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P. L.

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

The question being put, the Council divided—

Ayes 5.	*Noes* 3.
Sir Charles Jackson.	Mr. Laing.
Mr. Erskine.	Mr. Beadon.
Mr. Sconce.	Sir Bartle Frere.
Mr. Harington.	
The Vice-President.	

So the Motion was carried.

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

Agreed to.

NOTICES OF MOTION.

MR. SCONCE gave notice that he would next Saturday move the first reading of a Bill to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).

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

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

The Council adjourned.

Saturday, March 16, 1861.

PRESENT:

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

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

PRISON AT THE NEILGHERRIES.

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

MESSAGE No. 260.

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

By Order of the Governor-General in Council.

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

FORT WILLIAM,
The 15th March 1861.

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

MEMORANDUM.

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

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

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

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

preparation, but it has not been possible to make any allotment for the work in the Budget.

"It was supposed moreover that the small prison at Cotacamund, which will be finished in June next, would afford sufficient accommodation for a time".

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

HOME OFFICE,
The 15th March 1861.

POLICE.

THE CLERK presented to the Council a Petition of the British Indian Association relative to the Bill "for the regulation of Police."

SIR BARTLE FRERE moved that the Petition be read at length, before the Motion for the third reading of the Bill was carried.

Agreed to.

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition of certain Protestant Missionaries relative to the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

MR. BEADON moved that the Petition be read at the table, as it related to a Bill of which he should have the honor to move the second reading presently, and as it also bore upon a Bill of which the Honorable Member for Bengal proposed to move the first reading to-day.

The Motion was carried, and the Petition read accordingly.

THE CLERK presented to the Council a Petition of the British Indian Association on the same Bill.

MR. BEADON moved that this Petition also be read at the table.

The Motion was carried, and the Petition read accordingly.

RECOVERY OF RENTS (BENGAL).

MR. SCONCE moved the first reading of a Bill "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)." He said that the object of this Bill was to amend two points in Act X of 1859, and he did not expect that the amendments he intended to propose would give rise to any opposition, as they could not be but beneficial to all concerned. The first point was that, when claims were brought for the recovery of rent, the only remedy now provided to suitors was to arrest the defendant pending the decision of the suit. The consequence was that defendants had it in their power to alienate the property in the meanwhile. To remedy this defect, he proposed to extend to the suits tried under that Act the rules for "attachment before judgment" contained in the 81st and following Sections of Act VIII of 1859, commonly called the Code of Civil Procedure, which would enable plaintiffs to attach the property of the defendants pending the suit.

The other was a matter of less moment, though also, it seemed to him, calculated to be of practical benefit. Section 71 of Act X of 1859 contained an express prohibition against remunerating law agents employed by the suitors. Each party would, no doubt, be expected to remunerate his own agent, but it seemed to him (Mr. Sconce) proper that, if a party was cast in a suit, he should be required to pay the costs of the winning party. He therefore proposed to empower the Courts constituted under Act X of 1859, to award to agents costs not exceeding what was allowed to pleaders in the Civil Courts under Act I of 1846. These were the only points on which he proposed by this Bill to amend Act X of 1859, and he begged to move that the Bill be read a first time.

The Bill was read a first time.

REGISTRATION OF CONTRACTS.

MR. SCONCE moved the first reading of a Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of Agricultural produce." He said that the importance of the subject to which this Bill

related, and the general consent of all parties, both in and out of this Council, that something should be done to facilitate redress to parties engaged in agricultural contracts who needed redress, might probably enable him to dispense with any special statement of the necessity for this Bill. He would, therefore, proceed without further preface to say that the first part of the Bill was intended to effect what many parties had for some time desired to see effected, namely, the registration of contracts. He proposed to enable any local Government to constitute any number of Registry Offices, by appointing as Registrars, either public servants or persons not public servants, within any District under their Government. He did not here pretend to say how many such Offices should be created. He would leave that matter to the discretion of the local Government, who might appoint as many Registrars in any District as the wants or convenience of the community might seem to require. It was proposed that, in each case when a contract was presented for registration, the Registrar should satisfy himself of the identity of the party, if present, or the execution by him of the engagement, if absent, and the authority of his agent to appear before him. One important matter he had not touched, or rather had touched it by avoiding it altogether, namely, whether the registration of contracts should be compulsory. For his own part he thought it would not be safe to make registration compulsory. But if the Council, and persons out of doors most interested in the registration of contracts, should think that compulsory registration was better than optional registration, he probably could have no objection to make that change in the Bill.

The next point with which he proposed to deal was to extend and amend the law, which had hitherto been applicable to Bengal only, relating to contracts for growing Indigo, so as to give the party who should advance money for the cultivation of any article of agricultural produce a lien upon the crop. The Bengal laws on the subject were Regulation VI of 1823 and Act X of 1836. He proposed in the first place to make those laws general, that is, to adopt throughout India the principle of those laws. He proposed therefore that, whenever an advance was made to a cultivator for the cultivation of any article of agricultural produce on a specified portion of land, the party making the advance should have a lien on the crop until the contract was fulfilled.

Another point was that, if a third party, a stranger, who knew that a capitalist (if he might be so called) had advanced money, should take that crop, or should, for his own benefit, or the benefit of any other person, induce the cultivator to pass away the crop from the party who originally made the advance, that third party should be liable for full damages to the party who made the advance, or, as the Bill provided, should be liable " to an award of such an amount of penalty or damages as might be awarded against such cultivator under the terms of the engagement executed by him." Thus in such cases a double security would be afforded, namely, the cultivator and the third party who should join the cultivator in breaking the contract.

Another point referred to the remedy which the party making the advance should have in case of a breach of engagement. Act VIII of 1859 was in every man's hand, and he might assume that the provisions of that Act were universally known. Any person who made an advance was a party to a contract, and could under Act VIII of 1859, not only bring a suit, but had many remedies under that Act, which for his own protection, he might ask the Court to extend to him. If he chose to ask for a specific performance, that Act would allow it to be enforced, not only after a suit, but pending the suit also. In what cases a specific performance could or could not be ordered, he did not now say. He might have to state his views upon that point when the Bill on a similar subject came on to-day for a second reading. But assuming, as that Bill assumed, a specific performance by order of

Court to be possible, he considered it a material point to be assured that a remedy was provided in Act VIII of 1859. That was, he (Mr. Sconce) considered, a material point. Section 192 of Act VIII of 1859 provided as follows :—

"When the suit is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the Court with the consent of the plaintiff may decree the specific performance of the contract within a time to be fixed by the Court, and in such case, shall award an amount of damages to be paid as an alternative, if the contract is not performed."

But an additional security was provided by Section 200, which provided as follows :—

"If the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by the seizure, if practicable, of the specific moveable and the delivery thereof to the party to whom it shall have been adjudged, or by imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until further order of the Court, or by both imprisonment and attachment, if necessary ; or if alternative damages be awarded, by levying such damages in the mode hereinafter provided for the execution of a decree for money."

Act VIII of 1859, therefore, provided, not only for a decree for specific performance, but for the execution of that decree. And he must yet remind the Council that it did more, for after the institution and pending the decision of suits, Section 93 of the Act permitted an injunction to issue to restrain a breach of contract. Whether you looked therefore to the suit when commencing, or to the termination of the suit, or to the execution of the decree, you had your remedy under that Act, if the law allowed you a remedy. But possibly the Courts might find some difficulty in applying the law of specific performance universally to agricultural contracts, and therefore, to some extent, he proposed to remedy what might be considered a practical defect, as to the power of the Act referred to for dealing with suits of that character. He accordingly proposed to provide that, on the institution and pending the termination of the suit, for the delivery of produce grown upon the strength of an advance made—for example, for a crop of sugar as described in the correspondence received from the Madras Presidency—the Court should have power to put the plaintiff in possession of the disputed crop, on such terms, as was provided in the Bill, as to the custody, re-delivery, gathering, or reaping of the crop, and the eventual fulfilment of the engagement, and as to the security to be given by the plaintiff for the due performance of such terms as the Court might direct. The direct effect therefore of this Clause was to secure to any party his lien upon a crop, as soon as he brought a claim for the same.

As he had said, the Section to which he had alluded, referred to a growing crop, and to the delivery of crop. But he need not remind the Council that the great majority of cases in Bengal, relating to breach of contract, arose from the non-cultivation of the land, and for these cases, he intended, by this Bill, to provide a special remedy. He apprehended that in such cases the Court, on the application of the plaintiff, should call upon the defendant to give security for the complete performance of his contract. He was charged by the plaintiff with non-performance. He had undertaken to cultivate and did not cultivate. He (Mr. Sconce) therefore permitted the plaintiff to require the Court to demand security from the defendant for the performance of his contract, and if the defendant should not give security, the Court would have the power to transfer the land, for the cultivation of which the defendant had refused to give security, to the plaintiff, to enable him to carry on the cultivation which the defendant had failed to perform.

These were the main points of this Bill. In other respects he had reserved the right of land-owners to recover their rent from growing crops. As a general rule, standing crops were hypothecated to land-owners.

Such was the Bill, the provisions of which he considered better adapted to

meet the failure to perform agricultural contracts, and involved more legitimate remedies than the Bill which had already been brought in and read a first time, and which was proposed to be read a second time to-day.

The Bill was read a first time.

SUGAR DUTY (NORTH-WESTERN PROVINCES).

Mr. HARINGTON moved the first reading of a Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)." He said, the object of this Bill was to amend so much of Section 2 Act XIV of 1843, as fixed the rate of duty upon misree, kund, chenee, and all clayed and refined sugar, exported from the North-Western Provinces, to which alone the Act applied, at 8 annas per maund, and upon goor, rab, sheerah, and all unclayed and unrefined saccharine produce, similarly exported, at 3 annas per maund. The Bill proposed to double the rates of duty now taken on both discriptions of sugar and other saccharine produce when carried across the Frontier line. It was expected that the incidence of the higher duty would be almost entirely in Central India, to which the greater portion of the sugar manufactured in the North-Western Provinces, including the Doab, Rohilcund, and the Benares Division, was exported for sale. The sugar manufactured in the North-Western Provinces, which was consumed in those Provinces, paid no duty, and the River Ganges, by which route the producers of sugar in the North-Western Provinces, who desired to send their sugar beyond the limits of India, forwarded it to Calcutta, was left perfectly free. Consequently the producers of sugar in the North-Western Provinces would not have to compete at a disadvantage in the Calcutta market with the producers from other places in that market on account of the increased duty. The fact that that duty would be paid, not by our own subjects, but chiefly by the subjects of Foreign States, was strongly urged by the authorities in the North-Western Provinces as an argument in favor of the proposed alteration in the law. From calculations and enquiries which had been made, it was believed that the sugar which was manufactured in the North-Western Provinces and exported to Central India would well bear the higher duty now proposed to be placed upon it, and that the trade would not be injuriously affected thereby. It was also believed that the increase in the price of the sugar on which the higher duty would be paid, would be scarcely perceptible. The amount of duty collected at the present rates exceeded five lakhs of Rupees per annum. This amount should be doubled at the higher rates. The sum was certainly not very large, but such as it was, it would be very acceptable in the existing state of the finances, and the proposed duty had the great advantage, that it would be raised by means not of direct, but of indirect taxation, that it would require no new agency to collect it, and that its collection would entail no additional expenditure upon Government. The same establishment which collected the present duty would collect the higher duty. For obvious reasons, the force of which had been admitted on former similar occasions, the Government had thought it proper to direct that the higher rates of duty should be levied at once, or rather he should say from the ninth of this month, on which date notice had been given to the Council of the intention to bring in the present Bill, and a Section had been added to the Bill, to which it was hoped the Council would readily assent, to indemnify the Collectors of Customs and others engaged in collecting the higher duties during the interval which must elapse before the Bill could pass into law. This was what was done in the case of the Bill brought in by him at the end of the year before last for raising the duty on salt in the Presidency of Bengal. He was sure the Council would be glad to hear that the effect of that Bill had been to increase the Salt Revenue in the North-Western Provinces at the rate of nearly

half a million of pounds sterling per annum. In the Lower Provinces of Bengal also there had been a considerable increase. At the time the higher duty was imposed, it was feared by many that the imports would fall off in consequence. He was happy to say that these fears had in no way been realized. Instead of a decrease the quantity of salt imported had gone on steadily increasing, which was very satisfactory. He would only further remark that the present Bill had the entire concurrence of the Supreme Government, of the Honorable the Lieutenant-Governor of the North-Western Provinces, of the Sudder Board of Revenue at Allahabad, and of the Commissioner of Customs, whose duty it would be to carry out the provisions of the Bill when it should become law.

MR. LAING seconded the Motion, which was put and carried, and the Bill read a first time.

SMALL CAUSE COURTS.

MR. BEADON begged to move the second reading of the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)." He said that, when he moved the first reading of this Bill a fortnight ago, he explained that the object of it was simply to repeal that Clause of Act XLII of 1860, which prevented Courts of Small Causes constituted under that Act from exercising any other Civil Jurisdiction. He had imagined that the object would be attained by simply repealing that Clause, and authorizing certain classes of Judges to exercise the powers of a Small Cause Court Judge. But it was subsequently pointed out to him by the Honorable Member for the North-Western Provinces that the Bill, as framed, would not entirely meet the object in view, or be in harmony with the Code of Civil Procedure. The Honorable Member had been good enough to add a few Clauses for this purpose, and it was his (Mr. Beadon's) intention, if the Bill be read a second time, to refer it to a Select Committee with an instruction to report under the 62nd Standing Order as to the best form in which the Bill should be framed previously to publication. With that explanation, he begged to move the second reading of the Bill.

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

MR. BEADON then moved that the Bill be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover, with an instruction to submit a preliminary report under the 62nd Standing Order.

Agreed to.

BREACH OF CONTRACT.

MR. BEADON begged to move the second reading of the Bill "for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce." In doing so, he said he would briefly call the attention of the Council to the Petition which was presented last week by the Indigo Planters' Association. That Petition, after declaring that the Association would not have had reason to object to the general provisions of the Bill, had it become law in October last, stated that, "having been brought in only now, it will in its present shape cause serious loss and hardship to your Petitioners for the following reasons." The first reason was—

"Because under it all contracts made previous to the Act being passed, will be excluded from its provisions, and whilst your Petitioners agree that no legislation should have a retrospective effect, they submit that to punish a breach of an engagement committed after the passing of the law, is not retrospective,"

and they pray—

"that the 6th Section of the proposed Bill be modified, so as to make it applicable to all breaches of engagements, committed after the Act has been passed without reference to the date of the contract."

