

Saturday, August 6, 1859

**LEGISLATIVE COUNCIL
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P . L .

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. HARINGTON 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. HARINGTON 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. HARINGTON 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 XXXII 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. Harington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Scone, Esq.

SMALL CAUSE COURTS.

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

cation from the Malabar Government, forwarding a return of Suits and Appeals instituted under that Presidency during the first four months of 1859.

MR. HARINGTON moved that the communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK also reported a communication from the Bengal Government, forwarding Reports on the litigation going on in the Districts of Hooghly, East and West Burdwan, and Beerbhum, respecting the appointment and remuneration of Chowkeydars.

MR. SCONCE moved that the communication be referred to the Select Committee on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

Agreed to.

STANDING ORDERS.

MR. HARINGTON presented the Report of the Select Committee on the Message from the Governor-General in Council, calling for a report on the working of the Standing Rules and Orders of the Legislative Council.

MR. HARINGTON gave notice that he would, on Saturday next, move that the Report be adopted.

ARMS AND AMMUNITION.

MR. HARINGTON moved 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)." He said, the Act which it was the object of this Bill to make perpetual, was proposed to the Council for adoption under date the 1st August 1857, and the Bill which was brought in on that date, having gone through the regular stages, received the assent of His Excellency the Right Honorable the Governor-General, and passed into law as Act No. XXVIII of 1857 on the 11th September following. By the 35th Section of the Act, its operation was limited to two years, and as little more than a month of that

period now remained, it had become necessary to consider whether the Act should be allowed to expire, or whether it should not be continued in force, and in the latter case, whether any limit should again be assigned to its duration, or whether it should not rather be made one of the permanent laws of the country. It was scarcely necessary for him to remind Honorable Members that at the time the Act was passed, the late mutiny in the Native Army of Bengal, and the rebellion which ensued thereon in some parts of the country, were at their height; but although those events no doubt hastened the introduction of the Act, and accelerated its passage through the Council, the expediency of disarming the population, with a view to the maintenance of the public peace, and to the prevention of crimes of the more violent class, particularly affrays, which in this country, from the number of persons who engaged in them, and from the fierceness of the combatants, so often assumed the character of pitched battles, had for many years previously been under the consideration of the Government, and had been strongly advocated by many old and experienced Officers. In the Punjab a general disarmament of the population had already been carried out with the happiest results. Indeed, the remarkable tranquillity which prevailed in that Territory during the eventful years of 1857 and 1858, when the greater portion of the North-Western Provinces of the Bengal Presidency was filled with violence, and outrages of every kind were being perpetrated therein with impunity, had been attributed in a great degree to the adoption of what he must consider this wise, prudent, and politic measure shortly after our acquisition of the Territory. In introducing Act XXVIII of 1857, the Honorable Mover of the Bill said—

"The Government of India had for some time past had under its consideration the state of the law relating to the manufacture and possession of arms and ammunition throughout India. The law as it stood at present was so far defective that, though it would admit of the seizure of arms, it gave no power to ascertain by which portions of the community arms were possessed, or to regulate the possession of arms, or to prevent their sale and manufacture. The object of

This Bill was to provide, as far as was possible, for all these purposes, by putting it in the power of the Government to regulate the importation, manufacture, and sale of arms and ammunition, and to know where they were kept, and the reasons and objects of their possession."

From these remarks it would be seen that, unlike some of the other special Acts which were passed in 1857, the Act in question had really not grown out of the events of that year, though its passing had been co-incident with them, and though equally with those Acts provision had been made for its remaining in force for a time only. It was no doubt quite right and proper that some of the special Acts referred to, should be temporary Acts only, and that they should not survive the necessity which had called them into existence; but the character of Act XXVIII of 1857 was very different, and there appeared to him (Mr. Harington) to be obvious and cogent reasons why that Act should remain in the Statute Book. One of the strongest arguments in favor of the continuance of the Act was to be found in the marked benefits which had followed the introduction of a similar measure into the Punjab, not for a time only but permanently, and he had no doubt that the law, if continued in other parts of India, would tend greatly to the diminution of crime, particularly of crimes attended with violence, and that it would prove very beneficial to the people at large. He would only add as a further reason for continuing the Act in force, certainly for some time longer, that, although in those places to which its provisions had been extended, an immense number of arms had been surrendered, the work had not as yet been nearly completed. The operation of disarming was still going on with great success. In other places again, from political or other reasons, it had not yet been commenced. If, therefore, the Act should be allowed to expire at the date fixed for its termination, the Government would not have it in its power to do any thing in the way of disarming the people in the places last referred to, while, in those places in which the Act was now in force, the local Officers would find themselves compelled suddenly to bring their labors to a close. This he thought would be

Mr. Harington

highly objectional and inexpedient, and in its consequences he feared it might prove very calamitous. For these reasons he hoped that the Council would give their consent to the Motion which he was about to make, and that they would further allow the Bill to pass at once through its remaining stages.

With regard to the provisions of Act XXVIII of 1857, he deemed it sufficient to remark that no legislative measure had probably ever been more carefully considered before it became law. On referring to the Debates of the time, he found that the Bill had been re-committed no less than twice previously to the third reading, and every Section appeared to have been fully discussed and weighed before it was allowed to stand as part of the Act. So far as he was aware the Act had worked well, and no modification of any part of it had been proposed or seemed necessary. With these remarks he begged to move that the Bill be now read a first time.

The Bill was read a first time.

FOREIGNERS.

MR. HARINGTON moved the first reading of a Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)." He said, the reasons which led to the introduction of the Act, to which this Bill related, would be found fully reported in the Volume of the Proceedings of the Council for November 1857, and it was unnecessary for him to occupy the time of the Council with a repetition of them. Happily the circumstances of the country were very different from what they were when the Act was passed, and there might not be so great a necessity for the Act now as there was then, but still it was considered that the time had not yet arrived when the provisions of the Act could be safely and properly dispensed with, and he trusted therefore that no objection would be made to the continuance of the Act in operation for the further comparatively short period of two years.

He did not know that he was required to say anything more on the subject, and he would therefore move the first reading of the Bill.

The Bill was read a first time.

JAMSETJEE JEJEBHOY ESTATE.

MR. LEGEYT moved the first reading of a Bill "for settling Promissory Notes of the Government of India producing an annual income of Rs. 1,00,000, and a Mansion-house and Hereditaments called Mazagon Castle in the island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him, and the heirs male of his body, by Her present Majesty Queen Victoria, and for other purposes connected therewith." He said that it would be in the recollection of the Council that a Bill, very nearly to the same effect as that which he was now bringing forward, passed through the Council last year, and was sent to England for the sanction of the Crown. A communication, however, was reported to the Council, on Saturday last, from the Home Department, forwarding a despatch from the Secretary of State for India, returning the Bill for the purpose of being remodelled, in consequence of the death of Sir Jamsetjee Jejeebhoy, which event took place in April last, and the Baronetcy descended to his son Sir Cursetjee Jamsetjee. Shortly after the death of Sir Jamsetjee, the Council had determined to abandon the old Bill, and had made a reference to the Government of Bombay, and through that Government to the present Baronet, requesting that the necessary steps might be taken for preparing a Bill to give effect to his father's wishes. Accordingly a Bill, suitable to the altered circumstances of the case, had been prepared and transmitted to him (Mr. LeGeyt); and this Bill, which seemed to him to supply all that was necessary, he now begged permission to read a first time.

The Bill would be printed and circulated, and he proposed, on Saturday next, to move the second reading, which, if agreed to, would be followed by a Motion to suspend the Standing Orders, so as to enable him to pass the Bill through its remaining stages, and ensure its transmission to England for the sanction of the Crown, which, owing to the Incorporation Section, was still necessary, by the Steamer which would leave Calcutta on the 23rd instant.

The Bill was read a first time.

SALT DUTY (BOMBAY).

