

in these remarks. Well then, should his expectations be realized, and Courts of Small Causes presided over by competent Judges be established at the Sudder Stations of the different districts, and at or in the neighborhood of the large towns and cities in the interior, or wherever there was work for them, with a sufficient extent of jurisdiction which, while it did not place those residing at the extreme limits thereof at too great a distance from the Court, would yet embrace a considerable radius, they would have provided a class of Courts, to the constitution and composition of which he could not conceive that any reasonable objection could be taken, for the final disposal, at a single trial, and generally at a single hearing, under a simple Code of Procedure, of at least one-half—probably referring to what had just been mentioned by the Honorable Member for Bombay—of nearly three-fourths of the entire judicial business of the country, arising beyond the local limits of her Majesty's Supreme Courts of judicature, and he thought he might say that that would not be a small reform in the judicial system of the country. Then the Act relating to the recovery of arrears of rent, for which they were indebted to the Honorable Member for Bengal, had provided a class of Courts, in so far as the Presidency of Bengal was concerned, the best suited, in the opinion of the Honorable Member and of others who thought with him, for the determination in the first instance of all suits arising between Landlord and Tenant or between Landlord and Agent. He thought he should not be guilty of any exaggeration if he estimated the average annual income of such cases in the Lower and North-Western Provinces at 100,000, so that this again was no inconsiderable reform, and here he must congratulate his Honorable friend, the Member for Bengal, on his having been present to-day, as he (Mr. Harington) had hoped he would be, when the assent of His Excellency the Governor-General was given to that great work which had been elaborated by him with so much labor, care, and ability, and which had elicited from His Excellency the high commendation that it would confer a great practical benefit upon the agricultural population of Bengal.

Mr. Harington

For some months past the Council had been engaged in considering in what way improvements could best be effected in the Civil Courts of this country. Various schemes had been proposed and a report had just been made on the subject by the Select Committees upon the Codes of Civil and Criminal Procedure prepared in England by Her Majesty's Commissioners. Whichever of these schemes was eventually adopted, he thought he might say that the Courts to be established under the Act of the Honorable Member for Bengal, and those which might be constituted under the Bill before the Council, should that Bill pass into law, would go far towards the solution of this very difficult question. But they could not stop there; they must go on until they reached the question of amalgamated Courts, that is, as he understood the matter, Courts composed partly of Judges appointed in England, and partly of Judges appointed in this country. It seemed to be the opinion in England that the Council was either unwilling or afraid to enter upon the consideration of this question; but he thought that there must be some misapprehension upon the point. No doubt Her Majesty's Commissioners proposed to establish a High Court in each of the three Presidency Towns and at Agra to take the places of the present Supreme and Sudder Courts, and in the Codes prepared by them they introduced provisions for the constitution of such Court, and for the duties to be performed by it; but in the Bills brought in by the Honorable and learned Member of Council on his left (Mr. Peacock), in which those Codes were embodied, the Chapters, which related to the High Court, were omitted, as he (Mr. Harington) understood, under orders from home, and the question of amalgamation had not yet been submitted for the consideration of the Council, or discussed by it.

He came now to the Section which was objected to by the Honorable and learned Member of Council (Mr. Peacock), and to the scheme contained therein.

He was quite ready to admit that he attached comparatively little importance to this part of the Bill. From the first he had considered the main or

primary object of the Bill to be the establishment of separate Courts of Small Causes as calculated to give greater satisfaction, as well to the Government as to the people, in the decision of the cases which would be triable by those Courts than Courts exercising both general and what was understood by Small Cause jurisdiction. The investment of existing Courts with jurisdiction to try cases under the Bill had been with him all along a secondary consideration. In framing the Bill, however, he felt that, if he confined its operation to the establishment of separate Courts of Small Causes, the jurisdiction of which could not possibly be extended to all parts of the country, he should be depriving a very large section of the community of the benefits of what was called the Small Cause system, and that the Bill would, therefore, to a certain extent, be a partial one. In saying this he begged to observe that he did not consider that the Government was bound to give exactly the same kinds of Courts to all classes of its subjects. Persons residing in desert places, or amongst a scanty population, where there was little if any trade, or at a distance from large towns, were not, in his opinion, entitled to claim Courts of the same character and in the same number as persons residing in populous places or in places where there was a large amount of trade. Equality in this respect would be impossible, nor could any Government afford it. If people chose, for their own convenience, to live in out-of-the-way spots, they must be satisfied with such Courts as the Government could give them.

But still, if a system of Courts for the trial of Small Causes was to be introduced in the Mofussil, it was obviously just and proper that it should be extended as widely as possible. He had, therefore, to consider in what manner this could best be done. Two ways presented themselves, by which the benefit of the system might be spread over a much wider extent of country, and might be made to reach a much larger number of persons than if separate Courts only in particular localities were established. The first way was that proposed in the Bill, namely, to allow the local Governments to invest

any existing Courts with Small Cause jurisdiction up to a certain amount. The other way was that suggested by the Honorable and learned Member of Council, namely, to constitute every Moonsiff's Court a Court of Small Causes for the trial and determination of certain classes of suits up to ten or twenty Rupees, or even more. Now, except as to the amount, this was exactly the scheme which was proposed by the Honorable and learned Member of Council when the Bill for the more easy recovery of small debts and demands was under the consideration of the Council, and the arguments adduced by the Honorable and learned Member in favor of his proposition, and the objections urged by him to the scheme contained in the Bill were, in fact, little more than a reproduction of all that was said by him in the discussions which took place on the Bill to which he had just referred. But the Honorable and learned Member appeared to have overlooked the obstacle which had been intermediately raised up in the way of the adoption of his plan. That obstacle was the almost unanimous verdict which had been pronounced by those best competent to give an opinion on the subject, against the scheme of the Honorable and learned Member of Council, and in favor of the scheme proposed in the Bill. Amongst those who had joined in that verdict were the Governments of Madras and Bombay; the Lieutenant-Governors of Bengal and the North-Western Provinces; the Sudder Courts at Madras, Bombay, and Agra; the majority of the Sudder Court at Calcutta, and a very large majority of the Zillah Judges; and he said now, as he had said before, that surely this Council would not run counter to the opinions of all those authorities and force upon the country a scheme which had been so strongly condemned by them. It was entirely owing to this scheme having been brought forward, contrary to the advice of the original framers of the Bill for the more easy recovery of small debts and demands, that the country was not now covered or nearly covered with Courts of Small Causes, either separate Courts, or invested Courts. It was owing in a great measure to the same cause that the question of establishing Courts of Small Causes, the necessity

for which was so generally admitted, had been allowed to lie dormant for so long a period. Looking then to the effect which had been produced by the proposition of the Honorable and learned Member of Council, when formerly made, and to the very decided opposition which that proposition had met with, he (Mr. Harington) must be allowed to express his regret and surprise that the Honorable and learned Member of Council should again have brought it forward, and that, too, notwithstanding that no change of circumstances had immediately taken place. He would not occupy the time of Honorable Members by reading the opinions to which he had referred, but he begged Honorable Members carefully to consider those opinions before they gave their vote in favor of the Honorable and learned Member's Motion. Surely the Honorable and learned Member of Council must admit that young natives, of whose antecedents they might be entirely ignorant; of whose character they might really know scarcely any thing, and of whose qualifications for the important office of Judge, all that they knew was that they had passed an examination, the written questions proposed at which were, in all probability, surreptitiously obtained by them beforehand, were not the men to be entrusted immediately on their elevation to the Bench, when in the great majority of cases they must necessarily be devoid of all judicial experience, with a final jurisdiction in about nine-tenths of the suits, which would come before their Courts, and that, too, in a country where there was neither press nor any public opinion to exercise an influence upon them. Yet such would be the case if they agreed to the amendment of the Honorable and learned Member of Council. If that amendment were carried, he (Mr. Harington) could only repeat what he said when he introduced the Bill, namely, "that they would be commencing at the wrong end; that they would be giving large powers to those who were the least fit to be entrusted with them, and that, too, over the most indigent and most helpless classes of the people, who could ill afford to lose the smallest sum, and who were the most destitute of power to complain or make known their grievances." Now the scheme contained in

Mr. Harington

the Bill was open to none of these objections. Where a separate Court of Small Causes might be established, there would be no necessity for investing any existing Court, holding its sittings within the same local limits, with Small Cause jurisdiction. Where there was no such separate Court, it would be competent to the local Government to invest any existing Court with jurisdiction to try cases under the Bill not exceeding in amount or value the sum of fifty Rupees. The Sudder Courts would always be at hand to advise the local Governments as to the qualifications and merits of the Officers employed under them, and he thought they might safely trust the local Governments to extend the system to all parts of the country as fitting instruments could be found for carrying it out. But the Honorable and learned Member of Council said that the inhabitants of those places in which there was no Small Cause Court, nor any Court invested with Small Cause jurisdiction, would complain, and as he thought, with justice, that they were excluded from the benefits of the system; they would say that it was hard upon them that they should be obliged to put up with an inferior Judge, and that, because he could not be trusted, his decisions, even in cases of the smallest amount, should be open to appeal. But did the Honorable and learned Member really believe that such a complaint would ever be made? He (Mr. Harington) thought, as he had remarked on a former occasion, that those who were to be deprived of the right of appeal under the Bill would complain of the loss, not that they should hear any complaints from those who, from whatever cause, were to be left in the enjoyment of that right. What did the natives say—why, that if the right of appeal was taken away, our judicial system would be no better than that which obtained under native rule. It was this fondness for appeal, and not the dislike to it, from which it seemed so desirable to detach the natives of India. This the Bill proposed to do by degrees, or again to quote the words of the Honorable the Lieutenant-Governor of Bengal,

"Gradually to introduce into the large towns and marts, and thence, step by step, into



other places in the interior. Small Cause Courts, after the pattern of the successful Court in Calcutta, thereby weaning the natives from their attachment to judicial formalities and continuous appeal, and, by little and little, accustoming them to the use of simple, informal, and final Courts of justice, just as the natives of Calcutta had been gradually accustomed to the Calcutta Small Cause Court, until it had become with them an entirely favorite institution."

It should be borne in mind that the Bill would not take away any thing from those places to which its provisions did not extend; they would be left, as at present, only with a much better and much simpler Code of Procedure. The Honorable and learned Member of Council thought that this Council might, with equal propriety, empower the local Governments to determine to what extent every Sessions Judge should have power to punish within certain limits, as to declare from what Moonsiffs' decisions an appeal should lie, and what Moonsiffs' decisions should not be open to appeal, for such he said would be the real effect of the Section as now framed. But surely there was a great difference between Officers holding the appointment of Civil and Sessions Judge, which was never given except to old and experienced Members of the Covenanted Civil Service, and young natives entering the service of Government for the first time, of whom, as he had said, they often knew little, if any thing, at the time of their appointment, and who, in the great majority of cases, had had no judicial experience. It was to the giving to these young men indiscriminately final jurisdiction in any class of cases, that he (Mr. Harington) entertained such strong objections. The Honorable Member for Bombay, in the amendment proposed by him, did not object to the principle of allowing the Executive Governments to invest any existing Courts with Small Cause jurisdiction, but as he seemed to think that the Lower Courts could not be trusted as a body, or at any rate that they did not enjoy the confidence of the people, the Honorable Member was of opinion that, in fixing the amount or value of the suits in which that jurisdiction might be exercised, at fifty Rupees, too high a sum had been taken, and he proposed to reduce it to ten Rupees. The question therefore at

issue between himself and the Honorable Member for Bombay was one merely of degree. Now it certainly did not appear to him (Mr. Harington) that there was any such difference between simple actions of debt and the like for fifty Rupees, and suits below that sum; that, if the Government were to be invested with the discretionary power contemplated in the Section at all, they could not be safely entrusted with the exercise of it to the extent proposed. He should therefore vote against the amendment of the Honorable Member for Bombay, as well as against the Motion of the Honorable and learned Member of Council.

Mr. FORBES said, before the Council came to a decision, he desired to say a few words on the Motion of the Honorable Member for Bombay. The Honorable Member proposed to limit Small Cause jurisdiction to ten Rupees. But the Council were probably aware that, in Madras, District Moonsiffs had had jurisdiction to the extent of double that amount since 1816; and he would read to the Council the opinion of an Officer fully competent to speak upon the question of how far this unappellate jurisdiction had been exercised to the satisfaction of the people. Mr. Morehead (who was now a Member of the Madras Government) had said:—

"As a body I consider the District Moonsiffs intelligent and upright, and that, with few exceptions, they possess the confidence of the people. The files of their Courts are heavy, the average of appeals from their decisions is small, and in the exercise of their summary jurisdiction they have succeeded well; suits of this nature are speedily disposed of, parties do not complain of such decisions, and no representations that I am aware of have been made by the Civil Judges reflecting upon the manner in which this portion of their duties has been performed. It must moreover be borne in mind that our District Moonsiffs have exercised this summary jurisdiction since 1816, and no clamour has been raised against it, which could hardly have been the case had it been attended with evil results."

That was the opinion of a gentleman who had been thirty-five years in the Judicial Service, and for twelve or fifteen years a Judge of the Sudder Court; and it showed very clearly that the opinion expressed by the Honorable Member for Bombay, that the people would view the

grant of unappellate jurisdiction even as far as in cases of only ten Rupees in amount with great dissatisfaction, was not founded on what had been the experience in Madras during the last forty years.

He was in favor of an extension of that unappellate jurisdiction at the discretion of the Government as far as fifty Rupees, and he should vote for the Section as it stood.

MR. LEGEYT said, he should be very glad himself to see the unappellate jurisdiction increased, but he believed that, unless they got these cases decided by European Judges or by Natives of the highest character, the people would not be satisfied.

The picture drawn by the Honorable Member for the North-Western Provinces was a delightful one to contemplate, but he could form no hope that that picture would be realized by this Bill. The Honorable Member had said that it would be the duty of Government to appoint qualified Officers to preside over the Courts to be constituted under the Bill. There was no doubt that this should be so. But was there in the present day any reasonable prospect of such a result? The tendency at present was reduction everywhere.

He had in his hand a Bombay Return, where he found that in the district of Poonah 8,374 suits were decided in the year before ten Native Judicial functionaries. Of these not more than 374 were for sums above fifty Rupees, leaving 8,000 suits for sums below fifty Rupees, which would, under this Act, have to come before Small Cause Courts. That would give an average of 800 suits in the year to a Small Cause Court Judge. He saw from this return that a very industrious and hard-working Native Judge in this same district of Poonah, could only get through 600 suits, and the Sudder Ameen, who was a very able Officer, could only decide 700 or 750 suits in the year. Therefore he did not expect that, with all the preparation of the suits, the execution of decrees, &c., they could get any Small Cause Judge to decide 800 suits in the year. But even if that were possible, was there any probability of Government giving ten Small Cause Judges to

Mr. Forbes

each zillah? He did not know what ground there was for supposing that people at large would be willing to accept of final jurisdiction up to fifty Rupees. His object in limiting the amount to ten Rupees was that he did not see how any man in his senses could object to so small a sum not being open to appeal. Nothing would rejoice him more than to see the picture drawn by the Honorable Member for the North-Western Provinces realized throughout the length and breadth of the land, but he believed it hopeless to expect such a result.

Mr. LeGeyt then withdrew his amendment with a view to supporting the Section proposed by the Honorable and learned Member (Mr. Peacock).

MR. HARRINGTON said, the Honorable Member for Bombay seemed to think it was hopeless to expect that a sufficient number of Courts would be established for the disposal of the large number of cases which would be cognizable under the provisions of the Bill, and in support of what he had stated upon this point, he instanced the fact that in the district of Poonah ten Judges were able to dispose of only 8,000 cases per annum; but the three Judges of the Small Cause Court at Calcutta disposed of upwards of 30,000 cases in the course of last year, and under the new Code of Civil Procedure, which, whatever might be thought of it in some quarters, was certainly less cumbersome in its character than the Code now in force in Bombay, he (Mr. Harrington) saw no reason why the Courts, which might be established under the Bill, should not be able to dispose of nearly the same amount of work, or, at any rate, of a very much larger number of cases than was decided by the existing Courts under the present Regulations. Her Majesty's Commissioners had declared that the procedure proposed by them would be equally expeditious with that of the Courts of Small Causes at Calcutta, Madras, and Bombay, and whether the changes made in this country were to be regarded as improvements or the contrary, they certainly had not altered the character of the Code in the respect just mentioned. He was prepared to admit that the new Code threw more

upon the Judges than was the case at present, but they had a right to expect that those whose duty it would be to work the Code would not be wanting in doing what was required of them. This Council could only make laws; they could not compel obedience to them; this was the duty of the Executive Government, and they could only hope that no laxity would be permitted.

The Honorable Member for Bombay having asked to be allowed to withdraw his amendment, he (Mr. Harrington) thought he might fairly claim the Honorable Member's vote against the Motion of the Honorable and learned Member of Council on his left (Mr. Peacock). The reason assigned by the Honorable Member for Bombay for proposing that the sum mentioned in the Section under discussion should be reduced from fifty to ten Rupees was that the Courts which might be invested with jurisdiction to try cases under the Bill did not as a body enjoy the confidence of the people. Such being the case, he (Mr. Harrington) did not see how the Honorable Member for Bombay could consistently vote for the amendment of the Honorable and learned Member of Council, which proposed to give to all Courts indiscriminately, whoever might preside in them, a final jurisdiction in suits up to twenty Rupees.

MR. LEGEYT said, he did not know if it was necessary for him to reply to the charge of inconsistency brought against him by the Honorable Member for the North-Western Provinces. He would only say that his opinion had always been for giving final jurisdiction everywhere throughout India without distinction, in suits of very small amount or value. He should have preferred the limit to be fixed at ten Rupees; but after what had fallen from the Honorable Member for Madras, as to the results of the system obtaining in that Presidency, if the Council felt disposed to raise the limit to twenty Rupees, he would not object to it.

MR. CURRIE said, the question, as he understood it, was whether they should invest certain Courts (the Courts of Moonsiffs) indiscriminately with final jurisdiction up to twenty Rupees. He wished to say upon this question that he did not think it would be safe

to give such a power to young men who, after passing a mere technical examination, were ordinarily appointed to the office of Moonsiff. In considering the jurisdiction to be conferred by the Rents Bill, he had proposed at first to give to Deputy Collectors a power of final adjudication in cases of certain amount, but on further consideration, and in deference to the opinions of several Officers of experience, he had concurred in an alteration made by the Select Committee, under which the cases in which he had proposed to give final jurisdiction, when decided by Deputy Collectors, were made appealable to the Collectors. Consistently therefore with the course which he had followed upon the occasion, he could not now vote in favor of giving final jurisdiction to Moonsiffs who, as a class, he believed to be greatly inferior to the Deputy Collectors.

MR. PEACOCK said, he wished to add a few words. The Honorable Member for Madras had admitted that for several years past Moonsiffs had exercised final jurisdiction up to twenty Rupees. He (Mr. Peacock) remembered that, when the old Small Cause Court Bill was under consideration, the question was asked, if Moonsiffs could be trusted with that jurisdiction in Madras, why should not the Moonsiffs in Bengal and Bombay be equally trusted? The Honorable Member for the North-Western Provinces said that he (Mr. Peacock) had overlooked the objections made to the passing of the former Bill. He had not done so. That Bill proposed to give final jurisdiction to the extent of fifty Rupees, whereas he now proposed to give it up to twenty Rupees. He would not press his opinion against those who thought that the Moonsiffs, as a body, were incompetent to be trusted with final jurisdiction up to fifty Rupees, but he thought that what had worked well in Madras would probably work well in the two other Presidencies. It was a fallacy to call the Courts, to be constituted under the Bill, Small Cause Courts.

He also thought that Zillah Judges should be entrusted with Small Cause jurisdiction up to five hundred Rupees.

MR. HARRINGTON said, he desired to explain that he did not object to that part of the Honorable and learned Member's amendment which proposed to invest the Zillah Judges with a final appellate jurisdiction in simple actions of debt and the like, in which the amount or value in dispute did not exceed the sum of five hundred Rupees. To that part of the Honorable and learned Member's scheme it was not his intention to offer any opposition, nor had he said one syllable against it; what he objected to was the proposal to give a final jurisdiction in suits up to twenty Rupees to all Native Judges without any distinction.

MR. PEACOCK, with the leave of the Council, withdrew his amendment, and stated his intention of dividing it into two, so as to bring each forward separately. He should now content himself with merely voting against the Section under discussion. If the Moonsiffs in Madras could exercise final jurisdiction up to twenty Rupees, not only in claims for debt, but also in suits relating to land, he confessed he saw no reason why the Moonsiffs in Bengal and Bombay should not be vested with that jurisdiction in suits cognizable under this Bill.

MR. HARRINGTON said, so much stress had been laid upon the fact of the whole of the Moonsiffs in the Madras Presidency having a final jurisdiction in all suits, as well for real as for personal property, up to twenty Rupees, that he considered it necessary to read to the Committee what had been said of these Officers by the Madras Sudder Court. On the 14th July 1854 the Court declared that they were not men whose honesty was unimpeachable, and in whose efficiency in the discharge of their duties every reasonable confidence might be reposed. Here they had the opinion of the highest Appellate Court at Madras in respect of the Judges in whose favor so much had been said in the course of this debate, and it must be presumed that the Sudder Court at Madras had good grounds for the opinion which they had given. But whatever might be the character of the Madras Moonsiffs, this Bill did not propose to deprive those Officers of any jurisdiction now vested in them. That

would remain untouched. There was a great difference, however, between giving a new jurisdiction and taking away a jurisdiction which had been long exercised. He must repeat that the Bill would leave the residents of those places to which its provisions were not extended in the full enjoyment of all that they now possessed; while as regarded the question of appeal, he believed that if the country were canvassed, a very large majority of the people would be found voting for the continuance of the present system with its right of appeal in every case, rather than for the introduction of a system which, though it might give them a superior Judge, proposed to deprive them of a privilege to which they attached the greatest importance, and which was highly valued by them.

The question being then put that Section XIX stand part of the Bill, the Council divided—

Ayes 3.

Mr. Forbes.
Mr. Harrington.
Mr. Currie.

Noes 4.

Mr. LeGeyt.
Mr. Peacock.
Sir J. Outram.
The Chairman.

So the Section was negatived.

MR. PEACOCK moved the introduction of the following new Section after Section XVIII :—

"No appeal shall lie from a decree of any existing Court subordinate to a District Court in any suit of the description contained in Section II, when the debt, damage, or demand shall not exceed twenty Rupees, but every such decree shall be final."

Agreed to.

MR. PEACOCK moved the addition of the following proviso to the above Section :—

"Provided that the provisions of Section IX and the proviso in Section XI shall be applicable to every suit in which the decree is by this Section made final."

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

MR. PEACOCK moved the introduction of the following new Section after the above :—

"No special appeal shall lie from any decision or order passed on regular appeal by

any Court subordinate to the Sudder Court in any suit of the nature described in Section II, when the debt, damages, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees. But every such order or decision shall be final."

Agreed to.

MR. PEACOCK moved the introduction of the following new Section after the above :—

"In every case in which a decree or decision is, by the two last preceding Sections, made final, the Court passing the final decree or decision shall have the same power to draw up a statement of the case for the opinion of the Sudder Court as is hereby vested in a Court of Small Causes, and all the provisions of this Act relative to statements drawn up by Courts of Small Causes shall be applicable to statements drawn up under the provisions of this Section."

Agreed to.

MR. LEGEYNT asked leave to go back to Section V, with a view to moving an amendment, the effect of which would be highly beneficial, and would give the Bill the only chance of being universal. It would vest in Small Cause Courts the power of trying suits above twenty Rupees wherever Small Cause Courts might exist; and with regard to the zillah of Poonah, one or two Small Cause Courts would be able to get through all the other suits between two and twenty Rupees, which he could only call rubbish. This would give a very fair chance of Small Cause Courts being really established. Surely if a case under twenty Rupees could be decided by the Moonsiff on one side of the hedge, the same should be done by the Moonsiff on the other side also. He would ask if there was any reasonable hope of Small Cause Courts being established except at a very few places. It was all very well to say that these Courts would pay their own expenses. The sums now realized by Stamp Duties were all taken to credit, and it was perfectly illusory that any larger revenue would be derived. It should also be remembered that a large increase of establishment would be required consequent on the establishment of the Small Cause Courts. He therefore proposed that the words "for any amount exceeding twenty Rupees" be

inserted after the word "Act" in line 5.

MR. HARRINGTON said, the object chiefly aimed at in the present Bill was the improvement of the Courts, by which the great mass of the Civil judicial business of the country was now disposed of, or, he should rather say, the introduction of a superior class of Courts in their places, to which much larger powers might be safely confided, and it could hardly be necessary for him to tell the Committee that this object would be very partially attained if about three-fifths, or, he might perhaps say, even a larger number of the cases, for the adjudication of which it was proposed to create new Courts, were to be excluded from their cognizance, which would be the obvious effect of the amendment moved by the Honorable Member for Bombay, if he had rightly understood that amendment. They were constantly told that the Moonsiffs' Courts, by which all petty actions of debt and the like were now heard, were bad, that they were corrupt, and that they did not command the confidence of the public; and yet when it was proposed to provide a better class of Courts for the adjudication of the greater portion of the cases now cognizable by these much abused Courts, the Honorable Member for Bombay came forward with a Motion which, if adopted, would exclude all these numerous cases from the jurisdiction of the new Courts, and leave them to be determined as at present, though with this difference, in consequence of the amendment which had just been made in the Bill on the Motion of the Honorable and learned Member of Council on his left (Mr. Peacock), that the decisions passed in them would be no longer open to appeal. But the Honorable Member for Bombay said, the cases which would be embraced by his amendment were nothing more than rubbish. If such were indeed the case; if three-fourths of the Civil suits of the country answered the description given of them by the Honorable Member for Bombay, and it mattered little what was the character of the Judges who decided them, it certainly seemed to him (Mr. Harrington) open to question whether it would not

be better to adopt the suggestion which was made not long ago by a Member of the Civil Service in the North-Western Provinces, now no more, and declare that no action for debt or damage up to a certain amount should be sustainable in any Court. The Honorable Member for Bombay seemed to think that the Government would never consent to establish Courts with high paid Judges in such numbers as would be necessary for the disposal of the great mass of petty litigation which now found its way into our Courts, and that it was only by adopting his amendment that any benefit might be expected to result from the passing of this Bill. He (Mr. Harington) had already expressed his belief that the Courts which he wished to see established, if judiciously placed, would more than cover the expense of maintaining them. He found that the fees paid into the Small Cause Court at Calcutta during the past year exceeded the cost of that Court by several thousand Rupees, and the same was the case in respect to the Moonsiffs' Courts, at least in the North-Western Provinces, though if the Courts, the establishment of which this Bill contemplated, were not to have jurisdiction in cases under twenty Rupees, and the present Moonsiffs' Courts were to be kept up for the disposal of cases below that sum, which would be necessary if the amendment of the Honorable Member for Bombay should be carried, they could scarcely expect the Government to go to the expense of establishing separate Courts of Small Causes, certainly not in any number. Should this Bill pass into law in the form in which the majority of the Select Committee had recommended that it should be passed, he (Mr. Harington) looked forward to a considerable reduction in the present number of Moonsiffs' Courts, particularly now that they had got the Act relating to the recovery of arrears of Rent in Bengal, which had been brought in by his Honorable friend opposite (Mr. Currie). He would take the District of Benares as an instance. There were now employed in that District no less than four Moonsiffs and a Principal Sudder Ameen, all of whom held their Courts

Mr. Harington

in the city of Benares or within a short walk of it. He believed that a Small Cause Court presided over by a competent Judge and a single Court for the trial of suits beyond the jurisdiction of the Small Cause Court would be amply sufficient for the whole District with, of course, a suitable Appellate Court, so that in this one district alone there would be a reduction of three badly paid Courts, and so on. He was aware that under the scheme proposed by him the parties in suits relating to real property, or in which the amount or value in dispute might exceed the jurisdiction of the Small Cause Courts, would have to travel farther for justice than at present, but in such cases distance would not be of so much consequence as in petty actions of debt and the like, and the parties would not feel in the same degree the little additional expense or delay to which they would be exposed from this cause. He should vote against the Motion.

MR. LEGGEYTS Motion being put, the Council divided—

Ayes 4.	Noes 3.
Mr. LeGeyt.	Mr. Forbes.
Mr. Peacock.	Mr. Harington.
Sir James Outram.	Mr. Currie.
The Chairman.	

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

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

ADJUDICATION OF FORFEITURES.

MR. GRANT announced that the Governor-General had signified his assent to the Bill "to provide for the adjudication of claims to property seized as forfeited."

SALES OF LAND FOR ARREARS OF REVENUE.

MR. GRANT moved that Sir James Outram be requested to take the Bill "to improve the law relating to sales of land for arrears of revenue in the

Bengal Presidency" to the Governor-General for his assent.

Agreed to.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the prevention of fraudulent transfers of property and of secret trusts."

Agreed to.

LIMITATION OF SUITS.

MR. HARRINGTON moved that Sir James Outram be requested to take the Bill "to provide for the limitation of suits" to the Governor-General for his assent.

Agreed to.

SMALL CAUSE COURTS.

MR. HARRINGTON moved that the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" be re-published for two months.

Agreed to.

PILOT COURTS (BENGAL).

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

BREACHES OF CONTRACT BY ARTIFICERS, &c.

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 7, 1859.

PRESENT:

The Hon'ble Lt.-General Sir James Outram.
Hon'ble B. Peacock, H.B. Harington, Esq.,
P. W. LeGeyt, Esq., H. Forbes, Esq.,
and
Hon. Sir C. R. M. Jackson.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Saturday, May 14, 1859.

PRESENT:

The Hon'ble Barnes Peacock, Vice-President,
in the Chair.

Hon. Lieut.-Genl. Sir J. Outram, H. Forbes, Esq.,
Hon. H. Ricketts, Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq., and
H. B. Harington, Esq., A. Sconce, Esq.

SALE OF LAND FOR ARREARS OF REVENUE (BENGAL); PILOT COURTS (BENGAL); BREACHES OF CONTRACT BY ARTIFICERS, &c.; AND LIMITATION OF SUITS.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency"—the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty"—the Bill "for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases"—and the Bill "to provide for the Limitation of Suits."

EXCLUSIVE PRIVILEGES TO INVENTORS.

The following Message from the Governor-General in Council was also read by the Vice-President:—

MESSAGE No. 177.

With reference to the Message from the Legislative Council, No. 95, dated the 2nd October 1858, the Governor-General in Council has the honor to forward to the Legislative Council copy of a Despatch No. 3, dated the 31st March 1859, from the Right Honorable the Secretary of State for India, together with the Draft Act, therewith received, "for granting exclusive privileges to Inventors," which has received the sanction of the Crown.

By order of His Excellency the Governor-General in Council.

W. GREY,
Secy. to the Govt. of India.
Fort William, the 11th May 1858.

NEW MEMBER.

THE CLERK reported to the Council that he had received a letter from the Bengal Government, intimating that the Lieutenant-Governor had nominated Mr. Sconce to be a Member of the Legislative Council.

Mr. Sconce was duly sworn, and took his seat.

VILLAGE WATCHMEN (BENGAL).

THE CLERK presented a Petition from Emmadooddeen Mahomed of Beerbhoom, concerning the Bill "to regulate the appointment, employment, and dismissal of Village-watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

MR. RICKETTS moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

CATTLE TRESPASS.

THE CLERK presented a Petition from the Indigo Planters' Association, praying for the enactment of a law, similar to Section IV Regulation V. 1830 of the Bengal Code (repealed by Act III of 1857), which provided a punishment for wilful damage to indigo plant by other means than Cattle Trespass.

MR. LEGEYT moved that the Petition be referred to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

Agreed to.

REGULATION OF CONVEYANCES (STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement with the draft of an Act for the regulation of hack carriages, passenger boats, and other conveyances in that Settlement.

MR. LEGEYT moved that the communication be printed.

Agreed to.

SIR JAMSETJEE JEEJEEBHAY'S ESTATE.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for settling a sum of money, and a mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith." At the same time he begged to move that the Report be read by the Clerk, with a view to his (Mr. Legeyt's) afterwards moving its adoption by the Council. His reason for doing so was that the family and friends of the late Baronet were extremely desirous that the Bill should be settled, in accordance with the wishes of the deceased Baronet, as speedily as possible. He had received several communications on the subject from the Bombay Government, who were of opinion that the Council would be conferring a great favor on the family of the late Baronet if the Bill were passed at once. The Bill was so completely of a private nature, that it was scarcely necessary that there should be the delay of printing and circulating the Report previously to its adoption.

The Motion was carried, and the Report read accordingly.

MR. LEGEYT then moved that the Report be adopted.

MR. PEACOCK said, he regretted very much that any delay had taken place in the passing of this Bill, especially as the sons of the late Baronet were most anxious to carry out their father's intentions at once. But there were certain recitals in the Bill which required alteration to adapt them to the present state of circumstances, and the Select Committee were not in possession of sufficient information to enable them to make the necessary alterations. For instance, the Bill said that Sir Jamsetjee Jeejeebhoy was possessed of a mansion-house and appendages called Mazagon Castle. The Select Committee could not know who was at present in possession of Mazagon Castle, or whether it had descended to the present Baronet, or had been devised by the will of the late Sir Jamsetjee Jeejeebhoy.

Another difficulty was that it was proposed to incorporate certain Government Officers at Bombay as trustees of the property to be conveyed for the support of the title. One of those Officers was the Commissioner of Revenue. It was not impossible, nor indeed improbable, that that office might be abolished, and it was therefore necessary to make some provision for the re-construction of the Corporation in the event of the abolition of any of the offices of which the holders were to be ex-officio trustees under the Act. He (Mr. Peacock) did not think it right that the Select Committee should, without the consent of the present Baronet and the other persons entitled, provide for the re-construction of the Corporation in the event of the abolition of any of the said offices. It appeared to him, therefore, that the Report just read should be adopted and sent to the present Baronet. The Council could consider any other Bill which the present Baronet might think proper to submit to them.

The Motion was carried.

REPEAL OF ACTS AND REGULATIONS.

MR. HARRINGTON moved the first reading of a Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter." He said, this Bill was intended as a supplement to the Act which had lately been passed by the Council for simplifying the Procedure in the Courts of Civil Judicature in this country, not established by Royal Charter, and which, having received the assent of His Excellency the Right Honorable the Governor-General, was now enrolled amongst the Statutes for India as Act No. VIII of the current year. The Act concluded by declaring that, from and after the time when it should come into operation in any part of the British Territories in India, the Procedure of the Civil Courts in such parts of the said Territories should be regulated by the Act, and, except as otherwise provided by the Act, by no other Law or Regulation. The Section in which this declaration was contained did not form part of the Bill, as originally prepared, but was added in Com-

mittee of the whole Council, as it was considered that the Code would not be complete without it. It was at the same time intimated that this Section was not intended to do away with the necessity of any further legislation on the point to which it related, but that it was proposed, as soon as the new Code of Procedure became law, to bring in a Bill to repeal all existing Regulations and Acts or parts of Regulations or Acts which would be superseded by its provisions. The Bill, of which he was about to move the first reading, had been framed in pursuance of the intention thus expressed. The Preamble recited the reasons which had rendered the introduction of the Bill necessary. This was followed by a single enacting Clause in the usual terms of a repealing Act, and then came a Schedule, in which, as appearing to be the most convenient mode of proceeding, the whole of the laws proposed to be repealed were thrown together in columns with suitable headings. This Schedule had been carefully prepared with the assistance of the Honorable Members for Madras and Bombay, and of the Clerk and Assistant Clerk of the Council, and it was hoped that it would be found to contain all the Regulations and Acts now in force in the three Presidencies, which would cease to have effect from the dates on which the new Code of Civil Procedure would come into operation in those Presidencies respectively. The opportunity had also been taken to repeal a number of Regulations relating to the late Courts of Appeal and the Courts of the Zillah Registers, which, in consequence of the abolition of those Courts, had long been a dead letter, but which still encumbered the Statute Book. The total number of Regulations and Acts proposed to be repealed, either wholly or in part, was a hundred and thirty-eight; of these eighty would be entirely repealed, and fifty-eight partially. These Regulations and Acts were scattered through a large number of volumes, and extended over a period of upwards of sixty years, commencing with the year 1793. So that, regarded merely as a work of codification, if it had no higher merit, the new Code of Civil Procedure, the whole of which was con-

tained in the small thin volume which he held in his hand, would, he thought, prove an immense boon to the various Courts of Civil Judicature spread over this vast country, whose proceedings were to be regulated by its provisions, as well as to the people at large. Should the Council permit the Bill to be read a first time, he proposed to ask for the suspension of the Standing Orders to enable him to move that the Bill be read a second time also to-day. This Motion, if carried, would be followed by the publication of the Bill for general information in the next issue of the *Calcutta Government Gazette*, and he proposed further to move that the Select Committee, to which the Bill would be referred in the usual course, be instructed to make their report within six weeks from this date. He thought that this would allow ample time for the Select Committee to receive from the Local Governments any suggestions which they, or the Officers subordinate to them, might wish to make, either for the purpose of supplying any omissions which might have occurred in the preparation of the Schedule annexed to the Bill, or with a view to the removal therefrom of any laws which had been improperly inserted. With regard to Bombay, which, in so far as the transmission of letters by post was concerned, was the farthest removed from them, he might mention that the whole of the Regulations relating to the Procedure of the Civil Courts of the East India Company in that Presidency, having been codified in the year 1827, it would not be necessary for any of the Bombay officials who might feel disposed to assist them on this occasion to go back beyond that year, and their work of revision would, consequently, be comparatively light. It could scarcely be necessary for him to remark that it was very desirable that the Bill which he wished to introduce, and the Act containing the new Code of Civil Procedure, which, as he had said, the Bill was intended to supplement, should come into operation at the same time. In the Presidency of Bengal the new Code of Civil Procedure would take effect from the 1st July next, which was now close at hand, and in Madras and Bombay from the 1st January 1860, or such

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earlier day as the Local Government in those Presidencies respectively should fix and publicly notify in the *Gazette* of the Presidency, three months at least before the date so fixed, and, notwithstanding what had lately been stated in another high quarter, he must say that it would be a great disappointment to him, and he thought he might add that it would be a subject of deep and universal regret if any thing occurred to prevent the Code from coming into operation in the three Presidencies on the dates which he had mentioned. But should such a misfortune happen, and knowing from a long judicial experience the great benefits which might be expected to result from the introduction of the new Code, he could call such a contingency by no other name, the Bill now proposed for adoption, even if it should have passed into law at the time, would be simply inoperative, and he could see no reason, therefore, for their delaying to pass that Bill until they were informed of the result of the attempts which they had reason to believe were being made to render nugatory, for a time at least, the labors of this Council, in preparing and bringing to maturity a Code of Civil Procedure for all India, though at first it was not intended to apply to the Courts established by Royal Charter. Honorable Members who had read the Minute on the subject of the amalgamation of the Supreme and Sudder Courts at Madras, which had lately appeared in the public prints, and to which the signature of His Excellency the present Governor of Madras was affixed, would, he thought, consider that he had good grounds for what he had just stated as to what was being done to suspend, if not to stop altogether, the action of the new Code of Civil Procedure which had been prepared and passed by the Council. Looking to the constitution of the Local Governments and to the relation or subordination in which they stood to the Supreme Government, of which there could be no question this Council was a component part, some doubt might be entertained as to the authenticity of the document to which he had alluded, but he believed that he should not do wrong if he assumed that

document to be authentic, and referred to it under that assumption. His Excellency the Governor of Madras in this Minute expressed a hope that Her Majesty would be advised to disallow the Act in which the new Code of Civil Procedure was contained. An uninitiated person, or any person not fully master of the subject, would naturally be led to suppose that the hope thus expressed was grounded on a belief or conviction that the Code, considered merely as a Code of Procedure—and it did not profess to be any thing more—was defective in itself; that it did not answer its title; that this Council having been required to prepare a Code for simplifying the Procedure of the Courts of Civil Judicature in this country had failed to accomplish that object, and that little, if any, advantage would result from introducing the Code prepared by them in supersession of existing enactments. But this was not the ground on which His Excellency the Governor of Madras had based the hope expressed by him that Her Majesty would be advised to disallow the Act containing the new Code. The objection urged to the Code by His Excellency the Governor of Madras was that it made no provision for uniting the Sudder and Supreme Courts, or for extending the improved Procedure to the Supreme Courts. In a parenthesis His Excellency had declared his belief that the proposed alterations in the Code of Procedure were conducive to speedy and economical justice, which must be looked upon as high praise coming from him, but because a small, though, no doubt, a most intelligent and influential section of the large Indian community, that is to say, those residing within the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature at Calcutta, Madras, and Bombay, from which number must however be deducted all those numerous classes, whose disputes never took them beyond the jurisdiction of the Courts of Small Causes in the three Presidency Towns, would not enjoy the benefit of these alterations and improvements from the same date as the millions who were subject to the jurisdiction of the Courts to which the provisions of the

Code were at once to be extended, His Excellency would indefinitely postpone the period for the Code coming into operation, or, in other words, would punish these millions, for such would be the effect, if the hope expressed by His Excellency should be realized, for the sake of a few thousands, who, whether rightly or wrongly, wisely or unwisely, were strongly opposed to the changes in contemplation, and whose only wish was to be left alone. But His Excellency said that, if the Act containing the new Code of Civil Procedure were confirmed, it would be a practical adoption of the old divided jurisdiction into the new regime, and would indefinitely postpone the establishment of a united system of judicature. He (Mr. Harington) must confess that he could not see why this should necessarily be the case. In preparing the new Code of Civil Procedure, the object had been steadily kept in view from the first so to frame its provisions, that it should be suited to any class of Courts which might eventually be established for the administration of civil justice in this country, whether they should be amalgamated Courts or otherwise, and should admit of easy extension to them; in other words, that, *mutato nomine*, the Code should be capable of being worked just as well by a High Court, such as was proposed by Her Majesty's Commissioners to be established, as by the present Sudder and Zillah Courts; and that in any Act which might hereafter be passed for constituting a High Court or other Courts, a simple declaration that, where the words "Sudder Court" occurred, the High Court should be understood, and so on, should be all that was necessary. With regard to the amalgamation of the Supreme and Sudder Courts, he (Mr. Harington) had stated at the last meeting of the Council, that the question of uniting those two Courts had never been submitted for their consideration, and had consequently never been discussed by them, orders having, as he understood, been received from England prohibiting any immediate legislation on the subject. He had since made further enquiries with a view to ascertain the real state of the case, and he had found that, on the introduction

of the Bill "for simplifying the procedure of the Courts of Civil Judicature of the East India Company in the Presidency of Bengal," the Honorable and learned Mover of the Bill had stated that "the Council was aware that the Commissioners, meaning Her Majesty's Commissioners, had recommended that the Sudder Courts and Her Majesty's Supreme Courts should be amalgamated. But under the Statute 3 and 4 of William 4, chapter 85, Section XLVI, this Council had no power, without the sanction of the Honorable the Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. The Council had received no authority from the Court of Directors to abolish the Supreme Courts, and, therefore, it was impracticable at present to effect the amalgamation desired. He had accordingly excepted that question from his Bill." Here then was the cause of the Council not having as yet done any thing towards the carrying out of that part of the scheme of Her Majesty's Commissioners which related to the amalgamation of the Supreme and Sudder Courts. It was unnecessary for him to tell the Council that the scheme of Her Majesty's Commissioners was limited to the union or amalgamation of the two Courts just mentioned, and did not propose to descend to any of the Courts below them. The Courts of the Zillah Judges, of the Principal Sudder Ameen, and of the Moonsiffs were to be continued as at present, except that some alteration was proposed in the amount of the jurisdiction now exercised by the Moonsiffs. Before resuming his seat, he felt that it was due to the Council that he should apologize for the digression from the subject in hand, of which, in making these remarks, he felt that he had been guilty, and he must also express a hope that in what he had said he had not been guilty of any disrespect towards His Excellency the Governor of Madras. On both public and private grounds his wish must be to treat His Excellency, whose friendship he had the privilege of enjoying after an acquaintance, which commenced more than thirty years ago, with all the respect and courtesy which were so justly due to his exalted position, high

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character, and private virtues; but having labored assiduously for several months with the other Members of this Council in preparing the new Code of Civil Procedure, and conscientiously believing as he did that that Code was calculated to confer very great benefits on the people of this country, he could not but deeply lament that His Excellency the Governor of Madras should have considered it to consist with his duty to the public of India to exert his powerful influence, for that he must be presumed to have done, to prevent the Code from coming into operation at the time appointed, thereby indefinitely postponing the introduction of this large and useful measure of reform, which had been so long and anxiously looked for—and that, too, not because there was anything bad or defective in the Code itself, for His Excellency admitted that it would conduce to speed and economy, two great requisites in any judicial system—but because for a brief interval, which might be shortened by a stroke of the pen, a small portion of the community, consisting chiefly of their own countrymen, were not to enjoy its benefits. But their duty in this matter was a respectful obedience to the commands of the Sovereign, an entire submission to Her Majesty's will and pleasure.

The Bill was read a first time.

MR. HARRINGTON moved that the Standing Orders be suspended in order that the Bill might be read a second time.

MR. FORBES seconded the Motion, which was then agreed to.

MR. HARRINGTON moved the second reading of the Bill.

MR. PEACOCK said that, in consequence of what had fallen from the Honorable Member for the North-Western Provinces, he thought it right to make a few observations. He had no doubt that he was expressing the feeling of the whole Council in stating that they were deeply indebted to the Honorable Member for the trouble he had taken in preparing the present Bill, which would have the effect of repealing numerous Sections of Acts and Regulations now lying scattered over several volumes, and which had been superseded by the Code of Civil Procedure recently

passed by the Council. He hoped with the Honorable Member that nothing would prevent that Code from taking effect. When he (Mr. Peacock) originally introduced the Bill, he explained to the Council that they were not competent, without the previous sanction of the Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. It was not necessary, nor was it his intention on the present occasion, to discuss the question relating to the abolition of the Supreme and Sudder Courts, and to substitute for them a High Court of Judicature as proposed by Her Majesty's Commissioners. When that question should come regularly before the Council, he should be prepared to discuss it. At present he did not consider that the Council had the power to abolish the Supreme Courts. He would however remark that, according to the scheme proposed by Her Majesty's Commissioners, a Native Judge of ten years' standing might be appointed to hold a Session of Oyer and Terminer, and Europeans might be tried by him with the assistance of a jury, and if found guilty might be sentenced by him to punishment. He (Mr. Peacock) thought that such a scheme would cause great dissatisfaction.

With reference to the Minute of the present Governor of Madras, which had appeared in the public newspapers, he (Mr. Peacock) must be allowed to express his opinion that His Excellency had not acted with that decorum which the subject demanded, or treated this Council with that respect to which it was entitled. The Council had not passed that Code hastily nor without attentive consideration. The Government of Madras had been very ably represented both in the Select Committee and in the Council by the Honorable Member for that Presidency. Yet that Honorable Member had never offered any objection to its being passed unless accompanied by an amalgamation of the Supreme and Sudder Courts, neither did the Madras Government of the day offer any such objection. He (Mr. Peacock) did not therefore see what right a newly appointed Governor had in his official capacity—he (Mr. Peacock) would say nothing of his private capacity—to record a Minute, and to allow it to appear in the public newspapers, and thereby publicly to express a hope that Her Majesty

would be advised to disallow an Act which, after due deliberation, had been passed by this Council, and had received the assent of the Governor General of India. If the Governor of Madras considered that the Code would not answer the purpose for which it was intended without providing at the same time for the amalgamation of the Courts, he should have sent his representation to this Council, and asked for the repeal of the Code so far as the Madras Presidency was concerned, or for amalgamation. But by publicly expressing, in a Minute recorded in his official capacity, a hope that Her Majesty would be advised to disallow the Act, he (Mr. Peacock) thought that the Governor of Madras had greatly exceeded his functions, and had assumed a tone not very respectful to this Council.

His Excellency did not object to the Code of Procedure so far as it went; on the contrary he thought that it would be conducive to the ends of justice and that the inhabitants of the Presidency Towns ought to have the benefit of it; but he expressed a hope that it would be disallowed by Her Majesty as it would indefinitely postpone the amalgamation of the Courts and the adoption of one uniform system of Procedure. He (Mr. Peacock) could not admit that such would be the case. It was quite consistent with the Code that amalgamation should take place, but he (Mr. Peacock) saw no reason why the Code should be disallowed in order that the disallowance might be used as a screw to compel this Council to pass an Act for amalgamating the Courts.

An Act for that purpose had not yet come under the consideration of the Council. On receiving authority from the Home Government for carrying that matter into effect, the Council would be prepared to give, and doubtless would give the subject full consideration. He thought it right to make these observations as he had introduced the Bill under a Resolution of the Supreme Government, leaving the formation of a High Court as a matter for separate consideration.

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

MALABAR OUTRAGES.

MR. FORBES moved the second reading of the Bill "for the suppression of

outrages in the District of Malabar in the Presidency of Fort St. George."

MR. RICKETTS said, he was not prepared to take upon himself the responsibility of endeavoring to prevent the second reading of this Bill. But he must say that he was not satisfied with the proof which had been brought forward by the Honorable Member for Madras of the necessity of continuing the arbitrary and what he (Mr. Ricketts) could not but consider tyrannical rules which the Bill proposed to enact. No doubt there were times when arbitrary rules were extremely necessary, and there were also times when a tyrant was the best preserver of the public peace. But the question was, whether the state of the Mopla country was the same now as it was before 1854? The Honorable Member for Madras, in his speech on the first reading of the Bill and in his Statement of objects and reasons, had certainly shown that in 1854 there was very great necessity for such a law, and he, as well as those from whom he had obtained his information, had stated that "the temper of a great portion of the Mopla population was such that any relaxation of the law would be attended with considerable danger to the peace of the Province." But what were the facts? Since 1854 not a single outrage had occurred.

[Mr. Forbes. Mr. Conolly's murder in 1855.]

Now if the quiet of the Province was not to be regarded as a proof that such rules were no longer necessary, he (Mr. Ricketts) could not see what better proof could be adduced. Supposing this Province had been quieted by the influence of the Mopla Chiefs, as he (Mr. Ricketts) believed was partly the case, what would they say to the re-enactment not only of those rules but also of still more stringent rules? What would they say to the renewal of the stigma of there being one law for them and another law for their neighbors; and not only that, but additions to the stigma already existing.

According to Act XXIII of 1854, whenever an outrage was committed, it was "lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize from all the Moplas within the Umshum or the several Umshums to which the

perpetrator or perpetrators, or any one of such perpetrators of such outrages shall be found to belong, or wherever any such perpetrator shall have been resident at the time of the commission of the outrage." But this Bill proposed to empower the Magistrate to punish as accessories the inhabitants of the Umshum where a fanatical outrage was committed. Now he thought it ought to be shown what necessity there was for such additional stringency. It might be necessary and politic that every one residing in a village where a crime was committed should be punished, but the necessity should be very clearly shown to justify such a rule. Supposing a party of Sailors were to come from Garden Reach and attack the Bengal Club and murder the Steward, what would the Honorable and learned Chairman and all those who lived in Russell Street, Middleton Street, and other Streets in the vicinity, say if they were called upon to pay a fine because they happened to live in the Umshum in which the Club was situated? All the inhabitants of Garden Reach would be liable under the law which seemed stringent enough without extending the liability to those who resided near the house attacked. Certainly circumstances in Malabar were not ordinary circumstances. But before the Council was asked to pass such a measure, it was reasonable to expect that some proof of its necessity should be presented.

He (Mr. Ricketts) observed in the annexures to the Bill that the Sessions Judge of Tellicherry recommended that the inhabitants of the Umshum in which a crime was committed, should be fined whenever it might be ascertained from presumptive evidence or otherwise that the crime was perpetrated with the knowledge and consent of the Mopla inhabitants of the neighborhood. The Honorable Member rejected altogether the suggestion as regards evidence of complicity, and made the neighbors punishable whether there be evidence or not!

He would next observe that Section X enabled a Magistrate to call upon the Mopla inhabitants of the village to which the perpetrator of an outrage belonged, or in which he resided, or to which he might flee, to deliver him up when called upon, under penalty of fine or failure to do so. This also was a new

rule, the necessity for which should be plainly shown.

Some time ago he (Mr. Ricketts) was constantly in communication with Military Officers and others who knew the Moplas well, and he learned from them that the fines levied from Moplas were not only excessive, but that they were often times levied from those against whom there was nothing that in other parts would be regarded as approaching proof of complicity. He had also been told that a feeling was gradually rising in Malabar, which, if not checked in time, might lead to great embarrassments. The Council must not suppose the Moplas to be a race of savages. Fanaticism aside, they were industrious, enterprising, independent, and indeed he wished that all our Asiatic subjects, fanaticism excepted, were like them. In trying to put down the outrages of a few, it behoved us to be very careful not to cause general discontent among 4,00,000 of our best subjects. He was not prepared, as he had already stated, to oppose the Motion for the second reading, but he hoped the Honorable Mover of the Bill, when the Bill came under the consideration of the Select Committee, would reconsider these new rules, and suit his Bill to the altered circumstances of the Province.

MR. FORBES said, he believed he should have been surprised if this opposition to the Bill had been made by any other Member than the Honorable Member who had just spoken. But as the Honorable Member had in conversation made known to him his objections, he was not quite unprepared for the opposition.

It appeared to him (Mr. Forbes) that the very ground of objection which had been taken to the Bill was a sufficient ground for passing it. In moving the first reading, he had shown that, before the passing of Act XXIII of 1854, Malabar was in so lamentable a condition that no European or Hindoo Inhabitant of that district felt his life worth half an hour's purchase. The result of the passing of that Act was that, since that time, the fanatical outrages by which the peace of the Province had been violently disturbed for several years previously had almost wholly ceased. Mr. Conolly's murder was an exceptional case, and was committed out of revenge.

The argument of the Honorable Member (Mr. Ricketts), however, stood thus. If Act XXIII of 1854 had failed in its operation, the Honorable Member would have had no objection to continuing it in force; but the Honorable Member objected to do so because it had been successful. It was generally supposed that "prevention is better than cure;" the Honorable Member, it would appear, thought otherwise. It was also an old proverb to shut the stable-door before the steed was stolen; the Honorable Member, however, said, "no, the Bill should not be passed for prevention, but for punishment." The more stringent provisions of the law in force had been introduced in Select Committee, among whom were the late Vice-President (Sir James Colville) and an Honorable Member (Mr. Grant) who had recently retired from this Council on becoming Lieutenant-Governor of Bengal. He was sure that he need hardly say that no two Members of this Council were at all less likely to allow a measure which had a tendency to undue harshness or severity, or which stretched the law unduly against the liberty of the subject, than the late Honorable and learned Chief Justice and the present Lieutenant-Governor of Bengal. But what was the peculiar injustice or hardship of the measure? It did not say that any one in the peaceable pursuit of his ordinary calling, whatever it might be, should be interfered with; no one was to be subjected to any particular surveillance of the Police; as long as any one abstained from committing murder, or abetting the commission of murder by others, he was just as much at liberty to do what he pleased as any inhabitant of Calcutta. In Calcutta, if any man committed murder, he was liable to suffer death, and the reason why in Malabar the law was different, was because there death was no punishment to a Mopla who had committed a fanatical murder, but really was a premium upon crime. A Mopla fanatic sought death at the hands of those he considered to be unbelievers, and his whole end and object was to be killed.

The Honorable Member (Mr. Ricketts) had said that no reason had been given for the new provision introduced into the Bill, by which it was proposed

to make the Mopla inhabitants of the village within which a fanatical outrage was committed liable to fine in the same manner as the existing law had made the inhabitants of the village to which the perpetrator belonged or in which he had recently resided. If the Honorable Member had read the Statement of objects and reasons of the Bill, he would have found it stated in paragraph 17 that this addition to the scope of the law had been recommended by the Madras Government on the suggestion of the Local Officers. The Session Judge of Tellicherry had observed—

"In the case of the sanguinary outbreak which took place in January 1852 at Mattanoor, fifteen miles from Tellicherry, in which a substantial Brahmin householder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the consent of the Mopla community generally in the neighborhood where the crime was perpetrated."

It seemed therefore quite as reasonable to make the accessories residing at the scene of outrage as amenable to the law as those who resided at the same place as the fanatic. That was the ground on which he had introduced that Section, and he humbly took leave to say that it was a substantial and a good ground.

In 1856, when a Bill was brought in to give effect to Act XXIII of 1854 from the time of its promulgation in Malabar, the late Honorable Member for Madras (Mr. Elliott) had said :—

"In the course of this enquiry it was clearly ascertained that the object of the attack upon Mr. Conolly was to inflict vengeance on him for the part he had taken in the banishment of the Tungal to which he had already adverted. 'The murderers,' said Mr. Collett, the Joint Magistrate, 'in more than one place declared this to be their motive.' 'It is now clear,' he observed, 'that, from an early date, they shaped their proceedings with a view to this end. It is from the knowledge that they were plotting to retaliate upon the person of the Chief Officer of Government for this offensive measure, that their caste-people generally conspired together to aid them, and preserved their secret inviolate, though it was literally known to scores, including women and children.' He might here mention that but shortly before this fatal event Mr. Conolly had received a communication from Captain Harris, the late Resident at Aden, warning him to be on his guard, as, from information

Mr. Forbes

that had been sent to him from Arabia, he apprehended that the Tungal was plotting some mischief against him."

Was that the state of things in which the Honorable Member opposite wished Civil Officers in Malabar to be placed?

He (Mr. Forbes) remembered, in the course of the debates which recently took place on the Bill for the recovery of rents, to have heard the Honorable Member (Mr. Ricketts) say, after congratulating the late Honorable Member for Bengal at the prospect of that Bill passing into law, that it would be a pleasing reflection for the Honorable Member for Bengal "to put under his pillow and go to sleep upon in a snug little room in the old country," that he had been instrumental in passing a Bill which would benefit about thirty millions of people. Would it be a pleasing reflection for the Honorable Member (Mr. Ricketts) to put under his pillow and go to sleep upon, that he had left a million Hindoos, men, women, and children, and all the Civil Officers of Government employed in Malabar, to the mercy of the Moplas who spared neither age nor sex? For his own part he (Mr. Forbes) must say that it would be a pleasing reflection to him that he had brought in a Bill for the purpose of protecting the lives of the peaceable inhabitants of the Province and the public servants of Government. Mr. Conolly had returned from the labors of the day and was sitting reading in his verandah, when four men came up with drawn swords and hacked him to pieces in the presence of his wife; and such scenes must again happen if the proposed law were not passed. If any portion of the Bill should be considered too stringent, it could be debated in Committee.

SIR JAMES OUTRAM said, he did not understand the Honorable Member opposite (Mr. Ricketts) to object to the renewal of the old law, but to the adoption of more stringent measures than were passed in 1854. The Honorable Member for Madras had admitted that, since the passing of the Act of 1854, only one outrage had been committed, in consequence of which it became necessary in 1856 to pass a supplementary Act which contained all that was considered necessary, and which had in practice proved quite

successful. But the Bill now introduced contained additional provisions, the necessity for which had not been shown; and he certainly thought with the Honorable Member opposite that still more stringent measures might have the effect of irritating a fanatical people like the Moplas into desperation, who as yet were found obedient to the law as it now stood. For these reasons, while he was prepared to support the renewal of the old law, he must decidedly object to the enactment of more stringent measures than those now in force.

MR. FORBES said that, on the second reading of a Bill, the general principle only was under discussion. If the Honorable and gallant Member took exception to any particular Section in this Bill, opportunity to state his objection would be afforded when the Bill was in Committee.

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

EXCLUSIVE PRIVILEGES TO INVENTORS.

The Order of the Day being read for the third reading of the Bill "for granting exclusive Privileges to Inventors"—

MR. PEACOCK said that, before he moved the third reading of this Bill, he thought it necessary that the Council should go into Committee for the purpose of adopting the amendment made therein by Her Majesty's Government. He should state very briefly for the information of Honorable Members who were not in the Council when the Bill was last under consideration, that, in consequence of instructions received from the Honorable the late Court of Directors, it was decided that this Bill should be sent home to England for the sanction of the Crown previously to its being passed. With this view it was considered advisable that the Bill should pass through all its stages except the third reading; and, accordingly, after the Bill had been considered and amended by a Committee of the whole Council, it was sent home for the sanction of Her Majesty. Consequently the Council were to some extent pledged to the passing of the Bill in the form in which it then stood. The Bill had now received the sanction of Her Majesty, except as to a slight verbal

amendment. Before moving for the re-committal of the Bill, he would request the Clerk of the Council to read the Despatch of the Right Honorable the Secretary of State, conveying Her Majesty's sanction to the Bill.

The Despatch was read accordingly. MR. PEACOCK then moved that the Bill be re-committed to a Committee of the whole Council.

Agreed to.

The Bill passed through Committee with the insertion of the words "in Council" after the words "Governor-General of India" in Section XVI, and the Council having resumed its sitting, was reported.

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

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

MR. PEACOCK moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

REPEAL OF ACTS AND REGULATIONS.

MR. HARRINGTON moved that the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover, with an instruction to present their Report within six weeks.

Agreed to.

WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved that the Bill "to provide for the due execution of Warrants of Attorney to confess judgment and Cognovits" be referred to a Select Committee consisting of the Vice-President, Mr. Harrington, and the Mover.

Agreed to.

SMALL CAUSE COURTS.

MR. HARRINGTON moved that the Clerk of the Council be directed to address a letter to the Secretary to the Government of India in the Home Department, requesting that His Excellency

the Right Honorable the Governor-General in Council will be pleased to call upon the Local Governments of Madras, Bombay, the North-Western Provinces, and the Punjab, to furnish this Council, with as little delay as possible, with the following returns, and that those Governments be desired, at the same time, to submit any remarks that they, or the Officers subordinate to them, may see fit to make on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the Supreme Courts of Judicature established by Royal Charter," as settled in Committee of the whole Council, and published for general information in the Calcutta Gazette of the 4th May Instant, namely:—

A return of the number of original suits instituted in the several Courts during the first four months of the current year, showing:—

1. The number of cases in which the amount or value of the property in dispute did not exceed the sum of twenty Rupees, and what number of those cases would, by Section II of the Bill, have been cognizable under its provisions.

2. The number of cases in which the amount or value in dispute exceeded the sum of twenty Rupees, but did not exceed the sum of fifty Rupees, and what number of those cases would have been cognizable as above.

3. The number of cases in which the amount or value in dispute exceeded the sum of fifty Rupees, but did not exceed the sum of five hundred Rupees, and what number of those cases would have been cognizable as above.

4. The number of cases in which the amount or value in dispute exceeded the sum of five hundred Rupees, but did not exceed the sum of one thousand Rupees, and what number of those cases would have been cognizable as above.

5. The number of cases in which the amount or value of the property in dispute exceeded the sum of one thousand Rupees, but did not exceed the sum of five thousand Rupees and what number of those cases would have been cognizable as above.

6. The number of cases in which the amount or value of the property in dispute exceeded the sum of five thousand Rupees, but fell below the sum of ten thousand Rupees, and what number of those cases would have been cognizable as above.

7. The number of cases in which the amount or value in dispute was ten thousand Rupees and upwards, and what number of those cases would have been cognizable as above.

The number of regular appeals preferred during the same period, classified as above.

Mr. Harington

The number of special appeals admitted during the same period, classified as above.

MR. LEGEYT said, he did not rise to offer any opposition to any part of the Motion of the Honorable Member for the North-Western Provinces. He (Mr. LeGeyt) only desired to remark that objection might be taken to the Motion in the form in which it now stood. The Motion began as follows:—"That the Clerk of the Council be directed to address a letter to the Secretary to the Government of India in the Home Department, requesting that His Excellency the Right Honorable the Governor-General in Council, &c." Now it was not his intention to re-open the debate which had taken place on the Oaths question. He had since considered the question then mooted, and thought that the course which was followed upon that occasion was not quite consistent with the Standing Orders.

Standing Order No. 115 required that "all communications from the Legislative Council to the Governor-General, or to the Governor-General in Council, shall be made by Message to be taken by a Member of the Legislative Council." On the 25th August 1855, when the late Honorable Member for the North-Western Provinces moved that the President in Council be requested to favor this Council with a certain document, he also moved that one of the Members of the Council be requested to carry the Message to the President in Council. That he took to be not only in strict accordance with the Standing Orders, but in all respects a more fitting course than the one now proposed by the Honorable Member for the North-Western Provinces. This Council being a part and parcel of the Council of the Governor-General of India, he did not think that the proposed course was a becoming one; and as they had on record precedents which appeared to him to be strictly in accordance with the Standing Orders, it seemed to him that those precedents should be adhered to. He would therefore propose to substitute for the words above quoted the words "that a Message be taken to the Right Honorable the Governor-General, requesting that His Excellency, &c."

MR. HARRINGTON said, he had no objection to offer to the amendment proposed by the Honorable Member for Bombay, and was willing that the words suggested by him should be substituted for the words to which he had taken exception. On a former occasion the Clerk of the Council had been directed on his (Mr. Harington's) Motion to address a letter to the Secretary to Government in the Home Department for the purpose of obtaining some information required from his Office, and no objection had been urged by any Honorable Member to the mode of communication then followed, and he had therefore proposed that they should adopt the same mode on the present occasion. He had certainly overlooked the Standing Order referred to by the Honorable Member for Bombay; but even had he (Mr. Harington) adverted to it, he thought he should have had some doubts as to its applicability in the present instance. But if the Council were of a different opinion, he was quite prepared to alter his Motion so as to make it correspond with the order in question.

The Motion was by leave withdrawn.

MR. HARRINGTON then proposed the same Motion in an altered form. The amended Motion commenced as follows:—

"That the Vice-President be requested to take a message to His Excellency the Right Honorable the Governor-General in Council, requesting that His Excellency in Council, &c."

The Motion was carried.

REGULATION OF HACKNEY CARRIAGES.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill "for the better regulation of Hackney Carriages in certain Towns."

MADRAS POLICE.

MR. FORBES moved that Mr. Sconce be added to the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

Agreed to.

REGISTRATION.

Mr. Forbes moved that Mr. Sconce be added to the Select Committee appointed to take into consideration a communication from the Madras Government, suggesting improvements in the present system of registering assurances, and submitting the draft of an Act for affording protection to rights on property.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES moved that the Bill for the suppression of outrages in the District of Malabar in the Presidency of Fort St. George "be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover."

Agreed to.

MADRAS POLICE.

MR. FORBES moved that certain papers received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

Agreed to.

The Council adjourned.

Saturday, May 21, 1859.

PRESENT:

The Hon'ble Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon. Sir C. Jackson,
H. B. Harington, Esq.,	and A. Sconce, Esq.

EXCLUSIVE PRIVILEGES TO INVENTORS.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for granting exclusive privileges to Inventors."

PUBLIC CONVEYANCES.

THE CLERK presented a Petition from certain inhabitants of Calcutta,

praying for an Act to regulate the rates of hire for Conveyances.

Mr. LeGEYt moved that the Petition be printed.

Agreed to.

Mr. LeGEYt begged to move the first reading of a Bill "for regulating public conveyances in the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

He said, he was led to believe, from representations which had been made by persons whose opinions were entitled to some respect, that the want of a law of this kind was severely felt in Calcutta. It was obvious to any one who traversed the streets of this City, that the employment of hackney carriages was very general; and the constant intercourse between the numerous ships in the river and the shore was necessarily carried on by means of hired boats. The complaints were numerous against the extortion and misconduct of the class of persons who were employed as drivers of these conveyances, and who navigated the boats. At the same time it was not reasonable to suppose that the cause of complaint was entirely on one side; and in providing for the convenience and protection of the public, he thought it was equally necessary to provide for the protection of the owners against oppression and fraud on the part of the hirers.

In their Annual Report for 1857, the Municipal Commissioners had stated:—

"Whilst on this subject, we beg to bring to your Honor's notice the imperative necessity which exists for putting a stop to the nefarious monopoly carried on by native livery stable-keepers, and for placing the same under regulations as exist in all the large towns of Europe—in London, in Paris, in Vienna; in fact, in every capital of Europe. The places or stands for conveyances on daily hire, as well as the rates of fare, are fixed by the authorities, and the time has arrived when these wholesome provisions should also be adopted in Calcutta. The absence of all regulations with regard to fare has been productive of a sort of monopoly on the part of native livery stable-keepers, which has entailed not only much inconvenience but considerable hardship upon a number of strangers, who, in the course of the year, passed through this town. Owing to the general rise in the cost of food, and also the increased demand for

hired carriages, the livery stable-keepers have raised the rates of fare of a gharree with two horses to three Rupees, and of a gharree and one horse to two Rupees per diem. Nobody can find fault with these rates, but what people complain of, and not without reason, is, that full fares are insisted upon, whether the conveyance be used for half an hour only, or for the whole day, and that, not unfrequently, when it does not suit the convenience of the drivers to move out of their stables, they refuse altogether to bring a conveyance.

"There have likewise been many complaints about the imposition practised upon visitors coming into town from the surrounding districts. From what has been reported to us, it appears that the drivers in many instances demand payment in advance, and that, in fact, they refuse to bring the conveyance unless the hire be paid first. They then take the party to the place where directed, but whilst the person hiring the carriage is paying a visit, or making purchases at a shop, the driver and carriage abscond. These complaints being on the increase, we consider it absolutely necessary that a stop be put to such malpractices on the part of livery stable-keepers. We would therefore propose that the hire of all similar conveyances be fixed by a tariff, regulating the rates of fare, conduct of drivers, and stands for vehicles, on the same principle as is done in London and Paris. Each hired conveyance should be compelled to exhibit, in a conspicuous place, within the tariff, and any extortion should be liable to a heavy penalty."

It appeared that this Report of the Municipal Commissioners had been referred for the opinion of the late Honorable Member for Bengal, who did not think that the necessity for legislation had been made out. Mr. Currie remarked:—

"The question of fixing a tariff of fares for carriages let on hire is one which hardly falls within the scope of your present requisition, which speaks only of necessary amendments of the law. The moderate rates of charge, and the active competition which keep down those rates, do not, I think, indicate any necessity for the action of Government in the very questionable direction of an interference with the natural adjustment of wages and profits."

He (Mr. LeGeyt) believed that nothing more was done upon this Report by the authorities here. But the "natural adjustment" referred to by Mr. Currie did not appear to have come about, for a numerous signed petition had just been presented to the Council, praying for relief from this public

grievance. In addition to this, the Commissioner of Police had communicated with him on the subject, and had expressed it, as his opinion, that a law to regulate hackney carriages was absolutely required, and, in asking this, he said he only demanded what was accorded in almost every city and town where legislation had been established. Mr. Wauchope remarked:—

"I believe some law regulating the rates of hackney carriages here to be absolutely required, and that, to the best of my knowledge, it is almost the only civilized town, or professing to be civilized, in which the hackney carriages are not placed under Police restrictions."

In Bombay there had been a law, though an imperfect one, to regulate such conveyances for the last eighteen years, namely, Act IV of 1841, which had worked well as far as it went; but he proposed by this bill, if it should pass into law, to repeal that Act and to give Bombay the advantage of a more modern system of regulating such matters.

In Madras he believed there was no law on the subject, nor was it within his knowledge that any representation had ever been made from that city, stating the necessity for such a measure. He had, however, included that Presidency town within the scope of the Bill, as so large and populous a city would, like other places, stand in need of such an Act, and he agreed with Mr. Wauchope in thinking that in all large towns an Act of the kind was very necessary.

The Straits Settlement had also felt the necessity for a regulation on the subject. The Governor of that place had lately submitted the Draft of an Act founded on Act IV of 1841 for Bombay. In submitting this Draft Act, Mr. Blundell said:—

"The Act is similar in its provisions to Act IV of 1841, which apparently has never been repealed, though some of the provisions of that Act seem inconsistent with those of Acts XIII and XIV of 1856.

"I am not aware whether Acts similar to IV of 1841 exist for the regulation of vehicles let to hire in Calcutta and Madras, but most certainly the want of some enactment of the kind is severely felt here, where unlimited license reigns on the part of the charges and imposition on strangers of the drivers of carriages and the tindals of boats."

"I have always been alive to the necessity of some such enactment as this, and have made frequent representations on the subject; but as nothing was ever done to remedy the evil, I presumed it was not intended that the subject should be legislated on. Seeing, however, that Bombay enjoys a regulating Act, and presuming that Calcutta and Madras have some old law still in existence to a similar effect, I am emboldened to solicit the consideration of the Council towards placing these Settlements in a similar position."

Upon this authority he (Mr. LeGeyt) had placed the Straits Settlement within the provisions of the Bill.

His (Mr. LeGeyt's) own convictions were entirely with those who were desirous of legislation on this subject. He well remembered the trouble and annoyance which prevailed in Bombay prior to the passing of Act IV of 1841, and the relief which that Act afforded, not only to the hirers of carriages and boats, but in many instances to the proprietors of the conveyances themselves, who, till the passing of that Act, had to apply to a Civil Court for the recovery of their just dues.

With these facts before him, he (Mr. LeGeyt) thought that a sufficient case had been made out to warrant the passing of such a Bill; and in bringing it forward, he had ascertained that the Honorable Member for Bengal did not consider that he (Mr. LeGeyt) was trespassing upon his manor. Whether he (Mr. Sconce) was more favorable to the measure itself than his Honorable predecessor, he (Mr. LeGeyt) did not know; but he hoped he would not, when the time came, ask them to wait any longer for the "natural adjustment of wages and profits" as a relief from the present inconvenience.

Mr. LeGeyt proceeded briefly to notice the several provisions of the Bill. With reference to Section IX, he said he had left the fixing of the fares to the Commissioners of Police at Calcutta and Madras, to the Petty Sessions at Bombay, and to the Quarter Sessions in the Straits Settlement, subject, however, to the confirmation of the local Governments. He did not think the Council was in a position to legislate on so purely local a point, and no evidence or information which it could obtain would enable it to do so, so well as the authorities on the

spot. The sanction of the local Government would, he thought, be a sufficient guarantee that the power would be exercised with proper discretion.

With regard to Section XXIII, it might possibly be objected that unoffending parties, the owners of conveyances, were made criminally responsible for the doings of their servants. Mr. Wauchöpe had informed him (Mr. LeGeyt) that he considered it essentially necessary in Calcutta that the authorities should know the proprietors, and that the proprietors should be responsible for the acts of their servants. His (Mr. LeGeyt's) own experience in Bombay induced him fully to concur in this opinion. The sense of this responsibility would force the owner to get a decent man for a driver, in the same manner as the knowledge that registration would not be permitted to an unsafe conveyance would compel the owner to provide safe conveyances and proper horses.

Section XXVI, which empowered the Commissioner of Police, in certain cases, to refuse or cancel registration, would enable that authority to control and check abuses, and to maintain efficiency and safety in the condition of the conveyances. This principle was sanctioned in Section LXXIX of Act XIII of 1856 in regard to boats; it was also fully recognized in Act IV of 1841 at Bombay, and was, he thought, essential to the well-working of the system.

The Bill was read a first time.

POWERS OF SESSION JUDGES.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to enable Session Judges to pass sentence in certain cases without reference to the Sudder Court.

RIVER SIGNALS.

MR. SCONCE gave notice that he would, on the same day, move the first reading of a Bill to enforce signals of the names of vessels passing signal stations established within the river Hooghly and the branches thereof.

Mr. LeGeyt

CATTLE TRESPASS.

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

Agreed to.

FRAUDULENT TRANSFERS AND SECRET TRUSTS.

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "for the prevention of fraudulent transfers of Property and of Secret Trusts."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

MR. LEGEYT moved that Mr. Sconce be added to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

APPEALS.

MR. HARINGTON moved that Mr. Sconce be added to the Select Committee on the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals."

Agreed to.

MADRAS POLICE.

MR. FORBES said, at the last Meeting of the Council he moved that Mr. Sconce be added to the Select

Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George." He was under the impression at the time that the late Member for Bengal was upon that Select Committee, and he had therefore proposed to substitute his successor for him. But he now found that the Select Committee on that Bill already contained its full complement of Members, and that he had labored under a misapprehension in supposing that the late Honorable Member for Bengal was one of them. He now begged to move that Mr. Peacock be relieved from that Committee.

Agreed to.

The Council adjourned.

Saturday, May 28, 1859.

PRESENT :

The Honorable B. Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-General Sir J. Outram,	H. Forbes, Esq.,
P. W. LeGeyt, Esq.,	Hon. Sir C. R. M. Jackson, and
H. B. Harington, Esq.,	A. Sconce, Esq.

APPEALS.

The Clerk presented a Petition from the Indigo Planters' Association against the Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court, and of applications for special appeals."

MR. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

The Clerk also presented a Petition from the British Indian Association against the same Bill.

MR. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved the first reading of a Bill "to enable Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

He said, a Bill "to provide for the more speedy disposal of appeals in cases appealable to the Sudder Court, and of applications for special appeals," was, the Council would recollect, brought in by his Honorable friend, the late Member for Bengal, on the last day on which he sat as a Member of that Legislature. The object of that Bill, which, after being read a second time, was now under the consideration of a Select Committee, whose report upon it would be due in the course of a few days, was to afford relief to the Sudder Courts at Calcutta and Agra on the Civil side. The Bill, of which he was now to move the first reading, was introduced with a view still further to relieve those Courts, though on the Criminal side, and this it proposed to do by enabling Sessions Judges to pass sentence in certain cases which, under the law, as it now stood, required to be referred for the final orders of the Nizamut Adawlut. He had reason to know that the late Honorable Member for Bengal originally intended to include in the Bill brought in by him the whole of the provisions contained in the Bill which he (Mr. Harington) had prepared. The Sudder Court at Calcutta recommended, he believed, that those provisions should be introduced into that Bill, but as it was fully expected that the new Code of Criminal Procedure, which embraced all the modifications of the existing Regulations and Acts relating to the reference of Criminal trials to the Sudder Courts, now proposed for adoption, would soon become law, the late Honorable Member for Bengal considered it unadvisable to anticipate the new Code in the Bill brought in by him, and he, accordingly, confined the provisions of that Bill to the business coming before the Sudder Court on the Civil side. It was proper, therefore, that he (Mr. Harington) should explain why, instead of following the example set him by the late Honorable Member for Bengal, and waiting patiently for the passing of the new Code of Criminal Procedure, he was anxious to hasten matters, and had considered it necessary to bring in this Bill at the present time. The explanation which he had to offer to the Council on this point was this. Honorable Members were aware that considerable disappointment

had been felt at home in consequence of no provision having been made in the new Code of Civil Procedure, which was lately passed by the Council, for amalgamating the Supreme and Sudder Courts according to the scheme proposed by the original framers of that Code, and that so much importance was attached to the amalgamation of those two Courts, and to their formation into a single high Court, that it was considered desirable in some quarters that the Codes of Civil and Criminal Procedure should be stayed until the scheme of amalgamation was matured and could be embodied therein. He believed he was not wrong in saying that a wish to this effect had been expressed, at least such was generally reported to be the case. The reason why nothing had as yet been done by this Council towards carrying out that part of the scheme of Her Majesty's Commissioners, which related to the amalgamation of the Supreme and Sudder Courts, had already been mentioned more than once within the last few days, and it was unnecessary for him to repeat now what was then said.

With respect to the new Code of Criminal Procedure, he wished to observe that, although the Select Committee, to which the Bill containing that Code was referred, had made their report, and the Bill was now ready to be committed to the whole Council, he thought it very probable that the Honorable and learned Vice-President, who had charge of the Bill, would not consider himself justified in going on with it at present in the face of the wish to which he had alluded, but that he would prefer to wait for further instructions from home, which might not be received for a considerable time. He (Mr. Harington) was unable to say what course the Honorable and learned Vice-President intended to pursue in existing circumstances; but should he have decided not to proceed with the Bill under his charge at present, he thought the Council at large would concur in the propriety of that decision, for, independently of the desire which they must all feel to defer, as far as lay in their power, to the wishes of the Home authorities in this matter, it was obvious that it would be far

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better that there should be a little delay in the passing of the Code than that they should run the risk of the result of their labors, after they had been brought to a close here, being eventually disallowed at home. It was not possible for them to stay proceedings in respect to the new Code of Civil Procedure, because the Bill, in which that Code was contained, had received the assent of His Excellency the Right Honorable the Governor General before they were made aware of the fact that any wish of the nature of that mentioned had been expressed, and in so far, therefore, as the Civil Code was concerned, they could only await Her Majesty's pleasure. Then, in addition to the obstacle which had been so unexpectedly raised up in the way of their proceeding with the new Code of Criminal Procedure, he might state that the Select Committee, to which the Bill containing that Code was referred, had recommended such very material and important alterations in it, that, in the event of their recommendations being adopted by the Council at large, he thought it very probable that it would be considered proper to republish the Bill for general information before it was read a third time, which would cause a further delay of several weeks; and that, moreover, the references made in the new Code of Criminal Procedure to the new Penal Code were so numerous, and the two Codes were so intimately connected with one another, that it seemed desirable that they should pass into law simultaneously, but the Select Committee on the Penal Code had not as yet been able to present their report. Considerable progress had been made in the work of revision committed to them, but much remained to be done, and it was, at present, quite impossible even to hazard a conjecture as to when the new Penal Code would come into operation. Taking all these circumstances together, it certainly appeared to him (Mr. Harington) that, if the amendments of the existing Code of Criminal Procedure proposed in the Bill which had been prepared by him, were really necessary and likely to prove beneficial, it would be better to pass them at once, particularly as they chimed in, as he had stated, with the new Code of Crimi-

nal Procedure, rather than wait for an indefinite period, or until the new Code of Criminal Procedure should become law, which might not happen this year. He trusted that he had said enough to justify the course which he was pursuing in bringing in the present Bill, and that in its introduction he should not be considered to be unnecessarily occupying the time of the Council. He would now proceed to notice briefly the cases in which the Bill proposed that Sessions Judges should have power to pass sentence without reference to the Sudder Court.

These were, *first*, cases of rape. According to the law in force in Bengal and Madras, Sessions Judges had no power to pass sentence on a conviction for this offence, but were obliged to refer their proceedings for the orders of the Sudder Court. No doubt rape was a very heinous crime, and there was reason to fear that it was one of very common occurrence in some parts of India; but he (Mr. Harington) did not consider it to be of a more heinous character than several other offences, the perpetrators of which might, on conviction, be punished by Judges of Sessions without reference to the Sudder Court. In support of this opinion, he might observe that the punishment awarded by the Sudder Court, in cases of rape referred for their orders, very rarely exceeded what the Sessions Judges were competent to adjudge in cases punishable by them under the general Regulations, that is, seven years' imprisonment with hard labor in irons. A Bill to enable Sessions Judges to pass sentence in cases of rape was brought in by the late Honorable Member for Bengal so far back as the 8th March 1856, and what had just been mentioned by him on the subject of the punishment of the crime was one of the reasons assigned by the Honorable Mover of the Bill for its introduction. The Bill was read a second time on the 15th March of the same year, and was referred in the usual course to a Select Committee, but no report was made, and on the 20th November last the Committee was discharged on the motion of the late Honorable Member for Bengal, and the papers were ordered to be referred to the Select Committee on the Criminal Procedure Code.

The next class of cases to which the Bill referred were cases of forgery and perjury. The Regulations of Bengal and Madras fixed a minimum punishment for these two offences, any thing short of which the Sessions Judges were precluded from awarding on conviction; but if in any case the punishment so fixed appeared too severe, the Sessions Judges were required to refer their proceedings for the orders of the Sudder Court, stating at large the grounds on which they considered a mitigation of punishment necessary. In the cases referred to the Sudder Court under this rule, the Court were obliged to revise the proceedings, not only with a view to ascertain whether the ground on which a remission of punishment was recommended was sufficient to justify their interference, but also whether adequate proof existed in the record to sustain the conviction, which of course occupied a good deal of time. But if the Sessions Judges could be safely entrusted with power to award punishment in cases of forgery and perjury, extending in some cases to sixteen years' imprisonment in banishment, it certainly seemed unreasonable to impose upon the exercise of their discretion the restriction just mentioned, particularly as it might be relaxed on their recommendation. He might add that the Select Committee on the new Penal Code were opposed to any minimum of punishment being declared by law, and they had recommended that the Code should be altered accordingly.

The last class of cases to which the Bill related were cases falling within the provisions of Clause 1 Section IV Regulation VI. 1832. That Clause declared that "in all trials in which recourse might be had to the provisions of the Regulation, the *futwa* of a Mahomedan law officer was unnecessary, and might be dispensed with at the option of the Court, anything in the existing Regulations to the contrary notwithstanding; provided that, whenever the *futwa* was dispensed with, and the crime of which the prisoner was convicted was one which the Judge was not specifically empowered by the Regulations to punish, he should not proceed to pass sentence, but should refer the case for the consideration of the Nizamut Adawlut, stating at length in

the proceedings the opinion of the punchayet, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment which should be awarded."

The effect of the proviso which he had just read was to preclude the Sessions Judges in those Districts of the Bengal Presidency, in which there was no Mahomedan law officer, from passing sentence in cases of child-stealing, which were very numerous, abduction, exposure of newborn infants, conspiracy, and many other cases the offences charged in which were not of a more heinous character than those just mentioned, and on a conviction for which a more severe punishment than seven years' imprisonment, to which extent, as already noticed, the Sessions Judges had power to pass sentence under the general Regulations, was seldom, if ever, awarded, and to devolve upon the Sudder Court the necessity of revising the proceedings of the Court below, and of coming to a decision thereon. The Sudder Court at Agra had again and again recommended the rescission of this rule and the substitution for it of a provision that, in cases of the nature of those mentioned, where the offence charged had been declared punishable by a conviction and sentence of the Nizamut Adawlut, no reference should be necessary to that Court, but that the Session Judges, on conviction, should be at liberty to pass sentence within certain limits, although the offence was not one which those Officers were specifically empowered to punish by any Regulation. This was what was now proposed to be done. In suggesting this alteration of the law, the Sudder Court justly observed that the effect of the existing rule was to devolve upon the Sudder Court the final determination of a large number of cases of comparatively little importance, without, as the Court believed, any commensurate public benefit.

He (Mr. Harington) was quite prepared to admit that the amount of relief which would be afforded to the Sudder Courts at Calcutta and Agra, by the introduction of the present Bill, would not be very great, but still it would be something. It was scarcely necessary for him to say that every

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minute of the time of the Judges of the Sudder Court was very valuable, and all would agree that the time of the Judges of that Court should not be occupied with work of comparatively little importance. Every hour saved from the disposal of the cases to which the present Bill related, would be so much time gained for other more important business; and as they had recently been called upon to pass a law for the relief of the Sudder Courts at Calcutta and Agra, one of the provisions of which would have a retrospective effect in respect to certain classes of cases which might be depending on the date on which the Bill should come into operation, he thought they were bound to relieve those Courts of all work which, from its nature, could be sufficiently well performed by the subordinate Courts, and for the devolution of which upon the Sudder Courts no special or sufficient reason appeared to exist. It was upon these grounds that he ventured to commend this Bill to the favorable consideration of the Council, and to express a hope that they would give their assent to the motion which he was about to make. He would only add that the Bill, as drawn, applied to the Presidency of Bengal alone, but such parts of it as related to the crimes of rape, perjury, and forgery, could hereafter be extended to Madras, if the authorities at that Presidency should express a wish that it should be so extended.

