

Saturday, 15th December, 1860

**PROCEEDINGS**

**OF THE**

**LEGISLATIVE COUNCIL OF  
INDIA**

**Vol. VI**

**(1860)**

Mr. SCONCE observed that the object of the Bill now under consideration was simply to do what the Secretary of State suggested in the final paragraph of his Despatch, as far as regarded the Bengal Presidency.

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

#### ROHILCUND DIVISION.

Mr. HARRINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts.

#### CRIMINAL PROCEDURE.

Mr. HARRINGTON moved that certain Minutes recorded by the Judges of the Court of Nizamut Adawlut for the North-Western Provinces on the subject of the preliminary investigation by Police Officers in cases of offences cognizable by those Officers, be printed and referred to the Select Committee now sitting on the Code of Criminal Procedure for such consideration and notice in the Report to be submitted by them as they might deem proper. He said that copies of these Minutes had not yet reached him from the Government of the North-Western Provinces, though he was daily in expectation of receiving them. The copies which he held in his hand had come to him direct from the Sudder Court, the Court having probably observed the re-appointment of a Select Committee to consider some portions of the Criminal Procedure Code and the instruction given to the Committee to make its Report without delay; and as the Committee was now sitting and engaged in performing the task assigned to it, he had thought it better, in order to save time, not to wait until he heard from the North-Western Government, but to move that the Minutes of the Sudder Judges be printed at once and laid before the Committee.

Agreed to.

Mr. HARRINGTON also moved that the Extracts from the Despatches received from the Secretary of State for India and communicated to the Council, relative to those Chapters of the Code of Criminal Procedure which treated of trial by Jury and appeals, be referred to the same Committee, and that the Committee be instructed to propose any modifications of the Chapters in question which they might consider desirable.

Agreed to.

#### PORT-DUES (AMHERST).

Mr. SCONCE moved that the Bill "for the levy of Port-dues in the Port of Amherst" be referred to a Select Committee consisting of Mr. Harrington, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

*Saturday, December 15, 1860.*

#### PRESENT:

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

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

#### RECOVERY OF RENTS.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding the Returns called for in Message No. 160, dated 25th June 1860, regarding claims relating to the recovery of rent preferred in the Revenue Courts of the Lower Provinces of Bengal.

Mr. HARRINGTON moved that the above communication be printed.

Agreed to.

#### ESCAPED CONVICTS.

Mr. ERSKINE presented a communication which he had received from the Bombay Government, relative to

sentences to be passed on escaped convicts, and moved that it be laid upon the table and referred to the Select Committee on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

Agreed to.

#### FLOGGING.

MR. HARRINGTON moved the first reading of a Bill "to provide for the punishment of flogging in certain cases." In doing so, he said, previously to making the Motion that the Report of the Select Committee on the punishment of flogging be adopted by the Council, and that the Bill appended thereto, be read a first time, he wished to explain the views which he entertained on the question of flogging as a punishment for criminal offences, and to offer a few remarks upon some of the more important provisions of the Bill which had been prepared by the Select Committee under the instructions given to it.

Individually, he disliked, and he had always been opposed to the punishment of flogging, which must, he thought, be regarded as, in a greater or less degree, a demoralizing punishment, and neither as a Judge nor as a Magistrate did he ever remember to have administered it. As a general rule, he was of opinion that where, in its effect, the punishment of flogging was likely to be more demoralizing on the character of the person flogged than imprisonment in jail, and where, at the same time, it was not found to be much more efficacious in deterring from the commission of crime, which should be the object chiefly aimed at in all punishments, it had better not be inflicted. It was not because he liked the punishment of flogging that he considered that it should find a place in the Indian Penal Code. He repeated that he disliked it, but he conscientiously believed that, in the present state of Indian society, taking the British possessions in India as a whole, and not confining their attention to any particular part, the punishment of flogging would be found in certain cases a suitable and, comparatively, a

humane and merciful, if not a necessary, punishment. It was under this conviction that the Select Committee proposed that it should be allowed in the cases which would be found described in the Bill prepared by that Committee. He used the word "allowed," because the Select Committee did not propose that the punishment should be imperative in any case, but permissive only.

He (Mr. Harrington) was quite willing to admit that if they had to legislate in this matter for the Presidency Towns alone, or for only those Sections of the community, whether to be found in the Presidency Towns or elsewhere, which had attained to a high degree of civilization, the case would be quite different, and the addition of the punishment of flogging to the penalties prescribed in the Penal Code, would be of very questionable propriety. But the Indian Penal Code would apply not to the Presidency Towns alone and to the comparatively small number of Europeans scattered over the Mofussil, but to the whole of this vast country extending from the Himalayas to the Sea. Not to the civilised classes alone to which he had referred, but to the barbarous tribes to be found in the Punjab and other places, and to all the intermediate classes; to people who were to be counted not by hundreds or by thousands, but by tens of millions. Few who were acquainted with the state of native society beyond the Presidency Towns, or who had had the opportunity of observing the classes of persons who usually came before the Mofussil Courts charged with criminal offences, would, he thought, deny that flogging was a suitable and proper punishment for them—very much more so in the great majority of cases than imprisonment for long periods, and that in its effects it was little, if at all, more demoralising on the native character. If such was the case, it surely behoved them to pause and consider well before they discontinued the punishment of flogging in the Presidencies of Madras and Bombay, and in the Punjab and Oude, in all which places it might

now be administered for very many more offences than would be found mentioned in the Bill prepared by the Select Committee. True, the punishment was abolished in the Bengal Presidency beyond the Presidency Town, by a Regulation passed so long back as 1834: but the policy of its abolition had long been questioned, and the punishment was resorted to, he might almost say with eagerness, in the North-Western Provinces, when during the period of the late disastrous events, the law was temporarily suspended in those Provinces.

It seemed to be thought by some, that in the matter of punishment in this country, class distinctions might not improperly be allowed, but he submitted that legislation had rarely, if ever, taken that form either here or at home, and he considered that recourse to it on this occasion would not only be highly objectionable, but that it was quite unnecessary. In the course of the debates which had taken place on the question of flogging as a punishment for criminal offences, allusion had more than once been made to the Act which was passed some years ago in England, to prevent outrages on Her Majesty. That Act, which allowed the punishment of flogging for the offence, was of general application. It applied alike to the Peer of the Realm, to the meanest citizen, and to the most illiterate peasant. In Ceylon they were told by their late Honorable and learned Colleague, in the admirable speech which he delivered in that Council some years ago, that the district Judge with no other aid than that of three sleepy, useless and powerless Assessors, might imprison a British subject for a year, and give him one hundred lashes, and that the Police Magistrate without even that nominal aid, might imprison him for three months and give him twenty-five or fifty lashes. The 9th George IV, Chapter 74, for improving the administration of Criminal Justice in the East Indies, in the 21st Section, declared—

“That every person convicted of any felony not punishable with death, shall be punished

*Mr. Harington*

in the manner prescribed by the statute or statutes specially relating to such felony, and that every person convicted of any felony, for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable at the discretion of the Court to be transported to such place as such Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, if the Court shall so think fit, in addition to such imprisonment.”

This law was of general application and made no distinction of races or classes, and so recently as the year 1856 that Council passed a law for the Presidency Towns, Act XIII of 1856, one of the Sections of which allowed the punishment of flogging in certain cases, whoever might be the offender. Under all these laws, the punishment of flogging was permissive only, not imperative. It was left to the presiding Judge to administer it in those cases in which he might consider it a suitable and proper punishment, and to abstain from administering it in those cases in which he might not so consider it. This was precisely what was proposed in the Bill prepared by the Select Committee. They did not hear that the discretionary power given to the various Courts which could administer the punishment of flogging in certain cases was abused, and he saw no reason to suppose that it would be abused under the proposed Bill, should it pass into law with the safe-guards which would be found contained therein.

Then again an opinion seemed to have got abroad that those who now advocated corporal punishment were proposing to revive a punishment which had long since been altogether abolished, and that consequently the present Bill was of a retrograde character, and as such, proceeded in the wrong direction. What he (Mr. Harington) had said as to the state of the law in Ceylon and some parts of India, including the Presidency Towns, would show how erroneous this opinion was, and that the Bill proposed by the Select Committee, whatever might be its claims to be regarded as a progressive measure, was scarcely open to the charge of retrogression.

He (Mr. Harington) would proceed now briefly to notice the principal provisions of the Bill. The Select Committee had selected for the punishment of flogging those offences, the punishment of which was regarded generally as peculiarly degrading, or he should perhaps more correctly say the punishment for which carried with it a greater amount of social and moral degradation than was the case as regarded the punishments for other offences. The offences selected by the Select Committee were theft, burglary, perjury, forgery, rape, unnatural offences, and indecent assaults upon women. He thought that in this respect the Select Committee had acted on a right principle. The Select Committee proposed that the punishment should be inflicted on males only. He (Mr. Harington) observed that it had been stated that he would flog females. The statement was a very silly one, and it was as untrue as it was silly. The Select Committee proposed that the punishment should be in substitution of, or in addition to, imprisonment. When administered by the Magistrate or a subordinate Officer, it must be in substitution. The Select Committee thought that this provision would operate very beneficially, both in saving many young offenders from the contaminating influences inseparable from imprisonment in a Criminal Jail, and the evil consequences which generally ensued therefrom, and in preventing the crowding of the jails. The events of the years 1857 and 1858 to which he had already referred, had taught us this amongst other important lessons, that it was highly inexpedient that large crowded jails, whether Central or District, should be scattered over the country, and the fearful sickness and mortality which prevailed almost periodically in the mofussil jails, furnished another and a very powerful argument in favor of limiting the number of persons confined therein as much as possible, which could only be done by substituting transportation for short periods for which the Penal Code made pro-

vision, and flogging for imprisonment in jail. When the punishment was in addition to imprisonment, it would not be administered until two months after the date of the order, in cases open to revision by a superior Court. A Section had been introduced, which would prevent the infliction of the punishment on old and infirm men; and provision was made for limiting the number of stripes, for the administration of the punishment on summary conviction only by Magistrates or other Officers specially empowered, and for the execution of the sentence in the presence of a proper Officer.

These were the principal provisions of the Bill prepared by the Select Committee, and he thought they would show that, the suitability of flogging as a punishment in certain cases, and the desirableness of continuing it for those cases, being admitted, the Select Committee had evinced no desire to carry the law or the punishment beyond the necessities of the case.

The Bill was read a first time.

#### ROHILKUND DIVISION.

MR. HARINGTON moved the first reading of a Bill "to remove certain tracts of country in the Rohilkund Division from the jurisdiction of the tribunals established under the general Regulations and Acts." He said, this Bill was introduced at the request of the Honorable the Lieutenant-Governor of the North-Western Provinces, in which the tract of country to which the Bill related was situated. As was remarked by him on a former occasion, when bringing in a Bill to remove two Pergannahs in a district in the Province of Bundeled, from the operation of the general Regulations, the introduction of Bills of this nature, which were intended to apply only to small tracts of country, the peculiar circumstances of which rendered it desirable to observe a different form of administration in them from what was generally observed, did not necessarily raise any question as to the superiority of what was called the non-Regulation system over the Regula-

tion system or *vice versa*, and in the few remarks with which he should trouble the Council in explanation of the objects and reasons of the present Bill, it was not his intention to draw any comparison between the two systems, though at the proper time he should always be prepared to consider and discuss their respective merits.

The Bill related to eight Pergunnahs, the names of which would be found in the Schedule of the Bill. These Pergunnahs lay in the north of the Province of Rohilkund in the Terai, and skirted the Kumaon Hills. Previously to the mutinies three of the Pergunnahs formed part of the district of Moradabad, two of the district of Bareilly, and the remaining three of the district of Phillibheet. In the year 1858, they were made over to the management of the Commissioner of Kumaon, which was a non-Regulation Province. The transfer was avowedly temporary only, and was recommended rather by military than by administrative considerations. Subsequent experience had shown the inexpediency of continuing the existing arrangement. On this point, all the local authorities were agreed. But it was considered that it would be no less inexpedient to retransfer the Pergunnahs to the districts to which they formerly belonged, and there appeared to be a very general concurrence of opinion that they should be formed into a separate district under a single Officer at its head who, as was the case in the Punjab and other non-Regulation Provinces, should unite in his own person all the executive functions, Civil, Criminal, and Revenue, which in the Regulation Provinces were exercised to some extent by different Officers. This was what had been strongly recommended by the Honorable the Lieutenant-Governor of the North-Western Provinces. The recommendation was entirely concurred in by the Supreme Government, and having been ordered to be carried out, the present Bill, which proposed to remove the Pergunnahs in question from the jurisdiction of the tribunals established under the general Regula-

tions and Acts, was required to give effect to the arrangement. The Bill had been framed after the model of the Act which was passed some little time ago, on the Motion of the Honorable Member for Bengal, in relation to a portion of the district of Chittagong. It had appeared to him (Mr. Harrington) that the form of legislation observed in that Act would be preferable on the present occasion to the form which was adopted in the case of the Bundelkund Pergunnahs, to which he had already alluded, and he had ascertained from the Honorable the Lieutenant-Governor of the North-Western Provinces that, *mutatis mutandis*, the Chittagong Act, that was Act No. XXII of the present year, would quite meet His Honor's views. Before bringing these remarks to a close, he would, with the permission of the Council, read two paragraphs from the letter of the Secretary to the North-Western Government to the Government of India, proposing the new arrangement. These paragraphs would show the Council to some extent the peculiar character of the tract of country to which the Bill related, and of the people who would be affected by it; the necessity that existed for the Bill, and the benefits which were expected to result from its introduction. The first paragraph said—

"The Pergunnahs which compose the Terai, occupy an area of about 1,000 square miles, and would therefore form territorially no inconsiderable charge. But when it is considered that the tract is admitted on all hands to be peculiar in its character, peopled partly by migratory Bhojias and Tamroos, who, as Mr. Muir observes, "must be managed like children, and kept out of the way of usurers;" and when it is borne in mind, as further remarked by Mr. Muir, that "cultivators must be attracted by low rates, that the water which spreads over the country into swamps must be directed into drainage channels, that good drinking water must be provided, that works of irrigation must be constructed and maintained; and that a simple and patriarchal form of administration is what is required;" it will, His Honor thinks, be evident that the charge will be, not only sufficient, but a responsible and onerous one, requiring energy, perseverance, and zealous devotion on the part of a separate Officer, who shall have no other duty to occupy his time or distract his attention."

