Saturday, June 22, 1861

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who was to pay for it, if payment were necessary.

After some conversation, an amendment was carried, requiring the Court to "cause *the Magistrate* to summon" the Jurors; and after some further amendments, the Section was passed.

Sections 281 and 282 were passed after amendments.

Sections 283 to 286 were passed as they stood.

Section 287 provided for the names of Jurors being called, &c.

MR. SETON-KARR said that the decision of the Court should be final on the objections raised, and that words to that effect should be inserted in the Section.

The suggestion was adopted, and some further amendments were carried incorporating Sections 287 and 288 into one Section.

Section 289 specified the grounds on which objection might be taken to a Juror, the second and fourth of which were as follows :—

"(2.) Relationship to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused."

"(4.) Any circumstance that shows either prejudice against or favor to either of such persons."

MR. SETON-KARR asked if the word "relationship" was intended to comprise connections by marriage.

After some conversation, the second Clause was omitted, and the fourth Clause was amended as follows :—

"Any circumstance which in the judgment of the Court is likely to cause prejudice," &c.

Sections 290 to 292 were passed as they stood.

Section 293 related to the mode of summoning Jurors when the accused person belonged to one of the specified races.

After some amendments, the further consideration of the Section was postponed.

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

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

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

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

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

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

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

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

The Council adjourned.

Saturday, June 22, 1861.

PRESENT:

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

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

BREACH OF CONTRACTS.

THE CLERK reported to the Council that he had received a Petition from certain inhabitants of Bhownugger in Zillah Ahmedabad in the Presidency of Bombay against the passing of a law relating to Breaches of Contract, and had certified that the Petition was not framed in accordance with the Standing Orders, forasmuch as it did not conclude with a distinct prayer.

CATTLE TRESPASS.

THE CLERK presented a Petition of the British Indian Association con-

cerning the Bill "to amend Act III of 1857 (relating to Trespasses by Cattle)."

MR. HARINGTON moved that the above Petition be printed.

Agreed to.

INCOME TAX.

THE CLERK reported to the Council that he had received two communications from the Financial Department forwarding certain papers from the Bombay and Straits Governments, suggesting amendments in the Income Tax Act (XXXII of 1860).

SIR BARTLE FRERE moved that the above communications be printed.

Agreed to.

EMIGRATION (SEYCHELLES.)

THE CLERK also reported that he had received a communication from the Home Department on the subject of Emigration to the Seychelles Dependencies of the Mauritius Government.

MR. FORBES moved that the above communication be printed.

Agreed to.

FINES FOR RIOTS.

THE CLERK also reported that he had received a communication from the Bengal Government forwarding certain papers in further illustration of the necessity of a law for fining communities for riots.

MR. SETON-KARR moved that the above communication be printed.

Agreed to.

MR. FORBES presented the Report of the Select Committee on the communication from the Madras Government regarding the levy, in certain cases, of a fine on the Town, District, or Division in which a riot or pillage is committed.

BENGAL MILITARY ORPHAN SOCIETY.

SIR CHARLES JACKSON moved the first reading of a Bill "to amend Act XXI of 1860 (for the Registration of Literary, Scientific, and Charitable Societies.)" He said that the object of this Bill was to relax the stringency of one of the provisions of Act XXI of 1860, so as to permit the Bengal Military Orphan Society to register itself under that Act. The Bengal Military Orphan Society was a Charitable Society, consisting of 3156 Members, all Officers of the Bengal Army. It was very anxious to register itself under that Act as the only means of suing to recover debts due to it. It had a large printing establishment and large outstandings, and he was sorry to say that there were many persons, who, taking advantage of the inability of the Society to sue, refused to pay their just debts. When this Act was passing through the Committee, he had communicated with one of the Managers, Captain Lees, and asked him to see if the Bill was altogether suited to the circumstances of the Society. He proposed some slight alterations which were adopted, and thought it would work well. But it turned out to be otherwise. The Society had proceeded to get, according to the provisions of the Act, the assent of three-fifths of their number. They succeeded in getting the assent of 1310 Members, which was less than the required number of three-fifths by about 500. Many of the Officers composing the Society were scattered all over Europe and other parts of the world, and the Society had found it impossible to get the assent of three-fifths of their number. The Society was a very useful Society, and one which was well deserving of the support and encouragement of this Council. There was no doubt that it would suffer very large pecuniary loss if it were not allowed to be registered under this Act. Now the constitution of the Society seemed to be peculiarly favorable for the exercise of some indulgence in its favor, as the governing body was an elected body chosen by the different Divisions of the Army, each of which elected a representative resident in Calcutta. Besides these there was a Governor and a Deputy-Governor, and these formed the managing body. He thought that, if the

assent of the Governor and Deputy-Governor and the managing body were taken, that would be all that was necessary, and the Bill was prepared accordingly.

