alone should think fit to send us his Constructions or Orders as to the constitution under which we were acting? He (the Vice-President) denied the power of the Secretary of State to dictate to the Members of this Council as to the course which they should pursue in the way of legislation, or to direct them to act upon his construction of the Statutes upon which the constitution of this Council depended. If Parliament, in its wisdom, should declare—which was very improbable—that Members of this Council were to stand here and legislate without asking questions, or obtaining that information from the Executive Government which was necessary to enable them to discharge their duties conscientiously, he should feel bound to submit to their decision; but from that very moment he should cease to enter this

Chamber as a Member of the Council. He could not consent to perform the important and most responsible duties of a Legislator, duties which might affect the liberties and even the lives of his fellow-subjects; that he was to sit here as an instrument to legislate, and that he had no right to seek in a legitimate manner the information which was necessary to enable him to judge for himself upon every matter that came before him in the discharge of his duty. But the Honorable Member (Mr. Beadon) had said that all the documents of Government were accessible to the Honorable and learned Judge. He (the Vice-President) did not consider that he had any authority to apply for information to the Secretaries without the consent of the Governor-General in Council. He was not a Member of the Executive Government, and he had no control over their papers and records, and he had no right to refer to them of his own authority. He thought that the Honorable and learned Judge was perfectly right in coming and asking the question as he did, and that this was the place and the only proper place to ask for the information which he required.

Then we were told that, if the Judges were to ask, the information would be given to them. Why should it be given to them? What was the constitutional principle which allowed the Judges to ask for information, when that privilege was denied to the Members of this Council? What benefit would it be to the Honorable Members for Bengal, Bombay, and the North-Western Provinces, if this information were to be privately given to the Judges in their Chambres? As Judges, they did not require the information, for in that capacity they had already discharged their duties. They could not recall the sentences which they had passed. Therefore, as Judges, they were not in a position to require that information. But as Legislators, when they found that the effect of a law which had been passed might be inhuman and cruel if proper means were not provided for carrying out its

provisions, they certainly had a right to ask for that information which was necessary to enable them to judge whether an alteration of the law was necessary. But whether they received the information or not, must depend on the judgment of the Right Honorable the Governor-General in Council. All that we now asked was that the Governor-General in Council be requested to give us the information. The Honorable and learned Judge had put the question most respectfully, and the only objection which had been taken to it was that some great constitutional question was now pending at home, and that, until that question was decided, nothing could be done. Suppose the Honorable Member for Bengal had asked the question instead of its having been put by the Honorable and learned Judge, and he had been told, "we protest against your asking for such information; if the Judges ask for it, we will give it to them." Until the constitutional question was settled, he (the Vice-President) should deem it right to ask questions, whether he received the information he required or not; and if he were called upon to legislate without having the information, he should, as an honorable and independent man, adopt such a course as might appear to him to be proper or necessary under the circumstances. He thought that the Honorable and learned Judge was perfectly justified in asking this question, and he (the Vice-President) should certainly give his vote in support of the Motion.

SIR BARTLE FRERE said, he should not have thought it necessary to take any part in this discussion, after having so lately expressed his opinion on the main question at issue, did he not wish to clear himself and his colleagues from the imputation cast upon the Government by the Honorable Member for Bengal, of treating the Council in a "contemptuous" manner. He was certain nothing was farther from their intention than to do so. Again, it was repeatedly stated by those who supported the Motion, that there was some disposi-

tion on the part of Government to refuse or withhold information. This also he wished most emphatically to deny.

How stood the case? Last Saturday, when the question stood on the Motion paper, he (Sir Bartle Frere), speaking for his own personal understanding of the matter, certainly supposed that the Honorable and learned Judge simply intended to put the question for his own information, and that his wish to obtain information was, in fact, with a view to do what he had done in 1859. And he (Sir Bartle Frere) had felt convinced that the Honorable and learned Judge would, on receipt of the information, take such steps as he thought necessary, either to press for some more active measures to provide Prison accommodation, or, it might be, for an alteration of the law. Had he done this—had he done what was done in 1859—he would, in his (Sir Bartle Frere's) opinion, have been perfectly right in putting his question, and the Government now, as in 1859, would have been very much obliged to him for drawing attention to the matter. But what did the Honorable and learned Judge now do? All the information the Government possessed was placed fully and unreservedly at his disposal, and that offer of full and unreserved information had been repeated to-day in that Council, and refused.

