

Saturday, May 18, 1861

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***P. L.***

MR. FORBES seconded the Motion, which was then put and carried, and the Bill was read a first and second time on the motion of Mr. Harington.

#### 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.

Sections 132 and 133 were passed after amendments.

Sections 134 to 137 were passed as they stood.

Section 138 was passed after amendments.

Sections 139 and 140 were passed as they stood.

Section 141 was passed after amendments.

After two verbal amendments in Section 142, the consideration of that and the following Section was postponed.

Sections 144 and 145 were passed as they stood.

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

#### POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed:—

Adjourned Committee of the whole Council on the Bill "to remove certain tracts of Country in the Rohilkund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

Committee of the whole Council on the Bill "for licensing and regulating Stage Carriages."

Committee of the whole Council on the Bill "for the levy of Port-dues in the Ports of the Concan."

Adoption of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (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)," and suspension of the Standing Orders in order that the Bill may be passed through its subsequent stages.

#### CRIMINAL PROCEDURE.

MR. HARRINGTON moved that the communication from the Bengal Govern-

ment which was this day reported, relative to Section 162 of the Criminal Procedure Bill, be printed.

Agreed to.

The Council adjourned.

*Saturday, May 11, 1861.*

#### PRESENT :

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

The Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	The Hon'ble Sir C. R. M. Jackson.

In consequence of the indisposition of Mr. Laing and Sir Robert Napier, the Council was adjourned, on the Motion of Sir Bartle Frere, till Saturday, the 18th instant, at 11 o'clock, the Members assembled not forming the quorum required by law for a Meeting of the Council for the purpose of making laws.

*Saturday, May 18, 1861.*

#### PRESENT :

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

Hon'ble Sir H. B. E. Frere,	C. J. Erskine, Esq.,
Hon'ble Major-General Sir R. Napier,	Hon'ble Sir C. R. M. Jackson,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.

#### 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. Seton-Karr to be a Member of the Legislative Council.

MR. SETON-KARR was duly sworn and took his seat.

#### LIMITATION OF SUITS.

THE CLERK presented to the Council a Petition from Russickloll Ghose, praying for certain amendments in Act XIV of 1859 "to provide for the limitation of suits."

THE VICE-PRESIDENT moved that the Petition be printed.

Agreed to.

#### AMALGAMATION OF SUDDER AND SUPREME COURTS.

THE CLERK presented a Petition from certain Enamdars, Merchants, and other Native Inhabitants of the Zillah of the Northern Korkan, in the Bombay Presidency; and reported that he had certified on the back of the Petition that it was not framed in conformity to the 22nd Standing Order, forasmuch as it did not relate to any matter connected with the business of the Council.

MR. ERSKINE said, he understood that this was a Petition relating to the proposed Act for the Amalgamation of the Sudder and Supreme Courts, and that it was very similar to a Petition on the same subject which had been forwarded to him not long ago. He had explained to the writers of the former Petition that this was not a matter connected with any business before the Council; and with the consent of the Petitioners had transferred the Petition to the Supreme Government for disposal. It appeared to him that the same course should be pursued with this Petition, and he should therefore move that the Clerk of the Council be requested to transfer it to the Secretary to the Government of India.

Agreed to.

#### PARSEES.

THE CLERK presented a Petition from certain Parsee Inhabitants of Bombay, praying that the draft Code of laws sent up by the Parsees of Bombay be not adopted.

Also a Petition of Ferozbhoye, wife of Ardaseer Cursetjee and daughter of the late Framjee Cowasjee, praying for the passing of an Act granting to the Supreme Court power to exercise ecclesiastical, as well as criminal, jurisdiction over the Parsees in matrimonial and other cases.

MR. ERSKINE moved that these Petitions be referred to the Select Committee on the subject to which they related.

Agreed to.

#### TRANSPORTATION AND PRISON DISCIPLINE.

THE CLERK reported to the Council that he had received a communication from the Home Department forwarding the opinion of the Advocate-General calling attention to the present anomalous state of the law according to which no milder punishment than death can be passed for the offence of escaping from transportation, and pointing out the necessity of a law to enable the Executive Government to frame rules for prison discipline as regards convicts sentenced to imprisonment only, or convicts who, though sentenced to transportation or penal servitude, have not been removed to their final place of destination.

THE VICE-PRESIDENT moved that this communication be printed.

Agreed to.

#### ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported that he had received a communication from the Military Department suggesting for consideration, in connection with the Bill to amend the Articles of War for the Native Army, that recruits, before being sworn in, should have Article 47 (requiring Sepoys in the field to aid in the construction of field works) read to them in addition to other articles already directed to be read to them.

SIR BARTLE FRERE moved that this communication be printed.

Agreed to.

#### CATTLE TRESPASS.

THE CLERK reported that he had received a communication from the Bengal Government relative to an amendment of Act III of 1857 (relating to trespasses by cattle).

MR. HARRINGTON moved that this communication be printed and referred to the Select Committee on the Bill which had been brought in to amend that Act.

Agreed to.

## SUGAR DUTY (NORTH-WESTERN PROVINCES).

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

## ARTICLES OF WAR (NATIVE ARMY).

SIR BARTLE FRERE presented the Report of the Select Committee on the Bill "to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army."

## 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)."

## CONSOLIDATED CUSTOMS BILL.

MR. ERSKINE moved the first reading of a Bill for the consolidation and amendment of the laws relating to the collection of Customs Duties. He said that it was a source of regret to him that the duty of introducing this Bill to the Council should not have been entrusted to some one who was more familiar than he could profess to be with the internal working and management of the Departments of Customs in the different Presidencies in this country. The Bill, as Honorable Members would perceive, was a very extensive one, and it referred to a great variety of minute details in connection with which it would have been satisfactory that there should be some one at hand to furnish information and explanations on each point as it arose with more authority than he could hope to do. As, however, this did not seem to be practicable, it had been a consolation to him to reflect that the draft of this Bill had been prepared by a Committee of gentlemen who were fully cognizant, not only of the views and requirements of the

chief officers in the service of Government in this Department, but also of the mercantile community—and of that community not merely in any one place, but, at all events, in the two greatest centres of commercial activity on the opposite sides of India. He trusted, therefore, that the draft had been so maturely considered, that any defects in the manner of its introduction now would be of comparatively little importance. Perhaps he might most readily enable Honorable Members to apprehend to some extent the duty which had been imposed on the framers of this Bill, and the work which they had accomplished, by calling attention in a summary way to some of the circumstances which led to the appointment last year of a General Customs Committee and to the preparation of the measure now before them. Just two years ago an Act had been passed, to amend the rates of Customs Duties leviable on articles imported and exported at British Indian Ports. That Act did not contain in itself any detailed Tariff of fixed valuations for duty, nor did it provide for any alterations in the executive management of the Customs Department. But reasons similar to those which led to the preparation of that enactment seemed to have led at the same time to a general reconsideration of the questions connected with the department, and much correspondence and discussion ensued. To this it was not necessary to allude farther than by noticing that a rather elaborate report relative to the then anticipated revision of the Tariff of valuations had been made by the Calcutta Chamber of Commerce towards the end of the same year, and just about the time at which the late Mr. Wilson arrived in the country. His attention, of course, was, without loss of time, devoted to these subjects, and in the months of February and March following he carried through the Council a Bill by which the rates of Customs Duties were again considerably altered and amended. Very soon after the passing of that Act, a revised Tariff of valuations for Duty was like-