*Mr. Harrington*

The second paragraph went on to say—

"The Lieutenant-Governor is strongly of opinion that the Government is bound, in the cause of humanity and civilization, to do its utmost towards the reclamation of this swampy and pestiferous tract, and that in the prosecution of this work, it will consult its own interest in the addition to its revenue which the extension of cultivation, and the material improvement of the Pergunnahs must produce. It has been shown, His Honor trusts, that such improvement cannot be expected to result from the divided management of two or three different Collectors, whose duties are already so laborious that they could devote but little time or attention to their respective Terai Pergunnahs—that, on the contrary, it is only by the introduction of a completely uniform system applied, under the direction of a single energetic Officer, to the entire tract, that its gradual reclamation can be hoped for."

The Bill was read a first time.

#### ADMINISTRATION OF JUSTICE, IN THE SUPREME COURT (BOMBAY).

Mr. ERSKINE, in moving the first reading of a Bill "for the improvement of the administration of justice and despatch of business in the Supreme Court of Judicature in Bombay," said that it would not be necessary for him to offer more than a few words of explanation. Although the Title of the Bill was certainly rather formidable, the Bill itself was a very simple one. It was intended merely to enable the Judges of the Supreme Court in Bombay to sit separately and simultaneously on the Civil side of the Court for the despatch of business, as one Judge is already empowered to sit separately on the Criminal side by Act XXI of 1847. The present Bill had been drawn in accordance with that Act, of which it was the complement. It had been drawn by the Judges of the Supreme Court themselves, and was recommended by the local Government and by the Supreme Government. He (Mr. Erskine) did not wish to maintain that the principle of the Bill was in all respects an improvement on existing practice, had the Bill been desired as a permanent measure. But, in fact, it was sought merely as an *ad interim* measure, as

a "temporary palliative" for inconvenience resulting from the accumulation of arrears in the Court at Bombay which could not otherwise apparently be cleared off, while it was impossible, in the existing uncertainty as to the future constitution of the Court, to expect immediate relief in the shape of increased judicial assistance. But perhaps it would be better to allow the Judges to explain for themselves the circumstances under which this Bill was proposed, and he would therefore read to the Council a portion of their letter on the subject—

"We regret that it becomes our duty to observe to your Excellency in Council, that from causes beyond the control of the Judges, the general business of the Supreme Court has fallen into arrear.

The Court has now been sitting without intermission since the 5th of June, but the Equity Board of last June term is not yet disposed of, and the entire business for last August term, with some trifling exceptions, is in arrear.

The Criminal Sessions now intervene, and November will bring its own list of causes at all sides of the Court to add to the accumulation of arrears.

We do not on the present occasion propose to advert further to the obvious necessity for increased judicial assistance.

As a temporary palliative for public inconvenience, we desire to be empowered to sit apart, when necessary, for the contemporaneous despatch of each class of business, and we beg to forward a short clause framed for the purpose, in accordance with the principle of Act XXI of 1847."

This was the statement of Her Majesty's Judges themselves, and with these few words of explanation, he (Mr. Erskine) would merely now propose that the Bill be read a first time.

The Bill was read a first time.

#### MINORS.

Mr. SCONCE moved the second reading of the Bill "to amend the law relating to Minors."

Mr. HARRINGTON said, that he did not rise for the purpose of opposing the Motion for the second reading of this Bill, but before the Bill was read a second time and referred to a Select Committee, he should be glad to hear from the Honorable Member for Bengal

what were the material advantages which were expected to be obtained by the passing of the Bill. In the Statement of Objects and Reasons they were told that what was wanted was an affective tribunal ; that at present they had Magistrates who could not interfere at all, and Civil Courts which could only interfere on the subject matter in dispute being laid as a regular suit subject to all the charges of ordinary plaints, and accordingly the Bill proposed to supply an effective Court, but in no other respects to deal with the law which should govern the adjudication of such disputes. It was not apprehended that the Courts would have any difficulty in dealing with the claims brought before them, and at present no legislation as to the substantive law applicable to the case was said to be called for. But how did the Bill supply the want here stated to exist, and how would a case brought under the Bill differ from an ordinary Civil Suit under Act VIII of 1859 ? The case was to be brought before the Judge by petition. A suit under Act VIII of 1859 commenced with a plaint. But as no thing more was allowed to be stated therein, except the claim and the date when it accrued, and the petition required by the present Bill could scarcely be prepared in a more concise or summary form, the difference between the two papers would be in the name only. The procedure under the Bill was to be that laid down in Act VIII of 1859, in so far as the same was applicable ; so that in this respect nothing would be gained. The order made by the Judge was to be enforced as if made in a regular suit. This was precisely what was required to be done in respect to decrees passed in regular suits, and the same procedure would be followed. Lastly, there was to be an appeal to the Sudder Court, which was allowed from all decisions passed by a Zillah Judge in a regular suit, and here again the same procedure would be followed. So that under the Bill there would be all the stages of a regular suit, the only difference, in so far as procedure was concerned, being that the case would commence with a petition instead of a plaint. The petition was

*Mr. Harrington*

certainly to be written on the stamp paper prescribed for petitions only, instead of bearing the stamp duty prescribed for plaints, which appeared to be the only real change made by the Bill. This was a question of revenue. If the Government were willing to give up the higher duty, he (Mr. Harrington) could have no objection, but the reduction might be made by an order of Government under the power given to it in a Section of the Stamp Act. No new law was necessary for the purpose and unnecessary legislation was always to be avoided. He (Mr. Harrington) was no advocate for taxes on justice, and he should be very glad if the finances of the country would allow of the institution fee for regular suits being given up ; but so long as the state of the finances required the retention of that fee, he did not see why an exception should be made in favor of the cases to which the present Bill related. The Bill had, he believed, originated in a representation from the Secretary of State for India, who pointed out that the law which regulated the disposal by the Magisterial authorities of cases connected with the guardianship of Minors seemed to be in a very uncertain state ; that some Magistrates thought that they had power to interfere in such cases, while others considered that they had no jurisdiction, and that it was desirable that the law should be made clear on the point, but the present Bill did not expressly bar the jurisdiction of the Magistrates, and so far as he (Mr. Harrington) could perceive, those Officers would still be at liberty to act or not as they might think proper, as they did under the existing law whenever a case was brought before them.

Mr. SCONCE said, he had no doubt he should be able to satisfy the Council and the Honorable Member for the North-Western Provinces as to the opinion he had expressed regarding the necessity for this Bill. He would begin with the last point first, and that was the absence of any proposition as to the jurisdiction of Magistrates. Undoubtedly this Bill would not apply to matters which came under the cog-

nizance of the Criminal Courts. The Bill was purposely confined to claims to the custody of children that were of a purely Civil nature, and with such cases the Civil Courts alone could deal. When any violence should be used towards parent or child, it would necessarily be within the competency of a Magistrate to act, but such interference was exercisable without a new law, and it seemed to him unnecessary to make any reservation as to a Magistrate's powers in the present Bill.

As to the other matters alluded to, his purpose was to secure a summary jurisdiction for the trial of all claims that should arise relative to the proper custody of minors. He confessed however that he had not that anxiety with respect to the loss of revenue in the matter of Stamps, which his Honorable friend had just expressed. He was not disposed to adopt the suggestion thrown out, that the Governor-General-in-Council should be moved under the recent Stamp Act to remit the duty on plaints proffered in the cases contemplated. On the contrary, it seemed to him that no option should be given, and that the applications referred to should by law be declared chargeable merely as petitions. When he came to consider in what manner a remedy might by law be most effectually found for the difficulties now experienced in entertaining complaints on the subject of the custody of minors, it seemed to him to be essential to exempt applications from the Stamp Duty leviable upon the plaints of regular suits. Suppose a father wished to recover his son, in filing a regular suit, he would first have to consider the value he would put upon him. Any Honorable Member might attempt to settle that matter for himself. If the boy were worth fifty Rupees, a plaint would cost four Rupees. But a father might wish to recover three sons, and if the value of each increased with his age the value of all the three boys might amount to nearly three hundred Rupees. In that case it would cost the father sixteen Rupees before his case could be heard. Now he was sure the Council would agree with him, that it was impossible to consider claims, such

as these, to be properly chargeable with Stamp Duty, and that the hearing upon summary application should be facilitated. In this, as in other cases of a like kind, there seemed to him to be room for extending into the Mofussil Courts some of the more familiar forms of Equity jurisdiction. He might instance the Bill brought in some months ago by the Honorable and learned Judge near him (Sir Charles Jackson) on a matter affecting the relations of husband and wife: and certainly in that case, as in this, we were, he (Mr. Sconce) thought, bound to give relief without requiring the subject matter of plaints to be valued, and enforcing the use of Stamps determinable by that valuation.

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

#### POLICE (PRESIDENCY TOWNS AND STRAITS' SETTLEMENTS.)

MR. FORBES moved that the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)" be read a third time and passed.

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

#### EMIGRANT VESSELS.

SIR BARTLE FRERE moved that the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies" be read a third time and passed.

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

#### VACATIONS (CIVIL COURTS.)

MR. SCONCE moved that the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal" be read a third time and passed.

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

## RAILWAYS.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act XVIII of 1854 (relating to Railways in India);" 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.

## RECOVERY OF RENTS (BENGAL.)

MR. SCONCE 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.)"

Agreed to.

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

## MYSORE GRANT.

The following Order of the Day was then read :—

"Sir Barnes Peacock to move: That the Government of India be requested to lay before this Council, a copy of the account in which the stipends which have from time to time been paid to the descendants of Tippoo Sultan are debited, or such an abstract thereof as will show the total amounts paid and credited in each year, from the year 1799 to the present time.

"Also a copy of any Resolution or Order of Government by which the stipends now payable to such descendants were fixed, and of any correspondence between the Government of India and the late Honorable Court of Directors, or the Right Honorable the Secretary of State for India, in consequence of which the same was passed.

"And also a copy of any Despatch or Despatches received during the present year from the Right Honorable the Secretary of State for India, by which any sum of money has been ordered to be paid or secured to any of the descendants of the said Tippoo Sultan, and of any document or documents, showing the grounds on which such order was made.

"And further, that the said Government of India be requested to inform this Council whether any sums of money so ordered to be paid to the descendants of Tippoo Sultan, are included in the estimate for the year 1860-61."

THE VICE-PRESIDENT said, in moving for the information specified in this Motion, he thought it right to call the attention of the Council to the circumstances under which he had been induced to make the Motion. On Saturday last, a petition very numerous and respectably signed, was presented to the Council, stating, among other things, that the petitioners were informed that a large sum of money had been ordered by the Secretary of State, to be paid to certain native families. The Honorable Member for Bengal moved that the petition be printed; but before doing so, he asked the Honorable the President of the Council for information on certain points specified in that petition, and amongst other things, whether such an order had been received from the Right Honorable the Secretary of State. The President of the Council however refused to give the information upon the ground that, assuming all the facts which had been mentioned in the petition to be correct, still that neither this Council nor any of its Members ought to ask for such information, as they had no power to interfere in the matter. He (The Vice-President) thought he was correct in stating that this was the answer of the Honorable the President of the Council on that occasion. Now without entering into the question as to the power of the Secretary of State, with or without the concurrence of the Council of India, to make an order for such a payment, he would assert the right of this Council, or of any Member of it, to ask for such information, and he would like much to know for what reason they were not to expect to receive such information. When the Honorable Member for Bengal asked for the information on Saturday last, the answer which was returned to him was that, if the information on the subject of the estimates were applied

for by the Chamber of Commerce or any other public body, from the Government of India in its Executive capacity, it would be furnished. Now he (The Vice President) held in his hand a letter, dated the 19th of July last, and signed by the Secretary to the Government of India in the Financial Department, which was in reply to one from the British Indian Association, requesting to be supplied with certain information. The answer to that application was as follows :—

"SIR,—I am directed to acknowledge the receipt of your letter, dated the 22nd May last, conveying the request of the Committee of the British Indian Association, to be furnished with the last revised estimate of revenues and charges in India for 1860-61.

In reply I am desired by the Governor-General in Council to state for the information of the Committee of the British Indian Association, that it would be contrary to the practice of any Government, whether in Europe or elsewhere, to furnish official returns on the request of private persons or Associations. Such documents are presented in the first instance for the information of the Legislative bodies of different states, and by them made public.

I am to add that documents similar to the one asked for in your letter under acknowledgment, have some time ago been presented to the Legislative Council and made public.

In conclusion the Governor-General in Council directs me to state that he cannot recognize the right of any private person or Association to ask for such documents, which can be given only through the recognized public channel.

I have, &c.,

(Signed) C. H. LUSHINGTON,

Secretary to the Govt. of India.

