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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 12th February 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.
Major General the Hon'ble Sir R. Napier, K. C. B.
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 Dèo Narain Singh Bahadoor.
The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

FOREIGNERS.

The Hon'ble MR. BEADON moved that the Bill to revive and continue in force for a further period Act XXXIII of 1857 (to make further provision relating to Foreigners) be passed.

His Excellency THE PRESIDENT said that, as no amendment had been made in the Bill as settled by the Select Committee, it could now be passed under Rule 27.

The Motion was put and agreed to.

BANK OF BENGAL.

Hon'ble MR. RITCHIE introduced the Bill for regulating the Bank of Bengal, and moved that it be referred to a Select Committee. He said that a few alterations would be proposed in the Bill, and he proposed that

they should be published with it. The most important of these was a power to the Bank to take over the business of any local Bank, and to increase its Capital beyond that limit of double its present Capital, which the Bill, as at present drawn, provided. This amendment had been proposed by the Directors, and the Government saw no objection to its adoption. The second amendment was a merely formal one, namely the repeal, so far as the Bank of Bengal was concerned, of the Act XXVII of 1835. That Act was now no longer necessary. The third amendment would be a provision that no two partners of any one Firm should be Directors of the Bank at the same time. The clause would extend to any one partner in conjunction with any person holding a procuration from the same Firm, the object being to secure as independent a representation of the shareholders in the Direction as possible. He would propose that the Committee should report in a fortnight, as the period during which the Bank could continue to issue its notes would expire on the 1st of March; and the other alterations in the Bank's Charter were not so material as to require a lengthened publication.

The Motion was put and agreed to.

BREACHES OF CONTRACT.

The Hon'ble MR. RITCHIE introduced the Bill relating to Breaches of Contract committed in bad faith, and moved that it be referred to a Select Committee.

The Hon'ble MR. HARINGTON said that he would preface the observations which he deemed it right to address to the Council on the motion for the introduction of this Bill, by saying that, whatever were his own views on the subject of the Bill, it was not his intention, unless he found from the course taken by the debate on the present motion that the majority of this Council was with him, to oppose the motion for the reference of the Bill to a Select Committee or its immediate publication for general information. He might however consider it consistent with his duty, should the Bill ever go to Committee, to propose an amendment in some of its provisions. He rejoiced at the abandonment of the Bill of last year, because he believed it to be opposed to sound principles of legislation; and he had a strong conviction that had that Bill passed into law, it might have been perverted, as the Statement of Objects and Reasons of the present Bill stated, into an instrument of extortion and oppression. He believed also that, instead of assisting, it would have injured those for whose special benefit it was designed. He heartily sympathized with those persons, and was most willing and anxious to afford them every relief which legislation could properly give. Nothing had occurred since the Bill of last year was discussed, to alter the opinion which from the first he had formed of it. The present Bill, rightly as he thought, excluded the jurisdiction of the Criminal Courts altogether, and confined the jurisdiction to Civil Courts, which alone were competent to deal with the equities that must constantly arise in questions respecting contracts.

The imprisonment, too, provided by the present Bill would be in the Civil, and not in the Criminal Jail, and the defaulters would thus be saved from association with the most degraded classes of offenders and from all the contaminations of the Criminal Jail. To these provisions of the present Bill he could of course have no objection. Indeed the present Bill was comparatively of so mild and gentle a character, that if it would not greatly benefit those for whose advantage it was designed—and truth compelled him to say that he did not think it would benefit them in the slightest degree—on the other hand the persons who were the objects of the Bill might so easily avoid its most stringent provision by an outlay of 1 Rupee or 1 Rupee 8 Annas a month, that he felt some compunction in saying a word against the Bill. But the Bill involved a very important principle. They were now called upon, he believed for the first time, to assent to the principle that, in certain actions of debt and damage, judgment debtors might be imprisoned in default of payment of penal damages, at the expense of the State. They were asked to affirm the proposition that the dieting of such persons at the public expense was a legitimate charge on the revenues of the country. Were they prepared to assent to this proposition? Were they prepared to compel the Government of India to include this item of expenditure it its future Budgets? Was it a charge that had been provided for in the Budget of next year? There was no analogy between criminal cases and the cases to which this Bill would apply. In criminal cases the prisoners were rightly imprisoned at the public expense, for they were imprisoned for the protection and therefore for the benefit of the public at large. But the imprisonment of private debtors stood on an entirely different footing. The case of a fraudulent Bankrupt might be quoted in support of this Bill; but a fraudulent Bankrupt was regarded as a public cheat or swindler who went about preying on the public, and his imprisonment at the public expense was defended or justified on that ground. Assuming, however, the principle of this Bill to be unobjectionable, he would ask, why was it restricted to cases of contract in which consideration had been given? Mr. Ritchie had referred to a Bill prepared by the learned Chief Justice, and said it was considered right to carry out the principle of that Bill to its legitimate extent. But if that principle were carried out to its legitimate extent, the Bill must apply, not only to contracts on which some consideration had been paid, but also to all other contracts and to all actions of tort. If the Bill could be rightly applied to actions of contract, why should it not be applied to actions in which damages were given for adultery, for defamation, and personal injuries? He would ask if any calculation had been made as to the number of cases in which, as the Bill now stood, the Courts would have to exercise a discretion in carrying out this Bill. 2,50,000 cases a year was a low estimate. In the Calcutta Court of Small Causes alone there were between 30,000 and 40,000 cases instituted yearly, to a great portion of which the provisions of this Bill might apply, and he would ask if

