

Saturday, April 6, 1861

***INDIAN LEG.  
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DEBATES***

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***P. L.***

The Clerk of the Council was instructed to number the several Clauses in this Chapter as separate Sections.

The Clause defining "Courts of Session" gave rise to some conversation.

The further consideration of the Bill was ultimately postponed, so as to allow the Members for Bombay and Madras to enquire of their respective Governments by telegram as to the expediency of dispensing with the Assistant Sessions Judges in the former Presidency, and with the Subordinate Criminal Courts and the Courts of the Principal Sudder Ameen in the latter.

#### SUGAR DUTY (NORTH-WESTERN PROVINCES.)

MR. HARRINGTON moved that the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)" be referred to a Select Committee consisting of Mr. Laing, Mr. Erskine, and the Mover.

Agreed to.

MR. HARRINGTON said that as it was important that this Bill should be passed into law as soon as possible, he begged to move for the suspension of the Standing Orders with a view to his moving an instruction to the Select Committee which had just been appointed, to submit their report within four weeks.

MR. LAING seconded the motion, which was put and carried.

MR. HARRINGTON then moved an instruction to the above effect.

Agreed to.

#### RECOVERY OF RENTS (BENGAL.)

MR. SCONCE moved that 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)" be referred to a Select Committee consisting of Mr. Beadon, Mr. Harrington, and the Mover.

Agreed to.

The Council adjourned.

Saturday, April 6, 1861.

PRESENT :

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

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harrington, Esq.,	Hon'ble Sir C. R. M. Jackson.
H. Forbes, Esq.,	

#### PUBLIC CONVEYANCES.

THE CLERK presented to the Council a Petition signed by 801 Inhabitants of Calcutta and its Suburbs, regarding the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

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

Agreed to.

#### BREACH OF CONTRACT.

THE CLERK presented a Petition signed by 207 Ryots, Inhabitants of Nuddea, Jessore, Pubna, and Moorshedabad, against the Bill "to provide for the punishment of Breach of Contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce."

MR. BEADON moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK presented a similar Petition signed by 28 Ryots, Inhabitants of Nuddea, Jessore, Pubna, and Moorshedabad against the same Bill.

MR. BEADON moved that the Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK reported to the Council that he had under the 27th Standing Order certified on the back of a Petition signed by 624 Ryots and Mahajuns of Kishennuggur, Pubna, Moorshedabad, and Jessore, in the Province of Bengal, relative to the same Bill,

that, in his judgment, the Petition was not framed in accordance with the 22nd Standing Order, forasmuch as it was not couched in temperate language, and did not conclude with a distinct prayer.

THE VICE-PRESIDENT said that, according to Standing Order No. 22,

"Petitions to the Legislative Council must relate to matters connected with the business of the Council. Every Petition shall be superscribed 'to the Honorable the Legislative Council of India,' and shall be dated and signed by the Petitioner or Petitioners. It shall be in respectful and temperate language, and shall conclude with a distinct prayer."

By Standing Order No. 27, it was declared :—

"If in the judgment of the Clerk the Petition be not framed in conformity with Order No. XXII, or if he have reason to doubt the authenticity of any signature thereto, he shall certify the same on the back of the Petition, and shall report the fact to the Council; in which case the Petition shall not be received by the Council, except upon the Motion of a Member.

So that, unless any Motion was made to receive this Petition, according to the latter Standing Order to which he had referred it could not be received.

#### CRIMINAL PROCEDURE.

THE CLERK presented a Petition from the British Indian Association, relative to the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

MR. HARRINGTON said, when the Council resolved itself into a Committee on the Bill, he proposed to move that the Clerk be requested to read this Petition.

#### PARSEES.

THE CLERK reported to the Council that he had received a communication from the Home Department, forwarding a communication from the Government of Bombay, and the correspondence received therewith, on the subject of the proposed Draft Code of law for the Parsee community.