Now apart from the question whether, if the operation of this Act were

made applicable to existing contracts, it would be retrospective legislation or not, he thought there were several reasons why the operation of this Bill should not extend to existing contracts, any one of which reasons would, in his judgment, be quite conclusive against it. The first reason was that the Indigo ryots in Bengal had been informed by the Lieutenant-Governor of Bengal, under the authority of the Governor-General in Council, in a Notification issued in September last, that it was—

"not the intention of the Government of India to re-enact the temporary law for the summary enforcement of Indigo contracts by the Magistrate, which law will expire on the 4th October next, corresponding with the 19th of Assin. After that date, actions for breach of existing contracts will be cognizable as before, by the Civil Courts, but it is the intention of the Government to provide as soon as possible for the more speedy adjudicature of such cases, by increasing the number of Courts, and by simplifying Procedure."

Now there could be no doubt to those who were aware of the circumstances, under which that Notification was issued, that the Government of India, in sanctioning that Notification, intended it to apply only to contracts then existing. But it had been considered in some quarters that the words might be construed so as to apply to contracts existing at any time at which an Act might be passed, bringing such contracts within the cognizance of the Magistrates. Although he had no doubt as to the intention of the Government of India at the time, still he admitted that the words of the Proclamation could bear that construction; and he therefore thought that it would be contrary to the spirit of the Proclamation, as it stood, to make this Bill applicable to contracts now existing or existing at the time that the Bill might be passed into law. Whether this Council was bound by the promise of the Government of India or not, there could be no doubt that the Government of India and every individual Member of that Government was bound by it, and therefore he, for one, could be no party to a law which would make the compulsory enforcement of contracts by summary process before the Magistrates, applicable to contracts made before the passing of the law.

Another objection to the application of this Bill to existing contracts was that we could have no evidence, such as it was proposed to require under this Bill, that the contracts were really and *bonâ fide* entered into and executed at the time at which they purported to have been executed. Without intending to impute blame to any one, or to cast any reflection, except on the careless and rotten system on which Indigo planting had been carried on for years, he would observe that it had been a common practice to enter into verbal contracts with ryots for the cultivation of Indigo, and, when it afterwards became necessary to bring the ryots into Court, to fabricate documents not differing, he believed, in their terms from the verbal contracts, but certainly having no existence when those contracts were made. He thought it absolutely necessary that there should be some evidence of written contracts having been duly executed at the time when they were said to have been made, and that it would be unsafe to legislate where no such evidence could be had.

A third objection to make the law retrospective in its operation was that the Bill was applicable not only to Indigo, but to all agricultural produce, not merely to Bengal, but to the whole of India: and he certainly was not prepared to propose to the Council a project of Law which would make contractors for agricultural produce all over India liable to punishment for the breach of engagements entered into, at a time when the violation of such engagements entailed only Civil consequences.

The next request made in the Petition of the Indigo Planters' Association was that the term of the contracts be not limited as to time, and that the value of the produce be extended to one hundred Rupees. He would not now offer an opinion on these two points. They were questions of detail, though of considerable importance, and did not

affect the principle of the Bill. He thought, therefore, that they had better be left to be dealt with by the Select Committee.

The Petitioners further requested that the Standing Orders be suspended, so that the Bill might be passed at once, and the reason given was—

"that, if Indigo sowings are made at all in lower Bengal this year, they must in 9-10ths of the land be effected within the next thirty or thirty-five days, and that, if the law be not passed immediately, it will be useless and inoperative for the present season."

Now the whole force of this request depended upon, whether the action of the Bill should be retrospective or not. It was quite clear that, if the Bill was to come into operation in respect only to contracts made after the passing of the law, it made no difference whether it was passed immediately or allowed to run through its usual course according to the forms of the Council. He had already stated his opinion that the Act ought not to be made applicable to existing contracts, and he could not therefore support the request, that the Bill should be hurried through the Council. Indeed, he was of opinion that the Bill, affecting as it did agricultural and commercial interests throughout India, was one on which ample time should be given for discussion, and for collecting opinions from all parts of the country and from all classes of persons likely to be affected by it.

It had been mentioned to him, as an objection to the Bill, that persons who contracted in consideration of an advance, were not sufficiently protected against employers who, instead of making the full advance set forth in the contract, might keep back a part or the whole of it, and apply it towards the liquidation of old debts. He was not prepared to admit that there was any need of giving greater protection in this respect merely because it was preferred to make wilful breach of contract punishable, than there would be if they were the subject only of a Civil action; and he was also disposed to think that any precaution that might be taken to prevent the deduction of old balances from new advances might be easily evaded, for nothing would be easier than, after a ryot had received his advance in full, to oblige him to refund a portion of it in liquidation of an old debt. Still if the Council were of opinion that it was advisable to provide more distinctly against such a practice, a few words might be added to the fourth Clause to the effect that, if it appeared to the Magistrate that the full advance had not been made, the complaint should be dismissed.

It had also been suggested to him that the eighth Clause might be advantageously omitted, and that, by omitting it, some objection which had been felt to the Bill on the ground that it might become law in one place and not in another, would be removed. He must say he entirely agreed in this suggestion. His only object had been to make the Bill agree as far as possible with Act XIII of 1859, and to go no further than that Act went. But he was so firmly convinced that the principle of the Bill was a right principle, and one of universal application to all petty contracts made with the laboring natives of India, that he heartily agreed to strike that Clause out of the Bill, so that it might come into force at once throughout India without any occasion for the immediate action of the Executive Government.

These, however, were points of detail, and he had no doubt that there were many others, in which it would appear to Honorable Members that the Bill was susceptible of improvement. There were also other points referred to in the Petitions presented to-day, which were well worthy of consideration. He must say he had no partiality for the particular form in which the Bill was drawn. He had adapted to his purpose the form of a law already existing. He believed that that law had been carefully framed and considered by gentlemen of greater experience in such matters, and greater ability to deal with them than himself; he knew that, so far as it went, that law had been entirely successful in its operation; and he supposed that the Council would

more readily accept a Bill prepared in the same form to meet cases of an analogous character than one framed on any new principle or in any new shape. It was his intention however to propose, if the Bill were read a second time, that it should be referred to a Select Committee in order that all the suggestions for its improvement might be carefully considered, and that a preliminary report might be made to the Council before the publication of the Bill in the Gazette. All he would ask the Council to do now was this, to affirm the principle that persons in the condition of laborers who freely received a *bonâ fide* advance of money, and in consideration thereof voluntarily contracted to cultivate or deliver produce, if they wilfully and without reasonable excuse failed to perform their engagements, and either persisted in their refusal or would not pay such damages as the Magistrate might think reasonable, should be liable to punishment.

With these remarks he begged to move that the Bill be read a second time.

MR. SCONCE said, he was wholly opposed to this Bill, both in form and in substance. In making that statement, he was sensible, considering the manner in which the Bill had come to us under the auspices of the Government of India, that he had a large number of the Members of this Council adverse to him. He would therefore the more earnestly appeal to them that, if they thought that this Bill did not conform to that standard of right and wrong, which, as legislators, we were bound to adopt, or to those principles of social justice and enlightened jurisprudence which regulated the legislation of all civilized countries, he hoped that even those who came to support the Bill would agree with him in the opinion he was about to express, that the Bill should not be allowed to pass the second reading. He need not give any assurance to the Council that he was not insensible of the difficulties against which those gentlemen who had made advances for the cultivation of Indigo had to contend. If it only depended on that point, he would abstain from making any opposition to the Bill. But it was not so, and he would proceed to show what he conceived would be a more adequate and certainly a more just enactment. We had more important measures to consider than merely laws to be in force for one or two years only. The Bill before the Council was of a permanent nature, and we ought therefore to see that the Acts we put into the Statute book were such that we should not be ashamed of them hereafter. He would recall to the attention of the Council some of the circumstances which had preceded the introduction of this Bill, and of the explanations that had been offered to the Council with a view to induce Honorable Members to accept the principle of the Bill. It was not many months since the Penal Code, with which we must all be familiar, was passed by this Council. There was in it a provision for cheating, and he would ask the Council to consider if this Code, after having been so carefully considered, was so imperfect that we should now be called upon to create a new offence. But the offence in question was not forgotten when the Council passed the Penal Code six months ago. If the Council would turn to the head of "Cheating" in the Code, they would find how offences against Indigo might be dealt with. Illustration *G* of Section 415 provided as follows:—

"A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of Indigo plant, which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the Indigo plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

(MR. BEADON—hear, hear.)

Observe in this latter case, the Penal Code said that "A does not cheat," but we were now required to say that he "does cheat." Let it be observed, therefore, that this Bill not merely proposed to create a new offence, but, what was infinitely more objectionable, it proposed to reverse the rule of

law to which the Penal Code gave effect, by declaring that to be an offence which the Penal Code showed could be redressed only by a civil action. The cheer with which his Honorable friend (Mr. Beadon) had received what he had now said, reminded him that, in the speech by which the Honorable gentlemen had introduced the first reading of the Bill, he had not overlooked the definition of cheating in the Penal Code, but undertook to show that the Code had erred in the determination of what was or was not fraud. His Honorable friend was reported to have said :—

"If a ryot took an advance from an Indigo Planter and engaged to deliver a certain quantity of produce, intending at the time not to fulfil his engagement, he was held to be guilty of cheating. But how could such intention be possibly proved? and what was the extent of the difference in point of moral guilt, between a man who made an agreement, intending at the time to break it, and one who made an agreement in good faith, and resolved, an hour or a month afterwards, to play false?"

His Honorable friend seemed to argue as if there were no difference between taking money on false pretences, and taking money without a fraudulent pretence or assurance. Making an engagement in good faith, and making it on false pretences, were represented to be identical; and in that striking misapprehension might be found an explanation of the course taken in the preparation of this Bill. No doubt, in the two cases put by the Honorable gentleman, there was one point of resemblance. In both cases, an advance was made on an assurance that the contract would be fulfilled. But in the one case, the advance supposed to have been given was given in consequence of fraudulent representations, and in the other by no deception at all, but under the honest intention on the part of the cultivator to fulfil the engagement in consideration of which the advance was paid to him; and yet the Honorable gentleman asked, what was the difference between the two cases? If the Council agreed with him (Mr. Sconce) that there was a material difference, a difference going to the very elements of Criminal Jurisprudence, he would confidently ask them to vote with him.

Then, again, the Honorable Member this morning repeated that ryots who took advances were in the position of laborers. What he said a fortnight ago was as follows :—

"There was no difference in principle between the case of a mason who contracted to build a stable, or a laborer who engaged to work for so many days, and that of a ryot who engaged to deliver produce. That a ryot was a laborer, whatever else he might be, there could be no doubt. It was for the produce of his labor that he contracted, and his field was no more to him in fulfilling his agreement than his skill and tools to the workman, or his capital to the petty contractor."

Observe that it was upon these opinions, and this statement, that the Bill was founded. The ryot was a mere workman; his field was no more to him than his skill and tools to the workman. The land of a cultivator, we were told, was no better than his plough; an instrument, as the plough was an instrument; whereas, what was called the produce of the soil was the produce of the ryot's labor. It was thus that land and labor were confounded; and that a ryot was converted into a laborer living upon wages. The manifold returns of the land and the purposes to which they were applied were ignored, and the Honorable gentleman would have us believe that the fruitful fat of the earth was but the sweat of the ryot's brow. In the Appendix to the Report of the Indigo Commission would be found ample information as to the position of ryots in connection with Indigo Planting. Take the case of the Bengal Indigo Company as an instance. It would be seen, that the ryottee land (excluding neejabad) was 61,000 beegahs. The advances annually made to the ryots varied from 50,000 to 75,000 Rupees. The ryots were in number 23,200. The average advance to each ryot, therefore, was something under three Rupees in the year. Three rupees to a ryot was say one month's wages. If you looked, therefore, at the advance as determining the position of the ryot,

you would find that what you might choose to call wages did not cover more than wages for one month in the year; while for the remaining eleven months the ryot had from other sources to support himself. Compare the total advance made by this great Company with the land engaged for, and you find the same result. As he had already said, the land was 61,000 beegahs, and on an average the advance appeared to be about one Rupee to the beegah. What was the produce? He might, with safety, assume that a beegah cultivated with rice would yield eight to ten Rupees a year, so that the aid given to a ryot by way of an advance was no more than equivalent to one-tenth of the produce. He (Mr. Sconce) hoped that the Council would see that the Honorable Member was wholly under a misconception in dealing with the ryot as if he was a laborer. This was by no means a contest as to words. In this case a word made the principle of the Bill; and by the misapplication of a word an analogy was found for applying the same law to workmen and agriculturists.

In another respect, the Bill was wholly objectionable. It was limited to the delivery of produce valued at fifty Rupees. You were afraid to extend it to larger transactions. It was a Bill, the principle of which you confined to the poor. You knew that if you took the limit at five hundred Rupees, it would be impossible to maintain its principle. There was then to be one law for the rich and another for the poor. There was an old legal maxim, "*De minimis non curat lex.*" This Bill was intended wholly for small things. If it were founded on any just principle, it should be applicable to large as well as small contracts; but you virtually disavow your own principle in embracing only small transactions and absolving greater offenders from the cognizance of the law. It seemed to him difficult to know what particular part of the Bill to commence with. It applied to the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce. Every word you read pointed to a new circle of offences. Take, for example, the manufacture of agricultural produce. What did this expression include? Some might apply it to bakers, some to brewers, others possibly to butchers. For himself he would hold to none of these, but there was one possible construction of the term, which was of more serious moment. He feared under these words lay a project to advance the interest of the Ditch—an attempt to get in the fine end of the wedge—and he was concerned to say that his Honorable friend, to use the words of the fifth Section of his Bill, was an abettor of the attempt. Within the definition of this Bill, it might be competent to a Calcutta merchant, who had made advances for the manufacture of Indigo, to proceed against the unhappy manager of a factory who had failed in part (the Bill said "in part") to manufacture Indigo, and might be thrown into a Mofussil Jail for three months. Did the Honorable gentleman intend this or not? He knew he did not; and the intentional omission entitled him to say that this Bill in its application forsook the path of justice.