wise published. It was put in force at once on this side of India, and was referred to the other Presidencies in order to its uniform adoption throughout the country if that were judged to be practicable. The publication of this Tariff gave rise, as was well known, to renewed representations, here and elsewhere—and in due time the Bombay Government intimated that, although they fully appreciated the benefits to be expected from the adoption of a uniform Tariff for India, they were of opinion that the one adopted in Bengal must be materially modified before its application could be made universal. Under these circumstances the Government of India resolved to assemble a general Customs Committee in which the other Presidencies should be represented as well as Bengal, and in which the mercantile community should be represented as well as the official departments under the Government. The Government of Madras, and the Chamber of Commerce there, did not deem it necessary to depute special representatives to this Committee. The Commissioner of Customs, Mr. Spooner, appeared from Bombay as the representative, not only of that Government but also of the commercial community there, who had expressed entire confidence in his ability and judgment. In Bengal, Mr. Eden, one of the Secretaries of the Board of Revenue, was named on behalf of the Government, and the Chamber of Commerce named their own President, Mr. Bullen. To the Committee thus constituted were entrusted several very important duties. They were to revise the Tariff already referred to, in order to its adaptation to the whole of India; they were to advise the Government in regard to some questions relating to the administration of the Customs Department in regard to which discussions had taken place; they were to frame forms of uniform Trade and Navigation Returns for the whole empire, for periodical publication; and they were to prepare the draft of a Bill to consolidate the laws relating to the Customs Department in all the Presidencies. To the

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manner in which the Committee had performed most of these duties it would be out of place to allude, farther than to observe that their proposals and performances seemed to have secured for them not only the hearty thanks of Government but the general approval of those who were more specially interested in, and conversant with, the subjects with which they had to deal. In regard to the Committee's draft of a Consolidated Customs Act, however, it would be necessary to speak somewhat more in detail. The plan of a consolidation of the Customs Laws applicable to the Presidency of Bengal had, he (Mr. Erskine) believed, been in contemplation for some considerable time. But he was not aware that any formal design for a general consolidation of these Laws for the whole of India had been entertained before the arrival of Mr. Wilson in the country. In that supposition he might be mistaken, but, at all events, if this measure did not originate with Mr. Wilson, he had adopted it at a very early period. He alluded expressly to it during the discussions on the Customs Bill which he carried through the Council last spring. On that occasion the Honorable Member for the North-Western Provinces suggested a provision relative to the incidence of duties, in cases of contracts to deliver goods, duty-paid, when an enhancement of duties was enforced between the date of the contract and the date of delivery. Mr. Wilson then observed that such a provision might be more appropriately considered in connection with a Bill for the consolidation of the Customs Laws throughout India, which, as he stated, was under consideration by the Government. And, indeed, no one who remembered the circumstances under which Mr. Wilson arrived in the country, or the views on this particular subject which he had expressed some years before he left England, could wonder that he should be a strong advocate for such a consolidation. When he arrived in India, the then recent enhancement of the rates of Duties, followed by an enhancement also of the rates of fixed valuations for duty, and by an increased

strictness of management in some respects in the Customs Houses, had attracted much attention to this department and given rise to much discussion. At the same time he (Mr. Wilson) was engaged in a searching enquiry into the working of all the great departments which ministered to the public revenue, and with a view, no doubt, to the introduction into each, as far as possible, of a more uniform and concentrated management. He must have felt how convenient it would be for the Government, when they had once referred to several Regulations in order to settle some question of Customs management in one Province, to be saved from the necessity of repeating the process, perhaps more than once, in connection with very similar questions if they should arise in any other Province where the Regulations were different. He must have felt how convenient it would be for a mercantile man to be assured that, when he had made himself familiar with the system which was at work in his own immediate neighborhood and under his own eyes, he had thereby made himself familiar also with the system which would meet him at every port in British India with which he might have transactions. He must have felt, too, how almost indispensable such uniformity of laws would be if there were any likelihood of the introduction into this department of a more professional agency—of a class of officers more specially trained to its peculiar duties, and enlisted, so to speak, for general service in all the Presidencies indiscriminately. And, indeed, no one could more clearly or strongly express approval of a thorough consolidation of all regulations for Customs management than Mr. Wilson had done in England in 1833. Honorable Members were no doubt aware that in that year he had carried through Parliament the well known English Consolidated Customs Act—and in moving a resolution preliminary to the introduction of that Bill, he had explained in much detail and with great ability his views on the whole subject. After enumerating several measures of

reform which the Government of the day proposed to adopt, and noticing seriatim the recommendations of a Parliamentary Committee which had long been sitting, he expressed himself as follows, in respect to a codification of the Customs Laws:—

“The next point to which the Committee refer is that of the codification of the Customs laws. Now perhaps the House is not aware that prior to the year 1823 there existed no fewer than 1500 laws relating to this department; but in that year the number was reduced to six Acts of Parliament. These Acts included every thing relating to management, regulation, smuggling, informations, registry, duty, &c., connected with the Customs Department. The labour was performed by one gentleman; and I now hold in my hand a book which Mr. Huskisson exhibited to the House some twenty-five years ago as the greatest mental effort that had been made for many years. These Acts were classified by James Deacon Hume, Secretary to the Board of Trade; and I believe that no more meritorious work was ever performed by a public servant. The 1500 Acts to which I have referred were all reduced to this small volume; and when Mr. Huskisson held it up, he did so with an air of the greatest triumph. The case of Mr. Hume furnishes a remarkable example of the impolicy of the present regulations with regard to the promotion of the officers employed in the Customs. I think there ought to be no branch of the public service, in which a man may not, sooner or later, by great efforts, look to a more prominent position.”