MR. ERSKINE moved that the communication be referred to the Select Committee on the subject.

Agreed to.

#### LICENSING OF ARTS, TRADES, AND DEALINGS.

THE CLERK reported to the Council that he had received a communication from the Financial Department, regarding the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in Tobacco to take out a license."

#### STAGE CARRIAGES.

MR. HARRINGTON presented the Report of the Select Committee on the Bill "for licensing and regulating Stage Carriages."

#### MINORS.

MR. SCONCE presented the Report of the Select Committee on the Bill "to amend the law relating to Minors."

#### 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.

MR. HARRINGTON moved that the Clerk be requested to read the Petition of the British Indian Association, which had this day been presented to the Council.

The Motion was carried, and the Petition read accordingly.

The words "except the Settlement of Prince of Wales' Island, Singapore, and Malacca" were added to the definition of "British India," on the Motion of Sir Charles Jackson.

The definition of the words "Moveable Property" was substituted by the definition of the same words as given in the Penal Code, on the Motion of the same Member.

The definition of the words "Court of Session" being read by the Chairman—

Mr. HARRINGTON said, before they resumed the consideration of this Clause which had given rise to a lengthened discussion, and to some difference of opinion at the last meeting of the Committee, he might mention that, in consequence of a communication which he had just received from the Executive Government, it was his intention to move on Saturday next the first reading of the Bills, presented to the Council by the Select Committees on the Criminal Procedure Bills, for constituting Courts of Civil and Criminal Judicature. If these Bills should pass into law, the effect would be that the Courts of the Assistant Sessions Judges of the Presidency of Bombay, and the Subordinate Criminal Courts and the Courts of the Principal Sudder Amceus of the Madras Presidency, would be abolished as separate classes of Criminal Courts, and uniform classes of Criminal Courts would be established in the three Presidencies. Under these circumstances, it seemed desirable to allow the Criminal Courts of the Madras and Bombay Presidencies to remain for the present subject to any provisions which might be introduced into the Procedure Code in respect to their powers of punishment, and if the Committee concurred in this view, they would perhaps permit the consideration of the Clause to stand over.

The consideration of the Clause was accordingly postponed.

The definition of the words "Magistrate of the District" was passed after a verbal amendment.

The following definition of the words "year" and "month" was added to Chapter I, on the Motion of the Chairman :—

"Wherever the word 'year' or the word 'month' is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar."

Before Chapter I was passed by the Committee—

SIR CHARLES JACKSON suggested the necessity of introducing a

definition of the words "Police Station."

Ultimately, the consideration of this question was reserved until after the Committee had gone through the Code, when Sir Charles Jackson said that he should probably propose a definition of those words.

Chapter II related to the Jurisdiction of the Criminal Courts.

Section 2 was passed after a verbal amendment.

Section 3 provided by what Courts the offences mentioned in the Schedule annexed to the Act were triable, and within what limits such Courts might pass sentence.

A trifling amendment was made in the introductory part of the Section, on the Motion of Mr. Erskine.

The Section proceeded to describe the powers of the Court of Session as follows :—

"The Court of Session. Death (subject to confirmation by the Sudder Court). Transportation, imprisonment for 14 years, and fine to an unlimited amount, or, both transportation and fine, or imprisonment and fine in cases in which both punishments are authorized by Act XLV of 1860 (The Indian Penal Code.)"

Several amendments were proposed and carried, which made the above run as follows :—

"The Court of Session. Death (subject to confirmation by the Sudder Court). Transportation, imprisonment of either description for 14 years, including such solitary confinement as is authorized by law, or fine to an unlimited amount, or both transportation and fine or imprisonment and fine in cases in which both punishments are authorized by the Indian Penal Code."

The following addition was made to the above, on the Motion of Mr. Harrington :—

"In cases in which, according to the Indian Penal Code, forfeiture of property may be adjudged, the Court of Session may adjudge such forfeiture in addition to the sentence."