One point that met us on the threshold was this—It was a Bill avowedly to direct the specific performance of a contract. In the first place, a Magistrate would have to consider the reasonableness of the excuse which the ryot might offer, and if he thought a reasonable excuse had not been offered, it might be his duty to order the ryot to perform the contract. Under this Bill, however, he desired to say that the very attempt to take any such proceedings was absolutely impossible. The contracts to which it referred were not required to specify the lands upon which produce was to be cultivated. They were simply agreements to cultivate and deliver agricultural produce, and necessarily furnished no dates for the interference of the Magistrate. The exact specification of the land was obviously material to the performance of the contract. Without that the Magistrate would

have to choose throughout the whole District. In the Bill which he (Mr. Sconce) introduced this morning, he proposed to give the Planter a lien on the crop, if the land on which it was grown was defined in the engagement. But under this Bill, the position of the land supposed to be referred to in contracts was altogether undetermined; it might lie in any direction, at any distance to the North, at any distance to the South; and under such circumstances, the breach of contracts could by no possibility become the subject of judicial cognizance. This defect met one on the very threshold, but the difficulty increased when you attempted to go against the laws of nature and the laws of man, against physical laws and moral responsibilities. These contracts related to the cultivation, production, and delivery of agricultural produce. He would confine himself to these three words. Supposing a complaint was brought against a ryot for non-production, what was the purpose of this Bill, and in what manner would it have effect? He would venture to say that, according to the well recognized principles of an intelligent jurisprudence, contracts such as these must be left absolutely to the discretion of the person contracting to determine as to the time of ploughing, sowing, or reaping. The judgment, skill, and independent action of the agriculturist were of the very essence of the contract. No Magistrate could presume to dictate to a contracting party in what manner a farmer should plough his land. Suppose it was a case of weeding; how could the Magistrate say, you must weed once, twice, or thrice. Suppose it was ploughing; was the Magistrate to tell him to plough twice or three times? Was he judicially to determine that question? Could the Magistrate watch the times and seasons? Could the Magistrate presume to say that on this day you must plough, or sow, or weed? Suppose the Magistrate were to say, "plough in the morning," and the man said, "No, it was too wet or too dry;" would the Magistrate put him into jail? But that was not all. He had already said that the matter was essentially beyond the competency of a Magistrate, and that there were certain contracts which the law assumed, from their very nature, must be left to the discretion of the parties who undertook to perform them. He felt that the consideration he had given to the subject did entitle him to say that such engagement could only be carried through by the skill and discretion of the contracting party and not by the dictation of a Court. But supposing the interference of some Court to be possible in order to direct the specific performance of contracts such as these, he would say with confidence that it could not lie with a Magistrate, but it must be a Civil Court, a Court of Equity, to make such orders. Take for example the question of advances. As this Bill stood, an advance might be merely nominal—two Rupees a beegah or two pice. He (Mr. Sconce) would say unreservedly that no Magistrate in any country would be permitted to determine whether the consideration given in a contract was such as to require the party to carry out the contract. He understood clearly enough the principle that a man who chose to make a bargain must abide by his bargain, and often the adequacy of the consideration paid would not be discussed by the Courts. But there were cases in which, upon the ground of inadequacy of consideration, a Court of Equity would refuse to direct the performance of a contract. Supposing the consideration paid to be grossly small in comparison with the thing to be done; and supposing one party to be poor and ignorant and the other man rich and influential. That alone would afford cause to a Court of Equity to entertain the objection and dismiss the suit. But again he must ask, was it only a question of Courts? Then, suppose two Courts to be at the same time and the same place equally available, the one a Magistrate's Court, the other a Civil Court; he must hold the one to be a competent and the other an incompetent Court. Why should not the Civil

Court which, looking to the issues to be tried, was the most competent Court, be the Court at which the case should be dealt with? Was it supposed that the Civil Courts had no time and were encumbered with too many forms? Then increase your Courts and simplify your forms. Whatever you do, don't turn aside parties from a Court where justice would be rightly administered to a Court where justice would be wrongly administered. In introducing his Bill this morning, he said that he had material doubts whether even in a Civil Court the specific performance of contracts like these could be directed. He was quite satisfied that this could not always be done. If they could not come before a Court of Equity, would any gentleman say that they could come before a Magistrate's Court? Whatever weight might be attached to what he said, he would observe strongly that a mighty wrong would be done if the Council allowed Magistrates to entertain cases of this description. It was an admitted principle that Courts of equity would not pretend to give specific performance in cases where they could not carry out their own orders: impossibility was a clear bar to specific performance. He had stated to the Council the ground on which he held these cases to be impossible. In the case of Gervais *versus* Edwards, the presiding Judge, Lord Chancellor Sugden, in his judgment, observed:—

"As far as the merits of the case go, I would decree the specific execution of this contract; but I do not see how it is possible. If I execute it at all, I must execute it *in toto*; and how can I execute it prospectively? The Court acts only on the principle of executing it in specie and in the very terms in which it has been made; therefore, when you come to the specific execution of a contract containing many particulars, you must see that it is possible to execute it effectually. The Court cannot say that, when an event arises hereafter, it will then execute it. In the case of a decree for the execution of a contract for the sale of timber, it is no objection that it is to be cut at intervals; that is certain, and the mere delay will not prevent the Court from executing it; there the agreement is executed in specie; the Court decrees to one the very timber contracted for, to the other the very price. If I am called on now to execute this agreement, I can only specifically execute a portion; whereas I am bound to execute it all."

And again,

"No precedent has been cited; but, indeed, none is necessary. It is a question of principle; and I am clearly of opinion, that if I gave a decree now, it would not be a specific execution of the contract, but only a declaration that there ought to be a specific execution of it hereafter. I must therefore leave the plaintiff to his remedy at law."

That was just such a case as this. You had a complaint involving many successive operations, ploughing, sowing, and weeding; and what was worse, the contract that you attempted to perform, you only half performed, for you could not provide that a ryot should receive the price of his crop. In another well known case, Lumley *versus* Wagner, the presiding Judge, Lord St. Leonards, observed as follows:—

"Beyond all doubt, where a lease is executed, containing affirmative and negative covenants, this Court will not attempt to enforce the execution of the affirmative covenants either on the part of the landlord or the tenant, but will leave it entirely to a Court of law to measure the damages; though with respect to the negative covenants, if the tenant, for example, has stipulated not to cut or lop timber, or any other given act of forbearance, the Court does not ask how many of the affirmative covenants on either side remain to be performed under the lease, but acts at once by giving effect to the negative covenant, specifically executing it by prohibiting the commission of acts which have been stipulated not to be done."

He (Mr. Sconce) had read this, mainly to support the view which he was about to mention. A complaint was made that a ryot, who had contracted to grow indigo, would not do so, but would sow rice. A Civil Court, if the case went there, might, by injunction, direct the party not to sow rice. You knew, on the most unexceptional authority, that a Court of Equity would not attempt to enforce affirmative covenants, but that by injunction it might restrain an act that a party had bound himself not to do. That injunction the Civil Courts of this country had power to make

under Act VIII of 1859, and you would go beyond all judicial authority and every principle of legality if you passed this Bill.

These were the reasons for which he was opposed to the principle of the Bill. There were, however, objections to various details of the measure, with which it was unnecessary at present to detain the Council. He would only notice Section IV. We were told the other day that this Section had been introduced in order to give some security to the ryot that he would be fairly dealt with by the Planter, *a quid pro quo* in short for the penalties proposed against himself. The Section provided that, "if it shall appear to the Magistrate that the contract has been obtained by means of fraud, force, or intimidation, the complaint shall be dismissed." He hoped the Council would not be carried away with the provision of this Section. The Penal Code contained ample provision for criminal force, intimidation, or cheating. It was a mere shadow of a substance to introduce what would in any way justify a measure which would inflict great injury on the ryots.

With these remarks he begged to repeat that he must oppose the second reading of this Bill.

MR. LAING said, he was glad that the issue had been raised on the present occasion with a distinctness worthy of the question before the Council. It was unnecessary to go into details, because the question involved in the second reading was the broad principle whether breaches of contracts should, under the circumstances described, be treated as subjects of Criminal or of Civil legislation. The Penal Code, as it was well stated, admitted the principle that anything in the nature of cheating was a subject for Criminal prosecution. The question then arose whether the definition in the Code provided sufficiently for such cases as those in which a person who executed a contract and took an advance under it, neglected or failed to use reasonable exertions to fulfil his part of it, and inflicted injury on the other party to the contract by such dishonest contract. That, he believed, might be fairly stated to be the broad issue between the Bill of his Honorable friend (Mr. Beadon) and the Bill of his Honorable friend the Member for Bengal. He (Mr. Laing) thought it was impossible to over-estimate the importance of such an issue. It was an issue on which not only a large amount of English Capital in India depended, but also one which was intimately connected with the promotion of morality and civilization among a vast agricultural population. He thought there could be no better system of legislation than that which encouraged honesty and discouraged fraud. That had been tried in England on a very large scale. Owing to a spurious sentimentality which had influenced legislation in favor of lessening the punishment on dishonest debtors, fraud had grown up to such an extent, that a universal cry had been raised for such a revision of the Bankruptcy law as should render the temptation to fraud less powerful than it now was among the class of petty traders and dealers. The necessity for such a revision was admitted in all quarters, and formed a prominent topic in the Queen's speech delivered in the Session which had just commenced, and there was no doubt that the measure of the Government would soon be passed into law. He thought that the same principle would apply still more strongly to India. As the law now stood, there was great temptation to a vast mass of the agricultural population to commit fraud. The nature of transactions in many staples of agricultural produce was such that a European Planter was obliged to resort to a system of advances. That was the case with regard to Indigo as well as to other produce. If European capital was to be introduced into India, the speculator must be prepared in many cases to make advances, otherwise he might stay away from India altogether. Well, the system of advances being admitted, what was the position in which the Honorable Member for Bengal wished to leave it? The Honorable Member had proposed to give the Planter the

remedy of instituting 10,000 or 20,000 Chancery suits, and had then quoted a number of cases to show that the construction in cases of enforcing specific performance, was so very doubtful, that no one could possibly say how any one of their suits might be decided. He (Mr. Laing) thought that the Honorable Member had put himself out of Court by the very cases he had read, for, according to those cases, it seemed doubtful whether an injunction for a specific performance would issue at all from a Court of Equity, and thus a Chancery suit might after all prove a remedy as inapplicable in law as it was nugatory in practice. He called it a barren remedy, because it was impossible to suppose that it was any real remedy to tell the Planter to bring a suit for specific performance on a point of mere legal construction against each of 10,000 ryots on contracts for the delivery of five or ten Rupees worth of Cotton or Indigo. Why, if he obtained an injunction at a cost ten times greater than the sum to be recovered, the defendant would be in the jungle, and his cattle across the border. Fancy an energetic Manchester man coming out to try whether India could not make us independent of the United States for Cotton, and going up to a Cotton District. He made his advances, and when he expected to receive his Cotton, was told that the ryots preferred to grow rice instead, but there were Courts of law and plenty of Lawyers, and if he liked to file 10,000 Civil suits and carry them through two or three appeals, perhaps, if he was lucky, he might get decrees for specific performance. The result would be that he would pack up his portmanteau and leave for England by the first steamer. It was a most serious thing for India to lose the benefit of an influx of European capital and enterprize. Why had we expended so many millions on Railways, if it were not in the hope of encouraging an influx of European capital? He firmly believed that the residence of European Planters in the Mofussil was, on the whole, beneficial to the country and to the ryots among whom they lived, and he was glad to think that the question now stood on a footing which removed all doubt as to the result. He was happy to think that the old system of Indigo contracts was at an end, and that the question of enforcing contracts could now be considered on general grounds apart from past topics of irritation. This Bill was not intended to have retrospective effect; and supposing a man with his eyes open chose to enter into a contract, what had he to complain of in the present Bill? Why, he had a simple mode of keeping out of the reach of its provisions, and that was to be honest. Let him faithfully carry out the obligations which he had contracted, and he had nothing to fear. He (Mr. Laing) would say that that was infinitely better for the man himself than that he should be placed in a position where, if his inclination or caprice pulled counter to his duty, he knew that there was no practical remedy to hold him to his contract.

If those Reverend gentlemen, who had signed the Petition we had heard read this morning, were present, he would ask them whether the Bill we were now proposing to introduce was not the best auxiliary to their efforts to improve the morality of the people which they had so much at heart. It was essential that laws should not be too lax, or procedure too remote and difficult in cases of this sort, which affected the character of great masses of the population. He thought it unnecessary to pursue the subject farther, because it had been narrowed to the distinct and broad issue, whether fraudulent breach of contract should be punished Civilly or Criminally.

As to the details of the Bill, as his Honorable friend (Mr. Beadon) had proposed to refer it to a Select Committee previously to publication, he would only say that he concurred in the omission of the 8th Clause, so as to remove all interference on the part of the Executive Government with a law which he believed to be applicable to the whole of India. He thought also, that the question as to the limitation of fifty Rupees should be carefully considered in Committee, but as regards the principle

Mr. Laing

of the Bill, it was one upon which the Government would take their stand and listen to no compromise.

Sir CHARLES JACKSON said, he had felt some difficulty in making up his mind on the present Bill, looking at it in one aspect, that is, assuming that the ryotty cultivation of Indigo was voluntary. His embarrassment arose from no inherent difficulty in the subject itself, but from the fact that they had been told that this Bill was brought forward at the instigation of the Planters themselves. Now assuming that the ryotty Indigo cultivation was a voluntary one, he was very much surprised that a body of men, so able and intelligent, and so acquainted with their own interests as the Indigo Planters, should propose a measure, which must, in the end, deal a death-blow to all ryotty cultivation. Either the Planter wanted the ryot to take advances, or he did not. If he wanted him to take advances, it appeared to him (Sir Charles Jackson) that it was the very wildest expedient to tempt the ryot by threatening him with a Criminal Penalty for the breach of his contract. There were plenty of persons in the Mofussil who would tell the ryots, even if these ryots were not now sufficiently able to advise themselves, "all you have to do, to keep out of prison, is not to take advances;" and what would be the consequence? All would refuse to take advances. He (Sir Charles Jackson) happened to know that under Act XIII of 1859 (which had, he supposed, been extended to the Neilgherries), not a single artizan or workman could be found to take an advance, so as to render themselves liable under that Act. For these reasons, it appeared to him that, if the ryotty cultivation was a voluntary one, the Bill would be of no assistance to the Planter. But that was not all. It would involve much more serious consequences, nay, strike at the root of all ryotty cultivation. He thought that was to be deprecated, for there was nothing whatever to condemn in the ryotty cultivation in itself, if the ryot cultivated voluntarily and was paid his price, and he (Sir Charles Jackson), for one, should be sorry to see it put a stop to if it could be so carried on.