MR. LEGEYT moved the first reading of a Bill "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)." He said, the object of this Bill was to raise the Customs Duty paid on Salt imported into that Island, from twelve annas to one Rupee per maund. The present scale of Duty was fixed by Act I of 1852, Schedule A, and assimilated with the Excise Duty paid on Salt manufactured within the Presidency of Bombay, which was levied under Act XXVII of 1837 and Act I of 1838. It had recently been determined by the Home Government that the present Excise Duty on Salt in Bombay should be raised from twelve annas to one Rupee per maund of 8½ lbs. It therefore became important that imported Salt, which did not pay Excise Duty in India, should be subjected to a Customs tax at an equal rate to the Excise charge; and this was provided by the Bill which he now had the honor to introduce to the Council. He might mention that the additional Duty was expected to raise the revenue by seven lakhs of Rupees per annum, namely, from twenty-one to about twenty-eight lakhs. The present Salt Duty was imposed in lieu of Transit Duties, Town Duties, and Mohturfa taxes, amounting to about twenty-seven and a half lakhs, which had been abolished; and the Revenue realized by the Salt tax had not yet amounted to twenty and a half lakhs, so that the proposed measure would not place a greater burden than that which had been formerly imposed. The Bombay Government were of opinion that the community could very well bear the additional impost, and that it would cause no diminution in the actual consumption.

The Bill was read a first time.

WATER-SUPPLY (KURRACHEE).

MR. LEGEYT moved the first reading of a Bill "to provide funds for better supplying with water the Town and Suburbs of Kurrachee." He said, this Bill was intended to provide funds for the construction of certain waterworks by which it was proposed to supply

the cantonment, town, and port of Kurrachee with good and wholesome water. It was mentioned by the Commissioner in Scinde, as would be seen from the papers which would be printed and annexed to the Bill, that there was at present a great deficiency of this most necessary article, and what was procurable was exceedingly inferior in quality, and indeed deleterious to health. This had for some time past been a crying evil, and several projects had been formed to remedy it, but which had from some cause or other come to nothing. Ultimately Sir Bartle Frere referred the whole matter to Captain De Lisle, and requested him to propose a plan for supplying Kurrachee with drinking water by pipes from the bed of the Mulleer River into reservoirs in the cantonment, town, and port. The plan proposed by Captain De Lisle, which would be printed and circulated for the information of the Council, had been approved by the local authorities in Scinde and the Bombay Government. The Commissioner in Scinde had proposed two modes by which funds might be raised for carrying it into effect. The first was that the Government should (as in the case of the Vehar Waterworks) advance the funds for the purpose to be repaid by the sale of water and a rate on property. The other was that the Municipality of Kurrachee should be empowered to borrow a sufficient sum for the completion of the work, and to impose special rates on real property which would provide for the re-payment of the debt, and also sell, in certain cases, water. The Bombay Government had, in reference to the present state of the public finances, proposed this latter course for raising the necessary funds.

He might mention that the Municipality of Kurrachee was constituted under Act XXVI of 1850, and that it consisted of the Collector as Chairman and a certain number of inhabitants as Municipal Commissioners.

The sum actually required was stated to be considerably less than ten lakhs of Rupees, but Sir Bartle Frere had recommended that the Municipal Commissioners should be authorized, subject to the sanction of the Governor of Bombay in Council, to borrow a sum of not less than ten lakhs, bear-

Mr. LeGeyt

ing interest at the rate of nine per cent. per annum, and that this sum should be re-paid by a tax on all houses and lands in Kurrachee, the cantonment, Glizree, Clifton, and Keamaree—these were suburbs of Kurrachee. He proposed a tax of two per cent. on the value of all houses and lands. This tax it was calculated would realize about one lakh and twenty-five thousand rupees per annum, and it was proposed that it should continue to be imposed till the capital borrowed was paid, and that it should be then reduced to a sum equal to keeping the works in repair and good order.

The Bill also provided for the assessment and collection of the tax, and for its recovery from those liable to pay.

He had proposed a Bill in a form very similar to that suggested by Sir Bartle Frere. It would be for consideration whether the mode proposed by that gentleman should be adopted in preference to that which had already been assented to by the Council in other places. This would doubtless be discussed when the Bill would come on for second reading, or afterwards in Committee of the whole Council, if the Council should allow the Bill to be read a second time. Kurrachee was a rising town, and a place of that sort to be stinted in water was a serious evil requiring immediate correction.

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

The Bill was read a first time.

PASSENGERS.

MR. LEGEYT moved the second reading of the Bill "to amend the law relating to the carriage of Passengers by Sea."

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

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved the second reading of the 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)."

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

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved the second reading of the Bill "for regulating the establishment and management of Electric Telegraphs in India."

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

ARMS AND AMMUNITION.

MR. HARINGTON, in pursuance of notice, moved the suspension of the Standing Orders, in order that the 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)" might be proceeded with. As he had already mentioned, the Act would expire on the 11th September next, and it was very necessary that this Bill should be passed without delay.

MR. FORBES seconded the motion.

MR. SCONCE said, he had no intention absolutely to oppose the Motion for the suspension of the Standing Orders, so that the Bill should not come into operation on the expiration of the present Act. But it seemed to him that the authority exercised by the Council of suspending the Standing Orders was being too often exercised, and that, as in the case of the Bombay Abbaree Act lately passed and the present Bill, the earlier introduction of the measures would have rendered it unnecessary to suspend the Standing Orders. In this case it seemed to him advisable not to carry out the measure without giving the Council an opportunity of deliberating upon it. Probably, therefore, instead of suspending the Standing Orders in order to carry the Bill through the Council to-day, he should be glad to know if the Honorable Member would object to the Bill being postponed for a week or fortnight.

MR. HARINGTON said, he would not object to postpone the passing of the Bill through its remaining stages to-day, provided it was allowed to proceed in sufficient time to admit of its becoming law before the Act to which it related expired. He wished, however, to observe that there was this difference between the present Bill and other recent Bills in respect of which the Standing Orders had been suspended,

that he was proposing nothing new, but merely a law to continue in force an existing Act which had been found to work remarkably well, and the provisions of which, before it became law, had been most carefully considered. Probably the Honorable Member for Bengal would have no objection to allow the Bill to be read a second time to-day, and to its being referred to a Select Committee, with instructions to present their report within a week.

MR. SCONCE assented.

SIR CHARLES JACKSON wished to know the principle of the Bill, and whether it applied to Europeans as well as to Natives.

MR. HARINGTON said that, if the Honorable and learned Judge would refer to the Debates of the Council under date the 5th September 1857, he would find the following remarks by the Honorable and learned Chief Justice of the day :—

"He entirely acquitted many of the critics of this Bill of having read it. For instance, he had seen a complaint that Europeans were to be compelled by it to take out a license to possess arms; whereas the Council well knew that the provisions to that effect had been struck out of the Bill some weeks ago."

The Act did not apply to Europeans, and it was not the intention of the present Bill to extend the scope or application of the Act.

The VICE-PRESIDENT said, with reference to the Honorable and learned Judge's enquiry, he thought that the Act did apply to Europeans. Section IV gave Magistrates the power of seizing Arms or Ammunition in the possession of *any* person in whose possession such Arms or Ammunition could not, in the judgment of the Government or of the Magistrate, be left without danger to the public peace; and Section VI empowered the Government to exempt any persons whom they thought fit from certain provisions of the Act. Unless, therefore, Europeans were so exempted, they would be subject to the provisions of the Act.

With reference to the general question now before the Council, it appeared to him that the Standing Orders should not be suspended in the manner proposed by the Honorable Mover. He thought that a preferable course even

to that suggested by the Honorable Member for Bengal would be that which was adopted by the Council when it was thought advisable to continue to the family of the late Nabob of the Carnatic the exemption which they enjoyed from the jurisdiction of the Civil and Criminal Courts. Upon that occasion a Bill for the purpose was introduced, and after it had been read a second time it was referred in due course to a Select Committee and allowed to be published so as to afford the creditors an opportunity of pointing out any objections which they might have to offer against the measure. In the meantime a temporary Act was passed continuing the exemption during the progress of the other Bill through the Council.

In like manner, as Act XXVIII of 1857 would expire in September, there would be no objection to suspending the Standing Orders with a view to passing an Act for extending that Act for three or four months, and the present Bill could then be proceeded with in the regular course, so as to give the public an opportunity of making known their opinions as to whether the Act should be made perpetual or not.

MR. HARINGTON said, after what had passed, he willingly acceded to the suggestion from the Chair, and if the Motion for the second reading of the Bill should be carried, he would move for a Committee of the whole Council with a view to his proposing the necessary amendments. At an early Meeting of the Council he would introduce a Bill to make Act XXVIII of 1857 perpetual, which, if allowed to be read a second time, would be published in the regular course, and an opportunity would thus be afforded to the public of urging any objections that they might think proper to it.