Mr. ERSKINE proposed to move an amendment to the effect that the words "Court of Session" should not include the Courts of Assistant Sessions Judges in the Bombay Presiden-

ey, in respect to whose powers a special reservation was made in Section 359 of the Act.

After some conversation, the consideration of the proposed amendment was postponed.

After some amendments in the Clauses describing the powers of the Magistrate of the District and of Subordinate Magistrates or Officers authorized to exercise any of the powers of a Magistrate, the following addition was made to Section 3, on the Motion of Mr. Erskine :—

“ No sentence of solitary imprisonment under Section 73 of the Indian Penal Code shall be passed by any Court inferior to an Officer exercising the powers of a Magistrate.”

THE CLERK of the Council was authorized to substitute the words “ the Indian Penal Code” for the words “ Act XLV of 1860 (The Indian Penal Code)” wherever necessary.

MR. HARRINGTON moved the introduction of the following new Section after Section 3 :—

“ The local Government may invest any person with the powers of a Magistrate or of a Subordinate Magistrate of the first or second class, as described in the last preceding Section, with a view to the exercise by such person of such powers under this Act or under any special or local law.”

Agreed to.

Section 4 was passed after amendments.

Sections 5 and 6 were passed as they stood.

Sections 7 to 10 were passed after verbal amendments.

Sections 11 and 12 (relating respectively to the receiving of stolen property, and to the unlawfully receiving or having in possession criminally misappropriated property) were incorporated into one Section with necessary modifications and verbal amendments.

So likewise were Sections 13 and 14 (relating respectively to escape from lawful custody under sentence, and to return from transportation) incorporated into one Section, which provided also for breach of license under the Penal Servitude Act.

Sections 15 and 16 were passed after verbal amendments.

Section 17 was passed as it stood.

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

#### ROIHLKUND DIVISION.

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

Agreed to.

Section I provided as follows :—

“ The tracts of country described in the Schedule to this Act are hereby removed from the jurisdiction of the Courts of Civil and Criminal Judicature, and from the control of the Offices of Revenue constituted by the Regulations of the Bengal Code and the Acts passed by the Governor-General of India in Council and the Legislative Council of India as well as from the system of procedure prescribed for the said Courts and Offices by the Regulations and Acts aforesaid ; and no Act hereafter passed by the Legislative Council of India relative to the constitution or procedure of the said Courts and Offices shall be deemed to extend to any part of the said tracts, unless the same be specially named therein : provided that nothing herein contained shall extend to or affect any case now pending in any Court or Office.”

MR. BEADON asked, what the effect of the Bill would be as regarded the Acts of the Government of India ? Would it be to make the tract of country to which the Bill related, not subject to the Penal Code for instance, or to the Codes of Civil and Criminal Procedure ?

MR. HARRINGTON said, the Bill related only to the constitution of the Courts and to procedure, and would leave the substantive law intact. It would not remove the tract of country to which it related from the operation of the Penal Code or the Law of Limitation, for instance ; but the new Code of Criminal Procedure upon which the Council was now engaged would not take effect in that tract, nor indeed would it take effect in any Non-Regulation Province, unless it was specially

extended thereto by an order of the local Government. The Bill had been framed after the model of the Act lately passed relating to a portion of the Chittagong District.

After some further discussion, the consideration of the Bill was postponed, and the Council resumed its sitting.

#### PORT DUES (AMHERST.)

The Order of the Day for a Committee of the whole Council on the Bill "for the levy of Port-Dues in the Port of Amherst" was postponed.

