

Saturday, November 20, 1858

**LEGISLATIVE COUNCIL  
OF  
INDIA**

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858.

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1858.

the jurisdiction of the Courts of Criminal Judicature of the East India Company, for simplifying the procedure thereof, and for investing other Courts with Criminal jurisdiction.

Agreed to.

**PETTY OFFENDERS AND WITNESSES.**

MR. CURRIE moved that the Select Committee on the Bill "for enforcing the attendance of petty offenders and witnesses" be discharged, and that the Bill be referred to the Select Committees on the same Bills.

Agreed to.

**CRIMINAL JURISDICTION OF MOONSIFFS AND TUHSEELDARS (N. W. PROVINCES).**

MR. CURRIE moved that the Select Committee on the Bill "for conferring Criminal jurisdiction upon Moonsiffs and Tuhseeldars in the North-Western Provinces" be discharged, and that the Bill be referred to the Select Committees on the same Bills.

Agreed to

The Council adjourned.

Saturday, November 20, 1858.

**PRESENT:**

The Honorable the Chief Justice, *Vice-President*, in the Chair.

Hon'ble Lieut.-Genl. Sir J. Outram,	E. Currie, Esq.,
Hon'ble H. Ricketts,	Hon'ble Sir A. W. Buller,
Hon'ble B. Peacock,	H. B. Harrington,
P. W. LeGeyt, Esq.,	Esq., and
	H. Forbes, Esq.

**NATIVE PASSENGER VESSELS (BAY OF BENGAL).**

THE CLERK reported to the Council that he had received from the Home Department a copy of a further Extract from Proceedings in the Foreign Department respecting the evasion of the provisions of Act I of 1857 (to prevent the over-crowding of vessels carrying Native Passengers in the Bay of Bengal).

MR. FORBES moved that the above communication be referred to the Select Committee on the former communication.

Agreed to.

**IMPROVEMENT OF COURTS (BOMBAY).**

THE CLERK reported that he had received from the Home Department papers regarding certain suggestions made by Mr. H. B. E. Frere for improving the Courts in the Regulation Provinces of the Bombay Presidency.

MR. LEGEYT said, it was very much to be regretted that these papers had not been forwarded in time to receive the consideration of the Select Committee on the Code of Civil Procedure. They contained some very valuable suggestions which had been made so long ago as 1852. The opinions of Judicial and other Officers had been given on them, and he found that they were forwarded to the Government of India in September 1857. This still allowed sufficient time to lay them before the Select Committee.

He had looked over these papers, which appeared to embrace nine different topics.

1st. The want of Courts of Summary Jurisdiction and easy access for the disposal of Small Causes.

This would very properly be considered by the Select Committee to whom the Bill on the subject introduced by the Honorable Member for the North-Western Provinces would be referred, if it should pass a second reading.

2nd. The propriety of Judges making circuits and trying appeals from the decisions of Moonsiffs at the stations of the Moonsiffs.

3rd. The examination of Plaintiff and Defendant in a suit.

This had been provided for in the Code of Civil Procedure.

4th. The want of efficient Bankruptcy Laws.

5th. The amendment of the law relative to the raising of attachments imposed in execution of decrees.

This was a point which could hardly be said to be a closed question in connection with the Civil Procedure Bill. The present provisions in that Bill were as nearly as possible the same as those upon which this letter was a commentary, and he hoped that consideration would be given to those comments.

6th. The more frequent employment of Panchayets.

7th. The propriety of raising the salaries of Sheristadars.

This would more properly be considered in connection with the subject of the constitution of the Courts.

8th. The advantage of making the Establishments of Native Judges a portion of the regular stipendiary establishment of Government.

This was a matter which had never been before this Council. The Bombay Government had adopted the suggestion, and had stated that the result had proved satisfactory.

9th. The propriety of providing good Native Law Books.

This was not a subject requiring consideration here.

He thought that Mr. Frere's observations and the opinions of the various authorities on most of these topics, with the Minutes of the Bombay Government thereon, should be printed. What he proposed to print were in respect to the 1st, 2nd, 3rd, 4th, and 5th points. He should, therefore, move that so much of these papers as relate to those five points be printed.

Agreed to.

#### OATHS AND AFFIRMATIONS.

THE CLERK reported that he had received from the Home Department papers relating to Act V of 1840 (concerning the Oaths and Declarations of Hindoos and Mahomedans).

MR. HARRINGTON moved that these papers be laid upon the table.

Agreed to.

