

Wednesday, December 7, 1859

**LEGISLATIVE COUNCIL
OF
INDIA**

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1859

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was the desire of this Council that the information indicated in the following queries relative to the actual working of the Act be procured and communicated to the Legislative Council :—

1. In what Provinces, Districts, or places has a general search for Arms, Ammunition, or Sulphur been ordered under Section XXIV Act XXVIII of 1857, and carried out, stating, if possible, in the case of each District or place, the commencement and completion of the search; and stating also the number of the different sorts of Arms seized?

2. To what Provinces, Districts, or places have Sections I and V of the above Act been extended, stating whether the extension applies to other places than those in which a general search has been ordered?

3. To what places have Sections VII and VIII, prohibitory of the manufacturing and dealing in Arms without a license, been extended?

4. In what places has the prohibition to import Arms, Ammunition, Sulphur, and Saltpetre been enforced under Section XII, and is continued in force?

5. In what places has the transport of Arms &c. been prohibited under Section XV, and is still prohibited?

6. In what places has the sale of Sulphur been prohibited under Section XVIII, and is still prohibited?

7. In what places have the making and keeping of Cannon &c. without a license been prohibited under Section XXVI, and are still prohibited?

Agreed to.

MR. SCONCE moved that Mr. Ricketts be requested to take the above Message to the President in Council.

Agreed to.

MARKETS.

MR. RICKETTS moved that Mr. Forbes and Mr. Sconce be added to the Select Committee on the Bill "for regulating the establishment of Markets."

Agreed to.

TOLLS (EASTERN CANAL).

MR. SCONCE gave notice that he would, at the next Meeting of the

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Council, move the first reading of a Bill to amend and extend Act XXII of 1836, relating to the levy of Tolls in the Eastern Canal.

CRIMINAL APPEALS.

MR. SCONCE moved that a correspondence received by him from the Bengal Government, relative to the admissibility or otherwise, by the Nizamut Adawlut, of second appeals in judicial proceedings of the Fouzdary Courts other than Criminal trials, when those Courts act without having jurisdiction, be printed.

Agreed to.

The Council adjourned at half past 12 o'clock, on the Motion of Mr. Ricketts, to Wednesday, the 7th Instant, at $\frac{1}{2}$ past 10 o'clock.

Wednesday, December 7, 1859.

PRESENT:

The Hon. Lieut.-Genl. Sir James Outram, Senior Member of the Council of the Governor-General, presiding.

Hon. H. Ricketts,		Hon. Sir C. R. M.
Hon. H. B. Harington,		Jackson,
Rt. Hon. J. Wilson,		and
H. Forbes, Esq.,		A. Sconce, Esq.

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented two Petitions from the Inhabitants of Poona against the Bill "for the Licensing of Trades and Professions."

MR. HARINGTON moved that the above Petitions be printed.

Agreed to.

POLICE (PRESIDENCY TOWNS AND STRAITS SETTLEMENT).

THE CLERK reported to the Council that he had received a communication from the Governor of the Straits Settlement on the subject of empowering Magistrates to take cognizance in certain cases of offences against Act IV of 1839 (stealing growing trees, &c.).

SIR JAMES OUTRAM moved that the above communication be referred to the Select Committee on the Bill "to amend Act XIII of 1856 (for re-

gulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

MERCHANT SEAMEN.

THE CLERK also reported that he had received a communication from the Governor of the Straits Settlement, with a Memorial from Messrs. Alla Petchey and Emansah, Ship-owners at Singapore, praying for a modification of Act I of 1859 (for the amendment of the law relating to Merchant Seamen).

MR. SCONCE moved that the above communication be printed.

Agreed to.

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES presented the Report of the Select Committee on the Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal;" and, in accordance with the notice which he gave last Saturday, he moved that the Standing Orders be suspended, in order that the Bill might be carried through its remaining stages to-day. The object he had in view, as he had said before, was that the Bill might be passed before the expiration of the present law, thereby to prevent the great public inconvenience which would otherwise of necessity be the result.

MR. HARRINGTON seconded the Motion, which was put and carried.

MR. FORBES then moved that the Council resolve itself into a Committee on the Bill, and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended that it should be passed.

Agreed to.

The Bill passed through Committee after an amendment in Section XVIII, and, the Council having resumed its sitting, 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 Mr Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ARMS AND AMMUNITION.

