Saturday, January 5, 1861

INDIAN LEG. COUNCIL DEBATES

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P. L.

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

Saturday, January 5, 1861.

PRESENT :

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

The Hon'ble Sir H. B. E. Frere,
The Hon'ble C. Beadon,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.,
C. J. Erskine, Esq.,
and
The Hon'ble Sir C. R. M. Jackson.

MESSAGES.

THE VICE-PRESIDENT read Messages informing the Legislative Council that the Governor-General had assented to the Bill "to amend Act XIII of 1856 (for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca)"; the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies"; the Bill "to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal"; the Bill "further to amend Act XXXVI of 1860"; the Bill "to amend Act XVIII of 1854 (relating to Railways in India)"; and the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal)."

FINANCES OF INDIA.

THE CLERK presented to the Council a Petition of Inhabitants and Tax Payers of Madras, relative to the Finances of India.

MR. FORBES moved that the Petition be printed.

Agreed to.

CRIMINAL PROCEDURE.

THE CLERK also presented to the Council a Petition of the British Indian Association concerning the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter."

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

Agreed to.

PEPPER-DUTY (COCHIN).

MR. FORBES presented the Report of the Select Committee on the Bill "to provide for the collection of Duty of Customs on Pepper exported by sea from the British Port of Cochin."

PORT-DUES (CONCAN).

MR. ERSKINE, in moving the first reading of a Bill "for the levy of Port-Dues in the Ports of the Concan," said that the Bill which he now had the honor to present to the Council was another of a series of Bills which had been passed by this Council, in order to give effect to the provisions of the Ports Act XXII of 1855. It might be in the recollection of some Members of the Council that, as long ago as 1857, the Bombay Government had proposed, by means of a single Bill,

to provide for the levy of Port-dues in all the Continental Ports under that Presidency. At that time, however, doubts arose in the Council as to the compatibility of a general arrangement of that kind with the intention of the original Ports Act, and the correspondence was consequently referred to a Select Committee then sitting on a kindred Bill. This Select Committee reported in November 1857, that in their opinion the plan of regarding whole classes of Ports as a single Port for the purposes of the original Act, and allowing them to have a common fund and a common administration of it, should be sanctioned only in respect to groups of Ports which, owing to geographical position or other local circumstances, might be expected to derive common benefits from the improvements to be effected in this way. In accordance with these views a Bill was passed in the spring of the following year for the Ports in the Gulf of Cambay, which Bill now stood as Act IX of 1858. Those Ports were by that Act to be treated as a single Port in respect to the levy of Port-dues, and were placed under a common administration. The Bombay Government now proposed in the same way to treat as single Ports several groups of Ports in the Concan Districts of the Bombay Presidency, and the Bill which he now begged to introduce provided for three such groups. The central one included all those which were located on, or were in more immediate communication with, the harbour of Bombay and its outlets. A second included some Ports in the North-Western portion of the Tanna Collectorate. And a third included most of the Ports in the Rutnageeree District, to the north of Goa. The present Bill was drawn almost *verbatim* on the model of Act IX of 1858, already referred to ; and the rates of Duty now proposed to be levied were identical with those provided for in the same Act. Under these circumstances he thought it hardly necessary to detain the Council with further details, and he should only therefore move that the Bill be now read a first time.

The Bill was read a first time.

Mr. Erskine

MERCHANT SEAMEN.

Mr. BEADON, in moving the first reading of a Bill " to extend the provisions of Act I of 1859 (for the amendment of the law relating to Merchant Seamen)," said that the object of the Bill was merely the better to enable Courts at the Out-ports of British India to take cognizance of charges of incompetency and misconduct against masters and mates of Merchant vessels. The law at present stood thus. First, in respect to masters and mates holding certificates from the Board of Trade in England. Under the provisions of the Merchant Shipping Act of 1854, all Courts having Admiralty Jurisdiction had the power, on the application of the owner of a ship, to make enquiry into the conduct of any certificated master, and to remove him from the command of his ship if the Court thought it necessary. Beyond that, the Board of Trade in England, if it had reason to believe that any master or mate was, from incompetency or misconduct, unfit to discharge his duties, was empowered to appoint persons to investigate the matter, and thereupon to cancel or suspend his certificate. Under the 242nd Section of the Act, the Board of Trade had also power to suspend or cancel the certificate of any Master or Mate,

" if upon any investigation made by any Court or Tribunal authorized or hereafter to be authorized by the Legislative Authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or Tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, and such report is confirmed by the Governor or person administering the Government of such possession."

