Saturday, June 1, 1861

INDIAN LEG. COUNCIL DEBATES

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1861

Saturday, June 1, 1861.

PRESENT :

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

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

ROHILCUND ; AND PORT-DUES (CONCAN).

THE VICE-PRESIDENT read Messages informing the Legislative Council, that the Governor-General had assented to the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the General Regulations and Acts," and the Bill "for the levy of Port-Dues in the Ports of the Concan."

CRIMINAL PROCEDURE.

THE CLERK presented to the Council a Petition of the Landholders and Commercial Association of British India praying, with reference to a recent amendment in the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter", that as at present it shall continue to be the law that no British born subject of Her Majesty shall be amenable to be committed for trial to the Supreme Court by a Justice of the Peace in the Mofussil, unless such Justice of the Peace be a Covenanted Servant or British born subject.

MR. HARINGTON moved that the Clerk be requested to read the above Petition at the table, when the Council went into Committee on the Bill.

Agreed to.

BREACH OF CONTRACT.

THE CLERK presented a Petition from certain Ryots of Amber and other villages in the Sonthal Pergunnahs against the Bill "to provide for the punishment of breach of contract for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of Agricultural produce."

PUBLIC CONVEYANCES.

MR. ERSKINE presented to the Council a communication from the Bombay Government relative to the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca", and moved that it be printed and referred to the Select Committee on the Bill.

Agreed to.

CRIMINAL PROCEDURE.

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

The Petition from the Landholders' and Commercial Association of British India, which was presented this day, having been read by the Clerk—

MR. HARINGTON moved that the Petition be printed, and in making the Motion he wished to observe, what was well known to every Honorable Member present, that, under the law as it now stood, only European British subjects could hold the office of Justice of the Peace in the Mofussil or beyond the limits of the Presidency Towns. The Natives of India were not eligible to the office of Justice of the Peace in the Mofussil, and he (Mr. Harington) had no knowledge of any intention either at home or in this country to propose any alteration in the existing law in respect to the office of Justice of the Peace in India, nor had he any reason to believe that any such alteration was in contemplation. It was scarcely necessary for him to say that no law that this Council might pass could be binding on any future Legislature, much less upon the House of Commons, which was what the Petitioners seemed to contemplate.

Agreed to.

MR. HARINGTON said, on Saturday last he undertook, at the request of the Committee, to prepare a series of Sections to take the place of Section 162 and the new Section which was introduced on his motion immediately after that Section, and he had now the honor to move that these two Sections be struck out of the Bill, and that the Sections prepared by him, copies of which he had caused to be circulated to Honorable Members in the early part of the week, be substituted for them. He trusted it would be found that in preparing these Sections he had followed the letter of what might be called his instructions :—

(a). "The evidence of each witness shall be taken down in writing in the language in ordinary use in the district in which the Court is held, by or in the presence and hearing and under the personal direction and superintendence of the Magistrate, and shall be signed by the Magistrate. When the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand. In cases in which the evidence is not taken down in writing by the Magistrate, he shall be bound, as the examination of each witness proceeds, to make a memorandun of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

(b.) It shall be competent to the Local Government to direct that in any District or part of a District to which this Act shall extend, or shall hereafter be extended under the provisions of Section 360, the evidence of witnesses shall be taken down in the vernacular language of the Magistrate, unless the Magistrate be prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court. The evidence so taken down shall be signed by the Magistrate, and form part of the record. Provided that if the vernacular language of the Magistrate be not English, or the language in ordinary use in proceedings before the Court, the Magistrate may be directed by the Local Government to take down the evidence in the English language or in the language in ordinary use in proceedings before the Court instead of his own vernacular.

(c). The evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative. It shall be in the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing or any person who is a prosecutor or a person accused shall require it. When the evidence is completed it shall be read over to the witness in the presence of the person accused, if in attendance, or of his agent when his personal attendance is dispensed with and he appears by agent and shall, if necessary, be corrected. If the witness shall deny the correctness of any part of the evidence when the same is read over to him, the Magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he may think necessary. If the evidence be taken down in a different language from that in which has been given, and the witness does not understand the language in which it is taken down, the witness may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

(d.) A memorandum to be signed by the Magistrate shall be attached to the evidence of each witness, and shall state that the evidence was read over to the witness in a language which he understands [naming the language] and, if the fact is so, that the witness acknowledges such evidence to be correct. When the evidence is not taken down by the Magistrate with his own hand the memorandum shall further state that the evidence was taken down in the presence and hearing of the Magistrate, and under his personal direction and superintendence."

MR. SETON-KARR would ask the Honorable Member, with reference to Section (*a*), whether it had occurred to him that, if both the memorandum of the Magistrate and the deposition of the witness were to *form part of the record*, this difficulty might not arise, namely : In case of a difference between the two, which was to be regarded as the genuine and authentic document, and on which could the Appellate Court depend ?

MR. HARINGTON said, the point noticed by the Honorable Member for Bengal had not been overlooked by him. He presumed that the evidence taken down in detail in the language of the District, as required by the first part of the Section, would be regarded as the evidence in the case, and that the decision of the Court would be passed in reference to what appeared therein. In like manner, he presumed that, in the event of an appeal, it would be the duty of the Appellate Court to look to this evidence, and to base its

judgment upon it and not upon the memorandum of the substance of the evidence which the presiding officer was required to make, as the examination of each witness proceeded, when the detailed evidence was not taken down by that officer with his own hand. The memorandum was not intended to be a complete record of the evidence. It was required to be made with the sole object of preventing the presiding officer from attending to other business while a witness was undergoing examination before him and of compelling him to give his attention to what the witness was deposing—in other words, to conduct the examination himself.

MR. ERSKINE moved the omission of the words "When the evidence of a witness is given in English, the Magistrate may take it down in that language with his own hand," and the substitution of the following :—

"When the evidence of a witness is given in English, and the Magistrate takes it down in that language with his own hand, an authenticated translation of the same shall form part of the record."

He instanced the case of medical evidence taken in English by the Magistrate, and thought it very desirable that an accurate translation of all evidence so taken should form part of the record.

MR. HARINGTON said, the object of the Honorable Member for Bombay would not be attained if the amendment was worded as proposed by him. The Honorable Member proposed to confine the translation of evidence taken in English to such evidence when taken down by the Magistrate with his own hand, but a translation would be just as necessary when the evidence was taken down in English by any other person, say by the Magistrate's Clerk.

MR. ERSKINE said, he had no objection to omit the words "and the Magistrate takes it down in that language with his own hand," so as to make his amendment run as follows :—

"When the evidence of a witness is given in English, an authenticated translation of the same shall form part of the record.

MR. HARINGTON said, if the words proposed to be omitted were omitted, no power would remain to take down evidence in the English language. The earlier part of the Section required that all evidence should be taken down in the language of the District, but an exception was afterwards made in favor of evidence given in English which it was clearly desirable to retain. The object really aimed at in this part of the Section was, not that the Magistrate should take down all evidence given in English with his own hand but that he should have power to record evidence given in English in that language, the former part of the Section notwithstanding.

THE CHAIRMAN said, what he understood the amendment of the Honorable Member for Bombay to mean was that, when evidence was given in English, a translation of it should form part of the record. He (the Chairman) would suggest that the object of the Honorable Member might be better attained by allowing the words proposed to be omitted to stand, and by adding the words "and an authenticated translation of the same shall form part of the record." He thought it proper, however, to call attention to the fact that, if the amendment were carried, there would still remain this difficulty—whether the translation should be in the language of the Court or the language of the District.

MR. ERSKINE then withdrew his amendment, and moved instead that the following words be inserted after the words before proposed by him to be omitted :—

"and an authenticated translation of the same in the language in ordinary use in the District in which the Court is held shall form part of the record."

MR. HARINGTON moved that the word "Court" be substituted for the word "District" in the amendment last proposed by the Honorable Member for Bombay. He observed that the word used by the Honorable Member for Bombay was no doubt in

conformity with the alteration which had been made, as he (Mr. Harington) thought erroneously, at a former meeting of the Committee, in that part of the Section which declared that the evidence of witnesses should be taken down in the language "in ordinary use in proceedings before the Court," for which the words "in the District in which the Court is situated" had been substituted. The words, as they originally stood, contained a clear and well defined rule which could not, he thought, be said of the words which had been substituted. As regarded many Districts in which more languages than one were current, it would often be difficult to say what was the language of the District. Who could say what was the language of Calcutta? It was not his intention to move that the original words be restored, but if any other Honorable Member would make the motion, he (Mr. Harington) would support it with much satisfaction. His present motion had reference only to the amendment proposed by the Honorable Member for Bombay.

SIR BARTLE FRERE said, he had not the least objection to the amendment of his Honorable friend, provided he would propose a Section declaring that, with the exception of Her Majesty's Supreme Courts, where the English language was understood by the practitioners, the language of the Court should be the language of the District. He entertained very strong objections to a language which was not the language of the District, nor of the practitioners, nor of the Judge, but the language of some of the officers of the Court, being selected as the official language of the Court. If his Honorable friend would insert a Section to the effect above referred to, so as to secure throughout India the language of the Court being the language of the District in which it was situated, he should not object to the amendment.

MR. HARINGTON said, the rule in Bombay was contained in Section XXXVI Regulation IV. 1827, which provided as follows :—

"*First.*—The deposition of each witness shall be taken down in writing by the Serishtadar or other Officer of Court, in the language and character used in the Court, and when completed, it shall be signed by the witness with his name or mark, and shall be authenticated by the Court.

Second.—But if the language used in the Court is not familiarly known to the witness, his deposition shall be taken in the language best known to him, for which an interpreter can be found."