they were prepared to throw upon the Judges of that Court and upon every Judge in the country, the obligation and responsibility of determining in every suit of a breach of contract falling within the provisions of this Bill, whether there had been bad faith and a want of reasonable excuse or a wilful withholding or a wilful not doing from interested motives? He would take the case of a lady ordering a dress and paying for it with money with which she ought to have discharged a Bill of another milliner of long standing; was she to be liable to penal damages, and in default of payment to hard labor? Referring to the 12th paragraph of the Statement of Objects and Reasons, he apprehended that the Bill applied to a case of that nature. Such a law might be right in theory, but he questioned the expediency of reducing the theory into practice. The law was of general application and would have to be administered by Native Judges of every grade throughout the country, who might assess penal damages against European British subjects, and declare them liable to imprisonment which might extend to two years with hard labor. The question arose, where were such prisoners to be confined, and what was to be the nature of the labor exacted from them? He would ask, what was the cause of this violent change in our legislation? The only reason he could discover was that a few months ago a system, which did not rest on the only sound foundation, namely, the basis of mutual interest, broke down. But was it an adequate reason for imposing this Bill on the whole country, that things had gone wrong in two or three Districts in Lower Bengal? Surely it would be better to leave time and self-interest, aided by common sense, to work the remedies for the present state of things in those Districts. He would ask if any enquiry had been made as to what might be the cost of carrying out this Bill. The report upon the Jails in the Lower Provinces showed that the average gross cost to the State of each criminal prisoner was 39 Rupees 8 Annas a year, the average net cost 28 Rupees 2 Annas, which under favorable circumstances, never likely to occur in the case of Civil prisoners, might be reduced to 20 Rupees. There would be, therefore, a large expenditure for the Native prisoners confined at the expense of the State, and in the case of European prisoners the cost would be greater. Then in Civil Jails no means existed for employing prisoners in a manner to render their labor remunerative, and workshops would be required, and instructors and extra guards. Having thus discussed the principle and shewn, as he thought, that no adequate reason had been assigned for the introduction of the Bill, and that it might prove very burdensome to the public Revenues, he would enquire if it would satisfy those on whose behalf it was understood to have been introduced. A loud cry had been raised for a Criminal Contract Law which was to be the panacea for all that had been amiss in the Districts to which he alluded, and elsewhere; to make dishonest men honest, bring out Capitalists from Europe, and so aid in the development of the resources of the country. He was surprised at that cry, but he was not astonished at its gradually dying away. He hoped that this Bill would not revive it. He should

be disposed to sympathize in the disappointment which, no doubt, would be felt by those who were so clamorous for criminal contract law, when they saw this Bill and found it so different from what they expected, were he not assured that a Bill, such as they asked for, would do them harm rather than good. He felt that it would be better for those persons to trust more to their own resources and to the remedies for the existing state of things at which he had hinted, they taking ordinary precautions and being fairly liberal in their dealings with the Natives, rather than press for legislation which could do nothing towards amendment, and if it did not prove absolutely injurious, would probably be wholly inoperative. It was expected that Act XIII of 1859 would do great good in Calcutta. But what had been the result? He had made enquiries from some very respectable European and Native Tradesmen in Calcutta, and he was assured that, in the direction intended, the law had done no real good. Upon the first introduction of the Act they said they had instituted two or three cases under it, but the result had been so unsatisfactory that they had given up having recourse to the Act, and were now endeavouring to put a stop to the system of advances which appeared to be at the root of the evil which Act XIII of 1859 was intended to cure. He thought it would be a great misfortune if the introduction of this Bill fostered or encouraged the keeping up of a system which had proved so pernicious and which had been so universally condemned. He presumed that, if this Bill passed into law, Act XIII of 1859 would be repealed. He did not think the two laws could co-exist. The same remark seemed to apply to a clause which he understood it was proposed to add to Act X of 1859 (the Rent Law), allowing an award of penal damages in certain suits for the recovery of an arrear of rent. He had alluded to the penal damages which might be awarded in certain circumstances by the Civil Courts under this Bill. He thought that this provision might prove very oppressive. Take the following case—A party contracted with another party to supply him with a certain quantity of sugar of a certain quality, at a certain price, within a certain period, and it was conditioned that, on failure to fulfil any part of the engagement, the contractor should pay twice the amount he was to receive for the sugar. A great rise took place in the price of sugar, and the contractor found it more for his interest to pay the penalty agreed upon, than supply the sugar at the price contracted for. He was willing to pay the penalty, but the co-contractor, not satisfied therewith, instituted a suit under this Bill, and there having been a wilful failure to fulfil the contract from motives of interest, obtained a decree for penal damages, on account of which the judgment debtor would be liable, in default of payment, to be imprisoned with hard labor. He was willing to pay the penalty, but he was unable to pay the damages assessed by the Court. In such a case he thought injustice would be done under the Bill. Very great misapprehension prevailed both at home and in this country in respect to the Code of Civil Procedure in accordance

with which suits were conducted in India, and as to the remedies provided by the existing law in cases of breaches of contract and the like. Many persons seemed to imagine that no redress was obtainable under the existing law in such cases, or that it was obtainable only after very long and protracted litigation, in fact after something very like a Chancery suit. The misapprehension had created a great prejudice against the Indian Courts and against our civil system generally, and had proved otherwise mischievous. It had appeared to him, therefore, that he should be doing useful service if he brought together, in a brief and convenient form, the various provisions of the existing laws on the two points which he had mentioned. The result of his labors would be found in a paper which, with the permission of the Council, he would lay on the table of the Council. He thought that, on reading that paper, every one who had any knowledge of law, or had had any experience in the administration of justice, would be surprised, not that the law had done so little, but that it had been able to do so much for persons complaining of breaches of contract. That paper would shew that any thing more unlike a Chancery suit than an action for debt or damage for a breach of contract carried on under the Code of Procedure now in force, could scarcely be imagined. It would be seen that all mere technicalities and forms, not necessary to secure a degree of regularity, had been excluded, and that substantial justice, to be speedily afforded, was what had alone been aimed at in framing the Code. He thought that, if the persons who had occasion to institute suits of the nature of those to which this Bill was intended to apply, would make themselves acquainted with the provisions of the existing law, as detailed in the paper prepared by him, and avail themselves of those provisions as occasions arose, they would find that there was already enough of good law for all useful and practical purposes, and that this Bill might be properly and safely dispensed with.

The Hon'ble RAJAH DINKAR RAO said he thought there was no necessity for this law, for it was the duty of a person entering into a contract to contract with a fit man and to take proper security. If after this there were a breach, the complainant had a remedy for damages under Act VIII of 1859, or he might proceed under Section 415 of the Penal Code.

The Hon'ble MR. ERSKINE said that he regretted to find that he differed considerably both from Mr. Harington and Mr. Ritchie, and expressed a hope that, if the Bill were allowed to go to a Committee, it would be the duty of that Committee to report, not merely on the precise clauses, but generally on the remedies at present provided by law in cases of fraudulent breaches of contract and on the different amendments of the law which had recently been proposed. This was the third measure on this subject which had been submitted to them within 12 months, and the Legislative Council