Now no provision had hitherto been made for vesting any Courts in the British possessions in India with such authority. The Indian Act No. I of 1859, which followed almost *verbatim*

the provisions of the English Act, making them applicable to masters and mates who had received certificates from a local Government, also provided that Courts having Admiralty Jurisdiction might remove the master of any vessel; and it further provided (following the words of the English Act) that the local Government might deprive of his certificate any master or mate who, upon investigation made, either by an Officer specially appointed by the Government, or by any Court or tribunal authorized by law on that behalf, should be found incompetent or guilty of any gross act of misconduct, drunkenness, or tyranny. But no legislative provision had been made to vest any Court or Tribunal with the requisite authority, either under the Imperial or under the Local Act.

Some time ago the Principal Assistant at Aden took cognizance of a complaint made against the master of a merchant vessel who held a certificate from the Board of Trade, and having adjudged him guilty of misconduct, removed him from the command of his vessel, and sent the proceedings of the case to the Board of Trade. The Board of Trade, admitting that the evidence justified the finding of the Assistant, at the same time pointed out, in a letter to the Secretary of State for India, that the proceeding was invalid, inasmuch as the Assistant had no Admiralty Jurisdiction, and was not empowered, by any legislative authority, to investigate the charge which had been brought before him. The Secretary of State had forwarded the papers in this matter to the Government of India, desiring that no time might be lost in taking measures for placing the administration on a proper constitutional basis, and for investing the Courts with the necessary powers for dealing with cases under the Indian Merchant Seamen's Act.

Now it was not in the power of this Council to pass any law which would alter in any way the English Merchant Shipping Act of 1854, except so far as that Act gave the Indian Legislature power to do so. Nor could it vest any Court with Admiralty Jurisdiction, or with power to remove a master holding a certificate from the Board of Trade. That, he apprehended, could be done by Parliament alone. All, therefore, that could be done, was to pass a law, empowering local authorities, without any instruction to that effect either from the Board of Trade or from the local Government, to take cognizance of charges of incompetency and misconduct on the part of masters or mates, whether they had received their certificates from the Board of Trade or from the local Government, and to report the result to the local Government, by whom or by the Board of Trade, as the case might be, the certificate could be suspended or withdrawn.

Beyond this, it was proposed not to vest with Admiralty Jurisdiction any Court that did not now enjoy it, but to give the principal Criminal Court at every Port where there was no Court having Admiralty Jurisdiction, power to enquire into the conduct of masters certificated by the local Government, and to remove them if necessary. That was the object of the Bill, and he believed that that was all that could be done here. If it were desired to vest Courts in India other than those vested with Admiralty Jurisdiction with the power of removing masters holding certificates from the Board of Trade, this could only be done by Act of Parliament.

With these observations he begged to move the first reading of the Bill.

The Bill was read a first time.

FLOGGING.

MR. HARINGTON moved the second reading of the Bill "to provide for the punishment of flogging in certain cases."

SIR CHARLES JACKSON said, he had hoped that, when the question of flogging was referred to a Select Committee of this Council, they would have been prepared to lay down some broad principles on which legislation on this subject should be based. He regretted to say, however, that he had been greatly disappointed with the