The Bill was read a first time.

GOVERNMENT SEAL.

MR. ERSKINE moved the first reading of a Bill respecting the use of the Government Seal. He said that it would not be necessary to offer more than a few words of explanation regarding the scope and object of this Bill. The Act of 1838 relative to coasting vessels in the Bombay Presidency, provided that every vessel engaged in the coasting trade there should be registered—that a certificate of such registry should be furnished to every owner of a coasting vessel—and that every such certificate should be sealed with the seal of the East India Company. Some time ago a large number of these certificates was forwarded by the Commissioner of Customs in Bombay to the Secretary to Government, in order that they might be sealed as usual. The anomaly then became apparent of requiring that the seal of the East India Company should be affixed on behalf of the Government to public documents after the connection of the Company with the Government had entirely ceased. A reference was therefore made on the subject to the Solicitor to the Government, who advised that the certificates would not apparently have full legal validity unless they were sealed with the seal specified in the law—and that there seemed to be no legal objection to the continued use of that seal for this purpose. At the same time, he suggested that it would be more seemly and convenient that the use of this seal should be formally discontinued, and that an alteration of the law should be obtained. He pointed out that as such an enactment need in no way affect any use of any seal ordered by English Statutes—or, at all events, by any recent English Statutes, such as those of 1858 and 1859, relative to the execution of contracts and issue of securities—it would be competent to the Legislature in this country to effect all that was required. The papers had, therefore, been forwarded from Bombay in order that the Council might be moved to make the requisite alteration in the law. Before making a Motion on the subject, however, it had seemed to him desirable to ascertain whether any similar difficulty had arisen on this side of India, and how it had been met. A reference on that subject had therefore been made through the Secretary to the Government of India—and from his reply it appeared that the question had not been raised here. With his reply, however, the Secretary forwarded an opinion of the learned Advocate-General, in which he expressed concurrence in the views of the Solicitor to Government in Bombay; and advised that an emendatory Act should be obtained, the operation of which—due care being taken not to affect contracts and securities of the kind described in the Acts of Parliament above referred to—should be general, to all parts of this country and to all Indian laws applying to any part of it. In accordance with that advice the present Bill had been framed; and it merely provided that whenever by any Regulation of a Local Government, or by any Act of the Governor-General of India in Council, it was provided that the seal of the East India Company should be affixed on behalf of Government to any document, it should henceforth be lawful on behalf of any Local Government to apply in lieu thereof a seal bearing the designation of such Local Government, and on behalf of the Supreme Government a seal bearing the designation "Government of India." This was the sole object of the present Bill, and he need not therefore longer detain the Council in connection with it. He begged to move that it be read a first time.

The Bill was read a first time.

SETTLEMENT OF ENAMS (BOMBAY).

MR. ERSKINE moved the second reading of the Bill "to facilitate the

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

THE VICE-PRESIDENT begged to say that he had not time, since this Bill had been read a first time, thoroughly to study the provisions of the Bill and the papers which had been printed. He should therefore ask the Honorable Member for Bombay, if he had no objection, to let the second reading of the Bill stand over until Saturday next.

MR. ERSKINE said, it was impossible to decline compliance with the request made by the Honorable and learned Vice-President on the ground just stated. The Bill was no doubt an important one, and it was desirable that every Honorable Member should have full time to consider it before he was asked to express an opinion on the subject. He regretted that the printing of the Bill and its accompaniments had not been completed in time to admit of their earlier distribution, and he might take that opportunity of adding that if, on perusal of the printed papers, any Honorable Members should desire further information on any point, or should wish to refer to any other documents in his possession, he should be glad to meet their wishes in as far as it was in his power. At the same time, as the Government of Bombay was very anxious that this Bill should be settled as speedily as possible, he trusted that Honorable Members would be in a position to proceed to the second reading on Saturday next.