MR. HARRINGTON moved the first reading of a Bill "to continue in force for a further period Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)." In giving notice of this Motion at the last meeting of the Council, and of his intention, in the event of the Motion being carried, to ask permission to suspend the Standing Orders with a view to passing the Bill at once through its remaining stages, he had stated the reasons which appeared to him to render it desirable that he should bring in a temporary Bill for continuing Act XXVIII of 1857 in force for the further period of six months, instead of pressing on at this time the Bill which he had introduced into the Council in August last for making the Act perpetual. At the time he brought in that Bill he had every reason to expect that there would be ample time for a full discussion and consideration of the subject before the close of the present year, but that expectation had not been realized, owing to circumstances which could not have been foreseen or guarded against; and as he believed that some Honorable Members desired further time for consideration, as well as further information as to the working of Act XXVIII of 1857, and as it was also desirable that the Bill should be discussed in a full Council, the only way to prevent the inconvenience which would result if the law were allowed to expire was to pass a temporary Act.

The Bill was read a first time.

MR. HARRINGTON, pursuant to notice, moved that the Standing Orders be suspended, in order that the Bill might be passed at once through its remaining stages.

MR. FORBES seconded the Motion which was carried.

MR. HARRINGTON then moved the second reading of the Bill.

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

MR. HARINGTON moved that the Council resolve itself into a Committee on the Bill.

SIR CHARLES JACKSON said, it was not his intention to offer any opposition to the passing of this Bill, which would be a temporary measure. He should reserve his objections till the other Bill to make Act XXVIII of 1857 perpetual was again brought forward, when he should have the benefit of the assistance of the Honorable and learned Vice-President, who also entertained objections to some of its provisions.

The Motion was carried.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported.

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

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

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

ARMY AND STATE OFFENCES.

MR. HARINGTON moved the first reading of a Bill "to continue in force, for the further period of one year, Acts XIV, XVI, and XVII of 1857." He said that, with the permission of the Council, he would read the remarks which he had made at the last meeting of the Council at the time of giving notice of his intention to move the first reading of this Bill to-day, and, in the event of that Motion being carried, to ask for the suspension of the Standing Orders, with a view to passing the Bill at once through its remaining stages. He was not aware that he could add any thing to those remarks, and he would therefore now only move that the Bill be read a first time.

The Bill was read a first time.

MR. HARINGTON moved that the Standing Orders be suspended, in order that the Bill might be passed at once through its remaining stages.

MR. FORBES seconded the Motion.

MR. SCONCE said, before the Council came to a vote on the question before them, there were some remarks which he should wish to submit for their consideration, not only in respect to one, but more of the Acts which were now proposed to be extended. There were three Acts which this Bill proposed to continue in force, Acts XIV, XVI, and XVII of 1857. Of these he would first notice Act XVI, which was an Act to make temporary provision for the trial and punishment of heinous offences in certain districts. Now among the reasons which his Honorable friend opposite (Mr. Harington) gave to the Council for the renewal of the three Acts, as contained in his speech at the last Meeting, they were told that the Lieutenant-Governor of the North-Western Provinces considered it necessary that his hands should still be strengthened for the trial and punishment of mutinous sepoys and rebels. Now Act XVI of 1857 applied neither to rebels nor to mutinous sepoys. It was an Act for the trial and punishment of heinous offences, and it provided that, whoever should commit, or attempt to commit any heinous offence, should be liable on conviction to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years. Such was the general provision contained in the first Section. The second Section declared that the words "heinous offence" should be deemed to include an attempt to murder, rape, maiming, dacoity, robbery, burglary, and knowingly receiving stolen property, &c, and it was with regard to this Section that he had great objection. According to this Section robbery was a heinous offence, and so also were burglary and receiving property obtained by burglary. If therefore this Act were continued, any person in any district in the North-Western Provinces, who should be convicted of stealing by burglary, and any midnight robber, might be hanged.

MR. HARINGTON.—Only in Districts to which the Act was extended.

MR. SCONCE continued—precisely so, and the want of any limit to its possible extension was what he objected to. A simple burglary, a simple receipt of property the results of such burglary, was by this Act rendered a capital.

