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Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter" as settled in Committee of the whole Council.

MR. HARINGTON moved that the Petition be printed.

Agreed to.

ENGLISH PASSENGERS ACT.

THE CLERK reported to the Council that he had received, from the Home Department, a Despatch from the Secretary of State for India, suggesting the extension to India of the provisions of Sections LII to LV of the English Passengers Act, 18 and 19 Vic. c. 119.

MR. HARINGTON moved that the above communication be printed.

Agreed to.

EXECUTION OF MOFUSSIL PROCESS (STRAITS).

THE CLERK reported that he had received a communication from the Foreign Department relative to the extension to the Straits Settlement of 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).

MR. PEACOCK moved that the above communication be printed.

Agreed to.

OATHS AND AFFIRMATIONS,

THE CLERK reported that he had received, from the Home Department, an Extract of a Despatch from the Secretary of State for India, relative to the Bill "concerning oaths and affirmations."

MR. FORBES moved that the above communication be printed.

Agreed to.

SMALL CAUSE COURTS.

THE CLERK reported that he had received, from the Home Department, an Extract of a Despatch from the Secretary of State for India, relative to the Bill "for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter."

MR. HARINGTON moved that the above communication be printed.

Agreed to.

STAMPS.

MR. SCONCE moved the first reading of a Bill "to consolidate and amend the laws relating to Stamps." He said that the Bill which he now had the honor to bring to the notice of the Council had for its main object to consolidate, amend, enlarge, and generally to enforce the operation of the Stamp Laws. He should have wished that, as was at one time expected, the Council had had the benefit of the greater authority of an Honorable Member of this Council, whose absence they had so much cause to regret, in the introduction of the Bill. But as the duty had devolved upon him, he would now, with the indulgence of the Council, state shortly the general topics to which the Bill related.

It was a Bill, as he had said, to consolidate and enlarge the Stamp Laws, but the subject matter of the Bill did not embody and could not disclose the object of the proposed enactment. He need hardly say that the leading motive of the Bill, but for which the amendment of the law would not have been probably at this moment attempted, was, if possible, in some degree to increase the resources of the Government, a subject which it was scarcely necessary for him to dwell upon. It was generally understood how necessary it was to relieve the pressure under which the Government now lay, and it was probably sufficient for him to recall to the recollection of the Honorable Members the exposition of the financial circumstances of the Government which had been laid before the Council four months ago by His Excellency the Governor-General.

As to the Stamp Law, it was well known that it operated and became productive in two general forms. In one form, it affected a vast number of transactions and situations in which mankind were placed towards each other or themselves. It generally affected monetary transactions; and it

touched, in some degree, the capital of the capitalists, the profit of the merchant and trader, and the income of the consumer. It was too much to expect that it would always work with entire impartiality; hardly any tax did so. Nor did it pretend to touch all capital, profits, or income without exception; but from the number of persons of all classes who were affected by the application of the law, and from the universality of its operation, it might fairly be said to have a very wide and general application.

The second form in which the law acted might not possibly be said to be of so unexceptionable a character. He alluded to the Stamps used in judicial proceedings. The operation of the tax in this sense was often said to be a tax upon redress of wrong, and an impediment to the proper administration of justice. But the question had another side. Where there was wrong to be redressed, there was a wrong-doer; and it might be not unfairly argued that, as ultimately the result of litigation was to cast the costs of suit on the party who had done the wrong, the imposition of a Stamp Duty upon the institution of a suit was relieved from an injurious operation. On the other hand, even admitting that the use of stamp paper in suits affected the resources of suitors, there was, he might venture to say, very much reason to be assured that the doors of the Courts of Justice were not sensibly straightened by the operation of the Stamp Law, and certainly that suitors generally disbursed their money with a facile affluence which did not by any means support the supposition that to be relieved from the charge of an institution-stamp was to them a material object of economy. But this question he did not propose to bring now to an issue. The Bill which he held in his hand was a Bill to increase, not to forego, public revenue. The sacrifice which the adoption of the principle now referred to would entail, was of too serious a nature to be at this moment submitted for the consideration of the Council. He found from the latest Returns available to him that the total revenue derived from stamps during the year 1856-57 yielded somewhat more than sixty lakhs; and as it was estimated on very exact data that stamps used in judicial proceedings furnished at least one-half of the entire revenue, it followed that a proposition to abandon this portion of the public revenue would entail a loss to the State of thirty lakhs. It seemed to him, therefore, that whatever ground there might be on any future occasion for re-considering the principle of this tax, it was not at the present moment that the question could be entertained.

