

Saturday, June 29, 1861

***INDIAN LEG.
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DEBATES***

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enforce his attendance, a new Juror shall be added, or the Jury shall be discharged, and in either case the trial shall commence anew."

SIR CHARLES JACKSON proposed to omit all the words after the word "attendance," and to substitute the words

"or if the Jury shall be unable to come to an unanimous finding or to a finding of not guilty by such a majority as is specified in Section 273, the Jury shall be discharged and the trial shall commence anew."

After some conversation the consideration of the Section was postponed.

Section 295 was passed as it stood.

Section 296 provided a penalty of 50 Rupees for non-attendance of a Juror or Assessor.

After a verbal amendment, on the Motion of the Chairman—

MR. SETON-KARR moved that the limit of 50 Rupees in this Section be extended to 100 Rupees. When he considered that this Section was meant to apply not only to Jurors who failed to attend at first, but to Jurors who, having once attended, absconded and could not be found, he thought that this limit was not excessive. It was only the half of the amount prescribed for contempt of Court, and it might sometimes be necessary to impose a heavy fine on Jurors who absconded or absented themselves without excuse. He trusted, therefore, that the Council would support him in the proposed extension of the fine.

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

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

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

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

Committee of the whole Council on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating

the Customs Duties in the North-Western Provinces)."

Committee of the whole Council on the Bill "to make certain amendments in the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army."

Committee of the whole Council on the Bill "to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil)."

Committee of the whole Council on the Bill "to amend Act III of 1857 (relating to trespasses by Cattle)."

REGISTRATION OF ASSURANCES.

MR. HARINGTON moved that a communication received by him from the Government of the North-Western Provinces be laid upon the table and referred to the Select Committee on the Bill "to provide for the registration of assurances."

Agreed to.

The Council adjourned.

Saturday, June 29, 1861.

PRESENT :

The Hon'ble Sir H. B. E. Frere, *Senior Member of the Council of the Governor-General*, Presiding.

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

BREACH OF CONTRACT.

THE CLERK presented to the Council a Petition from the Landholders and Commercial Association of British India, from the Bengal Chamber of Commerce and from the Calcutta Trades' Association, praying that a general law may be passed, punishing criminally fraudulent breaches of contract, when advances have been received to perform work or service, or to deliver produce up to a certain value.

SIR BARTLE FRERE moved that the Petition be printed and referred to

the Select Committee on the Bill on the same subject.

Agreed to.

SMALL CAUSE COURTS.

THE CLERK presented a Petition from the Landholders and Commercial Association of British India, praying that Act XLII of 1860 (the Small Cause Act for the Mofussil) be so modified, as to enable the party who obtains a decree under it to enforce immediate execution of the same by warrant, either against the goods or against the person of the judgment-debtor.

MR. HARRINGTON moved that the Petition be printed.

Agreed to.

BREACH OF CONTRACT.

THE CLERK reported to the Council that he had received a communication from the Foreign Department, forwarding for the purpose of being laid before the Select Committee on the Bill for the punishment of fraudulent breaches of contract, a communication from the Commissioner of Pegu.

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

Agreed to.

SALTPETRE.

THE CLERK reported to the Council that he had received a communication from the Government of Bengal, concerning the Bill "to regulate the manufacture of Saltpetre and of Salt educed in the manufacture thereof."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported that he had received a further communication from the Military Department, relative to the Bill "to make certain amendments in the Articles of War for the govern-

ment of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

REGISTRATION OF ASSURANCES.

MR. ERSKINE presented to the Council a communication which he had received from the Bombay Government, and moved that it be printed and referred to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

BRANCH RAILWAYS, &c.

MR. SETON-KARR rose for the purpose of moving the first reading of a Bill "to provide for the construction, by companies, and by private persons, of Branch Railways, iron tram-roads, common roads, or canals, as feeders to public Railways."

He said—Sir, the object of this Bill is to stimulate and afford assistance to private capital and private enterprise, in aid of great lines of public Railway, by affording to Societies and individuals all due facilities for occupying lands required for such purposes, under the provisions of Act VI of 1857.

At present, that Act is applicable only to lands taken for public purposes. It is proposed to make it applicable to lands required by private companies and persons, under the enactment which I now bring forward. It being no object of the Government to encourage rash projects likely to prove abortive from the want of funds, it is proposed that the local Government shall have power to satisfy itself that the applicant has sufficient funds to complete the whole line; as well as that the line is likely to prove expedient and advantageous to the community at large. But, when these primary requirements shall have once been complied with, every reasonable facility will be afforded to the promoter to complete and carry out their scheme. With this view, Sections 2 to 6 of

the Bill carefully provide for the grant of a provisional certificate, empowering the promoter to enter on the line, in order to make a preliminary survey thereof, but allowing him to cut down no crops or trees, invade no premises, damage no property, and injure no rights. They provide, further, for the appointment of Commissioners on the part of Government, who shall receive suggestions from any persons whose interests may be affected by the proposed line. They provide for the issue of a notification to all interested in the Government Gazette; for the consideration, by the Commissioners, of the propriety of deviating from the line if deviations or variations shall be proposed; and finally, for the submission to Government of a full and conclusive report, which shall enable it to decide on giving its permanent sanction to the whole scheme.

