COUNCIL OF THE GOVERNOR GENERAL OF INDIA

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Abstract of the proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 17th February 1864.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honor the Lieutenant Governor of Bengal.
Major General the Hon'ble Sir R. Napier, K. C. B.
The Hon'ble H. B. Harington.
The Hon'ble H. Sumner Maine.
The Hon'ble Sir C. E. Trevelyan, K. C. B.
The Hon'ble W. Grey.
The Hon'ble A. A. Roberts, C. B.
His Highness Nawab Mahomed Yousuf Ali Khan Bahadur, K.S.I. Nawab of Rampore.
The Hon'ble H. L. Anderson.
The Hon'ble C. H. Brown.
The Hon'ble J. N. Bullen.
The Hon'ble Mahárájá Vezearám Guzzeputty Ráj Bahádur of Vizianagram.
The Hon'ble Rájá Sáhib Dyál Bahádur.

BURMAH CUSTOMS' BILL.

The Hon'ble MR. MAINE in moving for leave to introduce a Bill to give further effect to the provisions of Act IV of 1863 (to give effect to certain provisions of a Treaty between His Excellency the Earl of Elgin and Kincardine, Viceroy and Governor-General of India, and His Majesty the King of Burmah,) said that this Bill was fact, as was stated in its title, a Bill to give effect to certain provisions of Act IV of 1863. At the express request of the Foreign Department, Act IV of 1863 was so framed as to follow the terms of the Burmese Treaty as nearly as possible, it being supposed that any departure from the language of the Treaty would be likely to excite suspicion in the mind of the King of Burmah. One of the Articles of the Treaty stipulated, that goods imported into British Burmah merely for export into the Burmese Territory should be subject to only a small and almost nominal Customs' duty: but further rules were necessary to ensure that goods declared to be for export to the Burmese Territories should be really so

exported, and to protect that revenue against the mal-practices of certain persons who declared goods to be for transit to the Burmese Territory, when they really intended to smuggle them into British Burmah. It being somewhat difficult in any legislative measure to lay down the necessary rules, the Bill which he proposed to introduce would leave it to the Governor-General in Council from time to time to make such rules as were required, provided those rules were not inconsistent with Act IV of 1863, and provided the penalties prescribed were similar to the penalties which could be imposed under the consolidated Customs' Act.

The Motion was put and agreed to.

TOLLS' BILL.

The Hon'ble MR. MAINE introduced the Bill to amend Act VIII of 1851 (for enabling Government to levy tolls on Public Roads and Bridges), and, in moving that it be referred to a Select Committee, with instructions to report in three weeks, said that the only part of the old law which this Bill touched was the Schedule, the details of which could best be settled in Select Committee.

The Hon'ble RAJA SAHIB DYAL BAHADUR said that, with reference to the Bill, he would ask in what places or at what distances was the toll to be leviable? Would tolls be levied on Railroads or in Boats? if not, goods travelling by the roads would be the only ones which would have to bear this charge. The result would be that whereas the goods brought by rail and boat would be sold at a remunerative price, those brought by the road being only sold at the same price, would entail a loss on the seller.

The Hon'ble MR. MAINE said, that the last speaker overlooked the fact that this Bill touched on no matter of principle. No doubt the question as to whether there ought or ought not to be any tolls at all was one on which much might be said. But that was a question which was not raised in this Bill, which merely amended a Schedule which worked oppressively.

The Motion was put and agreed to.

ALIMENTARY SALT (CENTRAL PROVINCES) BILL.

The Hon'ble MR. HARINGTON presented the Report of the Select Committee on the Bill for regulating the importation and manufacture of Alimentary Salt in the Territories administered by the Chief Commissioner of the Central Provinces.

COURT OF SMALL CAUSES (KURRACHEE) BILL.

The Hon'ble MR. ANDERSON presented the Report of the Select Committee on the Bill to give validity to certain proceedings of the Court of Small Causes of Kurrachee, and having applied to the President that the Rules for the Conduct of Business should be suspended.

The President declared the Rules to be suspended.

The Hon'ble MR. ANDERSON then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ANDERSON then moved that the Bill be passed.

The Motion was put and agreed to.

CIVIL PROCEDURE (SINDE) BILL.

The Hon'ble MR. ANDERSON also presented the Report of the Select Committee on the Bill to give validity to the extension of the Code of Civil Procedure to the Province of Sinde from the 1st day of January 1862, and having applied to the President that the Rules for the Conduct of Business should be suspended.

The President declared the Rules suspended.

The Hon'ble MR. ANDERSON then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Anderson then moved that the Bill be passed.

The Motion was put and agreed to.

WHIPPING BILL.

The Hon'ble MR. ROBERTS moved that the Report of the Select Committee on the Bill to authorize the punishment of whipping in certain cases be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ROBERTS, in moving that the Bill be passed with the amendments recommended by the Select Committee, said that he had a few observations to make relating to the history of this measure. Corporal punishment was one of the authorized modes of punishment in our administration of criminal justice from the earliest time through-

out the British Territories in India, and continued in force in the Madras and Bombay Presidencies without interruption until 1st January 1862. In Bengal, corporal punishment was abolished by Lord William Bentinck in the year 1834, but the same Regulation, II of 1834, which abolished corporal punishment pointed out the necessary for the introduction of a better system of prison discipline, and contained a provision to enable the Governor General to take steps for introducing a system of discipline into the goals "calculated both to reform the convicts and to render their imprisonment efficacious, as an example to deter others from the commission of crime." With this view a Committee of Prison Discipline was appointed on the 2nd January 1836, and their enquiries extended over a period of two years. The able Report of the Committee, of which his Hon'ble friend who was charged with the supervision of the finances of this country was a member, should be carefully studied by all who took an interest in the management of Jails in India. Many important reforms and improvements were recommended, and some of them were carried out: but that the objects contemplated by Lord William Bentinck when he abolished corporal punishment were not attained, was clear from the preamble of Act III of 1844, which set forth that adequate improvements had not been effected in prison discipline, and that it was therefore expedient to substitute corporal punishment for certain offences. Accordingly corporal punishment was again authorized in the Bengal Presidency by Act III of 1844: it was from time to time introduced into all the territories subsequenly acquired by the British Crown, and it continued to be administered throughout British India until the 1st of January 1862, when the Penal Code came into operation. That Code did not include flogging in the list of punishments. The Code was completed and laid before the Governor-General on the 14th October 1837, but it did not pass into law until 25 years later. The Code was commenced in the year 1835 if not earlier, and it would be recollected that corporal punishment had been abolished in Bengal in the year 1834. It was not therefore surprising to find the following opinion expressed by the Law Commission on the Chapter of Punishments:—

> We have no thought is desirable to place flogging in the list of punishments.*** Being satisfied, therefore, that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories.