#### PENSIONS.

MR. PEACOCK presented the Report of the Select Committee on the project of a law for applying the provisions of the Government Order of the 1st December 1857, which affect Military Pensioners, to Pensioners in the Civil Department, and to the holders of rent-free lands.

#### RYOTWAR SETTLEMENTS (MADRAS PRESIDENCY).

MR. FORBES presented the Report of the Select Committee on the Bill "for the better recovery of arrears of Revenue under Ryotwar Settlements in the Madras Presidency."

*Mr. Le Geyt*

#### PILOT COURTS (BENGAL).

MR. CURRIE moved the first reading of a Bill "to amend the law for the trial of Officers of the Bengal Pilot Service accused of breach of duty." He said, the Officers of the Bengal Pilot Service, when accused of breach of duty, had the privilege of being tried by a Court formed in some measure on the model of Courts Martial. By the Act XXIV of 1845, the Superintendent of Marine might, when he thought necessary, bring any Member of the Pilot Service to trial before a Court, consisting of a President, two Merchants, four Ship Captains, and two Branch or Master Pilots. The finding and sentence were to be according to the votes of the majority of the Court.

It was provided that, if the breach of duty charged against the accused was punishable "under a certain Code, called the Penal Code, for the better order and Government of the Members composing the Pilot Service, passed by order of the Right Honorable the Vice President in Council on the 21st December 1826," the punishment awarded by the Court was to be that prescribed by the Code.

Now it was obvious that the Code passed on the 21st December 1826, being specified in the Act as that, which was to regulate the sentences of the Court, no modification of the Code could be made otherwise than by Legislative enactment, or rather that, if the Code were modified, an alteration of Act XXIV of 1845 would be necessary to enable the Courts to act in accordance with it.

So far back as December 1845 the Code of 1826 was represented to be defective, and a revised Code, prepared by the then Marine Judge Advocate (Captain Clapperton), was laid before Government, and other versions of an amended Code were submitted by the late Marine Superintendent (Captain Rogers), and the President of Marine Courts (Mr. Piddington), in April 1846 and June 1848. In consequence of these representations, the Legislative Member of Council (Mr. Bethune) seemed to have contemplated the preparation of a new law, apparently intending to embrace in that law the

provisions of a revised Code; but nothing was done in the matter.

In 1852, Mr. Piddington submitted to Government a paper on the operation of Act XXIV of 1845. He observed that—

“A brief experience of the working of this Court (meaning the Courts constituted according to the provisions of the Act) convinced me that, while it was a most necessary and useful institution, and one most essential to the safety of the Port, its utility was much limited from practical defects in its constitution, and this judgment has been confirmed by the many successive unsatisfactory findings and sentences which I have had to regret, and which have really been at times verdicts against evidence or sentences nullifying the verdicts when these were most justly given.”

Mr. Piddington proceeded to comment at length upon the unsatisfactory operation of the existing Courts, and the reasons which had led to such a result. He recommended a total change in their constitution, and in lieu of a Court consisting of nine Members, and deciding according to the votes of the majority, proposed one consisting of—

“1. A President, whose sole decision would be the finding, and his award the sentence; this last to be regulated by a detailed Penal Code.

2. One Branch Pilot, one Merchant Captain, and one Mercantile Assessor, to sit with the President, having all the privileges of members of the present Courts; its separate findings and award of punishment to be stated with written grounds, if they think proper to submit them, but to be in no way binding upon the decision of the President.”

This communication therefore raised another question altogether different from that of the alleged defectiveness of the Penal Code of 1826, and the Government had before it these two questions; first, the proposed revision of the Penal Code, for which three several recommendations had been submitted, and secondly, Mr. Piddington's suggestion for a change in the constitution of the Courts by which the Code was to be administered.

With regard to the first question he (Mr. Currie) entirely concurred in the opinions expressed by Mr. Grant, then Secretary to the Government of India, in a Note dated 11th December 1852. He said:—

“What is called a Penal Code is, in fact, no more than a part of the regulations of the Pilot Service such as a master lays down for his servant's observance. The penalties involve nothing beyond what a Master can inflict of his own authority on those who choose to enter or re-

main in his service, such as dismissal, degradation, and suspension from pay. It does not appear what necessity there is for putting such instructions and penalties into a law. Indeed, from the nature of the relation of master and servant, the details of such regulations must be subject to frequent change. The regulations of the service might be left to be made, and amended from time to time, by the Executive Government; and the penalties for breach of regulation or other misconduct might be left to the same Government, as well in the case of Pilots as in that of any other class of servants in the Civil Department. All that a law is requisite for is to enable Government to ascertain facts, to the minutest particular.”