should therefore attempt more than a partial solution of the question. A full solution could not be expected at once, but could only be effected by fair reasoning, experience, and the growth of settled public convictions. Indeed the present Bill itself re-opened the whole question, and obliged the Council to consider whether the Criminal Law was sufficient, whether the Civil Law was sufficient, or, if they were defective, whether the present Bill met those defects. The Penal Code had effected great improvements in this as in other branches of the Criminal Law, by providing not only for cheating and criminal breaches of trust, but also for the fraudulent transfer of property, the malicious destruction of property, and the dishonest misappropriation of property. But while he acknowledged the great improvements effected by that Code, he believed, without disrespect to its distinguished framers, that it might be still further improved, and that experience would enable them in some respects to improve it. He would allude at present to one particular class of cases only, in connection with which there had recently been much discussion. Suppose that a cultivator had contracted to cultivate a crop on stated lands; that he had made this contract with a full intention to perform it; but that, subsequently, he was led to break it, either from animosity or greed of gain. He might know well that he could not effect gain to himself except by inflicting injury on the other party, and might nevertheless break faith, sell his produce, abscond with the money, and leave nothing but his land heavily mortgaged. In that case no punishment was provided. One reason why the framers of the Code had not provided a punishment, probably was that the property was not in the legal possession of the person with whom the contract had been made, and that the law would not pursue it in order to enforce restitution. This was good as a rule to discriminate between offences, and to define what should be dealt with as theft or breach of trust and what should not be so treated. But it was not good as a rule to discriminate acts which should be deemed offences, from those which should not. He knew of no test which could rightly be used for this purpose, except the great rule of the general welfare; and so long as a person who indirectly injured the prospects of another by the publication of a malicious statement was punished as a criminal, he saw no reason why a person should not be so punished, who knowingly and directly injured or ruined another by breaking in bad faith his formal obligations to him. The decision of the Council as to the propriety of making such acts penal might also be affected by their decision on the proposal in Mr. Sconce's Bill to give a contractor a lien on the crop for which he had advanced. But to take another instance. Suppose that the cultivator already referred to, instead of fraudulently transferring his crop, had maliciously destroyed it. There was stringent provision against malicious mischief in the Penal Code. But on looking at the commentary of two learned friends of the mover of this Bill, he found that they expressed a doubt whether this provision of the Code applied to the very class of cases now instanced. This uncertainty should not remain. Or to take one other instance; the cultivator

might neither transfer nor destroy his crop, but might maliciously leave his land uncultivated, demonstrably for the purpose of injuring another. This might occur in scores of cases at the same time in the same neighbourhood, and all might be clearly the result of animosities excited by one emissary, whom there was no means of punishing for instigation or abetment, as the substantive acts were not offences. These illustrations would suggest why he thought it would not be an unprofitable task to go over the Sections of the Penal Code bearing on this subject, with a view to consider what amendments were desirable. He thought some enquiry the more necessary, as facts relative to the Bill introduced last year had to some extent been misapprehended, and the proceedings of the Legislative Council on it were not sufficiently explained in the present Statement of Objects and Reasons. The Legislative Council did not allow that Bill to be published for general information, but referred it to a Select Committee, with authority fully to recast, and those who voted for its second reading pledged themselves only to the principle that some revision and extension of the law respecting fraudulent breaches of contract seemed desirable. Nevertheless, arguments which might be valid against that Bill as originally drawn, had been quoted as though they were equally valid arguments against every kind of penal legislation in that direction. But this was an illegitimate assumption. It might be true that the former Bill was not restricted with sufficient clearness to cases of bad faith, and that it was open to some extent to a charge of one-sideness, and that it did not sufficiently discriminate obligations arising from the status of servants and provisions justified by the analogy of the law of Master and Servant, from those relating to contracts between independent persons. Moreover, the provisions of that Bill respecting registration were confessedly insufficient. These objections might be quite valid against the special measure proposed last year, but of no validity as objections to a careful extension of the Criminal Law in another form. The general arguments against any such extension did not seem to be of much weight. Mr. Harington objected that any such extension would be retrogade and hostile to the spirit of recent legislation. But this, he apprehended, was a misapprehension. The spirit of modern jurisprudence was hostile to excessive severity, to such punishments as the pillory, and to the punishment of death for theft or forgery. But the number of criminal offences as against property and credit and general trade had not been recently diminished. On the contrary, as the standard of morals rose in the community, the public conscience condemned a larger number of such acts; and as trade advanced, the danger of offences against commercial morality was more recognized. It was more clearly felt in such cases that the loss of one was the danger of many. And thus recent legislation had manifested itself in regard to frauds, fraudulent bankruptcy, and reckless insolvency. There were also reasons for some reconsideration of the Civil Law on this subject, and the Committee should not be restrained from reporting on them. He concurred with Mr. Harington that the Civil Procedure Code had effected a great

improvement in the administration of justice, and perhaps in regard to regular suits little more was required. But it might be necessary to provide for the granting of summary injunctions to restrain from breaches of contract without suit—as in the case of a man not preparing to cultivate a certain crop for which he had contracted, but making preparations to cultivate a different one. Indeed, it would be remembered that Mr. Sconce had argued very earnestly that the Civil Courts would probably not grant decrees for specific performance of contracts to cultivate, since they could not enforce execution of such decrees. It might be better that an injunction should be issued in anticipation of a breach of contract. There were other proposals of Mr. Sconce's which had been allowed silently to disappear. For instance, that of a plaintiff being sometimes put in possession of a crop, or in possession of land in which a crop was to have been cultivated. These propositions might be good or might not, but they ought not to be ignored. Mr. Sconce's proposition that a contractor should have a lien on the crop grown for him, had been noticed and supported by the Chamber of Commerce at Bombay; and even the Government there, though generally opposed to the proposed legislation of last year, observed that this particular remedy was only that with which the Government armed its own Collectors for the recovery of Revenue. He would submit that all these propositions should not be silently set aside. He must refer in conclusion to some of the details of the Bill. The first definition, that of "bad faith," went further than was proposed even by many who asked for a Criminal Law on the subject. In order to constitute bad faith, there should not only be an intentional breach of contract from a motive of interest, but a knowledge that the breach would cause injury to another. Again, the definition of "damages necessary to indemnify a plaintiff against all loss" was so large, including possible profits, that, taken in connection with the definition just referred to, and bearing in mind that the alternative might be imprisonment for two years with hard labor, it might operate with extreme severity. The Chief Justice had formerly objected to the Bill being confined to contracts on advances, and he (MR. ERSKINE) entirely concurred in that view. Mr. Ritchie seemed to desire the retention of this limitation, on the ground that a complainant should be able to claim the protection of this Act only when he had parted with some of his property, and put himself in a worse position, in reliance on the good faith of the opposite party. But he thought that a complainant might put himself in a worse position than before, in reliance on a contract, without giving advances—as for instance, if he chartered a vessel, or incurred other liabilities, on the strength of it. The one might be a matter only of a few rupees, and the other of many thousands. This, therefore, he thought, was not a judicious restriction. He would just call attention to the use of the word "wilfully" in clause 2, and "wilfully" in clause 3, as though it were tantamount to bad faith. He presumed that that was a misprint, and was not intended. [Mr. Ritchie assented.] He would only further notice Sections 5 and 6 of the Bill, and must

admit that he did not fully understand the principle on which they prescribed imprisonment with hard labor. It could not be as a penal infliction, because criminal legislation for such cases was repudiated. It could not be as a more stringent means of effecting the end for which imprisonment for debt was justified; *i. e.*, getting at the debtor's property, because it was to be continued at the public expense even when there was no property. And it could not be as the best means of re-imbursing Government for the maintenance of the prisoners, because it was not industrial labor that was prescribed: and the very essence of hard labor was that, in the first instance, it should be penal and exemplary, and only remunerative in as far as was consistent with that object. He nevertheless sincerely desired that this Bill should go to a Select Committee, and would only again express a hope that they might be enabled greatly to improve it.