The Bill was read a first time.

SIGNALS (RIVER HOOGHLY).

Mr. SCOTCH moved the first reading of a Bill "to enforce Signals of the names of vessels passing Signal Stations established within the River Hooghly and the branches thereof." He said that the Bill which he now had the honor to lay before the Council originated in a reference from the Lieutenant-Governor of Bengal. The object of the Bill was simply to compel Masters of vessels to report or signalize the names of their vessels when they neared any Telegraphic Station. On a late occasion a China steamer anchored at Saugor for nearly a whole day; and although the Pilot on board suggested to the Master the necessity of report-

ing her arrival, the arrival of the vessel remained unannounced.

Under these circumstances it had been considered necessary that signaling by vessels should, by law, be enforced. The suggestion had been made by the Superintendent of Marine; and the Lieutenant-Governor of Bengal, and the Chamber of Commerce to whom a reference was made on the subject, had given their support to Captain Rennie's proposition.

The Bill was very short and simple. The first Section provided that the Master of every inward-bound vessel belonging to a British subject, or sailing under British Colors, on nearing a Signal Station, should, on the requisition of the Pilot in pilotage charge of his vessel, signalize the name of the vessel by the usual numbers, and that every Signal so made should continue hoisted till answered from the Station to which it was addressed.

The second Section imposed a penalty for neglect of that injunction; and the third Section provided that this Act should be taken as part of the Ports Act XXII of 1855.

He supposed, generally, that there could be no doubt of the right of the Legislature to pass such a law when the interests of the public rendered it necessary. It was not always easy nor, as a general principle, was it on this occasion necessary, to draw the line by which, as regards the legitimate interference of the Legislature, the rights to be enjoyed by private parties without interruption should be distinguished from those in which the public had an interest. But it appeared to him that there were several considerations which might be urged in support of this Bill. Looking, generally, to the connection subsisting between navigators and the public whom they in a great measure served, it seemed to him that Masters of vessels might very reasonably be compelled to serve the purpose for which this Bill was intended to provide. In coming to this Port they had the protection of the law, the benefit of the Port itself, and of whatever advantages arose from the system of administration therein established. In other respects, they might

be regarded as public traders. They offered themselves to the public, although on a large scale, as carriers of goods and communications; and in return for the advantages which they derived from the public, some acknowledgment was due from them to the public. But, looking more particularly to the vessels engaged in the China Trade, it may be fairly said that the position which they occupied tended to exclude others from occupying the same line, and thus the advantages which they possessed partook in some degree of the nature of a monopoly, and for that reason also it appeared to him very proper that they should be required to disclose the fact of their return to Port.

The Bill was read a first time.

PORTS AND PORT-DUES.

Mr. FORBES moved the first reading of a Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues.)" He said that Act XXII of 1855 was passed to provide for the safety of vessels and the convenience of traffic in the several Ports in India and the Straits, for the improvement and maintenance of Ports, and for the levy of Port-dues in order to defray the cost of such improvements and maintenance. It provided for the levy by distraint of all claims of Government on account of Port-dues, as long as the vessel, in respect of which they were leviable, remained at anchor in the harbour, if the Master of the vessel refused to pay them on demand. But no provision was made for the collection at one Port of the claims due at another Port, if any vessel should leave the harbour without settling the claims. Experience had shown that such a provision was necessary, and instances had lately occurred on the Western Coast of India of vessels leaving their Port without satisfying the claims of Government on account of Harbour-dues.

The object of this Bill was to give the authorities, who, by Act XXII of 1855, had power to collect Harbour-dues for the Port at which they were employed, the same power to collect the dues which any vessel might have left undischarged at any other Port.

But as any Master of a vessel, who would attempt to defraud the Government by wilfully leaving a harbour without payment of the Port-dues, would, if no penalty attached to the attempt, always take his chance of evading the demand, it was further provided that, unless it were shown that departure was caused by stress of weather or other circumstances over which the Master had no control, his departure should be considered to have been wilful, and he would be liable to a penalty in addition to the Port-dues which he attempted to evade.

If this Bill, and the Bill which had just been introduced by the Honorable Member for Bengal, should pass a second reading, he (Mr. Forbes) proposed to communicate with that Honorable Gentleman privately, in the hope that both Bills might be incorporated into one in Select Committee, thus avoiding the inconvenience which would arise from there being before the Council two Bills to amend the same Act.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

PENAL CODE.

Mr. Forbes moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, June 4, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*.

The Hon. Lieut.-Genl. H. Forbes, Esq.,
Sir J. Outram, and
P. W. LeGeyt, Esq., A. Sconce, Esq.
H. B. Harington, Esq.,

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

Mr. Forbes

Saturday, June 11, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*.

H. B. Harington, Esq., | H. Forbes, Esq.,
and
A. Sconce, Esq.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws. The Council was therefore adjourned by the Vice-President at half past 11 o'clock to Saturday, the 18th Instant, at 11 o'clock.

Saturday, June 18, 1859.

PRESENT :

The Hon'ble Barnes Peacock, *Vice-President*,
in the Chair.

Hon. Lieut.-Genl. Sir J. Outram, | H. Forbes, Esq.,
Hon. H. B. Harington, | Hon. Sir C. R. M.
P. W. LeGeyt, Esq., | Jackson,
and
A. Sconce, Esq.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

THE CLERK presented a Petition from Mr. Robert Bain, of Prince of Wales' Island, praying for the repeal or a modification of Act VI of 1857 for the acquisition of land for public purposes.

MR. PEACOCK moved that the Petition be printed.

Agreed to.

APPEALS.

THE CLERK presented a Petition from Zemindars and others of Bengal and Behar against the Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals."

MR. SCONCE moved that the Petition be printed.

Agreed to.

MALACCA LANDS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits

for purposes of Police, or for the public health or safety; nor, looking at the Masters of the vessels who traded with the Port of Calcutta in their capacity of public traders or public carriers in the legal sense of those words, were they told that the shippers of goods by these vessels on their return voyage to Calcutta, or the consignees of those goods, required the Bill for their protection or convenience. The question then arose, for what purpose was the Bill required? Disguise it as they might, he (Mr. Harington) thought that the only answer that could be given to the question was that it was a Bill to protect one class of Opium speculators against another class of speculators in the same drug, who, from being possessed of more capital or greater enterprise, had been enabled to secure for themselves certain advantages, of which this Bill, should it become law, would deprive them; but he could not regard that as a legitimate object of legislation. He believed he was right in saying that no such law existed in England, and that the want of such a law was not felt there. If then the public interests in England, with its numerous shipping, did not require a law of this nature, he (Mr. Harington) could not understand why the public interests required it in Calcutta. It was no answer to the objections which appeared to him to exist to the Bill, to say that the vessels which would be chiefly affected by its provisions were obliged by law to carry mails, by which the information which the owners of these vessels wished to keep to themselves, for a time at least, might be and was conveyed. It was scarcely necessary for him to say that it was not this particular information alone that was conveyed by these mails, but that they carried the letters of the entire public, using that term in its largest sense, commencing with the Government and proceeding downwards. It was, therefore, very right and proper, and for the interests of the public as a public, that the obligation of carrying mails should be enforced by law on all vessels, and that they should be compelled to deliver their mails as speedily as possible. But this was a very different thing from the interests of a small section of the Calcutta community, whose success or failure in the

speculations carried on by them in a particular article, often in a spirit of gambling, was a matter of the smallest possible moment, or of no moment at all, to the public at large. The promoters of the Bill had been able to adduce only two instances to show the necessity of its introduction; but it was admitted that one of the cases was not in point. In that case the Master of the vessel wilfully omitted to land his mail where he was bound by law to have landed it, and he was very justly punished for the omission. But the present Bill would not meet a case of this nature, though the Chamber of Commerce had given it as their opinion that the punishment which could be awarded under the existing law on a conviction for the offence of which the Master of the vessel in the case referred to was found guilty was quite inadequate, and they had recommended that the penalty should be greatly enhanced. No attention, however, appeared to have been paid to this recommendation in framing the present Bill, though it certainly seemed to him (Mr. Harington) to be deserving of consideration. In the second case, it was not clear that any proper enquiry had been made with a view to ascertain whether the cause assigned for anchoring the vessel outside was a valid one, or whether it was a mere pretext resorted to for a particular purpose; nor had it been shown that any public inconvenience had been experienced in consequence of the number of the vessel not having been signalled to the nearest telegraphic station, in accordance with the request expressed by the Pilot. It was very possible that it might have been for the convenience or advantage of certain parties, other than the owners of the vessels, to have been informed of her arrival at the same time that the owners probably received their information; but, as he had already intimated, he did not think that they should be called upon to legislate in this matter for the protection of individual or class interests. It had been said that it was as great an offence to withhold information of the arrival of a vessel by not hoisting her number as it was to hoist a wrong number; but he could not concur in that position. When a wrong number was hoisted, it would generally be done with a fraudu-

lent intention, but the case was very different when information was simply withheld, the communication of which was not required for the general good. In the absence then of any information or evidence to show that this Bill was really necessary for the interests of the Government or the public at large, he (Mr. Harington) felt himself unable to give his assent to the second reading of it.

MR. LE GEYT said, he generally assented to what had just fallen from the Honorable Member (Mr. Harington); but he (Mr. Le Geyt) had another objection to the Bill, which, if passed in its present shape, would become wholly inoperative. Section II provided a penalty of a hundred Rupees for a Master of a vessel refusing or neglecting to hoist his number. Now, if the object of not disclosing the name of the vessel was worth a great deal more, probably a hundred times as much, to the parties concerned, the proposed penalty would be quite inadequate; and with regard to imprisonment, he did not think that any Magistrate would send a Commander of a vessel to jail for thirty days for such an offence, or that that would be the best way of enforcing the provisions of a Bill like that now before the Council. If any good ground could still be urged in favor of such a restriction, and if it could be shown, as had been mentioned, that the Bill was intended to provide for the public safety, he thought it would be far preferable that this Bill should be withdrawn, and that, in lieu of it, another Bill be introduced, adopting the suggestion of the Superintendent of Marine, that authority be given to the Pilot of a vessel to enforce the order for showing her number, or, as an alternative, to refuse to continue in the vessel.

MR. PEACOCK said, he entirely agreed with the Honorable Member (Mr. Harington) and the Honorable Member for Bombay. He saw no sufficient case shown for interfering, as this Bill proposed to do, with private enterprise. There was nothing in the papers to bear out the allegation in the Statement of objects and reasons, that "there is reason to apprehend that parties through whom communications with China are kept up are disposed to use the opportunities naturally arising from their posi-

Mr. Le Geyt

tion, to the detriment of the mercantile community and to the disadvantage of the public generally." The Honorable Mover had not shown that the Masters or owners of ships had been guilty of any fraud or of any attempt at fraud. There was no more reason for preventing a person, who obtained private information by means of a ship employed by him for that purpose, from using that information, than there was for restricting every other person from using private information which he obtained by other means. There was no great reason for informing the public that Mr. A.'s ship from China was at Kedgerree, and therefore that the owner might possibly have some private information as to the price of opium, than there was for declaring that no person should receive private information as to the state of any particular market by the Electric Telegraph, or that his name should be published. In fact, he did not see how the owner of a vessel which refused to hoist her number could receive information of her arrival before any other person, or any private information from her, unless it were through a private message for which he would be obliged to pay. All he could know (as others would at the same time know) would be that a ship had arrived without showing her number. But even supposing it were made known that the *Lightning* had arrived from China, all that the public would gain would be that they might suspect from that circumstance that the owner might be in possession of private information as to the rate of opium ruling in China, and they would be more cautious in dealing with him. So, if the owner of a China Steamer were found to keep back from the public information of her arrival, and to enter into opium-contracts upon the faith of private information received by her, persons would soon cease to have dealings with him. If the thing were thus left alone, it would soon find its own level and rectify itself. He, therefore, thought that this Bill, which would in some respects interfere with private enterprise, ought not to be passed. But even if it were passed, the object of the promoters might easily be frustrated. There was nothing to prevent a Steamer lying at the Sandheads and sending a private message by a Tug

Steamer to the nearest Telegraph Station. Nor was there any thing to compel a foreign vessel to show her number. If there were any public object for passing such a Bill, it should apply to all vessels, Foreign as well as British. He did not mean to say that he would oppose such a Bill if sufficient public grounds were shown for it. All he meant to contend was that the reasons urged were not sufficient to induce him to vote in support of it, and at present he did not see any.

MR. SCONCE said that, after what had been stated, more especially by the Honorable Member (Mr. Harington), he thought he had been materially relieved from saying much about the propriety of legislating on such matters. At the same time he should be unwilling, on his own account, to magnify the necessity for the proposed measure. He looked upon it as a Bill embracing both material public and material social advantages. He need not attempt to define the circumstances under which the Legislature was justified in interfering with the private acts of private individuals. Each case was determined by its own merits according to the time and circumstances that it occurred.

With regard to this Bill, it seemed to him that allusion had been made as though it applied only to China vessels, whereas it was a general measure. Communications to China were made by vessels which were compelled, not only to carry, but also to deliver mails. He could not help looking upon the communication as one of public interest, and he believed it to be a principle of very general application that men who, for their own advantage, made use of the public, should on occasion be required to serve the public for their advantage. He was not sufficiently informed as to the extent to which each single China vessel depended on the exports and imports of its own owners. He apprehended, however, that, as carriers for the public, all who opened large lines of communication became, in a manner, public servants. He had said that they used the public in so far as they carried their goods, and it seemed to him that it was a fair return to compel them to report their arrival. But they served the public in another way, meaning in a larger sense the commonwealth and not

only its individual members. They had the protection of the laws at sea and on shore; they had the advantages of the Port; they benefited by our Postal arrangements; nay, they were indebted to the public for the establishment of the Electric Telegraph, which, while so ready to use on their own account, they practically shut against others.

These were the general grounds upon which he would advocate the second reading of the Bill.

The Honorable Member for Bombay had said that, in one respect, it would be inoperative. But that was a point for consideration in Committee, quite distinct from the principle of the Bill itself.

Again, it had been said that parties who paid for their information should not be deprived of it. On general grounds, however, he maintained that it was nothing but fair that owners of vessels should be obliged to reciprocate the advantages which they enjoyed.

The Motion was then put and negatived.

PORTS AND PORT DUES.

MR. FORBES moved the second reading of the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port dues)."

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

PUBLIC CONVEYANCES.

MR. LE GEYT moved the second reading of the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

MR. HARINGTON said, he had carefully considered all that was urged in favor of this Bill by the Honorable Member for Bombay at the time that he introduced it to their notice. He had also read the Bill itself and the Statement of objects and reasons since printed and circulated, together with the petition from certain inhabitants of Calcutta, which was presented to the Council before the Bill was brought in, and the extract from the Report of the Municipal Commissioners for the year 1857, and the letter

from the Governor of the Straits Settlement, which formed the annexures to the Bill; but he must confess that he had been unable to discover in these papers any sufficient ground for their coming to a different conclusion from that arrived at by the late Honorable Member for Bengal, who, with that sound judgment and practical wisdom which exhibited themselves in all that he did, objected to any legislation for the purpose of fixing the fares for carriages let on hire, considering "that the moderate rates of charge and the active competition which kept down those rates, did not indicate any necessity for the action of Government in the very questionable direction of an interference with the natural adjustment of wages and profits." The Honorable Member for Bombay seemed to think that the natural adjustment, so confidently looked forward to by the late Honorable Member for Bengal, was still far in the future and might never be attained, and he had assigned this as one of his reasons for introducing this Bill at the present time; he had also referred to the petition, which, as already stated, was presented to the Council by certain inhabitants of Calcutta before the Bill was brought in; but what did the petitioners ask for—why, their principal request seemed to be that the rate of hire for a whole day for the class of carriages to which their petition related, should be fixed by law at a sum one-third lower than the rate which the Municipal Commissioners in their Report had pronounced to be a fair and reasonable rate, or one with which no fault could be found, and they made this request, notwithstanding that, since the date of the Municipal Commissioners' Report, almost every article of food had nearly doubled itself in price, horses and ponies cost much more, and wages were generally higher. A rate of hire, then, considered by the Municipal Commissioners to be fair and proper, was one of the public grievances from which these Calcutta petitioners prayed to be relieved by legislative enactment. The Honorable Member for Bombay did not say that higher rates were now demanded than at the time when the Municipal Commissioners gave it as their opinion that no fault could be found with the rates charged; and, look-

Mr. Harington

ing to the increase which, as he had said, had taken place in the price of almost all articles of food and of ponies and horses, and in the rates of wages, he certainly thought they might assume that a maximum rate of hire had been attained, and that, to some extent at least, the expectation expressed by the late Honorable Member for Bengal had been realised. So much then of the ground on which the Honorable Member for Bombay had asked them to pass this Bill was cut away from beneath them.

The Bill brought in by the Honorable Member for Bombay related to three descriptions of hired conveyances, namely, wheeled carriages, boats, and palankeens; but neither in the petition from the inhabitants of Calcutta, nor in the extract from the Report of the Municipal Commissioners, on which stress had been laid by the Honorable Member for Bombay, was any mention made of the last two descriptions of conveyances, and in so far, therefore, as the public voice was concerned, there appeared to be no ground for any legislative interference in respect to them. He believed he was right in saying that a respectable palankeen could, at all times, or nearly always, be obtained in any part of Calcutta at a moderate rate of hire, and that the bearers were generally willing and obliging. Why then, it might be asked, were they to invest the Municipal Commissioners, or the Commissioner of Police, with power to fix the rate of hire at which the owners or bearers of these conveyances were to give their services and the use of their palankeens to the public? Then, as regarded boats, there was already a law which required that all boats let for hire should be registered and numbered. This law had been for some time in force, and he was not aware that any complaints had been made against it. Its provisions corresponded very much with that part of the Bill brought in by the Honorable Member for Bombay which related to the same description of public conveyances; the Honorable Member, however, wished to go farther, and to give the Commissioner of Police power to fix the rate of hire at which boats should be let; but he (Mr. Harington) could see no more reason for the Commissioner of Police having this

power in respect to boats than in respect to palankeens. He thought that any one who had been in the habit of visiting the public ghâts of Calcutta would agree with him that there was no difficulty in hiring any number of boats; the only difficulty was to avoid having to engage all the boats at the ghât, so importunate were the owners, so anxious for a fare—but this, however disagreeable, would not be prevented by the present Bill.

To return to wheeled carriages. In order, he supposed, that the European livery stable-keepers might be excluded from the operation of the Bill, the Honorable Member for Bombay had so framed it that, according to his (Mr. Harington's) view, its provisions would reach few, if any, of the numerous hired carriages which traversed the Town of Calcutta at all hours of the day and night, to the great convenience, as he thought, of the citizens and of visitors, but against which the complaint of the Municipal Commissioners and the Calcutta petitioners seemed to be especially directed. If he rightly understood the second Section of the Bill, the Commissioner of Police would have no power to fix the rate of hire of any carriage which did not stand or ply in the streets for hire; nor would any carriage require to be registered and numbered under the Bill which was not let for any time less than a day. Unconvinced by any thing that had been said of the necessity of passing this Bill, he did not consider himself called upon to object to this particular part of it; but would it satisfy those who complained of the present state of things? Looking to their demands, it occurred to him (Mr. Harington) that they would scarcely care to have the Bill in the form in which it was now drawn, and he must confess that it was not of that large and comprehensive character which he, for one, had been led to expect from what the Honorable Member for Bombay had stated at the time of its introduction. Where stands were allotted in the public streets for hired carriages, it might be very right and proper that the owners of the carriages which plied for hire on those stands should be subjected to certain rules; but he was informed that the number of carriages which

actually plied for hire in the streets of Calcutta was comparatively small; that the charges made for them were generally moderate, and that the drivers of these carriages were not the persons whose conduct was complained of. In support of what he had just said, he might mention that he had been told by a gentleman who occasionally visited him from Barrackpore, and who generally travelled by rail, that he never experienced any difficulty in getting a hired carriage with a single horse on reaching the ghât on the Calcutta side of the river; that the carriage conveyed him wherever he wished to go during the day, and took him back to the ghât in the evening, and that for the whole day's work he never paid more than two rupees, with which the driver was quite satisfied. Surely there was no cause for complaint, no ground for legislation here. But what the Calcutta petitioners required was that the native livery stable-keepers who, for the most part, kept their carriages and horses under sheds, and who were stated by the Municipal Commissioners, by a strange misapplication of terms, to "carry on a nefarious monopoly," though in what their monopoly consisted he (Mr. Harington) had been unable to discover—should be compelled to let their carriages for such times and at such rates as the petitioners might consider proper. No such demand was made in respect of the European livery stable-keepers, though, if any monopoly existed, they not only shared in it, but they certainly had a monopoly of high prices, as any one must know to his cost, who had been in the habit of hiring carriages from both the European and Native livery stable-keepers.

He (Mr. Harington) should have no objection to a law being passed, which should require that all hired conveyances, of whatever description, and by whomsoever owned, should be licensed, registered, and numbered; and it might also be proper to require that a table of their rates of hire should be stuck up in some conspicuous place, either where the conveyances were kept, or in the conveyances themselves. He thought that a law of this character would be very advantageous and useful to the public; but it was obvious that the Bill brought in by the Honorable Member of Bom-

bay contained no provisions whatever as regarded the great majority of carriages let out for hire in this city, and as while it omitted legislation where it appeared to him (Mr. Harington) it might be usefully, beneficially, and properly had recourse to, it comprised provisions, of the necessity or propriety of which he was not satisfied, he did not feel disposed to vote for the second reading of the Bill. As regarded Bombay, he wished to observe that the changes which would be introduced into that Presidency, in the event of this Bill being substituted for the law now in force there, would not be for the advantage of the Bombay Community, and if they should be consulted on the subject, he thought they would prefer to retain their present law.

MR. LEGEYT said, he did not exactly understand whether the Honorable Member, who had just spoken, opposed the entire principle of the proposed measure, or only the form and framing of this particular Bill. If the latter, then he (Mr. LeGeyt) thought that all that had been brought forward by the Honorable Member would be more fully and far better discussed by the Select Committee, to whom the Bill would be referred, if the Council allowed it to be read a second time and published for general information. But in case his Honorable friend intended to oppose the second reading, he (Mr. LeGeyt) would proceed to answer shortly some of the objections which had been urged.

The Bill did not propose to reduce or fix the rates. He had expressly stated, on introducing the Bill, that this would be better done by the local authorities.

Then it was said that the Bill should apply, or rather that the principle of registration should be extended, to all classes of conveyances. He (Mr. LeGeyt) confessed he saw no good ground for including all classes of conveyances within the provisions of the Bill. This Bill was intended to regulate the conduct of the drivers and the condition of the carriages, which are engaged by the hour or by courses, and which are generally known under the name of Hackney-carriages. This description of conveyance is regulated in all large civilised towns, instead of leaving their employers to the mercy or whims

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of the drivers or owners of the vehicles, which he believed was found to be a source of great inconvenience in this city. Those who were in the habit of using such conveyances experienced great annoyance and trouble as to the amount of fares to be paid by them. A driver had no right, when he either occupied a public stand or plied along a public street ready to engage a fare, to hesitate or refuse to be hired when the customary fare was offered. He had been informed that it was a common practice with the drivers of these carriages to leave those who had hired and paid for them at shop-doors and other places, and decamp. It was to prevent annoyances of this nature, which this Bill was intended to provide.

With regard to what the Honorable Member had said about Bombay, he (Mr. LeGeyt) would only observe that, if the Bill were allowed to be read a second time, it would be seen how it would be received by the community at Bombay. In his (Mr. LeGeyt's) opinion, it would be an improvement on the existing law; and, at any rate, an alteration of the existing law in Bombay was necessary, as it directed certain things to be done by an Officer whose appointment had, for some time past, ceased to exist. He therefore hoped the Council would allow the Bill to be read a second time.

The question being put, the Council divided—

Ayes 4.	Noes 3.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	Mr. Peacock.
Sir James Outram.	

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

ESTATE OF THE NABOB OF SURAT.

MR. LEGEYT moved that the Report of the Select Committee on the Bill "to amend Act XVIII of 1848 (for the administration of the estate of the late Nabob of Surat and to continue privileges to his family)" be adopted. Agreed to.

TRIALS BY SESSION JUDGES.

MR. HARINGTON moved that the Bill "to enable Session Judges to pass

sentence in certain cases without reference to the Sudder Court" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover. Agreed to.

PORTS AND PORT-DUES.

MR. FORBES moved that the Bill "to amend Act XXII of 1855 (for the regulation of Ports and Port-dues)" be referred to a Select Committee, consisting of Mr. Harington, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES said, when Act VII of 1858, which provided for the levy of Port-dues and fees within the Presidency of Madras, was under consideration, more than one representation was received from the Chamber of Commerce at Cochin of the evils that would result to that Port from an enforcement of that Section of the Act which provided that half the ordinary amount of Port-dues should be collected from vessels which do not even break bulk, or land or take in a passenger.

The Chamber represented that Cochin was the chief place of export for the produce of the Malabar Coast, and that the greater part of the tonnage required by merchants was obtained by means of what were called seeking ships, that is, ships which came into Port to seek for freight without having any actual engagement, and it was urged that, with the choice of Bombay on the one side and Ceylon on the other, no ship would incur the certainty of having to pay Port-dues at Cochin, when it was doubtful whether she would after all obtain freight or not.

The Chamber, in an address presented to the Government of Madras after the Act was passed, showed that it had inflicted on Cochin considerable injury, as the Peninsular and Oriental Company had at once refused to allow their steamers to call at the Port on their passage to and from Bombay and Galle, as they had been accustomed to do, owing to the liability they incurred for Port-dues, however few might be the number of hours they remained in the Port, and whether they derived any benefit from calling at Cochin or not.

This last address was not transmitted to this Council by the Government of

Madras, because the original representation of the Chamber of Commerce had been already forwarded, and because the measure against which the Chamber protested had already become law. Their representation, however, having gone home as a part of the proceedings of the Government, had attracted the attention of the Secretary of State, and in a Despatch, dated the 7th of April last, Lord Stanley suggested that it should be sent to the Member of this Council representing the Madras Presidency.

He had looked over all that was recorded in connection with Act VII of 1858, and he must say that he was left under the impression that the mercantile community of Cochin had good ground for the representation they had made. The Section in the Act which makes ships liable to half dues, even though they do not break bulk, or land or take in a passenger, appeared to have been passed with sole reference to the Port of Madras, and in consideration of the great advantage which all vessels, whether breaking bulk or not, unquestionably derived from the admirable Light which is shown at that Port, and this was no doubt a substantial and good ground for taxing vessels coming into Madras. But at Cochin the argument did not apply, the Port had no Light-house, and vessels merely coming in to ask if there be freight for them or not could not, he thought, be said to derive such an advantage from anchorage in an open roadstead as to make it just to put a tax upon them. In fact, the law defeated its own end, for the result was that vessels did not come to Cochin, and what would otherwise be a thriving and a rising place, was depressed by the existence of a law passed with the sole view of providing means for the improvement of a Port which the law itself prevented ships from frequenting.

He had said that the Memorial of the Chamber of Commerce had now been sent to him at the suggestion of the Secretary of State, and as a Bill to amend Act XXII of 1855 had just been read a second time and referred to a Select Committee, he should move that these papers connected with Act VII of 1858, which was a part of, and was to be read with, Act XXII of 1855, be

referred for consideration and report to the same Committee.
Agreed to.

PUBLIC CONVEYANCES.

MR. LEGEYT moved that the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee, consisting of Sir Charles Jackson, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MR. FORBES moved that the Council be adjourned for ten minutes.

Agreed to.

The Council resumed its sitting pursuant to adjournment.

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE VICE-PRESIDENT announced that the Governor-General had signified his assent to the Bill "to explain Act XXX of 1858 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic)."

The Council adjourned.

Saturday, June 25, 1859.

PRESENT :

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

Hon. Lieut.-Genl. Sir H. Forbes, Esq.,
James Outram,
Hon. H. B. Harington,
P. W. LeGeyt, Esq.,
Hon. Sir C. R. M.
Jackson,
and
A. Sconce, Esq.

MALABAR OUTRAGES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

Agreed to.

Mr. Forbes

STAMPS.

MR. SCONCE gave notice that he would, on Saturday next, move the first reading of a Bill to amend the laws relating to Stamps.

SALT DUTIES (MADRAS).

MR. FORBES gave notice that he would, on the same day, move the first reading of a Bill to collect a duty of Excise on Salt manufactured in the Presidency of Fort St. George.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

BOMBAY ABKAREE REVENUE.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay.

The Council adjourned.

Saturday, July 2, 1859.

PRESENT :

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

Hon. Lieut.-Genl. Sir H. Forbes, Esq.,
J. Outram,
Hon. H. B. Harington,
P. W. LeGeyt, Esq.,
Hon. Sir C. R. M.
Jackson,
and
A. Sconce, Esq.

SMALL CAUSE COURTS.

THE CLERK presented to the Council a Petition of the British Indian Association relating to the Bill "for the establishment of

Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" as settled in Committee of the whole Council.

MR. HARINGTON moved that the Petition be printed.

Agreed to.

ENGLISH PASSENGERS ACT.

THE CLERK reported to the Council that he had received, from the Home Department, a Despatch from the Secretary of State for India, suggesting the extension to India of the provisions of Sections LII to LV of the English Passengers Act, 18 and 19 Vic. c. 119.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

THE CLERK reported that he had received a communication from the Foreign Department relative to the extension to the Straits Settlement of Act XXIII of 1840 (for executing, within the local limits of the jurisdiction of Her Majesty's Courts, legal Process issued by authorities in the Mofussil).

MR. PEACOCK moved that the above communication be printed.

Agreed to.

OATHS AND AFFIRMATIONS.

THE CLERK reported that he had received, from the Home Department, an Extract of a Despatch from the Secretary of State for India, relative to the Bill "concerning oaths and affirmations."

MR. FORBES moved that the above communication be printed.

Agreed to.

SMALL CAUSE COURTS.

THE CLERK reported that he had received, from the Home Department, an Extract of a Despatch from the Secretary of State for India, relative to the Bill "for the establishment of Courts of Small Causes beyond the local limits

of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

MR. HARINGTON moved that the above communication be printed.

Agreed to.

STAMPS.

MR. SCONCE moved the first reading of a Bill "to consolidate and amend the laws relating to Stamps." He said that the Bill which he now had the honor to bring to the notice of the Council had for its main object to consolidate, amend, enlarge, and generally to enforce the operation of the Stamp Laws. He should have wished that, as was at one time expected, the Council had had the benefit of the greater authority of an Honorable Member of this Council, whose absence they had so much cause to regret, in the introduction of the Bill. But as the duty had devolved upon him, he would now, with the indulgence of the Council, state shortly the general topics to which the Bill related.

It was a Bill, as he had said, to consolidate and enlarge the Stamp Laws, but the subject matter of the Bill did not embody and could not disclose the object of the proposed enactment. He need hardly say that the leading motive of the Bill, but for which the amendment of the law would not have been probably at this moment attempted, was, if possible, in some degree to increase the resources of the Government, a subject which it was scarcely necessary for him to dwell upon. It was generally understood how necessary it was to relieve the pressure under which the Government now lay, and it was probably sufficient for him to recall to the recollection of the Honorable Members the exposition of the financial circumstances of the Government which had been laid before the Council four months ago by His Excellency the Governor-General.

As to the Stamp Law, it was well known that it operated and became productive in two general forms. In one form, it affected a vast number of transactions and situations in which mankind were placed towards each other or themselves. It generally affected monetary transactions; and it

touched, in some degree, the capital of the capitalists, the profit of the merchant and trader, and the income of the consumer. It was too much to expect that it would always work with entire impartiality; hardly any tax did so. Nor did it pretend to touch all capital, profits, or income without exception; but from the number of persons of all classes who were affected by the application of the law, and from the universality of its operation, it might fairly be said to have a very wide and general application.

The second form in which the law acted might not possibly be said to be of so unexceptionable a character. He alluded to the Stamps used in judicial proceedings. The operation of the tax in this sense was often said to be a tax upon redress of wrong, and an impediment to the proper administration of justice. But the question had another side. Where there was wrong to be redressed, there was a wrong-doer; and it might be not unfairly argued that, as ultimately the result of litigation was to cast the costs of suit on the party who had done the wrong, the imposition of a Stamp Duty upon the institution of a suit was relieved from an injurious operation. On the other hand, even admitting that the use of stamp paper in suits affected the resources of suitors, there was, he might venture to say, very much reason to be assured that the doors of the Courts of Justice were not sensibly straightened by the operation of the Stamp Law, and certainly that suitors generally disbursed their money with a facile affluence which did not by any means support the supposition that to be relieved from the charge of an institution-stamp was to them a material object of economy. But this question he did not propose to bring now to an issue. The Bill which he held in his hand was a Bill to increase, not to forego, public revenue. The sacrifice which the adoption of the principle now referred to would entail, was of too serious a nature to be at this moment submitted for the consideration of the Council. He found from the latest Returns available to him that the total revenue derived from stamps during the year 1856-57 yielded somewhat more than sixty lakhs; and as it was estimated on very exact data that

Mr. Scoville

stamps used in judicial proceedings furnished at least one-half of the entire revenue, it followed that a proposition to abandon this portion of the public revenue would entail a loss to the State of thirty lakhs. It seemed to him, therefore, that whatever ground there might be on any future occasion for re-considering the principle of this tax, it was not at the present moment that the question could be entertained.

But while he did not propose to reduce, at the same time he did not propose to increase, this branch of the Stamp Revenue. The area of taxation would continue as before. The Presidency Towns of Calcutta, Madras, and Bombay, under the jurisdiction of the Supreme Courts of Judicature, which had hitherto been exempted from the use of Stamps in the conduct of judicial proceedings, would continue to be so exempted. But as regards the Local Courts, without, as he had said, enhancing the weight of the tax, it appeared to him that a beneficial change might well be adopted in the mode of its application. The revenue received through judicial proceedings was, as the Council was aware, derived for the most part from Stamps used in petitions of plaint and of appeal. In Bengal and Madras the same scale of taxation is followed, and though within the Presidency of Bombay the scale of values determining the tax was somewhat different, practically the duty charged very closely corresponded with that charged in the other Presidencies.

It seemed to him, however, that, as regards all the Presidencies, the scheme of taxation was very unequal in its operation, and (he feared) that inequality was indicative of unfairness, and unfairness of injustice. First, he apprehended that the present system was unjust from the severity with which suits for smaller values were taxed, compared with suits of larger values. Suits for smaller values, for example, suits for a hundred and sixty Rupees or three hundred and twenty Rupees were assessed at ten per cent.; but as the value of the suit increased, the percentage of taxation diminished from ten to six, five, four, and eventually, when the value of the subject of the suit was eight thousand Rupees, to three per cent. But not only was the difference in the taxation of the

smaller and the larger suits excessive, but within smaller limits the operation of the tax was exceedingly unequal. For example, all suits of values varying from three hundred to eight hundred Rupees were subject to a stamp of thirty-two Rupees, that is, a suit for three hundred and twenty Rupees and a suit for seven hundred and eighty Rupees were charged at institution with one and the same stamp. In an attempt, therefore, in some degree to mitigate the severity, and correct the inequality of the present system, he ventured to propose the substitution of the Schedule which appears in the present Bill.

He proposed a general rating of five per cent. to operate as follows:—On all suits up to the value of one hundred Rupees, he proposed that on every sum of ten Rupees a tax of eight annas or five per cent. should be charged; that is, eight annas on suits from ten to twenty Rupees, one Rupee on suits from twenty to thirty Rupees, and so on. Again, that in suits from the value of one hundred Rupees, to the value of five hundred Rupees, on every additional sum of twenty Rupees one Rupee additional tax, that is five per cent., should be imposed. Again, that in suits from the value of five hundred Rupees up to one thousand Rupees, for every additional sum of fifty Rupees an additional tax of two Rupees and eight annas or five per cent. should be charged; and after the same rate an additional charge of five Rupees on every additional sum of one hundred Rupees from a suit of the value of one thousand Rupees up to the value of ten thousand Rupees. Finally, as regarded suits exceeding in value ten thousand Rupees, it was proposed that five per cent. should be charged up to ten thousand Rupees, and two-and-a-half per cent. on every additional sum of one hundred Rupees above that amount.

The result of this change would be probably to leave the revenue derived from stamps in the course of judicial proceedings about the same amount as at present. In the details of receipts there would be necessarily considerable alteration. In the revenue derived from suits instituted in Moonsiffs' Courts in Bengal, there would be a falling off, as nearly as he was able to

estimate, of somewhat more than a lakh of Rupees. So in suits within the jurisdiction of Sudder Ameen, there would be a falling off of about fifteen thousand Rupees; but on the other hand, in suits of a value exceeding ten thousand Rupees, he estimated the gain to exceed one lakh of Rupees. Upon the whole, then, looking to the relief which the change proposed was calculated to bestow on the large number of persons interested in actions of smaller value, it seemed to him that the new Schedule was well worthy of being adopted by the Legislature.

In some respects there was a striking inequality in the application of the stamp tax to the three Presidencies, or in the actual law of this Presidency as compared with that in force in Madras and Bombay. In Bengal petitions presented in the Criminal Courts and to Collectors were required to be written on stamp paper, and he could not doubt that the duty realized from them contributed very materially to the general revenue. But there was no such requirement of the law in the other Presidencies, and this of itself exhibited an objectionable inequality, which, in consideration of the public exigencies, no attempt had been made to correct.

He would now proceed to notice the law as it affected general transactions. The stamps realized on this head were known in this part of India as comprised in Schedule A Regulation X. 1829. By Regulation XII. 1826 Stamp Duties were leviable within the town of Calcutta; but no similar law existed for the towns of Madras and Bombay. Generally stamps were realized in such transactions throughout the Bengal Presidency. As far as Calcutta was concerned, a sum of about one lakh of Rupees was annually levied from stamp paper. But though a law existed for the use of stamps within that town, it was more optional than imperative, for instruments not unstamped were not held, in actions tried by the Supreme Court, to be inadmissible as evidence; and the object of this Bill was to extend the law generally throughout the Presidencies and the Presidency Towns, by providing that no unstamped deed or instrument, which the law might require to be stamped, should be entitled to be produced in

evidence before any Court of Justice. But there were many classes of cases in which the parties concerned did not look to the admissibility of the deed as evidence; in these cases the trust and confidence of people in each other took the place of the motives which influenced them in the use of stamps in other cases. To give effect to such instruments as bonds or deeds of sale, the parties holding these deeds had to rely on the protection of the Courts. But there were others, such as bills and receipts, which, in dealing with each other, were accepted without the guarantee which stamps afforded. On this ground it seemed to have become necessary to make the law more stringent, and it was proposed to declare any person liable, upon the prosecution of the Collector of Stamps, to the imposition of a penalty upon the making or execution of a deed on unstamped paper or on paper of an inadequate stamp.

The law also sought to avail itself of another means of compelling the use of the stamps prescribed. It was well known that, under certain circumstances, instruments which had not been written on stamped paper might, under the specific conditions laid down in the law, be stamped if produced for that purpose within three months from the date of their issue, and in others if produced beyond three months. But the change now proposed was that, after the lapse of six months from the date of the promulgation of the Act, or after three months from the date of execution, no unstamped deed should be entitled to the benefit of being stamped. In the latter case it was possible to conceive that some opposition might be offered to a stringent enforcement of this rule. But as far as he was able to learn, the benefit to be derived from a looser wording of the old law was very limited, for it appeared that in the course of a whole year no more than six thousand Rupees had been derived from this source.

As to the details of the Schedule hitherto in force, a material difference was observable between the rates charged in Bengal, and the rates charged in Madras and Bombay. In Bengal there was a Schedule of discriminative rates for the different classes of documents stamped, whereas in the other two Pre-

sidencies all classes of instruments were taxed at one and the same rate of percentage. Uniformity of practice, however, was preferable to diversity; and other reasons arising upon the merits of the measure enforced the same principle of adopting one common law. Of these, the most prominent was the proposal to charge one anna stamps on all drafts or orders for money payable to the bearer on demand, and on all receipts for money paid to the amount of ten Rupees or upwards. The principle of this measure was to raise, it was hoped, a considerable amount of revenue by imposing a minimum charge on individuals, and it seemed indispensable to introduce it, not in one Presidency, but in all. In England, as he understood, for the year 1857, from one-penny duties collected upon receipts and orders for money, the sum of £2,77,000 was realized, and without assuming that statement as any positive basis for estimating the revenue to be received under the same head in India, it seemed to justify the expectation of the productiveness of the tax.

Another reason he would venture to adduce in support of the proposal of assimilating the rates of duty was that the scale of duties levied in Madras and Bombay, as compared with the scale of duties charged in Bengal, was excessively low. For example, as regards bonds, whereas in Bengal a bond varying in value from three hundred Rupees to five hundred Rupees was charged with four Rupees stamp, the same bond was charged in Madras and Bombay with one Rupee stamp; and in Bengal while a bond not exceeding one thousand Rupees was charged with a six Rupees stamp, the same bond in the other Presidencies would be charged with a two Rupees stamp. Then, as regards Conveyances, a Deed of Sale, for example, for five thousand Rupees in Bengal gave twenty Rupees Stamp Duty whereas in Madras and Bombay the Duty levied was only eight Rupees. It seemed desirable, therefore, not to reduce the Bengal Duty, but to place the Madras and Bombay Duty upon an equality with it.

Besides, as regards more important mercantile transactions, it appeared to be essential to have one scale and one law applicable to the various

cases throughout the three Presidencies.

The only exception made as regards the three Presidencies fell under the head of Leases. In Bengal only those leases were exempted from Duty which took effect between a landholder and the actual cultivator of the soil; whereas in Madras and Bombay, all leases between landlord and tenant, with respect to land paying revenue to Government, were exempt from Stamp Duty, and in Bombay the same exemption was recognized with respect to leases made within lands which contributed no revenue to Government. This last exemption, as regards lakhiraj lands, the Bill proposed to disallow, but the present law was in other respects continued.

On other matter of detail might perhaps be mentioned. He alluded to the composition on the issue of Bank Notes. These seemed to be proper exceptions to the rate ordinarily chargeable as Notes and Bills, from the repeated circulation of Notes from hand to hand, and from the facility of re-issuing them. The proposal of the Bill therefore was that all Banks of issue should pay five annas per cent. per annum upon the value of the Notes issued by them, and in circulation during the year. This charge closely approximated the rate of Duty taken in England, which amounted to seven shillings per cent. on the circulation of Notes per annum.

On the whole, he was unable to offer any opinion as to the results to be expected from the changes proposed. He had already mentioned that the receipts for the use of Stamps in Calcutta alone, under a law of very imperfect obligation, amounted to a lakh of Rupees. From Bills of Exchange, whether Inland or Foreign, a considerable amount was expected to be realized. He had much reason to believe that Foreign Bills alone drawn abroad amounted to twenty millions annually; and as upon an average the Duty levied upon Bills of Exchange, varied from one anna per cent. to two annas per cent., the Duty realized upon the above sum should yield at least a lakh or a lakh and twenty-five thousand Rupees.

These appeared to him to be clearly the points which only required to be

noticed; and he should accordingly now move the first reading of the Bill.

The Bill was read a first time.

EXCISE DUTY ON SALT (MADRAS).

MR. FORBES moved the first reading of a Bill "to collect a duty of excise on salt manufactured in the Presidency of Fort St. George." He said, the Council would remember that when the question of the renewal of the East India Company's Charter was under the consideration of Parliament in 1853, a Motion was carried in the House of Commons to require the early abandonment of the salt monopoly in India, and the substitution of a fixed excise. Although this requirement did not find a place in the Act which was finally passed, having been thrown out by the House of Lords, and its rejection having been acquiesced in by the House of Commons, still the Court of Directors of the East India Company, considering that it was probable that the subject would sooner or later be re-agitated, directed the Government of India to institute an enquiry into the practicability of carrying into effect any system under which, in the words of the Clause at first adopted by the House of Commons, "the manufacture and sale of salt in India shall be absolutely free, subject only to such excise as may now, or may from time to time, be levied."

This enquiry was, as is well known, entrusted to Mr. George Plowden, and the result was a very full and elaborate report with which, no doubt, Honorable gentlemen were familiar.

At present they had to deal only with the Presidency of Madras, and he would very briefly inform the Council of the system now in force in the South of India.

The salt revenue was there raised under a strict monopoly. By Regulation I. 1805 salt could be made only on account of Government. It was, when made, delivered to Government at a rate fixed for each district, but varying in different districts according to the expense of manufacture. The average cost to Government, including all items, was about two annas a maund. Dealers purchased salt at the Government stores, which were situated in the midst of the manufacture, at convenient distances all

down the Eastern Coast, and all salt purchased at a Government store was protected by a pass; no interference whatever was allowed with the retail sale, which, as regards price, place, quantity, and all other particulars, was conducted solely in accordance with what the dealer might consider to be his interest. The price at which Government sold the salt was one Rupee a maund, and the retail price of course varied with the distance of the place of sale from the place of manufacture.

After considering the system as just described, and after having considered and reviewed the excise system as in force in Bombay, the Commissioner, Mr. Plowden, made the following remarks in his report:—

"Regarded simply as a plan for the realization of an indispensable revenue, the salt monopoly under the Madras Presidency, as at present constituted, does not, it must be admitted, afford much room for practical objection. Salt of good quality is abundantly supplied by Government at a moderate fixed price, and the revenue is easily and cheaply collected; the exportation of salt by sea is now free from duty and all restrictions, and all foreign salt is admitted to competition with the home-made article on terms of perfect equality. Only the manufacture and first sale of salt are a Government monopoly. This is so far objectionable, that a Government monopoly in a great article of consumption, in any form or degree, and any participation of a Government, in the business of a trader, are such deviations from true principle, as cannot fail to be productive, directly or indirectly, of evil consequences. But the price of the salt being fixed, the Government possesses no power of deriving a profit from the exclusive manufacture, which they might not equally derive under a free manufacture, and are only interested in maintaining the monopoly on the consideration that the same amount of revenue could not be raised so cheaply, and with so little inconvenience to the community, in any other manner. Whether this plea for continuing the monopoly is or is not well founded, appears to me to constitute the whole question to be determined in considering the practicability of substituting a system of excise upon the manufacture."

That was Mr. Plowden's view of the salt monopoly at Madras, that it was a deviation from right principle that Government should be in any way engaged in trade, that the departure from right principle became wider when the article traded in was one of prime necessity, and that the measure would

be justifiable only if it could be shown that in no other way could so large a revenue as was derived from the salt monopoly be obtained at so small an amount of public inconvenience. At the same time Mr. Plowden admitted that the monopoly was well and fairly worked, that the salt sold was good and abundant, and that beyond the fact that the sale in the first instance was a monopoly, the salt trade was wholly free and unfettered.

He did not think that it was necessary that he should enter on any argument connected with the abandonment of the monopoly. It would be admitted that the Government was justified in applying to the Legislature for power to adopt its own method for realizing the public revenue, provided that the burdens of the people were not increased, and their convenience was not diminished. It was the declared wish of the Home Government that the salt monopoly should cease, and the Government of India had, in a recent Despatch, called the attention of the Madras Government to the subject, and requested that steps might be taken for gradually substituting an excise for the system at present in force.

This Bill had been prepared in consequence. Its main provisions were to establish a system of licenses, to be granted by Collectors for the manufacture of salt, all unlicensed manufacture being prohibited, and those carrying it on being subjected to penalty. As all the present places of manufacture are private property, and are frequently bought and sold, their owners having a vested pecuniary interest in them, it was provided that all holders of present salt pans shall be entitled to a license as a right; but for new works which it might be proposed hereafter to establish, the grant or refusal of a license would be determined by the question of whether the manufacture and sale at the particular place were likely to be sufficiently large for the Government to be compensated by the excise duty for the expense to which they would be put by keeping up a preventive force.

On the same ground it was provided that a license once given might be withdrawn if less than five thousand maunds of salt be manufactured on an average of

three consecutive years, and the license might also be withdrawn if the works for which it was given remained unused for three years.

The Bill provided that all salt should be brought to a Government store, and on being sold should be charged with the excise duty. A pass was to be given, which was to be delivered up at any one of the preventive stations which would be established round the works, and in its further progress, after passing the preventive station, the salt was to be subjected to no further interference whatever on the part of the Officers of Government.

The Bill continued the provisions of the present law, which allowed the Government to prescribe the route by which salt should be imported by land and the port at which it should be imported by sea, and also for the grant of drawback on any salt which might be exported after having paid the excise.

It further prescribed that certain penalties should be incurred by the violation of the conditions of license, or manufacture of salt without a license, by the importation of salt by land or sea by routes or at ports other than those prescribed by Government, by obstruction offered to any Revenue Officer in carrying out the Act, by refusal on the part of the Police to aid the Revenue Officers when called upon, and by corruption on the part of the Salt Officers by which the salt revenue might be affected.

In drawing the Bill he had adhered as closely as was possible to the existing excise law in Bombay and to Act XXI of 1856 for the consolidation of the Abkaree Revenue in Bengal.

The Bill was read a first time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay. He said that it would be necessary to state, for the information of the Council, that the Abkaree for the Island of Bombay was quite distinct from that of the rest of the Bombay Presidency. It was limited to the produce of the Cocoanut, Brab, and Date trees growing in the

Island. The tax at present levied under Regulation X. 1833 was three Rupees a year on each Cocoanut and each Brab tree, and eight annas a year on each Date tree. The late increase, however, in the Customs Duties on all importations of spirits into the Island of Bombay had materially affected the prices of those articles, and one of the objects of this Bill was to equalize the revenue derived from, and the prices charged for, spirits manufactured in the Island.

Brab trees in the Mahim District of the Island, which was an outlying District, were not included in the provisions of Regulation X. 1833. But no such exception had been made in this Bill, which gave a discretionary power to the Governor in Council to fix the fee or tax to be paid. At the same time it was proposed by the Governor in Council that the rates should be fixed experimentally, and it was estimated that the revenue expected to be derived would be about treble that now paid.

The present income from the Abkaree tax in the Island of Bombay amounted to eighty-nine thousand Rupees per annum, and it had been calculated that, after deducting the incomes from a number of trees which, under a higher scale of duty, would cease to be drawn, the tax would hereafter yield a revenue of about two lakhs of Rupees.

He was also requested to state that the present Bill was not entirely fiscal in its operation. The present law was defective in so far at least that it contained no provision for the punishment of those who worked without a license, and the Collector of Bombay had reported that he had lately discovered no fewer than sixty unlicensed stills. This defect the Bill proposed to remedy.

After briefly noticing the principal provisions of the Bill, Mr. LeGeyt said that this Bill had been prepared and forwarded by the Bombay Government to the Governor-General in Council. It had been approved by His Excellency, and had been referred to him from the Home Department, with the suggestion that the necessary measures should be taken for passing the Bill through its several stages, in order that the revised scale of Duties might be brought into operation from the commencement of the ensuing revenue year in August next.

He proposed, if the Council should allow the Bill to be read a second time next Saturday, to move the suspension of the Standing Orders with a view to the Bill being passed through all its stages forthwith, and to its coming into speedy operation.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. HARINGTON moved the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)." He said, it was with much regret that he found himself under the necessity of asking the Council to give their consent to a modification of the new Code of Civil Procedure, although it had not yet come into operation in the Presidencies of Madras and Bombay, while in the Presidency of Bengal it had taken effect only under yesterday's date. It was, however, some satisfaction to him to think, and he believed that the feeling would be shared in by his Honorable colleagues, that the principal alteration which he was about to propose had not arisen from any thing that could properly be regarded as a defect in the Code, but that the change was forced upon them by circumstances which could not have been foreseen at the time they passed the Code, and over which they could exercise no control. The most important modification of the Code which now appeared necessary was in Section 332. The last Clause of that Section provided that, "If the appeal lay to the Sudder Court, it should be heard and determined by a Court consisting of three or more Judges of that Court." The Council had lately been informed that, at the present time, there was a very heavy arrear of regular appeals pending before the Sudder Court at Calcutta. Indeed, so large was the number of appeals of that description awaiting decision in the Court, that they were told that, at the present rate of working, it would take at least two years before they could be disposed of, and as the institutions exceeded the decisions, it was fully expected that, at the expiration of the period just mentioned, the arrear of new cases would be greater than that now existing.

Mr. LaGeyt

The Sudder Court, naturally unwilling that this unsatisfactory state of things should continue, had very properly gone up to Government with a recommendation that the Court should be strengthened by the appointment of additional Judges, but financial and other considerations, which it was not necessary for him particularly to notice, had prevented the Government from complying with this recommendation. In communicating the decision of the Government to the Sudder Court, the late Lieutenant-Governor of Bengal had, he believed, suggested the expediency of relieving that Court of some of the least important part of its work, the disposal of which he thought might be devolved upon other tribunals, and, accordingly, the late Honorable Member for Bengal brought in a Bill, under date the 30th April last, one of the Sections of which proposed that the regular appeal in all suits below the value of ten thousand Rupees, which might be disposed of in the Courts of the Principal Sudder Ameen, should be heard and determined by the Zillah Judge, thus modifying the existing law, which restricted the appellate jurisdiction of the Zillah Judges, in respect to the decisions of the Principal Sudder Ameen, to suits in which the amount or value of the property in litigation did not exceed the sum of five thousand Rupees. Shortly afterwards, with a view to relieve the Sudder Court on its Criminal side, he (Mr. Harington) introduced a Bill to empower Session Judges to pass sentence in certain cases which, under the law, as it now stood, required to be referred for the final orders of the Nizamut Adawlat. Both Bills were referred in the usual course to Select Committees, but the Select Committee on the Bill brought in by the late Honorable Member for Bengal had reported against it; and although he (Mr. Harington) had recorded his dissent from so much of the Report as related to the part of the Bill to which he had just alluded, it was not his intention, under existing circumstances, to offer any opposition to the Motion which would shortly be made for the adoption of the Report, and the Bill of the late Honorable Member for Bengal must therefore be considered to have been disposed

of. With regard to the Bill which he (Mr. Harington) had introduced, he had never attempted to conceal that the amount of relief which would be afforded by it to the Sudder Court, should it become law, would be comparatively small, but still it would be something, and as he had observed on a former occasion, whatever time was saved from the trial of cases to which his Bill related, would be so much time gained for the disposal of more important business. The attempts then made to obtain the appointment of additional Judges to the Sudder Court at Calcutta, or to relieve that Court from some of its least important work, having both failed, it became necessary to consider what steps should be taken to enable the Court, not only to reduce the heavy arrears now pending before it, but to keep pace with its work for the future. He was sure that all who heard him would agree that the existing state of things should not be permitted to continue. It was hardly necessary for him to say that it was a great hardship to the suitors at large in the Sudder Court that they could not expect a final decision in the cases in which they were concerned under two years at the earliest. This very serious delay in the disposal of appeals in the Sudder Court must be highly injurious to the general interests of justice, and he must add that it could not but reflect discredit upon the Government. After carefully considering the subject, and consulting those whose long experience in these matters entitled their opinions to great respect, the conclusion to which he (Mr. Harington) had come was that, in existing circumstances, the best remedy that could be adopted was to pass an Act which would enable the Sudder Courts to dispose of the appeals coming before them by the employment of a less amount of judicial agency than was required by the Code as it now stood, and the first Section of the Bill, which he was desirous of introducing, had been prepared with this view.

For many years, all appeals instituted in the Sudder Court were distributed amongst the Judges of the Court. It was the duty of each Judge, with the aid of his separate establishment, to prepare the appeals so allotted to him for decision, and as soon as they were

ready for decision, the papers were read out before him, and after hearing the arguments of Counsel, he proceeded to record his judgment. If he saw no reason to differ from the decision of the Court below, and the case was not one of sufficient importance to render it proper that it should go before a second Judge, he made a final decree; but if he disagreed with the Lower Court on any point, or, although concurring with that Court, it appeared to him that the case should not be decided by a single voice, he ordered the papers to be laid before a second Judge. With exception to the preparation of the case, the same process had to be gone through before the second Judge which had already been gone through before the first Judge. If the second Judge concurred with the first Judge, the appeal was disposed of accordingly; but if he differed, the appeal was referred to a third Judge, before whom the papers had to be read over again, and the case to be re-argued. The consequence was that, when an appeal went before three Judges in succession, it not unfrequently happened that there was an interval of a year between the date on which the first Judge recorded his opinion and the final disposal of the case. The practice just described continued to be followed until the year 1843, when an Act was passed (Act II of 1843), which provided that, "when a single Judge of the Sudder Court, trying a case in appeal, regular or special, from any subordinate Court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other Judges of the Court to sit with him, and that the appeal shall be then heard by the three Judges sitting together, and be decided by them without any additional voices. In such cases the decree or final order shall be signed by the three Judges, if they agree together; but if one of them dissent from the view taken by the majority, by the two Judges who agree together, and the signature of the third Judge shall not be considered requisite, but his opinion shall be recited in the decree or final order." This was no doubt a great improvement upon the former practice, but as when the Judge who first heard the appeal was obliged, by reason of his differing from the

Court below, to call in two other Judges to enable him to dispose of the case, much valuable time and labor were lost, the Court, with the sanction of Government, passed a rule, requiring that all regular appeals should be heard and determined at once by three Judges sitting together. He was unable to say what was the effect of this rule in the Sudder Court at Calcutta, but he found it stated by the late Lieutenant-Governor of Bengal, in his evidence given before the House of Commons, that it was very remarkable of how much greater weight the decisions of the Sudder Court had been since the new rule was adopted than it was previously. At the time the rule was introduced into the Sudder Court at Agra, he (Mr. Harington) had the honor of a seat on the bench of that Court, and he could say, of his own knowledge, that the introduction of the rule was immediately followed by a very large increase in the number of decisions, and that the rule gave great satisfaction. Such then having been the beneficial effects, in practice, of the rule alluded to, it was only natural that they should wish to retain it in the new Code of Civil Procedure; and, accordingly, the Clause which he had already read to the Council was added to Section 332 when the Bill was passing through a Committee of the whole Council; but as it was quite impossible for the Sudder Court at Calcutta, with its present number of Judges, to give three Judges for the disposal of every appeal that came before it, and as he was informed that the Sudder Courts at Madras and Agra had also applied for additional assistance, which there was little probability of their getting, some modification of the rule was unavoidable. It was accordingly proposed to substitute the words "two or more" for "three or more" in the last two lines of the Section, and in order to provide for any difference of opinion that might arise, to add to the Section that when the Court consisted of two Judges only, if they differed in opinion upon the evidence, and one Judge concurred in opinion with the Lower Court as to the facts, the case should be determined accordingly; but if in a Court so constituted a difference of opinion arose upon a point of law, the Judges should state the point upon

Mr. Harington

which they differed, and the case should be re-argued upon that question before one or more of the other Judges of the Court, and should be determined in accordance with the opinion of the majority of the Judges.

It certainly had seemed to him that, when a difference of opinion arose between two Judges sitting together to decide an appeal, whether upon a point of fact, or upon any other point, the case should go before a third Judge. But it was thought by many that this would not afford the degree of relief required. It was moreover argued that, when one of the Judges of the Sudder Court concurred with the Judge of the Court below, who had had the advantage of hearing the witnesses and of cross-examining them, there would be a strong presumption that the decision of that Court upon the evidence was correct, and that the concurrent opinions of the two Judges, constituting, as they would, a majority, ought to satisfy reasonable men. There was, no doubt, much force in this argument, and he was accordingly willing to yield his own opinion. When any difference of opinion arose upon a question of law or upon the construction of a document, a third Judge would be referred to. This seemed to be proper in order to keep the law settled, and that the decision might in all such cases be that of a majority of the Judges of the Sudder Court. He believed he was right in saying that the proposed provision was concurred in by some of the Sudder Judges in this country, and that the authorities at home approved of it.

With respect to this part of the Bill he would only further remark that it was not pretended that the best remedy had been proposed; all that could be said was that it was the best remedy which, under existing circumstances, could be devised with any chance of its being adopted. Nor was it intended that this should be a final settlement of the question. At no distant date the Council would probably be called upon to consider the subject of the amalgamation of the Supreme and Sudder Courts and of the constitution of new District Courts, and it was hoped that some scheme would then be proposed for the hearing of appeals, where an appeal was allowed, which would be free from the objections to which many might

fairly consider the present Bill to be open.

The next Section of the Code referred to in the new Bill was Section 215. Under that Section the Court was required, on receiving an application for the execution of a decree, to cause the same to be compared with the original decree contained in the record of the suit. But it had been brought to his notice that the whole or nearly the whole of the records in the North-Western Provinces had been destroyed during the late mutinies, and that, consequently, it would often be found impossible to comply with this requirement of the law. There would also be some difficulty in conforming to it, when the Court, which originally decided a suit, was called upon to execute a decree passed in appeal in the same case for which the Code made provision. It was proposed, therefore, to omit certain words of the Section, and to leave it to the Court to satisfy itself in each case that the application was right and contained the necessary particulars, either by comparing it with the original decree sought to be executed, if that was at hand, or in some other way.

Lastly, the Bill proposed an alteration in Section 385 of the Code. That Section set forth that "the Act should not take effect in any part of the territories not subject to the general Regulation of Bengal, Madras, and Bombay, until the same should be extended thereto by the Governor-General of India in Council, or by the Local Government, to which such territory was subordinate and notified in the Gazette." Honorable Members might have observed in a recent number of the Calcutta Gazette that the Lieutenant-Governor of Bengal had extended the Act to certain Non-Regulation Districts under his Government, but that in doing so His Honor had added a proviso that no sale of land should be made without the sanction of the Commissioner of the Province. The Code contained no such provision, and a question might arise as to the competency of the Lieutenant-Governor to pursue this course, and whether, if he extended the Code at all, he was not bound to extend the whole Code. But as it seemed very desirable that the power exercised by the Lieutenant-Governor of Bengal in this instance should exist some-

where, the Bill proposed to authorize the Government of a Non-Regulation Province to which the Act might be extended, with the previous sanction of the Governor-General of India in Council, to declare that the Act should take effect therein, subject to any restriction, limitation, or proviso which it might think proper.

These were the alterations which were proposed to be made in the original Code, and it was intended that the Sections, as altered, should stand as part of the Code.

The Bill was read a first time.

BILLS OF EXCHANGE.

MR. HARRINGTON moved the first reading of a Bill for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays. He said, England had lately witnessed the solemn but pleasing spectacle of an entire nation uniting to offer up, in public, praises and thanksgiving to Almighty God, on a day specially appointed for the purpose by Her Majesty the Queen, for the signal success which had attended the Military operations in this country during the fearful contest in which they had lately been engaged, for the restoration of peace and tranquillity to India, and for the many and great mercies which had been vouchsafed to them as a nation and as individuals, and which had brought them through a crisis unparalleled in the history of the world. He felt sure that all who heard him would agree in the necessity and propriety of this national and public thanksgiving; but, if necessary and proper in England, how much more necessary and proper must it be in this country, which had been the scene of the many victories gained by our noble army, under its gallant leaders, one of the most gallant, most distinguished, and most chivalrous of whom they had the honor of numbering amongst their Members, and which had also been the scene of those mercies and of that great deliverance, the recollection of which must ever fill their minds with astonishment and wonder, and call forth the liveliest feelings of gratitude to Him, by whose blessing alone on the means used that deliverance had been effected, and our rule in this country.

re-established on a firm and, it might be hoped, a lasting basis. Accordingly, the example set them by Her Majesty's Government in England would have been promptly followed by Her Majesty's Government in this country, but at the time, although rebellion had nearly ceased in the greater part of the British Territories in India, it could not be said that it had been entirely put down, and so long as the official Gazettes continued to contain Despatches, which announced new contests with those still in arms against us, followed, as had invariably, been the case, by fresh victories which, though small in comparison with the glorious triumphs of the past year, were nevertheless great and important in themselves and in their consequences, and most creditable to the troops by whom they were achieved, it was felt that the Government of India could not with propriety appoint a day for a public thanksgiving for the complete restoration of peace and tranquillity, and however anxious the Government may have been that the opportunity lately enjoyed by our countrymen at home of offering up public thanks to the Almighty for His great mercies during the last two years, it was considered better to pause for awhile. He was happy to say that no reason now existed for further delay. The good time, so eagerly looked for, had come. In the language of the Proclamation just issued by His Excellency the Viceroy and Governor-General of India, "War was at an end; Rebellion had been put down; the noise of Arms was no longer heard where the enemies of the State had persisted in their last struggle; the presence of large forces in the Field had ceased to be necessary; order was re-established; and peaceful pursuits had everywhere been resumed;" and, as stated in the Proclamation, His Excellency had it now in his power to perform the grateful duty of appointing a day for a solemn thanksgiving to Almighty God for His signal mercies and protection, while, in order that the day might be more marked, and that it might be a day of general rejoicing as well as of thanksgiving, a week day had been selected by His Excellency, and it was desired that it should be observed as a holiday throughout British India by all faithful subjects of the Queen.

Mr. Harrington

It was not necessary for him to tell the Council that no special legislation was required for the purposes of the Proclamation, and it might, therefore, naturally be asked what had the remarks which he had just ventured to address to the Council to do with the subject of the Bill of which he had given notice? The answer to the question was that the Bill owed its origin to a day having been appointed for the public thanksgiving, in which they had all been invited to take part, which was neither a Sunday nor other close holiday, and on which, therefore, but for the Proclamation, mercantile and other transactions would have gone on as usual. The title of the Bill set forth that it was "to declare the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays." In England a law of this kind had been in force for many years, which made all Bills of Exchange falling due on Fast or Thanksgiving days payable on the day next preceding. It also pointed out when, in the event of a Bill which might fall due on any Fast or Thanksgiving day being dishonored, notice of the dishonor should be given. This law did not extend to India, but as similar doubts to those which had led to the passing of the English Act had arisen here, and it was advisable to remove the same with a view to prevent disputes and future litigation, it was proposed to pass a law containing the like provisions, in so far as they might be applicable, for this country. Hence the present Bill, which would apply not only to the particular day the appointment of which for a day of public thanksgiving had given rise to it, but to all future time. The Bill was also intended to have a retrospective effect. He believed he was right in saying that the custom of the country was in accordance with the provisions of the Bill, but it was considered desirable to give the sanction of law to what was now only custom or usage. This, he was given to understand, was the opinion of the Chamber of Commerce, who were in favor of the Bill.

The Bill was read a first time.

APPEALS.

MR. PEACOCK moved that the Report of the Select Committee on the

Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals" be adopted.

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government, regarding the extension of Corporal Punishment under Act I of 1853, so as to embrace assaults and all petty offences, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

MR. LEGEYT moved that a communication received by him from the Bombay Government, relative to the transfer of an infant child by its mother to a Kalawunt or dancing girl, be laid upon the table and referred to the Select Committee on the same Bill.

Agreed to.

The Council adjourned.

Saturday, July 9, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram, Hon. H. B. Harrington, P. W. LeGeyt, Esq.,	H. Forbes, Esq., Hon. Sir C. R. M. Jackson, and A. Sconce, Esq.
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ACTS OF THE LEGISLATIVE COUNCIL.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India reviewing Acts XX to XLI of 1858.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

AMALGAMATION OF SUPREME AND SUDDER COURTS.

THE CLERK also reported that he had received from the Home Depart-

ment an Extract of a Despatch from the Secretary of State for India, relative to the amalgamation of the Supreme and Sudder Courts.

MR. HARRINGTON moved that the above Extract be printed.

Agreed to.

MAGISTRATES.

MR. PEACOCK begged to move the first reading of a Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate." He said, a case lately came before the Supreme Court for consideration, as to the effect of Section LII of the Post Office Act XVII of 1854. By that Section certain offences, which did not require to be now mentioned, were punishable, on conviction before a Magistrate, with imprisonment for two years, and also with fine. Several other Sections rendered offenders liable to imprisonment for two years and to fine on conviction before a Magistrate. Section LVIII enacted that—

"Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Justice of the Peace for any of the Presidency Towns of Calcutta, Madras, and Bombay, Magistrate, Joint Magistrate, or person lawfully exercising the powers of Magistrate; and any person hereby made punishable by a Justice of the Peace shall be punishable upon summary conviction."

Then Section LXVI declared that—

"The word 'Magistrate' in this Act shall include Joint Magistrates and persons lawfully exercising the powers of Magistrates."

The Supreme Court, putting the best construction upon the wording of the Act, without reference to what had passed in this Council at the time of its passing, came to the conclusion that the word "Magistrate" in Section LII meant a Zillah Magistrate, and did not include Justice of the Peace. Therefore, if an offence under any of those Sections were committed by any person who could not be tried before a Zillah Magistrate, that person could not be committed at all.

When the Act was originally before the Council, the words "Justice of the Peace" stood in the Interpretation Clause; but they were afterwards struck out of that Section in Committee. The words "Justice of the Peace" were not originally in the Fine Clause (Section LVIII), but were introduced after the Act had been published. He was unfortunately absent from the Council on account of indisposition when the Bill was before the Committee, and he was therefore unable to say why they were struck out. Both the learned Judges, Chief Justice Peel and Mr. Justice Colville, were present. He remembered that Mr. Mills and Mr. Elliott took a very active part in the discussion, and he recollected to have been told by Mr. Mills, subsequently to the passing of the Bill, that the words "Justice of the Peace" had been struck out from the Interpretation Clause; he was not sure that the reason was stated, but he had no doubt that the omission had been advisedly made.

Now it must be borne in mind that the judicial powers of a Zillah Magistrate and the judicial powers of a Justice of the Peace were very different. A Zillah Magistrate had in many cases larger powers of punishment than a Justice of the Peace, and his decision was subject to an appeal to the Court of Sessions. But there was no appeal from the conviction of a Justice of the Peace, and the writ of *Certiorari* did not enable the Court to go into any questions as to evidence or the amount of punishment. There was therefore a check on the Mofussil Magistrate which there was not on a Justice of the Peace. Section LII and the other Sections referred to created new offences, so that the new remedy provided by the Act would require to be followed. It appeared to him, therefore, upon a proper construction of the words of Section LII, that an offence under that Section, committed within the local limits of the jurisdiction of the Supreme Court, would not be punishable at all.

A similar Section was adopted both in the Railway and the Electric Telegraph Acts passed in the same year. All offences punishable by a Justice of the Peace or Magistrate; and the In-

terpretation Clause merely declared that "the word 'Magistrate' shall include a Joint Magistrate and any person lawfully exercising the powers of a Magistrate." It was clear therefore that by the term "Magistrate" a Mofussil Magistrate only was meant, and that it was intended to render those offences punishable in the Mofussil by the Magistrate in the same manner as many other offences which Zillah Magistrates at present had power to punish to the extent of two years' imprisonment.

For these reasons it appeared to him that the Act required amendment. He did not wish by that Bill to increase the powers of Justices of the Peace or of Police Magistrates, but only to provide that offences under that Act, punishable upon conviction before a Magistrate, should not be committed with impunity within the local limits of the Supreme Court, or by a European British subject in the Mofussil. Generally speaking, he did not see that there would be any serious objection to allow Justices of the Peace or Magistrates of Police to punish certain offences committed within the limits of the Supreme Court with fine or imprisonment not exceeding six months. In fact, they had that power in many cases under the existing law. The whole subject would be fully provided for by the Code of Criminal Procedure now under consideration. What he proposed was to declare that, if any offence, which by any Act of the Governor General in Council heretofore passed was declared to be punishable upon conviction by a Magistrate, should be committed by a European British subject beyond the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, the offender should be liable, upon conviction before any such Court, to the punishment to which by such Act the offender was declared to be liable upon conviction before a Magistrate. So that for all those offences punishable in the Mofussil with imprisonment for two years, if the same be committed within the jurisdiction of a Supreme Court, a European British subject would be liable to be similarly punished on conviction before the Supreme Court. According to the construction put upon the Acts, a European British subject would not be liable to

Mr. Peacock

be tried in the Mofussil by a Magistrate, and that he might therefore commit any offence under those Acts with impunity.

Then he proposed to provide that, if any offence, which by any Act of the Governor General in Council heretofore passed was declared to be punishable upon conviction by a Magistrate, should be committed by any person within the local limits of any Court of Judicature established by Royal Charter, the offender should be liable, upon conviction before such Court, to the punishment to which by such Act the offender was to be liable upon conviction before a Magistrate.

Another difficulty which arose was, whether, when the power of punishment was given to a Magistrate or Justice of the Peace, it was intended that a Justice of the Peace should have the same power as a Zillah Magistrate. To obviate this difficulty, he proposed to enact that, whenever in any Act heretofore passed by the Governor General in Council the word "Magistrate" was declared to include a Justice of the Peace, such Justice of the Peace should not, by virtue of such Act, be deemed to have jurisdiction in respect of any offence, unless the same should be committed within the local limits of one of the Courts of Judicature established by Royal Charter.

He was aware that even now the Act would not be quite perfect, inasmuch as there were many offences punishable with fine only, for which a European British subject could not be punished in the Mofussil by a Zillah Magistrate. He did not propose such an amendment of the law in this Bill. That was a matter which required to be fully considered. It would be impossible to send such cases to the Supreme Court for punishment, and, consequently, in such cases the offence under the present state of the law would go unpunished. At present he merely wished to correct the mistake which had been committed in the Post Office and other Acts in regard to several offences punishable with two years' imprisonment to render those offences punishable when committed by a European British subject in the Mofussil, or by any person within the local limits of the Supreme Court.

The Bill was read a first time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYTT moved the second reading of the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay." He said, he might mention that it was not his intention, as stated in the Orders of the Day, to move the suspension of the Standing Orders in order that the Bill might be passed through its subsequent stages. If the Bill should pass the second reading, he proposed to refer it to a Select Committee for the purpose of undergoing revision, previously to its coming before a Committee of the whole Council for consideration.

MR. SCONCE said, he did not propose to offer any opposition to what he understood to be the primary object of this Bill. But there were one or two points on which he should be glad to have some information from the Honorable Member for Bombay before the Council came to vote upon the question now put.

From the Preamble, as well as the 3rd Section of the Bill, it appeared to be the object of the proposed law to declare that "no spirituous liquor should be manufactured in any part of the Island of Bombay, except from the juice drawn from cocoanut, brab, or date trees, and in such manufacture no moura, dates, rice, or other materials whatsoever should be used," and he understood that the Bill had been prepared from the old law, which exclusively dealt with spirituous liquors derived from the juice of the cocoanut, brab, and date trees. But he did not see that any explanation had been given of the grounds of the change now proposed by the absolute prohibition of the manufacture of spirituous liquor from any substance but the three trees named in the Bill.

Now if, as every where, common spirituous liquors were, and might be, distilled from other materials than the juice of trees, he wished to know why in the Island of Bombay distilleries of spirits from rice, for instance, might not be allowed to be used.

Again, there appeared to be some inconsistency between the 3rd and 11th Sections of the Bill. By Section III, as he had just observed, the manufac-

Saturday, July 16, 1859.

PRESENT:

The Hon'ble Barnes Peacock, Vice-President,
in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	Hon. Sir C. R. M. Jackson,
Hon. H. B. Harington,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. Forbes, Esq.,	

CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received from the Home Department, for consideration in connection with the Code of Criminal Procedure, copies of papers regarding the system of appeal in Criminal cases.

MR. HARRINGTON moved that the above papers be printed.

Agreed to.

ELECTRIC TELEGRAPHS.

THE CLERK also reported that he had received, from the Home Department, a copy of a communication from the Bombay Government, relative to a proposed amendment of Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India).

MR. LEGEYT moved that the above communication be printed.

Agreed to.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay."

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee on the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners, and for raising a Fund for Municipal purposes in the Town of Bombay)."

BILLS OF EXCHANGE.

MR. HARRINGTON moved the second reading of the Bill "for declaring the law in relation to Bills of Exchange

and Promissory Notes becoming payable on days generally observed as Holidays."

MR. PEACOCK said, it was not his intention to oppose this Bill at the present stage. But he was not quite sure as to the soundness of the principle of the Bill. He was particularly doubtful as to the last Clause, which declared that "the words 'Bill of Exchange,' as used in this Act, shall include Bank Post Bills and all Native Drafts or Hoondees requiring by law presentment and notice of dishonor." He did not know what Native Drafts or Hoondees required by law presentment or notice of dishonor. If there were any, he did not think it right that they should be governed by the English law applicable to Bills of Exchange and the like. For instance, Section IV provided that, if a Bill fell due on Christmas Day or on Good Friday, it should be payable on the day preceding. Now Mahomedans and Hindoos did not recognize Christmas Day or Good Friday, because they did not observe them as holidays; and it would be hard to compel them to do so.

Then there was another objection as to Bills and Promissory Notes becoming due on the day preceding those on which the Government Public Treasury would be closed. There were sometimes very long holidays occurring, and the Public Treasury might be closed for many consecutive days, in which case Merchants and others would be compelled to pay perhaps a fortnight before the Bill fell due; and, although the Treasury might be closed on those days for the convenience of the native clerks, Merchants and others might prefer to keep their Offices open, in which case he could not see any sufficient reason for compelling them to pay so much earlier than the time at which the Bill would be due in ordinary course. There would also be a difficulty as regards the Doorgah Poojah Holidays. There were one or two days which intervened between the Doorgah Poojah and the Luckee Poojah, which were not even native holidays; and if the Treasury, as he believed had generally been the case, were closed from the commencement of the Doorgah Poojah till the end of Luckee Poojah, Bills becoming due during that interval would become pay-

able on the day preceding that on which the Doorgah Poojah holidays commenced. He believed it was the practice among Merchants and Bankers to open their Offices at least on the intervening days, and he thought it would be rather hard to make it obligatory on persons to pay their drafts a fortnight before they fell due.

He threw out these suggestions for the consideration of the Select Committee to whom the Bill would, in due course, be referred, and reserved to himself the right of opposing the Bill, if necessary, at a future stage. He was disposed to think at present that it would be better to leave the matter to be settled by the custom and usage of Merchants.

MR. HARRINGTON said, at the time he prepared this Bill doubts similar to those which had been expressed by the Honorable and learned Vice-President, as to whether it would be right to apply its provisions to Native Hoondees, had occurred to him also, but as he could discover no reason why such Hoondees should not be included, he thought it better to make the Bill general. Should the Council allow the Bill to be read a second time, its publication would doubtless be followed by representations from Native Bankers and others, which would assist the Council in determining whether the provisions of the Bill should be made applicable to all Bills of Exchange alike, whether English or Native, which required presentment and notice of dishonor, or whether their operation should be confined to Promissory Notes and Bills of Exchange, requiring to be governed by English law; and any alterations in the Bill which might be considered necessary might then be made. He (Mr. Harington) had made enquiries on the subject, and he found that the practice amongst Native Bankers was not at all uniform. For instance, he was told that some Native Bankers were in the habit of cashing Hoondees which fell due on a native holiday on the day preceding, if the payee happened to be a friend or a countryman; but that, if he was not either one or the other, they would not cash the Bill until the day after. It appeared to him that such a state of things was not desirable, and that it would be better to have a fixed law for all classes. He had therefore

made the Bill of general application. It seemed to him that it was always better to draw a Bill as large as possible in the first instance, though its provisions might afterwards require to be considerably narrowed. This could always be done without any difficulty; whereas, if a Bill underwent much enlargement in Committee, it must either be republished, which caused delay, or it was passed in a form which might make its provisions applicable to many classes whose interests not being affected by the Bill at the time of its publication after the second reading, they had not considered it necessary to take any notice of it. This was obviously objectionable.

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

SALT DUTY (MADRAS).

MR. FORBES moved the second reading of the Bill "to establish a Duty of Excise on Salt manufactured in the Presidency of Fort St. George."

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

STAMPS.

MR. SCONCE said that, before making the Motion, of which he had given notice, for the second reading of the Bill "to consolidate and amend the law relating to Stamp duties," there were one or two points on which he desired to say a few words with regard to Schedule B, which contained the specification of duties chargeable on Law Papers. He alluded to the effect produced by recent legislation on the receipt of Revenue derived from Stamps.

It would be in the recollection of the Council that, by Act VIII of 1859, the practice formerly in force of requiring the presentation of every piece of evidence, and the nomination of every witness, to be effected by the use in each case of a separate Stamp, had been discontinued. He did not look back with regret to the change thus effected; he conceived that the Council was wisely reluctant to continue the system which the new law had superseded. But at present it was simply his purpose to show the result which

MAGISTRATES.

MR. PEACOCK moved that the Standing Orders be suspended to enable the Select Committee on the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate" to report thereon on Saturday next.

MR. FORBES seconded the Motion, which was then agreed to.

STAMPS.

MR. SCONCE moved that the Bill "to consolidate and amend the law relating to Stamp Duties" be referred to a Select Committee consisting of Mr. Harington, Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

The Council adjourned.

Saturday, July 23, 1859.

PRESENT :

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

Hon. Lieut.-Genl. Sir H. Forbes, Esq.,
J. Outram, Hon. Sir C. R. M.
Hon. H. B. Harington, Jackson, and
P. W. LeGeyt, Esq., A. Sconce, Esq.

LEGISLATIVE COUNCIL.

The following Message from the Governor General in Council was read by the Vice-President.

MESSAGE No. 180.

The Governor General in Council has the honor to forward to the Legislative Council the accompanying copy of a Despatch in the Legislative Department from the Right Honorable the Secretary of State for India, No. 5, dated the 3rd Ultimo, and to request that the Council will be pleased to furnish, for the information of Her Majesty's Government, a report on the practical working of the Standing Rules and Orders of the Legislative Council.

By order of His Excellency the Governor General in Council,

W. GREY,

Secy. to the Govt. of India.

Fort William,
The 16th July 1859. }

MR. HARRINGTON moved that the above Message and Despatch be printed. Agreed to.

ABKAREE REVENUE (BOMBAY).

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to amend the law for the realization of Revenue from Abkaree in the Island of Bombay."

ESTATE OF THE LATE NABOB OF THE CARNATIC.

THE CLERK presented to the Council a Petition of Narrain Doss Gopaul Doss of Madras, praying for the repeal of Act XVI of 1859 (to provide for the administration of the Estate and for the payment of the debts of the late Nabob of the Carnatic).

MR. FORBES moved that the Petition be printed.

Agreed to.

CIVIL PROCEDURE (SUPREME COURTS).

THE CLERK reported to the Council that he had received, from the Home Department, a copy of a Despatch from the Secretary of State for India, regarding the enactment of a Code of Civil Procedure for the Courts established by Royal Charter in India.

MR. HARRINGTON moved that the Despatch be printed.

Agreed to.

EMIGRATION TO BRITISH GUIANA.

THE CLERK also reported that he had received, from the Home Department, copies of papers on the subject of Emigration on private account from Bombay to British Guiana.

MR. HARRINGTON moved that the papers be referred to the Select Committee on the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places."

Agreed to.

MAGISTRATES.

THE VICE-PRESIDENT presented the Report of the Select Committee

on the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE moved the first reading of a Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)." He said, the Bill to which he now had the honor to invite the attention of the Council had originated at the instance of the Bengal Government, in consequence of the operations for taking land for the Eastern Bengal Railway having been found to be considerably retarded, particularly during the last working season. The evil, or rather the defect, which it was proposed to correct, might be thus shortly stated. It was said that, when the operations of the Railway Company for the taking of the land were finished, that is, when the ground was surveyed and planned and the line marked out, from the time when the proceedings of the Railway Officers for this purpose were closed, up to the time when under the law the land could be taken possession of and the Railway works commenced upon, a period of two or three months must elapse. This was considered by the Government of Bengal and the Railway authorities a sufficient ground for the interference of the Legislature.

There was no intention, he might say, in the Bill, as it now stood, to interfere with the principle of the existing law. It was prepared for the purpose of expediting the process by which the land was taken possession of, in order to carry on the works of the Railway, without prejudice, he believed, to the interests or claims of private individuals.

Under the present law the process followed for the taking of land was this. Under Section IV the Collector was required to cause the land to be marked out and measured, and a plan of the same to be made. Practically, however, the land was surveyed and marked out by the Railway Officers, and on a plan of each section (ordinarily two miles in length) being furnished to the Commissioner, that Officer would proceed to make the detailed measurement of the

land required by Section IV Act VI of 1857. The Railway Authorities had wished that their own survey should be received by the Collector as the basis of his operations. But that survey was made geographically, and furnished no means for the ascertainment of the nature of the land and of the buildings and other property upon it. Therefore, the detailed measurement by the Commissioner was necessary for the distinct specification of the several interests vested in the land to be taken for the Railway. As he had said, the Collector, on being informed that the line had been surveyed and marked out, proceeded to measure. In proceeding to measure, the Collector was required under the general law to give general and special notices, calling upon the persons interested to appear on the expiration of fifteen days from the date of publication of notice, and set forth their interest in the land about to be taken. Thus, first, there was the Railway Officer's survey and marking out; then there was the Collector's detailed measurement, which was usually accomplished by the Ameen's attached to the Commissioner's establishment; then there were the notices issued by the Commissioner; and, last of all, the Collector or Commissioner was required to review the measurement proceedings and to adjudicate claims.

The object of the present Bill accordingly was to dispense with a portion of the process now required. It was proposed that the Collector, as soon as he was informed that a line had been surveyed and marked out, should notify to the parties interested that he was about to measure the land, and intimate to claimants that, on the expiration of at least fifteen days from the date of publication of notice, they were required to appear before him and set forth their claims to compensation. A further period of ten days was allowed for the revision of the detailed measurement, after the expiration of which time the Bill proposed that immediate possession of the land might be taken.

In the first instance, then, between the present law and the proposed Bill there was this difference, that in the former the issue of notice followed, and in the latter it would precede, the measurement. But

it was important to observe that, in the whole course of the proceedings taken by the Commissioners, two steps of perfectly distinct characters had to be disposed of; first, the specification of the land, and, secondly, the determination of claims. As the practice now was, all parties seemed to accept the specification, that is, the detailed measurement, as furnishing as clear an exhibition of the condition of the land, as the land itself. It had been found, generally speaking, that in forty-nine cases out of fifty the measurement, as reported by the Surveying Officers, furnished a sufficient basis, without the necessity of inspecting the land, for the determination of the amount of compensation. On that principle, accepting the detailed measurement as a sufficient basis for the award to be made, it appeared to him (Mr. Sconce) that possession of land might be taken under this Bill without detriment to the interests of any other parties, whether occupants, tenants, or proprietors of the land, at the same time that it would secure to them the early payment of their dues, and remove the obstacles which retarded Railway operations under the practical working of the existing law.

A suggestion had been made in the papers which had been referred to him to revert to the old law of 1850, which enabled the Commissioner to take possession of land summarily before detailed measurement. But there was no intention in this Bill to adopt that suggestion. So far as it appeared to him (Mr. Sconce), the completion of the measurement was conclusive authority for the Commissioner taking possession of the land, and he (Mr. Sconce) had no hesitation to adopt the proposition which he had just expressed, that, on that Officer being first satisfied that the measurement was completed, and allowing a further period of ten days to pass after completion, he might be permitted to take possession of the land without detriment to the rights or interests of any private individuals.