But there was another aspect of the case, which was this. Suppose the Indigo cultivation was not voluntary, and that, as was asserted by some, Planters purchased Zemindary and Putneedary interests to obtain an influence over the ryots, and so compel them to take advances, in short, to put a screw upon their ryots. Whether that was so or not, he was not prepared to say; but he had a right to assume it by way of argument, and so put this Bill on the other horn of the dilemma, for if this be so, if the cultivation of Indigo be unprofitable to the ryot and not voluntarily entered into by him, then the effect of this Bill would be to perpetuate the present unhappy state of things, and it would also perpetuate a most rotten and vicious system. What did this Bill propose to do? Was there no means of reconciling Planter and Ryot? Was there no other balm in Gilead for the present state of things than this penal enactment? Look at the first Section. It provided:—

> "When any ryot, laborer, or other person shall have received from any manufacturer, master, or employer, carrying on business, or from any agent of such manufacturer, master, or employer, an advance of money on account of the cultivation, production, gathering, provision, manufacture, carriage, or delivery of agricultural produce, &c."

That provision was apparently founded upon an Indigo contract, which provided for everything. According to an Indigo contract—and he (Sir Charles Jackson) happened to hold one in his hand at this moment—a ryot was required to cultivate, gather, carry, and deliver. He was also required to measure, which was not however mentioned in the Act. Now there would not be a single breach of this contract. The breach was not that, if he did not deliver at the end of the year, he should be criminally prosecuted. If that had been the provision, there might be some analogy in this to the English law which rendered a husbandry laborer, or an artizan who took home materials

for the performance of a particular work, liable to be criminally punished for a breach of his engagement. But in this case, a ryot might be harassed throughout the whole cultivation with constant charges of breaches of contract. If a ryot were required to do a certain work, say, for instance, weeding, on a certain day, being engaged in his rice fields, and refused to do it on that day, he might be taken before a Magistrate's Court, merely upon that ground, for Indigo was a precarious cultivation, and the consequence of a delay in weeding might be ruinous. Again, it might be very important that the sowing should take place at a particular time, and he believed it was best done after rain, and the ryot might be called on to sow at once when it was inconvenient to him, and then if he was led to delay his sowing till the fall of another shower, he might be dragged before the Magistrate for a breach of his contract to cultivate. It might happen also that, owing to inundation, the ryot might be called on to cut the plant immediately the waters subsided, for he believed, that if that was not done immediately, the leaf turned yellow. The ryot might be called on to cut it at once, and if the Indigo cultivation was voluntary and profitable to him, he probably would do so, but if not, he probably would prefer to look after his own crops in the first instance, and the Indigo after that, and really considering that the call upon him was the result, not of his negligence, but of a mere visitation of Providence, his conduct would not be surprising, and he did not think the ryot should be subjected to a criminal charge for a breach of this kind. Then again look at the inequality of the punishment which the Bill provided for the several parties. While the ryot would be mulcted four times the amount of damages, or imprisoned for three months with hard labor, the other party might have recourse to perjury and subornation of perjury, and yet only be called on to make a compensation to the ryot. He firmly believed that this Act would be irritating to the ryot in the last degree, inasmuch as it sanctioned a constant supervision and interference with him. He believed the Act would aggravate the present unhappy state of things a thousand fold, and that it would so work as to aggravate the present discontent into more active resistance.

Then we come to the consideration of what were the grounds on which this measure was based. The grounds had been stated by the Honorable Member of Government who spoke last (Mr. Laing.) The only argument in its favor, or rather the only plausible ground put forward, was that the Bill merely proposed to affect small contracts under fifty Rupees, and that when a large number of these men struck work, it would be impossible to expect the Indigo Planter to drag so many as 500 or 1,000 ryots before a Court of Civil Judicature. To his mind, however, this argument was met by a very short answer. Pay the ryot a remunerative price; make it his interest to cultivate. If the ryot were paid a remunerative price for his crop, you would not want to drag 500 or 1,000 ryots before a Court of Justice. You might have to enforce an occasional contract now and then, and it might be that for the act of God, or the death of the parties, some contracts would be incapable of execution, in which case this Bill would not prove any relief to the Planter, for it applied only to fraudulent breaches of contract. But with those exceptions, he felt satisfied that if the ryot was paid a remunerative price, there would be no general complaint of breaches of contract, and he believed this answer exposed the fallacy on which the whole case for the Bill rested. Then again, before we were called on to pass this Act, it ought at least to be shown that it was impossible to provide an adequate Civil remedy, or that a Civil remedy had been tried and failed. He thought the Small Cause Court Bill which had been introduced to-day, was a move in the right direction, and he hoped that it would be sufficient. But if the ryot got a fair price, the Civil Courts would have little to do, for he repeated, and it was the argument he relied on, that if

Sir Charles Jackson

you gave a man a remunerative price for his labor, you would be generally sure of securing it.

Then there was another point on which the case for this Bill was rested. It was said that according to the English Act, an artizan or a laborer was under similar circumstances liable to be punished criminally. But he was in a very different position from a ryot in this country. In England, a husbandry servant, or an artizan, under certain circumstances, if he refused to perform the work, for which he received materials, was liable to criminal punishment. But he would ask upon what principle were these classes liable to criminal punishment? Upon this broad principle, that there was no other remedy but the person of the laborer or artizan. He (Sir Charles Jackson) would say that a ryot was neither a laborer nor an artizan, and it was a mere perversion of terms to say that he was so. He (Sir Charles Jackson) would not say that he was a Capitalist. What he meant to say was that a ryot was not a laborer. He did not work for wages, and the advance he received was often not enough to keep him a couple of months. The ryot to whom advances were made was a man possessing a few beegas more or less of land; he had also his homestead, his bullocks, and his plough; and it was a mere farce to say he was a laborer. According to the common acceptation of that term, a cooly was a laborer. Was it to be supposed that a Planter would trust a cooly with a piece of cloth round his waist with an advance. That a ryot was not a beggar or a person from whom you could not recover property, he (Sir Charles Jackson) could satisfactorily show from the result of the Act passed last year. He (Sir Charles Jackson) was not present in the Council at the time that Act was passed, as he was then presiding at the Criminal Sessions. It appeared from papers he had seen, and from which he had made an extract, that in Jessore 6,200 Rupees was decreed against 157 ryots, and about forty Rupees a head was recovered; while in Kishnaghur the sum decreed was 60,000 Rupees against 550 ryots, and the recoveries under these judgments averaged about fifty Rupees a head. It was therefore quite preposterous to say that the ryots were mere coolies, or had nothing but the clothes on their person. They were persons who contracted with the Planter, and, as such, would not be liable to such Acts as these in England.

There were some other grave points in the Bill on which he intended to have remarked; but as they were rather matters of detail than of principle, he would not enter upon them now. But there was one matter on which he wished to say a few words, and that was with regard to the Proclamation of the Government issued in September last, which had been referred to by the Honorable Mover of the Bill, and was also referred to in the Petition of the British Indian Association which had been read at the table to-day. The Proclamation was as follows:—

"It is not the intention of the Government of India to re-enact the temporary law for the summary enforcement of Indigo contracts by the Magistrate, which law will expire on the 4th October next, corresponding with the 19th of Assin. After that date actions for breach of existing contracts will be cognizable as before by the Civil Courts, but it is the intention of the Government to provide as soon as possible for the more speedy adjudication of such cases, by increasing the number of Courts, and by simplifying Procedure."

There was nothing in that Proclamation to which any one could object. It was a wise and proper proclamation. But could any body doubt, after reading it, that Government had abandoned the system of criminal prosecution against these parties? or could any one suppose, as had been suggested, that the Proclamation referred only to existing contracts? Existing contracts were referred to merely to show that now even they were to be cognizable in Civil Courts; and he felt satisfied that no one could read that Proclamation in any other sense than that for the future these subjects should be left for the decision of the Civil Courts. He did not wish to throw this out in a spirit of personal opposition to the

Government. He did not wish to say or insinuate that the Government were guilty of a breach of faith. He knew they were all incapable of such a thing. But this he must say that he thought it was a most lamentable thing that the Government of this country should have one policy in September, and another in March.

These were the only observations he had to make in reference to this Bill. If the ryotty cultivation of Indigo be a voluntary cultivation, it would be quite ruined by this Bill, whilst, on the other hand, if it were forced upon the ryot, the Bill would merely secure a continuance of the present unhappy state of things. He was sure that, if the Bill were passed, they would sow, not Indigo, but distrust and discontent, and that they would reap a rich harvest of discord and resistance.

MR. ERSKINE said, he was unwilling either to detain the Council long, after so full a discussion of this question by others, or to give a merely silent vote on a Bill of so much importance. Indeed after the statement that had just been made by the Honorable Member in charge of the Bill, it would be premature, he thought, to criticise the detailed provisions of a draft which must now be regarded rather as a mere project of law, to be elaborated hereafter into a more satisfactory enactment. Nor did he wish to trouble the Council with his opinion as to the suitableness of this Bill for the Indigo Districts of Bengal. He had no experience of these Districts, and on that subject other Members of the Council were much more competent to speak. But he would remind the Council that this Bill was also a general Bill; and the few remarks he had to offer, would refer to the general principle involved in the Bill, and to the course now to be pursued in connection with it. As to the principle on which the Bill was framed, he must confess that, in spite of all that had been said by his Honorable and learned friend (Sir Charles Jackson) and by his Honorable friend near him (Mr. Sconce), it did not appear to him that it was at variance with any principle of justice or with the principle on which the corresponding Chapter of the Penal Code was based, or with the principle enunciated by the Law Commissioners themselves, as the general rule for guidance in legislating on questions of this kind. In their Note on the Chapter relative to Criminal breach of contracts of service in the Penal Code, the Law Commissioners, after observing that "in *general* a *mere* breach of contract ought not to be an offence,"—a position which few persons, he thought, would deny—proceeded to state :—

> "To this general rule, there are, however, some exceptions. Some breaches of contract are very likely to cause evil, such as no damages, or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for Penal legislation."

This seemed to him to be a rational and a clear rule—and he did not see why it should be departed from. In applying the rule practically to different cases or classes of cases, difference of opinion would, no doubt, arise —as, for instance, whether contracts with agriculturists should be brought under the rule as well as contracts with artizans. But the proper solution of such a doubt as this, was to be found surely in a reference to the actual state of the agricultural population in different parts of the country. For himself, he had no difficulty in believing that in very many Districts in India the state of that population was unfortunately such—owing to improvidence, owing to the pressure of debt, owing to many adverse circumstances operating through a long course of years—that persons entering largely into contracts with such agriculturists, ought to enjoy all the same safeguards, all the same securities against fraud—neither more nor less than if their contracts had been made with artizans. For these reasons he did not object to the principle involved in the Bill. He saw no reason why an attempt should not be made to give practical effect to it by a suitable law. When, however, he turned from the question of justice to consider the prudence, the policy of introducing

at this time a Bill of this kind for the whole of India; and to consider the shape which such a Bill should assume—the difficulty of arriving at sound conclusions seemed to be much greater. In many respects he thought they were still a good deal in the dark. They were not told that the other Governments had been consulted on the question, or what opinions they had expressed. As regards the greater portion of India, no information had been placed before them. And certainly in connection with such an extensive question as this, no one could be expected to offer here an extemporaneous opinion which would be much worth having, or would be equally applicable to the state of affairs in all parts of India. Had it not been therefore for the statement made that morning by the Honorable Member in charge of the Bill, he should hardly have known how to acquiesce in this Motion. The proposal now contemplated, however, as he understood it, would allow to the Bombay Government, for instance, full time to express its own opinion on this subject, before the discussion should be renewed; and would leave any Honorable Member free to reconsider all the details of the Bill, even if it were now read a second time,—pledging no one to more than the soundness of the principle of the Bill, to which he had already referred. And therefore, as he did not object to that principle, he had no intention of opposing the Motion of the Honorable Member.

MR. HARINGTON said, the speeches which they had heard from Honorable Members who had already spoken on the Motion before the Council, showed the importance of the question which they were then discussing. He believed he might truly say that no more important, no more difficult Bill had ever been submitted for the consideration of the Council than the Bill which they were now asked to read a second time. The principle involved in that Bill was a most important one;—the interests likely to be affected by the Bill were of considerable magnitude, reaching far beyond the classes of persons immediately concerned, and whether they looked at the Indigo Planter on the one hand, or at the cultivator of Indigo on the other, they could not but feel that any Bill, passed by them now, which should injuriously affect one of those classes, would not leave the other class altogether unscathed. In the remark which he had just made, he had mentioned only two classes as specially interested in this Bill, namely, the Indigo Planter and the Indigo ryot, because, disguise it as they might, call the Bill by whatever title they pleased, it must be patent to every one, that the Bill had been introduced solely on account of a particular trade, that was, the trade in Indigo. In order that this fact might not be brought out too prominently, and to save appearances at least, they might clothe the Bill in a garment of divers colors, but still the Indigo Planter would feel that this Bill was brought in for his protection alone; the Indigo ryot would feel that the Bill was directed solely against the class to which he belonged. He thought the Bill would be extremely unpopular with the latter class, and it behoved those, in whose interests the Bill was introduced, to consider whether the additional hostility to them which the Bill was sure to engender, would not in its effects more than counterbalance any advantages which they might hope to derive from the operation of the Bill. The Honorable Member of Council in the remarks with which he prefaced his Motion for the first reading of the Bill, observed that

> "it might be said with some show of reason, that such a law as that now proposed, would be unfair, if it were to apply only to Indigo. But this was not the case;"

and a little farther on, he proceeded to say that

> "it was not intended to confine the action of the Bill to contracts for the delivery of Indigo; that the Bill had been framed so as to embrace all kinds of agricultural produce, and its provisions were equally applicable to tea, sugar, coffee, cotton, and other valuable staples."

