

Saturday, May 14, 1859

LEGISLATIVE COUNCIL  
OF  
INDIA

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1859

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Bengal Presidency" to the Governor-General for his assent.  
Agreed to.

**FRAUDULENT TRANSFERS AND SECRET TRUSTS.**

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 "for the prevention of fraudulent transfers of property and of secret trusts."

Agreed to.

**LIMITATION OF SUITS.**

MR. HARRINGTON moved that Sir James Outram be requested to take the Bill "to provide for the limitation of suits" to the Governor-General for his assent.

Agreed to.

**SMALL CAUSE COURTS.**

MR. HARRINGTON moved that the Bill "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" be re-published for two months.

Agreed to.

**PILOT COURTS (BENGAL).**

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal" to the Governor-General for his assent.

Agreed to.

**BREACHES OF CONTRACT BY ARTIFICERS, &c.**

MR. CURRIE moved that Sir James Outram be requested to take the Bill "to provide for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases" to the Governor-General for his assent.

Agreed to.

The Council adjourned.

*Saturday, May 7, 1859.*

PRESENT :

The Hon'ble Lt.-General Sir James Outram.	
Hon'ble B. Peacock,	H. B. Harrington, Esq.,
P. W. LeGeyt, Esq.,	H. Forbes, Esq.,
	and
	Hon. Sir C. R. M. Jackson.

The Members assembled at the Meeting did not form the quorum required by Law for a Meeting of the Council for the purpose of making Laws.

*Saturday, May 14, 1859.*

PRESENT :

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

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

**SALE OF LAND FOR ARREARS OF REVENUE (BENGAL); PILOT COURTS (BENGAL); BREACHES OF CONTRACT BY ARTIFICERS, &c.; AND LIMITATION OF SUITS.**

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency"—the Bill "to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty"—the Bill "for the punishment of breaches of contract by artificers, workmen, and laborers in certain cases"—and the Bill "to provide for the Limitation of Suits."

**EXCLUSIVE PRIVILEGES TO INVENTORS.**

The following Message from the Governor-General in Council was also read by the Vice-President:—

**MESSAGE NO. 177.**

With reference to the Message from the Legislative Council, No. 95, dated the 2nd October 1858, the Governor-General in Council has the honor to forward to the Legislative Council copy of a Despatch No. 3, dated the 31st March 1859, from the Right Honorable the Secretary of State for India, together with the Draft Act, therewith received, "for granting exclusive privileges to Inventors," which has received the sanction of the Crown.

By order of His Excellency the Governor-General in Council.

W. GREY,  
*Secy. to the Govt. of India.*

Fort William, the 11th May 1858.

#### 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. Sconce to be a Member of the Legislative Council.

Mr. Sconce was duly sworn, and took his seat.

#### VILLAGE WATCHMEN (BENGAL).

THE CLERK presented a Petition from Emmadooddeen Mahomed of Beerbhoom, concerning the Bill "to regulate the appointment, employment, and dismissal of Village-watchmen in the Territories under the Government of the Lieutenant-Governor of Bengal."

MR. RICKETTS moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

#### CATTLE TRESPASS.

THE CLERK presented a Petition from the Indigo Planters' Association, praying for the enactment of a law, similar to Section IV Regulation V. 1830 of the Bengal Code (repealed by Act III of 1857), which provided a punishment for wilful damage to indigo plant by other means than Cattle Trespass.

MR. LEGEYT moved that the Petition be referred to the Select Committee on the Bill "to amend Act III of 1857 (relating to trespasses by cattle)."

Agreed to.

#### REGULATION OF CONVEYANCES (STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement with the draft of an Act for the regulation of hack carriages, passenger boats, and other conveyances in that Settlement.

MR. LEGEYT moved that the communication be printed.

Agreed to.

#### SIR JAMSETJEE JEEJEEBHOY'S ESTATE.

MR. LEGEYT presented the Report of the Select Committee on the Bill "for settling a sum of money, and a mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, the property of Sir Jamsetjee Jeejeebhoy, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred on him by Her present Majesty Queen Victoria, and for other purposes connected therewith."

At the same time he begged to move that the Report be read by the Clerk, with a view to his (Mr. LeGeyt's) afterwards moving its adoption by the Council. His reason for doing so was that the family and friends of the late Baronet were extremely desirous that the Bill should be settled, in accordance with the wishes of the deceased Baronet, as speedily as possible. He had received several communications on the subject from the Bombay Government, who were of opinion that the Council would be conferring a great favor on the family of the late Baronet if the Bill were passed at once. The Bill was so completely of a private nature, that it was scarcely necessary that there should be the delay of printing and circulating the Report previously to its adoption.

The Motion was carried, and the Report read accordingly.

MR. LEGEYT then moved that the Report be adopted.

MR. PEACOCK said, he regretted very much that any delay had taken place in the passing of this Bill, especially as the sons of the late Baronet were most anxious to carry out their father's intentions at once. But there were certain recitals in the Bill which required alteration to adapt them to the present state of circumstances, and the Select Committee were not in possession of sufficient information to enable them to make the necessary alterations. For instance, the Bill said that Sir Jamsetjee Jeejeebhoy was possessed of a mansion-house and appendages called Mazagon Castle. The Select Committee could not know who was at present in possession of Mazagon Castle, or whether it had descended to the present Baronet, or had been devised by the will of the late Sir Jamsetjee Jeejeebhoy.