On the grounds here set forth it was, he (Mr. Currie) thought, clear that the revision of the so-called Penal Code was not within the province of the Legislature, that it should be left to the Executive Government, and that all that the law should do in respect of the Code should be to require any Court constituted by law for the trial of offences contained in the Code to regulate its sentences in accordance with it.

The other question remained, namely, what was the best constitution for such a Court. Mr. Piddington described the existing Courts as consisting of:—

1st. “A President who is competent and perfectly unbiassed.

2ndly. Two Merchant Members, who are on some points but partially competent and rarely unbiassed by fears of delay or mischief to property in which they have directly or indirectly a stake either as Merchants or Under-writers, and who allow themselves at times to be a good deal led by the opinions of the Branch Pilots.

3rdly. Four Merchant Captains, of whom it may be said at once that, though quite competent, two if not three and sometimes all four of them are afraid of, or partial to the Pilots; and of whom some will not, as they express it, risk damage to their owner's interest and their own prospect by appearing to form part of a Court which has punished a Pilot, if they can avoid it.

4thly. Two Pilot Members who are as a general rule and naturally the advocates of their own service. To this, however, there are some few honorable exceptions, as there are also in what I have said above of the four nautical and other members; and it must be avowed that their fears of damage to their property and prospects, if exaggerated, are not wholly unfounded, when it is known that the Pilots have a club of which many are members for their mutual support in all cases of prosecution.”

Mr. Piddington remarked that in Courts so constituted

“there is generally a preponderating majority most unwilling to convict; or who are afraid to punish when they cannot avoid convicting; or who compromise with their consciences by the quibble that if they are sworn to determine and administer justice according to the evidence,

&c., this does not oblige them to inflict any severe punishment."

The remedy which he proposed was, as had been stated, that the trial should be held by a President or Judge assisted by Assessors, the finding and sentence to rest entirely with the President.

Within the last few months another representation had been laid before the Bengal Government by the present President of Marine Courts, Mr. Graham. This gentleman said that, without at the time being aware of the recommendations of his predecessor Mr. Piddington, he had felt it his duty to record some remarks on the existing Courts. In these remarks he writes:—

"I would venture respectfully to bring again to the notice of Government the operation of the present system, of which even a limited experience convinced me that very material alterations were requisite to render these tribunals deserving of the confidence of Government or the respect of the mercantile community."

Mr. Graham's views of the defects of the existing Courts were precisely the same with those of Mr. Piddington. He observed—

"that there is almost invariably an undue bias (and occasionally a most unseemly partiality) on the part of the Pilots on the Court in favor of the accused. Added to this, the Commanders of Ships, whether from fear of injury, as concluded by Mr. Piddington, or other cause, generally follow the votes of the Pilots, even on questions other than nautical. The combination of these two classes is sufficient at any time to outvote the Merchants and the President (who of course are entirely disinterested) and has at times been productive of decisions manifestly contrary to the evidence."

Mr. Graham, however, did not altogether agree with Mr. Piddington in respect to the remedy. He was opposed to the system of Assessors, and recommended a Court of five persons composed of the President, two Merchants and two Captains of Ships, of whom three might be a quorum. The verdict to be according to the votes of the majority, and the President to vote only in case of the opinions of the other members being equally divided. The sentence in case of conviction to rest with the President. The Superintendent of Marine concurred generally with Mr. Graham, but proposed, instead of two Captains of Ships, one Captain and one Branch Pilot.

Considering what had been said of the general unfitness of the classes of

*Mr Currie*

persons (or at least two of the classes of persons) of which the Court was to be composed to sit as Judges, he must say that his own judgment inclined rather in favor of Mr. Piddington's plan, namely, a Judge with Assessors. But he found that the Lieutenant-Governor of Bengal, whose long experience of the business of the Bengal Office, had made him fully acquainted with all particulars connected with the Pilot Service, with the feelings of the Pilots, and the operation of the existing law, was strongly opposed to the plan of Assessors which he thought would be unpopular and distasteful, and that he would greatly prefer the Jury system. The testimony, too, of Mr. Grant, when Secretary to the Government of Bengal, in a Note upon Mr. Piddington's suggestion, supported this view of the question. He said:—