Report of the Select Committee, and the Bill founded upon it. He had looked through the Bill in vain to find any leading principle to which its provisions might be referred. The Bill, for instance, provided the punishment of flogging in cases of rape and unnatural offences, and no one would object to that. But it also provided flogging as punishment for theft, robbery, and even lurking. It was surely sufficient to state this in order to show that the Bill was framed upon no principle in defining the cases in which the punishment of flogging might be resorted to. Then it was to be considered that the Bill applied to all Europeans as well as Natives, and in that respect he regarded it practically as a retrograde measure. Not being based on any principle, all that could be said for the Bill was that it merely re-enacted the existing law as regarded natives, and kindly extended its provisions to the Europeans also. He did not think that this Council, which was just about to inaugurate a new Penal Code and to pass a new Code of Criminal Procedure, would be disposed to pass an Act, sanctioning the severe punishment of flogging for trivial offences, a punishment which was wholly opposed to the spirit of legislation in the present day. Now he wished it to be distinctly understood that he did not object to flogging altogether. He did not object to that punishment if applied to a man already demoralized. For instance, he saw no objection to its being applied to persons committing grossly indecent or unnatural offences, or to persons who, from the constant repetition of offences, might well be considered lost to all sense of honor and shame—the confinement of a prison being no object of terror to them. To such persons, being, in fact, already demoralized, the lash might be beneficially applied, as it might, in their case, prove a strong deterrent to crime. But what he did object to was the resort to this punishment in trivial cases, and the resort to it on the commission of any offence for the first time, except in cases of a very degraded nature, to which he had already adverted; for the effect of flogging any European or any educated Native must be to cause loss of all self-respect, and render his reformation almost hopeless. The question, he believed, had never been fairly considered in any country. In England it was formerly the practice to flog for every trivial offence. This was owing to more reasons than one, and particularly to the state of the jails at that period. Even women used to be exposed to this degrading punishment. If we were to take Lord Byron's Diary as an authority, when he was about to embark at Falmouth in 1809, a woman was flogged at the cart's tail, because, in addition to the crime of larceny, she had been pertinacious and had sworn at the Mayor. What was the consequence of this wretched system? It excited strong feelings of disgust, and, in consequence, practically, with very few exceptions, corporal punishment had been abolished in England. He did not wish to go so far in this country, for he thought that this punishment, if discreetly applied to particular offenders, might be a useful deterrent from crime. But he also objected to this Bill, because it was a retrograde measure as applied to Europeans. In England the punishment had been practically abolished. In the Supreme Courts in this country, no doubt, the Statutes which related to them empowered the Judges to inflict corporal punishment in very many cases, but what had been the practice? He had been twelve years in the country, and he did not know a single case in which such a sentence had been passed by any of the Supreme Courts. That being so, why should we render Europeans liable in this country to a punishment which had been abolished in England? But then it would be said that he was claiming an exemption for Europeans. He did no such thing. It was true that he did not wish to see Europeans in this country subjected to the punishment of flogging, except in very special cases. But neither did he want Natives to be flogged, except under similar circumstances. He did not desire to see any exceptional law, but, on the contrary,

Sir Charles Jackson

he wished to carry out the principle of uniformity by raising Natives to the same level with Europeans. That was the way in which this question had invariably been met. Whenever the necessity had arisen for legislating for the two classes, and one had been found in possession of advantages which the other had not, the panacea had constantly been to lower the European to the level of the Native. That was in fact the view taken by those who supported the Black Acts, upon which subject, however, he would not then enter. He would say in a few words that any Act of this kind should be based on this principle, that we ought not to flog any but a demoralized man. The demoralization might, in some few cases to which he had already adverted, be inferred from the gross nature of the crime, or might be inferred from a constant repetition of offences, showing a total absence of shame or self-respect. To this general rule there might be exceptions, and he did not know any general principle which had no exceptions. The first exception, he believed, might be that of boys under 16 years of age, who might be beneficially flogged. And then he believed it was probable, though he was not sure, and spoke with great diffidence on the subject, that some power of corporal punishment ought to be reserved for jail discipline. He was induced to think a resort to it might be avoided by introducing solitary cells; but, no doubt, whether this should be an exception ought to be considered. Then there might be another exception, and that was the case of certain nomade tribes, who had been accustomed to live in the open air all their lives, and to whom, he was informed, confinement in a jail was tantamount to the punishment of death. These cases might also form another exception to the general rule.

Sir Charles Jackson concluded by apologizing to the Council for having occupied so much of their time. But he thought this a serious matter. The Council had just passed a Penal Code, and were about to pass a Code of Criminal Procedure, and these Acts would write the name of the Council in the History of India, and he should be sorry to send down to posterity, with these Codes, the Act in question which was opposed to the spirit of Legislation at Home, and was, as regards Europeans, a retrograde measure.

MR. ERSKINE said, it was not his wish to say much at present as to a point specially adverted to by the Honorable and learned Member who had just sat down, namely, the propriety of extending the application of this Bill to Europeans. This—regard being had to the provisions of the new Criminal Procedure Code—must chiefly, he (Mr. Erskine) presumed, refer to the supposed effects of the Bill on the jurisdiction of the Supreme Courts. It seemed to him that this point might be more appropriately considered hereafter, if the Bill should itself be allowed to go to a Committee after being read a second time. He would only remark at present, with reference to what had fallen from the Honorable and learned Judge as to the impropriety of extending this punishment to offences of a trivial nature, such as thefts, &c., that, as regarded the Presidency Towns at least, the punishment was already applicable to petty thefts under a Section in the Municipal Police Act of 1856, which Section had been re-enacted by the Council within the last few weeks, in a Bill, as to which it had only this day been intimated to the Council that His Excellency the Governor-General had just given his assent to it.

