# LEGISLATIVE COUNCIL

# OF

# INDIA

VOL. 5

JAN. - DEC.

1859

P . L .

FOREIGNERS.

MR. HARINGTON moved that the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)" be referred to a Select Committee consisting of Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved that the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, 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," be referred to a Select Committee consisting of the Vice-President, Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

PUBLIC CONVEYANCES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to a Select Committee on the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

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 empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

The Council adjourned.

*Saturday, August* 20, 1859.

PRESENT:

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

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

CRIMINAL PROCEDURE.

THE CLERK presented to the Council a petition from certain members of the Central Committee of the Indigo Planters' Association against the provisions of Section XX of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" as amended in Committee of the whole Council, and praying for the re-publication of the Bill.

SIR CHARLES JACKSON moved that the petition be printed.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES presented the Report of the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved the first reading of a Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal." He said he should not detain the Council long in introducing the Bill, of which he had given notice, for the continuance of the provisions of Act I of 1857, a law passed to prevent the over-crowding of vessels carrying passengers in the Bay of Bengal. The original Bill was introduced by Mr. Eliott in 1856, and became law early in 1857, and its operation was limited to three years at the instance of the Marine authorities at Madras, who thought it probable that some error or oversight might, in the course of time, become apparent in a law passed in a matter

to which legislation in India was new, and that the experience had in the three years to which the operation of the law was limited, might show that, in some points, it might be possible to make its provisions more efficacious.

These anticipations had proved correct, and the Bill which he should immediately present to the Council had one or two provisions which were not to be found in the law now in force, but which experience had shown to be very necessary for the protection of those for whose protection the original Act was passed.

The Council might perhaps remember that in November of last year some papers were presented to them by the Government of India, which showed that, although Act I of 1857 had put an end to over-crowding in vessels clearing out from British Ports in the Presidency of Madras, the evils which it was enacted to prevent still prevailed in the case of vessels clearing from Foreign European Ports, and from ports in the Presidency of Bengal; and in the cases that were referred to in the correspondence, as many as one hundred and eighty-nine passengers arrived at Moulmein in a vessel of only seventy-eight tons burden, which had cleared out from the French Port of Karical, and as many as three hundred and twenty arrived at Rangoon from Chittagong in a vessel of only one hundred tons burden. In the one case the proportion was two and a half persons to each ton, and in the other three and one-fifth, while the law allowed of no more than one person to each ton in a licensed vessel, and one to four tons in a vessel that was unlicensed.

To meet this evil it was proposed in the Bill about to be presented to the Council that the law should be as applicable to vessels arriving at any British Port, as it at present was to those leaving a British Port, following in this respect the precedent of Section XIX of Act XXI of 1858, and to extend the law to Chittagong and the Ports in Orissa. On this subject he had consulted the Honorable Member for Bengal, and he was able to say that the proposed extension of the law had his full concurrence.

They had further learned by experience that Native Passengers required the protection of the law quite as much in returning to India from the Eastern Settlements, as they did in proceeding to the Eastern Settlements from India, and in one respect even more so, for while the masters of vessels had always so far kept faith with their passengers proceeding to the eastward as to convey them to the port to which they might have contracted to convey them, in returning it had not been unusual for the master to land his passengers at any port that might be convenient to himself, without reference to the convenience of the passengers themselves.

It is proposed to meet this evil by attaching a penalty to the act of landing a passenger at any port other than that to which he had contracted to be taken, allowance being made for stress of weather or other unavoidable hindrance.

The only other additions which he proposed to make to the present law were to incorporate Sections XXVIII, XXIX, XXX, XXXII, and XXXIII of Act XXI of 1858. Section XXVIII reserved to passengers their right of action. Section XXIX provided that offences should be summarily punished by a Magistrate, and made legal the levy, by distress, of any penalty that might be unpaid by the Master or Owner. Section XXX provided that for the purpose of adjudicating penalties any offence should be deemed to have been committed within the jurisdiction of the Magistrate of the place where the offender was found. Section XXXII enabled the Magistrate to give compensation to any party who might have suffered wrong or damage, from the amount of any penalty that might be adjudged; and Section XXXIII was one of interpretation. It had appeared to him that all of these provisions were as much needed in the case of passengers proceeding across the Bay of Bengal as in the case of those who proceeded from the Western Coast of India to the Red Sea or the Persian Gulf.

The Bill was read a first time.

## ARMS AND AMMUNITION.

MR. HARINGTON said, in introducing on that day fortnight a Bill to make perpetual Act No. XXVIII of

1857, which would have expired in the course of a few days, but that the Council, on the day just mentioned, had been pleased to extend its operation, originally limited to two years, from the 11th September 1857 to the last day of the current year, he stated that, although the Act in question was passed at the time that the late Mutiny in the Native Army of Bengal, and the Rebellion which followed thereon in some parts of the country, were at their height, and, like some of the Special Acts passed about the same period, and which, no doubt, grew out of the circumstances of the times, a temporary character was assigned to it also, the Government, for some years previously, had had under its consideration the expediency of introducing a law for the purpose of disarming the population throughout the country, as calculated materially to repress crimes attended with violence, and generally to contribute to the maintenance of the public peace. He pointed out that in the Punjab a general disarmament of the population had been carried into effect with the best results, and that to this circumstance had been attributed, in no small degree, the remarkable tranquillity which prevailed throughout the Territory at the very time that the greater part of the North-Western Provinces was in a state of anarchy; and he observed that, although it was quite right and proper that most of the Special Acts passed in 1857 should not be allowed to remain in force a day longer than was absolutely necessary, in reference to the circumstances which had called them into existence, Act XXVIII of 1857 was of a different character, and that there were obvious and cogent reasons for its continuing in the Statute Book, and for its becoming one of the permanent laws of the country. To these remarks he had little to add on this occasion, but he might mention that a communication had lately been received from the Lieutenant-Governor of the North-Western Provinces, in which His Honor strongly recommended that the Act should be made permanent. He wished, at the same time, to take advantage of the present opportunity to say a few words by way of explanation in respect to a mistake into which he had fallen in the course of the debate which took place on the Motion made by him for suspending the Standing Orders to admit of the Bill being read a second time and proceeding at once through its remaining stages, in replying to a question put by the Honorable and learned Judge opposite (Sir Charles Jackson). Having been asked by the Honorable and learned Judge whether the Bill applied to Europeans, he read an extract from a speech which had been delivered in that Chamber by the late Honorable and learned Chief Justice in one of the debates which took place when Act XXVIII of 1857 was passing through a Committee of the whole Council, in which the Honorable and learned Chief Justice observed that—

> "He had seen a complaint that Europeans were to be compelled by the Bill 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. His object in provoking this discussion was not to move any amendment on the Section as it stood, but to remove a misconception which appeared to exist in some quarters, and which might extend to those whose duty it would be to put the Act in force."