That was common sense and had been the law in Bombay upwards of thirty years. He admitted that the Regulation just quoted applied only to the Civil Courts, but he believed that the same rule was observed in the Criminal Courts, and he would ask the Honorable Member of Government on his left (Sir Bartle Frere) whether any inconvenience had been found to result from the operation of the law, or whether any of the local officers had complained of the law. The Section, as settled in Committee, corresponded almost exactly with the Bombay law. First it required that the evidence should be taken down in the language of the Court, and then it provided that, if the evidence was taken down in a different language from that in which it was given, and the witness did not understand the language in which it was taken down, he might require his deposition as taken down to be interpreted to him in the language in which it was given.

SIR BARTLE FRERE said, he was very much obliged to his Honorable friend for having given him the opportunity of explaining. Before the passing of the Bombay Code, which was the work mainly of Mr. Elphinstone and the eminent men whom he employed, the language of the Courts was Persian. It was not understood by the prisoner or the witnesses, and was very imperfectly known by the Judges. After that, the Guzerattee was introduced in Guzerat, and Mahratta in the Deccan and Concan and Southern Mahratta Country. Then it was found that, in many of the Southern Districts, Canarese was the current language, a language as different from Mahratta as Welch was from English. But the Governor of that day, Sir Robert Grant, took

great pains to make the officials learn Canarese, which he fixed as the official language of those districts, and thus effectually brought about what was found to be a most popular and useful reformation, namely, that any inhabitant of the District who came into Court could understand what was going on. There were very few measures which were better understood by the people and which better ensured the popularity of the Government. Latterly, in Sind, Persian was at first the language of the Courts, but as it was imperfectly understood, it was abolished, and Sindee was substituted for it. He believed now, that, with the exception of the Presidency Town, there was not any part of the Bombay Presidency where the language of the Court was not the language in common use in the District. He believed the same was the case in Madras, from which Presidency, indeed, Bombay derived great assistance when Canarese was made the language of the Courts, and where it had always been the rule to make the mother tongue of the people, the language of the Courts.

He would repeat that he should have no objection to the proposed amendment provided some such provision, as that suggested by his Honorable friend, the Member for Bombay, were adopted.

MR. FORBES said that, by the Bengal Act XXIX of 1837, power was given to

> "the Governor-General of India in Council, by an Order in Council, to dispense either generally, or within such local limits as may to him seem meet, with any provision of any Regulation of the Bengal Code, which enjoins the use of the Persian language in any judicial proceeding or in any proceeding relating to the Revenue, and to prescribe the language and character to be used in such proceedings."

He thought that a similar provision might be introduced into this Code empowering the Local Governments to declare what should be the language of the Courts subordinate to them respectively.

SIR CHARLES JACKSON said, he had another objection to the amendment of the Honorable Member for the North-Western Provinces. It appeared to him to be an amendment which affected the regularity of their proceedings. When this question was considered on Saturday last, the Council had a long debate upon it, at the close of which they came to a division. But the Honorable Member had now re-opened the whole question. It was quite clear that a Member in Committee could speak as often as he pleased; but he had never heard that it was competent to a Member, when beaten on a question, to move it again.

MR. HARINGTON contended that he was quite in order in the Motion which he had just made. The Honorable Member for Bombay had proposed the addition of certain words to one of the Sections, which it was proposed to substitute for Sections previously settled by the Committee. A word occurred in the proposed addition which appeared to him (Mr. Harington) to be a wrong word, and he submitted that under the Standing Orders he had a perfect right to move, as an amendment, that any word which he preferred should be substituted, and to offer any remarks which he thought proper in support of his amendment.

SIR CHARLES JACKSON said, however that might be, the proposed alteration raised the same question.

MR. HARINGTON resumed. Supposing such to be the case, it in no way affected his right to move the amendment which he had proposed. If any other amendment in the Section was moved by any other Honorable Member, he reserved to himself the right of moving any amendment thereon that he might deem proper, without reference to what might have taken place on previous occasions.

THE CHAIRMAN said, the case stood thus: The Honorable Member for the North-Western Provinces had moved a Section in amendment of Section 162. He had framed the Clause at the request of the Council, in accordance with the views which they entertained. It could hardly be said, therefore, that the question had

been determined. If Section 162 had, by common consent, been struck out, for the purpose of substituting other words, it could hardly be said that the Honorable Member was prevented from proposing any amendment on the words proposed to be substituted. With reference to the objection of the Honorable and learned Judge, he (the Chairman) did not think it wise and expedient generally, after a question had once been discussed and decided by the Council, that it should be reopened. But it might be that, owing to human inadvertence, there might be an omission to put it in the proper form. Under all the circumstances of the case, therefore, he thought that it was open to the Honorable Member for the North-Western Provinces to press his Motion, if he desired to do so. His (the Chairman's) attention had been drawn to a similar question raised in December 1858, in reference to an amendment proposed by Mr. Ricketts, on which occasion the Vice-President of the day (Sir James Colvile) was reported to have made the following remarks:—

"The Vice-President thought that it would be very unwise for the Council to lay down a rule against reconsidering a matter on which a vote had once been taken. Their object was to make their Bills as perfect as possible; and upon many subjects of debate, Honorable Members might be found to alter the opinion which they had previously expressed. The question, however, could not now be said to have arisen here, for the Honorable Member's proposed amendment was different from that upon which the Council had voted at the last Meeting."

MR. HARINGTON said, he had come down to the Council to-day with no intention of re-opening the question as to the language in which the evidence of witnesses should be recorded. He was asked by the Committee to prepare certain Sections to take the place of two Sections which were ordered to stand part of the Bill at the last meeting of the Committee. He had done as he was asked, and he had proposed to-day to confine himself to moving the adoption of the Sections prepared by him without any comments. When, however, the Honorable Member for Bombay moved an addition to the first of the Sections prepared by him (Mr. Harington), and he found therein a word which seemed to him to be wrong, he certainly did express an opinion that the Committee had made a mistake in substituting the language of the District for the language of the Court, but he at the same time expressly stated that although if any other Honorable Member would move that the original words be restored he would gladly support the Motion, he had no intention of making such a Motion himself. What had fallen from the Honorable and learned Vice-President to-day in favor of the Section as it originally stood, greatly strengthened his opinion that, in altering the words to which he was referring, the Committee had committed an error from which much inconvenience might ensue, and he believed that it would be the most straightforward course for him to move that the original words be put back. He begged to make a Motion to that effect. He might add that he should have no objection to the insertion of words, giving to the local Governments the power of declaring what should be the language of the Courts.

THE CHAIRMAN said, he would put the question to the vote to strike out the words "in ordinary use in the District in which the Court is held," and substitute the words "in ordinary use in proceedings before the Court." In doing so, however, he would observe that, supposing the Motion to be carried, it would not decide the question as to the language in which the proceedings before the Court were to be recorded. He would recommend the adoption of the suggestion made by the Honorable Member for Madras, of giving the local Governments the discretion to declare what the language of the Courts should be. Otherwise it would be still unknown what the language of the Court was.

MR. FORBES said, if the amendment of the Honorable Member for

the North-Western Provinces were carried, he would move the introduction of a Section empowering the local Governments to declare what the language of the Courts should be.

SIR BARTLE FRERE asked, if the Honorable Member for the North-Western Provinces would object to let them consider the Clause proposed to be introduced by the Honorable Member for Madras, before coming to a decision on the amendment now before the Committee. His (Sir Bartle Frere's) vote on the latter would depend on the tenor of the former. For his own part, he would propose a Clause to the following effect:—

"The language of the Court shall be the language which shall be declared by the Government to be the language of a majority of the inhabitants of the District in which such Court is situated. Provided that it shall always be competent to the Government to direct that the English language shall be the language of the Court."

MR. HARINGTON said, he could have no objection to their considering any Section which the Honorable Member for Madras might propose for fixing what should be the language of the Courts, before they proceeded farther with the consideration of the Section now before the Committee. The proviso which the Honorable Member of Government stated it to be his intention to move, to the effect that the Government should have power to direct that the language of any Court should be English, would have his (Mr. Harington's) hearty concurrence. The Honorable Member for Bombay seemed to be afraid that the Government might proceed too hastily in introducing the English language as the language of the Courts. He (Mr. Harington) entertained no such apprehension. He felt satisfied that the Government would act cautiously in the matter, and that they would not direct that the English language should be used in any Court until they felt convinced that it might safely be introduced. When this was the case, he (Mr. Harington) had no doubt that there would be a great advantage in the use of the English language. With regard to the condition which the Honorable Member of Government (Sir Bartle Frere) would impose upon the Government, he would only observe that he did not consider any such condition necessary. For many years, Persian was the language of the Courts on this side of India, but that being a foreign language, it was felt that it ought not to be retained, and, accordingly, the Act which had been referred to by the Honorable Member for Madras was passed. This Act left it to the Governor-General in Council to prescribe the language and character to be used in judicial proceedings, and authorized the Governor-General in Council to delegate the power thereby given to him to any subordinate Government. The Act which was passed in 1837 had been in force nearly twenty-five years, and during this long interval no one had ever heard of the power which it conferred being abused. For his own part, he was quite willing to trust the local Governments. He could see no necessity for imposing any restrictions upon them or for fettering them in any way in the exercise of any discretion which might be given to them for fixing the language of the Courts.

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

Ayes 3.	*Noes* 5.
Mr. Forbes.	Mr. Seton-Karr.
Mr. Harington.	Sir Charles Jackson.
The Chairman.	Mr. Erskine.
	Sir Robert Napier.
	Sir Bartle Frere.

So the Motion was negatived.

MR. ERSKINE'S amendment was put and carried, and Section (*a*) as amended then passed.

Section (*b*) was passed after amendments.

MR. ERSKINE moved the introduction of the following new Section after the above:—

"If any question shall arise as to what is the language in ordinary use in any district in which a Court is held, that question shall for the purposes of this Act be determined by the Local Government."

Agreed to.

Sections (*c*) and (*d*) were passed after amendments.