offence. More than that, the stealing of property which had been provided for troops was also a capital offence. If a man were to steal a bundle of hay which belonged to the Commissariat, he might be sentenced to imprisonment not exceeding fourteen years, but he also might be sentenced capitally. Again, the breaking of the spokes of a cart-wheel would also be a capital offence. It seemed to him doubtful that the Council should be called upon to give any one the power to hang petty thieves and robbers. He had heard nothing which should induce him to suppose that the hands of the Government of the North-Western Provinces could thus be in any way strengthened. As he understood, it was the desire of the Lieutenant-Governor of the North-Western Provinces to continue a tribunal which he had established for the trial of mutinous sepoys and rebels. But he desired to remark that, for the attainment of this asserted object, two Acts other than that to which allusion is now made placed ample power in the hands of the Executive. Apart from other considerations to which he should presently allude, if it was merely the trial of rebels for which the Lieutenant-Governor was concerned, that was fully provided for by Act XI of 1857 which was a permanent law. The language of the first Section of this Act was unmistakably applicable to rebels, for it applied to any person who should rebel or wage war against the Government, or should instigate or abet rebellion; while special jurisdiction for the trial of any such offences was created by Section VII Act XIV of 1857. So much then as to rebels: and as to mutinous sepoys, their case was expressly provided for by Act XVII of 1857, a law which, according to its title, was enacted for the trial of Native Officers and Soldiers for mutiny and desertion. If therefore we were to regulate our acceptance of the Bill now submitted to the Council by the ground shown for its enactment, it would appear that the Executive Government was vested with abundant powers, irrespectively of Act XVI of 1857. The Lieutenant-Governor of the North-Western Provinces desired, they were told, to retain laws for the punishment of mutiny and rebellion; and such laws are to be found in Acts XIV and XVII of

1857; not at all in Act XVI of that year, which applied to heinous offences exclusive of rebellion and mutiny. It seemed to him therefore, upon the whole, that the Council could not with a due regard to its own responsibilities give such great powers at this time (three years after the occurrence of the late mutiny), or give its countenance to the continuance of an Act passed during that time. He said nothing to question the policy of originally enacting the law. In the year 1857 the hand of every man might be said to have been raised against his neighbor; any act of violence was an act of rebellion: but it was different now, and it appeared to him that they should not give the Lieutenant-Governor of the North-Western Provinces, or any Governor, the power of hanging a midnight robber, or a petty thief. But there was another matter which had occurred to him within the last few hours, and which induced him to regard this measure with more or less doubt; it was one worthy of consideration. On the 1st of November last was promulgated an Amnesty by the Proclamation of Her Majesty, and one Section of this Proclamation ran as follows:—

“Our clemency will be extended to *all* offenders, save and except those who have been or shall be convicted of having directly taken part in the murder of British subjects. With regard to such, the demands of justice forbid the exercise of mercy.”

The first question he desired to put was whether, by re-enacting Act XVI of 1857, they would go back to offenders to whom Her Majesty had extended her clemency. He did not know up to what date this Amnesty as to general offences applied; possibly to the 1st of November 1858 at least. Therefore it seemed to him that, with respect to the offences covered by the Clause which he had quoted, and assuming that offenders already pardoned should not be again declared liable to punishment, they were bound to indicate in this new Bill that the renewal of Act XVI of 1857 for the punishment of heinous offences should have effect only against offences committed subsequently to the date of the Proclamation. But the same question arose as to the other Acts which his Honorable friend

opposite had asked them to continue. In the 7th Section of Act XIV of 1857 provision was made first for the trial of offences committed under Sections I and II of Act XI of 1857, which applied to rebellion, and to which he had already alluded. If Her Majesty had pardoned simple rebellion committed up to a certain date, it would be altogether impossible on their part, in the face of the Proclamation, to re-enact a law which would permit the Executive Government to take cognizance of the crime of simple rebellion *which had been pardoned on the 1st November 1858, and which had not been continued or revived subsequent to that date.* But by the same Section VII of Act XIV, any heinous crime might be punishable by the Commission which the Government of the North-Western Provinces had under the Act power to issue: and for the reasons already given, it seemed to him obvious that the new Bill should be so qualified as not to continue a jurisdiction to try heinous offences generally, on the footing that they might be tried under the original Act, but only such heinous offences as had been perpetrated subsequently to the date of the Amnesty. He excluded from consideration both subsequent acts of rebellion and subsequent heinous crimes, and the proposed law, according to his idea of intelligent legislation, should give no countenance to the revival of amnestied offences. Similar remarks applied to Act XVII of 1857. With certain qualifications mutiny and desertion were embraced in Her Majesty's Amnesty; and it seemed to him that they ought not to renew a law, drawn in terms which ignored the facts that had intervened between the enactment of the original law in 1857 and the present time. With these observations, therefore, it seemed to him that, without more information than they now possessed, or without very material modifications in the Act, he was under the necessity of opposing the Motion for the suspension of the Standing Orders.