Thus far as regards the requirements of the community. As regards the public Railway to which it is intended that those lines shall be feeders, Section 7 provides that due notice shall be given to the Public Company, and if the line be a Branch Railway intended to form a junction with the public Railway, or to have rails of the same gauge, the public Railway Company shall be called on to show cause why they should not construct the necessary sidings, wharves, and godowns, for the reception of the traffic, or for the convenience of the community.

Under Section 13 the Government may call on the Company to form a junction, if necessary; but my own idea is that, practically, the result will be, either that the public and private Company will share the expense in equal portions, or that the outlay will be assessed rateably according as one company or the other may derive the greater benefit from the proposed scheme.

At the conclusion of the Report, the Government may authorize the land to be taken under Act VI of 1857, and care will be taken to provide for compensation to the owners of land so taken up under the authority conferred by this Act.

Mr. Seton-Karr

The Act next provides that the line shall be made available for the public and for the conveyance of passengers and traffic, and this may be done in one or both of two ways; either the owners or lessees shall be called on to furnish an adequate supply of conveyances for the public—or else persons, other than the owners or lessees, may bring their own vehicles and means of transport on the line; but here, one proviso is most important, which is, that the vehicles and means of transport shall not be inconsistent with the scope, nature, and object of the line. The meaning of this proviso is to check unreasonable and extravagant demands. Men are not to claim permission to run a locomotive engine over a metalled or unmetalled road, nor to be conveyed at the rate of speed of a parliamentary train over a tramway destined for vehicles which move at four miles an hour and which carry bulky materials; nor again will any one have a right to introduce a paddle-wheel Steamer into the waters of a canal, shaking the foundation and injuring the banks of that which was only excavated for a common track boat.

Finally, Government is to have power to regulate the rates of conveyance, and to inspect the means of transport, to supervise the whole action of the line, to direct that a junction shall be formed when a junction is part of the scheme, and to affix stated penalties for the infringement of rules.

If the proposed line shall be a Branch Railway, then the provisions of Act XVIII of 1854 are intended to apply to the same.

One other proviso is worthy of notice. Government may interfere to direct that the private Company shall provide drains for the proper drainage of the country, and shall construct or preserve in their integrity all such works and rights of way as the community may lawfully demand; but this interference is only to be permitted while the line is actually in process of construction.

The community must look to its own interests before the line is actually completed, for it would be most inju-

rious and vexatious that any one should claim to have a bridge in this place, or a tunnel in another, twelve months after the line had been in full working. By another Section the right to mines is expressly reserved in favor of those proprietors whose surface lands may be taken under the provisions of that Act; and on the other hand, if the mines are worked, they must be worked in a manner neither detrimental to the traffic, nor injurious to the lives of the travelling community. One class of cases, however, is not provided for by this Act, and that is, the case of Railways constructed by Companies or individuals, but not in connection with any existing public line. Such lines, if required, as the wants of the community expand, and if intended to run solely between their own termini, must be provided for by separate legislation. But it was not thought essential to anticipate this state of things in the present Bill. I would add, Sir, that in preparing and revising this Bill, I have been aided by the practical knowledge and engineering science of Lieutenant-Colonel Beadle. Some Sections have been borrowed from the English Acts bearing on the construction of Railways; for some of the technical phraseology I have been indebted to Mr. Purdon, the able Engineer of the Eastern Bengal Railway; and several of the amendments have been suggested by a gentleman of inexhaustible energy in all that relates to the spread of private enterprise throughout the length and breadth of Bengal. It has been thought better to invest the Government with power to decide on every application to occupy land, than to require persons to apply, in each instance, to the legislature for a separate enactment. The Government are really anxious to meet the wants of the community, and will probably be the best judges in each instance of the propriety of refusal or of compliance.