"The law, Act XXIV of 1845, Section XVIII, requires that every finding and sentence of a Marine Court shall be subject to the approval of the Governor of Bengal. The trials held under this law, therefore, always come under the revision of Government. The result of the experience of the three years and a half that I have been in this Office, has been to create the impression on my mind, that, generally, where these trials have been unsatisfactory, the fault has been rather in the penal sentence than in the verdict. My own belief is that, if these Courts were constituted upon the principles recognized in our ordinary Courts of Justice, the result would be generally satisfactory. If the President were to perform the functions of a Judge, and the other Members were restricted to the proper functions of a Jury, that is to say, to the decision of the single question of guilty or not guilty, free from all the difficulties attendant on the determination of questions of degree, there is nothing in what I have seen of the working of these Courts, to make me doubt that they would work well."

Influenced by these opinions expressed by persons best able from experience to form a sound judgment on the subject, and being informed also that the plan of Assessors, where it had had a practical trial, as in Ceylon, had not been found to work satisfactorily, he determined to provide for a Court constituted on the ordinary principle of a Judge and Jury. But it seemed to him that, from what had been said both by the former and the present Presidents of the bias of the Pilots in favor of the accused, and their influence on the other Members of the Court, it would not be right that any Members of the Pilot Service should sit on the Jury. He had thought, also, that there was no

use in summoning more persons to sit as Jurors than were really necessary for the purpose, and that the number of Jurors should be as small as was consistent with the formation of an efficient Jury. For these reasons he proposed that the Jury should consist of three persons, namely, two Merchants and one Commander of a Merchant Vessel, the verdict to be according to the votes of the majority of the Jurors, and the sentence to be pronounced by the Judge.

He had made provision for a new trial in the event of the Judge certifying the verdict to be clearly contrary to the evidence. There were several other alterations of the existing law, most of them growing out of the change made in the constitution of the Court, but it was not necessary to occupy the time of the Council with any detailed explanation of them. With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

#### SMALL CAUSE COURTS (MO-FUSSIL).

MR. HARRINGTON postponed the motion (of which he had given notice for this day) for the second reading of 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."

#### OATHS AND AFFIRMATIONS.

MR. FORBES moved the second reading of the Bill "concerning Oaths and Affirmations."

MR. CURBIE said, he was not disposed to concur in the proposal to read the Bill a second time. If read a second time, it would go forth to the public that the principle of the Bill had been approved of by the Council, and that it was their intention to pass it, or some similar measure. He was not at all prepared to agree to this. He would not then enter into his reasons, because he had reason to believe that the Council would consent to the course which he was about to propose. Otherwise he should wish to have an opportunity of stating his views on the measure proposed in the Bill.

But, besides the objection already stated, he had another objection to the publication of the Bill. The question raised by the Bill was, whether the present form of adjuration should be abandoned, and the old forms revived; whereas the question before the Council when in Committee on the Civil Procedure Bill, the question which gave occasion for the introduction of the present Bill, was one altogether different. That question was, whether, according to the recommendation of Her Majesty's Commissioners and the Select Committee on the Procedure Bill, the religious element should not be altogether dispensed with. That was the question on which the Council more particularly desired to have information. For these reasons, he thought it highly desirable that the second reading of the Bill should be deferred for three or four months, and that in the meantime measures should be adopted for procuring information through the several Governments, both on the point to which he had just referred, and on the question raised by this Bill. The representative Members would probably undertake to procure that information.

He therefore begged to move, as an amendment, that this Bill be read a second time this day four months.

MR. FORBES said, in introducing the Bill now before the Council, he had done so with the view of eliciting information; as it had been said by the Honorable and learned Judge (Sir Arthur Buller), at whose suggestion a separate Bill had been brought in, that the information before the Council did not extend over any period within the last ten years. He had also himself said at the first reading of the Bill, that he did not consider that a vote for the second reading would pledge Honorable Members to the principle of the Bill. But he was quite willing to assent to the amendment. He only hoped that those Members who represented the several local Governments in this Council, would press upon them the necessity of taking early and decisive measures to obtain the requisite information.

MR. LEGEYTT said, he had no objection to the postponement, but he would prefer the adoption of a more

decided course. They had had sufficient experience of the great difficulty of getting information from a distance on any subject, however important. It was extraordinary that it should be so, but so it was. They appointed Select Committees on various matters, which stood over for three, or six, or twelve months, or even for two years, waiting for information which had never come.