MR. FORBES said, he had intended to ask the Honorable Member who had introduced this Bill for some further information than was contained in the Statement of objects and reasons annexed to the Bill. That Statement occupied but five or six lines of print, and referred to the speech with which the Bill was brought in. It was usual, he believed, to state explicitly and concisely in the Statement of objects and reasons, the grounds of any measure, and the objects sought to be obtained by its enactment. But the Statement of objects and reasons annexed to this Bill merely referred to the speech with which it had been introduced; and however ably that speech expressed the views of the Honorable Member, and however attentively Members might have listened to the speech, he must say that it was impossible for Honorable Members to bear in their memories all the particulars of a measure as given in a speech of some considerable length rather rapidly delivered. Moreover, the papers which had been printed in the annexure gave no information as to the grounds on which the measure was introduced, but contained only some merely verbal criticisms by the Legal Remembrancer at Bombay and the Revenue Commissioner of the Southern Division on the different Clauses in the several Draft Acts which had from time to time been prepared. There were, he believed, some very interesting papers on record, particularly some valuable Minutes by the Members of Government, which might probably be circulated among the Members of the Council, although it might be inexpedient to print them; and he thought it very desirable that, in a Bill of so much importance as the one now before the Council, all the information available should be placed at the disposal of Honorable Members. He would therefore express a hope that, before the Bill was further proceeded with, the papers which were at the disposal of the Honorable Mover of the Bill would be shewn to the Members of the Council.

SIR BARTLE FRERE said, he thought it was very possible that his Honorable friend the Member for Bombay had, through an over-abundance of information, been led to adopt the course to which exception had been taken. The subject was one which had for the last twenty-five years occupied an unusual share of the attention of the Bombay Government. It had not only occupied the servants of Government in all departments; but it had been the subject of continual and very ex-

haustive discussion in the newspapers. The difficulty of a person whose attention had been directed to the subject so long and so earnestly, would be in knowing what papers were to be printed and what to be excluded. He believed this had been the case with his Honorable friend, and he (Sir Bartle Frere) confessed to a feeling of admiration of the manner in which he had managed to compress, into so very short a space as he did, in his speech with which he introduced this Bill, the history of the measure and what was desired to be done. However, nothing was more reasonable than the request expressed by the Honorable Member for Madras, and he (Sir Bartle Frere) need not say that whatever papers on the subject of the Bill were in the possession of the Government of India in the Home Department, would be at the disposal of Honorable Members.

MR. SETON-KARR would wish to know whether there was any objection to the production of the Minute of His Excellency the Governor of Bombay of 31st of October 1860. He asked in ignorance, but seeing that Minute referred to as important in a memorandum by the Secretary to Government, he was led to believe that it might contain a summary of the matter under discussion, and as such, with any other selected papers, it might afford the Council the means of arriving at a sound opinion on the subject.

MR. ERSKINE said, he must add a few words to the statement which had been made by his Honorable friend opposite (Sir Bartle Frere.) It was in order especially to anticipate the objection which he had understood the Honorable Member for Madras to entertain to the selection of papers printed with the Bill, that he had stated distinctly before that all papers on the subject which were in his possession were quite at the service of the Honorable Member, and of any Honorable Member who might wish to see them. With reference to the remark of the Honorable Member that the Statement of objects and reasons did not explain the considerations which led the Government of Bombay to conclude that a summary settlement of this question was necessary, he (Mr. Erskine) must repeat, in the first place, what had been stated by his Honorable friend opposite, that it would have been impossible to compress into any reasonable limits a precis of the long discussions which had taken place on that subject; and, in the next place, that he had believed the nature of those discussions and their results to be so generally understood as to render a re-statement of them unnecessary. He had believed that, not only in the Presidency of Bombay, but also in that of Madras, the circumstances which rendered it most inexpedient, and to some extent impracticable, to prolong the system of enquiries formerly enforced in Enam cases, had been thoroughly well known. The objections to a continuance of that system had been publicly urged, not only in this country, but also in Parliament, where the difficulties had been openly recognised. Those difficulties were appealed to in strong terms by the late Governor of Madras when he was arranging not long ago a new Enam settlement for that Presidency; and he had then quoted the announcement made in Parliament that the Home Government had been on the point of forbidding authoritatively the continuance of the Commission system inMadras. It had seemed to him (Mr. Erskine), therefore, that the main question on which the Council would desire information, was not whether a summary settlement of some kind was now desirable, but what were the terms on which an equitable settlement of that kind could be effected? These were the reasons why the statement that appeared with the Bill was so brief. He trusted that no Honorable Member had regarded that brevity as an indication of any want of courtesy or attention to the convenience of Honorable Members, which certainly was not the case. He begged to move that the consideration of the Bill be postponed until Saturday next.

The Motion was carried, and the consideration of the Bill accordingly postponed.