Sir, I firmly believe that this Bill, to whatever scrutiny it may be subjected, or whatever amendments it may receive at the hands of your Council,

will, if passed, in reality cause damage to no private interest, but that, on the contrary, every estate will be benefited through which any branch line may be constructed. The first scene of the operations of this enactment will, I understand, be the extensive coal fields situated at no great distance from the great public lines of Railway, which are now running through the important districts of Burdwan and Beerbhoom. But the time may come when this law shall have a more constant operation, and produce a wider and more important effect. It may bestow a deserved prominence on scores of places which are now lying, as it were, with undeveloped resources, or with names unknown. It may, I hope, stimulate to a healthful emulation the energies of active capitalists or of opposing societies. It may cause ten furnaces to glow where one only is now at work. It may add to the wealth, increase the traffic, and multiply the trains which are now, or shortly shall be, running on the great public lines now under process of completion; lines which are guaranteed on the faith, the stability, and the resources of the empire; and which are as essential to the maintenance of our political ascendancy, as they are to the full development of our superiority in commerce. In times of anxiety, such as we have been lately experiencing, owing to tropical famine, or tropical inundation, this enactment may cause the superfluity of one district to minister to the wants, to supply the deficiencies, and to mitigate the horrors of scarcity in another; and in happier times, which shall be free from anxiety and full of progress, it may be the means of uniting the remote and unconnected provinces of this vast Empire in the gentle, but firm, compact, and indissoluble bonds of material prosperity and of ever-growing civilisation.

The Bill was read a first time.

SETTLEMENT OF ENAMS (BOMBAY).

The Order of the Day being read for the second reading of the Bill "to facilitate the adjustment of unsettled

claims to exemption from the payment of Government Land Revenue in the Presidency of Bombay, exclusive of Sind, and to regulate the succession to and transfer of lands wholly or partially exempt from the payment of such Revenue"—

MR. ERSKINE said that, although he was reluctant to acquiesce in any further postponement of the second reading of this Bill, and although the Government of Bombay, as Honorable Members were aware, was anxious that the Bill should be proceeded with as rapidly as possible, still as it had been postponed on Saturday last at the request of the Honorable and learned Vice-President, as he had expressed a wish to consider the papers which had been circulated to some Honorable Members and lately forwarded to him, and as he was unavoidably absent to-day, owing to his engagements in the Vice-Admiralty Court, he (Mr. Erskine) thought he should best meet what he believed must be the feeling of the Council, if he acquiesced in the postponement of the Bill for one week more. He should therefore propose that the consideration of the Bill be postponed till Saturday next.

Agreed to.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved the second reading of the Bill "to amend Act XXI of 1860 (for the registration of Literary, Scientific, and Charitable Societies)."

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

CRIMINAL PROCEDURE.

MR. HARINGTON said, 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" stood next in the Orders of the Day, but as the Sections of that Bill which remained to be settled had been reserved for separate consider-

ation, and the Honorable and learned Vice-President had taken a prominent part in the discussion on those Sections, he (Mr. Harington) thought it unadvisable that they should proceed with the Bill in his absence. He begged, therefore, to move that the consideration of the Bill be postponed till Saturday next.

Agreed to.

STAGE CARRIAGES.

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill "for licensing and regulating Stage Carriages"; and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

Section I provided as follows :—

"Every Carriage drawn by one or more horses which shall ordinarily be used for the purpose of conveying passengers for hire on journeys for a greater distance than twenty miles to or from any place in British India, shall, without regard to the form or construction of such Carriage, be deemed to be a Stage Carriage within the meaning of this Act."

SIR CHARLES JACKSON said, the Section, as it stood, was not sufficiently explicit. The words "on journeys for a greater distance than twenty miles" would not meet every possible case.

MR. HARINGTON said, the words referred to by the Honorable and learned Judge had been introduced into the Bill in order to exclude from the operation of the Bill the hack carriages used in the Presidency Towns and their vicinity, and the conveyances let out for hire at some of the up-country stations. Such, for instance, as the "Ekkas" which were much used at Patna and Dinapore, and to which attention had been called by the Commissioner of the Patna Division. The present Bill was not intended to apply to such conveyances.

MR. SETON-KARR said that the limit of twenty miles might exclude small branch lines in connection with

great roads or lines of Railway. For instance, there might be a branch road of nineteen and a half miles on which such Carriages might run to and from a Railway, and this Section would omit it altogether and allow the Carriages to escape. He would suggest that the limit be fixed at twelve miles.

After some conversation, Sir Charles Jackson moved the omission of the words "on journeys for a greater distance than twenty miles," and the addition of the following proviso :—

"Provided that this Act shall not apply to Carriages not ordinarily used for journeys of a greater distance than twenty miles."

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

Section II provided as follows :—

"No Carriage shall be used as a Stage Carriage unless licensed by the Magistrate of the District or place in which the Head Office of the Proprietor of such Carriage is situate. If such Head Office be in any Presidency Town, the license shall be granted by the Chief Commissioner of Police of such Town."

MR. HARRINGTON moved the omission of all the words from "the Magistrate of the District" to the end of the Section, and the substitution of the words "a Magistrate or by the Chief Commissioner of Police of a Presidency Town." He said that, although the Head Office of some of the Calcutta Dawk Companies was in Calcutta, their carriages started from Raneegunge, and it might cause inconvenience to those Companies if they were obliged to bring their carriages to Calcutta for the purpose of having them licensed.