#### PENAL CODE.

THE VICE-PRESIDENT said, when the Penal Code was before the Council, it was considered that the translations of it into the several native languages might be made in sufficient time to enable it to be brought into effect on the 1st of May 1861. That day was therefore introduced into the Code as the date from which it should take effect. But from all the information which he had been able to obtain on the subject, it appeared that the Code had not yet been translated into all the native languages. He believed no one was to blame for this, as it was a matter of very great difficulty, and no doubt every endeavor had been made to complete the translations as quickly as possible. He found that even in Bengal the whole of the translation could scarcely be published in the Gazette before the 1st May 1861. He thought it would not be right to allow the Code which altered the whole Criminal Law of the country, to take effect before it was translated and published for the information of the natives of India, and more especially before the native Judges and Officers who would have to administer justice under this Code should have had ample time thoroughly to understand it. For this reason he thought it proper that the date from which the Code would take effect should be postponed. It appeared to him that the 1st of January 1862

*Mr. Harington*

would not be too late a day for its coming into operation, as in his opinion it ought to come into operation at the same time all over the country, and not piecemeal as the translations might be completed.

The question then was, whether the 1st of January 1862 would be too late a period to fix for the commencement of the Code. He thought that, by fixing that date, there would be time to complete the Code of Criminal Procedure, and for the native Judges to study it. He therefore proposed to suspend the Standing Orders for the purpose of bringing in and passing through all its stages, a Bill to postpone the operation of the Code until the 1st January 1862. This was April, and there was scarcely a month before the Code, as it now stood, would come into operation. He thought that, if any alteration were made, it ought to be made at once, so as to give time for communicating to distant parts of the country that its operation had been postponed for a time. He begged to move therefore that the Standing Orders be suspended to enable him to introduce and carry through its several stages a Bill "to alter the time from which the Indian Penal Code shall take effect."

SIR BARTLE FRERE seconded the Motion.

MR. HARRINGTON said, before the question was put for the suspension of the Standing Orders to enable the Honorable and learned Vice-President to bring in a Bill to postpone the introduction of the Indian Penal Code, he must express a hope that the Honorable and learned Vice-President would not press the second reading of the Bill to-day, but would allow the second reading to lie over until next Saturday. He (Mr. Harington) was anxious to communicate with the Honorable the Lieutenant-Governor of the North-Western Provinces, and to ascertain from His Honor what would be the effect of the Bill in those Provinces in connection with the new Police which was now being organized in them. If time were allowed him,

he would communicate at once with the Honorable the Lieutenant-Governor by Electric Telegraph, and he might hope to receive an answer before the next meeting of the Council. It was right he should mention that an admirable translation of the Penal Code in the Oordoo language, which was the vernacular of the North-Western Provinces, and the language of all the Courts in those Provinces, as it was, he believed, to a great extent of the Courts in the Punjaub also, was now being published under the authority of the Government of the North-Western Provinces. A considerable portion of the translation had already been printed, and it was confidently expected that the whole would be completed, and that copies of the translation would be in the hands of all the Government Officers, and would be available to the public generally at a moderate price on or about the 15th Instant. This translation of the Code, which had undergone a careful revision by the Honorable the Lieutenant-Governor of the North-Western Provinces, who was known to be an accomplished Oriental Scholar, would have a copious and skilfully prepared index attached to it, which would materially facilitate reference to any part of the Code. He had no reason to believe that the Honorable the Lieutenant-Governor or the Officers under him had expressed, or that they felt any desire that the introduction of the Code should be postponed beyond the date now fixed for its coming into operation, and he thought he might state that the whole of the Officers in the North-Western Provinces were prepared for the introduction of the Code on that date. He knew that sometime ago the Junior Civil Servants and the Members of the Uncovenanted branch of the service in the North-Western Provinces, who had to undergo an examination according to the higher or lower standard, were warned that they would be examined in the Penal Code, and they had been preparing themselves accordingly. He feared that great confusion would be caused, and that much inconvenience would be

experienced in the North-Western Provinces, if, at this late period, a Bill were introduced, absolutely postponing the introduction of the Code for a lengthened period. This inconvenience would be particularly felt in the department of Police, which, it might be truly said, would have no proper law for the guidance of its Officers until the Penal Code and the new Code of Criminal Procedure came into operation. Under these circumstances, he ventured to express a hope that, if a Bill were necessary to postpone the introduction of the Penal Code beyond the date now fixed for its coming into operation, that was to say, the 1st May next, the Bill would be made of a permissive character only, and that, while it allowed the introduction of the Code to be postponed until a certain date, it would empower the local Governments to bring it into operation within their respective Governments on an earlier date if they thought proper, giving timely notice of their intention to do so.