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 on the Bill.

THE CHAIRMAN said, the Clerk of the Council was requested last Saturday to prepare a Clause in lieu of Section 293, and had done so. He begged to move now that that Clause, which was as follows, be substituted for Section 293 :—

"When a trial is held in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of Section 269 of this Act, the Court of Session shall, three days at the least before the day fixed for holding such trial, cause to be summoned in the manner prescribed in Section 280 such a number of jurors of the races mentioned in Section 269 as is equal to the total number of jurymen required for the trial if so many of such races be on the jury list of the district. The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of other persons shall have been summoned for jury trials at that Sessions. The names of the persons to be summoned shall be drawn by lot, excluding those who have served within six months unless the number cannot be made up without them. From the whole number of persons returned, the jurors who are to constitute the jury shall be taken by lot in the manner prescribed in Section 286, until a jury containing the proper number of the races mentioned in Section 269 or a number approaching as nearly thereto as possible, has been obtained. The jurors shall be liable to the same objections as any other jurors. If a jury containing the requisite number of the races mentioned in Section 269 be not obtained, the accused person may elect to be tried by the Judge with the aid of assessors, otherwise he shall be tried by the jury obtained by the means aforesaid."

Agreed to.

The postponed Section 271 provided as follows :—

"In a trial by jury before the Court of Session, in which a person not belonging to the races specified in Section 269 shall be tried either alone or jointly with any person belonging to either of such races, one-half of the jury, if the accused person who does not belong to either of such races desire it, shall consist of persons not belonging to either of such races."

THE CHAIRMAN said that, in consequence of the alteration in Section 293, some alteration was necessary in Section 271. He proposed to move the following new Sections in lieu of Section 271 :—

"In a trial by jury before the Court of Session in which a person not belonging to the races specified in Section 269 shall be tried, one half of the jury, if the accused person desire it, shall consist of persons not belonging to either of such races.

In any case before the Court of Session in which a person not belonging to the races mentioned in Section 269 is charged jointly with a person belonging to one of those races, and such last mentioned person claims to be tried by a jury consisting of at least half Europeans or Americans, the person not belonging to either of such races shall, if he desire it, be tried separately."

MR. HARINGTON said, the only objection he saw to the amendment was that it might sometimes lead to a conflict of judgments. If a European and a Native, jointly accused of an offence, were tried separately, according to the latter of the proposed Sections, both trials would be held before the same Judge, who would be bound by the verdict of the Jury in the case which must be tried by Jury, though that verdict might be contrary to his own judgment, while in the case, which would be tried with the aid of Assessors, the decision would rest entirely with the Judge, and he might acquit or convict as he thought proper, though in the other case he had been compelled to do just the reverse on precisely the same evidence.

THE CHAIRMAN said, there could be no objection in that. It would be the same as trying two parties jointly concerned in an offence, but apprehended at different times. If both could not be apprehended at the same time, the trial of the one who was apprehended would not be postponed until the other was apprehended. But whatever the opinion of the Council might be with regard to his amendment, the Sections proposed by him, if carried, would of course be passed subject to

the decision that might be come to on the amendment proposed to be moved by the Honorable Member of Government (Sir Bartle Frere) with regard to Section 269.

MR. HARINGTON said, he had merely suggested the objection.

MR. SETON-KARR suggested that the amendment of the Honorable Member of Government (Sir Bartle Frere) should be first considered.

SIR BARTLE FRERE then moved the omission of Section 269, and the substitution of the following new Section :—

" Criminal trials before the Court of Session in which any person not being a native of India is the accused person or one of the accused persons, shall be by a Jury of which at least one half shall consist, if such accused person so desire it, of persons who are of race or origin as nearly as may be similar to the accused, if so many persons of such race or origin are on the jury list of the District."

MR. FORBES said, the difficulty which he felt in agreeing to this amendment was that it seemed to him it would be almost impossible in practice to carry it out. It would be difficult to decide which was the class of persons most nearly similar in race or origin to the person who might be accused. Supposing an accused person in the Mofussil were a Malay or Chinaman ; what class of persons would be most nearly of the same race or origin? Would it be Englishmen, Hindoos, or Mahomedans? Supposing the accused were an African negro ; who would be considered most nearly of the same race or origin? Suppose he was an Affghan, (and it was well known that many of that race came in the cold weather to the North-Western Provinces, for the purpose of trade); who was to decide the class of persons most nearly similar to an Affghan in race or origin ? He had read a book written to prove that the Affghans were identical with the lost tribes of Israel, and it would, under this Section if it passed, be incumbent on the Judge to decide whether this supposed origin of the Affghans was true, and to try the accused by a Jury of Jews ; or whether it was erroneous, and in that case to declare what class of persons were most similar to the accused in race and origin. It was because he believed that several difficulties of a similar nature would be sure to arise, that he thought it useless to pass a Clause which it would be impossible to put into practice.