And, after some further allusions to Mr. Hume's character and career, he continued—

“That work having been performed, it was not difficult from time to time to codify the fresh regulations that were made; and in the years 1835 and 1839 they were again codified, under the care of Mr. Ponlett Thompson. We have given instructions to the Solicitor to the Customs to reduce these six Acts into one, which shall include every thing that is necessary for the management of the Customs establishment. That gentleman has undertaken the work; and discarding altogether technical terms—using plain, simple language, that no man reading English can misunderstand, arranging the transactions relating to importation and exportation in all their various branches in the simplest order. I hope very shortly to be able to lay on the table that Act, which shall include every existing law and regulation with regard to the Customs management. And after that is done, in order that there may not exist any excuse or ground of complaint, we have instructed the Commissioners every month to publish any new regulations that may be

made, so that they may be included every year in a new Act of Parliament. Every regulation adopted from time to time for the extension of commerce will thus be brought before the public from year to year, so that one single Act of Parliament shall contain the whole of the existing Customs regulations."

Now, without wishing it to be supposed that he (Mr. Erskine) considered that an annual revision and republication of a great Act like that now proposed, could in this country and at this time be prescribed without much public inconvenience, it did appear to him that the principle recognised at the close of this extract—of a periodical revision and reconsolidation, perhaps after three years or five years, of every important Act passed for the codification of any great branch of the law—was one which might hereafter with much advantage be considered by the Council. That, however, was not a question on which he could then dwell; but it would no doubt be admitted that one who had years ago entertained the views just quoted could hardly be otherwise than an earnest advocate for some measure of the same kind in this country, where the existing regulations were in many respects not only defective, but discordant in different places. There could be no doubt that, if Mr. Wilson had lived until the Committee assembled in the autumn of last year, the Members of it would have derived from his ability and great experience, the most important assistance. Unfortunately, however, they were deprived of this advantage, and were therefore thrown back on their own plans and resources. In these circumstances they had proceeded, he (Mr. Erskine) thought, with much prudence and good judgment. They had collected the principal regulations now in force in this department throughout India. They had collated and compared them carefully. They had thrown out such portions as were obviously inapplicable or antiquated and had retained what was still suitable, with as little alteration as possible even in form. Where alterations were unavoidable, they had been made not in any spirit of theoretic

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cal innovation, but as plain practical experience required. Where more important deficiencies were discovered, the Committee had fallen back generally on the English Consolidated Act, from which they had borrowed largely, and occasionally they had legalised some old established and well known rule of practice in the department or some valuable general order of the Government. In this way they had succeeded, he thought, in preparing a draft which, at least, seemed to be a great improvement upon any law hitherto enacted in this country, and which, he trusted, would afford a secure and solid foundation on which to rest further measures of reform hereafter. That this opinion would in a great degree be shared by mercantile men who, more than others, were personally interested in the good management of this department, might perhaps be concluded from the manner in which Mr. Bullen himself had alluded to the labors of this Committee, in addressing the Chamber of Commerce in December last. He was reported to have said on that occasion—

"He was glad that the Tariff which the Committee had prepared had met with such general approval; he thought it a fair Tariff both to the Government and the importer. The Committee was now engaged in the revision of the Acts and Regulations under which the Customs were administered, and the issue of their labors would be a concise consolidated Code for all India, purged of many unfair and injurious Clauses which were now in force. The Committee had fixed Thursday next for the hearing of all complaints against the existing Custom House system; and, considering the liberal views which his two colleagues had brought to bear on the consideration of all questions which had come before them, and to which he was glad to have that opportunity of testifying, he had every hope that all grievances which could be substantiated would be remedied."

In this passage Mr. Bullen spoke of the Committee's draft as a Consolidated Code, and a similar expression occurred in the report of the Committee themselves. And no doubt, in one sense, this Bill might be so regarded. At the same time it might be well, in order to avoid any possibility of misconception,

to notice at once that, not only was there here no attempt whatever, no pretence of dealing with the many important questions which would have fallen to be discussed had this been in the nature of a Commercial or Maritime Code, but that this did not even profess to be an exhaustive compilation and consolidation of all existing Regulations which, under more favorable circumstances might have been, and which hereafter might be, included in a law for the administration of the department. Some subjects had for the present been designedly avoided. And on one point the Committee had been specially anxious that there should be no misapprehension; namely, that this was in no respect in the nature of a Tariff Bill, or a Revenue Bill, or a Bill which would affect the public exchequer, except indeed in as far as the efficient and economical management of a great department always must indirectly affect it. In their report to Government the Committee had remarked on this point—

“They think it desirable for many reasons that the laws fixing the rates of duty chargeable upon goods, which are of course intended to be periodically revised, in accordance with the requirements of the State and the condition of Trade, should be entirely distinct from the Code which ought to be drawn up as far as possible with a view to permanency. Keeping this object in view throughout, the Committee have avoided the introduction into the draft of all such forms and tables as are necessarily subject to frequent alteration to suit the circumstances of the trade of different ports. In so doing they have followed the English practice, where the Tariff Act, 16 and 17 Vic. c. 106, is quite distinct from the Consolidated Customs Act 16 and 17 Vic. c. 107, though both became law on the same day.”

As regards the materials with which the framers of this Bill had to work, it could not be necessary to say much. Honorable Members were aware that the laws which chiefly regulated the management of the Customs Department were not of very remote antiquity. The older Regulations on this subject, in as far as they had not been long ago formally rescinded, had for the most part long ago become obsolete; and the Acts which were opera-

tive in the different Presidencies had been passed from time to time after the introduction of great changes into the system in this country, consequent on the Reforms of 1833-4. After those years, when the system of Inland Customs and Transit Duties was abolished from time to time in different Provinces, enactments were passed for that purpose, and changes were also made in the Regulations of the Department of Sea Customs. The original Acts for Bengal had been passed in 1836-7. The corresponding Act for Bombay had been passed in 1838, but had been superseded by a more complete law which furnished many materials for this Bill. A similar Act for Madras had been passed in 1844. All of these laws were more or less founded on one another—all were more or less like each other—and, in all, there were considerable defects. Indeed, it could be no libel to say that the Act by which it was proposed to supersede them all, was greatly superior to any of them. There was one other point on which he was anxious there should be no mistake. It had seemed to him expedient—more respectful to the Members of the Customs Committee and more likely to be in accordance with the wishes of the Council and of others who might feel an interest in this Bill—that it should be presented to the Council in the first instance exactly in the shape in which it had left the hands of the Committee. He had been careful, therefore, in causing it to be printed, to see that no changes were made except here and there in the way of verbal amendments. He had also directed that references should be given in the margin to the former provisions of law, on which each new provision had been founded. Every one who saw the printed Bill might, therefore, be assured that in each particular he was in possession both of the matured recommendation of the Committee and of the general grounds of it. He trusted at the same time that, when the Bill should be read a second time Honorable Members would freely state any difficulties that occurred to them and any amendments which seemed expedient. He



