

Saturday, May 4, 1861

***INDIAN LEG.  
COUNCIL  
DEBATES***

***Vol. 7***

***5 Jan. - 25 May***

***1861***

***P. L.***

The question being put, the Council divided—

*Ayes* 3.  
Mr. Sconce.  
Mr. Forbes.  
Mr. Harington.

*Noes* 5.  
Sir C. Jackson.  
Mr. Erskine.  
Mr. Laing.  
Sir B. Frere.  
The Chairman.

So the Motion was negatived, and the Section was ultimately passed as it stood.

THE CHAIRMAN then moved the addition of the following Section :—

“Sections XIX, XX, XXI, XXII, and XXIII of the said Act shall not take effect, or have any operation before the said 1st day of January 1862.”

Agreed to.

The Title was passed as it stood, and the Council having resumed its sitting, the Bill was reported.

THE VICE-PRESIDENT moved that the Bill be read a third time and passed.

MR. HARINGTON said, he did not propose to occupy the time of the Council at this late hour by stating at length his reasons for refusing to give his assent to the Motion for the third reading of this Bill. He regarded the Bill as altogether uncalled for by the country at large. The Honorable Member of Government opposite (Mr. Laing), in some of the remarks which fell from him, seemed to have treated the Bill very much as if its operation would be confined chiefly to Calcutta; but the Bill was not merely a Calcutta Bill; it would affect the whole country, and looking upon it as a one-sided Bill and as calculated to cause immense confusion and to be the means of inflicting a very large amount of injustice, he felt that he could not properly be a party to the passing of the Bill. He should, therefore, say ‘no’ to the present Motion.

The question being put, the Council divided—

*Ayes* 6.  
Sir C. Jackson.  
Mr. Erskine.  
Mr. Sconce.  
Mr. Laing.  
Sir B. Frere.  
The Vice-President.

*Noes* 2.  
Mr. Forbes.  
Mr. Harington.

So the Motion was carried, and the Bill read a third time.

THE VICE-PRESIDENT moved that Sir Bartle Frere be requested to take the Bill to the Governor-General for his assent.

Agreed to.

The Council adjourned, till Saturday, the 4th May, at 11 o'clock.

*Saturday, May 4, 1861.*

PRESENT :

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

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

LIMITATION OF SUITS.

THE VICE-PRESIDENT read a message informing the Legislative Council that the Governor-General had assented to the Bill “to amend Act XIV of 1859 (to provide for the limitation of suits.)”

BREACH OF CONTRACT.

THE CLERK reported to the Council that he had certified under Standing Order No. 27, that he doubted the authenticity of the signatures attached to two Petitions from ryots of Nuddea against the Bill “to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce.”

THE CLERK presented to the Council a Petition from certain ryots of Beerhoom against the same Bill.

SIR BARTLE FRERE moved that the above Petition be printed and referred to the Select Committee on the Bill.

Agreed to.

THE CLERK also presented to the Council four Petitions from certain ryots of Moorsshedabad against the same Bill.

SIR BARTLE FRERE moved that the above Petitions be printed and referred to the Select Committee on the Bill.

Agreed to.

#### CRIMINAL PROCEDURE.

THE CLERK reported to the Council that he had received a communication from the Bengal Government, relative to Section 162 of the Bill "for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter."

Mr. HARINGTON said, he proposed, when the Council went into Committee on the Bill and came to the Section to which the communication from the Bengal Government related, to move that that communication be read at the table.

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

Mr. FORBES moved the first reading of a Bill "to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca." He said, he should occupy but very little time in introducing to the Council the Bill of which he had given notice. The increasing business in the Courts of the Recorders in the Straits Settlement had rendered it necessary that some relief should be afforded; and at the Sessions lately held at Singapore the Grand Jury, in a presentment, recommended the appointment of an additional Judge. In forwarding the presentment to the Government, His Honor the Recorder said that the business on the common law side of the Court was amply sufficient to occupy the attention of one Judge, while in addition thereto was the admiralty, ecclesiastical, and miscellaneous business, besides the criminal work at the Sessions at both Malacca and Singapore. The Governor of the Straits Settlement had recommended on a former occasion that the Supreme Court should be relieved by an extension of the jurisdiction of the Courts of Requests, and he had now repeated this recom-

mendation in sending up the Recorder's letter with the presentment of the Grand Jury. The Government of India were of opinion that this extension of the jurisdiction of the Courts of Requests would afford the best and readiest means of giving relief to the Supreme Court, and it was at their request that the present Bill had been prepared. It proposed to enlarge the jurisdiction of the Courts of Requests from thirty-two dollars to a hundred dollars or from sixty-four to two hundred rupees, and one short Section embodied all the change that was proposed.

