

Tuesday, September 6, 1859

LEGISLATIVE COUNCIL
OF
INDIA

VOL. 5

JAN. - DEC.

1859

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Chairman, and the Council resumed its sitting.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on 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.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE gave notice that he would, at the next Meeting of the Council, move the second reading of the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability."

The Council adjourned at 7 o'Clock, on the Motion of Sir James Outram, to Tuesday, the 6th instant, at $\frac{1}{4}$ to 11 o'Clock.

Tuesday, September 6, 1859.

PRESENT :

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

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

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented to the Council a Petition from the Bengal Chamber of Commerce against the Bill "for the Licensing of Trades and Professions."

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

Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved the second reading of the Bill "to enable Joint

Stock Banking Companies to be formed on the principle of Limited Liability."

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

CRIMINAL PROCEDURE.

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

The postponed Section 260 prescribed the form of verdict in trials by Jury.

After some verbal amendments, Mr. Harington moved the addition of the following words to the Section :—

"When the Jury are equally divided in opinion, the verdict shall state specially the division of opinion."

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

The postponed Section 261 was passed after verbal amendments.

The postponed Section 262 prescribed the form of finding and sentence.

After some verbal amendments, Mr. Harington moved the introduction of the following Clause into the Section ;—

"When the Jury are equally divided in opinion, the finding of the Jury shall state specially the division of opinion, and the finding and sentence of the Court shall then be recorded in the following form or to the same effect :

The Court concurs with the Jurors who have found that Z is guilty of the offence specified in the charge, namely, that he has committed &c. &c., and the Court directs that the said Z be [sentence]; or (as the case may be)—

The Court concurs with the Jurors, who have found that Z is not guilty of the offence specified in the charge, namely, that Z has committed &c., &c.; and the Court directs that the said Z be discharged."

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

Verbal amendments were made in Sections 267, 270, and 274.

MR. SCONCE proposed an amendment in Section 276. He said, this Section provided for appeals from judg-

ments of Criminal Courts, but did not apply to interlocutory orders. He should move the addition of the following words to the Section :—

“ In like manner an appeal may be preferred to any of the Appellate Courts above mentioned from any interlocutory order made in the course of a Criminal trial upon the same grounds as from an order of conviction.”

After some conversation the Council divided—

Aye 1.
Mr. Sconce.

Noes 6.
Sir C. Jackson.
Mr. Forbes.
Mr. LeGeyt.
Mr. Harington.
Sir James Outram.
The Chairman.

So the Motion was negatived.

Section 280 related to appeals from orders in proceedings other than Criminal trials.

MR. SCONCE said, as this Section now stood the decisions of the Sessions Judges would be final, and in no case would an appeal lie from them to the Sudder Court. The cases to be tried would, among others, be cases of forcible dispossession under Act IV of 1840, and cases for the removal of local nuisances and such like, not being Criminal trials. The question was frequently raised whether Magistrates and Sessions Judges had taken cognizance of the cases before them strictly within the terms of the law by which they professed to be guided, and it seemed to him very important that the Sudder Court should have power to amend errors of law. Questions also arose whether the security taken had legally been forfeited, and in Mofussil Courts this gave rise to a great deal of misunderstanding. He therefore proposed the following addition to the Section :—

“ An appeal shall also lie to the Sudder Court upon any point of law that may arise from any order made by the Court of Session in such proceedings.”

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

Section 287 provided as follows :—

“ Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the

Heads of Villages or of the District or Village Police Officers in the Presidencies of Madras and Bombay.” &c.

SIR CHARLES JACKSON wished to ask the Honorable Member for Madras the object of the amendment which had been made on his Motion in this Section. What he desired to know was, if the intention of it was to exclude the Police of Madras and Bombay wholly from the operation of the Act. If so, he considered the amendment to be a very improper one. The Act professed to apply to all the Presidencies generally, and he could not understand why two of the Presidencies should be excepted from its operation, so far as the duties and powers of the Mofussil Police were concerned. If this amendment was insisted on, it would be better to strike out of this Code all the provisions regarding Police, than leave the Code in its present state, applicable to the Police of one Presidency only and not to that of the others. He did not know how the amendment had crept into the Bill, but it certainly appeared to him to be a very improper one. He did not rise at present to propose any alteration, but merely to elicit some explanation of the Clause as it now stood.

MR. FORBES said, the Honorable and learned Judge had observed that the amendment had crept into the Section, an expression to which he thought he was hardly open. The provision to which the Honorable and learned Judge had referred had stood in the Bill for the last five months as regards the Presidency of Bombay; and all that he had done was to extend to Madras a provision of the Code which had already been passed for Bombay. The amendment which had been made in the Section on his (Mr. Forbes') Motion on Thursday last was made openly in a Committee of the whole Council. He believed that his Motion was fully understood by other Honorable Members, and he denied that he was obnoxious to the charge made by the learned Judge that he had been in any way instrumental to this amendment having crept in. He stated then what he would now state again. The Bill for the organization of the Madras Police Force was founded on the principle of an entire