As he had said, from two to three months now elapsed before the Railway Officers were enabled to go on with the Railway works after they were ready to go on, and considering the shortness of the working season in Bengal, it became

Mr. Sconce

a matter of urgent necessity to shorten the time which was unprofitably consumed under the provisions of Act VI of 1857. The main object of the Bill was in fact to save time by which no man gained. The rights of occupants or owners of the land did not seem to be in any way protected by the tardier process of the present law. Their rights were sufficiently protected by the specification of the property to be taken, as recorded by the measurement of the Railway Commissioner; and to give them full information of what was going forward, it was proposed that a notification should first be published of the intention to undertake the measurement of the marked out line.

Besides, in addition to the publicity which the survey and marking out by the Railway Officers gave as to their proceedings, a provision was inserted in this Bill, not contained in the Act now in force, namely, that by a notification, the attention of all parties interested should be called to the preliminary survey undertaken by Section XXXIV of that Act.

He would also remark that the proposition now made in fact virtually corresponded with the declared principle in the present law. As he had said, the object of the proposed Bill was to take immediate possession of land on the measurement being finished. So under the present Act, if the Collector and a claimant of compensation did not agree as to amount, and the case was referred to arbitration, the Collector might at once take possession of the land; so that, although arbitration was still pending, and however long it might be pending, possession passed to the Government, and the arbitrators who had to make the award were governed by the measurement record. The same principle might safely be adopted in this Bill, and land be allowed to be taken upon the completion of the detailed measurement.

The Bill was read a first time.

MAGISTRATES.

THE VICE-PRESIDENT moved that the Standing Orders be suspended, in order that the Bill "to amend the law relating to offences declared to be punish-

able on conviction before a Magistrate" might be passed through its subsequent stages. He had mentioned, at the time when he introduced this Bill, that the object of it was not to increase the powers of Justices of the Peace or of Police Magistrates, but merely to provide that certain offences under the Post Office and other Acts, punishable upon conviction before a Magistrate, should not be committed with impunity within the local limits of the Supreme Court, or by European British Subjects in the Mofussil.

As the Bill was not intended to alter the existing law, but only to correct defects in certain Acts, he thought that he was not asking too much of the Legislative Council in proposing that the Standing Orders should be suspended with a view to this Bill being passed through its subsequent stages.

MR. HARRINGTON seconded the Motion, which was then carried.

THE VICE-PRESIDENT said, before moving that the Council should go into Committee upon the Bill, he would request the Clerk of the Council to read the Report of the Select Committee upon it.

The Report was read accordingly.

THE VICE-PRESIDENT then moved that the Council resolve itself into a Committee upon the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

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

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

THE VICE-PRESIDENT moved that Mr. Harrington be requested to take the Bill to the Governor General for his assent.

Agreed to.

LEGISLATIVE COUNCIL.

MR. HARRINGTON moved that the Message from the Governor-General in Council, calling for a report on the

practical working of the Standing Rules and Orders of the Legislative Council, be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover, with an instruction to report thereon on an early day.

Agreed to.

NOTICES OF MOTIONS.

MR. HARRINGTON gave notice that he would, on Saturday next, move for a Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," and (following the course adopted with respect to the Civil Procedure Bill) he proposed that the consideration of the Bill in Committee on that day should not extend beyond Section 108 Chapter X. In the event of any Honorable Member intending to move an amendment of any of the Sections within the limit mentioned, he ventured to hope that, as a matter of convenience to the Council, notice of the same would be given to the Clerk of the Council in time to admit of its being printed and considered before the next meeting of the Council.

MR. LEGEYT gave notice that he would, on the same day, move the first reading of the following Bills, namely:—

A Bill to extend to India the provisions of Sections LII to LV of the English Passengers Act 18 and 19 Vic. c. 119.

A Bill to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the Jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil); and

A Bill to amend Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India).

MR. HARRINGTON gave notice that he would, on the same day, move the first reading of a Bill to amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of Postage, and for the punishment of offences against the Post Office).

The Council adjourned.

Saturday, July 30, 1859.

PRESENT :

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

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M.
P. W. LeGeyt, Esq.,	Jackson,
	and
	A. Sconce, Esq.

MAGISTRATES.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate."

MARKETS.

THE CLERK presented a Petition from certain Native Inhabitants of Bengal against the Bill "for regulating the establishment of Markets."

MR. SCONCE moved that the petition be referred to the Select Committee on the Bill.

Agreed to.

JAMSETJEE JEJEEBHoy BARONETCY.

THE CLERK reported to the Council that he had received, from the Home Department, a copy of a Despatch from the Secretary of State for India returning the Jamsetjee Jejeebhoy Baronetcy Bill in order that it might be remodelled consequent on the death of Sir Jamsetjee Jejeebhoy.

OATHS AND AFFIRMATIONS.

THE CLERK also presented a communication from the Government of the North-Western Provinces regarding Oaths and Affirmations.

MR. HARRINGTON moved that the communication be printed.

Agreed to.

PASSENGERS.

MR. LEGEYT moved the first reading of a Bill "to amend the law relating to the carriage of Passengers by Sea." He said, the object of this Bill was to extend the provisions of a portion of

the Act of Parliament of the 18 and 19 Vic. c. 119 to vessels sailing from Ports in British India. The provisions of that Act did not include vessels sailing from any Port in British India and carrying Native Emigrants as Passengers. A case had lately happened at St. Helena of a vessel which had run on shore, and was consequently unable to proceed on her voyage, and great difficulty might have been experienced by the authorities as to how the Emigrants were to be dealt with. But the difficulty did not arise in consequence of the Master of that vessel having made arrangements at his own expense for at once forwarding the Emigrants to their destination by another vessel. Still it had been pointed out that Masters of vessels might not always be found to act in the same manner, and it had been thought expedient to take advantage of Section XCIX of the English Passengers Acts (18 and 19 Vic. c. 119), which authorized the Governor General of India in Council to enact by a local law that any part of the said Act should be made applicable to vessels sailing from Ports in British India and their passengers.

This Bill had accordingly been prepared to guard against inconvenience likely to arise from accidents which were incident to voyages by sea, by making Sections LII to LV of that Act so applicable.

Section I enumerated the voyages from certain Ports in India which were to be regulated by the Bill; Section II empowered Governors or Consuls to pay expenses of taking off passengers at sea; and Section III empowered them to send on passengers if the Masters failed to do so; while Section IV made the expenses incurred for the above purposes a Crown debt.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved the first reading of a Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the

Mofussil)." He said, the object of this Bill was to extend the execution of process issued from any of the Civil Courts in British India to the Straits Settlement.

The law under which Mofussil process was now executed within the Jurisdiction of the Supreme Courts was Act XXIII of 1840. But that Act, made no mention of the Courts established by Royal Charter in the Straits, and its provisions only applied to the Presidency Towns of Calcutta, Madras, and Bombay. A case had arisen where inconvenience had been experienced from the impossibility of serving process issued by the authorities at Rangoon on parties in the Straits. Some time ago a process had been issued at Rangoon against a party who was residing at Penang, but the learned Recorder of Penang found himself unable to execute the warrant, because he found that Penang was not within the limits of Her Majesty's Supreme Courts. There appeared to be no objection made in any quarters to the proposed extension, and a short Bill had therefore been prepared to declare that, in execution of the powers of Act XXIII of 1840, the said Act should be read as if the words "any Court of Judicature established by Royal Charter" were mentioned therein, instead of the words "Supreme Courts of Calcutta, Madras, and Bombay."

The Bill was read a first time.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved the first reading of a Bill "to amend Act XXXIV of 1854 (for regulating the establishment and management of Electric Telegraphs in India)." He said, the object of this Bill was to amend certain defects which had been found to exist in that Act. In dealing with this subject, he had found it more convenient to repeal Act XXXIV of 1854, and to re-enact its provisions with the required amendments by a new Bill. Several of these alterations were in the phraseology of the Act, the change of which was rendered desirable by the transfer of the Government of India to the Crown. New provisions had been introduced, as it had been thought expedient to specify the authorities under whose orders

alone the servants of the Electric Telegraph Department might be authorized to do certain things connected with the Department.

The Bill authorized a penalty of imprisonment with or without hard labor for a term not exceeding three months in addition to the punishment provided for misconduct in Section XII of the Act. It made the offer of a bribe to any person in the employ of Government in the Electric Telegraph Department penal, with a penalty, on conviction, of imprisonment for a term not exceeding six months, or with fine, or both.

He had omitted Sections XVII, XVIII, and XIX of the Act. Their objects were provided for by existing laws and certain alterations in the language of the present Bill. The alterations which had been made were suggested principally by Sir William O'Shaughnessy, and the papers on the subject had already been printed and circulated to the Members.

With these remarks he begged leave to move the first reading of the Bill.

The Bill was read a first time.

POST OFFICE.

MR. HARRINGTON said that, since he had given notice of his intention to move the first reading of a Bill to amend Act XVII of 1854 (commonly called the Post Office Act), he had been informed by the Director General of Post Offices in India that he had also some amendments of that Act to propose, and as it was very desirable that the Bill, which was about to be brought in, should embrace all necessary amendments of the existing law, as well those proposed by himself as those considered requisite and proper by the Director General of Post Offices, he would, with the permission of the Council, postpone his Motion until this-day fortnight. He thought it right, however, to mention at once that there was no intention on the part either of himself or of the Director General of Post Offices to propose any increase in the present rates of Inland Postage.

CRIMINAL PROCEDURE.

MR. HARRINGTON moved that the Council resolve itself into a Committee of the whole Council on the Bill "for

simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section 1 was passed after an amendment.

Section 2 was passed as it stood.

Section 3 provided as follows:—

"No person whatever shall, by reason of place of birth or by reason of descent, be exempt from the rules of Criminal Procedure. Provided that nothing in this Section shall be held to authorize the trial before any Criminal Court of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court."

SIR JAMES OUTRAM said, he had no doubt that the strict legal interpretation of this Section was quite consistent with the preceding Section. But to persons like himself, not learned in the law, there certainly appeared to be an inconsistency between the two Sections. The previous Section excepted some persons, while this Section excepted no one.

MR. HARRINGTON said that this Section, as originally drawn by Her Majesty's Commissioners, did not contain any proviso, but merely declared the applicability of the Code of Procedure to all classes indiscriminately. The proviso was added by the Select Committee, and was considered necessary in consequence of the exception contained in the preceding Section. Under the law as it now stood, European British Subjects could not be tried for felony in the Mofussil, but must be committed for trial before the Supreme Court of Judicature within whose general jurisdiction the offence was committed. It would be the duty, however, of the local Magistrate to make the preliminary investigation which would be conducted by him under the rules contained in the Code of Procedure in the same manner as if the offence had been committed within his jurisdiction by a person not being a European British Subject, and therefore the Section declared the non-exemption of any person from the rules of Criminal Procedure contained in the Code, simply by reason of place of birth

Mr. Harrington

or by reason of descent. This was in no way inconsistent with the exception contained in the Section immediately preceding, but in order that there might be no doubt on the subject, the proviso was added, which declared that nothing in the Section should be held to authorize the trial of any person who, in respect of the offence with which he was charged, was not subject to the jurisdiction of the Court, even though it might be the duty of that Court to make the preliminary investigation.

SIR CHARLES JACKSON said, that the intention of this Section was not happily expressed. What was there to show that the words "be exempt from the rules of Criminal Procedure" were not general, but were merely intended to be confined to investigations preliminary to trial? It was true that the word "trial" appeared in the subsequent proviso, but that, he thought, only served to increase the difficulty.

THE VICE-PRESIDENT said that, reading this Section with the preceding one, it appeared to him that no one who was heretofore exempt from the jurisdiction of the Mofussil Courts would be liable under this Code to be tried by them. European British Subjects, as every body knew, were exempt from the jurisdiction of these Courts generally, but still they were subject to the Mofussil Courts in respect of offences made punishable by any local or special law. He would refer, for instance, to the Post Office Act, which had lately come under the consideration of the Council. Under that Act, a European British Subject was liable to be tried by the Mofussil Courts in respect of an offence punishable with fine only; so that a Mofussil Court, although it had no jurisdiction over European British Subjects under the general law, might take cognizance of an offence under the Post Office Act committed by a European British Subject, for which a fine alone was imposed. The meaning of these two Sections, therefore, taken together, appeared to him to be that European British Subjects were not generally subject to the jurisdiction of the Mofussil Courts; but when they were so subject under any special or local law, those Courts should proceed according to the rules of Procedure provided by this Code.

The Section was ultimately passed after two verbal amendments.

Section 4 provided as follows:—

"Every offence shall ordinarily be enquired into and determined and the offender prosecuted and punished in the district or jurisdiction in which the offence was committed."

THE VICE-PRESIDENT said, he had some little doubt as to this Section, with reference to the words "ordinarily be enquired." What was meant by the word "ordinary"? Suppose a European British Subject committed an offence within the jurisdiction of a Mofussil Court, the Section as it now stood might be held to exclude that Court from taking cognizance of the offence.

After some discussion, certain amendments were carried, which made the Section stand thus:

"Except where otherwise expressly provided by this Act, every offence shall be enquired into and determined, and the offender prosecuted and punished in the District or Division in which the offence was committed. Provided that nothing in this Section shall exempt European British Subjects from being tried and convicted before the Supreme Courts of Judicature for offences committed beyond the local limits of such Courts."

Sections 5 and 6 were passed after verbal amendments.

Sections 7 to 11 were passed as they stood.

Section 12 was passed as it originally stood.

The further consideration of Section 13 was postponed, after two verbal amendments had been made therein.

The consideration of Sections 14 and 15 was postponed.

Section 16 provided as follows:—

In all Criminal Courts complainants and witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of complainants and witnesses."

THE VICE-PRESIDENT said that, as the Honorable Member for Madras had withdrawn his Bill "concerning oaths and affirmations," and had no intention of bringing in another measure having for its object the re-introduction of oaths in lieu of affirmations, he (Sir Barnes Peacock) did not see why the Council should delay

any longer in coming to a decision in the matter. His own opinion, and, he believed, the opinion of other Honorable Members were in favor of the abolition of oaths altogether in judicial proceedings. The Select Committee on the Civil Procedure Code had proposed the insertion of a Section requiring witnesses to be examined without oath or affirmation, but with due warning, by the Judge. When that Code came before a Committee of the whole Council, the question of re-introducing oaths was revived by the Honorable Member for Madras, and it was ultimately determined that the matter should be brought to a decision by a Bill which that Honorable Member undertook to introduce on the subject. Meanwhile the Code of Civil Procedure was passed, with the substitution, for the Clause referred to, of another similar to that now under consideration, requiring witnesses to be examined upon oath or affirmation, or otherwise, according to the law for the time being in force relating to the examination of witnesses. But as the Bill introduced by the Honorable Member for Madras had been withdrawn, and as the question had now again come up, he saw no reason why the Council should be called upon to affirm that complainants and witnesses should be examined upon oath or affirmation. He therefore moved the omission of the words upon "oath or affirmation, or otherwise."

After some conversation the Motion was carried, and the Section as amended then passed.

Section 17 was passed after amendments.

Sections 18 and 19 were passed as they stood.

Section 20 was passed after an amendment.

Sections 21 and 22 were passed as they stood.

Section 23 was passed after an amendment.

Section 24 was passed as it stood.

Sections 25, 26, and 27, were passed after amendments.

Sections 28 and 29 were passed as they stood.

The consideration of Sections 30 and 31 was postponed.

Sections 32 and 33 were passed as they stood.

Section 34 provided as follows:—

"A warrant directed to a superior Officer of Police, or to a Nazir, or other proper Officer of a Court, may be executed by any Officer subordinate to such superior Officer of Police or Officer of the Court respectively."

THE VICE-PRESIDENT said, it appeared to him that there should be something on the face of the warrant to show that the superior Officer of Police or proper Officer of the Court had deputed his subordinate to execute it. The Penal Code proposed to give the right of private defence to a person against an act done or attempted to be done by the direction of a public servant, unless the person knew or had reason to believe that the person doing the act was acting by such direction, or unless the person acting stated the authority under which he acted, or, if he had authority in writing, unless he produced such authority. He should move to add the words "whose name shall be endorsed upon the warrant by the Officer to whom the same is directed."

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

Sections 35 to 70 were passed as they stood.

Section 71 was passed after amendments.

Sections 72 to 81 were passed as they stood.

The consideration of Sections 82 to 84 was postponed.

Sections 85 and 86 were passed as they stood.

The consideration of Section 87 was postponed.

Sections 88 to 93 were passed as they stood.

Section 94 was passed after amendments.

Sections 95 to 97 were passed as they stood.

The consideration of Section 98 was postponed.

Sections 99 to 108 were passed as they stood.

The further consideration of the Bill was then postponed till Saturday next, and the Council resumed its sitting.

RAILWAY CONTRACTORS AND WORKMEN.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western

Provinces be laid upon the table and referred to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

Agreed to.

NOTICES OF MOTIONS.

MR. HARINGTON gave notice that he would, on Saturday next, move the first reading of a Bill to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same), and that the Standing Orders be suspended, in order that the Bill may be proceeded with.

Also, the first reading of a Bill to continue Act XXXIII of 1857 (to make further provision relating to Foreigners).

MR. LEGEYNT gave notice that he would, on the same day, move the first reading of a Bill for settling a sum of money and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith.

The Council adjourned.

Saturday, August 6, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

SMALL CAUSE COURTS.

THE CLERK reported to the Council that he had received a communi-

cation from the Madras Government, forwarding a return of Suits and Appeals instituted under that Presidency during the first four months of 1859.

MR. HARINGTON moved that the communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK also reported a communication from the Bengal Government, forwarding Reports on the litigation going on in the Districts of Hooghly, East and West Burdwan, and Beerbhoom, respecting the appointment and remuneration of Chowkeydars.

MR. SCONCE moved that the communication be referred to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

STANDING ORDERS.

MR. HARINGTON presented the Report of the Select Committee on the Message from the Governor-General in Council, calling for a report on the working of the Standing Rules and Orders of the Legislative Council.

MR. HARINGTON gave notice that he would, on Saturday next, move that the Report be adopted.

ARMS AND AMMUNITION.

MR. HARINGTON moved the first reading of a Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." He said, the Act which it was the object of this Bill to make perpetual, was proposed to the Council for adoption under date the 1st August 1857, and the Bill which was brought in on that date, having gone through the regular stages, received the assent of His Excellency the Right Honorable the Governor-General, and passed into law as Act No. XXVIII of 1857 on the 11th September following. By the 35th Section of the Act its operation was limited to two years, and as little more than a month of that

period now remained, it had become necessary to consider whether the Act should be allowed to expire, or whether it should not be continued in force, and, in the latter case, whether any limit should again be assigned to its duration, or whether it should not rather be made one of the permanent laws of the country. It was scarcely necessary for him to remind Honorable Members that, at the time the Act was passed, the late mutiny in the Native Army of Bengal, and the rebellion which ensued thereon in some parts of the country, were at their height; but although those events no doubt hastened the introduction of the Act, and accelerated its passage through the Council, the expediency of disarming the population, with a view to the maintenance of the public peace, and to the prevention of crimes of the more violent class, particularly affrays, which in this country, from the number of persons who engaged in them, and from the fierceness of the combatants, so often assumed the character of pitched battles, had for many years previously been under the consideration of the Government, and had been strongly advocated by many old and experienced Officers. In the Punjab a general disarmament of the population had already been carried out with the happiest results. Indeed, the remarkable tranquillity which prevailed in that Territory during the eventful years of 1857 and 1858, when the greater portion of the North-Western Provinces of the Bengal Presidency was filled with violence, and outrages of every kind were being perpetrated therein with impunity, had been attributed in a great degree to the adoption of what he must consider this wise, prudent, and politic measure shortly after our acquisition of the Territory. In introducing Act XXVIII of 1857, the Honorable Mover of the Bill said—

"The Government of India had for some time past had under its consideration the state of the law relating to the manufacture and possession of arms and ammunition throughout India. The law as it stood at present was so far defective that, though it would admit of the seizure of arms, it gave no power to ascertain by which portions of the community arms were possessed, or to regulate the possession of arms, or to prevent their sale and manufacture. The object of

this Bill was to provide, as far as was possible, for all these purposes, by putting it in the power of the Government to regulate the importation, manufacture, and sale of arms and ammunition, and to know where they were kept, and the reasons and objects of their possession."

From these remarks it would be seen that, unlike some of the other special Acts which were passed in 1857, the Act in question had really not grown out of the events of that year, though its passing had been co-incidental with them, and though equally with those Acts provision had been made for its remaining in force for a time only. It was no doubt quite right and proper that some of the special Acts referred to, should be temporary Acts only, and that they should not survive the necessity which had called them into existence; but the character of Act XXVIII of 1857 was very different, and there appeared to him (Mr. Harington) to be obvious and cogent reasons why that Act should remain in the Statute Book. One of the strongest arguments in favor of the continuance of the Act was to be found in the marked benefits which had followed the introduction of a similar measure into the Punjab, not for a time only but permanently, and he had no doubt that the law, if continued in other parts of India, would tend greatly to the diminution of crime, particularly of crimes attended with violence, and that it would prove very beneficial to the people at large. He would only add as a further reason for continuing the Act in force, certainly for some time longer, that, although in those places to which its provisions had been extended an immense number of arms had been surrendered, the work had not as yet been nearly completed. The operation of disarming was still going on with great success. In other places again, from political or other reasons, it had not yet been commenced. If, therefore, the Act should be allowed to expire at the date fixed for its termination, the Government would not have it in its power to do any thing in the way of disarming the people in the places last referred to, while, in those places in which the Act was now in force, the local Officers would find themselves compelled suddenly to bring their labors to a close. This, he thought would be

Mr. Harington

highly objectionable and inexpedient, and in its consequences he feared it might prove very calamitous. For these reasons he hoped that the Council would give their consent to the Motion which he was about to make, and that they would further allow the Bill to pass at once through its remaining stages.

With regard to the provisions of Act XXVIII of 1857, he deemed it sufficient to remark that no legislative measure had probably ever been more carefully considered before it became law. On referring to the Debates of the time, he found that the Bill had been re-committed no less than twice previously to the third reading, and every Section appeared to have been fully discussed and weighed before it was allowed to stand as part of the Act. So far as he was aware the Act had worked well, and no modification of any part of it had been proposed or seemed necessary. With these remarks he begged to move that the Bill be now read a first time.

The Bill was read a first time.

FOREIGNERS.

MR. HARRINGTON moved the first reading of a Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)." He said, the reasons which led to the introduction of the Act, to which this Bill related, would be found fully reported in the Volume of the Proceedings of the Council for November 1857, and it was unnecessary for him to occupy the time of the Council with a repetition of them. Happily the circumstances of the country were very different from what they were when the Act was passed, and there might not be so great a necessity for the Act now as there was then, but still it was considered that the time had not yet arrived when the provisions of the Act could be safely and properly dispensed with, and he trusted therefore that no objection would be made to the continuance of the Act in operation for the further comparatively short period of two years.

He did not know, that he was required to say anything more on the subject; and he would therefore move the first reading of the Bill.

The Bill was read a first time.

JAMSETJEE JEJEEBHoy ESTATE.

MR. LEGEYNT moved the first reading of a Bill "for settling Promissory Notes of the Government of India producing an annual income of Rs. 100,000, and a Mansion-house and Hereditaments called Mazagon Castle in the island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him, and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith." He said that it would be in the recollection of the Council that a Bill, very nearly to the same effect as that which he was now bringing forward, passed through the Council last year, and was sent to England for the sanction of the Crown. A communication, however, was reported to the Council, on Saturday last, from the Home Department, forwarding a Despatch from the Secretary of State for India, returning the Bill for the purpose of being remodelled, in consequence of the death of Sir Jamsetjee Jejeebhoy, which event took place in April last, and the Baronetcy descended to his son Sir Cursetjee Jamsetjee. Shortly after the death of Sir Jamsetjee, the Council had determined to abandon the old Bill, and had made a reference to the Government of Bombay, and through that Government to the present Baronet, requesting that the necessary steps might be taken for preparing a Bill to give effect to his father's wishes. Accordingly a Bill, suitable to the altered circumstances of the case, had been prepared and transmitted to him (Mr. Legeynt); and this Bill, which seemed to him to supply all that was necessary, he now begged permission to read a first time.

The Bill would be printed and circulated, and he proposed, on Saturday next, to move the second reading, which, if agreed to, would be followed by a Motion to suspend the Standing Orders, so as to enable him to pass the Bill through its remaining stages, and ensure its transmission to England for the sanction of the Crown, which, owing to the Incorporation Section, was still necessary, by the Steamer which would leave Calcutta on the 23rd Instant.

The Bill was read a first time.

SALT DUTY (BOMBAY).

MR. LEGEYNT moved the first reading of a Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said, the object of this Bill was to raise the Customs Duty paid on Salt imported into that Island, from twelve annas to one Rupee per maund. The present scale of Duty was fixed by Act I of 1852 Schedule A, and assimilated with the Excise Duty paid on Salt manufactured within the Presidency of Bombay, which was levied under Act XXVII of 1837 and Act I of 1838. It had recently been determined by the Home Government that the present Excise Duty on Salt in Bombay should be raised from twelve annas to one Rupee per maund of 82lbs. It therefore became important that imported Salt, which did not pay Excise Duty in India, should be subjected to a Customs tax at an equal rate to the Excise charge; and this was provided by the Bill which he now had the honor to introduce to the Council. He might mention that the additional Duty was expected to raise the revenue by seven lakhs of Rupees per annum, namely, from twenty-one to about twenty-eight lakhs. The present Salt Duty was imposed in lieu of Transit Duties, Town Duties, and Mohturfa taxes, amounting to about twenty-seven and a half lakhs, which had been abolished; and the Revenue realized by the Salt tax had not yet amounted to twenty and a half lakhs, so that the proposed measure would not place a greater burden than that which had been formerly imposed. The Bombay Government were of opinion that the community could very well bear the additional impost, and that it would cause no diminution in the actual consumption.

The Bill was read a first time.

WATER-SUPPLY (KURRACHEE).

MR. LEGEYNT moved the first reading of a Bill "to provide funds for better supplying with water the Town and Suburbs of Kurrachee." He said, this Bill was intended to provide funds for the construction of certain water-works by which it was proposed to supply

the cantonment, town, and port of Kurrachee with good and wholesome water. It was mentioned by the Commissioner in Scinde, as would be seen from the papers which would be printed and annexed to the Bill, that there was at present a great deficiency of this most necessary article, and what was procurable was exceedingly inferior in quality, and indeed deleterious to health. This had for some time past been a crying evil, and several projects had been formed to remedy it, but which had from some cause or other come to nothing. Ultimately Sir Bartle Frere referred the whole matter to Captain De Lisle, and requested him to propose a plan for supplying Kurrachee with drinking water by pipes from the bed of the Mulleer River into reservoirs in the cantonment, town, and port. The plan proposed by Captain De Lisle, which would be printed and circulated for the information of the Council, had been approved by the local authorities in Scinde and the Bombay Government. The Commissioner in Scinde had proposed two modes by which funds might be raised for carrying it into effect. The first was that the Government should (as in the case of the Vehar Water-works) advance the funds for the purpose to be repaid by the sale of water and a rate on property. The other was that the Municipality of Kurrachee should be empowered to borrow a sufficient sum for the completion of the work, and to impose special rates on real property which would provide for the repayment of the debt, and also sell, in certain cases, water. The Bombay Government had, in reference to the present state of the public finances, proposed this latter course for raising the necessary funds.

He might mention that the Municipality of Kurrachee was constituted under Act XXVI of 1850, and that it consisted of the Collector as Chairman and a certain number of Inhabitants as Municipal Commissioners.

The sum actually required was stated to be considerably less than ten lakhs of Rupees, but Sir Bartle Frere had recommended that the Municipal Commissioners should be authorized, subject to the sanction of the Governor of Bombay in Council, to borrow a sum of not less than ten lakhs, bear-

Mr. Le Geyt

ing interest at the rate of nine per cent. per annum, and that this sum should be re-paid by a tax on all houses and lands in Kurrachee, the cantonment, Ghizree, Clifton, and Keamaree—these were suburbs of Kurrachee. He proposed a tax of two per cent. on the value of all houses and lands. This tax it was calculated would realize about one lakh and twenty-five thousand Rupees per annum, and it was proposed that it should continue to be imposed till the capital borrowed was paid, and that it should be then reduced to a sum equal to keeping the works in repair and good order.

The Bill also provided for the assessment and collection of the tax, and for its recovery from those liable to pay.

He had proposed a Bill in a form very similar to that suggested by Sir Bartle Frere. It would be for consideration whether the mode proposed by that gentleman should be adopted in preference to that which had already been assented to by the Council in other places. This would doubtless be discussed when the Bill would come on for second reading, or afterwards in Committee of the whole Council, if the Council should allow the Bill to be read a second time. Kurrachee was a rising town, and a place of that sort to be stinted in water was a serious evil requiring immediate correction.

With these remarks he begged to move the first reading of this Bill.

The Bill was read a first time.

PASSENGERS.

MR. LEGEYT moved the second reading of the Bill "to amend the law relating to the carriage of Passengers by Sea."

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

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved the second reading of the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil)."

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

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved the second reading of the Bill "for regulating the establishment and management of Electric Telegraphs in India."

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

ARMS AND AMMUNITION.

MR. HARINGTON, in pursuance of notice, moved the suspension of the Standing Orders, in order that the Bill "to make perpetual Act XXVIII, of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)" might be proceeded with. As he had already mentioned, the Act would expire on the 11th September next, and it was very necessary that this Bill should be passed without delay.

MR. FORBES seconded the motion.

MR. SCONCE said, he had no intention absolutely to oppose the Motion for the suspension of the Standing Orders, so that the Bill should not come into operation on the expiration of the present Act. But it seemed to him that the authority exercised by the Council of suspending the Standing Orders was being too often exercised, and that, as in the case of the Bombay Abkaree Act lately passed and the present Bill, the earlier introduction of the measures would have rendered it unnecessary to suspend the Standing Orders. In this case it seemed to him advisable not to carry out the measure without giving the Council an opportunity of deliberating upon it. Probably, therefore, instead of suspending the Standing Orders in order to carry the Bill through the Council to-day, he should be glad to know if the Honorable Member would object to the Bill being postponed for a week or fortnight.

MR. HARINGTON said, he would not object to postpone the passing of the Bill through its remaining stages to-day, provided it was allowed to proceed in sufficient time to admit of its becoming law before the Act to which it related expired. He wished, however, to observe that there was this difference between the present Bill and other recent Bills in respect of which the Standing Orders had been suspended,

that he was proposing nothing new, but merely a law to continue in force an existing Act which had been found to work remarkably well, and the provisions of which, before it became law, had been most carefully considered. Probably the Honorable Member for Bengal would have no objection to allow the Bill to be read a second time to-day, and to its being referred to a Select Committee, with instructions to present their report within a week.

MR. SCONCE assented.

SIR CHARLES JACKSON wished to know the principle of the Bill, and whether it applied to Europeans as well as to Natives.

MR. HARINGTON said that, if the Honorable and learned Judge would refer to the Debates of the Council under date the 5th September 1857, he would find the following remarks by the Honorable and learned Chief Justice of the day:—

"He entirely acquitted many of the critics of this Bill of having read it. For instance, he had seen a complaint that Europeans were to be compelled by it to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago."

The Act did not apply to Europeans, and it was not the intention of the present Bill to extend the scope or application of the Act.

The VICE-PRESIDENT said, with reference to the Honorable and learned Judge's enquiry, he thought that the Act did apply to Europeans. Section IV gave Magistrates the power of seizing Arms or Ammunition in the possession of any person in whose possession such Arms or Ammunition could not, in the judgment of the Government or of the Magistrate, be left without danger to the public peace; and Section VI empowered the Government to exempt any persons whom they thought fit from certain provisions of the Act. Unless, therefore, Europeans were so exempted, they would be subject to the provisions of the Act.

With reference to the general question now before the Council, it appeared to him that the Standing Orders should not be suspended in the manner proposed by the Honorable Mover. He thought that a preferable course even

to that suggested by the Honorable Member for Bengal would be that which was adopted by the Council when it was thought advisable to continue to the family of the late Nabob of the Carnatic the exemption which they enjoyed from the jurisdiction of the Civil and Criminal Courts. Upon that occasion a Bill for the purpose was introduced, and after it had been read a second time it was referred in due course to a Select Committee and allowed to be published so as to afford the creditors an opportunity of pointing out any objections which they might have to offer against the measure. In the meantime a temporary Act was passed continuing the exemption during the progress of the other Bill through the Council.

In like manner, as Act XXVIII of 1857 would expire in September, there would be no objection to suspending the Standing Orders with a view to passing an Act for extending that Act for three or four months, and the present Bill could then be proceeded with in the regular course, so as to give the public an opportunity of making known their opinions as to whether the Act should be made perpetual or not.

MR. HARRINGTON said, after what had passed, he willingly acceded to the suggestion from the Chair, and if the Motion for the second reading of the Bill should be carried, he would move for a Committee of the whole Council with a view to his proposing the necessary amendments. At an early Meeting of the Council he would introduce a Bill to make Act XXVIII of 1857 perpetual, which, if allowed to be read a second time, would be published in the regular course, and an opportunity would thus be afforded to the public of urging any objections that they might think proper to it.

THE VICE-PRESIDENT said, no Member who should vote in favor of the extension of the Act for a few months would be committed to the principle of the Bill for making the Act perpetual.

SIR CHARLES JACKSON said, upon that understanding he would make no objection.

The Motion was carried.

MR. HARRINGTON moved the second reading of the Bill.

The Vice-President

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

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I being proposed—

MR. HARRINGTON moved the omission of this Section and the substitution of the following:—

"Act XXVIII of 1857 shall continue in force until the end of the year 1859."

Corresponding amendments were made in the Preamble and Title, and, the Council having resumed its sitting, the Bill was reported.

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

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

MR. HARRINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 82 provided as follows:—

"The examination of witnesses by the Police shall be taken on the spot where the enquiry is held, in the presence of the Head Officer of a Police Station, or, in the event of his absence, in the presence of any Officer above the rank of a peon or burkundaz, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be transmitted to the Magistrate, as hereinafter provided, under the signature of the Police Officer by whom the enquiry shall have been made."

MR. SCOTCE said that this Section, as it now stood, proposed that the examination of witnesses by the Police should be taken on the spot. The question was thus raised generally as

to whether Police Officers should so far exercise judicial powers as to form a record of their investigations, without entering upon the broader question as to whether persons exercising primarily judicial powers should also exercise the powers of Police Officers. A Magistrate might be vested with the powers of controlling the subordinate Police, but the question arose whether Officers having the power of Detective Police should also exercise judicial functions. He thought it necessary that a distinct opinion should now be formed upon this question, and he could not help feeling, from the grounds suggested for the introduction of the Madras Police Bill now before the Council, which seemed to recognize a distinction between the system to be pursued in Bengal and the system to be pursued in Madras, that the full and fair consideration of the two systems could not be evaded. It was not because Police functions were under all circumstances incompatible with judicial functions that he proposed the amendment in this Section which he was now about to move, and he was free to confess that, in this respect, some considerable advantage did result from an early record being made of available information. Nevertheless, the first question which he conceived should now be disposed of, was whether men with the qualifications and character of ordinary Police Officers were competent to exercise the duty of examining and recording the examination of witnesses. So far as Bengal was concerned, this was a point on which he need hardly offer detailed proof of the operation of the present system. He expressed, he believed, the general conviction, that the records which the Police made up created the utmost distrust in the minds of our Judicial Officers. There might be occasions when the records were found useful. Nevertheless, there was a general impression of the unfitness and corruption of the Police, and unhappily in his own experience he had known districts in which it often seemed to him there could be no question of giving the Police more or less power, but rather of the quick and entire dispersion of the whole body. There might be not a few Police Officers, whose uprightness, moderation,

and high feeling, deserved fully to be commended. And as with men, so with districts. There might be good districts, as well as bad districts; but they could not deal with exceptions. He thought, therefore, that if a remedy were proposed with a view to restore confidence in Criminal investigations, it demanded their best attention.

He might ask the Council to refer to the clearly recorded opinion of the learned Law Commissioners in England upon the question. He would state shortly the conclusions on the subject to which they came. It was observed that—

"The evidence taken by the Parliamentary Commissioners on Indian Affairs in the Sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the Police are often abused for purposes of extortion and oppression."

Again, it was said that, in spite of provisions in the law to prevent any species of compulsion or maltreatment, confessions were frequently extorted or fabricated, and it was added:—

"We are persuaded that any provision to correct the exercise of this power by the Police (that is, the power of taking the answers or confessions of persons under arrest) will be futile; and we accordingly propose to remedy the evil, as far as possible, by the adoption of a rule prohibiting any examination whatever of an accused party by the Police, the result of which is to constitute a written document."

Such were the opinions expressed by the Law Commissioners in England. To show that similar opinions of the present state of the Police were still entertained here, he might mention that, in the course of last year, a correspondence passed between the Government of Bengal and the Commissioners of Police. In the course of that correspondence, the Commissioner of Burdwan remarked as follows:—

"He considers the Darogahs are very inferior in spite of increased salaries. The Darogahs of former days might have been equally corrupt, but under an active Magistrate they were more laborious and painstaking."

That report was written, he believed, by Mr. Elliott, than whom probably none had larger experience.

The Commissioner of Bhaugulpore said—

"The institution of grades and other improvements are said to have raised the Darogah class; this may be the case in the districts near Calcutta; but in the remoter districts to which the Commissioner's experience refers, he sees no change."

And to a similar effect was the opinion given by the Commissioner of Chittagong.

He (Mr. Sconce) might also adduce as an instance a case reported in the Volume of Reports of the Sudder Nizamut Adawlut for the first quarter of the present year, of a murder committed in the 24-Pergunnahs, within the suburbs of Calcutta. For many days the Darogah, who was deputed to enquire into the matter, had failed to detect the murderers. The Magistrate, dissatisfied with his proceedings, sent another Darogah to co-operate with the first, and the very next day two persons were sent up confessing to the crime. These confessions might, or might not, be true, but the consequence was that, when the case came on for trial, the proceedings broke down, and the utmost suspicion was expressed as to the conduct of the Police.

This was an every-day instance of the working of the present system. So far then it seemed to him that the power exercised by the Police was an incubrance, and the Council might well consider the principles on which the law as it now stood was drawn. He would also say that the judgment of the Council upon this question seemed to him to be invited by the tenor of a Despatch addressed by the Court of Directors to the Government of India in November 1857. In this Despatch it was observed:—

"We suggested in our Despatch, to which your present letter is a reply, the necessity of making material changes in the constitution and organization of the Police, and observed that a mere attempt at reform without such changes would be a serious error, and would bring about its own failure from the public and general conviction of its inadequacy to the great object in view. We trust that the higher rates of pay proposed to be given, and increased vigilance on the part of the superintending authorities, will lead to considerable improvements in the Police, but we would have wished for some more extensive change than any which either the Lieutenant-Governor

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or yourselves have recommended in regard to its organization, which we cannot but fear will be open to the objections to which we formerly directed your attention."

Here then we had the apprehension expressed on the part of the Home Government, that a mere increase of salaries, unattended by other measures, would fail to give satisfaction. Certainly, larger salaries would be beneficial, and that benefit would not be lost by the adoption of the change which he now supported; and it appeared to him (Mr. Sconce) that the re-constitution of the organic functions of the Police was indispensable to success. In the murder case to which he had already alluded, the mischief attaching to the power of investigation vested in the Police, as regards the information of witnesses, was forcibly exhibited. In that case, two men were represented early in the enquiry as detailing to the Darogah how the so-called "murderers" had openly declared to them that they had done the deed. But the Sessions Judge, apparently discrediting their testimony, declined to examine them. It was shocking to our better sense to employ agents whose want of rectitude enabled them to coerce prisoners into confessions. This was bad enough if the confessions were true, but the iniquity was infinitely magnified if the confessions extracted were false. Thus it seemed to him that it was nothing but fair to conclude that the same systematic unscrupulousness which induced the Police to fabricate confessions would induce them to fabricate depositions. But it should be understood that he did not by any means, for the first time, suggest this change in the law. In 1847, the Sudder Court at Calcutta recommended a similar measure. On that occasion Mr. Tucker in his Minute observed that—

"He would not allow the Darogah to record a single deposition except that of the prosecutor; he should question witnesses verbally and class them accordingly. In like manner, prisoners should be simply asked to plead, and their reply, 'guilty' or 'not guilty,' recorded."

On the same occasion, Mr. Welby Jackson expressed his opinion as follows:—

"The Police should not be allowed to take down in writing any deposition or confession

whatever. After twenty-five years' experience I place little or no confidence in the depositions or confessions recorded before the Police. The confessions, even when true, are generally extorted, and the depositions are warped so as to answer the purpose the Police have in view."

Mr. Hawkins's opinion was not carried to the same extent, but he even said "no depositions of witnesses need be recorded; only a note of the leading facts to which they depose;" and the recommendation which was made in the letter of the whole Court addressed to the Government was to the following effect:—

"The reports of the Darogah should be dispensed with; nor should inquests be held by them except in offences of a heinous nature, or in cases of violent death. They should not be permitted to record any depositions of witnesses, which should first be taken by the Magistrate; nor would Messrs. Dick and Jackson allow them to put any questions by way of cross-examination to the accused. They should merely report the nature of the case, the names of the parties sent in, and the purpose of sending them: their opinion should in no instance be recorded."

So there was the deliberate opinion of the Sudder Court in 1847, that the Police should not put on record their proceedings, and that witnesses should for the first time be examined before the Magistrate.

He did not deny that, in some respects, a recorded statement of the facts deposed to by witnesses might be useful. But practically the system worked as follows. There were cases no doubt in which the statements recorded by the Police tallied with those recorded by the Magistrate. In such cases public justice would lose nothing by the proposition which he now had the honor to make. There might be instances where the Police did not feel or display any personal interest, but if nothing was gained, nothing was lost by dispensing with Police records. On the other hand, a witness might deny the words put into his mouth, but if those words were originally untrue, it could be no matter of regret if the truth were eventually spoken; whereas, by requiring a witness to adhere to a false statement, the life, liberty, and property of an innocent man might be imperilled. But even on the supposition that the statement of a witness was true as recorded

by the Police, it appeared to him that the law could not undertake to bind an unwilling witness to adhere to the statement which he was said to have made. Justice, as they all knew, was said to be blind, but law might equally be said to have no knowledge of facts. The statement of facts must be thrown on the conscience of parties. The sense of truth was the only legitimate source of constraint; and in fact the law would act as illegitimately as the Police were supposed to act, if it coerced men's words and put into their mouths language which it took, without foundation, to be true.

But, again, the statements made by the Police were in themselves not worth having. They were taken hastily, carelessly, and incompletely, and in the end it might often be found unfair to a witness, and injurious to the administration of justice, to make an estimate of the evidence eventually taken, depend on the insufficient record of the evidence originally taken by the Police.

Another objection which in his mind weighed considerably against the adoption of the Section now under discussion was that in very many instances the enquiries made into the commission of a crime would be undertaken by the subordinate grades of Police Officers, by any indeed between a Burkundaz and a Darogah or Head Police Officer; and so it followed that, whatever confidence we might repose in selected men of the highest grade, we could not have the same security in the trustworthiness of the proceedings of more subordinate Officers.

So far as Bengal was concerned, the large increase of the number of Deputy Magistrates throughout the Province seemed to afford better means of securing the earliest record of the answers of prisoners and the information of witnesses. These Officers were now stationed in the interior of districts in considerable numbers, every Deputy Magistrate being in charge of three or four thanuhs. In fact, in matters of internal organization, Magistrates were more wanted than Police Officers, and it seemed to him to be a question well worthy of consideration, seeing that the present system had, after a full and long trial, failed of success, whether the opportunity might not now be taken

of allowing judicial investigations to a large extent to take the place of examinations by Police Officers.

With these remarks he begged to move the omission of Section 82 and the substitution of the following—

"It shall be lawful for the Head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case; but the statement made by the person so examined shall not be reduced to writing so as to constitute the deposition of the witness and shall not be signed by him."

MR. LEGEYT said, he had not given notice of an amendment, for he knew that his Honorable friend on his left (Mr. Sconce), who was better able to deal with the subject, had undertaken to propose a Section in substitution for that now under consideration. He (Mr. LeGeyt) had objected to the Section in Select Committee, and he held strong opinions on the subject. His opinions coincided with those of the Honorable Member. He did not believe that the examination of witnesses was a part of a Policeman's business. If a Policeman were to sit down upon every occasion to examine a person supposed to be acquainted with the facts and circumstances of the case, it would be impossible for him to attend to the active duties of his Office. Thief-catching and judicial enquiry were totally distinct duties. He apprehended that the legitimate duty of a Policeman, upon receiving intimation of the commission of a crime, was to make rapid enquiries with a view to the detection of the perpetrators of that crime. Upon apprehending the persons whom he had good reason to suspect of being the perpetrators, he should be obliged to send them up without delay to the Judicial Officer, together with such persons whom he knew could give evidence in the case. The way in which, in the course of his (Mr. LeGeyt's) experience, he had seen Policemen conduct investigations, had strengthened his opinion on the subject. The Code of Criminal Procedure in Bombay generally contemplated the apprehension of offenders by the Village Police. The duty of the Village Police was to give immediate notice to the nearest Judicial Officer that he might commence a judicial investigation. There had been in-

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stances where more extensive powers had been entrusted, and improperly entrusted, to the Police, and sad results had ensued from the abuse of those powers. It was difficult enough to prevent Judicial District Officers from exceeding the limits of their proper duties in holding these investigations. But this Section, it appeared to him, proposed to give every Police Officer, that is, as he (Mr. LeGeyt) supposed, every Village Police Officer above the rank of a mere Chowkeydar the power of holding a judicial investigation, and of taking written evidence to be used thereafter on the trial of the accused. He would not detain the Council by going at great length into the details of the question, but he would just make a few observations on the principle involved in it. He desired to separate the functions of the Executive from those of the Judicial Police. He desired to see the Executive Police well organized and well supervised, and instructed in the discharge of their duties, and he would allow them to exercise no judicial functions whatever. If this were done and fully kept up to, he believed there was no reason why this country should not enjoy the benefit of a good and efficient Police. But if the duties of the Police were half judicial and half executive, the oppressions so long complained of would never be done away with. He believed that one great argument for requiring Policemen to take down a statement of the information obtained by them was that what they first took down was more likely to be true than what they might afterwards give in as evidence. It might be so, but if such a power was given to them, what was there to prevent them from delaying their proceedings till a story had been concocted, and then to bolster up a case with fictions and inventions of their own. He knew this had been done; he wished to prevent the possibility of it; he had no confidence either in the depositions or confessions made to the Police. He remembered a remarkable case in which some prisoners were brought before him for trial in a Session Court on a charge of murder and thuggee by an Assistant Superintendent in that Department. The chief evidence against them was that of the Officers of the Department and their own confessions taken by the Officers

of that Department. These prisoners, on being placed at the bar of the Session Court, had pleaded guilty. Their confessions handed up by the Superintendent of Thuggee, who was a Magistrate, were read over to them and confirmed by them. This, according to the law in force, was sufficient for conviction; but before recording a verdict he had thought it right to hear a Medical Officer's evidence as to a quantity of bones which had been produced in Court. The prisoners in their confessions stated these bones were those of individuals whom they had murdered and buried, and which were pointed out by them to the Thuggee Officers and disinterred. The English Medical Officer however swore that not one of the bones was of a human being! He (Mr. LeGeyt), of course questioned the prisoners, who then said that it was quite true they had committed no murder and knew nothing of these bones; but they had, in obedience to the Thuggee Officers, stated what they had written, and their motive was that, being in custody on suspicion, and having no chance of getting out, they were promised to be made approvers if they submitted to be convicted as murderers. His (Mr. LeGeyt's) belief was that the course of justice would run more smoothly and clearly if the Police were restricted to their proper duties, and properly and strictly supervised in the performance of them. The Stipendiary Magistrates were the fitting and proper persons to sift cases and arrange the evidence, and this, it was plainly seen, was the intention and plan of the Law Commissioners in England who framed the Code. He had hailed those Sections of the Code which separated the Police from Judicial investigations with much satisfaction, and had opposed their alteration in the Select Committee of which he was a Member. He should continue that opposition as long as he could bring it to bear, and with much satisfaction supported the amendment of the Honorable Member for Bengal.

MR. HARRINGTON said, the Section now under consideration had nothing whatever to do with confessions. It related entirely to the examination of witnesses by the Police. There might be a convenience in considering

this Section and the Section which related to Thannah confessions together, as had been done by the Honorable Members for Bengal and Bombay; but he proposed to confine himself for the present to the Section before the Council.

He wished at the outset of his remarks to correct a mistake into which the Honorable Member for Bombay had fallen. The Honorable Member said, that Her Majesty's Commissioners had set their face against the examination of witnesses by the Police just as much as against the Police being allowed to reduce into writing any confession or admission that might be made to them by an accused party. So far, however, from this being the case, the Section under consideration had not been introduced into the Code by the Honorable and learned Mover of the Bill, nor by the Select Committee to whom the Bill was referred in the regular course, but by Her Majesty's Commissioners themselves. The Honorable Member for Bengal had referred to the notes of Her Majesty's Commissioners on this part of the Code, but he had omitted to read that part of those notes which related to the powers to be exercised by the Police under the Code in their preliminary investigation of a case. With the permission of the Committee, he (Mr. Harrington) would read the parts which the Honorable Member for Bengal had passed over. Her Majesty's Commissioners said:—

"The Police in the Provinces of Bengal are armed with very extensive powers. They are prohibited from enquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the Police Darogah, who is authorized to examine the complainant, and to issue process of arrest, to summon witnesses, to examine the accused, and to forward the case to the Magistrate, or submit a report of his proceedings, according as the evidence may, in his judgment, warrant the one or the other course."

Then came the sentence just quoted by the Honorable Member for Bengal:—

"The evidence taken by the Parliamentary Committees on Indian Affairs during the Sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the Police are often abused for purposes of extortion and

oppression; and we have considered whether the powers now exercised by the Police might not be greatly abridged."

The Honorable Member for Bengal, omitted the next sentence and plunged at once into the following paragraph, which related to confessions. In the sentence which the Honorable Member had omitted to read, Her Majesty's Commissioners proceeded to observe:—

"We have arrived at the conclusion that, considering the extensive jurisdiction of the Magistrates, the facilities which exist for the escape of parties concerned in serious crimes, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the Police with some such powers as they now possess; and we have accordingly adopted many of the provisions of the Bengal Code on this head."

That was what Her Majesty's Commissioners had determined upon doing after full consideration and after taking evidence. They proposed that the Police should be allowed to examine witnesses as at present, but having given the Police this power, it never entered into their imaginations that the Police could be safely entrusted to exercise it, or indeed that it would be proper to invest them with it, unless they were at the same time required to record the examinations which they took; and Her Majesty's Commissioners accordingly introduced the Section now objected to. This was followed a little farther on by another Section, which provided that—

"In all cases, in submitting his proceedings to the Magistrate, the Darogah shall forward the statement of the person complaining, and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of the evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the Magistrate. The Darogah shall further state whether he has forwarded the accused, or released him on bail or on his own recognizance."

Then came a note which said—

"Much has recently been done towards the improving of the mode of recording the proceedings of the Police in the investigation of

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Criminal cases. Much, however, still remains to be done. The unnecessarily voluminous mass of papers frequently sent by a Darogah to a Magistrate may be greatly reduced by a careful supervision, and by enforcing a strict adherence to the rules laid down for the guidance of the Police. The report of the Darogah, which is not evidence in the case, may safely be limited to the particulars noted in this Article."

Here then they had, first, the procedure to be followed by the Police in their preliminary investigation of a case, which Her Majesty's Commissioners had recommended, then their reasons for that recommendation, and then the form of the report which the Police were to send in to the Magistrate in every case; and it was worthy of remark that, so far from the Select Committee having proposed any addition to the report to be made by the Police, they had done just the contrary, and instead of requiring the submission of the detailed depositions taken by the Police, all that the Section as amended by them directed was that the substance of the information obtained from the witnesses as reduced to writing should be forwarded.

Now the Honorable Member for Bengal, as far as he (Mr. Harington) understood the Honorable Member's amendment, had no intention of taking away one atom of all the very large powers which it was proposed to give to the Police. On hearing of the occurrence of a crime, they were to go to the spot, to apprehend the party or parties accused or suspected, to collect and examine the witnesses, and to send in the complainant and the accused with the witnesses to the Magistrate. But they were not to record any thing. The record was what the Honorable Member for Bengal objected to. The Police might exercise almost any amount of power, provided they had not recourse to pen, ink, and paper. These were the weapons in the hands of the Police of which the Honorable Member for Bengal was afraid. But, no, he was wrong; for, on referring to another of the Honorable Member's amendments, he found that the Police were to write something. The amendment referred to stated:—

"In all cases the Head Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which

the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation."

But if the Police were unfit to be trusted with pen, ink, and paper for the purposes mentioned in Sections 82 and 87 of the Bill as now framed, how could they be trusted to do what the Honorable Member's amendment would require of them? That, however, was not all; the amendment proceeded:—

"During the progress of, or at the completion of an enquiry, the Head Officer of Police shall forward to the Magistrate the statement of the complainant or other information, and shall set forth in a report the names of the parties, the nature of the offence, and a list of the witnesses bound over to appear, together with a brief indication of the points to which the evidence of each relates."

The Police were to be allowed to do all these things, but they were not to be allowed to reduce to writing on the spot the examinations taken by them. What, he would ask, did the Honorable Member for Bengal mean by an indication of the points to which the evidence of each witness related? What might, and what might not, be comprised under this word "indication?" It certainly appeared to him that Honorable Members who, like the Honorable Member for Bengal and the Honorable Member for Bombay, went so far as to say that the Native Police were unfit to be trusted to the extent mentioned in the Code, should go farther and say that they were not fit to be employed at all. It certainly appeared to him that, if the proposed amendments should be adopted, the Police would have all the powers which they now possessed, and that the principal, if not the only, check which existed against their abuse of those powers, would be removed. He had lately asked the Chief Commissioner of Police in Calcutta what he thought of the proposed amendments by the Honorable Member for Bengal, and whether in his opinion what was called the Thannah record could be safely dispensed with. His answer was—"Certainly not—if you take away the record, you deprive yourself of your only check upon the Police." He had put the same question to a very intelligent Punjab

Officer who was staying with him, and had received from him the same answer.

The Honorable Member for Bengal had referred to a case which he (Mr. Harington) thought supported his view. The Darogah whose duty it was to make the preliminary investigation in that case appeared to have acted honestly and properly, but the Magistrate, dissatisfied with his proceedings, sent another Darogah with orders to discover and send in the guilty parties, which, as a matter of course, led to the results which followed. Whose fault was that? It was not the fault of the system, it was not the fault of the Police, it was the fault of the Magistrate. So far, therefore, from the case cited favoring the view of the Honorable Member for Bengal, it appeared to him (Mr. Harington) to make just the contrary way. If Magistrates, instead of driving their Police into irregular proceedings or acts of oppression and violence, by issuing injudicious orders, such as the one to which he had just referred, and he had seen many such orders, made proper allowance for the great difficulties by which the Police were often surrounded, and at the same time exercised a careful and vigilant supervision over them, much of the improper conduct of the Police now complained of would cease. He was not prepared to say that there was not great ground for complaint against the Native Police, but he firmly believed that they were not nearly so bad as they were represented.

The Sudder Courts at Calcutta, Madras, Bombay, and Agra, had not objected to the Section now under consideration. The late Honorable Member for Bengal was entirely in favor of it; as already noticed, it was introduced into the Bill by Her Majesty's Commissioners. One of these Commissioners was Mr. Hawkins, to whom the Honorable Member for Bengal had referred, as holding the same opinion as himself, and it certainly appeared to him (Mr. Harington) that, with this array of witnesses in favor of the Section, they would act most unwisely if they struck it out of the Bill, and substituted the amendment proposed by the Honorable Member for Bengal for it. He must say that Honorable Members who, while they were willing that the Police should continue to exercise all the

large powers with which they were now invested, refused to allow them to record any thing, because in their judgment no reliance could be placed on any thing that they wrote, would swallow a camel and strain out a gnat—would gulp down an elephant and be strangled by a flea.

For these reasons he should oppose the amendments proposed by the Honorable Member for Bengal and the Honorable Member for Bombay.

SIR CHARLES JACKSON said, he would confine his observations to the question which was now before the Council, namely, whether Section 82 should be omitted. Now what did that Section propose? It provided that

"The examination of witnesses by the Police shall be taken on the spot where the enquiry is held, in the presence of the Head Officer of a Police Station, or, in the event of his absence, in the presence of any Officer above the rank of a peon or burkundaz."

That is to say, a Darogah or Jemadar might hold this enquiry, and not only do that, but also decide what evidence should be recorded, and what rejected, for the Section proceeded—"and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer," (which he, Sir Charles Jackson, thought would be some protection against his fabricating evidence,) "but in that of a brief narrative, which shall be transmitted to the Magistrate, as hereinafter provided, under the signature of the Police Officer by whom the enquiry shall have been made."

The provisions of this Section appeared to him to be most startling. Certainly no such power was known to the law as administered in England or in the Supreme Courts. It would be considered very strange indeed in England, if a Sergeant of Police were allowed to take down depositions and send them to the Magistrate. If the statement of the Police Officer was valuable, he should attend personally and depose to it. The objection to his written statement was that it substituted secondary for primary evidence; that, instead of taking the evidence of a witness, the Magistrate took his statement in writing. It might be useful to a Magistrate to have a statement of this sort as an index before

commencing the investigation, but the same might be said with respect to the Magistrates in England and the Presidency Towns. If that were the object of this Section, it would save the Magistrate but ten minutes' labor. The report or statement of the Police Officer either meant something or nothing. If it meant something, it was most mischievous in its nature, inasmuch as it gave the Police Officer the power of fabricating evidence, and did not ensure his cross-examination with respect to it. If it meant nothing, it might well be dispensed with. It certainly appeared to him that, if the Magistrate thought this evidence necessary, he should examine the Darogah himself, and not receive his written statement.

MR. HARRINGTON said, the Thannah record could scarcely be regarded in the light of secondary evidence, in fact it was no evidence at all, though it was often found of the greatest use to the Magistrate, the Sessions Court, and even the Nizamut Adawlut, and proved a most valuable aid to them in their endeavors to get at the truth. In Calcutta, the place, where a crime was committed, was always within a comparatively short distance from a Magistrate's Court; but in the Mofussil, the Magistrate's jurisdiction extended over immense tracts of country, and their Courts were often at so great a distance from the place of the occurrence of an offence, that it would be an impossibility for the Magistrates to make the preliminary investigations which now of necessity devolved upon the Police.

The CHAIRMAN said, he confessed he thought the Section proposed by the Honorable Member for Bengal was preferable to the Section now before the Council. He would, however, read to the Council an extract from a report by Mr. Spankie, the Magistrate of Saharunpore, on the subject of the investigation and record by Thannah Officials. Mr. Spankie said:—

"Before finally concluding this report, I would take the opportunity of once more recommending the complete withdrawal of all power of interference on the part of the Police Darogahs in the conduct and trial of Criminal cases. No reform will be more complete than one which would do away with the written investigation by Police Officers, and

none will be more thoroughly appreciated by the people. There would be no difficulty in arranging this reform, still less will impunity in crime be the result of it. The Police will not be the less bound to make their enquiries, and to investigate suspicious cases or charges of heinous crime. All that is recommended is that they should abstain from recording in writing the result of their enquiries, or put words into the mouths of witnesses which they never spoke, or suggest clues or motives designedly offered to mislead the European Officer."

He then suggested that—

"In lieu of the kyfouts, which, in spite of the Nizamut Adawlut's Orders, in spite of fines and threats from the local Officers, still run their own length in every case, or at any rate claim a course to which they are not entitled—I would have a simple form like the following, sent with the prisoners from the Mofussil Police Officers."

On the whole, he (the Chairman) was of opinion that it would be better to put a stop altogether to the recording of evidence by the Police. He would allow only the names of the parties accused and of the witnesses to be forwarded to the Magistrate. He would also allow the Darogah to send a short statement of what each witness was expected to say; but he would not allow Darogahs to send up any depositions which would, as it were, bind witnesses to prove the facts recorded for them.

After some further discussion, the question was put that all the words after the word "burkundaz" in line 7 be omitted and the following words substituted for them—

"It shall be lawful for the Head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case, but the statement made by the person so examined shall not be signed by him or treated as part of the record, or forwarded or used as evidence."

Agreed to.

MR. HARRINGTON moved that the following proviso be added to the Section:—

"Provided that nothing in this Section shall preclude such Head or other Officer of Police from reducing to writing the statement made by any witness."

After some conversation, the Council divided—

<i>Ayes 4.</i> Mr. Forbes. Mr. Harrington. Sir James Outram. The Chairman.	<i>Noes 3.</i> Mr. Sconce. Sir Charles Jackson. Mr. LeGeyt.
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So the Motion was carried, and the Section as amended then passed.
Section 82 provided as follows:—

"No Police Officer or other person shall offer any inducement to an accused person by threat or promise, or otherwise, to make any disclosure or confession, but if any disclosure or confession is voluntarily made by an accused person, it shall be reduced to writing and attested by two or more persons, not being Officers of Police, in whose presence it is made."

MR. SCONCE moved the omission of this Section and the substitution of the following:—

"It shall not be competent to a Head or other Officer of Police to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make."

MR. LEGEYT said, he had placed on the paper an amendment of Section 83, which he preferred to that proposed by the Honorable Member for Bengal, though it was the same in principle, and not very different in effect.

He (Mr. LeGeyt) wished to abolish the system of extracting confessions by the Police, that is, he would prevent the Police from extorting either by threats or actual violence, or by cajolery and false promises of pardon, admissions of guilt from persons whom they suspected of crime.

The system of obtaining these confessions seemed universal in India. In short, they were the only sort of evidence a native policeman seemed to think necessary.

He did not know upon what principle such a system could be defended. It had led to the most cruel and frightful torture being inflicted on persons, he feared, innocent as well as guilty. It made the policeman idle, brutal, careless, and kept him from even learning what his duty really was—instead

of hunting out crime, he considered his duty was to get a confession.

He (Mr. LeGeyt) did not, however, think it necessary to absolutely forbid a confession being received by a policeman, and on this principle he had provided in his amendment for the policeman writing a note of what he had heard and sending it up with the report of the case to the Magistrate. He also thought it quite proper that a policeman who had heard a prisoner confess should, in the proper way, depose to what he had heard, and for the purpose of refreshing his memory he should be allowed to use the memorandum or note just mentioned. The policeman so deposing would be subject to cross-examination, and he did not think there would be much danger of his swearing falsely under such circumstances; and if he did, detection would be very probable—nay, he thought, almost certain. Something had been said about the improbability of a policeman going up with a case to the higher Court. Now he (Mr. LeGeyt) would admit of no such impossibility, and no case of any importance should ever be sent up to a higher Court which was not placed, as it were, in the charge of some Police Officer who knew it from its commencement, and would be able to assist the Magistrate or Session Judge in the investigation. This he did consider the duty of the Police, and a legitimate duty perhaps of the higher ranks of the Force, but still it was one necessary to be performed. He had heard with satisfaction that day, that Magistrates were now spread over the country in Bengal, so as to be tolerably near every part of a district. Such Officers in the shape of Mamlutdars and Tehseeldars had always, or at least for many years past, been stationed all over the Zillahs in the Presidencies of Bombay and Madras, so that it really was no drain on the Police to oblige an Officer to go up with an important case at least to the Magistrate. If he went there, and was an intelligent man, he thought he would be pretty sure to be sent on with the case to the Session Court, and it ought to be so.

With these remarks, he begged to move as an amendment the omission of only the latter part of the Section commencing with the words "but if any

Mr. LeGeyt

disclosure," and the substitution of the following:—

"But if any disclosure or confession is voluntarily made in the presence of any Police Officer, it shall be competent to such Officer to note down in writing the substance of such statement, and to forward it with his report of the case to the Magistrate as hereinafter directed."

The question was then proposed that the latter part of the Section be omitted.

MR. FORBES said, he looked upon this question as one of great importance, and perhaps throughout this whole Code of Criminal Procedure there was no question on a right decision of which the good or bad Police administration of the country would be more dependent than the one now before the Committee. He was, therefore, very unwilling to give a silent vote upon it, but he would state his views and opinions as briefly as he could.

The Honorable Member who had moved this amendment appeared to be of opinion that, if the Section as it now stood in the Bill became law, the Police would endeavor to obtain confessions from persons by violence, and that many of the confessions so obtained would be false, and these evils the Honorable Member hoped to obviate, not by prohibiting the Police from receiving a confession, not by declaring that no confession made before the Police should be received in evidence, but by enacting that no confession made before the Police should be recorded. Under the Honorable Gentleman's view, a confession might still be taken by the Police, and might still be received against the accused in evidence; only, instead of being given in the words of the prisoner who made it, it was to be given in the words of the burkundaz who heard it.

Now it certainly did appear to him, that not only would this be very unfair to the accused person, but also that it would be wholly inoperative in attaining that end of freedom for the accused from all ill-usage, which all persons in common with the Honorable Gentleman earnestly desired.

Now, as regards the first point, he thought that there were many advantages in obtaining the prisoner's story in his own words. When apprehended he was to a certain degree taken

unaware, and had not had time to arrange his story so as to suit his own ends; he had not become possessed of facts which would teach him what he had better suppress, or what he had better invent in order to remove impossibilities, or improbabilities, or contradictions. Then, again, it was surely most unjust to the prisoner, and in every way objectionable, to allow the evidence of his statement to depend upon what the memory or the inclination of a Police burkundaz might lead him to depose to. The expressions of the accused would be very probably misrepresented, criminating admissions only remembered, while circumstances giving a key to the whole matter, and removing all suspicion, would be omitted. If a confession was to be received in evidence, as the Honorable Gentleman himself was willing that it should be, he was at a loss to conceive on what principle of justice it was that hearsay evidence of that confession was to be preferred to the very words in which it was given.

Then, as regards the second point, as to whether the extortion of confessions would be prevented by precluding their being recorded, he was equally at a loss to see what bearing the one had upon the other. Confessions were not obtained to be used as direct evidence against an accused person, and even if they were, extortion would not be prevented by merely enacting that no confession should be recorded. But supposing that confessions were obtained only for the sake of the direct evidence they would afford of guilt, every Police Officer who extorted a confession must suborn two witnesses to prove it to have been voluntary; and he asked, if it were likely that the Officer who had no scruple about suborning witnesses to an extorted confession, would take the trouble and run the risk of extorting a confession at all, when fabricating it would save him all trouble and all risk? The fabrication demanded no more perjury than the extortion, while it was easier, quicker, and less liable to detection.

The chief motive for endeavoring to obtain a confession was not the wish to use it as direct evidence of guilt, but the desire to recover stolen property, or to obtain some clue to the discovery of a crime; and merely forbidding Police

Officers to record confessions would have no effect whatever in preventing them from extorting them. Whether a confession be recorded or not, the motive for obtaining it remained the same, and whoever, for the sake of finding stolen property or obtaining a clue to a crime, would extort a confession which he might record, would, for precisely the same object, extort a confession which he might not record.

He would suppose a case in elucidation of his point. A Police Officer extracted from a prisoner by torture a confession of where certain stolen property was concealed, his confession was recorded, and two witnesses were suborned to prove the confession and the discovery of the stolen property to have been voluntary. Now, if the confession could not be recorded, the only difference would be that witnesses would be suborned to prove a verbal confession and discovery of stolen property to have been voluntary, and he would ask the Honorable Gentleman what practically good result would have been attained by the change?

It was quite clear that Police Officers must be permitted to question persons on their apprehension as regards their names and places of abode and any suspicious fact. To abolish this would be to give almost an impunity to all crime of which there were no witnesses. The only question therefore was—should they trust to oral evidence of the accused's statement, or have it reduced to writing in his own words by the first superior Police Officer before whom he might be brought? It was argued apparently, that we ought not to admit the written confession, because we could not trust the honesty of the Police by whom it would be reduced to writing; but we must remember that the written confession would be taken only by a superior Officer of Police, while the oral evidence of confession, which it was said we were to admit, would be given by a common burkundaz; so that in fact the argument resolved itself into the exact reverse of what had been pressed upon the Government by all public Officers for many years past. They had all been saying that, in order to raise the character of their native servants for honesty, it was essential to raise their salaries. In the present

proposal, however, the rule would be that the lower the pay the greater the honesty, and that the burkundaz might be trusted when his superior Officer might not. He had himself no doubt that both for the elucidation of truth, and as a matter of justice to the accused, confessions should be recorded, and he should unhesitatingly vote against the present amendment.

SIR CHARLES JACKSON said, the question was simply whether the latter part of the Section should be omitted or not. There was a great omission in it, inasmuch as it contained no provision requiring the confession to be signed by the party making it. In the next place, it provided no sufficient safeguard for the correctness of the confession, for it was undeniably true, and he made this assertion after an experience of eleven years in the Presidency Towns of Bombay and Bengal, that to the Police there was attached a large excrescence of goindas or spies, and, in most cases, the two persons by whom confessions were to be attested under the provisions of this Section would be these goindas or informers, who were not a class of beings calculated to give credit or respectability to any transaction with which they were mixed up. The Honorable Member for Madras said that confessions were not sought for by the Police. That was a mistake, for the more convictions they obtain, the surer their promotion. There was unhappily little doubt that the Police obtained their confessions by threats or violence, and that, as a general rule, confessions were thus obtained; and though it seemed somewhat startling in principle to say that an apparently voluntary confession should not be received, yet he (Sir Charles Jackson) thought that they must legislate with reference to the clearly ascertained character of the Police and people, and bearing in mind the universal conviction that prevailed as to the mode in which confessions were obtained by native policemen, he was of opinion that some check should be placed on the admissibility of such confessions, and, as he had mentioned last Saturday, that no confession should be received unless made before a Magistrate.

Mr. Forbes

MR. HARRINGTON said, the first objection taken by the Honorable and learned Judge opposite (Sir C. Jackson) to that part of the Section which it was proposed to omit, was that it did not require that a confession or admission made by an accused party to the Police, and reduced by them to writing, should be signed by the party making it. He believed he was correct in saying that all confessions now made, whether at the Thannah, or before the Magistrate, were required to be signed by the parties who made them, and he had certainly no objection to the continuance of the practice, but the contrary. If the party could write, he should be required to affix his signature to the confession, but if he could not write, he should be required to make his mark. This would meet the first part of the Honorable and learned Judge's objections to the Section as it stood, but the Honorable and learned Judge went on to say that, in most cases, the two persons by whom, under the Section as now drawn, confessions would be attested, would be goindas or informers. Did the Honorable and learned Judge suppose that Magistrates would be so careless, so indifferent, so supine as to allow this? He (Mr. Harrington) felt sure that it would not be allowed in the Supreme Court, and he was equally sure that it would not be permitted in the Mofussil. It had been incidentally mentioned at the last Meeting of the Committee, that a perwannah had been addressed to a respectable landholder, requiring of him to appoint persons to attest Thannah confessions. In the course of the week, he (Mr. Harrington) had had an opportunity of seeing this document, and he found that it directed the appointment of persons to attest confessions, not at the Thannah, but in the Magistrate's Court. No doubt the requisition was very improper, but if any legislation was to be based upon it, it must be to put a stop, not to Thannah confessions, but to confessions before the Magistrate also. Were Honorable Members who supported the present Motion prepared to go that length? Were they prepared to say that, because a young Deputy Magistrate had issued an injudicious order of this nature, no Magistrate should be allowed to receive or record a confession? If this were done, he

(Mr. Harrington) thought the interests of justice would greatly suffer.

It appeared to him that, in considering the question before the Committee, they must also consider the amendments proposed by the Honorable Member for Bengal and the Honorable Member for Bombay. Before agreeing to the omission of the words proposed to be struck out of the Section under discussion, they should know exactly what words were to be put in. He agreed generally in what had fallen from the Honorable Member for Madras in respect to both amendments. If they could not trust the Police to record confessions made before them, he did not see how they could, with any show of consistency or justice, trust them to record the substance of what the accused party had said, much less to supply what was not recorded by oral testimony, which was the proposition of the Honorable Member for Bombay. If the amendments of the Honorable Member for Bombay were adopted, he (Mr. Harrington) thought they would operate most unfairly to the accused, and if the amendments of the Honorable Member for Bengal were adopted, he thought that, in practice, they would prove most injurious to the cause of justice. He preferred the Section as it stood, and should vote against any alteration of it.

SIR JAMES OUTRAM said, he understood that the confessions made to Police Officers would not be used as legal evidence against the accused. He differed in opinion with those who said that all Police Officers could not be trusted. So far as the lower class of Native Police functionaries was concerned, he was quite ready to admit that no trust whatever could be placed in them, for, if interested in so doing, they would have no scruple to record confessions very different from what might have really been confessed to, and very different from what the parties might afterwards be willing to swear by. Under these circumstances he would vote against the latter part of this Section, which would admit of confessions being taken by the lower class of the Native Police, even if attested as proposed, aware as the Council was how such attestations were obtained.

THE CHAIRMAN said, he thought that the latter part of this Section ought certainly to be omitted. The Honorable Member for Madras had remarked that, if the amendment of the Honorable Member for Bengal were adopted, confessions would continue to be taken by the Police, and to be received in evidence against the accused, only they would not be recorded. It seemed to him (the Chairman) that, in this country, it would be safer to enact that no confession before a Police Officer should be used in evidence against the accused. The object, however, of having two attesting witnesses was to prove that the confession was made; but they could not shut their eyes to the fact that, in spite of all prohibitions, threats and in some cases even torture were resorted to by the Police for the purpose of extorting confessions. A confession might be extorted by threats or by actual torture before the accused was brought into the presence of the witnesses, who in such case would know nothing about it, and yet might prove that they heard the confession made. Whether torture were used or not, the accused might have reason to apprehend that he would be put to torture unless he confessed. Even if the attesting witnesses were in other respects above all suspicion, the very fact of the confession being made at a Police Thannah ought to exclude it from being received in evidence. According to English law, a confession could not be received in evidence if made under the influence of hope or fear. He thought it might be safely assumed that a large majority of confessions made to the Police or at a Police Thannah were, to say the least of them, obtained by means of threats, and he thought the safest course would be to exclude them, even though the Police should state that they were made voluntarily. It was not his object to protect the guilty, but that innocent persons should not be punished as if they were guilty. There was scarcely a single case in the Volume of Criminal Reports which he held in his hand, in which a confession was not given in evidence. He would not go so far as to exclude confessions altogether. He would allow confessions to be taken by the Police, provided no threat or torture were used, for the

purpose of enabling them to trace out the facts, but not for the purpose of being used as evidence against the accused.

The question to omit the latter part of the Section being then put, the Council divided :—

<i>Ayes 5.</i> Mr. Sconce. Sir Charles Jackson. Mr. LeGeyt. Sir James Outram. The Chairman.	<i>Noes 2.</i> Mr. Forbes. Mr. Harington.
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So the Motion was carried.

The question was then proposed that the words proposed by Mr. LeGeyt to be substituted be substituted.

THE CHAIRMAN said, it appeared to him that these words ought not to be added. He thought "forwarding it (that is, the written substance) with his report of the case to the Magistrate," would introduce all the evils which Her Majesty's Commissioners wished to avoid, and would be in direct opposition to the view taken by them.

SIR JAMES OUTRAM said, it appeared to him to be very unfortunate that some distinction had not been made, so as to show the class of Police Officers referred to in the amendment. He had no objection to allow the higher class of Police Officers to exercise the proposed power, but he certainly would object to entrust the lower class of Native Police Subordinates with such power. The difficulty he experienced, however, was that, if he voted against the amendment, he would prevent the higher Police Officers from exercising what he deemed a very necessary power; whereas, if he voted in favor of it, he would be conferring such power on the inferior Native Policemen, who, he considered, would be too ready to abuse it.

THE CHAIRMAN said, he was about to remark, in reference to what had fallen from the Honorable and gallant Member, that it was his (the Chairman's) intention to propose the introduction of a new Section, to the effect that certain provisions of the Code should not be applicable to all classes of Native Officers.

After some conversation, Mr. LeGeyt and Mr. Sconce, with the leave of the Council, severally withdrew their amendments; and the Section, as previously amended, was then put and carried.

THE CHAIRMAN moved the introduction of the following new Section after Section 83, namely :—

"It shall not be competent to a Head or other Officer of Police to record any admission or confession of guilt which may be made before him by a person accused of a Criminal offence. Provided that nothing herein contained shall preclude any such Officer from reducing any such admission or confession to writing for his own information or guidance."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above, namely :—

"No confession or admission of guilt made to a Head or other Officer of Police shall be used as evidence against a person accused of any Criminal offence."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above, namely :—

"No confession or admission of guilt made by any person accused of a Criminal offence, whilst such person is in the custody of the Police, shall be used as evidence against the prisoner."

Agreed to.

SIR CHARLES JACKSON moved the introduction of the following new Section after the above, namely :—

"When any fact is deposed to by a Police Officer as discovered by him in consequence of information received from a person accused of any Criminal offence, then so much of such information, whether it amounts to a confession or admission, or not, as relates distinctly to the fact discovered by it, may be given in evidence."

Agreed to.

The postponed Section 84 provided as follows :—

"The Head or other Police Officer shall complete the enquiry with as little delay as possible. If the Head Officer has himself made the enquiry, he shall forward the accused under custody to the Magistrate, provided the evidence is such as to warrant that course, and the offence is not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. If a subordinate Police Officer have made the enquiry, he shall submit his proceedings to the Head Officer, who shall then proceed as if he had made the enquiry himself."

MR. SCONCE moved the omission of this Section and the substitution of the following :—

"The Head or other Police Officer shall complete the enquiry with as little delay as possible. If the person arrested appears from the information obtained to have committed the offence charged and the offence is not bailable, he shall be forwarded under custody to the Magistrate; and the Head or other Officer of Police shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. But when in any case a subordinate Officer of Police has made the enquiry, he may be required by the Head Officer of Police to submit his proceedings to him, or may do so without such instructions, and the Head Officer shall then proceed as if he had made the enquiry himself."

He said, the object of this amendment was simply to dispense with the necessity, under the Section as it now stood, of the subordinate Police Officer submitting his proceedings to the Head Officer in every case in which the former might be deputed to make a local enquiry. He (Mr. Sconce) proposed that the subordinate Officer should do so when required by the Head Officer, or without such instructions at his (the subordinate Officer's) discretion. The matter was only one of convenience, intended to meet the case of the enquiry being conducted at a place much nearer to the Magistrate than the place where the Head Police Officer happened at the time to be.

MR. HARINGTON said, as a general rule, the Code required Thannah enquiries to be made by the Head Officer of the Police, and it was only when the Head Officer at the Police Station was unable from any cause to proceed to the spot and make the enquiry in person, that he might depute a subordinate Officer to make it. The amendment proposed by the Honorable Member for Bengal, however, would permit the subordinate Officer, who might be a very inferior Officer, to judge in what cases he should, and in what cases he should not, send in the case to the Magistrate. Now this was a power which ought not to be given to a subordinate Police Officer. True, under the proposed amendment, the Head Police Officer might require his subordinate to submit the proceedings for his revision and orders, whenever he might think proper to

do so, but he could not judge of the propriety or necessity without seeing the papers, the transmission of which to him would cause just as much delay as could ever take place under the rule objected to by the Honorable Member for Bengal. It should, moreover, be borne in mind, that the Head Officer, not the subordinate, was the person responsible to the Magistrate in all matters relating to the Thannah. For these reasons he should oppose the amendment.

After some further discussion, the Council divided.

<i>Ayes 4.</i> Mr. Sconce. Sir Charles Jackson. Mr. LeGeyt. The Chairman.	<i>Noes 2.</i> Mr. Forbes. Mr. Harington.
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So the Motion was carried.

The further consideration of the Bill was postponed on the Motion of Sir Charles Jackson.

CATTLE TRESPASS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

Agreed to.

NOTICES OF MOTIONS.

MR. HARINGTON gave notice that he would, on Saturday the 13th Instant, move the second reading of the Bill "to continue Act XXXIII of 1857 (to make further provision relating to Foreigners)."

Also the first reading of a Bill for the licensing of Trades and Professions in India.

PASSENGERS.

MR. LEGEYT moved that the Bill "to amend the law relating to the carriage of Passengers by Sea" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYTT moved that the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing, within the local limits of the jurisdiction of Her Majesty's Courts, legal process issued by Authorities in the Mofussil)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ELECTRIC TELEGRAPHS.

MR. LEGEYTT moved that the Bill "for regulating the establishment and management of Electric Telegraphs in India" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Harington be added to the Standing Orders Committee.

Agreed to.

The Council adjourned.

Saturday, August 13, 1859.

PRESENT :

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir	H. Forbes, Esq.
J. Outram,	Hon. Sir C. R. M.
Hon. H. B. Harington,	Jackson, and
P. W. LeGeyst, Esq.,	A. Sconce, Esq.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor-General had assented to the Bill "to continue in force until the end of the year 1859 Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

POST OFFICE.

MR. HARRINGTON said, he was under the necessity of asking the Council again to allow him to postpone the motion (which stood in the Orders of the Day) for the first reading of a Bill to

amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office), as he found that the amendments proposed by the Director General of Post Offices required more consideration than from the pressure of other business he had been able to give them.

TRADES AND PROFESSIONS.

MR. HARRINGTON said, pursuant to the notice which he gave on Saturday last, he had now the honor to move the first reading of a Bill "for licensing trades and professions in India." In bringing in this Bill, he was sensible that he had undertaken a task of no ordinary difficulty, and he thought it not improbable that the Bill would meet with a very considerable amount of opposition, if not within these walls, certainly beyond them. But he trusted that, when the measure came to be fully considered, it would be found to be a wise and politic measure, and one which, in existing circumstances, the Government of this country was fully justified in adopting.

By some he should probably be told that it was opposed to sound principles of political economy to put a tax upon trade or upon the profits arising from trade, but he considered that the English property tax was a sufficient and conclusive answer to any such objection. What was right in principle in England as regarded a measure of this nature, could scarcely be wrong in principle here. The English Act said that—

"Upon the annual profits or gains arising or accruing to any person residing in Great Britain from any kind of property whatever, whether situate in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence; and upon the annual profits or gains arising or accruing to any person residing in Great Britain, from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence."

"And upon the annual profits or gains arising or accruing to any person whatever, whether a subject to Her Majesty or not, although not resident within Great Britain,

from any property whatever in Great Britain, or any profession, trade, employment, or vocation exercised within Great Britain, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence."

Others might say that, in practice, the measure would operate unequally and partially, and would affect certain classes only, who could not with justice be taxed in the manner proposed, while others were exempt; others again would perhaps say that, although there was nothing objectionable in the principle of the Bill, in carrying out its provisions any approach to a fair or proportionate assessment would be almost impossible, and the consequence would be endless heart-burnings and very wide-spread dissatisfaction. These and other objections, which were likely to suggest themselves to different persons, he should endeavor to answer in the course of the remarks with which he considered it necessary and proper to trouble the Council before the motion which he had made was put from the chair.

Though the title of the Bill did not disclose the real purpose for which it was introduced, he did not think he should take Honorable Members or the public at large by surprise, when he mentioned that the sole and entire object of the Bill was to augment the public revenue. The licensing of trades and professions was certainly not required for Police purposes, or for the convenience of the public. It was not pretended that the system of allowing all persons to carry on any trade or profession they pleased, supposing the same to be lawful in itself, without let or hindrance, and without any interference or supervision on the part of the Government, had been productive of any public inconvenience or injury so as to call for the intervention of the Legislature, or the imposition of any restrictions. It was not on that ground that it was proposed to require by law that all trades and professions should be carried on for the future under the sanction of a Government license. He repeated that the sole object of the Bill was to open up a new source of public revenue. That, then, was the object of the Bill. The necessity for the Bill was to be found in the present financial condition of the country. To establish this necessity it

was only necessary for him to refer to the full and lucid statement which was made not many months ago in that Chamber by His Excellency the Right Honorable the Governor-General, in introducing the Bill to alter the rates of Customs Duties on goods imported or exported by sea. In that statement His Excellency took them back to the time (and the interval was not a very wide one, extending over a period of little more than two years) when by good Government and by a prudent economy the revenue of India very nearly equalled the expenditure, the difference being only eighteen lakhs. His Excellency took them back to the time when, to quote his own words,

"The Government had almost touched the point, at which, amongst States as amongst individuals, all who desired to administer their financial concerns with honesty and safety, must aim—namely, a balance of expenditure with revenue. It saw before it an early opportunity of being able to prosecute large works of material improvement, without either increasing the burdens of the people, or anticipating the resources of its own successors, on whom the future administration of the country should devolve."

"This was a prospect to which he had looked forward eagerly. But it was not permitted to him to realize it. The new financial year was little more than a week old, when the spark fell which lit up a conflagration, the embers of which were now and only now dying out. That was no longer the time to talk of balance sheets. Every hand, and heart, and brain, were needed for the struggle. We have now risen from that struggle, our honor vindicated, our power secured, and our character, as masters merciful in our strength, not, he ventured to hope, unworthily maintained. But we had risen with resources drained; in the opinion of some, though he did not share in that opinion, with resources well nigh exhausted; and it was incumbent upon the Government to increase the revenue by the readiest and soundest means which it could devise."

His Excellency then proceeded to show how rapidly a deficit of only eighteen lakhs had been increased to the enormous sum of 817 lakhs, and he expressed his fears, which had proved too well founded, that, at the end of the current commercial year, that is, on the 30th April last, the deficit would exceed the enormous sum of 1,300 lakhs of Rupees.

"To meet this expenditure," His Excellency went on to say, "the Government had

been compelled to have recourse to exceptional resources. By debentures in England, in the course of the past year, eight millions sterling had been raised. By the loan of last year in India, counting from the opening of it to the present day, namely, twenty-two months—the amount raised was 914 lakhs. These two sums together did not meet the expense of which he had just spoken. But the expense was met within a very trifling sum from the excess which existed between the cash balance in May 1857 and the cash balance in May 1858. The difference between these two balances amounted to 414 lakhs, and that sum, joined to the two sums raised by loan in England and India, very nearly came up to the full amount of the expenditure he had mentioned, including in this the estimated deficit of the current year. Now, whatever might be done by loans and whatever might be the opinions held as to the loans which had been levied, and as to the extent to which they should be raised in England or in India respectively, and there was a difference of opinion on those points—it was incontrovertibly the fact that, come the loan from where it might, the Government of India must find the interest for it. On that ground alone he asked the Legislative Council to give their assent to this Bill. It was the duty of the Government to provide at once for the payment of the interest that would be required by increasing the revenue by every means within its reach which sound policy would allow; and of all such means he knew of none which would be less injurious to public or to private interests than the proposed measure of raising the duties in the Tariff."