MR. HARINGTON said, he too had an objection to the proposed amendment of a somewhat similar character to that mentioned by the Honorable Member for Madras, but his objection applied to an earlier part of the Section, though he should be glad to know in what sense the word " origin" to which the Honorable Member for Madras had taken exception, was used. He objected to the words " not being a native of India." He wished some definition of those words in order that it might be clearly understood who were to have the benefit of the Section and who were to be excluded therefrom. One born in any place was said to be a native of that place, but he apprehended that that was not what was intended by the Section, because such a definition of the words which he had quoted, would exclude many persons to whom he understood it to be the wish of the Honorable mover of the amendment to give the benefit of the Section.

MR. ERSKINE said, there was one other point, on which he had no doubt his Honorable friend (Sir Bartle Frere) would be able to afford some explanation. The Local Government were to become empowered to extend the system of trial by Jury to any district they thought proper. It was not at once to take effect everywhere. He did not therefore see why trial by Jury should be made compulsory in all cases where the deceased person was not a native of India, without reference to the district in which the trial was held.

SIR BARTLE FRERE said, there were two points which, he thought, had perhaps be better cleared away in starting. One was as to the general question of trial by Jury. He did not see why every criminal trial for a serious offence should not be by a Jury.

The Chairman

The other point was, that many of the objections which had been taken would be met if the power to claim trial by Jury were left to be claimed by the person put upon his trial. His Honorable friend the Member for Madras had asked why Malays, Chinese, African Negroes, or Affghans should be tried by Jury and by what kind of Jury should they be tried. He (Sir Bartle Frere) would answer this question by asking why the classes specified should not be tried by a Jury? As he said before, it was next to impossible that they should limit the privilege to Europeans and Americans without excluding people of British Colonies who had the same right as British subjects to claim trial by Jury, and who should not be deprived of that right when they came here. But it was impossible to define them in any way which should not include the tribes specified by the Honorable Member for Madras. If any better definition could be offered, he (Sir Bartle Frere) should be ready to adopt it. It was very easy in common parlance to say that this man was a European, and another a native, but it was not so easy to define the difference in legal language. He held in his hand a very able opinion given by the Advocate-General some years ago as to what constituted a man a British subject, and what an European British subject. It appeared that the slightest trace of legitimate British blood after the country came under the direct management of the crown, would suffice to prove British descent and to constitute a man a British subject. This period would carry them very far back in Bombay, which came into the possession of the British Crown about two hundred years ago. It must be remembered that this was not a Code to be in force for the next ten or twenty years only. Its operation might be continued for a century. Consider the great amount of intercourse which would certainly within the next twenty years exist with Australia, the Islands in the Indian Ocean, Africa, and elsewhere. Why, in ten or twenty years you would probably have a large population at our seaport towns, of men who were rather Australians or Africans than Europeans or Americans. Then came the difficulty with which his Honorable friend the Member for Madras had started, as to Malays, Chinese, and Affghans. Now, he (Sir Bartle Frere) did not think that they should be deterred from doing what was reasonable for a large class of the community in the Colonies, because the same right might be given to Chinamen and others. But his Honorable friend said, there was the difficulty of saying of what race or origin should be the persons who were to be on the Jury.

MR. FORBES said, if the proposed Section had said "of the same race or origin if persons of such race or origin are on the Jury list of the District," it would have been a different thing; but it said "of race or origin as nearly as may be similar to the accused," and the difficulty would consist in deciding which race, of several different races residing at one place, was most nearly similar to that of the accused party.

SIR BARTLE FRERE said, if the accused were a Chinaman or a Malay, and there were Chinese or Malays on the Jury list, they would get Chinese or Malays. If there were not, they would get a Jury as nearly as possible answering the same end of having some men on the jury who were of race as near as might be similar to the accused. But these were simple matters which, in working a provision of this sort, would not, he thought, be found an obstacle to the great object intended to be secured. He thought he had already noticed the objection of his Honorable friend the Member for Bombay.