separation of the Police from the Revenue and Magisterial Departments, and its constitution as a distinct department under the immediate control of Government. That Bill was intended to give legislative sanction to an entirely new system of Police for that Presidency. The system proposed to be introduced was, so far at least as that Presidency was concerned, an experiment, and the Select Committee on the Bill had recommended that, as the Madras Government had resolved to try it, as the Home Government had approved of its trial, and as the Government of India had sanctioned an expenditure of ten lakhs of Rupees for the purpose, it should not be fettered in its course of action in matters of mere detail. Although there was some difference of opinion as to the principle of the proposed system, he thought that the experiment should have a fair trial. He did not think that it would have a fair and full trial if the Government of Madras were not allowed to have its own way as to the manner in which the experiment was to be tried. At the time of moving his amendment in the Section now under consideration, or rather whilst moving for a suspension of the Standing Orders on the Madras Bill, he had said that it was not a law peculiar to India which was proposed to be introduced, but only an extension to India of the principle at work with the Police in Great Britain and Ireland. The Honorable and learned Judge was probably aware that the Police of Madras had become open to charges of oppression and extortion, and the present system had been proposed with a view to its reform. Although there was some difference of opinion as to the probable success of the measure, he believed that all Honorable Members were inclined to give it a fair and full trial.

Even if the Madras District Police were not excepted, it would be absolutely necessary to except the Madras Village Police, which was an institution unknown in Bengal but invaluable in Southern India; and as exact uniformity was therefore impossible, the question of the length to which deviation should be allowed was only one of degree. The Council would probably remember that an exception

Mr. Forbes

was made in the Code of Civil Procedure in favor of the Village Moonsiffs of Madras.

MR. LEGEYNT said, as the Honorable and learned Judge's question applied to the Bombay Police also, he (Mr. LeGeyt) desired to make a few remarks on the subject. He should be very glad indeed to see the whole of the Police Chapter struck out from this Bill. It was a Bill for simplifying the Procedure of Courts of Criminal Jurisdiction not established by Royal Charter, and he thought that the Procedure of the Police in detecting or preventing crimes and apprehending offenders was no part of the Procedure of Criminal Courts. It would be very confusing to District Police Officers to be obliged to observe the procedure as laid down in this Code, and he was very glad when the Select Committee had agreed to the Section 287, as far as regarded the Presidency to which he belonged. That Presidency had a few plain short directions as to the way in which the duties of the Village and District Police were to be conducted, and which having been now in force for several years had become well understood. An Act (No. XXVIII) was passed in 1852, vesting the Government of Bombay with the superintendence and control of the Police. That law, in some degree, he supposed, over-rode some particular provisions of the Regulation of 1827 as regards the District and Village Police. But he did not think that this Regulation, which contained extremely plain and simple rules, had been superseded, and he was glad to see by this Section that they were to be continued, and that the Executive Police would continue to be governed by the Rules and Regulations which had been in operation during the last thirty years, and had by experience been found to have worked most satisfactorily when properly superintended. He therefore hoped that no alteration would be made in the Bill as regarded Section 287. If any alterations were necessary, he would rather strike out altogether the Chapter regulating the Police procedure. The Village Police had no place at all in the Bill; and as for uniformity, he did not think that any one Code for regulating the Police could be framed to suit every place. What could

answer in one district would not answer in another. It was wholly an Executive matter, and the law of 1827 had wisely left all details to the Executive Government.

He entirely agreed with the Honorable Member for Madras in his remarks on the subject of the Village Police. He appealed to the Honorable and gallant Member opposite (Sir J. Outram), whether, in the part of the Bombay Presidency with which he was acquainted, we could have got on during the time of the late disturbances, had the Village Policemen been against us, as it was next to certain they would have been, had they been left in the wild state they were in previous to 1847-48.

SIR JAMES OUTRAM said that, as he had been appealed to by the Honorable Member for Bombay, he could only confirm what he had said. In his (Sir James Outram's) opinion, the Bombay Village Police was more efficient, its results had been more satisfactory, than those of the other Presidencies. The Madras Police especially was notoriously most inefficient. It seemed to him monstrously absurd that they should introduce one rule of Procedure for the Police of the whole of India, to suit all kinds of people throughout so vast a country, comprising many different tribes and races. They might just as well attempt to introduce one system throughout Europe. He thought that the local Governments should be allowed to introduce their own systems, and not be bound by a general Code. If the amendment which had been introduced into the concluding Section, and passed at the last Meeting, regarding the Madras and Bombay Police, were now again to be altered, rather than consent to the alteration, he would exclude the whole of the Police provisions of this Bill.

MR. HARRINGTON said, he was very glad that this discussion had taken place, as it would enable him to correct a mistake into which he had fallen, as a Member of the Select Committee on the Bill, in allowing certain words to be introduced into the Section under consideration, the effect of which would be to exempt from the rules of Procedure contained in the Bill the Police in the Presidency of Bombay, equally with

the Police of the Madras Presidency, which he had certainly never intended; and he took blame to himself for not having more carefully considered what would be the effect of the words in question before giving his assent to their introduction into the Section. In Madras and Bombay the Mofussil Police were invested with certain powers which were not possessed by the Police in Bengal. It was not proposed by the present Bill to give those powers to the Police in Bengal, or to take them away from the Police in Madras and Bombay. But he (Mr. Harrington) quite agreed with the Honorable and learned Judge opposite (Sir Charles Jackson), that, in so far as Bombay was concerned, there was no reason why the rules of Procedure contained in the Bill should not be extended to that Presidency equally with Bengal. The case of Madras was different. A Bill, having for its object the introduction of an entirely new system of Police into that Presidency, was now before the Council. It was not proposed that that Bill should be extended to Bombay, and the Police of Bombay would consequently continue to be governed by the rules of Procedure contained in the Bombay Regulations, unless the new Code of Criminal Procedure were made applicable to that Presidency. The Honorable Member for Bombay said, the rules of the Bombay Code were very plain and simple, and that they had worked satisfactorily. He (Mr. Harrington) would ask the Committee to refer to those Rules, and see what was their character. Let them take, as an instance, Clause 1, Section 43, Regulation XII, 1827. That Section provided as follows:—