THE VICE-PRESIDENT said, no Member who should vote in favor of the extension of the Act for a few months would be committed to the principle of the Bill for making the Act perpetual.

SIR CHARLES JACKSON said, upon that understanding he would make no objection.

The Motion ws

MR. HARINGTON moved the second reading of the Bill.

The Vice-President

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

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

Section I being proposed—

MR. HARINGTON moved the omission of this Section and the substitution of the following :—

"Act XXVIII of 1857 shall continue in force until the end of the year 1859."

Corresponding amendments were made in the Preamble and Title, and, the Council having resumed its sitting, the Bill 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 James Outram be requested to take the Bill to the Governor General for his assent.

Agreed to.

CRIMINAL PROCEDURE.

On 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 Section 82 provided as follows :—

"The examination of witnesses by the Police shall be taken on the spot where the enquiry is held, in the presence of the Head Officer of a Police Station, or, in the event of his absence, in the presence of any Officer above the rank of a peon or burkundaz, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be transmitted to the Magistrate, as herein-after provided, under the signature of the Police Officer by whom the enquiry shall have been made."

MR. SCONCE said that this Section, as it now stood, proposed that the examination of witnesses by the Police should be taken on the spot. The question was thus raised generally as

to whether Police Officers should so far exercise judicial powers as to form a record of their investigations, without entering upon the broader question as to whether persons exercising primarily judicial powers should also exercise the powers of Police Officers. A Magistrate might be vested with the powers of controlling the subordinate Police, but the question arose whether Officers having the power of Detective Police should also exercise judicial functions. He thought it necessary that a distinct opinion should now be formed upon this question, and he could not help feeling, from the grounds suggested for the introduction of the Madras Police Bill now before the Council, which seemed to recognize a distinction between the system to be pursued in Bengal and the system to be pursued in Madras, that the full and fair consideration of the two systems could not be evaded. It was not because Police functions were under all circumstances incompatible with judicial functions that he proposed the amendment in this Section which he was now about to move, and he was free to confess that, in this respect, some considerable advantage did result from an early record being made of available information. Nevertheless, the first question which he conceived should now be disposed of, was whether men with the qualifications and character of ordinary Police Officers were competent to exercise the duty of examining and recording the examination of witnesses. So far as Bengal was concerned, this was a point on which he need hardly offer detailed proof of the operation of the present system. He expressed, he believed, the general conviction, that the records which the Police made up created the utmost distrust in the minds of our Judicial Officers. There might be occasions when the records were found useful. Nevertheless, there was a general impression of the unfitness and corruption of the Police, and unhappily in his own experience he had known districts in which it often seemed to him there could be no question of giving the Police more or less power, but rather of the quick and entire dispersion of the whole body. There might be not a few Police Officers, whose uprightness, moderation,

and high feeling, deserved fully to be commended. And as with men, so with districts. There might be good districts, as well as bad districts; but they could not deal with exceptions. He thought, therefore, that if a remedy were proposed with a view to restore confidence in Criminal investigations, it demanded their best attention.

He might ask the Council to refer to the clearly recorded opinion of the learned Law Commissioners in England upon the question. He would state shortly the conclusions on the subject to which they came. It was observed that—

“The evidence taken by the Parliamentary Commissioners on Indian Affairs in the Sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the Police are often abused for purposes of extortion and oppression.”

Again, it was said that, in spite of provisions in the law to prevent any species of compulsion or maltreatment, confessions were frequently extorted or fabricated, and it was added :—

“We are persuaded that any provision to correct the exercise of this power by the Police (that is, the power of taking the answers or confessions of persons under arrest) will be futile; and we accordingly propose to remedy the evil, as far as possible, by the adoption of a rule prohibiting any examination whatever of an accused party by the Police, the result of which is to constitute a written document.”

Such were the opinions expressed by the Law Commissioners in England. To show that similar opinions of the present state of the Police were still entertained here, he might mention that, in the course of last year, a correspondence passed between the Government of Bengal and the Commissioners of Police. In the course of that correspondence, the Commissioner of Burdwan remarked as follows :—

“He considers the Darogahs are very inferior in spite of increased salaries. The Darogahs of former days might have been equally corrupt, but under an active Magistrate they were more laborious and painstaking.”

That report was written, he believed, by Mr. Elliott, than whom probably none had larger experience.

The Commissioner of Bhaugulpore said—

"The institution of grades and other improvements are said to have raised the Darogah class; this may be the case in the districts near Calcutta; but in the remoter districts to which the Commissioner's experience refers, he sees no change."

And to a similar effect was the opinion given by the Commissioner of Chittagong.

He (Mr. Sconce) might also adduce as an instance a case reported in the Volume of Reports of the Sudder Nizamut Adawlut for the first quarter of the present year, of a murder committed in the 24-Pergannahs, within the suburbs of Calcutta. For many days the Darogah, who was deputed to enquire into the matter, had failed to detect the murderers. The Magistrate, dissatisfied with his proceedings, sent another Darogah to co-operate with the first, and the very next day two persons were sent up confessing to the crime. These confessions might, or might not, be true, but the consequence was that, when the case came on for trial, the proceedings broke down, and the utmost suspicion was expressed as to the conduct of the Police.

This was an every-day instance of the working of the present system. So far then it seemed to him that the power exercised by the Police was an incubus, and the Council might well consider the principles on which the law as it now stood was drawn. He would also say that the judgment of the Council upon this question seemed to him to be invited by the tenor of a despatch addressed by the Court of Directors to the Government of India in November 1857. In this despatch it was observed:—

"We suggested in our despatch, to which your present letter is a reply, the necessity of making material changes in the constitution and organization of the Police, and observed that a mere attempt at reform without such changes would be a serious error, and would bring about its own failure from the public and general conviction of its inadequacy to the great object in view. We trust that the higher rates of pay proposed to be given, and increased vigilance on the part of the superintending authorities, will lead to considerable improvements in the Police, but we would have wished for some more extensive change than any which either the Lieutenant Governor

Mr. Sconce

or yourselves have recommended in regard to its organization, which we cannot but fear will be open to the objections to which we formerly directed your attention."

Here then we had the apprehension expressed on the part of the Home Government, that a mere increase of salaries, unattended by other measures, would fail to give satisfaction. Certainly, larger salaries would be beneficial, and that benefit would not be lost by the adoption of the change which he now supported; and it appeared to him (Mr. Sconce) that the re-constitution of the organic functions of the Police was indispensable to success. In the murder case to which he had already alluded, the mischief attaching to the power of investigation vested in the Police, as regards the information of witnesses, was forcibly exhibited. In that case, two men were represented early in the enquiry as detailing to the Darogah how the so-called murderers had openly declared to them that they had done the deed. But the Sessions Judge, apparently discrediting their testimony, declined to examine them. It was shocking to our better sense to employ agents whose want of rectitude enabled them to coerce prisoners into confessions. This was bad enough if the confessions were true, but the iniquity was infinitely magnified if the confessions extracted were false. Thus it seemed to him that it was nothing but fair to conclude that the same systematic unscrupulousness which induced the Police to fabricate confessions would induce them to fabricate depositions. But it should be understood that he did not by any means, for the first time, suggest this change in the law. In 1847, the Sudder Court at Calcutta recommended a similar measure. On that occasion Mr. Tucker in his Minute observed that—

"He would not allow the Darogah to record a single deposition except that of the prosecutor; he should question witnesses verbally and class them accordingly. In like manner, prisoners should be simply asked to plead, and their reply, 'guilty' or 'not guilty,' recorded."

On the same occasion, Mr. Welby Jackson expressed his opinion as follows:—

"The Police should not be allowed to take down in writing any deposition or confession

whatever. After twenty-five years' experience I place little or no confidence in the depositions or confessions recorded before the Police. The confessions, even when true, are generally extorted, and the depositions are warped so as to answer the purpose the Police have in view."

Mr. Hawkins's opinion was not carried to the same extent, but he even said "no depositions of witnesses need be recorded; only a note of the leading facts to which they depose"; and the recommendation which was made in the letter of the whole Court addressed to the Government was to the following effect:—

"The reports of the Darogah should be dispensed with; nor should inquests be held by them except in offences of a heinous nature, or in cases of violent death. They should not be permitted to record any depositions of witnesses, which should first be taken by the Magistrate; nor would Messrs. Dick and Jackson allow them to put any questions by way of cross-examination to the accused. They should merely report the nature of the case, the names of the parties sent in, and the purpose of sending them: their opinion should in no instance be recorded."