The question of Oaths, however, was one of paramount importance, which should be decided one way or the other. Her Majesty's Commissioners had proposed that the examination of witnesses should be taken without any oath, solemn affirmation, or warning. There had been a Select Committee of the Council on this very subject of Oaths and Affirmations which was discharged two years after it had been appointed, and he did not believe that a single communication had been received by this Committee to throw any light on the question. Instead of leaving the matter in the hands of four individual representative Members to act separately, he thought that a Select Committee should be appointed with instructions to take every means to obtain information from all parts of India. He would, therefore, propose as an amendment that a Select Committee be appointed to enquire and report on the matter.

SIR ARTHUR BULLER said, he thought that the moving an amendment on an amendment would somewhat embarrass the Council. Nor could he see the necessity for such a course, as the questions were entirely independent of each other. The question now before the Council was—"Shall we postpone this Bill for four months or not?" When that question was disposed of, the amendment of the Honorable Member for Bombay might be brought forward in the shape of a separate and substantive motion.

Mr. LUGEYNT assented, and said that he would defer his motion till afterwards.

THE VICE-PRESIDENT said, he supposed that the Honorable Member for Bengal had it in contemplation to

*Mr. Le Geyt*

move something in addition after his present motion had been disposed of, otherwise the course proposed would be open to this objection. The Bill, if not read a second time, would not be published, but this Bill was introduced upon an understanding that some distinct measure should be put forth on which the present opinion of the public with respect to judicial oaths could be taken. If this could be done without reading the Bill a second time, it might be well to adopt the suggestion of the Honorable Member for Bengal, and thus to avoid the inference generally drawn from a second reading, namely, that the Council had committed itself to the principle of the Bill. Most of them agreed, even those who like himself thought it a questionable policy to abolish oaths in the Mofussil Courts, that it was desirable to have information of a later date than that before the Council.

Whether the machinery by which they were to obtain information was to be that suggested by the Honorable Member for Bengal, or the Select Committee proposed by the Honorable Member for Bombay, he (the Vice-President) thought it would be equally necessary to publish the Bill.

Mr. CURRIE said, he did not propose to move either for the publication of the Bill or for the appointment of a Select Committee. He did not see how the Bill could be published without pledging the Council to an intention to legislate in accordance with its spirit. He thought, too, that there was little use in publication. For more than a year a Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal" had been before the public, and though it touched the interests of every Ryot and every Zemindar in the country, nothing had been elicited from them. The reference to a Select Committee was too often tantamount to shelving a question. Referring to the list of Select Committees, he found a Select Committee appointed "to take into consideration the Projects of Law connected with the Marine Department, and to prepare such Bill or Bills as may be necessary with reference thereto." He believed the Ports Bill had been prepared by



that Select Committee, but it had done nothing more. He had himself, upon the urgent request of the Bengal Government, prepared and introduced the Merchant Seamen's Bill, and he had this day brought in a Bill for the reform of Marine Courts.

Next, there was a Select Committee "to consider and report upon the question of Municipal Law for the conservancy of Towns in the Territories under the Government of the East India Company." His predecessor had brought forward a Bill on this subject for the Bengal Presidency which was thrown out by the Council, and this Select Committee had been appointed, but he was not aware that it had ever done any thing.

Again, there was a Select Committee appointed "to consider and report on the question of enabling the Legislative Council to call for evidence." A Bill had been brought in, discussed, and withdrawn, and this Select Committee had been appointed to consider the general subject, possibly with the intention that the whole project should be shelved; at all events nothing had ever been done.

For these reasons he was of opinion that the most effective course would be for each representative Member to take upon himself to communicate with his own Government and to obtain information; and he had therefore limited his motion simply to deferring the second reading of the Bill.

Mr. CURRIE'S amendment was then put and agreed to.

#### LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

Mr. CURRIE moved the second reading of the Bill "for the registration of Literary, Scientific, and Charitable Societies."

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

#### DELHI AND MEERUT.

Mr. PEACOCK moved that the Council resolve itself into a Committee on the Bill "to remove from the operation of the General Laws and Regulations the Delhi Territory and Meerut Division, or such parts thereof as the Governor General in Council shall place under the administration of the

Chief Commissioner of the Punjab"; 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 I was passed as it stood.

Section II provided that all suits and proceedings which were pending at the time when the Delhi Territory was placed under the Chief Commissioner of the Punjab, and which had been or might be transferred to the Courts or Officers established or appointed therein, should be deemed to have been lawfully transferred to such Courts and Officers according to their respective jurisdictions.