“The District Police Officer shall forward in custody to the Magistrate any person whom he may have reasonable cause to suppose to have been guilty of any penal offence of a nature more serious than those which he is empowered to try, and, according to the principles of Section IX Clause 3rd, he is authorized to apprehend such person without written process; but he shall, after securing the suspected persons, investigate the matter, examine witnesses, and record such statements as the prisoner may voluntarily make, causing to be affixed thereto the signatures of two creditable persons in attestation, and if the result confirm that there is occasion to bring the party to trial, the said proceedings shall be forwarded with him to the Magistrate.”

This was one of the Clauses of the Bombay Code which the Honorable Member for Bombay asked the Committee to retain after they had struck out from the new Code of Criminal Procedure provisions substantially the same, which had been introduced into that Code by Her Majesty's Commissioners, but which, after full discussion and consideration, the majority of the Committee had determined should not be retained. He (Mr. Harington) did not think that the Council could allow the Bombay Regulations to remain in force in that Presidency if they passed the new Code of Criminal Procedure in the form in which it had been settled by a Committee of the whole Council, and it was his intention to move the omission of so much of the Section under consideration as, if retained, would exempt the Police at Bombay in their investigation of heinous offences from the rules of Procedure contained in the new Code.

The Honorable Member for Bombay seemed to think that Act XXVIII of 1852 gave the Government of Bombay full power to set aside the existing Regulations of that Presidency in regard to the duties of the Mofussil Police, and to lay down such rules for their guidance as to it might seem fit. He (Mr. Harington) could not concur in that opinion. The Act referred to had nothing to do with the duties of the Mofussil Police. It was an Act simply to relieve the Court of Sudder Fouzdaree Adawlut at Bombay from the superintendence of the Police in that Presidency, and to vest the superintendence in the Governor in Council of Bombay. The Act certainly gave the Governor in Council power to appoint persons to control and superintend the Police, subject to the orders of the said Governor in Council, and to vest in the persons so appointed such power and authority for the purposes mentioned in the Act as might seem proper, but that was all. The Act related entirely to the appointment and the duties of the Superintendents appointed under its provisions, not to the duties of the persons subject to their control and supervision. These were to be continued to be discharged under the Regulations previously in force, one of which he had quoted; and if the Government of Bombay had prescribed dif-

ferent rules under the supposed authority of Act XXVIII of 1852, it appeared to him (Mr. Harington) that it had placed a construction upon the Act which it did not bear.

Not anticipating that there would be any debate to-day upon the Section under consideration, he had proposed to reserve what he had to say on the subject of the Madras Police Bill until they went into Committee upon that Bill. But the present discussion having arisen, it might be convenient for him at once to explain why, when they were about to pass a Code of Criminal Procedure for all India, he was willing that the Madras Presidency should have a separate Code of Procedure, differing in some respects from the Code before the Committee, for the guidance of its own Police and for the regulation of their duties.

If Honorable Members would refer to the debate which took place on the Motion of his Honorable friend the Member for Madras for the second reading of the Bill brought in by him, they would find that he (Mr. Harington) strongly objected to the Bill, and he did not hesitate now to say that he should have been very glad if the Bill, as it was then framed, had been thrown out. Finding, however, that the sense of the Council was against him, he withdrew the Motion which he made, and which contemplated further enquiry before the Bill proceeded to a second reading, and the Motion of his Honorable friend was, consequently, carried without a division. Since then the Bill had undergone a very material change, if not at the instance, certainly, he believed he might say, with the full concurrence of the Government of Madras. In his opinion the changes made had very greatly improved the character of the Bill, and although they had not altogether, they had to a great extent, removed what to his mind was objectionable in it. The principal objection which he entertained to the Bill, as it was originally framed, was that it took away from the Magistrate all powers of control over the Police of his own district, and placed those powers in the hands of an Officer who was not only not to be in any way subordinate to the Magistrate, but who was to be quite independent of him,

Mr. Harington

thus entirely separating in the person of the Magistrate the Judicial and Police functions, which were at present united in that Officer. The Government of Madras had since caused it to be intimated to the Council, through the Honorable Member for that Presidency, that it was the distinct and unanimous intention of the Madras Government that the Local Superintendents of Police were to be entirely under the orders of the Local Magistrates; that the functions of the Commissioner or, as he should more properly be styled, the Inspector-General, would be confined to the organization of the establishment, and to maintaining it in a state of efficiency by a proper attention to promotion, discipline, and other details of management; and that the primary object of the plan was to place an improved instrument for the prevention and detection of crime at the disposal of the Magistrate; and it was now proposed that the Bill should be altered in accordance with the intention thus expressed. He (Mr. Harington) hailed this important change in the original plan of the Bill with the utmost satisfaction. But it was not on account of this alteration in the Bill that he was about to vote in favor of the Sections to which these remarks particularly applied, though that vote would be given with very much less apprehension as to the consequence, and therefore with very much less reluctance than would have been the case had the Bill retained its original character. As soon as the Council, by allowing the Bill to be read a second time, affirmed the principle of the Bill in so far as the Presidency of Madras was concerned, he (Mr. Harington) determined to offer no further opposition to it. He came to this determination on the ground that a great experiment being about to be tried in the Madras Presidency, it was only fair and proper that the Government of that Presidency, whose duty it would be to carry out the experiment, and who, while they would be entitled to all the credit of success, would also be responsible for any failure that might ensue, should be allowed to make the experiment in that way which in their judgment afforded the best chance or prospect of success. It was for this reason that he intend-