Another difficulty was that it was proposed to incorporate certain Government Officers at Bombay as trustees of the property to be conveyed for the support of the title. One of those Officers was the Commissioner of Revenue. It was not impossible, nor indeed improbable, that that office might be abolished, and it was therefore necessary to make some provision for the re-construction of the Corporation in the event of the abolition of any of the offices of which the holders were to be ex-officio trustees under the Act. He (Mr. Peacock) did not think it right that the Select Committee should, without the consent of the present Baronet and the other persons entitled, provide for the re-construction of the Corporation in the event of the abolition of any of the said offices. It appeared to him, therefore, that the Report just read should be adopted and sent to the present Baronet. The Council could consider any other Bill which the present Baronet might think proper to submit to them.

The Motion was carried.

#### REPEAL OF ACTS AND REGULATIONS.

MR. HARRINGTON moved the first reading of a Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter." He said, this Bill was intended as a supplement to the Act which had lately been passed by the Council for simplifying the Procedure in the Courts of Civil Judicature in this country, not established by Royal Charter, and which, having received the assent of His Excellency the Right Honorable the Governor-General, was now enrolled amongst the Statutes for India as Act No. VIII of the current year. The Act concluded by declaring that, from and after the time when it should come into operation in any part of the British Territories in India, the Procedure of the Civil Courts in such parts of the said Territories should be regulated by the Act, and, except as otherwise provided by the Act, by no other Law or Regulation. The Section in which this declaration was contained did not form part of the Bill, as originally prepared, but was added in Com-

mittee of the whole Council, as it was considered that the Code would not be complete without it. It was at the same time intimated that this Section was not intended to do away with the necessity of any further legislation on the point to which it related, but that it was proposed, as soon as the new Code of Procedure became law, to bring in a Bill to repeal all existing Regulations and Acts or parts of Regulations or Acts which would be superseded by its provisions. The Bill, of which he was about to move the first reading, had been framed in pursuance of the intention thus expressed. The Preamble recited the reasons which had rendered the introduction of the Bill necessary. This was followed by a single enacting Clause in the usual terms of a repealing Act, and then came a Schedule, in which, as appearing to be the most convenient mode of proceeding, the whole of the laws proposed to be repealed were thrown together in columns with suitable headings. This Schedule had been carefully prepared with the assistance of the Honorable Members for Madras and Bombay, and of the Clerk and Assistant Clerk of the Council, and it was hoped that it would be found to contain all the Regulations and Acts now in force in the three Presidencies, which would cease to have effect from the dates on which the new Code of Civil Procedure would come into operation in those Presidencies respectively. The opportunity had also been taken to repeal a number of Regulations relating to the late Courts of Appeal and the Courts of the Zillah Registers, which, in consequence of the abolition of those Courts, had long been a dead letter, but which still encumbered the Statute Book. The total number of Regulations and Acts proposed to be repealed, either wholly or in part, was a hundred and thirty-eight; of these eighty would be entirely repealed, and fifty-eight partially. These Regulations and Acts were scattered through a large number of volumes, and extended over a period of upwards of sixty years, commencing with the year 1793. So that, regarded merely as a work of codification, if it had no higher merit, the new Code of Civil Procedure, the whole of which was con-

tained in the small thin volume which he held in his hand, would, he thought, prove an immense boon to the various Courts of Civil Judicature spread over this vast country, whose proceedings were to be regulated by its provisions, as well as to the people at large. Should the Council permit the Bill to be read a first time, he proposed to ask for the suspension of the Standing Orders to enable him to move that the Bill be read a second time also to-day. This Motion, if carried, would be followed by the publication of the Bill for general information in the next issue of the *Calcutta Government Gazette*, and he proposed further to move that the Select Committee, to which the Bill would be referred in the usual course, be instructed to make their report within six weeks from this date. He thought that this would allow ample time for the Select Committee to receive from the Local Governments any suggestions which they, or the Officers subordinate to them, might wish to make, either for the purpose of supplying any omissions which might have occurred in the preparation of the Schedule annexed to the Bill, or with a view to the removal therefrom of any laws which had been improperly inserted. With regard to Bombay, which, in so far as the transmission of letters by post was concerned, was the farthest removed from them, he might mention that the whole of the Regulations relating to the Procedure of the Civil Courts of the East India Company in that Presidency, having been codified in the year 1827, it would not be necessary for any of the Bombay officials who might feel disposed to assist them on this occasion to go back beyond that year, and their work of revision would, consequently, be comparatively light. It could scarcely be necessary for him to remark that it was very desirable that the Bill which he wished to introduce, and the Act containing the new Code of Civil Procedure, which, as he had said, the Bill was intended to supplement, should come into operation at the same time. In the Presidency of Bengal the new Code of Civil Procedure would take effect from the 1st July next, which was now close at hand, and in Madras and Bombay from the 1st January 1860, or such