trusted also that, if the Bill were published for general information, a similar course would be adopted by others, and that they would be favored with opinions on the measure, especially by the experienced servants of Government in the department, and by mercantile men and mercantile bodies, such as the Chambers of Commerce at the different Presidency Towns, who must be in possession of much valuable information, and whose suggestions, he was sure, would be received with thankfulness and considered with every attention. If this were done, he was sanguine that a Select Committee might effect further improvements in this Draft, and that it might be made in every way worthy of adoption by the Council. In one or two particulars the Supreme Government, when they expressed a general approval of the Committee's recommendations, had pointed out that modifications seemed to be expedient, and a few provisions had not altogether commended themselves to his (Mr. Erskine's) own judgment. These doubts chiefly arose in connection with Sections regarding which there had been differences of opinion among the Members of the Committee, or which suggested innovations on the existing practice. And it might be right just to draw attention to some of these points as briefly as possible. The Bill was distributed into nine sub-divisions relating respectively to—Appointment of Officers and Declaration of Ports; Importation; Warehousing; Exportation; Drawback; Coasting-trade; Trade in Spirits; Offences and Penalties; and General Rules. With reference to the Appointment of Officers, he need only remark that no provision was made for any central body or Board of Administration. It was considered—and, he thought, wisely—that, if the law were made uniform throughout, the application and administration of the law might be left to the discretion of the Local Governments, subject, of course, to the general control of the Supreme Government. Then, a provision had been introduced in Section VI for the Declaration or Proclamation

of Ports for the landing and shipment of goods, and for the forfeiture of goods landed or shipped elsewhere. This was said to be specially required in Bengal, as it was doubtful whether the law expressly prohibited the landing or shipment of goods anywhere along the coast where no customs establishment was located, and abuses consequently were known to prevail. Then Section XIV restored the former practice as to appeals, and directed that they should lie in the first instance to the Local Government with a general control merely on the part of the Governor-General in Council. Section XXIX, as to the responsibility of masters of vessels for goods unauthorizedly removed, related to a subject on which there had been much discussion, and he must, therefore, allow the Committee to state their own conclusions in their own words. They wrote—

“ In these Sections the objectionable provisions of the old Law (Section XII of Act XIV of 1836), regarding which the merchants of this port some time since addressed the Government, have been cancelled. The Committee think it is very unreasonable that the master of a vessel should be made responsible for acts which are avowedly altogether beyond his control. The master of the vessel is bound to deliver the goods to the consignees on the payment of freight and the production of the bills of lading. The goods having once left the ship's side he cannot possibly take any precautions to ensure their being landed at the custom house wharf or at any other wharf. The responsibility from the moment of delivery from the ship's side should rest with the consignee, and sufficient precautions have been taken in Sections XXX and XXXI to enforce this. The responsibility of the master, so far as in the opinion of the Committee it should rest with him, is clearly defined in Section XXIX.”

In other words, the master was made responsible for any unauthorized removal of goods from the ship, but not for their further custody. Section XL provided that the Customs House Officers might take samples of goods; and it was explained that the number of articles on which duty was now chargeable *ad valorem* necessitated this provision, in order to secure proper appraisement. The importer would no doubt generally of his own accord meet the wishes of the Customs Officers

in this respect. But it was thought better that legal authority should be given to take samples if necessary, provision being made, of course, for the repayment of their value. The subject of Section XLI likewise—namely, the time to be allowed for the landing of goods after the entry of the vessel—had led to much discussion; and the Committee had entered into the question at some length in their report. As that document would be circulated among the papers relating to this Bill, it was not necessary that he (Mr. Erskine) should then read more than the Committee's statement of the conclusion at which they had arrived. After alluding to the insufficiency of the existing law and to a conference which they had had on the subject with the leading firms in this city, they concluded:

"All parties, however, eventually seemed to concur in the Committee's proposal to allow consignees a period of 15 days in which to land their own goods. But to enable ship-owners to make their own terms with shippers, a proviso has been added to the effect that if any earlier period than 15 days is expressed on the bills of lading for the discharge of any goods, and the consignees of such goods neglect to land them within the period so specified, the master may at once land the goods and the collector shall then hold them subject to the ship's lien. This provision should, in the opinion of the Committee, satisfy all parties; the term within which delivery of goods is to be taken being thus a matter of material agreement at the time of shipment. The same provision is contained in the English Law, Section LXX."

In connection with Section LXX there had been a difference of opinion among the Members of the Committee on one point, namely, whether a remission of duty should be allowed to importers, on account of ullage and wastage on goods which had been warehoused and were afterwards entered for consumption. The majority were of opinion that this remission should be made. The Supreme Government had concurred with the majority; and he certainly saw no reason to dissent, and would propose an alteration of the Section accordingly. The four Sections LXXIX to LXXXII were very important, and would confer new

benefits on commerce by extending the advantages of the bonding system. They admitted of the removal of goods in bond not only from one warehouse to another, but from one Port to another, and of the trans-shipment of goods in bond. It appeared to him that some alterations were required in Section LXXIX, which was too indefinitely worded. But in substance he trusted that these Sections would be approved. Section CV also had given rise to a difference of opinion in the Committee. The majority, however, were of opinion that allowance of drawback on re-exportation need not be confined to cases in which the exportation took place from the original Port of importation. In this opinion the Supreme Government agreed. It seemed to be the more liberal one; and so long as proper precautions were taken to identify the goods and to prevent fraud, he thought it was the right principle. The provisions relative to the coasting Trade had been adopted from the English Act, and were said to be much required in order to check existing abuses. He need not, however, enlarge upon them at present, and would only notice that Section CXIX had been inserted in order to protect coasting steamers from vexatious interferences at the minor Ports along the coast. It was very desirable to foster undertakings of this description and prevent annoyances to those engaged in them. The Supreme Government had recommended the omission of Sections CXXVIII and CXXIX; but it seemed to him that there must be some misapprehension as regards the former Section. The latter apparently would have to be amended—but he would not then enter into the question as to the conditions on which the removal of country-made spirits from one Indian Port to another should be permitted. The papers appended to the Bill contained full statements on the subject, which might be discussed at a later period. Attention had specially been drawn by the Customs Committee to Sections CLIV, CLV, and CLVI, of which the first provided

that untariffed articles were to pay duty on the net market value of the like kind of goods in bond; the second authorized the Local Government to fix a Tariff value on any articles; and the third authorized the Customs Authorities to take over undervalued goods on account of Government. The Committee remarked on these Sections that the correctness of the principle of levying duty on the net value in bond had been approved by Government in November last, and that the provision under which duty used to be levied from the importer when the right of pre-emption was exercised, could therefore no longer stand. There was no doubt some inconsistency in admitting the principle of Section CLV just after the adoption of a uniform Tariff for the whole country, but in practice, apparently, the discretion thus proposed to be conceded could not at once be dispensed with. Section CLXI provided for the licensing of cargo boats, which was now done in Bombay, and might, it was believed, be done elsewhere with advantage. He (Mr. Erskine) had noted several other Sections for comment, but, with one or two exceptions, they related to matters of comparatively minor importance, and he had already detained the Council so much longer than he had intended, or could have wished, that he should refrain from entering into further details. These, then, were the remarks which he had deemed it right to make in introducing this Bill; and he would only in conclusion express a hope that, when Honorable Members should have had an opportunity of carefully considering the provisions of the Bill itself, they would concur in thinking that it was well calculated to promote the uniform and effective management of this important Department, to remove uncertainties, to prevent vexatious interference with trade; and that the gentlemen to whom it was due, therefore, had well deserved the acknowledgments of all those who had at heart the improvement of the law and the convenience of commerce in this country.