But while he did not propose to reduce, at the same time he did not propose to increase, this branch of the Stamp Revenue. The area of taxation would continue as before. The Presidency Towns of Calcutta, Madras, and Bombay, under the jurisdiction of the Supreme Courts of Judicature, which had hitherto been exempted from the use of Stamps in the conduct of judicial proceedings, would continue to be so exempted. But as regards the Local Courts, without, as he had said, enhancing the weight of the tax, it appeared to him that a beneficial change might well be adopted in the mode of its application. The revenue received through judicial proceedings was, as the Council was aware, derived for the most part from Stamps used in petitions of plaint and of appeal. In Bengal and Madras the same scale of taxation is followed, and though within the Presidency of Bombay the scale of values determining the tax was somewhat different, practically the duty charged very closely corresponded with that charged in the other Presidencies.

It seemed to him, however, that, as regards all the Presidencies, the scheme of taxation was very unequal in its operation, and (he feared) that inequality was indicative of unfairness, and unfairness of injustice. First, he apprehended that the present system was unjust from the severity with which suits for smaller values were taxed, compared with suits of larger values. Suits for smaller values, for example, suits for a hundred and sixty Rupees or three hundred and twenty Rupees were assessed at ten per cent.; but as the value of the suit increased, the percentage of taxation diminished from ten to six, five, four, and eventually, when the value of the subject of the suit was eight thousand Rupees, to three per cent. But not only was the difference in the taxation of the

smaller and the larger suits excessive, but within smaller limits the operation of the tax was exceedingly unequal. For example, all suits of values varying from three hundred to eight hundred Rupees were subject to a stamp of thirty-two Rupees, that is, a suit for three hundred and twenty Rupees and a suit for seven hundred and eighty Rupees were charged at institution with one and the same stamp. In an attempt, therefore, in some degree to mitigate the severity, and correct the inequality of the present system, he ventured to propose the substitution of the Schedule which appears in the present Bill.

He proposed a general rating of five per cent. to operate as follows:—On all suits up to the value of one hundred Rupees, he proposed that on every sum of ten Rupees a tax of eight annas or five per cent. should be charged; that is, eight annas on suits from ten to twenty Rupees, one Rupee on suits from twenty to thirty Rupees, and so on. Again, that in suits from the value of one hundred Rupees, to the value of five hundred Rupees, on every additional sum of twenty Rupees one Rupee additional tax, that is five per cent., should be imposed. Again, that in suits from the value of five hundred Rupees up to one thousand Rupees, for every additional sum of fifty Rupees an additional tax of two Rupees and eight annas or five per cent. should be charged; and after the same rate an additional charge of five Rupees on every additional sum of one hundred Rupees from a suit of the value of one thousand Rupees up to the value of ten thousand Rupees. Finally, as regarded suits exceeding in value ten thousand Rupees, it was proposed that five per cent. should be charged up to ten thousand Rupees, and two-and-a-half per cent. on every additional sum of one hundred Rupees above that amount.

The result of this change would be probably to leave the revenue derived from stamps in the course of judicial proceedings about the same amount as at present. In the details of receipts there would be necessarily considerable alteration In the revenue derived from suits instituted in Moonsiffs' Courts in Bengal, there would be a falling off, as nearly as he was able to estimate, of somewhat more than a lakh of Rupees. So in suits within the jurisdiction of Sudder Ameens, there would be a falling off of about fifteen thousand Rupees; but on the other hand, in suits of a value exceeding ten thousand Rupees, he estimated the gain to exceed one lakh of Rupees. Upon the whole, then, looking to the relief which the change proposed was calculated to bestow on the large number of persons interested in actions of smaller value, it seemed to him that the new Schedule was well worthy of being adopted by the Legislature.