And so it happened that corporal punishment was excluded from the Penal Code.

The Code remained in abeyance for upwards of 20 years. It came under the consideration of the late Legislative Council in 1855, and a Select Committee was appointed to consider and revise it. The Select Committee, among other alterations and modifications were of opinion that flogging should be among the punishments authorized by the Code, and placed it on the list; but when the Code came under the consideration of a Committee of the whole Council, it was thought that as the published draft contained no such punishment as flogging, it was desirable that local Officers and the public should have an opportunity of expressing their opinions on the subject, and that the passing of the Code should not be delayed on that account. A Select Committee was at the same time appointed to report on the punishment of flogging, and to prepare such a Bill as they might consider necessary. This was in 1860. A Bill was accordingly prepared, published, and discussed, and was passed by the Council on 7th September 1861. It was taken to the Governor-General, but failed to obtain the assent of the Viceroy. He would, with the permission of His Excellency the President, read the reasons assigned by the late Lord Canning as reported in the Abstract Proceedings of the Council for 5th February 1862 for withholding his assent to the Bill:—

His Excellency the President stated that he wished to advert to the reasons why the Bill passed by the Legislative Council had not received his assent. As that Council had not met again for the transaction of business, he had not had an opportunity of communicating his sentiments. He had no doubt on the point of principle, but there were serious defects in the details of the measure. The definition as to age was very vague and not sufficient as a guide to the Courts. There appeared to be too much detail, and that not of a very judicious character, as to the mode of inflicting the punishment. Security was wanting for a safe and judicious Medical supervision, and there was an absence of a provision, so desirable in all such cases for the exercise, at any rate to some extent, of the discretion of the local Government. The present Bill, he believed, would be found to be a considerable improvement on the former.

The latter portion of the remarks of Lord Canning related to a new Bill which his friend the Lieutenant Governor of Bengal, who was then a Member of the Supreme Government, had framed so soon as he became aware of the objections of the Governor General. This Bill which was the same was modified from that was now under the consideration of the Council, was introduced on the 26th February 1862, and had consequently been two years before the Council and before the public. The Council ceased to sit for legislative purposes in April 1862, before the Bill could pass through all the necessary stages, and when the Council met again in the following November, the Government of India thought it desirable to call upon all the local Government to report what had been the effect of the abolition of corporal punishment under the Penal Code and also requested an expression of opinion as confirmed or modified by the experience of the year 1862, regarding the expediency of retaining flogging as a punishment. From the reports furnished by the Governments of Bengal, Madras, the

North-Western Provinces, Oudh, and the Central Provinces, it would appear that during the year 1862, about 18,000 persons were sentenced to imprisonment in those territories alone, for offences which were formerly punishable by flogging. Probably 3 to 4,000 more persons were punished under similar circumstances in Bombay and Burmah, which would give a total of more than 20,000 persons who were committed to Jail for various terms during the year 1862 for offences formerly punishable by flogging. Of course it was not to be supposed that all these persons would have been flogged had that mode of punishment been retained. It was only permissive under the old law—not obligatory. But Judging from the number who were subjected to corporal punishment in the previous year in those Provinces from which there were Returns on the subject, he had no hesitation in saying that at least 10,000 offenders were committed to Jail for various terms of imprisonment in 1862, who before the passing of the Penal Code would have been punished with stripes and released. That was one effect of the abolition of corporal punishment. The Jails in India which had always been overcrowded and contained insufficient accommodation even under the old law, had to take in 10,000 additional prisoners during the year 1862. The additional cost to the State could not have been less than 2 lakhs of Rupees. Each prisoner cost the Government on an average more than Rs. 40 per annum; but in estimating an increased cost of 2 lakhs for the year 1862, he had allowed an average sentence of only 6 months for the additional 10,000 prisoners. If the average sentence was longer, the additional cost would have been so much more in proportion. Of course this increased expenditure was not worthy of a moment's consideration if the main objects of punishment, the repression of crime and the reformation of criminals, were obtained thereby. But this was the point at issue. The advocates of corporal punishment maintained that for certain offences corporal punishment was a better preventive of crime than imprisonment in our Jails, that it was less demoralizing to the individual, and more humane to himself and to his family. As to the expediency of retaining flogging as a punishment, the Governors of Madras and Bombay, the Lieutenant Governors of Bengal, the N. W. Provinces, and the Punjab, and the Chief Commissioner of the Central Provinces had all expressed a strong opinion regarding the necessity of the measure. Fortified by these opinions—by the opinion of the late Legislative Council and of the late Lord Canning—and deeply impressed with the necessity in the present state of society in this country, and the defective system of discipline in our Jails—Select Committee had addressed themselves to the introduction of such modifications and restrictions as would, they hoped, disarm objection and prevent the possibility of abuse. He begged to point out that the punishment was not obligatory, but was permissive only. The Bill would not allow whipping to be inflicted in addition to any other punishment unless the offender had previously been convicted of the same offence as that for which the whipping was awarded. It was proposed that whipping

should be lawful in lieu of any other punishment in cases of theft, extortion by threat, and a few other offences of which it seemed more particularly likely to be an effectual preventive : and in the case of frontier or wild districts specially brought by Government under the more stringent provisions of the Act, a still wider range of offences were made punishable with whipping in lieu of any other punishment. As regarded juvenile offenders, it was highly desirable that it should in all cases, except when the offence was one which was punishable with death, be lawful to award whipping as the punishment in lieu of any other punishment which might be prescribed for the offence, and a provision to that effect was accordingly introduced into the Bill. It was left to the local Governments to determine the particular mode, within the limits prescribed in the Act, in which the whipping was to be inflicted.