With regard to the Bill now before the Council, no one could wonder that it should not meet with acceptance every where; and, indeed, if Members of this Council were at liberty to be guided in such a matter, he would not say by their own feelings, but by their own pre-conceived notions of what was abstractedly desirable, he should hardly imagine that there would be much difference of opinion on the subject. But, in point of fact, the question with which this Bill proposed to

deal was altogether a question of practical experience; and when a discussion took place some time ago in this Council, which led to the appointment, by the Council, of a Committee to prepare a Bill on this subject, it was repeatedly stated, as the Honorable and learned Judge would remember, that, although it was most desirable that this punishment should not form part of the Penal Code—should not be permanently incorporated into that great settled body of Penal law for India—nevertheless, that it was not possible at once and altogether to dispense with it, without disregarding the practical judgments of experienced public men, to an extent which could not be justified. Such being the case, it seemed to him (Mr. Erskine) that the objects which the framers of this Bill had to secure, as far as possible, were primarily these; to bring into harmony the extremely discordant practice of different Presidencies and Provinces in India; to place proper restrictions on the use of this punishment every where; to dispense with it, whenever that could be done, without running counter to the opinions of those who were immediately responsible for the Criminal administration of the country; and by these means to prepare this whole question for a more complete and more satisfactory solution at, we might hope, no very distant period. Even in this point of view, however, the Honorable and learned Judge did not seem to be satisfied with this Bill. He said that it had been framed on no fixed principles. Now, without professing to find in this Bill any precise scientific arrangement, it did seem to him that a reference to the offences quoted in it would suggest that they had not been selected without a certain method. They seemed all to distribute themselves into a very few classes, in connection with each of which the opinions of experienced Officers in different parts of the country were known to be strongly in favor of the retention of this punishment. The first class of offences to which he referred included thefts, robberies, and petty burglaries. Petty thefts, as he had already reminded his Honorable and learned friend, were even now punishable in this way; and if this Bill proposed to extend the same punishment to similar offences of a somewhat graver character, an explanation of this was to be found in the fact that Criminals of this class, in the Mofussil, were often mere youths—often belonged to tribes of almost hereditary thieves,—and if removed from their native jungles and hills, to be shut up in our jails in the plains, were too apt to languish and die there. Another class of offences included only two or three crimes selected from the sixteenth Chapter of the Penal Code. They all indicated great brutality in the perpetrators. And he thought the Honorable and learned Judge would agree with him that, if in any case this punishment could be inflicted without specially shocking the moral sense of a community, it must be in cases like these. The offences included under the third and last class differed, no doubt, considerably from those just mentioned. They were such crimes as perjury and personation, forgery and criminal receipt of stolen goods. They had all at least this in common, that they were not often committed from any mere sudden access of passion, but were generally done deliberately, were often habitually practised, and sometimes were engaged in almost professionally, especially in this country. These were the classes of offences with which this Bill proposed to deal; and he would only add, with reference to the statement of the Honorable and learned Judge, that the Bill would re-enact all the provisions relative to this punishment in existing Regulations; that, at all events in the Presidency with which he was more immediately concerned, this Bill might truly be described as a Bill for abolishing the punishment of flogging in a variety of cases, and for restricting it in many. It went indeed further in that direction, he apprehended, than would be approved by many able Officers in Western India. He trusted, however, that, if passed, it would, in practice, be productive only of good results; and would, indeed, be

Mr. Erskine

only the first step towards a larger measure of reform, to be undertaken hereafter, whenever experience might show that it could be undertaken with safety.