COUNCIL CHAMBER, }  
19th July 1860." }

So that when the British Indian Association asked for information, they were told that it was contrary to the practice, not only of this Government, but of all Governments generally, to furnish such information to private individuals or Associations; and then the letter proceeded to state that such information could be obtained through the Legislative Council, and through them only. But on Saturday last, when a petition, numerously signed, was presented to the Council, stating

special grounds why information was required, the Honorable Member for Bengal, instead of moving that the Governor-General in Council be requested to lay the information before this Council, simply asked the Honorable the President of the Council a few questions, and the President of the Council gave the answer to which he had already referred, that this Council was not entitled to ask for such information. He (The Vice President) begged to call the attention of the Council to the fact that we had at present before us, a Bill which proposed to tax all trades up to a certain amount. That Bill would probably very shortly come before the Council for final consideration. When the Income Tax was brought in by the late Financial Member of Council, whose loss we must all deplore, and the Stamp Act and Customs Act were before this Council, the Right Honorable Gentleman gave full estimates of the income and expenditure of the country. What was that for, except to lay before this Council full information upon matters that they were called upon to legislate. The Right Honorable Gentleman then stated the balance anticipated of expenditure over income, and how that balance was to be met. The last published returns showed a deficit of over six millions, after allowing the estimated produce of the Income Tax; and it was stated that that deficit must be met by drafts on the cash balances in the Government Treasuries. Now when this Council would be asked shortly to complete a Bill for imposing a tax on Trades, it was necessary for them to have the same information as before, namely, what would be the deficit after providing this tax, and to know if the cash balances really could meet that deficit. The cash balances in the Government Treasuries in the month of October last, as appeared from a notification of Government published in the Gazette, amounted in round numbers to twelve millions, and the Honorable the President of the Council had told us that, at the commencement of the official year 1861-62, the balances in the Government Treas-

suries would be about the same in amount. At the commencement of the present official year, those balances were sixteen millions, which now were twelve millions, and there was no probability of their being increased, so as to exceed that amount of twelve millions. Last year the balances in the month of October amounted to twelve millions, and they increased between October and the beginning of the official year 1860-61 to sixteen millions. But that increase, as remarked by the Honorable the President of the Council, was produced by payments on account of an open loan. Now it was important to know what was the deficit and what was the amount to be met by taxation, and how much would be drawn from the cash balances? He should like to know how much of the six millions remained to be paid off, and whether the cash balances in April 1861 would amount to twelve millions before or after paying the sum granted to this native family? That was an important question. In all probability the whole of that deficit would not be paid off by the commencement of next year, and therefore, a portion of that deficit would fall on the cash balances after May next. What then would be the amount of the cash balances on the 1st of May? He wanted to know whether that deficit of six millions included half a million to be paid to the Mysore family. Half a million was not a very small sum, and he therefore wished to know whether such a sum of money had been ordered by the Secretary of State to be given away or not, and whether it was included in the estimate of expenditure?

It was said that the Council ought not to ask this question. He saw no reason why they should not. The late Right Honorable Financial Member, when he laid his estimates before the Council, never said, "here are the estimates, but I will not tell you what are included in them, nor will I answer any questions you may choose to put me concerning them." But the Right Honorable Gentleman intended to give us a true estimate of what was the probable expenditure, and how it was proposed to meet it, leaving us as intelligent beings to form our own judgments

*The Vice-President*

in legislating for the well being of the country, and as men of judgment to judge for ourselves how far it was necessary to tax the people, and whether it was absolutely necessary to impose an Income Tax on all persons having an income of two hundred Rupees a year and upwards, and to add to that a License Tax on Traders and Artizans. It had been said that we were here simply for the purpose of making laws and regulations. He should like to know what was meant by making laws and regulations. If we had the power to make laws and regulations, were we to make them in the dark? Were we to be considered merely the drafters of laws? Laws are commands; and were we simply to issue them when the Executive Government desired us to do so? Were we not to consider whether what was wanted was necessary or not, or how it was to be carried out? Supposing the original state of affairs in this country, before the constitution of this Council, to have still existed, and the Governor-General with his Council of three or four Members sat deliberating upon a question of taxation. Would they not desire to know what the real deficit was, whether two, or three, or four millions? Now when we were in the same position, had we not a right to ask what the deficit was? Were we to be kept in the dark, or were we not, as intelligent beings, to see not only that the law was properly worded, but whether the law was conducive to the interests and welfare of the people or not, whether it was necessary or not, and whether the money to be raised by the taxes we imposed were to be applied to the actual wants of the country, or spent in voluntary gifts? Suppose we were told that the expected deficit, according to the estimates, was exceeded by half a million, so that, instead of the deficit being 6,273,000 Rs, it was nearly seven millions, and suppose we were asked at the same time to pass the Trades License Bill, should not we ask how that half million additional was caused, and whether the sum of money which had been ordered by the Secretary of State to be paid to the family of Tipoo Sultan, was in the proper exercise of

the powers of Government? If the half million had not been paid, and if it was not included in the deficit, it ought to be included in the estimate.

MR. BEADON.—And if it had been paid?

THE VICE-PRESIDENT.—That is what we want to know. Then it was said that the payment had been ordered by the Secretary of State, and we had no right to question the proceedings of that authority. But he (The Vice-President) contended that neither the Secretary of State nor the Governor-General had any right to point out to him how he was to legislate. He had a right to exercise his own judgment, and so had every Member of this Council. The Secretary of State could not tell us that he wanted so much money, and that in our passing a law for the purpose, we had no business to ask what the money was required for. The Honorable Member of Government on his left (Mr. Beadon) had asked him—supposing the money had been paid, what we should do? He (The Vice-President) should know how to act when he had the information. He hoped that it would never be considered by any Member of this Council that we were here simply for the purpose of making laws, without enquiring as to whether the laws we made were just and conducive to the interests of the people. If any Member thought that he sat here to make laws without satisfying himself of the necessity for them, and without exercising his own judgment in the matter, he would be merely an instrument to carry out the views of others, and not a Legislator. He (The Vice-President), for one, did not wish to legislate in the dark. Honorable Members might not wish to have the information, but he wished to have it. Supposing he (The Vice-President) did not wish to have the information, and any Honorable Member stood up in his place and said upon his conscience that he wished to have it; although he (The Vice-President) did not require it, he should still feel it his duty, unless strong objections existed, to vote in favor of the Mo-

tion. What he proposed simply to do was, not to ask the President of the Council here as President of the Council in his Executive capacity to give him an answer, but to ask the Council to join him in requesting the Government of India to give us the information; and if the Government of India refused to grant our request, we should know how to act hereafter. That was a question for future consideration. He thought he had a right to ask for any information he required, and that all Honorable Members were bound to support him if the information he required was necessary to enable him to discharge his duties conscientiously. Could any man say that we had not a right to ask for such information as he had specified when the Council was called on to tax the people? If any Honorable Member would satisfy him that it was not right for him to ask it, he (The Vice-President) would instantly withdraw his Motion. But he maintained that it was the undoubted right of this Council to ask for such information. Several questions for information had been asked by Members of the Council, and he had never heard any of them objected to before. As an instance, when the late Right Honorable Financial Member brought in the Income Tax Bill, the Honorable Member for the North-Western Provinces asked him for information. He (The Vice-President) held in his hand a Report of the Proceedings of the Council for 21st April 1860, in which he saw stated as follows:—

“Mr. Harington said, previously to the Council proceeding to the regular business of the day, as sketched forth in the paper which the Honorable President held in his hands, there were two questions which, in reference to what had fallen on different occasions from the right Honorable Gentleman opposite, on the subject of the present and probable deficit for some time to come in the income of this country, as compared with its expenditure, he wished to ask the Right Honorable Gentleman before the Select Committee on the Income Tax Bill met; and it would perhaps be more convenient for him to put those questions now than at a later hour of the day. The questions were as follows:—

" 1st.—How far the expected deficiency of the next year of 6½ millions, it was contemplated would be met by reduction of expenditure ?

" 2nd.—Seeing that it was proposed to take the Income Tax Bill for the limited period of five years, how it was contemplated, in the interim, to provide ways and means which would enable the Government to dispense with the tax at the expiration of that period ?"

The Right Honorable Gentleman did not refuse to answer the questions which the Honorable Member for the North-Western Provinces had thought it necessary to put to him. The information was furnished by the Right Honorable Gentleman at that time. But suppose the Right Honorable Gentleman had refused to answer the questions, he (The Vice-President) would have suggested to the Honorable Member for the North-Western Provinces to have moved for an address to the Government of India, asking them to give the information.

He (The Vice-President) had included four different matters in his question, but if the Council wished, he was quite willing to divide his Motion into four, and to take the votes of the Council on them separately. First of all, he would like to take the sense of the Council on the last question, and that was that the Government of India be requested to inform this Council whether any sums of money ordered to be paid to the descendants of Tippoo Sultan, were included in the estimate for the year 1860-61. The answer might be that there was no order. Then there would be an end to the matter, and the estimate of October 1860 would be a correct estimate. But if such an order did exist, he saw no necessity for making a mystery of it. He could not suppose that the Secretary of State, after ordering the payment of a sum of money, could have any objection to the order being made known. Or if the money had been ordered to be secured, why should not this Council know of it? He (The Vice-President) held that this was a very dangerous precedent. After the financial estimates had been placed before this Council, and the Council asked to increase the revenue to meet the expenditure, should the Secretary

*The Vice-President*

of State have the power to send out an order to raise a further sum by adding to the debt of the country, and then should all information be refused to this Council? He (The Vice-President) did not know if a sum of money was ordered to be paid, or some new securities were to be created for the benefit of this family. It was this uncertainty that led him to ask the Government of India for the information. The amount did not make any difference, but it was the principle involved that he regarded. It might be that all this was a mere fiction, and that the Secretary of State had sent out no order at all. But he (The Vice-President) was arguing upon the assumption of the President of the Council that, even if the facts, as stated in the newspapers, were correct, we had no right to ask for the information. But why should there be any mystery in the matter? He could not suppose that the Secretary of State, after ordering a sum to be paid or secured, should wish it to be kept a secret. Then why should it be kept secret? The President of the Council had told us that the information had come from the family themselves. If so, there must have been some communication, or how could the President of the Council suppose that the public had their information from that source? Then why was it not to be communicated to us? But, supposing the order of the Secretary of State was to secure the money, the precedent would be even more dangerous than an order to pay money. The difficulty in paying money in cash would always have some restraint on voluntary gifts, whereas there would be no such restraint if the money were to be paid by future generations, with the increasing addition of interest on the debt, and there would be a great temptation to make such gifts. He (The Vice-President) understood the late Right Honorable Financial Member to have said, when he made his financial statement, that it was not intended to increase the debt of the country, at any rate during the present year, and that the deficit that we had to meet was a certain amount that

could be met from the cash balances. Upon the faith of that statement, we voted for the Income Tax. Now, surely, we had a right to know whether any money was to be secured to this family beyond what appeared in the deficit. By adding to the deficit a sum of money which was not included in the amount, and meeting that by creating some new debt, the estimate became an incorrect statement, and we were not acting upon an understanding of the true state of affairs. The amount, as he had already remarked, made no difference, and he therefore proposed to ask for the information contained in the third question. He also wanted the information specified in the first question. By the absence of the Governor-General, a portion of his duties had devolved upon the President of the Council. There were some rules which prescribed what portion of the business was to be disposed of by the President of the Council, and what portion by the Governor-General. He (The Vice-President) simply asked that the Government of India be requested to furnish the information which was required. If his Motion were carried, he had only to move that a Message be sent to the President of the Council; and if the President of the Council thought that it was not a matter within his competency by virtue of the rules laid down by the Governor-General, he would refer it to the Governor-General. But in either case it would be acted upon by the Government of India. The information, he supposed, was not contained in a Legislative Despatch from the Secretary of State, because in that case it would, as a matter of course, have been laid before this Council. But if it were not, before the Council proceeded to pass an Act levying a tax, we had an undoubted right to ask for the information. All he asked for now was that Honorable Members would support him in asking the Government, and he called upon all Honorable Members to join him as a legislative body in asking for the information, even though any individual Member might not personally require it for his own satisfaction.

He also wanted to know by the second question what stipends were payable to the descendants of Tippoo Sultan, and whether there were any orders of Government or any correspondence that had previously settled this matter. A great portion of this part of the information was included in the Appendix to the Report of the Select Committee of the House of Commons. But there the account did not commence in 1799, and did not extend beyond 1827. He did not want the Government to take the trouble of furnishing a detailed account; but only such an abstract of the account as could be conveniently prepared.

SIR BARTLE FRERE said that he regretted he could not support the Motion of the Honorable and learned Vice-President, nor could he promise that he would receive any aid from the Executive Government in obtaining that which he looked for, and he (Sir Bartle Frere) sincerely trusted that when he had stated his reasons to the Council, the Honorable and learned Gentleman would see the propriety of withdrawing his Motion.

He (Sir Bartle Frere) would briefly touch on what he might call the technical ground of objection, though it was one which he thought of the highest importance—namely, that the subject was not connected with any Legislative action, and that if any action was required in the matter, such action should be taken by the Executive Government.