MR. HARRINGTON said, it could not be denied that the Acts, which it was desired to retain on the Statute Book for the further period of a year, were special Acts, and that the punishments which they prescribed for some

of the offences enumerated in them were extremely severe, so much so, indeed, that the infliction of those punishments could be justified only by very special and extraordinary circumstances. But it was just those special and extraordinary circumstances which, having called the Acts in question into existence the year before last, rendered it advisable, in the judgment of the Executive Government, that they should be allowed to continue in force some little time longer. Not that there was any parallelism between the state of the country at the present time and at the time when those Acts were passed, or when they were afterwards renewed. Happily this was not the case. Indeed, it was scarcely possible to conceive any thing more different. Of this they could desire no better proof than was afforded by the glorious but peaceful tour lately made by His Excellency the Viceroy and Governor General of India through the very places which only a few months ago were the scenes not only of open rebellion against the Government, but of crimes of the most revolting character. Still, as had already been mentioned to the Council, there was a large body of rebels on the Oude Frontier, as well as on the borders of Goruckpore, against which our troops were operating in conjunction with the troops of the Nepalese Government, and there was a large number of rebels in Bundelkund against whom operations were also being carried on, and it seemed very desirable that the Civil Officers or Officers exercising Civil functions with the Military Columns employed in those places should possess all the powers described in the Acts under consideration for the trial and punishment of the persons who might be apprehended by them. Surely these persons had no particular claim to mercy or to be treated more leniently than they would have been had they been arrested a year ago. Every effort had been made by the Government to induce all those who were still in arms against us to surrender. Her Majesty's most gracious amnesty, to which the Honorable Member for Bengal had referred, had been proclaimed again and again throughout all parts of the country, and the conduct of the Government towards those who had surrendered under

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it must have shown how anxious and willing the Government were to give the widest latitude of construction to the offers of mercy contained therein. Many persons had accepted those offers and were now living peaceably in their villages, but a great many obstinately refused to come in, and the Government had consequently been obliged to adopt active measures to cause their apprehension and to rid the country of them. He confessed that he had no compassion for these miscreants; that he had no sympathy with them. The Honorable Member for Bengal had overlooked that part of Her Majesty's proclamation which fixed a period for the operation of the Royal clemency. That period had long expired and there were large bodies of men still in arms against the Government and acting in open defiance of it.

MR. SCONCE said, no part of his observations applied to acts of present rebellion. He did not mean to include those who were now opposed to the Government. But these Acts would apply to offences committed before the promulgation of Her Majesty's proclamation, and not subsequently continued or repeated.

MR. HARINGTON continued, he had mentioned that the period of the Amnesty was limited. The Honorable Member for Bengal asked whether the Government intended to act in opposition to the terms of the royal proclamation; whether by re-enacting Act XVI of 1857 they would go back to offenders to whom Her Majesty had extended her clemency. He (Mr. Harington) thought that the Honorable Member for Bengal had no right to put such a question. The Honorable Member must be aware that it was quite impossible for the Government to do anything contrary to the terms of Her Majesty's proclamation. But a large number of persons had refused to avail themselves of the offers of mercy held out to them, and the Government had come down to the Council and asked it to continue certain laws in force which were considered necessary for the punishment of those persons.

He well recollected that when the renewal of the three Acts, to which his present motion referred, was proposed to

the Council last year, both he (Mr. Harington) and the predecessor of the Honorable Member for Bengal thought that some mitigation of the stringent provisions of Act XVI of 1857 might be allowed. They were however told by the Members of the Executive Government that it was thought better that the Act should continue in force as it was originally passed, but that the Council might rest assured that the provisions of the Act would be put in force in those cases only in which their enforcement was strictly just and proper and called for by the circumstances. Mr. Currie and himself were contented with that assurance, and he certainly had had no reason to repent the confidence which he had reposed in the Government. A similar assurance had been given to the Council on the present occasion, and he thought that the Honorable Member for Bengal might safely accept the same and withdraw his opposition to the Bill before the Council, and that in giving to the Executive Government the powers for which it had asked, and which it deemed necessary, for the proper administration of the country, he need be under no apprehension that, in the exercise of those powers, the Government would be guilty of any abuse of them. In thus trusting the Executive Government, he (Mr. Harington) did not think that the Honorable Member for Bengal would be acting inconsistently with his duty, or with the object of his appointment to this Council, which was to assist in making the laws which were necessary to enable the Executive Government to carry on the Executive duties of the country. It seemed to him (Mr. Harington) that the Honorable Member did not sufficiently distinguish between Executive and Legislative functions. It was no doubt difficult to know where to draw the line, but from what had taken place on this and on former occasions, he thought that the Honorable Member was disposed to place himself, in his legislative capacity, rather in antagonism to the Executive Government. This no doubt arose from an extreme anxiety on the part of the Honorable Member faithfully to discharge his own duties, which was very laudable, but, at the same time, he thought the Honorable Mem-

ber should be careful not to throw obstacles in the path of the Executive Government in the performance of its Executive duties. Those duties were of a very responsible and important nature, and he certainly thought that the Honorable Member for Bengal might exhibit a more trusting spirit towards the Executive Government, and confide more fully in it than he appeared disposed to do. The representative Members of this Council were not sent there for the protection of the people against the Executive Government, but to assist in making the laws which were considered by the Executive Government necessary to enable it to exercise its functions for the benefit of all classes.