At the time he read this extract, he had not seen the original Bill, and it occurred to him that it must have contained some provisions relating to Europeans which had been afterwards struck out. Hence the mistake into which he fell. The fact of his reading the passage in question, word for word, must have shown that he could have had no intention of misleading the Honorable and learned Judge, or the Council at large, and he felt sure that the Council would acquit him of any such design. He believed, too, he was right in saying that the Honorable and learned Member, after hearing Sir James Colvile's remark, expressed himself as quite satisfied. He now found, on comparing the Act as passed with the original Bill, that the provisions relating to licenses which the late Honorable and learned Chief Justice stated had been struck out, applied alike to Natives and Europeans, those provisions being considered objectionable as regarded both classes. It had also, he observed, been stated that in the course recently pursued in respect to the continuance of Act XXVIII of 1857, the Government had tried to smuggle the Bill through the



that

Council, in order that the public might not have an opportunity of expressing any opinion on the subject of the Act. The best answer that he could make to that statement was to refer to what took place immediately he became acquainted with the fact that some Honorable Members were not prepared to give their assent at once to a Bill to make the Act perpetual, and that they required further time for consideration. On the understanding that no objection would be made to the passing of a temporary Act, he at once yielded to the wish for delay, not because he was afraid of being defeated, for to this day he had no idea what the result would have been, had he pressed his motion to a division, but because what he was chiefly anxious for was that the Act, under the operation of which the process of disarming was being vigorously and successfully prosecuted in some districts, while in others it had not yet commenced, should not expire on the day originally fixed for its termination. It never occurred to him that the Bill would be objected to. Nothing had fallen from any Honorable Member, previously to the Meeting, to lead him to suppose that there would be any opposition, but directly that he was informed of the wishes and feelings of some Honorable Members, he willingly acceded to the suggestion which fell from the Chair, and which was quite sufficient for his immediate purpose. He ought perhaps to take blame to himself for not having brought in the Bill before, but he had not the honor of a seat in the Council at the time Act XXVIII of 1857 was passed, and it was not until the receipt of a letter from a Civil Officer in the North-Western Provinces that he became aware of the fact that the Act had only a few days to run, and that it was only by obtaining a suspension of the Standing Orders that he could prevent a cessation of its operation.

With regard to the question whether Act XXVIII of 1857, supposing the Council to agree to make it permanent, should continue generally applicable to all classes as at present, or whether any, and what modifications should be made in the Act in this respect, he deemed it sufficient on this occasion to read what had been said on the subject by the Honorable Mover of the original Bill. He observed :—

"It was a question for consideration whether several further exemptions might not be made; whether any particular class or classes of persons should not be exempted. But to him it appeared that it would be inexpedient to make any special exemption of this nature. He was perfectly satisfied that there were many sections of the community who could be trusted by the Government with the possession of arms, without being subjected to the necessity of taking out licenses. All Europeans, our East Indian brethren, many educated Native Gentlemen, and (he believed he would be supported by the Honorable Member for Bombay in adding) the Parsee gentry and community, might, he was quite sure, be allowed unrestricted possession of arms without any danger to the State. Other sections of the general community might be added. But it appeared to him that, in a measure of legislation like this, it would be difficult to exempt particular classes without appearing invidious and exciting ill-will; and, accordingly, he had made the Bill applicable to all, merely reserving to the Governor-General in Council (by Section VI) the power of exempting from its operation any persons or classes of persons whom he should think fit."

In these remarks he (Mr. Harington) fully concurred, and he could not but think that his fellow-countrymen generally in India would agree with him that, if all Europeans, without distinction, were to be exempted from the operation of the Act, many respectable natives must also be exempted, but if they once embarked on the wide sea of selection, he feared that they would find themselves beset by many and great difficulties, and that it would prove a most perplexing matter to know where to draw the line. He was not prepared to say that class legislation should never be resorted to in this country. Though to be avoided as a rule, it might sometimes be very right and necessary, but he could not bring himself to believe that the present Bill was one into which it could with any propriety be imported. Act XXVIII of 1857, as finally settled by the Council, was a very guarded Act. Large powers of exemption were vested by it in the Government, and he could scarcely contemplate the possibility of the provisions of the Act being applied to any respectable European, except as regarded the manufacture of certain articles, which, he thought, all would admit was proper,

and the registration of arms, which could put no one to any great inconvenience. If the exception still contended for by some was not considered necessary and proper at the time Act XXVIII of 1857 was passed, *à fortiori*, it could not be considered necessary or proper now. With these remarks he begged to move that the Bill be read a first time.

The Bill was read a first time.

## ACQUISITION OF LAND FOR PUBLIC PURPOSES.

On the Order of the Day being read for the adjourned second reading of the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)"—

MR. HARINGTON said, the discussion on this Bill having been postponed on the previous Saturday at his request, he would now, with the permission of the Council, proceed to state what had been the result of the consideration which he had given to the Bill in the interim.

If he rightly understood the Bill, the effect of it would not be to place the owners of land required for public purposes in a worse position than that in which they were under the existing law. Were the question at issue between the authorities and the owners of the land, whether the latter had or had not a right to retain possession, notwithstanding that the land was stated to be required for a Railroad, or for a Canal, or for some other public purpose, the case would be different. But this question could never arise. From the moment the land was marked out, the right of ownership virtually passed from the owner to the Railway authorities, or to the Government, as the case might be; it could never be recovered, and the only question that remained for determination was, what was the amount of compensation that should be awarded to the owner for his land? Henceforth, so far as the question of compensation was concerned, it mattered little who was in possession, provided of course that, before the land underwent any change for the purpose for which it was taken, such a plan or drawing of it was made as could be confidently appealed to, and as would indeed supply the place of the land as a matter of evidence in the adjustment of any dispute that might arise. For this the law seemed to make ample provision. Under these circumstances it did not appear that any advantage could result to the owner of the land from retaining possession until the amount of compensation should be fixed; he could not sow the land, he could erect nothing upon it, and he could not let any houses standing upon it; to him, therefore, the land would be barren and useless, and could only be a source of expense in looking after it: whereas it was obviously of great public importance that it should come into the possession of the Railway authorities, or Government Officers, as soon as possible, in order that it might be used by them for the purpose for which it was required. The Honorable and learned Vice-President and the Honorable and learned Judge opposite (Sir Charles Jackson) considered that the price of the land should be at once either paid or placed in deposit; but as the Government or the Railway authorities were the payers, there was obviously no risk of eventual non-payment of any sum awarded as compensation, and if the money were required to be placed in deposit until the amount was fixed, he (Mr. Harington) did not see how that would benefit the owner. So long as the money remained in deposit, he could make no use of it, and it would be just as profitless as the land. It might be quite just and proper to expedite the decision of cases in which any dispute might arise; and when the Bill was in Committee, and he should do his best to get it there by supporting the Motion for the second reading, it might be deserving of consideration whether some provision should not be introduced, requiring the party whose land was taken to state at once at what sum he valued it. If the Railway authorities, or Government, considered the valuation a fair one, they should be bound forthwith to pay the money to the owner; or if any dispute arose as to the right of ownership, it might be certified for decision to the Civil Court.

THE VICE-PRESIDENT said that, although he had no right to address the Council again in this case, he desired to explain, with reference to what had fallen from the Honorable

Member (Mr. Harington), that what he (the Vice-President) meant to say was that, previously to land being taken possession of by Government, either the purchase money should be paid or the matter put into train towards adjustment, so that there might be no delay. In such a case there would be great inducement for a speedier settlement than if Government could enter into possession at once.

