

Saturday, August 13, 1859

**LEGISLATIVE COUNCIL
OF
INDIA**

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EXECUTION OF MOFUSSIL PROCESS
(STRAITS).

MR. LEGEYT moved that 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)" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

ELECTRIC TELEGRAPHS.

MR. LEGEYT moved that the Bill "for regulating the establishment and management of Electric Telegraphs in India" be referred to a Select Committee consisting of Mr. Forbes, Mr. Sconce, and the Mover.

Agreed to.

STANDING ORDERS COMMITTEE.

THE VICE-PRESIDENT moved that Mr. Harington be added to the Standing Orders Committee.

Agreed to.

The Council adjourned.

Saturday, August 13, 1859.

PRESENT :

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir J. Ontram,	H. Forbes, Esq.,
Hon. H. B. Harington,	Hon. Sir C. R. M. Jackson, and
P. W. LeGeyst, Esq.,	A. Sconce, Esq.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to continue in force until the end of the year 1859 Act XXVIII of 1857 (relating to the importation, manufacture, and sale of Arms and Ammunition, and for regulating the right to keep or use the same)."

POST OFFICE.

MR. HARRINGTON said, he was under the necessity of asking the Council again to allow him to postpone the motion (which stood in the Orders of the Day) for the first reading of a Bill to

amend Act XVII of 1854 (for the management of the Post Office, for the regulation of the duties of postage, and for the punishment of offences against the Post Office), as he found that the amendments proposed by the Director General of Post Offices required more consideration than from the pressure of other business he had been able to give them.

TRADES AND PROFESSIONS.

MR. HARRINGTON said, pursuant to the notice which he gave on Saturday last, he had now the honor to move the first reading of a Bill "for licensing trades and professions in India." In bringing in this Bill, he was sensible that he had undertaken a task of no ordinary difficulty, and he thought it not improbable that the Bill would meet with a very considerable amount of opposition, if not within these walls, certainly beyond them. But he trusted that, when the measure came to be fully considered, it would be found to be a wise and politic measure, and one which, in existing circumstances, the Government of this country was fully justified in adopting.

By some he should probably be told that it was opposed to sound principles of political economy to put a tax upon trade or upon the profits arising from trade, but he considered that the English property tax was a sufficient and conclusive answer to any such objection. What was right in principle in England as regarded a measure of this nature, could scarcely be wrong in principle here. The English Act said that—

"Upon the annual profits or gains arising or accruing to any person residing in Great Britain from any kind of property whatever, whether situate in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence; and upon the annual profits or gains arising or accruing to any person residing in Great Britain, from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in Great Britain or elsewhere, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence.

"And upon the annual profits or gains arising or accruing to any person whatever, whether a subject to Her Majesty or not, although not resident within Great Britain,

from any property whatever in Great Britain, or any profession, trade, employment, or vocation exercised within Great Britain, there shall be charged yearly, for every twenty shillings of the amount of such profits or gains, the sum of seven pence."

Others might say that, in practice, the measure would operate unequally and partially, and would affect certain classes only, who could not with justice be taxed in the manner proposed, while others were exempt; others again would perhaps say that, although there was nothing objectionable in the principle of the Bill, in carrying out its provisions any approach to a fair or proportionate assessment would be almost impossible, and the consequence would be endless heart-burnings and very wide-spread dissatisfaction. These and other objections which were likely to suggest themselves to different persons, he should endeavor to answer in the course of the remarks with which he considered it necessary and proper to trouble the Council before the motion which he had made was put from the chair.

Though the title of the Bill did not disclose the real purpose for which it was introduced, he did not think he should take Honorable Members or the public at large by surprise, when he mentioned that the sole and entire object of the Bill was to augment the public revenue. The licensing of trades and professions was certainly not required for Police purposes, or for the convenience of the public. It was not pretended that the system of allowing all persons to carry on any trade or profession they pleased, supposing the same to be lawful in itself, without let or hindrance, and without any interference or supervision on the part of the Government, had been productive of any public inconvenience or injury so as to call for the intervention of the Legislature, or the imposition of any restrictions. It was not on that ground that it was proposed to require by law that all trades and professions should be carried on for the future under the sanction of a Government license. He repeated that the sole object of the Bill was to open up a new source of public revenue. That, then, was the object of the Bill. The necessity for the Bill was to be found in the present financial condition of the

country. To establish this necessity it was only necessary for him to refer to the full and lucid statement which was made not many months ago in that Chamber by His Excellency the Right Honorable the Governor General, in introducing the Bill to alter the rates of Customs Duties on goods imported or exported by sea. In that statement His Excellency took them back to the time (and the interval was not a very wide one, extending over a period of little more than two years) when by good government and by a prudent economy the revenue of India very nearly equalled the expenditure, the difference being only eighteen lakhs. His Excellency took them back to the time when, to quote his own words,

"The Government had almost touched the point at which, amongst States as amongst individuals, all who desired to administer their financial concerns with honesty and safety, must aim—namely, a balance of expenditure with revenue. It saw before it an early opportunity of being able to prosecute large works of material improvement, without either increasing the burdens of the people, or anticipating the resources of its own successors, on whom the future administration of the country should devolve.

"This was a prospect to which he had looked forward eagerly. But it was not permitted to him to realize it. The new financial year was little more than a week old when the spark fell which lit up a conflagration, the embers of which were now and only now dying out. That was no longer the time to talk of balance sheets. Every hand, and heart, and brain, were needed for the struggle. We have now risen from that struggle, our honor vindicated, our power secured, and our character, as masters merciful in our strength, not, he ventured to hope, unworthily maintained. But we had risen with resources drained; in the opinion of some, though he did not share in that opinion, with resources well nigh exhausted; and it was incumbent upon the Government to increase the revenue by the readiest and soundest means which it could devise."

His Excellency then proceeded to show how rapidly a deficit of only eighteen lakhs had been increased to the enormous sum of 817 lakhs, and he expressed his fears, which had proved too well founded, that, at the end of the current commercial year, that is, on the 30th April last, the deficit would exceed the enormous sum of 1,300 lakhs of Rupees.

"To meet this expenditure," His Excellency went on to say, "the Government had

been compelled to have recourse to exceptional resources. By debentures in England, in the course of the past year, eight millions sterling had been raised. By the loan of last year in India, counting from the opening of it to the present day, namely, twenty-two months—the amount raised was 914 lakhs. These two sums together did not meet the expense of which he had just spoken. But the expense was met within a very trifling sum from the excess which existed between the cash balance in May 1857 and the cash balance in May 1858. The difference between these two balances amounted to 414 lakhs, and that sum, joined to the two sums raised by loan in England and India, very nearly came up to the full amount of the expenditure he had mentioned, including in this the estimated deficit of the current year. Now, whatever might be done by loans and whatever might be the opinions held as to the loans which had been levied, and as to the extent to which they should be raised in England or in India respectively, and there was a difference of opinion on those points—it was incontrovertibly the fact that, come the loan from where it might, the Government of India must find the interest for it. On that ground alone he asked the Legislative Council to give their assent to this Bill. It was the duty of the Government to provide at once for the payment of the interest that would be required by increasing the revenue by every means within its reach which sound policy would allow; and of all such means he knew of none which would be less injurious to public or to private interests than the proposed measure of raising the duties in the tariff."