The Hon'ble MR. COWIE said that he did not understand that this Bill provided any criminal punishment for a breach of contract, as the Secretary of State had disapproved of that principle. But he believed that a defendant under this Bill would suffer more than if he were prosecuted on the criminal side, and the complainant would certainly suffer more. So that he hoped that Mr. Ritchie, in Committee, would devise some more summary and less costly remedy. With reference to Mr. Harington's statement on the Civil Procedure, there was a general impression that suits occupied more time than he had stated.

The Hon'ble MR. FITZWILLIAM stated that the European community generally, and many Natives engaged in trade, felt the necessity of some more stringent remedies for breaches of contract, and he hoped that, notwithstanding what Mr. Harington had said, the Bill would be referred to a Select Committee, and that the suggestions of Mr. Erskine and Mr. Cowie would receive the consideration they deserved.

The Hon'ble MR. FORBES said that the few observations which he wished to make, would have no reference to the Bill which was introduced into the late Legislative Council, and which was applicable only to contracts for the delivery of agricultural produce. His observations would be confined to the present Bill, which included all contracts for which consideration had been given, and which, he could not but think, would include more than those who advocated the Bill at all contemplated. In his opinion the Bill, if passed into law, would have an action in that part of India with which he had been most connected, which would be very novel, very injurious, and very little in accordance with the intentions of those by whom it was now supported. If he were not misinformed, a lease was a contract; and when land was made over for cultivation to any party for a specified rent, it would, he imagined, form the consideration which would bring the lease or contract within the provisions of this Bill. Almost all land in the Southern part of India was held primarily

under lease from Government, either permanently or temporarily—permanently, inasmuch as the Government could dispossess no lessee as long as he paid the permanently fixed assessment on the land; temporarily, inasmuch as any lessee could relinquish his lease at the commencement of any year from which he desired to be relieved from it. If he was correct in this assumption, it would follow that all the hundreds of thousands of holders of leases from Government in Southern India would be amenable to the proposed law, if, from improvident expenditure on any private object, they became unable to meet the public demand upon their land; and he could not but think that those who advocated this Bill should seriously consider the effect that its publication would be likely to have on the minds of the whole agricultural population of the Madras Presidency, when it informed them that, for the first time since the British Government was established, they were liable to imprisonment with hard labor if by any improvidence they failed in ability to pay the assessment on their land. The point to which he desired to attract the attention of the Council appeared of more importance when the Bill was a little further considered. It would be to no purpose that a sentence of hard labor would be passed against a contractor under this Bill, if there were to be no means of enforcing the sentence. The contractor would simply refuse to work, and the law would be defeated. But this point needed not to be argued, as the Council was well aware that the Sudder Court had ruled that the Prison Discipline Law was as applicable to those confined on the civil, as to those on the criminal side of the jail, and all that was necessary, therefore, was to consider what were the laws regarding Prison Discipline. Confining himself to the Presidency to which he had at first referred, he would notice that, by Regulation X of 1832 of the Madras Code, a person confined in jail, who might refuse to perform any hard labor to which he had been sentenced, was liable to corporal punishment to the extent of 150 lashes, or three times the amount of punishment to which, by the Bill about to be introduced by the Hon'ble Mr. Beadon, those who committed grave and serious crimes were to be subjected; and by the same law, even a careless or negligent performance of an allotted task would render liable to 60 lashes any person who evinced such carelessness or negligence; this punishment even being more severe than was provided by Mr. Beadon's Bill for what were termed disgraceful crimes. Mr. Cowie had stated, when Mr. Beadon obtained leave to introduce his Bill, that he objected to all corporal punishment excepting in the case of juvenile offenders, and the hon'ble gentleman had perhaps not sufficient acquaintance with the Criminal Law of the Mofussil to be aware that the present Bill would bring all who were adjudged to have fraudulently broken their contracts within the scope of that punishment. It must be remembered, too, that the Prison Discipline Law made no exception. All classes and all races were alike subject to it, and the European, as well as the Native, would be liable to its provisions, if, when confined in jail for a breach of contract, he did not break stones quite so zealously as an impatient Jailor might wish. It would probably be in His Lordship's recollection, that not very long ago the late Governor of Madras, Lord Harris, had issued a Commission of Enquiry into charges brought against the Native servants, of enforcing the Government

demand and the Police Law by harsh and illegal means, and he must confess his hope that, by the publication of the Bill in its present form, no ground would be given to the agricultural population of Southern India to suppose that it was the intention of the legislature to legalize measures which every European officer of Government had hitherto done his utmost to put an end to as illegal and oppressive. If the Bill were to be published in its present form, he feared that it would have a very injurious effect, and he would urge Mr. Ritchie to consent that the Select Committee to be appointed upon it should take into consideration the point he had now pressed, and should be instructed to make a preliminary report on the Bill, under the 17th of the Standing Rules, before it was published in the Gazette.

The Hon'ble the LIEUTENANT-GOVERNOR said that the Council had been invited by Mr. Erskine to enter on the consideration of very large questions, embracing one whole Department of the Law, probably the largest of all, and to revise the Penal Code, which for 25 years had engaged the attention of some of the ablest men in India. He certainly did not think that there was substance and bone enough in this Bill to make it a peg on which to hang such weighty questions. If a reconsideration of any of the topics suggested by Mr. Erskine were necessary, it would be better for some Hon'ble Member to address himself to the task and submit his views to the Council. He (MR. GRANT) would notice the only principle which he considered at present fairly came under discussion, and would enquire if this were not a Bill for the artificial encouragement of advances. In some degree he thought the Bill was open to that objection. He looked on the system of advances in this country as a great misfortune, and thought that it would be better, as far as possible, to check and reduce that system. The tendency of this Bill seemed to be on the other side, and therefore it was open to question. But he should vote for a Select Committee, reserving his right to vote hereafter as he might consider right. He wished, however, to enquire respecting the definition of damages, and to ask of Mr. Ritchie whether that definition would alter the substantive law of damages as now administered in this country? They had heard of consequential damages, and he wished to know how far this Bill would carry the right to award such damages, beyond the practice of the Courts under the present substantive law.

