

Saturday, July 30, 1859

**LEGISLATIVE COUNCIL  
OF  
INDIA**

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**P . L .**

Saturday, July 30, 1859.

PRESENT :

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

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

MAGISTRATES.

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

MARKETS.

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

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

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

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

OATHS AND AFFIRMATIONS.

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

MR. HARRINGTON moved that the communication be printed.

Agreed to.

PASSENGERS.

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

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

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

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

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

The Bill was read a first time.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

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

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

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

The Bill was read a first time.

#### ELECTRIC TELEGRAPHS.

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

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

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

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

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

The Bill was read a first time.

#### POST OFFICE.

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

#### CRIMINAL PROCEDURE.

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

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

Agreed to.

Section 1 was passed after an amendment.

Section 2 was passed as it stood.

Section 3 provided as follows:—

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

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

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

*Mr. Harrington*

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

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

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

The Section was ultimately passed after two verbal amendments.

Section 4 provided as follows:—

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

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

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

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

Sections 5 and 6 were passed after verbal amendments.

Sections 7 to 11 were passed as they stood.

Section 12 was passed as it originally stood.

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

The consideration of Sections 14 and 15 was postponed.

Section 16 provided as follows:—

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

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

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

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

Section 17 was passed after amendments.

Sections 18 and 19 were passed as they stood.

Section 20 was passed after an amendment.

Sections 21 and 22 were passed as they stood.

Section 23 was passed after an amendment.

Section 24 was passed as it stood.

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

Sections 28 and 29 were passed as they stood.

The consideration of Sections 30 and 31 was postponed.

Sections 32 and 33 were passed as they stood.

Section 34 provided as follows:—

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

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

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

Sections 35 to 70 were passed as they stood.

Section 71 was passed after amendments.

Sections 72 to 81 were passed as they stood.

The consideration of Sections 82 to 84 was postponed.

Sections 85 and 86 were passed as they stood.

The consideration of Section 87 was postponed.

Sections 88 to 93 were passed as they stood.

Section 94 was passed after amendments.

Sections 95 to 97 were passed as they stood.

The consideration of Section 98 was postponed.

Sections 99 to 108 were passed as they stood.

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

#### RAILWAY CONTRACTORS AND WORKMEN.

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

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

Agreed to.

#### TRIALS BY SESSIONS JUDGES.

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

Agreed to.

#### NOTICES OF MOTIONS.

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

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

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

The Council adjourned.

Saturday, August 6, 1859.

#### PRESENT :

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

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

#### SMALL CAUSE COURTS.

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