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

Sections III and IV provided as follows :—

"III. The Magistrate or Chief Commissioner, to whom the application for a license of a Stage Carriage is made, may refuse to license the same, if he shall be of opinion that such Stage Carriage is unserviceable, or is unsafe, or unfit for public accommodation or use.

IV. Every license shall be numbered and contain the following particulars, namely,

The number of such license.

The name and residence of the proprietor of the Stage Carriage, and the place at which his head office is held.

The number of passengers permitted to be conveyed thereby.

The weight of luggage permitted to be carried.

The number of horses to be used in drawing the Stage Carriage.

The name of the place at which the Stage Carriage is licensed."

After some discussion, the following words were added to Section III (on the Motion of Sir Charles Jackson), and Section IV was thereupon struck out as unnecessary :—

"If a Magistrate or Chief Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the Stage Carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such Carriage, the number of Horses by which such Carriage is to be drawn, and the name of the place at which such Stage Carriage is licensed."

Section V was passed after amendments.

Section VI was passed as it stood.

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

"The proprietor of any licensed Stage Carriage, who shall let such Stage Carriage for hire without the particulars specified in Section III being painted on such Carriage in the manner directed in the last preceding Section, shall be liable to a fine not exceeding one hundred Rupees."

Agreed to.

Section VII provided as follows :—

"Whoever uses or lets for hire any Stage Carriage without the same being licensed as provided by this Act, shall be liable to a fine not exceeding five hundred Rupees."

MR. HARRINGTON moved the omission of the words "uses or" in the beginning of the Section. He pointed out that, if the words proposed to be omitted were retained, the Section

would apply to the travellers by, as well as the owners of the Stage Carriages, which could not be intended.

Agreed to.

MR. HARINGTON moved the omission of the words "to a fine not exceeding five hundred Rupees" at the end of the Section, and the substitution of the following words:—

"on a first conviction to a fine not exceeding one hundred Rupees, and on any subsequent conviction to a fine which may extend to five hundred Rupees."

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

Section VIII provided as follows:—

"Any proprietor of a licensed Stage Carriage who permits such Carriage to be drawn by a less number of horses, or who permits a larger number of passengers, or a greater weight of luggage to be carried by such Stage Carriage than shall be provided by the license, shall for every such offence be liable to a fine not exceeding five hundred Rupees. In every case where such Stage Carriage shall be proved to have been drawn by a less number of horses or to have carried a larger number of passengers or a greater weight of luggage than shall be provided by the license, the proprietor of such Carriage shall be held to have permitted such offence unless he shall prove the contrary."

MR. HARINGTON moved the omission of the words "for every such offence be liable to a fine not exceeding five hundred Rupees" at the end of the first sentence, and the substitution of the following words:—

"on a first conviction to a fine not exceeding one hundred Rupees, and on any subsequent conviction to a fine which may extend to five hundred Rupees."

Agreed to.

SIR CHARLES JACKSON objected to a proprietor being made liable for an offence under this Section unless he knowingly permitted the commission of the offence. He also thought that the Section should apply not only to the proprietor, but to the agent of the proprietor and the driver who were more likely to connive at the commis-

sion of the offences specified in the Section than the proprietor who would generally be at a distance from the spot where the offence might be committed. Take the driver for instance; he might be induced by means of a present or a threat to permit the carriage to be overladen at some place between two stations, and the proprietor might be totally unaware of such offence, and yet the Section would require him to prove his innocence. He should propose the insertion of the words "or agent of a proprietor or any driver" after the word "proprietor" in the first line, and of the word "knowingly" before the word "permits" in the second and sixth lines.

Agreed to.

The question being put that the Section, as amended, stand part of the Bill—

SIR CHARLES JACKSON said, it now appeared to him that there was an incongruity between the two parts of the Section as amended. The first part threw the onus of proof on the complainant, by requiring him to prove that the proprietor *knowingly permitted* the offence. The latter part, however, threw the onus on the proprietor, by holding him to have permitted the offence *unless he should prove the contrary*. If it was necessary to show that the proprietor knowingly permitted the offence, then the latter part of the Section was unnecessary.

MR. HARINGTON said, the question now before the Committee was that the Section, as amended, should stand part of the Bill, and he submitted that that question should be put to the vote. If the Motion was carried, it would be open to any Honorable Member to move that the Committee go back to the Section.

THE CHAIRMAN said, in strictness, the Honorable Member for the North-Western Provinces had a right to insist upon that question being put to the vote, but it would be open to the Honorable and learned Judge, after that question was decided, to move that the Section be re-considered.

The question being put that the Section, as amended, stand part of the Bill, the Council divided :—

Ayes 5.