The Hon'ble MR. LAING said that Mr. Harington had assumed that this and the Bill of last year were brought in to meet a special case, that of Indigo. This was not the case. The principle of both Bills, namely, that breaches of contract tainted with fraud should be criminally punished, was one applicable to all time, and of incalculable importance for the future welfare of India. He had been led to give that principle his warm support by two classes of considerations, material and moral. *Material.*—It appeared that, owing to the poverty of the ryot, who had not sufficient capital wherewith to conduct his cultivation, a system of advances was almost universal in India for all descriptions of produce.

Those advances were commonly made at most usurious rates, and not only oppressed the peasant, but also unduly enhanced the price of produce. As an illustration, he had only the other day had occasion to compare the prices of Bengal and Malwa Opium, and he found that the former was produced at a cost of 400 Rupees a chest, while the latter cost 750 Rupees, and yet the actual cultivator of the poppy received a much better remuneration in the former case than in the latter. The difference was merely owing to the Government making advances in Bengal without interest, while in Malwa the ryot was in the hands of middlemen, who made him the requisite advances. The same thing applied to all other produce. Take cotton. What mighty interests were depending on the question whether Indian cotton could be produced permanently at a price to meet American. The transfer of a trade of £20,000,000 a year from America to India, and the extinction or perpetuation of slavery, were hanging on the question of a penny a pound more or less in the selling price of Indian cotton at Bombay and Calcutta. The system of advances enhanced, far more than a penny, the cost price of almost every pound of cotton produced in India. Why was the rate of interest on those advances so exorbitant? Mainly, no doubt, because capital was scarce, but to a considerable extent, also, because the security for the recovery of advances was imperfect. Bad security was only another word for high interest. England could borrow at 3 per cent., while America, with less debt in proportion to her resources, had to pay 6 or 8 per cent. But then "repudiation" was a word of American and not of English growth. So in private transactions; give the best possible security for the enforcement of *boná fide* obligations, and you would get the lowest possible rate of interest consistent with the fair market relation between the supply and demand of capital. But give facilities for evading the payment of just debts, and the creditor must place on the honest debtor an extra charge for insurance against the risks which he ran from the dishonest one. Nor was this all. Give security to capitalists, and capital would flow in from other quarters and cheapen the rate of interest. There was a superabundance of capital in England, eager to seek profitable employment. Give it security in India, and it would flow here in a fertilizing stream. He did not expect that these results would follow at once, as if by magic, from passing this or any other law, but he did believe that, if they legislated in a right direction, like men building for the future, a very considerable effect would be produced ere long, especially at a time when India was, we might hope, entering upon a new era of power and prosperity. He was convinced this law would not, as the Lieutenant-Governor partly apprehended, tend to hold out any artificial encouragement to the present system of advances, but that, on the contrary, it would prove the most efficient means of accelerating the arrival of a state of things when advances might be discontinued altogether, and when the immense internal wealth of India might be brought into the market at a price regulated only by a fair wage for labor, a fair rent for land, and a fair interest and profit on capital employed. The second class of considerations which weighed with him was of a moral nature. They could not do a people

a greater injury than to make legislation so complicated and technical, that it held out facilities for evasion and chicanery, and did not correspond with the moral sense of the community. Legislation for all people, but more especially for an Oriental people, should be simple, summary, and in accordance with the dictates of common sense and natural equity. Now the existing English Law as to contracts was founded on subtle distinctions which he defied any plain mind to appreciate. If he made a contract with a man and took an advance from him, intending at the time to break it, it was fraud, and he might be punished criminally. But if he changed his mind five minutes after he had signed the contract, and, because he thought it more for his advantage, deliberately repudiated his obligation, it was no fraud, but merely the subject of a civil suit. In fact the *repudiator* was in no worse position, as far as the law was concerned, than the honest but unfortunate debtor. This was subversive of all feelings of moral justice. It reduced the law to a mere game of chess, to be played at by special pleaders, according to a set of technical rules. No people could stand the demoralizing effect of laws which opposed the moral sense, and held out a premium to chicanery. Even in England, the demoralization produced among the class of petty traders by the over-lenient and technical laws of Bankruptcy and Insolvency had been so great, that it had been found indispensable to amend those laws, and to introduce the very principle for which they were now contending, namely, that fraud should be punished. The Indian people were not naturally more untruthful than others. On the contrary, truthfulness was always recognized as a remarkable portion of the Indian character by the writers of antiquity. What a responsibility did they then incur, if, by introducing the complication and technicality of the worst parts of English Law in a country where it was not understood, and where the administration of justice was necessarily imperfect, they created and fostered a spirit of litigation and chicanery. Honesty was the best policy, and as far as it was possible to do so by their laws, they were bound to make it a man's interest to be honest, and to punish him if he was detected in fraud. For these reasons he heartily supported the motion.

The Hon'ble SIR ROBERT NAPIER stated that he agreed with the Lieutenant-Governor as to the evil of advances, and thought it would be better if the system could be abolished. But it would be long before they could expect that. In some districts the people were so poor, that they could not leave their homes to go to places where employment was obtainable, without some advances to enable them. In his experience in public works, he had generally found that the rural population, to whom he had thus been compelled to make advances, were honest. But when competition occurred for labor, as in the neighbourhood of great cities, the temptation to break contracts was very great, and, there, a law like that proposed was required. But the present Bill had a larger scope than the Bill of last year. He thought it would be better to confine it to small cases, but that was a matter of detail which might be considered in Committee. He approved of the principle of the Bill.

The Hon'ble MR. BEADON said that it was very necessary to bear in mind the object of the Bill. Mr. Laing had truly said that the Bill of last year had not been introduced in favor of any one particular class, but on the broad principle that, where there was a fraudulent breach of contract on which advances had been made, that fraud should be punished. It happened that the preparation of the Bill had fallen to him, and he thought it desirable to frame it on the model of Act XIII of 1859. But he must state, as he stated before, that he believed the best course of all would have been that suggested by Mr. Erskine, namely, an extension of one Section of the Penal Code relating to Criminal Breach of Trust. That course would have been unexceptionable, and would meet most of the cases under this Bill. Section 405 provided—

"Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits Criminal Breach of Trust."