The Bill was read a first time.

#### CRIMINAL PROCEDURE.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," the Council resolved itself into a Committee for the further consideration of the Bill.

The postponed Section 90 was passed as it stood.

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

"In any case in which there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate in whose district the warrant is to be executed, will prevent the discovery of the thing for which search is to be made, the Police officer charged with the execution of the search warrant, may execute the same in any place beyond the jurisdiction of the Magistrate by whom it was issued without the endorsement of the Magistrate in whose jurisdiction that place is situate. If the thing for which search is made is found in such place, it shall be immediately taken before the Magistrate in whose jurisdiction it is found, and who, unless there be good cause to the contrary, shall make an order authorizing it to be taken to the Magistrate who issued the warrant."

Agreed to.

Mr. FORBES moved the introduction of the following new Section after the above :—

"If the thing searched for be found within the local limits of a Supreme Court of Judicature, it shall be taken to the Chief Commis-

sioner of Police or to a Police Magistrate, who shall act in the manner prescribed in the last preceding Section."

Agreed to.

MR. HARRINGTON moved the omission of Section 91 (providing in what case a Magistrate might grant a search warrant out of his jurisdiction), and the substitution of the two following Sections:—

"In any case in which it may appear necessary, a Magistrate may by the warrant order search to be made in a place out of his jurisdiction, and may direct that the warrant be executed either after or without obtaining the endorsement of the Magistrate within whose jurisdiction the search is to be made. When a Magistrate issues a warrant under this Section, he shall inform the Magistrate within whose jurisdiction the house or place to be searched is situate, or if the house or place be situate within the local limits of any Supreme Court of Judicature, he shall inform the Chief Commissioner of Police of the issue of such warrant.

It shall be competent to a Magistrate issuing a warrant for the search of any house or place out of the jurisdiction of the Magistrate of the District, to direct the warrant to the Magistrate of the District, in which such house or place is situate, and to transmit the same by post. On receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on the warrant, and enforce its execution in the same manner as if the warrant had been originally issued by himself. If the warrant is to be executed within the local limits of any Supreme Court of Judicature, it shall be addressed to the Chief Commissioner of Police or to a Police Magistrate. In such case any property found on search made, may be dealt with as provided in Sections 90 and 90a."

Agreed to.

The postponed Section 97 was passed after some amendments.

Section 103 was passed after an amendment.

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

"Nothing in the last preceding Section shall be held to interfere with the exercise of any powers which are vested in a Police Officer by any special or local law or with the performance of any duty which is imposed upon a Police Officer by any such special or local law."

Agreed to.

Section 104 (requiring the officer in charge of a Police Station, upon

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complaint preferred, to proceed in person or depute a subordinate officer to make the enquiry) was passed with the addition of the following words, on the motion of Mr. Erskine:—

"Any Magistrate on receiving intimation of the commission of any such offence, may at once proceed, or depute an officer exercising any of the powers of a Magistrate, to proceed to hold a preliminary enquiry into, or otherwise to dispose of such case, in the manner provided in this Act."

Section 105 was passed as it stood.

Section 124 was transposed so as to stand after Section 105.

Section 106 was passed as it stood.

Section 107 was passed after the addition of the words "in such form as shall be from time to time proscribed by the local Government."

Sections 108 to 111 were passed as they stood.

Sections 112 and 113 were passed after amendments.

Sections 114 to 118 were passed as they stood.

Section 119 was passed after a verbal amendment.

Section 120 was passed after the reduction of the maximum period for which an accused person might be detained by the Police without the special order of a Magistrate, from 48 to 24 hours.

Section 121 was passed as it stood.

Section 122 provided as follows:—

"A Police officer making an enquiry under this Chapter, shall day by day record his proceedings by way of diary setting forth the time at which 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 statement of the circumstances elicited by his enquiry, and shall forward day by day a copy of such record to the Magistrate having jurisdiction in the case so investigated."