THE CHAIRMAN then proposed the introduction of the following new Section after the above :—

"If the evidence is given in a language not understood by the accused, it shall be interpreted to him in open Court in a language understood by him in all cases where the accused is present in person. If the accused appears by agent and evidence is given in a language other than the language in ordinary use in the District in which the Court is held, it shall be interpreted to him in that language."

Agreed to.

Section 164 provided as follows :—

"It shall be in the discretion of the Magistrate from time to time at any stage of the enquiry to examine the accused person, and to put such questions to him as he may consider necessary. It shall be in the option of the accused person to answer such questions."

SIR CHARLES JACKSON said he hoped he should not be considered pertinacious in bringing this Section once more before the Council. He did so in 1859 when he was beaten by a majority of one. But as the Council was now differently constituted, he hoped for better success. It certainly was a grave question, whether a Magistrate or Judge should have the power to examine a prisoner by question and answer on the facts of the case. He said Magistrate or Judge, for, although the present Section related only to preliminary enquiries by the Magistrates, he proposed to argue the whole question now, as he did not intend to re-open the discussion when the subsequent Clauses relating to Judges came before the Committee. He should address his observations to the whole question, whether Judicial Officers should be invested with such a power. He thought that a little consideration would show the Council that this was a very alarming change in the administration of justice. It was urged by those who supported this *innovation*, that the great object in a criminal trial was to get at the truth, and that the examination of the prisoner was one of the best means of getting at the truth. The principal object in a criminal trial was certainly correctly stated, but it was not every good object which justified the means adopted to attain it. The sight of a pair of thumb-screws, or the application of torture, might be an efficient means of elucidating the truth. He thought, however, that they should all deem truth itself to be dearly purchased by the use of such means, or even at the expense of the moral torture which he contended the cross-examination of a Judge would amount to. But he denied that the examination of a prisoner by question and answer did afford the best, or even a fair or just means of attaining the truth. Now was it a fair means of getting at the truth? The parties to this logomachy were the Judge and the prisoner. Were they in an equal position? What was the position of the Judge? He was a person, if not a lawyer, acquainted with the practice of Courts and the modes of examination ; he would feel no anxiety to please, neither would he fear or dread his opponent ; his mind would be distracted by no personal considerations, except, perhaps, that his intellects would be sharpened by the desire of showing his skill in obtaining some confession, or some admission of circumstances tantamount to a confession, from the prisoner. Now, on the other hand, what was the position of the prisoner during this contest? He would be totally ignorant of the practice of the Courts and their mode of examination ; his mind would be distracted with care and anxiety, and he would often be unable to understand the full bearing of the questions, and he would be in personal fear of the Judge who would no longer be looked upon as an impartial protector, but as an unrelenting prosecutor. This proposition, in fact, made every prisoner his own advocate. Even in civil cases, it was proverbial that, if a man pleaded his own case, he had a fool for his client. With how much greater force did that proverb apply to the case of a criminal, distracted by fear and anxiety as to his fate, and knowing that his life or detention in prison depended on the impression which he might

make on the Judge at the time? The consequence would be that in the great majority of cases the prisoner would say anything, or resort to any expedient, to meet the present difficulty suggested by the question of the Judge. That was the case in France, and it would be much more so in this country. Here, at all events, the prisoner would be sure to envelope himself in a cloud of lies, and then he would be disbelieved and convicted on his own erroneous statements. But then it might be said, who would pity him? But surely such reasoning was not logical; you would not convict a man of the crime of murder, because he told lies in his defence. Then it might be said that some part of his objections were met by the latter Clause of the Section which gave a prisoner the option to answer any questions put to him. He (Sir Charles Jackson) had been a party to the introduction of that Clause, hoping that it might operate so as to mitigate the severity of the enactment; but he now thought that it was quite unnecessary, for it was not to be supposed that the Judge could compel the prisoner to answer any question. There was no process of contempt provided in case of refusal to answer; and if the Judge could postpone the case, keeping the prisoner in confinement in the meantime, it might answer the prisoner's purpose and delay the sentence indefinitely. A similar provision to this would be found in the Bill which Lord Brougham had introduced into the House of Lords. He proposed that the examination of a prisoner should be voluntary. But the fallacy of that proposition was clearly stated by Lord Campbell, who showed that a prisoner would practically be afraid to decline giving an answer from fear of the effect of his taciturnity on the Jury. He would be afraid of the Judge or Jury drawing a presumption of his guilt from his reticence. They would often do so. For instance, there might be a case in which the Judge and Jury entertained a doubt on a particular point. If the prisoner objected to be examined, they might be inclined to say—"I did entertain a doubt on that point, and the prisoner might have solved it, but as he has declined to do so, I shall draw my own conclusion as to his guilt"; and yet the prisoner might have been willing to answer that particular question. Again, persons perfectly innocent of a crime might object to be examined, especially if their general moral character would not stand the test of such an examination. The result would be, as shown by Lord Campbell, that, in process of time, every body would submit himself to this cross-examination.

But that was only one view of the subject. The next point was as to the propriety of the examination being conducted by the Judge, to which he thought there were very grave objections. He thought the tendency of it would be to convert the Judge, who should be impartial, into an unrelenting prosecutor. It would introduce into this country the worst features of the French system, and they would have in this country the same disgusting trials that took place in France. He would have brought down with him the reports of some of those cases, but he was content to rest his case on Lord Brougham's own statement. That noble and learned Lord said—

"The way in which French Criminal Jurisprudence was conducted, was sufficient to raise the strongest objection to the cross-examination of accused parties. That system was chiefly objectionable from being conducted by the Judge. Any thing more preposterous, cruel, or inhuman, could not be conceived."

That was a statement made by a strenuous supporter of a measure for the examination, by way of question and answer, of an accused person. That was the statement of a noble and learned Lord who had spent half of each of the last twenty years in France, and was intimately acquainted with the nature of the French legal proceedings. Now, if this system had been so pernicious and so bad in France, where they had learned and trained Judges, and where they had a vigilant press and an active public

opinion, how would it work in this country where the Judges were unlearned and untrained, where in fact there was no press or public opinion, and where the Magistrates were young and inexperienced men. If the system were to be introduced at all into this country, he should prefer the system as laid down in the New York Code where the examination of the prisoner was confined to particular questions which were printed in the Code itself. That would be some restraint on the Judge, and would prevent the possibility of such revolting exhibitions as had taken place in France.

These were the chief observations which he had to make upon the subject. He must say that he did distrust this measure altogether, and he hoped that the Council would pause before it introduced so alarming an innovation into the Criminal law of this country. He should move the omission of the Clause.

MR. HARINGTON said, notwithstanding the manner in which the Honorable and learned Judge had attacked him in the debate which took place on an earlier Section, for re-opening the question of the language in which evidence should be recorded, after the decision come to by the Committee upon that question at a former meeting of the Council, he very readily admitted the perfect right of the Honorable and learned Judge to re-open the question which they were now called upon to discuss. He (Mr. Harington) had himself asked the Council on more occasions than one to reconsider its votes, though at the risk of being considered importunate. On one occasion he recollected that he drew down upon himself something like a censure from the Chair for conduct which might have appeared to contain in it the spirit of obstinacy, but nevertheless he persevered, and well was it that he had done so for those who were engaged in what must be regarded as the unfortunate contest now going on in respect to the payment of rent between landlord and tenant and indigo planter and indigo ryot. He did not succeed on that occasion in inducing the Council to restore an important Section of Mr. Currie's Rent Bill which it was proposed to repeal, but he believed he might say that, in consequence of his representations, the Supreme Government, in the exercise of the power vested in them by a Section of the repealing Act, did that by a Resolution which he proposed to do by maintaining the original law. He was, therefore, the last man who ought to complain of the course pursued by the Honorable and learned Judge on this occasion; but while he freely admitted the Honorable and learned Judge's right again to open the present question, he must say that he could not consider the ground on which the Honorable and learned Judge had put the course which he was now following a valid or sufficient ground. The Honorable and learned Judge said that the Council was differently constituted from what it was when the Section, as it now stood, was settled by the Select Committee, and that he hoped, therefore, for a different result to his opposition to that Section. But he (Mr. Harington) could not admit that a change in the constitution of the Council afforded any ground for reconsidering a law which had been fully considered and discussed by the Council, and deliberately adopted. He was sure that the Honorable Members, who had joined the Council since the period referred to by the Honorable and learned Judge, would not consider that he intended any disrespect to them in remarking that the Honorable Members who composed the Council when the Section, now under discussion, was settled in 1859 were as competent and as well able to deal with that question as the Honorable Members who at present composed the Council. If a change in the composition of the Council was to be a ground for altering laws deliberately passed, the Council, instead of employing itself in passing new laws rendered necessary by the altered circumstances of the country, would be constantly engaged in revising the laws enacted in former periods. Their laws would have no certainty or fixedness, and no one would have