This, then, was the condition of the finances of India at the close of the last financial year. In the short period that had since elapsed, it was not to be supposed that very much would be effected in the way of improvement, but he was happy to say that a good deal had really been done, and that the measures which had been adopted with a view to a strict economy in the administration of affairs and to increase the revenue had proved more successful than was anticipated; in proof of which he might mention that, while the deficit exhibited in the anticipation sketch estimate for 1859-60 was 724½ lakhs, the deficit for 1859-60, obtainable from the last rough estimate for July, was 684 lakhs, the difference being upwards of forty lakhs of Rupees.

It was of course impossible that this deficit, though little more than half what it was in the preceding financial year, could be permitted to continue. It could only be followed, and that speedily, by the most calamitous results, and it

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had therefore again become incumbent upon the Government to have recourse at once to means to equalize income and expenditure.

The question then arose, how could this best be accomplished? No doubt many would exclaim, diminish your expenses, bring them down with an un-sparing hand to the level of your income. That was, in truth, being done in every possible way and as rapidly as circumstances would admit. All Military and other appointments called into existence by late events, which could be dispensed with without public inconvenience, had been or were being reduced. Considerable reductions had been made in the numerical strength of the several Native Cavalry and Infantry Regiments, both regular and irregular. Many of the Police levies had been disbanded, and the strength of those which it was considered necessary for the present to retain had been reduced. Further considerable reductions in this Force might hereafter be found practicable, but their extent must depend in a great measure upon the decision which might be come to in England upon the important question of the re-organization of the Native Army of Bengal. The Council were aware that this question was now before Parliament, whose decision, or that of Her Majesty's Government at home, must be awaited before anything further could be done in this country. A Commission was now sitting at Bombay, composed of Officers from the three Presidencies, the object of whose appointment was to ascertain what reduction could properly be made in the Military Department, and what plan could be adopted to reduce and keep down expenditure. This Commission, after completing its enquiries at Bombay, would proceed first to Madras, and afterwards to Calcutta. A second Commission had been ordered to assemble also at Bombay, with a view to the institution of similar enquiries in the Naval Department of the public service, and in all branches connected therewith. It was no secret that considerable reductions had been proposed in the salaries of the Covenanted Civil Servants of Government throughout India, based upon the report of Mr. Ricketts, who was appointed some years

ago to revise the salaries of the Civil Establishments in the three Presidencies, and to propose such alterations therein, with a view to a reduction of expense, as he might consider proper. The proposed reductions might at once have been carried into effect by the Government in this country, but as the question was one of considerable importance, and as in its decision the Government at home had an interest nearly equal to that of the Government in this country, it was considered proper that the Home Authorities should be consulted on the subject, and that whatever was done should be done with their concurrence. The orders of the Home Government might shortly be expected, but in the meantime he might mention that the saving expected from this source amounted to less than eleven lakhs of Rupees per year. As a permanent measure, it was considered that reduction in this branch of the public service could not prudently or safely be carried further. He was sure all would agree with him that it would be a false economy to risk the efficiency of the Establishment, which would be the inevitable consequence of greatly underpaying it. Even as it was, he believed he was right in saying that one of Her Majesty's Ministers, who was greatly in favor of what was called the competition system, had lately stated in his place in Parliament that, although a great many very superior young men had entered the Indian Civil Service under the operation of that system, it had not produced all the fruits expected from it, and that the inducements which it offered were not sufficient to tempt out the best men from the two English Universities. What then would be the case if any considerable reduction in the emoluments of the service took place? Already he was informed that many who had come out under the new system were disappointed with their prospects, and thought that they might have turned their abilities and acquirements to better account at home. All new grants in aid of or for promoting education amongst the natives had been stopped, and this was perhaps one of the most painful parts of the economy which had been forced upon the Government by the extraordinary expenditure rendered necessary by the events of the

last two years. The measures which he had just described, either as having been already adopted, or as being in contemplation, would, he thought, show that the Government was in earnest, and that it was determined fearlessly and unflinchingly to do its duty by enforcing the most rigid economy in every branch of the public service consistently with a due regard to efficiency, which he need not remark included honesty no less than many other qualities. As regarded the Uncovenanted branch of the Civil Service and the European Officers of the Army, he did not think there was room for any great reduction in their allowances, certainly not in the lower ranks of the Army. The expenses of living had increased so greatly of late years that, what with their messes, bands, and uniform, Subaltern Officers, however disposed to be prudent and economical, found it very difficult to live on their pay and avoid debt. In the Uncovenanted branch of the Civil Service, here and there appointments perhaps existed, the salaries of which might be considered high even in India, and might admit of some reduction, but such appointments certainly constituted the exception, not the rule; and he should be extremely sorry to see any considerable reduction permanently made in the salaries of this class of Officers generally. These remarks applied more particularly to their native officials, scarcely one of whom was overpaid. In the lower branches it was notorious that the salaries, with reference to the duties to be performed and the temptation to which the Officers were exposed, were most inadequate, and there could be no doubt that, if the Government did its duty to those Officers, a very large additional expenditure would be the consequence, but this of course could not at present be thought of.

He passed on to notice the measures for improving the public revenue that had been adopted, or were in contemplation, or had been proposed. The first of these was the Act for raising the rates of Customs Duties on goods imported or exported by sea, to which he had already referred. This Act applied alike to Europeans and Natives, but as the articles liable to duty under it were, for the most part, used to a very

much greater extent by the European than by the Native population, the Act, there could be no doubt, pressed much more heavily upon the former than upon the latter class. That such would be its effect was foretold by His Excellency the Governor General, who remarked in the statement from which he had already quoted largely, that

“These charges would bear mainly on the European community, but he thought he might appeal to that community to submit ungrudgingly at a moment like the present to the increase which they would make to their burdens.”

He (Mr. Harington) laid much stress upon this point, in order that our native fellow-subjects might see that we had not shrunk from taxing ourselves as well as them, and that new taxation having become absolutely necessary, we began by taxing ourselves principally.

He would further remark, as a proof of the great anxiety that the Government had always felt to avoid as much as possible imposing any burden in the way of taxation on its native subjects, that, with exception to the trifling duty upon salt, a very large portion of the native community, including all the bankers and almost all the traders in the country, contributed nothing at all to the revenue of the State in return for the protection, security, and advantages they enjoyed under the British Government.

The next measure to which he would refer was the increase in the duty on Malwa opium. This had been increased from 400 to 500 Rupees per chest by an order in Council which the Government had the power to pass without the sanction of the Legislature. He need scarcely remark that this duty did not press upon the people of India. The increase expected from the alteration in the duties on Malwa opium and on the various articles mentioned in the new Tariff was 130 lakhs, namely, 87 lakhs on the former and 93 lakhs on the latter. He was happy to have it in his power to say that these expectations had been more than realized. He believed, too, he might add, that the appeal made to the European community by His Excellency the Governor General, at the time of proposing the increased duties, had been heartily responded to, and

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that all, admitting the necessity of what had been done, willingly submitted to it.

He now came to the Bill relating to stamps introduced by his Honorable friend the Member for Bengal. This Bill was still before the Council, and it was not possible to say what would be the effect of it on the public revenue, but it was confidently expected that the sale of stamps other than judicial would produce a considerable sum of money without the charge to those requiring to use stamps of that class being much felt. The masses of course would not be affected in the slightest degree by the proposed law. With regard to judicial stamps, although some increase was expected from them, he doubted whether it would amount to much. Indeed, if many of the reforms now in contemplation were carried out, such, for instance, as doing away with the appeal in simple actions of debt and the like up to a certain amount, not allowing any special appeal in cases of the same kind in which the amount or value of the claim did not exceed five hundred Rupees, and constituting Courts of final jurisdiction, in so far as the facts were concerned, in all cases, whatever might be the amount, there would probably be a loss instead of any gain in this branch of the public revenue.