SIR CHARLES JACKSON said, he only desired to explain that his objection was that no attempt was made by this Bill to bring about an amicable arrangement between the Government and the owners. He thought it was wrong and contrary to the principle of all English Acts to keep the owner out of his money after his land had been taken away from him. The English Act required that either the payment or deposit of the purchase money should be made before entry on the land.

MR. SCONCE said, it seemed to him, with reference to the remarks of the Honorable and learned Judge on his right, that there was some misapprehension as to the objects with which he had introduced this Bill. Certainly it was farthest from his intention to introduce a Bill that should be calculated to deteriorate the interests of the owners or occupiers of the land required for a public purpose. The grand basis of the Bill, and the principle upon which it was framed, was to prevent delay in carrying on the work after the land was ready to be taken. Substantially a record was prepared which, in all cases, was equivalent to the land itself. It was said that the purposes of the existing law had been materially misunderstood, and that it was sufficient that, as soon as the land was marked out and surveyed by the Railway authorities, the land as thus surveyed should be held to be measured within the meaning of the Act. Now, he would remark that, so far as the Bill now introduced was concerned, supposing the above interpretation of the old law to be correct, this Bill would place the owners of the land on a much better footing than the old Act did. According to this Act, notice to the parties interested must issue after the land had been marked out and measured. Well, if, according to the above interpretation of the Act, the survey of the Railway authorities represented the measurement required by Section IV, then this notice would issue on the completion of the survey. But observe the additional advantage given to the parties interested by the present Bill. The Railway survey would be made as before; but that was not held to be sufficient, and further security to the owners and occupiers of the land was afforded by providing that notice should be given of the intention to make a detailed measurement; while, moreover, on the completion of that measurement, a further time was allowed for discussing the details of the measurement. Clearly, therefore, if they accepted the construction of the Honorable and learned Judge as to the course which it was competent to the Railway Commissioner to follow under the Act now in force, the proposals of the present Bill must be held to be entirely in the interest of the public.

It was said also that the Bill did not provide for some arrangement being made with owners prior to taking possession. But the effect of the notice would be to require the owner to state the value of the land. Application could be made to the Deputy Collector, who would always be on the spot, and, in the event of the parties disagreeing, a reference could be made to arbitration. The law could hardly do more than bring the parties together, and when brought together, if they could not agree, to refer the matter to arbitration; and this was the principle adopted in the present Bill.

But even with regard to arbitration, as provided for by the existing law, the principle was the same as that involved in this Bill. Supposing the notices to have been issued, the owner would come and meet the Deputy Collector and make his demand. The Deputy Collector, if he found it to be exaggerated, might decline to accede to it, and this would necessarily lead to a reference to arbitration. Upon the order for a reference to arbitration being made, which might happen at the commencement of the enquiry, possession might immediately be taken. There was no provision as to the time the arbitration should occupy. It might be for a longer, or it might be for a shorter period: and thus in effect the present law embodied a provision which was in

complete accordance with the Bill now before the Council.

Possibly it would be necessary for him to make a few remarks on the subject of dispensing with the detailed measurement now made by the Railway Commissioner, and to which the learned Judge on his right (Sir Charles Jackson) ascribed the delay in assuming possession of the land. In order to prepare a correct assessment of the land to be taken for Government, it was not sufficient to have a statement showing the superficial area of the land, but every thing upon the land must be shown. The number of houses standing, the trees growing, the crops, and whatever other produce might be on the land, should be specified, so as, both for the interests of the owner and of Government, to put on record a specification from which to ascertain the correct value of the land. Now, for any such purpose the Railway survey was a blank, and was quite insufficient to furnish data, upon which alone not only the amount of compensation, but the quota due to the several parties interested could be determined.

He had been asked, if he remembered rightly, by the Honorable and learned the Vice-President, why he had not referred to the law that was in operation before the promulgation of Act VI of 1857. Now, Section V, Act XLII of 1850, provided as follows :—

"Whenever the said Officer shall have recorded his opinion that the land in dispute is needed immediately for the purpose of the public work, he shall be empowered to take immediate possession thereof on behalf of the Government, leaving the amount and distribution of the consideration to be paid for it, if not agreed to by private bargain, to be afterwards ascertained according to the said Regulation, and such possession may be enforced and the obstruction of it punished in like manner as if the land so taken had been sold in execution of the decree of a Civil Court ; and all Collectors, Magistrates, and other Officers shall, if necessary, give the like aid as they would be bound to give for enforcing the speedy and complete execution of any such decree."

If he mistook not, in introducing the Bill, he had stated that it was not his purpose to recommend the enforcement of so summary a law, and unquestionably the provisions of the present Bill were of a much more moderate character. It appeared to him that the Honorable Member opposite (Mr. Harington) had made a suggestion which might be found well worthy of adoption in the event of the Bill passing the second reading. He (Mr. Sconce) agreed with his Honorable friend, that it might be found expedient to introduce a Clause providing, if necessary, for an early adjustment. He mentioned at the last Meeting of the Council that he was prepared, on his own part, to introduce a Clause for the purpose of allowing interest upon the purchase money from the date on which possession of the land should be taken, till such purchase money was paid. The rate of interest he had fixed at six per cent., but it would of course be determined at the discretion of the Council whether that would be a reasonable sum or not. If it should be considered expedient to make even further provision on the subject, the time might be fixed within which payment or a reference to arbitration should be made. Indeed, from the papers printed with the Bill, it would appear that no time was lost in making payment. The Commissioner observed :—

"The term of fifteen days having expired, the Deputy Collector settles the claims, and reports his proceedings for confirmation. As fast as they come in, I revise them, and with very few exceptions confirm them at once, and as soon as the settlement is completed, any property which has fallen into the hands of Government, by the refusal of the owners to remove it, is sold by auction, and possession given to the Railway Company. In fact, I do not delay possession on account of cases returned for revision, as the worst that is likely to come of taking the land at once is that I must in the end accept the valuation to which I have objected. The Deputy Collector may take from one week to two weeks making his settlements. In order to expedite his work, I have authorized them to pay for all houses and other property under fifty Rupees in value, without waiting to report ; and where his proceedings have to come up for revision, I have directed that the final roobukarees be reduced to the fewest words ; but still there must be a record, and there must be time occupied in making it."

This explanation of the course followed by the Railway Commissioner showed his readiness to expedite as much as possible the adjustment of claims and payment of compensatio..

*Mr. Sconce*

With these remarks he begged to press his Motion for the second reading of the Bill.

The Council divided—

| *Ayes* 5. | *Noes* 2. |
|---|---|
| Mr. Sconce. | Sir Charles Jackson. |
| Mr. Forbes. | The Vice-President. |
| Mr. LeGeyt. | |
| Mr. Harington. | |
| Sir James Outram. | |

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

## CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved the second reading of the Bill (No. 1) "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 that the object of this Bill was to raise the Customs Duty paid upon Salt imported into Bombay from twelve Annas to one Rupee per maund.

THE VICE-PRESIDENT said, it appeared to him to be very inconvenient to have two Bills to amend the same Act. The better way would be to consolidate both Bills into one. The Bills, after being read a second time, might be referred before publication to a Select Committee for that purpose.