any confidence in their stability. He would now address himself to the question before the Committee, and he concurred with the Honorable and learned Judge that instead of considering that question merely in reference to the Section before the Committee which applied only to the preliminary enquiry before the Magistrate, it would be better and more convenient to enter at once upon the consideration of the question in its more important bearing, namely, in connection with the trial before the Court of Session, because, if the Committee arrived at the conclusion that the Sessions Judge ought to be allowed to put any question that he thought proper to an accused person on trial before his Court, the arguments in favor of that proceeding would apply *á fortiori* to the Court of the Magistrate whether that Officer was engaged in trying a case or merely in conducting a preliminary investigation. The Honorable and learned Judge seemed to think that they were making an alarming charge in the administration of criminal justice in this country; but he begged to assure him that in so far as the Magistrate was concerned this was not the case, at least on this side of India. Here the Magistrates did examine accused persons and put such questions to them as they judged proper, and that not only during the preliminary enquiry, but upon the subsequent trial if they tried the case themselves. The Section now before them, therefore, proposed nothing new; it merely maintained the existing practice in Bengal, and if they struck the Section out of the Bill he thought they would be making an alteration in the law which might prove very inconvenient and might seriously injure the cause of justice. It could scarcely be necessary for him to say that the sole object aimed at in the provision to which the Honorable and learned Judge demurred, was to promote the ends of justice; and it was clearly the duty of that Council by all legitimate means to do all that lay in its power to secure the accomplishment of that object. The Honorable and learned Judge had alluded to the use of torture. Formerly, and such continued to be the case until a comparatively recent period, tortures of the most horrible kinds for the purpose of extorting confessions from accused persons or of compelling them to tell the truth, were considered even in our own country and in other civilized nations, not incompatible with justice and humanity; and to this day in France, as also noticed by the Honorable and learned Judge, accused persons were subjected to a species of mental torture in the examinations which they underwent with the same object. Happily physical or bodily torture in the case of accused persons was no longer tolerated by any civilized nation, and he certainly had no wish to see the French system introduced into the proceedings of the Criminal Courts in this country. He entirely concurred in Lord Brougham's condemnation of that system contained in the speech from which the Honorable and learned Judge had read an extract. It had been justly remarked in respect of the French system that under it the grave judicial enquiry degenerated into a keen encounter of wits, and that he who should hold the balance steady wielded the sword of the combatant. He repeated, he had no desire to see the French system introduced into this country in substitution for the present mode of trial. But there was a wide difference between the French system, as just described, and the discreet and fair questioning of an accused person by an impartial Judge anxious only to get at the truth on whichever side it lay and whether it should prove favorable or unfavorable to the accused. To such questioning he could see no reasonable objection. To an innocent man, improperly accused of an offence, it might often be of very great benefit in elucidating circumstances by which his innocence might be made to appear and which might not otherwise have come to the knowledge of the Court, and if such examination should ever of itself lead to the conviction and punishment of a guilty man, it did not

Mr. Harington

appear to him (Mr. Harington) that this would afford any cause for regret. Justice would be satisfied and society protected, though it might be at the expense of what might be called an ancient prejudice. The case seemed to be one in which the end justified the means. He quite concurred in the old English maxim that no one accused of an offence should be looked upon or treated as guilty until he had been found guilty; but he had long questioned the soundness of the English practice according to which every person accused of an offence, from the time he was arrested until he was convicted, though during the whole of the interval he was strongly suspected to be guilty, was recommended by Judge, Magistrate, and Police, not to say any thing by which he might criminate himself. No doubt it would be very desirable if a Judge could avoid taking any part in a trial beyond finding the accused person guilty or innocent, and sentencing him to punishment in the one case and ordering him to be discharged in the other; in other words, if every question which required to be put to the witnesses could be asked by the parties or their counsel, and the case advanced to a complete state of preparedness for decision without any interference or intervention on the part of the Judge. But that was not possible even at home where counsel were generally employed for the prosecution or the defence. In this country it generally happened that the Judge was obliged to act not only as Judge but also as counsel for both sides, and to conduct himself the entire cross-examination of the witnesses. There was no one else who could perform that duty. In the course of such cross-examination it was impossible for the Judge to avoid putting questions which gave to the examination an appearance of onesidedness on his part. The objection of the Honorable and learned Judge would apply to the cross-examination of the witnesses by the Judge, and to some extent to the charge made by the Judges of the English Courts to the jury in which they summed up and commented upon the evidence. In doing this it must often happen that the Judge would lean more to one side than to the other. This could not be avoided, and how frequently was the remark heard that the Judge summed up against the prisoner or that he summed up in favor of the prisoner. But in all this the object of the Judge was simply to get at the truth, to do justice between man and man, to perform his duty, and to act with strict impartiality in regard to all parties. He (Mr. Harington) thought the Honorable and learned Judge had considered the question too much from one point of view, and that he had assumed that the power of questioning an accused person must necessarily be injurious to such person, whereas the very contrary might be the case. A single question, judiciously put, might lead to the discovery of a train of circumstances most favorable to the accused. It had been well observed of the rule of English law in this respect that, while it shielded the guilty person as with armour, it often acted as an encumbrance upon the innocent. The Honorable and learned Judge had alluded to the practice of the Civil Courts, but he had omitted to mention a most important reform which had lately been introduced into those Courts. Formerly the parties to a civil suit could not be examined by the Court. In this respect the law placed them on the same footing as accused persons in criminal cases; but the plaintiff and defendant could now be examined by the Court in the same manner as a witness, and they were liable to the same penalty for wilfully giving false evidence. There could be no doubt that the greatest possible benefit had resulted from the relaxation of the old practice. On the whole, although the rule now under consideration was not altogether free from objection, and it had its disadvantages, it appeared to him (Mr. Harington) that the advantages greatly preponderated; and seeing no sufficient reason for any alteration of the Section now before them and of the subsequent Sections relating to the same point,

as settled by a former Committee of the whole Council after very full consideration and discussion, he should vote against the motion of the Honorable and learned Judge.

MR. SETON-KARR said that, after the able, legal, constitutional, and he might say, philosophical arguments of the Honorable and learned Judge, he would not occupy the time of the Council very long, but would content himself by mentioning the practical objections which he entertained to the Clause as it now stood. He was well aware that the propriety of examining the accused had been sanctioned by some of the ablest jurists. He knew that it had commended itself to the philosophic intellect of Bentham and had received the approbation of the veteran statesman and greatest law reformer of the present age. He was also aware that the system was fully prevalent in France and Germany, and Honorable Members well knew how the President of the Court was accustomed to comment, now with undue severity, now with moral indignation, on the answers and the demeanor of the accused. But this practice, to such an extent, stood condemned by lawyers in England, and was not, he admitted, likely to be introduced in its breadth and fulness into English Law. He would even go farther and state his conviction that it might be quite possible for an impartial English Judge, in this city, with the aid of an independant bar, and with that publicity which was one of the safeguards of trial, to use the proposed power with such evenhandedness, discretion, and marked impartiality, that it should conduce only to the ends of justice and to the ascertainment of truth. But it must be remembered that we were legislating to entrust such a power to the hands of persons of widely different temperaments, experience, and feelings, and that the operation of this Code would extend over a large tract of country from the frontiers of Burmah on the one side, to Sind and the Punjaub on the other. He much feared that some officials, familiarised with crime, and laudably anxious for its extirpation, might be tempted to exercise their zeal and ingenuity at the expense of the prisoner. He thought also that the last part of the Section which gave the accused the option of answering any questions put to him, would, in practice, not remove the objections raised. However permissive the system might at first be, it would in the end become compulsory. The accused person would feel that his silence would tell against him, or, if he chose to return answers, he might end by engaging the presiding officer in a personal contest with himself. Such a provision, too, would only harden the hardened offender, while it would confuse the timid and entrap the unwary. As regards the existing practice of examining the accused, the Sudder Court had jealously prohibited any undue moral pressure being exercised upon the defendant or prisoner by close and constant cross-questioning, and had issued a Circular directing the Judge simply to point out to the accused, in the fairest manner, the points of the case that appeared in evidence against him, leaving it to the prisoner to adduce such exculpatory pleas as he thought fit for his own safety. He therefore trusted that the Council would pause to consider fully the effect of introducing this Section in the Mofussil. He thought it would not be enough to consider what might be its effect within the 24-Pergunnahs, at Hooghly, or Burdwan, or in Districts in close proximity to the Presidency, from whence the influence of the Press and of public opinion radiated, and where English Counsel were available. But he would ask them to consider the effect of such a system as extending every where in the Mofussil, in Courts removed alike, for the time, from the salutary control of public opinion, and from the wholesome publicity of the Press. Looking at it in this practical light, he thought that the change was a dangerous innovation, and that it rested on a theory which, however defended by able and plausible arguments, demanded, for its success, a combination of requisites

and circumstances, which the administration of justice in this country could not, as yet, be held to possess.

THE CHAIRMAN said, the Honorable and learned Judge was quite right in bringing this question before the Council, notwithstanding that it had been decided by the Council before. He thought it would be rather technical to say that this motion could not be made now, when a motion to recommit the Bill could be brought forward by the Honorable and learned Judge on the motion for the third reading of the Bill, or he could bring in a new Bill to repeal this Section after this Bill was passed and had received the assent of the Governor-General. All circumstances considered, he thought it was better that the question should be decided now.

He wished to call the attention of the Council to the Clause, and to the manner in which it came to stand in the Bill. The Clause was not originally inserted by this Council, but by the English Law Commissioners. He had already on a former occasion called attention to the names of the Commissioners. Among them were gentlemen intimately acquainted, not only with the English law, but also with the law and practice of this country. They proposed a Clause very similar to the Clause in question; but it did not include the very beneficial words which were subsequently introduced into it here, namely,—"It shall be in the option of the accused person to answer such questions."

The Section, as proposed by the Commissioners, provided as follows:—

"It shall be at the discretion of the Magistrate to examine the defendant at any stage of the inquiry from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the defendant either discharged, or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be."

Then, by Section 274, the Commissioners proposed:—

"The examination of the defendant before the Magistrate shall be given in evidence at the trial."

The Law Commissioners had attached a note to the former Section, explaining their reasons for its insertion. They said:—

"As already stated, we have proposed a rule to the effect that the party accused of an offence shall not be subjected to any examination by the Police. By the Regulations of the Bengal Code it was directed that the Magistrate shall examine the defendant when brought before him; and under the sanction of this rule it is the practice of the Magistrate to examine a prisoner who has confessed to the Police, or is likely to give any information in regard to the crime of which he is accused, immediately upon his arrival at the station of the Magistrate, though the prosecutor and his witness may not have arrived. The examination is based upon the report of the darogha, and such papers as he may have transmitted with the accused party to the Magistrate.