ed to support his Honorable friend the Member for Madras in carrying the Bill through its remaining stages substantially in the form in which the Select Committee had recommended that it should be passed. The Bill, if passed, would have his (Mr. Harington's) hearty wishes for its complete success, and he most sincerely hoped that the benefits which the friends of the measure anticipated from its introduction would be realized to the fullest extent. In that case he should have no cause to regret the votes which he was to give that day.

SIR CHARLES JACKSON said, it was all very well to say that different systems required different procedure. But look to Section 23 of the Madras Police Bill, which authorized Police Officers to arrest without warrant. Surely that Section did not depend on any particular system, and the provisions of that Section should be the same as those in the Code of Criminal Procedure. Were the Council to pass two different Bills on the same subject on the same day? They now had before them the Criminal Procedure Bill containing one set of provisions regarding the Police, and on the same day, within a few hours, they would be called upon to pass a Bill containing other and different provisions for regulating the Police of the Madras Presidency. It appeared to him that the Council would stultify themselves if they passed two different laws on the same subject on the same day.

MR. FORBES said, if the learned Judge would refer to the last Clause of the Report of the Select Committee on the Madras Bill, he would find his objection answered by anticipation. The Select Committee observed—

“It is true that some parts of the Bill are in principle identical with parts of the Code, and have indeed been taken from it; but if the course of procedure upon any points is to be laid down in the Bill, it appears better that the Bill should be complete in itself and embrace all points, the Madras Police being excepted from the operations of the provisions of the Criminal Procedure Code.”

He (Mr. Forbes) thought that there was great reason in that, and that the Council would be willing to accept the recommendation of the Select Committee.

MR. LEGEYT said, he had a few words to say in reply to what had fallen from the Honorable Member (Mr. Harington) regarding the Bombay Police. The picture which he had drawn was not quite correct in practice. He had said very truly that the law by which the superintendence of the Police was vested in the Government of Bombay was not Regulation III. 1833, but Act XXVIII of 1852. By the operation of the latter Act the executive and judicial functions of the "District Police Officer" had been dissevered, and the District Police Officer now exercised only the judicial duties laid down in Chapter V of Regulation XII. 1827. The Executive Police duties were executed under the orders of a European District Superintendent of Police appointed by Government under Act XXVIII of 1852, and under this Officer, as his staff, there was in every division of his jurisdiction an Executive Officer who performed those duties of Executive Police which were performed by the District Police Officer previously to 1852.

The number of judicial cases disposed of by the District Magistrates in 1857 exceeded thirty-three thousand, while those disposed of by the higher Magisterial Officers, the Magistrates and Deputy-Magistrates, were under three thousand.

The District Subordinate Magistrates did not commit cases for trial to the Session Courts in Bombay, though he thought they might with advantage be invested with that duty.

There was no inconsistency in his voting against the power of taking confessions and evidence by the Police, seeing that the District Magistrates were not invested with Police Executive powers.

The Honorable Member was correct in saying that, in the earlier part of the Code, they had disposed of the duties of the Executive Police. But these were not the Officers known as District Police Officers. The term "District Police Officer" was a misnomer no doubt. He was one of the subordinate Judicial Officers by whom all cases were prepared for trial. The system was a tolerably good one; and in endeavoring to improve it, he thought the Council would do well to take care that they were not more likely to impair it.

THE CHAIRMAN said, there was considerable difficulty with reference to this Bill and the Madras Police Bill. Many Sections in both Bills prescribed different systems of procedure. For instance, according to Section 52 of the Code, any Police Officer might without warrant arrest an offender on reasonable complaint, or suspicion of having committed an offence for which a Magistrate might issue a warrant. The Code did not perhaps sufficiently define the offences for which a Magistrate must issue summons, and those for which he might issue a warrant. Now Section 22 of the Madras Bill provided that "it shall be the duty of any Police Officer, and he is hereby authorized, to arrest without warrant any person who is charged on credible information, or whom he has reasonable ground to suspect, of having been concerned in any grave or forcible crime or outrage." Then again "any person who is charged with committing an aggravated assault in every case in which he shall have good reason to believe that such assault has been committed, although not in his view, and that by reason of the recent commission of the offence a warrant could not have been issued," and so on. The law of arrest should be the same under the Criminal Procedure Code and in the Madras Presidency.

The Madras Government had expressed a strong opinion in favor of the provisions of the Police Bill. So far as that Bill related to the organization and administration of a Police Force, it was very desirable that its provisions should accord with the wishes of that Government. But in such a matter as a Police Officer's power to arrest without warrant, there should be one rule to regulate the Police throughout India.

He felt the difficulty of passing two inconsistent Acts on the same subject on the same day.