Now, he (Mr. Harington) would ask what evidence had the Council

before it that all or any of these staples required the protection of this Bill, or that they would in any way be benefited by the passing of this Bill. He submitted that no such evidence was to be found in the remarks to which he had just referred, or in the Statement of objects and reasons circulated with the Bill. No doubt some letters from the Managing Partner of a Sugar Concern in the Madras Presidency had been printed amongst the annexures to the Bill, but the writer of these letters had given the particulars of only a single case, in which he charged an attempt at fraud against certain persons, who, after taking advances from the concern managed by him, to plant sugar-cane, tried to dispose of the produce to another party. The decision of the Sudder Adawlut at Madras, reversing the conviction of the Court below, had not been communicated to the Council, and the case had been laid before them altogether in an *ex parte* form. From the papers before the Council, it was not possible to form an opinion, whether this particular case would be met by the Bill of the Honorable Member. Then it was worthy of remark that the Resolution come to on the complaint of Mr. Boothby by the Government of Madras, to which the particulars of the case must have been fully known, declared that that Government was not prepared to recommend to this Council the extension to contracts, such as those described by Mr. Boothby, of Act XIII of 1859, upon the model and in accordance with the principle of which, they were informed, the Bill before the Council had been framed. Another noticeable circumstance in the correspondence which had come up from Madras, was that at the date of Mr. Boothby's complaint to the Madras Government, the new Code of Civil Procedure had not been extended to the part of the country, in which the Aska Sugar Concern was situated. The Collector and Magistrate of Ganjam, writing to the Government of Madras, under date the 20th April last, noticed this fact, and added

> "that cases of the nature described by Mr. Boothby, might probably be often disposed of at a first hearing under the new Code, and that a little experience of its working would, perhaps, discourage the present system of fraud, which was as demoralizing to the ryots, as it was vexatious and injurious to merchants."

It would thus be seen that, at the period referred to in Mr. Boothby's complaint, the effects of the new Code in shortening procedure and in accelerating the decision of Civil suits had not been tried in the Province of Ganjam, and it was impossible, therefore, to judge how far Act VIII of 1859 would provide a remedy for the evils complained of by Mr. Boothby. For aught they knew to the contrary, it might put a stop to those evils altogether. Another most important law which had been passed by this Council since the dates of Mr. Boothby's letters to the Madras Government, had been alluded to by the Honorable Member for Bengal. He referred, of course, to the Indian Penal Code. He begged Honorable Members to compare the offences described by Mr. Boothby in the 4th paragraph of his letter to the Government of Madras, dated the 13th April last, as the offences of which he stated he stood in fear, with the offence defined in Section 415 of the Indian Penal Code, and then to say, whether they considered any fresh Criminal legislation necessary to meet offences, such as those mentioned in Mr. Boothby's letters. It appeared to him (Mr. Harington) that the Section of the Penal Code which he had quoted, must have been framed with special reference to cases such as those described by Mr. Boothby, the money having been taken, according to his statement, under false pretences. And here he would venture to ask the Honorable Member of Council who was in charge of the present Bill, whether after what had been said by the able men who framed the Indian Penal Code in their remarks on the Chapter from which the Honorable Member for Bombay had read an extract, where

they declared their agreement with the great body of jurists in thinking that, in general, a mere breach of contract ought not to be an offence, but only to be the subject of a Civil action, and looking to the fact, that only a few weeks ago this Council had, after full deliberation, resolved not to extend the Chapter upon which those remarks were made—he was alluding to the Chapter on the Criminal breach of contracts of service—beyond the very few and entirely exceptional cases selected by the framers of the Code, notwithstanding that, at the time the Council passed the Code, they had before them the able and elaborate report of the Indigo Commission, and were fully informed of all that was going on in the Indigo Districts in Bengal, he said he would venture to ask the Honorable Member of Council, whether looking to these circumstances, he would have brought in this Bill, had it not been for the unhappy differences which had arisen between the Indigo Planters and the cultivators of Indigo in the Districts just referred to. But for those differences he (Mr. Harington) felt sure that neither the Honorable Member of Council nor any other Honorable Member would have brought in such a Bill as this at the present time in respect to Indigo alone, much less a Bill which should extend to contracts for every other description of agricultural produce. He must repeat what he had said before, that they had no evidence before them to show the necessity of such a law for other descriptions of agricultural produce, or that any other kind of agricultural produce would be benefited by the passing of this Bill. If the manufacture of Indigo really required the protection of this Bill, and if there was nothing unobjectionable in the character of the Bill, let the Bill be passed, but let it be called by its right name. In the years 1823, 1830, and 1836, the Legislature of this country was not afraid, and did not think it wrong to pass a special law for the enforcement of Indigo contracts alone. Why, assuming its necessity, should they be afraid to pass such a law now? If a special law was required for Indigo, let a special law be passed. Why, he asked, should they pass a general law, which was not required, merely in order that they might meet a particular case or state of things? With the permission of the Council, he would read what was said by the Indigo Commission in the very able Report to which he had already referred, in deprecation of the passing of any general law for the enforcement of Civil contracts. He thought that this part of the Commissioner's report furnished a full and satisfactory answer to some remarks which had fallen from the Honorable Member of Council opposite (Mr. Laing.) The Honorable Member of Council seemed to think that fraud entered into all contracts to which the Natives of India were a party, and that unless a law of this kind was passed to punish fraudulent contractors, the people of Manchester would be deterred from coming out to India to engage in cotton and other speculations. He (Mr. Harington) thought that what he was about to read, would show the Honorable Member of Council that there were no grounds for his apprehensions. The opinions of the Indigo Commissioners, it must be remembered, were formed after taking an immense quantity of evidence. They said:—

"It is not proved to us, that in other and similar transactions the native of Bengal is more than usually dishonest. Large advances are made for silk, hides, and jute; much money, or the equivalent of money, is advanced in the way of loans on the security of the crop; for this we hold to be the real nature of the transaction between mahajun and ryot, and we are not aware of dealers complaining generally of the dishonesty of the contracting parties, or claiming that some special law should be enacted in their favor. On the contrary, several witnesses, Mr. Morrell, Mr. S. Hill, Mr. Eden, Baboo Joykissen Mookerjee, and Mr. A. Forbes, have mentioned facts, or given evidence, which prove fair dealing on the part of ryots and other classes of natives, in matters profitable to them. One inference which we draw from this is that the sale of hides and the raising of jute and ordinary rice crops are profitable to the parties who supply these articles, and as to the ordinary mahajani dealings, it suits the ryots to borrow money or grain, to eat at a season of the year when the market is tight, and to repay the loan after the gathering in of the harvest. It is true that on behalf of the Planters it is denied that they

demand special legislation, these gentlemen holding that all evasions or breaches of contract of whatever kind, should be punished as misdemeanors, as only fair to all Commercial enterprise. In this we think that such arguments are merely pushed to their utmost logical consequence and conclusion. The position being taken up that Indigo requires protection, it is natural to add that not only Indigo, but every kind of Mercantile speculation is liable to the same fluctuations, is exposed to the same chances of fraud and dishonesty, and naturally demands the same prompt remedy.

Now, as it is an undeniable fact that a vast deal of money changes hands annually in the course of transactions with regard to the country produce; and as the parties mainly interested are, as far as we know, not anxious for any special law, or ever complain that the Courts, should they have occasion to resort there, do not give adequate protection, we cannot think that, for the sake of apparent logical consistency, it would be expedient to demand from the Legislature a summary remedy to be applied to all mercantile transactions, where money is advanced by one party for the purchase of produce. The claims of the Indigo Planters, if any, are special, and must be considered as such."

He trusted it was unnecessary for him to disclaim in the remarks which he had made, or which he was about to make, any thing approaching to a feeling of hostility to the Indigo Planters. He was quite insensible of any such feeling. If he might be permitted to say so, his feeling towards the Indigo Planters was one of the utmost friendliness. He heartily endorsed all that had been said by the Honorable Member of Council opposite (Mr. Laing) and by the Indigo Commission in their report, as to the advantages that resulted from the residence of Indigo Planters in the interior of the country, where, to quote the words of a late able State paper, "they were a source of strength to British rule and of usefulness to India." No one could regret more than he did the unfortunate position in which the Indigo Planters were placed at the present time. No one more sincerely sympathized with them than he did. No one would more readily lend them a helping hand in every proper way. He looked upon what was now going on in some of the Indigo Districts as a national misfortune, and rejoiced, indeed, should he be if some suitable remedy could be devised, which should have the effect of reviving the old relationships between the Indigo Planter and the Indigo ryot; which should bring back the kindly feelings which formerly existed between them, when the ryot looked up to the Planter as a superior Being and loved, respected, and esteemed him; and which should place this important branch of our trade, in which more European capital, skill, and labor had been embarked than in any other branch of our Indian trade, on a healthy and satisfactory footing. But he was unable to regard this Bill as any remedy for what was now amiss. Not only would it prove quite ineffectual as a remedy, but he agreed with the Honorable and learned Judge opposite (Sir Charles Jackson) that it was more likely to aggravate than mitigate the existing evils. What seemed to him to be required was some measure which should bring about an entire reconciliation between the Indigo Planter and the Indigo ryot. Was there any thing he would ask of a conciliatory character in this Bill? Would this Bill bridge over or fill up the gulph which separated the two classes? Would this Bill lead to an extension of the cultivation of Indigo to which the Indigo Planter must look to retrieve his fortunes? It was no easy matter to say what should be done; but on this point he was clear, that the remedy did not lie in fresh legislation; certainly not in the Bill which was now proposed for their adoption. The Honorable Member of Council in his introductory remarks said—

"As to the Bill being injurious to employers, he thought it must be admitted that employers were the best judges of what would conduce to their interests. A general desire had been expressed for such a law."

But where, he would ask, had this general desire been expressed? Had the present Bill been welcomed by the Planter? Had it been received with any thing like enthusiasm? Had any public meeting been held in support of it? Calcutta could hold public meetings about matters in which it was interested, and it could speak out at such

meetings. Had any Petition been presented to the Council in support of this Bill by the Indigo Planters' Association? No doubt that Association had petitioned the Council on Saturday last regarding the Bill; but was there a word of commendation or approval of the Bill in their Petition. They said they would not have had reason to object to the general provisions of the Bill, as far as regarded Indigo planting, had it become law in October last, when Act XI of 1860 expired, but having been brought in only now it would in its present shape cause serious loss and hardship to the Petitioners; and they then went on to propose certain modifications of the Bill, which, if adopted, would render the Bill, to quote the words of the Honorable Member in charge of the Bill, an unjust Bill. Interested parties were not always the fittest judges of what was best for their own interests. Their minds were apt to become biased. Their feelings sometimes got the better of their judgment. Last year, when the temporary Act was under the consideration of the Council, he ventured to suggest that if fresh legislation was necessary, it should take a different form from that recommended for their adoption. He also expressed a doubt whether the proposed Act would prove as beneficial to the Planters as the laws they already possessed. He would now read to the Council what the Indigo Commission had said in respect of the working of last year's Act, and of the effects produced by it. They said:

"Also when we consider the working of the law for breach of contract, passed in the spring of this year, we are unable to pronounce it at all satisfactory. Unless we are greatly misinformed, the hope and intention of the Legislature was that the law would act as an inducement to the ryot to sow as in former years, and that its stringent provisions would be rarely put in force. But the result, unhappily, has not borne out these expectations. In one district the ryots have been induced to sow, as we gather from official papers duly placed before us, by the management and decided course adopted by the local authorities in aid of the summary law. But in another, ryots have preferred distraint and apparent ruin, and even the jail, to a continuation of their cultivation. It is true that many of these unfortunate persons, through wilfulness or carelessness, have mistaken the object of the Act, have imagined that it was a mere threat, or that, instead of the suits turning on the point of cash advances, given and received, there would be a regular adjustment of past accounts on both sides, by which they would be entitled to receive money instead of being found in debt to the factory. But the results, however caused, are such as make us shrink from recommending any continuance of the summary law, in its present or even in an amended form. There is either reluctance, or the most clear and avowed dislike to Indigo; the operation of the law has inflicted heavy loss on scores of families; those who have suffered its operations, and those who have not, have in language not to be mistaken, declared before us their unalterable determination not to sow any more. And we have felt it our duty to point out, in the system of planting, sundry defects which must be removed before we can pronounce that both parties stand even on an equal footing. Besides, even if we were disposed to recommend a summary law, we should think it necessary to point out that such a measure, this year, might really be prejudicial to the very interests which it was intended to serve. No such summary law, we should suppose, could be made to apply to the advances of past years. It would apply to advances to be taken in future, and it would, no doubt, be thought proper clearly to explain to all ryots the penal consequences of taking advances, and not fulfilling a contract. Now if this were done, as we suppose it would be, and the ryots were told that imprisonment in the Criminal jail would be likely to follow any breach of engagement on their part, we are morally certain that from the temper of the ryots, few persons would be found to come forward and enter into such contracts at all. While matters are in this state of uncertainty and transition? and the minds of the agricultural population are under the influence of fear and discontent, or are completely unsettled, we cannot reconcile it to our consciences to recommend any special and summary legislation of any kind, so manifestly in favor of one party, as such a law would be, even though it were proposed to give security to ryots by making advances not recoverable under any contract of more than a year's duration, or unless the Planter sue within a twelve month; on the contrary, we object to any laws which fetter one party or the other, and we do not wish to see the period within which a person may sue for debts, damages, or breach of contract, reduced below that at which the late law of limitation has fixed it."

Surely, he was justified in saying that the Act of last year had not improved matters—that it had done harm rather than good.

He presumed that the Council would not agree to pass both the Bills now before it. For his own part, he thought it very doubtful whether the country required either of

those Bills; but if obliged to choose between them, he thought he should give the preference to the Bill of the Honorable Member for Bengal, which appeared to him to be based on sound principles. If they did not take care, the country would soon be suffering under an embarrassment of riches in the shape of laws for enforcing Indigo contracts. Before assenting to new laws, would it not be well for them to enquire what laws they had at present, and to consider whether the existing laws were not sufficient, or if any change was required, whether it would not be better to consolidate and amend the existing law, rather than have recourse to fresh legislation of a novel character, and declared to be opposed to the views of the great body of jurists. He would briefly refer to the laws now borne on the Statute Book relating to Indigo contracts, or which might be applied to the enforcement of such contracts. First, there was Regulation VI of 1823. Section 2 of that Regulation declared:

"If any person shall have given advances to a ryot or other cultivator of the soil under a written engagement, stipulating for the cultivation of Indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the Indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests, and for the due execution of the contract."