Now why did his Hon'ble and learned friend (Sir Charles Jackson) ask for the information? And why did he refuse to take it as offered? As very justly stated by the Honorable Member for the North-West, it was "not to gratify an idle curiosity," for the Honorable and learned Judge already knew what answer could be given, and, in point of fact, he had just been to the Neilgherries, had seen and examined for himself, and had no necessity to seek anywhere for information. He already knew more than the Government or any Member of this Council could tell him. He asked the information avowedly for the purpose of raising what was called a "Constitutional Question." Now the Honorable and learned Vice-President asked what was this constitu-

tional question? and in his remarks had, he (Sir Bartle Frere) thought, rather misapprehended what had fallen from His Honorable friend opposite (Mr. Laing). The Honorable and learned Vice-President had argued as though his Honorable friend had recommended them to stop in the exercise of their duties, until the constitutional question referred for the decision of the Secretary of State was decided. But he (Sir Bartle Frere) was sure that his Honorable friend (Mr. Laing) had no intention of being so understood. What he recommended was that, until questions now pending before the Home Government were decided, Members of that Council would do well to exercise a discretion in raising again and again a question which was already pending before the Home Authorities, and in this point he entirely agreed with his Honorable friend.

The question pending before the Home Government was a constitutional question, inasmuch as it affected the constitution of that Council. As to the power of any Legislative body to interrogate the Executive and to modify its action, Macaulay had long ago pointed out that the power had been virtually conceded from the date of his own appointment as Legislative Member of Council in 1833, with duties entirely independent of, and separate from those of the Executive Government. How far these powers should be pushed was a question of time and discretion. The Council was composed of a small number of Members legislating for a vast empire, and the question for them now to decide was, where should they stop in putting questions unconnected with any business before them on the Motion paper? It was almost impossible to imagine any question which might not, in some way or another, be connected with legislation. The point to decide was, how far the power of putting such questions could be pushed without interfering most inconveniently with the practical utility of the Council as a body for making laws?

When the Mysore Grant was under discussion, he (Sir Bartle Frere) pointed out that, when once we abandoned the plain and obvious course of confining our questioning to matters practically before the Council, we entered on a very wild and inconveniently wide field of discussion. He thought we need go no farther than this debate for an illustration of the soundness of this anticipation. He (Sir Bartle Frere) had no wish to undervalue the importance of this subject of Prisons for Europeans, it was unquestionably one deserving their gravest attention, and he entered entirely into the feelings of the Honorable and learned Chief Justice, when he described how the matter came home to himself and his colleagues as Judges on the bench. But the practical question was, what was the best and most effectual mode of doing our duty in this matter of getting proper Prisons built, or of amending the law which was passed in anticipation of such Prisons being built?

The Honorable Member for Bengal had compared the Members seeking this information to the famine-stricken inhabitants of the North-West asking for food and being told to get it in some roundabout manner, which amounted to a practical denial. But the simile was not even poetically correct, for his Honorable Colleague opposite (Mr. Beeson) not only did not refuse the information, but he offered it by a much shorter and more practically useful process than that of obtaining information by Motion and Debates in that Council. Nor could he concur with the Honorable Member that they were in any danger of a dearth of business or of information relating to it. With the Codes on their hands and all the projects of laws which they had before them, there was surely enough to satisfy the most unlimited appetite for information relating to legislation.

It was only fair, after having found fault with the course which His Honorable and learned friend (Sir Charles Jackson) had adopted, that he (Sir Bartle Frere) should state briefly the course which, in his opinion, should have been pursued. It appeared to him

that his Honorable and learned friend having received from the Executive Government the information tendered, and which was all they had to give, might then have shaped his course in that Council according to what he had so learnt. If the information satisfied him that Government was doing all in its power to provide Prisons, there would, of course, have been no necessity for further action. If the information were otherwise than satisfactory, he might have either moved an address to Government or brought in a measure for altering the law, or taken any other step he thought proper in his Legislative capacity. The production of information in a form accessible to every one would then have been ensured, as a matter of course, and much useless discussion, which was in no way conducive to the despatch of business, would have been avoided.