After some verbal amendments, on the Motion of the Chairman—

MR. FORBES moved the omission of the words "Magistrate having jurisdiction in the case so investigated" at the end of the Section,

and the substitution of the following words :—

“ District Superintendent of Police, and it shall be the duty of such officer to bring to the notice of the Magistrate of the District any part of such diary which he shall consider it to be important that such Magistrate shall know. The Magistrate of the District shall be entitled to call for and inspect such diary. In cases where there is no District Superintendent of Police, the Police Officer shall forward day by day a copy of the diary to the Magistrate of the District. Such diary shall not be evidence of the facts stated therein except against the Police Officer who made it.”

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

Section 123 was passed after amendments.

Sections 125 to 128 were passed as they stood.

Section 129 was passed after a verbal amendment.

Sections 130 and 131 were passed as they stood.

The Council adjourned for 10 minutes.

#### POLICE.

MR. HARRINGTON said, before they proceeded with the consideration of the Code of Criminal Procedure, he wished, now that they had settled what might be called the Police Chapters of the Code, again to call the attention of the Council to the state of the Police in the North-Western Provinces, to which he had alluded on a former occasion. In the North-Western Provinces a new Police Force had been organized, or was in course of organization, in accordance with the Act lately passed by the Council; but the Police appointed to this Force could not be enrolled in the manner laid down in the Act, because, from the time that they were enrolled, they would have no law for their guidance in taking cognizance of and making a preliminary enquiry into criminal offences, it being expressly provided by Section XX of Act V of the current year, that “ Police Officers enrolled under that Act should not exercise any authority except the authority provided for a Police Officer under

the Act, and any Act which should hereafter be passed for regulating Criminal Procedure.” The only course, therefore, open to the authorities in the North-Western Provinces was for the present not to enrol the new Police, but this course was open to the objection that it obliged the members of the new Police Force to regulate their proceedings by the old, or, he should more correctly say, the existing Regulations which it was the object of the Code of Criminal Procedure, on the revision of which they were now engaged, to supersede altogether. This was a state of things which it was not desirable to continue: and he had been considering how the want of a proper law for the guidance of the Police, which was so much felt in the North-Western Provinces, could be best and most speedily supplied. Now that they had settled in a Committee of the whole Council the Chapters of the new Code relating to Police Procedure, it seemed to him that they could not do better than embody those Chapters in a separate Bill and pass it at once. He had framed a Bill accordingly, and he would now ask the Council to suspend the Standing Orders, and to allow the Bill to be read a first and second time to-day. If this were permitted, he would have the Bill printed and circulated in the early part of next week, and he would ask the Council to pass it through its remaining stages at the next meeting of the Council. In the Bill prepared by him he had copied the Police Sections word for word from the Code of Criminal Procedure, as they had been finally settled by the Committee of the whole Council; but as the Schedule appended to the Code of Criminal Procedure was based on the Indian Penal Code which would not take effect until the 1st January next, he had prepared a Schedule of offences for the Bill he was desirous of introducing. He had taken the offences contained in this Schedule from the existing Regulations, and had designated them as they were designated therein. With these remarks he begged to move that the Standing Orders be suspended. )

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

#### CRIMINAL PROCEDURE.

The adjourned Committee of the whole Council on the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" was then resumed.

Sections 132 and 133 were passed after amendments.

Sections 134 to 137 were passed as they stood.

Section 138 was passed after amendments.

Sections 139 and 140 were passed as they stood.

Section 141 was passed after amendments.

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

Sections 144 and 145 were passed as they stood.

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

#### POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed:—

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

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

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

Adoption of the preliminary Report of the Select Committee on the Bill "to amend Act XLII of 1860 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter)," and suspension of the Standing Orders in order that the Bill may be passed through its subsequent stages.

#### CRIMINAL PROCEDURE.

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

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

Agreed to.

The Council adjourned.

*Saturday, May 11, 1861.*

#### PRESENT :

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

The Hon'ble Sir H. B. E. Frere, H. B. Harington, Esq., H. Forbes, Esq.,		C. J. Erskine, Esq., and The Hon'ble Sir C. R. M. Jackson.
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In consequence of the indisposition of Mr. Laing and Sir Robert Napier, the Council was adjourned, on the Motion of Sir Bartle Frere, till Saturday, the 18th instant, at 11 o'clock, the Members assembled not forming the quorum required by law for a Meeting of the Council for the purpose of making laws.

*Saturday, May 18, 1861.*

#### PRESENT :

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

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

THE CLERK reported to the Council that he had received a letter from the Bengal Government, intimating that the Lieutenant-Governor had nominated Mr. Seton-Karr to be a Member of the Legislative Council.

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

#### LIMITATION OF SUITS.

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