THE VICE-PRESIDENT said, if this Bill depended merely with reference to the punishment of Europeans in the Supreme Courts, he thought it would be wholly unnecessary to pass it, for the law which was now administered in the Supreme Court authorized the punishment of flogging. Section 21 of the 9th Geo. IV. c. 74, which was the Criminal law administered in the Supreme Court, provided as follows :—

"And be it enacted that every person convicted of any felony not punishable with death shall be punished in the manner prescribed by the Statute or Statutes specially relating to such felony; and that every person convicted of any felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the Court, to be transported to such place as such Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, *and if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit), in addition to such imprisonment.*

Then there were several Sections which provided for different offences, and among them larceny as well as the offence of passing bad coin. Under the English law, however, the punishment of flogging had been substantially abolished, that is, it had never been carried into effect, except in certain cases. For instance, the English Consolidation Act, on the principle of which the 9th Geo. IV. c. 74 was based, also authorized the punishment of whipping in like manner as the 9th Geo. IV. But practically in England, as here, the power was seldom used. The English law, therefore, already authorized the punishment of flogging, and if the present Bill was to be applied to the Supreme Courts, it would, as he had before stated, be wholly unnecessary.

But we had to deal with various classes of persons, who were liable to be tried by Courts other than the Supreme Courts. We had been told by the Officers in the North-Western Provinces, Punjab, Oude, and other places, that the punishment of flogging was necessary in some cases. It would, no doubt, be a retrograde measure in places where it was now abolished. But the question was, whether it should be abolished in those places where it was now permitted, and where the local Officers, who were better able to judge in the matter than he was, had recommended its retention. If the Bill should pass the second reading, and be referred to a Select Committee, it would be published for general information, and would then elicit the opinions of local Officers from all parts of the country. The Committee would then have the opportunity of determining to what cases flogging should be applied, and in what cases it might be dispensed with.

To the particular cases referred to in the Bill, as it now stood, he did not think any reasonable objection could be taken. The offences first enumerated were: intentionally giving or fabricating false evidence, giving or fabricating false evidence with intent to procure conviction of a capital offence or conviction of an offence punishable with transportation or imprisonment, assaulting or using criminal force to a woman with intent to outrage her modesty, rape, and unnatural offences—all which were classes of cases to which he thought the punishment of flogging ought to be applied.

The Bill then proposed to provide the punishment of flogging in cases of theft, theft in a building, tent, or vessel, and theft under certain other circumstances, as well as extortion by threat of accusation of an offence punishable with death or transportation; and if any offence deserved the punishment of flogging, that last mentioned certainly did. Then there were robbery, dishonestly receiving and habitually dealing in stolen property, and lurking house trespass.

Another class of cases provided for in the Bill was forgery, forgery of a record of a Court of Justice or of a public register of births, power of

attorney, &c. He rather thought that, under the English law, forgery was not one of the cases to which flogging was applied.

It appeared to him that the question was not merely whether this was or was not a retrograde measure, but whether, when the Penal Code was to come in force, the punishment of flogging ought to be totally abolished. He, for one, did not think that it could at present be so abolished. Upon the whole, therefore, he was in favor of the motion for the second reading of this Bill, and would leave it to the Select Committee to propose such amendments therein as they might think necessary, after consideration of the information and opinions which might be laid before them on the publication of the Bill.

MR. HARINGTON said, the remarks of the Honorable and learned Judge opposite (Sir Charles Jackson) left it doubtful whether it was his intention to vote against the Motion for the second reading of this Bill; but if such was not the Honorable and learned Judge's intention, he (Mr. Harington) would willingly promise him that, when the Bill got into Committee, any suggestions that he might make for the improvement of the Bill, or any amendments that he might think it right to propose, should receive the fullest consideration. In the remarks with which he (Mr. Harington) prefaced the Motion for the first reading of the Bill, he stated at some length the views which he himself entertained on the question of flogging as a punishment for criminal offences, and he also explained the considerations by which the Select Committee, to whom was entrusted the task of preparing a Bill in connection with that question, had been influenced in framing the Bill before the Council. He had little, if anything, to add to those remarks on the present occasion. The Honorable and learned Judge complained both of the Bill prepared by the Select Committee, and of the report made by them, and declared that he was unable to discover in either of these papers the principle on which the Select Committee had acted or any principle defining the class of cases to which the Bill was intended to apply. But he (Mr. Harington) thought there was no ground for this complaint. The Honorable and learned Judge would allow the punishment of flogging in cases of rape and unnatural offences, or where, as in such cases, the offence committed displayed a peculiarly demoralized mind, and he (Mr. Harington) supposed that, if the Select Committee had confined the Bill prepared by them to cases such as those mentioned by the Honorable and learned Judge, the Honorable and learned Judge would have admitted that there was a principle in the Bill. Now the Select Committee, in framing the present Bill, had proceeded on the same principle on which the Honorable and learned Judge would have proceeded; only they proposed to go a little farther than the Honorable and learned Judge, and to extend the principle of the Bill to offences other than those mentioned by the Honorable and learned Judge, for which they considered the punishment of flogging a suitable punishment. Whether the Select Committee were right or wrong in their selection, the principle on which they had acted, as declared in his introductory remarks, was to select for corporal punishment those offences, the punishment of which carried with it a greater degree of social and moral degradation than was the case as regarded the punishment of other offences. The offences, on a conviction of which the Select Committee considered that corporal punishment might be awarded, were specified in the Bill. The Honorable and learned Judge declared some of these offences to be most trivial, but he (Mr. Harington) did not think that this could fairly be considered the character of any of them, in so far as the question under discussion was concerned.

