

Wednesday, March 5, 1862

***INDIAN LEG.  
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*Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

THE Council met at Government House, on Wednesday, the 5th March 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding*.

His Honor the Lieutenant-Governor of Bengal. .

His Highness the Maharajah of Puttiala, K. S. I.

The Hon'ble Sir H. B. E. Frere, K. C. B.

The Hon'ble Cecil Beadon.

The Hon'ble S. Laing.

The Hon'ble W. Ritchie.

The Hon'ble H. B. Harington.

The Hon'ble H. Forbes.

The Hon'ble C. J. Erskine.

The Hon'ble W. S. Fitzwilliam.

The Hon'ble D. Cowie.

The Hon'ble Rajah Dec Narain Singh Bahadoor.

The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

EMIGRATION (FRENCH COLONIES).

The Hon'ble MR. RITCHIE presented the Report of the Select Committee on the Bill to amend Act XLVI of 1860 (to authorize and regulate the emigration of Native Laborers to the French Colonies).

KING OF OUDE BILL.

The Hon'ble MR. BEADON introduced the Bill to provide for the service of legal process issued against His Majesty the King of Oude, and for taking the examination of His said Majesty when required as a witness, and moved that it be referred to a Select Committee, with instructions to report in a fortnight.

The Motion was put and agreed to.

PROTECTION AGAINST BAD COIN.

The Hon'ble MR. RITCHIE introduced the Bill for the better protection of the public against bad coin, and moved that it be referred to a Select Committee.

The Hon'ble RAJAH DINKAR RAO said that he did not think that this Bill should be passed, because it was improper not to restore the metal after the coin had been reduced to the metallic state. The Bill provided that, if it were suspected that a man was knowingly in possession of counterfeit coin, his case might be sent to a Magistrate. But it was difficult to determine whether the coin was kept with a guilty knowledge, and he thought that the existing law for restoring debased coin after it was reduced to metal, was sufficient. The

Penal Code already provided for offences respecting the coin, and he thought it undesirable to legislate further on the subject, when that Code had only been in operation for two months.

The Hon'ble RAJAH DEO NARAIN SINGH said that he thought the Bill unobjectionable, except in respect of an ambiguity in the wording of Section II. That Section left it open to doubt whether the unlawful possession of silver and gold filings, &c., was to be considered proved, and to entail their forfeiture, when such filings, &c., were found alone, or only when they were found together with the instruments used in obtaining them, or instruments for making counterfeit coin. He would suggest that such forfeiture should only occur, and the possessors of such filings should only be liable to conviction, when they were found together with such instruments.

The Hon'ble MR. RITCHIE said that the objections of the Rajah Dinkar Rao did not touch the principle of the Bill. It was undesirable that the law here should deal more tenderly with the offence contemplated than the English law did. The principle was that every person should be entitled to receive back metal, of which counterfeit coin consisted, if he could give a satisfactory explanation of the mode in which such coin came into his possession. The Rajah was mistaken in supposing that the law at present authorized the breaking up of bad coin. There was considerable doubt upon the subject, and the object of the Bill was to reduce the law on the subject to a certainty. The suggestion of the Rajah Deo Narain Singh was entitled to much consideration, and might properly be submitted to the Select Committee.

The Motion was put and agreed to.

#### PENAL CODE AMENDMENT.

The Hon'ble MR. RITCHIE introduced the Bill to amend Chapter XII of the Indian Penal Code, and to provide for certain offences against the Coin, and moved that it be referred to a Select Committee.

The Hon'ble MR. HARINGTON said that he was compelled on this occasion, as he had been on the introduction of Mr. Beadon's Bill to provide for the punishment of whipping, to object to the form of the Bill. The present Bill he considered even more objectionable, inasmuch as it mixed up substantive Criminal Law with Criminal Procedure, and provided new laws for the Straits' Settlement. At the least he considered that there should be two Bills, one to amend the Penal Code, and the other to amend the Code of Criminal Procedure. Great advantages had been conferred on the public during the administration of the present Governor-General by the passing of many Acts complete in themselves, which swept away a number of previous Regulations in which various provisions were combined in an indiscriminate mass. The good thus effected should not be undone, and the Council should be careful not to drift back to the confused legislation of former days. Turning from the form to the substance of the Bill, he enquired if the Penal Code, which had been for twenty-five

years under the consideration of so many able jurists, had omitted by accident the provision contained in the second clause of Section 1 of this Bill? He must reject that supposition, and conclude that the subject had been considered, and that it had been decided to omit the provision. Turning to the original Code, he found that his conjecture was correct. In their Note to the Chapter relating to Coin, he found the following observations by the Law Commissioners :—

“ We considered whether it would be advisable to make it an offence in a person to have in his possession at one time a certain number of counterfeit Coins, without being able to explain satisfactorily how he came by them. It did not, after much discussion, appear to us advisable to recommend this or any similar provision. We entertain strong objections to the practice of making circumstances which are in truth only evidence of an offence, part of a definition of an offence; nor do we see any reason for departing in this case from our general rule.