earlier day as the Local Government in those Presidencies respectively should fix and publicly notify in the *Gazette* of the Presidency, three months at least before the date so fixed, and, notwithstanding what had lately been stated in another high quarter, he must say that it would be a great disappointment to him, and he thought he might add that it would be a subject of deep and universal regret if any thing occurred to prevent the Code from coming into operation in the three Presidencies on the dates which he had mentioned. But should such a misfortune happen, and knowing from a long judicial experience the great benefits which might be expected to result from the introduction of the new Code, he could call such a contingency by no other name, the Bill now proposed for adoption, even if it should have passed into law at the time, would be simply inoperative, and he could see no reason, therefore, for their delaying to pass that Bill until they were informed of the result of the attempts which they had reason to believe were being made to render nugatory, for a time at least, the labors of this Council, in preparing and bringing to maturity a Code of Civil Procedure for all India, though at first it was not intended to apply to the Courts established by Royal Charter. Honorable Members who had read the Minute on the subject of the amalgamation of the Supreme and Sudder Courts at Madras, which had lately appeared in the public prints, and to which the signature of His Excellency the present Governor of Madras was affixed, would, he thought, consider that he had good grounds for what he had just stated as to what was being done to suspend, if not to stop altogether, the action of the new Code of Civil Procedure which had been prepared and passed by the Council. Looking to the constitution of the Local Governments and to the relation or subordination in which they stood to the Supreme Government, of which there could be no question this Council was a component part, some doubt might be entertained as to the authenticity of the document to which he had alluded, but he believed that he should not do wrong if he assumed that

*Mr. Harington*

document to be authentic, and referred to it under that assumption. His Excellency the Governor of Madras in this Minute expressed a hope that Her Majesty would be advised to disallow the Act in which the new Code of Civil Procedure was contained. An uninitiated person, or any person not fully master of the subject, would naturally be led to suppose that the hope thus expressed was grounded on a belief or conviction that the Code, considered merely as a Code of Procedure—and it did not profess to be any thing more—was defective in itself; that it did not answer its title; that this Council having been required to prepare a Code for simplifying the Procedure of the Courts of Civil Judicature in this country had failed to accomplish that object, and that little, if any, advantage would result from introducing the Code prepared by them in supersession of existing enactments. But this was not the ground on which His Excellency the Governor of Madras had based the hope expressed by him that Her Majesty would be advised to disallow the Act containing the new Code. The objection urged to the Code by His Excellency the Governor of Madras was that it made no provision for uniting the Sudder and Supreme Courts, or for extending the improved Procedure to the Supreme Courts. In a parenthesis His Excellency had declared his belief that the proposed alterations in the Code of Procedure were conducive to speedy and economical justice, which must be looked upon as high praise coming from him, but because a small, though, no doubt, a most intelligent and influential section of the large Indian community, that is to say, those residing within the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature at Calcutta, Madras, and Bombay, from which number must however be deducted all those numerous classes, whose disputes never took them beyond the jurisdiction of the Courts of Small Causes in the three Presidency Towns, would not enjoy the benefit of these alterations and improvements from the same date as the millions who were subject to the jurisdiction of the Courts to which the provisions of the

Code were at once to be extended, His Excellency would indefinitely postpone the period for the Code coming into operation, or, in other words, would punish these millions, for such would be the effect, if the hope expressed by His Excellency should be realized, for the sake of a few thousands, who, whether rightly or wrongly, wisely or unwisely, were strongly opposed to the changes in contemplation, and whose only wish was to be left alone. But His Excellency said that, if the Act containing the new Code of Civil Procedure were confirmed, it would be a practical adoption of the old divided jurisdiction into the new regime, and would indefinitely postpone the establishment of a united system of judicature. He (Mr. Harington) must confess that he could not see why this should necessarily be the case. In preparing the new Code of Civil Procedure, the object had been steadily kept in view from the first so to frame its provisions, that it should be suited to any class of Courts which might eventually be established for the administration of civil justice in this country, whether they should be amalgamated Courts or otherwise, and should admit of easy extension to them; in other words, that, *mutato nomine*, the Code should be capable of being worked just as well by a High Court, such as was proposed by Her Majesty's Commissioners to be established, as by the present Sudder and Zillah Courts; and that in any Act which might hereafter be passed for constituting a High Court or other Courts, a simple declaration that, where the words "Sudder Court" occurred, the High Court should be understood, and so on, should be all that was necessary. With regard to the amalgamation of the Supreme and Sudder Courts, he (Mr. Harington) had stated at the last meeting of the Council, that the question of uniting those two Courts had never been submitted for their consideration, and had consequently never been discussed by them, orders having, as he understood, been received from England prohibiting any immediate legislation on the subject. He had since made further enquiries with a view to ascertain the real state of the case, and he had found that, on the introduction