But, under that law, it would be necessary to prove dishonest misappropriation of a particular advance, and there were cases in which that could not be proved. The advance itself might not have been misappropriated, and yet the contract might be subsequently broken in bad faith. That Section could be enlarged; and though he thought that the Penal Code should not be lightly altered, and that at any rate it was not now necessary wholly to revise it, yet it must be remembered that it was not perfect, and the Chief Justice, in his speech on the third reading, had said that it must be considered as open to constant revision. He did not therefore think that there was any objection to the extension of that clause. But the Secretary of State had objected to the application of Criminal Law to breaches of contract, and therefore he was prepared to accept Mr. Ritchie's Bill as an alternative, and as the best provision possible under the circumstances. But he wished to notice one particular point. Its operation extended to all contracts on which any consideration had passed. He doubted the wisdom of that provision. It was not essential to the original design, which was to punish that which amounted to criminal misappropriation or breach of contract when cash had been advanced. Mr. Harington's suggestion was, that the principle should be extended to all cases of damages. But this would launch the Council into a boundless and unknown sea. He would therefore prefer confining the Bill to cash advances. Mr. Harington and Mr. Forbes had dwelt on the dreadful consequences of imprisoning a large number of persons in jail and subjecting them to the disgrace of penal imprisonment. But as the object was to prevent fraud, this very disgrace was desirable, as it might serve to check those who would disregard other consequences, and any man who would fraudulently break his contract might be safely left to be dealt with like other convicts. As to the effect of the Bill on the system of advances, he agreed with Mr. Laing that it would tend to check it, and the argument of Mr. Harington respecting Act XIII of 1859 sup-

ported that conclusion. He had stated that that Act had become practically inoperative, except that it had led the tradesmen to oppose the system of advances. He believed that such would be the necessary effect of the present Bill, and therefore should cordially support it. But he suggested that it should be confined to cases in which the consideration consisted of payments in cash.

The Hon'ble RAJAH DEO NARAIN SINGH said that there was no difference between the breach of a contract and the non-fulfilment of the conditions of a bond or mortgage, and therefore he could not see why imprisonment with hard labor should be awarded in one case, and not in the other. The Bill applied only to cases of breach of contract in bad faith and without reasonable excuse. But the honesty or dishonesty of a man's intentions were scarcely susceptible of proof, and the Bill did not define what was a reasonable excuse. One principal cause of breaches of contract was that capitalists entered into contracts without ascertaining the ability of the other party to fulfil them. It was true that from breach of contract heavy losses ensued, but the laws provided for the recovery of damages, and he saw no occasion for the addition of imprisonment with hard labor. In his part of the country, sugar refiners, after entering into contracts with the cultivators for raw material equal to a certain given sample, often changed the sample with a view to lower the value of the produce supplied by the cultivator. The cultivator in such a case was forced either to break his contract, or to take whatever price the manufacturer might choose to put upon the articles supplied. The fault here clearly lay with the manufacturer. Yet in that and in many other cases imprisonment with hard labor would by this Bill fall on the contractor. Contracts were entered into in this country with builders and others, and advances were made when it was well known at the time by the parties that the work could not be accomplished in the time specified. Yet in this case also the builders might be imprisoned. Capitalists already, by means of their money, had power over the poor and needy, and it did not seem expedient that the law should step in and increase their power. He therefore thought that this Bill, far from being beneficial to the country, would give rise to constant disputes, and cause the ruin of many. He thought also that it would be injurious to trade, for, if a capitalist could cause a contractor to be imprisoned with hard labor, such persons would, as far as they had the power, abstain from entering into contracts. He also noticed that the Bill had no provision for the due attestation of contracts, so as to prevent their being tampered with by either party. Nor was the case provided for, of the payment of the consideration by instalments, or the case of a contractor, after fulfilling part of his contract, stopping short on account of the vexatious objections of the other party.

The Hon'ble SIR BARTLE FRERE said that he supported the motion for referring the Bill to a Committee, not because he thought it perfect, but because the Bill was practically a complete and useful measure. He did not feel that the objections to it carried great weight. Mr. Harington stated that the Bill introduced new

principles. But this might be an advantage. Let the Council remember the state of our English Law some years ago. Though the law of a nation so advanced in civilization, there was extreme severity against indebtedness, so extreme that special legislation was unnecessary. In fact, a man unable to pay a debt might be imprisoned for life, though innocent of fraud. The general sense of the community controlled the law by refusing to put it in force, and subsequently the law itself was greatly relaxed. It had, however, been recently felt that the relaxation had been too great, and there had been a tendency to deal more severely with some cases. As to the new principle of supporting the private debtor at the expense of the State, it was impossible to say where the private injury ended and the public injury began. Mr. Harington objected to the limitation of the Bill to cases in which consideration had been paid. But he regarded this as a wise provision, for every person who wished to avoid coming under the law might relieve himself by refusing to take consideration. It was not open to Mr. Harington, who opposed the principle of the Bill, to contend that the Bill did not go far enough. The law must be regarded as a general law, and though there might be practical difficulties in particular districts, yet the strong call from various parts of the country for some legislation of the kind showed the general want. Mr. Forbes feared that leases would be embraced. But it would be easy to provide that Revenue defaulters should be exempted. The amount of punishment in jail was a question of Prison Discipline. The Lieutenant-Governor had said that he feared that the tendency would be to encourage advances. If he (SIR BARTLE FRERE) had any doubt on that point, he would vote against the Bill. His impression was that it would have the contrary effect. The evils of the present system arose largely from want of capital, want of security, and want of roads and communications, and to these had been added the inefficiency of our Civil Procedure. Mr. Harington had described the recent great improvements in that. But the cases to which this Bill would apply would generally be petty cases, and the redress required in them must be rapid and summary. This Bill, by giving power to punish fraud when advances had been received, would do more than anything to prevent men insisting on advances. Their present reasons for doing so were partly custom, and partly the desire to have the employer in their power. He (SIR BARTLE FRERE) knew that, in some places near Calcutta, capitalists, by acting with firmness, had succeeded in putting an end to the system, and had derived great benefit from the change.

His Highness the MAHARAJAH OF PUTTIALA said that, as he had only had the Bill for two or three days, he should prefer expressing his opinions on it on a future occasion. He had been recently directing his attention chiefly to the Stamp Bill.

The Hon'ble MR. RITCHIE said that the supporters of this Bill were exposed to the remarks which were usually directed against those who took a middle course. It was open to some to contend that the Bill went too far, and to others that it introduced punitive remedies. Mr. Harington took both sides, but the