Mr. Seton-Karr.
Mr. Forbes.
Mr. Harington.
Sir Robert Napier.
The Chairman.

Noes 2.

Sir Charles Jackson.
Mr. Erskine.

So the Motion was carried.

SIR CHARLES JACKSON then moved that the Section be re-considered.

MR. HARINGTON said, the first part of the Section proposed to deal with a fact. A carriage was found drawn by a less number of horses than the license allowed, or carrying a greater number of passengers or a larger quantity of luggage, and the latter part of the Section authorized the Magistrate, when such was the case, to proceed at once against the proprietor of the carriage as if he had himself committed the offence charged. In the absence of the driver, this would probably be generally the course which would be pursued. It would rest with the proprietor to shew that he did not permit the act complained of by adverting any evidence on the point that it might be in his power to bring forward. He (Mr. Harington) could not perceive that the first and second parts of the Section were inconsistent the one with the other. The latter part of the Section was based upon the old maxim *qui facit per alium facit per se*, which was strictly applicable in the present case, and it was absolutely necessary to enforce it in order to render the Bill effectual.

MR. SETON-KARR said that, on the whole, he felt inclined to agree with the Honorable Member for the North-Western Provinces. He could see no incongruity in the two parts of the Section. The first part referred to the fact which the complainant on the part of Government, or the informer, was held to prove. The latter part threw on the proprietor the onus of proving that he had no such knowledge. Thus the two parts would be harmonious, the first relating to the bare fact, the latter to the disproof of guilty

knowledge. For the sake of perspicuity, however, he would move the insertion of the word "knowingly" before the word "permitted" near the end of the Section, and thus make the Section harmonious and complete.

After some further discussion, Mr. Seton-Karr's amendment was put and carried.

SIR CHARLES JACKSON then moved the omission of the words "unless he shall prove the contrary" at the end of the Section, and the substitution of the following words :—

"unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution, and had made reasonable provision to prevent the commission of the offence."

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

Sections IX and X were passed as they stood.

Section XI provided as follows :—

"In any station in which a Magistrate or other Officer exercising the powers of a Magistrate shall reside and be, any Police Officer may seize any Stage Carriage with the horse or horses harnessed thereto, if the full particulars of the license of such Stage Carriage be not distinctly painted on such Stage Carriage in the manner provided in Section V of this Act. Such Carriage with the horse or horses harnessed thereto, shall be taken without delay by such Police Officer before such Magistrate or other Officer as aforesaid, who shall hear and determine the complaint of such Police Officer in a summary way; and, if thereupon any fine is imposed by such Magistrate or other Officer as aforesaid, such Stage Carriage and horse or horses may be detained for twenty days as security for the payment thereof, and if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale, and the surplus (if any), if not claimed within a further period of two months from such sale, shall be forfeited to the State. If the proceeds do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided."

Several amendments were carried (principally on the Motion of Sir Charles Jackson) which made the

Section, as finally passed, run as follows :—

“ In any station or place in which a Magistrate shall reside and be, any Police Officer may in any place within two miles of the office of such Magistrate seize any Stage Carriage with the horse harnessed thereto, if the full particulars of the license of such Stage Carriage be not distinctly painted on such Stage Carriage in the manner provided in Section V of this Act. Such Carriage with the horse harnessed thereto, shall be taken without delay by such Police Officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such Police Officer, and, if thereupon any fine is imposed by such Magistrate, and such fine is paid, such Stage Carriage and horse shall be immediately released, and if such fine be not paid, such Stage Carriage and horse may be detained for twenty days as security for the payment thereof, and if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges, incurred on account of the detention and sale, and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse, and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State. If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.”

Section XII was passed as it stood.

Section XIII provided for the penalty being in certain cases recoverable from the proprietor, there being a proviso, empowering the Magistrate to discharge the proprietor, if the proprietor should prove to the satisfaction of the Magistrate “by sufficient evidence *not resting on his own testimony*,” that the offence was committed without his privity or knowledge, &c.

SIR CHARLES JACKSON proposed the omission of the words “not resting on his own testimony,” as going beyond the law of evidence, which allowed a defendant to give evidence on his own behalf.

MR. HARRINGTON said, he did not think the words were open to the objection taken by the Honorable and learned Judge. It was not proposed to exclude the evidence of the proprietor, but merely to provide that independent proof should be required before he could be exonerated, which, as the proprietor was liable to be put in

the place of the accused, did not appear unreasonable or improper.

After some further discussion, the Council divided—

Ayes 5.
Mr. Seton-Karr.
Sir Charles Jackson.
Mr. Erskine.
Sir Robert Napier.
The Chairman.

Noes 2.
Mr. Forbes.
Mr. Harrington.

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

Sections XIV to XVI were severally passed after amendments.