In some respects there was a striking inequality in the application of the stamp tax to the three Presidencies, or in the actual law of this Presidency as compared with that in force in Madras and Bombay. In Bengal petitions presented in the Criminal Courts and to Collectors were required to be written on stamp paper, and he could not doubt that the duty realized from them contributed very materially to the general revenue. But there was no such requirement of the law in the other Presidencies, and this of itself exhibited an objectionable inequality, which, in consideration of the public exigencies, no attempt had been made to correct.

He would now proceed to notice the law as it affected general transactions. The stamps realized on this head were known in this part of India as comprised in Schedule A Regulation X. 1829. By Regulation XII. 1826 Stamp Duties were leviable within the town of Calcutta; but no similar law existed for the towns of Madras and Bombay. Generally stamps were realized in such transactions throughout the Bengal Presidency. As far as Calcutta was concerned, a sum of about one lakh of Rupees was annually levied from stamp paper. But though a law existed for the use of stamps within that town, it was more optional than imperative, for instruments not unstamped were not held, in actions tried by the Supreme Court, to be inadmissible as evidence; and the object of this Bill was to extend the law generally throughout the Presidencies and the Presidency Towns, by providing that no unstamped deed or instrument, which the law might require to be stamped, should be entitled to be produced in

evidence before any Court of Justice. But there were many classes of cases in which the parties concerned did not look to the admissibility of the deed as evidence; in these cases the trust and confidence of people in each other took the place of the motives which influenced them in the use of stamps in other cases. To give effect to such instruments as bonds or deeds of sale, the parties holding these deeds had to rely on the protection of the Courts. But there were others, such as bills and receipts, which, in dealing with each other, were accepted without the guarantee which stamps afforded. On this ground it seemed to have become necessary to make the law more stringent, and it was proposed to declare any person liable, upon the prosecution of the Collector of Stamps, to the imposition of a penalty upon the making or execution of a deed on unstamped paper or on paper of an inadequate stamp.

The law also sought to avail itself of another means of compelling the use of the stamps prescribed. It was well known that, under certain circumstances, instruments which had not been written on stamped paper might, under the specific conditions laid down in the law, be stamped if produced for that purpose within three months from the date of their issue, and in others if produced beyond three months. But the change now proposed was that, after the lapse of six months from the date of the promulgation of the Act, or after three months from the date of execution, no unstamped deed should be entitled to the benefit of being stamped. In the latter case it was possible to conceive that some opposition might be offered to a stringent enforcement of this rule. But as far as he was able to learn, the benefit to be derived from a looser wording of the old law was very limited, for it appeared that in the course of a whole year no more than six thousand Rupees had been derived from this source.

As to the details of the Schedule hitherto in force, a material difference was observable between the rates charged in Bengal, and the rates charged in Madras and Bombay. In Bengal there was a Schedule of discriminative rates for the different classes of documents stamped, whereas in the other two Presidencies all classes of instruments were taxed at one and the same rate of percentage. Uniformity of practice, however, was preferable to diversity; and other reasons arising upon the merits of the measure enforced the same principle of adopting one common law. Of these, the most prominent was the proposal to charge one anna stamps on all drafts or orders for money payable to the bearer on demand, and on all receipts for money paid to the amount of ten Rupees or upwards. The principle of this measure was to raise, it was hoped, a considerable amount of revenue by imposing a minimum charge on individuals, and it seemed indispensable to introduce it, not in one Presidency, but in all. In England, as he understood, for the year 1857, from one-penny duties collected upon receipts and orders for money, the sum of £2,77,000 was realized, and without assuming that statement as any positive basis for estimating the revenue to be received under the same head in India, it seemed to justify the expectation of the productiveness of the tax.