of the Bill "for simplifying the procedure of the Courts of Civil Judicature of the East India Company in the Presidency of Bengal," the Honorable and learned Mover of the Bill had stated that "the Council was aware that the Commissioners, meaning Her Majesty's Commissioners, had recommended that the Sudder Courts and Her Majesty's Supreme Courts should be amalgamated. But under the Statute 3 and 4 of William 4, chapter 85, Section XLVI, this Council had no power, without the sanction of the Honorable the Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. The Council had received no authority from the Court of Directors to abolish the Supreme Courts, and, therefore, it was impracticable at present to effect the amalgamation desired. He had accordingly excepted that question from his Bill." Here then was the cause of the Council not having as yet done any thing towards the carrying out of that part of the scheme of Her Majesty's Commissioners which related to the amalgamation of the Supreme and Sudder Courts. It was unnecessary for him to tell the Council that the scheme of Her Majesty's Commissioners was limited to the union or amalgamation of the two Courts just mentioned, and did not propose to descend to any of the Courts below them. The Courts of the Zillah Judges, of the Principal Sudder Ameens, and of the Moonsiffs were to be continued as at present, except that some alteration was proposed in the amount of the jurisdiction now exercised by the Moonsiffs. Before resuming his seat, he felt that it was due to the Council that he should apologize for the digression from the subject in hand, of which, in making these remarks, he felt that he had been guilty, and he must also express a hope that in what he had said he had not been guilty of any disrespect towards His Excellency the Governor of Madras. On both public and private grounds his wish must be to treat His Excellency, whose friendship he had the privilege of enjoying after an acquaintance, which commenced more than thirty years ago, with all the respect and courtesy which were so justly due to his exalted position, high

*Mr. Harington*

character, and private virtues; but having labored assiduously for several months with the other Members of this Council in preparing the new Code of Civil Procedure, and conscientiously believing as he did that that Code was calculated to confer very great benefits on the people of this country, he could not but deeply lament that His Excellency the Governor of Madras should have considered it to consist with his duty to the public of India to exert his powerful influence, for that he must be presumed to have done, to prevent the Code from coming into operation at the time appointed, thereby indefinitely postponing the introduction of this large and useful measure of reform, which had been so long and anxiously looked for—and that, too, not because there was anything bad or defective in the Code itself, for His Excellency admitted that it would conduce to speed and economy, two great requisites in any judicial system—but because for a brief interval, which might be shortened by a stroke of the pen, a small portion of the community, consisting chiefly of their own countrymen, were not to enjoy its benefits. But their duty in this matter was a respectful obedience to the commands of the Sovereign, an entire submission to Her Majesty's will and pleasure.

The Bill was read a first time.

MR. HARRINGTON moved that the Standing Orders be suspended in order that the Bill might be read a second time.

MR. FORBES seconded the Motion, which was then agreed to.

MR. HARRINGTON moved the second reading of the Bill.

MR. PEACOCK said that, in consequence of what had fallen from the Honorable Member for the North-Western Provinces, he thought it right to make a few observations. He had no doubt that he was expressing the feeling of the whole Council in stating that they were deeply indebted to the Honorable Member for the trouble he had taken in preparing the present Bill, which would have the effect of repealing numerous Sections of Acts and Regulations now lying scattered over several volumes, and which had been superseded by the Code of Civil Procedure recently

passed by the Council. He hoped with the Honorable Member that nothing would prevent that Code from taking effect. When he (Mr. Peacock) originally introduced the Bill, he explained to the Council that they were not competent, without the previous sanction of the Court of Directors, to abolish any Court which existed by virtue of a Charter from the Crown. It was not necessary, nor was it his intention on the present occasion, to discuss the question relating to the abolition of the Supreme and Sudder Courts, and to substitute for them a High Court of Judicature as proposed by Her Majesty's Commissioners. When that question should come regularly before the Council, he should be prepared to discuss it. At present he did not consider that the Council had the power to abolish the Supreme Courts. He would however remark that, according to the scheme proposed by Her Majesty's Commissioners, a Native Judge of ten years' standing might be appointed to hold a Session of Oyer and Terminer, and Europeans might be tried by him with the assistance of a jury, and if found guilty might be sentenced by him to punishment. He (Mr. Peacock) thought that such a scheme would cause great dissatisfaction.

With reference to the Minute of the present Governor of Madras, which had appeared in the public newspapers, he (Mr. Peacock) must be allowed to express his opinion that His Excellency had not acted with that decorum which the subject demanded, or treated this Council with that respect to which it was entitled. The Council had not passed that Code hastily nor without attentive consideration. The Government of Madras had been very ably represented both in the Select Committee and in the Council by the Honorable Member for that Presidency. Yet that Honorable Member had never offered any objection to its being passed unless accompanied by an amalgamation of the Supreme and Sudder Courts, neither did the Madras Government of the day offer any such objection. He (Mr. Peacock) did not therefore see what right a newly appointed Governor had in his official capacity—he (Mr. Peacock) would say nothing of his private capacity—to record a Minute, and to allow it to appear in the public newspapers, and thereby publicly to express a hope that Her Majesty

would be advised to disallow an Act which, after due deliberation, had been passed by this Council, and had received the assent of the Governor General of India. If the Governor of Madras considered that the Code would not answer the purpose for which it was intended without providing at the same time for the amalgamation of the Courts, he should have sent his representation to this Council, and asked for the repeal of the Code so far as the Madras Presidency was concerned, or for amalgamation. But by publicly expressing, in a Minute recorded in his official capacity, a hope that Her Majesty would be advised to disallow the Act, he (Mr. Peacock) thought that the Governor of Madras had greatly exceeded his functions, and had assumed a tone not very respectful to this Council.