In addition to the sources of revenue which he had just mentioned, it had been suggested that the Salt Duty at the three Presidencies might be raised without being very sensibly felt by the people; that a duty might be imposed upon tobacco grown in the country; that an income tax, as well as a succession duty, might very properly be levied; and that a large sum might be raised by a tax upon houses.

With regard to the proposition to raise the duty upon salt, the Council were aware that Bills had lately been brought in by the Honorable Members for Madras and Bombay, the effect of which, should they pass into law, would be to increase the amount of the revenue now derived from salt in those two Presidencies. The Government of India had already power by law to raise the duty paid by salt in the Lower Provinces of Bengal to Rs. 3-4 per maund. The duty now paid was Rs. 2-8 per maund. Whether any increase should take place, and if so, what

should be its extent, were questions which would be considered on the receipt of a report which had been called for from the Government of Bengal. In the North-Western Provinces a duty of Rupees 2 per maund was levied on all salt crossing the Frontier, and a further duty of 8 annas per maund on any salt which might pass Allahabad. A uniform duty of Rupees 2-8 per maund had been proposed on all salt crossing the Frontier, the extra duty now taken at Allahabad being abolished. Some Officers had indeed proposed that the duty should be increased to Rupees 3 per maund. The question of increasing the duty on salt in the North-Western Provinces had to be considered in connection with Oude, which was a large salt-producing country, and reports had been called for from both the Chief Commissioner and the Lieutenant-Governor of the North-Western Provinces. Their answers might possibly show that it was not expedient to make any alteration in the rates of duty now levied in the North-Western Provinces, but this was a point upon which he purposely abstained from giving any opinion at present, because he felt that he was not in a position to do so with satisfaction to himself. In the Punjab measures had been introduced which would have the effect of increasing the salt revenue in that territory.

An income tax and a succession duty had many advocates both at home and in this country, but as regarded personal property belonging to natives, it was believed that there would be very great difficulty in ascertaining the amount on which the duty should be assessed, without having recourse to a mode and degree of inquisition which, while it would often end in defeat, would prove extremely vexatious and harassing, and repugnant to the feelings of the people. It was also felt that the enforcement of any tax or duty of this kind would generally be a matter of great difficulty, without resorting to measures which, though perfectly legitimate in themselves, would have the appearance at least of considerable harshness.

For these reasons chiefly the Government had not hitherto considered it advisable to introduce either of the two taxes or duties just mentioned as respected personal property. As re-

garded landed property, a doubt had been raised whether there were not legal impediments to their imposition in Bengal; while in the North-Western Provinces, and in the other parts of India, where the settlement was not permanent, but for a term of years only, it was open to the Government to increase the amount of its demand whenever the settlement came under revision.

To a house tax and to a duty upon tobacco grown in the country objections had been taken by Officers of high positions and large experience, whose opinions were entitled to great respect, and the Government had deemed it advisable that there should be further enquiry and a more full consideration of the subject, before it came to a final decision, either one way or the other, as regarded both these imposts, as well as in respect to an income tax and a duty on successions.

The last additional source of revenue which had been suggested was that which formed the subject of the Bill which he was about to ask the Council to allow to be read a first time, namely, a tax by means of a Government license for carrying on trades or professions.

It was not to be supposed that a tax of this kind could be proposed without giving rise to a good deal of difference of opinion, but after consulting a large number of persons, both Europeans and Natives, in all parts of the country, he found a very great preponderance of opinion in favor of the tax. From many quarters he had received much valuable advice and many useful hints, and he would particularly acknowledge in this place the assistance which he had received in these respects in framing the Bill from Mr. Martin Gubbins, one of the Judges of the Sudder Court at Agra, Mr. Muir, Junior Member of the Sudder Board of Revenue at Allahabad, Mr. Frederic Gubbins, the Commissioner of the Benares Division, Mr. George Campbell, the Judicial Commissioner at Lucknow, and the learned Clerk of the Council, whose aid, most cheerfully rendered on this as on all other occasions, he had found most useful, and he took this opportunity of thanking him for the same.

One great argument in favor of the present measure was that, in so far as

native traders were concerned, it introduced no new principle but merely revived one of their own modes of taxation. In Bengal all trades were formerly taxed under the head of "Sayer," and when the Sayer duties were abolished, if he recollected rightly, the Government reserved to itself the right of reviving at any time the tax upon trades. In the Madras Presidency a tax of a somewhat similar character, called "Mohturfa," was still in existence, and yielded a revenue of about twelve lakhs of Rupees a year; but the mode in which this tax was levied was very unsatisfactory and very uncertain, its realization being left very much to the views of individual Collectors. It also operated most unequally, and while it extended to many articles or acts, such for instance as the sifting of ashes and the furnaces of working jewellers, which ought not to be taxed, it omitted many trades or articles upon which it might be legitimately imposed. It was proposed, therefore, to repeal the present laws, and to substitute this Bill for them.

It might be supposed by some that, in order to carry out the Bill fairly and properly, as regarded both the State and the persons to whom it would apply, the same vexatious enquiry into every trader's or professional man's circumstances or profits would be necessary, which had been so strongly objected to in the case of an income tax or a succession duty, but nothing of that kind was intended. It was proposed that the tax upon the license to be taken out should be in all cases exceedingly light, and being light, it was felt that the amount might be fixed in an arbitrary manner, that is to say, without that enquiry into or that degree of regard to a man's professional income or profits, which would be necessary, if it were attempted to apportion the amount of the tax thereto. We were told by Adam Smith that, in a light tax, a considerable degree of irregularity might be supported, in a heavy one it was altogether intolerable; and again, the extreme inequality and uncertainty of a tax assessed in the manner proposed in this Bill could be compensated only by its extreme moderation, in consequence of which every man found himself rated so very much below his real revenue, that he

gave himself little disturbance, though his neighbors should be rated somewhat lower. He had acted upon these views, in which he fully concurred, in framing the present Bill.

It could scarcely be necessary for him to say that, although the price to be paid for the license would, in the first instance, come out of the pocket of the person taking out the same, it would not eventually be borne by him. He would have no difficulty in knowing where to go for reimbursement, namely, to his customers, who would really pay the tax, and as it would be thus spread over the entire population in proportion to each man's expenditure, it would scarcely be felt. The rich man who was clothed in purple and fine linen, and fared sumptuously every day, would pay comparatively largely, and he could well afford to do so; the poor man would pay very little. This was quite right and proper, and seemed to meet in a great degree the objection that the Bill would operate unequally.

He would now briefly allude to the provisions of the Bill. Section I repealed the laws in Madras relating to Mohturfa. In Bombay, where duties on trades were formerly levied, they had been done away with by Act XIX of 1844.

Section II required a license to be taken out to carry on any trade or exercise any profession. Section III declared who were to be deemed persons carrying on trade. Section IV provided by whom licenses were to be granted. Section V enacted what particulars were to be specified in the license. Section VI related to the commencement and expiration, and Section VII to the renewal of licenses.