What was the case supposed by the Honorable and learned Gentleman? He had heard that a large grant had been made by the Secretary of State in Council to a Native family, without, as the Honorable and learned Gentleman believed, any good reason—that the Executive Government in India had received orders to pay those pensions from the revenues of India, which orders it felt bound to obey. Such, as he (Sir Bartle Frere) understood it, was the case supposed, as he before stated, on the information given by the family itself. The Honorable and learned Gentleman had expressed a doubt on this point. He (Sir Bartle Frere) could only say that the informa-

tion which had become matter of public discussion, was not derived from Government, but as he had every reason to believe from members of the family. This was the case supposed; how far truly or not, he did not feel bound to state. But supposing the case to be as stated, who was in fault, and with whom did the remedy lie? Clearly not with that Council nor with that Government, but with the Parliament of England, who passed the law according to the strict letter of which such grants could alone be made, and if any amendment of the law was in the opinion of the Honorable Gentleman required, it was to the Secretary of State and to the Parliament of England he should apply—not to that Council or to the Supreme Government of India. He (Sir Bartle Frere) did not understand the Honorable and learned Gentleman to say, that in the case supposed, he thought they had the power to sit in judgment on such orders or to refuse obedience to them. Indeed he (Sir Bartle Frere) had little doubt, the Honorable and learned Gentleman would say, that no one in India possessed such power. In saying this he (Sir Bartle Frere) simply said—"you have come to the wrong place for information, to the wrong jurisdiction for redress." What would the Honorable and learned Gentleman have said, if, sitting in the Supreme Court, he were applied to on the subject of a case wrongfully decided in the Mofussil? or if, sitting as an Admiralty Judge, he were assailed by complaints from a suitor in equity, or from a creditor who had been wronged in the Bankruptcy Court? He (Sir Bartle Frere) imagined, however little the Honorable and learned Gentleman might doubt the magnitude of the wrong done, he would tell the applicant, he ought to seek for justice in another Court. This was no new doctrine; it was just the same when Mr. Wilson gave his estimate, in which all the home charges were entered.

In putting on the paper this Motion, which he (Sir Bartle Frere) might mention he saw for the first time in the daily papers, the Honorable

*Sir Bartle Frere*

and learned Gentleman did not even condescend to inform them what he meant to do with these papers if he got them. Supposing the Government had received such a Despatch as he (The Vice-President) presumed, and had taken of it the view which he thought right and proper, how could he suppose they should lay all this before the public without receiving the slightest intimation of the use to be made of those papers, or whether they might not be turned into a handle for the most factious opposition to the Government in England? Could he really suppose them so lost to all sense of duty as to lay before the public the materials for an organized attack by that Council on a public functionary in the position of the Secretary of State, who was not even here at hand to defend himself?

The Honorable Gentleman now commenced this demand with the License Tax—with what reason, he (Sir Bartle Frere) would show hereafter. Any duty which could arise to take action in connection with such a grant under the circumstances supposed by the Honorable and learned Gentleman, must of necessity devolve on the Supreme Executive Government. If the grant were objectionable, and if the Executive Government had stated the objections to it, all had been done that could be done in India, under the present constitution of the Government as settled by Parliament. If such objections had not been stated, then it was the Supreme Executive Government alone which was to blame; and looking at the Motion in this light, he could regard it as nothing else than a Motion of want of confidence. The Motion said, as plainly as words could speak, to the Executive Government of India—"Here is a duty of remonstrance or refusal, or whatever else you may conceive that duty to be—and that you have neglected, and we require you to state the circumstances under which this neglect of due care of the finances of India has occurred." He (Sir Bartle Frere) did not feel that the Honorable and learned Gentleman had any fair grounds on which to rest such a charge. Whatever might

have occurred with regard to this grant, there was nothing which they wished to deny, or conceal, or which they could be ashamed of when the information was sought by any one who had the right to ask it. The Honorable and learned Gentleman would acquit him of all disrespect when he said that he could not see that that right rested with that Council, and he must, therefore, decline to be any party to placing that Council in what he conceived to be a false position.

Before quitting this branch of the subject, he must make a few remarks in reference to what had fallen from the Honorable and learned Gentleman on the promises and performance of the Government, in furnishing information, such as the Legislative Council might expect to receive, and such as the Executive Government might be reasonably expected to give. The Honorable Gentleman spoke of it as if it had been a practice of the last few months only, and latterly very imperfectly performed. He would beg to refer the Honorable Gentleman to the Report of the Proceedings in that Council of the 12th of March 1859, where he would find that when His Excellency the Governor-General came down to move the first reading of the Customs Bill, he used the following memorable words, which had been often quoted since, and which were well worthy of record, as marking an era in the history of the British Government in India. The Governor-General stated:—

“He offered this explanation, because he wished the Legislative Council fully to understand that, in laying before them a financial measure of some magnitude, a measure which must be distasteful to a large class of the community, the Government had not been driven to that step by any lavishness of expenditure, or any laxity of watch over the revenues at its command.”

Now, he (Sir Bartle Frere) appealed to that Council, whether there had been any short-coming on the part of the Government of India in fulfilling the promise thus made? He asserted with confidence, that like every other pledge proceeding from the same quarter, it

had been most fully redeemed, and that never at any period was such readiness shown in furnishing the public with all information which could reasonably be expected from Government, as since the date of that speech.

But the Honorable and learned Gentleman attempted to fix on the Government of India a charge of inconsistency between the promise thus made, and subsequently so often repeated, and reiterated by him on last Saturday, and an answer which was given by the Government of India to the British Indian Association in August last, when they were informed that “such documents” as the Association asked for, “were usually presented to the Legislative bodies of the State, and by them communicated to the public.” Now, he (Sir Bartle Frere) could see no discrepancy whatever between such an answer as this to the British Indian Association, and the assurances which he gave last Saturday, that the Government of India would be happy to furnish any information in its power which the Chamber of Commerce or any other body representing the mercantile community, might consider to be essential to their mercantile interests, and which could be given without prejudice to the public service. The Chamber of Commerce was a purely commercial body, representing all the great commercial firms of this city, and occupying an entirely different position from the British Indian Association. He (Sir Bartle Frere) had a great respect for that Association, and a sincere sympathy with many of its objects, but as a body, whose aims are chiefly political, it occupied an entirely different position from the Chamber of Commerce. There was hardly any reasonable information which any Government at home would refuse to the London Bankers' Association, but it would be an entirely different question if the same information were sought for by the same firms acting as Members of a Reform or Anti-Corn Law League.

There was one question put by the Honorable and learned Gentleman, on which he (Sir Bartle Frere) was happy to be able to give him information,

which he trusted would be satisfactory. He (the Vice-President) had remarked on the statement that the cash balances were returned at 16 millions in April 1860, twelve millions in October 1860, and were estimated at twelve millions in April 1861—and he (the Vice-President) asked whether the twelve millions of cash balances in April 1861, were meant to be before paying six millions deficit, or after paying six millions deficit.

In reply, he (Sir Bartle Frere) would state that the accounts were made up for the whole official year 1860-61—we had as the cash balance in October last, twelve millions, the expenditure was going on, and the revenue coming in during the months between this and next April, and the Government hoped to close the official year in April, after meeting the deficit of the year, with a cash balance of twelve millions in India.

He need not remind the Honorable and learned Gentleman that these Cash Balances represented the aggregate of balances throughout all the Treasuries in India.

The Honorable and learned Gentleman put a further question, as to whether those amounts included the Mysore grant? For the reasons he (Sir Bartle Frere) had already given, he must decline to enter into any particulars on that subject, but it might satisfy his Honorable and learned friend to know that the Government had written within the last few days, requesting some of the leading Members of the mercantile community to confer with the Accountant General or Financial Secretary, and to state to Government what of the returns and accounts periodically rendered to Government, were of real practical importance to the mercantile community, and there would be every disposition on the part of Government to afford them any information they might consider as really valuable.

The Honorable and learned Gentleman, referring to the expression of the willingness on the part of the Government to furnish information, remarked that “ Mr. Wilson gave us true esti-

mates.” He (Sir Bartle Frere) trusted that that there was nothing in the expression “ true estimates,” which would indicate a belief on the part of the Honorable and learned Gentleman that the returns he had since received had been less true than formerly.

THE VICE-PRESIDENT here interrupted the speaker, and said he disclaimed any such intention.

SIR BARTLE FRERE continued.—The justification put forward by the Honorable and learned Vice-President in asking for these present returns was that the License Bill was now before the Council. But the Honorable and learned Gentleman had forgotten that the License Bill was no new Bill now brought forward by Government for the first time; it was a part of a plan in justification of which Mr. Wilson had proposed his estimates. If those estimates were not satisfactory, why did they not demand from Mr. Wilson further information at the time?

As to the precedent quoted by the Honorable and learned Gentleman for putting such questions, when the Honorable Member for the North-Western Provinces put two questions to Mr. Wilson on the Income Tax, they both related to matters within the competence of the Government of India, and were such as, under the distinction he had drawn, it would be perfectly legitimate to put and only reasonable that the Government of India should answer.

The Honorable and learned Gentleman stated that he could not suppose that the Secretary of State would make such a grant and not wish it to be made public. He (Sir Bartle Frere) could not pretend to say what might be the Secretary of State's wishes on the matter. All he could state was that it did not appear to the Government of India desirable to make such papers public in reply to such questioning in that Council—totally unconnected with Legislative action.

He (Sir Bartle Frere) had been told that Honorable Members held that he had no ground for expressing any apprehension as he did last Saturday, lest the action of the Council in that mat-

ter might injure the Council in the opinion of the English public at home, and afford an argument to those who were unfavorable to the institution of such a Council. He was fully aware that the Council might safely be left to take care of itself. But there was a danger, and one which, viewing it as he did, he felt bound to state distinctly to the Council, that the first result of the action to which the Honorable and learned Gentleman would drive that Council, might be to defer for years any further legal development of their powers, perhaps until some serious convulsion should open the eyes of the English people to their true duty in this matter. Those who had studied, however cursorily, the fluctuations of public opinion in England, must be aware that our dangers lay, not in the desire of any party to remove Indian affairs from the sphere of public criticism and from the control of public opinion, but in the power of several parties who differed widely from each other on all other subjects, to unite in changing the sphere of such criticism and such public opinion from India to England. There was a large and very influential section of honest and sincere Indian reformers, who imagined that there was no hope for India, but in establishing the Indian Government in London under the eye of Parliament. They would reduce the Indian Government as much as possible to an assemblage of independent autocracies, and they pointed to the condition of non-Regulation Provinces, to the effects of individual responsibility and energy as shown by some of our Governments of such Provinces, as furnishing the best models we could adopt for our several Governments under the general control of a Secretary of State, responsible to Parliament. He (Sir Bartle Frere) need not say that, beyond joining earnestly in their wishes to improve the condition of India in every possible way, he had little sympathy with this party. He held that above all things it was necessary to govern India in India. But it was this party which had, within these last few months, found most fault with the proceedings of that Council, and who

would most assuredly point to such discussions as these as conclusive proofs of the way in which they wasted their time and mistook their proper functions.

He (Sir Bartle Frere) had now briefly stated what he might call the technical grounds of objection to this Motion.

But there were yet stronger, and to his mind more cogent grounds, for objecting to the Motion, on the score of the great public inconvenience of the course on which the Honorable and learned Gentleman would have them to enter. At a time when every branch of the public service was being remodelled, when the greatest exertions were necessary to carry on the current business of the State, and to effect those reductions in expenditure which must be effected if they would avoid general bankruptcy, the Government of India, reduced as it was for the time, in numbers, by the death and ill health of some of its ablest Members, had enough and more than enough to do in attending to its own proper business. It was not always easy under such circumstances to answer for their own short-comings, and he must emphatically protest against being called upon to answer for other authorities over whom the Government of India had no control, and who were in no wise bound by the constitution of the Indian Government, as settled in Parliament, to render to this Government any account of what they did or of their reasons for it. They were told that this movement was intended to assist the Government, and to strengthen their hands in enforcing that economy at home for which they got scant credit in those departments which were under their own control. He did not for a moment doubt the sincerity of this intention, but he really wished that those who tendered it would allow the Executive Government to judge when it wanted direction or help in such a matter. Of this at all events he was convinced, that if week after week they were to pass their time in criticising and defending measures which did not originate in India—for which no Indian branch of the Govern-

ment was responsible, and over which no such branch had any control—not only would legislation stand still, but it would speedily become a matter of utter impossibility to carry on the ordinary duties of Government.

He (Sir Bartle Frere) did not on this occasion make any appeal to the Honorable Gentleman not to do what was commonly called “embarrass the Government.” If Government had done wrong—if they had neglected their duties—or betrayed their trust—why, in Heaven’s name, let them be embarrassed. He should be the last person to desire to save them from embarrassment; but if, as they had every reason to suppose—as he was given to understand they asserted that they did suppose—that this Government had done its duty, and the matter which they wished to question was one beyond the powers of Government to control, and one in which the Government distinctly stated that it could not with due regard to its duties and responsibilities and to the interests of the Government service, give them the information they sought for—then, he (Sir Bartle Frere) said in the name of common sense, how were their proper duties, whether those of the Executive or the Legislative Council, to be carried on, if every Member of that Council was to consider himself at liberty to put questions and demand papers regarding every act of the home Government which he considered required explanation.

He did not talk of matters distantly connected with the finances of this country, though it would be easy to prove that the conduct of the Ministry at home with regard to Syria or Egypt, or the Italian question, was a matter in which the finances of India were directly concerned. He spoke of expenditure ordered on account of India by the Secretary of State for India. To-day the question was regarding a pension granted to Native Princes—next Saturday it might be on the subject of the contract with the Peninsular and Oriental Company, or the Red Sea Cable, or the Singapore Cable—or any thing else equally unconnected with legislation in India and equally beyond the control of

*Sir Bartle Frere*

the Government in this country. Where he would ask was any line to be drawn? There was no charge so minute or so utterly beyond the control of this Government to which the reasoning of the Honorable and learned Gentleman would not logically apply.