The Hon'ble SIR CHARLES TREVELYAN said that it was very important that the Council should approach the consideration of this matter, duly appreciating the gravity of the issue before it ; and he thought he could not do better than commence the observations he had to make by reading the declaration of principle contained in the preamble of Regulation II of 1834, the Act passed by Lord William Bentinck for the abolition of flogging. The preamble was as follows :—

Whereas corporal punishment has not been found efficacious for the prevention of crime either by reformation or by example ; and whereas it is always degrading to the individual, and by affixing marks of infamy, which often are for ever indelible, prevents his return to an honest course of life ; and whereas there is every reason to fear that it is in many cases injudiciously and unnecessarily inflicted, becoming a grievous and irremediable wrong ; and whereas it is becoming and expedient that the British Government, as the paramount power in India, should present in its own system the principles of the most enlightened legislation, and should endeavour, by its example, to encourage the Native States to exchange their barbarous and cruel punishments of maiming, of torture, of loss of limb, for those of a more merciful and wise character, by which the individual may be reformed and the community saved from these brutalizing exhibitions ; and whereas it has been deemed expedient to authorize the substitution of a fine in lieu of labor, in certain minor offences, for which the Criminal Courts were empowered by existing Regulatons to pass sentence of imprisonment with labor, either with or without irons and whereas it has been deemed necessary to provide for the gradual introduction of a better system of prison discipline, the following rules have been enacted, to be in force from the date of their promulgation throughout the Territories subjects to the Presidency of Fort William.

After corporal punishment had remained abolished from 1834 to 1837, the Indian Law Commission pronounced the following opinion :—

We have not thought it desirable to place flogging in the list of punishments. If inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes, that punishment is open to the very serious objections which may be urged against all cruel punishments and which are so well known that it is unnecessary for us to recapitulate them. When inflicted on men of mature age, particularly if they be of decent stations in life, it is a punishment of

which the severity consists, to a great extent, in the disgrace which it causes; and to that extent, the arguments which we have used against public exposure apply to flogging.**** The moderate flogging of young offenders for some petty offences is not open, at least in any serious degree, to the objections which we have stated. Flogging does not inflict on a boy that sort of ignominy which it causes to a grown man. Up to a certain age boys, even of the higher classes, are often corrected with stripes by their parents and guardians; and this circumstance takes away a considerable part of the disgrace of stripes inflicted on a boy by order of a Magistrate. In countries where a bad system of prison discipline exists, the punishment of flogging has in such cases one great advantage over that of imprisonment. The young offender is not exposed even for a day to the contaminating influence of an ill-regulated goal. It is our hope and belief, however, that the reforms which are now under consideration will prevent the goals of India from exercising any such contaminating influence; and, if that should be the case, we are inclined to think that the effect of a few days passed in solitude or in hard and monotonous labor would be more salutary than that of stripes. Being satisfied, therefore, that the punishment of flogging can be proper only in a few cases, andnot being satisfied that it is necessary in any, we are unwilling to advise the Government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories.

and it was to be observed that this opinion was given by the Commissioners after a long experience of the existence of flogging and after four years' experience of the effects of its abolition.

Combined with the abolition of flogging was Lord William Bentinck's plan of improving the Jails and reforming Jail discipline, and a Committee was appointed to report upon the subject. It might be said that these views on the part of the Government of the time were merely speculative benevolence, which had become obsolete. But he hoped to prove that the principle involved was sound, and founded deep in human nature, and was at least as applicable to India as elsewhere. It was true that Lord William Bentinck was a real friend to this country, and did so much to place the Government on sound principles of justice and public good, that he might be said almost to have been a second founder of our Empire here. Lord William Bentinck considered the abolition of flogging to be as important to the progress of this country as the abolition of Suttee, the improvement of Education, or the free settlement of Europeans in India. Of the Law Commissioners he would only say that they combined high judicial attainments with thorough practical knowledge; and that they were assisted by the Chief Justice, Sir E. Ryan, and by Sir B. Malkin, a Puisne Judge of the Supreme Court, both eminent men and well fitted to advise on such a subject.

The course of the question since 1837 had been alluded to by Mr. Roberts, but perhaps not sufficiently elucidated. In 1844, an Act was passed restoring corporal punishment to some extent. It authorized the infliction of not more than

30 stripes of a rattan in cases of petty theft, and the reason for the passing of the Act appeared from its preamble, which declared it to be "expedient, until adequate improvements in prison discipline can be effected, to substitute corporal punishment for imprisonment in the case of certain offences." After that came the mutiny when prisons were broken open and destroyed. The limitations which had been placed on the infliction of corporal punishment were suspended, and it was frequently resorted to. Shortly after, corporal punishment found a place in the draft of the Penal Code; but again it was excluded. Then came the Flogging Bill prepared by a Select Committee of the Legislative Council, brought in by Mr. Harington, and subsequently passed by the Council. Lord Canning, however, refused his assent to it. Finally came Mr. Beadon's Bill—the Bill now under consideration. So that the matter stood thus: corporal punishment was originally excluded from the Penal Code; but since that time there had been a see-saw legislation on the subject adapted to the circumstances of the times. Corporal punishment had been at one time partially restored as a provisional measure. But what it was now proposed to do was a very different matter, for it was proposed to restore corporal punishment, not as a provisional, but as a general permanent arrangement, and as a punishment for almost every species of offence, from petty theft to robbery and rape. This was a great change indeed, and the issue now to be decided was whether corporal punishment ought permanently and finally to be adopted into our legal system.

He (Sir Charles Trevelyan) contended that it ought not. His first objection to flogging was that while all punishments were more or less unequal, corporal punishment was much more so than any other. The instrument to be used presented one great difficulty. In the Bill brought into the Legislative Council, it was provided that the rattan alone should be the instrument employed: but then it was urged strongly that the rattan was a dangerous instrument,—that (as it was said) it descended like a bullet; and Sir Charles Jackson mentioned several cases which had come out in the course of an enquiry instituted by order of Lord Dalhousie in which the use of the rattan had inflicted serious and lasting injury. The Bill subsequently introduced prescribed the use of the cat-of-nine-tails. But suppose the punishment to be with the cat-of-nine-tails, how unequal the punishment must be! An inexperienced operator, for example, might allow the tails to get entangled, so that they in fact together inflicted only one blow, while a man who understood the use of the instrument, and drew his fingers through the tails between each stroke, would give a distinct blow with each tail. So again there was inequality arising from the part of the body on which it was to be inflicted some preferring the back, while others preferred another part of the person as less likely to inflict irremediable injury: and the Chief Justice proposed that a light cloth should be drawn over this part of the body when the punishment was inflicted. Under the present Bill, there must necessarily be the greatest amount of inequality;

for the Bill did not even lay down the instrument to be used, but left that matter to the discretion of the local Governments, of whom, of course, one would take one view, and another another—one would be severe, and another would be lenient—one would follow one medical opinion, and another would follow another. The title of the Bill had been altered from the "Flogging" Bill, as the Bill introduced into the Legislative Council was called, to the "Whipping" Bill, which was the title of the present measure. He must say he thought that to call this the Whipping Bill was quite inconsistent with the provisions it contained; for there really was no limit to the severity of the flogging that might be inflicted under it. It was always better to call things by their proper names, and this was a Flogging Bill.