Was this law to be retained, if they passed the Bill now before them? There was no proposition to repeal it. He was told that this law had proved inoperative, and that it had not afforded to the Planter the protection which it was intended that he should derive from it. If this was really the case, why was it so? Was the law defective? He believed that the reason why this Regulation VI of 1823 was not made more use of was the failure of the Planters to take written engagements from the ryots in the terms of the Regulation. The law required that the engagement should indicate the specific land which the ryot agreed to cultivate with Indigo. What said the Report of the Indigo Commission on this point?

"The contract binds the ryot to give suitable lands, to plough, sow, and weed at the proper times, to see that the plant be not damaged by cattle, to cut it and, in some instances, to deliver it at the factory. Naturally it is, as regards the fulfilment of these contracts, so worded, that we have had the greatest complaints and the largest amount of conflicting evidence."

He would ask the Honorable Member of Council, who was in charge of this Bill, whether he intended the Criminal Courts to enforce the performance of vague contracts of this nature and, upon summary conviction, to visit a supposed violation of them with the penal consequences described in the Bill. The Bill contained no provision as to what the contract was to set forth, and so far as the Bill was concerned, the contracts, which the Criminal Courts might be called upon to enforce under it, might be as vague as those described by the Indigo Commission. If an express provision of law could be deliberately set aside as the Report of the Indigo Commission showed to have been the case in respect to Section 2 Regulation VI of 1823, what might they not expect when the law left everything vague as to what the contract was to contain. Was the Magistrate the proper authority to decide, and that too without an appeal, whether the land was suitable, which was a question of degree, or what were the proper times for ploughing, sowing, and weeding, the times being dependent, not altogether upon the will of the ryot, but as had been pointed out by the Honorable and learned Judge opposite (Sir Charles Jackson), upon the Heavens, or upon the weather, or the season. It certainly did appear to him (Mr. Harington) that these were questions for the decision of a Civil Court, not of a Magistrate, to be followed, it might be, with imprisonment in the Criminal Jail with labor. He hoped the Honorable Member of Council would excuse him for saying so, but it seemed to him that the Honorable Member could not have sufficiently considered the nice,

difficult, and complicated questions which would constantly arise in the cases which he proposed to commit to the final determination of a Magistrate.

The next law was Regulation V of 1830. But little of this law remained. There was, however, one Section of the Regulation which had been repealed, to which he wished to call the attention of the Council, because the Bill now before them must be regarded as a revival of this abrogated Statute, and he was rather surprised that it had not been noticed by the Honorable Member of Council in his opening remarks.

Section 3 Regulation V of 1830 enacted that :—

"All persons who may have received advances and have entered into written agreements for the cultivation of Indigo plant, in the manner indicated in Regulation VI of 1823, and who, without good and sufficient cause, shall wilfully neglect, or refuse to sow, or cultivate the ground, specified in such agreements, shall be deemed guilty of a misdemeanor, and on conviction, before a Magistrate or Joint Magistrate, shall be liable to a sentence of imprisonment not exceeding one month. The Magistrate or Joint Magistrate may likewise require the persons so convicted, to sow or cultivate the ground specified, if it shall appear just and proper to require the same ; and any subsequent convictions of wilful neglect or refusal to comply with such requisition, shall be punishable with a further sentence of imprisonment, not exceeding two months."

This law, after being in force for only five years, was repealed by Act XVI of 1835. The grounds of the repeal were not stated in the repealing Act, but he learned from the very able Minute of the Honorable the Lieutenant-Governor of Bengal on the Report of the Indigo Commission that the law treating one, and one only, of the two parties to a Civil contract as a Criminal, if he failed to fulfil it, was held by the Home Government to be manifestly unjust and oppressive, and contrary to all sound principles of legislation, and that it was ordered to be rescinded in consequence. He had not seen the correspondence which preceded the repeal of Section 3 Regulation V of 1830, or the Despatch of the Home Government, and he should be glad if these papers could be laid before the Council. [MR. BEADON—The papers are published in the Appendix to the Report of the Indigo Commission.] He (Mr. Harington) had not had time to read through the Appendix to the Report, nor indeed the whole of the evidence, and he was not aware that the papers referred to by him had been printed. He would take this opportunity of asking the Honorable Member of Council, whether any communication had been received from the Secretary of State for India, on the subject of the temporary Act of last year, and, if so, whether there would be any objection to laying a copy of any Despatch received on the table of the Council? They were aware that the Secretary of State for India was in the habit of reviewing the Acts of this Council, and of making remarks upon them, which were communicated to the Government of India, and he did not suppose that so important an Act as the temporary Act of last year, could have passed without comment. They learned from the paragraph of the Minute of the Honorable the Lieutenant-Governor of Bengal which he had read, that the Penal law of 1830 was considered an unjust and oppressive law by the Home Authorities, because it was a one-sided law, and he would ask in what respect did the present Bill differ from that law? The only difference he could see was that the present Bill was more severe in its provisions, and less precise in its requirements, as to what the written contracts should contain. What was unjust and oppressive in 1830, could not be otherwise in 1861, the circumstances remaining the same —and what reason had they to suppose that the authorities at home who had ordered the repeal of the law of 1830, because it was an unjust and oppressive law, and opposed to sound principles of legislation, would give their assent to the Bill under consideration, which presented precisely the same features as the repealed law? The Honorable Member of Council on his left (Sir Bartle Frere), when the temporary Act of last year was under consideration, said that Honorable Members would cut off one of their hands rather than pass a one-sided law, or a law that did not afford

equal protection to the interests of the cultivator and the planter. But he would ask what protection did the present Bill afford to the Indigo ryot? He understood the Honorable Member of Council on his left, in what he said regarding the protection which the Bill of last year would afford to the interests of the ryots, to allude to the Commission then about to be assembled. Well, that Commission had sat—had made enquiries, and had sent in their Report, and what was the result? It had been stated by the Honorable Member of Council in charge of the present Bill, in the extract which he had read from the Minute of the Honorable the Lieutenant-Governor of Bengal already referred to—and he (Mr. Harington) did not understand the Honorable Member of Council to dissent from the conclusion arrived at by the Honorable the Lieutenant-Governor of Bengal on the evidence—the result was that the ryot was found guilty of nothing, and that his complaints were in the main fully established. The Honorable the Lieutenant-Governor of Bengal went on to observe, and he (Mr. Harington) entirely concurred with him, that

> "It would be natural, upon such a finding, to discuss some project of a special law of protection in his favor; but to follow up a verdict in favor of a successful complainant by a sentence of subjection to a special Penal law, making him Criminally liable for what no other person is criminally liable, does seem to me to be somewhat hard upon him."

The other existing laws were Act X of 1836, the Section of the Indian Penal Code already quoted more than once, and the new Code of Civil Procedure; but as the Honorable Member for Bengal had fully shown the applicability of these laws in the case of Civil contracts, he (Mr. Harington) would not occupy the time of the Council by noticing them in detail, farther than to observe that the Illustration "G" to Section 415 of the Indian Penal Code, which had been read by the Honorable Member for Bengal, showed that the framers of the Code had not overlooked Indigo contracts. With this array of existing law, Civil and Criminal, for enforcing Civil contracts, whether relating to Indigo or any other agricultural produce, he (Mr. Harington) must say he could not consider any new law either necessary or desirable.

The Honorable Member of Council, in bringing in the present Bill, observed that the protection, which it was intended to afford to the parties in whose interest the Bill had been introduced, had long been enjoyed by masters against their servants; but he (Mr. Harington) believed he was right in saying that any Penal laws relating to masters and servants, which were to be found in the existing Regulations and Acts, would cease to be in force from the date on which the Indian Penal Code came into operation.

Act XIII of 1859 had been much dwelt upon by the Honorable Member of Council in charge of the present Bill, as affording a precedent for it, and as justifying its introduction. But he would ask, were the contracts to which that Act applied, at all similar in character to the Indigo Contracts, which would fall under the present Bill? Was there any parallelism between the artificers and workmen referred to in Act XIII of 1859, and the Indigo ryots who would be affected by the present Bill? The vast difference between the two classes would, he thought, be best shown by his reading to the Council what had been said by the Indigo Commission in their Report on the present state and condition of the Indigo ryot. [Mr. Harington here read parts of the following paragraphs of the Indigo Commissioners' Report, namely paragraphs 41, 42, 52, 61, 67, 70, and 109.]

Much stress had been laid by the Honorable Member of Council in charge of the Bill on the opinions expressed by the dissentient minority of the Commission. But what was stated in the passages of the Report which he had just read in support of the asserted fact that the Indigo ryot was not really a free agent, was not the statement of the majority of the Commission only. In paragraph 12 of

the separate Minute recorded by Mr. Temple, in which Mr. Fergusson had concurred, it was stated :—

"The local administration is however bound to protect both parties in the exercise of their legal rights ; the ryot therefore must be absolutely protected from force, unlawful coercion, or violence. Let all this freedom be secured from henceforth, let the cultivators of Indigo be really free agents ; and doubtless some good understanding will soon be arrived at, between Planter and ryot. But we deem it right to declare our apprehension that, unless some important concessions are at once made by the Planters to the ryots in several Districts, nothing short of actual force would induce the ryots to sow."

Then again in paragraph 31, Mr. Temple said :—

"If it be urged, in opposition to the enactment of such a law, that the crop is unremunerative to the ryot ; that the ryot is not practically free ; that force and violence are already used ; that the police are inefficient ; that the planter is already the stronger party ; then we would beg that the matters previously urged may be borne in mind ; and we submit that these objections, however applicable under the system heretofore existing, will not apply to that reformed system which we seek to introduce. If the improvements which we urge, shall be carried out, (and unless they are carried out, more or less, we fear that the very existence of Indigo cultivation at all will be jeopardized), then we submit the cultivation will be remunerative to the ryot, that the ryot will be a perfectly free agent ; that force and oppression will no longer be possible ; that the police will not be inefficient. And lastly, however powerful the planter may have heretofore been, yet he is not now the stronger party, as compared with the ryot. Indeed the ryots have shown themselves to be aware of their own rights and interests, and resolute in using their physical force and numerical strength in resistance to any thing like coercion."

The dissentient minority never proposed that a law such as that contained in the Bill before the Council should be passed until effectual measures had been taken for the protection of the Indigo ryot. Where were these measures ? He did not find them in the Bill before the Council. What the dissentient minority contemplated as a preliminary measure was that the whole system of Indigo cultivation, as between the Planter and the ryot, should undergo a complete reformation. Had this reformation even commenced ? He would ask with the Honorable and learned Judge opposite, what guarantee had they that it would ever take place, and until they had such guarantee how could they give their assent to the present Bill ? Furthermore the dissentient minority never proposed to make the breach of every contract punishable by the Magistrate, but only the breach of a registered contract. They considered registration an essential safeguard to the ryot, and he (Mr. Harington) entirely concurred with them. But this safeguard was to be dispensed with, not because it was not necessary, but because there would be some difficulty in providing it—and what did the Bill propose to substitute for registration ? why, merely that copies of all contracts should be filed in the Magistrate's Office within a month after they were executed. No provision was made for any notice being given to the ryot and, as had been pointed out in the petition which had been read to the Council to-day, so far as this Bill was concerned, no opportunity would be afforded to the ryot of knowing of the existence of the contract in his name, much less of disputing its authenticity. It might happen and, if what was said by the Honorable Member of Council in charge of the Bill as to the character of some of the Indigo contracts was true, it probably would happen that the first intimation the ryot got of the contract would be by means of a warrant of arrest issued against him for an alleged breach of the contract. He could not accept this provision as the equivalent of the safeguard recommended and made a condition of a Criminal law by the dissentient minority. In conclusion, he must say he concurred with the Honorable the Lieutenant-Governor of Bengal in thinking that no one-sided legislation was ever justifiable, and that such legislation generally injured the interest it was intended to serve. He had already expressed his belief that such would be the effect of the present Bill, if it passed into law. If asked, what he considered should be done, he would answer the question by

saying, do not pass this Bill. In the words of the Indigo Commissioners' Report,

"A really good system needs the support, neither of registration nor of summary and special laws and measures. Such measures do nothing more than prop up a bad system, or cloak its defects."

He must apologize for having occupied so much of the time of the Council, and he hoped that they would forgive him for having done so. He begged to thank them for the hearing they had accorded him.

SIR ROBERT NAPIER said, the arguments for and against this Bill had been so fully discussed that he would not detain the Council farther than to say that nothing that he had heard to-day had convinced him of any injustice in the principle of the Bill. It was clear to him that a fraudulent breaker of a contract ought to be promptly punished, and he had not so poor an opinion of the Magistracy of this country as to believe that an honest though unfortunate Contractor would be punished under the Bill. He (Sir Robert Napier) believed that the dishonest only would be punished, and therefore he should give the Bill his hearty support, trusting to the Committee to correct such details as required amendment.

SIR BARTLE FRERE said that, after what had fallen from his Honorable friend opposite (Mr. Laing) and his Honorable friend the Member for Bombay, in which he entirely concurred, he had little to say as to his own reasons for supporting the second reading of the Bill, but he must disclaim all intention of dealing with it as an Indigo Bill.

It had been said that there was no demand for the law in any other part of the country, or from any other branch of industry. But he knew that such a law had been long a *desideratum* in other parts of the country—in the Bombay Cotton Districts, for instance, where the want of summary means of enforcing petty contracts, for the delivery of cotton, was felt as a serious impediment by both Native and European Capitalists.