SIR JAMES OUTRAM moved that the further consideration of this Bill be postponed until the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George" were settled in Committee of the whole Council.

The Motion was carried, and the Council resumed its sitting.

MADRAS POLICE.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George," and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Sections I to IV were passed as they stood.

Sections V to VII were passed after verbal amendments.

Sections VIII to XIV were passed as they stood.

Section XV was passed after trifling amendments.

Sections XVI to XX were passed as they stood.

Section XXI was passed after verbal amendments.

Section XXII prescribed in what cases any Police Officer might arrest without warrant.

SIR CHARLES JACKSON suggested the omission of this Section.

MR. FORBES said, the remarks which the Madras Government made were these:—

"The Clauses 51, 52, and 53 of the Criminal Procedure Code may be construed to include the occasions on which it was intended to empower the Police to act without warrant by the Police Bill, but much pernicious uncertainty must result from basing their actions on *their* judgment as to an offence for which a 'warrant may issue.' Chapter III of the Code of Procedure leaves this point in a most discretionary state, and it will be scarcely possible to explain the law to the Police, if it be based on a principle so uncertain as this, whether a warrant may or may not issue in a case in which they are called on to act. These provisions of the Criminal Procedure Code were before the Madras Government when the Police Bill was drawn, but it was thought better to enunciate as positively as circumstances admit of the cases in which the Police should act without warrant, rather than adopt the provisions of the Criminal Procedure Code, which left so much to the discretion of the Police."

It would be seen therefore that the Madras Government were averse to give the Police of that Presidency that discretion which was given elsewhere, and instead of leaving it to an ignorant

Policeman to distinguish when he was to arrest with and when without a warrant, it was wished to lay down the rule in each particular case. He preferred to press upon the Committee the Clauses as they stood, and he hoped he should succeed in passing them.

The Section was put and carried.

Sections XXIII to LV and the Schedule were passed as they stood.

Form A was passed after a verbal amendment.

The Preamble and Title were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

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

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

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

Agreed to.

CRIMINAL PROCEDURE.

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

MR. HARINGTON moved the omission of the words "Presidencies of Madras and Bombay" in the beginning of Section 287, and the substitution of the following—

"Presidency of Madras; or the jurisdiction of District or Village Police Officers in Criminal cases which they have power to try under the provisions of the Bombay Code, or their procedure in such cases."

MR. LEGEYT said, if he understood the effect of the proposed amendment aright, it would be to place the Village and District Police under the Chapters of this Code, which had just passed through Committee. He could not see why the Police of Madras and Bombay should be dealt with differently. The Council had passed a Bill allowing the Madras Government to manage their Police in the way they thought best. The Government of Bombay, he was authorized to say, were quite content with the Police procedure contained in their Code. The one system had succeeded for years;

the other was an experiment. The Council had heard nothing against the working of the Bombay Police. He had no objection to making the Code of Criminal Procedure applicable to Courts for which it treated. But he had the strongest objection that the Code should go beyond that, and affect or alter the working of the Police of which they had had every proof that it worked well and to the satisfaction of the Government and the people of that Presidency. The directions to Police Officers were contained in Regulation XII. 1827 in clear and unmistakable terms, and were well understood by the people for whom they were intended. And who were these people? People of the most illiterate kind, and on the receipt of about 3 or 3½ Rupees a month. Could these men be expected to know the circumstances of the offences detailed in Section 70? They would be confused or require to be instructed before they could understand them. He would ask the Council to pause before they introduced this innovation into a country where it was not wanted, and where they had no proof that it was wanted, merely for the sake of uniformity. And what sort of uniformity were they desirous of securing? In Bengal they had heard that the Village Police existed in name only. But in Bombay it existed in reality, and had a principle of vitality in it. The continuance of the Judicial powers of Village and District Police Officers, as proposed by the Honorable Member's amendment, was infinitely less material than the exception of the Executive Police from the difficult and intricate procedure of this Code. If they were going to establish a Village Police, they would have to teach them the provisions of the Penal Code. But whilst learning it, they would exist only in name. Would they destroy by a blow a system which had worked well, and thus undo all the good that had been done during the last ten years? No! he would say leave Section 287 alone. Let the discussion which had taken place to-day go forth with the Bill on its republication, and they would attract attention. If the Government of Bombay should then think that the procedure provided by

Mr. LeGeyt

this Code was preferable to that now in use, they would say so, but he did not anticipate any such concurrence.

MR. HARRINGTON. Would the Honorable Member for Bombay allow him to ask him whether the Bombay Government had expressed a wish that the Madras Police Bill should be made applicable to that Presidency?

MR. LEGEYT said, he intended to have stated to the Council that the Bombay Government did not desire the extension of the Madras Bill to that Presidency. They had expressed a wish that there should be no alteration in the present system, with which they were perfectly content.

MR. HARRINGTON said, he would then ask, as the Code of Criminal Procedure had been before the public for about three years, if the Bombay Government had asked that the Bombay Police should be excepted from its operation.

MR. LEGEYT replied that the Bombay Government had expressed no wish on the subject. The Code had been before the public so long that nearly every body seemed to have regarded it as a dead letter. People had no idea that it would again be taken up, besides which its provisions were known only to those who might have read them in the Government Gazette, and who, he presumed, were very few.