Finally, he would ask his Honorable and learned friend, if he got the papers he asked for, and if he founded on them the most vigorous action of which that Council was capable, if he got the Executive Government to concur with this Legislative Council in condemning what he thought unjustifiable, what practical result would be likely to follow his actions? They might, it was true, offer to the astonished eyes of Europe the spectacle of another Indian Mutiny more unaccountable than any that had preceded it—the Executive Government, betraying their trusts and conspiring with the Legislative body to defy the authority of the home Government as constituted by Parliament. But he (Sir Bartle Frere) would ask whether this was a course likely to obtain for them the sympathy and aid of the people of England—so conspicuous for their regard for constituted authority and their almost superstitious veneration for all the forms and limitations of authority? Until such forms were changed, and such limitations removed by the legal action of the great powers of the State, he would say that we could expect nothing from the Honorable and learned Gentleman’s Motion if successful, but the well merited contempt of the people of England. The non-official community in this very city had already indirectly condemned the action of the Honorable and learned Gentleman, for he saw by a notice in the public papers, that having failed to obtain by their petition to this Council the information they sought for, they had called, through the Sheriff, a public meeting to give expression to their views in the only manner in which they could possibly command the sympathy and respect of the orderly people of England. He could only hope that the Honorable and learned Gentleman would see fit to withdraw his Motion and spare them from the necessity of dividing on it.

SIR CHARLES JACKSON said, he must support the Motion of the Vice-President, for he thought that this Council was entitled to full information on all subjects connected with legislation before it. This question was raised in a Debate in August 1859, on a Bill brought in by the Honorable Member for the North-Western Provinces, for the licensing of certain Trades and Professions. He (Sir Charles Jackson) then ventured to ask for accounts of the income and expenditure, and information showing the amount of the deficiency, and was then met, as we were now, with the statement that such enquiries were *ultra vires*, and that he, and those who acted with him, were arrogating to themselves the duties of a House of Commons. Things then came to a dead lock, and after a time Mr. Wilson arrived. He was a Statesman accustomed to deal with men, and knew how to earn their confidence, and he promised the Council full publicity, and gave us all he promised. We were then convinced that great sacrifices were necessary, and these sacrifices were immediately and cheerfully made. But now when we were startled with the rumour—nay more than rumour, for the statement had been made in this Council, and had never been denied by any Member of the Executive Government—a statement then, that a monstrous donation of £4,40,000 had been made to the Mysore Princes—and we ventured to enquire as to the particulars of that gift, we were again met with the old objection of *ultra vires*, and that we were arrogating to ourselves the duties of a House of Commons. This question might be looked at in two aspects. In one, the view of some official minds, every enquiry which was disagreeable was *ultra vires*—indeed some people seemed to think that the Members of the Legislative Council were mere servants of the Government, appointed as Magistrates were to a district, merely to obey the orders of the Government. But the other point of view, which was adopted by the Vice-President and those who thought with him, was that every en-

quiry was within our competency, which added to our knowledge of the subjects on which we legislated, and of the effect of our legislation. Now what was more important for us to know than the amount of the deficiency that we were to meet, and yet, at this moment, in consequence of the refusal of the President of the Council to give us the information whether this £4,40,000 was included in the deficiency of £6,270,000 or not, we did not know whether the deficiency was £6,270,000, or £6,710,000. Surely this was a legitimate subject of enquiry.

The President in Council told us last Saturday (and the observation had been made in other quarters) that these enquiries were not within our province, and that we were not the House of Commons. We never claimed to be a House of Commons. Without prestige, representing no class of the population of India, and without any power of enforcing any of the enquiries we made, it would be ridiculous, indeed, to compare ourselves with that powerful assembly. But although we were not a House of Commons, he would tell them what we were. We were a small body of independent English gentlemen appointed by an Act of Parliament to legislate for this country, and that duty, he trusted, we should discharge fairly and honestly.

The President in Council said that we were acting *ultra vires*, inasmuch as the proper place for these enquiries was the British Parliament. How could we make such enquiries in Parliament? What means had we of doing so? The Honorable the President contended that we had no right to raise any question on the action of the Secretary of State on our finances, but surely we had a right to enquire what that action was? By whom was the money raised which the Secretary of State appropriated in this way, but by this Council? and who paid the taxes, but the people for whom we legislated? and surely we had a right to enquire if our financial legislation was rendered nugatory by wasteful expenditure. To tell us that we must go to Parliament to have our enquiries answered as to the expenditure of the

Secretary of State, was, in fact, to withdraw from our cognizance all knowledge of a large branch of the public expenditure.

Now we might be wrong in our views on this subject, but if so, we were not to blame for our error. Parliament, when creating our powers, did not think fit to define their limits, and the whole course of this Council had been to assert its independence and its right to full information on all subjects connected with legislation before it, and those rights so asserted had been in fact conceded to it. At an early period of the existence of this Council, he believed in 1855, the home Government of that day sent this Council, who had then the Administrator General's Act before them, an order to pass a specific measure. What course did the learned Vice-President, then a Member of the Executive Government, and Sir Lawrence Peel, our late esteemed Chief Justice, take on that occasion? They told the home Government plainly that they had no right to issue such an order. If this Council had been wrong, the Home Government would have applied to Parliament for an Act confining our duties to those of mere scribes. But the Home Government did nothing of the kind, and on the contrary, from that time to this, the Home Government had never done more than suggest to this Council the propriety of any measure they might wish it to pass.

Assuming then that we were at least independent, let us see whether this Council had not always asserted its right to full information, and whether that right had not in fact been conceded. First of all let me however refer to another passage in the speech of the Right Honorable the Governor-General on the 12th of March 1859, on the Customs Duties Bill, which showed, as well as the passage cited by the Honorable the President in Council, that the Governor-General, for one, took a liberal view of this question. In the opening of that speech he observed:—

“In proceeding to explain to the Legislative Council, the reasons which had induced

*Sir Charles Jackson*

the Government of India to place this Bill before them, it would be right that he should notice the extent of the pressure which had compelled the Government to resort to this measure, the financial position in which the Government now found itself, the principle which had guided it in framing this measure, and the results which might fairly be expected therefrom.”

In the Debate in August 1859, on the Bill introduced by the Honorable Member for the North-Western Provinces for the licensing of certain Trades and Professions, he ventured to object to legislation in the dark, and to call for accunts of income and expenditure. He (Sir Charles Jackson) was then met, as now, with objections, that he was exceeding his powers as a Member of this Legislature. Those Debates must have reached home before Mr. Wilson left England; at all events there was plenty of time for instructions to reach him before he made his financial statement in February 1860, and yet that statement manifested anything but hostility to our claim for information. He would just read what the Right Honorable Gentleman said on that occasion:—

“The Government desires to exercise no reserve. We think that our safest course—for rely upon it, if in matters involving the credit of a State, there is a well founded impression that something is held back, that the whole truth is not known, that the public may be exposed to a disagreeable surprise—it is the Government itself that suffers most from such a state of uncertainty. The money market understands how to discount uncertainties and contingencies. We consider, therefore, that the greatest frankness is not only the line of our duty, as it is of our inclination, but that it is our best policy: we are of opinion also, that under present circumstances especially we are bound to be frank, when we are about to appeal to you to aid us in our efforts to retrieve the position in which we now stand. If we call upon the public to bear new burdens, and to make new sacrifices, however slight, we feel that we are at least bound to explain fully their necessity. And we are confident that, if we can enlist public opinion in our favor at all, it is by pursuing such a course. Sir, it is true we have no representative assembly to satisfy, and it would be only idle to speculate upon the time when India might have such institutions; but, Sir, we have a public opinion, an enlightened public opinion, both Native and European, and above all we have a Free Press and free discussion; and we are of opinion that nothing

but good can be derived from those useful—I would say necessary elements of a prosperous social structure, by frankness on our part. It is by such a course that we believe we can best perform our duty to this Council, and by which we can best enlist the sympathies and aid of the public in the heavy task which for the public benefit of India we are prepared to undertake, and in the success of which we have the utmost confidence, if we have only that fair share of support which we trust our proposals will command."

Then again the learned Vice-President had referred to certain questions put at a subsequent period by the Honorable Member for the North-Western Provinces, calling upon the late Right Honorable Financial Member for information relating to the reduction of expenditure. The information thus called for was readily afforded by the Right Honorable Gentleman. He (Sir Charles Jackson) had just been told that those questions had been put at the express desire of the Right Honorable Gentleman himself, but that made no difference. It only showed the Right Honorable Gentleman's wish that full information as to expenditure should be laid before the Legislative Council.

He thought he had shown enough to prove that our right to full information on all matters connected with legislation had been conceded. In fact, the Act of Parliament having failed to define our rights on the subject, this must be the only principle which could be applied to us. He did not mean to say that a Member might bring in any Bill founded on some crochets of his own, and then require Government to give every information connected with his Bill; but that was not the case before us, for it was the Government that now called on us to pass tax Bills to meet the present deficiencies. If they did this, they must afford us the means of intelligently exercising our Legislative duties, and this could only be done when we knew the purposes to which the proceeds of such taxation were to be applied.

But he thought we were also entitled to express our opinion freely on all subjects connected with legislation. We had, for instance, a right to complain if we found our legislation interfered

with by the action of some extrinsic body or person. Now suppose the Governor-General in Council—of course he was putting a supposititious case, for he believed the Executive Government to be incapable of such an act—but suppose the Governor-General in Council to issue an order suspending the Income Tax, and promulgating a new law. Should we not be entitled to complain? Would it not be within our competency to record a Resolution on our Proceedings, condemning that course. Or let us suppose another case more analogous to the present. Suppose the Governor-General in Council were to give away five millions of the public revenue to some Native Prince. Surely we should be entitled to complain, and say it was useless to come to us for legislation if the money raised was squandered in that way? And so in the present case we should be entitled to complain if we found it to be true that the Secretary of State had given away £1,40,000 of the public revenues for these Mysore Princes. At present we had no official information before us, and he should, of course, reserve his opinion on the merits of this grant till he saw all the papers. What he wanted was to get at the facts, to see whether there was a shadow of liability on our part to pay this money, or what was the pretence for such a monstrous donation.

Now, assuming that this was a gift—and we had a right to assume this for the present purpose, as the Government had not yet thought fit to deny it—then there were two grounds on which he thought the Council might legitimately complain. *First*, this Council might well complain of such a gift at such a time as this, when we were devising, hitherto with small success, how to raise funds sufficient to equalize the income and expenditure. We were surely entitled to complain if the Home Government, without consultation with the Governor-General, had granted away nearly half of the money we got by our Income Tax in this most extraordinary donation. If we did not complain, he felt

sure the other Native Princes would proceed to England, and return with orders on our Indian Exchequer—no doubt they were all now turning their faces homewards—ignoring the Governor-General, who had always hitherto been considered as the fountain of honor and wealth to the native population. But, *secondly*, we had a right to call the attention of the Parliament and the whole community to these extraordinary powers which were vested in the Secretary of State in Council. We found that the Secretary of State in Council of his own mere motion, without consultation with the Governor-General, might vote away any portion of the public revenues. The Honorable the President in Council had said, this Council had no right to question the legality of the acts of the Secretary of State. It was not his intention to do so, but he might surely express an opinion that some check ought to be devised by Parliament to restrain these awful powers. He said awful powers, for what was there to prevent the Secretary of State from sending us further orders for a million or two in 1861, and another million in 1862? What check should be imposed on these powers was quite another question, into which it was not necessary to enter, but one check was obvious, namely the concurrence of the Governor-General in Council to such grants. He felt confident that, if they had been consulted in the present case, this donation would never have been made. As to the check of Parliament, they all knew what that meant. If the public prints, and our other sources of information, did not greatly mislead, the very utterance of the word "India" operated like the clang of a bell, calling the Members to their dinner. On these two grounds he trusted that, when we got the papers, we should be able to frame some Resolutions, expressing the sense of this Council on this extraordinary grant.

The Honorable the President in Council had treated this Motion as if it were a vote of want of confidence. He could not imagine on what ground he could so consider it. He assured that Honorable Gentleman, that he

for one disclaimed any intention of reflecting on the Executive Government. He firmly believed that the Executive Government had done their duty in this matter, and that if it had been in their power to prevent it, this donation would never have been granted. The enquiries we now made were all devoted to the action of the Secretary of State in Council in this matter, and to the conduct of the Secretary of State in Council only.

He thought the Home Government should bear in mind that the present system of taxation no longer affected the native population only, but laid its heavy hand on European British subjects. In Great Britain taxation and representation went hand in hand, and although it would be impossible in the present state of India to introduce anything of the kind here—though it would be, as Mr. Wilson observed, an idle dream to speculate after what length of time India would be fit for representative institutions—yet still he thought the Home Government might adopt some constitutional forms, and some checks on wasteful expenditure. If they did not, there would be much discontent among the European tax-payers, for you could not put your new wine into the old bottles, you could not compress your new subjects of taxation under your old modes of Government. Our fellow countrymen in this country had all the characteristics of their countrymen at home, and would never quietly submit to any system of taxation, the necessity for which was not explained, or to a system of expenditure which was not shown to be proper, and not wasteful.

Mr. BEADON said, he did not altogether regret that this Motion had been made by the Honorable the Vice-President, though he considered it his duty to oppose it. He did not regret it, because he thought that the proceeding of the Council this day, however they might result, would tend to impress on Her Majesty's Government the necessity for imposing some further check on the expenditure of Indian taxes in England, and that they would be a step towards the solution of the doubts which prevailed as to the

functions of this Council, and as to its relation to the Executive Government of India.

The Honorable and learned Judge who spoke last, had truly said that this Council was not the House of Commons, and that it did not exercise or desire to exercise over the Executive Government of India the kind of control that was exercised by the House of Commons over Her Majesty's Government at home. He had truly said that they were a body of independent English gentlemen, and that they had a right, before they leg. slated, to all information which was necessary to enable them to legislate in an intelligent manner. The Honorable and learned Gentleman had also remarked that there were some who regarded the Legislative Members of the Council as if they were paid Magistrates in the Moosul, bound to obey the behests of Government without question. From that category the Honorable and learned Gentleman had specifically excepted the Honorable the President of the Governor-General's Council, and therefore it seemed necessary that he (Mr. Beadon) as the only other Member of Government now there, should for himself distinctly disclaim any such view.