Bill was not open to the objection that it was at once too severe and too lenient. It was idle to discuss the question whether Criminal Courts should have the jurisdiction. The Secretary of State had decided that, and it remained for the Council to do what it could through the Civil Courts. It was objected that the Bill introduced a violent change. But the law, as it at present stood, made no distinction between the honest and dishonest debtor, while this Bill merely sought to provide a special remedy where there was fraud, by the award of full compensation, or imprisonment. What objection could there be to that? The tendency of modern legislation was in the same direction. Formerly, a trustee could with impunity, so far as the Criminal Law was concerned, commit any breach of trust, but the law now rendered him liable to prosecution and punishment. So the Bankruptcy Act, while it afforded every facility to the honest debtor to relieve himself on the surrender of his whole property, dealt with the unfair trader as a criminal, and rendered him liable to 12 months' imprisonment in cases where fraud tainted his transactions in contracting his debt, or where he had placed his property out of the reach of his creditor. In this Bill the attempt was made to prevent fraud by acting on the same principle. He agreed with Mr. Erskine that, as the standard of morality advanced, the number of offences of which the law would take cognizance would be more numerous. Formerly, when a man was charged with obtaining money under false pretences, the Courts would treat him simply as a cheat who had made a fool of the prosecutor. But now, obtaining money under false pretences was dealt with as a substantive offence. With reference to special legislation, it was not necessary to discuss that subject now, for this Act was not special but general. At the same time, he must say that, if he had been in the Council last year, he should warmly have supported Mr. Beadon's Bill. An objection however had been felt to the jurisdiction of Criminal Courts, in cases where equities might have to be determined. But equities would not arise in the class of cases to which that Bill applied, or those that fell under Act XIII of 1859. In England, the only cases of breach of contracts submitted to the Criminal Courts were those which had the ingredient of simplicity, with which a Justice of the Peace might deal by mere common sense and every-day experience. When cases of a more complicated character arose, there might be objection to the jurisdiction of the Criminal Courts. But the question was, what should be the remedy when an honest creditor was deprived of a benefit for which he had contracted, by a dishonest debtor? Mr. Erskine's argument was in favor of a penal remedy. But the line of enquiry he proposed was too wide. He (MR. RITCHIE) must decline entering on a preliminary enquiry. Materials enough were before them to show that the dishonest debtor should not be treated as an honest debtor. The Bill provided that he should not be so dealt with in respect to the amount of damages. The Lieutenant-Governor enquired if the definition in the Bill as to damages made any alteration in the substantive law on the subject. The present Bill certainly would alter the law as now administered in the English Courts. But he could not say that it would alter the law in the Mofussil Courts, and it was doubtful how far

it would alter it even in the English Courts in cases in which the amount of damages was open. The innovation that would be made, however, would only amount to allowing a difference in the amount of damages in honest and dishonest breaches of contract. The law deemed it unreasonable to give a larger amount of damages than it assumed the defendant could reasonably have contemplated when he entered into the contract. But that rule did not apply, in morality or common sense, to the case of a debtor who had dishonestly broken his contract with the design to injure the plaintiff. It had been considered that the law of damages was settled in a leading case a few years ago, in which a miller sued a public carrier for delay in delivering a wheel, in the absence of which he could not carry on his trade. It was held that he was not entitled to all the profits he had lost by the want of that wheel, for the public carrier could not have been aware that it was the only one he had or could obtain. That might be a reasonable decision ; but if a manufacturer, who contracted to make an article by a particular day, broke his contract in bad faith and without reasonable excuse, the case might be different. He (MR. RITCHIE) had known cases in Calcutta in which goods had been shut out of the last ship of the season, although the shipowner had contracted to take them ; and the plaintiffs had recovered only nominal damages. That might be fair when they were shut out accidentally. But if a shipowner, from motives of interest, excluded the goods he had contracted to carry, and took his own goods instead, the plaintiff should be entitled to full damages and indemnification. Mr. Forbes' objection respecting the Government ryots in Madras had been met by Sir Bartle Frere. The question as to the mode of enforcing hard labor was a question of Prison Discipline. He could not understand the authority of the rule respecting flogging, to which Mr. Forbes had referred. [MR. FORBES said that it was a law.] Here, in the House of Correction, hard labor had been enforced on some desperate offenders without any flogging ; and if the law were now about to be altered, it was only because such offenders sometimes might require severe measures. With respect to leases, he thought it right that the law should apply ; but it should not extend to the refusal to pay Government Revenue, and in that respect the Bill should be amended. He would not enter at length into the details of the Bill, but he thought it right to adhere to its provisions respecting consideration, notwithstanding what had been urged by Mr. Beadon. On this point of consideration, opposite objections had been urged. The Bill however did not affect to deal with all contracts, but only with those in which there was a certainty that the position of the plaintiff had been changed for the worse, by his having given a consideration beyond a promise. Contracts resting on mutual promises did not afford the same ground of certainty. He regretted to differ from so high an authority as the Chief Justice on this point. The definition of "bad faith" might be improved ; but the object of the Bill must be kept in view, as that object was stated in the Preamble, namely, "that it is just and expedient that defendants in civil suits, who have broken their contracts in bad faith, without reasonable excuse, after receiving consideration for the same, shall be liable to stricter provisions in regard to the judgment and execution to be awarded against

them, than defendants whose failure to perform their contracts has not been in bad faith or without reasonable excuse." It was just, because the dishonest and tricky debtor should not be dealt with on the same footing as the honest and unfortunate one ; and it was expedient, because it would tend to encourage honest commerce and to discourage fraud.

The Motion was put and agreed to.

EMIGRATION (SEYCHELLES).

The Hon'ble MR. FORBES introduced the Bill relating to Emigration to the British Colonial Dependency of Seychelles, and moved that it be referred to a Select Committee.

The Motion was put and agreed to.

KING OF OUDE BILL.

The Hon'ble MR. BEADON moved for leave to bring in a 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. He stated that the object of this Bill was to fulfil the promise and the expectation held out to the King of Oude after the annexation, that he should continue to be treated with all royal dignity. After the King refused to accept the Treaty tendered to him by Lord Dalhousie, he had placed himself at the disposal of the Government. But the Government were then prepared to pay him still the pension which they had offered, and to treat him with the same dignity as if he had accepted the Treaty. Afterwards, it became necessary to place him under arrest, and subsequently to that, on his release, he had applied to be placed in the position previously offered to him ; and the Government were willing to fulfil their promise of 1856, withholding only independent jurisdiction in his own residence. The present Bill, therefore, would exempt him from the process of the Criminal Courts, except in the case of treason and murder. In ordinary cases, Government might appoint a Commission to investigate the charge. As to Civil Courts, he would be placed on the same footing as the Nawab of the Carnatic had been. Process would be issued against him only with the previous sanction of Government, and he would be exempted from personal attendance as a witness in the Civil Courts.

The Motion was put and agreed to.

DISSOLUTION OF MARRIAGE (CHRISTIAN CONVERTS).