Section VIII he would read, as it showed how the tax was to be assessed. The Section provided as follows:—

"Upon all licenses to be granted under this Act, there shall be paid by the persons to whom such licenses are granted, the several annual sums hereinafter mentioned (that is to say):

If the person to whom the license is granted shall be assessed

Under Class	I ...	2,000 Rs. yearly.
" "	II ...	1,000 " "
" "	III ...	500 " "
" "	IV ...	250 " "
" "	V ...	100 " "
" "	VI ...	50 " "

Under Class VII	25	Rs. yearly.		
"	"	VIII	...	10	"	"
"	"	IX	...	5	"	"
"	"	X	...	2	"	"

He might add that bankers only would come under the first two Classes.

Section IX empowered the Collector, or other officer authorized to grant licenses, to determine under what class persons should be assessed, and to appoint a Panchayet, consisting of three or more respectable inhabitants of the neighborhood, to aid him in making such assessment. Section X required the assessment to be in accordance with the Schedule. Section XI related to the appointment of Chowdrees. Section XII related to the preparation and publication of the list of persons requiring to be licensed under the Act. Section XIII to the inspection of the list, and Section XIV to appeals from the orders of Collectors. Section XV required such appeals to be written on stamp paper. Section XVI related to the preparation of a revised list. Section XVII prescribed the penalty for not taking out a license. Section XVIII required licenses to be produced on demand. Section XIX provided for the adjudication of offences and recovery of penalties. Section XX declared that persons holding office or employment not under Government were to be deemed persons carrying on trade, &c. Section XXI enacted that the Act was not to apply to persons holding office under Government, and Section XXII that the Act was not to apply to workmen for hire, or cultivators of land, &c. It would be deserving of consideration hereafter, whether the Collector or other Officer authorized to grant licenses should not have power to except any person carrying on any petty trade, of whose inability to pay the small sum of two Rupees per annum, without great difficulty, he might be satisfied, or whether the exception contained in this Section might not properly be carried farther.

These then were the provisions of the Bill. He was very sensible that many imperfections would be found in it, but he trusted that, with the aid of Honorable Members, these would be corrected in Committee should the Bill ever reach that stage. If the Council allowed the Bill to be read a second time, it would

be published in the usual course for general information, and the publication would doubtless elicit many valuable remarks and suggestions from the public, and from the local Governments and the Officers subordinate to them, which would be of great use in the revision of the Bill, and he trusted that the result would be a useful and practicable measure of taxation, without the imposition of any very great pecuniary burden upon any one. What amount of revenue the introduction of the measure might be expected to produce, it was very difficult to say; but he thought they might safely calculate upon at least from one hundred to one hundred and fifty lakhs per year. The Bill would be printed and circulated without delay, and he hoped to move the second reading on that day fortnight. On that occasion he should not ask Honorable Members to commit themselves to any of the details of the Bill, but simply to its principle—in other words, that it was not wrong in principle in India to raise revenue by means of a license on trades and professions. This would leave every Honorable Member at liberty to do what he pleased in respect to the details of the Bill, and to propose any alterations in them that he might think proper, as also to vote against the third reading if he objected to the Bill in the form in which it might then appear. But, looking to the difficult position in which the Government was placed by the state of the finances, and to the impossibility of carrying on the Government properly, after every possible reduction had been effected, without an adequate revenue, for money was as much the sinews of government as it was of war, he ventured to hope that the Bill would receive the cordial support of the Council. He had to apologize for having trespassed at such great length upon the time of the Council, and thanking them for the patient hearing that they had accorded to him, he now begged to move that the Bill be read a first time.

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

CUSTOMS DUTY (BOMBAY).

MR. LEGEYT moved the first reading of a Bill "to amend Act I of 1852

(for the consolidation and amendment of the Laws relating to the Customs under the Presidency of Bombay).” He said, the object of this Bill was to raise the Customs Duties, hitherto levied under Section XX Act I of 1852, on spirits exported from any Port in India and imported to any Port within the Presidency of Bombay. The Government of Bombay had lately, under the authority vested in them by Act III of 1852, raised the Excise Duty on spirits manufactured in that Presidency from nine annas to one Rupee per gallon. Section XX Act I of 1852 fixed the Import Duty on any manufactured spirits which had not paid Excise at nine annas per gallon.

It had been thought expedient to raise this Import Duty to make it equal to the Excise fixed under Act III of 1852. This Bill had therefore been proposed and had been approved by the Government of Bombay and the Government of India. It proposed to repeal Section XX Act I of 1852, and to enact that an Import Duty, equal to the Excise imposed under Act III of 1852, should be levied on all spirits exported from any Port of British India to any port of the Bombay Presidency, on which Excise had not been paid. With these remarks he begged to move the first reading of the Bill.

The Bill was read a first time.

FOREIGNERS.

MR. HARRINGTON moved the second reading of the Bill “to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners).”

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

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved the second reading of the Bill “for settling Promissory Notes of the Government of India producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him, and

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the heirs male of his body, by her present Majesty Queen Victoria, and for other purposes connected therewith.”

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

MR. LEGEYT moved that the Standing Orders be suspended, in order that the Bill might be passed through its subsequent stages. His ground for making this motion was the extreme anxiety felt by the parties concerned. The Council were aware of the considerable delay which had already taken place in the matter. It was at first thought that the Bill would be passed through the Council within a short time. It was subsequently discovered that the Incorporation Clause rendered it necessary to send the Bill to England for the sanction of the Crown. In the meantime Sir Jamsetjee died, and the Bill was returned for the purpose of being modified, so as to suit the altered circumstances of the family. This had been done in the Bill, which was now before the Council, and which had been transmitted to him by the present Baronet, with an earnest request that no time should be lost in carrying it through the Council. The revised Bill would also, on account of its Incorporation Clause, require to be sent to England for the sanction of the Crown, and as the measure was entirely of a private nature, he trusted there would be no objection to the suspension of the Standing Orders. The Bill originally introduced had been fully considered by the Council before it was sent to England, and the alterations now made in it were necessary to adapt the Bill to the present circumstances of the family in consequence of Sir Jamsetjee's death.

SIR JAMES OUTRAM seconded the Motion.

SIR CHARLES JACKSON said, he thought that a case had hardly been made out for the suspension of the Standing Orders, with a view to this Bill being passed through all its subsequent stages. The Bill had been considerably altered, and it appeared to him that the better course would be to refer it to a Select Committee, with instructions to report thereon within a week.

THE VICE-PRESIDENT said, it appeared to him that there was some little difficulty about this Bill. It was

a private Bill by which the Legislature was about to settle property, among which was Mazagon Castle. The Preamble stated, among other matters, that—

“Whereas the said Sir Jamsetjee Jejeebhoy was seised of a Mansion-house and hereditaments situate in the Island of Bombay, called Mazagon Castle, and had an absolute estate of inheritance therein, and was desirous, in fulfilment of the aforesaid engagements, of settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and the said Mansion-house and hereditaments to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively.

“And whereas the said Sir Jamsetjee Jejeebhoy was also desirous that the heirs male of his body, to whom the said title and dignity of Baronet should descend, should take and bear the names of ‘Jamsetjee Jejeebhoy’ in lieu of any other name or names whatever, which they respectively might bear at the time of such descent on them respectively; and he was also desirous that the Revenue Commissioner for the Northern Division of the Presidency of Bombay, the Accountant General, and the Sub-Treasurer at Bombay for the time being, should be trustees of the aforesaid Promissory Notes, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the same securities, and also with relation to the said Mansion-house and hereditaments.

“And whereas the said Sir Jamsetjee Jejeebhoy departed this life on the 14th of April 1859, before the aforesaid engagement with Her Majesty’s Government was carried out on his part, and by his Will dated the 9th of April 1853, duly signed and executed by him, gave and devised the residue of the estate, houses, lands, securities, moneys, and effects, to and amongst his sons Cursetjee Jamsetjee, Rustomjee Jamsetjee, and Sorabjee Jamsetjee.”