STU CHARLES JACKSON said, his remarks did not at all apply to the Honorable Member of Government.

MR. BEADON resumed. - He was glad to hear that.

He fully concurred in all that the Honorable and learned Judge had said, as to the perfect independence of the Members and their right to demand from the Executive Government all the information necessary for the purposes of intelligent legislation: and it was because he thought that the information now sought was not necessary for that purpose, that he could not vote for asking for it.

The Honorable and learned Vice-President had well said that, in dealing with the question before the Council, it was necessary to bear carefully in mind the way in which it arose. It had not arisen in immediate connexion with any legislative measure under the consideration of the Council, but it

had arisen directly from the petition which was presented to the Council last Saturday, and which had been printed, and was now in the hands of Honorable Members. That petition, coming from a large and highly respectable body of the inhabitants and tax payers of Calcutta, after charging the Government of India with not fulfilling its promise of giving the public full and clear details of the public expenditure, full estimates in anticipation for the ensuing year, and periodical statements of the cash balances, and after alluding to certain heads of expenditure on which they desired information, asked this Council

"to take such measures as may ensure the immediate fulfilment of the unconditional promises of the Government, by laying on the table of your Honorable Council such full and detailed statements, returns, and estimates as shall give your Petitioners, as payers of Indian taxes, the same full information and power of public scrutiny, as are enjoyed by the tax-payers of England, in accordance with the promises above alluded to."

Now, he would not further advert to the charge made against the Government of India, than to say that it was completely refuted by the Honorable the President of the Council of the Governor-General of India, in his speech on the Motion that the petition be printed. But apart from that, there could be no question that the object of the petition was to induce this Council to put a pressure on the Government of India, in order that it might be compelled as it were to produce and make public information which could not be extracted from it by any other means.

Now, he would state distinctly, notwithstanding the allusion that had been made to the answer given by the Financial Secretary to the British Indian Association, that if the body of gentlemen who signed that petition, or if the Chamber of Commerce, had applied to the proper department of the Government of India for the information which was therein asked for, they would have received it as fully as it was given in this Council by the Honorable the President. They would have received all the information which

the Government could give, and felt itself at liberty to give, and nothing would have been kept back, but that which his Honorable colleague felt himself compelled to withhold there. Speaking for himself, he desired to say that he recognised most fully the importance of giving the public complete information as to the revenues and expenditure of the Government, and as to all that concerned its finances, or could in any way affect the money market and the operations of commerce. He could therefore safely say that as far as he was concerned, and he knew that in this respect he could answer for his Honorable colleague, the requests for information contained in the petition if made to the Government of India would have been complied with, so far as it was in the power of that Government to comply with them, and that where information was not given, the reasons for withholding it would have been explained.

But supposing it to have been otherwise. Supposing the petitioners to have been unsuccessful in their application to the Government for the information they asked for, or for any satisfactory explanation of the reasons for withholding it. Was it right, he would ask, that they should come to this Council to put a pressure on the Government of India? Was it right that they should endeavor to make this Council an instrument for extorting from the Government of India information or explanation which the Government of India had thought it expedient to decline? Was it right that they should place this Council in a position of antagonism as it were to the Executive Government of the country? Was it right that the Council should accept this position? To him it appeared that these questions must be answered in the negative, and if so, how much more when the Petitioners came to that Council to ask its interposition in obtaining information which they had omitted to seek by more direct means. He need not say how great would be the public inconvenience and embarrassment if such were the recognized relative position of the

Mr. Beadon

Legislature and Executive in a country like India governed by an alien race, and by the prestige of the despotic power of Her Majesty's Viceroy.

He begged they would consider what the constitution of that Council was. It was very simple and was defined in Section XXII of the Act of Parliament, passed in 1853, which declared that for the better exercise of the powers of making laws and regulations now vested in the Governor-General in Council, certain persons should, in addition to and together with the Council then existing, be Members of the said Government, for and in relation to the exercise of all such powers of legislation, and that such persons should not be entitled to sit or vote in the said Council, except at meetings for making laws and regulations.

This Council therefore was not a body separate from the Governor-General in Council, but it was the Governor-General in Council, or in his absence the Vice-President in Council, and these meetings were meetings of the Council of India for making laws and regulations. The Governor-General in Council possessed the very same powers of making laws and regulations as he possessed previous to 1853, and no others: and this Council was in no legal respect different from what it was when it consisted only of the Governor-General and three Ordinary Members sitting and voting only at meetings for making laws and regulations. It seemed therefore to him (Mr. Beadon) quite unconstitutional and beyond the intentions of Parliament that that Council should take any step which might have the appearance of sitting in appeal against the act of the Government of India, or to encourage the public in supposing that an appeal lay from the Governor-General in Council in one department to the Governor-General in Council in another.

He now came to the subject of the Honorable the Vice-President's Motion which he felt bound to oppose, not only on the general grounds he had already stated, but for special reasons. The notoriety of the proceeding of which it was proposed to call for the papers,

gave him liberty to speak without much delicacy about it. Anybody who took the trouble to go to Russapugla, or who met Prince Gholam Mahomed in his morning ride, could have from him a full and accurate account of all that had been done for the Mysore family by Her Majesty's Government, and could form his own opinion. Why, by the very Steamer which brought out the last Despatch from home relating to the Mysore Princes, came Prince Gholam Mahomed himself with a letter in his pocket from the Secretary of State, telling him all that Her Majesty's Government had done for the family, and he and the other Members of the family made no secret of it. This he had heard out of doors, and he confessed that from what he heard there seemed to be no difference of opinion on the subject. His own view of the matter was recorded on the proceedings of the Government of India, and as it might be published some day or other in a blue book, he had better not say what it was. But of course notoriety of this kind was a very different thing from the formal publicity involved in the production of papers on which an act of the Government could be made the subject of public official discussion and animadversion. Not that he would have any objection on this score to produce any papers involving the decision of the Government of India, whose Members were present to defend themselves, and the Government of which they were the Members. But he felt the strongest objection to the production of papers for the purpose of calling in question an act of the Secretary of State, who was not here to explain his act, or to show cause why the papers should not be produced. He did not think it would be fair thus to arraign a public functionary before a tribunal to which he was certainly not responsible, and before which he could not appear, or that it would be wise to anticipate the action of Parliament in the matter, and, as he thought it could not be affirmed with reason that an inspection of those papers could be really necessary for any purpose of

legislation, he was of opinion that they ought not to be asked for.

He had said before that the legal constitution and powers of that Council did not in any respect differ from those of the Governor-General in Council before the passing of the Act of 1853, but there was one important particular, in which the constitution of this Council practically, though not legally, differed materially from that of the Governor-General in Council when making laws and regulations under the former regime. By no law, but by a spontaneous act of the Governor-General in Council, the proceedings of this Council had been made public, and consequently every document officially communicated to this Council was public also. This it must be admitted was a very important difference. The Honorable the Vice-President would bear him out in saying that when he filled the office of Legislative Member of Council, and had not by law a vote or a seat in the Council, except at meetings for making laws and regulations, he had no difficulty in obtaining access to all papers of whatever nature that came before the Government, however secret and confidential they might be, and papers were now freely placed within reach of the Legislative Members who needed them for their own information.

THE VICE-PRESIDENT said that, if he were furnished with a copy of the papers asked for, he would withdraw his Motion.

MR. BEADON said that he could not promise that, but he affirmed generally as a fact that papers were now freely placed in the hands of Honorable Members who required them. But before papers could be communicated to this Council officially, it had now to be considered whether they were such as could be properly placed before the public, and if they were not of that character, neither could they for the same reason be communicated to the Council.

He was free to admit that, when Parliament abolished the Court of Directors of the East India Company as a governing body, it failed altogether to

provide in the place of that body any effectual check upon the expenditure of the Indian taxes in England. The Council of India, a mere appendage to the Secretary of State, was no substitute for the independent Court of Directors as a check upon extravagance, especially in Military expenditure, and what could Parliament do when the very men who were best fitted to give information on Indian subjects, and were for that reason appointed to the Council of India, were excluded from the House of Commons? Without touching on the great question, whether India should be governed in England as a dependency or in India as a colony, he would say without fear of contradiction that some additional control on the administration of the public finances of India was absolutely necessary, but the nature of it must be determined by Parliament. Meanwhile the Council might be assured that the Government of India had done its duty in this matter, and he did not think that any such control ought to be attempted by this Council, whose function was strictly limited by Act of Parliament to the making of laws and regulations.

MR. ERSKINE said, he had come down to the Council that morning with the intention of offering some remarks on more than one subject closely connected with this Motion. But the discussion had already covered such an extent of ground, and branched off in so many different directions, that he believed he should best meet the convenience of the Council and answer his own purpose if he confined himself, in the very few observations he should now make, strictly to the two points by which his vote must be decided, if this Motion were pressed to a division; and which seemed indeed to contain the gist and essence of the whole matter, namely, whether the request which the Honorable and learned Vice-President proposed to make was a legitimate and reasonable request; and if it were, whether the objection urged against a compliance with it seemed sufficient. He was obliged to say, with reference to the former point, that he was one of those

who believed that a public duty lay on every Member of that Council to satisfy his own mind by all means in his power, that the proceeds of taxes which he was instrumental in imposing, were not largely misapplied either in England or in India; and, as he believed that this was their duty, it seemed to him that, when any Member of the Council proposed to ask for information from Government in this way *bonâ fide* for the purpose of satisfying his own mind on a public matter like this, his request should not be refused, except on the ground that the information asked for was such that it could not be produced without real injury to the public interests. For these reasons he could not come to the conclusion that the proposal of the Honorable and learned Vice-President was illegitimate or unreasonable; and therefore, although he always differed with regret from some other Honorable Members of the Council, and especially could not differ without great reluctance from his Honorable friend the President in Council, as would readily be believed by his Honorable friend whose judgment he always respected so much, still he should be obliged in this instance to give this Motion his support in as far as it was not objected to on the ground that the information could not be produced without injury to the public interests.

MR. HARRINGTON said, he did not know that he could with advantage protract this debate by taking part in it, and, after what had fallen from the Honorable Members who had already spoken, he should have been content to have recorded a silent vote upon the Motion before the Council, but a very forcible appeal had been made to them which, looking to the vote which he intended to give, he did not think that it would be respectful on his part towards the Honorable and learned Vice-President who had made that appeal, to pass over without observation, and there had been allusions made to his (Mr Harrington's) conduct on former occasions which seemed to require some notice from him. He regretted very much that

the Honorable and learned Judge on his right (Sir Charles Jackson) had introduced into this important debate observations which could not, he thought, be regarded as otherwise than of a personal nature. Certain questions which he (Mr. Harington) had put to their late Right Honorable colleague, Mr. Wilson, whose death, as justly remarked by the Honorable and learned Vice-President, they all deeply deplored, had been referred to in support of the present Motion. The questions alluded to were asked when the Bill for imposing an Income Tax was before the Council. The Honorable and learned Judge on his right had told them that he had just been given to understand that those questions were put at Mr. Wilson's own request. He (Mr. Harington) did not know from whom the Honorable and learned Judge had obtained this information. He (Mr. Harington) had not furnished him with it. The questions were put and answered. Had Mr. Wilson refused to answer the questions on the ground that the Executive Government did not consider it proper to furnish the information required, and had he (Mr. Harington) persisted, notwithstanding, in asking for that information, and having put the question to the vote succeeded in carrying a Motion similar to that which was now before the Council, he admitted that the case would have served as a precedent on the present occasion, but as the case stood, it was not in point, and furnished no precedent on which they could rely at this time. The information asked for had been at once given, and there the matter ended. The Honorable and learned Judge had referred to what had fallen from him (Mr. Harington) in the course of one of the Debates which had taken place on the Bill brought by him last year for licensing Trades and Professions. In that Debate, he (Mr. Harington) had certainly taken upon himself to remind the Council that they were not like the House of Commons, whose duty it was to regulate and control the public expenditure, as well as to provide the money required for the same by means of legislation. He contended that this Council, under its

constitution, had no power to interfere, either directly or indirectly, with the administration of the public revenues of the country, and he remarked that it was the Governor-General of India in Council in his executive capacity, and not the Governor-General of India in Council in his legislative capacity, who was responsible for the due administration of the Indian Finances. He adhered to the opinion which he then expressed, and the only part of what fell from him in the debate referred to which he had had occasion to regret, was the part in which he stated incidentally what was construed into a charge against some Honorable Members of seeking popular applause in the observations which they had been led to make upon the Bill brought in by him, and he regretted this the more, because the charge was considered to extend to the Honorable and learned Vice-President, to whom the remark could not possibly have been intended to apply. He (Mr. Harington) had been induced to express himself as he did in the debate to which he was alluding, because it certainly appeared to him that the Council were disposed to assume duties and functions which did not properly belong to them, and what had fallen from the Honorable and learned Judge on his right to-day seemed fully to warrant the inferences drawn by him (Mr. Harington) on the former occasion. The Honorable and learned Judge on the supposition that a donation, such as had been stated, had been really made to the parties named, had styled it a monstrous donation, and he had gone on to declare that it might be the duty of this Council to record a Resolution, having for its object to call the attention of Parliament and the British public to the matter, in order that some check might be imposed on the Secretary of State for India, and that some check might be put on this disgraceful expenditure.

SIR CHARLES JACKSON here interrupted the speaker and said, that he did not use the word "disgraceful."

MR. HARINGTON remarked that he had taken the Honorable and learned Judge's words down at the time,

and he thought that he had expressed himself as stated.

SIR CHARLES JACKSON said that the word used by him was "wasteful" not "disgraceful."

MR. HARRINGTON begged the Honorable and learned Judge's pardon, and said he understood him to have employed the word "disgraceful," and he had consequently put down that word in his notes.