Mr. HARRINGTON said that, since the Bill was reported upon by the Select Committee, it had occurred to the Honorable and learned Member on his left (Mr Peacock) and himself, that the Bill did not provide for suits and proceedings instituted subsequently to the Delhi Territory having been placed under the Chief Commissioner of the Punjab, but only for suits and proceedings pending at the date of the transfer. He therefore moved that the following words be added to the Section :—

"And any suits or proceedings which, subsequently to the time when the said Territory was so placed under such administration, shall have been instituted in any such Court or before any such Officer, shall be deemed to have been lawfully instituted."

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

Section III was passed as it stood.

Section IV provided that "all appeals or proceedings pending" in the Sudder Court and Sudder Board of Revenue for the North-Western Provinces "at the time when the said Territory was so placed under the administration of the said Chief Commissioner," should be determined by such Court or Board in the same manner as if this Act had not been passed.

Mr. HARRINGTON said that, from a communication lately received by him from the Sudder Court at Agra, it appeared that, subsequently to the time when the Delhi Territory was placed under the Chief Commissioner of the Punjab, several applications for special

appeal which, at the date of the transfer, were pending on the file of the Sudder Court, had been admitted by the Court, and as the Section, as at present worded, would not reach these cases, he begged to move the insertion of the word "now" between the words "all appeals or proceedings" and the word "pending" in line 1, and the omission of the words "at the time when the said Territory was so placed under the administration of the said Chief Commissioner" in lines 7 to 9.

The motions were severally carried, and the amended Section then passed.

Section V and the Schedule, Preamble, and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

#### LEASES OF GHATWALEE LANDS (BEERBHOOM).

MR. CURRIE moved that the Bill "to empower the holders of Ghatwalee lands in the district of Beerbhoom to grant leases extending beyond the period of their own possession" be referred to a Select Committee consisting of Mr. Peacock, Mr. Harrington, and the Mover.

Agreed to.

#### LITERARY, SCIENTIFIC, AND CHARITABLE SOCIETIES.

MR. CURRIE moved that the Bill "for the registration of Literary, Scientific, and Charitable Societies" be referred to a Select Committee consisting of the Vice-President, Mr. LeGeyt, Mr. Forbes, and the Mover.

Agreed to.

#### OATHS AND AFFIRMATIONS.

MR. FORBES moved that the Clerk of the Council be directed to address the Government of India and to express the wish of the Legislative Council that they would call upon the several local Governments to obtain and transmit the opinions of the several Judicial authorities, European and Native, upon the question of the re-introduction of Oaths, and also upon the proposition of Her Majesty's Commissioners that all Oaths and Affirmations be dispensed with, and gener-

*Mr. Harrington*

ally to invite the opinions of the public upon the subject.

MR. LEGEYT said, he could not agree to such a motion in its present shape. He did not think it was at all becoming for this Council to ask the Executive Government to do what was their (the Legislative Council's) own duty. Why should they not perform that duty themselves, either by a Select Committee or by the Clerk of the Council?

It was not unusual for the Supreme Government on matters of general interest to call for information. His own experience of the result of such enquiries was not favorable. A certain number of copies of the questions were struck off and sent every where, and in eight out of twelve instances they remained a dead letter. Then came a refresher, which was after long delay followed by a peremptory demand for replies, and then came apologies that press of work and various reasons had prevented time or attention being devoted to the subject, and one can easily judge of the value of the information so elicited. The time thus lost in collecting opinions generally defeated the object of the enquiry. He would much prefer to see a Select Committee appointed with stringent instructions and full powers to enquire into and report on what might appear to be the general feeling of the country on the proposed change in the existing law contained in the Bill, and also whether the examination of witnesses in Civil and Criminal trials without oath, affirmation, or warning, as proposed by the Commissioners in England, was advisable, and for this purpose that the Select Committee take such measures as might seem to them best calculated to elicit the fullest information on this important subject. That was the measure, the adoption of which he would strongly advocate in preference to an application from the Council to the Supreme Government to obtain information for them. He thought that a communication from a Select Committee of this Council calling for information, with an intimation that it was urgently required within four months, and that silence would be taken for assent, would be much more likely to attain the object.

