M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1705 Press Mis.

50-51

Dated 6—12—~~19~~1948

Not to be folded or roughly handled

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1705

No. 50. Read the following letter from H. FORBES, Esq., Member of the Legislative Council of India for Madras; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort St. George, dated Fort William, the 20th November 1858.

SIR,

I have the honor to forward, to be laid before the Government, a copy of a Bill which was brought into the Legislative Council by myself on the 6th Instant, with some copies of a speech addressed to the Council on its introduction, and of the debate on a previous occasion of an amendment being moved to that part of the Code for simplifying Civil procedure, which provided for the admission of evidence without either oath or affirmation.

The second reading of the Bill was moved to-day, and the motion was withdrawn on a general expression of the wish of the Council, that they should not be called upon to commit themselves to an opinion upon its principle, until they were in possession of the opinions of the public authorities in the several Presidencies, and of the community in general, upon a subject which, although of very great importance, has not elicited an expression of opinion since 1847.

It has been, therefore, resolved that the Clerk of the Council shall communicate to the several local Governments, the wish of the Legislative Council to receive the opinions of the Revenue and Judicial Officers, European and Native, and of the community in general upon the question of the re-introduction of oaths which were abolished as regards Hindoos and Mussulmans by Act V of 1840, and upon the recommendation of Her Majesty's Commissioners, that oaths and affirmations should be altogether dispensed with; and I now take leave to bespeak the particular attention of the Government to this matter, and to request that the Government will adopt whatever measures they may consider proper to ensure the opinions which it is wished to obtain being before the Council within the period of four months for which the second reading of the Bill has been postponed.

No. 51. ORDER THEREON, No. 1715; dated 6th December 1858.

Ordered to be communicated to the Court of Sudder and Foujdaree Udalut; and through the Revenue Department, to the Board of Revenue, who will respectively obtain from such European and Native Officers subordinate to them, as they may think proper, their opinion on the question of the re-introduction of oaths, which was abolished, as regards Hindoos and Mahomedans, by Act V of 1840.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

Exd. F. Cartledge.

THE postponed Section 145 of Chapter III provided that witnesses should be examined without oath or affirmation, and prescribed a form of admonition to be used preliminary to their giving evidence.

MR. FORBES said that, in rising to move an amendment to the Section, he must commence by an expression of the wish he so strongly felt, that some other Honorable Member more competent than he was to do justice to so important a subject had been willing to bring it forward for discussion; but as he stood alone among those Members of the Select Committee who usually attended its Meetings in protesting against the principle which it was now sought to introduce into our Courts of Justice, he felt that, unless he put himself forward on this occasion, the matter, important though it was, might not be discussed at all. He felt sure that he should not look in vain for the indulgence of the Council, and that he should

peared. He asked the Council for one moment to reflect on the great injustice of which our Courts must have been the unconscious instruments when made the tools of such a mass of perjury as was implied in an increase of detected cases from 18 to 148. It was, he believed, generally admitted that certainty of punishment was one of the best preventives of crime; if, therefore, any crime increased greatly in extent, it was to be assumed that detection and punishment had become less certain. Let this principle be applied to the statement now in question, and he thought we must conclude that the vast increase in the number of detected cases of perjury proved beyond a doubt that a far greater number had remained altogether undetected.

If, however, these facts were not sufficient to decide the question, and if the evidence of all the Courts, whether established by Royal Charter or presided over in the Mofussil by Europeans or Natives, were insufficient to decide the question, by what should it be decided? These facts and this evidence could not be set aside; there were no facts and no evidence on the other side to show that good had resulted from the abolition of oaths; but he would anticipate the answer that would be made to the present motion. It would be admitted that it was to be regretted that Act V of 1840 had ever been passed; but having been passed, it would be said that it was inexpedient to go back, and that as the same oath was not equally binding on all, if oaths were admitted, a discretion must be allowed to the Courts to administer whatever oath it considered to be most binding upon each witness, that much trouble and inconvenience might arise, and that a Judge might here and there be found, who would resort to unbecoming means of testing the credibility of evidence.

If this were to be the defence of the Section as it now stands, he would take leave to say that it would be no defence at all, for in the first place he agreed with what Mr. Lushington had said in the Minute from which he had just now read an extract, that if a false step in legislation had been made, it was a plain and simple duty to retrace it; it was a false pride that induced us to be consistent in error. As regarded any fear that might be felt regarding the discretion of some one or two Judges, he submitted to the Council that they could not legislate for individual and exceptional cases, and that it would be doing a grievous wrong to the people of this great country, if they were deprived, as regards their persons and property, of the safeguard which evidence delivered on oath was admitted by all to afford, by a vague indefinite fear that, here or there, at sometime or other, a Judge might possibly arise whose zeal in the pursuit of truth would outrun his discretion. Such a case, if ever it did arise, should be dealt with at the time by whatever authority might have the supervision of our Courts, and the people should not be deprived of what

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SIR ARTHUR BUL
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No 1715.

Ordered to be communicated to the Court of Sudder and Foujdaree Adalut and; thro' the Revenue dept., to the Board of Revenue, who will respectively obtain from such European and Native officers subordinate to them, as they may think proper their opinion on the question of the reintroduction of oaths, which was abolished, as regards Hindoos and Mahomedans, by Act V of 1840.

W. H. B

Fort St George, 6th December 1858.

Copy to Court of S. & F. A. and with a copy of the Bill & Stmt. " Revenue Dept. } Desp. 10