The peculiarities attaching to this class of contracts were, first, their *small amount*, and the petty character of the fraud whenever any fraud was committed. The produce was collected in very small quantities from a great number of producers; and the vast number of suits which must be instituted to obtain the enforcement of such contracts, was of itself sufficient to render the remedy by Civil suit inoperative. Then there was the element of *time*, it was essential in most of these contracts that they should be performed within a certain time; the produce must be cut, or picked, or delivered on a certain day, in order to be of any value to the receiver: if therefore the Civil Court only gave its decree when that time was passed, the decree was of little value; the delay had neutralized its effects. Then again there was the absence of *means*, whence payment of damages could be enforced. It was of little use to get the decree, unless the amount could be speedily levied. There had been much discussion as to whether the ryot was a laborer or a capitalist; he (Sir Bartle Frere) remembered that a witness examined on the Charter Act in 1833, described the ryot as a "landed proprietor living on, and cultivating his own estate." Now without entering on this question and admitting that the ryot was very often a substantial man with considerable property, it must be admitted that his property was very often intangible when the Sheriff went to execute a distress warrant. The ryot probably had a house, but it was generally shared by a dozen relations. He had perhaps a comfortable farm of a number of acres of well cultivated land, but there were a dozen perplexing shares and contingent rights of ownership, which made the land practically unsaleable. He had bullocks and farming stock, but it was next to impossible for any but a fellow villager to identify them, and altogether he might have ample means to satisfy a decree, and yet the Sheriff would find it impossible to get hold of

them. Now what was to be done in this case? Was the fraud to be practically unpunished, because from the small amount it cost more to recover than the sum at stake, or because the necessary process of adjudication in a Civil Court was so tardy, or because the party committing the fraud was able to conceal and make away with his property? Surely this was not a desirable state of things for any of the parties concerned. If the party committing the fraud could not or would not make pecuniary satisfaction, he ought to suffer in person. It seemed to him (Sir Bartle Frere) that two remedies should be open, the one through the Civil Court, the other through the Criminal, and it appeared to him that both Bills were needed. There could be no doubt that our legislation on both points had been very defective. The Bill of the Honorable Member for Bengal proposed to amend the Civil law; his Honorable friend's (Mr. Beadon's) the Criminal. The two Bills had been described as antagonistic; he could not regard them in that light, and hoped that both would pass. The principle of his Honorable friend's (Mr. Beadon's) Bill was not a new one, even in English law. Why in England were certain classes of servants, hackney coachmen, boatmen, petty artisans, and others, liable to prosecution before a Magistrate for breaches of contract, essentially similar to those which, among merchants, could only be dealt with by Civil action? The reason was not that the English law treated the poor man in one way, and the rich in another, but simply because, where the amount at stake was small, where there was no time for litigation, and where the party charged was not likely to have means of paying damages, a somewhat shorter, rougher, and readier means of deciding the case was provided through the Magistrate's Court, instead of referring the case to the Civil Judge. He could not think the Magistrates any way unfitted to try such cases, and if there was such a defect in the Criminal law, as he thought existed, he could find nothing in the proclamation of September, or in the circumstance of their having lately passed the Penal Code, to prevent their amending the Criminal Law. It had been said that there were no complaints, but this was not the case. The deputation of Indigo Planters, which lately waited upon Government, gave strong and convincing evidence on this point, and it was evident from what they said that the defect in the law was general and was not confined to Indigo. He thought that our Criminal legislation on this subject should be of a permanent and general character, like the other parts of the Penal Code. He would be glad to see both the Bill of the Honorable Member for Bengal and the Bill of his Honorable friend (Mr. Beadon) considered together; and if the Honorable Member for Bengal wished it, and the forms of the Council allowed, he (Sir Bartle Frere) would gladly support the Honorable Member in any Motion he might make for the purpose of placing both Bills before the same Select Committee.

THE VICE-PRESIDENT said that, if we were now considering whether this Bill should be passed in its present shape, he should certainly vote against it, because there were many of its details to which he objected. But the Honorable Mover had stated that it was not his intention to move for a suspension of the Standing Orders, with a view to passing the Bill through all its stages forthwith; but rather, after the Bill had passed its second reading, to refer it to a Select Committee with an instruction to submit a preliminary Report upon it previously to its publication. In case that course should be adopted, there were one or two points which he would suggest for the consideration of the Committee. He certainly agreed with the Honorable Mover of this Bill, that Section VIII should be omitted. He (the Vice-President) would make the Act general. Then it might be for consideration whether Act XIII of 1859 ought not also to be made applicable to the whole of India, and Artificers, Workmen, and Laborers receiving advances dealt with summarily throughout India. There was another objection of

a very serious nature, namely, whether a Planter who chose to adopt the remedy provided by this Bill should also have a Civil action. He objected to any person being allowed a double remedy in respect of the same matter, and thought that all parties should be obliged to choose between the two. This Bill empowered a Magistrate to order the party complained against to repay the amount advanced, and to award damages not exceeding four times the amount of the advance, which of course would be paid over to the complainant. Section II, however, contained a proviso,

> "that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy by action, or otherwise, which he might have had but for this Act;"

and it was further provided that, in the event of non-payment, the Magistrate might order the party to be imprisoned with hard labor for a term of three months or until the money should be sooner repaid. He (the Vice-President) thought that a person who was imprisoned with hard labor for three months under this Act ought not to be liable to be imprisoned again under the process of a Court of Civil Judicature.

There were other points in the Bill which required amendment, but as they were mere matters of detail, he would not enter upon them at present.

The question for consideration now was, whether we should provide a new remedy for breaches of contract, or leave them to be dealt with under the ordinary law. The Honorable Member for Bengal had said that, by passing this Bill, we should be enacting one law for the rich and another for the poor, and the Honorable Member had gone into statistics to show that the ryot was not a laborer. Now we were not discussing the question whether the ryot was a capitalist, or a gentleman living on his own estate; but we were considering whether, in the case of contracts entered into for small sums, we should drive the parties into Civil Courts of Judicature, or give them summary redress. The Honorable Member for Bengal had said that there were 23,200 ryots employed by the Bengal Indigo Company, to whom, upon an average, advances to the amount of about 75,000 rupees were annually made, which would come to about three rupees each man; and he asked if that was sufficient for a ryot to live upon for a year? But he (the Vice-President) believed that in the contracts it was provided that the ryot should be paid at the end of the season at the rate of a rupee for so many bundles. But that was not now the question. The purpose of the Bill was simply to protect certain interests which would certainly be jeopardized, whether the amounts advanced were large or small, if summary redress were not given. He (the Vice-President) did not come to enter into the question whether this Bill was for the protection of Indigo Planters or any other interest. Had the Bill been brought in for the protection of Planters alone, he should have considered it his duty to give it his support. It had been said that such cases as breaches of contract should not be made the subject of Criminal prosecution, but should be left to be dealt with by the Civil Courts. It was very difficult however to draw the line where Criminal jurisdiction ended, and where Civil began; and what we had to consider was whether we might not be doing serious injury to a great interest, if we refused to provide summary redress for such breaches of contract. The Honorable Member for Bengal had said *de minimis non curat lex*. It would be *de minimis*, if we were considering the case of one ryot only. But we were considering the question as regards the protection of a large and important interest which was at stake. He would ask the Honorable Member, with reference to the 23,500 ryots who, he said, had received advances to the amount of about 75,000 rupees, what would be the consequence if these men were to be dragged before the Civil Courts, and in default of payment, cast into prison? According to the Code of Civil Procedure, the party

at whose suit the defaulter might be imprisoned, would be obliged to support him in idleness, paying for his subsistence four annas a day, or six annas a day in case of illness. What would be the effect? Why, the whole amount of advances, the 75,000 rupees, would probably be gone in four days. Besides it was not right that these parties should be imprisoned at the expense of the complainant, but their imprisonment ought to be free of expense to him. He (the Vice-President) thought that such small contractors, if imprisoned, should be kept at the expense of the Government; nor did he think it unreasonable that they should be kept to hard labor to defray the expenses of their keep instead of living like gentlemen in idleness on the Civil side of the jail. The Honorable Member for Bengal had cited two cases, that appeared to be complicated, determined, he (the Vice-President) thought, by Lord St. Leonards in the Court of Chancery, which did not seem to have any bearing upon the present question. Lord St. Leonards was reported to have said that he would not award specific performance, because the Court could not enforce it. Nor would the Magistrate do so. It did not require the learning of Lord St. Leonards to tell us this. The Bill merely authorized the Magistrate to award specific performance, if he could enforce his order. Section II provided that the Magistrate might order the person complained against, "*if it be possible*, to perform the contract, or get it performed according to the terms thereof." Were we to assume that a gentleman who held the high position of a Magistrate was unable to determine so simple a question, and that he would order a person to perform an impossible contract? He (the Vice-President) could hardly conceive that a Magistrate would be so incompetent as to do anything of the sort. It was provided by Section IV of the Bill, and very properly so, that, "if it shall appear to the Magistrate that the contract has been obtained by means of fraud, force, or intimidation, the complaint shall be dismissed." Now was not the Magistrate equally capable of trying that simple matter of fact as a moonsiff? It might be said that, if the moonsiff tried in the first instance, his decision was not final, and that an appeal would lie from his decision. But were parties in cases of such small amounts as three rupees to be allowed to have the right of appeal to the Zillah Judge? He (the Vice-President) thought that the Magistrate was quite as competent to determine cases of fraudulent contracts as the Zillah Judge. It did not require learning but experience to try these cases. It was not a question of law, but simply of fact, that would have to be tried. This Bill indeed made some kind of provision as to this important matter, which did not appear to him to be sufficient. Section VI provided that "the word 'contract' as used in this Act, shall extend to contracts and agreements in writing, duly witnessed and stamped, of which a copy shall have been deposited in the Magistrate's Office within one month from the date of execution." The depositing would no doubt be evidence, and very good evidence, that the complainant at the time of the deposit alleged this contract to have been subsisting. But it would not be evidence that the other party was not induced to enter into that contract by means of fraud, force, or intimidation, or that the other party knew of the contract being so deposited. Some better mode was therefore necessary, but as that was a matter of detail, he would leave it for consideration in Committee. If some provision were introduced, requiring a certificate from the Magistrate that the persons who were alleged to have entered into a contract deposited in his Office had appeared before him, it would be hardly possible to have better evidence. Even in such a case, it might happen that a person might appear before the Magistrate by means of fraud, force, or intimidation practised upon him, but that could not be avoided under any circumstances. The Civil Court might be deceived in a case of this kind. But the Civil Court would endeavor to

guard against it, and so would the Magistrate who would be equally competent. Some provision might be made, requiring that a Deputy Magistrate should be deputed for the duty, before whom the contracting ryots should appear, whose duty it should be to see that the contract was duly stamped and sealed, and who should satisfy himself that the persons entering into the contract were free agents. He (the Vice-President) did not propose at present to enter into the details of that matter. He merely threw this out as a suggestion for the consideration of the Honorable Members to whom the Bill should be referred.

The Bill then provided that no complaint should be received under the Act for the breach of any contract made for a longer term than one year. He thought that it would be sufficient to provide that no contract should be enforced under the Act, except within a year from the date of its execution. If the parties chose to enter into contracts for three years, or for five years, he saw no objection to their doing so; but he would leave the party complaining, if he allowed the first year to pass, to the Civil Courts for redress.

Again, it had been said, that this Bill would be in the nature of one-sided legislation, inasmuch as it imposed hard labor on the ryots for breach of contract, and not on the other party for obtaining the contract through fraud, force, or intimidation. But this Bill did not attempt to provide a complete remedy in all cases. It dealt with the peculiarity of small transactions, for which no remedy could be obtained in a Civil Court. Under the Penal Code, a person who used fraud, force, or intimidation could be punished; and so any contractor who forcibly compelled men to labor for him, might be punished. So in like manner, would the ryot, if you could prove that, at the time he received his advance, he never intended to perform his contract. But how could you prove it? It was not like the case of the man named Dando in England, who used to go into the Oyster shops without a shilling in his pocket, and after eating as many Oysters as he could, walk away without paying for them; he was eventually punished, because, on being searched, it was discovered that he had no money in his pocket, and he was therefore convicted of fraud on the ground that, when he ate the Oysters, he had no intention whatever of paying for them. But that was a very different case from the present. How could it be proved that the ryot, at the time of receiving his advance and entering into his contract, did not intend to fulfil the contract? That was what was required to be proved under the Penal Code. Under this Bill, however, all that was required to be proved was that the ryot, after receiving an advance, had entered into a contract, and that he afterwards refused to perform it. Then the Honorable Member for Bengal had said, how could the Magistrate know that the full amount of the advance had been obtained? By bringing in a Bill on the same subject, the Honorable Member had himself admitted that the existing law was not sufficient to deal with such cases. He (the Vice-President) would ask the Honorable Member, supposing the case were one for a specific performance pending the suit, as provided by his Bill, how could the Judge say whether the money was adequate or not? The question was by no means a question of advance; it was simply a contract to perform a certain work, and the advance was given to enable the man to carry out his contract, for the ryot might be a poor man and not a Capitalist. He (the Vice-President) saw no difference in principle between a case where advance was made, and a case where advance was not made. Once prove that the contract had been broken, and that a large interest was at stake, and it mattered not whether the ryot had received an advance or not. The non-receipt of an advance might be pleaded before the Magistrate by the ryot only as a reason why he should not be put to hard labor. But he (the Vice-President) saw no reason why his taking the advance, like the recruit who took his shilling, should render him liable to hard labor, whereas, if he

The Vice-President

took no advance, he would not be so liable. Were there no precedents? Were there no cases in England or in this country in which persons were held criminally responsible for breach of engagement, because a large interest was at stake? Look at the case of the soldier, who deserted after receiving his shilling; he might be punished with death. Look at the sailor; he was liable to be punished in the same way. Look at the Merchant Seaman; he was liable to be punished with three months' imprisonment with hard labor, and in addition to it, to forfeiture of wages. Why was it not said that the ship-owner should be left to the Civil Courts? Because the law saw a large interest at stake. Then in England there was a law which rendered laborers refusing to perform their contract liable to imprisonment with hard labor for three months, and there was an instance of a man who contracted for the digging of a well and Lord Ellenborough treated him as liable under that law. In that case of Lowther against Lord Radnor for levying a distress on the goods of Lowther for disobedience of an order of the Justices for the payment of certain wages to the man who had so contracted, it was held that such a petty contractor came within the scope of the Statute 20 George II., c. 19, but that that law did not make the employer liable to three months' imprisonment with hard labor for not paying his wages. The 4th Geo. IV., c. 34, did not give the same power over the master as it gave over the servant. It provided:—

"And if it shall appear to such Justice that any such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, kielman, pitman, glassman, potter, laborer, or other person, shall not have fulfilled such contract, or has been guilty of any other miscoaduct or misdemeanor as aforesaid, it shall and may be lawful for such Justice to commit every such person to the House of Correction, there to remain and be held to hard labor for a reasonable time not exceeding three months, &c."