The next charge which the Honorable and learned Judge had brought against the Bill was that it was of a retrograde character and that it proceeded therefore in a wrong direction, and he particularly noticed the appli-

cation of the Bill to Europeans as well as to Natives. He (Mr. Harington) did not think that the Bill was obnoxious to this charge. The Honorable Member for Bombay had shown very clearly that, in so far as that Presidency would be affected by the operation of the Bill, its character was progressive, not retrogressive. The same remark, he believed, was equally applicable to the Presidency of Madras. It also applied to the Punjab and Oude. The Honorable and learned Judge had admitted that in very many cases the punishment of flogging might be inflicted on Europeans.

SIR CHARLES JACKSON here explained that, while he had admitted that the law was so, he had also stated that, although he had been twelve years in the country, he knew of no instance in which the punishment of flogging had been inflicted on a European.

MR. HARINGTON resumed—The present Bill would make no alteration in the law in this respect. It did not say that every European or other person convicted of any of the offences specified in the Bill should be flogged, but merely declared that the punishment of flogging might be awarded for those offences, which was just what the existing law did. The Honorable and learned Judge had not specified the offences for which, under the Act of George the Fourth, corporal punishment might be awarded, whoever was the offender. The Honorable and learned Vice-President had, however, pointed out that, under the Act referred to, most of the offences described in the Bill were punishable with flogging, and forgery was the only one of those offences which he had mentioned as not so punishable.

THE VICE-PRESIDENT begged, in correction of what he had before stated, to explain that, on referring to the 9th Geo. IV. c. 74, he found that forgery was one of the cases in which flogging might be awarded.

MR. HARINGTON proceeded to observe that this made his case all the stronger, and furnished an additional argument in favor of the present Bill, as showing that, even in so far as Europeans were concerned, it was not of a retrograde character. It must be borne in mind that the Bill proposed no alteration as to the Tribunals by which offences were to be tried. Offences punishable with corporal punishment by the Supreme Court would continue to be tried by that Court, any thing in the present Bill notwithstanding. It was not alleged that the discretionary power vested in the Judges of the Supreme Court in respect to the punishment of flogging had been abused, and there was no ground for apprehension that it might be abused under the present Bill. The same Judges who administered the existing law would administer the law now proposed to be introduced. In the Presidency of Bengal, beyond the limits of the Town of Calcutta or in what were called the Regulation Provinces, corporal punishment had, as he had mentioned on a former occasion, been abolished by a law which was passed so far back as the year 1834, and in so far therefore as the Lower and Upper Provinces of the Presidency of Bengal were concerned, it must be admitted that the present Bill was retrogressive; but while the law to which he had just referred abolished corporal punishment in some parts of the Bengal Presidency, it left it to be administered in the Presidencies of Madras and Bombay and in the three Presidency Towns, and as he had previously stated the partial abolition of the punishment in those parts of the country to which the abolition extended, had always been considered impolitic and of questionable propriety. He heartily concurred in what had fallen from the Honorable and learned Judge as to the duty which rested upon them in legislating for this country, not to reduce the European to the level of the Native, but to raise the Native to the level of the European. Unfortunately, however, this was not always possible in the case of the Natives, and they often found themselves pre-