We have considered whether it would not be a better course for the Magistrate first to examine the prosecutor and witnesses, and then proceed to the examination of the defendant: and, in order to ascertain the probable effect of prescribing such a course, we have examined two gentlemen who long held judicial employ in India. The result of the inquiry is such as to satisfy us that the discretionary power of examination at any stage of the proceedings must be left to the Magistrate. The witnesses are of opinion that the immediate examination of the accused is often essential to the discovery of truth, and that the abolition of this power of immediate examination on the part of the Magistrate would be attended with injurious consequences to the administration of justice. We accordingly propose to leave this power as it now exists. By the abolition of examination on the part of the Police, the first examination of the accused will be transferred from the hands of a functionary, whose proceedings in such matters it is often very difficult to control, to those of a responsible Judicial Officer.

We are not unanimous in our decision upon another point, namely, the latitude which should be allowed to a Magistrate as to the questions which he may put to the accused. The danger apprehended from leaving a Magistrate without restriction in the exercise of this power is, that in the course of his examination he may become engaged in something like a controversy with the accused, and that the proceeding may thus assume the character of a contest between the two, a result which may give an unfair colour to the evidence obtained, as finally exhibited by the Magistrate. It has been suggested, therefore, that limitations, more or less resembling those proposed by Mr. Livingstone in his Criminal Code of Louisiana, should be imposed as to the questions which a Magistrate may put to the accused. But upon fully weighing the difficulties on both sides the majority of the Commissioners are of opinion that

the advantages of leaving the Magistrate without control in this respect outweigh the disadvantages."

It had been asked, was it fair to convict a man on his own evidence? But the real question was, not whether it was unfair to a guilty man to convict him on his own evidence, but whether it was injurious to allow the practice with regard to an innocent man? Now, he thought it would be very injurious to the prisoner if the Magistrate were not allowed to ask him questions. In most cases the prisoner had no counsel in the Mofussil. In the Mofussil the Magistrate had to determine the facts. In the Supreme Court the Jury had to decide upon the facts. If the prisoner was merely to make his defence at the end of the trial, many matters might escape him which it was very necessary for him to clear up; whereas if the Magistrate were allowed to ask him questions on particular points, he might be able to exculpate himself. If the prisoner were an ignorant person, he might not know on what points he had to make his defence, or what were the principal charges which he ought to disprove; but by the Magistrate asking him certain questions, he might be able to get witnesses to depose to those points. In a case of murder, for instance, where the prisoner's presence at a particular spot was alleged, a direct interrogation might bring him to say that he was not there. Then the Magistrate would ask him what witnesses he had, whether he would subpœna them, and so on. Suppose the prisoner were an ignorant man, and the Magistrate were allowed to ask him questions, the man would have a chance of setting up a defence of *alibi* which his ignorance would have prevented him from thinking of. The Honorable and learned Judge might shake his head; perhaps he thought that an *alibi* was often a doubtful sort of defence; but it was only a supposed case that he (the Chairman) was putting.

With regard to the system which prevailed in France, and which had been reprobated by Lords Brougham and Campbell, it was not proposed to introduce here any of that kind of moral torture but simply to maintain a system that already existed here. Had it been shown that any ill effects had arisen from it? had it been shown that an abuse had been made of the power as in France? On the contrary, the Honorable Member for Bengal had said that the Sudder Court had jealously prohibited any abuse of it, and were constantly putting checks on its too frequent and improper use. This Bill, however, gave the accused person the option to answer, and Section 165 provided that no influence, by means of any promise or threat or otherwise, should be used to the accused person to induce him to disclose or withhold any matter within his knowledge. It was also provided by Section 167, that the examination of the accused should not be taken down in the form of a narrative, but that every question and answer should be recorded in full, so as to show whether the questions had been of a fair and impartial nature; and that the whole, after being attested and certified by the Magistrate, should be sent to the Sessions Judge, not with a view to the conviction of the prisoner, but in order that the case might be fully brought before those who had finally to decide upon the facts. He (the Chairman) thought that we should be doing a great injury to the prisoner and a greater injury to the administration of justice, if we did away with the existing system. Whether it was necessary in the Supreme Court or not, he thought there would be no harm in allowing even a Judge of that Court to put questions to the accused with a view to enable the Jury to arrive at a fact that could do an innocent man no harm and might tend to his vindication. It was not every false statement made before a jury which would be believed by the jury. Looking at the case, therefore, in every possible point of view, he thought that the provision of the Section now under discussion would not be injurious but beneficial to an innocent man, and that it would do no harm to a guilty person. It appeared to him that we should look

The Chairman

rather to the protection of innocent than of guilty persons.

For these reasons he should vote against the motion for the omission of this Section.

MR. ERSKINE said that he did not wish in connection with this Section to enter on any general argument as to the advantages of an examination of prisoners by a Judge during the final trial. He should refrain, therefore, from offering any opinion as to the provision which it was proposed to make elsewhere, for such examinations in the Sessions Court. At present they had to consider merely what discretion in this respect should be allowed to Magistrates during a preliminary enquiry. And he quite concurred with the Honorable and learned Chairman in thinking that the point on which their decision must mainly turn, was whether the grant of such a discretion would have a tendency to elicit the truth, without operating to the prejudice of innocent persons against whom charges might wrongfully be brought. He was disposed to believe that it would have this tendency. No doubt, so long as the Magistrates throughout the country were charged with the duties of Executive Police Officers, there might often have been a risk of their straining unduly a discretional power of this kind in their zeal to secure the detection and punishment of crime. But with the disseverance of Police and magisterial functions that risk must be greatly diminished; while the prohibition now enacted against the taking down of confessions by the Police would render it expedient that the enquiry before the Magistrate should be as free as possible. He believed that in very many cases a discreet use by the Magistrate of the power of questioning a prisoner would be of real service to the accused person. In the great majority of cases in the Mofussil prisoners were not defended by counsel during the preliminary enquiry, and he thought he might appeal to any one who had experience in such matters whether, in the case especially of poor and ignorant men, some guidance such as this Section would allow the Magistrate to afford, was not indispensable, to enable accused persons to do justice to their own cases and give an intelligible explanation of facts. It had been said that the Magistrate might as it were put a case to the prisoner in respect to any point which might bear hardly upon him and ask him what he had to say on that subject. But it certainly appeared to him that, with the class of prisoners who most required considerate treatment, this would tend merely to confuse and bewilder; whereas if the Magistrate put to them a plain question on any subject which it might be well for them to explain, they would generally be able to give a plain answer. It was quite necessary, no doubt, to guard against an abuse by Magistrates, especially by young and subordinate Magistrates, of the discretion now proposed to be allowed; and if any additional and appropriate safeguards could be devised, he should be glad to see them introduced. In the meantime it had been pointed out to him that every question put by a Magistrate under this Section must, under Section 167, be fully recorded. This was one considerable security against abuse. Perhaps some further limitations against improper questionings—in the direction of those suggested by Mr. Livingstone, and adopted also in the late Code for New York, might be practicable—though not, he thought, to the full extent provided in the American system. But on the whole he believed that the grant of some discretional power of questioning was required, and would be productive of more good than evil, and he should therefore support the retention of the Section.

MR. FORBES said that he had voted in favor of this Section when it was last under discussion, and as he had heard nothing to induce him to alter the opinion under which he then acted, he should vote against the present motion. On the former occasion he had said that, if a prisoner were really guilty, he could see no reason why his own evidence, properly ob-

tained, should not be obtained by his own examination, and be used towards his own conviction. He also said what had now been so much better expressed by the Honorable and learned Chief Justice, that he considered that an innocent man would only make his innocence more clear by giving a straight-forward answer to the question put to him by the Court before which he might be on his trial. He could very well imagine a case in which the evidence against a prisoner given by the prosecutor and witnesses might be so clear as to leave in the mind of the Judge or Magistrate no doubt of the prisoner's guilt if such evidence could not be refuted, but that, by putting to the prisoner one or two questions on those points which bore most heavily against him, the Judge or Magistrate might give the prisoner an opportunity of stating facts which, being followed up, might change the whole features of the case and lead to the innocence of the prisoner being established to the Judge's satisfaction. Points which the intelligence of the Judge might show him to be important, might escape the attention of an ignorant prisoner, and the power of putting to the accused questions by the Court, might in many instances be the means and the sole means of bringing his innocence to light.

SIR ROBERT NAPIER said he fully felt the force of the objections made by the Honorable and learned Judge to giving Magistrates the power to examine the accused, but in the present state of the country he did not see how it was possible for the Courts of Justice to proceed without it. It would be impossible to provide the agency necessary to give a prosecutor in each case. He did not see any danger of the evils which might arise in England if the Magistrate or Judge were to enter into the examination of the accused, where there was an eager prosecutor and an eager defendant and a keen examination of witnesses. The Magistrate in this country was in a different position, and he (Sir Robert Napier) did not see how he could arrive at sufficient evidence without the power which it was proposed to omit and which he thought must be allowed to stand.

SIR BARTLE FRERE said, he was inclined at first to agree with his Honorable and learned friend opposite (Sir Charles Jackson) in his Motion for the omission of this Section. But the convincing arguments which had been used by the Honorable and learned Chairman had satisfied him as to the desirableness of retaining the Clause, and he reserved to himself the right of supporting any amendment which the Honorable and learned Judge opposite might move with the view of introducing what he might consider a safeguard against any improper use of the power conferred by the Section.