Information also should be sought not only from the Official Authorities, but also from the people, so that the Council might acquire knowledge of the real feelings of the country on this subject. There were some oaths that carried terror to the native mind, and if they were imposed it was pretty certain that falsehood would not be told under their direct influence; but such oaths were of such a nature that they could hardly be conveniently administered in Courts of Justice. He believed that the affirmation prescribed by the Act of 1840 was not considered to convey any religious obligation; the Brahmins told the Hindoos "it is the Feringhee's oath," and the Mahomedans said "you have not been sworn on the Koran." He believed the only part of that Act which made any impression, was the warning given to the witness that if he spoke falsely he would be punished. He believed that the dread of punishment would alone deter persons whose moral sense was like that of most of the witnesses who appeared in Courts of Justice in India, and to preserve that dread the penalty ought to be immediate. He trusted he should yet see the Courts armed with power to punish for false swearing by a summary sentence—such as fine—which need not be irrevocable, but which, he believed, would check the wholesale false swearing which was said to disgrace our Courts.

Before this amendment was put, it was agreed that Mr. Forbes' motion and the amendment should be withdrawn, to enable Mr. LeGeyt to make the following motion.

Mr. LE GEYT moved that the Bill "concerning Oaths and Affirmations" be published for general information.

He said that the Honorable Member for Bengal had objected to the publication of the Bill that it might commit the Council to an expression of approval of the principle of the Bill. But he thought that this would not be so, because the Bill had only been brought in by an individual Member whose opinions were entitled to great consideration, but nothing had passed to pledge the Council. The Bill was pro-

posed to be published merely for information, and he therefore did not see how the publication would have such an effect as that apprehended by the Honorable Member for Bengal.

Mr. CURRIE said, he had already stated his objection to publication. Notwithstanding any thing that might be said in that room, if the Bill were published, it would go forth as having received the sanction of the Council. The Proceedings of the Council were often not reported at all, or, if reported, the report was frequently unintelligible, and probably seldom read; therefore the public generally would not know what had passed there. The appearance of the Bill in the *Gazette* would be taken as an intimation of the intention of the Council to pass a measure of this sort.

THE VICE-PRESIDENT said, he could not see the slightest objection to the publication of the Bill. The object was to elicit opinions; it was surely desirable that the points on which their opinions were given should be stated as definitely as possible. If the representative Members sought for the information, it would require no very astute mind to discover that some proposition on this subject had been made, and that there was some intention to legislate. The Council now committed itself to nothing, and the Bill would be put forth as one which had been postponed for four months, because the Council was desirous to obtain further information on the subject matter of it before proceeding with or rejecting it.

Mr. CURRIE said that, if this Bill were published with some such preface as that indicated by the Honorable and learned Vice-President, it would obviate his objection to the publication.

Mr. LE GEYT'S motion was then put and agreed to.

Mr. FORBES' motion and Mr. LeGeyt's amendment were then again brought forward.

The amendment having been proposed—

Mr. RICKETTS said, it appeared that the Council were resolved that nothing should be done until further infor-

mation had been obtained. The only question now was, how it could be obtained speedily and completely. It was objectionable to apply to the Executive Government, for by so doing the Council would acknowledge that they had not themselves the power of calling for information. If allowable under the Standing Orders, he suggested that the information required should be called for by the Clerk in the name of the whole Council, and not in the name of a Committee only.

MR. PEACOCK said that the Governor General in the Legislative Council had the same power of calling for information as the Governor General in his Executive Council had. Though the Governor General was absent, yet the Vice-President was appointed to supply his place. The Legislative Council might direct the Clerk of the Council to address the local Governments. He was not sure whether the Honorable Member for Bombay intended that the Clerk should write to the local Officers; the proper course would be to apply to the local Governments. A request made by the Clerk of the Council by the direction of the Council would no doubt be complied with. He saw no objection to the appointment of a Select Committee who would determine upon what points information was required.

THE VICE-PRESIDENT said, he inclined to the proposition of the Honorable Member for Bombay. The Select Committee would be able to consider the sort of information required, and to classify it. He was not prepared to say whether they would have the same powers of addressing through the Clerk of the Council the local Governments and other authorities as the Council had. But if they had not, any Member of that Select Committee might on any Saturday move for and obtain the sanction of the Council to any address of that kind which it was desirable to make. The motion of the Honorable Member for Madras, that application should be made to the Government of India, he thought objectionable. Every additional body interposed between the Council and those whose information was sought, caused some delay. The Honorable and learned

*Mr. Ricketts*

Member (Mr. Peacock) had suggested that the local Governments should be addressed. They would not in that case get the opinion of Officers in the Non-Regulation Provinces unless the expression was understood to include Chief Commissioners, &c. A Select Committee, when it met, might see other modes of obtaining information which did not at the present moment suggest themselves to the mind of any Member of the Council, and information of a kind which was not procurable through the local Governments.