“ Whether a person who is possessed of bad money knows the money to be bad, and whether, knowing it to be bad, he intends to put it into circulation, are questions to be decided by the tribunals according to the circumstances of the case, circumstances of which the mere number of the pieces is only one, and may be one of the least important. A few bad rupees which should evidently be fresh from the stamp, would be stronger evidence than a greater number of bad rupees, which appeared to have been in circulation for years. A few bad rupees, all obviously coined with the same die, would be stronger evidence than a greater number obviously coined with different dies. A few bad rupees placed by themselves, and unmixed with good ones, would be far stronger evidence than a much larger number which might be detected in a large mass of treasure.”

These remarks applied especially to the offence in clause 2 of Section I, but they also bore on the offence in clause 1. He would not contend that the Penal Code was perfect. But looking to the time it had occupied, the care bestowed on it, the ability of the men engaged on it, and the short time, not amounting to three months, in which it had been in operation, he thought it was premature to add to it provisions which had been deliberately omitted by the framers. The Penal Code, as it stood, contained several provisions with respect to the possession of counterfeit coin, and he believed that those provisions were sufficient to protect the public. The additions proposed by Mr. Beadon's Bill stood on a different footing. They were embodied in the Penal Code as amended by the Select Committee, and were taken out of it to be embodied in a separate Bill, and separately considered, in order to prevent delay in the passing of the Code.

The Hon'ble RAJAH DINKAR RAO said that he objected to this Bill, because he thought that the new offences enumerated in it would be difficult to be brought home to the offender, and the law therefore would be the cause of oppression to the people. The subject of this Bill had already been treated in the Penal Code, and that Code had only been two months in operation.

The Hon'ble MR. ERSKINE stated that he recognized the weight of many of the remarks made by Mr. Harington, and his attention also had been arrested by the Note of the Law Commissioners in the Penal Code. Mr. Harington's objection extended to both clauses of the 1st Section. But he did think that in the Penal Code there was a deficiency. Its provisions only extended to materials with which an offence was hereafter to be committed, but there was no provision in

respect of materials with which an offence had already been committed. The case was analogous to that of the possession of stolen property. A case might arise in which a person made a trade of receiving filings from coin; but it was doubtful if this was a matter of sufficient importance to warrant an amendment of the Penal Code. He could not at all assent to the second clause of Section I, and entirely concurred with the Note in the Penal Code on the subject. It might not be an offence to receive the coin or to retain it, and it was admitted that it might be right to give the possessor the material of which the coin he had incautiously received consisted. Many coins might be received in the course of a single forenoon over the counter by a large tradesman who could not prove that he had exercised caution in examining them. The provisions of the Bill respecting procedure were very questionable. It would be well for the Council to consider how far it should legislate at all on procedure which could be provided for by the local legislatures. The Penal Code stood on a different footing. That Code could not be amended without the sanction of the Governor-General. But the Procedure Code might be modified by the local legislatures to meet the requirements of other Presidencies; and already two Bills had been introduced into the Bombay legislature which did affect procedure. Section IV of this Bill provided that the offences specified in the Bill should be tried under the provisions of the Code of Criminal Procedure. But a local legislature might desire to modify that Code, but would be prevented from doing so by its inability to amend this Act of the Council of the Governor-General. He thought that, if they passed a Bill thus settling the procedure, it should be restricted to those territories in which there were no local legislatures.

The Hon'ble RAJAH DEO NARAIN said that he was unable to see any special cause for the proposed amendments of the Penal Code. Amendments should only be made when a law had been proved defective in practice. Sufficient time had not yet elapsed to test the Penal Code. The proposed new Section, 254*a*, would entail great suffering on the public, as persons innocently in possession of coin which had been diminished in weight would be liable to punishment. A man cutting a goldmohur in halves, using one-half for an ornament, and keeping the other, would be liable to be prosecuted though his intentions were innocent. Section 254*b* would render the possessor of five or more coins which had been diminished in weight liable to punishment. But it appeared to him that it would be very difficult to prove whether coin had become lighter by fair or by foul means, for coin was constantly changing hands, and was necessarily becoming worn. Or a servant or enemy might maliciously place five false or light coins in a larger sum in order to get the owner convicted of an offence. In his opinion it was sufficient to provide that false or light coin should be cut or broken, as ample punishments had been provided by the Penal Code.

The Hon'ble SIR BARTLE FREERE said that, with respect to the first offence provided under Section I, he thought that it stood on the same footing as the

receipt of stolen goods, and therefore it might be necessary to provide for it if no adequate provision yet existed. As to the second offence, he concurred with Mr. Erskine. It appeared to him that it might be well, instead of providing for the possession of counterfeit coin without lawful excuse, which it would be the duty of the possessor to offer, to provide for the possession of such coin under circumstances that raised the suspicion that it had not been received *boná fide*, or that it was intended to make unlawful use of it. He also agreed with the Rajahs Dinkar Rao and Deo Narain, that it was undesirable to alter the Penal Code prematurely. But he could not go so far as Mr. Harington: He should be glad to see a case made out of practical inconvenience, such as existed in the former case that had been before the Council.