MR. LEGEYT said, at the time he introduced this Bill, he had not received the papers relating to the Bill which he had subsequently brought in. But he had no objection to adopt the suggestion of the Honorable and learned Vice-President.

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

MR. LEGEYT then moved the second reading of Bill (No. 2). He said, the object of this Bill was to raise the Customs Duty upon Spirits exported from any Port in India, and imported to any Port in Bombay.

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

## WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved the second reading of the Bill "to provide for better supplying with water the town and suburbs of Kurrachee."

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

## CRIMINAL PROCEDURE.

On the Order of the day being read for the adjourned Committee of the whole Council upon 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 229 provided as follows:—

> "Criminal trials before the Court of Session shall ordinarily be by Jury. But if a Court of Session shall consist of three Judges, Criminal trials may be held before a Court so constituted without a Jury. The judgment of the Court in trials so held shall be according to the opinion of the majority. Trials by Jury may be held before a single Judge of a Court of Session."

MR. SCONCE said, as the Bill now stood, the rule would be that, unless a Court consisted of three Judges, trials should ordinarily be by Jury, and in Sections 232 and 233 was set forth the constitution and the power proposed to be vested in the Jury. But it appeared to him that this representation of a Jury was in every sense a sham. First as to the Members of the Jury. It might consist of three persons; but it appeared to him that a Jury so constituted, whether with reference to the limited number, or to the qualification of the persons of whom it would ordinarily be composed, must be held to be quite inadequate to exercise effectively the Judicial functions of a Jury properly so called. Further, the Sections went on to provide that the Jury should, under certain circumstances, convict; but if they acquitted an accused, and the Judge disapproved of the verdict, a reference might be made by him to the Sudder Court for a re-hearing. This might or might not be a proper trial, but in his opinion the Jury whose verdict was so treated was not a Jury. Whether, therefore, with reference to the number required to constitute a Jury, or to the utter negation of power, the word seemed wholly inapplicable. For his own part he considered it would be preferable to take two courses. He

would adopt a nearly similar suggestion to that which stood in the Bill as it came from England, that the Governor-General in Council should be vested with the discretionary power of determining in what districts or places, from the number or respectability of the residents, a well working and satisfactory Jury could be got together, and to this he (Mr. Sconce) had no objection. But, on the other hand, if in any district or place Government deemed it inexpedient to extend trial by Jury, trials before a single Judge should be with the aid of Assessors. In contrasting his suggestions with the provisions of the Chapter now before the Council, there appeared to him to be no comparison between the character of the one and that of the other. As the Chapter now stood, the word "Jury" was a mere shadow of the reality, and one which the Council should not embody in the Code.

Then again he entertained material objections to Sections 230 and 231, which provided for the creation of registered and non-registered persons. The Bill, as it originally came from England, provided for cases in which British subjects were concerned as accused, and, accordingly, the registration of British subjects with others was provided for. But now that the trial of British subjects had been excluded from the scope of the Bill, the same proposal remained, and registration was intended to be applied to Europeans other than British subjects, to Armenians, Americans, and East Indians. But he must say he did not see any necessity for making this provision for such exceptional interests. In many districts of Bengal, European foreigners or Americans never set their feet. With regard to East Indians, he could name towns in which they numbered fifteen hundred or two thousand. Among them there were men of great respectability, industry, and intelligence. But taking them as a body, they were for the most part ignorant and uneducated, and a vast number of them were unable to understand or speak English at all. Of what utility, therefore, would it be to create in their favor such a distinction. But, indeed, it appeared to him it was not very clear how the proposed registry was to be effected. The Bill provided that parties might be registered "according to such rules as the Governor-General in Council shall prescribe." Taking the case of two thousand or fifteen hundred East Indians, was the Governor-General in Council to select from among them one-fourth, or one-half, or the whole; on what principle was the selection of Jurors to be made, and, above all, on what principles were any members of the same class to be deprived of the benefits of trial by Jury, which the Bill would extend to those who had the fortune to be registered? It seemed to him (Mr. Sconce) that, were the Legislature to pass such a law, the effect of it would only be to rouse feelings of jealousy and suspicion, or to excite in the minds of the non-registered classes ideas that a man living in one bazaar of a town had different interests from those of another man living in another bazaar of the same town. In lieu therefore of the system of registration now provided for, he would propose that a general Jury List should be prepared, and that it should be made as little exclusive as possible.

The amendments upon the Chapter of which he had given notice were as follows:—

The omission of Section 229, and the substitution of the following:—

"The local Government may order that the offences specified in Chapter XVIII of the Penal Code, or (as may be) that all offences triable by a Court of Session, may be tried by Jury as hereinafter provided, in such districts as it may see fit to specify in such order; and the said local Government may, from time to time, revoke or alter such order.

"Criminal trials before the Court of Session, if that Court consist of three Judges, shall be conducted by the Judges sitting alone; or with a Jury, when to any district, as provided in the last preceding Section, trial by Jury shall be extended. If the Court of Session consist of a single Judge, Criminal trials shall be conducted with the aid of two or more Assessors, or with a Jury, when to any district as above provided trial by Jury shall be extended."

The omission of Sections 230, 231, 232, and 233, and the substitution of the following:—

"In districts in which by Section trials may be by Jury, when an accused person shall be sent for trial before the Court of Session, and the charge on which he is to be tried has been read over to him, the Magistrate shall require him to state whether he elects to be

tried by Jury or otherwise: if the accused person, or at least one-half of the accused persons, where two or more are accused, do not elect to be tried by Jury, the trial shall be conducted with or without Assessors, according as the Court of Session consists of one or three Judges.

"A Jury shall consist of six or of nine persons, as may be determined by the Court; and unanimity, or a majority of two-thirds, with the concurrence of the Judge or Judges, shall be necessary for a verdict of guilty: and in default of such unanimity, or such majority, with the concurrence of the Judge or Judges, the accused shall be acquitted.

"If the Court of Session shall consist of three Judges, the judgment of the Court, when it has to be expressed, shall be according to the opinion of the majority.

"When a trial shall be conducted before the Court of Session, with the aid of Assessors, the opinion of such Assessors shall be given separately, and if any of the Assessors or the Court shall desire it, the opinion of the Assessors shall be recorded in writing. But the decision is vested exclusively in the Judge or Judges."

The insertion of the following proviso after the word "proper" in the 9th line of Section 235:—

"Provided that, in the list of Jurors to be summoned for any trial, such a proportion of persons representing the section of the community to which the accused belongs, as may, under the circumstances of each district, be practicable, and may by the Sudder Court be deemed reasonable, shall be included: provided also that—"

The introduction of the following words at the beginning of Section 253:—

"In cases tried with Assessors, the Judge, before pronouncing his own judgment, shall call upon the Assessors for their opinions."

Accordingly he begged to submit for the consideration of the Committee the omission of Section 229, and the substitution of the following:—

"The local Government may order that the offences specified in Chapter XVIII of the Penal Code, or (as may be) that all offences triable by a Court of Session, may be tried by Jury as herein after provided, in such districts as it may see fit to specify in such order; and the said local Government may from time to time revoke or alter such order."