Mr. BEADON said, he had no hesitation in voting in support of the Bill for postponing the operation of the Penal Code. But he ventured to suggest whether an earlier date than the 1st of January 1862 might not sufficiently answer the purpose intended. If the operation of the Code were postponed at all, it was better that it should come into force on the same date throughout all India than that it should come into force on the 1st May 1861 in one part of India, and on another date in another. He thought that a period of four months beyond the time originally fixed, would be quite sufficient to complete the translations of the Code where they were incomplete, and give abundance of time to the officers who would have to administer the Code to make themselves masters of it. He therefore ventured to suggest that the Act be postponed until the first September next. This would give an additional four months, within which period the Code of Criminal Procedure would also be passed, and its translations completed without difficulty.

THE VICE-PRESIDENT said, he should not object to deferring the operation of the Penal Code to the 1st of September 1861 instead of the 1st January 1862, if he were satisfied that the Code could be translated, in sufficient time to enable the native Judges to become thoroughly acquainted with it. He understood from the Honorable Member of the North-Western Provinces that the officers were to be examined in the Penal Code. It appeared to him (the Vice-President) that it would be better if the examination took place previously to the Code coming into operation, than by allowing the officers to be examined in the Code after it came into operation.

MR. HARRINGTON said that the examinations he referred to, were the periodical examinations to which the junior Civil Servants and others were subjected.

THE VICE-PRESIDENT said, with regard to the native Judges they ought not to be called upon to administer the Code before they had had time to study it. He thought it would be a great reproach to this Council if it were allowed to come into force before it had been translated into the languages of the people to be affected by it, and studied by the Native Judges who would have to administer it. He therefore thought that the translations of the Code ought to be published sufficiently to enable the native Judges thoroughly to understand it. He believed that a representation had been received by the Government of India from the Madras Government as to the impossibility of the translations of the Code being completed before the 1st of May next.

MR. BEADON said, the communication from the Madras Government was to this effect. They thought that it was intended that the Penal Code and the Code of Criminal Procedure should be brought into operation on the same date, and they said that although the translations of the Criminal Code would be completed in time, yet if the operation of both Codes were to commence on the same date, some postponement would be necessary, as the

Code of Criminal Procedure could not possibly be translated by that date. He held in his hand the advertisement which appeared in the Gazette of this day, which announced that the Oordoo translation of the Penal Code—and the Oordoo was the *lingua franca* of India—would be ready for publication on the 15th of this month. That would give the native Judges four and a half months' time to consider the Code. He was told that the Bengalee translation of the Code would be ready by the 1st of next month; that the Bombay translations had passed through the press; and that the Madras translations would shortly be printed and published. If therefore, the 1st of September were fixed for the commencement of the Code, every native Judge would have it in his power to make himself master of it, both in the Vernacular language of his District and in the Oordoo.

MR. FORBES said, the Oordoo was certainly not the *lingua franca* of India, for in the Madras Presidency it was not understood at all. To facilitate the translation of the Penal Code in anticipation of its being passed, he had sent a few copies of Mr. Edmonstone's Oordoo translation to Madras, where however the translators found it of no use, so different was it from the Hindoostanee spoken there. Therefore the Oordoo translation to which the Honorable Gentleman (Mr. Beadon) referred as the *lingua franca* of India, would not be of any service whatever to the native Judges in the Southern Presidency. There were five different languages into which the Code required to be translated in that Presidency, and the Members of the Civil Service were the only persons acquainted with those languages, whose services could be made use of as Government Translators. The office of translator was however so ill-paid that the gentlemen who were thus employed had all some other offices, and two of them filled the laborious offices of Secretary to the Board of Revenue and Registrar to the Sudder Court, and it was but little time therefore that they had for their translators' duties. This was the sole cause of the delay



that had occurred in the translation of the Penal Code at Madras. In order that the translation of the Code of Criminal Procedure might be expedited as much as possible, he had already sent down copies of it for the purpose of being distributed and put at once into the hands of the translators.