The Bill was read a first time.

*Mr Erskine*

## COURTS OF REQUESTS (STRAITS SETTLEMENT.)

MR. FORBES moved the second reading of the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca."

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

## SMALL CAUSE COURTS.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to amend Act XLII of 1860 (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);" and that the Committee be instructed to consider the Bill in the amended form in which it had been submitted by the Select Committee with their preliminary Report.

Agreed to.

Sections I and II provided as follows:—

"I. The local Government may empower any Court of Small Causes constituted under the said Act XLII of 1860, to hear and determine under the Rules contained in Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal) the claims cognizable under that Act arising within the local limits of the jurisdiction assigned to such Court as a Court of Small Causes. Any Court so empowered shall exercise all the powers of a Collector under the said Act X of 1859, except the power of hearing appeals.

"II. The local Government may invest, within the same limits, the Judge of any Court of Small Causes constituted under the said Act XLII of 1860, with all or any of the powers of a Magistrate, and also with the powers of a Principal Sudder Ameen for the trial and determination of civil suits under the rules applicable thereto, other than suits and claims falling within the provisions of the said Act XLII of 1860, and Act X of 1859."

MR. HARINGTON said, before he moved the amendments, of which he had given notice, he wished to be allowed to express his deep regret, in which he was sure every Honorable Member present would participate, that the severe illness with which the Honorable Member of the Government who

had brought in this Bill had been so suddenly attacked, should have compelled him to leave India for a time for the recovery of his health, and that this should have been the cause of the charge of the Bill having devolved upon him (Mr. Harington). He had further to regret, (however well and ably Bengal was represented at the present time), that what he must regard as the premature resignation of his seat by their late esteemed colleague (Mr. Sconce) to whose excellent manner of conducting his duties as a Member of this Legislature, the Honorable and learned Vice-President had, with the hearty concurrence of all present, borne honorable testimony on the last occasion on which the Honorable Member had made his appearance in that Chamber, should have left him (Mr. Harington) the sole Member of the Select Committee to which the Bill was referred for a preliminary Report. The late Honorable Member for Bengal had printed and circulated certain amendments in the Bill as settled by the Select Committee which it was his intention to have moved when the Council resolved itself into a Committee of the whole Council upon the Bill. The Bill was in the Orders of the Day for that day three weeks for a Committee of the whole Council, and it was fully expected that the Bill would have been committed upon that day, but other more important business prevented it from being brought forward, and the late Honorable Member for Bengal thus lost the opportunity of proposing his amendments, which he (Mr. Harington), very much regretted. He did not concur in those amendments, and had the late Honorable Member for Bengal moved their adoption, he should certainly have considered it his duty to oppose the Motion. The first amendment proposed to give a special appeal to the Sudder Court from every decision passed under the Act which the present Bill had been brought in to amend, not only upon points of law, but upon many other points which, in practice, by a little skilful management on the part of Counsel learned in the law, would open almost every case

to appeal. He would say nothing as to what would be the effect of the amendment, if adopted, on the files of the Sudder Courts, which had already more work than they could dispose of with the despatch which was so desirable, but it must be obvious that the amendment was directly opposed to a fundamental provision of Act XLII of 1860, to wit, that there should be no appeal in the cases decided under that Act, though, under certain circumstances, a case might be stated for the opinion of the Sudder Court. The next amendment of the late Honorable Member for Bengal proposed to invest the Local Governments with discretionary power to reduce the pecuniary jurisdiction conferred by Act XLII of 1860 on the Courts constituted under that Act, but he (Mr. Harington) could see no adequate cause for any such change in the existing law. He certainly could find no reason for it in the appointments recently made to the Courts of Small Causes about to be established in Bengal. In all quarters he heard those appointments well spoken of. It was not his intention to move the amendments proposed by the late Honorable Member for Bengal. As he had already said, he did not agree in those amendments. It was of course open to any other Honorable Member who thought proper to move their adoption. For his own part he was content with Act XLII of 1860 as it stood, but as it was thought that some of the amendments, of which he had given notice, would enable the Local Governments to extend the benefit of Courts of Small Causes much farther than, with a due regard to financial and other considerations, would otherwise be possible, and none of the proposed amendments affected the principle of the original Act, he was willing to assent to them. The measure must be regarded as purely experimental. This would be the case for some time. All that he asked for the measure was that it should be allowed a fair trial. If this were accorded, he had no fear as to the result. But happen what might, he felt bound to say that the Supreme Government, by its liberality in the matter of salary, and

the Bengal Government by the care and judgment exercised by it to secure fitting agents to carry out the Act, had done their best to ensure its successful operation. As regarded the first three amendments, of which he had given notice, he would only observe that they merely proposed a different, and as it appeared to him, a more convenient arrangement of the Sections to which they related. If adopted, they would leave the Sections substantially as settled by the Select Committee on the Bill.

With these remarks he begged to move the omission of the 1st and 2nd Sections in order to substitute the following :—

" I. The Local Government may invest any Court of Small Causes constituted under Act XLII of 1860, within the local limits of the jurisdiction assigned to such Court, with the powers of a Principal Sudder Ameen for the trial and determination of civil suits under the rules applicable thereto, other than suits falling within the provisions of the said Act XLII of 1860. The decisions passed by a Court of Small Causes in the exercise of the powers conferred under this Section, shall be open to regular and special appeal in the same manner, and subject to the same rules, as if they had been passed by a Principal Sudder Ameen.

II. The Local Government may also invest, within the same limits, the Judge of any Court of Small Causes, constituted as aforesaid, with all or any of the powers of a Magistrate for the trial and decision of cases cognizable by a Magistrate, but no other jurisdiction in criminal matters shall be exercised by any Court so constituted.

III. In the places in which the provisions of Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal) are in force, the Local Government may empower any Court of Small Causes, constituted as aforesaid, to hear and determine, under the rules contained in the said Act X of 1859, and subject to the same regular and special appeal, the claims cognizable under that Act arising within the local limits of the jurisdiction of such Court. Any Court so empowered shall exercise all the powers of a Collector under the said Act X of 1859, except the power of hearing appeals."