This, then, was the condition of the finances of India at the close of the last financial year. In the short period which had since elapsed, it was not to be supposed that very much would be effected in the way of improvement, but he was happy to say that a good deal had really been done, and that the measures which had been adopted with a view to a strict economy in the administration of affairs and to increase the revenue had proved more successful than was anticipated; in proof of which he might mention that, while the deficit exhibited in the anticipation sketch estimate for 1859-60 was 724½ lakhs, the deficit for 1859-60, obtainable from the last rough estimate for July, was 684 lakhs, the difference being upwards of forty lakhs of Rupees.

It was of course impossible that this deficit, though little more than half what it was in the preceding financial year, could be permitted to continue. It could only be followed, and that speedily, by the most calamitous results, and it

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had therefore again become incumbent upon the Government to have recourse at once to means to equalize income and expenditure.

The question then arose, how could this best be accomplished? No doubt many would exclaim, diminish your expenses, bring them down with an unsparing hand to the level of your income. That was, in truth, being done in every possible way and as rapidly as circumstances would admit. All Military and other appointments called into existence by late events, which could be dispensed with without public inconvenience, had been or were being reduced. Considerable reductions had been made in the numerical strength of the several Native Cavalry and Infantry Regiments, both regular and irregular. Many of the Police levies had been disbanded, and the strength of those which it was considered necessary for the present to retain had been reduced. Further considerable reductions in this Force might hereafter be found practicable, but their extent must depend in a great measure upon the decision which might be come to in England upon the important question of the re-organization of the Native Army of Bengal. The Council were aware that this question was now before Parliament, whose decision, or that of Her Majesty's Government at home, must be awaited before anything further could be done in this country. A Commission was now sitting at Bombay, composed of Officers from the three Presidencies, the object of whose appointment was to ascertain what reduction could properly be made in the Military Department, and what plan could be adopted to reduce and keep down expenditure. This Commission, after completing its enquiries at Bombay, would proceed first to Madras, and afterwards to Calcutta. A second Commission had been ordered to assemble also at Bombay, with a view to the institution of similar enquiries in the Naval Department of the public service, and in all branches connected therewith. It was no secret that considerable reductions had been proposed in the salaries of the Covenanted Civil Servants of Government throughout India, based upon the report of Mr. Ricketts, who was appointed some years

ago to revise the salaries of the Civil Establishments in the three Presidencies, and to propose such alterations therein, with a view to a reduction of expense, as he might consider proper. The proposed reductions might at once have been carried into effect by the Government in this country, but as the question was one of considerable importance, and as in its decision the Government at home had an interest nearly equal to that of the Government in this country, it was considered proper that the Home Authorities should be consulted on the subject, and that whatever was done should be done with their concurrence. The orders of the Home Government might shortly be expected, but in the meantime he might mention that the saving expected from this source amounted to less than eleven lakhs of Rupees per year. As a permanent measure, it was considered that reduction in this branch of the public service could not prudently or safely be carried further. He was sure all would agree with him that it would be a false economy to risk the efficiency of the Establishment, which would be the inevitable consequence of greatly underpaying it. Even as it was, he believed he was right in saying that one of Her Majesty's Ministers, who was greatly in favor of what was called the competition system, had lately stated in his place in Parliament that, although a great many very superior young men had entered the Indian Civil Service under the operation of that system, it had not produced all the fruits expected from it, and that the inducements which it offered were not sufficient to tempt out the best men from the two English Universities. What then would be the case if any considerable reduction in the emoluments of the service took place? Already he was informed that many who had come out under the new system were disappointed with their prospects, and thought that they might have turned their abilities and acquirements to better account at home. All new grants in aid of or for promoting education amongst the natives had been stopped, and this was perhaps one of the most painful parts of the economy which had been forced upon the Government by the extraordinary expenditure rendered necessary by the events of the

last two years. The measures which he had just described, either as having been already adopted, or as being in contemplation, would, he thought, show that the Government was in earnest, and that it was determined fearlessly and unflinchingly to do its duty by enforcing the most rigid economy in every branch of the public service consistently with a due regard to efficiency, which he need not remark included honesty no less than many other qualities. As regarded the Uncovenanted branch of the Civil Service and the European Officers of the Army, he did not think there was room for any great reduction in their allowances, certainly not in the lower ranks of the Army. The expenses of living had increased so greatly of late years that, what with their messes, bands, and uniform, Subaltern Officers, however disposed to be prudent and economical, found it very difficult to live on their pay and avoid debt. In the Uncovenanted branch of the Civil Service, here and there appointments perhaps existed, the salaries of which might be considered high even in India, and might admit of some reduction, but such appointments certainly constituted the exception, not the rule; and he should be extremely sorry to see any considerable reduction permanently made in the salaries of this class of Officers generally. These remarks applied more particularly to their native officials, scarcely one of whom was overpaid. In the lower branches it was notorious that the salaries, with reference to the duties to be performed and the temptation to which the Officers were exposed, were most inadequate, and there could be no doubt that, if the Government did its duty to those Officers, a very large additional expenditure would be the consequence, but this of course could not at present be thought of.

He passed on to notice the measures for improving the public revenue that had been adopted, or were in contemplation, or had been proposed. The first of these was the Act for raising the rates of Customs Duties on goods imported or exported by sea, to which he had already referred. This Act applied alike to Europeans and Natives, but as the articles liable to duty under it were, for the most part, used to a very

much greater extent by the European than by the Native population, the Act, there could be no doubt, pressed much more heavily upon the former than upon the latter class. That such would be its effect was foretold by His Excellency the Governor-General, who remarked in the statement from which he had already quoted largely, that

"These charges would bear mainly on the European community, but he thought he might appeal to that community to submit ungrudgingly at a moment like the present to the increase which they would make to their burdens."

He (Mr. Harington) laid much stress upon this point, in order that our native fellow-subjects might see that we had not shrunk from taxing ourselves as well as them, and that new taxation having become absolutely necessary, we began by taxing ourselves principally.

He would further remark, as a proof of the great anxiety that the Government had always felt to avoid as much as possible imposing any burden in the way of taxation on its native subjects, that, with exception to the trifling duty upon salt, a very large portion of the native community, including all the bankers and almost all the traders in the country, contributed nothing at all to the revenue of the State in return for the protection, security, and advantages they enjoyed under the British Government.

The next measure to which he would refer was the increase in the duty on Malwa Opium. This had been increased from 400 to 500 Rupees per chest by an order in Council, which the Government had the power to pass without the sanction of the Legislature. He need scarcely remark that this duty did not press upon the people of India. The increase expected from the alteration in the duties on Malwa Opium and on the various articles mentioned in the new Tariff was 130 lakhs, namely, 37 lakhs on the former and 93 lakhs on the latter. He was happy to have it in his power to say that these expectations had been more than realized. He believed, too, he might add, that the appeal made to the European community by His Excellency the Governor-General, at the time of proposing the increased duties, had been heartily responded to, and

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that all, admitting the necessity of what had been done, willingly submitted to it.

He now came to the Bill relating to Stamps introduced by his Honorable friend the Member for Bengal. This Bill was still before the Council, and it was not possible to say what would be the effect of it on the public revenue, but it was confidently expected that the sale of Stamps other than judicial would produce a considerable sum of money without the charge to those requiring to use Stamps of that class being much felt. The masses of course would not be affected in the slightest degree by the proposed law. With regard to judicial Stamps, although some increase was expected from them, he doubted whether it would amount to much. Indeed, if many of the reforms now in contemplation were carried out, such, for instance, as doing away with the appeal in simple actions of debt and the like up to a certain amount, not allowing any special appeal in cases of the same kind in which the amount or value of the claim did not exceed five hundred Rupees, and constituting Courts of final jurisdiction, in so far as the facts were concerned, in all cases, whatever might be the amount, there would probably be a loss instead of any gain in this branch of the public revenue.

In addition to the sources of revenue which he had just mentioned, it had been suggested that the Salt Duty at the three Presidencies might be raised without being very sensibly felt by the people; that a duty might be imposed upon tobacco grown in the country; that an income tax, as well as a succession duty, might very properly be levied; and that a large sum might be raised by a tax upon houses.

With regard to the proposition to raise the duty upon salt, the Council were aware that Bills had lately been brought in by the Honorable Members for Madras and Bombay, the effect of which, should they pass into law, would be to increase the amount of the revenue now derived from salt in these two Presidencies. The Government of India had already power by law to raise the duty paid by salt in the Lower Provinces of Bengal to Rupees 3-4 per maund. The duty now paid was Rupees 2-8 per maund. Whether any increase should take place, and if so, what

should be its extent, were questions which would be considered on the receipt of a report which had been called for from the Government of Bengal. In the North-Western Provinces a duty of Rupees 2 per maund was levied on all salt crossing the frontier, and a further duty of 8 annas per maund on any salt which might pass Allahabad. A uniform duty of Rupees 2-8 per maund had been proposed on all salt crossing the Frontier, the extra duty now taken at Allahabad being abolished. Some Officers had indeed proposed that the duty should be increased to Rupees 3 per maund. The question of increasing the duty on salt in the North-Western Provinces had to be considered in connection with Oude, which was a large salt-producing country, and reports had been called for from both the Chief Commissioner and the Lieutenant-Governor of the North-Western Provinces. Their answers might possibly show that it was not expedient to make any alteration in the rates of duty now levied in the North-Western Provinces, but this was a point upon which he purposely abstained from giving any opinion at present, because he felt that he was not in a position to do so with satisfaction to himself. In the Punjab measures had been introduced which would have the effect of increasing the salt revenue in that Territory.

An income tax and a succession duty had many advocates both at home and in this country, but as regarded personal property belonging to natives, it was believed that there would be very great difficulty in ascertaining the amount on which the duty should be assessed, without having recourse to a mode and degree of inquisition which, while it would often end in defeat, would prove extremely vexatious and harassing, and repugnant to the feelings of the people. It was also felt that the enforcement of any tax or duty of this kind would generally be a matter of great difficulty, without resorting to measures which, though perfectly legitimate in themselves, would have the appearance at least of considerable harshness.

For these reasons chiefly the Government had not hitherto considered it advisable to introduce either of the two taxes or duties just mentioned as respecting personal property. As re-

garded landed property, a doubt had been raised whether there were not legal impediments to their imposition in Bengal; while in the North-Western Provinces, and in the other parts of India, where the settlement was not permanent, but for a term of years only, it was open to the Government to increase the amount of its demand whenever the settlement came under revision.

To a house tax and to a duty upon tobacco grown in the country objections had been taken by Officers of high positions and large experience, whose opinions were entitled to great respect, and the Government had deemed it advisable that there should be further enquiry and a more full consideration of the subject, before it came to a final decision, either one way or the other, as regarded both these imposts, as well as in respect to an income tax and a duty on successions.

The last additional source of revenue which had been suggested was that which formed the subject of the Bill which he was about to ask the Council to allow to be read a first time, namely, a tax by means of a Government license for carrying on trades or professions.

It was not to be supposed that a tax of this kind could be proposed without giving rise to a good deal of difference of opinion, but after consulting a large number of persons, both Europeans and Natives, in all parts of the country, he found a very great preponderance of opinion in favor of the tax. From many quarters he had received much valuable advice and many useful hints, and he would particularly acknowledge in this place the assistance which he had received in these respects in framing the Bill from Mr. Martin Gubbins, one of the Judges of the Sudder Court at Agra, Mr. Muir, Junior Member of the Sudder Board of Revenue at Allahabad, Mr. Frederic Gubbins, the Commissioner of the Benares Division, Mr. George Campbell, the Judicial Commissioner at Lucknow, and the learned Clerk of the Council, whose aid, most cheerfully rendered on this as on all other occasions, he had found most useful, and he took this opportunity of thanking him for the same.

One great argument in favor of the present measure was that, in so far as

native traders were concerned, it introduced no new principle but merely revived one of their own modes of taxation. In Bengal all trades were formerly taxed under the head of "Sayer," and when the Sayer duties were abolished, if he recollected rightly, the Government reserved to itself the right of reviving at any time the tax upon trades. In the Madras Presidency a tax of a somewhat similar character, called "Mohturfa," was still in existence, and yielded a revenue of about twelve lakhs of Rupees a year; but the mode in which this tax was levied was very unsatisfactory and very uncertain, its realization being left very much to the views of individual Collectors. It also operated most unequally, and while it extended to many articles or acts, such for instance as the sifting of ashes and the furnaces of working jewellers, which ought not to be taxed, it omitted many trades or articles upon which it might be legitimately imposed. It was proposed, therefore, to repeal the present laws, and to substitute this Bill for them.

It might be supposed by some that, in order to carry out the Bill fairly and properly, as regarded both the State and the persons to whom it would apply, the same vexatious enquiry into every trader's or professional man's circumstances or profits would be necessary, which had been so strongly objected to in the case of an income tax or a succession duty, but nothing of that kind was intended. It was proposed that the tax upon the license to be taken out should be in all cases exceedingly light, and being light, it was felt that the amount might be fixed in an arbitrary manner, that is to say, without that enquiry into or that degree of regard to a man's professional income or profits, which would be necessary, if it were attempted to apportion the amount of the tax thereto. We were told by Adam Smith that, in a light tax a considerable degree of irregularity might be supported, in a heavy one it was altogether intolerable; and again, the extreme inequality and uncertainty of a tax assessed in the manner proposed in this Bill could be compensated only by its extreme moderation, in consequence of which every man found himself rated so very much below his real revenue, that he

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gave himself little disturbance, though his neighbors should be rated somewhat lower. He had acted upon these views, in which he fully concurred, in framing the present Bill.

It could scarcely be necessary for him to say that, although the price to be paid for the license would, in the first instance, come out of the pocket of the person taking out the same, it would not eventually be borne by him. He would have no difficulty in knowing where to go for reimbursement, namely, to his customers, who would really pay the tax, and as it would be thus spread over the entire population in proportion to each man's expenditure, it would scarcely be felt. The rich man who was clothed in purple and fine linen, and fared sumptuously every day, would pay comparatively largely, and he could well afford to do so; the poor man would pay very little. This was quite right and proper, and seemed to meet in a great degree the objection that the Bill would operate unequally.

He would now briefly allude to the provisions of the Bill. Section I repealed the laws in Madras relating to Mohturfa. In Bombay, where duties on trades were formerly levied, they had been done away with by Act XIX of 1844.

Section II required a license to be taken out to carry on any trade or exercise any profession. Section III declared who were to be deemed persons carrying on trade. Section IV provided by whom licenses were to be granted. Section V enacted what particulars were to be specified in the license. Section VI related to the commencement and expiration, and Section VII to the renewal of licenses.

Section VIII he would read, as it showed how the tax was to be assessed. The Section provided as follows:—

"Upon all licenses to be granted under this Act, there shall be paid by the persons to whom such licenses are granted the several annual sums hereinafter mentioned (that is to say):

Under Class	I	...	...	2,000	Rs. yearly.
"	II	...	...	1,000	" "
"	III	...	...	500	" "
"	IV	...	...	250	" "
"	V	...	...	100	" "
"	VI	...	...	50	" "

Under Class VII	...	...	25	Rs. yearly.
" VIII	...	...	10	" "
" IX	...	...	5	" "
" X	...	...	2	" "

He might add that bankers only would come under the first two Classes.

Section IX empowered the Collector, or other Officer authorized to grant licenses, to determine under what class persons should be assessed, and to appoint a Panchayet, consisting of three or more respectable inhabitants of the neighborhood, to aid him in making such assessment. Section X required the assessment to be in accordance with the Schedule. Section XI related to the appointment of Chowdrees. Section XII related to the preparation and publication of the list of persons requiring to be licensed under the Act. Section XIII to the inspection of the list, and Section XIV to appeals from the orders of Collectors. Section XV required such appeals to be written on stamp paper. Section XVI related to the preparation of a revised list. Section XVII prescribed the penalty for not taking out a license. Section XVIII required licenses to be produced on demand. Section XIX provided for the adjudication of offences and recovery of penalties. Section XX declared that persons holding office or employment not under Government were to be deemed persons carrying on trade, &c. Section XXI enacted that the Act was not to apply to persons holding office under Government, and Section XXII that the Act was not to apply to workmen for hire, or cultivators of land, &c. It would be deserving of consideration hereafter, whether the Collector or other Officer authorized to grant licenses should not have power to except any person carrying on any petty trade, of whose inability to pay the small sum of two Rupees per annum, without great difficulty, he might be satisfied, or whether the exception contained in this Section might not properly be carried farther.

These then were the provisions of the Bill. He was very sensible that many imperfections would be found in it, but he trusted that, with the aid of Honorable Members, these would be corrected in Committee should the Bill ever reach that stage. If the Council allowed the Bill to be read a second time, it would

be published in the usual course for general information, and the publication would doubtless elicit many valuable remarks and suggestions from the public, and from the local Governments and the Officers subordinate to them, which would be of great use in the revision of the Bill, and he trusted that the result would be a useful and practicable measure of taxation, without the imposition of any very great pecuniary burden upon any one. What amount of revenue the introduction of the measure might be expected to produce, it was very difficult to say; but he thought they might safely calculate upon at least from one hundred to one hundred and fifty lakhs per year. The Bill would be printed and circulated without delay, and he hoped to move the second reading on that day fortnight. On that occasion he should not ask Honorable Members to commit themselves to any of the details of the Bill, but simply to its principle—in other words, that it was not wrong in principle in India to raise revenue by means of a license on trades and professions. This would leave every Honorable Member at liberty to do what he pleased in respect to the details of the Bill, and to propose any alterations in them that he might think proper, as also to vote against the third reading if he objected to the Bill in the form in which it might then appear. But, looking to the difficult position in which the Government was placed by the state of the finances, and to the impossibility of carrying on the Government properly, after every possible reduction had been effected, without an adequate revenue, for money was as much the sinews of Government as it was of war, he ventured to hope that the Bill would receive the cordial support of the Council. He had to apologize for having trespassed at such great length upon the time of the Council, and thanking them for the patient hearing that they had accorded to him, he now begged to move that the Bill be read a first time.

The motion was carried, and the Bill read a first time.

CUSTOMS DUTY (BOMBAY).

Mr. LEGEYT moved the first reading of a Bill "to amend Act I of 1852

(for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay). He said, the object of this Bill was to raise the Customs Duties, hitherto levied under Section XX Act I of 1852, on spirits exported from any Port in India and imported to any Port within the Presidency of Bombay. The Government of Bombay had lately, under the authority vested in them by Act III of 1852, raised the Excise Duty on spirits manufactured in that Presidency from nine annas to one Rupee per gallon. Section XX Act I of 1852 fixed the Import Duty on any manufactured spirits which had not paid Excise at nine annas per gallon.

It had been thought expedient to raise this Import Duty to make it equal to the Excise fixed under Act III of 1852. This Bill had therefore been proposed and had been approved by the Government of Bombay and the Government of India. It proposed to repeal Section XX Act I of 1852, and to enact that an Import duty, equal to the Excise imposed under Act III of 1852, should be levied on all spirits exported from any Port of British India to any Port of the Bombay Presidency, on which Excise had not been paid. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

FOREIGNERS.

MR. HARRINGTON moved the second reading of the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)."

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

JAMSETJEE JEJEEBHAY BARONETCY.

MR. LEGEYT moved the second reading of the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him, and

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the heirs male of his body, by her present Majesty Queen Victoria, and for other purposes connected therewith."

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

MR. LEGEYT moved that the Standing Order be suspended, in order that the Bill might be passed through its subsequent stages. His ground for making this motion was the extreme anxiety felt by the parties concerned. The Council were aware of the considerable delay which had already taken place in the matter. It was at first thought that the Bill would be passed through the Council within a short time. It was subsequently discovered that the Incorporation Clause rendered it necessary to send the Bill to England for the sanction of the Crown. In the mean time Sir Jamsetjee died, and the Bill was returned for the purpose of being modified, so as to suit the altered circumstances of the family. This had been done in the Bill, which was now before the Council, and which had been transmitted to him by the present Baronet, with an earnest request that no time should be lost in carrying it through the Council. The revised Bill would also, on account of its Incorporation Clause, require to be sent to England for the sanction of the Crown, and as the measure was entirely of a private nature, he trusted there would be no objection to the suspension of the Standing Orders. The Bill originally introduced had been fully considered by the Council before it was sent to England, and the alterations now made in it were necessary to adapt the Bill to the present circumstances of the family, in consequence of Sir Jamsetjee's death.

SIR JAMES OUTRAM seconded the Motion.

SIR CHARLES JACKSON said, he thought that a case had hardly been made out for the suspension of the Standing Orders, with a view to this Bill being passed through all its subsequent stages. The Bill had been considerably altered, and it appeared to him that the better course would be to refer it to a Select Committee, with instructions to report thereon within a week.

THE VICE-PRESIDENT said, it appeared to him that there was some little difficulty about this Bill. It was

a private Bill by which the Legislature was about to settle property, among which was Mazagon Castle. The Preamble stated, among other matters, that—

"Whereas the said Sir Jamsetjee Jejeebhoy was seised of a Mansion-house and hereditaments situate in the Island of Bombay, called Mazagon Castle, and had an absolute estate of inheritance therein, and was desirous, in fulfilment of the aforesaid engagements, of settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and the said Mansion-house and hereditaments to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively.

"And whereas the said Sir Jamsetjee Jejeebhoy was also desirous that the heirs male of his body, to whom the said title and dignity of Baronet should descend, should take and bear the names of 'Jamsetjee Jejeebhoy' in lieu of any other name or names whatever, which they respectively might bear at the time of such descent on them respectively; and he was also desirous that the Revenue Commissioner for the Northern Division of the Presidency of Bombay, the Accountant General, and the Sub-Treasurer at Bombay for the time being, should be trustees of the aforesaid Promissory Notes, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the same securities, and also with relation to the said Mansion-house and hereditaments.

"And whereas the said Sir Jamsetjee Jejeebhoy departed this life on the 14th of April 1859, before the aforesaid engagement with Her Majesty's Government was carried out on his part, and by his Will dated the 9th of April 1853, duly signed and executed by him, gave and devised the residue of the estate, houses, lands, securities, moneys, and effects, to and amongst his sons Cursetjee Jamsetjee, Rustomjee Jamsetjee, and Sorabjee Jamsetjee."

With reference to the words "residue of the property," he asked how could the Council know what would be comprised under those words? It was necessary, when recitals of this nature were inserted, that the facts should be correctly ascertained. In England such a Bill would not be passed without proof of the correctness of the Preamble.

This Bill varied considerably from the original Bill, which had been withdrawn. According to the original Bill, the late Baronet and his representatives would have had ultimate appointment of the trust fund, whereas this Bill gave it to the present Baronet and his representatives. In case of failure of the Baronetcy, a question might arise

whether this Council had not appropriated the ultimate residue in a different manner from that intended by the late Baronet. The Council was entirely in the dark as to the contents of the Will. He (the Vice-President) did not mean to say that the property had been otherwise disposed of, but still it was necessary that they should see the Will, and that the Bill should be published to the world, so as to allow those who might have any objections to make to it, the opportunity of submitting them.

For these reasons it appeared to him that the Standing Orders should not be suspended, but that the Bill should be proceeded with in the usual course. There might have been some necessity for hurrying on the Bill during the lifetime of the late Baronet, but he did not think that the same necessity existed for doing so now.

The Council divided—

<i>Ayes</i> 3.	<i>Noes</i> 4.
Mr. LeGeyt.	Mr. Sconce.
Mr. Harrington.	Sir Charles Jackson.
Sir James Outram.	Mr. Forbes.
	The Vice-President.

So the Motion was negatived.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE said, before moving the second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," there was one important point which he desired to notice. The principle of the Bill was that, after the measurement of the land required for Railway or other purposes had been completed, a reasonable period, say ten days, was allowed for further adjustment, after which period the land might at once be taken possession of for the purpose to which it was proposed to be applied. He thought it necessary, however, in the event of the Bill being allowed to be read a second time and referred to a Select Committee, to introduce a Clause corresponding with a Clause in the present Act, which provided that, on the land being taken possession of, when the question of compensation was referred to

(for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said, the object of this Bill was to raise the Customs Duties, hitherto levied under Section XX Act I of 1852, on spirits exported from any Port in India and imported to any Port within the Presidency of Bombay. The Government of Bombay had lately, under the authority vested in them by Act III of 1852, raised the Excise Duty on spirits manufactured in that Presidency from nine annas to one Rupee per gallon. Section XX Act I of 1852 fixed the Import Duty on any manufactured spirits which had not paid Excise at nine annas per gallon.

It had been thought expedient to raise this Import Duty to make it equal to the Excise fixed under Act III of 1852. This Bill had therefore been proposed and had been approved by the Government of Bombay and the Government of India. It proposed to repeal Section XX Act I of 1852, and to enact that an Import duty, equal to the Excise imposed under Act III of 1852, should be levied on all spirits exported from any Port of British India to any Port of the Bombay Presidency, on which Excise had not been paid. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

FOREIGNERS.

MR. HARRINGTON moved the second reading of the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)."

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

JAMSETJEE JEJEEBHAY BARONETCY.

MR. LEGEYT moved the second reading of the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him, and

Mr. LeGeyt

the heirs male of his body, by her present Majesty Queen Victoria, and for other purposes connected therewith."

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

MR. LEGEYT moved that the Standing Order be suspended, in order that the Bill might be passed through its subsequent stages. His ground for making this motion was the extreme anxiety felt by the parties concerned. The Council were aware of the considerable delay which had already taken place in the matter. It was at first thought that the Bill would be passed through the Council within a short time. It was subsequently discovered that the Incorporation Clause rendered it necessary to send the Bill to England for the sanction of the Crown. In the mean time Sir Jamsetjee died, and the Bill was returned for the purpose of being modified, so as to suit the altered circumstances of the family. This had been done in the Bill, which was now before the Council, and which had been transmitted to him by the present Baronet, with an earnest request that no time should be lost in carrying it through the Council. The revised Bill would also, on account of its Incorporation Clause, require to be sent to England for the sanction of the Crown, and as the measure was entirely of a private nature, he trusted there would be no objection to the suspension of the Standing Orders. The Bill originally introduced had been fully considered by the Council before it was sent to England, and the alterations now made in it were necessary to adapt the Bill to the present circumstances of the family, in consequence of Sir Jamsetjee's death.

SIR JAMES OUTRAM seconded the Motion.

SIR CHARLES JACKSON said, he thought that a case had hardly been made out for the suspension of the Standing Orders, with a view to this Bill being passed through all its subsequent stages. The Bill had been considerably altered, and it appeared to him that the better course would be to refer it to a Select Committee, with instructions to report thereon within a week.

THE VICE-PRESIDENT said, it appeared to him that there was some little difficulty about this Bill. It was

a private Bill by which the Legislature was about to settle property, among which was Mazagon Castle. The Preamble stated, among other matters, that—

"Whereas the said Sir Jamsetjee Jejeebhoy was seised of a Mansion-house and hereditaments situate in the Island of Bombay, called Mazagon Castle, and had an absolute estate of inheritance therein, and was desirous, in fulfilment of the aforesaid engagements, of settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and the said Mansion-house and hereditaments to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively.

"And whereas the said Sir Jamsetjee Jejeebhoy was also desirous that the heirs male of his body, to whom the said title and dignity of Baronet should descend, should take and bear the names of 'Jamsetjee Jejeebhoy' in lieu of any other name or names whatever, which they respectively might bear at the time of such descent on them respectively; and he was also desirous that the Revenue Commissioner for the Northern Division of the Presidency of Bombay, the Accountant General, and the Sub-Treasurer at Bombay for the time being, should be trustees of the aforesaid Promissory Notes, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the same securities, and also with relation to the said Mansion-house and hereditaments.

"And whereas the said Sir Jamsetjee Jejeebhoy departed this life on the 14th of April 1859, before the aforesaid engagement with Her Majesty's Government was carried out on his part, and by his Will dated the 9th of April 1853, duly signed and executed by him, gave and devised the residue of the estate, houses, lands, securities, moneys, and effects, to and amongst his sons Cursetjee Jamsetjee, Rustomjee Jamsetjee, and Sorabjee Jamsetjee."

With reference to the words "residue of the property," he asked how could the Council know what would be comprised under those words? It was necessary, when recitals of this nature were inserted, that the facts should be correctly ascertained. In England such a Bill would not be passed without proof of the correctness of the Preamble.

This Bill varied considerably from the original Bill, which had been withdrawn. According to the original Bill, the late Baronet and his representatives would have had ultimate appointment of the trust fund, whereas this Bill gave it to the present Baronet and his representatives. In case of failure of the Baronetcy, a question might arise

whether this Council had not appropriated the ultimate residue in a different manner from that intended by the late Baronet. The Council was entirely in the dark as to the contents of the Will. He (the Vice-President) did not mean to say that the property had been otherwise disposed of, but still it was necessary that they should see the Will, and that the Bill should be published to the world, so as to allow those who might have any objections to make to it, the opportunity of submitting them.

For these reasons it appeared to him that the Standing Orders should not be suspended, but that the Bill should be proceeded with in the usual course. There might have been some necessity for hurrying on the Bill during the lifetime of the late Baronet, but he did not think that the same necessity existed for doing so now.

The Council divided—

Ayes 3.

Mr. LeGeyt.

Mr. Harrington.

Sir James Outram.

Noes 4.

Mr. Sconce.

Sir Charles Jackson.

Mr. Forbes.

The Vice-President.

So the Motion was negatived.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE said, before moving the second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)," there was one important point which he desired to notice. The principle of the Bill was that, after the measurement of the land required for Railway or other purposes had been completed, a reasonable period, say ten days, was allowed for further adjustment, after which period the land might at once be taken possession of for the purpose to which it was proposed to be applied. He thought it necessary, however, in the event of the Bill being allowed to be read a second time and referred to a Select Committee, to introduce a Clause corresponding with a Clause in the present Act, which provided that, on the land being taken possession of, when the question of compensation was referred to

arbitrators, interest should be paid from the date that the land was taken. Accordingly, it was his purpose to propose that, on the land being taken possession of as provided in the present Bill, the owner should be entitled to interest at the rate of six per cent. per annum from the time when possession was taken to the time of payment.

SIR CHARLES JACKSON said, it was quiet clear from the amendment now proposed by the Honorable Mover, that he saw the objection to which the Bill was open. The Bill, as it now stood, did not direct the Collector to give any notice to, or attempt to make any arrangement with, the owner, but immediately after the measurement was completed, Government were authorized to take possession, and thereafter be sole owners of the land. That was contrary to the principle of all English Acts. According to the Lands Consolidation Act, notice was to be given, and payment or a deposit of the purchase money was required to be made before any entry on the land. Now, in this case, this was entirely dispensed with, and the reason given for dispensing with it was that land was urgently required for Railway purposes, and that great delay took place in obtaining possession. It appeared to him that the delay was owing to a misconstruction of Act VI of 1857. That Act never contemplated a detailed measurement of the land showing every tree upon it, such as had become customary now, but only a measurement of the quantity sufficient to show what was the land required to be taken.

He would read an extract of a Despatch from the Court of Directors on this subject, under date the 13th August 1856. The Court of Directors said:—

"We agree with you that, when individuals are required to relinquish their land for purposes of public convenience, they may reasonably expect to be liberally dealt with, and we much prefer that such arrangements should be amicably settled between the Revenue Officers and the parties concerned. It is only when exorbitant terms are insisted on that the provisions of the Act XX of 1852 should be resorted to."

There was great objection in principle to allowing Government to take

Mr. Sronce

possession of land without paying for it, or, in case of dispute, depositing the purchase money. If that were allowed, all inducement was taken away for expediting the settlement of the claims with the owners, and what would be the position of the owner in the meantime? Supposing he depended entirely for support upon his land, what would he live upon during the time his claim was not settled? A similar objection would appear to have occurred to the Honorable Member for Bengal, for he now proposed to provide for the payment of interest, but it was poor compensation to a man deprived of his land, and, perhaps, of his subsistence, to tell him that eventually he would get interest for it.

THE VICE-PRESIDENT said, he thought that the Legislature went quite far enough in passing Act VI of 1857. Under that Act, when the Collector had made an award or directed a reference to arbitration, immediate possession of the land might be taken. It did appear very hard, and was certainly going far beyond the English Act, to take possession of another man's property, unless the money was first paid or deposited, or at least before matters were put into train towards adjustment.

He agreed with the Honorable and learned Judge, that the term "measured" in Act VI of 1857 did not mean a detailed measurement. It appeared to him that there was no great difficulty in marking out or measuring the land. He was not in favor of anything that could cause undue delay, but if Government were allowed to take possession of land as proposed by the Bill, delay might ensue before owners received the amount of their purchase money. The Honorable Member for Bengal had given no account of the length of time which, under the former law, elapsed between the taking of land and the payment of the money. In Howrah he was informed that cases had happened, in which persons had been obliged to wait so long as two or three and in one case even five years. He (the Vice-President) thought it unreasonable to ask that land should be taken by Government before the money was paid or deposited, or matters put into train for the purpose.

MR. HARINGTON said, he had quite overlooked that this Bill was entered in the Notice Paper to be read a second time to-day, and having had much other business to attend to, he was obliged to confess that he had not read it. If the Honorable Mover would not object, he (Mr. Harington) should be glad to have a little more time to consider the subject, and he therefore proposed that the further consideration of the Bill be postponed till Saturday next.

The further consideration of the Bill was postponed accordingly.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 85 was passed after an amendment.

Section 87 provided as follows:—

"In all cases, in submitting his proceedings to the Magistrate, the Head Officer of a Police Station shall forward the statement of the person complaining and the substance of the information obtained from the witnesses as reduced to writing, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the Magistrate. The Officer shall state in his report whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance."

MR. SCONCE said, he had given notice of an amendment in this Section, by which he proposed, as nearly as possible, to accommodate it to the changes which had been made in the preceding Sections. As this Section now stood, the Head Officer was required, in forwarding the statement of the complainant, to send in the substance of the information obtained from the witnesses as reduced to writing. But as the Council had already determined to dispense with a record by Police Officers of statements made to them by witnesses, some alteration was clearly necessary.

He also proposed to make another slight verbal alteration in the Section, which, as it stood, seemed to him to give some encouragement to the Police to delay submitting the statement of the complainant to the Magistrate. He considered it important that the Police should be required to transmit the ground of their investigation without delay to the Magistrate, and for this purpose the first sentence of the present Clause was slightly modified. He proposed also to add a new sentence to the beginning of the Clause, with the object of indicating to the Police the sort of record which it was expedient that they should keep up, in order to exhibit the course of their proceedings. He had also added three lines at the close of the Section, requiring the Police, in the event of the accused being released on bail, or on his own recognizance, to mention the date on which the accused was required to appear before the Magistrate.

With these remarks, he begged to move the omission of this Section, and the substitution of the following:—

"In all cases the Head Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation. During the progress of, or at the completion of an enquiry, the Head Officer of Police shall forward to the Magistrate the statement of the complainant, or other information, and shall set forth in a report the names of the parties, the nature of the offence, and a list of the witnesses bound over to appear, together with a brief indication of the points to which the evidence of each relates; and he shall also transmit any weapon or property which it may be necessary to produce before the Magistrate. The Officer shall state in his report whether he has forwarded the accused in custody; and if he has released the accused on bail, or on his own recognizance, shall mention the date on which the accused was required to appear before the Magistrate."

MR. HARINGTON said, he had no particular objection to make to the proposed amendment, but he preferred the Section as it stood. He saw no very great difference between it and the proposed amendment. The former provided that "the substance of the

information obtained from the witnesses as reduced to writing" should be forwarded to the Magistrate, and the latter proposed the substitution for those words of the words "a brief indication of the points to which the evidence of each witness relates." He desired to know the precise meaning of the word "indication," and what it was intended to comprise.

After some further discussion, the question to omit Section 87 was put and negatived.

MR. SCONCE then moved the introduction of the following as a new Section after Section 86:—

"In all cases the Head or other Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation."

Agreed to.

MR. HARRINGTON moved the addition of the following words to the above Section:—

"And shall forward day by day a copy of such record to the Magistrate."

After some discussion the Council divided:—

Ayes 4.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harrington.
Sir James Outram.

Noes 3.
Mr. Sconce.
Sir Charles Jackson.
The Chairman.

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

SIR CHARLES JACKSON moved that the words "and the substance of the information obtained from the witnesses as reduced to writing" be omitted from Section 87.

MR. HARRINGTON said, it appeared to him that Honorable Members, in proposing that the Police should not be allowed to send in any thing in writing, labored under the great mistake of supposing that the Thannah record, instead of being in any way a protection to an accused party, must necessarily prove injurious to him. Now his own experi-

Mr. Harrington

ence was quite the other way, and he believed that, if the Thannah record was done away with, or not allowed to be seen by the Court trying the case, it would be most injurious to the interests of justice. He was confirmed in this view by a letter which he had received only yesterday morning from one of the Judges of the Sudder Court at Calcutta, Mr. Samuells, who, as was well known, was a practical man and a very able and experienced Judge. This letter he would venture to read to the Council.

SIR CHARLES JACKSON rose to order. He doubted whether it was strictly in order to read a letter from a private person. It appeared to him that the Standing Orders required communications from such persons to be addressed to the Council by petition.

MR. HARRINGTON said, he believed he was not out of order. It would be in the recollection of the Council that, on the occasion of an Honorable Member (Mr. Ricketts) who was now absent taking his seat in this Council, that Honorable Member read a private letter which he had received from an Officer under the Punjab Government without any objection being made. He believed also that, during the Debates which took place last year on the Alluvial Lands Bill, a private letter from Mr. Samuells was read to the Council. He mentioned these instances to show that he had precedents for the course which he was about to have taken. He would observe further, that he believed it was fully competent to any Honorable Member to mention the substance of any private letter which he might receive bearing on any subject before the Council, and it appeared therefore to him that there could be no valid objection to the letter being read *in extenso*. He need scarcely say that Mr. Samuells might easily have put the letter which he had addressed to him into an official form, and sent it through his Government to the Clerk of the Council, in which case it would have been open to him (Mr. Harrington) to have moved that it be printed.

The CHAIRMAN said, it appeared to him that the Honorable Member was not out of order. It was very desirable that the Council should have the benefit of the opinions of practical persons, and

he certainly thought that the opinion of a gentleman of Mr. Samuells's experience should be read.

MR. HARRINGTON then proceeded to read Mr. Samuells's letter, which was as follows:—

"I do not know whether the forms of the Council admit of the re-consideration of Clauses adopted at a second reading, but if so, I do think that there should be some further consideration of Section 82 and the various Sections of 83, and I for one should be happy to memorialize the Council about them if I thought it would do any good. Section 82 simply relieves the Police of responsibility. Hitherto they have been obliged to make a note of the evidence in presence of witnesses, and to send it in immediately. It is placed on the record, and they are responsible for its correctness. It has never been regarded as evidence, but has been valuable as enabling the Judge to check the evidence of the witnesses in Court. Now the Police will give verbal evidence of the witnesses' statements, and will refresh their memories by looking at notes which they will say they took at the time. The only remedy for the evils this will give rise to will be for the Superintendents of Police to direct the Police to send in their notes of evidence as hitherto for the Magistrate's private information. Still, as the Magistrate cannot place them on record, the Judge will be deprived of the check they have hitherto afforded him. The majority of the Council evidently are not aware that the great object in Indian Police investigations is to record the statements of all parties immediately, and to have them laid before the Magistrate at once, so as to prevent as much as possible all tampering and collusion. Then with regard to Section 83, there is first the obvious objection that it has no business in a Code of Procedure. If the Law of Evidence requires amendment, surely this amendment, and such an important amendment, ought not to be made in a Procedure Bill. But there is the still graver objection, that the alteration is a retrograde one. The tendency of legislation of late years has been to open out the channels through which evidence may flow into the Courts as widely as possible, leaving the Court to judge of its value. But here, because it is not always trustworthy, and is apt to be procured by improper means, you shut out altogether that evidence which, when genuine, is the very best. To be consistent, you must now exclude all native testimony, because natives frequently perjure themselves, and false evidence is procurable in all bazaars. What is meant by 83d, and the facts the Police are permitted to depose to, I do not understand, and I am sure no Magistrate will, but the effect of 83c, if it is to be read without qualification, will be that numerous heinous crimes will escape conviction, for certainly for one extorted confession you have in this country twenty voluntary ones, and without these voluntary confessions conviction would often be impossible."

In corroboration of what Mr. Samuells had stated, he would go back to the Code of Civil Procedure, and refer to what the Council had done in it. There they had given the Judge large powers to send for papers, or, in fact, do any thing which appeared likely to lead to a correct decision of the case, and thereby to promote the ends of justice; and there was a still greater necessity for this in Criminal matters. He felt convinced that, instead of giving protection to life and property by doing away with the Thannah record, they would be doing just the contrary.

It certainly seemed to him that the words proposed by the Select Committee, and which did not go so far as the words used by Her Majesty's Commissioners, were good in themselves, and were preferable to the words suggested by the Honorable Member for Bengal. He should oppose the Motion.

After some further discussion, the Council divided:—

Ayes 4.
Mr. Sconce.
Sir Charles Jackson.
Mr. LeGeyt.
The Chairman.

Noes 3.
Mr. Forbes.
Mr. Harrington.
Sir James Outram.

So the Motion was carried.

THE CHAIRMAN moved the insertion of the words "or other" before the words "Officer of a Police Station" in the beginning of the Section.

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

Section 109 was passed as it stood.

Section 110 provided as follows:—

"If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous enquiry to be made into the complaint, either by means of the local Police Officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the enquiry shall lead the Magistrate to believe that the charge is well founded, and the offence is of the nature described in Section 109, he shall issue his warrant or summons as therein directed; provided that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it."

MR. SCONCE, in drawing attention to the words "or in such other mode

as he shall judge most proper," said that these words were taken, he believed, from the existing law. But he thought that they were scarcely consistent with the present Code. He had no objection that the investigation which they seemed to sanction should be described, but if that was impracticable, in so far as they meant any indirect course of action, the words would be better left out, and he should therefore move for their omission.

MR. LEGEYNT asked, if the words "by means of the local Police Officers" also were quite consistent with the provisions of this Code. He doubted whether the rural or local Police, by whom he understood Village Chowkeydars, were proper persons to make an enquiry of the kind contemplated. The Magistrate would have persons in his Cutcherry, whom he could entrust with the duty, instead of sending a Thannahdar or a Village Chowkeydar, by which means a wide door would be open to those abuses which the Council was striving to avoid. He would rather omit this Section altogether, and leave it to the discretion of the Magistrate to adopt whatever measures he considered most proper for the purpose of satisfying himself as to the truth of a complaint before issuing process for causing the attendance of the accused.

THE CHAIRMAN moved the insertion of the words "of his Assistant, or of any Deputy Magistrate or" after the words "by means" and before the words "of the local Police Officers."

MR. LEGEYNT said, surely the insertion of those words would commit the Council to a continuation of the present union of Judicial and Police functions. It would be giving by law direct authority to a Magistrate to depute his Deputy or Assistant to perform the duty of an Executive Police Officer. He conceived the duty here indicated was especially that of the superior Executive Police, and should be performed under their orders by such persons as they might deem best fitted for the duty.

MR. HARRINGTON said, the Honorable Member for Bombay seemed to be proceeding on the assumption that there was a Bill before the Council to separate the Judicial from the Police functions of the Magistrate. But no

Mr. Sconce

such Bill had been introduced, nor had any Honorable Member given notice of his intention to bring in such a Bill. The Bill relating to the Madras Police certainly, as originally framed, proposed to effect this separation, but that Bill had since undergone considerable alteration, in consequence of a communication received from the Madras Government, which would leave the Magistrate to exercise all his present Police as well as Judicial functions, with the aid of the new Police Force to be raised under the Bill. What the Council had to deal with was the system now in force, and to fit the Code of Procedure to the existing Courts. Hereafter, in the event of a new system being introduced, or of new Courts being constituted, requiring a different Procedure, the necessary alterations could be made. "Sufficient for the day was the evil thereof."

As regarded the amendment proposed by the Honorable Member for Bengal, he (Mr. Harrington) was willing to meet that Honorable Member's objection by the insertion of the words "not inconsistent with the provisions of this Code." But he should certainly oppose the omission of the words referred to by the Honorable Member, taken as they had been from a law which had been in force for upwards of thirty years, and which so far as he was aware had never given rise to any improper practice, or been found open to doubt or mis-construction.

THE CHAIRMAN said, he did not quite understand the force of the objection taken to his amendment by the Honorable Member for Bombay. The Honorable Member had said that the adoption of that amendment would commit the Council to a continuation of the existing union of Judicial and Police functions. He (the Chairman), however, did not think that this was a Police duty. The Section provided that—

"If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous enquiry to be made into the complaint, either by means of the local Police Officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations."

If the Magistrate had reason to doubt the correctness of the complaint, he might go himself and enquire into the matter; and if he could not go himself, what objection was there to his sending his Assistant or Deputy; or if he could not spare his Assistant or Deputy, why could he not send any of his local Officers? It was only to satisfy some doubt which had arisen in his own mind that he might wish to depute an Officer to make the enquiry, or probably he might require the Officer at the next Thannah to do so. He should, therefore, press his amendment. THE CHAIRMAN'S Motion was then put and carried.

MR. SCONCE'S motion to omit the Section was put and negatived, and the Section, after a further amendment on the motion of THE CHAIRMAN, was then passed.

Sections 111 to 114 were passed as they stood.

Section 115 was passed after a verbal amendment.

Sections 116 to 123 were passed as they stood.

Section 124 was passed after an amendment.

Sections 125 to 134 were passed as they stood.

Section 135 was passed after an amendment.

Sections 136 to 153 were passed as they stood.

MR. HARRINGTON moved the introduction of the following as a new Section after Section 153 :—

"Prosecutors and witnesses for the prosecution, whose attendance may be necessary before the Court of Session, shall execute recognizances before the Magistrate to be in attendance when called upon at the Court of Session (to prosecute or to give evidence as the case may be). If any prosecutor or witness shall refuse to attend before the Court of Session, or to execute the recognizance above directed, it shall be competent to the Magistrate to detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the time when his attendance at the Court of Session is required, when the Magistrate shall forward such prosecutor or witness under custody to the Court of Session."

Agreed to.

Sections 154 to 159 were passed as they stood.

The consideration of Section 160 was postponed.

Sections 161 to 163 were passed as they stood.

The consideration of Section 164 was postponed.

Sections 165 to 228 were passed as they stood.

Chapter XVIII Section 229 provided as follows :—

"Criminal trials before the Court of Session shall ordinarily be by Jury. But if a Court of Session shall consist of three Judges, Criminal trials may be held before a Court so constituted without a Jury. The judgment of the Court in trials so held shall be according to the opinion of the majority. Trials by Jury may be held before a single Judge of a Court of Session."

MR. SCONCE said, he felt great difficulty in agreeing to the whole of this Chapter as it now stood. The first Section declared that "Criminal trials before the Court of Session shall ordinarily be by Jury." A later Section provided that the Jury should consist of not less than three or more than nine persons. The Chapter then proceeded to provide—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority with the concurrence of the Judge, the accused shall be acquitted."

In the first place, he thought it was impossible that nine eligible persons could at all times be had to form a Jury. In the next place, it appeared to him that a body of three men was altogether opposed to the English idea of the constitution of a Jury. Then, again, he was not prepared to allow two or even three men to neutralize the voice of the Judge. He did not think that the verdict of three Jurors, such as would ordinarily sit, should be taken to have the same force as the opinion of an educated Judge. He proposed therefore that this Section should commence as follows :—

"Criminal trials before the Court of Session shall ordinarily be by Assessors or by Jury."

MR. HARRINGTON said, he found a difficulty in dealing with the amend-

ment proposed by the Honorable Member for Bengal, because it did not disclose the mode of procedure to be observed when Assessors were employed instead of a Jury, how they were to act, and what weight was to be given to their opinion. The revision of this Chapter had proved a very difficult task to the Select Committee. Their wish was to constitute a Court of Session, to consist of three Judges, for the trial of all cases beyond the competency of the Magistrate to dispose of. It seemed to the Committee that a Court so constituted, being in fact a Jury of Judges, all of whom would be Officers of considerable standing and experience, might safely be left to deal finally with all questions of fact, and to dispose of them without an appeal. But although the Bill might provide for the establishment of Courts of Session composed as he had just mentioned, the Government might object to the expense, and say that they could not furnish the number of Judges; and, therefore, the Bill made provision for the trial of cases requiring to be committed to the Court of Sessions by a single Judge, with the aid of a Jury. The number of Jurors was not fixed absolutely at three, but as there might often be very great difficulty in getting a larger number, it was proposed that the Jury should consist of not less than three, or more than nine. Individually he had no objection to a Jury of twelve if that was considered the correct number, but in practice he thought that it would be most inconvenient to declare that the Jury must always consist of five, or nine, or twelve members.

In the objections taken by the Honorable Member for Bengal to the force proposed to be given to the verdict of the Jury, he appeared to have overlooked the concluding Sections of the Chapter, according to which, if the Judge thought a verdict of guilty contrary to, or not warranted by, the evidence, though he might be bound to accept it, he could apply to the Government for a pardon or a remission of the punishment awarded, which he believed was what was done at home under similar circumstances; or if he thought a verdict of acquittal improper, he could refer his proceedings to the Sudder

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Court, who would be competent to pass such orders in the case as it might deem just. He was very sensible that objections might be taken to the very large power thus proposed to be given to the Sudder Court, and it might be considered wrong in principle that the Court should have that power; but this was what was done at Madras, and there was a difficulty in making any other provision without giving a degree of power to Native Jurors, with which, for the present at least, it was thought that they could not be safely entrusted.

MR. FORBES said, the Honorable Member for Bengal had stated his objections to this Chapter, but had proposed no amendments to meet those objections. The question of trial by Jury was a most important one; a more important question, he thought, could scarcely be entertained by the Council. He should therefore propose that the further consideration of this Chapter be postponed; and if the Honorable Member for Bengal would give notice of his amendments, with a view to their being printed and circulated for the information of the Council, Honorable Members would come prepared to discuss the proposed amendments on the next occasion of the Committee sitting on this Bill.

The further consideration of the Chapter, comprising Sections 229 to 236, was postponed.

Sections 237 to 242 were passed as they stood.

Section 243 was passed after amendments.

Sections 244 to 248 were passed as they stood.

Section 249 provided as follows:—

“When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence. The Court may put such questions to the accused as it may think proper.”

SIR CHARLES JACKSON, advertising to the concluding sentence of this Section, asked if the Council were prepared to admit the new principle of the Judge examining an accused person. Now that the Supreme and Sudder Courts were shortly to be amalgamated, he thought that an important principle of this nature should be considered with

reference to the Supreme Courts. The question was nothing more or less than the adoption of the French system, and from what he had seen of that system, he must say that the tendency of it would be to make the Judge a prosecutor. He (Sir Charles Jackson) desired to see an English Judge maintain the high and impartial position which he now held, and which was to hear the evidence on both sides, and to sum up and decide fairly between man and man. As the Section now stood, however, the Judge would be required to exercise his ingenuity in convicting the accused, and he would have the same interest in a case pending before him as a Judge which a Public Prosecutor might be expected to have.

MR. HARRINGTON said, the object of the provision to which the Honorable and learned Judge objected was simply to promote the ends of justice, and that he thought was a sufficient ground for its introduction. He entirely agreed with the Honorable and learned Judge that the French system, under which the Court and the Public Prosecutor did all they could by cross-examining the prisoner to entrap him into a confession, or to elicit some information which might be used against him, was most objectionable, but he trusted that such would never be the practice here.

THE CHAIRMAN said, he was not one of those who thought that a person should not be bound to criminate himself. He would have no objection to give to the Supreme Courts the power of examining an accused person. MR. SCOTCH suggested the addition of words giving the accused the option of declining to answer.

The further consideration of the Section was then postponed.

Sections 250 to 254 were passed as they stood.

Section 255 provided as follows:—

“If the case is one in which, if the defendant be convicted, he is liable to sentence of death, the Court of Session shall record the conviction and refer the case to the Sudder Court, with a statement in writing of its opinion as to the sentence which should be passed upon the accused, with the reasons for such opinion; and in cases tried by Jury, the Court of Session shall report the substance of its direction to the Jury.”

SIR CHARLES JACKSON asked, what the last part of this Section meant, namely, “the Court of Session shall report the substance of its direction to the Jury.” The practice was for the Judge to sum up to the Jury, immediately after the case was closed. Was it intended that he should write out his direction to the Jury before it was delivered? If not, he thought any statement afterwards written would convey a very inadequate idea of what was really said to the Jury.

THE CHAIRMAN said, he would rather let the Judge pass sentence at once upon the accused, provided that, if sentence of death were passed, it should not be carried into effect until after confirmation by the Sudder Court. It was very important, by way of example, that the by-standers should know what became of the accused. He should move the omission of all the words commencing with “record the sentence” and the substitution of the following words:—

“Pass sentence, and if sentence of death be passed, it shall not be executed without the confirmation of the Sudder Court. In any case submitted to the Sudder Court for confirmation of the sentence, the Court may either confirm the sentence, or pass any other sentence warranted by law.”

MR. HARRINGTON said, the effect of the proposed amendment would be to enhance the severity of the punishment. It would often be a very long time before the sentence was confirmed, and the suspense would add greatly to the penalty.

After some further discussion, the further consideration of the Section was postponed.

Section 256 was passed as it stood.

The further consideration of the Bill was postponed on the Motion of Sir James Outram.

STANDING ORDERS.

MR. HARRINGTON postponed the Motion (which stood in the Orders of the Day) for the adoption of the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

FOREIGNERS.

MR. HARRINGTON moved that the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)" be referred to a Select Committee consisting of Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

JAMSETJEE JEJEEBHoy BARONETCY.

MR. LEGEYT moved that the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body by Her present Majesty Queen Victoria, and for other purposes connected therewith," be referred to a Select Committee consisting of the Vice-President, Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

PUBLIC CONVEYANCES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to a Select Committee on the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

The Council adjourned.

Saturday, August 20, 1859.

PRESENT:

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harrington,	Hon. Sir C. R. M. Jackson,
P. W. Legeyt, Esq.,	and
	A. Sconce, Esq.

CRIMINAL PROCEDURE.

THE CLERK presented to the Council a Petition from certain Members of the Central Committee of the Indigo Planters' Association against the provisions of Section XX of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" as amended in Committee of the whole Council, and praying for the re-publication of the Bill.

SIR CHARLES JACKSON moved that the Petition be printed.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES presented the Report of the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved the first reading of a Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal." He said he should not detain the Council long in introducing the Bill, of which he had given notice, for the continuance of the provisions of Act I of 1857, a law passed to prevent the overcrowding of vessels carrying passengers in the Bay of Bengal. The original Bill was introduced by Mr. Elliott in 1856, and became law early in 1857, and its operation was limited to three years at the instance of the Marine authorities at Madras, who thought it probable that some error or oversight might, in the course of time, become apparent in a law passed in a matter

to which legislation in India was new, and that the experience had in the three years to which the operation of the law was limited, might show that, in some points, it might be possible to make its provisions more efficacious.

These anticipations had proved correct, and the Bill which he should immediately present to the Council had one or two provisions which were not to be found in the law now in force, but which experience had shown to be very necessary for the protection of those for whose protection the original Act was passed.

The Council might perhaps remember that in November of last year some papers were presented to them by the Government of India, which showed that, although Act I of 1857 had put an end to over-crowding in vessels clearing out from British Ports in the Presidency of Madras, the evils which it was enacted to prevent still prevailed in the case of vessels clearing from Foreign European Ports, and from Ports in the Presidency of Bengal; and in the cases that were referred to in the correspondence, as many as one hundred and eighty-nine passengers arrived at Moulemein in a vessel of only seventy-eight tons burden, which had cleared out from the French Port of Karical, and as many as three hundred and twenty arrived at Rangoon from Chittagong in a vessel of only one hundred tons burden. In the one case the proportion was two and a half persons to each ton, and in the other three and one-fifth, while the law allowed of no more than one person to each ton in a licensed vessel, and one to four tons in a vessel that was unlicensed.

To meet this evil it was proposed in the Bill about to be presented to the Council that the law should be as applicable to vessels arriving at any British Port, as it at present was to those leaving a British Port, following in this respect the precedent of Section XIX of Act XXI of 1858, and to extend the law to Chittagong and the Ports in Orissa. On this subject he had consulted the Honorable Member for Bengal, and he was able to say that the proposed extension of the law had his full concurrence.

They had further learned by experience that Native Passengers required the protection of the law quite as

much in returning to India from the Eastern Settlements, as they did in proceeding to the Eastern Settlements from India, and in one respect even more so, for while the Masters of vessels had always so far kept faith with their Passengers proceeding to the Eastward as to convey them to the Port to which they might have contracted to convey them, in returning it had not been unusual for the Master to land his Passengers at any Port that might be convenient to himself, without reference to the convenience of the Passengers themselves.

It is proposed to meet this evil by attaching a penalty to the act of landing a Passenger at any Port other than that to which he had contracted to be taken, allowance being made for stress of weather or other unavoidable hindrance.

The only other additions which he proposed to make to the present law were to incorporate Sections XXVIII, XXIX, XXX, XXXII, and XXXIII, of Act XXI of 1858. Section XXVIII reserved to Passengers their right of action. Section XXIX provided that offences should be summarily punished by a Magistrate, and made legal the levy, by distress, of any penalty that might be unpaid by the Master or Owner. Section XXX provided that for the purpose of adjudicating penalties any offence should be deemed to have been committed within the jurisdiction of the Magistrate of the place where the offender was found. Section XXXII enabled the Magistrate to give compensation to any party who might have suffered wrong or damage, from the amount of any penalty that might be adjudged; and Section XXXIII was one of interpretation. It had appeared to him that all of these provisions were as much needed in the case of Passengers proceeding across the Bay of Bengal as in the case of those who proceeded from the Western Coast of India to the Red Sea or the Persian Gulf.

The Bill was read a first time.

ARMS AND AMMUNITION.

MR. HARRINGTON said, in introducing on that day fortnight a Bill to make perpetual Act No. XXVIII of

1857, which would have expired in the course of a few days, but that the Council, on the day just mentioned, had been pleased to extend its operation, originally limited to two years, from the 11th September 1857 to the last day of the current year, he stated that, although the Act in question was passed at the time that the late Mutiny in the Native Army of Bengal, and the Rebellion which followed thereon in some parts of the country, were at their height, and, like some of the Special Acts passed about the same period, and which, no doubt, grew out of the circumstances of the times, a temporary character was assigned to it also, the Government, for some years previously, had had under its consideration the expediency of introducing a law for the purpose of disarming the population throughout the country, as calculated materially to repress crimes attended with violence, and generally to contribute to the maintenance of the public peace. He pointed out that in the Punjab a general disarmament of the population had been carried into effect with the best results, and that to this circumstance had been attributed, in no small degree, the remarkable tranquillity which prevailed throughout the Territory at the very time that the greater part of the North-Western Provinces was in a state of anarchy; and he observed that, although it was quite right and proper that most of the Special Acts passed in 1857 should not be allowed to remain in force a day longer than was absolutely necessary, in reference to the circumstances which had called them into existence, Act XXVIII of 1857 was of a different character, and that there were obvious and cogent reasons for its continuing in the Statute Book, and for its becoming one of the permanent laws of the country. To these remarks he had little to add on this occasion, but he might mention that a communication had lately been received from the Lieutenant-Governor of the North-Western Provinces, in which His Honor strongly recommended that the Act should be made permanent. He wished, at the same time, to take advantage of the present opportunity to say a few words by way of explanation in respect to a mistake into which he had fallen in the course of the debate which took place on the Motion made by

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him for suspending the Standing Orders to admit of the Bill being read a second time and proceeding at once through its remaining stages, in replying to a question put by the Honorable and learned Judge opposite (Sir Charles Jackson). Having been asked by the Honorable and learned Judge whether the Bill applied to Europeans, he read an extract from a speech which had been delivered in that Chamber by the late Honorable and learned Chief Justice in one of the debates which took place when Act XXVIII of 1857 was passing through a Committee of the whole Council, in which the Honorable and learned Chief Justice observed that—

"He had seen a complaint that Europeans were to be compelled by the Bill to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago. His object in provoking this discussion was not to move any Amendment on the Section as it stood, but to remove a misconception which appeared to exist in some quarters, and which might extend to those whose duty it would be to put the Act in force."

At the time he read this extract, he had not seen the original Bill, and it occurred to him that it must have contained some provisions relating to Europeans which had been afterwards struck out. Hence the mistake into which he fell. The fact of his reading the passage in question, word for word, must have shown that he could have had no intention of misleading the Honorable and learned Judge, or the Council at large, and he felt sure that the Council would acquit him of any such design. He believed, too, he was right in saying that the Honorable and learned Member, after hearing Sir James Colville's remark, expressed himself as quite satisfied. He now found, on comparing the Act as passed with the original Bill, that the provisions relating to licenses which the late Honorable and learned Chief Justice stated had been struck out, applied alike to Natives and Europeans, those provisions being considered objectionable as regarded both classes. It had also, he observed, been stated that, in the course recently pursued in respect to the continuance of Act XXVIII of 1857, the Government had tried to smuggle the Bill through the

Council, in order that the public might not have an opportunity of expressing any opinion on the subject of the Act. The best answer that he could make to that statement was to refer to what took place immediately he became acquainted with the fact that some Honorable Members were not prepared to give their assent at once to a Bill to make the Act perpetual, and that they required further time for consideration. On the understanding that no objection would be made to the passing of a temporary Act, he at once yielded to the wish for delay, not because he was afraid of being defeated, for to this day he had no idea what the result would have been, had he pressed his motion to a division, but because what he was chiefly anxious for was that the Act, under the operation of which the process of disarming was being vigorously and successfully prosecuted in some districts, while in others it had not yet commenced, should not expire on the day originally fixed for its termination. It never occurred to him that the Bill would be objected to. Nothing had fallen from any Honorable Member, previously to the Meeting, to lead him to suppose that there would be any opposition, but directly that he was informed of the wishes and feelings of some Honorable Members, he willingly acceded to the suggestion which fell from the Chair, and which was quite sufficient for his immediate purpose. He ought perhaps to take blame to himself for not having brought in the Bill before, but he had not the honor of a seat in the Council at the time Act XXVIII of 1857 was passed, and it was not until the receipt of a letter from a Civil Officer in the North-Western Provinces that he became aware of the fact that the Act had only a few days to run, and that it was only by obtaining a suspension of the Standing Orders that he could prevent a cessation of its operation.

With regard to the question whether Act XXVIII of 1857, supposing the Council to agree to make it permanent, should continue generally applicable to all classes as at present, or whether any, and what modifications should be made in the Act in this respect, he deemed it sufficient on this occasion to read what had been said on the subject by the

Honorable Mover of the original Bill. He observed:—

"It was a question for consideration whether several further exemptions might not be made; whether any particular class or classes of persons should not be exempted. But to him it appeared that it would be inexpedient to make any special exemption of this nature. He was perfectly satisfied that there were many sections of the community who could be trusted by the Government with the possession of arms, without being subjected to the necessity of taking out licenses. All Europeans, our East Indian brethren, many educated Native Gentlemen, and (he believed he would be supported by the Honorable Member for Bombay in adding) the Parsee gentry and community, might, he was quite sure, be allowed unrestricted possession of arms without any danger to the State. Other sections of the general community might be added. But it appeared to him that, in a measure of legislation like this, it would be difficult to exempt particular classes without appearing invidious and exciting ill-will; and, accordingly, he had made the Bill applicable to all, merely reserving to the Governor-General in Council (by Section VI) the power of exempting from its operation any persons or classes of persons whom he should think fit."

In these remarks he (Mr. Harington) fully concurred, and he could not but think that his fellow-countrymen generally in India would agree with him that, if all Europeans, without distinction, were to be exempted from the operation of the Act, many respectable natives must also be exempted, but if they once embarked on the wide sea of selection, he feared that they would find themselves beset by many and great difficulties, and that it would prove a most perplexing matter to know where to draw the line. He was not prepared to say that class legislation should never be resorted to in this country. Though, to be avoided as a rule, it might sometimes be very right and necessary, but he could not bring himself to believe that the present Bill was one into which it could with any propriety be imported. Act XXVIII of 1857, as finally settled by the Council, was a very guarded Act. Large powers of exemption were vested by it in the Government, and he could scarcely contemplate the possibility of the provisions of the Act being applied to any respectable European, except as regarded the manufacture of certain articles, which, he thought, all would admit was proper,

and the registration of arms, which could put no one to any great inconvenience. If the exception still contended for by some was not considered necessary and proper at the time Act XXVIII of 1857 was passed, *à fortiori*, it could not be considered necessary or proper now. With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

On the Order of the Day being read for the adjourned second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)"—

MR. HARINGTON said, the discussion on this Bill having been postponed on the previous Saturday at his request, he would now, with the permission of the Council, proceed to state what had been the result of the consideration which he had given to the Bill in the interim.

If he rightly understood the Bill, the effect of it would not be to place the owners of land required for public purposes in a worse position than that in which they were under the existing law. Were the question at issue between the authorities and the owners of the land, whether the latter had or had not a right to retain possession, notwithstanding that the land was stated to be required for a Railroad, or for a Canal, or for some other public purpose, the case would be different. But this question could never arise. From the moment the land was marked out, the right of ownership virtually passed from the owner to the Railway authorities, or to the Government, as the case might be; it could never be recovered, and the only question that remained for determination was, what was the amount of compensation that should be awarded to the owner for his land? Henceforth, so far as the question of compensation was concerned, it mattered little who was in possession, provided of course that, before the land underwent any change for the purpose for which it was taken, such a plan or drawing of it was made as could be confidently appealed to, and as would indeed supply the place of the land as a matter

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of evidence in the adjustment of any dispute that might arise. For this the law seemed to make ample provision. Under these circumstances it did not appear that any advantage could result to the owner of the land from retaining possession until the amount of compensation should be fixed; he could not sow the land, he could erect nothing upon it, and he could not let any houses standing upon it; to him, therefore, the land would be barren and useless, and could only be a source of expense in looking after it: whereas it was obviously of great public importance that it should come into the possession of the Railway authorities, or Government Officers, as soon as possible, in order that it might be used by them for the purpose for which it was required. The Honorable and learned Vice-President and the Honorable and learned Judge opposite (Sir Charles Jackson) considered that the price of the land should be at once either paid or placed in deposit; but as the Government or the Railway authorities were the payers, there was obviously no risk of eventual non-payment of any sum awarded as compensation, and if the money were required to be placed in deposit until the amount was fixed, he (Mr. Harington) did not see how that would benefit the owner. So long as the money remained in deposit, he could make no use of it, and it would be just as profitless as the land. It might be quite just and proper to expedite the decision of cases in which any dispute might arise; and when the Bill was in Committee, and he should do his best to get it there by supporting the Motion for the second reading, it might be deserving of consideration whether some provision should not be introduced, requiring the party whose land was taken to state at once at what sum he valued it. If the Railway authorities, or Government, considered the valuation a fair one, they should be bound forthwith to pay the money to the owner; or if any dispute arose as to the right of ownership, it might be certified for decision to the Civil Court.

THE VICE-PRESIDENT said that, although he had no right to address the Council again in this case, he desired to explain, with reference to what had fallen from the Honorable

Member (Mr. Harington), that what he (the Vice-President) meant to say was that, previously to land being taken possession of by Government, either the purchase money should be paid or the matter put into train towards adjustment, so that there might be no delay. In such a case there would be great inducement for a speedier settlement than if Government could enter into possession at once.

SIR CHARLES JACKSON said, he only desired to explain that his objection was that no attempt was made by this Bill to bring about an amicable arrangement between the Government and the owners. He thought it was wrong and contrary to the principle of all English Acts to keep the owner out of his money after his land had been taken away from him. The English Act required that either the payment or deposit of the purchase money should be made before entry on the land.

MR. SCONE said, it seemed to him, with reference to the remarks of the Honorable and learned Judge on his right, that there was some misapprehension as to the objects with which he had introduced this Bill. Certainly it was furthest from his intention to introduce a Bill that should be calculated to deteriorate the interests of the owners or occupiers of the land required for a public purpose. The grand basis of the Bill, and the principle upon which it was framed, was to prevent delay in carrying on the work after the land was ready to be taken. Substantially a record was prepared which, in all cases, was equivalent to the land itself. It was said that the purposes of the existing law had been materially misunderstood, and that it was sufficient that, as soon as the land was marked out and surveyed by the Railway authorities, the land as thus surveyed should be held to be measured within the meaning of the Act. Now he would remark that, so far as the Bill now introduced was concerned, supposing the above interpretation of the old law to be correct, this Bill would place the owners of the land on a much better footing than the old Act did. According to this Act, notice to the parties interested must issue after the land had been marked out and measured. Well, if, according to the above interpretation of the Act, the survey of the

Railway authorities represented the measurement required by Section IV, then this notice would issue on the completion of the survey. But observe the additional advantage given to the parties interested by the present Bill. The Railway survey would be made as before; but that was not held to be sufficient, and further security to the owners and occupiers of the land was afforded by providing that notice should be given of the intention to make a detailed measurement; while, moreover, on the completion of that measurement, a further time was allowed for discussing the details of the measurement. Clearly, therefore, if they accepted the construction of the Honorable and learned Judge as to the course which it was competent to the Railway Commissioner to follow under the Act now in force, the proposals of the present Bill must be held to be entirely in the interest of the public.

It was said also that the Bill did not provide for some arrangement being made with owners prior to taking possession. But the effect of the notice would be to require the owner to state the value of the land. Application could be made to the Deputy Collector, who would always be on the spot, and, in the event of the parties disagreeing, a reference could be made to arbitration. The law could hardly do more than bring the parties together, and when brought together, if they could not agree, to refer the matter to arbitration; and this was the principle adopted in the present Bill.

But even with regard to arbitration, as provided for by the existing law, the principle was the same as that involved in this Bill. Supposing the notices to have been issued, the owner would come and meet the Deputy Collector and make his demand. The Deputy Collector, if he found it to be exaggerated, might decline to accede to it, and this would necessarily lead to a reference to arbitration. Upon the order for a reference to arbitration being made, which might happen at the commencement of the enquiry, possession might immediately be taken. There was no provision as to the time the arbitration should occupy. It might be for a longer, or it might be for a shorter period: and thus in effect the present law embodied a provision which was in

complete accordance with the Bill now before the Council.

Possibly it would be necessary for him to make a few remarks on the subject of dispensing with the detailed measurement now made by the Railway Commissioner, and to which the learned Judge on his right (Sir Charles Jackson) ascribed the delay in assuming possession of the land. In order to prepare a correct assessment of the land to be taken for Government, it was not sufficient to have a statement showing the superficial area of the land, but every thing upon the land must be shown. The number of houses standing, the trees growing, the crops, and whatever other produce might be on the land, should be specified, so as, both for the interests of the owner and of Government, to put on record a specification from which to ascertain the correct value of the land. Now for any such purpose the Railway survey was a blank, and was quite insufficient to furnish data, upon which alone not only the amount of compensation, but the quota due to the several parties interested could be determined.

He had been asked, if he remembered rightly, by the Honorable and learned the Vice-President, why he had not referred to the law that was in operation before the promulgation of Act VI of 1857. Now Section V Act XLII of 1850 provided as follows:—

"Whenever the said Officer shall have recorded his opinion that the land in dispute is needed immediately for the purpose of the public work, he shall be empowered to take immediate possession thereof on behalf of the Government, leaving the amount and distribution of the consideration to be paid for it, if not agreed to by private bargain, to be afterwards ascertained according to the said Regulation, and such possession may be enforced and the obstruction of it punished in like manner as if the land so taken had been sold in execution of the decree of a Civil Court; and all Collectors, Magistrates, and other Officers shall, if necessary, give the like aid as they would be bound to give for enforcing the speedy and complete execution of any such decree."

If he mistook not, in introducing the Bill, he had stated that it was not his purpose to recommend the enforcement of so summary a law, and unquestionably the provisions of the present Bill were of

Mr. Sconce

a much more moderate character. It appeared to him that the Honorable Member opposite (Mr. Harington) had made a suggestion which might be found well worthy of adoption in the event of the Bill passing the second reading. He (Mr. Sconce) agreed with his Honorable friend, that it might be found expedient to introduce a Clause providing, if necessary, for an early adjustment. He mentioned at the last Meeting of the Council that he was prepared, on his own part, to introduce a Clause for the purpose of allowing interest upon the purchase money from the date on which possession of the land should be taken, till such purchase money was paid. The rate of interest he had fixed at six per cent., but it would of course be determined at the discretion of the Council whether that would be a reasonable sum or not. If it should be considered expedient to make even further provision on the subject, the time might be fixed within which payment or a reference to arbitration should be made. Indeed, from the papers printed with the Bill, it would appear that no time was lost in making payment. The Commissioner observed:—

"The term of fifteen days having expired, the Deputy Collector settles the claims, and reports his proceedings for confirmation. As fast as they come in, I revise them, and with very few exceptions confirm them at once, and as soon as the settlement is completed, any property which has fallen into the hands of Government, by the refusal of the owners to remove it, is sold by auction, and possession given to the Railway Company. In fact, I do not delay possession on account of cases returned for revision, as the worst that is likely to come of taking the land at once is that I must in the end accept the valuation to which I have objected. The Deputy Collector may take from one week to two weeks making his settlements. In order to expedite his work, I have authorized them to pay for all houses and other property under fifty Rupees in value without waiting to report; and where his proceedings have to come up for revision, I have directed that the final roobukarees be reduced to the fewest words; but still there must be a record, and there must be time occupied in making it."

This explanation of the course followed by the Railway Commissioner showed his readiness to expedite as much as possible the adjustment of claims and payment of compensation.

With these remarks he begged to press his Motion for the second reading of the Bill.

The Council divided.

Ayes 5.
Mr. Sconce.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harington.
Sir James Outram.

Noes 2.
Sir Charles Jackson.
The Vice-President.

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

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved the second reading of the Bill (No. 1) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said that the object of this Bill was to raise the Customs Duty paid upon Salt imported into Bombay from twelve Annas to one Rupee per maund.

THE VICE-PRESIDENT said, it appeared to him to be very inconvenient to have two Bills to amend the same Act. The better way would be to consolidate both Bills into one. The Bills, after being read a second time, might be referred before publication to a Select Committee for that purpose.

MR. LEGEYT said, at the time he introduced this Bill, he had not received the papers relating to the Bill which he had subsequently brought in. But he had no objection to adopt the suggestion of the Honorable and learned Vice-President.

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

MR. LEGEYT then moved the second reading of Bill (No. 2). He said, the object of this Bill was to raise the Customs Duty upon Spirits exported from any Port in India, and imported to any Port in Bombay.

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

WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved the second reading of the Bill "to provide for better supplying with water the town and suburbs of Kurrachee."

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

CRIMINAL PROCEDURE.

On the Order of the day being read for the adjourned Committee of the whole Council upon the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 229 provided as follows:—

"Criminal trials before the Court of Session shall ordinarily be by Jury. But if a Court of Session shall consist of three Judges, Criminal trials may be held before a Court so constituted without a Jury. The judgment of the Court in trials so held shall be according to the opinion of the majority. Trials by Jury may be held before a single Judge of a Court of Session."

MR. SCONCE said, as the Bill now stood, the rule would be that, unless a Court consisted of three Judges, trials should ordinarily be by Jury, and in Sections 232 and 233 was set forth the constitution and the power proposed to be vested in the Jury. But it appeared to him that this representation of a Jury was in every sense a sham. First as to the Members of the Jury. It might consist of three persons; but it appeared to him that a Jury so constituted, whether with reference to the limited number, or to the qualification of the persons of whom it would ordinarily be composed, must be held to be quite inadequate to exercise effectively the judicial functions of a Jury properly so called. Further, the Sections went on to provide that the Jury should, under certain circumstances, convict; but if they acquitted an accused, and the Judge disapproved of the verdict, a reference might be made by him to the Sudder Court for a re-hearing. This might or might not be a proper trial, but in his opinion the Jury whose verdict was so treated was not a Jury. Whether, therefore, with reference to the number required to constitute a Jury, or to the utter negation of power, the word seemed wholly inapplicable. For his own part he considered it would be preferable to take two courses. He

would adopt a nearly similar suggestion to that which stood in the Bill as it came from England, that the Governor-General in Council should be vested with the discretionary power of determining in what districts or places, from the number or respectability of the residents, a well working and satisfactory Jury could be got together, and to this he (Mr. Sconce) had no objection. But, on the other hand, if in any district or place Government deemed it inexpedient to extend trial by Jury, trials before a single Judge should be with the aid of Assessors. In contrasting his suggestions with the provisions of the Chapter now before the Council, there appeared to him to be no comparison between the character of the one and that of the other. As the Chapter now stood, the word "Jury" was a mere shadow of the reality, and one which the Council should not embody in the Code.

Then again he entertained material objections to Sections 230 and 231, which provided for the creation of registered and non-registered persons. The Bill, as it originally came from England, provided for cases in which British subjects were concerned as accused, and, accordingly, the registration of British subjects with others was provided for. But now that the trial of British subjects had been excluded from the scope of the Bill, the same proposal remained, and registration was intended to be applied to Europeans other than British subjects, to Armenians, Americans, and East Indians. But he must say he did not see any necessity for making this provision for such exceptional interests. In many districts of Bengal, European Foreigners or Americans never set their feet. With regard to East Indians, he could name towns in which they numbered fifteen hundred or two thousand. Among them there were men of great respectability, industry, and intelligence. But taking them as a body, they were for the most part ignorant and uneducated, and a vast number of them were unable to understand or speak English at all. Of what utility, therefore, would it be to create in their favor such a distinction. But, indeed, it appeared to him it was not very clear how the proposed registry was to be effected. The Bill provided that parties might

Mr. Sconce

be registered "according to such rules as the Governor-General in Council shall prescribe." Taking the case of two thousand or fifteen hundred East Indians, was the Governor-General in Council to select from among them one-fourth, or one-half, or the whole; on what principle was the selection of Jurors to be made, and, above all, on what principles were any members of the same class to be deprived of the benefits of trial by Jury, which the Bill would extend to those who had the fortune to be registered? It seemed to him (Mr. Sconce) that, were the Legislature to pass such a law, the effect of it would only be to rouse feelings of jealousy and suspicion, or to excite in the minds of the non-registered classes ideas that a man living in one bazaar of a town had different interests from those of another man living in another bazaar of the same town. In lieu therefore of the system of registration now provided for, he would propose that a general Jury List should be prepared, and that it should be made as little exclusive as possible.

The amendments upon the Chapter of which he had given notice were as follows:—

The omission of Section 229, and the substitution of the following:—

"The local Government may order that the offences specified in Chapter XVIII of the Penal Code, or (as may be) that all offences triable by a Court of Session, may be tried by Jury as hereinafter provided, in such districts as it may see fit to specify in such order; and the said local Government may, from time to time, revoke or alter such order."

"Criminal trials before the Court of Session, if that Court consist of three Judges, shall be conducted by the Judges sitting alone; or with a Jury, when to any district, as provided in the last preceding Section, trial by Jury shall be extended. If the Court of Session consist of a single Judge, Criminal trials shall be conducted with the aid of two or more Assessors, or with a Jury, when to any district as above provided trial by Jury shall be extended."

The omission of Sections 230, 231, 232, and 233, and the substitution of the following:—

"In districts to which by Section trials may be by Jury, when an accused person shall be sent for trial before the Court of Session, and the charge on which he is to be tried has been read over to him, the Magistrate shall require him to state whether he elects to be

tried by Jury or otherwise: if the accused person, or at least one-half of the accused persons, where two or more are accused, do not elect to be tried by Jury, the trial shall be conducted with or without Assessors, according as the Court of Session consists of one or three Judges.

"A Jury shall consist of six or of nine persons, as may be determined by the Court; and unanimity, or a majority of two-thirds, with the concurrence of the Judge or Judges, shall be necessary for a verdict of guilty: and in default of such unanimity, or such majority, with the concurrence of the Judge or Judges, the accused shall be acquitted."

"If the Court of Session shall consist of three Judges, the judgment of the Court, when it has to be expressed, shall be according to the opinion of the majority."

"When a trial shall be conducted before the Court of Session, with the aid of Assessors, the opinion of such Assessors shall be given separately, and if any of the Assessors or the Court shall desire it, the opinion of the Assessors shall be recorded in writing. But the decision is vested exclusively in the Judge or Judges."

The insertion of the following proviso after the word "proper" in the 9th line of Section 235:—

"Provided that, in the list of Jurors to be summoned for any trial, such a proportion of persons representing the section of the community to which the accused belongs, as may, under the circumstances of each district, be practicable, and may be included: provided also that—"

The introduction of the following words at the beginning of Section 253:—

"In cases tried with Assessors, the Judge, before pronouncing his own judgment, shall call upon the Assessors for their opinions."

Accordingly he begged to submit for the consideration of the Committee the omission of Section 229, and the substitution of the following:—

"The local Government may order that the offences specified in Chapter XVIII of the Penal Code, or (as may be) that all offences triable by a Court of Session, may be tried by Jury as hereinafter provided, in such districts as it may see fit to specify in such order; and the said local Government may from time to time revoke or alter such order."

SIR CHARLES JACKSON said, he really thought (and indeed the speech of the Honorable Member for Bengal suggested the idea) that, instead of considering this Chapter piecemeal as

it were, the whole Chapter had better be struck out at once. Section 230, which empowered the Governor-General in Council to form Juries of his own, appeared to him (Sir Charles Jackson) to be a most unconstitutional Clause. If there was to be a Jury, let it be an independent Jury, or have no Jury at all. Then Sections 231 and 233 were most objectionable. Under the latter Section, a Jury of nine Jurymen might acquit an accused person, and the Sudder Court might afterwards hang him notwithstanding such acquittal. Such a provision was perfectly monstrous. The several Sections of this Chapter were so involved one with the other, that he considered it utterly impossible to consider them separately Section by Section, and he therefore begged to move the omission of all the Sections from 229 to 233.

The Motion was subsequently, by leave, withdrawn.

MR. HARRINGTON said, in addressing himself to the question before the Committee, namely, that Section 229 be omitted and the Section proposed by the Honorable Member for Bengal substituted for it, he would follow the course pursued by that Honorable Member, and consider the whole Chapter. The Honorable Member for Bengal had stated that he considered his proposed amendments a great improvement on the Chapter as it now stood. With all deference to the Honorable Member, he (Mr. Harrington) could not agree with him. What the Honorable Member for Bengal now desired to do was done in 1832, that is, upwards of twenty-five years ago. Previously to that period, except in the Supreme Courts of Judicature, trial by Jury, or with the assistance of Assessors, was not known in this country. In the Courts of Sessions in the Mofussil, Criminal trials were held with the aid of a Mahomedan Law Officer. If the Judge agreed in the futwah delivered in by that Officer at the conclusion of the trial, and the case was one in which it was competent to him to pass sentence, he passed sentence; but if he differed from the Mahomedan Law Officer, or if, though he concurred with that Officer, the sentence was beyond his competency to pass, he referred the proceedings for the orders of the Sudder Court. In 1832, during the administration of that enlightened

Nobleman, Lord William Bentinck, it was thought that the time had arrived when an attempt should be made to introduce trial by Jury in the Mofussil, and a law was passed for that purpose, which was still in force. In the Madras Presidency trial by Jury had existed since 1827. The amendment then of the Honorable Member for Bengal, which left it to the Government to determine in what districts trials should be by Jury, really took them back more than a quarter of a century. But this was not all—it proposed the adoption of a measure which had already been fully tried, but from which little, if any, good had resulted. Now it certainly appeared to him (Mr. Harington) that any law of this kind which might be passed should be a law of general application, and that the duty and responsibility of determining in what districts it should be enforced, should not be thrown upon the Government. It was almost impossible for the Government to discharge the duty with satisfaction to itself, and the consequence would be, what had already happened, that having little, if any thing, to guide it in making its selection, it would escape from the difficulty by extending the law to all parts of the country without distinction. But supposing the Government, in the exercise of the discretion proposed to be invested in it, to extend the law to some places, and not to others, why, it might fairly be asked, was one district to have the benefit, if it might be so called, of trial by Jury, while it was denied to the adjoining district?

The next Section which the Honorable Member for Bengal wished to substitute for the corresponding Section in the Bill, as it stood, proposed no less than four modes of trial in a Court of Session, which he (Mr. Harington) considered objectionable. First, the trial might be held before a Court consisting of three Judges sitting alone. Sitting alone, he understood, meant sitting together, but without a Jury or Assessors. Secondly, the trial might be held before a Court consisting of the same number of Judges with a Jury. Thirdly, the trial might be held by a single Judge with a Jury; and fourthly, the trial might be held by a single Judge with Assessors whose opinion was to have no more weight

Mr. Harington

than what the Judge might choose to give to it. In other words, the Judge might accept it, or set it aside just as he pleased.

With regard to Section 283, he could only repeat what he had said on a former occasion, that he was very sensible it was open to objection, and he was quite willing to agree to any modification of the Section, which, while it gave some power of interference to the Sudder Court, in cases in which the verdict of the Jury was manifestly wrong, should restrict the exercise of that power within proper limits.

THE CHAIRMAN said, this Section involved so many different propositions, that it appeared to him hardly possible to come to a decision upon it, without taking its several provisions into consideration separately. He had no objection to the proposition contained in the first part of this Section, but there was this difficulty which he felt with regard to it, namely, whether an intelligent Jury could be formed in every district in the Mofussil. He thought that it was rather the duty of the Legislature than of the local Government to determine whether trials by Session Courts should be by Jury or not. The only object for leaving this to the local Government was that it might be presumed they had the best opportunity of knowing in what districts or places a sufficient number of respectable and intelligent Jurors could not always be obtained. Nevertheless, he objected entirely to the principle of leaving it to the local Government to decide in what districts or places trials by Session Courts should be, and in what districts or places they should not be, by Jury. Entertaining this opinion, therefore, he was quite prepared to oppose the Motion of the Honorable Member for Bengal for the omission of this Section altogether. At the same time he reserved to himself the right, in the event of that Honorable Member's Motion being negatived, to move any amendments he pleased in that Section.

MR. SCONCE'S Motion was then put and negatived.

THE CHAIRMAN moved the omission of the word "ordinarily" in line 2.

Agreed to.

THE CHAIRMAN said, he thought that the remainder of this Section was better adapted to the Bill, which would provide for the constitution of Session Courts. He should therefore now move the omission of all the words after the word "Jury" in line 3.

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

Section 280 provided as follows:—

"In trials by Jury before the Court of Session in which a European not being a British subject, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the accused person or one of the persons accused, one-half at least of the Jury shall consist, if the accused desire it, of persons so registered."

MR. SCONCE moved the omission of this Section.

SIR CHARLES JACKSON said, he should certainly support this proposition. He objected entirely to giving the Governor-General in Council the power to lay down rules as to who should be Jurors and who not. Instead of doing so, he (Sir Charles Jackson) thought there should be a Chapter in this Bill, defining what classes were to be Jurors, and laying down rules respecting the calling and challenging of Jurors. If they were to have a Jury, it would be better to have an independent Jury, and not a shadow.