His Excellency did not object to the Code of Procedure so far as it went; on the contrary he thought that it would be conducive to the ends of justice and that the inhabitants of the Presidency Towns ought to have the benefit of it; but he expressed a hope that it would be disallowed by Her Majesty as it would indefinitely postpone the amalgamation of the Courts and the adoption of one uniform system of Procedure. He (Mr. Peacock) could not admit that such would be the case. It was quite consistent with the Code that amalgamation should take place, but he (Mr. Peacock) saw no reason why the Code should be disallowed in order that the disallowance might be used as a screw to compel this Council to pass an Act for amalgamating the Courts.

An Act for that purpose had not yet come under the consideration of the Council. On receiving authority from the Home Government for carrying that matter into effect, the Council would be prepared to give, and doubtless would give the subject full consideration. He thought it right to make these observations as he had introduced the Bill under a Resolution of the Supreme Government, leaving the formation of a High Court as a matter for separate consideration.

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

#### MALABAR OUTRAGES.

MR. FORBES moved the second reading of the Bill "for the suppression of



outrages in the District of Malabar in the Presidency of Fort St. George."

MR. RICKETTS said, he was not prepared to take upon himself the responsibility of endeavoring to prevent the second reading of this Bill. But he must say that he was not satisfied with the proof which had been brought forward by the Honorable Member for Madras of the necessity of continuing the arbitrary and what he (Mr. Ricketts) could not but consider tyrannical rules which the Bill proposed to enact. No doubt there were times when arbitrary rules were extremely necessary, and there were also times when a tyrant was the best preserver of the public peace. But the question was, whether the state of the Mopla country was the same now as it was before 1854? The Honorable Member for Madras, in his speech on the first reading of the Bill and in his Statement of objects and reasons, had certainly shown that in 1854 there was very great necessity for such a law, and he, as well as those from whom he had obtained his information, had stated that "the temper of a great portion of the Mopla population was such that any relaxation of the law would be attended with considerable danger to the peace of the Province." But what were the facts? Since 1854 not a single outrage had occurred.

[Mr. Forbes. Mr. Conolly's murder in 1855.]

Now if the quiet of the Province was not to be regarded as a proof that such rules were no longer necessary, he (Mr. Ricketts) could not see what better proof could be adduced. Supposing this Province had been quieted by the influence of the Mopla Chiefs, as he (Mr. Ricketts) believed was partly the case, what would they say to the re-enactment not only of those rules but also of still more stringent rules? What would they say to the renewal of the stigma of there being one law for them and another law for their neighbors; and not only that, but additions to the stigma already existing.

According to Act XXIII of 1854, whenever an outrage was committed, it was "lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize from all the Moplas within the Umshum or the several Umshums to which the

*Mr. Ricketts*

perpetrator or perpetrators, or any one of such perpetrators of such outrages shall be found to belong, or wherever any such perpetrator shall have been resident at the time of the commission of the outrage." But this Bill proposed to empower the Magistrate to punish as accessories the inhabitants of the Umshum where a fanatical outrage was committed. Now he thought it ought to be shown what necessity there was for such additional stringency. It might be necessary and politic that every one residing in a village where a crime was committed should be punished, but the necessity should be very clearly shown to justify such a rule. Supposing a party of Sailors were to come from Garden Reach and attack the Bengal Club and murder the Steward, what would the Honorable and learned Chairman and all those who lived in Russell Street, Middleton Street, and other Streets in the vicinity, say if they were called upon to pay a fine because they happened to live in the Umshum in which the Club was situated? All the inhabitants of Garden Reach would be liable under the law which seemed stringent enough without extending the liability to those who resided near the house attacked. Certainly circumstances in Malabar were not ordinary circumstances. But before the Council was asked to pass such a measure, it was reasonable to expect that some proof of its necessity should be presented.

He (Mr. Ricketts) observed in the annexures to the Bill that the Sessions Judge of Tellicherry recommended that the inhabitants of the Umshum in which a crime was committed, should be fined whenever it might be ascertained from presumptive evidence or otherwise that the crime was perpetrated with the knowledge and consent of the Mopla inhabitants of the neighborhood. The Honorable Member rejected altogether the suggestion as regards evidence of complicity, and made the neighbors punishable whether there be evidence or not!

He would next observe that Section X enabled a Magistrate to call upon the Mopla inhabitants of the village to which the perpetrator of an outrage belonged, or in which he resided, or to which he might flee, to deliver him up when called upon, under penalty of fine on failure to do so. This also was a new

rule, the necessity for which should be plainly shown.

Some time ago he (Mr. Ricketts) was constantly in communication with Military Officers and others who knew the Moplas well, and he learned from them that the fines levied from Moplas were not only excessive, but that they were often times levied from those against whom there was nothing that in other parts would be regarded as approaching proof of complicity. He had also been told that a feeling was gradually rising in Malabar, which, if not checked in time, might lead to great embarrassments. The Council must not suppose the Moplas to be a race of savages. Fanaticism aside, they were industrious, enterprising, independent, and indeed he wished that all our Asiatic subjects, fanaticism excepted, were like them. In trying to put down the outrages of a few, it behoved us to be very careful not to cause general discontent among 4,00,000 of our best subjects. He was not prepared, as he had already stated, to oppose the Motion for the second reading, but he hoped the Honorable Mover of the Bill, when the Bill came under the consideration of the Select Committee, would reconsider these new rules, and suit his Bill to the altered circumstances of the Province.