THE CHAIRMAN said, he had no objection to the omission of Sections I and II, but not for the purpose of substituting the particular Sections proposed, which seemed to him to require amendment. By voting therefore for the question of omission,

*Mr. Harington*

he did not wish to be bound to the Sections proposed to be substituted, as they now stood.

The question to omit Sections I and II was then put and carried.

The question to substitute the proposed Sections being read—

THE CHAIRMAN said, as he understood the object of the 1st Clause, it was to enable the Local Government to invest any Judge of a Court of Small Causes with the powers of a Principal Sudder Ameen. He believed it was stated by the Lieutenant-Governor of Bengal, in some papers which had been laid before the Council, that if some such provision were not made, there would be difficulty in appointing Small Cause Court Judges, as there would not be sufficient work to occupy their time, and consequently the measure would prove too expensive. The Lieutenant-Governor, therefore, proposed that the Small Cause Court Judges should be invested with the powers of a Principal Sudder Ameen. He also proposed that the Judges should be invested with the powers of a Magistrate, which was the object of the second proposed Clause; and he further proposed that the Judges should have the power to try cases under Act X of 1859, and that was the object of the third amendment.

With regard to the 1st Clause, he doubted very much whether the words employed really carried out the intention. The Clause provided that

" The Local Government may invest any Court of Small Causes constituted under Act XLII of 1860, within the local limits of the jurisdiction assigned to such Court, with the powers of a Principal Sudder Ameen."

He should prefer to stop here, but the Section went on—

" for the trial and determination of Civil suits under the rules applicable thereto, other than suits falling within the provisions of the said Act XLII of 1860."

Now there were two classes of suits falling within the provisions of that Act, namely, suits cognizable by Small Cause Courts, and suits not cognizable

by them. The suits cognizable were those mentioned in Section 3 of the Act, namely,

"claims for money due, whether on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of Rupees 500."

And then the Section went on to describe what suits were not cognizable by a Court of Small Causes, namely,

"on a balance of partnership account, unless the balance shall have been struck by the parties or their agents; or for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will; or for any claim for the rent of land, or any other claim for which a suit may be brought before a Revenue Officer, or for the recovery of damages on account of alleged personal injuries, unless special damage of a pecuniary nature shall have resulted from such injury."

He supposed that, by the words "other than suits falling within the provisions of the said Act XLII of 1860," were meant suits cognizable by a Court of Small Causes, but, as the learned Clerk of the Council had observed to him, the words were applicable to suits not cognizable by a Court of Small Causes. The question would therefore arise—what were the suits which it was intended that the Judge of a Court of Small Causes, with the powers of a Principal Sudder Ameen, should try? He should prefer to leave the Section so worded as simply to empower the Local Government to invest a Small Cause Court Judge with the powers of a Principal Sudder Ameen; and then he would, as a Small Cause Court Judge, try all suits cognizable by a Court of Small Causes, and, as a Principal Sudder Ameen, all suits cognizable by a Principal Sudder Ameen, subject, of course, in his latter capacity, to the ordinary regular and special appeals. But the amendment went on to say—

"The decisions passed by a Court of Small Causes in the exercise of the powers conferred under this Section, shall be open to regular and special appeal in the same manner, and subject to the same rules, as if they had been passed by a Principal Sudder Ameen."

Now it appeared to him (the Chairman) that, when the officer was acting in a Court of Small Causes, there ought not to be an appeal from any decision passed by him; though, if he were trying as a Principal Sudder Ameen, it was obvious that he would be subject to the ordinary rules under which a Principal Sudder Ameen tried suits. But the 6th Section of Act XLII of 1860 provided that—

"Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court under the provisions of this Act shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Small Cause Court."

It appeared to him that this provision, taken in connection with the words of the proposed Clause above referred to, would give rise to considerable confusion, and that the better plan would be to stop at the words "Principal Sudder Ameen," and leave the Judge of a Court of Small Causes, who might be invested with the powers of a Principal Sudder Ameen, to the ordinary law which would guide the decision of suits by Principal Sudder Ameen. He should therefore propose the omission of all the words after the words "Principal Sudder Ameen" in the 6th line of the Section.

MR. HARINGTON said, the intention of the Sections had been correctly stated by the Honorable and learned Chairman, and if that intention had not been expressed with sufficient clearness in the Sections as they were framed, he could have no objection to the wording of the Sections being altered so as to make their meaning perfectly clear. The object of the insertion of some of the words remarked upon by the Honorable and learned Chairman was to prevent a Judge of a Small Cause Court, when invested with the powers of a Principal Sudder Ameen, from hearing appeals from the Moonsiffs and Sudder Ameen. He thought that, if a Judge of a Small Cause Court were empowered to try the three classes of cases proposed in addition to his duties as a Small Cause Court Judge, he would have ample

work to occupy his entire time, and that the better course would be to confine such officers at present to the trial of original suits without giving them any appellate jurisdiction. Sudder Ameens and Moonsiffs, where their Courts were retained, would continue to be subordinate to and subject to the control of the Zillah Judge, and he (Mr. Harington) thought that the appeals from their decisions should be heard by that authority.

THE CHAIRMAN said, supposing an English Barrister were appointed a Judge of a Small Cause Court, and the Local Government thought fit to invest him with the powers of a Principal Sudder Ameen, he would be equally competent to hear appeals from Moonsiffs and Sudder Ameens as to try original suits cognizable by Principal Sudder Ameens.

MR. HARINGTON said, it was a question, not of competency, but of expediency. He did not doubt the competency of the persons who might be appointed Judges of Courts of Small Causes to decide appeals, but for the reason, which he had already given, he did not wish them to exercise appellate jurisdiction. He would not however press his objections.

THE CHAIRMAN'S Motion was then put and carried; and after some further amendments (on the Motion of the Chairman), Section I was passed as follows:—

"The Local Government may invest any Judge of a Court of Small Causes constituted under Act XLII of 1860 with the powers of a Principal Sudder Ameen within such local limits as the Local Government shall from time to time appoint."

The proposed Sections II and III were passed after amendments.

MR. HARINGTON moved the introduction of the following as Sections IV and V:—

"An officer to be styled the Clerk of the Court may be appointed to any Court of Small Causes constituted as aforesaid, on such salary as shall be authorized by the Governor-General of India in Council. The appointment and removal of such officer shall rest with the Court, subject to the approval of the Local Government.

*Mr. Harington*

When a Clerk is appointed to any Court of Small Causes constituted as aforesaid, such Clerk shall, subject to the orders of the Court, issue all Summonses, Warrants, Orders, and Writs of Execution, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all moneys payable or paid into or out of Court, and shall enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose."

Agreed to.