MR. ERSKINE said, perhaps he had not sufficiently explained his objection. It was an objection not to the amendment only, but also, he admitted, to some extent to the Section as it originally stood. Supposing, for instance, that in some remote district in which trials were generally conducted by a European Judge and not by Jury, an unknown native of some foreign country were brought up to be tried for any offence; he must in all cases be

tried by a jury. He might claim that one-half of the Jurors should be of his own race if so many could be found. But even if none of his own race should be found, he must be tried by a Jury, and not by the European Judge. He was not prepared to say that this would always be regarded as an advantage.

SIR BARTLE FRERE said, he could not admit that it was any objection that a man should be tried by a Jury in a case of that kind. For instance, an Affghan in Central India might claim to be tried by a Jury. For the same reason that you allowed a Jury to an American from California, he (Sir Bartle Frere) did not see why it should not be allowed to an Affghan or to any one else. As far as his own experience went, he must say that he felt it to be an enormous advantage to have the assistance of even a very inferior Jury, bound to hear the evidence of the witnesses, and to give a verdict in the case. Believing, therefore, that trial by Jury was a great privilege, and not seeing any difficulty, as many Honorable gentlemen seemed to see, in its extension, he was not at all afraid to make the provision general.

MR. HARINGTON said, the Honorable Member of Government seemed to think that a person born in Australia of European parents would not be entitled to the benefit of the Section as it now stood. He (Mr. Harington) would not undertake to say that this was a right construction; but assuming that it was, it would follow that the same construction of the Honorable Member's amendment would debar any European or American born in India of the benefit of that amendment, which clearly could not be intended. He preferred the Section as it stood, and thought that it was open to fewer objections than the amended Section.

THE CHAIRMAN said, he thought that the objections pointed out to the amendment were such that it would be almost impossible to get over them. The matter was one that required to be dealt with in such a manner as would make the Code practicable now, and without looking to the probability of the Code continuing in force for two or three centuries. If the Code should be found, within a quarter of a century or even one-eighth of a century, to require amendment, there would be no difficulty in amending it according to the circumstances which might then exist. He thought that, considering the difference between Europeans and Americans and Natives, it was nothing but fair to allow an accused person, if a European or American or Native, to claim to be tried by a Jury of which one half should be of his own race. But he certainly felt the force of the observations of the Honorable Member for Bombay. Now, the Act did not provide that all trials before the Sessions Court should be by Jury. But Section 268 empowered the local Government to extend the system to any District they thought proper. If the local Government should not exercise that power in any District, then he would not allow a prisoner, be he European or American, to claim to be tried by a Jury. He would give him trial by Jury only in Districts to which the system might be extended by the local Government. He would also in such cases entitle the prisoner to be tried by a Jury of half his race, if he claimed it; or if he did not so elect, then he would leave him to be tried by the Judge. If the prisoner declined to claim to be tried by a Jury at all, or if a Jury such as might be claimed by the prisoner could not be obtained, he (the Chairman) in that case also would leave him to be tried by the Judge with the aid of assessors. He must say, however, that he felt that very great difficulty would arise in carrying out the amendment now before the Council, and he should therefore vote against it. If it should not be carried, he proposed to move the substitution of the following new Section for Section 269 :—

"Criminal trials before the Court of Session in which a European (not being a British subject) or an American is the accused person or one of the accused persons, shall be by Jury, and in such case the Jury, if the accused person desire it, shall consist of at least one-half

of Europeans or Americans, if such a Jury can be procured. Provided that in any district in which the local Government shall not have ordered that all trials, or trials for all offences of the class within which the trial about to take place falls, shall be by Jury, the accused person may elect to be tried without Jury."

SIR BARTLE FRERE'S Motion being then put, the Council divided—

Aye 1.	*Noes* 6.
Sir Bartle Frere.	Mr. Seton-Karr.
	Sir Charles Jackson.
	Mr. Erskine.
	Mr. Forbes.
	Mr. Harington.
	The Chairman.

So the Motion was negatived.

THE CHAIRMAN'S amendment was then proposed.

MR. SETON-KARR said that he agreed entirely with what had been adduced by way of argument as well as by way of amendment by the Chairman; and that he merely wished to point out that it was desirable in the latter part of the amendment to provide that the Europeans, of whom the Jury might consist, might be European British subjects as well as Europeans who could not claim that privilege. It might be easy to collect a Jury of the former, but not so a Jury of the latter.

In accordance with the above suggestion, the words "whether British subjects or not" were inserted after the words "shall consist of at least one-half of Europeans," and the Section as amended was then passed.