With reference to the words “residue of the property,” he asked how could the Council know what would be comprised under those words? It was necessary, when recitals of this nature were inserted, that the facts should be correctly ascertained. In England such a Bill would not be passed without proof of the correctness of the Preamble.

This Bill varied considerably from the original Bill, which had been withdrawn. According to the original Bill, the late Baronet and his representatives would have had ultimate appointment of the trust fund, whereas this Bill gave it to the present Baronet and his representatives. In case of failure of the Baronetcy, a question might arise

whether this Council had not appropriated the ultimate residue in a different manner from that intended by the late Baronet. The Council was entirely in the dark as to the contents of the Will. He (the Vice-President) did not mean to say that the property had been otherwise disposed of, but still it was necessary that they should see the Will, and that the Bill should be published to the world, so as to allow those who might have any objections to make to it, the opportunity of submitting them.

For these reasons it appeared to him that the Standing Orders should not be suspended, but that the Bill should be proceeded with in the usual course. There might have been some necessity for hurrying on the Bill during the lifetime of the late Baronet, but he did not think that the same necessity existed for doing so now.

The Council divided—

<i>Ayes.</i> 3.	<i>Noes.</i> 4.
Mr. LeGeyt.	Mr. Sconce.
Mr. Harrington.	Mr. Charles Jackson.
Sir James Outram.	Mr. Forbes.
	The Vice-President.

- So the Motion was negatived.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

MR. SCONCE said, before moving the second reading of the Bill “to amend Act VI of 1857 (for the acquisition of land for public purposes),” there was one important point which he desired to notice. The principle of the Bill was that, after the measurement of the land required for Railway or other purposes had been completed, a reasonable period, say ten days, was allowed for further adjustment, after which period the land might at once be taken possession of for the purpose to which it was proposed to be applied. He thought it necessary, however, in the event of the Bill being allowed to be read a second time and referred to a Select Committee, to introduce a Clause corresponding with a Clause in the present Act, which provided that, on the land being taken possession of, when the question of compensation was referred to

arbitrators, interest should be paid from the date that the land was taken. Accordingly, it was his purpose to propose that, on the land being taken possession of as provided in the present Bill, the owner should be entitled to interest at the rate of six per cent. per annum from the time when possession was taken to the time of payment.

SIR CHARLES JACKSON said, it was quite clear from the amendment now proposed by Honorable Mover, that he saw the objection to which the Bill was open. The Bill, as it now stood, did not direct the Collector to give any notice to, or attempt to make any arrangement with, the owner, but immediately after the measurement was completed, Government were authorized to take possession, and thereafter be sole owners, of the land. That was contrary to the principle of all English Acts. According to the Lands Consolidation Act, notice was to be given, and payment or a deposit of the purchase money was required to be made, before any entry on the land. Now, in this case, this was entirely dispensed with, and the reason given for dispensing with it was that land was urgently required for Railway purposes, and that great delay took place in obtaining possession. It appeared to him that the delay was owing to a misconstruction of Act VI of 1857. That Act never contemplated a detailed measurement of the land showing every tree upon it, such as had become customary now, but only a measurement of the quantity sufficient to show what was the land required to be taken.

He would read an extract of a despatch from the Court of Directors on this subject, under date the 13th August 1856. The Court of Directors said:—

“We agree with you that, when individuals are required to relinquish their land for purposes of public convenience, they may reasonably expect to be liberally dealt with, and we much prefer that such arrangements should be amicably settled between the Revenue Officers and the parties concerned. It is only when exorbitant terms are insisted on that the provisions of the Act XX of 1852 should be resorted to.”

There was great objection in principle to allowing Government to take

Mr. Sconce

possession of land without paying for it, or, in case of dispute, depositing the purchase money. If that were allowed, all inducement was taken away for expediting the settlement of the claims with the owners, and what would be the position of the owner in the meantime? Supposing he depended entirely for support upon his land, what would he live upon during the time his claim was not settled? A similar objection would appear to have occurred to the Honorable Member for Bengal, for he now proposed to provide for the payment of interest, but it was poor compensation to a man deprived of his land, and, perhaps, of his subsistence, to tell him that eventually he would get interest for it.

THE VICE-PRESIDENT said, he thought that the Legislature went quite far enough in passing Act VI of 1857. Under that Act, when the Collector had made an award or *directed a reference to arbitration*, immediate possession of the land might be taken. It did appear very hard, and was certainly going far beyond the English Act, to take possession of another man's property, unless the money was first paid or deposited, or at least before matters were put into train towards adjustment.

He agreed with the Honorable and learned Judge, that the term “measured” in Act VI of 1857 did not mean a detailed measurement. It appeared to him that there was no great difficulty in marking out or measuring the land. He was not in favor of anything that could cause undue delay, but if Government were allowed to take possession of land as proposed by the Bill, delay might ensue before owners received the amount of their purchase money. The Honorable Member for Bengal had given no account of the length of time which, under the former law, elapsed between the taking of land and the payment of the money. In Howrah he was informed that cases had happened, in which persons had been obliged to wait so long as two or three and in one case even five years. He (the Vice-President) thought it unreasonable to ask that land should be taken by Government before the money was paid or deposited, or matters put into train for the purpose.

MR. HARRINGTON said, he had quite overlooked that this Bill was entered in the Notice Paper to be read a second time to-day, and having had much other business to attend to, he was obliged to confess that he had not read it. If the Honorable Mover would not object, he (Mr. Harrington) should be glad to have a little more time to consider the subject, and he therefore proposed that the further consideration of the Bill be postponed till Saturday next.

The further consideration of the Bill was postponed accordingly.

CRIMINAL PROCEDURE.

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

Section 85 was passed after an amendment.

Section 87 provided as follows:—

"In all cases, in submitting his proceedings to the Magistrate, the Head Officer of a Police Station shall forward the statement of the person complaining and the substance of the information obtained from the witnesses as reduced to writing, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the Magistrate. The Officer shall state in his report whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance."

MR. SCONCE said, he had given notice of an amendment in this Section, by which he proposed, as nearly as possible, to accommodate it to the changes which had been made in the preceding Sections. As this Section now stood, the Head Officer was required, in forwarding the statement of the complainant, to send in the substance of the information obtained from the witnesses as reduced to writing. But as the Council had already determined to dispense with a record by Police Officers of statements made to them by witnesses, some alteration was clearly necessary.

He also proposed to make another slight verbal alteration in the Section, which, as it stood, seemed to him to give some encouragement to the Police to delay submitting the statement of the complainant to the Magistrate. He considered it important that the Police should be required to transmit the ground of their investigation without delay to the Magistrate, and for this purpose the first sentence of the present Clause was slightly modified. He proposed also to add a new sentence to the beginning of the Clause, with the object of indicating to the Police the sort of record which it was expedient that they should keep up, in order to exhibit the course of their proceedings. He had also added three lines at the close of the Section, requiring the Police, in the event of the accused being released on bail, or on his own recognizance, to mention the date on which the accused was required to appear before the Magistrate.