SIR CHARLES JACKSON said, he really thought (and indeed the speech of the Honorable Member for Bengal suggested the idea) that, instead of considering this Chapter piecemeal as it were, the whole Chapter had better be struck out at once. Section 230, which empowered the Governor-General in Council to form Juries of his own, appeared to him (Sir Charles Jackson) to be a most unconstitutional Clause. If there was to be a Jury, let it be an independent Jury, or have no Jury at all. Then Sections 231 and 233 were most objectionable. Under the latter Section, a Jury of nine Jurymen might acquit an accused person, and the Sudder Court might afterwards hang him notwithstanding such acquittal. Such a provision was perfectly monstrous. The several Sections of this Chapter were so involved one with the other, that he considered it utterly impossible to consider them separately Section by Section, and he therefore begged to move the omission of all the Sections from 229 to 233.

The Motion was subsequently, by leave, withdrawn.

MR. HARINGTON said, in addressing himself to the question before the Committee, namely, that Section 229 be omitted and the Section proposed by the Honorable Member for Bengal substituted for it, he would follow the course pusued by that Honorable Member, and consider the whole Chapter. The Honorable Member for Bengal had stated that he considered his proposed amendments a great improvement on the Chapter as it now stood. With all deference to the Honorable Member, he (Mr. Harington) could not agree with him. What the Honorable Member for Bengal now desired to do was done in 1832, that is, upwards of twenty-five years ago. Previously to that period, except in the Supreme Courts of Judicature, trial by Jury, or with the assistance of Assessors, was not known in this country. In the Courts of Sessions in the Mofussil, Criminal trials were held with the aid of a Mahomedan Law Officer. If the Judge agreed in the futwah delivered in by that Officer at the conclusion of the trial, and the case was one in which it was competent to him to pass sentence, he passed sentence; but if he differed from the Mahomedan Law Officer, or if, though he concurred with that Officer, the sentence was beyond his competency to pass, he referred the proceedings for the orders of the Sudder Court. In 1832, during the administration of that enlightened

Nobleman, Lord William Bentinck, it was thought that the time had arrived when an attempt should be made to introduce trial by Jury in the Mofussil, and a law was passed for that purpose, which was still in force. In the Madras Presidency trial by Jury had existed since 1827. The amendment, then, of the Honorable Member for Bengal, which left it to the Government to determine in what districts trials should be by Jury, really took them back more than a quarter of a century. But this was not all—it proposed the adoption of a measure which had already been fully tried, but from which little, if any, good had resulted. Now it certainly appeared to him (Mr. Harington) that any law of this kind which might be passed should be a law of general application, and that the duty and responsibility of determining in what districts it should be enforced, should not be thrown upon the Government. It was almost impossible for the Government to discharge the duty with satisfaction to itself, and the consequence would be, what had already happened, that having little, if any thing, to guide it in making its selection, it would escape from the difficulty by extending the law to all parts of the country without distinction. But supposing the Government, in the exercise of the discretion proposed to be invested in it, to extend the law to some places, and not to others, why, it might fairly be asked, was one district to have the benefit, if it might be so called, of trial by Jury, while it was denied to the adjoining district?

The next Section which the Honorable Member for Bengal wished to substitute for the corresponding Section in the Bill, as it stood, proposed no less than four modes of trial in a Court of Session, which he (Mr. Harington) considered objectionable. First, the trial might be held before a Court consisting of three Judges sitting alone. Sitting alone, he understood, meant sitting together, but without a Jury or Assessors. Secondly, the trial might be held before a Court consisting of the same number of Judges with a Jury. Thirdly, the trial might be held by a single Judge with a Jury; and fourthly, the trial might be held by a single Judge with Assessors whose opinion was to have no more weight than what the Judge might choose to give to it. In other words, the Judge might accept it, or set it aside just as he pleased.

With regard to Section 233, he could only repeat what he had said on a former occasion, that he was very sensible it was open to objection, and he was quite willing to agree to any modification of the Section, which, while it gave some power of interference to the Sudder Court, in cases in which the verdict of the Jury was manifestly wrong, should restrict the exercise of that power within proper limits.

THE CHAIRMAN said, this Section involved so many different propositions, that it appeared to him hardly possible to come to a decision upon it, without taking its several provisions into consideration separately. He had no objection to the proposition contained in the first part of this Section, but there was this difficulty which he felt with regard to it, namely, whether an intelligent Jury could be formed in every district in the Mofussil. He thought that it was rather the duty of the Legislature than of the local Government to determine whether trials by Session Courts should be by Jury or not. The only object for leaving this to the local Government was that it might be presumed they had the best opportunity of knowing in what districts or places a sufficient number of respectable and intelligent Jurors could not always be obtained. Nevertheless, he objected entirely to the principle of leaving it to the local Government to decide in what districts or places trials by Session Courts should be, and in what districts or places they should not be, by Jury. Entertaining this opinion, therefore, he was quite prepared to oppose the Motion of the Honorable Member for Bengal for the omission of this Section altogether. At the same time he reserved to himself the right, in the event of that Honorable Member's Motion being negatived, to move any amendments he pleased in that Section.

MR. SCONCE'S Motion was then put and negatived.

THE CHAIRMAN moved the omission of the word "ordinarily" in line 2.

Agreed to.

THE CHAIRMAN said, he thought that the remainder of this Section was better adapted to the Bill which would provide for the constitution of Session Courts. He should therefore now move the omission of all the words after the word "Jury" in line 3.

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

Section 230 provided as follows:—

"In trials by Jury before the Court of Session in which a European not being a British subject, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the accused person or one of the persons accused, one-half at least of the Jury shall consist, if the accused desire it, of persons so registered."

MR. SCONCE moved the omission of this Section.

SIR CHARLES JACKSON said, he should certainly support this proposition. He objected entirely to giving the Governor-General in Council the power to lay down rules as to who should be Jurors and who not. Instead of doing so, he (Sir Charles Jackson) thought there should be a Chapter in this Bill, defining what classes were to be Jurors, and laying down rules respecting the calling and challenging of Jurors. If they were to have a Jury, it would be better to have an independant Jury, and not a shadow.

MR. HARINGTON said, the Section, as it now stood, was the same with some slight alterations as that proposed by Her Majesty's Commissioners, who must have known the difficulty of laying down any positive or absolutely restrictive rules on the subject. He felt certain that, in many districts, it would be impossible to get a sufficient number of Europeans, or of any of the other classes specified, to form a Jury. Granting, however, that the Council concurred in the objections taken by the Honorable and learned Judge opposite (Sir Charles Jackson), there seemed no reason why the whole Section should be omitted; surely it would be sufficient to leave out the words which had been objected to.

MR. FORBES said, it would be more convenient if the Honorable and learned Judge who had just spoken would mention what words he would propose to substitute for the Section proposed to be omitted. He thought that, generally speaking, the Council sitting in Committee should have the choice of two Sections, and should not be called on to omit one already in a Bill without knowing what it was intended to substitute. They might otherwise, after agreeing to omit one Section, find that they preferred what had been omitted to that which was proposed in its place.