SIR CHARLES JACKSON said, there seemed to him to be two questions for consideration. First, whether the operation of the Code should be postponed, and second, to what time it should be postponed. Now that it should be postponed, he thought was clear. If the translations in Bengal and Madras were not completed then, this Code could not be known to the people of the country, and certainly could not be known to the native Magistrates and Judges who would have to administer the law on the 1st of May next. It was preposterous to suppose that the native Magistrates would be able to administer a law which they had never seen or with the terms of which they had not had time to make themselves acquainted. Then as to the time to which it should be postponed, he thought it should be postponed to such a time as would enable all the Judicial Officers, natives and others, who would have to administer it, to become acquainted with its provisions, and that it was desirable to postpone it for such a period that the Code of Criminal Procedure might be passed and translated, so as to allow both Codes to come into force at the same time. He wished the Penal Code to have fair play, and he did not think that would be the case if it was brought into operation on the 1st of May. It would be difficult to work the Penal Code without the Code of Criminal Procedure, which was part and parcel of it; and it would be very undesirable to work it with the old system of Criminal Procedure to which it was not adapted.

MR. ERSKINE said that he had no wish to oppose the Motion which had just been made, if on general grounds there was reason to desire that the in-

roduction of the Penal Code should be postponed. But with reference to what had fallen from the Honorable Member of Government (Mr. Beadon) as to the general utility of the Ordinance version of the Code, he might mention that within the last day or two he had received a letter from the Bombay Government, intimating that it would be of no service to them, and that they did not require any copies of it. The Honorable Member (Mr. Beadon) was, he believed, quite justified in stating that the versions of the Penal Code required for general use in the Bombay Presidency, had already been satisfactorily completed there. He (Mr. Erskine) believed indeed that they had already been published in the Government Gazette. He had no reason to suppose that the Bombay Government was in other respects unprepared to bring the Code into operation from the date originally specified. At the same time, although he had not been aware that this Motion would be made to-day, and had not therefore been able to make a special reference on the subject, he thought he might undertake to say that they would not in Bombay greatly object to a postponement. It was, no doubt, desirable that the preliminary arrangements for giving effect both to the Penal Code and to the Procedure Code should be complete in all parts of the country before any attempt was made actually to enforce them. And with the Procedure Code especially—which would introduce great changes—he thought they should hasten slowly. He would only further remind the Council that the statement of the Honorable Member for the North-Western Provinces as to the effect which a delay in introducing these Codes would have on the new Police in the North-West, was deserving of every attention, as the inconvenience to be apprehended was apparently great. He (Mr. Erskine) would suggest on this account that the new date to be fixed by this Bill should be the earliest that could be named consistently with other objects.