With these remarks, he begged to move the omission of this Section, and the substitution of the following:—

"In all cases the Head Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation. During the progress of, or at the completion of, an enquiry, the Head Officer of Police shall forward to the Magistrate the statement of the complainant, or other information, and shall set forth in a report the names of the parties, the nature of the offence, and a list of the witnesses bound over to appear, together with a brief indication of the points to which the evidence of each relates; and he shall also transmit any weapon or property which it may be necessary to produce before the Magistrate. The Officer shall state in his report whether he has forwarded the accused in custody; and if he has released the accused on bail, or on his own recognizance, shall mention the date on which the accused was required to appear before the Magistrate."

MR. HARRINGTON said, he had no particular objection to make to the proposed amendment, but he preferred the Section as it stood. He saw no very great difference between it and the proposed amendment. The former provided that "the substance of the

information obtained from the witnesses as reduced to writing" should be forwarded to the Magistrate, and the latter proposed the substitution for those words of the words "a brief indication of the points to which the evidence of each witness relates." He desired to know the precise meaning of the word "indication," and what it was intended to comprise.

After some further discussion, the question to omit Section 87 was put and negatived.

MR. SCONCE then moved the introduction of the following as a new Section after Section 86 :—

"In all cases the Head or other Officer of the Police shall, day by day, record his proceedings by way of Diary, setting forth the time at which the complaint or information reached him, the time which he began and closed his enquiry, the place or places visited by him, and a brief statement of the circumstances elicited by his investigation."

Agreed to.

MR. HARINGTON moved the addition of the following words to the above Section :—

"And shall forward day by day a copy of such record to the Magistrate."

After some discussion the Council divided :—

Ayes 4.

Mr. Forbes.
Mr. LeGeyt.
Mr. Harington.
Sir James Outram.

Noes 3.

Mr. Sconce.
Sir Charles Jackson.
The Chairman.

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

SIR CHARLES JACKSON moved that the words "and the substance of the information obtained from the witnesses as reduced to writing" be omitted from Section 87.

MR. HARINGTON said, it appeared to him that Honorable Members, in proposing that the Police should not be allowed to send in any thing in writing, labored under the great mistake of supposing that the Thannah record, instead of being in any way a protection to an accused party, must necessarily prove injurious to him. Now his own experi-

Mr. Harington

ence was quite the other way, and he believed that, if the Thannah record was done away with, or not allowed to be seen by the Court trying the case, it would be most injurious to the interests of justice. He was confirmed in this view by a letter which he had received only yesterday morning from one of the Judges of the Sessions Court at Calcutta, Mr. Samuells, who, as was well known, was a practical man and a very able and experienced Judge. This letter he would venture to read to the Council.

SIR CHARLES JACKSON rose to order. He doubted whether it was strictly in order to read a letter from a private person. It appeared to him that the Standing Orders required communications from such persons to be addressed to the Council by petition.

MR. HARINGTON said, he believed he was not out of order. It would be in the recollection of the Council that, on the occasion of an Honorable Member (Mr. Ricketts) who was now absent taking his seat in this Council, that Honorable Member read a private letter which he had received from an Officer under the Punjab Government without any objection being made. He believed also that, during the Debates which took place last year on the Alluvial Lands Bill, a private letter from Mr. Samuells was read to the Council. He mentioned these instances to show that he had precedents for the course which he was about to have taken. He would observe further, that he believed it was fully competent to any Honorable Member to mention the substance of any private letter which he might receive bearing on any subject before the Council, and it appeared therefore to him that there could be no valid objection to the letter being read *in extenso*. He need scarcely say that Mr. Samuells might easily have put the letter which he had addressed to him into an official form, and sent it through his Government to the Clerk of the Council, in which case it would have been open to him (Mr. Harington) to have moved that it be printed.

THE CHAIRMAN said, it appeared to him that the Honorable Member was not out of order. It was very desirable that the Council should have the benefit of the opinions of practical persons, and

he certainly thought that the opinion of a gentleman of Mr. Samuells's experience should be read.

Mr. HARRINGTON then proceeded to read Mr. Samuells's letter, which was as follows:—

"I do not know whether the forms of the Council admit of the consideration of Clauses adopted at ... , but if so, I do think that ... some further consideration of Section 82 and the various Sections of 83, and I for one should be happy to memorialize the Council about them if I thought it would do any good. Section 82 simply relieves the Police of responsibility. Hitherto they have been obliged to take a note of the evidence in presence of witnesses, and to send it in immediately. It is placed on the record, and they are responsible for its correctness. It has never been regarded as evidence, but has been valuable as enabling the Judge to check the evidence of the witnesses in Court. Now the Police will give verbal evidence of the witnesses' statements, and will refresh their memories by looking at notes which they will say they took at the time. The only remedy for the evils this will give rise to will be for the Superintendents of Police to direct the Police to send in their notes of evidence as hitherto for the Magistrate's private information. Still, as the Magistrate cannot place them on record, the Judge will be deprived of the check they have hitherto afforded him. The majority of the Council evidently are not aware that the great object in Indian Police investigations is to record the statements of all parties immediately, and to have them laid before the Magistrate at once, so as to prevent as much as possible all tampering and collusion. Then with regard to Section 83, there is first the obvious objection that it has no business in a Code of Procedure. If the Law of Evidence requires amendment, surely this amendment, and such an important amendment, ought not to be made in a Procedure Bill. But there is the still graver objection, that the alteration is a retrograde one. The tendency of legislation of late years has been to open out the channels through which evidence may flow into the Courts as widely as possible, leaving the Court to judge of its value. But here, because it is not always trustworthy, and is apt to be procured by improper means, you shut out altogether that evidence which, when genuine, is the very best. To be consistent, you must now exclude all native testimony, because natives frequently perjure themselves, and false evidence is procurable in all bazaars. What is meant by 83 d, and the facts the Police are permitted to depose to, I do not understand, and I am sure no Magistrate will, but the effect of 83 c, if it is to be read without qualification, will be that numerous heinous crimes will escape conviction, for certainly for one extorted confession you have in this country twenty voluntary ones, and without these voluntary confessions conviction would often be impossible."

In corroboration of what Mr. Samuells had stated, he would go back to the Code of Civil Procedure, and refer to what the Council had done in it. There they had given the Judge large powers to send for papers, or, in fact, do any thing which appeared likely to lead to a correct decision of the case, and thereby promote the ends of justice; and there was a still greater necessity for this in Criminal matters. He felt convinced that, instead of giving protection to life and property by doing away with the Thannah record, they would be doing just the contrary.

It certainly seemed to him that the words proposed by the Select Committee, and which did not go so far as the words used by Her Majesty's Commission were good in themselves and were preferable to the words suggested by the Honorable Member for Bengal. He should oppose the Motion.

After some further discussion, the Council divided—

Ayes 4.

Mr. Sconce.
Sir Charles Jackson.
Mr. LeGeyt.
The Chairman.

Noes 3.

Mr. Forbes.
Mr. Harrington.
Sir James Outram.

So the Motion was carried.

THE CHAIRMAN moved the insertion of the words "or other" before the words "Officer of a Police Station" in the beginning of the Section.

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

Section 109 was passed as it stood.

Section 110 provided as follows:—

"If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous enquiry to be made into the complaint, either by means of the local Police Officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the enquiry shall lead the Magistrate to believe that the charge is well founded, and the offence is of the nature described in Section 109, he shall issue his warrant or summons as therein directed; provided that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it."

MR. SCONCE, in drawing attention to the words "or in such other mode

as he shall judge most proper," said that these words were taken, he believed, from the existing law. But he thought that they were scarcely consistent with the present Code. He had no objection that the investigation which they seemed to sanction should be described, but if that was impracticable, in so far as they meant any indirect course of action, the words would be better left out, and he should therefore move for their omission.