Another reason he would venture to adduce in support of the proposal of assimilating the rates of duty was that the scale of duties levied in Madras and Bombay, as compared with the scale of duties charged in Bengal, was excessively low. For example, as regards bonds, whereas in Bengal a bond varying in value from three hundred Rupees to five hundred Rupees was charged with four Rupees stamp, the same bond was charged in Madras and Bombay with one Rupee stamp; and in Bengal while a bond not exceeding one thousand Rupees was charged with a six Rupees stamp, the same bond in the other Presidencies would be charged with a two Rupees stamp. Then, as regards Conveyances, a Deed of Sale, for example, for five thousand Rupees in Bengal gave twenty Rupees Stamp Duty whereas in Madras and Bombay the Duty levied was only eight Rupees. It seemed desirable, therefore, not to reduce the Bengal Duty, but to place the Madras and Bombay Duty upon an equality with it.

Besides, as regards more important mercantile transactions, it appeared to be essential to have one scale and one law applicable to the various

Mr. Sconce

cases throughout the three Presidencies.

The only exception made as regards the three Presidencies fell under the head of Leases. In Bengal only those leases were exempted from Duty which took effect between a landholder and the actual cultivator of the soil; whereas in Madras and Bombay, all leases between landlord and tenant, with respect to land paying revenue to Government, were exempt from Stamp Duty, and in Bombay the same exemption was recognized with respect to leases made within lands which contributed no revenue to Government. This last exemption, as regards lakhiraj lands, the Bill proposed to disallow, but the present law was in other respects continued.

One other matter of detail might perhaps be mentioned. He alluded to the composition on the issue of Bank Notes. These seemed to be proper exceptions to the rate ordinarily chargeable as Notes and Bills, from the repeated circulation of Notes from hand to hand, and from the facility of re issuing them. The proposal of the Bill therefore was that all Banks of issue should pay five annas per cent. per annum upon the value of the Notes issued by them, and in circulation during the year. This charge closely approximated the rate of Duty taken in England, which amounted to seven shillings per cent. on the circulation of Notes per annum.

On the whole, he was unable to offer any opinion as to the results to be expected from the changes proposed. He had already mentioned that the receipts for the use of Stamps in Calcutta alone, under a law of very imperfect obligation, amounted to a lakh of Rupees. From Bills of Exchange, whether Inland or Foreign, a considerable amount was expected to be realized. He had much reason to believe that Foreign Bills alone drawn abroad amounted to twenty millions annually; and as upon an average the Duty levied upon Bills of Exchange, varied from one anna per cent. to two annas per cent., the Duty realized upon the above sum should yield at least a lakh or a lakh and twenty-five thousand Rupees.

These appeared to him to be clearly the points which only required to be noticed; and he should accordingly now move the first reading of the Bill.

The Bill was read a first time.

EXCISE DUTY ON SALT (MADRAS).

MR. FORBES moved the first reading of a Bill "to collect a duty of excise on salt manufactured in the Presidency of Fort St. George." He said, the Council would remember that when the question of the renewal of the East India Company's Charter was under the consideration of Parliament in 1853, a Motion was carried in the House of Commons to require the early abandonment of the salt monopoly in India, and the substitution of a fixed excise. Although this requirement did not find a place in the Act which was finally passed, having been thrown out by the House of Lords, and its rejection having been acquiesced in by the House of Commons, still the Court of Directors of the East India Company, considering that it was probable that the subject would sooner or later be re-agitated, directed the Government of India to institute an enquiry into the practicability of carrying into effect any system under which, in the words of the Clause at first adopted by the House of Commons, "the manufacture and sale of salt in India shall be absolutely free, subject only to such excise as may now, or may from time to time, be levied."

This enquiry was, as is well known, entrusted to Mr. George Plowden, and the result was a very full and elaborate report with which, no doubt, Honorable gentlemen were familiar.

At present they had to deal only with the Presidency of Madras, and he would very briefly inform the Council of the system now in force in the South of India.