SIR CHARLES JACKSON said, he should say a very few words in reply. In doing so, he should not stop to enter into the question raised by the Honorable Member for the North-Western Provinces, whether he had a right to refer to the change in the constitution of this Council since he last mooted this question. The Honorable Member had observed that, if he (Sir Charles Jackson) had carried out his reasoning, it should also apply to the examination of witnesses by a Judge. The examination of a witness, however, was quite a different matter. A witness was not distracted by fear of any personal consequences as a prisoner was. It was true that now, in Civil cases, the plaintiff and defendant might be examined by a Judge, but still they were not in the position of a prisoner at the bar. For, although the parties in a Civil suit might be interested in the result and excited, they were not engaged in the same anxious conflict, inasmuch as they were not in dread of bodily suffering and disgrace. But he felt that the argument adduced by the Honorable and learned Vice-President (for whose opinions he had the greatest respect) had made too much impression, and he regretted to observe that they had made a convert of the Honorable Member of Government opposite (Sir Bartle Frere). The learned Vice-President contended that the Clause might be of use in the cases

of ignorant prisoners, and would be the means of enabling them to make the real nature of the case known to the Judge or Jury. He (Sir Charles Jackson) thought however that, if that was the best argument in favor of the measure and he could answer it, the result might be the re-conversion of his Honorable friend. It was true that there might be an obstinate stupid prisoner who did not understand his own case, and, as observed by the Honorable and learned Vice-President, there might be some advantage in the Judge asking him some particular question, such as where he was at the time, and thus drawing his attention to the points that pressed against him ; but surely this was no defence of the system of examination by question and answer. Why could not the Magistrate, in the cases suggested, point out to the prisoner the evidence which pressed against him, and call upon him to address his defence to those particular points. He (Sir Charles Jackson) had himself often as a Judge suggested to an ignorant prisoner the line of defence he should take and call evidence to prove. He had said to such a prisoner, who, when called on for his defence, remained taciturn—"You have have heard the evidence ; the witness says that you were at a certain place on a certain day ; it is for you to show that his statement is not true." He must say that the argument resting upon the benefit the prisoner would derive from being given the opportunity of explaining his case was not satisfactory, for that opportunity could be fully afforded to him without resorting to an examination by question and answer ; and with all deference for the arguments of the Honorable and learned Vice-President, he must say that it did not appear to be an argument which justified the conversion of his Honorable friend opposite.

Then again, the Honorable Member for the North-Western Provinces had said that it had for a long time been the practice in this country for the Magistrate to put questions to the accused. But we had had it on the authority of the Honorable Member for Bengal, who had been a Judge here, that that was a practice which was discouraged and had constantly been reprehended by the Sudder Court.

Then, again, the Honorable and learned Vice-President observed that, if a Judge should carry this privilege to an undue and improper length, then of course the Sudder Court would set him right. But how would that operate ? It might check the future conduct of the Judge, but could not place the accused in the same position as before. As regards the prisoner, the mischief would be already done, and that was a consideration which ought to weigh with the Council who should lay down some principle in the matter, and the only principle that he could assent to was that laid down in the English law. He (Sir Charles Jackson) did not assert that it was correct to lay it down as a principle that a man should not be allowed to criminate himself. He saw no reason why a prisoner should not be allowed full liberty to criminate himself, and he thought the English law had been too fastidious on that point, and, looking at it as a moral question, the prisoner ought, if guilty, to criminate himself. But he maintained that it was a correct, just, and right rule to lay down that a man was only to criminate himself voluntarily and without the application of any extreme force, whether moral or physical. The Section under discussion might prove useful in some cases, but he felt sure that, in the majority of cases, it would work mischievously. The principle involved in it was not supported by the law in our own country. The measure, it was true, had received the support of one great and honored name—that of Lord Brougham—but it was opposed by all the other legal authorities in the House of Lords. He saw, however, it was hopeless for him to struggle any longer against the opinion of the Council.

The question being put, the Council divided—

Ayes 2.	*Noes* 6.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Mr. Forbes.
	Mr. Harington.
	Sir Robert Napier.
	Sir Bartle Frere.
	The Chairman.

So the Motion was negatived.

MR. SETON-KARR then moved the substitution of the words "at the close of the evidence for the prosecution" for the words "from time to time, at any stage of the enquiry." He objected to the latter words, as subjecting the accused to an unnecessary continual mental torture.

THE CHAIRMAN said, he preferred the Clause as it now stood. He would again read an extract from the remarks of the Law Commissioners, who originally prepared the Clause, as having reference to the amendment of the Honorable Member for Bengal. They said :—

"We have considered whether it would not be a better course for the Magistrate first to examine the prosecutor and witnesses, and then proceed to the examination of the defendant: and, in order to ascertain the probable effect of prescribing such a course, we have examined two gentlemen who long held judicial employ in India. The result of the inquiry is such as to satisfy us, that the discretionary power of examination, at any stage of proceedings, must be left to the Magistrate. The witnesses are of opinion that the immediate examination of the accused is often essential to the discovery of truth, and that the abolition of this power of immediate examination on the part of the Magistrate, would be attended with injurious consequences to the administration of justice. We accordingly propose to leave this power as it now exists."

Under these circumstances, he did not think that we ought hastily to alter the Clause. Mr. Hawkins, a gentleman well conversant with proceedings in this country, was one of the Commissioners; and the Commissioners had not merely acted upon their own knowledge, but after having examined two gentlemen, who had long held judicial employ in India, came to the conclusion that it would be injurious to the administration of justice not to allow the Magistrate to ask questions of the accused before the close of the prosecution. It therefore appeared to him that the Clause ought to stand as at present, unless those who objected to any part of it, could show some very good reasons why the Clause should be altered. No such reasons had been given in support of the present amendment, and he should therefore vote against it.

MR. HARINGTON said, he entirely agreed with what had just fallen from the Honorable and learned Chairman. The Honorable Member for Bengal seemed to think that he (Mr. Harington) had not correctly stated the law upon the point as at present in force in Bengal. He was alluding to the law as applicable to the Magistrates' Courts. He would therefore read the Bengal law. It was contained in Section V Regulation IX. 1793, and provided as follows :—

"Upon the prisoner being brought before the Magistrate, he shall enquire into the circumstances of the charge, and examine the prisoner and the complainant, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing. The complainant and the witnesses shall be examined upon oath, but the prisoner shall not be required to swear to the truth of his deposition. After this enquiry, &c."

MR. SETON-KARR—That is the Regulation, but not exactly the practice.

MR. HARINGTON said, of course, he could not speak of the practice in the lower Provinces of Bengal. He could only speak of the practice in the North-Western Provinces, which certainly was exactly in accordance with the provisions of the Regulation which he had just read. The Committee had decided by a large majority of votes that it was necessary for the ends of justice that the examination of accused persons by the Magistrates should be allowed to continue. The object in view would, to a great extent, be defeated, if the Section were pared down as proposed by the Honorable

Member for Bengal, and for that reason he should vote against the Motion.

MR. FORBES said, the law in Madras was contained in Section XXIV, Regulation IX 1816, which provided as follows :—

"Upon a prisoner being brought in the first instance before the Magistrate, charged with any crime or misdemeanor, he shall inquire into the circumstances of the charge, and examine the prisoner, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing. The witnesses shall be examined upon oath (or on a solemn declaration, if of a rank, or caste, which would render it improper to take an oath), but the prisoner shall not be required to swear to the truth of his deposition."

It was clear, therefore, that it was not proposed now to introduce any new law on the subject; and he did not consider that any ground had been shown for altering a law which had been satisfactorily in operation for nearly half a century.

SIR CHARLES JACKSON said, he was not quite sure that either of the Sections, which had been read by the Honorable Members for Madras and the North-Western Provinces, proved what the Honorable Gentleman seemed to suppose. It was true that the word "examined" was used in both, but he was not sure that it meant an examination in the form of question and answer. It might mean an examination as conducted in England where in fact the prisoner made a mere statement, if he chose to do so, although it was called an examination. He must say he saw no reason why the accused should be exposed to a harassing prosecution. As to the evidence of the Gentlemen before the Law Commissioners in England, which was referred to by the Honorable and learned Chairman, he (Sir Charles Jackson) should have liked to have seen the evidence and to have judged for himself how far it justified the conclusion arrived at by the Commissioners, that the discretionary power of examination at any stage of the proceedings should be left to the Magistrate.

MR. FORBES said that, if the learned Judge's view was correct, it would prevent the examination of a witness equally with that of the prisoner. The words he had read were "shall examine the prisoner and such other persons as are stated to have any knowledge of the crime," so that whatever limit was put upon the prisoner's examination must be held to apply equally to the witnesses; and as it could not be contended that the witnesses should not be examined in the form of question and answer, it was clear to him that it was not intended that the prisoner should not be so examined.

MR. SETON-KARR said, he had no doubt that the Honorable Member for the North-Western Provinces had quoted the law correctly. But he certainly thought that an examination of a prisoner in the form of question and answer was going far beyond the present practice; and though beaten on the original Motion, he should press his amendment to a vote.

SIR BARTLE FRERE said, he should vote in favor of the amendment proposed by the Honorable Member for Bengal, as being more in accordance with the present law as administered in Western India, which worked well and which practically provided for the examination of the accused after the close of the evidence for the prosecution.

MR. ERSKINE said, he thought that, if these words were omitted, the object intended to be secured by this Section would not really be secured. The Section referred merely to preliminary enquiries; and in such enquiries they could not be sure that all the evidence would be procurable at once. Some witnesses might be forwarded to-day and some to-morrow and so on; and unless the questions of the Magistrate might be put from time to time as new evidence was recorded and new facts elicited, the desired object would not be fully secured. He would therefore prefer that the words should remain as part of the Section.

After some further discussion, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Seton-Karr.	Mr. Erskine.
Sir Charles Jackson.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
	Sir Robert Napier.
	The Chairman.

So the Motion was negatived and the Section was passed as it stood.

The postponed Sections 165 to 167 were also passed as they stood.

Section 210 provided as follows :—

"The provisions of Chapter XII relating to the issuing of process for causing the attendance of the accused person, the summoning and enforcing the attendance of witnesses, the examination of parties and evidence, the taking of bail, and the adjournment of a case, shall be applicable to cases tried under this Chapter."