MR. LEGEYT asked, if the words "by means of the local Police Officers" also were quite consistent with the provisions of this Code. He doubted whether the rural or local Police, by whom he understood Village Chowkeydars, were proper persons to make an enquiry of the kind contemplated. The Magistrate would have persons in his Cutcherry, whom he could entrust with the duty, instead of sending a Thannahdar or a Village Chowkeydar, by which means a wide door would be open to those abuses which the Council was striving to avoid. He would rather omit this Section altogether, and leave it to the discretion of the Magistrate to adopt whatever measures he considered most proper for the purpose of satisfying himself as to the truth of a complaint before issuing process for causing the attendance of the accused.

THE CHAIRMAN moved the insertion of the words "of his Assistant, or of any Deputy Magistrate or" after the words "by means" and before the words "of the local Police Officers."

MR. LEGEYT said, surely the insertion of those words would commit the Council to a continuation of the present union of Judicial and Police functions. It would be giving by law direct authority to a Magistrate to depute his Deputy or Assistant to perform the duty of an Executive Police Officer. He conceived the duty here indicated was especially that of the superior Executive Police, and should be performed under their orders by such persons as they might deem best fitted for the duty.

MR. HARINGTON said, the Honorable Member for Bombay seemed to be proceeding on the assumption that there was a Bill before the Council to separate the Judicial from the Police functions of the Magistrate. But no

such Bill had been introduced, nor had any Hon'ble Member given notice of his intention to bring in such a Bill. The Bill relating to the Madras Police certainly, as originally framed, proposed to effect this separation, but that Bill had since undergone considerable alteration, in consequence of a communication received from the Madras Government, which would leave the Magistrate to exercise all his present Police as well as Judicial functions, with the aid of the new Police Force to be raised under the Bill. What the Council had to deal with was the system now in force, and to fit the Code of Procedure to the existing Courts. Hereafter, in the event of a new system being introduced, or of new Courts being constituted, requiring a different Procedure, the necessary alterations could be made. "Sufficient for the day was the evil thereof."

As regarded the amendment proposed by the Honorable Member for Bengal, he (Mr. Harington) was willing to meet that Honorable Member's objection by the insertion of the words "not inconsistent with the provisions of this Code." But he should certainly oppose the omission of the words referred to by the Honorable Member, taken as they had been from a law which had been in force for upwards of thirty years, and which so far as he was aware had never given rise to any improper practice, or been found open to doubt or misconception.

THE CHAIRMAN said, he did not quite understand the force of the objection taken to his amendment by the Honorable Member for Bombay. The Honorable Member had said that the adoption of that amendment would commit the Council to a continuation of the existing union of Judicial and Police functions. He (the Chairman), however, did not think that this was a Police duty. The Section provided that—

"If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous enquiry to be made into the complaint, either by means of the local Police Officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations."

If the Magistrate had reason to doubt the correctness of the complaint, he might go himself and enquire into the matter; and if he could not go himself, what objection was there to his sending his Assistant or Deputy; or if he could not spare his Assistant or Deputy, why could he not send any of his local Officers? It was only to satisfy some doubt which had arisen in his own mind that he might wish to depute an Officer to make the enquiry, or probably he might require the Officer at the next Thannah to do so. He should, therefore, press his amendment.

THE CHAIRMAN'S Motion was then put and carried.

MR. SCONCE'S Motion to omit the Section was put and negatived, and the Section, after a further amendment, on the Motion of THE CHAIRMAN, was then passed.

Sections 111 to 114 were passed as they stood.

Section 115 was passed after a verbal amendment.

Sections 116 to 123 were passed as they stood.

Section 124 was passed after an amendment.

Sections 125 to 134 were passed as they stood.

Section 135 was passed after an amendment.

Sections 136 to 153 were passed as they stood.

MR. HARRINGTON moved the introduction of the following as a new Section after Section 153:—

“Prosecutors and witnesses for the prosecution, whose attendance may be necessary before the Court of Session, shall execute recognizances before the Magistrate to be in attendance when called upon at the Court of Session (to prosecute or to give evidence as the case may be). If any prosecutor or witness shall refuse to attend before the Court of Session, or to execute the recognizance above directed, it shall be competent to the Magistrate to detain such prosecutor or witness in custody, until he shall execute such recognizance, or until the time when his attendance at the Court of Session is required, when the Magistrate shall forward such prosecutor or witness under custody to the Court of Session.”

Agreed to.

Sections 154 to 159 were passed as they stood.

The consideration of Section 160 was postponed.

Sections 161 to 163 were passed as they stood.

The consideration of Section 164 was postponed.

Sections 165 to 228 were passed as they stood.

Chapter XVIII, Section 229, provided as follows:—

“Criminal trials before the Court of Session shall ordinarily be by Jury. But if a Court of Session shall consist of three Judges, Criminal trials may be held before a Court so constituted without a Jury. The judgment of the Court in trials so held shall be according to the opinion of the majority. Trials by Jury may be held before a single Judge of a Court of Session.”

MR. SCONCE said, he felt great difficulty in agreeing to the whole of this Chapter as it now stood. The first Section declared that “Criminal trials before the Court of Session shall ordinarily be by Jury.” A later Section provided that the Jury should consist of not less than three or more than nine persons. The Chapter then proceeded to provide—

“If the Jury are unanimous in a verdict of guilty, or if a majority of the Jury find a verdict of guilty, and the Judge concur in such finding, the accused shall be convicted. In default of such unanimity, or of such majority with the concurrence of the Judge, the accused shall be acquitted.”

In the first place, he thought it was impossible that nine eligible persons could at all times be had to form a Jury. In the next place, it appeared to him that a body of three men was altogether opposed to the English idea of the constitution of a Jury. Then, again, he was not prepared to allow two or even three men to neutralize the voice of the Judge. He did not think that the verdict of three Jurors, such as would ordinarily sit, should be taken to have the same force as the opinion of an educated Judge. He proposed therefore that this Section should commence as follows:—

“Criminal trials before the Court of Session shall ordinarily be by Assessors or by Jury.”

MR. HARRINGTON said, he found a difficulty in dealing with the amend-

ment proposed by the Honorable Member for Bengal, because it did not disclose the mode of procedure to be observed when Assessors were employed instead of a Jury, how they were to act, and what weight was to be given to their opinion. The revision of this Chapter had proved a very difficult task to the Select Committee. Their wish was to constitute a Court of Session, to consist of three Judges, for the trial of all cases beyond the competency of the Magistrate to dispose of. It seemed to the Committee that a Court so constituted, being in fact a Jury of Judges, all of whom would be Officers of considerable standing and experience, might safely be left to deal finally with all questions of fact, and to dispose of them without an appeal. But although the Bill might provide for the establishment of Courts of Session composed as he had just mentioned, the Government might object to the expense, and say that they could not furnish the number of Judges; and, therefore, the Bill made provision for the trial of cases requiring to be committed to the Court of Sessions by a single Judge, with the aid of a Jury. The number of Jurors was not fixed absolutely at three, but as there might often be very great difficulty in getting a larger number, it was proposed that the Jury should consist of not less than three, or more than nine. Individually he had no objection to a Jury of twelve if that was considered the correct number, but in practice he thought that it would be most inconvenient to declare that the Jury must always consist of five, or nine, or twelve members.