Another great difficulty in the way of using flogging as a punishment was this—that however much the Bill might provide that a European Officer should be present during the infliction of the punishment, he did not believe that practically such an Officer would usually be present. Our Judges would not readily submit to be turned into executioners: such scenes were so painful that no English gentleman would be present at them, who could possibly avoid it, and, the superintendence of the infliction of the punishment would be left to irresponsible Natives. In the case of soldiers flogged in obedience to the order of a Court Martial, abuse was prevented by the presence of a body of comrades jealously watching the whole proceedings; but if flogging were allowed to be ordered by Junior Magistrates, and the inflicting it were left to be superintended by Natives, very painful scenes would constantly be enacted in the interior of Jails. It was but lately that torture was eradicated from Southern India; but if this Bill passed, it would establish and legalize torture throughout India. He had said he doubted whether European officers would really in person superintend floggings. He would add that he believed, supposing they did attend them, the scene would so affect them that they would become leniently disposed, and that the actual punishment inflicted would be but slight. He would read the remarks upon this point of Mr. Campbell, contained in a report dated the 30th March 1860, written by him when Judicial Commissioner of Oudh—

"That the great criminal question is thus solved, that we have found the *panacea* for all our difficulties, is one of those rough and extreme ideas, engendered by the mutiny, of which we must now rid ourselves. In saying this, I am by no means setting myself against the practice prescribed by Government; for I believe that Government never intended that it should be carried to an extreme. Not only is it unfair and undesirable to inflict a degrading punishment for offences which are not always accompanied by moral turpitude, and for which it has not been prescribed by law, but it becomes every day clearer that for serious crimes of turpitude, such corporal punishment as we can inflict very frequently proves a wholly insufficient penalty; that it is uncertain, unequal, and precarious in its operation, and that there is a tendency among Officers to avoid its infliction to the extent which would make it effectual, and to allow our practice to degenerate into too great leniency. Officers have been warned against

this, and it is true that what is part of their duty they must perform without shrinking from it. But still I think that, as was said by one of the Deputy Commissioners (Captain Thompson) in a large proportion of thefts and such crimes, flogging alone cannot be effectual unless it is carried to the point of brutality. It can only be effectually administered with certainty and safety under the immediate and close personal superintendence of the European Officers, and I think that we must not too much turn our Judges into executioners. I look on this, in fact as one of the principal difficulties of the system. The constant participation in such scenes must have more or less a brutalizing effect on almost any man's mind, and must tend to perpetuate that harsh and severe feeling which, not unnaturally resulting from the scenes of 1857, it must now be our object to soften down and eradicate."

He might enlarge on the inequality of flogging as a punishment. Flogging to a weak person was a very different thing from flogging to a strong person: and a flogging from the hand of a strong executioner was a very different thing from a flogging from the hand of a weak executioner. A flogging depended much on the physique both of the flogger and of the person flogged, and upon the disposition of the flogger, and also of the presiding Magistrate. The Bill, it was true, attempted to provide against some of these inequalities by directing that, when possible, a Medical Officer should be present. He feared, however, that precaution would prove insufficient. The moral inequality of flogging as a punishment was perhaps even greater than its physical inequality. To a man of position and character, it was worse than death. To a bad and hardened man, it might be almost nothing. To Europeans it must always be a most severe and degrading punishment. And here he would remark that while Europeans in England were not liable to flogging, they would under this Act be liable to that punishment in this country on the order even of a Junior Magistrate. At a time when it was desired to encourage the settlement of Europeans in this country, it might be doubted whether it was wise to render them liable to flogging. He could think of nothing that was more likely to deter settlers.

He further objected to flogging, inasmuch as it was a punishment which had a brutalizing effect on the criminal. It hardened and rendered insensible to shame those who were not before hardened in crime. A petty theft, for instance, might be committed by a person of any class. Under other circumstances, the offender might repent of what he had done, and attain a respectable position in society; but if he were once flogged, he would be likely to become a shameless and hardened criminal. The punishment was demoralizing to those who superintended its infliction. All of us have a bad as well as a good spirit in us, and we should take care lest the bad spirit prevail. We know what we are, but we know not what we may be. Even a father correcting his son might commence well, but as he proceeded he might, from a spirit of resistance on the part of the son, lose his temper and be guilty of great abuse of authority.

Flogging would have an injurious influence upon the whole country. As a punishment, it had always been an emblem of a low state of civilization. There was the Russian knout, the American cowhide, and the korah or heavy horsewhip in this country, which the old French traveller Bernier two centuries ago was shocked to find it was the custom to hang over the gateway of every person in authority except when it was in actual use. He would ask when flogging had free scope in England? The Irish Rebellion was the last occasion on which it had been used to any extent, and its abuse then gave rise to great scandals. Since that time its use had gradually dwindled away. Its restoration as regards attempts on the person of the Queen, and the destruction of works of Art was often referred to. So also was the fact of its having been recently, in a fit of popular panic, re-enacted in the case of garrotting. He believed, however, he was correct in saying that in no single case had the punishment been inflicted under any of these restorations, and that in England, although it was occasionally talked of, flogging never was practised now. It was kept an as extraordinary weapon hung on the wall *in terrorem*, but not to be taken down. It was a coarse expedient of disturbed times and barbarous countries; and without any disrespect for the administration of the Punjab, of which he had a high opinion, it must be said that the pressure on the Council in respect of this Bill did not come from any of the old Provinces, but from the new or so-called Non-Regulation Provinces. How truly the term Non-Regulation was applied to them might be judged from the fact that among the papers connected with the Bill, he found a *demi-official* order from the Judicial Commissioner of the Punjab to his subordinates, directing them not to cease from flogging, although the punishment was no longer legal under the Penal Code.

Our mission in India was one of civilization, and our object should be by our example to raise the standard and to bring the Natives up to our level.

His last reason for opposing the Bill was, that it was not necessary. It seemed to be taken as an axiom that flogging was a punishment suited to, and necessary in the case of, wild tribes. That this was so, he wholly denied. Cleveland, Outram, and Dixon would have repudiated such help in civilizing the Bhaugulpore Hill tribes, The Bheels and Mhairs. The instruments used by them are described on Cleveland's tomb at Bhaugulpore—

Who without bloodshed or the terrors of authority,
Employing only the means of Conciliation, Confidence, and Benevolence,
Attempted and Accomplished
The entire subjection of the Lawless and Savage inhabitants of the Jungleterry of Rajmehal,
Who had long infested the Neighbouring Lands by their Predatory Incurisons,
Inspired them with a Taste for the Arts of Civilised Life,
And attached them to the British Government by a Conquest over their minds,
The most permanent, as the most rational, mode of dominion.