The question being put, the Council divided —

<i>Ayes</i> 5.	<i>Noes</i> 2.
Mr. Forbes.	Mr. Sconce.
Mr. Wilson.	Sir Charles Jackson.
Mr. Harington.	
Mr. Ricketts.	
The President.	

So the Motion was carried.

MR. HARINGTON then moved that the Bill be read a second time.

SIR CHARLES JACKSON said, he must offer a few observations on the remarks of the Member opposite (Mr. Harington), although, when he came into the room this morning, it was not his intention to say a word on the subject of the Bill. He certainly thought that the Honorable Member for Bengal had been exceedingly temperate in the manner in which he had expressed his objections to this Bill, and there was not the slightest foundation for the remarks which had fallen from the Honorable Member opposite. He (Sir Charles Jackson) could not conceive that any Honorable Member could have spoken in a less antagonistic spirit than the Honorable Member for Bengal. That Honorable Member had simply pointed out that the present law provided the punishment of death for persons convicted of such crimes as robbery and burglary; that under that Act a man might be sentenced to death for stealing a bundle of hay belonging to the troops; and he asked the Council if they wished to have recourse at the present

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time to such an extreme measure; and really there was nothing that evinced a spirit of hostility to Government in such a statement.

He (Sir Charles Jackson) found no fault with the passing of that Act in 1857. It was passed in a troublous time, as a rough and ready remedy for the punishment of mutineers and rebels, and was, in fact, equivalent to the establishment of Martial Law. The question which they had to consider in a calm and temperate manner was whether the Act was now necessary when the greater part of the country had settled quietly down, or to what extent it was necessary. According to the statement of the Honorable Member opposite, there were at the present time only two or three districts in a troublous state. That was a good reason why they should re-enact the Law as regards those disturbed districts, namely, Bundelkund, Goruckpore, and the territories bordering on Nepal. The Honorable Mover had made out a case for the re-enactment of this measure with respect to those places; but why he should ask for a general Law of this exceptional nature applicable to all India, he (Sir Charles Jackson) could not understand. He did not suggest this in any spirit of antagonism, but as a Member of the Council. They were, it is true, the advisers of the Executive, and he for one accepted that view of his position in that Council; but they were also the independent advisers of the Government, and were not to be taken to task whenever they thought fit to differ from the Executive.

MR. HARINGTON said that the Council had already received through him the assurance that the Government had no present intention of extending the operation of the Acts which it was proposed to continue in force for a few months longer beyond the places mentioned by him, namely, Goruckpore, Oude, and Bundelkund, in which places it seemed to be admitted by the Honorable and learned Judge opposite (Sir Charles Jackson) that a sufficient case had been made out for their continuance; but it was impossible to say what might occur in the course of the operations now being carried on. The rebels on the Frontier might find their way into places in Bengal,

Chuprah or Tirhoot, for instance, where tranquillity now prevailed, and they might be joined by some of the people of those places, in which case, if the operation of the Acts were limited by the terms of the law to particular localities, it would be necessary for the Government to ask the Council to extend them. It appeared to him that this would be attended with inconvenience, and that it would be better to keep the Acts general as they had been passed originally, and to leave the Executive Government to put them in force where they were found to be absolutely needed as had hitherto been done.

SIR CHARLES JACKSON said, it must not be supposed that he wished to throw the slightest doubt on the assurances which had been made by the Honorable Mover of this Bill. He never for one moment doubted the humanity with which these measures would be carried out by the Governor General or the other Governors. But he must say, if they were called upon to pass Acts on these grounds, they were asked to proceed on an entirely new principle of Legislation.

MR. SCONCE said, it might perhaps be more convenient to the Council that he should propose in the form of amendments those alterations which he might consider necessary in order to make an imperfect law more perfect. Apart from the terms of the law, and with reference to the remarks of his Honorable friend opposite (Mr. Harington), he (Mr. Sconce) thought that he saw no advantage in discussing the theory and constitution of his own office. His Honorable friend had asked them to repose confidence in the Executive Government. His (Mr. Sconce's) opinion agreed with that of the Honorable and learned Judge. He was prepared to give the Government every confidence, but when he spoke of confidence as a Member of this Legislature, he meant confidence within the scope of legal action, a confidence in acts done within the limits that the Legislature might prescribe. If they proceeded upon that principle, how could he be upbraided with acting antagonistically towards the Government? But upon these personal questions, it was unsatisfactory and painful