In the objections taken by the Honorable Member for Bengal to the force proposed to be given to the verdict of the Jury, he appeared to have overlooked the concluding Sections of the Chapter, according to which, if the Judge thought a verdict of guilty contrary to, or not warranted by, the evidence, though he might be bound to accept it, he could apply to the Government for a pardon or a remission of the punishment awarded, which he believed was what was done at home under similar circumstances; or if he thought a verdict of acquittal improper, he could refer his proceedings to the Sudder

Court, who would be competent to pass such orders in the case as it might deem just. He was very sensible that objections might be taken to the very large power thus proposed to be given to the Sudder Court, and it might be considered wrong in principle that the Court should have that power; but this was what was done at Madras, and 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.

MR. FORBES said, the Honorable Member for Bengal had stated his objections to this Chapter, but had proposed no amendments to meet those objections. The question of trial by Jury was a most important one; a more important question, he thought, could scarcely be entertained by the Council. He should therefore propose that the further consideration of this Chapter be postponed; and if the Honorable Member for Bengal would give notice of his amendments, with a view to their being printed and circulated for the information of the Council, Honorable Members would come prepared to discuss the proposed amendments on the next occasion of the Committee sitting on this Bill.

The further consideration of the Chapter, comprising Sections 229 to 236, was postponed.

Sections 237 to 242 were passed as they stood.

Section 243 was passed after amendments.

Sections 244 to 248 were passed as they stood.

Section 249 provided as follows:—

“When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence. The Court may put such questions to the accused as it may think proper.”

SIR CHARLES JACKSON, advertising to the concluding sentence of this Section, asked if the Council were prepared to admit the new principle of the Judge examining an accused person. Now that the Supreme and Sudder Courts were shortly to be amalgamated, he thought that an important principle of this nature should be considered with

reference to the Supreme Courts. The question was nothing more or less than the adoption of the French system, and from what he had seen of that system, he must say that the tendency of it would be to make the Judge a prosecutor. He (Sir Charles Jackson) desired to see an English Judge maintain the high and impartial position which he now held, and which was to hear the evidence on both sides, and to sum up and decide fairly between man and man. As the Section now stood, however, the Judge would be required to exercise his ingenuity in convicting the accused, and he would have the same interest in a case pending before him as a Judge which a Public Prosecutor might be expected to have.

MR. HARINGTON said, the object of the provision to which the Honorable and learned Judge objected was simply to promote the ends of justice, and that he thought was a sufficient ground for its introduction. He entirely agreed with the Honorable and learned Judge that the French system, under which the Court and the Public Prosecutor did all they could by cross-examining the prisoner to entrap him into a confession, or to elicit some information which might be used against him, was most objectionable, but he trusted that such would never be the practice here.

THE CHAIRMAN said, he was not one of those who thought that a person should not be bound to criminate himself. He would have no objection to give to the Supreme Courts the power of examining an accused person.

MR. SCONCE suggested the addition of words giving the accused the option of declining to answer.

The further consideration of the Section was then postponed.

Sections 250 to 254 were passed as they stood.

Section 255 provided as follows :—

“ If the case is one in which, if the defendant be convicted, he is liable to sentence of death, the Court of Session shall record the conviction and refer the case to the Sudder Court, with a statement in writing of its opinion as to the sentence which should be passed upon the accused, with the reasons for such opinion; and in cases tried by Jury, the Court of Session shall report the substance of its direction to the Jury.”

SIR CHARLES JACKSON asked, what the last part of this Section meant, namely, “ the Court of Session shall report the substance of its direction to the Jury.” The practice was for the Judge to sum up to the Jury, immediately after the case was closed. Was it intended that he should write out his direction to the Jury before it was delivered? If not, he thought any statement afterwards written would convey a very inadequate idea of what was really said to the Jury.

THE CHAIRMAN said, he would rather let the Judge pass sentence at once upon the accused, provided that, if sentence of death were passed, it should not be carried into effect until after confirmation by the Sudder Court. It was very important, by way of example, that the by-standers should know what became of the accused. He should move the omission of all the words commencing with “ record the sentence” and the substitution of the following words :—

“ Pass sentence, and if sentence of death be passed, it shall not be executed without the confirmation of the Sudder Court. In any case submitted to the Sudder Court for confirmation of the sentence, the Court may either confirm the sentence, or pass any other sentence warranted by law.”

MR. HARINGTON said, the effect of the proposed amendment would be to enhance the severity of the punishment. It would often be a very long time before the sentence was confirmed, and the suspense would add greatly to the penalty.

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

Section 256 was passed as it stood.

The further consideration of the Bill was postponed on the Motion of Sir James Outram.

STANDING ORDERS.

MR. HARINGTON postponed the Motion (which stood in the Orders of the Day) for the adoption of the Report of the Select Committee on the Message from the Governor General in Council calling for a report on the practical working of the Standing Rules and Orders of the Legislative Council.

FOREIGNERS.

MR. HARRINGTON moved that the Bill "to continue in force for a further period of two years Act XXXIII of 1857 (to make further provision relating to Foreigners)" be referred to a Select Committee consisting of Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

JAMSETJEE JEJEEBHOY BARONETCY.

MR. LEGEYT moved that the Bill "for settling Promissory Notes of the Government of India, producing an annual income of one lakh of Rupees, and a Mansion-house and hereditaments called Mazagon Castle, in the Island of Bombay, late the property of Sir Jamsetjee Jejeebhoy, Baronet, deceased, so as to accompany and support the title and dignity of a Baronet lately conferred on him and the heirs male of his body by Her present Majesty Queen Victoria, and for other purposes connected therewith," be referred to a Select Committee consisting of the Vice-President, Sir James Outram, Sir Charles Jackson, and the Mover.

Agreed to.

PUBLIC CONVEYANCES.

MR. FORBES moved that a communication received by him from the Madras Government be laid upon the table and referred to a Select Committee on the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Agreed to.

RAILWAY CONTRACTORS AND WORKMEN.

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 "to empower Magistrates to decide certain disputes between contractors and workmen engaged in Railway and other works."

Agreed to.

The Council adjourned.

Saturday, August 20, 1859.

PRESENT :

The Hon'ble Sir Barnes Peacock, *Vice-President*, in the Chair.

Hon. Lieut.-Genl. Sir James Outram,	H. Forbes, Esq.,
Hon. H. B. Harrington,	Hon. Sir C. R. M. Jackson,
P. W. LeGeyt, Esq.,	and
	A. Sconce, Esq.

CRIMINAL PROCEDURE.

THE CLERK presented to the Council a petition from certain members of the Central Committee of the Indigo Planters' Association against the provisions of Section XX of the Bill "for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter" as amended in Committee of the whole Council, and praying for the re-publication of the Bill.

SIR CHARLES JACKSON moved that the petition be printed.

Agreed to.

MALABAR OUTRAGES.

MR. FORBES presented the Report of the Select Committee on the Bill "for the suppression of Outrages in the District of Malabar in the Presidency of Fort St. George."

NATIVE PASSENGER VESSELS (BAY OF BENGAL).

MR. FORBES moved the first reading of a Bill "to prevent the overcrowding of vessels carrying Native Passengers in the Bay of Bengal." He said he should not detain the Council long in introducing the Bill, of which he had given notice, for the continuance of the provisions of Act I of 1857, a law passed to prevent the overcrowding of vessels carrying passengers in the Bay of Bengal. The original Bill was introduced by Mr. Elliott in 1856, and became law early in 1857, and its operation was limited to three years at the instance of the Marine authorities at Madras, who thought it probable that some error or oversight might, in the course of time, become apparent in a law passed in a matter