He would refer to some of the reports which had been received—especial those for the North-West Provinces, Oudh, Bengal, and Burmah, from all of which it appeared that the class of offences which would be liable to flogging under this Bill had not increased since the introduction of the Penal Code. The Chief Commissioner of British Burmah wrote thus :—

With respect to the first point, it does not appear that the suspension of corporal punishment has, during the year 1862, had any sensible effect on the numbers sentenced to imprisonment or convicted of theft. In other words, the punishment of flogging cannot be considered as having a marked deterring effect against crime upon the Burmese, and other tribes of the Indo-Chinese family. Indeed, I have no doubt but that confinement in a jail and the restraints of strict discipline are held very much more in dread by those races, than bodily pain to be endured for a short time.

The Chief Commissioner of Oudh said—

The Chief Commissioner quite agrees with the Judicial Commissioner in thinking that a sufficient time has not elapsed, since the introduction of the Penal Code, to enable him to judge of the effect of the suspension of corporal punishment, and, therefore, he would beg to be allowed to defer giving a decided opinion on the question of retaining flogging as a punishment, and of the offences for which it should be made applicable, till the experience of another year has been gained. The greatest diversity of opinion on the efficacy of corporal punishment prevails among the Officers employed in the administration of justice. The Chief Commissioner's impression is that the thieving population of town and country, the low Mahomedans of Lucknow and the Parsees of the Province, care nothing for the lash, while it is dreaded by the better born and nurtured class of offenders. But the Chief Commissioner waits for the further evidence that the criminal statistics of another year will afford before coming to definite conclusion on the question. On one point, however, he is not likely to alter his opinion, and that is, that the infliction of corporal punishment should be superintended by other than the Judicial Officers whose position is lowered by the performance of such a duty. In large Stations the punishment might be administered under the supervision of a Provost Sergeant or some agency of that kind.

The Judicial Commissioner of Oudh had written in the following terms :

It will be seen that during 1862, there has been a large decrease in the number of convictions for offences punishable by stripes as compared with 1861. I find, too, that there has been a considerable decrease in the number of juvenile offenders sentenced during the present year, the number being :—

1861	306
1862	245
Difference .	61

This would seem to dispose of the question as far as it is connected with the anticipated over a crowding of the jails in consequence of the abolition of corporal punishment.

There can be no doubt, however, that the offences against property, which were formerly punishable by the lash, are on the increase. Nevertheless, as I have already said, I would prefer to wait the result of the present year before re-introducing that punishment. I do not believe that the increase is owing, in any marked degree if at all, to its abolition, for the simple reason that I think it would take at least a year to apprise the criminal classes generally that it had been abolished, and to convince them that they need no longer abstain from crime from terror of the lash.

So the Register of the Sudder Court at Agra reported :—

From an examination of these it appears, that while it is generally agreed that as yet there is no perceptible increase or otherwise in the classes of offences for which under the old Law flogging was permitted, a very large majority of the Officers consulted are strongly in favor of the retention of flogging as a punishment in the case of juvenile offenders.

He would next read an extract from a letter written by the Judges of the High Court at Calcutta :—

The Court are of opinion that the reports received from the various local authorities and the experience of the past year afford no sufficient data for the formation of any opinion by this Court, as to the working of the Penal Code in reference to the suspension of corporal punishment, and to the particular class of offences affected by that change. They are decidedly of opinion, that no necessity has been shown to exist for reverting to that mode of punishment in the case of *adult* criminals ; but that, on the other hand, a perseverance for four or five years at least from the time of the passing of the Penal Code, in the experiment now under trial, of carrying on the administration of Criminal Justice without a resort to flogging , is highly expedient. * * * * The Court would not pretermit this opportunity of urging on the local Government the necessity of making yet further improvements in prison discipline and of speedily establishing juvenile reformatories, in order that, on the one hand, the arguments for reverting to it in the case of adults may be deprived of all force, and on the other hand the use of corporal punishment for young persons may be soon dispensed with.

And the Lieutenant Governor agreed with the Court in thinking that no sufficient data existed for forming any opinion as to the working of the Penal Code in reference to the suspension of corporal punishment, and to the particular class of offences affected by the change.

It appeared from the Madras Returns that the number of offences which might formerly have been punished with flogging had increased since the Penal Code came into force. But this might be accounted for in two ways,—the increased stringency of the Code, and the establishment of the new Police. One reason why when at Madras he (Sir Charles Trevelyan) had done his utmost to establish the new Police, was that he knew that the great majority of the offences committed were never traced out, or taken any notice of : he knew that many district were thinly inhabited and comparatively unproductive, in consequence of the badness of the old Police and the insecurity of property. Now, however, crimes were

much more efficiently hunted up: to borrow an expression from the Finance Department, he might say that now all crime was really brought to charge.

Lastly, he objected to the passing of the Whipping Bill, because it was unnecessary, inasmuch as there was an alternative measure to which recourse might be had. The original scheme for the abolition of flogging included a plan for the reform of Jail discipline. But that plan, although it might not have been abandoned, had never been carried out; and very much remained to be done before it could be said that the state of the Jails or of Jail discipline in India was such as it ought to be. At home it was a subject in which the public took the utmost interest, and he doubted not that the same result would be attained here if attention were directed to it. One of the strongest objections to this Flogging Bill was that, by substituting a coarse, easy expedient founded on physical force, it would indefinitely postpone the adoption of better means. Mr. Roberts had put the expense of an improved system of prison discipline at four lakhs a year. But if a proper system of Jail discipline were established, including juvenile reformatories, 40 lakhs would be well spent. To improve the morality of a country was to improve its financial condition. In proportion as we could do without magistrates, Police, and Soldiers, in proportion as we could humanize and raise the moral standard of the people,—in that proportion would the resources of the country be developed and its financial position improved.