MR. HARRINGTON said, the case then stood thus. The Government of Madras being anxious to introduce a new system of Police into that Presidency had prepared a Bill containing rules for the guidance of the Police to be appointed under the new system in the discharge of their duties, which they had sent up to this Council, and in asking the Council to pass the Bill, they had begged that so much of the new Code of Criminal Procedure as applied to the Police might not be extended to Madras. He (Mr. Harrington) thought that there could be no objection to this request being complied with, and he was quite prepared to vote for the exemption asked for by the Madras Government. The Government of Bombay on the other hand, notwithstanding that the new Code of Criminal Procedure had been for so long a time before the public, had expressed no wish that it should not extend

to their Presidency, and they had just been informed by the Honorable Member for Bombay, in reply to a question which he (Mr. Harington) had put to the Honorable Member, that the Bombay Government was not willing that the new Madras Police Bill should be extended to Bombay. On what ground then could they exempt the Police at Bombay from the operation of a Code which had been prepared by Her Majesty's Commissioners for all India, and maintain in the Presidency of Bombay the Police Regulations which Her Majesty's Commissioners intended should be superseded by the Code framed by them? The Honorable Member for Bombay argued as if the new Code would deprive the Police Officers of the Bombay Presidency of the jurisdiction which they now possessed in petty criminal cases, but that would not be the case. The Code would in no way interfere with any judicial functions which the Police at Bombay were competent to exercise under the law as it now stood, and he (Mr. Harington) was quite willing that, in the cases which the Bombay Police were authorized to try and decide, they should continue to follow the procedure now observed by them, any thing in the new Code notwithstanding. It was in the cases which, after completing the preliminary investigation, they were obliged to refer to a higher authority, that he thought the Police at Bombay should be required to follow the procedure of the new Code equally with the Police in Bengal.

SIR JAMES OUTRAM said, he could not understand why they should re-discuss this Section, which was passed at the last Meeting, or why it should be proposed to disturb existing arrangements at Bombay. Bombay had not complained of their system being a defective one or requiring reform; then why disturb it? The Honorable Member on his right (Mr. Harington) said that, because Bombay had not *asked* for the procedure of the Madras Police Bill being made applicable to them, or to be exempted from the Police procedure of this Code, he assumed that it would be satisfactory to them that the Code should be extended to Bombay. He was perfectly convinced from his long experience in Bombay that its Police

was in a more efficient state than the Police of Bengal. Letters from his friends resident there assured him that the Police was working satisfactorily. He saw no reason therefore why the Council should meddle with them so long as they were satisfied. The Section having been disposed of and the alteration decided at the last Meeting of the Council, he should vote for the Section as it was then decided.

After some further discussion the Council divided—

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

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

The question being put that the Chairman do report the Bill with amendments, the Council divided—

<i>Ayes</i> 6.	<i>No</i> 1.
Mr. Sconce.	Mr. LeGeyt.
Sir Charles Jackson.	
Mr. Forbes.	
Mr. Harington.	
Sir James Outram.	
The Chairman.	

So the Motion was carried, and the Council having resumed its sitting, the Bill was reported.

STANDING ORDERS.

MR. HARINGTON moved that the Council resolve itself into a Committee to consider 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.

Agreed to.

THE CHAIRMAN said that the Committee of the whole Council would probably take the Report of the Select Committee as the basis of the Report to be made by the Council. It was not very clear what was the nature of the Report which the Governor-General in Council had called for from this Council. [The Chairman here referred to the terms of the Despatch and of the Message from the Governor-General in Council.] It appeared to him that the

Select Committee's Report in some respects went more into detail than was necessary, while it omitted sufficiently to explain the object and operation of the several Standing Orders.

The Report should, he thought, state that the rules of this Council were taken from the Standing Orders laid down by the Governor-General in Council, shortly after the passing of the Charter Act of 1833, when the Governor-General in Council had the power of legislation.

There should be some explanation of the several Orders which the Council had adopted. For instance, take the Orders which stood under the head of "Meetings of the Council." Possibly it might be considered at home that once a week was not sufficient. He thought that they ought to explain to Her Majesty's Government that the reason why one Ordinary Meeting a week was fixed was that, as two of the Judges of the Supreme Court were Members of the Council, the engagements of those Judges would generally prevent their attendance at Meetings held on any other days than Saturday. It might further be stated that, although the Council met once a week, still a great part of the time of the Members was occupied in the preparation of measures to be brought before the Council for discussion, and, afterwards, in considering the details of measures in Select Committees. When the state of business rendered it necessary, the Council had exercised the power of adjourning the Ordinary Weekly Meeting on Saturday to some early day in the ensuing week, and the Standing Orders empowered the Governor-General or the Governor-General in Council to call an Extraordinary Meeting at any time.

He had not prepared a Report in accordance with his views, but he would propose some amendments in the Report of the Select Committee now under consideration. [He here noticed the amendments which he proposed to move.]

MR. HARINGTON said, he did not rise for the purpose of offering any opposition to the amendments which might be proposed by the Honorable and learned Vice-President; he had no doubt that those amendments would be an improvement on the Report

as it now stood. But as he had, at the present time, the honor of a seat in the Executive Council, this Council might look to him for some information both as to the nature of the Report which was required by the Secretary of State, and as to the purpose for which that Report was required. He was sorry, however, to say that it was not in his power to afford the Council any information on either of these points beyond what they already possessed. The Despatch received from the Secretary of State had been communicated to the Council *verbatim*, and this Council therefore possessed all the information on the subject which it was in the power of the Executive Government to furnish.