MR. FORBES said, he believed he should have been surprised if this opposition to the Bill had been made by any other Member than the Honorable Member who had just spoken. But as the Honorable Member had in conversation made known to him his objections, he was not quite unprepared for the opposition.

It appeared to him (Mr. Forbes) that the very ground of objection which had been taken to the Bill was a sufficient ground for passing it. In moving the first reading, he had shown that, before the passing of Act XXIII of 1854, Malabar was in so lamentable a condition that no European or Hindoo Inhabitant of that district felt his life worth half an hour's purchase. The result of the passing of that Act was that, since that time, the fanatical outrages by which the peace of the Province had been violently disturbed for several years previously had almost wholly ceased. Mr. Conolly's murder was an exceptional case, and was committed out of revenge.

The argument of the Honorable Member (Mr. Ricketts), however, stood thus. If Act XXIII of 1854 had failed in its operation, the Honorable Member would have had no objection to continuing it in force; but the Honorable Member objected to do so because it had been successful. It was generally supposed that "prevention is better than cure;" the Honorable Member, it would appear, thought otherwise. It was also an old proverb to shut the stable-door before the steed was stolen; the Honorable Member, however, said, "no, the Bill should not be passed for prevention, but for punishment." The more stringent provisions of the law in force had been introduced in Select Committee, among whom were the late Vice-President (Sir James Colville) and an Honorable Member (Mr. Grant) who had recently retired from this Council on becoming Lieutenant-Governor of Bengal. He was sure that he need hardly say that no two Members of this Council were at all less likely to allow a measure which had a tendency to undue harshness or severity, or which stretched the law unduly against the liberty of the subject, than the late Honorable and learned Chief Justice and the present Lieutenant-Governor of Bengal. But what was the peculiar injustice or hardship of the measure? It did not say that any one in the peaceable pursuit of his ordinary calling, whatever it might be, should be interfered with; no one was to be subjected to any particular surveillance of the Police; as long as any one abstained from committing murder, or abetting the commission of murder by others, he was just as much at liberty to do what he pleased as any inhabitant of Calcutta. In Calcutta, if any man committed murder, he was liable to suffer death, and the reason why in Malabar the law was different, was because there death was no punishment to a Mopla who had committed a fanatical murder, but really was a premium upon crime. A Mopla fanatic sought death at the hands of those he considered to be unbelievers, and his whole end and object was to be killed.

The Honorable Member (Mr. Ricketts) had said that no reason had been given for the new provision introduced into the Bill, by which it was proposed

to make the Mopla inhabitants of the village within which a fanatical outrage was committed liable to fine in the same manner as the existing law had made the inhabitants of the village to which the perpetrator belonged or in which he had recently resided. If the Honorable Member had read the Statement of objects and reasons of the Bill, he would have found it stated in paragraph 17 that this addition to the scope of the law had been recommended by the Madras Government on the suggestion of the Local Officers. The Session Judge of Tellicherry had observed—

“In the case of the sanguinary outbreak which took place in January 1852 at Mattavoor, fifteen miles from Tellicherry, in which a substantial Brahmin householder and his entire family, fifteen persons in all, were murdered in one night, the perpetrators came from a distance, but it was well established that the murder was committed with the consent of the Mopla community generally in the neighborhood where the crime was perpetrated.”

It seemed therefore quite as reasonable to make the accessories residing at the scene of outrage as amenable to the law as those who resided at the same place as the fanatic. That was the ground on which he had introduced that Section, and he humbly took leave to say that it was a substantial and a good ground.

In 1856, when a Bill was brought in to give effect to Act XXIII of 1854 from the time of its promulgation in Malabar, the late Honorable Member for Madras (Mr. Elliott) had said :—

“In the course of this enquiry it was clearly ascertained that the object of the attack upon Mr. Conolly was to inflict vengeance on him for the part he had taken in the banishment of the Tungal to which he had already adverted. ‘The murderers,’ said Mr. Collett, the Joint Magistrate, ‘in more than one place declared this to be their motive.’ ‘It is now clear,’ he observed, ‘that, from an early date, they shaped their proceedings with a view to this end. It is from the knowledge that they were plotting to retaliate upon the person of the Chief Officer of Government for this offensive measure, that their caste-people generally conspired together to aid them, and preserved their secret inviolate, though it was literally known to scores, including women and children.’ He might here mention that but shortly before this fatal event Mr. Conolly had received a communication from Captain Harris, the late Resident at Aden, warning him to be on his guard, as, from information

that had been sent to him from Arabia, he apprehended that the Tungal was plotting some mischief against him.”

Was that the state of things in which the Honorable Member opposite wished Civil Officers in Malabar to be placed ?