MR. HARRINGTON said, the Section, as it now stood, was the same with some slight alterations as that proposed by Her Majesty's Commissioners, who must have known the difficulty of laying down any positive or absolutely restrictive rules on the subject. He felt certain that, in many districts, it would be impossible to get a sufficient number of Europeans, or of any of the other classes specified, to form a Jury. Granting, however, that the Council concurred in the objections taken by the Honorable and learned Judge opposite (Sir Charles Jackson), there seemed no reason why the whole Section should be omitted; surely it would be sufficient to leave out the words which had been objected to.

MR. FORBES said, it would be more convenient if the Honorable and learned Judge who had just spoken would mention what words he would propose to

substitute for the Section proposed to be omitted. He thought that, generally speaking, the Council sitting in Committee should have the choice of two Sections, and should not be called on to omit one already in a Bill without knowing what it was intended to substitute. They might otherwise, after agreeing to omit one Section, find that they preferred what had been omitted to that which was proposed in its place.

MR. SCONCE said, a principle much deeper than the preparation of Jury Rules or Lists, for which Section 235 provided, was involved in this Section. His objection to it was not because he thought that the Governor-General in Council should not have the power of framing the rules; but his ground of objection was that certain classes were to be selected, and to them only were the rules to be applied. It was true that the word "Christian" was not mentioned in the Section, but it seemed to him that he was perfectly correct in assuming that a distinction was intended to be made in favor of Christian classes. The only indication now given in this Section was that of Christian classes. If it were said that he was mistaken in his supposition, he would ask whether the Legislature would leave it to the Governor-General in Council to prepare a list of Parsees. In Kishnagur, moreover, there was a large body of Native Christians. Would it be necessary to include them among the registered persons, or would they be left among the non-registered classes?

MR. HARRINGTON said, the assumption of the Honorable Member for Bengal, that religion had had something to do with the preparation of this Section, was entirely groundless. Any one who had had Mofussil experience, must have felt how painful it was to try a Eurasian or an American with a Jury composed entirely of Natives. The Section was intended for the protection of the different classes of persons specified in it, and he (Mr. Harington) considered it a great improvement on the present law.

THE CHAIRMAN said, this Section was founded on Section 260 of the Code as proposed by Her Majesty's Commissioners, which provided—

"Criminal trials before the Session Judge, in which a British subject, or a European, or an American, or an East Indian, or an Arme-

nian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the defendant or one of the defendants, shall be by Jury, of which at least one-half shall consist, if such defendant desire it, of persons so registered."

The object of that rule, it appeared to him, was to give to certain classes of Foreigners the right to be tried by a Jury, of which one-half at least should consist of their own countrymen. If a Frenchman were tried, it might be difficult in some places to form a Jury, half of which should be composed entirely of Frenchmen, but there would not be the same difficulty in getting half the Jury to consist partly of Europeans, or East Indians, or Americans. Referring to this difficulty, the Commissioners had observed as follows:—

"It will be seen, however, on reference to the rules which we have proposed, that the right of trial by Jury, in the case of persons residing beyond the limits of any place to which this mode of trial is extended, is to be conditional upon registration, according to such rules as the Governor-General in Council shall prescribe.

"In a country with such a diversified population as India comprehends, it would be extremely difficult to insert in a Legislative measure any positive rule of national or local distinctions which would not be open to grave objections. The difficulties of legislation will be met to a great extent by empowering the Governor-General in Council to issue, from time to time, such instructions as he may deem proper in regard to the registration of persons belonging to those classes mentioned in the rules, or of any other persons to whom, in his judgment, the right of trial by Jury should be extended; and questions of a difficult and delicate nature will be anticipated by the Government, and not discussed in the Courts. It will be at the option of the parties entitled to register to avail themselves of their privilege, and we think they should be allowed to exercise this option at any time previous to trial. A reference to the register will at once decide the right to be tried by a Jury."

He understood the principle laid down by the Commissioners to be the same as that provided for in this Section of the Bill, which provided that certain classes were to be "registered according to such rules as the Governor-General in Council shall prescribe." He thought the rule as now worded to be a very objectionable one. Why, he would ask,

The Chairman

should they leave it to the Governor-General in Council in his Executive capacity to do what the Governor-General in Council in his Legislative capacity ought to do? Was it because this Council did not know what rules ought to be passed, or was it that they wished to save themselves the trouble of framing them? He (the Chairman) was clearly of opinion that, if it were necessary to lay down any rules at all, it was the duty of this Council to do so. The Governor-General in his Executive Council had not so much time for discussing the rules relating to the qualification of Jurors, the mode of summoning them, the right to challenge, and other details connected with trial by Jury, as he had in his Legislative Council. Such matters were provided for in England, not by Order in Council, but by Act of Parliament. Surely then such questions ought to be decided by this Council, in which all the proceedings were public, and published for general information. But the Section further provided that "persons of any other class to which the Governor-General in Council may see fit to extend this rule" might also be registered, and this rule also appeared to him to be highly objectionable. Supposing the Governor-General in Council were to extend the rule to Mahomedans (and, as the Section was now framed, this was a matter which depended entirely on the particular views of the Governor-General in Council for the time being), then there would be a Registry List, upon which any Mahomedan might put his name, and then the half Jury for the trial of a European, instead of being Europeans, might be taken from the registered class in which Mahomedans might preponderate. It was true that there would be some difficulty in defining what classes should be registered. But the difficulty would not be got rid of by imposing it upon the Governor-General in Council in his executive capacity. The question must be considered and determined somewhere, and, in his opinion, it was the duty of this Council to devote the time and attention necessary to a proper determination of the subject. He should propose therefore to omit the general words about persons of any other class.

If the Bill were re-published, as he thought it ought to be, and if any class considered that it had been unfairly dealt with, they would have the opportunity of addressing the Council and representing the hardship of their case.

MR. SCONCE'S Motion was by leave withdrawn.

THE CHAIRMAN moved the omission of the words "or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules, as the Governor-General in Council shall prescribe."

Agreed to.

THE CHAIRMAN moved the omission of the words "so registered at the end of the Section" and the substitution of the following:—

"(Qualified to serve on Juries) of his own race or class, if practicable; or if that be not practicable, of Europeans, Americans, East Indians, or Armenians so qualified."

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

Section 231 provided as follows:—

"In trials by Jury before the Court of Session in which registered and non-registered persons are committed for trial together, one-half of the Jury, if the non-registered person desire it, shall consist of non-registered persons."

THE CHAIRMAN said, that this Section, as it now stood, would be inconsistent with the amendments just adopted in the preceding Section. He should therefore propose the omission of this Section, and the substitution of the following for it:—

"In trials before the Court of Session, in which a person not belonging to any of the races or classes specified in the last preceding Section shall be tried, either alone or jointly with any person belonging to any of the said races or classes, one-half of the Jury, if the accused person who does not belong to any such race or class desire it, shall consist of persons not belonging to any of the said races or classes."

This would enable a native, if tried together with a European, or if tried

alone, to insist upon his being tried by one-half of his own countrymen.

Agreed to.

The Council went back to Section 230, and made a verbal amendment therein.

The postponed Section 232 provided as follows:—

"In trials by Jury before the Court of Session, the Jury shall consist of such number of persons, not being less than three nor more than nine, as the Court shall direct."

MR. SCONCE said, he thought that a Jury consisting of three persons would have too few voices to prevail against the opinion of the Judge in the event of his not concurring with them in their verdict. He would say six, but would prefer even nine, as the number of persons to compose a Jury. He should therefore move to omit "three" and to substitute "six" for it.

SIR CHARLES JACKSON said, he had no objection to the substitution of "six" for "three," but he did not see the use of the words "nor more than nine;" though, if a maximum were necessary to be fixed, it should be an even number.

THE CHAIRMAN said, he thought that, if they fixed upon six as the number for a Jury, there might be difficulty in many places to get the half of a Jury composed entirely of Europeans or entirely of Americans. He therefore moved by way of amendment that "four" be substituted for "three."

The Council divided—

Ayes 4.
Mr. Forbes.
Mr. Harington.
Sir James Outram.
The Chairman.

Noes 3.
Mr. Sconce.
Sir Charles Jackson.
Mr. LeGeyt.

So the amendment was carried.

THE CHAIRMAN then moved the omission of the words "nor more than nine, as the Court shall direct."

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

Section 232A provided as follows:—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority

with the concurrence of the Judge, the accused shall be acquitted."

MR. HARINGTON moved the addition of the following words:—

"If the Jury be equally divided in opinion, the Judge shall decide whether the accused shall be convicted or acquitted."

SIR CHARLES JACKSON said, the decision upon this question would determine whether there should or should not be an Appeal in Criminal Cases. If the Jury were divided two against two, the decision of the Judge would be considered most unsatisfactory, and it would be absolutely necessary to provide an appeal in such cases.

MR. HARINGTON said, the opinion of the Judge must be presumed to be at least equal to that of a Juror, and the proposed amendment would only be giving his opinion the same weight. He (Mr. Harington) imagined that most decisions were unsatisfactory to the losing parties, but he was at a loss to understand how any person could reasonably be dissatisfied with the decision of three against two, one of the three being an intelligent Judge.

SIR CHARLES JACKSON said, he would only add that he would, in such cases, prefer following the practice observed in England, and he should therefore move by way of amendment to substitute the words "the Jury shall be discharged and the prisoner be tried again" for the words "the Judge shall decide whether the accused shall be convicted or acquitted."

THE CHAIRMAN said, the proposed amendment would give rise to a great deal of difficulty. There would be constant differences of opinion in Juries, and it would be very hard indeed to have a prisoner tried over again. Rather than do so, he would acquit him.

SIR CHARLES JACKSON'S amendment being put, the Council divided—

<i>Ayes 2.</i> Sir Charles Jackson. Sir James Outram.	<i>Noes 5.</i> Mr. Sconce. Mr. Forbes. Mr. LeGeyt. Mr. Harington. The Chairman.
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So the amendment was negatived.

MR. HARINGTON'S Motion being put, the Council divided—

<i>Ayes 5.</i> Mr. Sconce. Mr. Forbes. Mr. LeGeyt. Mr. Harington. Sir James Outram.	<i>Noes 2.</i> Sir Charles Jackson. The Chairman.
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So the Motion was carried, and the Section as amended then passed.

Section 233 provided as follows:—

"When an accused person is acquitted by the verdict of a Jury, if the Judge shall be of opinion that the verdict is contrary to the evidence, and that the accused ought to have been convicted, he shall submit the proceedings to the Sudder Court, and it shall be lawful for such Court to pass such orders thereon as it shall think proper."

MR. SCONCE said, he apprehended that they had now come to the tug of war. They had gone over a great deal of ground, first, by affirming that trials before the Courts of Session should be by Jury; next, from what classes Juries should be formed; and, lastly, the number of persons required to form a Jury. The question which this Section brought before the Committee was whether a trial being once held and a verdict of acquittal given by the Jury, if the Judge dissented from that verdict, he could put the accused again upon his trial by referring the case to the Sudder Court. It had often occurred to him in considering this question, that the employment of the name of a Jury resembled very much the ends and purposes of a Tulchan calf. Any one who had read *Carlyle's Commentaries on Cromwell's Letters and Speeches* knew to what he alluded. A Tulchan, as he remembered, was a stuffed calf brought up to a cow to induce her to let down her milk. So here the pretended constitution of a Jury was to be made our Tulchan, promising nominally a scheme of procedure with which the functions of the Court did not substantially correspond. By allowing a reference to the Sudder Court, when once a verdict was given, it seemed to him that the effect of it would only be to throw over the Jury. He should move the omission of this Section.

MR. HARINGTON said, he had already admitted that this Section was

open to objection. But, although trial by Jury had, with reference to the provision contained in the Section, been called a sham, it appeared to him that in practice it would not prove so. What he wished to avoid was the failure of justice, which he felt sure would constantly take place if the verdict of acquittal by a Jury, however opposed to the record, must necessarily be followed by the discharge of the accused party; and, above all, he deprecated such indecent exhibitions as had lately been witnessed either at Bombay or in England, when the Judge, on receiving from the Jury a verdict of not guilty in the face, as he thought, of clear proof of guilt, could not refrain from exclaiming—"Well, gentlemen, I am glad that is not my verdict, but yours." If, however, it were considered objectionable to give the Sudder Court the power with which this Section would invest it, some provision should at least be made, allowing the Sudder Court, on a reference from the Session Court, to order a new trial where a verdict of acquittal was manifestly contrary to the evidence, and he (Mr. Harington) was quite prepared to agree to the Section being modified to this extent.

THE VICE-PRESIDENT said, he should certainly vote in favor of the omission of this Section altogether. He did not know what was meant by the words "to pass such orders thereon as it shall think proper" at the end of the Section. But whatever they might mean, it could not be right, he thought, that, after a man had been acquitted by a Session Court, the Sudder Court should have the power to hang him. With reference to the unseemly case referred to by the Honorable Member (Mr. Harington), in which a Judge had observed to the Jury, "I am glad, gentlemen, that is not my verdict," he (the Vice-President) could only say that he thought the Judge had overstepped the bounds of his jurisdiction, and that he had no more right to say what he did to the Jury, than the Jury would have had at the close of the charge to say—"We are glad that is not our law."

MR. SCONCE'S Motion was then put and carried.

MR. HARINGTON moved the introduction of the following new Section after Section 232:—

"When an accused person is acquitted by the verdict of a Jury, if the Judge shall be of opinion that the verdict is contrary to the evidence, and that the accused ought to have been convicted, he shall submit the proceedings to the Sudder Court, and it shall be lawful for such Court to order a new trial in the case."

SIR CHARLES JACKSON said, this Section appeared to him to be just as mischievous in principle as Section 233, which had just been negatived. The question being put, the Council divided:—

<i>Ayes 2.</i> Mr. Forbes. Mr. Harington.	<i>Noes 5.</i> Mr. Sconce. Sir Charles Jackson. Mr. LeGeyt. Sir James Outram. The Chairman.
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So the Motion was negatived.

The postponed Section 234 was passed as it stood.

The postponed Section 235 provided as follows:—

"The Sudder Court shall have power, from time to time, to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such Jurors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall, before they are issued, have received the sanction of the Governor-General in Council."

THE VICE-PRESIDENT said, it appeared to him that, until the rules referred to were prepared, the provisions of this Section would not come into operation. He should move therefore that the Section be omitted, and that it be referred to a Select Committee with an instruction to prepare Jury Rules.

The Council divided—

<i>Ayes 6.</i> Mr. Sconce. Sir Charles Jackson. Mr. Forbes. Mr. LeGeyt. Sir James Outram. The Chairman.	<i>Noes 1.</i> Mr. Harington.
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So the Motion was carried.

THE VICE-PRESIDENT moved that the Select Committee consist of Mr. Harington, Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and Mr. Sconce.

MR. HARRINGTON moved by way of amendment that his name be omitted, and the Vice-President's substituted.

Agreed to.

The postponed Section 236 was passed as it stood.

The postponed Section 249 provided as follows:—

"When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence. The Court may put such question to the accused as it may think proper."

SIR CHARLES JACKSON moved the omission of the words "the Court may put such questions to the accused as it may think proper." He said, he need not repeat what he had already stated on a former occasion. He would only mention in addition that, if this power were entrusted to any one, it would be most dangerous to entrust it to Judges who had not received a legal education, and who had not sufficient experience in matters of this nature. He would not allow it even to the Judges of the Supreme Court. The objection was, that it would introduce the French system, and make the Judge a prosecutor, and to prevent him from preserving that calm and unprejudiced position which it was necessary for a Judge to maintain.

SIR JAMES OUTRAM said, he quite agreed with the Honorable and learned Judge. The terms of the Clause were—"the Court may put." Would they preclude the public prosecutor instead of the Judge, with consent of the Court, from putting any questions to the accused person? If so, he proposed to move an amendment to that effect.

THE VICE-PRESIDENT said, they had already passed a Section which would enable a Magistrate to examine an accused person.

SIR JAMES OUTRAM said, he conceived that that was very different. The Court of Session was a Court of final decision, whereas there was an appeal from the orders of a Magistrate.

SIR CHARLES JACKSON said, he quite agreed with the Honorable General. In the hurry in which some of the Clauses had been passed, he had either overlooked the Clause referred to by the Honorable and learned Chairman, or must have thought that such an examination as took place before Magistrates in England, or in Magistracies under the Supreme Court, was intended. There it was called the examination, but the examination was not taken in the way of question and answer; the prisoner was simply asked whether he had any thing to say. He would remark, too, that such a power as that now under consideration was particularly useless and dangerous in this country, where, whether on account of the climate, or from whatever other cause, natives could seldom twice repeat the same statement as to a fact.

MR. HARRINGTON said, whether the words in question were omitted or not, it appeared to him that the ground urged by the Honorable and learned Judge (Sir Charles Jackson) was not tenable. If valid, the objection would apply equally to the cross-examination, by the presiding Judge, of the witnesses for the prosecution and the defence.

MR. SCONCE said, the object of the proposed omission was to prevent the prisoner being pressed or driven into a corner. Considering the earlier power given to a Magistrate, it appeared to him (Mr. Sconce) that, after a case was closed, it should no longer be competent to a Court again to elicit by sharp examination any statement from the prisoner. It was under the apprehension of the power being abused that he objected to its use.

MR. LEGEYT said, he confessed he had no fear of the evil consequences which the Honorable and learned Judge on his left (Sir Charles Jackson) and the Honorable Member for Bengal apprehended would follow the exercise of such a power. He did not think that Sessions Judges would abuse the power. Those who had presided over Native trials knew how desirable it was to get a prisoner to elucidate the truth of statements deposed to by witnesses. Now two witnesses might concur in saying

that the prisoner was at a certain place on a certain day. The Judge would have the power under this Section of applying to the prisoner to say where he was on that particular day. If the prisoner found it inconvenient to answer the question, he would remain silent. If however he could give a satisfactory answer, he would give it. He (Mr. LeGeyt) had sometimes exercised this power, and he should be very sorry indeed to see the power dispensed with. He would of course allow the prisoner the option of not answering. If he declined to answer, the Judge, in directing the Jury, would draw their attention to the circumstance. He supposed that the whole object of a trial was to convict a man if he was guilty, or to acquit him if innocent. Therefore he would say, do not deprive the Judge of this power, which, if not grossly abused, cannot but prove beneficial to the cause of justice.

MR. FORBES said, he thought that the retention of the words proposed to be omitted would tend to the improvement of the administration of justice. In their great anxiety to secure the rights of rogues, they were sometimes apt to forget the rights of honest men. When a crime was committed, he must confess that his sympathy was rather with those against whom the crime was committed than with those by whom it was committed; and he did not participate in the apprehensions felt by the Honorable and learned Judge (Sir Charles Jackson). So far from entertaining any fear that an innocent person might admit guilt when subject to cross-examination, he was convinced that every step in the examination would only tend more fully to prove his innocence.

THE VICE-PRESIDENT said, he saw no objection to allowing Session Courts to put questions to accused persons. On the contrary, he thought that the proper exercise of such a power would promote the ends of justice. He should therefore vote for the retention of the words proposed to be omitted.

SIR CHARLES JACKSON desired to say a few words in reply upon this question. It had been argued in the first place that the exercise of the power to which he had objected would serve to elucidate the truth. If he were sure

of that, he should have no objection to the words referred to. But he maintained that that would not be the case as a general rule in this country. Take for instance the case of a native incapable of appreciating the drift of what was said to him, but knowing at the same time that his life or liberty depended on his answers; or put the case constantly met with in this country of a native incapable of twice narrating an occurrence in the same way. The consequence would be in the first case that the native prisoner, whether innocent or guilty, would embark on a labyrinth of falsehoods, and in both cases the Judge would be obliged to pursue him from point to point, and all this would lead to much heat of discussion, which would be wholly unbecoming a Judge. If, on the other hand, the prisoner should be a skilful man, he might elude the questions put to him and make the Judge both angry and ridiculous.

Honorable Members who took a different view of the matter, had entirely lost sight of the same system which prevailed in France. The questions put to prisoners by the Judges in that country were, to his mind, most revolting.

Lastly, there was no definition of the nature of questions to be put, and no provision allowing the prisoner the option of declining to answer.

The Council divided—

Ayes 3.	Noes 4.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
Sir James Outram.	Mr. Harington.
	The Chairman.

So the Motion was negatived.

SIR JAMES OUTRAM moved that the words "allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to" be inserted after the word "may" in the 6th line of the Section.

After some discussion the Council divided—

Ayes 3.	Noes 4.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
Sir James Outram.	Mr. Harington.
	The Chairman.

So the Motion was negatived.

SIR BARNES PEACOCK moved the insertion of the words "or may allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to put" after the word "put" in the 6th line.

The Council divided—

Ayes 1.
The Chairman.

Noes 6.
Mr. Sconce.
Sir Charles Jackson.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harington.
Sir James Outram.

So the Motion was negatived.

MR. LEGEYT moved the addition of the following words:—

"But it shall be explained to the accused person that he is at liberty to decline to answer any question so put to him."

The Council divided—

Ayes 4.
Mr. Sconce.
Sir Charles Jackson.
Mr. LeGeyt.
Sir James Outram.

Noes 3.
Mr. Forbes.
Mr. Harington.
The Chairman.

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

The further consideration of the Bill was postponed on the Motion of SIR JAMES OUTRAM.

STANDING ORDERS.

MR. HARINGTON said, he had proposed to move to-day the adoption of the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council. But having reason to believe that the Report would give rise to some discussion, he proposed, with the permission of the Council, to withdraw the motion of which he had given notice, and to move on Saturday next that the Council resolve itself into a Committee upon the Report for the purpose of considering any amendments that might be proposed therein.

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved that the two Bills "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Forbes, and the Mover.

Agreed to.

MR. LEGEYT then moved that the Select Committee be instructed to report previously to the publication of the Bills, whether it would not be advisable to consolidate them.

Agreed to.

WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved that the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.

Saturday, August 27, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

PORT-DUES (PEGU).

THE CLERK reported to the Council that he had received a communication from the Foreign Department regarding the levy of Port-dues in the Province of Pegu.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

NABOB OF FURRUCKABAD.

THE CLERK also reported a communication from the Foreign Department, forwarding correspondence with the

Government of the North-Western Provinces, relative to the passing of an Act for rescinding Section VIII Regulation II. 1803 and Act XII of 1836, concerning the Nabob of Furruckabad.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

CRIMINAL PROCEDURE.

MR. LEGEYT presented the Report of the Select Committee on Section 235 of the Bill "for simplifying the Procedure of the Courts of Criminal Jurisdiction not established by Royal Charter" submitting proposed Jury Rules.

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT also presented the Report of the Select Committee appointed to consolidate the Bills (Nos. 1 and 2) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)."

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the first reading of a Bill "to enable Joint Stock Banking Companies to be formed on the principle of limited liability." He said that the progress of public opinion as to the advantages and security arising to the community from the establishment of Joint Stock Companies on the principle of limited liability, might be considered a sufficient reason for his dispensing with any lengthy remarks in the introduction of the present Bill. The general purpose of the Bill was to give to Joint Stock Banking Companies the benefit given by the law passed in 1857 to Joint Stock Companies in general. On that occasion the Legislature, he apprehended, following the example set forth in England, thought it expedient to exclude Banking Companies from being formed with limited liability. But by a subsequent Act the power was extended to Banks in England, and on a similar principle it now seemed desirable to adopt the same law in this country. Perhaps in no country in the world, certainly in no country in which we are interested, was the establishment

of Banks likely to be so beneficial to the community as in India. He took it to be the object of the establishment of a Bank to bring together capital ready for investment, with a view to its being distributed to those who needed it, and who were in a position to turn it to a better account, than if left in the hands of those to whom it belonged. The position of India with regard to capital was in many ways different from that of other countries. In India, as they all knew, money to a large extent was hoarded and lay idle. If, therefore, by the encouragement of Banking institutions, and more particularly by the adoption of the principle which this Bill proposed to establish, they should succeed in setting free that large capital which now lay buried under the floors of houses, undoubtedly many very material advantages might be expected to result, not only with a view of releasing capital to the profit of the capitalist, but also of employing it to the material relief of the community. It was notorious that the rate of interest exacted by capitalists in this country was, speaking as he might in a European sense, very exorbitant and much beyond the ordinary return sufficient to reimburse and remunerate the capitalist. In England and elsewhere the rate of interest was about 8, 10 or 12 per cent., but in this country parties borrowing money, whether for a longer or shorter period, had to pay 20, 30, and even as much as 40 per cent. Such appeared to him to be the general advantages derivable from the measure. The law of 1857 contained large and ample provisions to guide the management of Banks and to regulate the conduct of the Managers and secure the interests of Shareholders. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

TRADES AND PROFESSIONS.

MR. HARINGTON said, he was desirous of prefacing his Motion for the second reading of this Bill with a few remarks. But, first, he must ask the Council to permit him to introduce at the commencement of Section I, before the words "Regulation V. 1832," the following words, name'y, "Regulation IV.

1818 of the Madras Code (prescribing rules for the assessment and collection of the Veesabuddy or Tax upon trade in the Provinces known by the appellation of the ceded districts in the zilla of Bellary and Cuddapah"), to insert the word "also" between the figures "1832" and the word "of" in the first line of the Section, and to substitute the word "are" for the word "is" in the last line. Should this Bill become law, Regulation IV. 1818, equally with Regulation V. 1832 of the Madras Code, would require to be repealed, but in drawing up the Section the former Regulation had been inadvertently omitted.

He would also ask the Council to allow him to strike out the Schedule annexed to the Bill, as well as Section X, and to substitute the following classes for those mentioned in Section VIII, namely,

Under Class	I.....	5,000	Ru. yearly
"	II.....	4,000	"
"	III.....	3,000	"
"	IV.....	2,000	"
"	V.....	1,000	"
"	VI.....	500	"
"	VII.....	250	"
"	VIII.....	100	"
"	IX.....	50	"
"	X.....	25	"
"	XI.....	10	"
"	XII.....	5	"
"	XIII.....	2	"

His reason for wishing, at the present time, to introduce the three higher classes just mentioned into the Bill, was that it was generally considered that the rates at which it was proposed to assess them might fairly be paid by the larger Bankers and Traders without their being unduly taxed, or taxed out of proportion to the lower classes with reference to the extent of their trades or business; and if it was to be done at all, it was obviously better to raise the rates before the Bill was published for general information, than when it got into Committee. Hereafter, if the rates should be found too high, they could easily be modified.

Passing on to Section IX of the Bill, Mr. Harington observed that this Section prescribed that the Collector or other Officer authorized to grant licenses should determine under what class every person to whom a license was

granted should be assessed; the Section went on to enact that "such determination should be made with reference to, and after consideration of, the extent of the trade, business, or profession carried on by every such person." It might be objected to this provision that it was too vague and undefined in its character, and that, if large discretion were left to the taxing or licensing Officer, it would lead to considerable diversity of practice, and a greater degree of inequality, if not in the same District, still in different Districts, than had been contemplated by him in his opening speech. The objection had not escaped his observation in drawing up the Section. But he hoped that he had met it in some degree by the power given to the Governor-General of India in Council in Section XXVI, to make, from time to time, rules for the guidance of Officers in matters connected with the enforcement of the Act, provided that such rules were not inconsistent with any of the provisions contained in the Act. The amount of duty chargeable according to the class in which every person required to take out a license was placed, being absolutely fixed by law, he thought that, within the pecuniary limit so fixed, the power thus proposed to be given to the Supreme Government might be legitimately and constitutionally exercised, and that the Supreme Government would be able to lay down such rules for the guidance of the local Officers in fixing the amount of duty to be paid as would insure throughout the country a sufficient approach to uniformity of practice. But he might mention that a duty, approximating as nearly as possible, without any very strict investigation, to about 8 per cent. on the profits or emoluments of the party taking out the license, was what was contemplated by the Government, that being about the rate imposed in England under the Sections of the Act of Parliament which he had read at the time he moved the first reading of the Bill, though a maximum rate of 5,000 Rupees was proposed, which would in no case be exceeded. He thought it right, however, at once to say, that if Honorable Members considered that whatever rule or rate of assessment was

to be followed, it should be made to appear on the face of the Bill, instead of being left to be determined by instructions from Government, he should be quite willing, when the Bill was in Committee, either himself to propose a specific provision to that effect, or to adopt any suggestion that might be made, calculated, in the opinion of the Council, to meet the end in view. His great object in framing the present Bill was to make the mode of assessment of a little an inquisitorial, harassing, or oppressive character as was possible, consistently with a due regard to the purpose for which the Bill had been introduced. The amount of Duty proposed to be levied on licenses granted under the Bill being intended to be comparatively light, it was thought not unlikely that, in a great majority of cases, what might be termed self-classification might be allowed. This, however, could hardly be permitted in this country to any great extent were a general income tax to be imposed without subjecting the Government to great loss, and this was one of the reasons why it appeared to him that the scheme for improving the public Revenue proposed in the present Bill was preferable to an income tax, which, in order to accommodate the amount of the tax to every man's circumstances, and the frequent fluctuations therein, would necessitate a degree and mode of enquiry which he feared would render it a source of constant and endless vexation, annoyance, and disgust, and it might be something worse.

He observed, indeed, that it had been stated that the Duty which would be levied under the Bill would be, to all intents and purposes, an income tax, and he supposed that it was this impression which had given rise to the objection which had been taken to the Bill that it was a partial measure, inasmuch as it proposed, amongst others, to exclude from its operation all Government servants. But, however the Bill might operate, and whatever might be its effect, an income tax was not what was intended, and the inclusion therefore in the Bill of all public Officers with whose salaries the Government had full power to deal without recourse to the Legislature would, he thought,

have been improper, and, looking to what had just been said on the subject of official salaries, a work of supererogation. Had the Government, in introducing the present Bill, really intended to impose an income tax, it would of course have included all incomes or salaries from whatever source derived, unless protected by a law superior to any law that could be passed in this country, or unless expressly excepted. But he felt, he might safely say, that no such exception would have been permitted by the Government in favor of its own servants, nor was it the intention of the Government at the present time, in so far as it had the power to prevent it, that those servants should enjoy exemption while other classes were taxed. He believed he should take few if any by surprise by the announcement which he was now authorized to make that it had always been the intention of the Government, simultaneously with the passing of any Legislative measure of this nature, to cause a deduction to be made from all official salaries by a percentage. This would now be ordered, and would take effect from the date on which the present Bill received the assent of His Excellency the Governor-General. The rate of deduction proposed was 3 per cent., being, as already stated, the rate imposed in England. Salaries not exceeding 150 Rupees per mensem would be exempt, as also the pay and allowances of Regimental Officers and of Regimental Staff Officers, whether of Regular or Irregular Regiments, but not of Officers in Civil employ or on the General Staff. The deduction would also extend to the civil salaries which it had been proposed to the Home authorities to reduce, according to the reduced scale, equally with the rest. For some months past rumours had been afloat and had appeared in the public prints, which showed that what was now contemplated was no secret. How the information got abroad he did not know, nor did he care to enquire. But only the other day it was stated in a daily paper which had a very wide circulation that the clerks in one of the Public Offices were getting up a Memorial to the Government against the proposed deduction of 5 per cent., from their sala-

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ries. He mentioned this to show that what was about to be done had been for sometime under consideration, and had been delayed only until this Bill, or some measure of a similar nature, should become law. The cry of "wolf, wolf" had long been heard, and, as in the fable, he would shortly appear.

But though, as he had stated, the Government had full power to order such amount of deduction from the salaries of the greater portion of its servants as it might deem necessary and proper, without the sanction of the Legislature, there were some official salaries which, being fixed by Act of Parliament, could not be affected by any Act passed in this country. The Officers to whose salaries this remark applied were few in number, but, for the most part, the positions which they occupied were the highest, and the salaries which they drew were the largest in the country. Under this head were included the Governor-General of India, the Governors of Madras and Bombay, the Lieutenant-Governors of Bengal, of the North-Western Provinces and of the Punjab, the Commander-in-Chief in India and the Commanders-in-Chief at Madras and Bombay, the Judges of the Supreme Courts of Judicature, and he believed the Bishops of the three Presidencies, the Members of the Executive and Legislative Council, and there might be some others. It was not the intention of the Governor-General and of the other Members of the Supreme Government present with the Government that the measure, which now only awaited the order to issue, should pass by them, and their salaries would accordingly be subjected to the proposed reduction from the date which he had mentioned. But in their case, as well as in the cases of the other high Officers whom he had named, it would be necessary for the Home Government to apply to Parliament for an Act of the Imperial Legislation to give legal authority to the extension of the measure to them. Steps would immediately be taken for obtaining this authority.

The only other part of the Bill which he desired particularly to notice at this time was Section XXIII, which provided that nothing in the Act should be deemed to apply to any artificer or

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workman for hire, or to any laborer, or to any cultivator of land in respect of the produce of such land. In commenting on this Section in the remarks with which he introduced the Bill, he (Mr. Harington) observed—

"It would be deserving of consideration hereafter, whether the Collector or other Officer authorized to grant licenses should not have power to except any person carrying on any petty trade, of whose inability to pay the small sum of two Rupees per annum without great difficulty he might be satisfied, or whether the exception contained in this Section might not properly be carried farther."

He did not anticipate that any great difficulty would be experienced in determining who should or who should not be exempted. Something analogous to this proposition was to be found in the pauper laws. The law said that a person having a good cause of action might be permitted to sue *in forma pauperis* if he could satisfy the Court, having jurisdiction of the claim, that he was not possessed of sufficient property to enable him to pay the Government Stamp Duty; but before he could enjoy the benefit of this law, it was not required that he should sell the clothes which he wore or the tools or instruments with which he carried on his trade. The same principle which governed the Civil Courts in the administration of the pauper law would, he presumed, govern the licensing or taxing Officer under this Bill in the event of any provision, such as he had suggested, being introduced into it. He now begged to move that the Bill be read a second time.

Mr. SCONCE said, the Bill in the form in which it was now presented came in quite a different shape from that in which they had been considering it for the past week, and therefore it might form a ground for the consideration of the Council, whether under such circumstances they should proceed at once to discuss the merits of the Bill as it had now been advanced, or whether its further consideration should not be postponed to the next Meeting of the Council. Under any circumstances, he thought the subject-matter of the Bill was one of gravity and importance, whether looking to the large scale of assessment which the tax pro-

posed to raise, or to the state of financial difficulty in which the Government now lay. He was conscious, as a Member of that Council, that he was placed in a peculiar and somewhat undefined position. The Executive Government came to that Council to be furnished with the means for carrying on the Government, and so far it lay within the functions of the Council to consider the nature of the proposition, and the amount which it would be expedient to sanction. Therefore it seemed to him, besides the mere passing into law such Bills as were laid before them, they had also the responsibility of considering the necessity of the proposed measures. The amounts required might be more or less large, and the principle of assessment or taxation involved more or less substantial, but beyond and before this question he could not help thinking that it was necessary to see whether Government had made out a case to call for the assistance of the Council. In this matter they had to satisfy their own consciences, and they were trustees for the public; and though he admitted the indefinite character of the powers with which they were invested, he could not help considering the justification which the introduction of such a measure should involve. For another reason also it seemed to him that these considerations were of paramount importance. The Bill now before the Council, it was estimated, would yield from one to one and a half crores of Rupees. Now it was one thing to pass this Bill for a period of say one, two, or five years, and another to make it a permanent law of the land. On that ground it behoved them to act cautiously, and to look to Government for such information as would afford good grounds for the adoption of the Bill. He had listened with much interest to the explanations entered into by the Honorable Mover of the Bill, and it was certainly satisfactory to know that the deficit of last year had been considerably reduced. It was also satisfactory to know that Government had undertaken measures to consider the reduction of the different departments, both Military and Naval; but he should have been glad if his Honorable friend had carried the subject farther, and brought down his information to the present

day in extension of the information which His Excellency the Governor-General had submitted to the Council on the introduction of the Customs Bill in March last. There were one or two broad facts which required explanation. In the first place, it appeared that, in the year 1856-57, the deficiency between the income and expenditure was about 18 lakhs; in the following year ending 30th April 1858, there was a deficit of 817 lakhs, but in the next year the deficit had risen to 13 crores. The difference between the deficit of the two years 1857-58 and 1858-59 was very considerable, and it would have been of interest to the Council to have been informed how in one year this difference of about five millions of money could have arisen. But again, in the year now in progress, the deficiency was estimated at 684 lakhs, thus falling from 13 crores to about 7 crores. Beyond these figures the Council knew nothing. Therefore it would have materially assisted the deliberation, and tended to the enlightenment of the Council, if Government had given it full information as to the circumstances which affected the rise of all the public charges. The subject represented itself in another light. He found, from the speech of His Excellency the Governor-General, that it had been ascertained that for the year ending April 1858, taking the total deficit to be 817 lakhs, out of that sum 350 lakhs arose from the loss of Revenue, and 130 lakhs from loss of Treasure, thus making 480 lakhs—from two special causes which would seem to be confined to the deficit of 1857-58. Now for the coming year, the estimated deficit was put down at 684 lakhs, and in comparing this deficit with that of 1857-58, as at this time neither loss of Treasure nor loss of Revenue should be anticipated, the loss sustained under these heads in the earlier year would now be added to the assets, and the actual deficit increased by the same amount. He made these observations, not as affecting the principle, or with the view of opposing the second reading of the Bill, but it seemed to him a matter of much importance that the fullest explanation should be placed before the Council as to the present state of finances. It was hardly enough to know, as they knew

by yesterday's Mail, that a Loan was proposed to be raised in England; the capital might be found there, but the interest would have to come out of this country. As to the Bill, he was at one time looking at it in one sense, but its enlargement now would probably tend materially to change that view.

MR. HARRINGTON here explained that the Honorable Member was labouring under a mistake. He (Mr. Harrington) had proposed no alteration in the principle of the Bill. What had fallen from him was merely by way of suggestion. The principle of the Bill was exactly the same as when it was read a first time, and he had no desire to alter it. He said that it might perhaps appear that some of the provisions of the Bill were too vague and indefinite, and that when the Bill got into Committee, Honorable Members or others might make suggestions on this point to which he should be very happy to give full consideration. They might think the rates too high and that Bankers and Traders were not properly classed. This could of course be rectified in Committee, but he begged to assure the Honorable Member for Bengal that the principle of the Bill remained unchanged.

MR. SCONCE said, his remarks referred particularly to the alterations proposed in the Schedule. But he would proceed now to consider the Bill as it originally stood. The lowest rate was fixed at 2 Rupees yearly. Now his Honorable friend had told them that he was prepared to accept a rating of three per cent. on the profits: he would wish to know whether on the net or the gross profits. A tax of 2 Rupees on the net proceeds of a trade supposes a net profit of 66 Rupees per annum. Necessarily, if the tax were on the gross profits, the incidence of the Bill would vary materially differ as to the parties brought within the classifications. Going up to the highest class as it formerly stood, a tax of 2,000 Rupees at three per cent. would pre-suppose a net profit of 66,666 Rupees. Now, with regard to the poorer classes of shopkeepers, if it were assumed that a trader, whose gross income amounted to 200 Rupees, should be placed in the lowest class of the Bill, the tax of 2 Rupees on his gross receipt would be 1 per cent.

Mr. Sconce

What then he wished to know was, whether a shop-keeper, whose gross profits in selling Rice, Dholl, Tobacco, and so on, did not exceed 200 Rupees, would be subject to the provisions of the Bill. In other respects, the objection which he felt to the form of the Bill had been much overcome by the explanations they had this day heard. He had entertained much objections to the power given to the Collector to determine arbitrarily the rate of assessment payable by the parties required to take out licenses: but it was intended to change this feature in the Bill, and the proceedings of the Collector, it was now admitted, should be regulated by the percentage chargeable upon the income of each individual.

He was not unwilling to agree to a considerable extent to the statement made by the Honorable Member who introduced the Bill, that a trader would reimburse himself by charging the amount of the tax to his customers; but he feared that this alternative would be only a partial relief, and that the tax would largely operate as a tax upon profits. In conclusion, he need only say that he was not prepared to throw out the Bill. He thought that if it were sent into Committee it might be considerably improved, and there was no doubt that many valuable suggestions would be received from all parts of India on the subject, which would considerably assist the Council in its deliberations.

MR. HARRINGTON regretted that the Honorable Member for Bengal had not intimated to him his intention of asking for the information with which he now considered it desirable that the Council should be supplied. If the Honorable Member had asked him yesterday, he could have obtained from the Office of the Financial Secretary, and would have brought with him to-day the necessary papers. There was not the slightest disposition on the part of the Government to withhold from the Council any information which it was requisite that they should possess.

MR. SCONCE explained that he had no expectation of being supplied immediately with the information he had referred to. He should be satisfied if the information were furnished when the Bill was under the consideration of the Select Committee.

SIR CHARLES JACKSON quite agreed with the Honorable Member for Bengal. He thought the Council had a right to complain of the manner in which the financial measures of Government were brought forward. It was true that in March last the Governor-General had made a very lucid statement of the financial state of the Government. Since then five months had elapsed, and no further information had been laid before them. They had no knowledge of the actual reductions made or contemplated, or what was the amount realized under the new taxation, or any statement of the amount realized by the Customs Bill which had been passed by the Council, or of the amount expected to be obtained by the Bills now before them. Since the Governor-General's statement a great number of measures had passed into law or been proposed to the Council, namely, the Customs Act, the Bombay Abkarree Act, the Stamp Bill, the new Bombay Excise Bill which had passed two readings, and now there was this present Bill. The Governor-General, without the aid of the Council, had also raised the Duty on Malwa Opium. No complete financial scheme had as yet been presented to the Council, showing what the permanent deficiency would be, or what amount of Revenue was likely to be realized, or, in fact, what was the amount of taxation at the present time. It was quite time to put a stop to this piecemeal Financial Legislation. The Council were in fact legislating completely in the dark. Government ought to give them a full statement of their whole financial scheme, showing the amounts which had been raised under the new taxations, what the permanent deficiency was likely to be, and what measures Government intended to introduce to meet such deficiency. What did the statement of objects and reasons, submitted by the Honorable Mover of the Bill, say? Why, simply as follows:—

"The expenditure exceeded the income derived from all sources by upwards of 1300 lakhs of Rupees. The deficit of the present year was estimated at between 650 and 700 lakhs."

That statement displayed a perfect horror of details, and a singular in-

dulgence in round numbers. The statement proceeded:—

"Reduction of expenditure in all departments is being made as rapidly as possible, but after this has been carried as far as may be practicable consistently with an efficient administration of the Government, it is feared that for some time to come the expenditure will be in excess of the income, the increase in the Public Debt alone, consequent on the large loans which it has been found necessary to take up during the last two years, both at home and in this country, having added greatly to the annual charges. Necessary Public Works on a large scale, and others which, though not of the same urgent necessity, are likely to prove productive at no distant date, and to add greatly to the prosperity of the country, require to be carried on; and demands in the Department of Education, which cannot be disregarded without serious injury to the people, have to be met."

"Further taxation, therefore, seems to be an unavoidable necessity, and the mode of taxation contemplated in the accompanying Bill seems to be open to few, if any, of the objections which apparently exist to many of the other schemes which have been suggested."

Not a word was said whether further taxation in addition to this Bill was contemplated, or what it was, and this was all the information given on which they were called on to legislate. The Honorable Member opposite (Mr. Harrington) might smile, but he would beg leave to inform him that under the present arrangement the responsibility of passing these Bills rested with that Council, and it was the bounden duty of the Executive Government to give them a full, clear, and ample explanation of their measures, in order to enable them as Members of Council to discharge their duties in an honest and efficient manner. Looking at the way in which the present Bill had been changed—

THE VICE-PRESIDENT here observed that he did not think the proposed alterations could be treated as having been made. No Motion for the purpose had yet been made, nor did he think that it was competent to the Honorable Mover of the Bill to do so in its present stage. The Council therefore could only debate on the Bill in the form in which it stood at the first reading.

MR. HARRINGTON was willing to withdraw for the present the amendments he had proposed.

SIR CHARLES JACKSON continued:—This Bill, though called a licensing Bill, appeared to him to be a modified income tax affecting particular classes only. But they did not know what were the ulterior intentions of Government. For aught the Council knew, Government might have an income tax in reserve, and an income tax and a license tax, such as this, would be most tyrannical and unjust, for trades and professions would have to bear both taxes, and the owners who derived their income from Company's Paper would only be liable to the income tax. It had dropped from the Honorable Member of the Executive Government that an income tax had been under discussion, but they had no clear statement of the intentions of Government for the future. The Bill as originally proposed appeared to be a sort of very mild income tax, but if, as subsequently suggested, they were to raise it by an assessment of three per cent., it would be a most severe one, and one which it would be very difficult to carry out effectually so as to make native traders equally liable. He could not however understand upon what principle all Officials, Judges, &c., and persons in Government employ, were to be exempt. As for the Judges, the point raised was that the Council could not possibly tax them, inasmuch as their salaries were fixed by an Act of Parliament. That might be a question in point of law with respect to the present frame of the Bill as a licensing Bill, but the difficulty might be avoided by making it an income tax. But why should the Civil and Military Officers of Government, and others receiving large salaries, be exempt? He could not for the life of him see any ground for exemptions which were preposterous in themselves and very invidious, considering the materials of which that Council was composed. He was certain the Bill would have to be greatly altered and modified in these and other respects before the Council could allow it to pass.

Then again the Honorable Mover said that the Government intended to cut the salaries of their own Officers. He (Sir Charles Jackson) himself very much questioned the justice of such a proceeding. He doubted whether the Government had any right to make any

reduction in the salaries of parties who had entered upon their present offices and duties in the expectation of a certain consideration. It would be all very well to reduce the salary of an incumbent of the Office, but he thought Government should fortify themselves with an Act to impose such a deduction from the salaries of their Officers. Why should they not tax this class with the others, as was the case in England? The Honorable Mover said, the Bill had not been changed, but that he only intended to propose alterations in Committee. The Bill might not be changed in principle, but practically the alterations proposed would change a licensing tax into a somewhat severe income tax, and the income tax then imposed would only apply to certain classes of professions. He (Sir Charles Jackson) did not object to the second reading of the Bill, but he reserved to himself the right of opposing it at a future stage, if the principles of it, as it now stood, were not materially altered.

THE VICE-PRESIDENT said that, if he thought by referring the Bill to a Select Committee any time might be saved, he would not object to the second reading. But it appeared to him that such a course would rather delay the passing of the Bill, for, unless the Bill were very materially altered, he certainly could not vote for the third reading; and if the alterations proposed by the Select Committee should be of an important character, the Bill would have to be republished for general information. Thus there would be a delay of another three months. He thought therefore that, in opposing the second reading, he would rather be expediting the business than otherwise.

In the first place he wished to know the principle of the Bill. This, as he understood, was to license trades and professions, and it appeared that the highest income would not have to pay more than 2,000 Rupees yearly, and the lowest not less than 2 Rupees. To whom, however, was the classification to be left? Why, to the Collector, subject to the orders of Government. What those would be was not explained. Section XXVI provided—

"It shall be lawful for the Governor-General of India in Council from time to time to

make rules for the guidance of Officers in matters connected with the enforcement of this Act, provided such rules are not inconsistent with any of the provisions herein contained."

No principle was laid down for the guidance of the Collector in making the assessment. It seemed to be left entirely to the discretion of the Collector to assess some at 2 Rupees, others at 5 Rupees, others at 7 Rupees, others at 10 Rupees, and so on.* There was nothing in the Act declaring that the amount of assessment should have reference to the amount of profits. In short, they were asked to pass an Act which left it to the Collector to do nearly as he pleased. It was true that the party could appeal, but then no rules were laid down for the Appellate Court. If there was no rule to guide the Collector, how was the Commissioner on appeal to say whether he was right or wrong?

Then again he saw no reason why a Banker should be taxed 2,000 Rupees, and another 1,000 Rupees, when the highest class for other traders, including Bankers also, was the third class, namely, 500 Rupees. The first two classes were confined only to Bankers. A man might carry on the business of a Banker, and make an annual profit of only 5,000 Rupees, and he might be assessed at 2,000 Rupees; whereas other traders (take Messrs. D. Wilson and Co. for instance) might make a clear profit of a lakh of Rupees a year, and yet not be taxed higher than 500 Rupees yearly. Why should this dead set be made against Bankers? They had been told that many Native Mahajuns made large profits, and contributed nothing to the taxes of the country. But this was not a sufficient reason for taxing them in a proportion higher than other trades. There was no reason why any person realizing large profits by any trade or profession, whatever it might be, should be excepted from the two first classes. If the Bill were to be confined to trades and professions, for what reason was a certain class to be altogether exempt? He would put it, why should the Chief Justice be exempt? Why should he not pay his 2,000 Rupees a year, as well as any one else? It had been said that the Council had not the power to tax the

Chief Justice, because his salary was fixed by Act of Parliament, but he (the Vice-President) would say that, in his opinion, the Council had the power. He might however be alone in that opinion, but such it was. But even supposing that statutory salaries could not be taxed, he should not feel himself justified in taking advantage of such objection, and, whether assessed or not, would willingly pay the tax on his salary. He should feel it his bounden duty as a man of honor to do so, and not to claim any exemption whilst others around him were taxed. But he should not feel inclined to pay unless others were compelled to do the same. That was the feeling which he and, as he thought, most others entertained. When they saw the state in which the public finances were at present, he thought very few persons would object to pay a fair and moderate tax, provided it were general, and not confined to particular classes. The Honorable Mover had relieved him to some extent of the objections which he had felt to the Bill, by stating that the salaries of Government Officers, excepting certain classes, were to be taxed three per cent. simultaneously with the passing of the Bill.

It was proposed, independently of the Act, to tax Civil Officers at the rate of three per cent., but he did not clearly understand whether the tax was to be on the present salary, or on the reduced salary recommended by Mr. Ricketts. His principle would be to tax all equally and fairly. The Honorable Mover would however exempt all Regimental Officers, so that a Colonel or Major would be allowed to put all his salary into his pocket, while a poor man, making only about 100 Rupees per year, would have to pay a tax of 2 Rupees, that is at the rate of two per cent. Why was one to be taxed and not the other? The Subaltern said, his present salary was not sufficient. The poor man might say the same, and yet the latter, perhaps with wife and children, was to be taxed and not the former. This, as a matter of course, would give rise to endless discontent. The poor man would naturally say—"I am making only 100 Rupees a year and am taxed, and yet there is another drawing £1,000 a year, and he pays nothing." Such a pro-

ceeding was not fair. He should wish the whole country to see that they were taxing fairly and properly. In England no classes were exempt from the income tax. Every one there was taxed alike, except in cases in which his income was below a certain amount; and this should be the case in this country. The Honorable Member, in his Statement of objects and reasons, stated that, when the trader was taxed, the tax did not rest with him, but was really paid by his customer. Had the Honorable Mover forgotten the 20th Section:—

"Persons holding any offices or employments mentioned in Section XXII of this Act, shall be deemed to be, in respect of the salary, fees, wages, perquisites, and profits of such offices or employments, persons carrying on trade or exercising a profession within the meaning of this Act."

So that any Clerk in a merchant's office would have to pay something in respect of his salary. This might happen to any European Clerk who might have a wife and family to support, and he (the Vice-President) could see no sufficient reason why he should be taxed, whilst a Subaltern was to be exempt. If his income was less than that of a Colonel or Major, why should he be taxed more than they? He might say, the Colonel is earning more than I. He ought to be able to live within his income as well as I, and be able to pay three per cent. upon his pay as well as myself. He (the Vice-President) would prefer an income tax of say two, three, or four per cent. all round. He himself thought that three per cent. would be a very fair proportion, and he would suggest a classification to be as near as possible to a tax of three per cent. according to the income. It was very evident that some principle ought to be laid down.

Then again there was another class, the landholders under the Perpetual Settlement, who were not included. It might be said that, like Officers whose salaries were fixed by Act of Parliament, they could not be taxed. He admitted that it would be unfair to tell the zemindars that a particular tax was to be imposed upon them, and not upon others. But when the profits of official and professional labor were going to be taxed generally, he did not see according to

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what principle of justice they could be exempted from taxation. What he understood by the Perpetual Settlement was that the proprietors of land at the time of that settlement were allowed to hold their land for ever at a certain fixed rent or revenue which was never to be increased. If Government were to throw on that class a particular burden, they would be guilty of a breach of faith. He recollected having written a Minute some time ago, in which he stated that he thought it was contrary to principle to say that proprietors of estates which they held permanently should be compelled, at their own expense, to keep up a certain number of Police Officers and Chowkeydars, according to the value of their estates. But to say that zemindars could not be included in a general income-tax was, in his opinion, going a step too far. With regard to the other Presidencies and the North-Western Provinces, perhaps a distinction might be made, for there the assessments could be increased by Government every twenty-one years. There was a difference in these two cases; in the one the rent was increased according to the improved trade of the country, but in the other, whatever benefit was derived went all to the proprietor, whose rent was always at the same rate. What would the zemindar do if there were no Military, if there were no trading vessels, if no Navy were kept up, and there were no traders or merchants? The increased Military had thrown an additional burden on the country, and the zemindars as well as others had the benefit of the protection afforded. It was said—"throw the burden upon trades and professions, but don't tax the zemindars." It might or might not be politic to tax the zemindars, but it appeared to him that they could, without any breach of faith, be compelled to bear an equal proportion of the tax according to a fair valuation of their net income.

He thought that Regimental pay ought to be taxed as well as the salary of the Clerk who had not the same means as the trader to realize it from his customers.

As this Bill at present stood, there were many persons drawing large salaries who could not be taxed higher than at the rate included in the third

class. For example, he would put the case of the Secretary to the Bank of Bengal whose salary was something about £3,000 or £3,500 a year. Why should he get off so cheaply as by paying only Rs. 250 per annum? Why should he pay so little, when it was proposed that Civil Servants should be taxed at the rate of three per cent. upon their salaries?

Then with regard to professional persons, why tax medical men, not being Government servants, who came out to this country to set up for themselves, and whose income for the first two or three years was very small, and not Military Surgeons? Barristers too had to struggle for many years before they could realize any thing approaching the salaries of some of the Civil Servants, and it was proposed to subject them to taxation, whilst the Regimental pay of all Military Officers, some of whom were better able to bear it, were to be exempted.

With regard to the Appeal Clause also, he did not see how the Act would work. Take the case of a man whom the Collector had assessed and placed in a certain class. The party taxed was dissatisfied and appealed to the Commissioner, but how was the Commissioner to decide? And how could he ascertain the merits of the appeal? He had no power to summon witnesses, or to compel the production of books; and even if the parties to be assessed should appear before him, he had no power to compel them to give evidence. Even supposing that he should ascertain the amount of net income, if he had no principle to guide him, how was he to act?

Under these circumstances, he would suggest to the Honorable Member the expediency of withdrawing this Bill, and of introducing another with respect to which the Council would know how to act. If the Honorable Member pressed the Bill in its present form, he (the Vice-President) would consider it his duty to oppose the second reading, unless the Honorable Member consented to refer the Bill to a Select Committee for the purpose of being amended before publication.

If it should be read in its present state and published, he thought that great delay must necessarily be occasioned by republishing the Bill.

MR. LEGEYTT said, he came here to-day with no intention of opposing the Bill, though he would not deny that he saw it was full of difficulties. What he had heard that day in Council had shown him that those difficulties were greater than he at first supposed. If, however, the Honorable Mover was prepared to carry it through, and if he was sufficiently prepared to meet the difficulties as to the details, and would make the alterations he had suggested, he (Mr. Legeytt) should not feel justified in opposing the second reading. If it did pass the second reading, it might in Committee be so altered and modified that they would find it necessary to republish it, and then the delay would arise which had been foreseen by the learned Vice-President. It was no doubt the object of every Member of this Council to assist the Government in their present difficulties in respect to finance, and he should feel he was wanting in his duty if he opposed, without the gravest reason, any measure that would tend to assist it at the present crisis. But he could not help hoping that the further consideration of the Bill would be deferred to enable the framers of it to consider the objections which had been brought forward and to make such modifications and alterations as would meet those objections, some of which, such as the absence of any specified principle on which the different classes were to be formed, appeared to him to be absolutely necessary to the working of the Bill. If this were secured, he should support the Bill.

MR. HARINGTON said, he was of course most anxious to defer to the wishes of the Council; but with regard to the suggestions which had fallen from the Chair, or rather he might say the second of those suggestions, for he certainly should not withdraw the Bill, though Honorable Members might of course throw it out if they thought proper, he should like to have a little time to consider it, and he should therefore move that the debate be adjourned until the next meeting of the Council. Before making this Motion, however, he desired to offer a few observations in reply to the objections which had been taken to the Bill. These objections revolved themselves

into objections of principle and objections of detail. With regard to the objections falling under the latter head, he had distinctly stated in the remarks with which he introduced the Bill, that he had no intention or wish to bind Honorable Members to any of the details of the Bill. He had admitted that the Bill was no doubt chargeable with many imperfections; but these he hoped would be remedied in Committee. As remarked by the Honorable Member for Bengal, and as he himself had said, many valuable suggestions and much good advice might be expected to be received on the publication of the Bill from all parts of India, as well from the Officers of Government, as from others, which would prove most useful when the time for considering the Bill in Committee arrived.

With regard to the objection of the Honorable and learned Vice-President, that there was nothing in the Bill, as now drawn, to show how the Officers, whose duty it would be to assess persons under it, were to administer the law, he had acknowledged that the rule laid down might be considered vague and indefinite, and he had also said that he was quite prepared to adopt any proposition which the Council at large might make to meet this objection. He did not think that any mere alteration of that kind would change the principle of the Bill, so as to render a republication necessary before it was read a third time and passed. The greater part of the Bills brought into that Council underwent material alterations after being read a second time, either at the hands of the Select Committee, or when before a Committee of the whole Council, and he could point out Bills, the form of which had been completely changed in this way. If the Select Committee, to whom the Bill would be referred, proposed that the duty to be charged on licenses should be generally at the rate of about three per cent. on the profits or emoluments of the party taking out the license, a rule to that effect, which would be restrictive in its character, would not, he thought, alter the principle of the Bill. But if the maximum rate was considered too low, and it should hereafter be proposed to raise the rates, that would undoubtedly necessitate the republication of the

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Bill before it was read a third time. It was on that account that he had asked the Council to allow him at once to add three higher classes, but he withdrew the application as soon as he found that Honorable Members opposite considered it objectionable, and he was very willing that the Bill should be read a second time in the form in which it had been introduced.

The Honorable and learned Judge opposite (Sir Charles Jackson) had characterized the exemption of Government Servants from the operation of the Bill as most preposterous. It would have been so if it had been proposed to impose an income tax; but that was not the character of the Bill, and he (Mr. Harington) did not see how Government servants could properly be included in a Bill for licensing trades and professions. Was the Governor-General of India to take out a license before he could exercise the functions of his high Office? Was the Honorable and learned Chief Justice, or were the Judges of the Sudder Courts, to take out a license before they could be allowed to sit on the benches of those Courts? Was the Bishop of Calcutta to be required to take out a license before he could preach in his own Cathedral?

With regard to salaries fixed by Act of Parliament, he deemed it sufficient to observe that the Government had been advised by those who were the legal advisers of the Government on questions of this nature, that neither the Government nor the Legislature of this Country could interfere with the salaries so fixed with a view to reduce their amount. The Government might of course have consulted the Honorable and learned Judges of Her Majesty's Supreme Court also, the point at issue involving the construction of an Act of Parliament, but they had not considered it necessary to do so. The Honorable and learned Judge opposite (Sir Charles Jackson) had expressed a doubt as to whether the Government could, by a mere order or resolution, legally carry out their intention of reducing the salaries of their servants other than those whose salaries were fixed by Act of Parliament by a percentage, and he gave this as a reason why those servants should be included in the Bill. He (Mr. Harington) could not agree with

the Honorable and learned Judge. Supposing the Government were to direct that, from the 1st January next, all official salaries under their control should be reduced by one-half, who, he would ask, could prevent the Government from carrying this order into effect? He (Mr. Harington) had no doubt that every Officer in the country, knowing the state of the finances, and that what was now proposed to be done was a matter of urgent necessity, would follow the excellent example of the Honorable and learned Vice-President, and cheerfully surrender, as the Honorable and learned Vice-President had expressed his intention of doing, what was proposed to be taken from other persons; but if any Officer was unwilling to serve the Government on a reduced salary, he had the remedy in his own hands—he could resign. It being then fully within the competency of the Government to make whatever reductions it pleased in the salaries of its own servants, unless they were protected by Act of Parliament, he submitted that no law was required for the purpose. It was unusual to have recourse to legislation for an object which could be equally well effected without it.

On the question raised by the Chair as to the liability of the Zemindars of Bengal to further taxation, he was not prepared to express a decided opinion; but he must say he was greatly surprised at what had fallen from the Honorable and learned Vice-President on that subject.

The Honorable and learned Vice-President had referred to a Minute which had been recorded by him, when a Bill to amend the law relating to the appointment and maintenance of Police Chowkeydars in Bengal was proposed by a former Honorable Member for Bengal. That Minute had been printed, and a copy of it was in the hands of every intelligent Zemindar in Bengal. From this Minute he (Mr. Harington) would read some extracts to show what was the opinion of the Honorable and learned Vice-President at that time on this most difficult question. He said:—

"It is clear that, according to the engagement entered into at the time of the Per-

manent Settlement, the jumma then fixed cannot be altered. It was declared by the Governor-General in Council that the Zemindars and other proprietors of land and their heirs would be allowed to hold their estates at such assessment for ever (See Regulation I. 1793 Section IV), and that the orders fixing the amount were to be considered irrevocable and not liable to alteration by any persons whom the Court of Directors might appoint to the administration of the affairs of the Company (Section VII). At the conclusion of the Permanent Settlement the Governor-General in Council expressed his confidence that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, would exert themselves in the cultivation of their lands, under the certainty that they would enjoy exclusively the fruits of their own good management and industry, and that no demand would ever be made upon them for an augmentation of the assessment in consequence of the improvement of their estates."

The words "public assessment being fixed," "under the certainty that they would enjoy exclusively," "and that no demand would ever be made," were italicised by the Honorable and learned Vice-President in the Minute, in order to draw particular attention to them. He then went on to say—

"The same principle which prevents an augmentation of the assessment equally precludes the taxation of the owners in respect of the rent or produce of their estates; such taxation must necessarily prevent them from enjoying exclusively the fruits of their own good management and industry."

And that his meaning might not be misunderstood, he proceeded to illustrate what he had just stated—

"Suppose," he said, "a Zemindar pays a fixed jumma, say of ten thousand Rupees a year, for an estate which at the time of the Settlement produced eleven thousand a year clear, that being the rate of assessment mentioned in Regulation II. 1763.

"The Government cannot raise his jumma ten per cent.; but if they tax his rents ten per cent. they do him a greater injury than if they were to increase his jumma ten per cent.; for, in the one case, assuming the lands to remain in *status quo*, they compel him to pay eleven hundred Rupees, in the other only one thousand Rupees.

"Suppose that, by good management, or the expenditure of capital, the lands are improved, and that the estate which produced eleven thousand Rupees a year in 1793, and for which the jumma was fixed at ten thousand

Rupees, now produced fifteen thousand Rupees."

There was nothing here to indicate that what was said by the Honorable and learned Vice-President was said in a limited sense, or in reference to any particular tax. The words were as general as they could possibly be, and were of universal application.

Now he (Mr. Harington) did not mean to say that, in giving the opinion just quoted, the Honorable and learned Vice-President was right. But if he were so, and the Government were really precluded by the terms of the perpetual settlement from taking away, by any means, any part of the rents or profits of the Zemindars of Bengal (for the rents of the land were their profits), what right, he would ask, had they to impose an income law upon those persons? He begged it to be understood that he did not say he agreed with the Honorable and learned Vice-President. In fact, he would admit that he had not made up his mind upon the point, nor did he mean to say that the Honorable and learned Vice-President could not change his opinion; he had a perfect right to do so, but still the opinion which he had formerly given would always be quoted in favor of the exemption claimed.

From what he had just said it was manifest that, had a general income tax been proposed, the question as to whether it could be legally imposed upon the Zemindars of Bengal must have been raised, and from them it would have been necessary to go to the Maafedars or holders of rent-free estates, and the Zemindars in the North-Western Provinces and in Madras. But, as he had observed on a former occasion, the Government could always increase its demands whenever an estate, not permanently settled, came under revision of settlement, and no fresh law was required to enable it to do so. It seemed however to be generally admitted that both at Madras and in the North-Western Provinces the lands were assessed at as high a rate as they could bear, and that if the settlement were raised the Zemindars would be unable to pay their revenue, and the consequence would be that many estates would come into the market, thus increasing

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the number of alienations which many were so anxious to prevent.

If the present Bill passed, it would not prevent any Honorable Member, who thought proper, from introducing a Bill for imposing a general income tax; and were such a Bill brought in, he (Mr. Harington) would give it his best consideration, though, before it could pass, it would be necessary to determine many difficult questions not involved in the present Bill. The Honorable and learned Judge opposite (Sir Charles Jackson) seemed to think that, should the Government hereafter propose a general income tax, it would operate with great hardship towards the parties who would be required to take out licenses under the Bill before the Council, but he could not conceive that any Honorable Member would consent to those parties being subjected to both taxes. Having offered these remarks, he begged to move that the debate be now adjourned.

THE VICE-PRESIDENT desired to say a few words in explanation with reference to the Minute from which the Honorable Member had just read. That Minute was written upon the question then before the Government, namely as to the right of Government to impose upon the landholders, and upon them alone, an additional burden in respect of their lands, by compelling them to maintain a Police Force. He might not have been sufficiently explicit, but that Minute had reference to the subject then under consideration, and not to the question of including them in a general income tax. If Government were precluded from including zemindars in any measure of general taxation, it might be concluded that it precluded Government from levying a duty on the exportation of rice produced in lands held under the Perpetual Settlement.

After some further discussion, the further consideration of the Bill was adjourned.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

Mr. FORBES moved the second reading of the Bill "to prevent the over-crowding of Vessels carrying

Native Passengers in the Bay of Bengal.

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

ARMS AND AMMUNITION.

MR. HARRINGTON moved the second reading of the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

SIR CHARLES JACKSON said, he rose for the purpose of opposing the second reading. This was a Bill which affected the right of Europeans to keep Arms for self-protection without a license. Really he thought that, after the experience of the years 1857 and 1858, Government had had a sufficient lesson not to deprive the European Community of the means of self-defence. Considering that the Europeans were a small dominant class compared with the large Native population, and many of them residing in isolated districts, it was absolutely necessary that they should have the means of protecting themselves. The reason assigned for depriving them of arms was that it would be invidious to make any distinction between Europeans and Natives, and that in this country it was particularly dangerous to do so. Now he did not wish to be misunderstood. He was as anxious as any one that the Natives should be kindly and paternally governed, that they should enjoy absolute personal freedom and as much political freedom as they were fitted for or could be trusted with; but it was cant, nay more, it was mere hypocrisy to pretend that we shrunk from making invidious distinctions between Natives and Europeans. In point of fact we made that distinction between the two classes constantly. Why were not Natives allowed a seat in this Council or in the Sudder Court? Why were they debarred from holding many other important Offices in this country? The reason was that Natives were not as yet thought fit to be trusted with powers now exercised exclusively by Europeans. He put his objection to this Bill on the same principle. The Government had come to the conclusion (he thought

rightly) that the Native Community generally were not fit to be trusted with Arms, but the same reason did not apply to Europeans, for there was no pretence for saying that they would use their Arms against the Government. He thought, therefore, that the argument, that it was invidious and impossible to draw a distinction between Natives and Europeans, was quite fallacious.

But the Bill was a specimen of double hypocrisy in itself, because, although it professed not to exclude Europeans from its operation, it nevertheless imposed on the Government the power of dispensing with its provisions as regards Europeans, and we all knew that the Act we were called on to renew had only been worked under this Clause, and Government had nowhere attempted to bring Europeans within its provisions. What was the use, therefore, of provisions imposing restraints on the use of Arms by Europeans, when the real intention was to dispense with those provisions in practice, and allow Europeans the use of Arms?

For these reasons it appeared to him that the Bill was founded on no correct principle as applicable to this country.

MR. SCOTCH said, he entertained objections of another kind to this Bill. To describe his idea of the Bill generally, it was a Bill to make perpetual a law passed at the time of mutiny and internal commotion, which was constructed for a temporary purpose, and did not bear the character of a permanent enactment. One of the most material Clauses in it was Section XXIV, which provided for a general search for Arms and Ammunition, wherever Government thought fit to order. Now supposing a search to have been made, how was it to be followed up? How would the result be secured? And when a search was once made, would the Bill authorize a second or a third search?

Further, he observed that the earlier Sections of the Act proceeded upon a different principle from that embodied in Section XXIV. This Section authorized a general search and seizure; whereas the object of Sections I and II was to require persons to give notice of the Arms held by them, and upon the delivery of a certificate or license

to retain the Arms so held. Section IV, it was true, provided for the seizure and detention of Arms for such time as might be deemed necessary: nevertheless, the principle of the earlier Sections of the Bill appeared to be to license the possession of Arms, and it seemed to him that it might be desirable to bring these Sections more in conformity with the provisions by which, under Section XXIV, a general search had been or might be made.

His view therefore would be to pass the Bill to a second reading, and then refer it to a Select Committee; but it seemed to him that the deliberations of the Committee would be materially assisted if they were informed as to the extent to which the powers given by the Act had been exercised. It was desirable to learn in what Districts, under Section XXIV, a general search had been made, and what result had followed from it. Knowing such points as these, the Council would be better able to determine how to provide for the future possession of Arms.

Again, he would remark that considerable apprehension was expressed as to the mode in which the power conferred by Section XXV of the Act was exercised. By this Section any person who refused to produce Arms was liable, on conviction, to imprisonment not exceeding two years. Subsequently Act XI of 1858 provided that, in lieu of the penalty of imprisonment, a fine might be imposed, and in lieu of fine corporal punishment. That is, as he understood, on the discovery of Arms which any person, in whose possession they were discovered, refused to produce, that person might, in the first instance, be fined, and then, on failure to pay the fine, might be flogged. Now there appeared to be reason to fear that the process contemplated by the laws was reversed, and that men were flogged that they might be made to produce their Arms, and not flogged after the Arms had been found. With the permission of the Council he would read an extract from the *New Times* newspaper, published at Allahabad, which bore upon this subject. It was there said:—

"In our last number we made some hurried remarks, occasioned by circumstances which had come to our knowledge, upon the

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discontent produced among the populations of these Provinces by the Disarming Act. We should perhaps have explained at the time that the objection is less to the Act itself, the principle of which has been put in practice with success elsewhere, than to the manner in which it is enforced. We know, and it is well known to many, that the Act is made a pretext for the grossest cruelty and extortion, and that deeds are daily committed in the name of the British Government which would be sufficient to render any Government detested. We need scarcely add that these deeds are committed by Native subordinates, and in violation, not in aid, of their duty. It is one thing to take Arms, wherever they can be found, by the fair exercise of authority; but it is quite another thing to extort them by the most brutal means from the poor and inoffensive, and to allow the rich and designing to retain them for the next opportunity that may arise for their use. The readers of Uncle Tom's Cabin all thought it monstrous that poor Topsy should be compelled by ill-treatment to declare herself guilty of an offence which she had never committed, because she thought she was required to confess something; but it is quite as bad that men should be compelled even to purchase weapons in order to give them up, and make for their tormentors an appearance of zeal and honesty, when they have in reality been guilty of nothing but cruelty and fraud."

From other sources he had heard that the general seizure of Arms was attempted to be enforced by violence, which the law, as he understood it, did not countenance; and he should be glad if some information were communicated to the Council as to the mode in which convictions were pronounced and corporal punishment inflicted within or beyond the provisions of Section XXV Act XXVIII of 1857 and of Act XI of 1858.

Mr. LUGREY said, he did not rise with the intention of opposing the second reading. But he proposed, if it was carried and referred to a Select Committee, to instruct the Select Committee to make enquiries and obtain information how those portions of the Act relating to the search and seizure of Arms had worked. He had heard, and from authority he could not question, that the powers created by this Bill had been grossly and cruelly exercised. It might be said that there was no chance of such misfeasance occurring again. But it might occur, and he thought that no Bill of this kind should be passed without containing stringent provisions to restrain such abuses. This

might be done in Select Committee, and he would not therefore oppose the second reading. But if it was not provided for in Select Committee, he reserved to himself the right to raise this question again in a Committee of the whole Council. He hoped that the publication of the Bill would elicit information which would enable them better to determine whether any measures and what measures should be adopted to prevent the possibility of the occurrence of such abuses as had been pointed out.

THE VICE-PRESIDENT said, it was not his intention to oppose the second reading of this Bill, because he thought that, on the publication of the Bill, it would not be necessary for the Select Committee to make it more stringent than it then was, and the Council would have it in its power to except Europeans from such of the provisions of the Bill as they might think proper. He thought himself that Europeans should be excluded from some of its provisions, but not from the whole. They might very reasonably be prohibited from the sale or manufacture of Arms, except under the provisions of the Act, but the provision authorizing a Magistrate to seize Arms in the possession of any person, if in his judgment they could not be left in his possession without danger to the public peace, was taken from an Act which was passed for Ireland. In the debate upon that Bill strong opposition was shown to such a provision even in Ireland, but it was wholly inapplicable to Europeans in the existing state of circumstances in India. It was not probable that Europeans would use Arms against the Government, and there was therefore no necessity for including them in that Clause; on the contrary, their numbers were so small compared with the Natives, and their position in many cases so isolated, that it was necessary to allow them to retain Arms for self-defence. With regard to other Clauses however, such as those which related to trading and dealing in Arms and Ammunition, it was very necessary that Europeans should be subject to this Bill as well as any one else, and they should be compelled to keep their books open for inspection at any time, so that Government might always know to whom they were sell-

ing Arms, or the nature of the traffic they were carrying on in Arms. With reference to the general Clause to which the Honorable and learned Judge (Sir Charles Jackson) had objected, he (the Vice-President) would mention that, when the Act was extended to Shahabad, Europeans and Eurasians had been excepted by Government. If Government thought it necessary to exempt them there at that time, he thought that the Council now, in making the Act a permanent law of the land, ought to introduce an exemption of that sort into this Bill.

In conclusion, he desired to suggest that, considering the nature of the subject, the Act itself should be published *in extenso*, together with the Bill which proposed to make it perpetual, so that the public might have an opportunity of sending in any objections they might have to any part of the Act.

MR. HARRINGTON said, he was quite willing to accede to the suggestion which had fallen from the Chair if the Standing Orders of the Council admitted of the Act, which it was now proposed to make permanent, being published in the Gazette, along with the Bill which had been introduced for that purpose. He could have no objection to the fullest discussion of the subject. It was quite proper that the public should know what the provisions of the existing law were, and that they should have every opportunity afforded them of stating their objections to any parts thereof.

The Honorable and learned Judge opposite had opposed the second reading of the Bill, on the ground that it did not exempt Europeans; he said that he should have supposed that there would have been some reluctance on the part of Government to make the law applicable to that class of its subjects. But looking to the time when the Act was passed, namely, during the height of the mutinies, when the life of every European in the country was in danger, it appeared to him (Mr. Harrington) that if the exemption now claimed for Europeans was proper, it should have been made at that time, and not having been allowed then, it could scarcely be permitted now when the circumstances of the country were so

different. At the time Act XXVIII of 1857 was passed, he (Mr. Harington) had not the honor of a seat in this Council, nor had the Honorable and learned Judge opposite (Sir C. Jackson), or the Honorable Members for Madras and Bengal, or the Honorable and gallant Member on his left (Sir James Outram); but the Honorable and learned Vice-President and the Honorable Member for Bombay had given their assent to the Act in its present form. For himself he should be very glad if the Council could with propriety say that the Act should not extend to Europeans; but he did not see on what ground the exemption could be put without making a most invidious distinction. Honorable Members had no doubt heard that large bodies of "lattials" or clubmen were sometimes kept up by Europeans in Bengal, in order to maintain by force what they considered to be their rights, and that battles frequently took place between the clubmen of one party and the clubmen of another party. He himself recollected to have seen a letter written by one Indigo Planter to another, in which the writer threatened that, unless certain parties discontinued to cultivate a particular piece of land, "he would plough their backs with pepper and salt." Surely that was not a state of things which should be allowed to continue. If this law were to pass, and Europeans were exempted from its operation, it would be very easy for any European to keep arms for his followers who could not themselves keep them, and thus to have an armed mob always at his disposal for any purpose, lawful or unlawful.

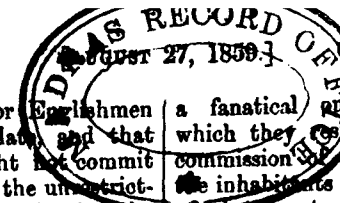
The Honorable Member for Bengal had said that particular parts of the Act had been abused, and he had read an extract from a Newspaper to show that such had been the case. But they were not told that the Act had been abused in respect of Europeans. Then on what grounds could they, with any degree of consistency, continue the law for Natives but not for Europeans? There were the learned Clerk of the Council and the learned Clerk Assistant, the one an English Barrister, the other a Native Barrister. How could the Council with propriety say that the law should not extend to the former, but that it should extend to the latter? He

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(Mr. Harington) was at a loss to discover any sufficient ground for making such a distinction. There were many other Native gentlemen who, if Europeans were exempted, ought also to be exempted. He must therefore repeat that, in his judgment, no exception in favor of certain classes could be made in the law without doing injustice to other classes. If, however, the Council would allow the Bill to be read a second time, the subject could be fully discussed in Committee. He certainly had no disposition to throw any obstacles in the way of such discussion. The objections taken by the Honorable Member for Bombay and the Honorable Member for Bengal were not against the principle of Act XXVIII of 1857, but to the manner in which that Act had been worked. No law however was ever passed which might not be abused, particularly in this country, but the abuse of a law furnished no ground in itself for its repeal, though it might render some additional provisions necessary and proper to prevent similar abuse for the future. The Code of Civil Procedure lately passed by the Council might be and no doubt would be abused; so also the new law of limitation; and the same might happen in respect of the new Penal Code and the new Code of Criminal Procedure when they should become law, but this would be no reason for repealing them. He (Mr. Harington) had not seen the paper from which the Honorable Member for Bengal had read an extract, but he could say that there was no disposition on the part of the Government to screen its Officers who might be guilty of acts such as those complained of, and it was only the other day that, on its coming to the notice of the Government, that some degree of violence had been used to compel a party to deliver up arms supposed to be in his possession, a most severe reproof was administered to all concerned.

He did not know that he could say anything more in support of the Bill, and, it only remained for him, to press his Motion for the second reading.

SIR JAMES OUTRAM said, no one could feel more grateful for the services rendered by his countrymen during the late troubles than he did. But he



could not assume even for Englishmen that they were immaculate, and that some among them might not commit gross excesses if allowed the unrestricted use of Arms. He thought that the Honorable and learned Judge opposite (Sir Charles Jackson) himself had lately had to try more than one European brought down from the Mofussil, who had grossly misused weapons in their hands. He therefore thought that it was but right to prevent the recurrence of such cases by investing Magistrates with the power of disarming, at their discretion, any such persons as they might consider unfit to be trusted with dangerous weapons. This Bill did not prevent every European from possessing Arms. It was made to meet the case of all classes of our subjects, and, as he understood, it would seldom be enforced against Europeans, and the Governor-General had the power of exempting any respectable and trustworthy person from its operation. The Bill was intended to be enforced only against those who might be considered dangerous characters.

SIR CHARLES JACKSON said, he would observe only, by way of explanation, that the cases referred to by the Honorable and gallant Member were cases of private injury which the ordinary law was sufficient to take cognizance of and repress. This, however, was a political question, and looking at it in that view, it was impossible to say that Europeans would use Arms against the Government.

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

MALABAR OUTRAGES.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form, in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to VIII were passed as they stood.

Section IX proposed to render liable to fine, not only the inhabitants of the Umshum to which the perpetrators of

a fanatical outrage belonged, or in which they resided at the time of the commission of the outrage, but also the inhabitants of the Umshum within which the outrage was committed.

MR. SCONCE said, he wished to state shortly the grounds of the objection which he had taken in Committee to two lines of this Section. The lines to which he referred were lines 18 and 19, and they were in the following terms:—"and also within the Umshum in which the outrage shall have been committed." That is, as he understood the Section, supposing the Umshum in which an outrage was committed to be at any distance from the Umshum to which the perpetrators belonged, or from which they had come, although the residents of the former Umshum might be perfect strangers to the perpetrators of the outrage, and quite ignorant of their intention to commit the outrage, nevertheless they would be liable to fine. He observed that this provision was stated to have been recommended by the Madras Government on the suggestion of Mr. Frere, the Sessions Judge of Tellichery. But he (Mr. Sconce) submitted that the provision was not in accordance with the intention of Mr. Frere's proposition. Mr. Frere said—

"I should also be disposed to recommend that the provisions of Section VII Act XXIII of 1854 should be extended to the Umshum or Umshums in which the crime may have been committed, as well as those in which the criminals may be resident, whenever it may be ascertained, from presumptive evidence or otherwise, that the crime was perpetrated with the knowledge and consent of the Mopla inhabitants of the neighborhood."

Unless, therefore, an amendment were made requiring proof equivalent to reasonable presumption that the residents were cognizant of the intended outrage, he (Mr. Sconce) should move the omission of the words referred to.

SIR JAMES OUTRAM said, he quite concurred with the Honorable Member for Bengal in objecting to the intrusion of the words in question. It appeared to him an exceedingly stringent measure to make a community answerable for a crime committed by strangers, and of which they might have had no cognizance. He thought that

what Mr. Frere intended was that such a measure should be had recourse to only when there was presumptive evidence of the complicity of the residents of the Umshum in which the outrage was committed. Moreover, the former Act was more stringent than the provisions in force in any other part of India. That Act had been in operation for about four years, during which period it had proved efficacious so far that there had been no further outrage.

MR. FORBES said, the Honorable and gallant General had remarked very truly, that since the present law had been in operation no fanatical outrage had been committed by the Moplas. But the district of Malabar had always been subject to periodical fits of fanatical outrages and to periodical fits of peace. There would be no outrages for years, and then one would suddenly break out. But because no outrage had been committed since Mr. Conolly's murder, it was yet too soon to argue that the Act had been completely successful, and that no change in its provisions was necessary. He must further remind the Committee that the words now objected to were no new provision of law; they were simply a slight extension of a provision of law which had already received the sanction and approval of the Council. In an earlier part of this very Section it was enacted that—

"It shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize, from all the Moplas within the Umshum or the several Umshums to which the perpetrator or perpetrators, or any one of such perpetrators of such outrages, shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the Umshum in which the outrage shall have been committed."

These words, now inserted in the Bill, and objected to by the Honorable Member for Bengal and by the Honorable and gallant gentleman, involved no new provision of law, but merely extended to the inhabitants of a village in which a fanatical outrage was committed, the same provisions of law as were already applicable to those residing in the village to which the perpetrator of the outrage might belong.

Sir James Outram

Then again the Honorable and gallant Member seemed to be under the impression that this provision was quite unknown in any civilized country, but he (Mr. Forbes) took leave to inform the gallant gentleman that, so far from that being the case, the principle embodied in this Section had been introduced in Ireland by the Peace Conservancy Act of 1856, and that the Executive Government of that country had power to quarter a Police Force in any village in which a violent crime had been committed, and to collect from the inhabitants of such village the sum required for the payment and expenses of the Force. In the papers laid before the Council with this Bill would be found evidence of this fact, and, with the leave of the Committee, he would read what would support the assertion he had now made. The extract was taken from the *Times* newspaper of the 2nd November 1857, and related to the murder of Mr. Ellis, then lately perpetrated—

"An extra constabulary Force of about twenty men, commanded by a vigilant Inspector, have been sent to the locality, and the charge, about £800 per annum, must be paid by the neighboring inhabitants, under the Peace Preservation Act of 1856. The provision of the Statute which imposes this heavy penalty is but a renewal of the law of Alfred, which made the hundred answerable for any felony committed within its circuit, unless hue and cry were made, and the felon detected and brought to justice; but the Peace Preservation Act gives the Lord Lieutenant power to allocate the charge so as to exempt the innocent and place it on the shoulders of those who have connived at the crime or sympathize with the criminal. In many instances the pressure of the tax has coerced the peasantry to give the murderer up to justice."

Such was at present the law in Ireland whenever a single murder was committed, but where, even in Ireland, had there been a case of a whole family of fifteen persons being murdered in one night with the consent of the community generally in the neighborhood where the murder was committed? Such cases had occurred in Malabar, and was it to be said that a law which might be passed to prevent individual murders in Ireland could not be tolerated for the prevention of wholesale butcheries in India?

Facts were not wanting in support of the words now objected to. In the case of the sanguinary outbreak which took place at Mattanoor in 1852, in which a substantial Brahmin landholder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the perfect knowledge and consent of the Mopla community in the neighborhood where the crime was perpetrated, and some of them were, in fact, convicted and punished as accessories. Besides this there was the case of Mr. Connolly, the Collector and Magistrate, and representative of Government in the Province, whose intended murder was certainly known to scores of people for some time before the crime was perpetrated.

The Madras Government, expressing their approval of the present Section, observed:—

"It is possible that the inhabitants of the Umshum in which the perpetrator of an outrage resides may not be aware of the intended crime. The plan may be, and not unfrequently is, formed by persons at a distance, and the individual selected as a fit agent may be called away secretly to the scene of outrage where he may be detained awaiting a suitable opportunity. That he is there for such a purpose can hardly fail to be known to the Mopla inhabitants of that Umshum. This was actually the case as respects the Moplas of Calicut, on the occasion of Mr. Connolly's murder."

He (Mr. Forbes) thought that sufficient ground had been shown for the stringency of the proposed clause to which objection had been taken. It must be remembered, moreover, that this provision was not obligatory on the authorities, but was to be enforced at the discretion of the Magistrate with the sanction of the Governor in Council. Considering therefore the desperate character of the Moplas, the nature of the outrages committed by them, the fact that there was now in force in Ireland a law precisely similar in principle to that now proposed, and that the clause objected to was not after all new, but was a provision already sanctioned by the Council, he did not think that this Council would refuse to give weight to the opinions of the Government of Madras and of the local Officers of the Province, on whom rested the respon-

sibility of maintaining the public peace, and who concurred in the necessity for the proposed provision.

On these grounds he should go to a division on the amendment proposed by the Honorable Member for Bengal.

MR. SCONCE'S Motion was then put and negatived, and the Section was passed as it stood.

Section X provided a penalty for Moplas refusing to deliver up an offender.

MR. SCONCE said, this Section provided a penalty to be inflicted under three different sets of convictions. It empowered the Magistrate to call upon three classes to deliver up the perpetrator of an outrage, and, on their failure to do so, to levy a fine from them. The first of these classes were the residents of the Umshum to which the perpetrator belonged. A man might belong to one Umshum, and yet have fled to another. He might commit a murder fifty miles to the north, and flee to an Umshum fifty miles to the south, and it would be hard to compel the inhabitants of an Umshum at a distance of a hundred miles to deliver him up.

The next class were the inhabitants of the Umshum wherein the perpetrator resided at the time of the commission of the outrage, and necessarily objections similar to those he had just expressed applied to this second class of cases. Altogether it appeared to him beyond every just principle to propose a law which should impose an obligation of that character.