The Legislative Council having now been in existence for upwards of five years, he (Mr. Harington) was led to suppose that the Secretary of State thought that the time had arrived when a comparison might fairly be drawn between the present system of making laws for India and that which preceded it. The Secretary of State probably looked rather to the Executive Council than to this Council for the information necessary to enable him to institute this comparison. He gathered this as well from the communication which had been received from the Secretary of State, as from the fact that separate Reports had been called for from the Honorable and learned Vice-President and from the Honorable the Lieutenant-Governor of Bengal, both of whom had been Members of the Executive Government under the old and the new systems. The duty of reporting on the working of the Standing Orders of the Council properly devolved upon this Council. The Secretary of State could not require to be told what those Standing Orders were, because doubtless he had a copy of them before him at the time he wrote his Despatch. What he desired to know was, how those orders had worked during the period they had been in operation, with a view probably to consider whether any and what alterations were required in them; and in reporting that upon the whole the Standing Orders had worked satisfactorily and well, which he believed was the case, it appeared to him that the Council

had said all that was necessary or, the fact being as stated, that could be expected from them. He had no reason to suppose that in the present call any blame was intended to be imputed to the Legislative Council. Although he had no authority for saying so, he believed that the only object which the Secretary of State had in view was, as he had already remarked, to institute a comparison between the two systems, in order to determine which was the best suited to the country, and he (Mr. Harington) could only express a hope that the result would be not otherwise than favorable to the present system.

The Report passed through the Committee after several amendments on the Motion of the Chairman, and the Council having resumed its sitting, was reported.

MADRAS POLICE.

THE VICE PRESIDENT announced that the Governor-General had signified his assent to the Bill "for the better regulation of the Police within the Territories subject to the Presidency of Fort St. George."

CRIMINAL PROCEDURE.

MR. HARINGTON moved that the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter," as settled in Committee of the whole Council, be published for three months. Agreed to.

JOINT STOCK BANKING COMPANIES LIMITED.

MR. SCONCE moved that the Bill "to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Forbes, Sir Charles Jackson, and the Mover. and Agreed to.

NABOB OF THE CARNATIC.

THE VICE-PRESIDENT wished to notice a Report of a decision of the Supreme Court at Madras on an Act

lately passed by the Council. He did not know whether the Report was correct or not, but in one part of it the learned Chief Justice was made to say—

"But manifest as may be the grievances of the applicant, we should perhaps not be justified in granting the postponement prayed for, unless it is likely to procure him redress. This consideration leads me out of our ordinary province, which is merely to expound the law as we find it, and not to remark upon its general character and policy. But called upon as I am under the peculiar circumstances of this case, I am bound to declare my opinion that the legislation complained of is of the grossest *ex post facto* character, and that it violates the first principles of legislation and of justice."

He must say, if the language used by the learned Chief Justice was correctly reported, that such language was in his (the Vice-President's) opinion indecorous from a Judge sitting on the Bench, whatever might be that learned Judge's private opinion. The Chief Justice declared that an Act passed by the Legislative Council, and which had received the assent of the Governor-General, was "of the grossest *ex post facto* character, and that it violates the first principles of legislation and of justice." It was explained in the judgment that the Act had been passed when the East India Company undertook to pay in full certain debts of the Nabob of the Carnatic. A question had been brought before the Supreme Court by a person claiming to be one of the Nabob's creditors in respect of a debt contracted by Prince Azeem Jah. The Court did not actually decide in that case the point now in question, namely, whether debts contracted by the Prince, and justly contracted as between the Prince and the creditor, though unfairly as regards the Nabob, were debts justly and fairly due from the Nabob. In that case the Prince himself gave evidence to the effect that he had contracted the debt on his own private account. In delivering judgment which was in favor of the Government and against the creditor, the Court took an opportunity of expressing an opinion that the words "fairly and justly" in the Act meant fairly and justly as between the Prince and the creditor, and not as between him and the Nabob; and

name that debts contracted in the Nabob's name were binding on the Nabob, and consequently on the East India Company who had agreed to pay his debts, and this notwithstanding that it might be shown that the Nabob was not at the time of contracting the debt in want of money, and that he had ample funds in his treasury.

Nothing was said in this Council upon the judgment of the Supreme Court. The Court appeared to suppose that the Council assumed to overrule the decision, but this was not so; there was no decision, but only an *obiter dictum*, an expression of opinion not called for and extra-judicial.

Offence seems to have been taken at the recital in the Act that "doubts had arisen." It was supposed to reflect upon what had actually been decided, but there had been no decision, nothing from which an appeal would have lain. What was the Council to do? If the language used in the Act expressed a meaning different from their intention, were they not justified in setting it right? They said, in effect, "the language may be ambiguous; if this is the correct construction, the words do not convey our real meaning." Was it right to wait until the Court had actually decided, or to set the matter right at once? He would refer to what he had said, to show that there was no intention to interfere with any decision of the learned Judges. He said—

"The question was whether the Court intended, and whether this Council, in passing Act XXX of 1858, intended that the Government should pay all debts whatever which had been contracted by the Regent during the minority of the Nabob, if contracted fairly as between the Regent and the creditors, however unjust it might have been as between the Regent and the Nabob for the former to contract them, and whether they were contracted for the benefit of the Nabob or not. The Court had not, as he understood, actually decided the case against Government; on the contrary, they decided the particular case in favor of Government, upon the ground that the debts had not in fact been contracted on behalf of the Nabob, but expressly on behalf of the Prince Azeem Jah as a private debt of his own.