So there was the deliberate opinion of the Sudder Court in 1847, that the Police should not put on record their proceedings, and that witnesses should for the first time be examined before the Magistrate.

He did not deny that, in some respects, a recorded statement of the facts deposited to by witnesses might be useful. But practically the system worked as follows. There were cases no doubt in which the statements recorded by the Police tallied with those recorded by the Magistrate. In such cases public justice would lose nothing by the proposition which he now had the honor to make. There might be instances where the Police did not feel or display any personal interest, but if nothing was gained, nothing was lost by dispensing with Police records. On the other hand, a witness might deny the words put into his mouth, but if those words were originally untrue, it could be no matter of regret if the truth were eventually spoken; whereas, by requiring a witness to adhere to a false statement, the life, liberty, and property of an innocent man might be imperilled. But even on the supposition that the statement of a witness was true as recorded

by the Police, it appeared to him that the law could not undertake to bind an unwilling witness to adhere to the statement which he was said to have made. Justice, as they all knew, was said to be blind, but law might equally be said to have no knowledge of facts. The statement of facts must be thrown on the conscience of parties. The sense of truth was the only legitimate source of constraint; and in fact the law would act as illegitimately as the Police were supposed to act, if it coerced men's words and put into their mouths language which it took, without foundation, to be true.

But, again, the statements made by the Police were in themselves not worth having. They were taken hastily, carelessly, and incompletely, and in the end it might often be found unfair to a witness, and injurious to the administration of justice, to make an estimate of the evidence eventually taken depend on the insufficient record of the evidence originally taken by the Police.

Another objection which in his mind weighed considerably against the adoption of the Section now under discussion was that in very many instances the enquiries made into the commission of a crime would be undertaken by the subordinate grades of Police Officers, by any indeed between a Burkundaz and a Darogah or Head Police Officer; and so it followed that, whatever confidence we might repose in selected men of the highest grade, we could not have the same security in the trustworthiness of the proceedings of more subordinate officers.

So far as Bengal was concerned, the large increase of the number of Deputy Magistrates throughout the Province seemed to afford better means of securing the earliest record of the answers of prisoners and the information of witnesses. These officers were now stationed in the interior of districts in considerable numbers, every Deputy Magistrate being in charge of three or four thanuas. In fact, in matters of internal organization, Magistrates were more wanted than Police Officers, and it seemed to him to be a question well worthy of consideration, seeing that the present system had, after a full and long trial, failed of success, whether the opportunity might not now be taken

of allowing judicial investigations to a large extent to take the place of examinations by Police Officers.

With these remarks he begged to move the omission of Section 82 and the substitution of the following—

"It shall be lawful for the Head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case; but the statement made by the person so examined shall not be reduced to writing so as to constitute the deposition of the witness and shall not be signed by him."

MR. LEGEYT said, he had not given notice of an amendment, for he knew that his Honorable friend on his left (Mr. Sconce), who was better able to deal with the subject, had undertaken to propose a Section in substitution for that now under consideration. He (Mr. LeGeyt) had objected to the Section in Select Committee, and he held strong opinions on the subject. His opinions coincided with those of the Honorable Member. He did not believe that the examination of witnesses was a part of a Policeman's business. If a Policeman were to sit down upon every occasion to examine a person supposed to be acquainted with the facts and circumstances of the case, it would be impossible for him to attend to the active duties of his office. Thief-catching and judicial enquiry were totally distinct duties. He apprehended that the legitimate duty of a Policeman, upon receiving intimation of the commission of a crime, was to make rapid enquiries with a view to the detection of the perpetrators of that crime. Upon apprehending the persons whom he had good reason to suspect of being the perpetrators, he should be obliged to send them up without delay to the Judicial Officer, together with such persons whom he knew could give evidence in the case. The way in which, in the course of his (Mr. LeGeyt's) experience, he had seen Policemen conduct investigations, had strengthened his opinion on the subject. The Code of Criminal Procedure in Bombay generally contemplated the apprehension of offenders by the Village Police. The duty of the Village Police was to give immediate notice to the nearest Judicial Officer that he might commence a judicial investigation. There had been in-

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stances where more extensive powers had been entrusted, and improperly entrusted, to the Police, and sad results had ensued from the abuse of those powers. It was difficult enough to prevent Judicial District Officers from exceeding the limits of their proper duties in holding these investigations. But this Section, it appeared to him, proposed to give every Police Officer, that is, as he (Mr. LeGeyt) supposed, every Village Police Officer above the rank of a mere Chowkeydar, the power of holding a judicial investigation, and of taking written evidence to be used thereafter on the trial of the accused. He would not detain the Council by going at great length into the details of the question, but he would just make a few observations on the principle involved in it. He desired to separate the functions of the Executive from those of the Judicial Police. He desired to see the Executive Police well organized and well supervised, and instructed in the discharge of their duties, and he would allow them to exercise no judicial functions whatever. If this were done and fully kept up to, he believed there was no reason why this country should not enjoy the benefit of a good and efficient Police. But if the duties of the Police were half judicial and half executive, the oppressions so long complained of would never be done away with. He believed that one great argument for requiring Policemen to take down a statement of the information obtained by them was that what they first took down was more likely to be true than what they might afterwards give in as evidence. It might be so, but if such a power was given to them, what was there to prevent them from delaying their proceedings till a story had been concocted, and then to bolster up a case with fictions and inventions of their own. He knew this had been done; he wished to prevent the possibility of it; he had no confidence either in the depositions or confessions made to the Police. He remembered a remarkable case in which some prisoners were brought before him for trial in a Session Court on a charge of murder and thuggee by an Assistant Superintendent in that Department. The chief evidence against them was that of the Officers of the Department and their own confessions taken by the Officers

of that Department. These prisoners, on being placed at the bar of the Session Court, had pleaded guilty. Their confessions handed up by the Superintendent of Thuggee, who was a Magistrate, were read over to them and confirmed by them. This, according to the law in force, was sufficient for conviction; but before recording a verdict he had thought it right to hear a Medical Officer's evidence as to a quantity of bones which had been produced in Court. The prisoners in their confessions stated these bones were those of individuals whom they had murdered and buried, and which were pointed out by them to the Thuggee Officers and disinterred. The English Medical Officer however swore that not one of the bones was of a human being! He (Mr. LeGeyt) of course questioned the prisoners, who then said that it was quite true they had committed no murder and knew nothing of these bones; but they had, in obedience to the Thuggee Officers, stated what they had written, and their motive was that, being in custody on suspicion, and having no chance of getting out, they were promised to be made approvers if they submitted to be convicted as murderers. His (Mr. LeGeyt's) belief was that the course of justice would run more smoothly and clearly if the Police were restricted to their proper duties, and properly and strictly supervised in the performance of them. The Stipendiary Magistrates were the fitting and proper persons to sift cases and arrange the evidence, and this, it was plainly seen, was the intention and plan of the Law Commissioners in England who framed the Code. He had hailed those sections of the Code which separated the Police from judicial investigations with much satisfaction, and had opposed their alteration in the Select Committee of which he was a Member. He should continue that opposition as long as he could bring it to bear, and with much satisfaction supported the amendment of the Honorable Member for Bengal.

MR. HARINGTON said, the Section now under consideration had nothing whatever to do with confessions. It related entirely to the examination of witnesses by the Police. There

might be a convenience in considering this Section and the Section which related to Thanna confessions together, as had been done by the Honorable Members for Bengal and Bombay; but he proposed to confine himself for the present to the Section before the Council.

He wished at the outset of his remarks to correct a mistake into which the Honorable Member for Bombay had fallen. The Honorable Member said, that Her Majesys's Commissioners had set their face against the examination of witnesses by the Police just as much as against the Police being allowed to reduce into writing any confession or admission that might be made to them by an accused party. So far, however, from this being the case, the Section under consideration had not been introduced into the Code by the Honorable and learned Mover of the Bill, nor by the Select Committee to whom the Bill was referred in the regular course, but by Her Majesty's Commissioners themselves. The Honorable Member for Bengal had referred to the notes of Her Majesty's Commissioners on this part of the Code, but he had omitted to read that part of those notes which related to the powers to be exercised by the Police under the Code in their preliminary investigation of a case. With the permission of the Committee, he (Mr. Harington) would read the parts which the Honorable Member for Bengal had passed over. Her Majesty's Commissioner said:—

“The Police in the Provinces of Bengal are armed with very extensive powers. They are prohibited from enquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the Police Darogah, who is authorized to examine the complainant, and to issue process of arrest, to summon witnesses, to examine the accused, and to forward the case to the Magistrate, or submit a report of his proceedings, according as the evidence may, in his judgment, warrant the one or the other course.”