MR. HARINGTON said, it was necessary that he should preface his Motion for the adoption of the amendments which stood next in order on the notice paper, with a few remarks. Honorable Members would probably have observed in the Official Gazette, announcing the establishment of Courts of Small Causes in certain places within the Lower Provinces of Bengal, and the appointment of Judges to those Courts, that two of the gentlemen so nominated were appointed Judges, not only of the Courts at the Sudder Station of their respective Districts; but also of the Courts ordered to be established in the interior of those Districts. He understood that it was the desire of the Honorable the Lieutenant-Governor of Bengal that these gentlemen should occasionally sit and hear and determine cases of comparative difficulty and importance with the Judges of the Mofussil Courts of their respective Districts. The Honorable the Lieutenant-Governor of Bengal had apparently long entertained the idea that in every District there should be a chief or superior Judge who should hold a rank in the Judicial Department corresponding to the rank held by the Commissioners of Divisions in the Executive Department. He would have this chief or superior Judge make regular circuits to the other Civil Courts of the District and sit with the Judges of those Courts in hearing and determining difficult and important cases. An outline of the plan proposed by the Honorable the Lieutenant-Governor of Bengal would be found in the remarks made by him when a Member of this Council on the Motion for the second reading of the Civil Procedure Bill, and in the arrangements

recently made, as described in the Gazette to which he (Mr. Harington) had alluded, the Honorable the Lieutenant-Governor of Bengal appeared to be desirous to some extent of carrying out the plan. He (Mr. Harington) thought there could be no doubt that the arrangement would be found to have its advantages. He saw no objection to its adoption, but he believed that some provision of law was necessary to give legal effect to it, and the amendments which he was now about to propose would probably be considered sufficient for the purpose. He should move the addition of the following as Sections VI to IX :

"VI. Whenever more Courts than one are constituted in any District under the said Act XLII of 1860, the Court so constituted at the Sudder Station shall be the Principal Court of Small Causes of such District.

VII. The Judge of the Principal Court of Small Causes in any District may sit with the Judge of any other Court of Small Causes, constituted as aforesaid, in the same District, for the trial and determination of any suit cognizable under the said Act XLII of 1860, which the Judge of such other Court may reserve for trial by himself and the Judge of the Principal Court of Small Causes.

VIII. When two Judges sit together for the trial of a suit under the last preceding Section, and they concur in the decision or order to be passed, such decision or order shall be the decision or order of the Court, and shall be signed by both Judges. If, in the trial of any suit, such Judges shall differ on a point of law, or usage having the force of law, or on the construction of a document affecting the merits of the decision, they shall submit a case for the opinion of the Sudder Court on the point of difference between them in the manner prescribed in Section 13 of the said Act XLII of 1860, and the rules applicable to a reference to the Sudder Court contained in Sections 14, 15, 16, 17, 18, and 19 of the said Act, shall be applicable to the reference made in such suit.

IX. If such Judges differ on any point other than the points abovementioned, or the construction of a document, the Judge of the Principal Court of Small Causes shall have the casting voice."

The Sections were passed after amendments in Sections VI and IX.

MR. HARINGTON moved the addition of the following new Section:—

"X. All suits cognizable under the provisions of the said Act XLII of 1860, which shall be pending before any Court within the limits of

the jurisdiction of a Court of Small Causes constituted under the said Act, at the time of the constitution of such Court, shall be heard and determined in the same manner as if such Court had not been constituted."

Agreed to.

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

MR. HARINGTON said that, the Standing Orders having been suspended, he begged to move 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 Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

#### POLICE.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "to regulate temporarily the procedure of the Police enrolled under Act V of 1861 (for the regulation of Police); and that the Committee be instructed to consider the Bill in the amended form in which it had been circulated.

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 Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

#### ROHILCUND DIVISION.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general



Regulations and Acts," the Council resolved itself into a Committee for the further consideration of the Bill.

MR. HARRINGTON said that, since this Bill was read a second time, he had ascertained from a communication with which he had been favored by the Honorable the Lieutenant-Governor of the North-Western Provinces that the whole of the Pergunnahs of Juspoor and Kasheepore, which were included in the Schedule of the Bill as it now stood, were not situate within the Terace, and that the parts of those Pergunnahs not so situated were nearer to the Station of Mooradabad than to the site proposed for the new station which it was intended to establish as soon as this Bill should become law. The local authorities had no desire that the Bill should extend to any part of the Rohilecund Division not falling within the Terace, and the object of the amendment of which he had given notice was to enable the Honorable the Lieutenant-Governor of the North-Western Provinces to exclude from the operation of the Bill those parts of the two Pergunnahs named in the amendments which were not so situated, and which, as he had already mentioned, were nearer to their present sudder station of Mooradabad than to the site of the proposed new station.

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

#### PORT-DUES (CONCAN).

MR. ERSKINE moved that the Council resolve itself into a Committee on the Bill "for the levy of Port-dues in the Ports of the Concan"; 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 after the substitution of "1st day of July 1861" for "1st day of May 1861," as the date of commencement of the Act; and 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.

The postponed Sections 142 and 143 provided as follows:—

"142. Provided that it shall be competent to a Court of Session to charge a person for any such offence committed before it or under its own cognizance, and to try such person upon its own charge. Provided also that in any case triable by the Court of Session, it shall be lawful for any Court of Civil Judicature before which the offence was committed, instead of sending the case for investigation to the Magistrate, to complete the investigation itself and to direct the commitment of the accused person to the Court of Session.

143. When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinafter provided, and shall transmit the same with the order of commitment and the record of the case to the Magistrate, and the Magistrate shall bring the case before the Court of Session in like manner as if the preliminary enquiry had been made by himself."

MR. HARRINGTON moved the omission of the above Sections and the substitution of the following:—

"It shall be competent to a Court of Session to charge a person for any such offence committed before it or under its own cognizance if the offence be triable by the Court of Session, and to try such person upon its own charge. In such case the Court of Session shall have the same power of summoning and causing the attendance at the trial of any witnesses for the prosecution or for the defence which is vested in a Magistrate by this Act.

In any case triable by the Court of Session, it shall be lawful for any Court of Civil Judicature before which any such offence was committed, instead of sending the case for investigation to a Magistrate, to complete the investigation itself and to direct the commitment of the accused person to the Court of Session.

When any such commitment is made by order of a Civil Court, the Court shall frame a charge in the manner hereinafter provided, and shall transmit the same with the order of commitment and the record of the case to the Magistrate of the District or other Officer exercising the powers of a Magistrate, and such Magistrate or other Officer as aforesaid shall bring the case before the Court of Session toge-

ther with the witnesses for the prosecution and defence in like manner as if the preliminary enquiry had been made by himself.

If any such offence, triable by the Court of Session, was committed before a Magistrate not empowered to commit for trial before a Court of Session, such Magistrate shall send the case to a Magistrate competent to make such commitment who shall proceed to pass such order in the case as he may think proper."