The salt revenue was there raised under a strict monopoly. By Regulation I. 1805 salt could be made only on account of Government. It was, when made, delivered to Government at a rate fixed for each district, but varying in different districts according to the expense of manufacture. The average cost to Government, including all items, was about two annas a maund. Dealers purchased salt at the Government stores, which were situated in the midst of the manufacture, at convenient distances all

down the Eastern Coast, and all salt purchased at a Government store was protected by a pass; no interference whatever was allowed with the retail sale, which, as regards price, place, quantity, and all other particulars, was conducted solely in accordance with what the dealer might consider to be his interest. The price at which Government sold the salt was one Rupee a maund, and the retail price of course varied with the distance of the place of sale from the place of manufacture.

After considering the system as just described, and after having considered and reviewed the excise system as in force in Bombay, the Commissioner, Mr. Plowden, made the following remarks in his report:—

"Regarded simply as a plan for the realization of an indispensable revenue, the salt monopoly under the Madras Presidency, as at present constituted, does not, it must be admitted, afford much room for practical objection. Salt of good quality is abundantly supplied by Government at a moderate fixed price, and the revenue is easily and cheaply collected; the exportation of salt by sea is now free from duty and all restrictions, and all foreign salt is admitted to competition with the home-made article on terms of perfect equality. Only the manufacture and first sale of salt are a Government monopoly. This is so far objectionable, that a Government monopoly in a great article of consumption, in any form or degree, and any participation of a Government, in the business of a trader, are such deviations from true principle, as cannot fail to be productive, directly or indirectly, of evil consequences. But the price of the salt being fixed, the Government possess no power of deriving a profit from the exclusive manufacture, which they might not equally derive under a free manufacture, and are only interested in maintaining the monopoly on the consideration that the same amount of revenue could not be raised so cheaply, and with so little inconvenience to the community, in any other manner. Whether this plea for continuing the monopoly is or is not well founded, appears to me to constitute the whole question to be determined in considering the practicability of substituting a system of excise upon the manufacture."

That was Mr. Plowden's view of the salt monopoly at Madras, that it was a deviation from right principle that Government should be in any way engaged in trade, that the departure from right principle became wider when the article traded in was one of prime necessity, and that the measure would be justifiable only if it could be shown that in no other way could so large a revenue as was derived from the salt monopoly be obtained at so small an amount of public inconvenience. At the same time Mr. Plowden admitted that the monopoly was well and fairly worked, that the salt sold was good and abundant, and that beyond the fact that the sale in the first instance was a monopoly, the salt trade was wholly free and unfettered.

He did not think that it was necessary that he should enter on any argument connected with the abandonment of the monopoly. It would be admitted that the Government was justified in applying to the Legislature for power to adopt its own method for realizing the public revenue, provided that the burdens of the people were not increased, and their convenience was not diminished. It was the declared wish of the Home Government that the salt monopoly should cease, and the Government of India had, in a recent Despatch, called the attention of the Madras Government to the subject, and requested that steps might be taken for gradually substituting an excise for the system at present in force.

This Bill had been prepared in consequence. Its main provisions were to establish a system of licenses, to be granted by Collectors for the manufacture of salt, all unlicensed manufacture being prohibited, and those carrying it on being subjected to penalty. As all the present places of manufacture are private property, and are frequently bought and sold, their owners having a vested pecuniary interest in them, it was provided that all holders of present salt pans shall be entitled to a license as a right; but for new works which it might be proposed hereafter to establish, the grant or refusal of a license would be determined by the question of whether the manufacture and sale at the particular place were likely to be sufficiently large for the Government to be compensated by the excise duty for the expense to which they would be put by keeping up a preventive force.

On the same ground it was provided that a license once given might be withdrawn if less than five thousand maunds of salt be manufactured on an average of

Mr. Forbes

three consecutive years, and the license might also be withdrawn if the works for which it was given remained unused for three years.

The Bill provided that all salt should be brought to a Government store, and on being sold should be charged with the excise duty. A pass was to be given, which was to be delivered up at any one of the preventive stations which would be established round the works, and in its further progress, after passing the preventive station, the salt was to be subjected to no further interference whatever on the part of the Officers of Government.

The Bill continued the provisions of the present law, which allowed the Government to prescribe the route by which salt should be imported by land and the port at which it should be imported by sea, and also for the grant of drawback on any salt which might be exported after having paid the excise.