The Hon'ble MR. MAINE agreed with his Hon'ble friend that there were some grave objections to the punishment of flogging, although he (Mr. Maine) was unfortunate in not being able to appreciate the precise objections which Sir Charles Trevelyan had passed on the Council. One defect which he (Mr. Maine) perceived, had not been mentioned by his Hon'ble friend, viz, that flogging was incapable of remission. Once administered, it could not be taken back, whatever light further enquiry might cast on the convict's guilt. Mr. Maine also acknowledged that there was great force in Sir Charles Trevelyan's remarks on the practical inequality of the punishment. But after all drawbacks had been brought into the account, he could not agree in his Hon'ble friend's conclusion. First, among such of Sir Charles Trevelyan's objections as he did not concur in, he would take one which was put forward rather modestly, but of which everybody must see the point. His Hon'ble friend had suggested that under the Bill a Junior Magistrate in the Mofussil might order a European to be flogged. That was a mistake. The Bill took away no privilege which Europeans at present possessed. European criminals would still be brought down to the Presidency Towns, and, if the High Court or a Calcutta Magistrate ordered a European who had been guilty of any of the offences mentioned in the Bill to be flogged, there was not the smallest reason for thinking that the European community would object. As to Sir Charles Trevel-

yan's assertion that flogging brutalized the criminal, he (Mr. Maine) had heard it so many times not only from his Hon'ble friend but from many other persons for whom he had the greatest respect, that he must suppose there was something in it, but for his part he must acknowledge that he did not even understand what it meant. What was intended when it was said that whipping brutalized? Was it, that it appealed to the offender's animal nature, as distinguished from his moral nature? that it caused, in short, physical pain? Why, every punishment deserving the name inflicted physical pain. If you shut a man up in Jail, who was used to the open air; if you deprived him of stimulants when he was habituated to them; if you made him work when he was accustomed to be idle; in all these cases you inflicted physical pain, and pain sometimes even severe than the pain of a flogging. Some persons, including apparently his Hon'ble friend, but certainly the authors of a petition which had been circulated, appeared to forget that, when you sentenced a criminal to punishment, you deliberately made up your mind to render him extremely uncomfortable: and for his part, Mr. Maine could not the least understand why one form or degree of physical pain should brutalize more than another. His Hon'ble friend further condemned flogging as a disgraceful punishment. He (Mr. Maine) was afraid he should shock his Hon'ble friend, but he was bound to say that, considering the present state of the theory of punishment, it was to some extent a recommendation of any punishment that it was disgraceful. For (as he supposed) there occurred in India the same perplexity which occurred in England—and which had gone far to disturb what were once believed to be the first principles of a penal system—that criminals were found by experience not to commit crimes singly and by isolated acts; they had a tendency to form themselves into a class, with rules and maxims and a code of honor of their own. The very difficulty was that ordinary punishments were not felt by them to be disgraceful, and if therefore a punishment could be discovered which roused under all circumstances the sense of shame, that punishment would have a value of its own. After all deductions had been made from the penal efficacy of flogging, there still remain one immense advantage, that it was the most strongly deterrent of known punishments—so deterrent indeed, that the legislator was under a constant temptation to employ it without regard to counterbalancing disadvantages. His Hon'ble friend had strangely argued that the English examples of Whipping Acts were not in point, because no flogging had been administered under them. The truth was, that the terror of the law had done its work thoroughly; offenders were deterred and offences ceased. He (Mr. Maine) would never advocate the infliction of whipping except sparingly and under careful restrictions; but what he did not comprehend was that this Council should oppose itself to the unanimous demand of the local Governments. Such a refusal could only be based, as his Hon'ble friend's argument showed, on certain abstract and speculative theories concerning punishment, and it was only fair to see what results those theories had given, so far as they had hitherto been permitted to govern practice. His Hon'ble friend had pressed the Council with the authority of Lord

William Bentinck, Lord Macaulay, and Mr. Anderson. Those were great names, but there was an authority greater than the authority of names, and that was the authority of facts. Now the fact was, that what he trusted he might call without offence the sentimental theory of punishment had all but collapsed ; if it had not utterly broken down, it had at all events been rudely shaken. The theory began (not long before the time when the Low Commissioners reported) in a natural reaction against the savage punishments employed at the beginning of the century, and it was founded on the assumption (which was only very partially true) that all punishment should be directed towards the reformation of the offender. If ever a theory had been thoroughly tested, it was this theory during its trial in England. It was impossible to say what sums had not been lavished in England on the construction of Jails on ideal principles, and on an internal discipline adjusted to some theory. Perhaps his Hon'ble friend scarcely reflected what he was promising when he promised that Indian Jails should be improved up to the English standard and reformatories established throughout the country. The outlay in England on Jails, Jail discipline, and reformatories was little known, because the money came out of local taxation, and did not appear in the public accounts ; but he believed that the sums expended, had been almost fabulous. What was the result ? Twenty or thirty years of costly experiments had simply brought out the fact, that by looking too exclusively to the reformatory side of punishment, you had not only not reformed your criminals, but had actually increased the criminal class. It was practically found that, by taking all the sting out of punishment by leaving the criminal nothing but the recollection of a rather dull and monotonous episode in his life, you had increased the offender's temptations without improving his morality : you were actually adding to that community within the community which lived by crime. The truth which no candid man who had English experience to guide him would deny was that, by adjusting jail discipline to one special principle, you had certainly not reformed your criminals, and probably had encouraged them. And if that were so in England, where you had men of the same race and nominally of the same faith as yourselves to operate upon, what certain results could you expect in India, where a wholly different set of usages and rules concerning the conduct of life prevailed from those which obtained at home ? The great agent of reformatory discipline in English Jails was the Chaplain. But what counterpart had the Chaplain in an Indian Jail ? He doubted whether his Hon'ble friend had followed the most recent current of English opinion on these subjects. If any of the Council had read the Reports of the Committees appointed last year by the two Houses of Parliament, and the discussions among the County Magistrates which had arrived by the last mail as to the proper mode of carrying out the recommendations of the Committees, they would see that the formula which, after recent experience, commanded most respect in England, was one which might well serve as the motto of that Bill—"Punish-first ; reform and instruct afterwards." It would be found that the Committee of the House of Lords