THE VICE-PRESIDENT said, he certainly thought that under all the

circumstances of the case the 1st of January would not be too late a period to which to defer the operation of the Penal Code. In all probability the Code of Criminal Procedure would not be passed next month. Not even one quarter of it had been settled by the Council to-day; and when it was passed, he understood that it would require to be translated by gentlemen of the Civil Service at Madras. These gentlemen had not yet completed the translation of the Penal Code in consequence of their having other duties to perform, and he thought it would not be fair to put an undue pressure of work upon them. He believed also that the Doorga Poojah holidays was the only portion of the year during which the Judges would have an opportunity of giving their attention to and studying the Code. In addition to that, there were a number of Regulations existing in Bengal, Madras and Bombay, known as local Laws, which would have to be repealed as soon as this Code of Procedure was completed. Many of these Regulations applied not only to crimes and offences, but also to Procedure, and it would be very difficult to separate a particular part of a Regulation, and to say that that particular part should be repealed now, and that another part of it should be repealed as soon as the Code of Criminal Procedure was completed. The repealing Act had not yet been completed, although great progress had been made in it by the learned Clerk Assistant of the Council, and it could not be completed until the Code was passed. The Bill therefore had to be brought in; and after it was read a first and second time and referred to a Select Committee, it would require to be published for three months for the consideration of persons competent to offer an opinion on the subject. Otherwise we would have to suspend the Standing Orders so as to pass the Bill for repealing those various Regulations, and that Bill would require to be translated and to come into operation at the same time with the Codes, so that one uniform system might be adopted through-

*The Vice-President*

out India. He did not think that the difference of time between the 1st of September and the 1st of January next, was so material compared with the advantage of bringing into force a uniform system. He thought it would be better that the whole system should be completed, so as to come into operation at the same time. He did not think we should fix an earlier date than one on which we could pass all Bills and bring them into operation together. The question then was, whether we should suspend the Standing Orders with a view of passing to-day the Bill for postponing the Penal Code, or wait until the Honorable Member for the North-Western Provinces had an opportunity of communicating with his Government on the subject. If it were not passed to-day, we should lose a week; and if we left it until next Saturday, the question would arise whether a fortnight would be sufficient time to communicate to the whole of the Judges that they were to go on with the old law, and not with the Penal Code, until the 1st January next. He (the Vice-President) thought it would be inconvenient to postpone the Code unless such a communication could be made to all the Judges. Otherwise, some of the Judges who could not be communicated with, might be acting on the Penal Code, and their orders would be illegal, because the operation of the Code would be postponed before they knew of its postponement. He therefore proposed to proceed with the Bill to-day.

Mr. HARRINGTON said, he hoped he might be allowed to offer a few more remarks on the Bill now proposed to be introduced. He was not anxious to cause delay, but he would certainly like to have an opportunity of communicating with the Honorable the Lieutenant-Governor of the North-Western Provinces before the Bill became law. At the time that they passed the recent Act for regulating the Police, they had in view that the Penal Code would come into operation from the 1st May next, and they fully expected that the Code of Criminal Procedure would be completed, and

that it would be introduced on the same date. This was still quite possible. The consequence was that the Police Act was made to depend in a great measure upon the Penal Code and the Code of Criminal Procedure as regarded the duties to be performed by the Police, and the manner in which those duties were to be performed. Without these two Codes the Police Act would be little more than a skeleton law, and as he had already observed the Police would have no proper law for their guidance.

SIR CHARLES JACKSON observed that the new Police might carry on their duties under the existing Regulations.

MR. HARRINGTON resumed, that was just what they desired to avoid. An entirely new system of Police was about to be introduced, the principal feature of which was the separation of Police and Judicial functions. The old Police were being removed and a new class of men were being appointed in their stead, and it was obviously advisable that the new men should from the first have for their guidance the laws which it had been determined should be introduced, and that they should conduct their duties in accordance with them rather than that they should have to learn the old laws and administer them and then, after a few months, be required to make themselves acquainted with a new set of laws and to introduce and carry on an entirely different system. He thought that the Honorable the Lieutenant-Governor of the North-Western Provinces would scarcely have consented to the immediate introduction of the new Police system had he supposed that the Police appointed under it would be required for a time to act under the old Police Regulations. It appeared to him (Mr. Harrington) that this would scarcely be fair to the newly appointed Inspector General of Police in the North-Western Provinces, and to the other officers in the Department and if, therefore, the proposed Bill should become law and be made general in its application, he certainly