MR. HARINGTON moved the omission of the above Section and the substitution of the following :—

"The provisions of Chapter XII, relating to the issuing of process for causing the attendance of the accused person ; the taking of bail ; the summoning and enforcing the attendance of witnesses ; the examination of parties and witnesses ; the mode of recording evidence, correction, attestation, and interpretation thereof ; and the adjournment of a case ; shall be applicable to cases tried under this Chapter. On completing the examination of a witness under this Section, the Magistrate, in addition to the memorandum required by Chapter XII, shall record such remarks as he may think material respecting the demeanor of any witness while under examination."

MR. ERSKINE said, that on Saturday last, when he objected to the Section now marked *(b)*, on the paper of Amendments, that it would dispense with a careful vernacular record in some cases in which appeals would lie, the Honorable Member for the North-Western Provinces had objected to this statement, and declared that the Section would refer only to preliminary enquiries. He (Mr. Erskine) thought, however, that a reference to Section 187 would satisfy Honorable Members that his former statement had been quite correct, and, indeed, the Honorable Member himself now sought, by this modified Section, to make the same practice applicable at will to any trials before a Magistrate, and consequently to cases, many of which would certainly have to be reviewed on appeal. He was very unwilling to re-open the discussion as to the propriety of allowing any authority to dispense in criminal cases with a clear record in the language of the people, but the subject was so very important, and the changes which it was proposed by this and other Sections to introduce, were so great, that he felt constrained to call attention to the subject again. Indeed, he hoped, that if the Council should be disposed to pass the Section now proposed, and others of the same description, they would consent, by postponing a final consideration of them, or allowing the Bill to be republished, to afford the local Governments full time to express their own opinions. In the meantime, as he was not quite sure how far the Honorable Member proposed to enlarge the discretional powers of the Government, he would be glad to ascertain, for instance, in what language, if these Sections passed, and were acted upon, the statements of witnesses would generally reach the ears of the officer presiding in the Court, for it seemed to offer no impediment to the introduction at will of a system of conducting trials through interpreters. Again, it seemed to place no restriction on the use of the English language in pleadings before the Court. It provided merely for the manner in which proceedings in Court were to be recorded, which was by no means all that they required.

MR. HARINGTON said, the first Section relating to the language in which the evidence of witnesses was to be recorded, namely Section 162, for which he had proposed to substitute other Sections, appeared in the Chapter which treated solely of the preliminary enquiry by the Magistrate in cases triable by the Court of Session. This was shewn by the heading of the Chapter. In cases properly falling under this Chapter there could be no appeal, and he contended, therefore, that he was quite right in what he had stated on this point. No

doubt it might occasionally happen that a case originally taken up and enquired into by the Magistrate as triable by the Court of Session only, eventually proved within the competency of the Magistrate to dispose of. For instance, a person might be charged with culpable homicide which was an offence triable by the Court of Session, and the preliminary enquiry would be conducted with a view to commitment to that Court; but it might appear in the course of such enquiry from the medical testimony or from other evidence, that the death of the person, whom the accused was charged with having killed, was in no way owing to any act of the accused, and that the accused had been guilty only of a common assault. In the case supposed commitment to the Session would not be necessary, and the Magistrate would proceed to try the case himself, and would pass sentence on the accused. The Section referred to by the Honorable Member for Bombay was intended to meet a case of this kind. Such cases were not of common occurrence. They were quite exceptional. The Chapter as drawn was intended for cases properly triable by the Court of Session. In most cases it was known from a very early stage whether, supposing there was sufficient evidence of guilt, the case would be committable to the Court of Session, and the enquiry proceeded accordingly. It would no doubt be proper to consider what would be the effect of the alterations which were in the course of being made in the parts of the Code relating to the language in which the evidence of witnesses was to be recorded, upon cases of the nature of those referred to in the Section to which the Honorable Member for Bombay had called attention. It had been his intention in the course of the week to consider the subject, but he had forgotten to do so. He would go into the matter during the ensuing week, and at the next meeting of the Committee he would be prepared either to move an amendment himself, if he found any change necessary, or to consider any amendment which the Honorable Member for Bombay might feel inclined to propose. With regard to the points on which the Honorable Member for Bombay appeared to desire further information from him (Mr. Harington), he could only say that the new Section proposed by him contemplated nothing more than that in those places to which the local Government might think proper to extend the Section—for it was not intended that the Section should be extended at once to all parts of the country—the evidence of the witnesses, instead of being taken down by an under-paid ministerial officer, should be reduced into writing by the Magistrate or the presiding officer of the Court with his own hand and ordinarily in his own vernacular which might and would often, of course, be English. The Section made no mention of the language of the pleadings, or of the language in which Counsel, when retained, were to address the Court, or of the language in which the judgment or the sentence was to be recorded, or of the language of any other proceeding. The Section proposed by him related simply to the recording of the evidence. The language now used for all other purposes would continue to be used, any thing that there might be in the Section proposed by him notwithstanding.

MR. ERSKINE said that he had hardly perhaps conveyed to the mind of the Honorable Member the full force of his apprehension as to the inexpediency of leaving it in doubt, whether a Magistrate might not conform to all the requirements of the law though he conducted a trial through an interpreter. But this question and also that of providing for the language of the pleadings, might perhaps be more conveniently considered at another time. At present he would observe that although it was now proposed to enable Government to dispense at will with the more satisfactory system provided in Section (*a*)—in favor of the less satisfactory system proposed in Section (*b*)—he did not know that any valid argument in favor of such a change had been brought forward. The Honorable Mover of this Section seemed to look too

exclusively to the system of taking evidence which had prevailed in Bengal—and to the reform proposed in some of the Non-Regulation Provinces. And he seemed to forget that in many other parts of the country a system existed which many persons believed to be better than either of these—and which in fact corresponded with the normal system provided for in that Code. He (Mr. Erskine) had certainly no wish to say anything in favor of the system alleged to prevail in Bengal, and which, if one half of that which was said of it by persons who ought to be well informed, were true, must be as bad as possible. Nor did he doubt that a system like that devised for Oudh would be a great improvement on the Bengal plan. Indeed he did not object to the positive provisions of the new Sections. He should be glad to have distinct legal provision made for the keeping of full and careful English notes by every European Magistrate and Judge with his own hand. But what he viewed with distrust was the tendency to dispense, in favor of these notes, with a careful vernacular record; which, if well kept—as it generally was in Bombay—formed a wholesome and useful check upon the English notes. He could speak from experience in this matter, and he would give one instance in illustration of what he meant. He had for some time been in the habit of reviewing the proceedings of an officer who was one of the best vernacular scholars he had known in the country—quite able to read for himself any native papers which came before him—always accustomed to put questions to witnesses with his own mouth—and in the habit of keeping full English notes of his proceedings. Yet he could assure the Council that in reviewing cases tried by that officer, he had often felt the great value of the native record. That record was not prepared, as was said to be the practice here, in a slovenly "hole and corner" manner. But as each witness answered the questions of the Judge, a native writer on the Establishment of the Court took down his very words in the vernacular language; while the Judge noted the answer in English. At the conclusion of the examination the deposition was read over to the writer, while the Judge compared it with his note—and any discrepancy was then cleared up. The native record thus framed was of the greatest use in disposing of an appeal. Often it might not be quite certain whether an expression in the English proceedings meant just so much, or rather more; or there might be an elliptical phrase or an ambiguous word or an obscurity resulting from haste or inaccuracy. In such cases a reference to the vernacular record generally explained exactly what had been said. He could see no reason therefore for dispensing with this safeguard or allowing it to be dispensed with, and English to be made the sole language of record in the Magistrates' Courts in any districts. He had noted some strong expressions of opinion on this subject by persons of experience in different parts of India and who were far from being indifferent to reform. But he would not now trouble the Council with these authorities; especially as there was a notice of amendment relative to the records of the Courts of Session which might raise a larger question. One expression had struck him much in one of Mr. Shore's letters on this subject. That gentleman observed that this was eminently a question in which there was need of a Lion Sculptor—there was need of some one to explain how measures of this kind would be regarded by the people. It was not enough in judging of such reforms to consider whether or not, they would be convenient to those who conducted the proceedings, or even whether they would conduce to economy and despatch. It must be considered above all, whether they would be safe for the people; whether they would be satisfactory to the minds of the people. And he could hardly believe that the people would be satisfied with an arrangement under which, in the Courts of European Magistrates, there would be no record in any language known to them or their neighbours of

what they were reported to have deposed in Court. At present if any doubt or apprehension arose in connection with any such statement, they might obtain access to the original in their own language, or the headman of their village might read it to them if they obtained a copy. Under the proposed system they would in every case have to go in search of some interpreter who knew or pretended to know English. It appeared to him that the innovation thus contemplated would not promote the ends of justice —and that there was no good reason for dispensing in such cases with a vernacular record carefully prepared in the manner now practised in Western India. He must, therefore, object to this Section—and trusted that if the Council were inclined to sanction changes in this direction they would allow the local Governments full time to offer their opinions on the subject.