The third class were the inhabitants of the Umshum where the perpetrator might be found after the perpetration of an outrage, and to this he saw no objection, if it be so expressed, as indeed the word "found" seemed to imply, that proof was adduced to show that a person charged with committing an outrage had fled to the Umshum of which the inhabitants were required to produce him.

He would further observe that this law was introduced at the instance of the Acting Magistrate of Malabar, who said that—

"The Magistrate should be empowered to call on the principal Mopla inhabitants of the parish to which the fanatics belong, as well as of that part of the country in which they are found, to seize and deliver them up, dead or alive, to him: in the event of their failing to

do so, and on proof of their having evinced sympathy with fanatics, that the provisions of Act XXIII of 1854 shall be applicable to them."

Unless, therefore, it could be shown that the perpetrator of an outrage had, after the commission of an outrage, fled to an Umshum the inhabitants of which were cognizant of the same, it would scarcely be proper to impose the obligation upon them. For these reasons he begged to move the omission of this Section.

SIR JAMES OUTRAM said, he begged to support the Honorable Member's Motion. The Section under consideration was one which it was proposed to add to the former law, and as that law had, after a practical operation for four years, been found quite sufficient for the purpose for which it was intended, he saw no necessity for any additional provision of greater stringency.

MR. HARRINGTON said, he thought that the Honorable Member for Bengal and the Honorable and gallant General (Sir James Outram) had treated this Section as if the rule contained in it were imperative and left the Magistrate no option, whereas it was permissive only. He could not suppose that the rule would be enforced in every case, but only in those cases in which the Magistrate might consider its application just and proper. The whole Bill was an exceptional one. No doubt it was a great misfortune to a Mopla, who was a good man, to belong to a class for which a law of this kind was found necessary, but so long as the necessity existed, he (Mr. Harrington) could not see any objection to the inclusion in the law of the Section in question, the terms of it, as he had said, being permissive not imperative. He should therefore vote for the retention of the Section.

MR. FORBES said, he would not trouble the Council with a repetition of what he had already said on the proposed amendment in Section IX; the arguments there used were equally applicable to the question now before the Committee, but he did not intend to reiterate them. The Honorable Member for Bengal had said that, if a man committed a murder fifty miles north of his place of abode, and fled to a village fifty miles south, it would be very hard

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to punish the inhabitants of an Umshum at a distance of a hundred miles, for failure to deliver him up. But, as the Honorable Member on his left (Mr. Harrington) had just remarked, the provision was not obligatory but permissive. Nor were they to suppose that the Magistrate would desire to enforce the provision, or that the Government would sanction his doing so in a case in which its enforcement would be obviously and manifestly unjust. Further, the Committee would notice that the wording of the Section was not such as would enable the Magistrate to assume that an offender had taken refuge in any village, and on mere suspicion to assess a fine upon the inhabitants for not delivering up a man who, after all, might not be there. The words in the Section were, "or wherever any such perpetrator may be found," and the actual fact of the presence of the offender in a village would be a necessary preliminary to the enforcement of this part of the law.

With regard to the information possessed by the Moplas generally of the acts of their countrymen, he would read an extract from the Report of the Commissioner who was sent to the Province to investigate their fanatical outbreaks:—

"These outbreaks, saving where a solitary individual may break out, as in the early cases, are brought about by concert, and are not executed until some time has passed, during which the plan is being matured. The mind has to fortify itself for execution of a tragedy which involves the agent as well as the victim in destruction. The fanatic doctrine needed for this has to be imbibed and to work. Comrades have to be gained; the priest consulted; and the consent of parents obtained. When the resolution to die has been taken, some further time is passed in devotional exercise, and the affairs of this life should be settled; debts should be paid off, or forgiveness for them obtained, and the wives should be put away, and their dowries in like manner adjusted. The very demeanor when a man has thus doomed himself to leave the world must undergo a change, and it is prominently marked in the instances of these fanatics, in their hardening themselves against any show of affection for their families. All these characteristics have been brought to light more or less in the course of the outbreaks, or threats of outbreaks, and some are also dwelt upon in the commemorative songs to which I have before alluded. The consent of parents is there described as obtained at times with difficulty, and as finally given under the consideration

that the merit of the martyrdom will extend also to them by virtue of such consent. It is impossible hence, but that the priest, the neighbors, and the families of the fanatics, must have that knowledge or inkling of their design which would serve to expose it. In every case, therefore, where it may appear that an outbreak has been pre-meditated, these parties should be punished, if they have not given timely intimation thereof, and can adduce nothing to purge themselves from the charge of suppressing information arising presumptively and naturally against them. The influential men of the caste in the vicinity may also be often justly held to the like liability. I would however give all such the opportunity of absolving themselves by any good service they may be able to execute by bringing in or putting down fanatics after they may have broken out. The influence of these parties, exerted on the fanatics under these circumstances of danger to themselves, might possibly in some cases be of effect, while the knowledge that all associated with them would be liable to ruin by their act would, no doubt, operate to check parties from engaging in these outbreaks."

When therefore it appeared that these terrible crimes were perpetrated with such publicity as to require the consent of parents to be obtained, and the blessing of a priesthood to be sought, when debts were to be paid or the absolution of creditors obtained, when wives were publicly dowered, and songs even were sung in celebration of the projected enterprise, it surely was not assuming too much to believe that the Mopla community generally in any village to which the fanatic belonged, or in which he might take refuge, were cognizant of his mind, and to insist on their delivering him up, or suffering the penalty of their complicity. He should feel it his duty to propose the present amendment.

MR. SCONCE'S Motion being put, the Council divided—

Ayes 3.
Mr. Sconce.
Sir James Outram.
The Chairman.

Noes 4.
Sir Charles Jackson.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harrington.

So the Motion was negatived and the Section was passed as it stood. Sections XI and XII were passed as they stood.

Section XIII was passed after an amendment, limiting the duration of the Act till the end of the year 1869.

The Preamble and Title were passed as they stood.

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

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

Section 1 of the proposed Jury Rules prescribed the qualifications of a Juror.

MR. HARRINGTON proposed to reduce the maximum age of a Juror from sixty to fifty years.

MR. LEGEYT moved that the maximum be reduced to fifty-five years.

MR. HARRINGTON'S Motion was negatived, and Mr. LeGeyt's was carried.

MR. HARRINGTON moved to reduce the minimum age from twenty-five to twenty years.

The Council divided—

Ayes 2.
Mr. Harrington.
Sir James Outram.

Noes 5.
Mr. Sconce.
Sir Charles Jackson.
Mr. Forbes.
Mr. LeGeyt.
The Chairman.

So the Motion was negatived, and the Section as previously amended then passed.

Section 2, which prescribed the disqualifications of a Juror, was passed after verbal amendments.

Section 3 was the Exemption Clause.

MR. HARRINGTON proposed an amendment to the effect that all (and, not as the Section already provided, certain specified) Officers of Government should be exempted from the liability to serve on Juries.

After some discussion, the Motion was by leave withdrawn.

MR. FORBES moved to substitute "All persons in the Military Service" for "Officers in the Military Service."

The Council divided—

Ayes 5.
Mr. Sconce.
Sir Charles Jackson.
Mr. Forbes.
Mr. Harrington.
Sir James Outram.

Noes 2.
Mr. LeGeyt.
The Chairman.

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

Section 4, which related to the preparation of lists of Jurors, was passed after amendments.

Sections 5 and 6, relating to the publication and revision of Jury Lists, were passed as they stood.

Section 7 provided that "the Court of Session shall, *three days at the least before the time fixed for the holding of Sessions,*" summon Jurors, &c.

MR. HARRINGTON moved the omission of the words in italics. He said that, if the Section were passed as it now stood, and if the Council resolved that Sessions trials should be held only on particular days, he feared that great difficulties would arise, and that it would be impossible for the present number of Sessions Courts to dispose of the work coming before them within a reasonable period. Under the present system cases committed to the Sessions were disposed of as soon as they were ready for hearing, which was a great convenience to the parties and witnesses as well as to the Judges, but if trials were to be held only at stated periods, he apprehended that there would often be a great accumulation of cases, which would lead to much delay in their determination and the whole work of the Judge's Court would be thrown back in consequence. The present system worked well, and he was strongly in favor of its continuance.

MR. LEGEYT said, unless a rule were adopted such as that which the Honorable Member proposed to omit, there would be an end altogether to the Jury system. His experience was certainly in favor of a fixed term for holding Sessions. There was no necessity whatever for subjecting Jurors to the inconvenience of attending unnecessarily until a case was ready for trial; whereas he saw no hardship in making a prisoner wait for a day or two. On the contrary, he was not one of those who would take a prisoner by surprise, but he would let him have time to consult his Counsel and prepare for his defence. On the whole, therefore, he thought that fixed Sessions would be a very great improvement upon the present system.

MR. FORBES said, so far from joining the Honorable Member for Bombay

in the opinion that fixed Sessions would be any improvement upon the present system, even the amendment proposed by the Honorable Member on his left (Mr. Harrington) would hardly make the Section applicable to the Southern Presidency of India. Immediately that a case was closed, the Magistrate was required to transmit it to the Sessions Court, without any previous intimation to the Court that the case was ready for committal, or any instruction from the Court to commit it. It would therefore be impossible for the Court in the Madras Presidency to give three days' notice to the Jurors, as it would not be known that a case had been committed for trial until the parties arrived at the Court, and it would be extremely inconvenient, and in many ways objectionable, that the trial should be postponed. The great size of many of the Provinces in Madras must also be considered. It might be very easy for the Judge in a Bengal District of 2,000 or 3,000 square miles to hold communication with a Magistrate before a case was committed, but the question assumed another aspect when, as in Madras, some Districts contained 13,000 square miles and had from fifteen to twenty committing Officers scattered over them, at distances from the Court varying from ten to ninety miles. The Honorable Member for Bombay seemed to think it hard that Jurors should have to wait. But he (Mr. Forbes) apprehended that it would be very hard indeed to make witnesses wait, and he would suggest the substitution of the words "wherever necessary" for the words proposed to be omitted.

After some further discussion, Mr. Harrington's Motion was negatived, and the further consideration of the Bill postponed on the Motion of Sir James Outram.

STANDING ORDERS.

MR. HARRINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a Report on the practical working of the Standing Rules and Orders of the Legislative Council.

ACQUISITION OF LANDS FOR PUBLIC PURPOSES.

MR. SCONCE moved that the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and the Mover.

Agreed to.

ARMS AND AMMUNITION.

MR. HARRINGTON moved that the Bill "to make perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)" be referred to a Select Committee consisting of Mr. LeGeyt, Sir Charles Jackson, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

CUSTOMS DUTIES (BOMBAY).

MR. LEGEYT gave notice that he would, at the next Meeting of the Council, move for a suspension of the Standing Orders, in order to carry the Bill (as consolidated by the Select Committee) "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" through its remaining stages.

CONSERVANCY (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE VICE-PRESIDENT moved that Sir Charles Jackson and Mr. Sconce be added to the Select Committee on the Bill "to amend Act XIV of 1856."

Agreed to.

The Council adjourned at $\frac{1}{4}$ past 4 o'clock on the Motion of Sir James Outram, to Tuesday, the 30th Instant, at 11 o'clock.

Tuesday, August 30, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram,	Hon. Sir C. R. M. Jackson,
Hon. H. B. Harrington,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. Forbes, Esq.,	

TRADES AND PROFESSIONS.

The adjourned Order of the Day for the second reading of the Bill "for the licensing of Trades and Professions in India" being read—

MR. HARRINGTON said, the adjournment of the Debate on this Bill, at the last meeting of the Council, arose out of two suggestions which fell from the Chair. The first of those suggestions was that he should withdraw the Bill, and, if he deemed it right, bring in a new Bill, which should be free from what were considered to be the imperfections of the present Bill. The second suggestion was that, if he objected to withdraw the Bill, it should be read a second time by consent, and then submitted before publication to a Select Committee, with instructions to consider whether certain alterations should not be made in it. What those instructions were to be was not said. To the first suggestion he had no hesitation in at once declining to accede. Violent though the attacks made upon the Bill by the Honorable and learned Vice-President and the Honorable Members opposite (Sir Charles Jackson and the Honorable Member for Bengal) had been, not a single reason, to his mind, had fallen from them to render the adoption of the first course, either proper, necessary, or expedient. As regarded the second suggestion, he had some difficulty in dealing with it, seeing that the purpose for which the Bill was to be referred to a Select Committee was altogether undefined. The treatment which the Bill had met with at the

hands of the Honorable and learned Vice-President afforded no ground to believe that the instructions to the Select Committee, if they emanated from the same source, would be conceived in a kind or friendly spirit to the Bill, as now framed, and there was every reason for the anticipation that, whatever the Honorable and learned Vice-President proposed, would receive the support of the other two Honorable Members to whom he had alluded, so that had he, in ignorance of what was intended to be done, acceded to the second suggestion of the Honorable and learned Vice-President, he might have had his Bill returned to him "transmogrified," to use a word which he remembered to have seen in an old play, though he did not believe it was to be found in any modern Dictionary, from a Bill for licensing Trades and Professions into an income-tax, or a poll-tax, or a tax on everybody and everything. He did not choose to run the risk of this. He was quite willing to let the Motion for the second reading of the Bill go to the vote, and to abide by the decision of the Council on that Motion; but he was not willing then, any more than he was willing now, to incur the hazard which he had just mentioned. Of course, had the Motion before the Council been put to the vote, it was open to the Honorable Members opposite to throw out the Bill, even though by so doing they might, to some extent, if he might so express himself, stop the supplies, which was one of the functions of the House of Commons which Honorable Members opposite seemed disposed to assume. He would, however, suggest for the consideration of those Honorable Members whether, if they were really prepared to insist upon all that the Honorable and learned Judge opposite (Sir Charles Jackson) mentioned in the speech delivered by him on Saturday last, (assuming that speech to have been reported with tolerable accuracy), and to require what the House of Commons required under somewhat similar circumstances, and which, it was not necessary for him to say, amounted to a direct control over the public expenditure and other matters of detail, even as to the number of men to be employed in the Army and Navy, they should go a lit-

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tle farther and take upon themselves the responsibilities of the House of Commons, as well as its powers of control over the public purse. But he would remind Honorable Members that this was simply impossible under the existing constitution of this Council. Whatever Honorable Members might consider to be their duty to the public, when financial measures were proposed for their consideration, he could have no hesitation in telling them that it was the Governor-General of India in Council in his Executive capacity, and not the Governor-General of India in Council in his Legislative capacity, who was responsible for the good Government of India; who was answerable for the right administration of the public finances; and that this responsibility could neither be arrogated by this Legislature to itself, nor could this Council relieve the Governor-General of India in Council in his Executive capacity from it. If functions, such as it appeared to him they seemed to be on the verge of assuming, were really vested in this Council, he could not but apprehend the greatest amount of public danger from the exercise of them. At any moment the Government might be brought to a dead lock by a vote of this Council in respect to a financial matter, particularly when, as at present, three of what might be considered its own Members were absent, and it seemed to him that the consequences which would ensue, even so far as the Honorable Members themselves were concerned, would be poorly compensated by any amount of popularity or public applause, as the reward of that spirit of independence which was at last declared to have exhibited itself within the walls of this Chamber.

But this was a digression. When he broke away into these remarks, he was explaining the difficulty in which he had found himself placed by the second suggestion which fell from the Chair, and he thought that it was no unreasonable request which he had made, that some time should be allowed him for consideration before he intimated to the Council what course he intended to pursue. He had since had a conversation with the Honorable and learned Vice-President, and he now found that, with exception to some mere matters of

detail calculated to render the enforcement of the law more easy, and the law itself more effectual, to which the Government could not of course make any objection, and to the inclusion in the Bill of the Officers of Government, on which point some difference of opinion existed between himself and the Honorable and learned Vice-President, the instructions which the Honorable and learned Vice-President had intended to propose should be given to the Select Committee, embraced only two alterations in the Bill. One of these he (Mr. Harington) had himself asked the Council to allow to be introduced before the Bill was read a second time. He alluded to the addition of three higher classes in Section VIII of the Bill: and the other, which had reference to the rating of parties, or to the manner in which this should be done, he had stated his willingness to introduce when the Bill was in Committee, should such appear to be the general wish of the Council. So that, after all, he could have safely adopted the second suggestion of the Honorable and learned Vice-President, and by so doing, have saved the Council the necessity of an adjournment and the loss of time consequent thereon, which he much regretted.

He would now proceed to explain the course which he was willing to pursue, in order to meet, as far as he could do so with propriety, the wishes of the Council, or rather of the Honorable and learned Vice-President, and the Honorable Members opposite, who, while they stated their intention to vote for the second reading, spoke against the Bill, and intimated their intention of doing their best to prevent its passing into law, unless greatly modified in Committee.

He was willing that the Bill should be read a second time in its present form, on the understanding that it should at once be referred to a Committee of the whole Council, to whom he would propose certain alterations which the Committee might adopt, or reject, as they pleased. He was willing that the point regarding the inclusion of Government Officers in the Bill, on which point, as he had said, he differed from the Honorable and learned Vice-President, should be discussed, and should be decided by the vote of the

Council, on the understanding that, whatever was the result, the Bill should still go on; but he was not willing that the Committee should have power to add to the Bill any subjects of taxation other than what he had just mentioned. The particular subjects which he had in his mind he would mention presently; and rather than they should be added, he would abandon the Bill or prefer that it should be thrown out on the motion for the second reading, whatever might be the consequences. But he would first explain the alterations which he was willing should be made in the Bill before it was published for general information. These perhaps he had better read, commenting upon them as he proceeded.

The first alteration related merely to a law of the Madras Presidency, which, by a mistake, had been omitted to be included in the repeal Section, and to the inclusion of which now in that Section no objection, he thought, could be made. The law to which he referred was Regulation IV. 1818, which prescribed rules for the assessment and collection of the Veesabuddy or tax upon the profits of trade in the provinces known by the appellation of the Ceded Districts, or the Zillahs of Bellary and Cuddapah.

The next alteration was in Section VIII, or rather in that part of the Section which contained the Schedule of sums payable on licenses. The first class it was proposed to assess at 5,000 Rupees, the maximum amount mentioned by him on Saturday last; the second at 4,500 Rupees; the third at 4,000 Rupees; the fourth at 3,500 Rupees; the fifth at 3,000 Rupees; the sixth at 2,500 Rupees; the seventh at 2,000 Rupees; the eighth at 1,500 Rupees; and so on, according to the Bill as originally introduced; the number of classes being increased from ten to seventeen. Upon the alterations proposed in this Section, he wished to remark that, although it had been said that, by proposing the addition of higher classes, compared with the Bill as published, he had altered the character of the Bill, he believed he should be guilty of no breach of confidence in stating that the Honorable and learned Vice-President had suggested this alteration. He (Mr. Harington) might have been

wrong in adopting the suggestion. He might have acted unwisely in taking the Honorable and learned Vice-President's advice, though those who knew the Honorable and learned Member as well as he did, and who had been as closely associated with him as he had been in official matters, would, he thought, agree with him that, in acting upon the Honorable and learned Member's suggestion, he was not likely to have erred very greatly.

The Honorable and learned Vice-President objected strongly in his speech on Saturday last to the distinction made in the Schedule of the Bill between Bankers and Traders, and he believed the Honorable and learned Vice-President said that, if Messrs. Wilson and Co.'s profits equalled those of the Bengal or Agra Bank, or of any other banking institution, he could not see why they should not be assessed equally with them. Neither could he (Mr. Harington) see why any difference should be made, and the distinction was accordingly proposed to be done away with. Whether Messrs. Wilson and Co. would concur with the Honorable and learned Vice-President, or whether the Calcutta tradesmen generally would approve of the alteration which had been made on the Honorable and learned Vice-President's suggestion, might admit of question. The Government would undoubtedly benefit greatly by it, and as for the rest, they might perhaps say, "save me from my friends."

The next alteration was in Section IX. He proposed after the word "person" in line 11, to insert the following words:—

"And the amount of the annual net profits or gains accruing therefrom; and in such manner that the sum to be paid for the license shall approximate as nearly as may be to three per cent. on such annual profits or gains."

In alluding to this Section on Saturday last, he observed that the provision which it contained might be considered too vague, and that it might be objected to the Section that, if so large a discretion were left to the Taxing or Licensing Officer, it might lead to considerable diversity of practice, and to a greater degree of inequality, if not in the same district, still in different districts, than he had contemplated, and, although he had endeavored to prevent this by giving

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the Governor-General in Council power, in a later Section of the Bill, to lay down rules for the guidance of the local Officers in all matters connected with the enforcement of the law, he stated that, if the Council at large thought that, whatever rate or rule of assessment was to be followed, should be made to appear on the face of the Bill, he was quite willing, when the Bill got into Committee, that a Clause should be added for this purpose. In proposing the present amendment, therefore, it was possible that he was only anticipating matters. For his own part he must say that he preferred the Section as it stood. In so far as Native traders were concerned, he thought it would be better to leave the Collectors to make the assessment with the assistance of Chowdries of trades, or of a Panchayet, and he believed that the Section, as framed, would work well. Although it had been stated that there was no principle in the Section, it was only the other day that they passed a Bill, in which a precisely similar power to that proposed to be conferred by the Section on the Taxing Officer was given to Magistrates, without any objection being taken to it. He alluded to what was called the Moplah Bill. Under that Bill the Magistrate was left to assess a fine which he might impose upon a body of men, according to what appeared to him to be the circumstances of the several parties composing the body. This showed that he was proposing nothing new.

After Section IX he would move the introduction of the following new Section, which was rendered necessary by the addition proposed to be made to that Section:—

"Any person who shall satisfy the Collector or other Officer authorized as aforesaid that the aggregate annual amount of the net profits or gains of the trade, business, or profession carried on by such person (estimated according to the provisions of the last preceding Section), is less than a sum which, so estimated, would render him liable to assessment under Class 17 of Section VIII, he shall be exempted from taking out a license under this Act."

Section X he proposed to omit, as it was not thought right to make any distinction between Bankers and Traders.

He proposed to introduce the following new Sections after Section XI. For these Sections he was indebted to the Honorable and learned Vice-President. Their object, it was scarcely necessary for him to say, was to enable the Taxing or Licensing Officer to arrive at a proper determination of the class under which every person required to take out a license should be assessed.

"The Collector or other Officer authorized as aforesaid, may summon any person whom he shall think able to give evidence for the purpose of enabling him to determine under which of the classes mentioned in Section VIII of this Act any person should be assessed, and may examine such person as to any such matter. The Collector or other Officer, as aforesaid, may also require the person summoned to produce any books or documents in his possession or power relating to the trade, or business, or profession of any person supposed to be liable to assessment, or to the amount of the annual profits or gains accruing therefrom. If the person summoned shall refuse to answer any lawful question of the Collector or other Officer as aforesaid, or shall knowingly give any incorrect answer, or shall refuse to produce any such books or documents as aforesaid he shall be liable to a penalty not exceeding five hundred Rupees, or if he be a person liable to be assessed, the Collector or other Officer as aforesaid may assess him under any of the classes mentioned in Section VIII of this Act, and no appeal shall lie from such assessment, on the ground that such person had been assessed under too high a class with reference to the provisions of Section IX of this Act.

"In order to enable the Collector or other Officer authorized as aforesaid to determine under what classes persons requiring to be licensed shall be assessed, and what sums shall be paid in respect of licenses granted under this Act, he may cause to be sent to any person supposed to be liable to the payment of the tax hereby imposed a Schedule to be filled up with such information respecting the trade, business, or profession carried on by such person, and the amount of the annual net profits or gains accruing therefrom, the number and names of persons holding any office of employment under him, and their salaries, fees, and wages, as the Collector or other Officer authorized as aforesaid may judge necessary for the purpose of such assessment. The Schedule shall be filled up in writing, and dated, and shall contain a declaration signed by such person that, to the best of his belief, the Schedule is a true return of the matters therein contained. Such return shall be delivered to the office of the Collector or other Officer as aforesaid, by every person to whom it is sent, whether or not liable to the payment of such tax; and who ever refuses, neglects, or omits duly to fill up and return such Schedule within twenty-

one days from the receipt thereof, or knowingly gives therein any incorrect or false return, shall be liable to a penalty not exceeding five hundred Rupees."

He proposed after Section XVIII to introduce the following new Section, which had also been suggested by the Honorable and learned Vice-President, namely:—

"No person required by this Act to take out a license shall be allowed to recover in any judicial suit or proceeding any money, debt or charge claimed by him in respect of the trade, business, or profession carried on by him, unless such person shall prove to the satisfaction of the Judge or Officer presiding at the trial, that at the time when the cause of action accrued he had duly obtained a license in conformity with this Act."

The last alteration which he proposed to make was in Section XX. To this Section he wished to add the following words. They would, of course, apply only to persons holding situations in private establishments:—

"And shall be assessed (with reference to the provisions of Section IX of this Act) upon an estimate of the annual salary, fees, wages, perquisites, and profits of such offices or employments. Provided that, if any person holding any such office or employment shall satisfy the Collector or other Officer authorized as aforesaid, that the salary, fees, wages, perquisites, and profits of his office or employment do not exceed one hundred Rupees per annum, such person shall not be required to take out a license under this Act."

These were the alterations which he proposed to move after the Bill was read a second time, and before it was published and referred to a Select Committee. As he had already said, it rested with the Council to adopt them or not, as it deemed proper.

He now came to the classes or subjects of taxation which he thought should not be included in the Bill, and he would prefer to abandon the Bill altogether rather than give his consent to their being so included. These were Houses, Land, and the Government Securities.

With reference to the comments which had been made by the Honorable and learned Judge opposite (Sir Charles Jackson) on the Statement of objects and reasons circulated with the Bill,

he must remark that he thought the Honorable and learned Judge would have behaved more generously, if, instead of commenting upon a Statement which was put in merely to comply with the forms of the Council, he had taken the speech which he (Mr. Harington) delivered in moving the first reading of the Bill, and which, although possessing no merit as a composition, contained, he submitted, as full information as could be desired, and had made his remarks upon that. The Honorable and learned Judge had been long enough in the Council to know that the Statements of objects and reasons circulated with Bills were generally very short. On the very day on which the Honorable and learned Judge commented in so sneering a manner upon the Statements of objects and reasons circulated with the present Bill, he (Mr. Harington) had occasion to refer to the Statement of objects and reasons of a Bill introduced by the Honorable and learned Vice-President, in which all that was said was—"The objects of this Bill are stated in the Preamble." The Honorable and learned Vice-President, in moving the first reading of the Bill, entered into a full exposition of his reasons for introducing it, and in the debate which ensued, Honorable Members referred to what was said by the Honorable and learned Vice-President on that occasion, not to the Statement of objects and reasons. What was there, he would ask, to have prevented him from copying into the Statement of objects and reasons circulated with the present Bill the whole of what he had said when he introduced the Bill to the Council; but as he knew that Honorable Members had been furnished with a copy of the remarks made by him on that occasion, he did not wish to impose upon them the trouble of reading a long Statement of objects and reasons, and he therefore purposely made that Statement as brief as possible.

In addition to the subjects of taxation embraced in the present Bill, he stated in his introductory remarks that the Government had had under consideration other modes of increasing the public revenue. He mentioned that in Bengal the Governor-General in Council had already the power, without any new law, to raise the duty on Salt from Rupees 2-8 per maund, the amount now

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paid, to Rupees 3-4 per maund, and that a reference had been made to the Government of Bengal on the subject. He referred to the Bills brought in by the Honorable Members for Madras and Bombay, the effect of which would, he hoped, be to increase the Revenue derived from Salt in those Presidencies, or at least in Bombay. He stated that in the Punjab steps had been taken with a view to increase the Salt Revenue of that territory. He stated that in the North-Western Provinces a duty of 2 Rupees per maund was levied on all Salt crossing the Frontier, and a further duty of 8 annas per maund on any Salt passing Allahabad; and that it had been proposed to levy a uniform duty of Rupees 2-8 per maund on all Salt crossing the Frontier, the extra duty now taken at Allahabad being abolished. He also stated that some Officers had proposed to increase the duty to 3 Rupees per maund all round, and he mentioned that the question of increasing the duty on Salt in the North-Western Provinces would have to be considered in connection with the newly acquired Province of Oude, which produced a good deal of Salt, and that reports had been called for from the Lieutenant-Governor and the Chief Commissioner in Oude, on the receipt of which it would be decided whether any alteration should be made in the rates of duty now charged on Salt crossing the North-Western Frontier. Then he alluded to the Bill relating to Stamps, which was introduced by the Honorable Member for Bengal, and in respect of which he stated that it was impossible to say what would be the effect of that measure on the public Revenue, but that it was expected that the sale of Stamps other than judicial would produce a large additional Revenue, though in judicial Stamps there would probably be a falling off of Revenue, if certain measures then under the consideration of the Council were adopted. He proceeded to notice certain taxes which it had been proposed to introduce, namely, a tax on tobacco grown in the country, a tax on houses, an income tax, and a succession duty. With regard to all these he had mentioned that the Government hesitated, from political considerations, to introduce them. He had referred parti-

cularly to the Land Revenue in Bengal, and stated that a doubt had been raised whether the holders of permanently settled estates could legally be subjected to further taxation. That was a question on which he had offered no opinion. As regarded the taxes above mentioned, he stated that the Government deemed it advisable that there should be further enquiry and a more full consideration before a decision was come to either one way or the other. Although the whole of these taxes might at some future time be imposed, so far as he was aware the Government had no intention of having recourse to any of them at present. He did not think that the Government ought to give any pledge in the matter; he considered that it would be most impolitic for the Government to bind itself not pre-emptively, particularly in the present state of Europe and of this country. Who could say what a day might bring forth, or what might happen on the morrow?

Government was making every effort to reduce the public expenditure. A deficit of thirteen crores of Rupees had been reduced to seven crores, and a further reduction of forty lakhs had been effected during the current financial year. There was no objection to placing before the Council every information which might be really useful to it consistently with the object and purpose for which the Council was constituted. But the Government itself was not in a position at present to form an estimate as to what would be the future expenditure in various Departments. Take for instance the Native Army of Bengal. The question of the re-organization of that Army, as the Council was aware, was before the Home Authorities, and until it was decided by them how many European and how many Native Regiments were to be kept up, it was impossible for the Government to know what would be the future expenditure of India under this head. Not very long ago they were told that twelve Battalions of Royal Artillery were to be despatched to India, the pay and other expenses of which would have had to be provided for in this country; then they were told that only six Battalions were to be sent, and now they were informed that none were to come. At present, therefore, much uncertainty prevailed.

He had mentioned in his introductory remarks, that a Commission was sitting at Bombay for the purpose of ascertaining what reductions were practicable in the Military Department, and that the Commission, after completing its enquiries at Bombay would proceed first to Madras and afterwards to Calcutta. It was impossible to say what reductions might be proposed by that Commission, or to what extent the Government might be prepared to adopt its recommendations. In fact it was almost impossible at this moment to form any idea what the expenditure of India would be this day twelvemonth. He thought that all who heard him would agree, that to whatever extent it might be found practicable to reduce the present expenditure, it was quite impossible to hope for the reduction of the large existing deficit from the existing revenues of the country, and there seemed therefore no alternative but to have recourse to further taxation.

He hoped he had made himself clear as to the alterations which he was willing should be made in the Bill before it was published for general information, and as to the subjects of taxation, to the inclusion of which in the Bill he could not consent. It would be open to any Honorable Member who thought proper, to move that Government Servants should be included, though if such Motion was made, it was his (Mr. Harington's) intention, for reasons which he had already given, to vote against it.

SIR CHARLES JACKSON said, he had no doubt that the amendments proposed by the Honorable Member who had just sat down were great improvements upon the Bill as originally introduced, and would greatly assist in rendering it a working measure. Indeed, the introduction of some such Clauses appeared to him to be absolutely necessary, in order to allow the Bill to work at all. But, whatever the Bill might be called, whether entitled a Licensing Bill, or anything else, it was, in fact, nothing more or less than an income tax of three per cent. on certain trades and professions. The great objections to the Bill in its present state were grounded on the omission of those classes of income from the operation of the Bill, to which the Honorable Member had himself

adverted. These were the incomes derived from land, interest derived from Government Securities, statutable salaries, and all incomes derived from the rents of houses. It also omitted, but that was a question left open for the consideration of the Council, all Civil Servants and all Military Officers. Now he wished to guard himself against its being said hereafter, if he allowed the Bill to go to a Select Committee, that he approved of the exemption of any of these classes. His objection was not to an income tax, but to an Act which affected certain classes of income, and not others. With respect to land, it seemed that the Zemindars who held lands under the Permanent Settlement thought they were entitled, under the terms of that settlement, to hold their zemindaries free from all taxation for ever. It was true that this land was vested in them and their heirs for ever at a certain fixed rental which could never be altered, but it could never have been the intention to free them from sharing in the burden of a general personal tax applicable to all classes, although no specific tax on the land or on the landowners as a particular class, could legally or morally ever be imposed. He would refer to the land tax in England. This was a long time ago redeemed by an Act of Parliament, and a pledge was then given to the owners that they would be liable to no further tax on their land. But did that afterwards exempt them from a general tax? Since that time the income tax had been imposed, and they had never heard of any breach of faith. On the same principle, he saw no reason why landholders in this country could not be taxed, notwithstanding the decennial settlement.

Then, as to lakhiraj or rent-free tenures, he did not see on what principle they had been omitted. It was quite true that they held their lands to them and their heirs for ever free from payment of income to Government; but that did not mean they should be exempt from all taxation, but only that no tax should be henceforth imposed upon the land itself specifically.

Then, as to Government Securities, he certainly expected to have seen some Clause inserted in the Bill taxing all Government Securities. The taxation of this class was most easily levied,

Sir, Charles Jackson

and the class included many natives who were mere drones, and who were enjoying large and princely incomes, without contributing one farthing toward the exigencies of the country. Why, and on what principle were these and all other holders of Government Securities to be excluded from the operation of the Bill?

Then there were the men who derived large profits from the rents of houses, and he did not see why they should escape. It was quite preposterous to contend that such a measure would operate as a house tax, and he was at a loss to imagine on what ground this class was excluded, who amassed large fortunes, and contributed little or nothing towards the pressure which was now being felt.

With regard to statutable salaries, it was that the Government had been advised by their Law Officers, that the salaries of Judges, Bishops, Members of Council, Lieutenant-Governors, Governors, and Governors-General, could not be taxed, because their salaries were fixed by Act of Parliament. But he apprehended that, if such an opinion was given to Government, it must have been with reference to a Bill for licensing trades and professions. There could be no doubt that a Bishop or a Judge could not be expected to obtain a license for the exercise of his calling. Suppose the learned Chief Justice should omit to take out a license, would the Collector be justified in stopping his ingress into the Court, and telling him that he could not carry on his occupation as Chief Justice, although possessed of Her Majesty's Patent, and appointed under an Act of Parliament? He (Sir Charles Jackson) imagined that the Chief Justice would indulge in the pleasurable excitement of committing the Collector for contempt of Court. But if this licensing apparatus were abandoned, and the Bill made a regular income tax, they would be able to remedy this, and get at the salary of the Chief Justice and all other statutable salaries.

The other two classes which the Honorable Member (Mr. Harington) was quite willing to leave to the decision of the Council, were the Civil and Military Services. With respect to the former, he thought it absolutely necessary that they should be included in this Bill, and he certainly did not see any

good ground existing for the exclusion of all Military Officers, of whatever grade, although he thought the Regimental Officers of the grade of Captain, and under that rank, might be excluded from the operation of the Bill.

With regard to the exemption of the first four classes, then, namely, the landholders, holders of Government Securities, proprietors of houses, and statutable salaries, he understood that the Honorable Mover had put it distinctly on the grounds of political considerations—that for certain political reasons, the Executive Government did not think it expedient to tax them. He was not prepared to say that this Council was so constituted that the consideration of such questions of political expediency did come within their province. He for one was not prepared to take upon himself the responsibility of insisting upon that which the Executive Government considered inexpedient for political reasons. He must be content, therefore, to leave the responsibility of this most exceptional measure with the Government. But he objected to the length to which the Honorable Member had carried this part of the case, by saying that he and other Honorable Members, in discussing such matters, were assuming and arrogating to themselves the functions which belonged only to the House of Commons, and that they considered they had a right to stop the supplies required by Government. He would ask the Council, whether a single word which fell from him, when he last addressed them on this Bill, justified that observation of the Honorable Mover. All he did say, and would say again, was that, when any Bill was brought before that Council, they had a right to be furnished with sufficient information to guide them in their legislation, and enable them to discharge their duties honestly and efficiently; and he really thought that the Government had no reason to thank the Honorable Member for raising such a discussion in that Chamber. Either they were the Legislative Council, or they were not. If they were expected to pass enactments in the way that the Honorable Member would wish them, the Clerk of the Council might just as well draw up and correct the Bills himself. But if

they were a Legislative Council, they ought to weigh every measure carefully before they gave it their sanction, and they had a right to demand every information they considered necessary to form a correct opinion on the subject, otherwise they would merely be a Council for the purpose of blindly registering whatever the Executive Government might think fit to propose. It would indeed render the existence of that Council a mere farce, and he thought that the doctrine of the Honorable Member was most unconstitutional, if he might apply that term to the present system.

Then, with regard to the Honorable Member's remark about parties seeking popularity and public applause. He should very much wish to know to whom that remark was intended to apply. He for one repelled such an observation with perfect scorn. He did not know what possible ground the Honorable Member could have had for such an insinuation, unless indeed he was so blind to the faults of his own measure as to be unable to appreciate the motives of those who took a different view of it. He for one was satisfied that he was only doing his duty in the position he was placed, and he thought that those who had agreed with him in the course he had pursued, had only exercised that right which they were bound to defend in their responsible situation as Legislators.

Mr. HARRINGTON explained that he did not intend to charge the Honorable and learned Judge opposite (Sir Charles Jackson), or any other Honorable Member, with having courted popularity in the opposition offered to the present Bill. What he wished to point out was that, if the Council took upon itself to call for information in the same manner as the House of Commons, it must be with some ulterior object; it could not be merely to gratify curiosity, but with a view to take some action upon the information required to be furnished. But he would ask what could be the character of that action? For instance, this Council could not take upon itself to say how many Regiments of Infantry, or how many Regiments of Cavalry, or how many Troops or Battalions of Artillery were to be kept up for the defence of the

country. The House of Commons undoubtedly had a right to call for every kind of information, because the responsibility of every measure which it sanctioned lay entirely with Parliament, which was responsible to the Country for what it did; whereas here the Executive Government was responsible. The Council were there merely to pass laws to meet the exigencies and requirements of the country. It was very far from his intention in what he had said to give offence to any Honorable Member, and if he had done so, he begged to apologize for the same.

MR. SCONEE said that he also, like the Honorable and learned Judge on his right, had reason to feel offended at the tone of the remarks of the Honorable Member opposite, but happily was conscious of having exhibited none of the hostility towards the Bill which the Honorable Member imputed to him. He (Mr. Sconce) was not disposed to question the theory of the constitution of this Council, which the Honorable Member had laid down. He had admitted himself on Saturday last, that the functions of the Council were limited and undefined. Nevertheless, it seemed to him that, when a Bill of this nature was submitted to them, they could not adequately express their assent or dissent to the measure, without being furnished with the amplest information. He could not walk in the dark or speak in the dark. It was not enough, it appeared to him, to declare generally the amount of the deficit for this year; but the Council were entitled to expect from the Government some explanation of the nature and origin of that deficit, by showing how the deficits in the preceding years had arisen. It was the income and disbursement of one year that helped them to know what the income and deficiency of another year were likely to be. In referring to the Debates, he found that, in the year 1856-57, disbursements and income nearly balanced each other. They also knew that last year there was a deficit of thirteen crores, and this year a deficit of seven crores. It seemed to him a matter of much importance to this Council to know to what particular circumstances these varying deficits, if on no other ground than from the interest

involved in the information, were owing. It was of great importance to know the reason of this great difference between the deficits of immediately succeeding years. Suddenly the excess charge fell from thirteen to seven crores, making a difference of six crores. No doubt it could be well accounted for. But what it was desirable to have information upon was such an exposition of the financial history of past years as would instruct the Council regarding the financial position of the present year, from which they were called upon to legislate—though they might not expect to fall back upon the condition of 1856-1857, when the public income and charges were nearly balanced. He (Mr. Sconce) was now willing to leave this subject. He felt conscious of having shown no hostile spirit against the Bill. He knew no higher duty, as a Member of this Council, than so to shape his course as that the Queen's Government should be most effectually carried on, and he conceived he had taken no steps calculated to encumber Her Majesty's Viceroy, or to detract from the respect and deference which he always desired to pay him in the administration of the Government.

With respect to the Bill itself, he was ready, as he had said before, to vote for the second reading, and willing to consider the Bill in Committee. He was not unwilling to accept the principle of the Bill. Nevertheless, he thought that it was somewhat misnamed, and that when it came to the form into which the Honorable Member had expressed his readiness to convert it, it would be substantially a tax on the profits of trades and professions. One inducement held out to them to accept the Bill on this ground was that persons engaged in mercantile transactions would have the opportunity of throwing the charge upon outside customers. In some respects this might be the case, but only in an indefinite degree; substantially it would affect profits. By the very terms of the Act, all trades would be taxed; now, when the profits of all trades were taxed alike, it was vain to expect that one trader could reimburse himself for the amount of the tax, by charging that amount to his customer. He might indeed raise the price of his goods upon his neighbors;

but so also his neighbors would raise the price of their goods upon him, and the result would be that his own additional price would be swamped by what he paid. An exception might exist as regards those consumers who were not traders, or who, at all events, were not subjected to taxation under the Bill. But, undoubtedly, he believed, as a general rule, a tax upon the profits of trade fell directly upon the trader.

He then came to the question as to the competency of this Legislature to tax Zemindars holding permanently-settled estates. Perhaps he might ask, what were the facts of the case, and whether the revenue paid by Zemindars was in its nature a tax? It was incontestably the constitutional maxim of the Revenue system of this country, that the State was entitled to a share of the produce of every beegah. Taking the land as it stood in 1790, three parties were interested in it, the Ryot, the Zemindar, and the Government. The rights of the Ryot and the State were indefeasible rights. The rights of the Zemindar might be the same. He (Mr. Sconce) would not say that they were less. It was enough for his purpose to say that they were not more. The revenue taken from Zemindars was no tax. The revenue was taken by the State by virtue of its own right. The Zemindar could not withhold the revenue imposed, for the Government took its own share of the produce of the land, not the Zemindar's share. There was nothing in the shape of a condition, compromise, or purchase between the Government and the Zemindar, at the time that the Permanent Settlement was concluded. It was essential, therefore, to keep in mind that the revenue charged on permanently-settled estates was not by any means a tax on the private profit or rent of the Zemindar, in any right sense of the term, and certainly the manner in which the Permanent Settlement was concluded afforded no argument for exempting them from being included in a general law of taxation. Whether the Zemindars of Bengal should be brought within the provisions of the present Bill or not, was another question; but what he was assured of was that exemption could not be claimed upon the ground that they were taxed by the settlement of 1790. The object,

as he understood, of the Governor-General at that time was not to relieve them from all eventual aid in the way of taxation, but simply to promote the good of the people, and of the Zemindars themselves, by giving encouragement to the cultivation of the land and developing the resources of the country. The Honorable Member (Mr. Harington) had reserved the expression of any opinion as to the legal liability of the Zemindars holding under the Permanent Settlement to be subjected to the present Bill; so no proposition to that effect being before them, he (Mr. Sconce) reserved his own; but in the remarks which he (Mr. Sconce) had just made, he had adverted to the historic character and constitution of the Permanent Settlement, and to the fact that the revenue by that settlement assessed was not a tax upon the resources of the Zemindars.

Probably this was not the time to discuss at any length the details of the measure. He feared he had very imperfectly expressed himself last Saturday concerning a doubt which had occurred to him, and upon which he thought it necessary to have some explanation. They knew that a tax of 2 Rupees might be imposed upon any shopkeeper, but the Bill gave no clue as to the class of shop-keepers who would have to pay it. No one in this room would object to pay it, but there were many shop-keepers to whom a yearly tax of 2 Rupees would be a material object. Upon the present scale of the Bill, supposing a tax of three per cent. on net profits, any shop-keeper whose yearly profits amounted to 66 Rupees would have to pay a tax of 2 Rupees. But supposing the tax to be an income tax, 66 Rupees was equivalent to £8 12s. They knew, however, that at home they carefully abstained from taxing any man under £100 or 1,000 Rupees. He did not say that a shop-keeper, whose net gains amounted to 66 Rupees a year, could not afford to pay 2 Rupees under this Bill; but it was a matter for careful deliberation whether the tax should be brought down to such low profits as 66 Rupees, or, whether, following the English scale, all should not be exempted whose profits were not over £100 or 1,000 Rupees. In connection with the

same lower grades of taxation, he would now only further advert to the exemption taken to personal incomes. Incomes which did not exceed 100 Rupees per mensem, or 1,200 Rupees per annum, were not to be assessed, that is the clerk who receives 100 Rupees per month, or 1,200 Rupees a year, would pay nothing, while the shop-keeper whose annual profits amounted only to 66 Rupees was to be taxed. This distinction might or might not be justifiable, but no doubt, at the proper time, it would receive the attention of the Council.

In admitting the limited and imperfect character of the Bill, he would state in a few words the grounds which induced him to assent to its second reading, and to give it his co-operation. He believed the characteristics, and he might say the advantages, of the Bill to be these: it was experimental; it was of limited local application; it was said to be moderate, though upon that matter there was more or less doubt; and, above all, he believed it must be temporary. He was entirely of opinion that the duration of the Bill should be limited, and that the Legislature should be again called upon to discuss both the principle of the law and the amount of revenue which it was designed to supply.

MR. FORBES said that he should have no hesitation in voting for the Motion for the second reading of this Bill. It might be that the Bill was not altogether perfect, but he was very sure of this, that, if they were to wait until some tax was proposed, to which no possible objection could be urged, they should have to wait a very long time indeed.

But, besides this, he was quite prepared to admit that, in matters of taxation, fiscal considerations were not all that was to be taken into account, and that questions of general policy would force themselves on the consideration of the Government, and oblige them, in prudence, to adopt the measure which might, on the whole, be most expedient in preference to that which, considered only in the abstract, might be a better and more productive tax.

In preferring one tax to another, the statesman would be partly guided by political considerations, and not solely

by strict views of financial expediency, and nothing would be more likely to determine his choice than the prospect of carrying with him the cheerful acquiescence of the people.

Now he thought that no one could have lived for many years in habits of constant intercourse with the people of India, without having observed how very much custom and habit influenced all their thoughts and feelings and actions, and he could not doubt that it had been a wise policy which, in imposing additional taxation, had decided to impose it in a form which was familiar to many by actual experience, and which was known to all by tradition.

He wished to be allowed to say a few words on what had fallen from the Honorable Member who had introduced this Bill, on the occasion of its introduction, and again in this day's debate regarding the Salt tax at Madras. The Honorable gentleman had stated on both occasions, that additional revenue was anticipated to follow the passing of a Bill which he (Mr. Forbes) had lately introduced, but this would not be the case. The Bill referred to by the Honorable Member was intended simply and solely to substitute an Excise Duty for the present Salt monopoly, and it was not intended, in any way whatever, that the Bill should raise the Excise Duty above what were the present monopoly profits.

By Act VI of 1844 the monopoly price of Salt in Madras was fixed at not more than one and a half Rupee a maund, power being reserved to the Governor-General in Council to reduce the price at pleasure. Actually, the price had for some years been one Rupee a maund, and although it was true that the Government of India had lately directed that the price should be raised to one Rupee two annas, that was an act of the Executive Government under an existing law, and the Bill which he (Mr. Forbes) had introduced, and to which the Honorable Member had referred, merely substituted one mode of collecting the revenue for another.

The Council had heard it said in the course of this debate, that the present measure was not what it professed to be; that it professed to be a tax on trades and professions, while it was, in fact, an income tax limited to certain classes.

Mr. Scoville

es. He must however say that the matter did not present itself to his mind in this point of view. He thought that the Bill really was what, in its title, it professed to be, and could not in any proper sense be said to be an income tax. He would illustrate his view of the matter by his own case. His profession was the Civil Service of India, and for his service in that profession he received a salary, which salary would be subjected to tax; but he might also hold Government Securities, the interest on which would tend to increase his income; but this addition to his income would not be taxed by this Bill, and he therefore thought that the measure was truly called a tax on profession, and could not be called a tax on income. In the same way he might assume the case of a wealthy native, whose total income was a lakh of Rupees a year, half of which he made in trade, and half of which he received as the profits of a landed state; the fifty thousand Rupees received from trade would be liable to tax, while the fifty thousand received from the estate would be exempt, and he thought that, as in the former case, the tax was on the profession only, so in this case it was only on the trade, and in neither was general income made liable to the provisions of the Bill.

As regarded what fell from the Honorable and learned Chief Justice at the commencement of this debate on the question of including Military Officers among those to whom the provision would apply, he thought that, however good as an abstract question the argument might be that the Colonel and the Major received as much pay as many Civil Officers who would be liable to the tax, there were circumstances which, when the question was looked at somewhat more in detail, afforded good ground for supporting the view which the Government had taken. He approached the subject with the diffidence which he always felt when he was so unfortunate as to hold an opinion at variance with that held by the Honorable and learned Chief Justice; but still he would state to the Council the light in which the question presented itself to him.

In the first place, he thought it must be remembered that, while all Civil Offi-

cers of every grade, whether Covenanted or Uncovenanted, received their appointments without having to pay a single Rupee for them, very few Officers in the Army ever obtained a step in rank without having to pay heavily for the advantage. It was very true that the Colonel and the Major received an amount of pay which would be taxed, if drawn by a Civil Officer; but the fact that, in the one case the salary was to some extent purchased, while in the other it was obtained for nothing, made in his estimation a great difference in the propriety of subjecting them each to tax. Not only moreover was an Officer's rank in the Army purchased with his own money, but that money was but too often obtained at very high interest. All had heard, during Sir Charles Napier's command, of the indebted state of the Army, and it was, he believed, well known that that indebted state arose mainly from the habit of purchasing steps. Officers were often unable to pay down their money in cash, and had recourse to Banks and other lending institutions, at which, what with interest and the expenses of a Life Insurance, they seldom were accommodated at a less cost to themselves than eighteen per cent.

Then, again, he thought that reference should be had to the fact that, whereas the Colonel or the Major did not obtain the income of their respective ranks under twenty or five-and-twenty years, a similar income was attained by the Civil Officers of Government in eight or ten years, while each had to maintain the same social position, and each to meet the same expenses incidental to educating and bringing up and providing for a family. Then, again, he thought that consideration should be given to the future prospects of each class. There were but few Generals of Divisions, and to the great majority of Officers the command of a regiment was the highest and most lucrative post obtainable; but to the Civil Officers there were many Collectorships, many Judgeships, Commissionerships, Boards, and Councils; and as the prospects of each class were different, so, in his opinion, might their liabilities to taxation be different also.

Before he sat down, he would say one word upon the question that had

• been raised as to the insufficiency of detailed information on the state of the finances, which had been furnished to the Council by the Government on the introduction of the Bill. Now the Council had been told distinctly the amount of the present deficit, and whether that deficit arose from a too lavish expenditure on the Army, or from too little parsimony in the Civil expenditure, whether the Commissariat had been too expensive, or the Public Works Department too liberally supplied, did not appear to him to be of much consequence to the Council. This Council could not control or alter the expenditure in any one of the branches he had referred to, and it appeared to him that they might well accept the statement of the deficit made by the Government as a fact, and legislate upon it, without insisting upon knowing how that deficit had arisen, since that was a matter which could have no practical bearing on their deliberations, even if the information were supplied.

He looked on this matter as he looked upon the Act for which the Governor-General, from time to time, came down to this Council to enable him to proceed to the Provinces, and to act without his Council. He (Mr. Forbes) did not, on such occasions, demand to know what were the political reasons which induced the Governor-General to quit Calcutta, he accepted as a fact the assurance that reasons did exist, and he was prepared to legislate accordingly.

SIR JAMES OUTRAM said, the Honorable Member for Madras had stated reasons why Military Servants should be exempted from taxation, while their Civil Comrades were not so. He had given reasons worthy of consideration, chiefly founded on the expense to which Military Officers were put in purchasing commissions and advancement in the service. He (Sir James Outram) would claim exemption for them on still more reasonable grounds. He would compare their position with that of Civil Servants, and show the different footing on which they stood as regards allowances, and as to their capability to bear equal taxation. Now the 11th class of 250 Rupees corresponded with an annual income of 8,300 Rupees, or a monthly income of 700 Rupees, which was little

Mr. Forbes

below a Lieutenant-Colonel's pay and allowances, namely 827 Rupees per mensem, and nearly as much in excess of a Major's pay and allowances (640 Rupees per mensem). He was taking half batta or garrison allowance, the difference of full batta being supposed to be absorbed by expenses on account of establishments while out in the field.

Then the 12th class of 100 Rupees would correspond with an annual income of 8,300 Rupees, or a monthly income of 275 Rupees, which was somewhat below a Captain's pay and allowances (374 Rupees), somewhat above a Lieutenant's salary (225 Rupees), and greatly above that of an Ensign (182 Rupees).

The 700 Rupees salaries in the Civil Service were enjoyed by comparatively young gentlemen of not above the average standing in the service of Subalterns in the Army, and Members of the Uncovenanted Service, who were thus in point of salary on an equality with Lieutenant-Colonels and Majors of double and treble their standing in the service. But the latter, so much older in life, labored under the disadvantage, for the most part, of the expense of wives and families to support, which but few of the much younger men of the Civil Service were yet (while only on 700 Rupees salary) burdened with. Moreover, the Officers of Her Majesty's Army had generally to leave their families in England, involving the cost of double establishments, while those who, like the Officers of the Indian Army, had their families in India, had to send their children to England for education.

The comparison of the Captains, Lieutenants, and Ensigns, with the corresponding class as to salary of the Civil Service, namely on the 12th class of the scale, was still more to the disadvantage of the Military Officers; for all Members of the Civil Service on that scale of salary were either European or Eurasian clerks, or natives, who neither held the same status in society, or were put to the cost of sending their families home; for it must be borne in mind that a large portion of the Military Officers in this class, Captains and Subalterns, were married, and many with large families.

It must be remembered also, that Officers of the Army at home, who were not put to the cost of maintaining

separate establishments, were taxed only on their net pay, and that they enjoyed certain advantages of quarters, coals, candles, &c.

He trusted, therefore, that Honorable Members of this Council would concur with him in thinking that the ranks of the Army he had enumerated should be exempted from taxation. He of course intended his plea for the Officers of the Army to embrace also Officers of corresponding ranks of the Indian Navy.

MR. LEGEYNT said, he would not detain the Council beyond a few minutes. He had stated on Saturday last that he would not oppose the Bill so long as it was shown that the Bill could be reduced to a practicable shape, and he thought that the amendments which had been proposed would cause the Bill to assume such a shape. He should be better satisfied if those amendments were settled before the Bill passed the second reading; but as the Council had determined upon adopting a different course, he had no objection to consider the amendments afterwards. He would say nothing about landholders, but he could not but express his regret that the Honorable Member had so decidedly opposed the inclusion in the tax of holders of Government paper. There were persons who derived large incomes from these securities. Was it to be supposed that these incomes were not used to a large extent, and very profitably so, in mercantile transactions? Was it to be supposed that they were not lent out at high rates of interest? There was, in fact, hardly a single native proprietor of Government Securities, who did not in reality carry on business to a large extent as a lender of money. However, as the Honorable Member had declared his intention of abandoning the Bill if this class were introduced into it, he (Mr. Legeynt) would say nothing more about it.

He should be glad to see the duration of the Bill limited to a certain period, say either five or seven years. He thought this would make it less unpalatable, and he did not see how such a limitation would affect the Bill. Some Honorable Members had looked upon it as an experiment, and that appeared to him a greater reason why some limitation of time should be fixed. He

proposed to raise this question in Committee, and he would also consider the expediency of adopting the proviso which was proposed to be added to Section XX, and which was to the following effect:—

“ Provided that, if any person holding any such office or employment shall satisfy the Collector or other Officer authorized as aforesaid, that the salary, fees, wages, perquisites, and profits of his office or employment do not exceed 100 Rupees per mensem, such person shall not be required to take out a license under this Act.”

Why was the receiver of a salary to be exempted from paying any tax, provided his receipts did not exceed 1,200 Rupees per annum, when a trader, whose profits did not exceed 66 Rupees would be liable to be taxed? He thought it better to restrict the exemption to incomes not exceeding 600 Rupees per annum, and to exempt altogether traders whose profits did not exceed 600 Rupees, so as to place the trader and salaried clerk upon a more even footing. But he would postpone the consideration of these matters till the Bill came before the Committee.

THE VICE-PRESIDENT said, he was not aware whether the Honorable Member was willing that the two questions raised by the Honorable Member for Bombay should be considered before the Bill was referred to a Select Committee. He (the Vice-President) considered it very desirable that, before they came to vote upon the question for the second reading, the Honorable Member should state whether the two questions, as to limiting the duration of the Bill, and exempting traders whose profits did not exceed 600 Rupees a year, would be open questions.

MR. HARRINGTON said, he thought it would be better that both the alterations mentioned by the Honorable Member for Bombay should be considered in Committee. It was very desirable with regard to the lower classes that information should be received from the country at large. There was no harm in adding higher classes now; but if such additions were made in Committee, it would necessitate the re-publication of the Bill. Hereafter it would be open to any Honorable Member, either in the Select Committee, or in a Com-

mittee of the whole Council, to propose the omission of any of the classes, either from the top or from the bottom of the list.

With regard to limiting the duration of the Bill, the Honorable Member for Bombay must, he thought, be aware that, although the income tax in England was a temporary tax, and was obliged to be renewed from time to time, there was scarcely any one who did not feel that it ought never to be given up. He considered, therefore, that the best plan would be to pass the Act as a permanent Act. Five years hence, if it should be thought necessary, or advisable, it might be repealed. This part of the Honorable Member's Motion had also, he thought, better be considered in Committee.

A doubt had been expressed as to the accuracy of what he had stated on a former occasion, that, in so far as trades were concerned, although the amount of the duty would be paid in the first instance by the tradesman taking out the license, it would come eventually from the pockets of his customers. To show that he was right, he would mention the following instances. A friend of his went to the shop from which he purchased his hats to buy a hat. He selected the kind of hat which he usually bought, and asked the price—14 Rupees was the answer; his friend objected that he had never been charged more than 12 Rupees before. "Oh! but you have forgotten the increase in the duty" was the ready rejoinder. Now he thought that, if Honorable Members would make the calculation, they would find that the extra charge of 2 Rupees covered not only the additional duty, but a little more. From the latter's friend went to his coach-builder's to pay for some repairs made to the hood of his buggy, and considering the charge high, he remonstrated against it. Here, too, the answer was the same. The new Tariff had increased the duty on leather, of which a small piece had been used in making the repairs. Another young friend of his had twelve pairs of American Drill trousers made by Messrs. Harman and Co., the tailors, for which he was charged 26 Rupees, or 3 Rupees per pair. Shortly after his brother arrived from England, and ordered a dozen pairs of the

Mr. Harrington

same description of trousers from the same shop, but when the bill came in, he found that he had been charged 40 Rupees. The two brothers went together to Messrs. Harman and Co.'s shop to ask for an explanation of this difference in the price, and were told that the higher duty now charged on cloth was the cause. He thought, therefore, that he had good ground for what he had stated.

MR. LEGEYTS said, he would withdraw his suggestions for the present; though he could not give up his position regarding the inequality of the proposed tax, or agree with the Honorable Mover in the illustrations he had brought forward.

THE VICE-PRESIDENT said, so that these questions were to remain open, and that, in Committee of the whole Council and on the third reading, Honorable Members were not to be pledged to the Bill as a permanent measure, he had no objection to let it go to the second reading.

He agreed with the Honorable and learned Judge (Sir Charles Jackson) and with the Honorable Member for Bengal, that no observations had been used in this Council which called for the remarks which had fallen from the Honorable Member (Mr. Harrington). He himself had been charged with having made a violent attack on the Bill, and with having opposed it in an unfriendly spirit. He was sure that no Honorable Member present desired to oppose the Government, or to place it in a position of difficulty. He was most anxious, at all times, to give the Government his warmest support; but to say that he was to accept every measure that was set before him was earnest, but he was not violent. He had said that the Bill was founded on no principle at all; but surely that was no reason why he should be charged with having opposed the Bill in an unfriendly spirit.

There were several alterations which the Honorable Member had expressed his willingness to make in the Bill, and there were some questions which he left open to be considered in Committee before the publication of the Bill, whilst there were others which he expressly excluded from being referred to the

Committee. The three questions which were not to be open questions, were the taxation of landholders, the taxation of fundholders, and the taxation of salaries fixed by Act of Parliament. The Honorable Member had alluded to a tax upon owners of houses, whereas no one desired to levy a house tax. There were many persons residing around Calcutta who were deriving a large income from the rents of houses in Chowringhee and elsewhere. A house tax and a tax upon profits derived from the rents of houses were perfectly distinct. If the Honorable Member said that, on general principle, Government thought it inexpedient to tax the owners of houses in respect of the profits derived from them, he (the Vice-President) was willing to accept that declaration of Government. He (the Vice-President) had said on a previous occasion, that zemindars were liable to be taxed on the income which they derived from their lands; but that whether it was politic or impolitic to tax them, was a question on which he then abstained from offering any opinion. If the Government considered that it would be politically inexpedient to do so, he should not think it right to raise that question. Then, with regard to fundholders, if the Government thought it expedient to exempt them from taxation, he for one should not press the question. They all knew of the great losses which fundholders had sustained; that four per cent. papers which had formerly been at a premium had fallen to a heavy discount, and so with five and five and a half per cent. papers. Then again, as to statutory salaries, he could see no reason why they should not be taxed. It appeared to him that there was a vast difference between merely taxing these salaries and attempting to prevent the Officers paid by such salaries from discharging their duties without a license from the Collector. He entirely agreed with the Honorable and learned Judge (Sir Charles Jackson), when he said that, if the Collector should attempt to stop him (the Vice-President) from exercising his vocation as Chief Justice, he should be very likely to commit him for contempt. This Council could not give such a power to the Collector. It was quite out of the power of Government to compel the Chief Justice to

take a license to do that which he did under the express sanction of an Act of Parliament and a Commission from the Crown; but it was quite another thing to say—"you are drawing a certain income, and must pay a tax of three per cent. upon it." He apprehended that there was no difference in this respect between a salary fixed by an Act of Parliament and a salary fixed by a contract with the East India Company. The Act of Parliament in fixing such salaries never intended to say that they should not be taxed, nor did he see any difference between such salaries and those of an Uncovenanted Servant whose salary was fixed by Government. But as the Honorable Member said that Government had been advised that they could not pass such an Act, this Council could not fairly expect the Government to impose a tax when they were advised by their Law Officers that it could not be enforced if resisted. Be this however as it might, he could only say that he for one should feel that he was not acting as a man of honor if he availed himself of any exemption from payment on the ground that he could not be legally taxed. Therefore, as far as he was concerned, it would make no difference whether salaries fixed by Statute were or were not included in the Bill; for if the Bill should be passed and other incomes or salaries were taxed at three per cent., he should feel bound to pay three per cent. upon his own salary, and should, as soon as the Bill became law, at once send an order to the Civil Auditor to deduct the same amount from his salary as might be authorized to be deducted from other salaries. Whether others would do so, he knew not; but he believed that no one in this room, and no one in this country, would do otherwise.

There were several other objections to the Bill. But as they were matters, not of principle, but of detail, they would be better left to be settled in Select Committee.

With regard to the Title of the Bill, the Honorable Member for Madras had called it an Act for taxing professions. If so, he (the Vice-President) thought it would be better not to require a license, but merely a receipt, showing that they had paid the tax on their profession.

Another question which the Honorable Mover had left open was whether Civil and Military salaries ought to be included in the Bill. He (the Vice-President) thought that they ought to be, for in what position would the Government be if left to tax them indirectly. He doubted very much whether Government could enforce the payment of the tax if a party refused to pay it. For the first few months they would probably be obliged to resort to dismissal for refusal to pay the tax. But he questioned whether Government could take such a step in the case of a Commissioned or a Covenanted Officer, and he thought that it would be far better therefore that this matter should be settled by legislation. Suppose again, the Executive Government, after a year or two, should think fit to withdraw the tax from their employees, would that be fair to those who would continue to be taxed under the Bill which would still be in force? He thought not. The Honorable Member had given no pledge from Government, that every servant of Government would be taxed as long as this Bill should continue in force. He (the Vice-President) thought that all should be taxed alike, and if no one else would do so, he should move the insertion of a Clause to the effect that a tax of three per cent. should be levied on the salaries of all Civil Servants and all Military Officers in Civil employ and on the net pay of every Military Officer.

The Honorable Member for Madras had put forward an extraordinary argument against the taxation of Military Officers. He said that they were compelled to borrow money at the rate of about eighteen per cent. discount to buy their superior Officers out. No doubt Commissions were bought and sold in Her Majesty's Army, subject to certain Regulations. But the practice adopted in this country of paying Officers to retire, though perhaps tacitly allowed, had been held to be illegal. Such a contract could not be sued on. Time and custom might to some extent sanction the practice, but that was not a consideration which could be admitted by this Council. Suppose anyone were to go to the Lord Chancellor or to the Prime Minister of England and offer him a sum of £10,000 to retire, or to the

The Vice-President

Chief Justice, or any one holding a high and responsible position. What would be thought of such conduct? Would he not be indicted? If any one were to come to him (the Vice-President) and offer to buy him out of Her Majesty's service, he should consider it an insult. Such a person would be guilty of a misdemeanor. But the argument of the Honorable Member for Madras was that Officers in the Army ought not to be taxed, because they were put to considerable expense in borrowing money to purchase out their superior Officers, and the Council were called upon to accept that as a reason for exempting Military Officers from being taxed under the Bill.

There was another and a most important matter on which he desired to say a few words. The Honorable Mover had said that Honorable Members of this Council had claimed for themselves an independence which did not belong to them, and had arrogated to themselves the power of controlling the expenditure of Government. He (the Vice-President) must say, in reference to that observation, that when the expenditure of Government exceeded its income, and this Council were called upon to create a tax to make good the deficiency, the Council had a right to ask what deficiency had arisen, how it had occurred, and what measures were proposed to meet such deficiency. If the Executive Government asked the Council to impose a tax, surely it was incumbent on them to show the Council why the tax was wanted, and the Council would then be in a position to know what it ought to do. Was it to be supposed that this Council was bound to pass every crude Act that Government might think fit to bring before it, and an Act too which its Mover himself had admitted was founded on no principle? Were they to act independently in the exercise of the important functions vested in them, or were they to become mere registrars of the decrees of Government? Were they not to be allowed to express an opinion or to make any enquiry or suggestion on a matter which came before them, without being told that they were arrogating to themselves a power which did not belong to them? For what purpose were they assembled in that Chamber? Were

they to sit there as mere machines in the hands of the Executive Government? Were they not Councillors of the Governor-General of India for making laws? Were they to be Councillors and yet not to advise? or were they to give counsel without asking any questions, or knowing the circumstances under which their advice was to be given? No, they were bound to advise and to act independently and according to the dictates of their conscience in giving that advice. If that were not so, then the sooner this Council was abolished the better. He, for one, must say that, so long as he had the honor of a seat in the Council, he should claim the right to exercise within those walls a free and independent judgment, and to abstain from giving any vote except after mature deliberation and according to the dictates of his own conscience.

MR. HARRINGTON, after the protracted debate which had taken place, would say only a very few words by way of reply. With regard to the Salaries of Government Officers he had already given his reasons for considering that they should not be included in the Bill. The point on which he particularly wished to offer a few remarks was, as to the amount of information relative to the state of the finances, which was required to be laid before the Council on the introduction of the present Bill. He submitted that all the information which was really necessary had been given. It was impossible, as he had already mentioned, to lay before the Council any correct or detailed statement of what would be the probable future expenditure. He had quoted word for word that part of the speech of His Excellency the Governor-General, delivered in March last, in which His Lordship placed before the Council the fullest information relative to the condition of the public finances at that date. The deficit then expected amounted to the very large sum of thirteen crores of Rupees. The accounts had not been made up, but that was the amount of the deficit anticipated. He said that the fears of the Governor-General as to the probable amount of the deficit at the end of the current financial year had been realized. He stated that reductions had been made to meet this deficiency, and that

further reductions would be carried into effect as rapidly as circumstances would admit. He particularly stated that the numerical strength of all the Native Regiments in India, both Regular and Irregular, had been greatly reduced; that many of the Police Levies had been disbanded; that further considerable reductions in this force might be found practicable; but that their extent must depend very much upon the decision which might be arrived at in England upon the important question of the reorganization of the Native Army of Bengal. What he then said was surely enough to show that Government had not been idle. It was only within the last few days that a reduction of 5,000 men had been ordered in the Oude Police, of whom 1,500 were Cavalry. This reduction might have been effected at once, but it was not thought prudent by the Honorable and gallant Member on his left (Sir James Outram) that so large a body of men should be turned loose upon the country at once, particularly as it was known that in Nepal and some parts of Bundelkund there were large bodies of rebels, whom the discharged men might at once join; and it was thought better, therefore, that they should be dismissed gradually, and as much as possible with their own consent. Then there was the Commission sitting at Bombay to enquire what reductions might be made in the Military expenditure of the country. He had also mentioned that all grants-in-aid for promoting education amongst the natives had been stopped, and that all public works which were not absolutely necessary had been suspended.

He had been charged with saying that the Council had claimed for itself an independence which did not belong to it. What he really said was that, looking to what had fallen from the Honorable and learned Judge opposite (Sir Charles Jackson) and the Honorable Member for Bengal, the Council appeared to him to be verging upon the functions of the House of Commons, and that, if they assumed those functions, they should also take upon themselves the responsibilities of the Executive Government which, he remarked, was simply impossible under the present constitution of the Council. He certainly considered the attack made upon the

Bill by the Honorable and learned Vice-President and the Honorable Members opposite, to have been a violent attack, and he had therefore used that epithet in referring to it, but not in an offensive sense. The Bill had been called a crude Bill, a Bill without any principle, and the measure had also been termed preposterous because it omitted certain classes. Under the supposition that the Honorable and learned Vice-President, in proposing that the Bill should be referred to a Select Committee before it was read a second time, did so with a view to an entire alteration in its character, he (Mr. Harington) certainly thought that the instructions to the Committee, if they emanated from the Honorable and learned Vice-President, would not be conceived in any kind of friendly spirit. Before resuming his seat, he begged to thank the Council for the consideration which they had shown him, and to apologize to the Council if, in the heat of debate, he had expressed himself with too great warmth.

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

MR. HARINGTON moved that the Standing Orders be suspended, in order that the Council might resolve itself into a Committee on the Bill, for the purpose of considering proposed amendments therein.

Mrs JAMES OUTRAM seconded the Motion, which was then carried.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I was passed after amendments providing for the repeal of Regulation IV. 1818 of the Madras Code.

Section VIII was passed with a revised Schedule of sums payable on licenses.

Section IX was passed after an amendment requiring sums payable upon licenses to approximate as nearly as possible to three per cent. on the annual net profits or gains accruing from trades and professions.

MR. HARINGTON moved the introduction of the following Section after Section IX :—

"Any person who shall satisfy the Collector or other Officer authorized as aforesaid, that

Mr. Harington

the aggregate annual amount of the net profits or gains of the trade, business, or profession, carried on by such person (estimated according to the provisions of the last preceding Section) is less than a sum which, so estimated, would render him liable to assessment under Class XVII of Section VIII, he shall be exempted from taking out a license under this Act."

Agreed to.

Section X was omitted on the Motion of Mr. Harington.

MR. HARINGTON moved the introduction of the following Section after Section XI :—

"In order to enable the Collector or other Officer authorized as aforesaid, to determine under what classes persons requiring to be licensed shall be assessed, and what sums shall be paid in respect of licenses granted under this Act, he may cause to be sent to any person supposed to be liable to the payment of the tax hereby imposed, a Schedule to be filled up with such information respecting the trade, business, or profession carried on by such person, and the amount of the annual profits or gains accruing therefrom, the number and names of persons holding any office or employment under him, and their salaries, fees, and wages, as the Collector or other Officer authorized as aforesaid may judge necessary for the purpose of such assessment. The schedule shall be filled up in writing, and dated, and shall contain a declaration signed by such person that to the best of his belief the schedule is a true return of the matters therein contained. Such return shall be delivered to the office of the Collector or other Officer as aforesaid, by every person to whom it is sent, whether or not liable to the payment of such tax; and whoever refuses, neglects, or omits, duly to fill up and return such schedule within twenty-one days from the receipt thereof, or knowingly gives therein any incorrect or false return, shall be liable to a penalty not exceeding five hundred Rupees."

MR. LEGEY moved the omission of the words "or knowingly gives therein any incorrect or false return." In doing so, he said, he thought that a penalty of five hundred Rupees was a very inadequate punishment for such an offence as knowingly giving incorrect or false Schedules, and that it would be more appropriate to attach to it the penalties of perjury.

Agreed to.

THE CHAIRMAN moved the insertion of the following words at the end of the Section :—

"Or if he be a person liable to be assessed, the Collector or other Officer as aforesaid may

assess him under any of the classes mentioned in Section VIII of this Act; and no appeal shall lie from such assessment, on the ground that such person had been assessed under too high a class with reference to the provisions of Section IX of this Act."

Agreed to.

MR. LEGEY moved the addition of the following words to the Section :—

"Or if such person knowingly gives therein any incorrect or false return, he shall be liable to the penalties provided for perjury."

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

MR. HARINGTON moved the introduction of the following Section after the above :—

"The Collector or other Officer authorized as aforesaid may summon any person whom he shall think able to give evidence for the purpose of enabling him to determine under which of the classes mentioned in Section VIII of this Act any person should be assessed, and may examine such person as to any such matter. The Collector or other Officer as aforesaid may also require the person summoned to produce any books or documents in his possession or power relating to the trade, business, or profession of any person supposed to be liable to assessment or to the amount of the annual profits or gains accruing therefrom. If the person summoned shall refuse to answer any lawful question of the Collector or other Officer as aforesaid, or shall knowingly give an incorrect answer, or shall refuse to produce any such books or documents as aforesaid, he shall be liable to a penalty not exceeding five hundred Rupees, or if he be a person liable to be assessed, the Collector or other Officer as aforesaid may assess under any of the classes mentioned in Section VIII of this Act, and no appeal shall lie from such assessment on the ground that such person had been assessed under too high a class with reference to the provisions of Section IX of this Act."

THE CHAIRMAN moved the insertion of the words "or of any person who has appealed against such assessment" after the words "liable to assessment."

Agreed to.

THE CHAIRMAN moved the substitution of the words "from such trade, business, or profession" for the word "therefrom."

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

MR. HARINGTON moved the introduction of the following Section after Section XVIII :—

"No person required by this Act to take out a license, shall be allowed to recover, in any judicial suit or proceeding, any money, debt, or charge claimed by him in respect of the trade, business, or profession carried on by him, unless such person shall prove to the satisfaction of the Judge or Officer presiding at the trial, that, at the time when the cause of action accrued, he had duly obtained a license in conformity with this Act."

The Section was passed after verbal amendments, on the Motion of the Chairman.

MR. HARINGTON moved the addition of the following words to Section XX :—

"And shall be assessed (with reference to the provisions of Section IX of this Act) upon an estimate of the annual salary, fees, wages, perquisites, and profits of such offices or employments. Provided that, if any person holding any such office or employment shall satisfy the Collector or other Officer authorized as aforesaid, that the salary, fees, wages, perquisites, and profits of his office or employment do not exceed one hundred Rupees per mensem, such person shall not be required to take out a license under this Act."

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

THE CHAIRMAN moved the introduction of the following Section after Section XX :—

"Every Civil Officer and every Military Officer in Civil employ shall pay at the rate of three per cent. per annum upon the amount of his salary, and the same may be deducted by Government from such salary."

After some discussion, the Council divided :—

<i>Ayes 5.</i> Sir Charles Jackson. Mr. Forbes. Mr. LeGeyt. Sir James Outram. The Chairman.	<i>Noes 2.</i> Mr. Sconce. Mr. Harington.
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So the Section was carried.

THE CHAIRMAN moved the introduction of the following Section after the above :—

"Every Military Officer shall pay a tax of three per cent. per annum upon the amount of his Regimental pay, exclusive of allowances, and also upon any Staff pay, and the tax may be deducted by Government from such pay."

MR. FORBES wished to say a very few words on what fell from the Honorable and learned Chief Justice in the debate on the second reading of this Bill, regarding the illegality of the sale of Commissions in the Army. The learned Judge had said that such sales were illegal; he had likened them to the sale of the high office which he so ably filled, and had characterized as extraordinary the argument which he (Mr. Forbes) had endeavored to raise in favor of the exemption of Military men from the operation of this tax, from the fact that they purchased their steps. Now he thought that this was a question that could not be decided on only a strict legal view, and he could not admit that there was any similarity between the sale of his step by an Officer in the Army, and the sale of so high an office as a Judgeship. He did not think that the Honorable and learned Judge would himself affirm that he would hold in similar estimation the two Officers who bought and sold a Commission, and the two men who bought and sold a Judgeship. The sale of a Judgeship would, no doubt, be a high crime and misdemeanor; the sale of an Army Commission was a matter of daily occurrence. The one would be a great offence against the Crown, in whose gift the Judgeships were; the other, as was notorious, was done with the approbation and consent of the authority whom the Officer served.

SIR CHARLES JACKSON moved the insertion of the words "above the rank of Captain" after the word "Officer."

After some discussion, the Motion was by leave withdrawn.

The original question being then put, the Council divided:—

Ayes 2.	Noes 5.
Mr. Charles Jackson.	Mr. Sconce.
The Chairman.	Mr. Forbes.
	Mr. LeGeyt.
	Mr. Harington.
	Sir James Outram.

So the Motion was negatived.

SIR CHARLES JACKSON moved the introduction of the following Section before Section XXI:—

"Every Military Officer on the General, Divisional, Brigade, and Personal Staff, shall

Mr. Forbes

pay a tax at the rate of three per cent. per annum on the amount of his pay and allowances, and the amount may be deducted by Government from his pay and allowances."

MR. LEGEYT moved, by way of amendment, to insert the word "staff" before the words "pay and allowances."

The amendment being put, the Council divided:—

Ayes 2.	Noes 5.
Mr. LeGeyt.	Mr. Sconce.
Sir James Outram.	Sir C. Jackson.
	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the amendment was negatived. The original question being then put, the Council divided:—

Ayes 6.	Noes 1.
Mr. Sconce.	Mr. LeGeyt.
Sir C. Jackson.	
Mr. Forbes.	
Mr. Harington.	
Sir James Outram.	
The Chairman.	

So the Motion was carried.

THE CHAIRMAN moved the addition of the following proviso to the new Section 20a relating to Civil Officers and Military Officers in Civil employ:—

"Provided that, if the salary of such Officer do not exceed 100 Rupees, he shall not be taxed."

Agreed to.

THE CHAIRMAN moved the omission of Section XXII, which provided that the Act should not apply to persons holding office under Government.

Agreed to.

THE CHAIRMAN went back to Section XX, and moved a verbal amendment therein, which was carried.

MR. HARINGTON moved that the following new Section be introduced before Section XXIII:—

"The provisions of this Act shall not apply to any person who shall hold any office, employment, or commission under Her Majesty, or under the Government of India, the salary

of which office or employment has been fixed by Act of Parliament."

He said that, in proposing the introduction of this Section, he desired to repeat what he had mentioned in moving the second reading of the Bill, namely, that it was not the intention of the Governor-General, or of the other Members of the Government present with the Government, that their salaries should be exempted, and they would accordingly be subjected to the proposed reduction from the date on which the Bill should pass into law. But in their case, as well as in the cases of the other Officers whose salaries were also fixed by Act of Parliament, it would be necessary for the Home Government to apply to Parliament for an Act of the Imperial Legislature, to give legal authority to the extension of the measure to them, and steps would immediately be taken for obtaining that authority.

Agreed to.

MR. HARINGTON moved the omission of the Schedule.

Agreed to.

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

MR. HARINGTON moved that the Bill be referred to a Select Committee consisting of the Vice-President, Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES moved that the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George" be read a third time and passed.

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

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 7 of the proposed Jury Rules was passed, with the inser-

tion of "eight" in the blank as the number of Jurors to be summoned, and after other verbal amendments

Section 8, which related to the form and service of summons, was passed after an amendment, on the Motion of Mr. LEGEYT, requiring the service to be made by the Judge, "through the Court's own Officers, or the Officers of the Magistrate of the district in which the Juror resides."

Section 9, which empowered the Court to summon another set of Jurors, when one set was not enough, was passed as it stood.

MR. HARINGTON moved the introduction of the following Section after Section 9:—

"If any person summoned to serve as a Juror be an Officer of Government, the summons shall be transmitted to such person through the Head Officer of the Office in which he is employed, and the Court may excuse the attendance of such person if it shall appear on the representation of such Head Officer that such person cannot serve as a Juror without inconvenience to the Public Service."

Agreed to.

Sections 10 to 14 were passed as they stood.

Section 15 prescribed the grounds of objection to be taken to a Juror.

THE CHAIRMAN moved the omission of the fourth ground, which was as follows:—

"Having formed such an opinion of the guilt or innocence of the defendant as, in the opinion of the Juror himself, renders him not an impartial judge."

Agreed to.

After a verbal amendment in the fifth ground, the Section was then passed.

Sections 16 to 18 were passed as they stood.

THE CHAIRMAN moved the insertion of the following Section after Section 18:—

"Whenever any Jury trial is to be had, in which the accused person or one of the persons accused is entitled to a Jury constituted under the provisions of Section 230, the Court of Session shall, three days at the least before the day fixed for holding such trial, cause not less than four of the persons named in the revised list of Jurors of the race or class to which the accused belongs to be summoned; the Court shall also at the same time

cause as many other persons named in the revised list as seem to the Court to be needed for such trial to be summoned. The names shall be drawn by lot, excluding those who have served within six months, unless when the number cannot be made up without them."

Agreed to.

THE CHAIRMAN then went back and proposed a verbal amendment in Section 236 of the Bill, which was carried.

Mr. LEGEYT moved the introduction of the following new Section after Section 236:—

"The Court of Session may order such reasonable subsistence money, the amount per diem to be fixed from time to time by the local Government with the sanction of the Governor-General in Council, to be paid to every Jurymen in attendance under a summons, which shall be paid by the Collector on the production of such order."

He said he felt convinced that, unless some reasonable subsistence were provided for bringing persons away from their homes, they would find excuses for keeping away. He thought it very hard to take them away from their usual daily occupations, and that a less objectionable way to do so would be as now proposed by him.

After some little discussion the Section was put and negatived; and the further consideration of the Bill postponed on the Motion of SIR JAMES OUTRAM.

STANDING ORDERS.

MR. HARRINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

MALABAR OUTRAGES.

MR. FORBES moved that Mr. Harrington be requested to take the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George" to the Governor-General for his assent.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved that the Bill "to prevent the overcrowding of Vessels carrying Native Passengers in the Bay of Bengal" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned at 5 o'clock, on the Motion of Sir James Outram, to Thursday, the 1st of September next.

Thursday, September 1, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir James Outram,	Hon. Sir C. R. M. Jackson,
Hon. H. B. Harrington,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.
H. Forbes, Esq.,	

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the Calcutta Trades Association against the Bill "for the licensing of Trades and Professions."

MR. HARRINGTON moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 255 provided as follows:—

"If the case is one in which, if the defendant be convicted, he is liable to sentence of death, the Court of Session shall record the conviction, and refer the case to the Sudder Court, with a statement in writing of its opinion as to the sentence which should be passed upon the accused, with the reasons for such opinion; and in cases tried by Jury, the Court of Session shall report the substance of its direction to the Jury."

THE CHAIRMAN moved the omission of all the words after "the Court of Session shall" in the beginning of the Section, and the substitution of the following:—

"Pass sentence; and if sentence of death be passed, it shall not be executed without the confirmation of the Sudder Court. In any case submitted to the Sudder Court for confirmation of the sentence, the Court may either confirm the sentence or pass any other sentence warranted by law."

MR. HARRINGTON said, he preferred the Section as framed by the Select Committee, and should vote against the amendment of the Honorable and learned Chairman. If that amendment were adopted, and if the Code of Criminal Procedure should come into operation before the Penal Code became law, some alteration of the present law must be made. According to the law now in force in the Presidencies of Bengal and Madras, a Sessions Judge could not pass sentence of punishment in a case of murder, but must refer his proceedings to the Sudder Court, and that Court, if it concurred in the conviction of the accused, could sentence him either to be hanged or to be imprisoned or transported for life, or it could pass any other sentence in the case that it deemed proper. Under the Bombay Code, he believed that, on a conviction for murder, the Sessions Judges could sentence the accused to transportation or imprisonment for life or to solitary confinement with corporal punishment. He did not think that this discretionary power should be vested in any subordinate Court. According to the Penal Code, the only alternative punishment to death was transportation for life, and he (Mr. Harrington) thought that the power of determining which of these two punishments should be awarded should be exercised by the Sudder Court alone. On their first appointment to the Bench many of the Sessions Judges were necessarily young and inexperienced, for we were not heaven-born Judges, though we had been called so at home, and he did not think that in cases of murder it should be left to any Court below the Sudder to decide whether the penalty of death, which the law had prescribed for that crime, should be inflicted, or whether some other punish-

ment, though allowed by law, should be substituted. It was not to be supposed that the Judges of the Sudder Court would pass sentence or give any order merely upon the report of the Sessions Judge; they would go through the proceedings and judge for themselves whether the record contained sufficient proof of the guilt of the accused to warrant a conviction, and, in that case, whether there were any mitigating circumstances justifying the remission of capital punishment.

The Section, as it now stood, introduced no new rule. It merely proposed to maintain a rule which had been in operation in India since 1793. The question then arose, had the rule worked well; what had been its practical effect; and was there any reason for altering it? If it could be shown that the operation of the rule had been attended with injustice to accused parties, or that it had caused any inconvenience in the administration of justice, he would withdraw his objections. But he did not think that any one who had had any practical acquaintance with the working of the rule could urge this as a ground for its discontinuance.

MR. LEGEYT said, it was his intention to support the amendment, and he was disposed to do so from his experience of the working of the law in the Bombay Presidency. There the law required the Sessions Judge to pass sentence in every case. When a sentence exceeded a certain limit, the case was referred to the Sudder Adawlut for confirmation, and that Court had the power to confirm, mitigate, or annul the sentence of the lower Courts. In cases of murder, as had been stated by the Honorable Member (Mr. Harrington), the Sessions Courts in Bombay possessed the discretionary power of sentencing the accused to transportation for life, imprisonment for life, or to solitary confinement for two years, with corporal punishment. He had seen all these sentences resorted to. He had had fourteen years' experience of the working of the Sudder Court, and he recollected very few cases in which that Court had found fault with the leniency of a sentence by a Sessions Court. The effect of a sentence passed immediately on the close of a trial was beneficial to the by-standers and the people generally. He thought how-

ever that, when a trial was closed without the sentence being passed, people would not know on what principle the punishment afterwards awarded was come to. There could not be a more fit or proper person to form an opinion whether a capital punishment was called for than the Judge who had tried the case and had heard the evidence. As however he might make a mistake and pass a wrong sentence, it was well and proper in a case of life and death that the sentence which was irrevocable should go up to another and a higher Court for confirmation. For these reasons he thought the amendment was just what was required and would be a great improvement in the law as provided in the Bill, and he should therefore support the amendment.