The Hon'ble MR. RITCHIE admitted the force of the objection to amendments of the Penal Code at the present time. But it did not appear to be sufficient to prevent the Council acting in a case like that before it. Mr. Harington argued as if the whole subject of offences relating to the coin had been considered by the Law Commissioners, and exhausted in Chapter XII of the Penal Code. If that were the case, no further action should be taken until some practical inconvenience arose. But he believed that such was not the case, and that the law in the Penal Code differed from that previously administered and from the law in England, and that those who had principally to watch offences relating to the coin found it to be insufficient. There was a law for the local jurisdiction of the Supreme Court, making the possession of counterfeit coin an offence that might be summarily punished. That offence was punishable with fine and forfeiture of the coin, and it had enabled Magistrates to deal with such cases as the seizure of large numbers, amounting to 2,000 and 2,500 counterfeit goldmohurs and of counterfeit rupees, under circumstances which did not admit of any offence being brought home in the ordinary manner to any particular individual. If the law were to enable an offender in such cases to defeat a prosecution simply by holding his peace and putting his accuser to the proof, there would be no remedy at all. When the punishment was simply a fine, there was nothing revolting to the feelings in calling on the accused for an explanation, if such a foundation of suspicion existed as his possession of more than a certain number of counterfeit coins. He regretted to differ on such a question from the framers of the Penal Code, but it had recently been reconsidered at home, and provisions similar to those of this Bill had been embodied in the Act of last year. The framers of the Penal Code probably considered the subject merely generally, and not as it would be considered specially by those who had much to do with the public coin, or had frequent opportunities of discovering the circulation of counterfeit coin. With respect to the form of the Bill, he proposed, in Select Committee, to consider generally the best mode of making amendments in the Penal Code and the Code of Criminal Procedure. He admitted that it was undesirable to mix up Procedure and Substantive Law, but in some cases it was difficult to

sever them ; and the mode of proceeding resolved itself into a question of convenience. He had already divided the new law of Coinage into two Bills, but if further separation were necessary, the present Bill must be divided into three, namely, for the Criminal Law, the Criminal Procedure, and the law for the Straits' Settlements, but it was very desirable to avoid the unnecessary multiplication of Acts.

The Motion was put and agreed to.

#### SUBORDINATE MEDICAL OFFICERS' WIDOWS' AND ORPHANS' FUND.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the dissolution of the Subordinate Medical Officers', Widows' and Orphans' Fund, and the distribution of the Funds belonging thereto. He stated that the Society which it was intended to dissolve had been established by the Subordinate Medical Officers of Government in 1851, at Ferozepore, the object being to provide for their Widows and Orphans, and the pensions were to be payable out of the interest on the capital. But during the mutiny all subscriptions stopped, and the affairs of the Society fell into so much confusion, that it was now necessary to afford relief by winding up the affairs through the medium of the Supreme Court, in the manner adopted in 1856 in the case of the Bengal Mariners' and General Widows' Fund.

The Motion was put and agreed to.

#### RULES FOR THE CONDUCT OF BUSINESS.

The Hon'ble MR. BEADON moved that a Select Committee be appointed to consider all proposals that might be made to alter or amend the Rules for the Conduct of Business, and that the Committee consist of the President, Mr. Ritchie and Mr. Harington. He stated that there was such a Committee in the late Legislative Council, by whom all proposals for the amendment of the Standing Orders were considered prior to their introduction to the Council.

The Motion was put and agreed to.

The Hon'ble MR. RITCHIE presented a Petition from Monsieur Gustave Pietsch, Manager of the Comptoir d'escompte of Paris, which had established a Branch in Calcutta, and moved that it be referred to a Select Committee.

His Honor THE LIEUTENANT-GOVERNOR suggested that no business could be transacted at a Meeting of Council, except in the passing of Rules, or the making of Laws and Regulations, and that this Petition did not appear to fall under either head.

His Excellency THE PRESIDENT concurred with His Honor, and the Motion was withdrawn.

The following Select Committees were named :—

On the Bill to provide for the service of legal process issued against His Majesty the King of Oude, and for taking the examination of His said Majesty—the Hon'ble Messrs. Beadon, Ritchie, Forbes and Erskine.

On the Bill for the better protection of the public against bad Coin—the Hon'ble Messrs. Ritchie, Harington, Erskine, Fitzwilliam and Cowie.

On the Bill to amend Chapter XII of the Indian Penal Code and to provide for certain offences against the Coin—the Hon'ble Messrs. Ritchie, Harington, Erskine, Fitzwilliam and Cowie.

The Council adjourned till Wednesday, the 12th instant, at 11 A. M.

M. WYLLIE,

*Depy. Secy. to the Govt. of India,  
Home Department.*

CALCUTTA,  
The 5th March 1862. }