He (Mr. Forbes) remembered, in the course of the debates which recently took place on the Bill for the recovery of rents, to have heard the Honorable Member (Mr. Ricketts) say, after congratulating the late Honorable Member for Bengal at the prospect of that Bill passing into law, that it would be a pleasing reflection for the Honorable Member for Bengal “to put under his pillow and go to sleep upon in a snug little room in the old country,” that he had been instrumental in passing a Bill which would benefit about thirty millions of people. Would it be a pleasing reflection for the Honorable Member (Mr. Ricketts) to put under his pillow and go to sleep upon, that he had left a million Hindoos, men, women, and children, and all the Civil Officers of Government employed in Malabar, to the mercy of the Moplas who spared neither age nor sex ? For his own part he (Mr. Forbes) must say that it would be a pleasing reflection to him that he had brought in a Bill for the purpose of protecting the lives of the peaceable inhabitants of the Province and the public servants of Government. Mr. Conolly had returned from the labors of the day and was sitting reading in his verandah, when four men came up with drawn swords and hacked him to pieces in the presence of his wife ; and such scenes must again happen if the proposed law were not passed. If any portion of the Bill should be considered too stringent, it could be debated in Committee.

SIR JAMES OUTRAM said, he did not understand the Honorable Member opposite (Mr. Ricketts) to object to the renewal of the old law, but to the adoption of more stringent measures than were passed in 1854. The Honorable Member for Madras had admitted that, since the passing of the Act of 1854, only one outrage had been committed, in consequence of which it became necessary in 1856 to pass a supplementary Act which contained all that was considered necessary, and which had in practice proved quite

*Hr. Forbes*

successful. But the Bill now introduced contained additional provisions, the necessity for which had not been shown; and he certainly thought with the Honorable Member opposite that still more stringent measures might have the effect of irritating a fanatical people like the Moplas into desperation, who as yet were found obedient to the law as it now stood. For these reasons, while he was prepared to support the renewal of the old law, he must decidedly object to the enactment of more stringent measures than those now in force.

MR. FORBES said that, on the second reading of a Bill, the general principle only was under discussion. If the Honorable and gallant Member took exception to any particular Section in this Bill, opportunity to state his objection would be afforded when the Bill was in Committee.

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

#### EXCLUSIVE PRIVILEGES TO INVENTORS.

The Order of the Day being read for the third reading of the Bill "for granting exclusive Privileges to Inventors"—

MR. PEACOCK said that, before he moved the third reading of this Bill, he thought it necessary that the Council should go into Committee for the purpose of adopting the amendment made therein by Her Majesty's Government. He should state very briefly for the information of Honorable Members who were not in the Council when the Bill was last under consideration, that, in consequence of instructions received from the Honorable the late Court of Directors, it was decided that this Bill should be sent home to England for the sanction of the Crown previously to its being passed. With this view it was considered advisable that the Bill should pass through all its stages except the third reading; and, accordingly, after the Bill had been considered and amended by a Committee of the whole Council, it was sent home for the sanction of Her Majesty. Consequently the Council were to some extent pledged to the passing of the Bill in the form in which it then stood. The Bill had now received the sanction of Her Majesty, except as to a slight verbal

amendment. Before moving for the re-committal of the Bill, he would request the Clerk of the Council to read the Despatch of the Right Honorable the Secretary of State, conveying Her Majesty's sanction to the Bill.

The Despatch was read accordingly.

MR. PEACOCK then moved that the Bill be re-committed to a Committee of the whole Council.

Agreed to.

The Bill passed through Committee with the insertion of the words "in Council" after the words "Governor-General of India" in Section XVI, and the Council having resumed its sitting, was reported.

MR. PEACOCK moved that the Bill be read a third time and passed.

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

MR. PEACOCK moved that Sir James Outram be requested to take the Bill to the Governor-General for his assent.

Agreed to.

#### REPEAL OF ACTS AND REGULATIONS.

MR. HARINGTON moved that the Bill "to repeal certain Regulations and Acts relating to the Procedure of the Courts of Civil Judicature not established by Royal Charter" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Mr. Sconce, and the Mover, with an instruction to present their Report within six weeks.

Agreed to.

#### WARRANTS OF ATTORNEY AND COGNOVITS.

SIR CHARLES JACKSON moved that the Bill "to provide for the due execution of Warrants of Attorney to confess judgment and Cognovits" be referred to a Select Committee consisting of the Vice-President, Mr. Harington, and the Mover.

Agreed to.

#### SMALL CAUSE COURTS.

MR. HARINGTON moved that the Clerk of the Council be directed to address a letter to the Secretary to the Government of India in the Home Department, requesting that His Excellency

the Right Honorable the Governor-General in Council will be pleased to call upon the Local Governments of Madras, Bombay, the North-Western Provinces, and the Punjab, to furnish this Council, with as little delay as possible, with the following returns, and that those Governments be desired, at the same time, to submit any remarks that they, or the Officers subordinate to them, may see fit to make on the Bill "for the establishment of Courts of Small Causes beyond the local limits of the Supreme Courts of Judicature established by Royal Charter," as settled in Committee of the whole Council, and published for general information in the Calcutta Gazette of the 4th May Instant, namely:—

A return of the number of original suits instituted in the several Courts during the first four months of the current year, showing—

1. The number of cases in which the amount or value of the property in dispute did not exceed the sum of twenty Rupees, and what number of those cases would, by Section II of the Bill, have been cognizable under its provisions.