to him to say more. He would keep to the prominent points before the Council. His Honorable friend had still admitted that rebellion and mutiny were the offences for which these Acts were required. His (Mr. Sconce's) objection was not as regards offences committed under rebellion or mutiny, but as regards heinous offences perpetrated by persons not mutineers or rebels. Again, however carefully he had listened to the remarks of his Honorable friend opposite, he had heard no explanation as to the effect which this Bill would have in confounding offences committed before and after the proclamation of Her Majesty's Amnesty. It seemed to him that this Legislature would sink its intelligence as to the rightness and fitness of things if it passed the present Bill, and, without an express recognition of the admitted facts, allowed offences which had already been pardoned by Her Majesty to be liable to punishment. With these remarks he begged to oppose the motion for the second reading of this Bill.

The question being put, the Council divided—

Ayes 5.	Noes 2.
Mr. Forbes.	Mr. Sconce.
Mr. Wilson.	Sir Charles Jackson.
Mr. Harington.	
Mr. Ricketts.	
The President.	

So the motion was carried and the Bill read a second time.

MR. HARINGTON moved that the Council resolve itself into a Committee upon the Bill.

Agreed to.

Section I provided as follows:—

“Acts XIV of 1857, XVI of 1857, and XVII of 1857 shall continue in force until the end of the year 1860.”

MR. SCONCE said, he desired to move an amendment in Section I Act XVI of 1857. That Section ran thus:—

“Whoever shall commit or attempt to commit any heinous offence in any District or place in which Martial Law hath been or shall be established, or in any District or place to which this Act shall be extended by order of the Governor General of India in Council, shall be liable, on conviction, to the punishment of death, or to the punishment

of transportation for life or of imprisonment with hard labor for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description."

The amendment which he proposed was to introduce a proviso into the Bill re-enacting that Section with the omission of the words "to the punishment of death or." He also intended to move an alteration in Section II of that Act, which he proposed should run thus :—

"The words 'heinous offence' shall be deemed to include an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson, provided the same shall have been committed with the intention of assisting any persons who at the time of commission were or are waging war or in arms against the State or forwarding their designs."

He had purposely excluded maining, burglary, stealing army provisions, violent assaults &c., and the offences which he desired to retain were "an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson." But he had also added a proviso which he considered indispensable because salutary. They must not, he thought, transport a person for simple robbery or simple plunder, unless those offences were committed with the view of aiding the purposes of those who were in arms against the Government. The amendment which he should now move was the addition of the following proviso to the Section of the Bill under consideration :—

"Provided, that, in lieu of Section I Act XVI of 1857, the following Section be substituted (that is to say) 'Whoever shall commit or attempt to commit any heinous offence in any district or place in which Martial Law hath been or shall be established, or in any district or place to which this Act shall be extended by order of the Governor-General of India in Council, shall be liable, on conviction, to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years, and shall forfeit all his property and effects of every description.'"

MR. HARRINGTON said, it had been suggested to him by the Honorable Member for Madras that, if the amendment of the Honorable Member for *Mr. Sconce*

Bengal were adopted with the proviso attached thereto, it would be exceedingly difficult for the Officers, who had to administer the law, to determine in a case of rape, for instance, that the crime was committed with the intention of assisting those who were waging war against the State or forwarding their designs, which would be essential to a conviction under the Act as proposed to be amended.

MR. SCONCE remarked that this proviso was contained in the law as it now stood.

MR. HARRINGTON continued, but it did not apply to a case of rape, which offence he (Mr. Harrington) supposed would generally be committed for the gratification of the passions of the man committing the same without much regard to the State or designs against the State. Let that however pass. The principal objection which he (Mr. Harrington) had to the proposed amendment was that it might often tend to considerable inconvenience from the difficulty and, indeed, impossibility of guarding the persons apprehended, particularly if in large numbers, and of conveying them from place to place before they could be delivered over for transportation. He recollected an instance in which a Civil Officer was attacked in the early part of the mutinies by a band of men, three of whom he killed with his own hand, and three others, who were seized, he afterwards hanged, simply because he had no means of guarding them or of forwarding them to any place of confinement. He had no law for what he did, and it might be said that he had been guilty of a judicial murder. He (Mr. Harrington) would be very sorry however to try this Officer for murder, or so to limit the law that, in the event of any Officer taking life under similar circumstances, he might be liable to be put on his trial for that offence. He therefore thought that it would be better that they should retain the punishment of death in the Act.

The Honorable Member for Bengal had not adduced any instance in which the Acts now proposed to be continued in force for a brief period longer had been abused since they were last renewed, and he (Mr. Harrington) believed he might say that recourse to capital

punishment under those Acts was very rare.