cluded from passing laws in this country which, if they had only the more civilized classes to legislate for, they would very readily adopt. He quite agreed with the Honorable and learned Vice-President that, if the Presidency Towns alone had now to be considered, there would be no necessity for the present Bill; but they were legislating for all India, and for the numerous races and classes scattered throughout the country, in respect to a great portion of whom it seemed to be generally admitted that corporal punishment would, in its effects, not be more demoralizing than imprisonment in a Criminal jail, and that in a very great many cases it would be not only a more humane but a more effectual punishment. With regard to what had fallen from the Honorable and learned Judge as to the expediency of confining corporal punishment to second and subsequent convictions, he would only observe that the object aimed at in the present Bill was as much as possible to save certain classes of offenders from the contaminating influences of a Criminal jail, from which those who were confined therein generally came out worse characters than when they entered the jail. If the suggestion of the Honorable and learned Judge were adopted, the effect would be that a person on his first conviction would be subjected to the pernicious influences just mentioned, and, on a second conviction, he would be flogged in order that he might not again be sent to jail. These were the only remarks with which he would trouble the Council; but he must express a hope that the Bill would be allowed to be read a second time. This would be followed by its publication, which would give the local authorities and the public the opportunity of expressing their opinions on the various provisions of the Bill, and the opinions thus received would be considered in Committee, and any alterations could then be made in the Bill, which might be deemed advisable.

Mr. Harington

The question being put, the Council divided :—

Ayes 7.	*No* 1.
Mr. Erskine.	Sir Charles Jackson.
Mr. Sconce.	
Mr. Forbes.	
Mr. Harington.	
Mr. Beadon.	
Sir Bartle Frere.	
The Vice-President.	

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

CIVIL PROCEDURE.

The Order of the Day being read for the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)"—

MR. HARINGTON said, in moving the second reading of this Bill, he had to express regret for the delay that had taken place in the printing and circulating of the Bill and the Statement of objects and reasons. He believed that these papers had not reached Honorable Members until late the evening before last. The delay in their circulation had arisen partly from the holidays and partly from the quantity of other work of a more pressing nature in the hands of the printer. He would only add that, if any Honorable Member desired further time to consider the Bill before giving a vote on the Motion for the second reading, he was very willing to defer his Motion until the next Meeting of the Council.

At the suggestion of the Vice-President, the Motion was accordingly postponed.

LAND FOR PUBLIC PURPOSES.

MR. FORBES moved that the Council resolve itself into a Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)"; and that the Committee be instructed to consider the Bill in the amended form in which the Select

Committee had recommended it to be passed.

Agreed to.

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

ADMINISTRATION OF JUSTICE IN THE SUPREME COURT (BOMBAY).

The Order of the Day being read for Mr. Erskine to move a suspension of the Standing Orders, to enable him to carry through its remaining stages forthwith the Bill "for the improvement of the administration of justice and despatch of business in the Supreme Court of Judicature in Bombay"—

MR. ERSKINE said that he had explained at the last Meeting of the Council that this Bill would not be fully efficacious, unless it were at once passed through its remaining stages; and as it had been framed by the Judges themselves at Bombay, and recommended by the local Government there, and had received the sanction of the Supreme Government, and been quite unopposed in the Council, he apprehended there could now be no objection to the suspension of the Standing Orders, with a view to the Bill being at once proceeded with. He should therefore make the Motion of which he had given notice.

SIR CHARLES JACKSON seconded the Motion, which was put and carried.

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

Agreed to.

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

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

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

MR. ERSKINE moved that Mr. Beadon be requested to take the Bill to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

FLOGGING.

MR. HARINGTON moved that the Bill "to provide for the punishment of flogging in certain cases" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, Mr. Erskine, Sir Charles Jackson, and the Mover.

Agreed to.

STAGE CARRIAGES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to the Select Committee on the Bill "for licensing and regulating Stage Carriages."

Agreed to.

MUNICIPAL ASSESSMENT (RANGOON, &c.)

MR. FORBES gave notice that he would, on Saturday next, move the first reading of a Bill to introduce the Municipal Acts into the Towns of Moulmein, Rangoon, Tavoy, and Mergui.

The Council adjourned.

Saturday, January 12, 1861.

PRESENT:

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

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq.,
Hon'ble C. Beadon,	C. J. Erskine, Esq.,
Hon'ble S. Laing,	and
H. B. Harington, Esq.,	Hon'ble Sir C. R. M.
H. Forbes, Esq.,	Jackson.

MUNICIPAL ASSESSMENT (RANGOON, &c.).

MR. FORBES moved the first reading of a Bill "for extending certain provisions of Acts XIV and XXV of 1856 to the town and suburbs of Rangoon, and to the towns of Moulmein, Tavoy, and Mergui, and for