Then came the sentence just quoted by the Honorable Member for Bengal:—

“The evidence taken by the Parliamentary Committees on Indian affairs during the Sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the Police are often abused for purposes of extortion and

oppression; and we have considered whether the powers now exercised by the Police might not be greatly abridged."

The Honorable Member for Bengal omitted the next sentence and plunged at once into the following paragraph, which related to confessions. In the sentence which the Honorable Member had omitted to read, Her Majesty's Commissioners proceeded to observe :—

" We have arrived at the conclusion that, considering the extensive jurisdiction of the Magistrates, the facilities which exist for the escape of parties concerned in serious crimes, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the Police with some such powers as they now possess; and we have accordingly adopted many of the provisions of the Bengal Code on this head."

That was what Her Majesty's Commissioners had determined upon doing after full consideration and after taking evidence. They proposed that the Police should be allowed to examine witnesses as at present, but having given the Police this power, it never entered into their imaginations that the Police could be safely entrusted to exercise it, or indeed that it would be proper to invest them with it, unless they were at the same time required to record the examinations which they took; and Her Majesty's Commissioners accordingly introduced the Section now objected to. This was followed a little farther on by another Section, which provided that—

" In all cases, in submitting his proceedings to the Magistrate, the Darogah shall forward the statement of the person complaining, and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of the evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the Magistrate. The Darogah shall further state whether he has forwarded the accused, or released him on bail or on his own recognizance."

Then came a note which said—

" Much has recently been done towards the improving of the mode of recording the proceedings of the Police in the investigation of

criminal cases. Much, however, still remains to be done. The unnecessarily voluminous mass of papers frequently sent by a Darogah to a Magistrate may be greatly reduced by a careful supervision, and by enforcing a strict adherence to the rules laid down for the guidance of the Police. The report of the Darogah, which is not evidence in the case, may safely be limited to the particulars noted in this Article."

Here then they had, first, the procedure to be followed by the Police in their preliminary investigation of a case, which Her Majesty's Commissioners had recommended, then their reasons for that recommendation, and then the form of the report which the Police were to send in to the Magistrate in every case; and it was worthy of remark that, so far from the Select Committee having proposed any addition to the report to be made by the Police, they had done just the contrary, and instead of requiring the submission of the detailed depositions taken by the Police, all that the Section as amended by them directed was that the substance of the information obtained from the witnesses as reduced to writing should be forwarded.

Now the Honorable Member for Bengal, as far as he (Mr. Harington) understood the Honorable Member's amendment, had no intention of taking away one atom of all the very large powers which it was proposed to give to the Police. On hearing of the occurrence of a crime, they were to go to the spot, to apprehend the party or parties accused or suspected, to collect and examine the witnesses, and to send in the complainant and the accused with the witnesses to the Magistrate. But they were not to record any thing. The record was what the Honorable Member for Bengal objected to. The Police might exercise almost any amount of power, provided they had not recourse to pen, ink, and paper. These were the weapons in the hands of the Police of which the Honorable Member for Bengal was afraid. But, no, he was wrong; for, on referring to another of the Honorable Member's amendments, he found that the Police were to write something. The amendment referred to stated :—

" In all cases the Head Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which

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the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation."

But if the Police were unfit to be trusted with pen, ink, and paper for the purposes mentioned in Sections 82 and 87 of the Bill as now framed, how could they be trusted to do what the Honorable Member's amendment would require of them? That, however, was not all; the amendment proceeded:—

"During the progress of, or at the completion of, an enquiry, the Head Officer of Police shall forward to the Magistrate the statement of the complainant or other information, and shall set forth in a report the names of the parties, the nature of the offence, and a list of the witnesses bound over to appear, together with a brief indication of the points to which the evidence of each relates."

The Police were to be allowed to do all these things, but they were not to be allowed to reduce to writing on the spot the examinations taken by them. What, he would ask, did the Honorable Member for Bengal mean by an indication of the points to which the evidence of each witness related? What might, and what might not, be comprised under this word "indication"? It certainly appeared to him that Honorable Members who, like the Honorable Member for Bengal and the Honorable Member for Bombay, went so far as to say that the Native Police were unfit to be trusted to the extent mentioned in the Code, should go farther and say that they were not fit to be employed at all. It certainly appeared to him that, if the proposed amendments should be adopted, the Police would have all the powers which they now possessed, and that the principal, if not the only, check which existed against their abuse of those powers, would be removed. He had lately asked the Chief Commissioner of Police in Calcutta what he thought of the proposed amendments by the Honorable Member for Bengal, and whether in his opinion what was called the Thannah record could be safely dispensed with. His answer was—"Certainly not—if you take away the record, you deprive yourself of your only check upon the Police." He had put the same question to a very intelligent Punjab

Officer who was staying with him, and had received from him the same answer.

The Honorable Member for Bengal had referred to a case which he (Mr. Harington) thought supported his view. The Darogah whose duty it was to make the preliminary investigation in that case appeared to have acted honestly and properly, but the Magistrate, dissatisfied with his proceedings, sent another Darogah with orders to discover and send in the guilty parties, which, as a matter of course, led to the results which followed. Whose fault was that? It was not the fault of the system, it was not the fault of the Police, it was the fault of the Magistrate. So far, therefore, from the case cited favoring the view of the Honorable Member for Bengal, it appeared to him (Mr. Harington) to make just the contrary way. If Magistrates, instead of driving their Police into irregular proceedings or acts of oppression and violence, by issuing injudicious orders, such as the one to which he had just referred, and he had seen many such orders, made proper allowance for the great difficulties by which the Police were often surrounded, and at the same time exercised a careful and vigilant supervision over them, much of the improper conduct of the Police now complained of would cease. He was not prepared to say that there was not great ground for complaint against the Native Police, but he firmly believed that they were not nearly so bad as they were represented.

The Sudder Courts at Calcutta, Madras, Bombay and Agra, had not objected to the Section now under consideration. The late Honorable Member for Bengal was entirely in favor of it; as already noticed, it was introduced into the Bill by Her Majesty's Commissioners. One of these Commissioners was Mr. Hawkins, to whom the Honorable Member for Bengal had referred, as holding the same opinion as himself, and it certainly appeared to him (Mr. Harington) that, with this array of witnesses in favor of the Section, they would act most unwisely if they struck it out of the Bill, and substituted the amendment proposed by the Honorable Member for Bengal for it. He must say that Honorable Members who, while they were willing that the Police should

continuc to exercise all the large powers with which they were now invested, refused to allow them to record any thing, because in their judgment no reliance could be placed on any thing that they wrote, would swallow a camel and strain at a gnat—would gulp down an elephant and be strangled by a flea.

For these reasons he should oppose the amendments proposed by the Honorable Member for Bengal and the Honorable Member for Bombay.

SIR CHARLES JACKSON said, he would confine his observations to the question which was now before the Council, namely, whether Section 82 should be omitted. Now what did that Section propose? It provided that

"The examination of witnesses by the Police shall be taken on the spot where the enquiry is held, in the presence of the Head Officer of a Police Station, or, in the event of his absence, in the presence of any Officer above the rank of a peon or burkundaz."

That is to say, a Darogah or Jemadar might hold this enquiry, and not only do that, but also decide what evidence should be recorded, and what rejected, for the Section proceeded—"and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer," (which he, Sir Charles Jackson, thought would be some protection against his fabricating evidence,) "but in that of a brief narrative, which shall be transmitted to the Magistrate, as hereinafter provided, under the signature of the Police Officer by whom the enquiry shall have been made."