MR. SCONCE said, a principle much deeper than the preparation of Jury Rules or Lists, for which Section 235 provided, was involved in this Section. His objection to it was not because he thought that the Governor-General in Council should not have the power of framing the rules; but his ground of objection was that certain classes were to be selected, and to them only were the rules to be applied. It was true that the word "Christian" was not mentioned in the Section, but it seemed to him that he was perfectly correct in assuming that a distinction was intended to be made in favor of Christian classes. The only indication now given in this Section was that of Christian classes. If it were said that he was mistaken in his supposition, he would ask whether the Legislature would leave it to the Governor-General in Council to prepare a list of Parsees. In Kishnaghur, moreover, there was a large body of Native Christians. Would it be necessary to include them among the registered persons, or would they be left among the non-registered classes?

MR. HARINGTON said, the assumption of the Honorable Member for Bengal, that religion had had something to do with the preparation of this Section, was entirely groundless. Any one who had had Mofussil experience, must have felt how painful it was to try a Eurasian or an American with a Jury composed entirely of Natives. The Section was intended for the protection of the different classes of persons specified in it, and he (Mr. Harington) considered it a great improvement on the present law.

THE CHAIRMAN said, this Section was founded on Section 260 of the Code as proposed by Her Majesty's Commissioners, which provided—

"Criminal trials before the Session Judge, in which a British subject, or a European, or an American, or an East Indian, or an Arme-

nian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe, is the defendant or one of the defendants, shall be by Jury, of which at least one-half shall consist, if such defendant desire it, of persons so registered."

The object of that rule, it appeared to him, was to give to certain classes of Foreigners the right to be tried by a Jury, of which one-half at least should consist of their own countrymen. If a Frenchman were tried, it might be difficult in some places to form a Jury, half of which should be composed entirely of Frenchmen, but there would not be the same difficulty in getting half the Jury to consist partly of Europeans, or East Indians, or Americans. Referring to this difficulty, the Commissioners had observed as follows:—

"It will be seen, however, on reference to the rules which we have proposed, that the right of trial by Jury, in the case of persons residing beyond the limits of any place to which this mode of trial is extended, is to be conditional upon registration, according to such rules as the Governor-General in Council shall prescribe.

"In a country with such a diversified population as India comprehends, it would be extremely difficult to insert in a Legislative measure any positive rule of national or local distinctions which would not be open to grave objections. The difficulties of legislation will be met to a great extent by empowering the Governor-General in Council to issue, from time to time, such instructions as he may deem proper in regard to the registration of persons belonging to those classes mentioned in the rules, or of any other persons to whom, in his judgment, the right of trial by Jury should be extended; and questions of a difficult and delicate nature will be anticipated by the Government, and not discussed in the Courts. It will be at the option of the parties entitled to register to avail themselves of their privilege, and we think they should be allowed to exercise this option at any time previous to trial. A reference to the register will at once decide the right to be tried by a Jury."

He understood the principle laid down by the Commissioners to be the same as that provided for in this Section of the Bill, which provided that certain classes were to be "registered according to such rules as the Governor-General in Council shall prescribe." He thought the rule as now worded to be a very objectionable one. Why, he would ask, should they leave it to the Governor-General in Council in his Executive capacity to do what the Governor-General in Council in his Legislative capacity ought to do? Was it because this Council did not know what rules ought to be passed, or was it that they wished to save themselves the trouble of framing them? He (the Chairman) was clearly of opinion that, if it were necessary to lay down any rules at all, it was the duty of this Council to do so. The Governor-General in his Executive Council had not so much time for discussing the rules relating to the qualification of Jurors, the mode of summoning them, the right to challenge, and other details connected with trial by Jury, as he had in his Legislative Council. Such matters were provided for in England, not by Order in Council, but by Act of Parliament. Surely, then, such questions ought to be decided by this Council, in which all the proceedings were public, and published for general information. But the Section further provided that "persons of any other class to which the Governor-General in Council may see fit to extend this rule" might also be registered, and this rule also appeared to him to be highly objectionable. Supposing the Governor-General in Council were to extend the rule to Mahomedans (and, as the Section was now framed, this was a matter which depended entirely on the particular views of the Governor-General in Council for the time being), then there would be a Registry List, upon which any Mahomedan might put his name, and then the half Jury for the trial of a European, instead of being Europeans, might be taken from the registered class in which Mahomedans might preponderate. It was true that there would be some difficulty in defining what classes should be registered. But the difficulty would not be got rid of by imposing it upon the Governor-General in Council in his Executive capacity. The question must be considered and determined somewhere, and, in his opinion, it was the duty of this Council to devote the time and attention necessary to a proper determination of the subject. He should propose therefore to omit the general words about persons of any other class.

*The Chairman*

If the Bill were re-published, as he thought it ought to be, and if any class considered that it had been unfairly dealt with, they would have the opportunity of addressing the Council and representing the hardship of their case.

MR. SCONCE'S Motion was by leave withdrawn.

THE CHAIRMAN moved the omission of the words " or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules, as the Governor-General in Council shall prescribe."

Agreed to.

THE CHAIRMAN moved the omission of the words "so registered" at the end of the Section and the substitution of the following :—

" (Qualified to serve on Juries) of his own race or class, if practicable; or if that be not practicable, of Europeans, Americans, East Indians, or Armenians so qualified."

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

Section 231 provided as follows :—

" In trials by Jury before the Court of Session in which registered and non-registered persons are committed for trial together, one-half of the Jury, if the non-registered person desire it, shall consist of non-registered persons."

THE CHAIRMAN said, that this Section, as it now stood, would be inconsistent with the amendments just adopted in the preceding Section. He should therefore propose the omission of this Section, and the substitution of the following for it :—

" In trials before the Court of Session, in which a person not belonging to any of the races or classes specified in the last preceding Section shall be tried, either alone or jointly with any person belonging to any of the said races or classes, one-half of the Jury, if the accused person who does not belong to any such race or class desire it, shall consist of persons not belonging to any of the said races or classes."

This would enable a native, if tried together with a European, or if tried alone, to insist upon his being tried by one-half of his own countrymen.

Agreed to.

The Council went back to Section 230, and made a verbal amendment therein.

The postponed Section 232 provided as follows :—

" In trials by Jury before the Court of Session, the Jury shall consist of such number of persons, not being less than three nor more than nine, as the Court shall direct."

MR. SCONCE said, he thought that a Jury consisting of three persons would have too few voices to prevail against the opinion of the Judge in the event of his not concurring with them in their verdict. He would say six, but would prefer even nine, as the number of persons to compose a Jury. He should therefore move to omit "three" and to substitute " six" for it.

SIR CHARLES JACKSON said, he had no objection to the substitution of " six" for " three," but he did not see the use of the words " nor more than nine;" though, if a maximum were necessary to be fixed, it should be an even number.

THE CHAIRMAN said, he thought that, if they fixed upon six as the number for a Jury, there might be difficulty in many places to get the half of a Jury composed entirely of Europeans or entirely of Americans. He therefore moved by way of amendment that "four" be substituted for "three."

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 amendment was carried.

THE CHAIRMAN then moved the omission of the words "nor more than nine, as the Court shall direct."

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

Section 232A provided as follows : —

" If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority

with the concurrence of the Judge, the accused shall be acquitted."

MR. HARINGTON moved the addition of the following words :—

"If the Jury be equally divided in opinion, the Judge shall decide whether the accused shall be convicted or acquitted."