MR. SCONCE'S Motion was put and negatived.

MR. SCONCE then moved that the following proviso be added to the Section, namely :—

“ Provided that, in lieu of Section II Act XVI of 1857, the following Section be substituted (that is to say) ‘ The words heinous offence shall be deemed to include an attempt to murder, rape, wounding with intent to kill, dacoity, robbery, plundering with open violence, and arson, provided the same shall have been committed with the intention of assisting any persons who at the time of commission were or are waging war, or in arms against the State, or forwarding their designs.’ ”

The Motion was negatived, and the Section then passed.

MR. SCONCE moved that the following new Section be added to the Bill :—

“ Nothing in the said Acts shall extend to the punishment of persons entitled to pardon under Her Majesty's Proclamation, published in the Calcutta Gazette Extraordinary, dated the 1st of November 1858.”

MR. HARRINGTON said, he considered the proposed Section to be quite unnecessary. If any person entitled to a pardon under Her Majesty's Proclamation was arrested and brought to trial, the proper and usual course would be for him to plead the pardon in bar of further proceedings.

MR. RICKETTS said that the Honorable Member for Bengal was still confounding offenders who had mutinied with those who had not.

MR. SCONCE said, the terms of the Proclamation were—

“ To all others in arms against the Government, we hereby promise unconditionally pardon, amnesty, and oblivion of all offences against ourselves, our Crown, and dignity, on their return to their homes and peaceful pursuits.”

Here manifestly all prior acts of mutiny and rebellion, up to the promulgation of the Proclamation, were fully condoned, and it seemed to him that, in renewing laws necessitated by the events of 1857 and created in that year, it was highly essential to limit the language of the new law by the conditions which the

Amnesty necessarily imposed, and not to encourage local officers by the curt and silent terms of our law to prosecute offences that had been already pardoned.

If the Legislature could be supposed not to be cognizant of the Proclamation, the Bill would have been more or less justified. But as it was otherwise, they should prevent the possibility of any District Officer, under color of this Act, taking advantage of the ignorance or timidity of a prisoner and subjecting him unreservedly to a law passed before the proclamation of the Amnesty, as if the old and the new law could apply to the same crimes and the same criminals. He should therefore press his amendment.

MR. WILSON would appeal most respectfully to the Honorable Member for Bengal whether it would be wise to persevere in this amendment, and trusted that on consideration he would not object to withdraw it. If the amendment were put and negatived, it might create an impression abroad that a majority of the Legislative Council and the Government of India were disposed to contravene the benign proclamation of Her Majesty. Now he was quite aware that the Honorable Member did not wish to raise such an imputation. That the amendment itself was not needed to accomplish the object of the Honorable Member must be apparent upon three distinct grounds. In the first place, the law, which it was now sought to continue for another year as a temporary measure, had been in operation during the whole of the last year, contemporaneously with Her Majesty's proclamation, but no one ever imagined that the two were inconsistent with each other, nor had it ever been asserted that the one contravened the other. In the next place, if such a proviso were needful to save the proclamation under this particular law and against the punishments it inflicted, it was equally necessary as against the common criminal law, as the proclamation equally covered ordinary punishments for the offences which it condoned. And in the last place, if a person should by accident be tried for an offence which came within the proclamation, it might be pleaded in bar of the prosecution. He

(Mr. Wilson) trusted therefore, in order to avoid misconceptions on so delicate a point, that the Honorable Member would consent to withdraw his motion and not leave it on the records of the Council.

SIR CHARLES JACKSON said, he was disposed at first to support the amendment of the Honorable Member for Bengal; but the observation of the Honorable Member opposite (Mr. Harington) had sufficiently answered the objection, for there was certainly nothing in the Act to prevent a person pleading Her Majesty's pardon if he was entitled to it.

MR. SCONCE then, with the leave of the Council, withdrew his motion.

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

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

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

MR. HARINGTON moved that Mr. Ricketts be requested to take the Bill to the President in Council in order that it might be submitted to the Governor-General for his assent.

Agreed to.

TOLLS (CIRCULAR AND EASTERN CANALS.)

MR. SCONCE said, he had the honor of moving the first reading of a Bill "to amend and extend Act XXII of 1836 (relating to the levy of a Toll on boats, rafts, and floats passing through the Circular and Eastern Canals)." Hitherto two Canals connected Calcutta and the River Hooghly with the Sunderbunds, and by a previous Act Government was empowered to regulate the navigation and to levy Tolls not exceeding a certain amount: Recently a third cut or line had been excavated by Government and was about to be opened for traffic. This line joined the other lines. The proposal which he had to make was that, whereas the two older lines were subject to the provisions of Act XXII of 1836 with respect to the levy of Tolls and other matters, the third new line might in like manner be brought under the provisions of that law.