THE CHAIRMAN said, he confessed he thought the Section proposed by the Honorable Member for Bengal was preferable to the Section now before the Council. He would, however, read to the Council an extract from a report by Mr. Spankie, the Magistrate of Saha runpore, on the subject of the investigation and record by Thannah Officials. Mr. Spankie said:—

commencing the investigation, but the same might be said with respect to the Magistrates in England and the Presidency Towns. If that were the object of this Section, it would save the Magistrate but ten minutes' labor. The report or statement of the Police Officer either meant something or nothing. If it meant something, it was most mischievous in its nature, inasmuch as it gave the Police Officer the power of fabricating evidence, and did not ensure his cross-examination with respect to it. If it meant nothing, it might well be dispensed with. It certainly appeared to him that, if the Magistrate thought this evidence necessary, he should examine the Darogah himself, and not receive his written statement.

MR. HARINGTON said, the Thannah record could scarcely be regarded in the light of secondary evidence, in fact it was no evidence at all, though it was often found of the greatest use to the Magistrate, the Sessions Court, and even the Nizamut Adawlut, and provided a most valuable aid to them in their endeavors to get at the truth. In Calcutta, the place where a crime was committed was always within a comparatively short distance from a Magistrate's Court; but in the Mofussil, the Magistrate's jurisdiction extended over immense tracts of country, and their Courts were often at so great a distance from the place of the occurrence of an offence, that it would be an impossibility for the Magistrates to make the preliminary investigations which now of necessity devolved upon the Police.

THE CHAIRMAN said, he confessed he thought the Section proposed by the Honorable Member for Bengal was preferable to the Section now before the Council. He would, however, read to the Council an extract from a report by Mr. Spankie, the Magistrate of Saha runpore, on the subject of the investigation and record by Thannah Officials. Mr. Spankie said:—

"Before finally concluding this report, I would take the opportunity of once more recommending the complete withdrawal of all power of interference on the part of the Police Darogahs in the conduct and trial of Criminal cases. No reform will be more complete than one which would do away with the written investigation by Police Officers, and

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none will be more thoroughly appreciated by the people. There would be no difficulty in arranging this reform, still less will impunity in crime be the result of it. The Police will not be the less bound to make their enquiries, and to investigate suspicious cases or charges of heinous crime. All that is recommended is that they should abstain from recording in writing the result of their enquiries, or put words into the mouths of witnesses which they never spoke, or suggest clues or motives designedly offered to mislead the European Officer."

He then suggested that—

"In lieu of the kyeuts, which, in spite of the Nizamut Adawlut's orders, in spite of fines and threats from the local officers, still run their own length in every case, or at any rate claim a course to which they are not entitled—I would have a simple form like the following, sent with the prisoners from the Mofussil Police Officers."

On the whole, he (the Chairman) was of opinion that it would be better to put a stop altogether to the recording of evidence by the Police. He would allow only the names of the parties accused and of the witnesses to be forwarded to the Magistrate. He would also allow the Darogah to send a short statement of what each witness was expected to say; but he would not allow Darogahs to send up any depositions which would, as it were, bind witnesses to prove the facts recorded for them.

After some further discussion, the question was put that all the words after the word "burkundaz" in line 7 be omitted, and the following words substituted for them—

"It shall be lawful for the Head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case, but the statement made by the person so examined shall not be signed by him or treated as part of the record, or forwarded or used as evidence."

Agreed to.

MR. HARINGTON moved that the following proviso be added to the Section:—

"Provided that nothing in this Section shall preclude such Head or other Officer of Police from reducing to writing the statement made by any witness."

After some conversation, the Council divided—

Ayes 4.	Noes 3.
Mr. Forbes.	Mr. Sconce.
Mr. Harington.	Sir Charles Jackson.
Sir James Outram.	Mr. LeGeyt.
The Chairman.	

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

Section 83 provided as follows:—

"No Police Officer or other person shall offer any inducement to an accused person by threat or promise, or otherwise, to make any disclosure or confession, but if any disclosure or confession is voluntarily made by an accused person, it shall be reduced to writing and attested by two or more persons, not being Officers of Police, in whose presence it is made."

MR. SCONCE moved the omission of this Section and the substitution of the following:—

"It shall not be competent to a Head or other Officer of Police to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make."

MR. LEGEYT said, he had placed on the paper an amendment of Section 83, which he preferred to that proposed by the Honorable Member for Bengal, though it was the same in principle and not very different in effect.

He (Mr. LeGeyt) wished to abolish the system of extracting confessions by the Police, that is, he would prevent the Police from extorting either by threats or actual violence, or by cajolery and false promises of pardon, admissions of guilt from persons whom they suspected of crime.

The system of obtaining these confessions seemed universal in India. In short, they were the only sort of evidence a native policeman seemed to think necessary.

He did not know upon what principle such a system could be defended. It had led to the most cruel and frightful torture being inflicted on persons, he feared, innocent as well as guilty. It made the policeman idle, brutal, careless, and kept him from even learning what his duty really was—instead

of hunting out crime, he considered his duty was to get a confession.

He (Mr. LeGeyt) did not, however, think it necessary to absolutely forbid a confession being received by a policeman, and on this principle he had provided in his amendment for the policeman writing a note of what he had heard and sending it up with the report of the case to the Magistrate. He also thought it quite proper that a policeman who had heard a prisoner confess should, in the proper way, depose to what he had heard, and for the purpose of refreshing his memory he should be allowed to use the memorandum or note just mentioned. The policeman so depositing would be subject to cross-examination, and he did not think there would be much danger of his swearing falsely under such circumstances : and if he did, detection would be very probable—nay, he thought, almost certain. Something had been said about the improbability of a policeman going up with a case to the higher Court. Now he (Mr. LeGeyt) would admit of no such impossibility, and no case of any importance should ever be sent up to a higher Court which was not placed, as it were, in the charge of some Police Officer who knew it from its commencement, and would be able to assist the Magistrate or Session Judge in the investigation. This he did consider the duty of the Police, and a legitimate duty perhaps of the higher ranks of the Force, but still it was one necessary to be performed. He had heard with satisfaction that day, that Magistrates were now spread over the country in Bengal, so as to be tolerably near every part of a district. Such Officers in the shape of Mamlutdars and Tehseeldars had always, or at least for many years past, been stationed all over the Zillahs in the Presidencies of Bombay and Madras, so that it really was no drain on the Police to oblige an Officer to go up with an important case at least to the Magistrate. If he went there, and was an intelligent man, he thought he would be pretty sure to be sent on with the case to the Session Court, and it ought to be so.

With these remarks, he begged to move as an amendment the omission of only the latter part of the Section commencing with the words "but if any

disclosure," and the substitution of the following :—

" But if any disclosure or confession is voluntarily made in the presence of any Police Officer, it shall be competent to such officer to note down in writing the substance of such statement, and to forward it with his report of the case to the Magistrate as hereinalter directed."

The question was then proposed that the latter part of the Section be omitted.

MR. FORBES said, he looked upon this question as one of great importance, and perhaps throughout this whole Code of Criminal Procedure there was no question on a right decision of which the good or bad Police administration of the country would be more dependent than the one now before the Committee. He was, therefore, very unwilling to give a silent vote upon it, but he would state his views and opinions as briefly as he could.

The Honorable Member who had moved this amendment appeared to be of opinion that, if the Section as it now stood in the Bill became law, the Police would endeavour to obtain confessions from persons by violence, and that many of the confessions so obtained would be false, and these evils the Honorable Member hoped to obviate, not by prohibiting the Police from receiving a confession, not by declaring that no confession made before the Police should be received in evidence, but by enacting that no confession made before the Police should be recorded. Under the Honorable Gentleman's view, a confession might still be taken by the Police and might still be received against the accused in evidence ; only, instead of being given in the words of the prisoner who made it, it was to be given in the words of the burkundaz who heard it.

Now it certainly did appear to him, that not only would this be very unfair to the accused person, but also that it would be wholly inoperative in attaining that end of freedom for the accused from all ill-usage, which all persons in common with the Honorable Gentleman earnestly desired.

Now, as regards the first point, he thought that there were many advantages in obtaining the prisoner's story in his own words. When apprehended he was to a certain degree taken

unawares, and had no time to arrange his story so as to suit his own ends ; he had not become possessed of facts which would teach him what he had better suppress, or what he had better invent in order to remove impossibilities, or improbabilities, or contradictions. Then, again, it was surely most unjust to the prisoner, and in every way objectionable, to allow the evidence of his statement to depend upon what the memory or the inclination of a Police burkundaz might lead him to depose to. The expressions of the accused would be very probably misrepresented, criminating admissions only remembered, while circumstances giving a key to the whole matter, and removing all suspicion, would be omitted. If a confession was to be received in evidence, as the Honorable Gentleman himself was willing that it should be, he was at a loss to conceive on what principle of justice it was that hearsay evidence of that confession was to be preferred to the very words in which it was given.