SIR CHARLES JACKSON said, the decision upon this question would determine whether there should or should not be an Appeal in Criminal Cases. If the Jury were divided two against two, the decision of the Judge would be considered most unsatisfactory, and it would be absolutely necessary to provide an appeal in such cases.

MR. HARINGTON said, the opinion of the Judge must be presumed to be at least equal to that of a Juror, and the proposed amendment would only be giving his opinion the same weight. He (Mr. Harington) imagined that most decisions were unsatisfactory to the losing parties, but he was at a loss to understand how any person could reasonably be dissatisfied with the decision of three against two, one of the three being an intelligent Judge.

SIR CHARLES JACKSON said, he would only add that he would, in such cases, prefer following the practice observed in England, and he should therefore move by way of amendment to substitute the words "the Jury shall be discharged and the prisoner be tried again" for the words "the Judge shall decide whether the accused shall be convicted or acquitted."

THE CHAIRMAN said, the proposed amendment would give rise to a great deal of difficulty. There would be constant differences of opinion in Juries, and it would be very hard indeed to have a prisoner tried over again. Rather than do so, he would acquit him.

SIR CHARLES JACKSON'S amendment being put, the Council divided—

| *Ayes* 2. | *Noes* 5. |
|---|---|
| Sir Charles Jackson. | Mr. Sconce. |
| Sir James Outram. | Mr. Forbes. |
| | Mr. LeGeyt. |
| | Mr. Harington. |
| | The Chairman. |

So the amendment was negatived.

MR. HARINGTON'S Motion being put, the Council divided—

| *Ayes* 5. | *Noes* 2. |
|---|---|
| Mr. Sconce. | Sir Charles Jackson. |
| Mr. Forbes. | The Chairman. |
| Mr. LeGeyt. | |
| Mr. Harington. | |
| Sir James Outram. | |

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

Section 233 provided as follows :—

"When an accused person is acquitted by the verdict of a Jury, if the Judge shall be of opinion that the verdict is contrary to the evidence, and that the accused ought to have been convicted, he shall submit the proceedings to the Sudder Court, and it shall be lawful for such Court to pass such orders thereon as it shall think proper."

MR. SCONCE said, he apprehended that they had now come to the tug of war. They had gone over a great deal of ground, first, by affirming that trials before the Courts of Session should be by Jury ; next, from what classes Juries should be formed ; and, lastly, the number of persons required to form a Jury. The question which this Section brought before the Committee was whether a trial being once held and a verdict of acquittal given by the Jury, if the Judge dissented from that verdict, he could put the accused again upon his trial by referring the case to the Sudder Court. It had often occurred to him in considering this question, that the employment of the name of a Jury resembled very much the ends and purposes of a Tulchan calf. Any one who had read *Carlyle's Commentaries on Cromwell's Letters and Speeches* knew to what he alluded. A Tulchan, as he remembered, was a stuffed calf brought up to a cow to induce her to let down her milk. So here the pretended constitution of a Jury was to be made our Tulchan, promising nominally a scheme of procedure with which the functions of the Court did not substantially correspond. By allowing a reference to the Sudder Court, when once a verdict was given, it seemed to him that the effect of it would only be to throw over the Jury. He should move the omission of this Section.

MR. HARINGTON said, he had already admitted that this Section was

open to objection. But, although trial by Jury had, with reference to the provision contained in the Section, been called a sham, it appeared to him that in practice it would not prove so. What he wished to avoid was the failure of justice, which he felt sure would constantly take place if the verdict of acquittal by a Jury, however opposed to the record, must necessarily be followed by the discharge of the accused party; and, above all, he deprecated such indecent exhibitions as had lately been witnessed either at Bombay or in England, when the Judge, on receiving from the Jury a verdict of not guilty in the face, as he thought, of clear proof of guilt, could not refrain from exclaiming—"Well, gentlemen, I am glad that is not my verdict, but yours." If, however, it were considered objectionable to give the Sudder Court the power with which this Section would invest it, some provision should at least be made, allowing the Sudder Court, on a reference from the Session Court, to order a new trial where a verdict of acquittal was manifestly contrary to the evidence, and he (Mr. Harington) was quite prepared to agree to the Section being modified to this extent.

THE VICE-PRESIDENT said, he should certainly vote in favor of the omission of this Section altogether. He did not know what was meant by the words "to pass such orders thereon as it shall think proper" at the end of the Section. But whatever they might mean, it could not be right, he thought, that, after a man had been acquitted by a Session Court, the Sudder Court should have the power to hang him. With reference to the unseemly case referred to by the Honorable Member (Mr. Harington), in which a Judge had observed to the Jury, "I am glad, gentlemen, that is not my verdict," he (the Vice-President) could only say that he thought the Judge had overstepped the bounds of his jurisdiction, and that he had no more right to say what he did to the Jury, than the Jury would have had at the close of the charge to say—"We are glad that is not our law."

MR. SCONCE'S Motion was then put and carried.

MR. HARINGTON moved the introduction of the following new Section after Section 232:—

"When an accused person is acquitted by the verdict of a Jury, if the Judge shall be of opinion that the verdict is contrary to the evidence, and that the accused ought to have been convicted, he shall submit the proceedings to the Sudder Court, and it shall be lawful for such Court to order a new trial in the case."

SIR CHARLES JACKSON said, this Section appeared to him to be just as mischievous in principle as Section 233, which had just been negatived.

The question being put, the Council divided:—

| *Ayes* 2. | *Noes* 5. |
|---|---|
| Mr. Forbes. | Mr. Sconce. |
| Mr. Harington. | Sir Charles Jackson. |
| | Mr. LeGeyt. |
| | Sir James Outram. |
| | The Chairman. |

So the Motion was negatived.

The postponed Section 234 was passed as it stood.

The postponed Section 235 provided as follows:—

"The Sudder Court shall have power, from time to time, to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such Jurors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall, before they are issued, have received the sanction of the Governor General in Council."

THE VICE-PRESIDENT said, it appeared to him that, until the rules referred to were prepared, the provisions of this Section would not come into operation. He should move therefore that the Section be omitted, and that it be referred to a Select Committee with an instruction to prepare Jury Rules.

The Council divided—

| *Ayes* 6. | *Noes* 1. |
|---|---|
| Mr. Sconce. | Mr. Harington. |
| Sir Charles Jackson. | |
| Mr. Forbes. | |
| Mr. LeGeyt. | |
| Sir James Outram. | |
| The Chairman. | |

So the Motion was carried.

THE VICE-PRESIDENT moved that the Select Committee consist of Mr. Harington, Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and Mr. Sconce.

MR. HARINGTON moved by way of amendment that his name be omitted, and the Vice-President's substituted.

Agreed to.

The postponed Section 236 was passed as it stood.

The postponed Section 249 provided as follows :—

"When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence. The Court may put such question to the accused as it may think proper."

SIR CHARLES JACKSON moved the omission of the words "the Court may put such questions to the accused as it may think proper." He said, he need not repeat what he had already stated on a former occasion. He would only mention in addition that, if this power were entrusted to any one, it would be most dangerous to entrust it to Judges who had not received a legal education, and who had not sufficient experience in matters of this nature. He would not allow it even to the Judges of the Supreme Court. The objection was, that it would introduce the French system, and make the Judge a prosecutor, and to prevent him from preserving that calm and unprejudiced position which it was necessary for a Judge to maintain.