thought that it would be the duty of the Council to consider what provision should be made to enable the Police in the North-Western Provinces properly to discharge their duties according to the system now being introduced, and not according to the old system. He should, of course, be happy to assist in framing a law for this purpose, but something should be done at once. No doubt it would be better and more convenient if the new Codes could be introduced at one and the same time throughout India; but this did not appear to him to be a sufficient reason for postponing the introduction of those Codes into any part of the Country where the postponement would cause inconvenience. He believed that this would be the case in the North-Western Provinces. He had already mentioned, that for any thing he knew to the contrary, they were quite prepared for the introduction of the Penal Code in those Provinces on the date originally fixed for its introduction, and if the present Bill were passed he should be glad if the suggestion which he had made that power should be given to the local Governments to introduce the Code on an earlier date than that mentioned in the Bill, could be adopted.

SIR BARTLE FRERE said, he was not sure if the Honorable Member for the North-Western Provinces had not mixed up two different matters. The Penal Code, as it now stood, would come into operation on the 1st of May. As to the Code of Criminal Procedure, the very earliest date would be the 1st of September, on which, if we used our utmost exertions, we could possibly make it come into operation, allowing sufficient time for its translation into the several native languages. In the meantime under any circumstances, supposing the Penal Code was not postponed, the Police would be in the same state as they now were. The remedy that he would suggest was this. As soon as the Clauses of the Procedure Code relating to the Police were settled, if it were found that any difficulty were experienced in the

North-Western Provinces, the Council should pass a temporary Act giving effect to those Clauses of the Code until the date fixed for the whole Code coming into general operation. That would get over the difficulty as regards the Police.

MR. HARRINGTON said that it was not only the Procedure to which he referred ; he had also in view the offences of which the Police should take cognizance.

MR. FORBES said that the Madras Police had a law of Procedure of its own which had been found to work well, and perhaps the Honorable Member for the North-Western Provinces might, as a temporary measure, adapt the Clauses relating to it to the North-Western Provinces.

THE VICE PRESIDENT said, he thought that that was certainly the most advisable course to follow with reference to the Police. He saw no objection to the insertion of any particular Clauses of the Penal Code or the Code of Criminal Procedure in a temporary Act, so that it might be passed and come into force whenever it might be considered necessary. The only question now was, whether we should allow the Penal Code to come into force by the 1st of May before the whole system might be completed and thoroughly understood. He should therefore press his Motion for the suspension of the Standing Orders, to enable him to bring in and proceed with the Bill.

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

The Standing Orders having already been suspended, the Council then resolved itself into a Committee on the Bill which was passed without amendment.

The Council having resumed its sitting, the Bill was reported, after which it was read a third time and passed, and Mr. Beadon was requested to take it to the Governor-General for his assent.

The Council adjourned.

Saturday, April 13, 1861.

PRESENT :

The Hon'ble Sir Henry Bartle Edward Frere, *Senior Member of the Council of the Governor-General, in the Chair.*

Hon'ble C. Beadon,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harrington, Esq.,	Hon'ble Sir C. R. M.
H. Forbes, Esq.,	Jackson.
A. Sconce, Esq.,	

PENAL CODE.

THE PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill " to alter the time from which the Indian Penal Code shall take effect."

CATTLE TRESPASS.

THE CLERK presented to the Council a Petition from the Indigo Planters' Association, praying for certain amendments in Act III of 1857 (relating to Cattle Trespass).

MR. BEADON moved that the Petition be printed.

Agreed to.

PARSEES.

THE CLERK presented a Petition from the Parsee Inhabitants of Calcutta in favor of the passing of the draft Code of law sent up by the Parsee Inhabitants of Bombay.

MR. ERSKINE moved that the Petition be referred to the Select Committee on the question to which it related.

Agreed to.

PUBLIC CONVEYANCES ; AND MASTERS AND SERVANTS.

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement on the subject of the regulation of Public Conveyances and the relations of Master and Servant.