MR. HARINGTON said, he thought it was a sufficient answer to what the Honorable Member for Bombay had stated as to the necessity there was for postponing the consideration of the Section under discussion, or, if the Committee agreed to adopt the Section, of republishing the Bill before it was read a third time, in order that the local Governments might have an opportunity of expressing their views on the subject, that the Section was in its character entirely permissive. Had he proposed to make the Section imperative, and to extend it at once to the whole of the Presidency of Bombay as well as to the rest of India, instead of leaving its introduction optional with the local Governments, he readily admitted that it would be quite right and proper that they should consult the local Governments before they finally adopted the Section. But, as he had already said, this was not the character of the Section. It was a permissive, not a compulsory Section. If the Bombay Government did not like the Section, or did not think proper to introduce it into any part of that Presidency, there was nothing in the Section to compel the Bombay Government to adopt a course opposed to its own views. It might or it might not extend the Section just as it thought proper. There could, therefore, be no ground for delaying the passing of the Section until there had been time to consult the local Governments in respect to it. Although he hoped that in the course of time the Section would become the rule instead of being the exception only, he had no expectation of its being immediately introduced to any great extent. But some provision of the nature of that proposed seemed absolutely necessary if only for the Non-Regulation Provinces in which, as he had already informed the Committee, a practice similar to that prescribed in the proposed Section was already very extensively followed; and unless, therefore, a Section such as that prepared by him was added to the Bill, either the practice must be discontinued in the places where it now existed, or the Code could not be introduced in those places. As he had remarked on a former occasion, he thought that this would be a subject for regret. He had read to the Committee what had been said in favor of the practice by Mr. George Campbell, the able Judicial Commissioner of Oude; he had told the Committee that the rule was reported to be working well and satisfactorily in the Punjab. They had the testimony of the Honorable Member for Bengal, that, wherever the rule had been introduced in Bengal, the result had been most favorable. The Sudder Court in Calcutta, and the local officers, had reported favorably of it, and the Honorable the Lieutenant-Governor of Bengal desired the extension of the rule. What greater encouragement could they require to induce them to pass the Section—what stronger arguments could be use in favor of the Section? It was not a question of Presidencies or of individual merit or where work was best done. The question was, which was the better system, not for any particular place only, but for the country generally; and he must say that a system which, as regarded the recording of evidence, substituted a trust-

worthy Judge or Magistrate for an underpaid ministerial officer, could not, he thought, justly be considered inferior to the system which it superseded. The Honorable Member for Bombay seemed to be contending for two records of the evidence, one to be made by the Judge or Magistrate in his own vernacular, and the other by a native officer probably in some other language ; but the inconvenience of a double record, particularly when in appeal the two records were found to differ and a difficulty might be experienced in ascertaining what the witness had really said, had been noticed by the Honorable Member for Bengal. He would only further remark that the system which he advocated was that which was followed in the Supreme Courts in India and in all the Queen's Courts at home.

SIR BARTLE FRERE said, he thought that the Honorable Member for the North-Western Provinces had proved rather too much. He had observed that very serious inconvenience would arise, if there was any contradiction between the two records. It was an easy but not a satisfactory way of removing that objection, by getting rid of one of the records. As to the possibility of inconvenience, he (Sir Bartle Frere) certainly thought there could be none of any moment, because the system was now in operation, and no inconvenience had yet arisen.

MR. HARINGTON said, there was nothing in the Section as framed by him, to prevent a complete copy of the evidence being made by an Officer of the Court in the language in use at the same time that the presiding Officer was taking down the evidence in his own vernacular, and if it was considered necessary to require this, he should not object ; but it would be an expensive system, as it would necessitate the keeping up of the Native evidence writers, whose services there was a general wish in many quarters to dispense with. For his own part, he should be quite satisfied with the record of the evidence made by the presiding Officer of the Court with his own hand and in his own vernacular, whether that was the vernacular or the language of the Court, or not. If there were to be two records, it must be determined which was to have the preference.

THE CHAIRMAN said, he understood the Honorable Member for Bombay to say that, when the case went up to the Session Judge, there should not be two records, namely, the record made by the Native Officer and the Magistrate's memorandum, as there might be cases in which they might both differ. It appeared to him (the Chairman) that either the Magistrate should be bound to see that his memorandum agreed with the record of the Native Officer before sending up the case to the Session Court, or that the Magistrate's memorandum ought not to be sent as part of the record. The vernacular deposition would then be the record, and the Magistrate's memorandum sent only for the purpose of being referred to. He would propose therefore to go back to Section 162 *(a)*, and to substitute the words "be annexed to the record" for the words "form part of the record."

The Motion was carried.

MR. ERSKINE then moved to except the provisions of Section *(b)* from the Section moved by Mr. Harington in lieu of Section 210.

MR. HARINGTON said, he could only repeat that the Section was of a permissive character, and that wherever the practice which it prescribed had been introduced it had been found to work well. Of this fact they had abundant proof.

The question being proposed, the Council divided—

Ayes 3.	*Noes* 5.
Mr. Erskine.	Mr. Seton-Karr.
Sir Robert Napier.	Sir Charles Jackson.
Sir Bartle Frere.	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the Motion was negatived, and the Section passed as it stood.

The postponed Sections 230 and 231 related to the mode of recording evidence in cases triable by the Magis-

trate, in which a summons on complaint should ordinarily issue.

MR. HARINGTON moved the omission of the above Sections, and the substitution of the two following new Sections :—

"The Magistrate shall make a memorandum of the substance of the evidence of each witness, as the examination of the witness proceeds. The memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record. If the Magistrate shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record. The Magistrate shall record such remarks as he shall think material respecting the demeanor of any witness while under examination.

In any case in which the Magistrate shall consider it necessary, it shall be competent to him, instead of taking down merely the substance of the evidence of any witness, to take down the evidence of the witness in the manner provided in Section or in the manner provided by Section , if within the jurisdiction of such Magistrate the local Government shall have made an order as provided in that Section. In any such case the provisions of Sections and shall be applicable to the evidence so taken."

After some conversation, the Sections were passed, subject to re-consideration when the Chapter of Appeals was settled.

Section 236 was passed after an amendment.

Section 237 was passed after the correction of a misprint.

Section 238 was passed after an amendment.

Section 239 provided as follows :—

"In every case in which the subordinate Criminal Court may be of opinion that the evidence is such as to warrant a presumption that the accused person has been guilty of an offence calling for a more severe punishment than such Court is authorized to adjudge, and such punishment may be awarded by law, it shall not proceed with the trial, but shall submit its proceedings to the Magistrate to whom such Court is subordinate, and such Magistrate shall either try the case himself, or refer it to any Court subordinate to him having jurisdiction. In either case, the Court which gives judgment on the trial, shall examine the parties, as if no proceedings had been held in any other Court, and may, if it think necessary, recall any witnesses who have already given evidence."

MR. HARINGTON moved the omission of the above Section, and the substitution of the two following new Sections :—

"In any case in which the Subordinate Criminal Court shall be of opinion that the evidence warrants a presumption that the accused person has been guilty of an offence, calling for a more severe punishment than such Court is authorized to adjudge, it shall not proceed with the trial, but shall submit its proceedings to the Magistrate, to whom such Court is subordinate. Such Magistrate shall either try the case himself, or refer it to any Court subordinate to him having jurisdiction, or he may commit the accused person for trial before the Court of Session. If the Magistrate try the case himself, or refer it to any Court subordinate to him, the parties shall be examined by such Magistrate or Subordinate Court, as if no proceedings had been held in any other Court; and such Magistrate or Subordinate Court may recall and examine any witness who shall already have given evidence in the case, and may call for or take any further evidence.

Nothing in the last preceding Section shall be held to prevent the Subordinate Criminal Court in any such case as is therein described, if such Court is empowered to hold the preliminary enquiry into cases triable by the Court of Session, and to commit persons to take their trial before such Court, from committing the accused person for trial before the Court of Session. If the Subordinate Criminal Court shall be of opinion that the accused person should be committed for trial before the Court of Session, it shall proceed in accordance with Chapter XII of this Act for conducting the preliminary enquiry in cases triable by the Court of Session."

Agreed to.

Section 240 was passed as it stood.

Section 241 was passed after an amendment.

Sections 242 to 249 were passed as they stood.

Section 250 was passed after a verbal amendment.

Sections 251 to 255 were passed as they stood.

Section 256 of Chapter XIX (relating to security for good behavior) provided as follows :—

"Whenever it shall appear to the Magistrate of the District, or a Magistrate in charge of a division of a District, that any person is lurking within his jurisdiction, not having any ostensible means of subsistence, or who cannot give a satisfactory account of himself, it shall be competent to such Magistrate to require

security for the good behavior of such person for a period not exceeding six months."

MR. FORBES moved the omission of the words "a Magistrate in charge of a division of a District," and the substitution of the words "to an Officer exercising the powers of a Magistrate." He observed that this Chapter gave very large powers—in the first place imprisonment for six months in default of security being given, then of twelve months, and then of three years; and as the Section, as now drawn, would enable a class of Magistrates to exercise these powers whose ordinary jurisdiction would be restricted to imprisonment for one month, he thought there would be great inconsistency in allowing a Magistrate to imprison for three years on suspicion only when he could imprison for only one month for a proved offence. It was on these grounds that he made the present motion.

Agreed to.

MR. HARINGTON moved that the words "or other Officer as aforesaid" be inserted after the word "Magistrate" at the end of the Section.

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

The Clerk of the Council was authorized to insert the words "or other Officer as aforesaid," after the word "Magistrate" wherever it occurred throughout this Chapter.

Sections 257 to 262 were passed as they stood.

Section 263 was passed after an amendment.

Sections 264 to 267 were passed as they stood.

MR. HARINGTON moved the insertion of the following new Section after the above :—

"Any evidence taken under Chapter XVIII or this Chapter, shall be taken in the manner prescribed by Section 230, subject to the provision contained in Section 231."

Agreed to.

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.)"

ARTICLES OF WAR (NATIVE ARMY).

THE CLERK reported to the Council 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 government of the Native Officers and Soldiers in Her Majesty's Indian Army."

SIR BARTLE FRERE moved that the above communication be printed.

Agreed to.

The Council adjourned.

Saturday, June 8, 1861.

PRESENT :

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

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Hon'ble Major-Genl. Sir R. Napier,	C. J. Erskine, Esq., and
H. B. Harington, Esq.,	W. S. Seton-Karr, Esq.

MALACCA LANDS.

THE CLERK presented to the Council a Petition from certain inhabitants of Malacca against the Bill "to regulate the occupation of land in the Settlement of Malacca."