SIR BARTLE FRERE proposed the insertion, after the word "American" in the foregoing Section, of the words "or a person of European or American extraction and born in any European Colony."

MR. HARINGTON said that if, as he understood, India was not a British Colony, a most respectable class would be excluded from the benefit of the proposed amendment. A country-born or Eurasian would not get the benefit of trial by Jury unless it happened that his father was a European British subject and he himself was born in wedlock. As an illustration of the effect of such a distinction, he would just observe that if a Native woman were taken to Australia and there gave birth to a boy, the father being a European but not married to the mother, the boy would have the benefit of the amendment because he was born in Australia, but not so if he were born in India. He would object to any distinction such as that which he had just noticed, and in the event of the amendment being carried he should be glad if a Clause could be introduced which would enable Eurasians to claim to be tried by Jury.

MR. ERSKINE said, the observation of the Honorable Member for the North-Western Provinces was one in which he concurred up to a certain point. It showed how difficult it would be to provide for all persons of mixed races. But he could not go the whole length of the argument of the Honorable Member; because, although it might be impossible specially to provide for persons of such races if born in this country, that would not be conclusive against a provision for similar persons who might be strangers to this country, and who on that ground might be proper subjects for a special privilege of this kind.

The amendment being put, the Council divided:—

Ayes 3.	*Noes* 4.
Sir Charles Jackson.	Mr. Seton-Karr.
Mr. Erskine.	Mr. Forbes.
Sir Bartle Frere.	Mr. Harington.
	The Chairman.

So the motion was negatived.

THE CHAIRMAN'S two new Sections in lieu of Section 271 (already noticed above) were then put and carried.

Section 273, as settled last Saturday, provided as follows:—

"If the Jury are unanimous in a verdict of guilty, the accused shall be convicted. If a majority of the Jury find a verdict of guilty and the Court concur in such finding, the accused shall be convicted. If only a majority of the Jury find a verdict of guilty, and the Court does not concur in such verdict, the accused shall be acquitted. If the Jury or a majority of the Jury find a verdict of not guilty, the accused shall be acquitted."

SIR CHARLES JACKSON said, he wished to call the attention of the Council to that part of the above Section which provided that "If only a majority of the Jury find a verdict of guilty, and the Court does not concur in such verdict, the accused shall be acquitted." He had been a party to that amendment; and he hoped he should not be considered infirm of purpose if he said that he now doubted the wisdom of that provision. When they abandoned the English law with respect to Juries and the old English number of twelve, the Council had wandered into a maze of experiments, and that must be his apology for his apparent vacillation. He doubted the policy of committing to a bare majority of a small Jury, like that of five for instance, the power of acquitting a prisoner. Every person who had to deal with Juries must know that generally one or two Jurors directed the whole Jury, and in this country, where we must be prepared for a great deal of bribery, corruption, and other external influences being brought to bear upon Jurors, he thought it necessary to be cautious. If one strong-minded man under such influence were on the Jury, how easily might he not persuade two or three other Jurors to find a verdict of acquittal? He thought it would be prejudicial to the administration of Criminal Justice if they allowed the opinion of a bare majority in so small a number to carry with it a verdict of acquittal. He proposed therefore to omit all the words from "If only a majority" to the end of the Section, and to substitute the following words :—

"It the Jury are unanimous in a verdict of not guilty, the accused shall be acquitted. If the Jury shall consist of five persons, and a majority of four find the accused not guilty; or if the Jury shall consist of seven persons, and a majority of five find the accused not guilty; or if the Jury shall consist of nine persons, and a majority of six find the accused not guilty; the accused shall be acquitted, and the Judge shall not receive a verdict of acquittal unless it be unanimous or found by such majority as last aforesaid."