on Prison Discipline had advised a liberal resort to the crank, the tread-mill, and something called the shot-drill, and he (Mr. Maine) perceived that in several Counties a contrivance which was in special favour was a species of plank-bed, of which, if he understood it rightly, the peculiar ingenuity consisted in its rendering it extremely difficult for the convict to sleep. He confessed that the impression left on his mind by the Parliamentary Reports and County discussion was that these noble Lords and honorable Gentlemen would have felt it a great relief if the authority of such great names as had been quoted to-day, had not prevented them from having recourse to the simpler and in his (Mr. Maine's) eyes much more innocent and less cruel expedient of a sound flogging. He submitted to the Council that the case was this—all theories on the subject of punishment had more or less broken down not finally he hoped, but for the present. We were again at sea as to first principles. Nothing then remained but to take experience for a guide and here was every local Government in India, every Government entrusted with the direct administration of the country, declaring that it could not keep the peace and tread down crime, unless it were allowed to employ the punishment of whipping. The duty of making laws in one Council for all India was onerous enough, but if they, sitting in one corner of the country, were deliberately to say to these Governments, that criminals were not to be flogged because flogging might brutalize a Bengalee thief or a Punjabee dacoit, he must say that they would not only incur a very grave responsibility, but be going very close to the verge of absurdity. And if it were once granted that whipping, though it should be sparingly employed and carefully guarded, should nevertheless not be altogether excluded from the list of punishments, a more innocent Bill than this could scarcely be conceived. Whipping was only for a first offence to be given in substitution for other punishments: the Judge at his discretion might order the convict to be whipped and released, thus saving him from the contamination of a Jail—contamination which existed not only here, but also in the most elaborately organized of English Jails. If the offender were convicted for a second offence, then as on a fair assumption, he might be supposed to belong to the criminal class, so that nothing was gained by saving him from the corruption of imprisonment, then he might for certain offences be flogged as well as imprisoned or otherwise punished. It appeared impossible, considering the weight legitimately due to the opinions of the local Governments that the Council should reject so mild a measure of concession to their demand.

The Hon'ble MR. HARINGTON said he had had such frequent occasion, in his capacity of a Member of the Indian Legislature, to speak on the subject of the Bill then under consideration, that he had exhausted all that he had to say in respect of the Bill. He had remarked upon more than one of the occasions referred to, and

he would repeat the remark now, that he was now in favor in the Indian Penal Code being supplemented by the present Bill, as the select Committee had advised that it should be altered, not because he liked the punishment of flogging which the Bill proposed to authorize the Criminal Courts to administer in certain cases—for, in reality, he disliked the punishment—but because in the present condition of Indian society (he, of course, meant that portion of Indian society which, in the event of the Bill becoming law, would be most affected by its provisions), and in the existing state of the Jails in this country, he was of opinion that corporal punishment must be regarded not only as a necessary ingredient in, or part of the Penal Code but absolutely, in a large portion of the cases in which, supposing the Bill to pass it was likely to be inflicted, as more a human and a more merciful punishment than imprisonment for a long period in a Criminal Jail. So far dread of as the punishment operated upon the Native mind to deter from the commission of crime, which was the primary object to be aimed at in every system of punishment, he believed that corporal punishment was more effectual than imprisonment, and looking to contamination which was inseparable from imprisonment in a Criminal Jail in this country, he also believed it was not more demoralizing or, indeed, so demoralizing. He had listened attentively to the objections which had been urged against the Bill with so much ability and feeling by Sir Charles Trevelyan, and he fully appreciated the motives which had actuated Sir Charles Trevelyan's opposition to the Bill. He would not occupy the time of the Council by considering in detail the arguments advanced by Sir Charles Trevelyan against the Bill. Where he to do so, he could only, as regarded the principle of Sir Charles Trevelyan's objections, go over the same ground which Mr. Maine had gone over and repeat much of what Mr. Maine had said so well, and he should therefore content himself with stating his intention to vote for the motion before the Council.

The Hon'ble the RAJA OF VIZIANAGRAM said that he thought flogging a proper and lawful punishment where crimes had in fact been committed. But among all classes of people false cases were frequently got up in this country, and proved by false evidence. The Magistrate might do his best, and yet by the evidence brought before him, he might consider himself bound to convict and to punish with flogging. In such a case, the person wrongly flogged would be injured and disgraced for life. He should like to see something in the nature of a safeguard against such cases as these.

The Hon'ble SIR R. NAPIER admitted that there was much force in what Sir Charles Trevelyan had said, but he could not agree with him that flogging, as a substitute for imprisonment, was an inhuman punishment for the class of people

who were likely to be subjected to it. He thought imprisonment more demoralizing and permanently injurious; for it was most probable that a man who went into prison simply a knave would come out a finished ruffian; that his family might be destitute during his imprisonment; and that if he had had any caste, he would eave the Jail an out-cast. In the old Legislative Council he had expressed his opinion in favour of the Flogging Bill: and he had not changed in the slightest degree the opinions he had expressed on any subject discussed in that Council. He was in favour of the principle of the Bill, but with the permission of the President, he would propose an amendment of the details, at the proper time.

The Hon'ble the Lieutenant Governor said that he would only offer a few remarks with reference to one point which had been alluded to by Sir Charles Trevelyan, and that was as to the reply of the High Court of Bengal, that the reports of the local authorities and the experience of the past year afforded no sufficient data for the formation of an opinion on the effect of the suspension of corporal punishment since the passing of the Penal Code. In this respect he entirely agreed with the Court. The Reports of the local authorities merely showed that a certain number of persons had been convicted of certain crimes the year before the Code came into force, and that there was no increase in the number convicted of the same crimes in the subsequent year. But the reports did not show how the change had operated in increasing the number of persons sent to gaol, and that information he was now in some degree enabled to supply from the Report of the Inspector General of Jails for 1862. From this it appeared that while the number of persons sent to gaol in 1861 was 48,626, in 1862 it was 58,135, being an increase of nearly 10,000 prisoners, or 20 per cent. in a single year. He did not mean to say that this increase was entirely owing to the abolition of corporal punishment but he had no doubt that a considerable proportion of it was due to that cause. The High Court had urged upon the Government the necessity for making yet further improvement in Jail discipline: but this, in the present state of things, was impossible. All the Jails in Bengal were overcrowded The mortality had in some places alarmingly increased, and he had been obliged in some cases to relax the salutary rule which restricts prisoners to intramural labour. Except in the Alipore and perhaps one or two other Jails, any serious attempt at the classification of prisoners was out of the question, the numbers in Jail being far beyond the space required for health much more for the due separation of prisoners. No doubt a remedy for this lay in enlarging the present Jails and building new ones, but where was the money to come from? Sir Charles Trevelyan had said that he would give 40 lakhs rather than that offenders should be punished with whipping: but in fact if it were proposed to spend a quarter of that sum on the Jails in Bengal,—and certainly less would not suffice to accommodate properly even the existing number of prisoners,—the money would not be forthcoming. There had recently been before him estimates

for very needful improvements in Jails, which he could not include in the Budget, because the allotment for public works was not sufficient to cover them : and if this were the case with comparatively trifling sums of a few thousand rupees, what would it be if lakhs were in question. For this reason alone, apart from all others, he should support the Bill.