SIR JAMES OUTRAM said, he quite agreed with the Honorable and learned Judge. The terms of the Clause were—"the Court may put." Would they preclude the public prosecutor instead of the Judge, with consent of the Court, from putting any questions to the accused person? If so, he proposed to move an amendment to that effect.

THE VICE-PRESIDENT said, they had already passed a Section which would enable a Magistrate to examine an accused person.

SIR JAMES OUTRAM said, he conceived that that was very different. The Court of Session was a Court of final decision, whereas there was an appeal from the orders of a Magistrate.

SIR CHARLES JACKSON said, he quite agreed with the Honorable General. In the hurry in which some of the Clauses had been passed, he had either overlooked the Clause referred to by the Honorable and learned Chairman, or must have thought that such an examination as took place before Magistrates in England, or in Magistracies under the Supreme Court, was intended. There it was called the examination, but the examination was not taken in the way of question and answer ; the prisoner was simply asked whether he had any thing to say. He would remark, too, that such a power as that now under consideration was particularly useless and dangerous in this country, where, whether on account of the climate, or from whatever other cause, natives could seldom twice repeat the same statement as to a fact.

MR. HARINGTON said, whether the words in question were omitted or not, it appeared to him that the ground urged by the Honorable and learned Judge (Sir Charles Jackson) was not tenable. If valid, the objection would apply equally to the cross-examination, by the presiding Judge, of the witnesses for the prosecution and the defence.

MR. SCONCE said, the object of the proposed omission was to prevent the prisoner being pressed or driven into a corner. Considering the earlier power given to a Magistrate, it appeared to him (Mr. Sconce) that, after a case was closed, it should no longer be competent to a Court again to elicit by sharp examination any statement from the prisoner. It was under the apprehension of the power being abused that he objected to its use.

MR. LEGEYT said, he confessed he had no fear of the evil consequences which the Honorable and learned Judge on his left (Sir Charles Jackson) and the Honorable Member for Bengal apprehended would follow the exercise of such a power. He did not think that Sessions Judges would abuse the power. Those who had presided over Native trials knew how desirable it was to get a prisoner to elucidate the truth of statements deposed to by witnesses. Now two witnesses might concur in s

that the prisoner was at a certain place on a certain day. The Judge would have the power under this Section of applying to the prisoner to say where he was on that particular day. If the prisoner found it inconvenient to answer the question, he would remain silent. If however he could give a satisfactory answer, he would give it. He (Mr. LeGeyt) had sometimes exercised this power, and he should be very sorry indeed to see the power dispensed with. He would of course allow the prisoner the option of not answering. If he declined to answer, the Judge, in directing the Jury, would draw their attention to the circumstance. He supposed that the whole object of a trial was to convict a man if he was guilty, or to acquit him if innocent. Therefore he would say, do not deprive the Judge of this power, which, if not grossly abused, cannot but prove beneficial to the cause of justice.

MR. FORBES said, he thought that the retention of the words proposed to be omitted would tend to the improvement of the administration of justice. In their great anxiety to secure the rights of rogues, they were sometimes apt to forget the rights of honest men. When a crime was committed, he must confess that his sympathy was rather with those against whom the crime was committed than with those by whom it was committed; and he did not participate in the apprehensions felt by the Honorable and learned Judge (Sir Charles Jackson). So far from entertaining any fear that an innocent person might admit guilt when subject to cross-examination, he was convinced that every step in the examination would only tend more fully to prove his innocence.

THE VICE-PRESIDENT said, he saw no objection to allowing Session Courts to put questions to accused persons. On the contrary, he thought that the proper exercise of such a power would promote the ends of justice. He should therefore vote for the retention of the words proposed to be omitted.

SIR CHARLES JACKSON desired to say a few words in reply upon this question. It had been argued in the first place that the exercise of the power to which he had objected would serve to elucidate the truth. If he were sure of that, he should have no objection to the words referred to. But he maintained that that would not be the case as a general rule in this country. Take for instance the case of a native incapable of appreciating the drift of what was said to him, but knowing at the same time that his life or liberty depended on his answers; or put the case constantly met with in this country of a native incapable of twice narrating an occurrence in the same way. The consequence would be in the first case that the native prisoner, whether innocent or guilty, would embark on a labyrinth of falsehood, and in both cases the Judge would be obliged to pursue him from point to point, and all this would lead to much heat of discussion, which would be wholly unbecoming a Judge. If, on the other hand, the prisoner should be a skilful man, he might elude the questions put to him and make the Judge both angry and ridiculous.

Honorable Members who took a different view of the matter, had entirely lost sight of the same system which prevailed in France. The questions put to prisoners by the Judges in that country were, to his mind, most revolting.

Lastly, there was no definition of the nature of questions to be put, and no provision allowing the prisoner the option of declining to answer.

The Council divided—

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

So the Motion was negatived.

SIR JAMES OUTRAM moved that the words "allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to" be inserted after the word "may" in the 6th line of the Section.

After some discussion the Council divided—

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

So the Motion was negatived.

SIR BARNES PEACOCK moved the insertion of the words "or may allow the Government Pleader or other Officer appointed by the Government to conduct trials before the Court of Session to put" after the word "put" in the 6th line.

The Council divided—

| *Aye* 1. | *Noes* 6. |
|---|---|
| The Chairman. | Mr. Sconce. |
| | Sir Charles Jackson. |
| | Mr. Forbes. |
| | Mr. LeGeyt. |
| | Mr. Harington. |
| | Sir James Outram. |

So the Motion was negatived.

MR. LEGEYT moved the addition of the following words:—

"But it shall be explained to the accused person that he is at liberty to decline to answer any question so put to him."

The Council divided—

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

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

The further consideration of the Bill was postponed on the Motion of SIR JAMES OUTRAM.

## STANDING ORDERS.

MR. HARINGTON said, he had proposed to move to-day the adoption of the Report of the Select Committee on the Message from the Governor-General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council. But having reason to believe that the Report would give rise to some discussion, he proposed, with the permission of the Council, to withdraw the motion of which he had given notice, and to move on Saturday next that the Council resolve itself into a Committee upon the Report for the purpose of considering any amendments that might be proposed therein.

## CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved that the two Bills "to amend Act I of 1852 (for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay)" be referred to a Select Committee, consisting of Mr. Sconce, Mr. Forbes, and the Mover.

Agreed to.

MR. LEGEYT then moved that the Select Committee be instructed to report previously to the publication of the Bills, whether it would not be advisable to consolidate them.

Agreed to.

## WATER SUPPLY (KURRACHEE).

MR. LEGEYT moved that the Bill "to provide for better supplying with water the Town and Suburbs of Kurrachee" be referred to a Select Committee, consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

The Council adjourned.

---

*Saturday, August* 27, 1859.

PRESENT:

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

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

## PORT-DUES (PEGU).

THE CLERK reported to the Council that he had received a communication from the Foreign Department regarding the levy of Port-dues in the Province of Pegu.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

## NABOB OF FURRUCKABAD.

THE CLERK also reported a communication from the Foreign Department, forwarding correspondence with the