Section XVII was passed as it stood.

Section XVIII was passed after a verbal amendment.

Section XIX was passed as it stood.

Section XX was passed after a verbal amendment.

Section XXI was the Interpretation Clause.

A verbal amendment was made in the definition of “Magistrate.”

The definition of “horse” after verbal amendments was transposed, so as to stand immediately before the definition of number.

The definition of “British India” was passed after the omission of the proviso.

A verbal amendment was made in the definition of gender; and the Section, as amended, was then passed.

MR. HARRINGTON proposed the introduction of the following new Section at the end of the Bill :—

“Except in the Presidency of Fort St. George and the Settlement of Prince of Wales’ Island, Singapore, and Malacca, this Act shall have effect on and after the 1st day of September 1861. In the said Presidency and Settlement respectively the Act shall have effect from the day when it shall be extended thereto by the local Government, by an order published in the Government Gazette.”

SIR CHARLES JACKSON asked, why such an exception should be made in favor of the Presidency of Fort St. George. He had travelled in Madras himself, and was perfectly willing to admit the superiority of the mode of travelling there over that practised in Bengal. He thought the term “be-

nighted Presidency," as applied to Madras, was not a correct one, and that in that respect, as in many others, Madras was far in advance of Bengal. Still he thought that the coachmen there required looking after as well as here. Carriages might be overloaded in Madras, and he knew from experience that they were so. He thought that a general law like this should have no exceptions; and that, if it was a good law, it was good for all places.

MR. FORBES said that, as he understood it, the chief object of this Bill was to prevent cruelty to animals, and not to act as a check upon drivers. No doubt, the coachmen of private gentlemen occasionally behaved ill, but it was not on that account thought expedient to pass a law for their coercion. The whole question therefore which arose was, whether this Act was necessary or not in Madras, because, if it were not necessary, it had better not be extended to that Presidency, it being an admitted principle that all unnecessary legislation was an evil and mischievous. Now how stood the case? The Madras Government, who might be presumed to be well acquainted with the wants of their own Presidency on such a matter, had said that it was not needed at present, and had asked that it should not be extended to them, expressing at the same time a willingness to adopt the law whenever it might be needed, and suggesting with this view the introduction of a provision leaving it to their discretion to bring it into operation within their territories whenever they thought it necessary. Now he was confident that, when the Madras Government had expressed such an opinion, this Council would not show so much discourtesy to that Government as not to trust them in a matter of such minor importance as this, or force upon them a law which they had asserted to be unnecessary. The Honorable and learned Judge had alluded to the superiority of the means of travelling in Madras, and there were reasons why travelling should be better in Madras than in

this Presidency. One reason was that the Carriages were better; another reason was that they never carried more than two passengers and generally only one, instead of the three and sometimes four passengers who went in a Dawk Carriage in Bengal; and were invariably drawn by two horses instead of one pony. Besides, the roofs being made circular, they could not be overloaded with luggage. The case referred to by the Honorable and learned Judge was a solitary one, and the learned gentleman would perhaps pardon him if he added that the learned Judge was himself the traveller who thus overloaded his Carriage. If that were the only instance to be urged as a ground for forcing the Act upon the Madras Presidency, he did not think that it was a reason which this Council would be willing to accept. As he had already observed, the Madras Government had not asked to be permanently excluded from the operation of the Act. What they asked was that they should be allowed to choose their own time for bringing it into operation, and that was what the amendment proposed by the Honorable Member for the North-Western Provinces would enable them to do.

MR. ERSKINE said that, partly as a matter of consistency, he must confess that he had not hitherto seen and did not now see the reason of the proposed exemption. He thought that, with respect even to a law which was intended to be made applicable to the whole of India, when a local Government wished to be exempted from its operation, their opinions were entitled to great consideration. But he was not altogether prepared to concur in the opinion of the Honorable Member for Madras, that there would be any discourtesy in this Council requiring the Act to take effect in the whole of India, unless the Madras Government showed some good reasons for the proposed exemption of that Presidency, and certainly his (Mr. Erskine's) recollection of the papers which had come from Madras inclined him to think that no such reasons had been

shown. On the whole, believing that cruelty to animals must exist, more or less, where Stage Carriages existed, he did not think that the Council would be justified, on the grounds now before them, in admitting the exemption claimed on behalf of the Madras Government.

MR. HARRINGTON said that, if the Madras Government had asked that the Madras Presidency should be excluded altogether from the operation of the Bill, he should have had no hesitation in voting against such an application. But all that the Madras Government asked was to be allowed to select its own time for the Bill taking effect within the limits of that Presidency. On this side of India, there could be no doubt that the sooner the Bill was brought into operation, the better; but it did not appear to be so urgently required in Madras. He could not speak of that Presidency of his own knowledge, but he thought that the Government of Madras would not have made the request contained in the communication received from that Government without good reasons, and he was quite willing to leave the Madras Government to fix its own date for bringing the Bill into operation in that Presidency.