Mr. SCONCE said, he would state shortly the objections which he had to the adoption of the proposed amendment. Murder being the highest crime known under the law, the punishment imposed for it was death. Cases might occur where the question would arise whether, instead of enforcing sentence of death, a lesser punishment might not be inflicted. Substantially, however, in cases of murder, death was the proper punishment, and in practice the point for decision was whether the liability to a capital sentence having been incurred, a lesser punishment should be substituted; not whether the lesser punishment being the ordinary penalty, a capital sentence should be superadded. It seemed to him, therefore, that a higher and more experienced Court was in a far better position to determine in what cases a special provision of the law should be departed from, than an Officer of less mature experience. It was, he thought, not consistent with the dignity and position of the Sudder Court to send up to it only such trials as, in the opinion of the Sessions Judges, required a capital sentence to be enforced, as if it should be the duty of the Sudder Court simply to register the judgment of the lower Court. Now the grounds for not inflicting capital sentences were delicate and various; and a proper measure of the punishment in each case to be imposed was more likely to be taken in the Sudder Court than by twenty or five-and-twenty Sessions Judges. These were the

Mr. LeGeyt

reasons which induced him to think the Section as it stood preferable to the proposed amendment.

THE CHAIRMAN said that, as he understood the Code as it now stood, a Sessions Judge would in ordinary cases have the power to sentence to transportation for life or any minor punishment. But if he had to try any offence punishable with death, he could not pass sentence at all. There was no other case provided for by this Code, in which it would be necessary for the Sessions Judge to send up the case to the Sudder Court for the sentence to be passed, than the single case of an offence punishable with death.

Two objections had been made to the amendment which he had proposed. The first was that, in cases punishable with death or with an alternative punishment, the Sessions Judge, instead of sending up a case to the Sudder Court, would pass a sentence short of death to avoid the necessity of sending up the case for the sanction of the Sudder Court, and that in consequence persons who might be punished with death would get off with transportation for life or some minor punishment. He (the Chairman) could hardly conceive that any Judge, who knew a prisoner to be deserving of death, would punish him with transportation for life, merely to avoid the reference to the Sudder Court. He (the Chairman) was of opinion that a Judge who was capable of acting so was not fit to be a Judge.

The next objection was that many Sessions Judges were too young and inexperienced to be invested with the power of passing sentence of death. But, he would ask, why should the Sudder Court have to pass the sentence? The Judge who was competent to try a case and recommend what sentence ought to be passed ought to be competent to pass the sentence himself. If he was not competent to pass sentence, he ought not to be entrusted with the power of trial. It was well known that, in many of the Non-Regulation Provinces, the Judge who tried for murder actually passed sentence of death, although he could not carry the sentence into execution with-

out the confirmation of the Supreme Government. In Non-Regulation Provinces a Judge could be trusted with the power of passing sentence of death; but in the Regulation Provinces it was said it would be wrong that a prisoner should be sentenced to death, except by the Sudder Court.

In England, in cases where death was the only punishment, there was no discretion allowed to the Judge, who must either pass or record sentence of death. He might refer the case to the Secretary of State, with a recommendation either for pardon or commutation of the sentence passed. In this country the Sudder Court was said to try the prisoner upon the record. This, if it were substantially the case, would be most objectionable. When he first came out to this country, he remembered having been much surprised to hear that the Sudder Court tried prisoners in capital cases, in their absence and upon the record, without seeing the witnesses or hearing their evidence, and that the committing officer recommended the punishment to be inflicted. It struck him as being very objectionable that the committing officer should be allowed to pre-judge the case by recording what sentence ought to be passed. But he was glad to find upon investigation that, in substance, this was not really the case. In reality the prisoner was tried by the Sessions Judge, though that officer could not pass sentence, but only recommend what sentence should be passed. He had constantly seen it remarked by the late Honorable Court of Directors that trial upon the record, and without hearing the witnesses, was most objectionable. He should be very sorry himself to try a man and to sentence him to death without having the witnesses, and he could not require others to do what he would not do himself. According to English law, a prisoner was required to be present and to be asked whether he had any thing to say why sentence of death should not be passed. He had a right to move in arrest of judgment, and to urge that the act of which he had been found guilty did not amount to a capital offence. Suppose a prisoner were to say to the Sessions Judge, "You are going to send

my case to the Sudder Court for trial, or for sentence, let me go up and be present whilst the trial goes on, and be heard in my defence, or let me show cause why sentence of death should not be passed against me." The Sessions Judge would not comply with the application according to the proposed law. The prisoner would not be told a syllable of what was to take place. The Judge would not even tell him that he was going to recommend the Sudder Court to pass sentence of death upon him. The Court would be closed, the prisoner would be taken back to the prison and there locked up, and he would know nothing more until he heard of the sentence passed upon him by the Sudder Court.

For these reasons he (the Chairman) should press his amendment. It might be however that the amendment did not go far enough, and it might be said that the Sudder Court should have the power of acquittal when a prisoner was manifestly innocent or when a wrong sentence was passed upon him. He (the Chairman) had no objection to giving the Sudder Court the power of reversing or mitigating a sentence, and of ordering a new trial, in any case in which a sentence of death might be sent up for confirmation.

SIR CHARLES JACKSON said, he objected entirely to the Sudder Court having the power to try upon record. When he was Advocate General, the case of Sonatun Naik, for whom he was engaged as Counsel, was heard before the Sudder Court. Sonatun Naik was charged with murder before a Judge at Midnapore, who partly heard the case and examined the greater number of witnesses called. That Judge was then removed, before he had finished the case, to another Station, and another Judge was appointed to Midnapore, who then took up the case as it stood at the departure of his predecessor, and examined a few more witnesses and then recorded his opinion that the prisoner should be hanged. This case, he tried, came up before the Sudder Court, and he as Counsel objected that it was a trial upon record, and that it was opposed to all principle that the Judge should recommend the sentence of death when he had not heard all the witnesses.

The Sudder Court (Mr. John Russell Colvin presiding) saw no objection to the course pursued in the case, and sentenced the prisoner to be hanged, whereupon he (Sir Charles Jackson) obtained a reprieve and referred the matter to Government. The Bengal Government agreed in opinion with the Sudder Court, and the prisoner, thus tried, was actually executed. He never saw the written answer on which Government proceeded, if any such were recorded, but he was afterwards informed verbally by a Government official that the English Law was analogous, inasmuch as a Justice in Chancery, when newly appointed, took up the proceedings of his predecessor as they stood, and never commenced the enquiry again *de novo*. To his great surprise, however, subsequently, when he was acting as Legislative Member of the Supreme Government, shortly before the arrival of the Honorable and learned Chairman, a Despatch arrived from the Court of Directors, in which they referred to this case and expressed a desire that steps should be taken to prevent the occurrence of such a case. Bearing this case in mind, he was not surprised at the views of the Honorable Member for the North-Western Provinces, but he should nevertheless vote in favor of the amendment proposed from the Chair.

After some further discussion the Council divided:—

<i>Ayes 4.</i> Sir Charles Jackson. Mr. LeGeyt. Sir James Outram. The Chairman.	<i>Noes 3.</i> Mr. Sconce. Mr. Forbes. Mr. Harington.
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So the Motion was carried.

THE CHAIRMAN moved the addition of the following words to the above Section:—

"Or may reverse the conviction and order a new trial."

MR. HARRINGTON said, he should not oppose the introduction of these words, because it would always be in the power of the Government to pardon the prisoner.

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

Section 257 provided as follows:—

"A case referred by a Court of Session for the sentence of the Sudder Court shall be heard by a Court constituted by three Judges

Sir Charles Jackson

of the said Sudder Court. The Sudder Court shall review the depositions of the witnesses, the conviction, and in cases tried by Jury, the direction of the Judge, and shall pass such judgment and sentence as to the Court shall seem right. The sentence shall be according to the opinion of the majority."

Several amendments were agreed to in this Section, on the Motion of the Chairman, which were rendered necessary by the alterations made in Section 255, and which made the Section run as follows:—

"A case referred by a Court of Session for confirmation of a sentence of the Court of Session shall be heard by a Court constituted by two or more Judges of the said Sudder Court. The confirmation of the sentence, or any new sentence or order passed, shall be signed by not less than two of such Judges."

After some amendments in Section 258, the further consideration of that Section and of Sections 259 to 262 was postponed.

Section 263, which provided that "in cases tried without a Jury the Court in its judgment shall record the reason for its decision," was negatived.

Sections 264 to 270 were passed as they stood.

Chapter XXII, Sections 271 to 274, contained provisions relating to the Sudder Court as a Court of Revision.

MR. LEGEYT said, he had some amendments to submit to the Council with respect to this Chapter regarding Revisions and the following Chapter regarding Appeals. It appeared to him that granting an appeal of right in Criminal cases, which was so amply afforded by this Code, was a mistake and defect. They had tried this system for a great while, and found that the facility of appeals in Criminal cases was an obstruction to justice. Reading these two Chapters, it would appear that nothing was more important than allowing appeals. It appeared to him that Chapter XXIII, relating to appeals, invited every convict to seek a reversal of the sentence passed upon him. It was not his (Mr. LeGeyt's) intention to propose to shut the door on the amendment or reversal of an unjust sentence. But to hold out hopes to a convict, both before and after conviction, to set aside conviction, was what appeared to him (Mr. LeGeyt) to be highly improper. Chapter XXIII, which provided for certain revision, was

all very right and proper, and to such revision he was anxious of restricting the re-investigation of cases in which sentence had been passed. He had therefore, with this view, prepared two Sections, which, if adopted by the Council, would remove what he considered very great defects in the Code.

These Sections were as follows:—

"It shall be lawful for the Sudder Court to call for and examine the records of any subordinate Court, for the purpose of satisfying itself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such subordinate Court. If the Sudder Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the same, and pass such judgment and sentence as to the Court shall seem right, or, if it deem necessary, to order a new trial."

"It shall be at all times lawful for a Court of Session and for a Magistrate, or other Officer exercising the powers of a Magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Courts. If the Court or Magistrate shall be of opinion that the sentence or order is contrary to law, the Court or Magistrate shall annul the same, and pass such judgment and sentence as shall seem right, provided that in no case the sentence be more severe than the sentence originally passed."

After some conversation the further consideration of this Chapter and of Chapter XXIII Sections 275 to 282 was postponed.

MR. HARRINGTON moved the introduction of the following Section after Section 282:—

"Every sentence or final order of a Court or Magistrate, together with the reasons for making or passing the same, shall be written in the vernacular language of the presiding Officer, and shall be dated and signed by such Officer at the time of his making or passing the same, and the original shall be filed with the record or proceedings, and a translation thereof, where the original is recorded in a different language to that in ordinary use in proceedings before such Officer, shall be incorporated in the record of the sentence or order."

Agreed to.

MR. HARRINGTON moved the introduction of the following Section after the above:—

"If the vernacular language of the presiding Officer be not English, and the Officer be

sufficiently conversant with the English language to be able to write the sentence or final order in a clear and intelligible manner in that language, and prefer to write the same in that language, the sentence or final order may be written in English."

Agreed to.

The consideration of Section 283 was postponed.

Sections 284 and 285 were passed as they stood.

The consideration of Section 286 was postponed.

Section 287 provided that—

"Nothing in this Act shall be held to alter or affect the jurisdiction or procedure in Criminal cases of Heads of Villages under the provisions of the Madras Code, or the jurisdiction or procedure in Criminal cases of District or Village Police Officers under the provisions of the Bombay Code, &c."

MR. FORBES said, he had an amendment to propose in this Section. The object of it was to give the District or Village Police in Madras the benefit of the exception which this Section, as it now stood, gave to the District or Village Police in Bombay. When the Code was before the Select Committee, it was proposed that its provisions should be applicable to the Madras Police, and the change he wished now to introduce was consequent on a wish expressed by the Government of Madras that the Police of that Presidency should have its own Procedure. The Bill for the organization of the Madras Police Force was framed on the principle of an entire separation of the Police from the Magisterial Department, and its constitution as a distinct department under the immediate control of Government.

He believed Honorable Members were willing that the Government of Madras should be allowed to carry out the proposed system in the manner they thought most fit, so as to give the experiment a fair and full trial. He should therefore move the omission of the words "in Criminal cases of Heads of Villages under the provisions of the Madras Code, or the jurisdiction or procedure in Criminal cases of District or Village Police Officers under the provisions of the Bombay Code," and the substitution of the following: "of the Heads of Villages or of the District or Village Police Officers in the Presidencies of Madras and Bombay."

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

MR. HARINGTON moved the introduction of the following new Section after Section 287 :—

"This Act shall not take effect in any part of the territories not subject to the general Regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor-General of India, in Council, or by the local Government to which such territory is subordinate and notified in the Gazette."

Agreed to.

MR. HARINGTON moved the introduction of the following new Section after the above :—

"The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say),

"Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

"Words importing the masculine gender shall include females.

"In any part of the British Territories in India to which this Act may be extended under the provisions of Section , the expression 'Sudder Court' shall be deemed to include the highest Criminal Court of Appeal or revision in such part of the said territories."

Agreed to.

Forms A to D were passed as they stood.

MR. HARINGTON moved the addition of the following form :—

"FORM OF RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

I, of , do hereby bind myself to appear at in the Court of , at o'clock on the day of next, and then and there to prosecute, (or, as the case may be, "to prosecute and give evidence" or "to give evidence") in the matter of a charge of , against one A. B.: and in case of my making default herein, I bind myself to forfeit to Government the sum of Rupees.

Dated "

Agreed to.

The postponed Sections 13, 14, 15, 30, 31, 98, 160, and 164, and the Preamble and Title, were passed as they stood, and the Council resumed its sitting.

CUSTOMS DUTY (BOMBAY).

The Order of the Day being read for a Committee of the whole Council on the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)"—

MR. LEGEYNT said, this Bill was the result of the Report of the Select Committee, to whom were referred the two Bills relating to the Import Duty upon Salt, and to the Duty upon Spirits exported from any Port in India and imported to any Bombay Port. The Committee were instructed to consider whether it would not be advisable to consolidate the two Bills before publication, and they had so consolidated them. If the consolidated Bill were to run on in the usual course, a delay of three months after publication would take place. But he had since received a communication from the Government of Bombay, stating that the Bill relating to Salt was urgently required, and wishing it to be passed immediately. He proposed therefore that the Standing Orders be suspended, in order that the Bill might be passed through its subsequent stages.

SIR JAMES OUTRAM seconded the Motion, which was then carried.

MR. LEGEYNT moved that the Council resolve itself into a Committee on the above Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Sections I to III, were passed as they stood.

Section IV was passed after an amendment.

The Schedule, Preamble, and Title were passed as they stood.

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

LAND CUSTOMS (MADRAS AND BOMBAY).

THE VICE-PRESIDENT moved that the Council resolve itself into a Committee upon the Bill "to alter the rates of Duty on goods imported of exported by land from certain Foreign

Territories into or from the Presidencies of Madras and Bombay," and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

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

The Council adjourned at 3 o'clock.

Saturday, 3rd September 1859.

PRESENT :

The Honorable the Chief Justice, Vice-President, in the Chair.

Hon Lieut.-Genl. Sir J. Outram;	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon'ble Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

MALABAR OUTRAGES.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

ABSENCE OF THE GOVERNOR-GENERAL.

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

MESSAGE No. 185.

The Governor-General in Council forwards to the Legislative Council extract of a Resolution passed on the 2nd instant, relative to the absence of the Governor-General from the Council, and to the necessity for vesting the Governor-General with certain powers during such absence.

By order of the Governor-General in Council,

W. GREY,

Secy. to the Govt. of India.

Fort William,
The 3rd September 1859.]

The extract from the Resolution referred to was as follows :—

Extract from the proceedings of the Right Honorable the Governor-General of India in Council in the Home Department, under date the 2nd September 1859.

Resolved.—That it is expedient that the Governor-General should visit the North-Western Provinces of the Presidency of Fort William in Bengal and other parts of India, unaccompanied by any Member of the Council.

That the Honorable Mr. Harington be requested to take charge of, and bring into the Legislative Council, with a view to its being passed into law, a Bill to authorize the Governor-General alone, during his absence, to exercise all the powers which might be exercised by the Governor-General in Council in every case in which the Governor-General may think it expedient to exercise those powers.

(True extract)

W. GREY,

Secy. to the Govt. of India.

MR. HARINGTON moved the suspension of the Standing Orders, to enable him to bring in a Bill "for providing for the exercise of certain powers by the Governor-General during his absence from his Council," and to pass the same at once through its remaining stages, in order that it might receive to-day the assent of His Excellency the Governor-General. This was necessary, as it was the last day on which the Council would sit for some time, and the course now resorted to was adopted with a view to consult the convenience of Honorable Members.

SIR JAMES OUTRAM seconded the Motion, which was carried.

MR. HARINGTON said, in pursuance of the Resolution which had been read from the Chair, and which, in accordance with the requirements of the Act of Parliament, notified the decision of the Council of India that it was expedient that the Governor-General should proceed to visit the North-Western Provinces and other parts of India unaccompanied by any Member of the Supreme Council, he had the honor to lay before the Council a Bill which would enable His Lordship to leave Calcutta, carrying with him the full powers of the Governor-General in Council, except, of course, the power of making laws, which he mentioned, as on a former occasion there had been some discussion on this point. It would still, however, be necessary for the Governor-General, wherever he might be, to give his assent to all laws passed by the Council before they could come into operation. This was required by the Act of Parliament already referred to, and could not be dispensed with.

It would be in the recollection of Honorable Members that, when the last Act was passed to admit of His Excellency the Governor-General leaving Calcutta, carrying with him the full powers of the Governor-General in Council, Lucknow and many other parts of the North-Western Provinces were in a state of open rebellion, and that for a time British rule was entirely suspended therein. It was felt desirable, in consequence, with a view to the concentration of Civil authority in the North-Western Provinces, and to unity of action on the part of the Civil Government in aid of Military operations, that the Governor-General should himself proceed and assume charge of the Government of the North-Western Provinces, which would be attended with the further advantage of placing the Head of the Supreme Government in the vicinity of the Head-Quarters of His Excellency the Commander-in-Chief, and at hand to support with the whole weight of the Supreme Government all the Military measures which the Commander-in-Chief might think it expedient to initiate.

In the month of July following the Council was asked to extend the Act passed in the early part of the year for the further term of six months, to enable His Excellency the Governor-General to prolong the period of his absence from the Presidency. In introducing a Bill for this purpose, the present Lieutenant-Governor of Bengal, who was at the time a Member of the Supreme Council, observed that—

"Though the original Act was limited to the short time of six months, he thought he might say that this was done rather on the possibility that events might so fall out that the country might be restored to its usual state of tranquillity in the course of that time than in the expectation that this would be the case. That this had not been the case was manifest. Progress, and great progress had been made; but every Honorable Member was aware that the work had not yet been completed. He did not, of course, speak of the work of re-organization and reconstruction. That most arduous duty which the Government had still before it required deliberation and consultation. He did not speak in consequence of that work not having been yet done; but he spoke of the prompt daily action rendered necessary by the concurrence of daily events in the North-Western Provinces. One point which alone required the continued presence of Supreme Authority in the Provinces, Hono-

Mr. Harington

orable Members must be well aware of. In the Province of Oude much remained to be done. It must be manifest to every body that, for Military operations to be renewed in Oude, the commencement of the dry season was all that was required. These operations, he hoped, would, in one sense, be very different from those which occurred last year. He hoped that we had seen the last of our great and bloody struggles in the field. But a great Military demonstration was very obviously necessary in Oude—a demonstration which would have probably as much a political as a Military character. For that, and for many other reasons, it was quite as requisite still that the Head of the Supreme Government should be on the spot, vested with the powers of the Governor-General in Council, which Act IV of 1858 had given him temporarily, as it was when that Act was passed; and it was necessary therefore for the Council, unless it wished to go backwards, to extend the operation of the Act."

Since the passing of the Act last mentioned, the Governor-General of India, in Council had had the satisfaction to announce to the people of India that "war was at an end, that rebellion had been put down, that the noise of arms was no longer heard where the enemies of the State had persisted in their last struggle; that the presence of large forces in the Field had ceased to be necessary; that order was re-established, and peaceful pursuits had everywhere been resumed." A day of General and Solemn Thanksgiving to Almighty God for His signal mercies and protection during the late events had been observed, and it was thought that it would be a fitting sequel to the whole that His Excellency the Governor-General should now visit those parts of the country which had been the scene of the recent disorders; but which were happily again enjoying the blessings of peace and good Government. His Lordship's tour would be a signal manifestation of the return of peace; a season for the public recognition of services rendered during the late mutinies; and a visible assertion of the authority of the Queen's Government. The tour would embrace the recognition, by His Lordship in person as Her Majesty's Viceroy in India, of many new tenures in Oude; the reception of the influential Native Chiefs from the west of the Jumna, in the Cis-Sutlej States, the Punjab, and elsewhere; His Lordship's direct intercourse with those who lately lent their aid to uphold the British honor, and his per-

sonal acknowledgment of those services, including the conferment, by His Lordship's hand, of the honors which would be the just reward of those services. An inspection by His Lordship of certain important points, such as Lucknow and Delhi, which were now in a transition state, was also considered desirable, as well as a personal conference with the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioner of Oude, in respect to the future Government of those vast and important territories. These were briefly the reasons which had induced His Lordship to consider it advisable that he should visit the Upper Provinces and other parts of India during the approaching cold season. The measure was entirely concurred in by the other Members of His Lordship's Government, and it now only remained for him (Mr. Harington) to ask the Council to pass this Bill, to admit of that measure being carried into effect. It was perhaps proper that he should add that the Bill was word for word the same as that passed in the early part of last year, except that it was proposed that it should continue in force for seven instead of six months, and the words "his Council" were substituted for "any Member of the Council of India" in the Title, Preamble, and first Section of the Bill. This was necessary in reference to the recent change in the Government of India. His Lordship did not propose to leave Calcutta before the first or second week of October, but, as he had said, it was necessary to pass the Bill at once, as it was proposed, at the close of to-day's proceedings, to adjourn the Council for some weeks.

The Bill was read a first time.

MR. HARINGTON moved that the Bill be read a second time.

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

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

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

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

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

MR. HARINGTON moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from certain Members of the Central Committee of the Indigo Planters' Association against the Bill "for the licensing of trades and professions."

SIR CHARLES JACKSON moved that the above Petition be referred to the Select Committee on the Bill.

THE VICE-PRESIDENT said, he was not sure, with reference to the prayer of the Petition, that it could be referred to the Select Committee. The prayer was "not to proceed any farther with the said Bill, but to demand from its author, in substitution for it, if necessary, a project of taxation which shall press equally on all incomes, howsoever derived, of a proper taxable amount, and on all classes of persons." It was open to the Honorable Mover of the Bill to object to the Petition, with that prayer as it now stood, being received.

MR. HARINGTON said, personally he had not the slightest objection to the Petition being received, printed, and referred to the Select Committee on the Bill, if the forms of the Council, in reference to what had fallen from the Chair, should allow the Petition to be so treated.

The Motion was then put and carried.

ADEN.

THE CLERK reported to the Council that he had received from the Home Department a copy of a communication from the Bombay Government, on the necessity of making adequate legal provision for the administration of justice at Aden.

MR. LEGEY moved that the above communication be printed.

Agreed to.

MADRAS POLICE.

MR. FORBES presented the Report of the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

CUSTOMS DUTIES (BOMBAY).

On the Order of the Day being read for the third reading of the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)—"

THE VICE-PRESIDENT moved that the Bill be re-committed to a Committee of the whole Council, for the purpose of considering proposed amendments therein.

Agreed to.

The Bill was passed after amendments in Sections III and IV; and the Council having resumed its sitting, the Bill was reported.

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

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

LAND CUSTOMS (MADRAS AND BOMBAY).

THE VICE-PRESIDENT moved that the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay" be read a third time and passed.

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

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CUSTOMS DUTIES (BOMBAY).

MR. LEGEYT moved that Sir James Outram be requested to take the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" to the Governor General for his assent.

Agreed to.

MADRAS POLICE.

MR. FORBES said, the Report of the Select Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George" had already been printed, and was in the hands of every Honorable Member; and before he proceeded to move for a suspension of the Standing Orders, he would request Honorable Members to correct a mis-print in that Report. In the third line of paragraph 10, instead of "we were all at first unanimous," it should have been "we were not at first unanimous."

He was aware that the Council were at all times unwilling to give their assent to Motions for the suspension of the Standing Orders, and, he thought, very properly so; but still there were occasions when it was very necessary that they should give their assent, and the present, in his opinion, was one of them. He was not about to propose to the Council to pass a Bill rapidly through all its stages. The Madras Police Bill had been published for nearly six months, and during the whole of that time not a single communication had reached the Council, except from the Government of Madras, at whose instance the Bill had been introduced, and that Government were now very anxious that the Bill should speedily become law. The head of that Government had it in contemplation to make certain reductions in the Army, which could not be effected until what it was hoped would be an efficient Police had been established by this Bill. As it was generally understood that this was the last time that the Council would sit for some few weeks, he hoped that what he had stated would be considered a sufficient reason to justify the Council in allowing the suspension of the Standing Orders, in order that the Bill might pass through a Committee, and be read a third time that day. The Council now unfortunately consisted of only seven Members, but five of them had been Members of the Select Committee, and had concurred in the Report which he had just presented.

The only other Members were the Honorable and learned Vice-President and the Honorable and learned Judge

opposite (Sir Charles Jackson), but he did not anticipate the slightest opposition from them, as the Bill was not introduced for the purpose of extending or enlarging the ordinary Mofussil law of India, but for the purpose of introducing into India the principles of English law. On these grounds he hoped to receive the support of the Council in now moving that the Standing Orders be suspended, in order that this Bill might be passed through its subsequent stages.

MR. HARRINGTON seconded the Motion, which was then carried.

CRIMINAL PROCEDURE.

On the Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

THE CHAIRMAN moved the introduction of the following new Section after Section 20 :—

"No person shall be empowered by Government to hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless the person so authorized is a Covenanted Servant of Government, or a European British subject."

MR. HARRINGTON said, if they adopted the amendment of the Honorable and learned Chairman, he thought that they would run some risk of violating the Act of Parliament which declared that any Officer of Peace might apprehend a British subject in the Mofussil. This Act did not require that the Officer should be a Covenanted Servant of Government, or a European British subject; and a Deputy Magistrate, though a Native, might, he presumed, exercise the power, there being no doubt that he was an Officer of Peace or Police within the meaning of the Act.

THE CHAIRMAN remarked that the amendment which he had moved proposed merely to empower the Government to do certain things, and it would in no way interfere with the Act of Parliament to which the Honorable

Member for the North-Western Provinces had referred.

MR. HARRINGTON said, he did not wish to press the point. He proceeded to observe that, in considering the question before the Committee, which was one of very great importance, it would, he thought, be well to go back a little and see what had been proposed in the first instance, and what had afterwards been done. The Code, as originally framed by Her Majesty's Commissioners, was intended to apply to all classes alike, Europeans as well as Natives. Little, if any, distinction was made between the two classes, and to show clearly what was the intention, a Section was introduced, which declared that no person whatever should, by reason of place of birth, or by reason of descent, be excepted from the rules of Criminal Procedure. This was the character of the Code as it was received from England.

In moving the first reading of the Bill, the Honorable and learned Chairman made the following remarks on the part under consideration. He said—

"There was an Article in the Code which involved a question of considerable importance, and would, no doubt, give rise to much conflict of opinion, and become the subject of future discussion. He alluded to Article 8 of Chapter I, which provided as follows :—

"No person whatever shall, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts."

"This Article would invest the Courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts. No Frenchman or German or Armenian or East Indian was exempt from their jurisdiction. European British subjects alone enjoyed that privilege; and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to the witnesses, who were, frequently, in no way interested in the proceedings.

"The Article to which he referred would bring an offender, whatever his place of birth, or whatever his descent, under the jurisdiction

of the Court within the local limits of which his offence might be committed."

There could be no doubt that the Article on which these remarks were made by the Honorable and learned Chairman gave jurisdiction to all Courts, whosoever presided in them, over European British subjects equally with Natives; and he certainly understood the Honorable and learned Chairman in those remarks strongly to have advocated the principle on which the Article was based, namely that it should be of general application, whereas now they were called upon by the Honorable and learned Chairman to declare not only that none but a Covenanted Servant or a European British subject should have power to commit a European British subject for trial, but that no one else should have power even to arrest him. He need not say that this was a most important alteration. How had the Select Committee on the Code, of which he (Mr. Harington) was a Member, proposed to deal with this question? A reference to the Section, as amended by them, would show that they had no desire to extend the jurisdiction of the Mofussil Courts as regarded European British subjects. They were of opinion that, whatever jurisdiction those Courts already possessed over European British subjects, should be continued to them, but that it should not be enlarged; and in order to remove any doubt that might arise, and to prevent the possibility of a mistake, they proposed to add to Section 3 a proviso to the effect that nothing in that Section should be held to authorize the trial of any person who, in respect of the offence with which he was charged, was not subject to the jurisdiction of the Criminal Courts established by Act of , referring to the proposed Bill for the constitution of the Criminal Courts. So that under the Section, as amended by the Select Committee, no European British subject could be committed by a Native Magistrate, whatever his powers might be. In case, however, of a murder or any other heinous offence being committed by a European British subject, a Deputy Magistrate in charge of a division, although not a Covenanted Servant, or a

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European British subject, would still have power to arrest the offender and to hold the preliminary investigation. To this it appeared to him (Mr. Harington) no reasonable objection could be made. He must repeat that the object of the Section, as amended by the Select Committee, was not to extend in any way the existing jurisdiction of the Mofussil Criminal Courts over European British subjects, but to maintain it as it now existed, leaving for future consideration the large question as to whether Europeans should or should not be amenable to the jurisdiction of those Courts in the same manner as other classes. When the Bill came before a Committee of the whole Council, the Honorable and learned Chairman himself introduced the words which brought European British subjects within the reach of Section 20. As that Section was originally framed, it carefully debarred the local Courts from committing for trial any party who was not amenable to the local Court of Sessions. To show that such was the case, he would, with the permission of the Council, read the Section. It said—

"It shall be competent to the Government to empower any subordinate Criminal Court to hold the preliminary enquiry into cases triable by the Court of Session, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes."

Under the law, as it now stood, only Magistrates and Joint Magistrates, or persons exercising the full powers of Magistrate, had the power of commitment to the Sessions. The Select Committee proposed to give the Government authority to invest any Subordinate Criminal Court with this power; but they would have limited its exercise to those cases which were triable by the Sessions Court, in which, by no possibility, could a European British subject be concerned, for this simple reason, that the Courts of Sessions had no jurisdiction over that class of persons, and when a commitment in their case was rendered necessary by the character of the offence charged, it must be made to the Supreme Court of Judicature. It was the Honorable and learned

Chairman, and not he (Mr. Harington), who, contrary to the intention of the Select Committee, had introduced the words out of which the present discussion had arisen, and, so far as those words were concerned, he (Mr. Harington) had no objection whatever to their omission. But what he was afraid of was that, if they passed the Section as proposed by the Honorable and learned Chairman, a difficulty might arise in places where there might be no Officer qualified to act as a Justice of the Peace, nor a Magistrate, nor a European British Subject. He did not think it advisable, nor had he any wish that the Courts in the Mofussil, when presided over by natives, should exercise jurisdiction in criminal cases over European British subjects. He would leave them to be tried by European officers only. At the same time he could not shut his eyes to the fact that, if the Honorable and learned Chairman's amendment were carried, it might often happen that a European, who had committed a serious offence, such for instance as murder, might escape because there was no Officer on the spot empowered to arrest him, or to make the preliminary investigation with a view to obtain proofs of his guilt. This he thought would be a very serious evil, and that it would cast a great reflection upon the administration of criminal justice in the interior of the country. Under Regulation XV. 1806 of the Bengal Code, a Zillah or City Magistrate, when he was a Justice of the Peace, might apprehend and commit European British subjects for trial before the Supreme Court, but when he was not a Justice of the Peace, he was required to send the accused to Her Majesty's Justices of the Peace at Calcutta, with a request that the necessary measures might be taken for bringing the accused to trial before the Supreme Court. The Bombay law was somewhat larger. That law spoke of the Magistrate generally, not of a Zillah or City Magistrate; and he believed he was right in stating that in Bombay many Natives held the appointment of Magistrate, while on this side of India Natives could be invested with the full powers of Magistrate. He thought that a reference to Act VII of 1853 would afford them some assistance in determining the powers of Native Ma-

gistrates or of other Natives exercising the powers of Magistrate in respect to European British subjects. That Act was passed to extend the jurisdiction of Magistrates under the 52 Geo. III., c. 155 s. 105 in cases of assaults, forcible entries, and other injuries accompanied with force not being felonies, and under its provisions a Magistrate might try, apprehend, and punish European British subjects committing any of the offences just mentioned; but, in order to show that the powers given by the Act were not intended to be vested in Covenanted Servants of the Government or European British subjects alone, the concluding Section distinctly said—

"The powers in such cases given to the Magistrate of the zillah or the district may be lawfully exercised by any Joint Magistrate or other person lawfully exercising the powers of a Magistrate in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends."

Here the power of apprehending and punishing European British subjects in certain cases was expressly given, not to Magistrates and Joint Magistrates only, but to any "other person lawfully exercising the powers of a Magistrate." The question then arose who were the persons other than Magistrates or Joint Magistrate who could lawfully exercise the powers of Magistrate. To this question Act XV of 1843 furnished a ready answer in so far as Natives were concerned. That Act gave the Government the power to appoint Native Deputy Magistrates, and to invest them with the full powers of a Magistrate, so that it was clear that Native Magistrates in cases of the nature of those just described had power not only to apprehend but to punish Europeans. Now, however, they were asked to prevent the Government from authorizing any but Covenanted Servants and European British subjects to apprehend a European British subject and that was his (Mr. Harington's) objection to the proposed amendment. He would repeat that he had not the slightest wish to make European British subjects amenable in Criminal cases to Courts presided over by Native Judges in the least degree more than they were amenable to those Courts by

the existing law, and if the Honorable and learned Chairman would so far alter the wording of the Section as to allow a Native Magistrate or Deputy Magistrate, in the absence of a European Magistrate or Justice of the Peace, to apprehend a European British subject charged with the commission of any crime, and after completing the preliminary investigation, to send him to the nearest Justice of the Peace or Magistrate, being a Covenanted Officer of Government, his objections would be entirely removed.

MR. SCONCE said, he was not yet thoroughly instructed as to the whole scope or possible result of the Section proposed. One of the effects of the law of 1806 was to make an invidious distinction between two classes of subjects. He referred to the Section of that law by which Magistrates, not being Justices of the Peace, had to deal with offences committed by British subjects. That Section said that—

“Whenever a European British subject shall be charged before a Zillah or City Magistrate who has not taken the oaths of qualification as a Justice of the Peace with a criminal offence which, according to the law of England, may not be bailable, and the Magistrate, after making the necessary enquiry on the subject, shall be of opinion that there are grounds for bringing the person accused to trial before the Supreme Court of Judicature, the Magistrate shall send the person accused under safe custody to His Majesty's Justices of the Peace at the Police Office in Calcutta, accompanied by the witnesses against the prisoner, with a letter, stating the nature of the case, and requesting that the Justices at Calcutta will take the necessary measures for bringing the person accused to trial before the Supreme Court of Judicature.”

Now that feature of the law he was not desirous to continue: it seemed to him not to be by any means desirable that a European British subject should be arrested by a Magistrate incompetent to commit him for trial, and required to forward the person arrested to a Calcutta Magistrate, who, after all, might or might not think fit to make the commitment. Supposing, however, a Magistrate was under the control of the Justice of the Peace of the same district, some change of the old law, which was certainly necessary, might readily be adopted. A more important question was, whether, under any circum-

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stances, a Magistrate who was not a Covenanted Servant of Government, or a European British subject, should exercise Magisterial powers in cases of offences committed by British subjects. On one point he had great doubt, and, as he had said before, was perfectly uninstructed; and he should be glad to have the opinion of the learned Judge on his right (Sir Charles Jackson) and of the learned Chairman as to how far the proceedings in the creation of Magisterial powers should be sufficient authority for the arrest and commitment of a European British subject, without the issue of a Commission of the Peace. If by an enactment of this Council they were competent to supersede the necessity of Commissioners of the Peace, it would be sufficient for them to confer Magisterial powers which would give jurisdiction and cognizance over all persons. It seemed to him that that would be the effect of the Bill, as it now stood, and was the effect of the Section now proposed, and that a person being a Mofussil Magistrate, though not a Covenanted Officer, might exercise the functions hitherto exercisable alone by a Justice of the Peace.

Then, next to that question, followed another still larger question. It mattered not whether the name of Justice of the Peace was retained or not, if the same functions were still to be invested in Mofussil Officers. But a material question to determine was, whether, in defining those functions, they should wholly except persons who were not European British Subjects or Covenanted Servants from the exercise of the functions of arresting and committing for trial a European British subject. He felt greatly indebted to the Honorable Member opposite (Mr. Harington) for his explanation as to the effect of the present Code, as it now stood, upon that much agitated question, namely the trial of British subjects by natives. He believed that question to have been wholly reserved in their recent discussions upon this Code, and that no Member of this Council had been implicated in any way by committing himself to an opinion in the matter. But he felt that it was very different now, that a kindred question had arisen,

not so much as to the form in which jurisdiction over British subjects was to be exercised, but that certain classes of Her Majesty's subjects should not be competent to exercise the functions corresponding with those of a Justice of the Peace. It was no new principle that residents of India, not being British subjects, should exercise the powers of Justice of the Peace. In the Statute 2 and 3 William IV. c. 117, it was provided that—

“Whereas it is expedient that other persons, besides the Covenanted Servants of the United Company of Merchants of England trading to the East Indies, or other British inhabitants of the East Indies, should be capable of being appointed to the office of Justice of the Peace within and for the Towns of Calcutta, Madras, and Bombay,” &c.

So that under that Act all natives of this country were competent to be appointed by Government to act and officiate as Justices of the Peace in the Towns of Calcutta, Madras, and Bombay. He was speaking now only of the fitness of the natives of this country to exercise the functions of Justices of the Peace. Therefore the point could not be evaded whether, seeing that so far back as 1832 the Imperial Parliament had declared that native gentlemen were capable of being appointed Justices of the Peace, twenty-seven years later this Council should depart from that principle, and declare that native gentlemen, equally well educated, should not be competent to exercise those functions. He need hardly allude to Section 87 of the renewed Charter Act of the following year, where it was declared that—

“No native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, color, or any of them, be disabled from holding any place, office, or employment under the said Company.”

Whether they looked to one Act or the other, the main point was that no born natives of this country, and no person not being a Covenanted Servant, or a European British subject, was qualified to exercise any functions which could be vested in a Justice of the Peace. He could not conceive that, when once the principle was admitted, the principle

of appointing native Justices of the Peace, it could now be departed from. It would be a matter of regret that now that the world was so many years older, now that civilization had so much advanced, and now that liberal sentiments had been so largely extended, they should hold that Her Majesty's native subjects were altogether incompetent to entertain charges against European British subjects. He did not think that the Honorable Member (Mr. Harington) had concluded with a Motion. He (Mr. Sconce) therefore felt disposed to move an amendment in the proposed Clause. He should propose to read the Clause thus:—

“No person exercising the lawful powers of a Magistrate shall hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or shall arrest, hold to bail, or commit any European British Subject, unless the person so authorized be a Covenanted Servant of Government, or a European British Subject, or be specially empowered by the local Government to act on that behalf.”

The difference would be that not every inexperienced Magistrate, and not the large number of Deputy Magistrates now appointed to Mofussil Districts, would be competent to hear charges against British subjects, but, looking to the character and competency of the Native Magistracy, the Government should not be declared disqualified from appointing any Native Magistrate from entertaining such charges. With these remarks he begged to move, as an amendment, that the words above read by him be substituted for those proposed by the Honorable and learned Chairman.

ADJOURNMENT.

SIR JAMES OUTRAM moved that the Council adjourn for ten minutes.

Agreed to.

The Council afterwards met pursuant to adjournment.

MESSAGES FROM THE GOVERNOR-GENERAL.

SIR JAMES OUTRAM returned to the Council Chamber with the Bill “for providing for the exercise of certain powers by the Governor-General during his absence from his Council,”

the Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)," and the Bill "to alter the rates of Duty on goods imported or exported by land from certain Foreign Territories into or from the Presidencies of Madras and Bombay respectively," and delivered them to the Vice-President, who thereupon announced that the Governor-General had signified his assent to the same.

CRIMINAL PROCEDURE.

The adjourned debate on the Motion for the introduction of a new Section after Section 20 of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

THE CHAIRMAN said, as he understood the effect of the amendment, any person exercising the powers of a Magistrate might be authorized by the local Government to hold a preliminary enquiry into cases triable by a Supreme Court, or to arrest, hold to bail, or commit European British subjects; whereas, as the Section now stood, it was proposed that no person should be empowered by Government to do so, unless he was a Covenanted servant of Government, or a European British subject. The Honorable Member (Mr. Harington) had referred to what he (the Chairman) had stated when this Bill was introduced by him. But he begged to remind the Honorable Member that, when the Bill was brought in, he (the Chairman) did not pledge himself to the whole of its provisions. He had expressly stated that he introduced the Bill as it had been framed by Her Majesty's Commissioners, with the omission of certain Clauses relating to the amalgamation of the Supreme and Sudder Courts, and to the exemption of proceedings in Criminal Courts from Stamp Duties; and he had said that, although he did not coincide with all the recommendations made by Her Majesty's Commissioners, he thought that it would be better to let the Code go forth to the public in the form in which it had been prepared by the Commissioners, in order that it might elicit the opinions and suggestions of all persons competent to advise upon the subject; and that, consequently, he had made no sub-

stantial alterations in it. Now the Honorable Member did not act fairly by him (the Chairman) in trying to hold him to the opinion that British subjects should be amenable to the jurisdiction of our Native Criminal Courts. What he had stated then he would repeat now, namely that European British subjects should be subject to the jurisdiction of the Courts of the country; but the question was, how were these Courts to be constituted. If they were properly constituted and were to be assisted by a Jury, he would have no objection. But it was quite a different thing for Englishmen to be tried by a Native Judge with the assistance of a Mahomedan Law Officer, either with or without a Jury. With reference to the observations of Sir Arthur Buller on the occasion of the second reading of the Bill, he (the Chairman) had remarked that—

"He felt it right, in order to prevent any misapprehension, and not in justification of himself, to remind the Council that, on moving the first reading of the Bill, he had stated that he did not pledge himself to all the provisions which it contained, but that he had inserted the Clauses as they had been framed by Her Majesty's Commissioners, in order that the whole scheme might be fully and fairly before the Council and the Public, and that their opinions regarding it might be elicited. He certainly felt the full force of all that the Honorable and learned Member had said with respect to the Clause which exempted particular classes of public servants from the jurisdiction which the Bill provided for the rest of the community."

This was said in March 1857, before the Mutinies, and he did not think, even if he had pledged himself to the opinion that the Native Criminal Courts should have jurisdiction over Europeans, that any Honorable Member should get up now and hold him to it. If he had expressed such an opinion, supposing even that he had done so, he did not feel himself bound to it after the occurrences of 1857 and 1858. He claimed for himself the right of giving his opinion with reference to facts and circumstances as they might exist at the time. What he had meant to say at that time referred to District Courts. He had expressed no opinion as to how those Courts were to be composed, but he said that it would be

better that Europeans should be tried in those Courts than that they should be brought down from distant places in the heat of the sun to the Supreme Courts for trial. He said so, not only with reference to the persons to be tried, but also with respect to the prosecutors and witnesses. Not long ago a case was sent up from Rangoon, in which the witnesses, after appearing before the Grand Jury, had to return to Rangoon before the prisoner could be put upon his defence before a common Jury. It was with reference to such cases that he (the Chairman) had said that it was better to constitute proper Courts for the trial of Europeans, than to drag an accused person, perhaps an innocent man, down to the Supreme Court. The Honorable Member did not propose to allow a European to be tried by a Native Judge. Then why did he propose to allow a Native Judge to commit him to the Supreme Court for trial, when he might probably be innocent of the offence with which he was charged? If he were an innocent man, witnesses would be obliged to come down to give their evidence for nothing. He remembered a Civil case in which the witnesses had to travel all the way from Agra or Simla. They had to come down in the middle of May, the hottest month in the year, and when they came, they found the case had been withdrawn or postponed, and they were told that they would not be required for about three or four months. They had to pay their own expenses, and while they were so absent their salary was retrenched by the Civil Auditor. Had they been obliged to come down again, they would have been put to the same expense, and the time so occupied would have been thrown away. The matter came before the Government with reference to the refusal of the Civil Auditor to pass their salaries, the Government ordered the Civil Auditor to pass the charge, although, according to the rules of the service, they were not entitled to their salaries. Suppose this had happened in the case of a planter or a private person who could not afford to pay these men, and to employ others to do their work while they were so absent? He (the Chairman) still maintained the opinion that Europeans should be rendered liable

to be tried by District Courts, but before the Council made them so liable, let a competent Court be constituted. The Honorable Member did not intend to recommend the trial of Europeans by Natives, but rather twitted him (the Chairman) for introducing words into Section 20 which would subject a European to that trial. He did not deny that the words were put in by him, but how often were words used which did not convey the intention of the person using them? It was not fair to say only that the words had been introduced by him, but the Honorable Member should also have said why he (the Chairman) had introduced them. There were legal difficulties as to the appointment of Justices of the Peace in newly acquired territories, and it was with reference to these difficulties that his amendment had been proposed. Its object was to empower Government to authorize certain persons in such territories to hold the preliminary enquiry into cases triable by a Supreme Court. The persons to be so authorized were those who, in the older Provinces, would, as Justices of the Peace, commit cases for trial in the Supreme Courts, that is to say, Covenanted Servants of Government, or European British subjects. He had since found that the words proposed by him did not properly express his meaning. Surely he was at liberty to amend his mistake.

He thought the Council ought to define what persons should have the power to commit for trial instead of giving to the Government that power, as was now the case by Section 20 and as the amendment of the Honorable Member for Bengal proposed to do. That amendment said—

"No person exercising the lawful powers of a Magistrate shall hold a preliminary enquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless such person be a Covenanted Servant of Government, or a European British subject, or be specially empowered by the local Government to act in that behalf."

He (the Chairman) objected to the introduction of those words. He believed many Governors held different opinions on such subjects. The Gover-

nor of Madras might hold one opinion, the Governor of Bombay another, and the Lieutenant-Governors of Bengal and of the North-Western Provinces and the Punjab others. They all might differ in opinion, and he therefore thought that the Council should lay down one rule. He would not invest any person who was not a Covenanted Servant of Government, or a European British subject, with the power to commit British subjects for trial by a Supreme Court. The Honorable Member said that the Council would be altering the existing law, and he referred to Regulation XV. 1806, Sections II and III. The words in this Regulation, "Magistrate who has not taken the oaths of qualification as a Justice of the Peace," meant a Magistrate who (being a Covenanted Servant of Government, or a European British subject) might be qualified, but who had not taken the oaths.

The Act of Parliament provided that no person should be appointed a Justice of the Peace unless he was a Covenanted Servant of the Government, or a British Inhabitant. The term "British Inhabitant" must be taken to mean a European British Inhabitant, because at that time a Native was not considered a British Inhabitant, or a British subject. To prevent misapprehension, however, he (the Chairman) had thought it proper to use the words "European British subject" in the Section proposed by him.

Then it was said that another Act of Parliament was passed, allowing Natives to be put into Commissions of the Peace for the Presidency Towns. But, although it might be so, they were not qualified to act for the Mofussil. It was true that this had been done in Bombay, but the Court of Directors had pointed out that this was contrary to the Act of Parliament.

The Honorable Member for Bengal had referred to the Section of the Charter Act, which said that no Native of India was disqualified, as such, from holding any place, office, or employment under Government. The present question related not to disqualification but to qualification. A Native was not disqualified from becoming a Member of the Civil Service. He might go to England, pass his examination, and come out as a Civil Servant. He was not disqualified

The Chairman

from becoming a Civil Servant, or, when a Civil Servant, from being appointed a Justice of the Peace. But he was not qualified to be a Justice of the Peace unless he was a Covenanted Civil Servant. In England Barristers of seven or ten years' standing were allowed to hold certain offices. A Native of India was not disqualified to hold those offices, but he would not be qualified to hold them if he was not a Barrister of seven or ten years, as the Act required.

He should not object to a Clause allowing any Native Magistrate or any qualified person, on receiving evidence of an offence committed by a European, to issue a warrant for his arrest, with a proviso that, immediately on his apprehension, the European should be taken before a Justice of the Peace, that is, a Covenanted Civil Servant, or a European British subject. The European could not be more harassed if so dealt with than he would be if seized by a Police Officer on view of offence. Rather than allow Europeans to escape justice, he had no objection to the introduction of such a provision. He did not wish that a European offender should go scot-free. But in such cases whatever was necessary to be done should be laid down by this Council. He protested against giving that power to Government, and thought that the law should be distinct upon the subject. He should adhere to his original proposition, which was intended as a proviso to Section 20, and should object to the amendment proposed by the Honorable Member for Bengal.

MR. HARRINGTON said, the Honorable and learned Chairman having charged him with not having dealt fairly towards him in trying to hold him to an opinion which he had expressed in March 1857, to the effect that European British subjects should be made amenable to the jurisdiction of the Native Criminal Courts equally with others, he was compelled to trouble the Council with a few remarks by way of reply to this accusation. His wish always had been and he hoped ever would be to act fairly towards all men, and he did not think he was open to the charge of having acted otherwise on the present occasion.

sion. It was not his intention, nor had he any desire, to hold the Honorable and learned Chairman to the opinion referred to. So far from thinking that any Honorable Member was bound by an opinion expressed upon a Bill, whether on its introduction or on the second reading, or at any subsequent stage, he had more than once declared that he considered Honorable Members were at full liberty to change their opinions upon any Bill or any part of a Bill whenever they pleased. It was only the other day that, in alluding to an opinion which had been given by the Honorable and learned Chairman, in which he expressed himself to the effect that, whenever the Government were precluded by their engagement from increasing the jumma of an estate, they were equally precluded by the spirit if not by the letter of their engagement from taxing the owners of the estates for which the jumma was paid, by a per-centage on the rents derived therefrom, he (Mr. Harrington) had said that the Honorable and learned Chairman was of course at liberty to change that opinion (assuming for the sake of argument that he had so expressed himself) if he thought proper to do so. He wished to take the present opportunity of correcting a mistake which had been made in respect to what had fallen from him on the occasion just referred to. He was reported to have said that the Government considered it impolitic at the present time to tax the Zemindars of Bengal. What he intended to say, and what he believed he did say, was, not that it was considered impolitic to impose any additional tax upon the landholders under the Perpetual Settlement, but that it was thought impolitic to raise the question whether any new taxes could be laid upon that particular class.

He hoped he had said enough to satisfy the Honorable and learned Chairman that it was not his wish to hold him to any opinions which he had expressed in bringing in the present Bill. He willingly acknowledged that the Honorable and learned Chairman had a full right to change those opinions either now or at any future time. But let them turn to the opinion which the Honorable and learned Chairman had formerly given on the subject under

discussion, and see exactly what he had said:—

"This Article," he stated, "would invest the Courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts."

The Honorable and learned Chairman certainly did not say what Courts he intended, but he went on to observe—

"No Frenchman, or German, or American, or Armenian, or East Indian, was exempt from their jurisdiction. European British subjects alone enjoyed that privilege, and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense, and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to witnesses who were frequently in no way interested in the proceedings. The Article to which he referred would bring an offender, whatever his place of birth or whatever his descent, under the jurisdiction of the Court within the local limits of which his offence might be committed."

Now, they did not require to be told that all the classes referred to by the Honorable and learned Chairman were amenable under the law as it at present stood to the local Criminal Courts of the country, whether presided over by European or Native Judges, and he submitted therefore that he was fully warranted in saying that the Courts which the Honorable and learned Chairman had in view, and to the jurisdiction of which he thought European British subjects equally with Frenchmen, Americans, Armenians, and Natives should be made amenable, were the Courts existing at the present time all over the country. What other Courts could have been intended, seeing the Bill did not propose to establish any new Courts? and were the Bill to become law to-day its provisions would require to be administered by the existing Courts in the same manner that the provisions of the new Code of Civil Procedure were being administered

in Bengal by the Courts which that Code found in existence at the time it was introduced.

The Honorable and learned Chairman charged him (Mr. Harington) with acting unfairly towards him, but he would ask the Honorable and learned Chairman, was it fair to enquire of him (Mr. Harington) whether he would allow a Native Deputy-Magistrate, a Mahomedan he said, to send down a European British subject all the way from Peshawar or Lahore for trial before the Supreme Court. From the first he (Mr. Harington) had objected to the power of committing European British subjects being given to Native Deputy-Magistrates, in proof of which it was only necessary for him again to refer to the Section as framed by the Select Committee, so that he submitted he was not in the remotest degree open to the charge which was implied in the question put to him by the Honorable and learned Chairman. Let the Section as amended by the Select Committee be compared with the Section as amended by the Honorable and learned Chairman. But the learned Chairman stated that the words which he now proposed should be struck out were introduced by mistake. He (Mr. Harington) accepted that explanation. In making these remarks what he (Mr. Harington) really wished was to guard himself against its being said that the Select Committee had proposed to allow a European British subject to be committed for trial before the Supreme Court by a Hindoo or Mahomedan Deputy-Magistrate, the very contrary being the case. The Honorable and learned Chairman referred to what was said by him when he moved the introduction of the words which it was proposed to strike out. He (Mr. Harington) had looked at the report of the debate which took place when the Honorable and learned Chairman made his Motion, but he found no report of what had fallen from the Honorable and learned Chairman on that occasion, and he was obliged to admit that he had forgotten what was said.

Then the Honorable and learned Chairman objected to giving to the Government the power proposed to be conferred upon it by Section 20; but if the objection was worth any thing,

Mr. Harington

it extended to the whole Section, and consistency would require that the entire Section should be struck out. The Section as framed by the Select Committee did not say that all subordinate Courts should be competent to order commitments, but those Courts only which the Government might so empower. The reason for this was that young men when first appointed were not competent to exercise this large power, and it was therefore proposed to be given to those Officers only who, after a sufficient trial, were considered qualified to exercise it.

SIR CHARLES JACKSON said, he did not wish to follow the Honorable Member who had just sat down at any length into that part of his speech which he had so irregularly introduced, and in which he stated that he had been misunderstood on a former occasion, and had not said that the Government considered it impolitic to tax landholders. He must say for himself, that he so understood the Honorable Member, and he would ask all the Honorable Members around him, whether they did not also understand the Honorable Member as putting the exemption of that class on the ground of political expediency.

But he would not dwell further on that subject. With respect to the question now before the Committee, namely, the expediency of giving Native Magistrates power to investigate charges against European British subjects, and to commit them for trial, he had no doubt that, as an abstract proposition, laws should be made applicable to all classes of the people alike; but that proposition must be taken with certain necessary modifications which the peculiar circumstances of each country might render necessary. In this country there was a small dominant and civilized class, and also a large native uncivilized population, and without entering into any argument on this part of the question—an argument which would raise many questions more or less personal as to the status and character of Native Officers—he was prepared to say that, in the present position of the two races, it was inexpedient that a Native Magistrate should have any jurisdiction whatever over British subjects, and if that was his opinion formerly, he certainly had

seen no reason to change it since the Mutinies. But he would rather put the argument on another ground. Whatever might be said of the Mofussil Courts, it must be admitted that they were as good Courts as natives ever had in this country. The Natives are not worse off, but, on the contrary, are much better off as to Courts than they were under the Native Governments. The British subjects, on the other hand, are subject now to Laws and Courts to which they are, more or less, attached, and the real question was, whether European British subjects should be deprived of their own Laws and Courts, and be placed under other Laws and Courts which were deemed by themselves and generally admitted to be of an inferior kind. He never could understand on what principle British subjects could be expected to acquiesce in the justice of such a proposition. No doubt the Laws and Courts of the country should be alike applicable and open to all classes; but the true solution of the difficulty was to raise the native to the position of the British subject, and not to reduce the British subject to the level of the native. Establish good Courts, and, if possible, a good Jury, in the Mofussil, and you would at once destroy all pretence for the exemption of British subjects from their jurisdiction; but until this was done, he should oppose every proposition for placing British subjects under the criminal jurisdiction of the present Mofussil Courts. Before he sat down he would refer to an argument of the Honorable Member on his left (Mr. Sconce), who had referred to the Statute of 2 and 3 Wm. IV. as authorizing the appointment of Native Justices of the Peace, and in fact establishing the principle that they were competent to discharge such duties. But their jurisdiction was confined by those Acts to the Presidency Towns, where they had little power, and where the Press and a large European community would operate as a check, and that restriction on the power of the Government to appoint Native Justices of the Peace spoke volumes as to the intention of the Legislature, and showed clearly that they were not then considered qualified to discharge the duties of Justices of the Peace in the Mofussil.

As he understood the present discussion, there appeared to be no difference between the views of the Honorable and learned Chairman and the Honorable Member (Mr. Harington), except as to the point of arrest. Neither of the Honorable Gentlemen wished to subject European British subjects to the jurisdiction of Native Magistrates, and all that the Honorable Member for the North-Western Provinces wanted, was a provision enabling Native Magistrates to arrest. He thought this difference might easily be reconciled by some provision on the subject, but he suggested that it would be better to make such provision in the 3rd Section, rather than in the 20th Section of the Act.

MR. SCONCE'S amendment being put, the Council divided—

Aye 1.
Mr. Sconce.

Noes 6.
Sir C. Jackson.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harington.
Sir James Outram.
The Chairman.

So the Motion was negatived.
The original question being put, the Council divided—

Aye 4.
Sir C. Jackson.
Mr. LeGeyt.
Sir James Outram.
The Chairman.

Noes 3.
Mr. Sconce.
Mr. Forbes.
Mr. Harington.

So the Section was carried.
Section 3 provided as follows:—

"No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal procedure, provided that nothing in this Section shall be held to authorize the trial before any Criminal Court of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court."

THE CHAIRMAN moved the insertion of the words "arrest or commitment for trial" after the word "trial" in the Proviso.

MR. HARRINGTON moved by way of amendment that the word "arrest" be omitted from the question.

The amendment being put, the Council divided—

<i>Ayes 5.</i>	<i>Noes 2.</i>
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the amendment was carried, and the Section as amended then passed.

MR. SCONCE moved the introduction of the following new Section after Section 20a:—

"Nothing in the foregoing Section shall be taken to prevent any Officer exercising the lawful powers of Magistrate from hearing a complaint against a European British subject, and issuing a warrant of arrest, or holding to bail any European British subject so charged, with a view to the complaint being investigated before a Magistrate authorized as provided in the last foregoing Section."

The Council divided—

<i>Ayes 5.</i>	<i>Noes 2.</i>
Mr. Sconce.	Sir C. Jackson.
Mr. Forbes.	The Chairman.
Mr. LeGeyt.	
Mr. Harington.	
Sir James Outram.	

So the Section was carried.

MR. LEGEYT moved the introduction of the following new Section after the above:—

"When a European or American has been arrested or held to bail under a warrant issued by an Officer not being a Covenanted Servant or a European British subject, such Officer shall forthwith forward him to the Magistrate of the District, or to some other Officer exercising the powers of a Magistrate, who is a Covenanted Servant, or a European British subject."

MR. HARRINGTON moved by way of amendment to insert the words "if the person arrested shall claim at the time of his arrest to be a European British subject" after the word "forthwith."

The amendment being put, the Council divided—

<i>Ayes 8.</i>	<i>Noes 4.</i>
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. LeGeyt.
	The Chairman.

So the amendment was negatived, and the Section as originally proposed was carried.

Section 232a provided as follows:—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority with the concurrence of the Judge, the accused shall be acquitted; if the Jury be equally divided in opinion, the Judge shall decide whether the accused shall be convicted or acquitted."

MR. HARRINGTON moved that this Section be omitted and the following substituted for it:—

"If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Court concur in such finding, the accused shall be convicted. If the Jury be equally divided in opinion, the Court shall decide whether the accused shall be convicted or acquitted. In all other cases the accused shall be acquitted."

Agreed to.

MR. LEGEYT moved the introduction of the following new Section after Section 270:—

"It shall be lawful for the Sudder Court to call for and examine the records of any Court of Session for the purpose of satisfying itself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Court. If the Sudder Court shall be of opinion that the sentence or order is contrary to law, the Court shall reverse the same, and pass such judgment and sentence as to the Court shall seem right, or, if it deem necessary, may order a new trial."

Agreed to.

MR. LEGEYT moved the introduction of the following Section after the above:—

"It shall be at all times lawful for the Sudder Court or a Court of Session, and for a Magistrate or other Officer exercising the powers of a Magistrate, to call for and examine the records of any Court subordinate to a Court of Session, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Courts. If the Court or Magistrate shall be of opinion that the sentence or order is contrary to law or evidence, the Court or Magistrate shall annul the same and pass such judgment and sentence as shall seem right, provided that in no

case the sentence be more severe than the sentence originally passed."

After some discussion the Motion was negatived.

Section 237 provided as follows:—

"Except in the cases referred to in Section 106, a Court of Session, as a Court of original Criminal Jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by a Magistrate or other Officer specially empowered by this Act or any other law to make commitments to such Court. No Judge of a Court of Session shall be precluded from sitting in the trial of any case before such Court by reason of the commitment in such case having been made by himself."

MR. SCONCE moved the omission of the words "No Judge of a Court of Session shall be precluded from sitting in the trial of any case before such Court by reason of the commitment in such case having been made by himself."

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

The postponed Section 271 was passed as it stood.

THE CHAIRMAN went back to Section 270a, and proposed amendments therein, which were carried.

The postponed Sections 272 to 275 were passed as they stood.

THE CHAIRMAN moved the introduction of the following Section after Section 275:—

"An appeal shall lie in all cases of conviction by the Magistrates in the Mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge, and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, to the Sudder Court. Provided that it shall not be competent to the Sudder Court to reverse the verdict of a Jury on the facts of the case in a case tried by Jury before the Session Court; but such verdict shall not prevent the Sudder Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court."

The question being put, the Council divided—

<i>Ayes 3.</i>	<i>Noes 4.</i>
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
The Chairman.	Mr. Harington.
	Sir James Outram.

So the Section was negatived.

Section 276 provided as follows:—

"Any person convicted by a judgment of any Criminal Court, from which an appeal lies to a higher Court under any law for the time being in force, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the proceedings of the Lower Court, and confirm or alter or reverse the finding and sentence of such Court, but not so as to enhance the punishment beyond what such Court is competent to award; provided that when a Court of Session shall consist of more than one Judge, no judgment of a Magistrate shall be reversed or modified, but by the concurrent opinion of two Judges of the Court of Session."

MR. LEGEYT moved the insertion of the words "subordinate to a Court of Session" after the words "Criminal Court."

The question being put the Council divided—

<i>Ayes 4.</i>	<i>Noes 3.</i>
Mr. Forbes.	Mr. Sconce.
Mr. LeGeyt.	Sir Charles Jackson.
Mr. Harington.	The Chairman.
Sir James Outram.	

So the Motion was carried.

MR. LEGEYT moved to omit the words

"Beyond what such Court is competent to award; provided that when a Court of Session shall consist of more than one Judge, no judgment of a Magistrate shall be reversed or modified, but by the concurrent opinion of two Judges of the Court of Session,"

and to substitute the word "awarded" for them.

Agreed to.

MR. SCONCE moved the addition of the following proviso:—

"Provided that an appeal shall lie from a judgment of the Court of Session to the Sudder Court upon any point of law that may arise upon that judgment."

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

The postponed Sections 277 to 283 were passed as they stood.

Verbal amendments were then made in Section 258, on the Motion of the Chairman.

The postponed Section 286 was passed as it stood.

The further consideration of the Bill was postponed on the Motion of the

Chairman, and the Council resumed its sitting.

STANDING ORDERS.

MR. HARRINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE gave notice that he would, at the next Meeting of the Council, move the second reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

The Council adjourned at 7 o'clock, on the Motion of Sir James Outram, to Tuesday, the 6th instant, at ¼ to 11 o'clock.

Tuesday, September 6, 1859.

PRESENT:

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

Hon. Lieut.-Genl. Sir J. Outram,	H. Forbes, Esq.,
Hon. H. B. Harrington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the Bengal Chamber of Commerce against the Bill "for the Licensing of Trades and Professions."

MR. HARRINGTON moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the second reading of the Bill "to enable Joint

Stock Banking Companies to be formed on the principle of Limited Liability."

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

CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 260 prescribed the form of verdict in trials by Jury.

After some verbal amendments, Mr. Harrington moved the addition of the following words to the Section:—

"When the Jury are equally divided in opinion, the verdict shall state specially the division of opinion."

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

The postponed Section 261 was passed after verbal amendments.

The postponed Section 262 prescribed the form of finding and sentence.

After some verbal amendments, Mr. Harrington moved the introduction of the following Clause into the Section:—

"When the Jury are equally divided in opinion, the finding of the Jury shall state specially the division of opinion, and the finding and sentence of the Court shall then be recorded in the following form or to the same effect:

The Court concurs with the Jurors who have found that Z is guilty of the offence specified in the charge, namely, that he has committed &c. &c., and the Court directs that the said Z be [sentence]; or (as the case may be)—

The Court concurs with the Jurors, who have found that Z is not guilty of the offence specified in the charge, namely, that Z has committed &c., &c.; and the Court directs that the said Z be discharged."

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

Verbal amendments were made in Sections 267, 270, and 274.

MR. SCONCE proposed an amendment in Section 276. He said: this Section provided for appeals from judg-

ments of Criminal Courts, but did not apply to interlocutory orders. He should move the addition of the following words to the Section:—

"In like manner an appeal may be preferred to any of the Appellate Courts above mentioned from any interlocutory order made in the course of a Criminal trial upon the same grounds as from an order of conviction."

After some conversation the Council divided—

Aye 1.
Mr. Sconce.

Noes 6.
Sir C. Jackson.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harrington.
Sir James Outram.
The Chairman.

So the Motion was negatived.

Section 280 related to appeals from orders in proceedings other than Criminal trials.

MR. SCONCE said, as this Section now stood the decisions of the Sessions Judges would be final, and in no case would an appeal lie from them to the Sudder Court. The cases to be tried would, among others, be cases of forcible dispossession under Act IV of 1840, and cases for the removal of local nuisances and such like, not being Criminal trials. The question was frequently raised whether Magistrates and Sessions Judges had taken cognizance of the cases before them strictly within the terms of the law by which they professed to be guided, and it seemed to him very important that the Sudder Court should have power to amend errors of law. Questions also arose whether the security taken had legally been forfeited, and in Mofussil Courts this gave rise to a great deal of misunderstanding. He therefore proposed the following addition to the Section:—

"An appeal shall also lie to the Sudder Court upon any point of law that may arise from any order made by the Court of Session in such proceedings."

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

Section 287 provided as follows:—

"Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the

Heads of Villages or of the District or Village Police Officers in the Presidencies of Madras and Bombay," &c.

SIR CHARLES JACKSON wished to ask the Honorable Member for Madras the object of the amendment which had been made on his Motion in this Section. What he desired to know was, if the intention of it was to exclude the Police of Madras and Bombay wholly from the operation of the Act. If so, he considered the amendment to be a very improper one. The Act professed to apply to all the Presidencies generally, and he could not understand why two of the Presidencies should be excepted from its operation, so far as the duties and powers of the Mofussil Police were concerned. If this amendment was insisted on, it would be better to strike out of this Code all the provisions regarding Police, than leave the Code in its present state, applicable to the Police of one Presidency only and not to that of the others. He did not know how the amendment had crept into the Bill, but it certainly appeared to him to be a very improper one. He did not rise at present to propose any alteration, but merely to elicit some explanation of the Clause as it now stood.

MR. FORBES said, the Honorable and learned Judge had observed that the amendment had crept into the Section, an expression to which he thought he was hardly open. The provision to which the Honorable and learned Judge had referred had stood in the Bill for the last five months as regards the Presidency of Bombay; and all that he had done was to extend to Madras a provision of the Code which had already been passed for Bombay. The amendment which had been made in the Section on his (Mr. Forbes') Motion on Thursday last was made openly in a Committee of the whole Council. He believed that his Motion was fully understood by other Honorable Members; and he denied that he was obnoxious to the charge made by the learned Judge that he had been in any way instrumental to this amendment having crept in. He stated then what he would now state again. The Bill for the organization of the Madras Police Force was founded on the principle of an entire

separation of the Police from the Revenue and Magisterial Departments, and its constitution as a distinct department under the immediate control of Government. That Bill was intended to give legislative sanction to an entirely new system of Police for that Presidency. The system proposed to be introduced was, so far at least as that Presidency was concerned, an experiment, and the Select Committee on the Bill had recommended that, as the Madras Government had resolved to try it, as the Home Government had approved of its trial, and as the Government of India had sanctioned an expenditure of ten lakhs of Rupees for the purpose, it should not be fettered in its course of action in matters of mere detail. Although there was some difference of opinion as to the principle of the proposed system, he thought that the experiment should have a fair trial. He did not think that it would have a fair and full trial if the Government of Madras were not allowed to have its own way as to the manner in which the experiment was to be tried. At the time of moving his amendment in the Section now under consideration, or rather whilst moving for a suspension of the Standing Orders on the Madras Bill, he had said that it was not a law peculiar to India which was proposed to be introduced, but only an extension to India of the principle at work with the Police in Great Britain and Ireland. The Honorable and learned Judge was probably aware that the Police of Madras had become open to charges of oppression and extortion, and the present system had been proposed with a view to its reform. Although there was some difference of opinion as to the probable success of the measure, he believed that all Honorable Members were inclined to give it a fair and full trial.

Even if the Madras District Police were not excepted, it would be absolutely necessary to except the Madras Village Police, which was an institution unknown in Bengal but invaluable in Southern India; and as exact uniformity was therefore impossible, the question of the length to which deviation should be allowed was only one of degree. The Council would probably remember that an exception

Mr. Forbes

was made in the Code of Civil Procedure in favor of the Village Moonsiffs of Madras.

MR. LEGEY said, as the Honorable and learned Judge's question applied to the Bombay Police also, he (Mr. LeGeyt) desired to make a few remarks on the subject. He should be very glad indeed to see the whole of the Police Chapter struck out from this Bill. It was a Bill for simplifying the Procedure of Courts of Criminal Jurisdiction not established by Royal Charter, and he thought that the Procedure of the Police in detecting or preventing crimes and apprehending offenders was no part of the Procedure of Criminal Courts. It would be very confusing to District Police Officers to be obliged to observe the procedure as laid down in this Code, and he was very glad when the Select Committee had agreed to the Section 287, as far as regarded the Presidency to which he belonged. That Presidency had a few plain short directions as to the way in which the duties of the Village and District Police were to be conducted, and which having been now in force for several years had become well understood. An Act (No. XXVIII) was passed in 1852, vesting the Government of Bombay with the superintendence and control of the Police. That law, in some degree, he supposed, over-rode some particular provisions of the Regulation of 1827 as regards the District and Village Police. But he did not think that this Regulation, which contained extremely plain and simple rules, had been superseded, and he was glad to see by this Section that they were to be continued, and that the Executive Police would continue to be governed by the Rules and Regulations which had been in operation during the last thirty years, and had by experience been found to have worked most satisfactorily when properly superintended. He therefore hoped that no alteration would be made in the Bill as regarded Section 287. If any alterations were necessary, he would rather strike out altogether the Chapter regulating the Police procedure. The Village Police had no place at all in the Bill; and as for uniformity, he did not think that any one Code for regulating the Police could be framed to suit every place. What could

answer in one district would not answer in another. It was wholly an Executive matter, and the law of 1827 had wisely left all details to the Executive Government.

He entirely agreed with the Honorable Member for Madras in his remarks on the subject of the Village Police. He appealed to the Honorable and gallant Member opposite (Sir J. Outram), whether, in the part of the Bombay Presidency with which he was acquainted, we could have got on during the time of the late disturbances, had the Village Policemen been against us, as it was next to certain they would have been, had they been left in the wild state they were in previous to 1847-48.

SIR JAMES OUTRAM said that, as he had been appealed to by the Honorable Member for Bombay, he could only confirm what he had said. In his (Sir James Outram's) opinion, the Bombay Village Police was more efficient, its results had been more satisfactory, than those of the other Presidencies. The Madras Police especially was notoriously most inefficient. It seemed to him monstrously absurd that they should introduce one rule of Procedure for the Police of the whole of India, to suit all kinds of people throughout so vast a country, comprising many different tribes and races. They might just as well attempt to introduce one system throughout Europe. He thought that the local Governments should be allowed to introduce their own systems, and not be bound by a general Code. If the amendment which had been introduced into the concluding Section, and passed at the last Meeting, regarding the Madras and Bombay Police, were now again to be altered, rather than consent to the alteration, he would exclude the whole of the Police provisions of this Bill.

MR. HARRINGTON said, he was very glad that this discussion had taken place, as it would enable him to correct a mistake into which he had fallen, as a Member of the Select Committee on the Bill, in allowing certain words to be introduced into the Section under consideration, the effect of which would be to exempt from the rules of Procedure contained in the Bill the Police in the Presidency of Bombay, equally with

the Police of the Madras Presidency which he had certainly never intended; and he took blame to himself for not having more carefully considered what would be the effect of the words in question before giving his assent to their introduction into the Section. In Madras and Bombay the Mofussil Police were invested with certain powers which were not possessed by the Police in Bengal. It was not proposed by the present Bill to give those powers to the Police in Bengal, or to take them away from the Police in Madras and Bombay. But he (Mr. Harrington) quite agreed with the Honorable and learned Judge opposite (Sir Charles Jackson), that, in so far as Bombay was concerned, there was no reason why the rules of Procedure contained in the Bill should not be extended so that Presidency equally with Bengal. The case of Madras was different. A Bill, having for its object the introduction of an entirely new system of Police into that Presidency, was now before the Council. It was not proposed that that Bill should be extended to Bombay, and the Police of Bombay would consequently continue to be governed by the rules of Procedure contained in the Bombay Regulations, unless the new Code of Criminal Procedure were made applicable to that Presidency. The Honorable Member for Bombay said, the rules of the Bombay Code were very plain and simple, and that they had worked satisfactorily. He (Mr. Harrington) would ask the Committee to refer to those Rules, and see what was their character. Let them take, as an instance, Clause 1, Section 43, Regulation XII. 1827. That Section provided as follows:—

“The District Police Officer shall forward in custody to the Magistrate any person whom he may have reasonable cause to suppose to have been guilty of any penal offence of a nature more serious than those which he is empowered to try, and, according to the principles of Section IX Clause 3rd, he is authorized to apprehend such person without written process; but he shall, after securing the suspected persons, investigate the matter, examine witnesses, and record such statements as the prisoner may voluntarily make, causing to be affixed thereto the signatures of two creditable persons in attestation, and if the result confirm that there is occasion to bring the party to trial, the said proceedings shall be forwarded with him to the Magistrate.”

This was one of the Clauses of the Bombay Code which the Honorable Member for Bombay asked the Committee to retain after they had struck out from the new Code of Criminal Procedure provisions substantially the same, which had been introduced into that Code by Her Majesty's Commissioners, but which, after full discussion and consideration, the majority of the Committee had determined should not be retained. He (Mr. Harington) did not think that the Council could allow the Bombay Regulations to remain in force in that Presidency if they passed the new Code of Criminal Procedure in the form in which it had been settled by a Committee of the whole Council, and it was his intention to move the omission of so much of the Section under consideration as, if retained, would exempt the Police at Bombay in their investigation of heinous offences from the rules of Procedure contained in the new Code.

The Honorable Member for Bombay seemed to think that Act XXVIII of 1852 gave the Government of Bombay full power to set aside the existing Regulations of that Presidency in regard to the duties of the Mofussil Police, and to lay down such rules for their guidance as to it might seem fit. He (Mr. Harington) could not concur in that opinion. The Act referred to had nothing to do with the duties of the Mofussil Police. It was an Act simply to relieve the Court of Sudder Fouzdaree Adawlut at Bombay from the superintendence of the Police in that Presidency, and to vest the superintendence in the Governor in Council of Bombay. The Act certainly gave the Governor in Council power to appoint persons to control and superintend the Police, subject to the orders of the said Governor in Council, and to vest in the persons so appointed such power and authority for the purposes mentioned in the Act as might seem proper, but that was all. The Act related entirely to the appointment and the duties of the Superintendents appointed under its provisions, not to the duties of the persons subject to their control and supervision. These were to be continued to be discharged under the Regulations previously in force, one of which he had quoted; and if the Government of Bombay had prescribed dif-

Mr. Harington

ferent rules under the supposed authority of Act XXVIII of 1852, it appeared to him (Mr. Harington) that it had placed a construction upon the Act which it did not bear.

Not anticipating that there would be any debate to-day upon the Section under consideration, he had proposed to reserve what he had to say on the subject of the Madras Police Bill until they went into Committee upon that Bill. But the present discussion having arisen, it might be convenient for him at once to explain why, when they were about to pass a Code of Criminal Procedure for all India, he was willing that the Madras Presidency should have a separate Code of Procedure, differing in some respects from the Code before the Committee, for the guidance of its own Police and for the regulation of their duties.

If Honorable Members would refer to the debate which took place on the Motion of his Honorable friend the Member for Madras for the second reading of the Bill brought in by him, they would find that he (Mr. Harington) strongly objected to the Bill, and he did not hesitate now to say that he should have been very glad if the Bill, as it was then framed, had been thrown out. Finding, however, that the sense of the Council was against him, he withdrew the Motion which he made, and which contemplated further enquiry before the Bill proceeded to a second reading, and the Motion of his Honorable friend was, consequently, carried without a division. Since then the Bill had undergone a very material change, if not at the instance, certainly, he believed he might say, with the full concurrence of the Government of Madras. In his opinion the changes made had very greatly improved the character of the Bill, and although they had not altogether, they had to a great extent, removed what to his mind was objectionable in it. The principal objection which he entertained to the Bill, as it was originally framed, was that it took away from the Magistrate all powers of control over the Police of his own district, and placed those powers in the hands of an Officer who was not only not to be in any way subordinate to the Magistrate, but who was to be quite independent of him,

thus entirely separating in the person of the Magistrate the Judicial and Police functions, which were at present united in that Officer. The Government of Madras had since caused it to be intimated to the Council, through the Honorable Member for that Presidency, that it was the distinct and unanimous intention of the Madras Government that the Local Superintendents of Police were to be entirely under the orders of the Local Magistrates; that the functions of the Commissioner or, as he should more properly be styled, the Inspector-General, would be confined to the organization of the establishment, and to maintaining it in a state of efficiency by a proper attention to promotion, discipline, and other details of management; and that the primary object of the plan was to place an improved instrument for the prevention and detection of crime at the disposal of the Magistrate; and it was now proposed that the Bill should be altered in accordance with the intention thus expressed. He (Mr. Harington) hailed this important change in the original plan of the Bill with the utmost satisfaction. But it was not on account of this alteration in the Bill that he was about to vote in favor of the Sections to which these remarks particularly applied, though that vote would be given with very much less apprehension as to the consequence, and therefore with very much less reluctance than would have been the case had the Bill retained its original character. As soon as the Council, by allowing the Bill to be read a second time, affirmed the principle of the Bill in so far as the Presidency of Madras was concerned, he (Mr. Harington) determined to offer no further opposition to it. He came to this determination on the ground that a great experiment being about to be tried in the Madras Presidency, it was only fair and proper that the Government of that Presidency, whose duty it would be to carry out the experiment, and who, while they would be entitled to all the credit of success, would also be responsible for any failure that might ensue, should be allowed to make the experiment in that way which in their judgment afforded the best chance or prospect of success. It was for this reason that he intend-

ed to support his Honorable friend the Member for Madras in carrying the Bill through its remaining stages substantially in the form in which the Select Committee had recommended that it should be passed. The Bill, if passed, would have his (Mr. Harington's) hearty wishes for its complete success, and he most sincerely hoped that the benefits which the friends of the measure anticipated from its introduction would be realized to the fullest extent. In that case he should have no cause to regret the votes which he was to give that day.

SIR CHARLES JACKSON said, it was all very well to say that different systems required different procedure. But look to Section 23 of the Madras Police Bill, which authorized Police Officers to arrest without warrant. Surely that Section did not depend on any particular system, and the provisions of that Section should be the same as those in the Code of Criminal Procedure. Were the Council to pass two different Bills on the same subject on the same day? They now had before them the Criminal Procedure Bill containing one set of provisions regarding the Police, and on the same day, within a few hours, they would be called upon to pass a Bill containing other and different provisions for regulating the Police of the Madras Presidency. It appeared to him that the Council would stultify themselves if they passed two different laws on the same subject on the same day.

MR. FORBES said, if the learned Judge would refer to the last Clause of the Report of the Select Committee on the Madras Bill, he would find his objection answered by anticipation. The Select Committee observed—

"It is true that some parts of the Bill are in principle identical with parts of the Code, and have indeed been taken from it; but if the course of procedure upon any points is to be laid down in the Bill, it appears better that the Bill should be complete in itself and embrace all points, the Madras Police being excepted from the operations of the provisions of the Criminal Procedure Code."

He (Mr. Forbes) thought that there was great reason in that, and that the Council would be willing to accept the recommendation of the Select Committee.

MR. LEGEYT said, he had a few words to say in reply to what had fallen from the Honorable Member (Mr. Harington) regarding the Bombay Police. The picture which he had drawn was not quite correct in practice. He had said very truly that the law by which the superintendence of the Police was vested in the Government of Bombay was not Regulation III. 1833, but Act XXVIII of 1852. By the operation of the latter Act the executive and judicial functions of the "District Police Officer" had been dissevered, and the District Police Officer now exercised only the judicial duties laid down in Chapter V of Regulation XII. 1827. The Executive Police duties were executed under the orders of a European District Superintendent of Police appointed by Government under Act XXVIII of 1852, and under this Officer, as his staff, there was in every division of his jurisdiction an Executive Officer who performed those duties of Executive Police which were performed by the District Police Officer previously to 1852.

The number of judicial cases disposed of by the District Magistrates in 1857 exceeded thirty-three thousand, while those disposed of by the higher Magisterial Officers, the Magistrates and Deputy-Magistrates, were under three thousand.

The District Subordinate Magistrates did not commit cases for trial to the Session Courts in Bombay, though he thought they might with advantage be invested with that duty.

There was no inconsistency in his voting against the power of taking confessions and evidence by the Police, seeing that the District Magistrates were not invested with Police Executive powers.

The Honorable Member was correct in saying that, in the earlier part of the Code, they had disposed of the duties of the Executive Police. But these were not the Officers known as District Police Officers. The term "District Police Officer" was a misnomer no doubt. He was one of the subordinate Judicial Officers by whom all cases were prepared for trial. The system was a tolerably good one; and in endeavoring to improve it, he thought the Council would do well to take care that they were not more likely to impair it.

THE CHAIRMAN said, there was considerable difficulty with reference to this Bill and the Madras Police Bill. Many Sections in both Bills prescribed different systems of procedure. For instance, according to Section 52 of the Code, any Police Officer might without warrant arrest an offender on reasonable complaint, or suspicion of having committed an offence for which a Magistrate might issue a warrant. The Code did not perhaps sufficiently define the offences for which a Magistrate must issue summons, and those for which he might issue a warrant. Now Section 22 of the Madras Bill provided that "it shall be the duty of any Police Officer, and he is hereby authorized, to arrest without warrant any person who is charged on credible information, or whom he has reasonable ground to suspect, of having been concerned in any grave or forcible crime or outrage." Then again "any person who is charged with committing an aggravated assault in every case in which he shall have good reason to believe that such assault has been committed, although not in his view, and that by reason of the recent commission of the offence a warrant could not have been issued," and so on. The law of arrest should be the same under the Criminal Procedure Code and in the Madras Presidency.

The Madras Government had expressed a strong opinion in favor of the provisions of the Police Bill. So far as that Bill related to the organization and administration of a Police Force, it was very desirable that its provisions should accord with the wishes of that Government. But in such a matter as a Police Officer's power to arrest without warrant, there should be one rule to regulate the Police throughout India.

He felt the difficulty of passing two inconsistent Acts on the same subject on the same day.

SIR JAMES OUTRAM moved that the further consideration of this Bill be postponed until the Bill for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George were settled in Committee of the whole Council.

The Motion was carried, and the Council resumed its sitting.

MADRAS POLICE.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Sections I to IV were passed as they stood.

Sections V to VII were passed after verbal amendments.

Sections VIII to XIV were passed as they stood.

Section XV was passed after trifling amendments.

Sections XVI to XX were passed as they stood.

Section XXI was passed after verbal amendments.

Section XXII prescribed in what cases any Police Officer might arrest without warrant.

SIR CHARLES JACKSON suggested the omission of this Section.

MR. FORBES said, the remarks which the Madras Government made were these:—

"The Clauses 51, 52, and 53 of the Criminal Procedure Code may be construed to include the occasions on which it was intended to empower the Police to act without warrant by the Police Bill, but much pernicious uncertainty must result from basing their actions on their judgment as to an offence for which a warrant may issue. Chapter III of the Code of Procedure leaves this point in a most discretionary state, and it will be scarcely possible to explain the law to the Police, if it be based on a principle so uncertain as this, whether a warrant may or may not issue in a case in which they are called on to act. These provisions of the Criminal Procedure Code were before the Madras Government when the Police Bill was drawn, but it was thought better to enunciate as positively as circumstances admit of the cases in which the Police should act without warrant, rather than adopt the provisions of the Criminal Procedure Code, which leave so much to the discretion of the Police."

It would be seen therefore that the Madras Government were averse to give the Police of that Presidency that discretion which was given elsewhere, and instead of leaving it to an ignorant

Policeman to distinguish when he was to arrest with and when without a warrant, it was wished to lay down the rule in each particular case. He preferred to press upon the Committee the Clauses as they stood, and he hoped he should succeed in passing them.

The Section was put and carried.

Sections XXIII to LV and the Schedule, were passed as they stood.

Form A was passed after a verbal amendment.

The Preamble and Title were passed as they stood.

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

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

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

MR. FORBES moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

The adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

MR. HARRINGTON moved the omission of the words "Presidencies of Madras and Bombay" in the beginning of Section 287, and the substitution of the following:—

"Presidency of Madras; or the jurisdiction of District or Village Police Officers in Criminal cases which they have power to try under the provisions of the Bombay Code, or their procedure in such cases."