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the dissolution in certain cases of marriages entered into by Converts before their conversion. He said that the object of this Bill was to settle the law respecting the marriage of Converts from one religion to another. Doubts had been excited as to the continuing validity of such marriages, and as to the legitimacy of the issue. Considerable evil had thus resulted to individuals, and some reproach rested on the State for the continuance of such a state of things. There should at any rate be certainty with respect to the law. Unfortunately, there was considerable difference of opinion as to the state of the law

among those who had most considered the question. The question arose in the case of a person who left the faith which he professed when he was married, and was left by his wife on his conversion. There were two extreme opinions on the subject. One was, that the existing marriage tie continued, as before, binding on the unconverted wife, and that the law should enforce the conjugal rights of the husband. The other was, that on conversion the marriage tie was as absolutely dissolved, as if the converted party were dead, without leaving it to the other party to elect whether to continue in the married relation or not. In his (MR. RITCHIE'S) opinion, both these opinions were incorrect. To hold that the marriage tie continued precisely as before, would be repugnant to the feelings and opposed to the usages of the people. In one case, under a decision of a learned Judge at Madras some years ago, the public had seen the infant wife of a Hindoo Convert, against her own remonstrances and the remonstrances of her family, handed over to her husband after his conversion, though both she and they considered that degradation was involved in it. This Bill would prevent the recurrence of such cases. The other opinion had more plausible support. Some Hindoo and Mahomedan lawyers considered that the marriage bond was dissolved. He (MR. RITCHIE) concurred in opinion with Sir James Colvile, when Advocate General, and with Sir Charles Jackson, that the marriage bond subsisted, but that no Court in India under the circumstances could enforce the conjugal rights, or had authority to dissolve a marriage simply upon the ground of conversion. But the marriage subsisting, the incidents of the marriage must follow the law under which it was contracted. But on conversion of one of the parties, that law could not be fully applied, and there was no *lex loci* that could be called in aid. The Hindoo or Mahomedan, previous to his conversion, might contract a second marriage while the first subsisted. But their laws would not give a dissolution of marriage for the purpose of enabling them to marry again, and did not distinguish between a separation *a mensâ et thoro* and a dissolution *a vinculo matrimonii*. In this state of things irregular marriages prevailed, and in some instances concubinage. Many marriages had been celebrated by conscientious persons, who believed that, on the conversion of one party, the former marriage had been dissolved. Where Sir James Colvile's opinion had become known, that practice seemed generally to have been given up. But the same forbearance was not shown in all places, and the time appeared to have come for a settlement of the question. The Bill would declare that, on the conversion of any husband from any of the religions of India, except the Christian religion, if the wife separated herself from her husband, the husband might apply to a Judge to enquire, in a manner consistent with the customs of the country, into her willingness to live with him, and the Judge should then record what took place. If she refused to live with him, then, if there were no children, after an interval of one year, or after an interval of two years if there were children, the Judge might declare the marriage dissolved. If the wife were an infant under 12 years, the examination would be postponed till she attained that age. The Bill would be confined to the case of a husband's

conversion, for very different considerations prevailed in the case of a wife. As the husband might, prior to his conversion, take a second wife, it could not be imputed to him that he had changed his faith for the purpose of marrying again. But that imputation and suspicion might rest on the wife, if she, by changing her faith, could procure a dissolution of her marriage.

The Motion was put and agreed to.

CONFINEMENT OF PRISONERS CONVICTED IN NATIVE STATES.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend Act XVIII of 1843 (relating to the imprisonment in British Jails of persons convicted of certain offences in the Courts of Foreign States). He stated that the Act XVIII of 1843 authorized persons in charge of British Jails to receive into custody persons convicted of Thuggee and Dacoity in Native States, and the object of this Bill was to extend that provision to Suttee and burying alive, and a provision would be added authorizing the Governor-General in Council to extend this power to other offences.

The Motion was put and agreed to.

RULES FOR THE CONDUCT OF BUSINESS.

The Hon'ble MR. HARINGTON moved the introduction of the following Rule after No. 15 of the Rules for the Conduct of Business :—

"No Bill shall be introduced until seven days after a copy of the Bill and of the Statement of Objects and Reasons has been furnished to each Member."

He said that the only object which he had in view in moving the introduction of this Rule, was to ensure that a copy of every Bill proposed to be introduced into the Council, and of the Statement of Objects and Reasons, should be in the hands of Hon'ble Members a sufficient time to admit of their carefully and fully considering the same, before they were called upon to discuss the principle of the Bill and its detailed provisions. The Rules, as now framed, contained no provision on the point. An incident at to-day's Meeting of the Council shewed the necessity of the Rule which he had proposed. They had been deprived of the benefit of the opinion of their Colleague, His Highness the Maharajah of Puttiala, on a very important Bill debated to-day, in consequence of a copy of the Bill having reached him only the day before yesterday. In the Rule proposed by him, he had fixed the same time as prescribed by Rule 23 before the Report of a Select Committee on a Bill could be taken into consideration. He did not think that a less time should be allowed before the Council were required to discuss the principle of a Bill and its detailed provisions.

His Excellency THE PRESIDENT said that he entirely concurred in the expediency of introducing the Rule proposed by Mr. Harington, and thought that its omission was a mere oversight in drafting the Rules. Its adoption would prevent the repetition of the occurrence of to-day, whereby the Native Members had been deprived of the full opportunity of considering the Bill which had been discussed in Council.

The Hon'ble MR. RITCHIE said he thought that three or four days would suffice, and that, if any Hon'ble Member required a longer time, he could apply to the mover of the Bill, who would be always ready to meet his convenience.

His Excellency THE PRESIDENT said that it would be better to have the Rule strict, and to relax it when necessary, than to render it lax, and then to prevent a Member from proceeding with a Bill unless the papers had been circulated for a longer period.

The Hon'ble MR. BEADON said he thought that the Rules should be made as elastic as possible, and that there should be no obstruction or delay in proceeding with a Bill before the Council. In any special case, a Bill could be postponed; as on the present occasion, he had no doubt that, if the Maharajah had applied for a delay, the mover of this Bill would have willingly consented. He thought it might be desirable to follow the practice of the Legislative Council, and have a Standing Orders Committee, consisting of the President and two other Members, to whom all proposals of this kind could be referred.

MR. FORBES stated that four days' notice would practically be reduced to two, for the papers were circulated on the evening of the first day, and discussion took place on the morning of the fourth.

The Hon'ble SIR BARTLE FRERE was in favor of the proposition for seven days.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill relating to Breaches of Contract committed in bad faith—the Hon'ble Messrs. Beadon, Ritchie, Harington, Erskine and Cowie.

On the Bill for regulating the Bank of Bengal—the Hon'ble Messrs. Laing, Ritchie, Cowie, Fitzwilliam and Rajah Deo Narain Singh.

On the Bill relating to Emigration to the British Colonial Dependency of Seychelles—the Hon'ble Messrs. Ritchie and Forbes.

The Council adjourned till Wednesday, the 19th instant, at 11 A. M.

CALCUTTA:
The 12th February 1862.

M. WYLIE,
Deputy Secy. to Govt. of India, Home Dept.

Office Supdt. Govt. Printing.—No. 68 L. D.—19-9-73.—50.