MR. SETON-KARR said that, agreeing with the Honorable Member for Bombay that there would be no discourtesy shown to the Madras Government if the Bill were made compulsory in that Presidency, he still thought that there was much weight in what had been adduced by the Honorable Member for Madras for allowing that Government to choose its own time. There was a too great disposition to use centralisation, and every local Government must be permitted to select its own time, and to know whether a law could best come into operation on the 1st of January of any year, or on the 1st of July. If the law worked practically and well, the Madras Government would regret much that they had not had recourse to it earlier, and would hasten to avail themselves thereof. In this view he should support the amendment of the

Honorable Member for the North-Western Provinces.

MR. FORBES wished to add, with reference to what had fallen from the Honorable Member for Bombay that cause had not been shown why the Bill should not be introduced into Madras, that he did not think that that was taking a correct view of the case. That Government had said that they did not require the law at present, and the onus now lay on the opposite side to show cause why it ought to be introduced there. In his opinion, as he had already observed, laws which were not needed were only evils; and it was incumbent on those who proposed them to show why they should be passed. It was not incumbent on those who objected, to prove a negative.

SIR CHARLES JACKSON said, it had already been shown generally why such a law was necessary, and as drivers, proprietors, and their carriages and horses were considered proper subjects for control here, he thought the onus lay with the Madras Government to show why they ought not to be subjected to control in Madras. The question was whether a *prima facie* case had been made out in favor of the introduction of the Bill into the other Presidencies, and if that was established, then the onus lay with the Madras Government to show why it was not equally applicable to that Presidency. As he understood the case, the Government of Madras did not say that the measure was objectionable, nor had they expressed any wish to be altogether excluded from the operation of the Bill. They only said they did not see any immediate necessity for the measure, and the case that had been made out for postponing the operation of the Bill in that Presidency certainly seemed to him to be a very weak one. The Government of Madras would have no good reason for considering the extension of the Act to Madras as an act of discourtesy. If the Act which was intended for all India, was allowed to apply to one Presidency, he could not see why it should not apply to another, for drivers and proprietors were much the same,

and subjected to much the same influences all over the world. He should on these grounds oppose the Clause.

SIR BARTLE FRERE said, the following was the opinion of the Madras Government, as communicated in their Chief Secretary's letter :—

“In respect to the measure generally, I am also to remark that the Government doubt, as do the Sudder Judges, whether it be required in this Presidency, and that in the event of the Bill being proceeded with, they would wish a provision introduced leaving it to the discretion of the Madras Government to bring it into operation within their Territories, whenever they may deem it necessary.”

That was a distinct request, therefore, upon which the proposed Section had been framed ; and he thought himself that it was a very reasonable request, and that, when so expressed, it was hardly courteous to insist upon making the Bill immediately applicable to Madras, contrary to the wishes of the local Government.

The Section was then put and carried.

The Preamble and Title were passed as they stood ; and the Council having resumed its sitting, the Bill was reported.

CIVIL PROCEDURE.

MR. HARRINGTON postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill “to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter).”

SUGAR DUTY (N. W. P.)

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill “to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces”).

Agreed to.

The Bill passed through Committee after a verbal amendment in Section III, and, the Council having resumed its sitting, was reported.

ARTICLES OF WAR (NATIVE ARMY).

SIR BARTLE FRERE postponed the Motion (which stood in the Orders of the Day) for a Committee of the whole Council on the Bill “to make certain amendments in the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army.”

EXECUTION OF MOFUSSIL PROCESS (STRAITS SETTLEMENT).

MR. FORBES moved that the Council resolve itself into a Committee on the Bill “to extend to the Straits Settlement Act XXIII of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by authorities in the Mofussil);” and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

Agreed to.

After some discussion, the Motion was by leave withdrawn, and the consideration of the Bill was postponed.

CATTLE TRESPASS.

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill “to amend Act III of 1857 (relating to trespasses by Cattle);” and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

SIR BARTLE FRERE said, he thought that this Bill should not be passed without great consideration, and that it was very important that the Council should have the assistance of the Honorable and learned Vice-President in considering its provisions in Committee. Besides, the subject of the Bill had some connection with a Motion which was about to be proposed to-day by the Honorable Member for Madras. He should therefore wish the consideration of the Bill to be postponed till Saturday next.