Then, as regards the second point, as to whether the extortion of confessions would be prevented by precluding their being recorded, he was equally at a loss to see what bearing the one had upon the other. Confessions were not obtained to be used as direct evidence against an accused person, and even if they were, extortion would not be prevented by merely enacting that no confession should be recorded. But supposing that confessions were obtained only for the sake of the direct evidence they would afford of guilt, every Police Officer who extorted a confession must suborn two witnesses to prove it to have been voluntary ; and he asked, if it were likely that the Officer who had no scruple about suborning witnesses to an extorted confession, would take the trouble and run the risk of extorting a confession at all, when fabricating it would save him all trouble and all risk ? The fabrication demanded no more perjury than the extortion, while it was easier, quicker, and less liable to detection.

The chief motive for endeavoring to obtain a confession was not the wish to use it as direct evidence of guilt, but the desire to recover stolen property, or to obtain some clue to the discovery of a crime ; and merely forbidding Police

Officers to record confessions would have no effect whatever in preventing them from extorting them. Whether a confession be recorded or not, the motive for obtaining it remained the same, and whoever, for the sake of finding stolen property or obtaining a clue to a crime, would extort a confession which he might record, would, for precisely the same object, extort a confession which he might not record.

He would suppose a case in elucidation of his point. A Police Officer extracted from a prisoner by torture a confession of where certain stolen property was concealed, his confession was recorded, and two witnesses were suborned to prove the confession and the discovery of the stolen property to have been voluntary. Now, if the confession could not be recorded, the only difference would be that witnesses would be suborned to prove a verbal confession and discovery of stolen property to have been voluntary, and he would ask the Honorable Gentleman what practically good result would have been attained by the change ?

It was quite clear that Police Officers must be permitted to question persons on their apprehension as regards their names and places of abode and any suspicious fact. To abolish this would be to give almost an impunity to all crime of which there were no witnesses. The only question therefore was—should they trust to oral evidence of the accused's statement, or have it reduced to writing in his own words by the first superior Police Officer before whom he might be brought ? It was argued apparently, that we ought not to admit the written confession, because we could not trust the honesty of the Police by whom it would be reduced to writing ; but we must remember that the written confession would be taken only by a superior Officer of Police, while the oral evidence of confession, which it was said we were to admit, would be given by a common burkundaz ; so that in fact the argument resolved itself into the exact reverse of what had been pressed upon the Government by all public Officers for many years past. They had all been saying that, in order to raise the character of their native servants for honesty, it was essential to raise their salaries. In the present

proposal, however, the rule would be that the lower the pay the greater the honesty, and that the burkundaz might be trusted when his superior officer might not. He had himself no doubt that both for the elucidation of truth, and as a matter of justice to the accused, confessions should be recorded, and he should unhesitatingly vote against the present amendment.

SIR CHARLES JACKSON said, the question was simply whether the latter part of the Section should be omitted or not. There was a great omission in it, inasmuch as it contained no provision requiring the confession to be signed by the party making it. In the next place, it provided no sufficient safeguard for the correctness of the confession, for it was undeniably true, and he made this assertion after an experience of eleven years in the Presidency Towns of Bombay and Bengal, that to the Police there was attached a large excrescence of goindas or spies, and, in most cases, the two persons by whom confessions were to be attested under the provisions of this Section would be these goindas or informers, who were not a class of beings calculated to give credit or respectability to any transaction with which they were mixed up. The Honorable Member for Madras said that confessions were not sought for by the Police. That was a mistake, for the more convictions they obtain, the surer their promotion. There was unhappily little doubt that the Police obtained their confessions by threats or violence, and that, as a general rule, confessions were thus obtained; and though it seemed somewhat startling in principle to say that an apparently voluntary confession should not be received, yet he (Sir Charles Jackson) thought that they must legislate with reference to the clearly ascertained character of the Police and people, and bearing in mind the universal conviction that prevailed as to the mode in which confessions were obtained by Native Policemen, he was of opinion that some check should be placed on the admissibility of such confessions, and, as he had mentioned last Saturday, that no confession should be received unless made before a Magistrate.

Mr. Forbes

MR. HARINGTON said, the first objection taken by the Honorable and learned Judge opposite (Sir C. Jackson) to that part of the Section which it was proposed to omit, was that it did not require that a confession or admission made by an accused party to the Police, and reduced by them to writing, should be signed by the party making it. He believed he was correct in saying that all confessions now made, whether at the Thannah, or before the Magistrate, were required to be signed by the parties who made them, and he had certainly no objection to the continuance of the practice, but the contrary. If the party could write, he should be required to affix his signature to the confession, but if he could not write, he should be required to make his mark. This would meet the first part of the Honorable and learned Judge's objections to the Section as it stood, but the Honorable and learned Judge went on to say that, in most cases, the two persons by whom, under the Section as now drawn, confessions would be attested, would be goindas or informers. Did the Honorable and learned Judge suppose that Magistrates would be so careless, so indifferent, so supine as to allow this? He (Mr. Harington) felt sure that it would not be allowed in the Supreme Court, and he was equally sure that it would not be permitted in the Mofussil. It had been incidentally mentioned at the last Meeting of the Committee, that a perwannah had been addressed to a respectable landholder, requiring of him to appoint persons to attest Thannah confessions. In the course of the week, he (Mr. Harington) had had an opportunity of seeing this document, and he found that it directed the appointment of persons to attest confessions, not at the Thannah, but in the Magistrate's Court. No doubt the requisition was very improper, but if any legislation was to be based upon it, it must be to put a stop, not to Thannah confessions, but to confessions before the Magistrate also. Were Honorable Members who supported the present Motion prepared to go that length? Were they prepared to say that, because a young Deputy Magistrate had issued an injudicious order of this nature, no Magistrate should be allowed to receive or record a confession? If this were done, he

(Mr. Harington) thought the interests of justice would greatly suffer.

It appeared to him that, in considering the question before the Committee, they must also consider the amendments proposed by the Honorable Member for Bengal and the Honorable Member for Bombay. Before agreeing to the omission of the words proposed to be struck out of the Section under discussion, they should know exactly what words were to be put in. He agreed generally in what had fallen from the Honorable Member for Madras in respect to both amendments. If they could not trust the Police to record confessions made before them, he did not see how they could, with any show of consistency or justice, trust them to record the substance of what the accused party had said, much less to supply what was not recorded by oral testimony, which was the proposition of the Honorable Member for Bombay. If the amendments of the Honorable Member for Bombay were adopted, he (Mr. Harington) thought they would operate most unfairly to the accused, and if the amendments of the Honorable Member for Bengal were adopted, he thought that, in practice, they would prove most injurious to the cause of justice. He preferred the Section as it stood, and should vote against any alteration of it.

SIR JAMES OUTRAM said, he understood that the confessions made to Police Officers would not be used as legal evidence against the accused. He differed in opinion with those who said that *all* Police Officers could not be trusted. So far as the lower class of Native Police functionaries was concerned, he was quite ready to admit that no trust whatever could be placed in them, for, if interested in so doing, they would have no scruple to record confessions very different from what might have really been confessed to, and very different from what the parties might afterwards be willing to swear by. Under these circumstances, he would vote against the latter part of this Section, which would admit of confessions being taken by the lower class of the Native Police, even if attested as proposed, aware as the Council was how such attestations were obtained.

THE CHAIRMAN said, he thought that the latter part of this Section ought certainly to be omitted. The Honorable Member for Madras had remarked that, if the amendment of the Honorable Member for Bengal were adopted, confessions would continue to be taken by the Police, and to be received in evidence against the accused, only they would not be recorded. It seemed to him (the Chairman) that, in this country, it would be safer to enact that no confession before a Police Officer should be used in evidence against the accused. The object, however, of having two attesting witnesses was to prove that the confession was made; but they could not shut their eyes to the fact that, in spite of all prohibitions, threats and in some cases even torture were resorted to by the Police for the purpose of extorting confessions. A confession might be extorted by threats or by actual torture before the accused was brought into the presence of the witnesses, who in such case would know nothing about it, and yet might prove that they heard the confession made. Whether torture were used or not, the accused might have reason to apprehend that he would be put to torture unless he confessed. Even if the attesting witnesses were in other respects above all suspicion, the very fact of the confession being made at a Police Thannah ought to exclude it from being received in evidence. According to English law, a confession could not be received in evidence if made under the influence of hope or fear. He thought it might be safely assumed that a large majority of confessions made to the Police or at a Police Thannah were, to say the least of them, obtained by means of threats, and he thought the safest course would be to exclude them, even though the Police should state that they were made voluntarily. It was not his object to protect the guilty, but that innocent persons should not be punished as if they were guilty. There was scarcely a single case in the Volume of Criminal Reports which he held in his hand, in which a confession was not given in evidence. He would not go so far as to exclude confessions altogether. He would allow confessors to be taken by the Police, provided no threat or torture were used, for the

purpose of enabling them to trace out the facts, but not for the purpose of being used as evidence against the accused.