The Hon'ble RAJA SAHIB DYAL BAHADUR said that juvenile offenders were under Section V of this Bill rendered liable to the punishment of whipping. This, he thought, was an error. In his opinion the imprisonment authorized by the Penal Code was far preferable mode of punishment, because, 1st, the bodies of juveniles were tender, and their bones and limbs had not attained their full development, consequently the infliction of whipping might be attended with the permanent injury: 2nd, as juveniles sinned either from ignorance or the evil persuasion of others flogging was a punishment out of all proportion to the offence. It must also be borne in mind that juveniles, while undergoing imprisonment under the Penal Code, would while in Jail have their education attended to, and be thereby probably reclaimed from their evil courses. Again, under Section IX, a term of only 15 days was allowed for the presentation of an appeal. This term appeared to him totally insufficient for the purpose, because the culprit from whom the appeal should come being in prison, his relations (supposing them to be able and willing to do so) would have to appeal on his behalf, and the 15 days would elapse ere they could hear of his imprisonment, obtain a copy of the sentence, and forward that and all other papers to the Appellate Court. He would therefore propose that in lieu of that Section, another should be substituted, declaring that the punishment of should be only inflicted on the expiry of the term of the imprisonment whipping awarded.

The Hon'ble MR. ROBERTS in reply said that after what had been said, he had only a few observations to offer. As to the apprehension expressed by Sir Charles Trevelyan that the passing of this Bill might lead to the re-establishment of torture which had only been recently trodden out by us ; that the superior Officers would evade the provision which required them to superintend the infliction of the punishment ; that it would be left to irresponsible parties under whom great abuses might take place, he (Mr. Roberts) left bound to say that in his experience of upwards of 25 years, no such abuse had occurred under the old law—that a similar provision existed under it, and had never been evaded by the European Officers. He thought too that the extract from the letter of the Judicial Commissioner of Oudh which had been read by Sir Charles Trevelyan confirmed this view. Mr. Campbell considered that there was a tendency to too great leniency on the part of our Officers. But it appeared to him (Mr. Roberts) that Sir Charles Trevellyan had avoided the main point at issue. It was admitted that Lord William Bentinck

had abolished corporal punishment under a sort of pledge to introduce a system of better prison discipline. Had that pledge been redeemed? The Committee of Prison Discipline had recommended many reforms and improvements, some of which had been carried out, but in his (Mr. Roberts') opinion the system of Prison Discipline was exceedingly bad. The Inspectors of Jails and Officers in charge of Jails did what they could, with the means at their disposal, to keep the Jails clean and healthy and to maintain a certain discipline. Still the Jails were in a most unsatisfactory state. They were overcroweded, and the mortality was was very great. He (Mr. Roberts) had not taken charge of this Bill, or presumed to lay it before Council without seriously considering whether corporal punishment was necessary. He himself would prefer imprisonment under an improved system of Jail discipline, but he was constrained to say that in the present state of affairs, corporal punishment was more humane than imprisonment. Form the returns before him, he found that, in the year 1862-63, as many as 4,700 prisoners died in our Jails in India. He did not include the prisoners sentenced to transportation in the Andaman Islands, but here on the Continent of India, 80 or 90, or even 100, out of every 1,000 prisoners died every year in our Jails. And what did our Jails consist of. Each Jail contained three, four, or more Barracks, in each of which from 50 to 80 or 100 prisoners slept at night. They were not actually huddled together, for each man had a certain space allotted to him. In the day time they all worked together in large yards. Here were all the evils of association and contamination, and our prisoners came out worse characters than when they went into Jail. If either the English or the Irish system of Jail discipline could be introduced, he (Mr. Roberts) would be glad to see corporal punishment abolished. He did not agree with Mr. Maine that the experiments which had been made in Jail management at home had not been successful. From all the reports and returns which he had seen, he thought that a decided impression was being made upon crime and the criminal population. But the cost was enormous. There were in England 146 County and Borough Jails and Houses of Correction, which cost the country close upon half a million sterling per annum. Then there were 12 Convict Prisons which cost another quarter of a million sterling per annum. Besides these, there were Reformatories and Industrial Schools, costing many thousand pounds per annum more. Thus England and Wales had more Jails, and spent annually at least three quarter a million sterling upon Jails for 20 millions of people, while in India, for 140 millions of people, we had not Jails enough, and spent only about 30 lakhs per annum on them. If Sir Charles Trevelyan would devote more funds to the improvement of our Jails and of Jail discipline, he (Mr. Roberts) would be glad to see the abolition of corporal punishment.

The Hon'ble SIR ROBERT NAPIER moved the amendment of which he had given notice,—that in Section X, line 11, "50" should be substituted for "150." He considered that the Bill went too far in allowing so many as 150 lashes. No doubt the instrument with which the punishment was inflicted by the authorities who advocated that number was a mild one. But any over-zeal on the part of authorities removed from supervision might increase the severity of the instrument, and this might render 150 lashes a very excessive punishment. He thought it much better to fix the number at 50 lashes, leaving the Executive Government to determine the description of the cat-of-nine-tails to be used,—since 50 lashes were capable of being made a sufficient punishment, but could hardly be made excessive, whilst he thought 150 lashes opened a very wide range for the exercise of over-severity. He should tremble to think of 150 lashes with a severe instrument, and thought the limit should certainly be reduced.

The Hon'ble MR. ROBERTS explained that, the rattan being the more severe instrument, the number of stripes had been fixed so as to equalize the punishment in each case as far as possible. When the cat-of-nine-tails was introduced into the Madras Presidency as an instrument of punishment, it had been calculated that five lashes of the cat were equal to one stroke of the rattan; and that calculations had been adopted in this Bill. This provision in the Bill was in accordance with the practice in the Madras Presidency.

The Hon'ble MR. MAINE said that if the proportion between the degree of punishment inflicted by the two instruments was lost sight of, the danger was resort would be had to whichever species of punishment was the more severe; he would rather retain the numbers as they stood.

The Hon'ble MR. HARINGTON entirely concurred in what had fallen from the Hon'ble Mr. Maine.

The amendment proposed by the Hon'ble Sir R. Napier was put and negatived.

The original Motion that the Bill be passed with the amendments recommended by the Select Committee, was then put and agreed to.

The following Select Committee was named:—

On the Bill to amend Act VIII of 1851 (for enabling Government to levy tolls on Public Roads and Bridges)—the Hon'ble Messrs. Harington, Maine, Ellis, Roberts and Anderson, and the Hon'ble Raja Sahib Dyal.

The Council adjourned.

CALCUTTA,
The 17th February 1864.

A. G. MACPHERSON,
Offg. Depy. Secy. to the Govt. of India,
Home Dept.