MR. RICKETTS observed that a letter might be prepared by a Select Committee, but the call should be in the name of the Council. Being unusual, it would for that reason be more immediately attended to than a letter from the Government of India. The opinions of Officers in the Non-Regulation Provinces should be obtained by addressing the Secretary to the Government of India. It might also be desirable to address questions to individual Europeans and Natives.

MR. LEGEYT would leave the Select Committee to act in an unrestricted manner. If they thought information could be elicited from individuals, they would forward the papers to them. He was sure Natives, to whom such communications would be sent by the Legislative Council, would receive them with great satisfaction, and feel honored by them. The person addressed would show the communication to his neighbours, and would discuss the subject with them. He felt sure that more attention would thus be bestowed on them than if the information were sought by a formal written letter from the Registrar of the Sudder addressed to the different Zillah Judges.

The question being then put that the words proposed to be omitted be omitted, the Council divided:—

<i>Ayes 4.</i>	<i>Noes 5.</i>
Sir Arthur Buller.	Mr. Forbes.
Mr. LeGeyt.	Mr. Harrington.
Sir James Outram.	Mr. Currie.
The Vice-President.	Mr. Peacock.
	Mr. Ricketts.

So the motion was negatived.

Mr. FORBES' motion being proposed—

SIR. JAMES OUTRAM said, he understood the proposition to be for an enquiry to be made through the Judicial Officers. His objection was that the enquiry should not be confined to Judicial Officers. He was not sure if the rules of the Council would permit his proposing such an amendment, but he thought that information should be sought from all classes, whether Europeans or Natives, and whether Government Servants or not. The object was to ascertain what were the true feelings of the Natives on this subject, and they were not so likely to attain that object if the enquiry were confined to official channels.

THE VICE-PRESIDENT said that the Honorable Member who last addressed the Council had anticipated him in the objection which he had intended to make to the proposition of the Honorable Member for Madras. The doubt in his (the Vice-President's) mind was as to the power of the local Governments to call for information from non-official persons. The amendment of the Honorable Member for Bombay was calculated to have that effect; but as it had been negatived, he did not see what amendment could be grafted upon the original question, which would have the same effect.

MR. FORBES then withdrew his motion, and made the following amended motion, namely, that the Clerk of the Council be directed to address the Government of India and the local Governments, and to request them to obtain and transmit the opinions of the several Judicial and Revenue Authorities, European and Native, and of such other persons as the local Governments might think fit, upon the question of the re-introduction of Oaths, and also upon the proposition of Her Majesty's Commissioners that all Oaths and Affirmations be dispensed with, and generally to invite the opinions of the public upon the subject.

Agreed to.

MR. LEGEYT said, he thought that, before dismissing the subject, they should come to a distinct understanding as to what was to be done,

either that a Select Committee should be appointed for the purpose of considering and settling the letter to be addressed; or that the letter, when drawn up by the Clerk of the Council, should be circulated among the Members, and brought forward at the next Meeting, when it might be proposed that the following letter be sent to the Government of India and the local Governments. This would have the advantage of ensuring a wider circulation, for the letter would be read, and reported in the newspapers, and men's minds would be turned towards the matter, before the official communications reached them.

After some conversation—

MR. LEGEYT moved that the Clerk be directed to frame and circulate the letter among the Members of the Council, and that the letter be afterwards submitted to the Council for adoption.

Agreed to.

#### RYOTWAR ARREARS (MADRAS PRESIDENCY).

MR. FORBES gave notice that he would on Saturday next move for a Committee of the whole Council on the Bill "for the better recovery of Arrears of Revenue under Ryotwar Settlements in the Madras Presidency."

The Council adjourned.

Saturday, November 27, 1858.

#### PRESENT :

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

Hon'ble J. P. Grant,	E. Currie, Esq.,
Hon'ble Lieut.-Genl. Sir J. Outram,	Hon'ble Sir A. W. Buller,
Hon'ble H. Ricketts,	H. B. Harington,
Hon'ble B. Peacock,	Esq., and
P. W. Legeyt, Esq.,	H. Forbes, Esq.

#### ACTS OF THE COUNCIL.

THE CLERK reported to the Council that he had received from the Home Department a Despatch from the Secretary of State for India reviewing Acts I to XIX of 1859.