MR. HARRINGTON said, he was very willing that the consideration of

the Bill should be deferred, as proposed by the Honorable Chairman, until Saturday next. The Bill was not brought in by him, but by the late Honorable Member for Bengal; and the charge of the Bill had devolved upon him simply in consequence of his being the senior Member of the Select Committee to which the Bill was referred in the regular course. Since the Select Committee made their report, a Petition had been presented against the Bill, which had been ordered to be printed on his Motion. The Petitioners seemed to think that the Bill contained provisions not to be found in the Penal Code; but a reference to the last Illustration given at the foot of Section 425 of the Code, in the Chapter relating to Mischief, would show that this was a mistake. That Illustration said—

“A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause damage to Z's crop. A has committed mischief.”

From this it would be seen that the provision objected to by the Petitioners, was not a novel one or now proposed for adoption for the first time. He would not further discuss the Bill to-day, but would move that its consideration be postponed until the next meeting of the Council.

The consideration of the Bill was accordingly postponed.

FINES FOR RIOTS.

Mr. FORBES moved that the Report of the Select Committee appointed to consider the communication from the Madras Government regarding the levy, in certain cases, of a fine on the Town, District, or Division in which a riot or pillage was committed, and also to consider the existing laws generally relating to the responsibilities of landowners and occupiers of land in connection with Police matters—which was presented to the Council last Saturday, and had been printed, and was in the hands of Honorable Members—be adopted. He said that, in case any Honorable Member should

Mr. Harington

not at once remember the circumstances of the case, he would briefly state that a case of riot had occurred in one of the Districts of the Madras Presidency, in reporting which the Magistrate suggested the enactment of a law for imposing a fine on the inhabitants of any village, by the inhabitants of which any serious outrage or riot might be committed, when there was reason to believe that the intention to commit such outrage or riot had been generally and publicly known to the inhabitants, and they had abstained from giving notice to the Police. That suggestion having gone home with all the papers connected with the case, the Secretary of State had desired that it should be communicated to the Government of India, by whom the papers had been presented to this Council. The subject had been considered by a Select Committee of the Council, but as no opinion upon the question had been expressed by any of the local Governments—the Madras Government even abstaining from any opinion for or against the proposed law when sending the papers home, and when sending them to the Government of India—the Select Committee had proposed that the Government of India should ascertain the sentiments of the various local Governments as to the advisability of legislation in the matter, on the receipt of which the Council would be in a better position than it was at present to come to a decision as to the necessity for the interference of the legislature. That was the Report which he now moved that the Council should adopt.

Agreed to.

Mr. FORBES then moved that Sir Bartle Frere be requested to take the Report to his Excellency the Governor-General in Council, for such orders as his Lordship in Council might think it expedient to pass thereon.

Agreed to.

BENGAL MILITARY ORPHAN SOCIETY.

Sir CHARLES JACKSON moved that the Bill “to amend Act XXI

of 1860 (for the registration of Literary, Scientific, and Charitable Societies)" be referred to a Select Committee consisting of Mr. Erskine, Mr. Seton-Karr, and the Mover.

Agreed to.

EMIGRATION (SEYCHELLES).

MR. FORBES gave notice that he would, on Saturday next, move the first reading of a Bill relating to Emigration to the British Colonial Dependency of Seychelles.

The Council adjourned.

Saturday, July 6, 1861.

PRESENT :

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

Hon'ble Sir H. B. E. Frere, Hon'ble Major-General Sir R. Napier, H. B. Harington, Esq., H. Forbes, Esq.,	Hon'ble Sir C. R. M. Jackson, and W. S. Seton-Karr, Esq.
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INCOME TAX.

THE CLERK reported to the Council that he had received a communication from the Bombay Government to the address of Mr. Erskine, regarding a proposed amendment in Act XXXII of 1860 (for imposing duties on profits arising from property, professions, trades, and offices).

SIR BARTLE FRERE moved that the communication be printed.

Agreed to.

RELIGIOUS ENDOWMENTS.

THE CLERK reported that he had received a communication from the Home Department forwarding a further despatch from the Secretary of State for India on the subject of the repeal of Regulations XIX. 1810. of the Bengal Code and VII. 1817 of the Madras Code, relative to native religious endowments.

SIR BARTLE FRERE moved that the communication be printed and re-

ferred to the Select Committee on the Bill to repeal those Regulations.

Agreed to.

MINORS.

THE CLERK reported that he had received a communication from the Home Department forwarding certain papers from the Government of the North-Western Provinces regarding the practical working of Act XI. of 1858 (for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal).

MR. HARRINGTON moved that the communication be printed.

Agreed to.

VILLAGE WATCHMEN.

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, forwarding the opinions of the local officers on the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal."

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

THE CLERK reported a communication from the Bengal Government to the address of Mr. Seton-Karr, forwarding, with reference to the Petition presented to the Legislative Council by certain Zemindars and others of Nuddea and to the Bill before the Council "to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal)", a report from the Board of Revenue on the subject.

MR. SETON-KARR moved that the communication be printed and referred to the Select Committee on the Bill.

Agreed to.