The Court had come to that decision upon the evidence of Prince Azeem Jah, who had been examined as a witness, and who proved that he had borrowed the money on his own account, and that he alone was liable for it.

The Vice-President

But the Court, in determining that case, had expressed their opinion as to the proper construction of the words 'fairly and justly contracted by the Nabob, or on his behalf, during his infancy, by Azeem Jah as Nabob Regent.' The Court held that, if the money was fairly and justly lent by the creditors to the Nabob Regent, and the latter borrowed it in the name of the Nabob, it was a debt 'fairly and justly contracted by the Nabob Regent on behalf of the Nabob' within the meaning of the words to which he had already drawn the attention of the Council, notwithstanding it might have been wholly unnecessary to borrow the money for the use of the Nabob, and notwithstanding it might never have been applied to his use. But it should be remarked that the words 'fairly and justly contracted on behalf of the Nabob' were used only in the Preamble of the Act, and not in the enacting Clause. The enactment was in Section XIV, by which the Government was bound to pay any such debts as were fairly and justly due from the Nabob, or were payable out of his estate. The words in the Preamble might be used to explain the words of the enacting Clause, but they did not themselves amount to an enactment. But even looking at the words of the Preamble alone, it was clear that the words 'fairly and justly' had reference to the conduct of the Nabob Regent, and not to the conduct of the creditors—'fairly and justly contracted by the Nabob or on his behalf, during his minority, by Azeem Jah as Nabob Regent.' Then the justness or fairness of the conduct of the Regent must have reference to the Nabob and not to the creditors, for if it were fair and just as between the Prince and the Nabob to contract the debts, no unfairness towards the creditors could deprive the latter of their rights. If the debts were fairly due from the Nabob, or binding upon his estate, they were to be paid by Government, otherwise they did not fall within Section XIV of the Act. If the Legislature had not expressed their meaning clearly, they should do so now. He contended that the Prince had no authority to borrow money in the name of the Nabob when it was not required for his use, and that he had no power to bind the Nabob to pay money, even though borrowed in his name, if it was not necessary to borrow it for his use, and if it was not applied for the purpose."

Again, with reference to the suspension of the Standing Orders, he said—

"It must be recollected that if in the ordinary course of legislation the passing of the Bill were to be delayed for three months, a large number of claims might be brought to a hearing, and probably be determined in the interim.

He apprehended that it would scarcely be right, if a decision should be passed by the Court, for the Legislature to pass a law upsetting that decision. But if the Court had misunderstood the meaning of the Legislature, the Legislature might well come forward and

declare what its intention was when it passed the former Bill. It might be that the former Act was ambiguously worded, and that the Court were warranted in the construction which they had put upon it; or it might be that the words did not express the meaning which the Court had put upon them. It was not necessary to determine that question. If the construction which the Court had put upon the language of the Legislature was not in accordance with their meaning, surely it was competent to them to come forward and declare what their meaning was. Then he thought that if the Legislature were to declare their meaning, it was far better that they should do so now than three months hence."

There was no attempt to overrule any decision; there had in fact been no decision, but only an opinion expressed. Seeing that the question must arise, the Council were justified in saying "we never meant this, we never understood that the Court of Directors undertook to pay debts of this nature; therefore, if there is a probability of our intention being mistaken, we will make it clear." This was what the Chief Justice had thought fit to describe as "one of the grossest *ex post facto* character, and violating the first principles of legislation and of justice."

There was also some discussion as to the power to award costs against claimants. The Act therefore empowered the Supreme Court to award costs to either party. He did not wish to remark on the judgment of the Supreme Court without knowing certainly that such was the language which had been used. He would therefore move that His Excellency the Governor-General in Council be requested to obtain through the Madras Government a copy of the judgment, and that it be laid on the table.

SIR JAMES OUTRAM said, he should second that Motion, and if his Honorable colleagues would allow him, he desired for himself and on behalf of them to thank the Honorable and learned Vice-President for the earnest and able manner in which he had taken up the subject. He (Sir James Outram) thought that the Council had a right to demand explanation, and the withdrawal of the most unwarrantable and uncalled-for animadversions passed on this Council, should the Judge

really have expressed himself as represented.

The Motion was carried.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the above Message to the Governor-General in Council.

Agreed to.

STANDING ORDERS.

THE VICE-PRESIDENT moved that Sir James Outram be requested to take the Report on the practical working of the Standing Rules and Orders of the Legislative Council to the Governor-General in Council.

Agreed to.

The Council adjourned at $\frac{1}{2}$ past 5 o'clock, on the Motion of Sir James Outram, to Saturday, the 12th of November next.

Saturday, November 12, 1859.

PRESENT :

Archibald Sconce, Esquire.

No other Member of the Council was this-day present.

Saturday, November 19, 1859.

PRESENT :

Archibald Sconce, Esquire.

No other Member of the Council was this-day present.

Saturday, November 26, 1859.

PRESENT :

Archibald Sconce, Esquire.

No other Member of the Council was this-day present.