It further prescribed that certain penalties should be incurred by the violation of the conditions of license, or manufacture of salt without a license, by the importation of salt by land or sea by routes or at ports other than those prescribed by Government, by obstruction offered to any Revenue Officer in carrying out the Act, by refusal on the part of the Police to aid the Revenue Officers when called upon, and by corruption on the part of the Salt Officers by which the salt revenue might be affected.

In drawing the Bill he had adhered as closely as was possible to the existing excise law in Bombay and to Act XXI of 1856 for the consolidation of the Abkaree Revenue in Bengal.

The Bill was read a first time.

ABKAREE REVENUE (BOMBAY).

MR. LEGEYT moved the first reading of a Bill to amend the law for the realization of Revenue from Abkaree in the Island of Bombay. He said that it would be necessary to state, for the information of the Council, that the Abkaree for the Island of Bombay was quite distinct from that of the rest of the Bombay Presidency. It was limited to the produce of the Cocoanut, Brab, and Date trees growing in the Island. The tax at present levied under Regulation X. 1833 was three Rupees a year on each Cocoanut and each Brab tree, and eight annas a year on each Date tree. The late increase, however, in the Customs Duties on all importations of spirits into the Island of Bombay had materially affected the prices of those articles, and one of the objects of this Bill was to equalize the revenue derived from, and the prices charged for, spirits manufactured in the Island.

Brab trees in the Mahim District of the Island, which was an outlying District, were not included in the provisions of Regulation X. 1833. But no such exception had been made in this Bill, which gave a discretionary power to the Governor in Council to fix the fee or tax to be paid. At the same time it was proposed by the Governor in Council that the rates should be fixed experimentally, and it was estimated that the revenue expected to be derived would be about treble that now paid.

The present income from the Abkaree tax in the Island of Bombay amounted to eighty-nine thousand Rupees per annum, and it had been calculated that, after deducting the incomes from a number of trees which, under a higher scale of duty, would cease to be drawn, the tax would hereafter yield a revenue of about two lakhs of Rupees.

He was also requested to state that the present Bill was not entirely fiscal in its operation. The present law was defective in so far at least that it contained no provision for the punishment of those who worked without a license, and the Collector of Bombay had reported that he had lately discovered no fewer than sixty unlicensed stills. This defect the Bill proposed to remedy.

After briefly noticing the principal provisions of the Bill, Mr. LeGeyt said that this Bill had been prepared and forwarded by the Bombay Government to the Governor-General in Council. It had been approved by His Excellency, and had been referred to him from the Home Department, with the suggestion that the necessary measures should be taken for passing the Bill through its several stages, in order that the revised scale of Duties might be brought into operation from the commencement of the ensuing revenue year in August next.

He proposed, if the Council should allow the Bill to be read a second time next Saturday, to move the suspension of the Standing Orders with a view to the Bill being passed through all its stages forthwith, and to its coming into speedy operation.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. HARINGTON moved the first reading of a Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)." He said, it was with much regret that he found himself under the necessity of asking the Council to give their consent to a modification of the new Code of Civil Procedure, although it had not yet come into operation in the Presidencies of Madras and Bombay, while in the Presidency of Bengal it had taken effect only under yesterday's date. It was, however, some satisfaction to him to think, and he believed that the feeling would be shared in by his Honorable colleagues, that the principal alteration which he was about to propose had not arisen from any thing that could properly be regarded as a defect in the Code, but that the change was forced upon them by circumstances which could not have been foreseen at the time they passed the Code, and over which they could exercise no control. The most important modification of the Code which now appeared necessary was in Section 332. The last Clause of that Section provided that, "If the appeal lay to the Sudder Court, it should be heard and determined by a Court consisting of three or more Judges of that Court." The Council had lately been informed that, at the present time, there was a very heavy arrear of regular appeals pending before the Sudder Court at Calcutta. Indeed, so large was the number of appeals of that description awaiting decision in the Court, that they were told that, at the present rate of working, it would take at least two years before they could be disposed of, and as the institutions exceeded the decisions, it was fully expected that, at the expiration of the period just mentioned, the arrear of new cases would be greater than that now existing.