The Sections were passed after some verbal amendments and after the introduction (on the motion of the Chairman) of the following new Section before the last :—

"Whenever any Court of Session or Civil Court shall commit or hold to bail any person for trial under Section 142 or 143, such Court may also bind over any person to give evidence, and, for that purpose, may exercise all the powers of a Magistrate."

Section 146 was passed after amendments.

Section 147 was passed as it stood.

Sections 148 and 149 were passed after amendments.

Section 150 was passed as it stood.

Sections 151 and 152 were passed after amendments.

Sections 153 to 155 were passed as they stood.

Section 156 was passed after amendments.

Sections 157 to 161 were passed as they stood,

Section 162 provided as follows:—

"The evidence of each witness shall be taken down in writing in the language in ordinary use in proceedings before the Court, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate, not ordinarily in the form of question and answer, but in the form of a narrative, and when completed shall be read over to the witness in the presence of the person accused if in attendance, or of his agent when his personal attendance is dispensed with and he appears by agent, and shall, if necessary, be corrected, and shall be signed by the Magistrate. If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given. When the evidence of a witness is given in English

the Magistrate may take it down in that language in his own hand. It shall be in the discretion of the Magistrate to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for so doing, or any person who is a prosecutor or a person accused shall require it. The Magistrate shall record such remarks as he may think material respecting the demeanour of any witness while under examination. In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so."

SIR CHARLES JACKSON proposed to substitute the words "in the language in ordinary use in the district in which the Court is situated" for the words "in the language in ordinary use in proceedings before the Court" in the beginning of the Section.

The amendment being put, the Council divided—

Ayes 4.	Noes 3.
Sir Charles Jackson.	Mr. Forbes.
Mr. Erskine.	Mr. Harington.
Sir Robert Napier.	The Chairman.
Sir Bartle Exner.	

So the motion was carried.

THE CHAIRMAN moved the substitution of the words "by the witness" for the words "by the Magistrate," at the close of the first sentence; and said he proposed, if this amendment should be carried, to move the following amendment, in order to ensure the provisions of the Section being fully carried out.

Agreed to.

THE CHAIRMAN then moved the insertion of the following words after the above:—

"The Magistrate shall sign a memorandum stating that the evidence was taken in his presence and hearing and under his personal direction and superintendence."

MR. FORBES said that he objected to the introduction of these words as unnecessary, and as showing a needless

and, in his opinion, undeserved distrust of the Magistrates. At the end of the Section on which the Committee was engaged were these words—

“ In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so ;”

and it appeared to him (Mr. Forbes), not only that these words gave all the security that was wanted that evidence should be taken down *bonâ fide* by the Magistrate, but that to require a certificate in addition to this, showed a doubt of the good faith in which this part of the law would be carried out. The proposed addition to the Section was further in his opinion unnecessary, since if any Magistrate would so far forget his duty as to evade the provision of the law which he had just read, he would probably also evade the words now proposed to be added. He should therefore vote against the proposed amendment.

Mr. HARRINGTON said, he was also opposed to the introduction of the words objected to by the Honorable Member for Madras. He thought that the Section, as at present framed, afforded all the security they could fairly and reasonably require that the evidence of every witness should be taken in the manner provided in the Section. The object aimed at was to oblige the Magistrate, as the examination of each witness proceeded, to give his mind to what the witness was deposing and to conduct the examination himself instead of leaving that duty to others and having his own attention diverted to other matters. The part of the Section quoted by the Honorable Member for Madras had been introduced for the express purpose of securing this object. The provision appeared to him quite adequate for the purpose, and he could see no sufficient reason for the proposed addition.

Mr. Forbes

After some further discussion, the question being put, the Council divided—

Ayes 5.

Sir Charles Jackson.  
Mr. Erskine.  
Sir Robert Napier.  
Sir Bartle Frere.  
The Chairman.

Noes 2.

Mr. Forbes.  
Mr. Harington.

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

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

#### STAGE CARRIAGES.

Mr. HARRINGTON postponed the motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill “ for licensing and regulating Stage Carriages.”

#### CATTLE TRESPASS.

Mr. HARRINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill “ to amend Act III of 1857 (relating to trespasses by cattle).”

Agreed to.

#### RECOVERY OF RENT (BENGAL).

Mr. HARRINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill “ to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).”

Agreed to.

#### PORT BLAIR.

Mr. HARRINGTON moved that Mr. Seton-Karr be added to the Select Committee on the Bill “ to regulate the administration of affairs in Port Blair.”

Agreed to.

#### MALACCA LANDS.

Mr. HARRINGTON moved that Mr. Seton-Karr be added to the Select

Committee on the Bill "to regulate the occupation of land in the Settlement of Malacca."

Agreed to.

#### REGISTRATION OF ASSURANCES.

Mr. FORBES moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

#### BREACH OF CONTRACTS; AND REGISTRATION OF CONTRACTS.

SIR BARTLE FRERE moved that Mr. Seton-Karr be added to the Select Committee on the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce," and the Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of agricultural produce."

Agreed to.

#### COURTS OF REQUESTS (STRAITS SETTLEMENT).

MR. FORBES moved that the Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca" be referred to a Select Committee consisting of Sir Charles Jackson, Mr. Seton-Karr, and the mover.

Agreed to.

#### SALTPETRE.

MR. HARRINGTON gave notice that he would on Saturday next, move the second reading of the Bill "to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof."

#### STAGE CARRIAGES.

MR. HARRINGTON moved that the Bill "for licensing and regulating Stage Carriages" be proceeded with in Committee of whole Council next

Saturday before the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

THE VICE-PRESIDENT said, he thought it very possible that the Stage Carriages Bill might give rise to some discussion. As to the Criminal Procedure Bill, although it was proposed that it should not take effect before the 1st of January next, yet it was very desirable that it should be passed into law as early as possible, so as to admit of its being translated and published in sufficient time before it came into operation.

MR. HARRINGTON said that, after what had fallen from the Honorable and learned Vice-President, he would not press his Motion.

The Council adjourned.

*Saturday, May 25, 1861.*

#### PRESENT :

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

Hon'ble Sir H. B. E. Frere.	Hon'ble Sir C. R. M. Jackson,
H. B. Harrington, Esq.,	and
H. Forbes, Esq.,	W. S. Seton-Karr, Esq.
C. J. Erskine, Esq.,	

#### SMALL CAUSE COURTS AND POLICE.

THE VICE-PRESIDENT read Messages, informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XLII of 1860," and the Bill "to regulate temporarily the procedure of the Police enrolled under Act V of 1861 (for the regulation of Police.)"

#### LIMITATION OF SUITS.

THE CLERK reported to the Council that he had received by transfer from the Home Department, a communication from Mr. G. Norton, forwarding a Memorial from Shah Koon-dun Lall and Shah Phoon-dun Lall, praying for an amendment of Act XIV of 1859 (to provide for the limitation of suits.)