MR. HARINGTON said, that the amendment proposed by the Honorable and learned Judge went in the direction which was so strongly advocated by him when the Bill was formerly before a Committee of the whole Council; and, regarding that amendment as a great improvement on the Section as settled on Saturday last, he was very willing to support it. The Select Committee, to which the Bill was originally referred, objected to allow a verdict of acquittal by a Jury to prevail under any circumstances against the conviction or judgment of the presiding Judge. In speaking in favor of the provision proposed by the Select Committee, he observed that there was a difficulty in making any other provision without giving a degree of power to Native Jurors, with which for the present at least, it was thought that they could not be safely entrusted. He had considerable doubts as to the expediency of the further Section about to be proposed by the Honorable and learned Judge, requiring a new trial to be held whenever the prescribed majority could not be obtained. He thought that new trials should be avoided as much as possible; they were very harassing to the witnesses, often operated unfairly towards the accused person, and were open to other objections. Instead of being the exception, as ought to be the case, he saw reason to fear that the practical effect of the rule proposed by the Honorable and learned Judge would be to make them the rule. He also felt great difficulty in accepting the proposition that, although the Judge might concur with the majority of the Jury in acquitting the prisoner, there must nevertheless be a new trial, unless the majority consisted of a certain number. He thought that if five out of nine Jurors acquitted the accused, and the Judge concurred in the finding of not guilty by that number of Jurors, his opinion should carry as much weight as the opinion of the remaining Juryman required to make up the majority of six Jurors out of nine to entitle the accused to an acquittal; and that in such case justice required, not that the accused should be subjected to a

new trial, which might result in his conviction, but that he should be at once acquitted and discharged.

SIR CHARLES JACKSON pointed out that in cases in which the Judge might not concur with the majority of the Jury, that majority being below the prescribed number, it would be, in fact, an expression of opinion on the part of the Judge that he thought the prisoner guilty. This would be very hard upon the accused, who must, when such was the case, undergo a new trial and be tried before the same Judge. The Jury upon the new trial might know what was the opinion of the Judge, and their verdict might be affected by that knowledge, and, at all events, the Judge would have committed himself as to the guilt of the prisoner. It was to avoid this that he had proposed the rule to which the Honorable Member for the North-Western Provinces objected.

MR. HARINGTON admitted there was much force in what had just been stated by the Honorable and learned Judge. He said it was a choice of difficulties, and perhaps upon the whole the rule proposed by the Honorable and learned Judge was the fairest and the least objectionable that could be adopted.

MR. SETON-KARR said that, when this question was before the Council last week, he partly agreed with, and partly differed from, the Honorable and learned Judge. As he now understood that the Jury system would work better with the proposed changes, and as the object of the amendment was only to facilitate the working of the Jury Act, and as it was also the avowed wish of the Council to introduce the part of the Code which related to Juries, by degrees into the country, and as he thought the amendment, having this for its object, was a safe and a cautious amendment, he would venture to give it his support.

THE CHAIRMAN said, he was disposed to concur in the amendment of the Honorable and learned Judge. He did not share in the apprehensions entertained by the Honorable Member for the North-Western Provinces that, if that amendment was adopted, it would give rise to many new trials or make them the rule instead of their being the exception. In the Supreme Court the Jury were required to be unanimous in their verdict, and if they could not agree in their verdict, a new trial was necessary; but such a contingency very rarely occurred, though of course it was much more likely to happen where a unanimous verdict was required than under the rule proposed by the Honorable and learned Judge. He admitted that the amendment was open to some objections, but looking to the circumstances of the country, he did not know that any better course than that proposed could be adopted.

SIR CHARLES JACKSON'S amendment was put and carried.

THE CHAIRMAN then said, he thought that a corresponding alteration was necessary in the first part of the Section, with this difference that, whereas the concurrence of the Judge was not necessary in a verdict of acquittal if it was unanimous or found by the majority specified in the amendment just carried, the concurrence of the Judge should be indispensable in a verdict of guilty. He should therefore move the omission of the first part of the Section and the substitution of the following words :—

"If the Jury shall consist of five persons, and a majority of four find the accused guilty, or if the Jury shall consist of five persons, and a majority of four find the accused guilty, or if the Jury shall consist of seven, and a majority of five find the accused guilty, or if the Jury consist of nine persons, and a majority of six find the accused guilty, the accused shall be convicted if the Judge concur in such finding. If the Judge shall not concur in such finding, the accused shall not be convicted thereon."

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

Section 294 provided as follows :—

"If, in the course of a trial by Jury at any time prior to the finding, any Juror shall, from any sufficient cause, be prevented from attending through the trial, or if any Juror shall absent himself, and it shall not be possible to

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

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

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

After some conversation the consideration of the Section was postponed.

Section 295 was passed as it stood.

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

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

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

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

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

POSTPONED ORDERS OF THE DAY.

The following Orders of the Day were postponed :—

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

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

Committee of the whole Council on the Bill "to amend Act XIV of 1843 (for regulating the Customs Duties in the North-Western Provinces)."

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

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

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

REGISTRATION OF ASSURANCES.

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

Agreed to.

The Council adjourned.

Saturday, June 29, 1861.

PRESENT :

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

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

BREACH OF CONTRACT.

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

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