MR. HARRINGTON resumed. He contended that if the duty of that Council had been correctly stated by the Honorable and learned Judge, it would necessarily involve a direct interference with the public expenditure, but he maintained that this Council, whose duties were purely legislative—as clearly pointed out in the Acts which had been quoted by the Honorable Member of Council (Mr. Beadon)—had no authority to exercise any such interference, and it certainly appeared to him on the present, as it did on the former occasion, that if they did not take care, they would be going beyond their legitimate functions. The Honorable and learned Judge (Sir Charles Jackson) had mentioned, in not very complimentary language, that after the Debate on the Bill brought in by him (Mr. Harrington) for licensing Trades and Professions, they heard no more of that Bill. On that part of the Honorable and learned Judge's speech, all that he (Mr. Harrington) would say was that in a few days the Honorable and learned Judge would probably be called upon to vote for the third reading of the Bill alluded to by him in a modified form. The Honorable and learned Judge was not present when the Bill now before the Council was introduced. But if he would refer to it, he would find that it was based on precisely the same principle on which the Bill brought in by him (Mr. Harrington) was based, though one point of difference between the two Bills was that the present Bill would, he feared, produce a very much less amount of revenue than his Bill, had it become law, would have yielded.

He would pass on to the appeal which had been made to them from the Chair.

*Mr. Harrington*

The Honorable and learned Vice-President had asked them to support his Motion upon this amongst other grounds that the papers to which that Motion referred, were required by him to enable him properly to perform his duties as a Member of that Council, and he thought that, even although other Honorable Members might not want the papers for the same purpose, it was only right that they should assist him in obtaining them for his own use. He (Mr. Harrington) would be very glad indeed if, consistently with what he regarded to be his duty on this occasion, he could respond to the Honorable and learned Vice-President's appeal, and give to his Motion the support for which he had asked. This was what his inclination would naturally prompt him to do. The high position which the Honorable and learned Vice-President occupied in that Council and in another place; the estimation in which he was held by all classes; the assistance they had derived from his labors, and the valuable aid which he was at all times so ready to afford to them individually and collectively in the discharge of their important duties, must make every Honorable Member most anxious to meet the wishes of the Honorable and learned Vice-President on this occasion as well as on all similar occasions, and for his own part, he would say that it was very painful to him to be obliged to vote against the Honorable and learned Gentleman's Motion, but after what had been stated by the Honorable the President of the Council of India as his reasons for considering that the papers asked for ought not to be produced at the present time, he felt that he had no alternative. He gathered from some observations which had been made by the Honorable the President of the Council of India that a Despatch had been received from England relative to the grant out of which this discussion had arisen, but that a representation or remonstrance had been made on the subject. If he were right in the inference which he had drawn from what had fallen from the Honorable the President of the Council of

India as to a reference having been made home, it was quite possible that the grant so generally objected to, assuming it to have taken place, might be reconsidered, and in the meantime, as the matter must be looked upon as *sub judice*, he thought there was the less necessity for their calling for any papers or information in connection with it. Furthermore, he observed that a public meeting was to be held next week for the purpose of considering the subject, and determining what ulterior steps should be taken to obtain a reconsideration of the whole case. This was a perfectly legitimate and proper course of proceeding, and it would probably result in a petition to Parliament, where the matter would be fully and properly discussed, and such decision come to in regard to it as might appear to be called for by the circumstances of the case. This seemed to him to furnish an additional reason against the adopting of the Motion which had been proposed to them. He had intended to have gone more fully into the question of the duties and powers of this Council, and as to its competency to call upon the Executive Government to produce any papers which it might think should be communicated to it. But for the reasons stated by the Honorable Member for Bombay, he thought it would be better that he should follow the example of that Honorable Member, and abstain from any further discussion of the subject at this time.

SIR BARTLE FRERE asked the permission of the Council to say a few words in explanation, with particular reference to what had fallen from his Honorable and learned friend opposite (Sir Charles Jackson). He (Sir Bartle Frere) had endeavored to draw this distinction that, with regard to its own acts and the acts of those under its own control, the Government of India was most anxious to afford this Council every information possible, and they had always afforded it when asked at proper times by those who were entitled to demand it. But with respect to matters beyond their juris-

dition, they must decline admitting any liability to be cross-questioned, or to be required to give any information whatever. He had endeavored to mark the distinction as broadly as possible.

Referring to what he had said about this Motion being in fact a vote of want of confidence in the Government, he felt much obliged to Honorable Members for the manner in which they had spoken of the Government. But he could not help thinking that his argument had not been fairly met. He had said that the terms of the Motion were equivalent to saying that this Council did not believe that the Government had done their duty in this matter. If it were not so, why were they not told the object in asking for this information? But the Honorable and learned Vice-President had not mentioned the course which he intended to follow if the information he required were supplied. As to what that course would be, except from what might be gathered from the words which fell from the Honorable and learned Judge opposite (Sir Charles Jackson), we had not the slightest intimation.

With regard to the desirableness of knowing what became of every shilling raised in India, he (Sir Bartle Frere) most cordially concurred. But as to that part of the expenditure which took place in England, the Government of India had no control. This was no new discovery; this limitation of the duties and responsibilities of the Government had long existed, and had been sanctioned by Parliament, and it appeared to him (Sir Bartle Frere) that the matter was one which we could not, as a legislative body, discuss. Sooner or later, if any money was paid to the Mysore family or any one else, it must appear in the Indian accounts, and then it appeared to him these questions would be perfectly legitimate. Till then he thought that the case put by the Honorable and learned Judge opposite, had not occurred, and he would only repeat that he felt confident, when the papers were produced, it would be seen that every thing

which the Government of India could do legitimately, it had done.

With reference to what had fallen from the Honorable Member for Bombay, he (Sir Bartle Frere) could only repeat that the production of the papers was in the opinion of the Government of India incompatible with the duty of the Government, and that the greatest possible inconvenience must arise, if the Legislative Council forced, or attempted to force, from the Government, the production of these papers. He trusted that what he had said would satisfy the Honorable Member.

MR. SCOTCHPOLE said that perhaps he might well avoid on this occasion stating to the Council any remarks of his own, in justifying the vote which he should give in favor of the Motion of the Honorable and learned Vice-President. The ball grew as it rolled. In the course of the Debate many arguments were brought forward, which it might be desirable to notice, but he rose much less with the purpose to trouble the Council with his own opinions, than if possible to relieve the President in Council of some apprehension which he entertained as to the share he (Mr. Scotchpole) took in this matter. The Honorable Gentleman in the first place had observed that he looked upon this Motion as a vote of want of confidence in the Government. Now he must deprecate any such view of the object of this discussion. He entertained feelings of the utmost respect for the Government of India. In dealing with such questions as that now brought before us, he believed that the conduct of the Government of India was at all times regulated by the highest integrity, and that no Government in the world could in that respect better claim the support and confidence of the people, and he was well assured that at no past time had the Government of India been administered with more integrity or more earnest straining after justice, than at the present moment. He hoped, therefore, that, so far as he was concerned, he should not be supposed to be a party to the passing of a vote of want of confidence in the Government.

*Sir Bartle Frere*

There was another matter however. The Honorable the President of the Council had said, as he (Mr. Scotchpole) understood, that this Motion was calculated to harass a weak Government. It might be that the Government was weak in numbers. They had to lament the death of one Member, and the absence by sickness of another. If in this sense we were to assent that the Government was weak, we knew that they were not weak in power, and however much he might and did regret that the bringing forward of this discussion should, in any degree, occasion anxiety to the Members of the Executive Government, it seemed to him that the extreme importance of the subject required them not to shrink from the conclusion which the motion of the Honorable and learned Vice-President invited them to come to. He had already stated that a variety of topics had been pressed upon us, and he trusted that the Council would pardon him for saying that he hardly understood the point upon which he was called upon to vote. The President in Council had said that a principle was at stake, and he (Mr. Scotchpole) begged to ask him what that principle was?

SIR BARTLE FRERE explained that the principle at stake was, whether we should be called upon to produce papers in respect to measures over which we had no possible control, which related to the acts of authorities not under our jurisdiction, and which had no bearing on any matter before the Council in its legislative capacity.

MR. SCOTCHPOLE resumed. He would remind the Council that the explanation of the principle just afforded by the Honorable the President in Council, did not meet the four questions embraced in the Motion before the Council. It might apply to the production of the last Despatch from the Secretary of State, but it could not apply to the production of the Resolutions of Government, by which the stipends of the Mysore family had been hitherto regulated, nor could it apply to an account of the stipends paid to that family since 1799, nor indeed to

the fourth point in the series of Motions now submitted to the Council. But again he must say, turning to the speech of the Honorable Member on his right (Mr. Beadon), that the principle involved in the opposition to the Motion of the Honorable and learned Vice-President was indistinguishable. He understood the Honorable Gentleman to say that he would tell us what he knew of the matter from information he had learned out of doors. The excellent head of the Mysore family, we were told, had brought with him from England letters that contained all the information on the subject of the orders of the Right Honorable the Secretary of State that was to be found in the Despatch addressed to the Government of India, and we seemed to be invited to go to the Prince at Russapugla, and ask from him the information which the Government declined to give us. What principle could be preserved in pursuing this course? Publication by the hands of Prince Ghulam Mahomed was held to be admissible, and surely the Government of India could derive no satisfaction from knowing that the Members of this Council acquired the information demanded by this Motion from Russapugla, and not from the Government. Would the Home Government be less embarrassed, if the Council adopted the course suggested? There was no pretence of secrecy. The papers were procurable, and yet from the over-fastidiousness of the Government of India, the request of this Council addressed to the Government for the same papers was to be rejected.

SIR BARTLE FRERE said, the question of embarrassment did not enter at all into this matter. The production of these papers would occasion no embarrassment whatever to the Secretary of State or to the Government here.

MR. SCONCE said, the matter had been put to them hypothetically by the Honorable the President of the Council. He understood him to say that if the Government of India had remonstrated against the orders of the Secre-

tary of State, and the subject of the grant to the Mysore Prince were still pending, it might be inconvenient to produce the papers. But no positive assurance had been given to them upon this point. There might be little unwillingness on the part of the Council to forego their demand for information if the matter were still pending. But the Honorable the President in Council declined to hold out any hope that the case was still pending; and, as he understood, they were not asked to reject this Motion upon the plea that the matter was not decided.

SIR BARTLE FRERE begged to state for the third time that he had given no information whatever on the subject, and he did not wish any Honorable Member to misunderstand him.

MR. SCONCE said, we could not then be expected to proceed on grounds of mere supposition, when positive statements were withheld. He was not willing to occupy the time of the Council long, but there was something that was said by the Honorable Member of Government on his right (Mr. Beadon) that by the entertainment of petitions, such as the petition presented last Saturday, improper pressure might be put upon the Government of India, and that a mischievous habit might be established if the Members of the Council brought forward the questions suggested in that petition. Now he must say simply for himself, that the questions he had put last Saturday, referred to matters upon which he personally felt the necessity of explicit information, and it was unworthy of the independence and intelligence of the Members of this Council to suppose that they would injudiciously lend themselves to any course suggested out of door for their adoption. It was said that the authority of the Legislative Council was limited. It might be so, but he would ask, was not the Executive Government under some limitation also? The Honorable Member near him (Mr. Beadon) had spoken of the despotic powers of the Viceroy, and he must say that he entirely differed from this description of

the authority of the Executive Government. The authority of the Viceroy, as of every man, in and out of office, was exercised under the law. By despotism, did the Honorable Gentleman mean what was commonly understood by absolute power or arbitrary will? [Mr. Beadon—No.] No, then in discarding arbitrary will, the power exercised must be referrible to some rule or law, and that law he took to be the law of truth and justice. If you admit that your power was limited by reason, justice, and truth, you were bound to verify the authority you exercised by disclosing, as occasion called for it, the course and ground of your proceedings. It was not simply that you disclaim the exercise of your arbitrary will, but you profess that your conduct is regulated by principles which the common sentiments of mankind universally appreciate and approve. How then can you fail to bring your proceedings to this test?

Mr. FORBES said that, the Honorable the President of the Council having now declared that the greatest inconvenience and embarrassment to the public interests would result from the establishment of such a precedent as would be made by the grant of the papers now moved for, he (Mr. Forbes) would venture to express a hope that the present Motion would be withdrawn; but as he had no desire to shrink from the responsibilities of his position as a Member of this Council, and to avoid a declaration of his views upon the question now before them by remaining silent in the hope that no division would be called for, he did not hesitate to say that, if the Council were called upon to divide, he should vote against the present Motion. He admitted so fully the broad distinction drawn by both the Members of Government, who had just addressed the Council, between an explanation required from the Government of an act performed in this country for which they were responsible, and of an act performed in England for which they were not responsible, that he could have no hesitation on which side of this question he ought to vote. He

*Mr. Sconce*

gave no opinion whatever upon the merits of the supposed grant to the Mysore family which had given rise to the debate. Whatever opinion he might have formed upon the question, he did not consider it to be any part of his duty to declare it as a Member of this assembly; but agreeing, as he did, with what had fallen from the Honorable the President of the Council that, while the Government might be fairly asked to explain the acts of those who were subordinate to them, they could not fairly be called upon to explain the acts of those to whom they were themselves subordinate, he should, if a division were called for, vote against the Motion.