This course seemed to him (Sir Bartle Frere) not only the more practically useful, but entirely consistent with the duties and dignity of Members, whether as Judges, or as Members of that Council. The Honorable and learned Vice-President had quite misunderstood His Honorable colleague (Mr. Beadon), when he argued as though his Honorable friend had said that the information might be given to the Judges, but would not be given to the Honorable Member for Bengal, or to other Members who were not Judges. What he (Sir Bartle Frere) understood his Honorable friend to say, and what he felt sure he meant to say was, that there was the information for any Member who desired it, whether he asked for it as a Member of the Legislative Council, or as a Judge specially and personally interested in the matter, and that the Judges might have it, irrespective of their position as Members of that Council, if they chose to ask for it, as they did for other information bearing on their judicial duties.

It was not necessary for him, as a Member of Government, to oppose this Motion. It would probably be carried, as in the case of the Mysore Grant, and would probably be answered as in

that case, as far as it was in the power of Government to give the information. But in his capacity as a Member of the Legislature, he (Sir Bartle Frere) must protest against this system of indiscriminate questioning, not for the purpose of eliciting information which would be readily and unreservedly furnished by Government, but merely for the purpose of raising a discussion as to the constitutional right of the Council to put questions to the Executive Government, when such questions were not needed in connexion with any Legislative action.

The issue had been already distinctly raised in the case of the Mysore Grant, and he (Sir Bartle Frere) was unable to see any useful result which could possibly follow its continual discussion in that Council, till we knew what was likely to be done on the subject by the only body which was able to take effectual action in the matter.

SIR CHARLES JACKSON, in reply, said that, as far as he understood the objections which had been made to his Motion, they appeared to resolve themselves under two heads—*1st*, a question of right, and *2ndly*, a question of discretion. As to the first, namely, the question of right, the information to be called for by his Motion had been treated as one of general policy unconnected with legislation. That however was not a correct statement, for the information was intimately connected with legislation. He had stated expressly in his opening remarks, that the Penal Servitude Act of 1855 was passed with a distinct understanding that proper places of confinement for European and American Convicts would be provided by the Government. He would put the case in this way. Suppose by the Currency Bill, the Government had taken power to issue ten Rupee Notes, and had at the same time stated that they would not issue them for the next two years, and that notwithstanding this undertaking the Government were to introduce them into the Mofussil sooner than they had said they would, could it be said that the Council had

no power to enquire into that matter, because the Bill had been passed? There could be no question whatever as to the right of the Council to interfere in such a case, and the Penal Servitude Act was precisely in the same position, and this question was therefore intimately connected with a subject of legislation. The information asked for by him was also useful with respect to future legislation. Suppose the Government had come down and said that, in the present state of the finances, they could not build the Jail at Jackatolla, (and it was to obtain their opinion as to the expediency of proceeding with this Jail, that his questions were chiefly directed), what would be the duty of this Council? It would have immediately to repeal the Act relating to Penal Servitude, and to consider and devise some other system of punishment instead of Penal Servitude. How could it then be contended that this was not a matter connected with legislation?

Then it was said, that the information had been offered to him. He must say, and he did so with the most perfect courtesy to the Honorable Member of Government, that he unhesitatingly declined to avail himself of such an offer. His reason for doing so was that he considered that this was the place where he should ask for and receive the information, because the matter was one connected with legislation, and every other Member of this Council was as much interested in it as himself. Then he was asked, where would have been the harm of his accepting the offer of the Honorable Member? The harm would have lain in this, that he should have been under the necessity of withdrawing his question, which had been entered in the Orders of the Day, and that would have been tantamount to an admission that the question was not a proper one, and that the Council had no right to ask for such information. He could not admit either of these positions, and he did not think the Government could reasonably expect him to put himself in such a false position.

As to the question of discretion, he really thought there could be no doubt on this score. It was a matter of the greatest astonishment to him, that any gentleman should think that there could be any objection to answering his question.