The Bill was read a first time.

Mr. Wilson

MILITARY POLICE BATTALIONS.

MR. SCONCE said, the Bill which he now had the honor to propose was somewhat of a different character, and he must crave the indulgence of the Council in the consideration of the proposed Bill. It was a Bill "to provide for the good order and discipline of the Battalions of Military Police." So far that efficiency was secured by Military organization, and he could well understand that a person more especially conversant with the working of the Military Law would have been better capable of preparing the Bill than himself. Those Battalions both in Bengal and the North-Western Provinces had been in existence for a considerable period, and however effectively they had been commanded, the powers of Commanding Officers were not supported by the operation of a specific law. In some instances it was found necessary to allow Commanding Officers to exercise the powers of Magistrates. But necessarily these powers which were limited to cases that fell strictly within the definitions of the Criminal Law, were in fact ill calculated to regulate the better order and discipline of Police Battalions. Some legislation on the subject was therefore extremely urgent. Without pretending to say that the form in which the Bill was now framed was the best which could have been adopted, yet it was brought in to meet the urgency of the case, and it might be taken as a substratum for a more effective Law. The offences provided for were taken from the Articles of War for the Native Army. Some of the minor offences were omitted, and others had been thrown together into one Article. As the Honorable and gallant President was well aware, most of the earlier articles of Act XIX of 1847 were not applicable to the circumstances under which the Police Battalions would be ordinarily employed. The Articles referred to contemplated offences occurring in time of war, and it appeared unnecessary to retain in the present law the same system of punishment that might be necessary to enforce discipline in a regular army. The punishment of death, for example, might be awarded under the Articles of War

for a series of offences; but except in the case of mutiny, this punishment was not retained in the present Bill. Now, therefore, as under the old Articles, the sentence for mutiny might be death.

A more material change now proposed related to the tribunals for the trial of these offences. The authorities whom he had consulted did not altogether agree upon the mode of conducting them. Major Rattray, the Inspector of the Military Police Battalions in Bengal, was rather disposed to view with favor the system of assessors. On the other hand, Colonel Williams, the Commissioner of the Police Battalions entertained in the North-Western Provinces, and the Officers under him, were of opinion that it was unadvisable to continue to Native Officers the exercise of powers with which they were invested under the old Courts. He (Mr. Sconce) had preferred, therefore, on the whole, to dispense with the services of Native Officers or Native Assessors, and to vest the conduct of these trials in Commanding Officers alone who, while empowered to inflict certain punishments of their own authority, were required to refer sentences of a graver nature for the confirmation of the Inspector of Police Battalions, or Commissioner as he was designated in the North-Western Provinces.

With these remarks, he begged to propose the first reading of this Bill.

The Bill was read a first time.

The Council adjourned at $\frac{1}{2}$ past 12 o'clock, on the Motion of Mr. Ricketts, to Saturday, the 17th Instant.

Saturday, December 17, 1859.

PRESENT:

The Honorable Lieut.-General Sir James Outram, Senior Member of the Council of the Governor-General, presiding.

Hon. H. Ficketts.		Hon. Sir C. R. M.
Hon. H. B. Harington.		Jackson, and
P. W. LeGayt, Esq.		A. Sconce, Esq.
H. Forbes, Esq.		

LICENSING OF TRADES AND PROFESSIONS.

THE CLERK presented a Petition from Native Inhabitants of Bombay

against the Bill "for the licensing of Trades and Professions."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

FOREIGNERS.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)."

TRIALS BY SESSIONS JUDGES.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to empower Sessions Judges to pass sentence in certain cases without reference to the Sudder Court."

CIVIL PROCEDURE.

MR. HARINGTON presented the Report of the Select Committee on the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

FOREIGNERS.

MR. HARINGTON moved, pursuant to notice, that the Standing Orders be suspended to enable him to pass through its remaining stages to-day the Bill to continue in force for the further period of two years, Act XXXIII of 1857, entitled an Act to make further provision relating to Foreigners. He said, the Bill for prolonging the operation of the Act in question was brought in on the 6th August last, and was read a second time without opposition on the 13th of that month. It was referred on the same day to a Select Committee, whose report from accidental causes had only just been presented. Meanwhile the Act, which it was proposed to continue in force, had expired, and it being very desirable, therefore, that the Bill should be proceeded with at once, instead of the usual interval being allowed to elapse between the presentation of the Report of the Select Committee and the resolution for going into Committee thereon, he hoped that the Council would not object to his