The question to omit the latter part of the Section being then put, the Council divided :—

Ayes 5.	Noes 2.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harrington.
Mr. LeGeyt.	
Sir James Outram.	
The Chairman.	

So the Motion was carried.

The question was then proposed that the words proposed by Mr. LeGeyt to be substituted be substituted.

THE CHAIRMAN said, it appeared to him that these words ought not to be added. He thought "forwarding it (that is, the written substance) with his report of the case to the Magistrate," would introduce all the evils which Her Majesty's Commissioners wished to avoid, and would be in direct opposition to the view taken by them.

SIR JAMES OUTRAM said, it appeared to him to be very unfortunate that some distinction had not been made, so as to show the class of Police Officers referred to in the amendment. He had no objection to allow the higher class of Police Officers to exercise the proposed power, but he certainly would object to entrust the lower class of Native Police Subordinates with such power. The difficulty he experienced, however, was that, if he voted against the amendment, he would prevent the higher Police Officers from exercising what he deemed a very necessary power; whereas, if he voted in favor of it, he would be conferring such power on the inferior Native Policemen, who, he considered, would be too ready to abuse it.

THE CHAIRMAN said, he was about to remark, in reference to what had fallen from the Honorable and gallant Member, that it was his (the Chairman's) intention to propose the introduction of a new Section, to the effect that certain provisions of the Code should not be applicable to all classes of Native Officers.

After some conversation, Mr. LeGeyt and Mr. Sconce, with the leave of the Council, severally withdrew their amendments; and the Section, as previously amended, was then put and carried.

THE CHAIRMAN moved the introduction of the following new Section after Section 83, namely :—

" It shall not be competent to a Head or other Officer of Police to record any admission or confession of guilt which may be made before him by a person accused of a Criminal offence. Provided that nothing herein contained shall preclude any such officer from reducing any such admission or confession to writing for his own information or guidance."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above, namely :—

" No confession or admission of guilt made to a Head or other Officer of Police shall be used as evidence against a person accused of any Criminal offence."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after the above, namely :—

" No confession or admission of guilt made by any person accused of a Criminal offence, whilst such person is in the custody of the Police, shall be used as evidence against the prisoner."

Agreed to.

SIR CHARLES JACKSON moved the introduction of the following new Section after the above, namely :—

" When any fact is deposed to by a Police Officer as discovered by him in consequence of information received from a person accused of any Criminal offence, then so much of such information, whether it amounts to a confession or admission, or not, as relates distinctly to the fact discovered by it, may be given in evidence."

Agreed to.

The postponed Section 84 provided as follows :—

" The Head or other Police Officer shall complete the enquiry with as little delay as possible. If the Head Officer has himself made the enquiry, he shall forward the accused under custody to the Magistrate, provided the evidence is such as to warrant that course, and the offence is not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. If a subordinate Police Officer have made the enquiry, he shall submit his proceedings to the Head Officer, who shall then proceed as if he had made the enquiry himself."

MR. SCONCE moved the omission of this Section and the substitution of the following :—

"The Head or other Police Officer shall complete the enquiry with as little delay as possible. If the person arrested appears from the information obtained to have committed the offence charged and the offence is not bailable, he shall be forwarded under custody to the Magistrate; and the Head or other Officer of Police shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. But when in any case a subordinate Officer of Police has made the enquiry, he may be required by the Head Officer of Police to submit his proceedings to him, or may do so without such instructions, and the Head Officer shall then proceed as if he had made the enquiry himself."

He said, the object of this amendment was simply to dispense with the necessity, under the Section as it now stood, of the subordinate Police Officer submitting his proceedings to the Head Officer in every case in which the former might be deputed to make a local enquiry. He (Mr. Sconce) proposed that the subordinate Officer should do so when required by the Head Officer, or without such instructions at his (the subordinate Officer's) discretion. The matter was only one of convenience, intended to meet the case of the enquiry being conducted at a place much nearer to the Magistrate than the place where the Head Police Officer happened at the time to be.

MR. HARINGTON said, as a general rule, the Code required Thannah enquiries to be made by the Head Officer of the Police, and it was only when the Head Officer at the Police Station was unable from any cause to proceed to the spot and make the enquiry in person, that he might depute a subordinate Officer to make it. The amendment proposed by the Honorable Member for Bengal, however, would permit the subordinate Officer, who might be a very inferior Officer, to judge in what cases he should, and in what cases he should not, send in the case to the Magistrate. Now this was a power which ought not to be given to a subordinate Police Officer. True, under the proposed amendment, the Head Police Officer might require his subordinate to submit the proceedings for his revision and orders, whenever he might think proper to

do so, but he could not judge of the propriety or necessity, without seeing the papers, the transmission of which to him would cause just as much delay as could ever take place under the rule objected to by the Honorable Member for Bengal. It should, moreover, be borne in mind, that the Head Officer, not the subordinate, was the person responsible to the Magistrate in all matters relating to the Thannah. For these reasons he should oppose the amendment.

After some further discussion, the Council divided.

Ayes 4.	Noes 2.
Mr. Sconce.	Mr. Forbes.
Sir Charles Jackson.	Mr. Harington.
Mr. LeGeyt.	
The Chairman.	

So the Motion was carried.

The further consideration of the Bill was postponed on the Motion of Sir Charles Jackson.

CATTLE TRESPASS.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

Agreed to.

NOTICES OF MOTIONS.

MR. HARINGTON gave notice that he would, on Saturday, the 13th instant, move the second reading of the Bill "to continue Act XXXIII of 1857 (to make further provision relating to Foreigners)."

Also the first reading of a Bill for the licensing of Trades and Professions in India.

PASSENGERS.

MR. LEGEYT moved that the Bill "to amend the law relating to the carriage of Passengers by Sea" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

MR. LEGEYT moved that the 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)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved that the Bill "for regulating the establishment and management of Electric Telegraphs in India" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Harington be added to the Standing Orders Committee.

Agreed to.

The Council adjourned.

Saturday, August 13, 1859.

PRESENT:

The Hon'ble Sir Barnes Peacock, Vice-President, in the Chair.

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

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to continue in force until the end of the year 1859 Act XXVII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

POST OFFICE.

MR. HARINGTON said, he was under the necessity of asking the Council again to allow him to postpone the motion (which stood in the Orders of the Day) for the first reading of a Bill to

amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office), as he found that the amendments proposed by the Director General of Post Offices required more consideration than from the pressure of other business he had been able to give them.

TRADES AND PROFESSIONS.

MR. HARINGTON said, pursuant to the notice which he gave on Saturday last, he had now the honor to move the first reading of a Bill "for licensing trades and professions in India." In bringing in this Bill, he was sensible that he had undertaken a task of no ordinary difficulty, and he thought it not improbable that the Bill would meet with a very considerable amount of opposition, if not within these walls, certainly beyond them. But he trusted that, when the measure came to be fully considered, it would be found to be a wise and politic measure, and one which, in existing circumstances, the Government of this country was fully justified in adopting.

By some he should probably be told that it was opposed to sound principles of political economy to put a tax upon trade or upon the profits arising from trade, but he considered that the English property tax was a sufficient and conclusive answer to any such objection. What was right in principle in England as regarded a measure of this nature, could scarcely be wrong in principle here. The English Act said that—

"Upon the annual profits or gains arising or accruing to any person residing in Great Britain from any kind of property whatever, whether situate in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence; and upon the annual profits or gains arising or accruing to any person residing in Great Britain, from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence."

"And upon the annual profits or gains arising or accruing to any person whatever, whether a subject to Her Majesty or not, although not resident within Great Britain,