That was exactly what this Bill provided. But it was said that the English Act applied only to laborers. That however made no difference. The question simply was whether these small contracts should form the subject of a Civil suit. The Planter might have made all his arrangements for manufacturing the Indigo, and his plant might be lying idle, while the ryots would tell him, "We will not fulfil our contract. You can bring your action in the Civil Court by applying to the Moonsiff on stamp paper, and then if he decides against us, we will appeal to the Zillah Judge." All this while the Planter's cultivation would be at a stop. Was not that putting a large interest at stake? He (the Vice-President) did not think that we should be violating any of the principles of jurisprudence in passing this Bill. Its principle had been admitted by the Imperial Parliament, and why should not a Bill be framed on the same principle providing for particular interests in this country? The Honorable Member for Bengal himself admitted the principle by bringing in his Bill. But what did he propose? Why, simply that the ryot should be sued in the Civil Court, an order of specific performance issued against him, his property attached under the Code of Civil Procedure if he should be unable to give security, and he himself turned out of his land at once. He might thus be ruined more completely than if he were dealt with by the present Bill and sentenced to hard labor. He (the Vice-President) denied most emphatically that this was a law for the rich and against the poor. It was a law for providing special protection, which, if not provided for, would be injurious to a large interest. It was on that ground that he (the Vice-President) supported this Bill. Looking, therefore, at the present state of the Civil Courts of Judicature in this country in which an appeal was allowed even for the smallest amount, and considering that it had been admitted that Moonsiffs generally could not be trusted to decide small cases of fifty Rupees without an appeal, it appeared to him that it would be injurious in the last degree, in cases of breach of contract for small

amounts, to compel the parties to resort to the Civil Courts for redress under these circumstances.

MR. BEADON said, the extremely able address of the Honorable and learned Vice-President rendered it unnecessary for him to answer several of the objections which had been taken to the Bill. But there were one or two points on which he wished to say a few words.

The Honorable and learned Judge (Sir Charles Jackson) had attempted to place the Government on the horns of a dilemma by arguing that, whether the cultivation of Indigo be voluntary or not, the proposed law was objectionable. If voluntary, he contended that the Bill would be a mistake, inasmuch as it would deter ryots from taking advances; or if not voluntary, the Bill would prove a source of great oppression and injustice to the ryots. He (Mr. Beadon) accepted the former alternative, and had no doubt that the contracts would be voluntary. If any practicable improvement could be suggested in the provision which he had introduced, requiring those who made contracts to file them in the Magistrate's Office within one month after execution, he would be quite willing to agree to it. What he meant to observe now was that the contracts with which this Bill proposed to deal, were purely voluntary contracts. The Honorable and learned Judge then said that our object was to induce ryots to take advances. [SIR CHARLES JACKSON—I said that that is the Planter's object.] Whatever might be the object of the Planters, that certainly was not the object of the Bill. The object of the Bill was simply to punish those who, having taken advances and entered into contracts, afterwards refused or neglected to fulfil their engagements. The Honorable and learned Judge then referred to Act XIII of 1859, and mentioned certain proceedings taken under that Act at Ootacamund, in consequence of which all artificers there had refused to take advances, and business was at a stand still. With reference to that, he might mention that, during the interval which had elapsed since the first reading of the Bill, he had thought it advisable to make some enquiry into the working of Act XIII of 1859 in this city. With this view he had put himself in communication with the Master of the Trade's Association, by whom he had been referred to a gentleman, who had taken a great interest in the question, and who favored him with an interview. He (Mr. Beadon) asked him if he could give him any information as to the manner in which the Act had operated, and whether it had had the effect of deterring artificers from taking advances. The reply he got was that the Act had worked most successfully, and that it certainly did not operate to prevent any workman from taking advances. So emphatic was his informant on this point that he said that the native workmen were so anxious to take advances—and they were of the same class of people as those who were likely to be affected by this Bill—that, even if they knew they would be hanged a year hence for non-performance of contract, they would still take advances. He asked the gentleman to be so good as to put his views on the subject in writing, and shortly before he (Mr. Beadon) came down to the Council this morning, he received a letter from the gentleman, which, with the permission of the Council, he would read to them. It was as follows :—

"With reference to our conversation of last evening, relative to Act XIII of 1859, I am in a position to state confidently that it has worked uncommonly well in Calcutta, and continues a great boon to those who have occasion to employ native artificers and workmen under contract with advances. The Civil Courts were of no avail whatever in remedying the evil and the wrong sustained, for which (previous to the passing of the Act) there was no efficient remedy; but Act XIII has met the case fully, and has been found very efficacious in all respects.

No diminution whatever would appear to have taken place in the number of applicants for advances, since the passing of this Act; but, on the contrary, a greater number have come forward, and among these, a better class of men, who, previous to the passing of Act XIII, would not take advances, consequent on the difficulty they experienced in controlling the workmen employed under them. But that

difficulty having been removed, and they feeling themselves better secured against loss, by desertion of their workmen, &c., now readily accept employment under Europeans, which they would not do before."

The Council would bear in mind that this was written of Calcutta, where there was a Small Cause Court on the model of which we were now establishing similar Courts in the Mofussil, and that it was written of persons who, though artificers and workmen in Calcutta, were for the most part occupants of land in their own villages.

The Honorable and learned Judge further remarked that the operation of this Bill would be excessively unjust, inasmuch as, owing to the state of the weather, or to other engagements, the ryot might at times be unable to perform his contract. He observed that, when sowing time came and a shower of rain fell, it was absolutely necessary for the Planter that the land should be ploughed immediately; but that the ryot might have some other engagement which prevented him from going to plough. He (Mr. Beadon) would ask, what business had a ryot to enter into two engagements incompatible with each other? But apart from that, the Bill only subjected a person to punishment for failing to perform his contract without lawful or reasonable excuse; and if he would show good cause for failure, the Magistrate would not punish him.

The Honorable and learned Judge then remarked on the effect of Act XI of 1860 in the Districts of Nuddea and Jessore. He observed that the ryot was not a pauper, and cited a large number of suits which had been instituted in those Districts for small sums, amounting in the aggregate to a very large amount. The average amount recovered in each of these cases was estimated at forty Rupees in Jessore and fifty Rupees in Nuddea. From this he (Mr. Beadon) argued that the Act had admirably answered the purpose for which it was passed, and that a good deal of money had been recovered, which might otherwise have been lost. It was because small contractors would not pay, not because they could not, that legislation was required; and whether the ryot were a pauper or not, he would be liable to imprisonment with hard labor under this Bill, only in the event of his persisting in not performing his lawful engagement, or in refusing to pay the damages which the Magistrate might award.

The Honorable Member for the North-Western Provinces, in his speech from which the Council had derived much instruction and advantage, observed that he was surprised that, when this Bill was introduced, no allusion was made to the circumstances under which Regulation V of 1830 had been repealed. He (Mr. Beadon) did not think it necessary to make a special reference to this matter, because all the papers relating to it were to be found in the Indigo Commissioners' Report. But he would now state plainly how the case stood. Regulation V of 1830 was repealed after having been law for five years, in consequence of an order from home. It was not shown that the Act had worked prejudicially to any class, nor was its repeal the result of any enquiry or any exposition of abuse; but it was repealed by order of the Court of Directors on theoretical grounds, because, though it provided that the ryot should be punished if he refused to fulfil his part of the agreement, it did not provide a corresponding punishment for the Planter.

The Honorable Member had asked, if there would be any objection to furnish the Council with a copy of the Despatch from the Secretary of State, relating to the Act passed last year. He (Mr. Beadon) certainly saw no objection to the production of that Despatch, and would take care that it should be laid before the Council.

The Honorable and learned Vice-President had pointed out several particulars in which the Bill was capable of improvement, and he (Mr. Beadon) generally concurred with him. With reference however to the Honorable and learned Vice-President's observations on the concluding proviso in

Section II, "that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy, by action or otherwise, which he might have had but for this Act," he (Mr Beadon) would only observe that it was a *verbatim* repetition of a similar proviso in Act XIII of 1859, and that it must be borne in mind that the amount of advances might bear a very small proportion to the amount recovered under the contracts, and that a ryot who had received an advance of five Rupees for the delivery of produce worth one hundred Rupees, would go to jail for three months, or pay damages equal to four times the amount of advance, namely twenty Rupees altogether, in order to escape the payment of one hundred Rupees by Civil process. But that, like all other points of detail, would no doubt be carefully considered by the Select Committee.

With regard to the provision in Section VI, which was a substitute for registration, he quite admitted that it was an imperfect substitute, though at present the only practicable one. If we had to wait until a proper system of registration could be established, he was afraid that the passing of the Bill would be delayed for a long time. The Honorable Member for Bengal intended to provide for the registration of contracts in his Bill which was read a first time to-day. If such a provision could be engrafted into his (Mr. Beadon's) Bill, he should be very glad. But if that were impracticable, he thought that the next best plan would be to require that every contract should be filed in the Magistrate's Office within a month after it had been executed. Certainly this would not be proof that a contract had been voluntarily entered into, but it would be evidence of its execution at the time alleged.

With regard to the question of advance, or no advance, he thought the difference in principle was this. Though the moral crime was, perhaps, not greater in one case than in the other, yet there was a great difference in the degree of temptation and in the probability that the crime would be committed. If a ryot or any other agricultural contractor engaged to deliver a certain amount of produce without receiving an advance, he would rarely be tempted to break his contract, seeing that he would not receive his money till the work was done. But the case was very different when an advance was made. A poor man suddenly found himself with twenty or thirty Rupees in his pocket, and under engagement to deliver a certain quantity of produce a year hence. He might have a marriage in his family shortly afterwards—and a marriage in a native family, of whatever condition in life, was always attended with great expense—and a strong temptation would thus present itself for misappropriating the advance. He (Mr. Beadon) thought, therefore, that there should be a distinction between the two cases, and doubted indeed whether, but for the system of advances, legislation was necessary.

He had no further observations to make on the Bill, and hoped that the Council would allow it to be read a second time.

The question being put, the Council divided—

Ayes 7.	*Noes* 2.
Mr. Erskine.	Sir Charles Jackson.
Mr. Harington.	Mr. Sconce.
Mr. Laing.	
Sir Robert Napier.	
Mr. Beadon.	
Sir Bartle Frere.	
The Vice-President.	

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

MR. BEADON then moved that the Bill be referred to a Select Committee consisting of The Vice-President, Mr. Laing, Mr. Sconce, Mr. Erskine, and the Mover, with an instruction to submit a preliminary Report under the 62nd Standing Order.

THE VICE-PRESIDENT said, his duties in Court at present were very pressing, and would continue to be so until the opening of the ensuing Criminal Sessions. He was afraid, therefore, that he would be unable to sit in Com-

mittee on the Bill for at least a fortnight.

MR. BEADON said that he had no objection to postponing the consideration of the Bill for a fortnight. The delay for that period was of little importance compared with the value of the Honorable and learned Vice-President's assistance.

The Motion was put and carried.

MR. HARINGTON said, he might mention that he voted for the second reading of the Bill, notwithstanding that he had spoken so strongly against it, because of the understanding that had been come to, that the Bill, though read a second time, should not be published at once, but should be preferred to a Select Committee to report. He thought it very desirable that the whole law as it now stood, in relation to the enforcement of contracts, should be taken into consideration and reported upon by the Select Committee to which this Bill was to be referred; and he begged to move, if the forms of the Council would admit of it, that the Bill which they had this day read a first time on the Motion of the Honorable Member for Bengal, be referred to the same Committee, and that they be instructed to take that Bill and the existing laws into consideration, and to report on them also.

MR. BEADON said that, so far as that proposal was likely to create delay in the submission by the Select Committee of their preliminary Report, he must resist it. He thought it quite sufficient to instruct the Select Committee to consider and report on the form in which this Bill should be published; and he saw no necessity for hampering the Committee with an instruction to consider the whole state of the law relating to Indigo.

THE VICE-PRESIDENT said, he quite concurred with the Honorable Member who spoke last, that it would be better to leave the Committee at present to report on this Bill only. When the Bill of the Honorable Member for Bengal was read a second time, he would no doubt consider it desirable to refer it to the same Committee for consideration. At present it would be premature to do so.

MR. HARINGTON said, he had no wish to cause delay. He thought it would be convenient if the Bill of the Honorable Member for Bengal could be referred at once to the Committee which had just been appointed. But if the forms of the Council did not admit of this being done, he would not press his Motion.

POLICE.

The Order of the Day being read for the third reading of the Bill "for the regulation of Police," the Petition of the British Indian Association was read at the table.

SIR BARTLE FRERE then moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of moving the addition of the following words to Section XXI, as suggested in the above Petition:—

"No hereditary or other Village Police Officer shall be enrolled without his consent and the consent of those who have the right of nomination. If any Police Officer appointed under Act XX of 1856 (to make better provision for the appointment and maintenance of Police Chowkeydars, in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal) is employed out of the District for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that District."

Agreed to.

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

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

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

SIR BARTLE FRERE moved that Mr. Laing be requested to take the Bill to the Governor-General for his assent.

Agreed to.

SALTPETRE.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to regulate

the manufacture of Saltpetre and the sale of Salt educed in the manufacture thereof.

The Council adjourned.

Saturday, March 23, 1861.

PRESENT:

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

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

THE Members at the Meeting did not form the quorum required by law for a Meeting of the Council for the purpose of making Laws; and the Vice-President adjourned the Council at half past 11 o'clock till Saturday the 30th instant, at 11 o'clock.

Saturday, March 30, 1861.

PRESENT:

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

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

POLICE.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "for the regulation of Police."

ARMS ACT.

THE CLERK presented to the Council a Petition from the Anglo-Indian Protective Association praying for the exemption of the Christian inhabitants in India from the operation of Act XXXI of 1860 (relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same and to give power of disarming in certain cases.)

BREACH OF CONTRACT.

THE CLERK presented a Petition from certain Coal and Mineral Proprietors relative to the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

MR. BEADON moved that this Petition, as well as the Petitions of the Protestant Missionaries and of the British Indian Association relative to the same Bill, which were presented to the Council at the last meeting, be printed and referred to the Select Committee on the Bill.

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON.)

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

MR. FORBES moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

BREACH OF INDIGO CONTRACTS.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding copy of a correspondence with the Secretary of State for India relative to Act XI of 1860 (to enforce the fulfilment of Indigo Contracts and to provide for the appointment of a Commission of Enquiry.)

MR. HARINGTON moved that the communication be printed and referred to the Select Committee on the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, ma-