THE VICE-PRESIDENT said, the Honorable Member who had spoken last, had rather appealed to him to withdraw his Motion upon the statement of the Honorable the President in Council, that inconvenience would arise from the production of the papers specified in the Motion. The Honorable Member had been more easily satisfied than himself. He (The Vice-President) would take leave to inform the Honorable Member that he must judge for himself of the statement of Government. It was not more inconvenience to the Government that we should care about, but whether the embarrassment was such as would be productive of public evil. He did not ask the Government to tell us what they had done on the subject. He believed that the production of the papers would occasion no evil, and that it could not in any possible way affect the position of the Government. He did not ask the Government to lay before us their own remonstrance; he gave them credit for having made a remonstrance on the subject. He simply asked for the production of information that he might form his own opinion. He was quite satisfied now that no possible danger or inconvenience could arise from his pressing his Motion. If he had any doubt before on the subject, it was this that, by asking for information which had not already been communicated to the family, he might be raising in their

minds hopes and expectations which might not after a l be realized. That doubt however had been entirely removed by the speech of the Honorable Member (Mr. Beadon), as it now appeared that the Secretary of State was so little careful of keeping his Despatch a secret, that he had given Prince Ghulam Mahomed a letter to the same effect as the orders he had sent out to the Government of India. It would seem therefore that what had been given to Prince Ghulam Mahomed was refused by the Government of India to the Members of this Council.

The Honorable Member (Mr. Beadon) had appealed to him, as to the course which would have been followed, under the state of things which existed before the constitution of this Council, when the Council of the Governor-General in the Legislative Department consisted of four Members. He (the Vice-President) had had the honor of holding the position of fourth Ordinary Member of Council, and he fully bore out the Honorable Member's statement that no information he then applied for was refused to him. Carrying out that principle, he saw no reason why any information should now be refused to any Member of this Council, which was in the possession of the Members of Government.

SIR BARTLE FRERE asked, if the information which was usually so laid before the 4th Ordinary Member of Council was ever published?

THE VICE-PRESIDENT said, it was quite open to any Honorable Member of this Council at any time to move that the room be cleared of strangers. But what he (the Vice-President) complained of was that information should be given to Prince Ghulam Mahomed, which was refused to the public. He was quite astounded at the statement which had been made by the Honorable Member (Mr. Beadon), that the Members of this Council were to obtain their information out of doors. Did he mean to say that matters talked of elsewhere could not be laid before the Council? He (the Vice-President) was not disposed to look for his information from any indirect channel. He did not think it was consistent

with his position to go to Russapugla, or to meet the Prince in his morning and evening drives to seek for information. But he came forward in a legitimate and honest way, and he asked the Members of this Council to support him in asking the Government to give him this information. The Honorable Member (Mr. Beadon) had said that he did not think it necessary to ask for the information, when all that could be told was known out of doors. But he (the Vice-President) begged leave to tell him that he never went out of doors to obtain information. He had heard several persons talking about the matter, but he had not asked any one for any information on the subject. He came in his place in this Council and asked every Honorable Member to support him in his Motion for the production of full information in a legitimate manner.

It had been said that this Motion amounted to a vote of want of confidence in the Government. He could assure Honorable Members that nothing was farther from his intention than that his Motion should assume such a character. In what respect did a Motion for the production of these papers show a want of confidence in the Government? He simply asked for the production of the Despatch from the Secretary of State, showing that a sum of money had been paid, or ordered to be paid or secured. He believed that the Government had received a Despatch, having reference to this subject, and he had sufficient confidence in the Government to believe that they would pause before acting upon it, if it were an illegal order. But he would ask if the Governor-General in his Executive capacity had the power of remonstrating, why should not we also possess the same power?

SIR BARTLE FRERE said, that what he stated was, that by the supposition whatever action upon this matter was necessary, whether in the way of obedience, or remonstrance, or otherwise, rested with the Executive Government, and that the putting of these questions at the present moment was tantamount to saying that this Council did not believe that the Exe-

cutive Government had done its duty in the matter.

THE VICE-PRESIDENT said, he meant nothing of the kind. He simply asked for the production of the papers. The Honorable the President of the Council now admitted by implication that there had been such a Despatch as was asked for. He (the Vice-President) did not know if the Executive Government had remonstrated or not. He had heard out of doors that they had remonstrated, but he had not asked if the Government had done so or not. He only asked to see the Despatch, in order that he might form his own opinion, and he wanted to know whether the amount ordered to have been paid by the Secretary of State was included in the estimates or not, because, if it was not, it would increase the deficit. The Honorable the President of the Council had said that he (the Vice-President) seemed to doubt the truth of those estimates. He could only say that he had no such intention. He believed that they were quite true. He did not object to them before, nor did he object to them now. He simply asked, whether they were meant to include this charge or not?

He admitted that the Trades Licenses Bill had been brought in by the late Right Honorable Financial Member, and that the License Tax was part of his measures. But if he (the Vice-President) had heard, during that Gentleman's lifetime, that half a million was ordered to be paid to the family of Tippoo Sultan, he should certainly have asked him whether that was the fact, and whether that amount was included in the estimate of Income and Expenditure for the year 1860-01.

The Honorable the President in Council had said that he should have liked to know whether the Government could have resisted the order of the Secretary of State. He (the Vice-President) was not prepared to offer any opinion on the subject until he was in possession of particulars, as he wished to know whether the order of the Secretary of State was a legal order or not.

Then it was said, what did you want the papers for? Whom he saw the

*Sir Bartle Frere*

papers, he should be able to say what he would do in the matter. At present, he simply wanted to know what was the order. He did not wish to know what the Government had done upon it. The Honorable the President of the Council seemed to think that he (the Vice-President) was going to impeach the Secretary of State. He (the Vice-President) would only say that he was a Legislator, and he wished to know whether we were to provide for half a million of money to be paid to the descendants of Tippoo. It might be that we had no control over the orders of the Secretary of State, but he might consider if he should not refuse to pass any further tax until the Secretary of State was restrained from ordering any lavish expenditure in the way of voluntary gifts out of the revenues of India. He wanted to get at facts before he acted as a Legislator. He did not intend to move a vote of censure on the Secretary of State, but simply to know how to deal with one of the Tax Bills now before the Council. Mr. Wilson had laid before us full information on the subject, and now he (the Vice-President) wished to know whether the half million in question had been paid or not?

But it was said that some Members of this Council might get up and move a vote of censure when the information was furnished. He would only say that "sufficient for the day was the evil thereof."

Then it was asked, who was responsible for this grant?

SIR BARTLE FRERE begged to say that the case he put was simply that which was stated by his Honorable and learned friend opposite (Sir Charles Jackson), and which was also stated by the petitioners. He had not admitted any thing about a grant, but had confined himself to the allegations of the petition and the statements of the proposed Motion.

THE VICE-PRESIDENT.—How were we to act on report? We wanted information. The Honorable Member of Government (Mr. Beadon) had stated that Prince Gholam Mahomed was in possession of a letter from the Secretary of State, informing him of

the order, but he told us "mind, I do not speak from what I know as a Member of Government, but from information which I have obtained out of doors." He (the Vice-President) wished to know whether it was a payment or a security which the Secretary of State had ordered. If a security, he had no hesitation in saying that the case was still worse. We all knew that it was a much easier matter for a man, when he was insolvent, to give a bill than to pay money. It must be remembered that, if the money was to be paid hereafter, there would also be the interest to pay. He did not think that there was any thing in the Act of Parliament which gave the Secretary of State any power to anticipate the revenues of India. He found it laid down in the last Act, by which the Government of India was transferred to Her Majesty, that all the territorial and other revenues of the country were

"vested in Her Majesty to be applied and disposed of, subject to the provisions of this Act, for the purposes of the Government of India,"

and that all charges and other tributes,

"lawfully incurred on account of the Government of India, and all payments under this Act, shall be charged and chargeable upon the revenues of India alone, as the same would have been if this Act had not been passed, and such expenses, debts, and liabilities, and payments as last aforesaid had been expenses, debts, and liabilities lawfully contracted and incurred by the said Company, and such revenues shall not be applied to any other purpose whatsoever."

He (the Vice-President) did not know, if the alleged grant had been ordered by the Secretary of State to be given for the service of the Government of India or not. If he were asked to offer an opinion on the subject, he would decline to do so until he saw the papers. Another part of the Act said—

"The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other

property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a Meeting of the Council."

It was clear therefore, that Parliament had been very careful to provide how the money was to be spent, and he scarcely thought that the Secretary of State could make any grant without the concurrence of a majority of the Council, or authorize any fresh loans without consideration, leaving posterity to pay them.

He would repeat that he disclaimed all intention of moving a vote of censure, or a vote of want of confidence in the Government of India. He confidently believed that the Government of India had done their duty in the matter. But he knew now that there had been a Despatch from the Secretary of State, because the Honorable Member (Mr. Beadon) had stated that, at the same time the Despatch was received, Prince Gho'am Mahomed arrived with a letter from the Secretary of State. If the Governor-General in His Executive capacity had the power to remonstrate, and if the Honorable Member (Mr. Beadon) had said that we were the Council of the Governor-General only enlarged, why could we not remonstrate also? He (the Vice-President) thought we had all an equal right to remonstrate, but he did not know if he had any thing to remonstrate against. He could not remonstrate upon what was said out of doors. He wished to see what the Despatch contained, so as to be able to perform his duty in the way in which he thought it ought to be performed.

He did not quite understand what the Honorable the President of the Council had stated with reference to the mercantile community.

SIR BARTLE FRERE explained, that he had mentioned as a proof of the disposition of the Government to afford the mercantile community any useful information in its power, that a letter had been written within the last few days to certain leading Members of that community to inform the Go-

vernment, after conferring with the Accountant General and the Financial Secretary, as to which of the returns and accounts now periodically rendered to Government were of real importance to the commercial community; and there was every desire on the part of the Government to give any such information which could with propriety be made public.

THE VICE-PRESIDENT said, he did not object to the mercantile community being furnished with any information. He thought that they were fully entitled to receive every information affecting them. But he did not see why this Council should not have the same privilege. He did not see why the mercantile community should be treated more favorably than this Council. We were a public body. As a Member of that body, he was anxious to see a Despatch on a matter of public interest, and he certainly thought that it ought to be submitted to the Council. He wished to know whether the item in question was included in the sketch estimate or not, and then he should be able to know whether it was included in the deficit or not.

Then it was said, that we should be playing into the hands of an influential party at home. He was not acting from party motives, but merely in the discharge of his duty here. He did not care if he played into the hands of a party at home or not. He was bound to discharge his duty to the best of his judgment, and to act upon the real facts and circumstances of the case. He did not ask for information in consequence of the petition presented to the Council last Saturday. But he asked for it to enable him to perform his duty as a Legislator properly when the Trades License Bill came before the Council, and because he desired to assert the right of the Council to that which was denied at the last Meeting. This was a most important matter, and we were not to be laughed out of it, by being told that we should be charged with getting up a mutiny of the Legislative and Executive Governments against the Secretary of

State. He had a public duty to perform, and he should endeavor to discharge it even though it might lead to the dissolution of the Council. Before he was a party to the passing of a law, he must satisfy himself that it would be beneficial to the country.

For these reasons, he would persevere in his Motion, and carry it to a division regardless of ulterior consequences. "*Fiat justitia, ruat cælum.*"

The question being put, the Council divided:—

Ayes 4.	Noes 4.
Mr. Erskine.	Mr. Forbes.
Sir C. Jackson.	Mr. Harrington.
Mr. Sconce.	Mr. Beadon.
The Vice-President.	Sir Bartle Frere.

The numbers being equal, the Vice-President gave a casting vote with the ayes.

So the Motion was carried.

THE VICE-PRESIDENT moved that Mr. Beadon be requested to take the above Message to the President in Council.

Agreed to.

#### POLICE (PRESIDENCY TOWNS AND STRAITS' SETTLEMENT.)

MR. FORBES moved that Mr. Beadon be requested to take the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

#### VACATIONS (CIVIL COURTS.)

MR. SCONCE moved that Mr. Beadon be requested to take the Bill "to amend the law relating to Vacations in the Civil Courts within the Presidency of Fort William in Bengal" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

Sir Bartle Frere

## EMIGRANT VESSELS.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

## STAMPS.

MR. BEADON gave notice that, at the next meeting of the Council, he would bring in a Bill for the further amendment of the Stamp law, and move for a suspension of the Standing Orders, to enable him to carry the Bill through its subsequent stages forthwith. The necessity for the proposed measure had arisen from the non-arrival of the adhesive Stamps expected from England, which it was thought would have arrived long ago.

## MINORS.

MR. SCOTCE moved that the Bill "to amend the law relating to Minors" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and Mr. Scence.

Agreed to.

## CIVIL PROCEDURE.

MR. HARRINGTON gave notice that he would at the next meeting of the Council move the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter.)"

The Council adjourned.

Saturday, December 22, 1860.

## PRESENT :

The Hon'ble Sir H. B. E. Frere, Senior  
Member of the Council of the Governor-  
General, Presiding.

Hon'ble C. Beadon,  
H. B. Harington, Esq.,  
H. Forbes, Esq.,  
A. Scence, Esq.

C. J. Erskine, Esq.,  
and  
Hon'ble Sir C. R. M.  
Jackson.

## MYSORE GRANT.

The following Message from the President in Council was read by the President :—

## MESSAGE No. 243.

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 Tipoo Sultan is provided for in any account or estimate, of which the results have hitherto been laid before the Legislative Council.

By order of the Honorable the President in Council.

W. GREY,

Secy. to the Govt. of India.

FORT WILLIAM,  
The 21st December 1860. }

SIR CHARLES JACKSON said that, in the absence of the learned Chief Justice, he might perhaps be permitted to express his gratification at the purport of the Message which had just been received. As he understood it, it appeared to him that the Government had conceded all the information which it was able to give. The Honorable the President in Council had said the other day that he regarded the motion of the learned Vice President as equivalent to a vote of want of confidence. He (Sir Charles Jackson) was satisfied that the Message just received would increase that confidence which the Council had in the Executive Government and would promote that harmonious action between the Executive Govern-