MR. LEGEYT said, if he understood the effect of the proposed amendment aright, it would be to place the Village and District Police under the Chapters of this Code, which had just passed through Committee. He could not see why the Police of Madras and Bombay should be dealt with differently. The Council had passed a Bill allowing the Madras Government to manage their Police in the way they thought best. The Government of Bombay, he was authorized to say, were quite content with the Police procedure contained in their Code. The one system had succeeded for years;

the other was an experiment. The Council had heard nothing against the working of the Bombay Police. He had no objection to making the Code of Criminal Procedure applicable to Courts for which it treated. But he had the strongest objection that the Code should go beyond that, and affect or alter the working of the Police of which they had had every proof that it worked well and to the satisfaction of the Government and the people of that Presidency. The directions to Police Officers were contained in Regulation XII. 1827 in clear and unmistakable terms, and were well understood by the people for whom they were intended. And who were these people? People of the most illiterate kind, and on the receipt of about 3 or 3½ Rupees a month. Could these men be expected to know the circumstances of the offences detailed in Section 70? They would be confused or require to be instructed before they could understand them. He would ask the Council to pause before they introduced this innovation into a country where it was not wanted, and where they had no proof that it was wanted, merely for the sake of uniformity. And what sort of uniformity were they desirous of securing? In Bengal they had heard that the Village Police existed in name only. But in Bombay it existed in reality, and had a principle of vitality in it. The continuance of the Judicial powers of Village and District Police Officers, as proposed by the Honorable Member's amendment, was infinitely less material than the exception of the Executive Police from the difficult and intricate procedure of this Code. If they were going to establish a Village Police, they would have to teach them the provisions of the Penal Code. But whilst learning it, they would exist only in name. Would they destroy by a blow a system which had worked well, and thus undo all the good that had been done during the last ten years? No! he would say leave Section 287 alone. Let the discussion which had taken place to-day go forth with the Bill on its republication, and they would attract attention. If the Government of Bombay should then think that the procedure provided by

Mr. LeGeyt

this Code was preferable to that now in use, they would say so, but he did not anticipate any such concurrence.

MR. HARRINGTON. Would the Honorable Member for Bombay allow him to ask him whether the Bombay Government had expressed a wish that the Madras Police Bill should be made applicable to that Presidency?

MR. LEGEYT said, he intended to have stated to the Council that the Bombay Government did not desire the extension of the Madras Bill to that Presidency. They had expressed a wish that there should be no alteration in the present system, with which they were perfectly content.

MR. HARRINGTON said, he would then ask, as the Code of Criminal Procedure had been before the public for about three years, if the Bombay Government had asked that the Bombay Police should be excepted from its operation.

MR. LEGEYT replied that the Bombay Government had expressed no wish on the subject. The Code had been before the public so long that nearly every body seemed to have regarded it as a dead letter. People had no idea that it would again be taken up, besides which its provisions were known only to those who might have read them in the Government Gazette, and who, he presumed, were very few.

MR. HARRINGTON said, the case then stood thus. The Government of Madras being anxious to introduce a new system of Police into that Presidency had prepared a Bill containing rules for the guidance of the Police to be appointed under the new system in the discharge of their duties, which they had sent up to this Council, and in asking the Council to pass the Bill, they had begged that so much of the new Code of Criminal Procedure as applied to the Police might not be extended to Madras. He (Mr. Harrington) thought that there could be no objection to this request being complied with, and he was quite prepared to vote for the exemption asked for by the Madras Government. The Government of Bombay on the other hand, notwithstanding that the new Code of Criminal Procedure had been for so long a time before the public, had expressed no wish that it should not extend

to their Presidency, and they had just been informed by the Honorable Member for Bombay, in reply to a question which he (Mr. Harrington) had put to the Honorable Member, that the Bombay Government was not willing that the new Madras Police Bill should be extended to Bombay. On what ground then could they exempt the Police at Bombay from the operation of a Code which had been prepared by Her Majesty's Commissioners for all India, and maintain in the Presidency of Bombay the Police Regulations which Her Majesty's Commissioners intended should be superseded by the Code framed by them? The Honorable Member for Bombay argued as if the new Code would deprive the Police Officers of the Bombay Presidency of the jurisdiction which they now possessed in petty criminal cases, but that would not be the case. The Code would in no way interfere with any judicial functions which the Police at Bombay were competent to exercise under the law as it now stood, and he (Mr. Harrington) was quite willing that, in the cases which the Bombay Police were authorized to try and decide, they should continue to follow the procedure now observed by them, any thing in the new Code notwithstanding. It was in the cases which, after completing the preliminary investigation, they were obliged to refer to a higher authority, that he thought the Police at Bombay should be required to follow the procedure of the new Code equally with the Police in Bengal.

SIR JAMES OUTRAM said, he could not understand why they should re-discuss this Section, which was passed at the last Meeting, or why it should be proposed to disturb existing arrangements at Bombay. Bombay had not complained of their system being a defective one or requiring reform; then why disturb it? The Honorable Member on his right (Mr. Harrington) said that, because Bombay had not asked for the procedure of the Madras Police Bill being made applicable to them, or to be exempted from the Police procedure of this Code, he assumed that it would be satisfactory to them that the Code should be extended to Bombay. He was perfectly convinced from his long experience in Bombay that its Police

was in a more efficient state than the Police of Bengal. Letters from his friends resident there assured him that the Police was working satisfactorily. He saw no reason therefore why the Council should meddle with them so long as they were satisfied. The Section having been disposed of and the alteration decided at the last Meeting of the Council, he should vote for the Section as it was then decided.

After some further discussion the Council divided—

Ayes 4.	Noes 3.
Mr. Seance.	Mr. Forbes.
Sir Charles Jackson.	Mr. LeGeyt.
Mr. Harrington.	Sir James Outram.
The Chairman.	

So the Motion was carried, and the Section as amended then passed:

The question being put that the Chairman do report the Bill with amendments, the Council divided—

Ayes 6.	No 1.
Mr. Seance.	Mr. LeGeyt.
Sir Charles Jackson.	
Mr. Forbes.	
Mr. Harrington.	
Sir James Outram.	
The Chairman.	

So the Motion was carried, and the Council having resumed its sitting, the Bill was reported.

STANDING ORDERS.

MR. HARRINGTON moved that the Council resolve itself into a Committee to consider the Report of the Select Committee on the Message from the Governor-General in Council, calling for a Report on the practical working of the Standing Rules and Orders of the Legislative Council.

Agreed to.

THE CHAIRMAN said that the Committee of the whole Council would probably take the Report of the Select Committee as the basis of the Report to be made by the Council. It was not very clear what was the nature of the Report which the Governor-General in Council had called for from this Council. [The Chairman here referred to the terms of the Despatch and of the Message from the Governor-General in Council.] It appeared to him that the

Select Committee's Report in some respects went more into detail than was necessary, while it omitted sufficiently to explain the object and operation of the several Standing Orders.

The Report should, he thought, state that the rules of this Council were taken from the Standing Orders laid down by the Governor-General in Council, shortly after the passing of the Charter Act of 1833, when the Governor-General in Council had the power of legislation.

There should be some explanation of the several Orders which the Council had adopted. For instance, take the Orders which stood under the head of "Meetings of the Council." Possibly it might be considered at home that once a week was not sufficient. He thought that they ought to explain to Her Majesty's Government that the reason why one Ordinary Meeting a week was fixed was that, as two of the Judges of the Supreme Court were Members of the Council, the engagements of those Judges would generally prevent their attendance at Meetings held on any other days than Saturday. It might further be stated that, although the Council met once a week, still a great part of the time of the Members was occupied in the preparation of measures to be brought before the Council for discussion, and, afterwards, in considering the details of measures in Select Committees. When the state of business rendered it necessary, the Council had exercised the power of adjourning the Ordinary Weekly Meeting on Saturday to some early day in the ensuing week, and the Standing Orders empowered the Governor-General or the Governor-General in Council to call an Extraordinary Meeting at any time.

He had not prepared a Report in accordance with his views, but he would propose some amendments in the Report of the Select Committee now under consideration. [He here noticed the amendments which he proposed to move.]

MR. HARRINGTON said, he did not rise for the purpose of offering any opposition to the amendments which might be proposed by the Honorable and learned Vice-President; he had no doubt that those amendments would be an improvement on the Report

The Chairman

as it now stood. But as he had, at the present time, the honor of a seat in the Executive Council, this Council might look to him for some information both as to the nature of the Report which was required by the Secretary of State, and as to the purpose for which that Report was required. He was sorry, however, to say that it was not in his power to afford the Council any information on either of these points beyond what they already possessed. The Despatch received from the Secretary of State had been communicated to the Council *verbatim*, and this Council therefore possessed all the information on the subject which it was in the power of the Executive Government to furnish.

The Legislative Council having now been in existence for upwards of five years, he (Mr. Harrington) was led to suppose that the Secretary of State thought that the time had arrived when a comparison might fairly be drawn between the present system of making laws for India and that which preceded it. The Secretary of State probably looked rather to the Executive Council than to this Council for the information necessary to enable him to institute this comparison. He gathered this as well from the communication which had been received from the Secretary of State, as from the fact that separate Reports had been called for from the Honorable and learned Vice-President and from the Honorable the Lieutenant-Governor of Bengal, both of whom had been Members of the Executive Government under the old and the new systems. The duty of reporting on the working of the Standing Orders of the Council properly devolved upon this Council. The Secretary of State could not require to be told what those Standing Orders were, because doubtless he had a copy of them before him at the time he wrote his Despatch. What he desired to know was, how those orders had worked during the period they had been in operation, with a view probably to consider whether any and what alterations were required in them; and in reporting that upon the whole the Standing Orders had worked satisfactorily and well, which he believed was the case, it appeared to him that the Council

MUNICIPAL ASSESSMENT (SINGAPORE).

THE CLERK reported that he had received a communication from the Home Department, forwarding copies of papers respecting the necessity of raising the maximum of the Municipal rates and taxes at Singapore.

MR. SCONCE moved that the above communication be printed.

Agreed to.

MAGISTRATES.

THE CLERK reported that he had received a communication from the Home Department, forwarding a copy of papers relative to the power of a Magistrate to punish persons convicted of the offence of leasing young girls for the purpose of prostitution.

MR. HARRINGTON moved that the above communication be printed.

Agreed to.

ARMS AND AMMUNITION.

MR. HARRINGTON said, it would be in the recollection of the Council that in the month of August last he introduced a Bill for making perpetual Act XXVIII of 1857 (relating to the importation, manufacture, and sale of arms and ammunition, and for regulating the right to keep or use the same); and as the duration of that Act had been limited to two years, of which only a small portion remained, he asked the Council to suspend the Standing Orders in order that the Bill brought in by him might pass rapidly through its several stages, the object being to prevent any cessation in the operation of the law which was being vigorously and successfully carried out at the time in most of the districts in the Upper Provinces. Some Honorable Members, however, objected to decide off-hand upon the expediency or otherwise of giving permanency to the law in question, and as they required further time for consideration, it was agreed that a temporary Act should at once be passed for continuing Act XXVIII of 1857 in force until the close of the current year, and that a separate Bill should be introduced

for making the law perpetual, which, if allowed by the Council to be read a second time, would be published for general information, and might afterwards be proceeded with in the usual way. The temporary Act received the assent of His Excellency the Governor-General on the 13th August, and the disarmament of the Native population was now being carried on under its provisions, though, as noticed, it would expire in a few days. No time was lost in bringing in a separate Bill, which was read a second time on the 27th August, and was referred on the same day to a Select Committee, who were desired to make their report on or after the 1st December. The report was therefore now due; but circumstances had hitherto prevented the Committee from meeting to consider the Bill, and no communications had as yet been received from the local Governments. It was moreover considered very desirable that the Bill should be carefully considered by the full Council, for which there would hardly be time before the temporary Act now in force expired, particularly as three of the Members of the Council were still absent, and they were about to lose for a time the services of the Right Honorable Gentleman opposite (Mr. Wilson). It had therefore appeared to him (Mr. Harrington) that the better plan would be to pass another temporary Bill extending Act XXVIII of 1857 for three or six months, although he should prefer the longer period. This would prevent the inconvenience which would arise were Act XXVIII of 1857 to be allowed to expire before a new Act was passed, and it would also allow ample time for the consideration of what was intended to be a permanent measure. Another reason which appeared to him to render it advisable to pursue the course which he had just mentioned was that he had been informed by his Honorable Friend the Member for Bengal that he intended to move to day for certain returns connected with the working of Act XXVIII of 1857 which could not possibly be prepared and laid before the Council under two or three months.

He had therefore the honor to give notice that at the next meeting of the

Council he should move the first reading of a Bill to continue Act XXVIII of 1857 in force for a further period of six months, that is to say, from the 1st January to the 20th June 1860 inclusive; and that if the Council allowed the Bill to be read a first time, he should ask permission to suspend the Standing Orders with a view to the Bill passing through its remaining stages on the same day.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill to amend Act XIII of 1856 (for regulating the Police of the towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.)"

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal."

Agreed to.

MALABAR OUTRAGES.

MR. FORBES moved that a Despatch from the Secretary of State relative to the Bill (which was passed as Act XX of 1859) "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George" be printed.

Agreed to.

Mr. Harington

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES gave notice that he would, at the next Meeting of the Council, present the Report of the Select Committee on the Bill "to prevent the over-crowding of Vessels carrying Native Passengers in the Bay of Bengal;" and that he would on the same day move for a suspension of the Standing Orders in order that the Bill might be passed through its remaining stages. In doing so he said that this Bill was in amendment and continuation of Act I of 1857, which would expire on the 7th of the following month. The Report of the Select Committee on the Bill was not due till after this day; and if the Bill were to be proceeded with in accordance with the ordinary course, it was probable the present law would expire before the new Bill could receive the assent of the Governor-General. To avoid this inconvenience, he proposed at the next Meeting of the Council to move for a suspension of the Standing Orders with a view to the Bill being passed through its remaining stages forthwith. The law which the new Bill would continue had been in force for three years, and he did not anticipate that any objection would be made to the course which he proposed to take.

ARMY AND STATE OFFENCES.

MR. HARRINGTON gave notice that he would at the next Meeting of the Council move the first reading of a Bill to continue in force for a further period of one year Acts XIV, XVI, and XVII of 1857, and that, if the Council allowed the Bill to be read a first time, he should ask permission to suspend the Standing Orders with a view to the Bill passing through its remaining stages on the same day.

In giving this notice, he said it seemed right that he should state briefly at this time the reasons which had led the Government to consider that the Acts which he had mentioned should continue in force some little time longer. It was originally intended that those Acts, which were called into existence by the peculiar and extraordinary circumstances of the period when they

were proposed, should continue in force for one year only. They were afterwards extended, as the Council were aware, to the end of the current year, by which time it was confidently expected that all necessity for them would cease, and such was indeed the case as regarded the greater part of the country. But the Honorable the Lieutenant-Governor for the North-Western Provinces had strongly urged upon the Government the advisability of continuing the Acts in force for the further period of a year to enable him to continue a tribunal which had been established by him, with the sanction of the Supreme Government, for the trial of mutinous sepoys. Of these a large number were now under trial before the tribunal to which he had referred; others were daily surrendering themselves for trial or were being arrested. On the Oude Frontier, as was probably known to the Council, operations were going on against the rebels who had taken refuge in the Nepaul Territory. These included several persons of note, and it was very desirable that, as they were arrested, they, as well as the mutineers to whom he had alluded, should be tried by the same tribunal and under the same law as would have been the case had their arrest or surrender taken place at any time during the last two years, rather than that they should be made over to the regular Courts which had already sufficient business of their own to attend to. In some parts of Bundelkund also, as the Council must have observed from the public prints, a large number of rebels had collected. These were now being pursued and captured by our troops. To them, as regarded the trial of any who might surrender or be arrested, the remarks which he had just made equally applied. With this explanation before them he hoped the Council would consent to the extension of the Acts to which his notice referred, under the assurance that they would be applied only to persons of the classes described by him, and that crimes which were being committed in the districts in which tranquillity had been restored would be left to be disposed of by the ordinary tribunals under the general Regulations.

ARMS AND AMMUNITION.

MR. SCONCE said, he ought possibly to have prepared the Council as to the terms of the Motion which he was about to make, and to which the Honorable Member opposite (Mr. Harington) had alluded. What he (Mr. Sconce) proposed was that a Message should be sent to the President in Council calling for information as to the working of the Arms Act XXVIII of 1857. That was a temporary Act, and it seemed to him important that, before making it perpetual, the Council should be in possession of full information as to the use which had actually been made of it, and that they should know in what Districts, Provinces, and places it had been actually brought into operation. He would remind the Council that the law in question was not one single in its object. It not only provided for the general disarmament of whole districts, but there were various other provisions which, though homogeneous in their character, were distinct one from the other, and might be enforced independently of each other. One Section provided for a registration of Arms. Another was prohibitory of the manufacturing and dealing in Arms without a license. Another prohibited the importation, and another the transport of Arms, &c. Under the Act therefore a multiplicity of powers was created; and while one Governor might think it necessary to put the whole Act or part of it in force, another Governor might choose to dispense with the aid which it was intended to afford him. It was a matter of notoriety that the Bengal Government had put the 24th Section relative to a general search for Arms into operation in the district of Shahabad: but it seemed to him to be of importance that the Council should have upon it explicit information both as regards the adoption of this Section, and the use made, if any had been made, of the other Sections of the temporary Act. Similar remarks would apply to Madras and Bombay.

He should therefore move that a Message be addressed to the Honorable the President in Council, stating that inasmuch as a Bill was now pending before the Legislative Council to make perpetual the temporary Act XXVIII of 1857, it

was the desire of this Council that the information indicated in the following queries relative to the actual working of the Act be procured and communicated to the Legislative Council :—

1. In what Provinces, Districts, or places has a general search for Arms, Ammunition, or Sulphur been ordered under Section XXIV Act XXVIII of 1857, and carried out, stating, if possible, in the case of each District or place, the commencement and completion of the search; and stating also the number of the different sorts of Arms seized?

2. To what Provinces, Districts, or places have Sections I and V of the above Act been extended, stating whether the extension applies to other places than those in which a general search has been ordered?

3. To what places have Sections VII and VIII, prohibitory of the manufacturing and dealing in Arms without a license, been extended?

4. In what places has the prohibition to import Arms, Ammunition, Sulphur, and Saltpetre been enforced under Section XII, and is continued in force?

5. In what places has the transport of Arms &c. been prohibited under Section XV, and is still prohibited?

6. In what places has the sale of Sulphur been prohibited under Section XVIII, and is still prohibited?

7. In what places have the making and keeping of Cannon &c. without a license been prohibited under Section XXVI, and are still prohibited?

Agreed to.

MR. SCONCE moved that Mr. Ricketts be requested to take the above Message to the President in Council.

Agreed to.

MARKETS.

MR. RICKETTS moved that Mr. Forbes and Mr. Sconce be added to the Select Committee on the Bill "for regulating the establishment of Markets."

Agreed to.

TOLLS (EASTERN CANAL).

MR. SCONCE gave notice that he would, at the next Meeting of the

Mr. Sconce

Council, move the first reading of a Bill to amend and extend Act XXII of 1836, relating to the levy of Tolls in the Eastern Canal.

CRIMINAL APPEALS.

MR. SCONCE moved that a correspondence received by him from the Bengal Government, relative to the admissibility or otherwise, by the Nizamut Adawlut, of second appeals in judicial proceedings of the Fowzdary Courts other than Criminal trials, when those Courts act without having jurisdiction, be printed.

Agreed to.

The Council adjourned at half past 12 o'clock, on the Motion of Mr. Ricketts, to Wednesday, the 7th Instant, at ½ past 10 o'clock.

Wednesday, December 7, 1859.

PRESENT:

The Hon. Lieut.-Genl. Sir James Outram, Senior Member of the Council of the Governor-General, presiding.

Hon. H. Ricketts,	Hon. Sir C. R. M.
Hon. H. B. Harington,	Jackson,
Rt. Hon. J. Wilson,	and
H. Forbes, Esq.,	A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented two Petitions from the Inhabitants of Poona against the Bill "for the Licensing of Trades and Professions."

MR. HARINGTON moved that the above Petitions be printed.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement on the subject of empowering Magistrates to take cognizance in certain cases of offences against Act IV of 1839 (stealing growing trees, &c.).

SIR JAMES OUTRAM moved that the above communication be referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for re-

gulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

MERCHANT SEAMEN.

THE CLERK also reported that he had received a communication from the Governor of the Straits Settlement, with a Memorial from Messrs. Alla Petchey and Emansah, Ship-owners at Singapore, praying for a modification of Act I of 1859 (for the amendment of the law relating to Merchant Seamen).

MR. SCONCE moved that the above communication be printed.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES presented the Report of the Select Committee on the Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal;" and, in accordance with the notice which he gave last Saturday, he moved that the Standing Orders be suspended, in order that the Bill might be carried through its remaining stages to-day. The object he had in view, as he had said before, was that the Bill might be passed before the expiration of the present law, thereby to prevent the great public inconvenience which would otherwise of necessity be the result.

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

MR. FORBES then moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

Agreed to.

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

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

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

MR. FORBES moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ARMS AND AMMUNITION.

MR. HARINGTON moved the first reading of a Bill "to continue in force for a further period Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." In giving notice of this Motion at the last meeting of the Council, and of his intention, in the event of the Motion being carried, to ask permission to suspend the Standing Orders with a view to passing the Bill at once through its remaining stages, he had stated the reasons which appeared to him to render it desirable that he should bring in a temporary Bill for continuing Act XXVIII of 1857 in force for the further period of six months, instead of pressing on at this time the Bill which he had introduced into the Council in August last for making the Act perpetual. At the time he brought in that Bill he had every reason to expect that there would be ample time for a full discussion and consideration of the subject before the close of the present year, but that expectation had not been realized, owing to circumstances which could not have been foreseen or guarded against; and as he believed that some Honorable Members desired further time for consideration, as well as further information as to the working of Act XXVIII of 1857, and as it was also desirable that the Bill should be discussed in a full Council, the only way to prevent the inconvenience which would result if the law were allowed to expire was to pass a temporary Act.

The Bill was read a first time.

MR. HARINGTON, pursuant to notice, moved that the Standing Orders be suspended, in order that the Bill might be passed at once through its remaining stages.

MR. FORBES seconded the Motion, which was carried.

MR. HARINGTON then moved the second reading of the Bill.

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

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill.

SIR CHARLES JACKSON said, it was not his intention to offer any opposition to the passing of this Bill, which would be a temporary measure. He should reserve his objections till the other Bill to make Act XXVIII of 1857 perpetual was again brought forward, when he should have the benefit of the assistance of the Honorable and learned Vice-President, who also entertained objections to some of its provisions.

The Motion was carried.

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

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

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

MR. HARRINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ARMY AND STATE OFFENCES.

MR. HARRINGTON moved the first reading of a Bill "to continue in force, for the further period of one year, Acts XIV, XVI, and XVII of 1857." He said that, with the permission of the Council, he would read the remarks which he had made at the last meeting of the Council at the time of giving notice of his intention to move the first reading of this Bill to-day, and, in the event of that Motion being carried, to ask for the suspension of the Standing Orders, with a view to passing the Bill at once through its remaining stages. He was not aware that he could add any thing to those remarks, and he would therefore now only move that the Bill be read a first time.

The Bill was read a first time.

MR. HARRINGTON moved that the Standing Orders be suspended, in order that the Bill might be passed at once through its remaining stages.

MR. FORBES seconded the Motion.

MR. SCONCE said, before the Council came to a vote on the question, before them, there were some remarks which he should wish to submit for their consideration, not only in respect to one, but more of the Acts which were now proposed to be extended. There were three Acts which this Bill proposed to continue in force, Acts XIV, XVI, and XVII of 1857. Of these he would first notice Act XVI, which was an Act to make temporary provision for the trial and punishment of heinous offences in certain districts. Now among the reasons which his Honorable friend opposite (Mr. Harrington) gave to the Council for the renewal of the three Acts, as contained in his speech at the last Meeting, they were told that the Lieutenant-Governor of the North-Western Provinces considered it necessary that his hands should still be strengthened for the trial and punishment of mutinous sepoys and rebels. Now Act XVI of 1857 applied neither to rebels nor to mutinous sepoys. It was an Act for the trial and punishment of heinous offences, and it provided that, whoever should commit, or attempt to commit any heinous offence, should be liable on conviction to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years. Such was the general provision contained in the first Section. The second Section declared that the words "heinous offence" should be deemed to include an attempt to murder, rape, maiming, dacoity, robbery, burglary, and knowingly receiving stolen property, &c, and it was with regard to this Section that he had great objection. According to this Section robbery was a heinous offence, and so also were burglary and receiving property obtained by burglary. If therefore this Act were continued, any person in any district in the North-Western Provinces, who should be convicted of stealing by burglary, and any midnight robber, might be hanged.

MR. HARRINGTON.—Only in Districts to which the Act was extended.

MR. SCONCE continued—precisely so, and the want of any limit to its possible extension was what he objected to. A simple burglary, a simple receipt of property the results of such burglary, was by this Act rendered a capital

offence. More than that, the stealing of property which had been provided for troops was also a capital offence. If a man were to steal a bundle of hay which belonged to the Commissariat, he might be sentenced to imprisonment not exceeding fourteen years, but he also might be sentenced capitally. Again, the breaking of the spokes of a cart-wheel would also be a capital offence. It seemed to him doubtful that the Council should be called upon to give any one the power to hang petty thieves and robbers. He had heard nothing which should induce him to suppose that the hands of the Government of the North-Western Provinces could thus be in any way strengthened. As he understood, it was the desire of the Lieutenant-Governor of the North-Western Provinces to continue a tribunal which he had established for the trial of mutinous sepoys and rebels. But he desired to remark that, for the attainment of this asserted object, two Acts other than that to which allusion is now made placed ample power in the hands of the Executive. Apart from other considerations to which he should presently allude, if it was merely the trial of rebels for which the Lieutenant-Governor was concerned, that was fully provided for by Act XI of 1857 which was a permanent law. The language of the first Section of this Act was unmistakably applicable to rebels, for it applied to any person who should rebel or wage war against the Government, or should instigate or abet rebellion; while special jurisdiction for the trial of any such offences was created by Section VII Act XIV of 1857. So much then as to rebels: and as to mutinous sepoys, their case was expressly provided for by Act XVII of 1857, a law which, according to its title, was enacted for the trial of Native Officers and Soldiers for mutiny and desertion. If therefore we were to regulate our acceptance of the Bill now submitted to the Council by the ground shown for its enactment, it would appear that, the Executive Government was vested with abundant powers, irrespectively of Act XVI of 1857. The Lieutenant-Governor of the North-Western Provinces desired, they were told, to retain laws for the punishment of mutiny and rebellion; and such laws are to be found in Acts XIV and XVII of

1857; not at all in Act XVI of that year, which applied to heinous offences exclusive of rebellion and mutiny. It seemed to him therefore, upon the whole, that the Council could not with a due regard to its own responsibilities give such great powers at this time (three years after the occurrence of the late mutiny), or give its countenance to the continuance of an Act passed during that time. He said nothing to question the policy of originally enacting the law. In the year 1857 the hand of every man might be said to have been raised against his neighbor; any act of violence was an act of rebellion: but it was different now, and it appeared to him that they should not give the Lieutenant-Governor of the North-Western Provinces, or any Governor, the power of hanging a midnight robber, or a petty thief. But there was another matter which had occurred to him within the last few hours, and which induced him to regard this measure with more or less doubt; it was one worthy of consideration. On the 1st of November last was promulgated an Amnesty by the Proclamation of Her Majesty, and one Section of this Proclamation ran as follows:—

"Our clemency will be extended to all offenders, save and except those who have been or shall be convicted of having directly taken part in the murder of British subjects. With regard to such, the demands of justice forbid the exercise of mercy."

The first question he desired to put was whether, by re-enacting Act XVI of 1857, they would go back to offenders to whom Her Majesty had extended her clemency. He did not know up to what date this Amnesty as to general offences applied; possibly to the 1st of November 1858 at least. Therefore it seemed to him that, with respect to the offences covered by the Clause which he had quoted, and assuming that offenders already pardoned should not be again declared liable to punishment, they were bound to indicate in this new Bill that the renewal of Act XVI of 1857 for the punishment of heinous offences should have effect only against offences committed subsequently to the date of the Proclamation. But the same question arose as to the other Acts which his Honorable friend

opposite had asked them to continue. In the 7th Section of Act XIV of 1857 provision was made first for the trial of offences committed under Sections I and II of Act XI of 1857, which applied to rebellion, and to which he had already alluded. If Her Majesty had pardoned simple rebellion committed up to a certain date, it would be altogether impossible on their part, in the face of the Proclamation, to re-enact a law which would permit the Executive Government to take cognizance of the crime of simple rebellion which had been pardoned on the 1st November 1858, and which had not been continued or revived subsequent to that date. But by the same Section VII of Act XIV, any heinous crime might be punishable by the Commission which the Government of the North-Western Provinces had under the Act power to issue: and for the reasons already given, it seemed to him obvious that the new Bill should be so qualified as not to continue a jurisdiction to try heinous offences generally, on the footing that they might be tried under the original Act, but only such heinous offences as had been perpetrated subsequently to the date of the Amnesty. He excluded from consideration both subsequent acts of rebellion and subsequent heinous crimes, and the proposed law, according to his idea of intelligent legislation, should give no countenance to the revival of amnestied offences. Similar remarks applied to Act XVII of 1857. With certain qualifications mutiny and desertion were embraced in Her Majesty's Amnesty; and it seemed to him that they ought not to renew a law, drawn in terms which ignored the facts that had intervened between the enactment of the original law in 1857 and the present time. With these observations, therefore, it seemed to him that, without more information than they now possessed, or without very material modifications in the Act, he was under the necessity of opposing the Motion for the suspension of the Standing Orders.

MR. HARRINGTON said, it could not be denied that the Acts, which it was desired to retain on the Statute Book for the further period of a year, were special Acts, and that the punishments which they prescribed for some

Mr. Seance

of the offences enumerated in them were extremely severe, so much so, indeed, that the infliction of those punishments could be justified only by very special and extraordinary circumstances. But it was just those special and extraordinary circumstances which, having called the Acts in question into existence the year before last, rendered it advisable, in the judgment of the Executive Government, that they should be allowed to continue in force some little time longer. Not that there was any parallelism between the state of the country at the present time and at the time when those Acts were passed, or when they were afterwards renewed. Happily this was not the case. Indeed, it was scarcely possible to conceive any thing more different. Of this they could desire no better proof than was afforded by the glorious but peaceful tour lately made by His Excellency the Viceroy and Governor General of India through the very places which only a few months ago were the scenes not only of open rebellion against the Government, but of crimes of the most revolting character. Still, as had already been mentioned to the Council, there was a large body of rebels on the Oude Frontier, as well as on the borders of Goruckpore, against which our troops were operating in conjunction with the troops of the Nepalese Government, and there was a large number of rebels in Bundelkund against whom operations were also being carried on, and it seemed very desirable that the Civil Officers or Officers exercising Civil functions with the Military Columns employed in those places should possess all the powers described in the Acts under consideration for the trial and punishment of the persons who might be apprehended by them. Surely these persons had no particular claim to mercy or to be treated more leniently than they would have been had they been arrested a year ago. Every effort had been made by the Government to induce all those who were still in arms against us to surrender. Her Majesty's most gracious amnesty, to which the Honorable Member for Bengal had referred, had been proclaimed again and again throughout all parts of the country, and the conduct of the Government towards those who had surrendered under

it must have shown how anxious and willing the Government were to give the widest latitude of construction to the offers of mercy contained therein. Many persons had accepted those offers and were now living peaceably in their villages, but a great many obstinately refused to come in, and the Government had consequently been obliged to adopt active measures to cause their apprehension and to rid the country of them. He confessed that he had no compassion for these miscreants; that he had no sympathy with them. The Honorable Member for Bengal had overlooked that part of Her Majesty's proclamation which fixed a period for the operation of the Royal clemency. That period had long expired and there were large bodies of men still in arms against the Government and acting in open defiance of it.

MR. SCOTCH said, no part of his observations applied to acts of present rebellion. He did not mean to include those who were now opposed to the Government. But these Acts would apply to offences committed before the promulgation of Her Majesty's proclamation, and not subsequently continued or repeated.

MR. HARRINGTON continued, he had mentioned that the period of the Amnesty was limited. The Honorable Member for Bengal asked whether the Government intended to act in opposition to the terms of the royal proclamation; whether by re-enacting Act XVI of 1857 they would go back to offenders to whom Her Majesty had extended her clemency. He (Mr. Harrington) thought that the Honorable Member for Bengal had no right to put such a question. The Honorable Member must be aware that it was quite impossible for the Government to do anything contrary to the terms of Her Majesty's proclamation. But a large number of persons had refused to avail themselves of the offers of mercy held out to them, and the Government had come down to the Council and asked it to continue certain laws in force which were considered necessary for the punishment of those persons.

He well recollected that when the renewal of the three Acts, to which his present motion referred, was proposed to

the Council last year, both he (Mr. Harrington) and the predecessor of the Honorable Member for Bengal thought that some mitigation of the stringent provisions of Act XVI of 1857 might be allowed. They were however told by the Members of the Executive Government that it was thought better that the Act should continue in force as it was originally passed, but that the Council might rest assured that the provisions of the Act would be put in force in those cases only in which their enforcement was strictly just and proper and called for by the circumstances. Mr. Currie and himself were contented with that assurance, and he certainly had had no reason to repent the confidence which he had reposed in the Government. A similar assurance had been given to the Council on the present occasion, and he thought that the Honorable Member for Bengal might safely accept the same and withdraw his opposition to the Bill before the Council, and that in giving to the Executive Government the powers for which it had asked, and which it deemed necessary, for the proper administration of the country, he need be under no apprehension that, in the exercise of those powers, the Government would be guilty of any abuse of them. In thus trusting the Executive Government, he (Mr. Harrington) did not think that the Honorable Member for Bengal would be acting inconsistently with his duty, or with the object of his appointment to this Council, which was to assist in making the laws which were necessary to enable the Executive Government to carry on the Executive duties of the country. It seemed to him (Mr. Harrington) that the Honorable Member did not sufficiently distinguish between Executive and Legislative functions. It was no doubt difficult to know where to draw the line, but from what had taken place on this and on former occasions, he thought that the Honorable Member was disposed to place himself, in his legislative capacity, rather in antagonism to the Executive Government. This no doubt arose from an extreme anxiety on the part of the Honorable Member faithfully to discharge his own duties, which was very laudable, but, at the same time, he thought the Honorable Mem-

ber should be careful not to throw obstacles in the path of the Executive Government in the performance of its Executive duties. Those duties were of a very responsible and important nature, and he certainly thought that the Honorable Member for Bengal might exhibit a more trusting spirit towards the Executive Government, and confide more fully in it than he appeared disposed to do. The representative Members of this Council were not sent there for the protection of the people against the Executive Government, but to assist in making the laws which were considered by the Executive Government necessary to enable it to exercise its functions for the benefit of all classes.

The question being put, the Council divided—

Ayes 5.
Mr. Forbes.
Mr. Wilson.
Mr. Harington.
Mr. Ricketts.
The President.

Noes 2.
Mr. Sconce.
Sir Charles Jackson.

So the Motion was carried.

MR. HARRINGTON then moved that the Bill be read a second time.

SIR CHARLES JACKSON said, he must offer a few observations on the remarks of the Member opposite (Mr. Harington), although, when he came into the room this morning, it was not his intention to say a word on the subject of the Bill. He certainly thought that the Honorable Member for Bengal had been exceedingly temperate in the manner in which he had expressed his objections to this Bill, and there was not the slightest foundation for the remarks which had fallen from the Honorable Member opposite. He (Sir Charles Jackson) could not conceive that any Honorable Member could have spoken in a less antagonistic spirit than the Honorable Member for Bengal. That Honorable Member had simply pointed out that the present law provided the punishment of death for persons convicted of such crimes as robbery and burglary; that under that Act a man might be sentenced to death for stealing a bundle of hay belonging to the troops; and he asked the Council if they wished to have recourse at the present

Mr. Harington

time to such an extreme measure; and really there was nothing that evinced a spirit of hostility to Government in such a statement.

He (Sir Charles Jackson) found no fault with the passing of that Act in 1857. It was passed in a troublous time, as a rough and ready remedy for the punishment of mutineers and rebels, and was, in fact, equivalent to the establishment of Martial Law. The question which they had to consider in a calm and temperate manner was whether the Act was now necessary when the greater part of the country had settled quietly down, or to what extent it was necessary. According to the statement of the Honorable Member opposite, there were at the present time only two or three districts in a troublous state. That was a good reason why they should re-enact the Law as regards those disturbed districts, namely, Bundelkund, Goruckpore, and the territories bordering on Nepal. The Honorable Mover had made out a case for the re-enactment of this measure with respect to those places; but why he should ask for a general Law of this exceptional nature applicable to all India, he (Sir Charles Jackson) could not understand. He did not suggest this in any spirit of antagonism, but as a Member of the Council. They were, it is true, the advisers of the Executive, and he for one accepted that view of his position in that Council; but they were also the independent advisers of the Government, and were not to be taken to task whenever they thought fit to differ from the Executive.

MR. HARRINGTON said that the Council had already received through him the assurance that the Government had no present intention of extending the operation of the Acts which it was proposed to continue in force for a few months longer beyond the places mentioned by him, namely, Goruckpore, Oude, and Bundelkund, in which places it seemed to be admitted by the Honorable and learned Judge opposite (Sir Charles Jackson) that a sufficient case had been made out for their continuance; but it was impossible to say what might occur in the course of the operations now being carried on. The rebels on the Frontier might find their way into places in Bengal,

Chuprah or Tirhoot, for instance, where tranquillity now prevailed, and they might be joined by some of the people of those places, in which case, if the operation of the Acts were limited by the terms of the law to particular localities, it would be necessary for the Government to ask the Council to extend them. It appeared to him that this would be attended with inconvenience, and that it would be better to keep the Acts general as they had been passed originally, and to leave the Executive Government to put them in force where they were found to be absolutely needed as had hitherto been done.

SIR CHARLES JACKSON said, it must not be supposed that he wished to throw the slightest doubt on the assurances which had been made by the Honorable Mover of this Bill. He never for one moment doubted the humanity with which these measures would be carried out by the Governor General or the other Governors. But he must say, if they were called upon to pass Acts on these grounds, they were asked to proceed on an entirely new principle of Legislation.

MR. SCONCE said, it might perhaps be more convenient to the Council that he should propose in the form of amendments those alterations which he might consider necessary in order to make an imperfect law more perfect. Apart from the terms of the law, and with reference to the remarks of his Honorable friend opposite (Mr. Harington), he (Mr. Sconce) thought that he saw no advantage in discussing the theory and constitution of his own office. His Honorable friend had asked them to repose confidence in the Executive Government. His (Mr. Sconce's) opinion agreed with that of the Honorable and learned Judge. He was prepared to give the Government every confidence, but when he spoke of confidence as a Member of this Legislature, he meant confidence within the scope of legal action, a confidence in acts done within the limits that the Legislature might prescribe. If they proceeded upon that principle, how could he be upbraided with acting antagonistically towards the Government? But upon these personal questions, it was unsatisfactory and painful

to him to say more. He would keep to the prominent points before the Council. His Honorable friend had still admitted that rebellion and mutiny were the offences for which these Acts were required. His (Mr. Sconce's) objection was not as regards offences committed under rebellion or mutiny, but as regards heinous offences perpetrated by persons not mutineers or rebels. Again, however carefully he had listened to the remarks of his Honorable friend opposite, he had heard no explanation as to the effect which this Bill would have in confounding offences committed before and after the proclamation of Her Majesty's Amnesty. It seemed to him that this Legislature would sink its intelligence as to the rightness and fitness of things if it passed the present Bill, and, without an express recognition of the admitted facts, allowed offences which had already been pardoned by Her Majesty to be liable to punishment. With these remarks he begged to oppose the motion for the second reading of this Bill.

The question being put, the Council divided—

Ayes 5.
Mr. Forbes.
Mr. Wilson.
Mr. Harington.
Mr. Ricketts.
The President.

Noes 2.
Mr. Sconce.
Sir Charles Jackson.

So the motion was carried and the Bill read a second time.

MR. HARRINGTON moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Section I provided as follows:—

"Acts XIV of 1857, XVI of 1857, and XVII of 1857 shall continue in force until the end of the year 1860."

MR. SCONCE said, he desired to move an amendment in Section I Act XVI of 1857. That Section ran thus:—

"Whoever shall commit or attempt to commit any heinous offence in any District or place in which Martial Law hath been or shall be established, or in any District or place to which this Act shall be extended by order of the Governor General of India in Council, shall be liable, on conviction, to the punishment of death, or to the punishment

of transportation for life or of imprisonment with hard labor for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description."

The amendment which he proposed was to introduce a proviso into the Bill re-enacting that Section with the omission of the words "to the punishment of death or." He also intended to move an alteration in Section II of that Act, which he proposed should run thus:—

"The words 'heinous offence' shall be deemed to include an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson, provided the same shall have been committed with the intention of assisting any persons who at the time of commission were or are waging war or in arms against the State or forwarding their designs."

He had purposely excluded maiming, burglary, stealing army provisions, violent assaults &c., and the offences which he desired to retain were "an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson." But he had also added a proviso which he considered indispensable because salutary. They must not, he thought, transport a person for simple robbery or simple plunder, unless those offences were committed with the view of aiding the purposes of those who were in arms against the Government. The amendment which he should now move was the addition of the following proviso to the Section of the Bill under consideration:—

"Provided, that, in lieu of Section I Act XVI of 1857, the following Section be substituted (that is to say) 'Whoever shall commit or attempt to commit any heinous offence in any district or place in which Martial Law hath been or shall be established, or in any district or place to which this Act shall be extended by order of the Governor-General of India in Council, shall be liable, on conviction, to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years, and shall forfeit all his property and effects of every description.'"

MR. HARRINGTON said, it had been suggested to him by the Honorable Member for Madras that, if the amendment of the Honorable Member for

Mr. SCONCE

Bengal were adopted with the proviso attached thereto, it would be exceedingly difficult for the Officers, who had to administer the law, to determine in a case of rape, for instance, that the crime was committed with the intention of assisting those who were waging war against the State or forwarding their designs, which would be essential to a conviction under the Act as proposed to be amended.

MR. SCONCE remarked that this proviso was contained in the law as it now stood.

MR. HARRINGTON continued, but it did not apply to a case of rape, which offence he (Mr. Harrington) supposed would generally be committed for the gratification of the passions of the man committing the same without much regard to the State or designs against the State. Let that however pass. The principal objection which he (Mr. Harrington) had to the proposed amendment was that it might often tend to considerable inconvenience from the difficulty and, indeed, impossibility of guarding the persons apprehended, particularly if in large numbers, and of conveying them from place to place before they could be delivered over for transportation. He recollected an instance in which a Civil Officer was attacked in the early part of the mutinies by a band of men, three of whom he killed with his own hand, and three others, who were seized, he afterwards hanged, simply because he had no means of guarding them or of forwarding them to any place of confinement. He had no law for what he did, and it might be said that he had been guilty of a judicial murder. He (Mr. Harrington) would be very sorry however to try this Officer for murder, or so to limit the law that, in the event of any Officer taking life under similar circumstances, he might be liable to be put on his trial for that offence. He therefore thought that it would be better that they should retain the punishment of death in the Act.

The Honorable Member for Bengal had not adduced any instance in which the Acts now proposed to be continued in force for a brief period longer had been abused since they were last renewed, and he (Mr. Harrington) believed he might say that recourse to capital

punishment under those Acts was very rare.

MR. SCONCE'S Motion was put and negatived.

MR. SCONCE then moved that the following proviso be added to the Section, namely:—

"Provided that, in lieu of Section II Act XVI of 1857, the following Section be substituted (that is to say) 'The words heinous offence shall be deemed to include an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson, provided the same shall have been committed with the intention of assisting any persons who at the time of commission were or are waging war, or in arms against the State, or forwarding their designs.'"

The Motion was negatived, and the Section then passed.

MR. SCONCE moved that the following new Section be added to the Bill:—

"Nothing in the said Acts shall extend to the punishment of persons entitled to pardon under Her Majesty's Proclamation, published in the Calcutta Gazette Extraordinary, dated the 1st of November 1858."

MR. HARRINGTON said, he considered the proposed Section to be quite unnecessary. If any person entitled to a pardon under Her Majesty's Proclamation was arrested and brought to trial, the proper and usual course would be for him to plead the pardon in bar of further proceedings.

MR. RICKETTS said that the Honorable Member for Bengal was still confounding offenders who had mutinied with those who had not.

MR. SCONCE said, the terms of the Proclamation were—

"To all others in arms against the Government, we hereby promise unconditionally pardon, amnesty, and oblivion of all offences against ourselves, our Crown, and dignity, on their return to their homes and peaceful pursuits."

Here manifestly all prior acts of mutiny and rebellion, up to the promulgation of the Proclamation, were fully condoned, and it seemed to him that, in renewing laws necessitated by the events of 1857 and created in that year, it was highly essential to limit the language of the new law by the conditions which the

Amnesty necessarily imposed, and not to encourage local officers by the curt and silent terms of our law to prosecute offences that had been already pardoned.

If the Legislature could be supposed not to be cognizant of the Proclamation, the Bill would have been more or less justified. But as it was otherwise, they should prevent the possibility of any District Officer, under color of this Act, taking advantage of the ignorance or timidity of a prisoner and subjecting him unreservedly to a law passed before the proclamation of the Amnesty, as if the old and the new law could apply to the same crimes and the same criminals. He should therefore press his amendment.

MR. WILSON would appeal most respectfully to the Honorable Member for Bengal whether it would be wise to persevere in this amendment, and trusted that on consideration he would not object to withdraw it. If the amendment were put and negatived, it might create an impression abroad that a majority of the Legislative Council and the Government of India were disposed to contravene the benign proclamation of Her Majesty. Now he was quite aware that the Honorable Member did not wish to raise such an imputation. That the amendment itself was not needed to accomplish the object of the Honorable Member must be apparent upon three distinct grounds. In the first place, the law, which it was now sought to continue for another year as a temporary measure, had been in operation during the whole of the last year, contemporaneously with Her Majesty's proclamation, but no one ever imagined that the two were inconsistent with each other, nor had it ever been asserted that the one contravened the other. In the next place, if such a proviso were needful to save the proclamation under this particular law and against the punishments it inflicted, it was equally necessary as against the common criminal law, as the proclamation equally covered ordinary punishments for the offences which it condoned. And in the last place, if a person should by accident be tried for an offence which came within the proclamation, it might be pleaded in bar of the prosecution. He

(Mr. Wilson) trusted therefore, in order to avoid misconceptions on so delicate a point, that the Honorable Member would consent to withdraw his motion and not leave it on the records of the Council.

SIR CHARLES JACKSON said, he was disposed at first to support the amendment of the Honorable Member for Bengal; but the observation of the Honorable Member opposite (Mr. Harington) had sufficiently answered the objection, for there was certainly nothing in the Act to prevent a person pleading Her Majesty's pardon if he was entitled to it.

MR. SCONCE then, with the leave of the Council, withdrew his motion.

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

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

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

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TOLLS (CIRCULAR AND EASTERN CANALS.)

MR. SCONCE said, he had the honor of moving the first reading of a Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals)." Hitherto two Canals connected Calcutta and the River Hooghly with the Sunderbunds, and by a previous Act Government was empowered to regulate the navigation and to levy Tolls not exceeding a certain amount. Recently a third cut or line had been excavated by Government and was about to be opened for traffic. This line joined the other lines. The proposal which he had to make was that, whereas the two older lines were subject to the provisions of Act XXII of 1836 with respect to the levy of Tolls and other matters, the third new line might in like manner be brought under the provisions of that law. The Bill was read a first time.

Mr. Wilson

MILITARY POLICE BATTALIONS.

MR. SCONCE said, the Bill which he now had the honor to propose was somewhat of a different character, and he must crave the indulgence of the Council in the consideration of the proposed Bill. It was a Bill "to provide for the good order and discipline of the Battalions of Military Police." So far that efficiency was secured by Military organization, and he could well understand that a person more especially conversant with the working of the Military Law would have been better capable of preparing the Bill than himself. Those Battalions both in Bengal and the North-Western Provinces had been in existence for a considerable period, and however effectively they had been commanded, the powers of Commanding Officers were not supported by the operation of a specific law. In some instances it was found necessary to allow Commanding Officers to exercise the powers of Magistrates. But necessarily these powers which were limited to cases that fell strictly within the definitions of the Criminal Law, were in fact ill calculated to regulate the better order and discipline of Police Battalions. Some legislation on the subject was therefore extremely urgent. Without pretending to say that the form in which the Bill was now framed was the best which could have been adopted, yet it was brought in to meet the urgency of the case, and it might be taken as a substratum for a more effective Law. The offences provided for were taken from the Articles of War for the Native Army. Some of the minor offences were omitted, and others had been thrown together into one Article. As the Honorable and gallant President was well aware, most of the earlier articles of Act XIX of 1847 were not applicable to the circumstances under which the Police Battalions would be ordinarily employed. The Articles referred to contemplated offences occurring in time of war, and it appeared unnecessary to retain in the present law the same system of punishment that might be necessary to enforce discipline in a regular army. The punishment of death, for example, might be awarded under the Articles of War

for a series of offences; but except in the case of mutiny, this punishment was not retained in the present Bill. Now, therefore, as under the old Articles, the sentence for mutiny might be death.

A more material change now proposed related to the tribunals for the trial of these offences. The authorities whom he had consulted did not altogether agree upon the mode of conducting them. Major Rattray, the Inspector of the Military Police Battalions in Bengal, was rather disposed to view with favor the system of assessors. On the other hand, Colonel Williams, the Commissioner of the Police Battalions entertained in the North-Western Provinces, and the Officers under him, were of opinion that it was unadvisable to continue to Native Officers the exercise of powers with which they were invested under the old Courts. He (Mr. Sconce) had preferred, therefore, on the whole, to dispense with the services of Native Officers or Native Assessors, and to vest the conduct of these trials in Commanding Officers alone who, while empowered to inflict certain punishments of their own authority, were required to refer sentences of a graver nature for the confirmation of the Inspector of Police Battalions, or Commissioner as he was designated in the North-Western Provinces.

With these remarks, he begged to propose the first reading of this Bill.

The Bill was read a first time.

The Council adjourned at $\frac{1}{2}$ past 12 o'clock, on the Motion of Mr. Ricketts, to Saturday, the 17th Instant.

Saturday, December 17, 1859.

PRESENT:

The Honorable Lieut.-General Sir James Outram, Senior Member of the Council of the Governor-General, presiding.
Hon. H. Ricketts. Hon. Sir C. R. M.
Hon. H. B. Harington. Jackson, and
P. W. LeGeyt, Esq. A. Sconce, Esq.
H. Forbes, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented a Petition from Native Inhabitants of Bombay

against the Bill "for the licensing of Trades and Professions."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

FOREIGNERS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)."

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

CIVIL PROCEDURE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

FOREIGNERS.

MR. HARINGTON moved, pursuant to notice, that the Standing Orders be suspended to enable him to pass through its remaining stages to-day the Bill to continue in force for the further period of two years, Act XXXIII of 1857, entitled an Act to make further provision relating to Foreigners. He said, the Bill for prolonging the operation of the Act in question was brought in on the 6th August last, and was read a second time without opposition on the 13th of that month. It was referred on the same day to a Select Committee, whose report from accidental causes had only just been presented. Meanwhile the Act, which it was proposed to continue in force, had expired, and it being very desirable, therefore, that the Bill should be proceeded with at once, instead of the usual interval being allowed to elapse between the presentation of the Report of the Select Committee and the resolution for going into Committee thereon, he hoped that the Council would not object to his

Motion. He might mention that no objection had been made to the Bill in any quarter, and that the Select Committee, to whom the Bill was referred, had not recommended any alteration in it beyond an addition, which they had proposed for the purpose of reviving as well as of continuing the operation of Act XXXIII of 1857 for two years from the 5th December 1857, and which had been rendered necessary by the expiration of the Act on that date.

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

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

Agreed to.

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

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

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

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON moved that the Standing Orders be suspended to enable him to carry through its remaining stages on that day the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court." He said, his reason for making this Motion was that it was very desirable that the Bill, to which the Motion referred, should come into operation, if possible, from the 1st January next. The Council were aware that the two Sudder Courts of the Bengal Presidency, to which alone the Bill applied, were much oppressed with work, particularly the Sudder Court at Calcutta, and this was one of the measures intended for the relief of those Courts. The Bill had been before the public for

Mr. Harington

six months, the second reading having taken place on the 18th June last, and it had met with no opposition from any quarter. No communication had been received from the Sudder Court at Calcutta on the subject of the Bill, and the only suggestion which had proceeded from the Sudder Court at Agra in respect to it was that the present opportunity should be taken to extend the powers of the Sessions Judges by allowing them to pass sentence of imprisonment for ten years in cases in which they were limited by the existing law to seven years. It appeared, however, to the Select Committee on the Bill, that the suggestion of the Agra Sudder Court could be more properly considered in connection with the Criminal Procedure Bill, and that it was not advisable, at the present stage of the Bill before the Council, to propose the introduction into it of so important an amendment of the existing law. With this explanation he trusted that the Council would accede to his Motion. He would only add that the Select Committee had not considered it necessary to propose any alteration in the Bill as read a second time.

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

MR. HARINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

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

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

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

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council, in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TOLLS (CIRCULAR AND EASTERN CANALS).

MR. SCONCE moved the second reading of the Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats, passing through the Circular and Eastern Canals)."

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

NOTICES OF MOTION.

MR. HARRINGTON gave notice that he would, on Saturday next, move the first reading of the following Bills—

A Bill to empower the Governor-General in Council to raise the duty on Salt imported into the North-Western Provinces of the Presidency of Bengal.

A Bill to repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad, and

A Bill to provide for the execution of Process within the precincts of the residence of His Majesty the King of Oude.

MR. HARRINGTON also gave notice that he would, on the same day, move for a Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

LAND FOR PUBLIC PURPOSES.

MR. LEGEYTT moved that a correspondence with the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of Land for Public Purposes)."

Agreed to.

REPEAL OF REGULATIONS AND ACTS.

MR. LEGEYTT moved that a communication received by him from the Bombay Government be laid upon the table, and referred to the Select Committee on the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter."

Agreed to.

WATER SUPPLY (KURRACHEE).

MR. LEGEYTT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

MR. LEGEYTT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XXII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

LICENSING OF TRADES AND PROFESSIONS.

MR. LEGEYTT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "for the licensing of Trades and Professions."

Agreed to.

STAMP DUTIES.

MR. LEGEYTT moved that two communications received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to consolidate and amend the law relating to Stamp Duties."

Agreed to.

EMIGRATION (MAURITIUS, &c.)

MR. LEGEYTT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to amend the law relating to the Emigration of Native Inhabitants of India to the Island of Mauritius and other places."

Agreed to.

NOTICES OF MOTION.

MR. LEGEYTT gave notice that he would, on Saturday next, move the first reading of a Bill for the levy of Port-dues in the Ports of the Konkan Division of the Presidency of Bombay.

MR. SCONCE gave notice that he would, on the same day, move the second reading of the Bill "to provide for the good order and discipline of the Battalions of Military Police."

TOLLS (CIRCULAR AND EASTERN CANALS).

MR. SCONCE moved that the Bill "to amend and extend Act XXII of 1886 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals) be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

EUROPEAN PRISONERS.

MR. LEGEYT gave notice that he would, on Saturday next, move the first reading of a Bill for increasing the debt money for Europeans imprisoned for debt.

The Council adjourned.

Saturday, the 24th December 1859.

PRESENT.

The Hon'ble H. Ricketts, Senior Member of the Council of the Governor-General, presiding.

Hon'ble Sir H. B. E. H. Forbes, Esq.
Frere. Hon'ble Sir C. R. M.
P. W. LeGeyt, Esq. Jackson, and
H. B. Harington, Esq. A. Sconce, Esq.

NATIVE PASSENGER VESSELS (BAY OF BENGAL); ARMS AND AMMUNITION; ARMY AND STATE OFFENCES.

THE PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal," the Bill "to continue in force for a further period Act XXVIII of 1857," and the Bill "to continue in force for a further period Acts XIV of 1857, XVI of 1857, and XVII of 1857."

CIVIL PROCEDURE.

THE CLERK presented to the Council a Petition from the British Indian Association concerning the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

MR. HARRINGTON moved that the above Petition be printed.

Agreed to.

THE CLERK reported to the Council that he had received from the Home Department communications from the Governments of Bengal and the North-Western Provinces connected with Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter).

ELECTRIC TELEGRAPHS.

THE CLERK also reported to the Council that he had received from the Home Department a communication from the Governor of the Straits Settlement suggesting, with reference to the line of Telegraph which is being laid down by the Dutch Government between Batavia and Singapore, that due protection, under law should be granted to any line of Telegraph laid within British Territory by a Foreign power.

MR. LEGEYT moved that the above communication be printed.

Agreed to.

MEERAS LANDS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to limit the period within which a Meerasdar may assert his claim to lands which he has abandoned, or for which he may have failed to pay assessment."

PASSENGERS.

MR. LEGEYT presented the Report of the Select Committee on the Bill "to amend the law relating to the carriage of Passengers by Sea."

JAMSETJEE JEJEEBHAY BARONETCY.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lac of Rupees and a Mansion house and hereditaments called Mazagon Castle in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy Baronet, deceased."

ed, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body by Her present Majesty Queen Victoria, and for other purposes connected therewith."

JOINT STOCK BANKING COMPANIES, LIMITED.

MR. SCONCE presented the Report of the Select Committee on the Bill "to enable Joint Stock Banking Companies to be formed on the principle of limited liability."

IMPORT DUTY ON SALT (N. W. P.)

MR. HARRINGTON moved the first reading of a Bill "to empower the Governor-General in Council to raise the Duty on Salt imported into the North-Western Provinces of the Presidency of Bengal." He said, in the remarks with which he prefaced the introduction of the Bill, brought in by him in the month of August last, for licensing Trades and Professions as a means of augmenting the general Revenues of the country, he alluded, amongst other sources from which additional Revenue might be obtained, to the possibility of increasing the Duty upon Salt. As regarded the Presidency of Bengal, he observed that "the Government of India had already power by law to raise the Duty paid by Salt in the Lower Provinces of Bengal to Rupees 3-4 per maund—the Duty now paid was Rupees 2-8 per maund—that whether any increase should take place, and if so, what should be its extent, were questions which would be considered on the receipt of a report which had been called for from the Government of Bengal—that in the North-Western Provinces a Duty of Rupees 2 per maund was levied on all Salt crossing the frontier, and a further Duty of 8 Annas per maund on any Salt which might pass Allahabad—that a uniform Duty of Rupees 2-8 per maund had been proposed on all Salt crossing the frontier, the extra Duty now taken at Allahabad being abolished—that some Officers had, indeed, proposed that the Duty should be increased to Rupees 3 per maund—that the question of increasing the Duty on Salt in the North-Western Provinces had to be

considered in connection with Oude, which was a large Salt-producing country, and that reports had been called for from both the Chief Commissioner and the Lieutenant-Governor of the North-Western Provinces—that their answers might possibly show that it was not expedient to make any alteration in the rates of Duty now levied in the North-Western Provinces; but this was a point upon which he (Mr. Harington) purposely abstained from giving any opinion at present, because he felt that he was not in a position to do so with satisfaction to himself."

The result of the enquiries instituted by the Governor-General in Council, through the local Governments of the Lower and North-Western Provinces of Bengal, had been to satisfy His Excellency that the Duty on Salt in both Divisions of the Presidency would admit of being increased to the extent of 8 Annas a maund, that is to say, that in the Lower Provinces the Duty might be raised from 2 Rupees 8 annas to 3 Rupees per maund, and in the Upper Provinces from 2 Rupees to 2 Rupees 8 annas per maund. It would still be necessary to retain the additional or differential Duty which was now paid by Salt from the North-West on passing Allahabad, as below that place the North-Western Salt came into competition with the Salt supplied from the coast; and where that was the case, it was only fair and proper that, in point of taxation, both Salts should be placed on a level.

As had been stated in the remarks to which he had referred, it was quite competent to the Government of India, without any new law, to raise the Duty upon Salt in the Lower Provinces of Bengal to 3 Rupees 4 Annas per maund, which would more than cover the increase now proposed in respect to those Provinces, and accordingly, as Honorable Members would have observed, an Official Gazette had just been issued, which declared that from and after the date thereof the rate of Duty to be charged on Salt imported by sea into any part of the Presidency of Fort William in Bengal would be 3 Rupees upon every maund of 3200 tolas. But the duty on Salt imported into the North-Western Provinces from across the

frontier being fixed by Section II Act XIV of 1843 at 2 Rupees per maund, a new law was required to raise the duty on Salt so imported to 2 Rupees 8 Annas per maund, and the Bill of which he was now to move the first reading had been framed with a view to give the Government this power. Instead, however, of limiting the power of Government to raise the duty upon Salt imported into the North-Western Provinces to 2 Rupees 8 Annas per maund which was all that was now intended or desired, it was proposed to extend the limit to 3 Rupees. This would still be less than the sum to which the Government of India was competent, under the existing law, to raise the duty upon Salt in the Lower Provinces of Bengal, and it was hoped that this proposed extension of the discretionary power to be vested in the Government of India in respect to Salt imported into the North-Western Provinces, so as to place it nearly upon a footing with the power which the Government of India already possessed as regarded the Salt of the Lower Provinces of Bengal, would not be objected to by the Council.

Before determining upon increasing the duty upon Salt in Bengal to the extent which he had mentioned, the probable effect of the increase upon the public Revenue and upon the health and comfort of the people at large and particularly the poorer classes had, he need scarcely say, been carefully and fully considered by the Government of India. If the effect of the proposed increase should be to diminish the consumption of Salt to any great extent so that the higher duty on the smaller quantity consumed would produce little, if any, more revenue than had hitherto been obtained from the lower rate on the larger consumption, the increase would, obviously, be highly impolitic and inexpedient, but after making full enquiry, the Government saw no reason to anticipate that the higher rate of duty would check consumption in any material degree, and it seemed to be the very general belief amongst those who might be regarded as competent judges, that the increase which might be expected to take place in the price of Salt in consequence of the increase in the rate of duty, would be so very trifling, that it would scarcely be felt even by the labor-

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ing population, who could the least afford any extra charge on account of the articles of food consumed by them. The condition of this class was daily undergoing considerable improvement from the higher price that they could now command for their labor. It was well known that the value of labor was rapidly increasing throughout the country from the large public and private works which were being carried on and from other causes. With regard to the extent to which the duty upon Salt pressed upon the people, he would, with the permission of the Council, read an extract from a despatch of the late Governor General, the Most Noble the Marquis of Dalhousie. Writing as Governor of Bengal, His Lordship observed—

"Notwithstanding the general assertions made in Parliament and elsewhere of the baneful effects of the Salt tax on the condition of the people, there is no reason whatever to suppose that such assertions are founded on fact, or that the very poorest classes suffer any appreciable degree of pressure or inconvenience from this their only contribution to the public revenue of the country. Assuming the population of the Provinces supplied with Salt subject to this tax at 50 millions, the average annual payment per caput, on the supposition that all consume alike, is only 5½ annas, while, on the same supposition, each individual has 5½ seers of Salt for his yearly consumption. If the population be less than 50 millions, the average consumption is of course greater. And as Salt in Bengal is not used for any but alimentary purposes, this amount of consumption is not consistent with the belief that the economical effects of the tax are more injurious to the people, than those of any other tax of similar amount would be."

Mr. George Plowden, again, in his able and elaborate Report upon the duty on Salt said:—

"It has been argued that it is grievous to tax Salt in India because Salt is the only condiment an Indian laborer consumes with his food, which is of such a nature that without Salt it would be unbearably insipid. But this is a mistake of fact. Dr. Bedford's paper on the income, expenditure, and food of the poor classes in Bengal shows that, dear as Salt is in Bengal, usually as much is spent by these very classes upon pepper and other untaxed spices (exclusive of the very important item of oil also untaxed) as upon Salt, and sometimes more. The daily food of the cooly or common working man in Bauleah is shown to consist of dhal, fish, meats, spice, green vegetables, milk, and oil, besides rice and Salt. This paper also

shows that usually half as much is spent by the poorer classes on tobacco (also untaxed) as on Salt. The Indian laborer then, when the facts of his case are ascertained, is found to be much more fortunate in the fiscal system under which he lives than the English laborer. I am not aware what condiment, except Salt, the latter can enjoy untaxed. In tobacco alone, I imagine, many laborers in England contribute more to the revenue of their country in proportion to their income than the Indian laborer does in Salt; and those English laborers who may consume occasionally sugar, coffee, tea, malt liquor, pepper, or other spices, and the like small luxuries corresponding with the spice, milk or dhye, oil, and tobacco of the Bengalee, pay very heavy taxes to which there is nothing corresponding in the Indian fiscal system as it affects any class of people. Mr. T. L. Parnock, in his evidence before the Select Committee of 1836, says—'I think the English laborer's taxes bear a greater proportion to his wages' (than the Salt Tax paid by the Bengal laborer bears to his wages); and speaking of the English system of taxation, he says—'almost all the taxes that fall upon the (English) laborer are out of the necessities of life; many taxes have been taken off of late years; the taxes are taken off soap, leather, and candles; formerly there was scarcely any thing that was not the subject of taxation to the poor man in England.' I have not observed that any witness in 1836 or on any other occasion has controverted this statement."

And further on, in the same Report, Mr. Plowden observed, in reference to the North-Western Provinces—

"The cost of an adequate supply of salt cannot be regarded as burdensome to the laborer in the North-Western Provinces. Much less can it be said that an adequate supply of good wholesome salt is beyond his reach."

This opinion was confirmed in a letter received by him (Mr. Harington) not long ago from the Commissioner of Customs for the North-Western Provinces who wrote—

"If the tax on salt is raised to 3 Rupees per maund in the North-Western Provinces, it will not be felt. At the above rate of duty, a cooly receiving 3 Rupees per mensem, and consuming 6 seers of salt per annum (the estimated amount), his contribution towards the expense of the State would be 6 annas 2 pies, the 80th part of his annual earnings, or about 1.25 per cent."

At 2 Rupees 8 annas per maund, the percentage would of course be less.

"The production price of the salt (the Commissioner went on to say) with all the expenses attending the manufacture and

transportation of the article to the market where it is sold, which the cooly would have to pay whether there was a duty or not, must be deducted from the amount of actual taxation. So little is the salt tax felt that not one man in a hundred knows that he is subjected to it. The poorer people in purchasing atta or flour have always a portion of salt with a little pepper given with it, which is charged for the price of the atta."

It was calculated that the increase in the rate of duty upon Salt in the Presidency of Bengal, now proposed, would yield an additional Revenue of between forty and fifty lacs of Rupees, or nearly half a million a year, and, as had been said, it was hoped that the increase would be obtained without any very sensible pressure upon the consumers of the article from which it was derived. The necessity for this increase, or for the measure by which it was expected to be produced, was to be found in the financial difficulties with which the Government were still contending. With the extent of those difficulties, as well as with the measures in progress to meet them, the Council had already been made acquainted, and he did not know that he could advantageously or usefully add any thing, at present, to the information given to the Council on both points on previous occasions. He would not therefore occupy the time of the Council by repeating the very full statement in respect to the finances, made in this chamber in the early part of the year by His Excellency the Governor General at the time that His Lordship introduced the Bill to alter the duties of Customs on goods imported or exported by sea, or what was said in the debates which took place on the motions for the first and second reading of the Bill for licensing Trades and Professions, though he might mention that there had been no abatement of the anxiety felt by the Government of India to reduce the expenditure in every branch of the public service to the utmost possible extent consistently with efficiency, and that the measures which had been adopted with that view had already produced a very considerable saving.

As regarded Madras and Bombay, a slight increase had lately been made in the duty on Salt in both those Presidencies. This increase had taken

place under the orders of the Government of India in accordance with instructions from home, and not, as had been erroneously stated by him (Mr. Harington) on a former occasion, by recourse to fresh legislation, which was not necessary. But even with this increase, the duty paid by Salt in Madras and Bombay would continue very much less than what was proposed for Bengal, and the people of Bengal might not unreasonably complain of the distinction, and, as respected the duty under consideration, might not unfairly claim equality of taxation in the three Presidencies. On this point he might observe that the Government of India had by no means conceded that the present duty on Salt in Madras and Bombay was nearly at a maximum. In the case of both Presidencies the Government of India had, for the present, yielded to the special considerations which had been pressed upon it by the local Governments. In urging these considerations, in so far as Bombay was concerned, the Government of that Presidency had frankly and fairly admitted that hereafter a further advance in the rate of duty might be made if the late increase, which was to the extent of 4 annas per maund, was found not to have produced any ill effect, and as regarded Madras, it was hoped that the improvements, now in progress in that Presidency under its present able and energetic Governor, and which embraced a reform of the Police, the settlement of Kama, and a reduction of the assessments upon land, would produce an amount of prosperity which would enable the people of Madras, at no distant date, to bear a duty upon Salt more nearly approaching the rate imposed upon the people of Northern India.

It only remained for him to say that it being obviously most undesirable that there should be any interval between the announcement to the public of the intention of the Government to raise the duty upon Salt in the North-Western Provinces to 2 Rupees 8 annas per maund, and the carrying out of that intention, the higher duty had been ordered to be levied from this date, and as was usually done in

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the like cases, a Section had been added to the Bill, which it was hoped, would be assented to by the Council, for the purpose of indemnifying all persons who might be concerned in levying the higher rate of duty previously to the sanction of the Legislature being given to the same.

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

ZILLAH COURT OF FURRUCKABAD.

Mr. HARRINGTON moved the first reading of a Bill to "repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad." He said that, by the first article of a treaty entered into in the year 1802 with the Nawab of Furruckabad, after the cession of that district by the Nawab Wuzer to the Honorable the East India Company, it was stipulated that "the authority of the Court of Adawlut should not extend to the person of the Nawab; but as his connexions and dependants were undefined, and it was the object of the British Government to introduce a fair and impartial administration of justice throughout the Province of Furruckabad, it was agreed that whatever complaint might be preferred against any of the Nawab's dependants, should in the first instance be referred to the Nawab; and in the event of the complainant not receiving any speedy justice, or being dissatisfied with the Nawab's decision, the complaint should be decided in the Adawlut."

This stipulation was embodied in Regulation II. 1803 of the Bengal Code and would be found in Section VIII of that enactment. Subsequently, Act XII of 1836 was passed, which declared that "from the 1st day of June 1836, if the holder of a decree passed by the Nawab of Furruckabad under the provisions of Section VIII of Regulation II. 1803, shall be unable to obtain execution of the said decree by the Nawab for a period of six weeks (which period of six weeks shall be calculated from the said first day of June, if the decree were passed before the said first day of June, and from the time of passing the decree, if the decree were passed on or after the said first day of June), the said holder shall be

at liberty to sue out execution of the said decree in the Zillah Court of Furruckabad; and the Judge of that Court, on application made to that effect, shall execute the decree in the same manner in which a decree of the said Zillah Court is executed."

This law, as well as the law of 1803, was still in force, but the conduct of the Nawab of Furruckabad during the temporary cessation of British authority in that district in the year before last, which had rendered his name infamous, having led to the banishment of the Nawab from the British Dominions in India, to the confiscation of his property and to the extinction of his title, it was not now possible, nor, if it were possible, would it be necessary or proper to continue to the followers and dependants of the Nawab the privilege of having complaints, when made against them, heard by him, which was conferred upon the followers of the Nawab by the terms of the treaty of 1802; and there being no longer any reason for placing those persons on a different footing in matters connected with the administration of Civil Justice in the district from the other residents thereof, the present Bill was introduced with the view of doing away with the distinctions in favor of the Nawab and his dependants which were contained in the existing Regulations, by repealing the same.

The Bill was read a first time.

KING OF OUDE.

Mr. HARRINGTON moved the first reading of a Bill "to provide for the execution of Process within the precincts of the residence of His Majesty the King of Oude." He said the Council was probably aware that His Majesty the King of Oude, who, notwithstanding the annexation of his kingdom to the British Dominions in India, retained his title, had lately taken up his residence at a place in the neighborhood of Calcutta, where His Majesty had become the proprietor by purchase of several houses with the grounds attached thereto, in which he and his family with their connexions and followers were at present living, and the object of the Bill, of which he was now to move the first reading, was to make

the same provision for the execution of legal processes within the precincts of His Majesty's residence which was made by law in the case of the Nawab Nazim of Bengal at Moorshedabad. This was considered desirable by the Government and it was hoped that the measure would materially facilitate the execution of legal processes within the precincts of the premises occupied by the King of Oude without interfering improperly or inconveniently with the ordinary jurisdiction of the local Civil and Criminal Courts, to which His Majesty and his followers, by taking up their abode within the territorial limits of the same, had rendered themselves amenable. The Bill related simply to the execution of the processes of those Courts, from which it did not propose to exempt any of the persons to whom it would apply, and in framing the Bill the wording of the corresponding enactment for regulating the execution of legal processes within the precincts of the palace of the Nawab Nazim of Bengal at Moorshedabad, had been closely followed.

The Bill was read a first time.

KONKAN PORT-DUES.

Mr. LEGEYNT postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill for the levy of Port-dues in the Ports of the Konkan Division of the Presidency of Bombay.

EUROPEAN PRISONERS.

Mr. LEGEYNT also postponed the Motion (which stood in the Orders of the Day) for the first reading of a Bill to make further provision for the subsistence of Europeans imprisoned under Civil Process.

MILITARY POLICE BATTALIONS.

Mr. SCONCE moved that the Bill "to provide for the good order and discipline of the Battalions of Military Police" be read a second time.

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

CIVIL PROCEDURE.

Mr. HARRINGTON postponed the Motion (which stood in the Orders of

the Day) for a Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

MILITARY POLICE BATTALIONS.

MR. SCONCE moved that the Bill "to provide for the good order and discipline of the Battalions of Military Police" be referred to a Select Committee consisting of Sir James Outram, Mr. Harington, Sir Charles Jackson, and the Mover.

Agreed to.

IMPORT DUTY ON SALT (N. W. P.)

MR. HARINGTON gave notice that he would, on Saturday next, move the second reading of the Bill "to empower the Governor-General in Council to raise the Duty on Salt imported into the North-Western Provinces of the Presidency of Bengal," and, in the event of that Motion being carried, the suspension of the Standing Orders with a view to the Bill being passed through its remaining stages forthwith.

DISSOLUTION OF MARRIAGES BY CHRISTIAN CONVERTS.

SIR CHARLES JACKSON gave notice that he would on the same day move the first reading of a Bill to provide for the dissolution of certain Marriages entered into by Christian Converts before their conversion.

ZILLAH COURT OF FURBUCKABAD.

MR. HARINGTON gave notice that he would on the same day move the second reading of the Bill "to repeal certain Laws relating to the jurisdiction of the Zillah Court of Furruckabad."

KING OF OUDE.

MR. HARINGTON gave notice that he would on the same day move the second reading of the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude."

WATER-SUPPLY (KURRACHEE.)

MR. LEGEYT moved that Sir Bartle Frere be added to the Select Committee on the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government respecting the power of Zillah Judges to award sentences of solitary confinement, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned.

Saturday, December 31, 1859.

PRESENT:

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Outram,	H. B. Harington, Esq.,
Hon. H. Ricketts,	H. Forbes, Esq.,
Hon. Sir H. B. E. Jackson,	Hon. Sir C. R. M.
Frere,	and
P. W. LeGeyt, Esq.,	A. Sconce, Esq.

DISSOLUTION OF MARRIAGES BY CHRISTIAN CONVERTS.

SIR CHARLES JACKSON begged leave to move the first reading of a Bill "to provide for the dissolution of certain Marriages entered into by Christian Converts before their conversion." The object of the Bill was to remove certain disabilities affecting Native Christian Converts. Owing to the custom of early marriages in this country, most Converts were married at the time of their conversion. The consequence of a Mahomedan or Hindoo becoming Christian was simply this, that the Hindoo or Mahomedan who remained true to his own faith was considered freed from the marriage tie; the marriage itself being dissolved; while on the other hand, according to Christian doctrine, the Convert was

bound by his marriage before conversion and was not able to re-marry. If it were not an Hibernian form of expression, he would describe his position as that of a married man without a wife. Such a state of things produced most serious consequences. It either led to concubinage amongst the Converts, or else to irregular marriages which gave neither a legal or religious sanction to the subsequent connection. A short statement of how matters stood, would, he thought, satisfy the Council that legislation on this subject ought not to be delayed. There were some Missionaries who treated these Native marriages as idle ceremonies, and did not hesitate to re-marry their Converts. In the Tinnevely Missions it appeared that a distinction was drawn between marriages contracted between children and not afterwards followed up by cohabitation at maturer years, and marriages which were afterwards followed up by cohabitation. If children became converts they were not allowed to wear the symbols of marriage in the schools, and were taught that they were idle ceremonies, and when they attained maturity the Missionaries did not hesitate to re-marry them, and it was only when the marriage was followed by subsequent cohabitation that the Converts were prevented from marrying again. He (Sir Charles Jackson) did not see the force of this distinction. The validity of the Hindoo marriage must be decided by the Hindoo law, and according to that law, the first marriage in childhood is the real marriage and the child-wife becomes a widow even if her husband dies before the consummation of the marriage. These confused views on so important a subject as the law of marriage—a subject which affected so deeply the morality and the property of the Native Christian community—would produce still greater mischief and confusion by and by, when the number of Native Christians increased. Besides, if a Convert were to re-marry, he would, according to an opinion given by Sir James Colville when Advocate General, render himself liable to an indictment for bigamy under Act 9 Geo. IV. c. 74, s. 70. He had not the Statute before him, but the Clause contained provision to the effect that any person "pro-

fessing the Christian religion," being married, should marry during the life of the former husband or wife, should be guilty of felony and liable to transportation for seven years, or to imprisonment for two years. He (Sir Charles Jackson) would express no opinion upon the point, but it might be that a Judge would be astute to see whether the Native Convert in such a case, though within the letter, was within the meaning of the Act. Be this however as it might, this state of the law is another reason why the present state of things should not be allowed to continue.

It might be said by some that this was a case for the legislation of the Imperial Parliament. He certainly thought that in cases affecting Europeans it is very desirable that the marriage law should be uniform, and that uniformity would best be secured by leaving questions relating to the marriage law of Europeans to the Imperial Legislature. But he did not think that this held good with respect to the Native Christian community. He very much doubted whether Parliament would ever undertake to legislate for them, and he felt quite sure that the consequences would be most disastrous if they were ever induced to make the attempt.

This subject had attracted the attention of the present Diocesan shortly after his arrival in this country, and he had asked him (Sir Charles Jackson) to obtain the assistance of that Council in order to remedy the evil. He (Sir Charles Jackson) had since then communicated with the Bishop and also with a Committee of Clergymen who had been appointed to confer with him on the subject, and the enactment which he now proposed met generally with their consent.

Before going farther, he wished to guard himself against any misconception. This Bill would not in any way affect either the Mahomedan or Hindoo party to the marriage who remained true to their original faith. According to the principles of the law to which they still adhered, the marriage was dissolved already, and it ought to be, and he believed it was, a matter of indifference to them whether the Convert did or did not marry again. The Bill only proposed to do that for

the Convert which the Mahomedan and Hindoo law had already done for the other party to the marriage contract. He thought however that as the Mahomedan or Hindoo party to the marriage contract did not in fact want this Bill, they might reasonably object to pay any of the expenses of the proceedings contemplated by this measure, and he had therefore inserted a Clause in the Bill, which expressly provided that the costs of all proceedings taken under the Act should be paid by the Convert.

In considering the question, he (Sir Charles Jackson) had looked round to see what was done in former times, when Christianity and Heathenism were side by side in Europe; but he was sorry to say there was little to be found. The law books of our own country were quite silent on the subject. There was, however, a case cited in Pothier which was in point. That was the case of a converted Jew, who in 1754, after his conversion, required his wife to return to cohabitation with him, but she refused. The Jew, thereupon, appealed to a tribunal in Strasbourg, and that tribunal granted him a divorce, with a declaration that he was at liberty to marry again. Four years afterwards, in 1758, he entered into an engagement to marry a young lady of Soissons; and all went merrily as a marriage bell till the parties applied to the Curé who refused to marry them. The matter was then referred to the Courts and the case was ultimately appealed to the Parliament of Paris who decided that the Curé was right and the parties could not be married. This was the only legal authority which was to be found on the subject, but he found it stated in the opinion of Mr. Colville, when Advocate General, to which he had already alluded, that the question had been agitated before the Council of Trent who did not appear to have arrived at any decision respecting it.

The Council would not expect him to go into the religious part of the question. That was not the time or place for such a discussion, and he did not feel himself qualified to discuss it. He would just remark, however, that he had seen a large mass of papers, from which it appeared that the whole controversy turned upon the 14th and

15th verses of the 7th Chapter of 1st Corinthians.

"If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. But if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases."

And he (Sir Charles Jackson) thought he might add that the great majority of the Clergy deemed this a sufficient authority for the present measure.

With these few observations, he begged to introduce the Bill to the Council. It was, he thought, characterised by two distinct features.

1st.—That there was the greatest time given to the parties for deliberation, particularly when there were any children of the marriage.

2nd.—That great care had been taken to throw all the burden of the proceedings taken under the Act upon the Convert.

He would not go at length into the provisions of the Bill, but he would simply state that it provided that, when a Mahomedan or Hindoo husband or wife refused to cohabit with a Christian Convert, the latter was allowed to apply by petition to the Zillah Judge, who would issue an order compelling the appearance of the party refusing to cohabit, for the purpose of being interrogated whether he or she refused to cohabit with the Convert. If the party, on being interrogated by the Judge, answered in the negative, the Judge was required to postpone making any final order for the dissolution of the marriage for a period of four years if there were any children, or of two years if there were none. At the end of the period ordered, the party would be again brought up and interrogated by the Judge, and if he or she still refused to cohabit with the Convert, the Judge was empowered to declare the marriage dissolved.

The Convert would be obliged (if the Zillah Judge should think fit so to order) to maintain his wife during the period which might intervene between the first and second interrogation, and the Bill expressly saved the rights of children born of the marriage which

was dissolved. These were the main provisions of the present Bill, and he would only say in conclusion that, if the Council should allow it to pass the second reading and be referred to a Select Committee, he should be very glad to receive any suggestions on the subject.

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

MARRIAGES (CHURCH OF SCOTLAND.)

MR. SCONCE said, the Bill of which he was about to propose the first reading, did not embody any new principle of law, but rather was intended simply to correct what appeared to him to be a defect in the present law relating to the celebration of Marriages by ordained Ministers of the Church of Scotland. The present law by which Marriages were solemnized by Ministers of that Church was enacted in England in 1818, and it might be readily understood that the general principles of legislation which were then adopted towards Europeans were much more restrictive than those of the present day. In the Act to which he had alluded, it was provided that Marriages "shall be had and solemnized within the British Territories in India by ordained Ministers of the Church of Scotland as by law established." Thus it was already recognized that Ministers of the Church of Scotland were competent to solemnize Marriages in this country; but the following words were added "and appointed by the United Company of Merchants of England trading to the East Indies, to officiate as Chaplains within the said territories." The purpose of the present Bill was simply to withdraw the restriction contained in those latter words, so that Marriages might be solemnized by any ordained Minister of the Church of Scotland in this country, whether Chaplains upon the Establishment or not. More recently, Chaplains or rather Ministers had been introduced into India on a footing not contemplated by the Legislature when the Act of 1818 was passed. Lately several Chaplains had been appointed by the Secretary at War to the Highland Regiments in this country; and it was apprehended that, under the strict terms of the law, those Chaplains,

though ordained Ministers of the Church, were not competent to marry soldiers attached to their Regiments. He did not apprehend that any objection could arise to effacing words from the Act which afforded no greater security than the ordination of the Church gave. With these remarks, he begged to move the first reading of a Bill "relating to the celebration of Marriages in India by ordained Ministers of the Church of Scotland."

The Bill was read a first time.

IMPORT DUTY ON SALT (N. W. P.)

MR. HARRINGTON moved the second reading of the Bill "to empower the Governor-General in Council to raise the duty on Salt imported into the North-Western Provinces of the Presidency of Bengal."

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

MR. HARRINGTON moved, pursuant to notice, that the Standing Orders be suspended to enable him to carry the Bill through its remaining stages to-day. The Council had already been informed that the extra duty proposed to be imposed upon Salt imported into the North-Western Provinces from across the Frontier, was being levied at the present time under an order of the Supreme Government, and a Section had been added to the Bill to indemnify all persons concerned in levying the higher rate of duty under that order. But it was obviously desirable that the sanction of law should be given to the measure as soon as possible, and he trusted therefore that the Council would not object to give their assent to the Motion which he had just made.

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. HARRINGTON then moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee after a verbal alteration in the Title, and, the Council having resumed its sitting, was reported.

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

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

Sir Charles Jackson

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved the second reading of the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad."

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

KING OF OUDE.

MR. HARINGTON moved the second reading of the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude."

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

JAMSETJEE JEJEEBHoy BARONETCY.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "for settling Promissory Notes of the Government of India producing an annual income of one lac of Rupees and a Mansion House and Hereditaments called Mazagon Castle in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith."

Agreed to.

The Bill passed through Committee after a verbal amendment in the Preamble, and, the Council having resumed its sitting, was reported.

MR. LEGEYT moved that Mr. Ricketts be requested to take the above Bill, as now settled in Committee of the whole Council, to the President in Council in order that it might be transmitted to the Secretary of State for India, with the request that he would obtain the sanction of Her Majesty to the same.

Agreed to.

PASSENGERS.

MR. LEGEYT moved that the Council resolve itself into a Committee on the Bill "to amend the law relating to the carriage of Passengers by Sea."

Agreed to.

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

MEERAS LANDS.

MR. LEGEYT moved that the Report of the Select Committee on the Bill "to limit the period within which a Meerasdar may assert his claim to lands which he has abandoned or for which he may have failed to pay assessment," be adopted.

Agreed to.

KING OF OUDE.

MR. HARINGTON moved that the Bill "to provide for the execution of process within the precincts of the residence of His Majesty the King of Oude" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

ZILLAH COURT OF FURRUCKABAD.

MR. HARINGTON moved that the Bill "to repeal certain laws relating to the jurisdiction of the Zillah Court of Furruckabad" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAIT SETTLEMENT.)

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the settlement of Prince of Wales' Island, Singapore, and Malacca)."

Agreed to.

WATER-SUPPLY (KURRACHEE).

MR. LEGEYT moved that a communication received by him from the Bombay Government be laid upon the table and referred to the Select Committee on the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee."

Agreed to.

EXCISE ON SALT (MADRAS PRESIDENCY).

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to establish a Duty of excise on Salt manufactured in the Presidency of Fort Saint George."

Agreed to.

The Council adjourned.

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