2. The number of cases in which the amount or value in dispute exceeded the sum of twenty Rupees, but did not exceed the sum of fifty Rupees, and what number of those cases would have been cognizable as above.

3. The number of cases in which the amount or value in dispute exceeded the sum of fifty Rupees, but did not exceed the sum of five hundred Rupees, and what number of those cases would have been cognizable as above.

4. The number of cases in which the amount or value in dispute exceeded the sum of five hundred Rupees, but did not exceed the sum of one thousand Rupees, and what number of those cases would have been cognizable as above.

5. The number of cases in which the amount or value of the property in dispute exceeded the sum of one thousand Rupees, but did not exceed the sum of five thousand Rupees and what number of those cases would have been cognizable as above.

6. The number of cases in which the amount or value of the property in dispute exceeded the sum of five thousand Rupees, but fell below the sum of ten thousand Rupees, and what number of those cases would have been cognizable as above.

7. The number of cases in which the amount or value in dispute was ten thousand Rupees and upwards, and what number of those cases would have been cognizable as above.

The number of regular appeals preferred during the same period, classified as above.

*Mr. Harrington*

The number of special appeals admitted during the same period, classified as above.

MR. LEGEYT said, he did not rise to offer any opposition to any part of the Motion of the Honorable Member for the North-Western Provinces. He (Mr. LeGeyt) only desired to remark that objection might be taken to the Motion in the form in which it now stood. The Motion began as follows:—"That the Clerk of the Council be directed to address a letter to the Secretary to the Government of India in the Home Department, requesting that His Excellency the Right Honorable the Governor-General in Council, &c." Now it was not his intention to re-open the debate which had taken place on the Oaths question. He had since considered the question then mooted, and thought that the course which was followed upon that occasion was not quite consistent with the Standing Orders.

Standing Order No. 115 required that "all communications from the Legislative Council to the Governor-General, or to the Governor-General in Council, shall be made by Message to be taken by a Member of the Legislative Council." On the 25th August 1855, when the late Honorable Member for the North-Western Provinces moved that the President in Council be requested to favor this Council with a certain document, he also moved that one of the Members of the Council be requested to carry the Message to the President in Council. That he took to be not only in strict accordance with the Standing Orders, but in all respects a more fitting course than the one now proposed by the Honorable Member for the North-Western Provinces. This Council being a part and parcel of the Council of the Governor-General of India, he did not think that the proposed course was a becoming one; and as they had on record precedents which appeared to him to be strictly in accordance with the Standing Orders, it seemed to him that those precedents should be adhered to. He would therefore propose to substitute for the words above quoted the words "that a Message be taken to the Right Honorable the Governor-General, requesting that His Excellency, &c."

Mr. HARINGTON said, he had no objection to offer to the amendment proposed by the Honorable Member for Bombay, and was willing that the words suggested by him should be substituted for the words to which he had taken exception. On a former occasion the Clerk of the Council had been directed on his (Mr. Harington's) Motion to address a letter to the Secretary to Government in the Home Department for the purpose of obtaining some information required from his Office, and no objection had been urged by any Honorable Member to the mode of communication then followed, and he had therefore proposed that they should adopt the same mode on the present occasion. He had certainly overlooked the Standing Order referred to by the Honorable Member for Bombay; but even had he (Mr. Harington) adverted to it, he thought he should have had some doubts as to its applicability in the present instance. But if the Council were of a different opinion, he was quite prepared to alter his Motion so as to make it correspond with the order in question.

The Motion was by leave withdrawn.

MR. HARINGTON then proposed the same Motion in an altered form. The amended Motion commenced as follows:—

“That the Vice-President be requested to take a message to His Excellency the Right Honorable the Governor-General in Council, requesting that His Excellency in Council,” &c.

The Motion was carried.

#### REGULATION OF HACKNEY CARRIAGES.

MR. LEGEYNT gave notice that he would, on Saturday next, move the first reading of a Bill “for the better regulation of Hackney Carriages in certain Towns.”

#### MADRAS POLICE.

MR. FORBES moved that Mr. Sconce be added to the Select Committee on the Bill “for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George.”

Agreed to.

#### REGISTRATION.

Mr. Forbes moved that Mr. Sconce be added to the Select Committee appointed to take into consideration a communication from the Madras Government, suggesting improvements in the present system of registering assurances, and submitting the draft of an Act for affording protection to rights on property.

Agreed to.

#### MALABAR OUTRAGES.

MR. FORBES moved that the Bill for the suppression of outrages in the District of Malabar in the Presidency of Fort St. George “be referred to a Select Committee consisting of Mr. Harington, Mr. Sconce, and the Mover.”

Agreed to.

#### MADRAS POLICE.

MR. FORBES moved that certain papers received by him from the Madras Government be laid upon the table, and referred to the Select Committee on the Bill “for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George.”

Agreed to.

The Council adjourned.

Saturday, May 21, 1859.

#### PRESENT:

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

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

#### EXCLUSIVE PRIVILEGES TO INVENTORS.

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill “for granting exclusive privileges to Inventors.”

#### PUBLIC CONVEYANCES.

THE CLERK presented a Petition from certain Inhabitants of Calcutta,