SIR BARTLE FRERE begged to correct his Honorable and learned friend. He (Sir Bartle Frere) had spoken of discretion as to putting, not of discretion as to answering, the question.

SIR CHARLES JACKSON resumed. He would only reply to the Honorable Member by reiterating that the indiscretion was entirely on the side of the Government. The Honorable the Fourth Member of the Government had admitted that this was a proper question, and indeed it could hardly be contended by any one that it was improper in a Judge, who had these sentences of Penal Servitude to pass, to put such a question? What possible harm would there have been for the Government to have answered at once, as they did in 1859. He really must say that the question of discretion was entirely on one side.

Then, again, it was said that a great constitutional question was pending before the Secretary of State. How long, he would ask, was this Council to wait for the solution of that question? For ought he knew, it might remain for years before it was settled by Parliament. It appeared to him impossible to act on suggestions of this nature, and that the Council must act on the basis on which it now stood as a Legislative Assembly. He thought moreover that it might be very useful that the attention of the Secretary of State should be drawn to the questions which this Council conceived it had a right to ask. If the Secretary of State was going to Parliament on this subject, it would be as well that he should know what questions might arise, and be thus enabled to provide against the quicksands which surrounded the subject, if he should consider them to be so. He (Sir Charles Jackson) thought that the question which he had put was one of great

importance, that he had every right to ask for the information, and that the question was one which it would have been only discreet for the Government to have answered at once. He should therefore press his Motion.

The question being put, the Council divided—

Ayes 5.	Nos 3.
Sir Charles Jackson.	Mr. Laing.
Mr. Erskine.	Mr. Beadon.
Mr. Scouce.	Sir Bartle Frere.
Mr. Harington.	
The Vice-President.	

So the Motion was carried.

SIR CHARLES JACKSON then moved that Sir Bartle Frere be requested to take the Message to the Governor-General in Council.

Agreed to.

NOTICES OF MOTION.

MR. SCONCE gave notice that he would next Saturday move the first reading of a 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).

Also of a Bill relating to contracts for the cultivation and delivery of agricultural produce.

MR. HARINGTON gave notice that he would, on the same day, move the first reading of a Bill to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces); and said that he might mention that the object of the Bill was to raise the Duty on the various kinds of Sugar exported from the North-Western Provinces, and to double the existing rates.

The Council adjourned.

Saturday, March 16, 1861.

PRESENT :

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

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

PRISON AT THE NEILGHERRIES.

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

MESSAGE NO. 260.

The Governor-General in Council has the honor to inform the Legislative Council, in reply to the request conveyed in Message No. 190, that the Secretary to Government, in the Home Department, has been directed to furnish the Clerk of the Council with a Memorandum, containing the information asked for in the Message.

By Order of the Governor-General in Council.

(Signed) W. GREY,
Secy. to the Govt. of India.

FORT WILLIAM,
The 15th March 1861.)

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding the following Memorandum referred to in the above Message, regarding the construction of a Jail for the reception of European Convicts:—

MEMORANDUM.

The Court of Directors having, in a Dispatch, dated 2nd of January 1857, authorized the erection in the Neilgherries of a Central Jail, capable of accommodating 100 prisoners, for the reception of European Convicts, the Government of Madras was requested in March 1857 to submit estimates for the building.

In the Madras Budget of Public Works submitted in 1858, the Madras Government included an item for a 'new Jail for native prisoners at Ootacamund,' and in a subsequent letter, dated 7th August 1858, early sanction for the work was requested on the ground that it had been designed partly as a prison for Europeans sentenced to Penal Servitude, until a larger prison could be constructed solely for their use. On this representation the work was immediately sanctioned, and the building is now drawing near to completion. It is stated by the Madras Government that it will hold thirty-six European Convicts in separate cells.

An estimate for the larger prison originally ordered, has not yet been submitted by the Madras Government. The following explanation on the subject was received recently from Madras.

"The construction of the large Jail for one hundred Europeans on the Neilgherries near Jackatolla, not at Ootacamund, has been delayed on account of difficulties in the way of fixing the site, of preparing the plan and estimates, and in providing funds. The site has been settled, the plan and estimates are under