Mr. LeGeyt

The Sudder Court, naturally unwilling that this unsatisfactory state of things should continue, had very properly gone up to Government with a recommendation that the Court should be strengthened by the appointment of additional Judges, but financial and other considerations, which it was not necessary for him particularly to notice, had prevented the Government from complying with this recommendation. In communicating the decision of the Government to the Sudder Court, the late Lieutenant-Governor of Bengal had, he believed, suggested the expediency of relieving that Court of some of the least important part of its work, the disposal of which he thought might be devolved upon other tribunals, and, accordingly, the late Honorable Member for Bengal brought in a Bill, under date the 30th April last, one of the Sections of which proposed that the regular appeal in all suits below the value of ten thousand Rupees, which might be disposed of in the Courts of the Principal Sudder Ameens, should be heard and determined by the Zillah Judge, thus modifying the existing law, which restricted the appellate jurisdiction of the Zillah Judges, in respect to the decisions of the Principal Sudder Ameens, to suits in which the amount or value of the property in litigation did not exceed the sum of five thousand Rupees. Shortly afterwards, with a view to relieve the Sudder Court on its Criminal side, he (Mr. Harington) introduced a Bill to empower Session Judges to pass sentence in certain cases which, under the law, as it now stood, required to be referred for the final orders of the Nizamut Adawlut. Both Bills were referred in the usual course to Select Committees, but the Select Committee on the Bill brought in by the late Honorable Member for Bengal had reported against it; and although he (Mr. Harington) had recorded his dissent from so much of the Report as related to the part of the Bill to which he had just alluded, it was not his intention, under existing circumstances, to offer any opposition to the Motion which would shortly be made for the adoption of the Report, and the Bill of the late Honorable Member for Bengal must therefore be considered to have been disposed

of. With regard to the Bill which he (Mr. Harington) had introduced, he had never attempted to conceal that the amount of relief which would be afforded by it to the Sudder Court, should it become law, would be comparatively small, but still it would be something, and as he had observed on a former occasion, whatever time was saved from the trial of cases to which his Bill related, would be so much time gained for the disposal of more important business. The attempts then made to obtain the appointment of additional Judges to the Sudder Court at Calcutta, or to relieve that Court from some of its least important work, having both failed, it became necessary to consider what steps should be taken to enable the Court, not only to reduce the heavy arrears now pending before it, but to keep pace with its work for the future. He was sure that all who heard him would agree that the existing state of things should not be permitted to continue. It was hardly necessary for him to say that it was a great hardship to the suitors at large in the Sudder Court that they could not expect a final decision in the cases in which they were concerned under two years at the earliest. This very serious delay in the disposal of appeals in the Sudder Court must be highly injurious to the general interests of justice, and he must add that it could not but reflect discredit upon the Government. After carefully considering the subject, and consulting those whose long experience in these matters entitled their opinions to great respect, the conclusion to which he (Mr. Harington) had come was that, in existing circumstances, the best remedy that could be adopted was to pass an Act which would enable the Sudder Courts to dispose of the appeals coming before them by the employment of a less amount of judicial agency than was required by the Code as it now stood, and the first Section of the Bill, which he was desirous of introducing, had been prepared with this view.

For many years, all appeals instituted in the Sudder Court were distributed amongst the Judges of the Court. It was the duty of each Judge, with the aid of his separate establishment, to prepare the appeals so allotted to him for decision, and as soon as they were ready for decision, the papers were read out before him, and after hearing the arguments of Counsel, he proceeded to record his judgment. If he saw no reason to differ from the decision of the Court below, and the case was not one of sufficient importance to render it proper that it should go before a second Judge, he made a final decree; but if he disagreed with the Lower Court on any point, or, although concurring with that Court, it appeared to him that the case should not be decided by a single voice, he ordered the papers to be laid before a second Judge. With exception to the preparation of the case, the same process had to be gone through before the second Judge which had already been gone through before the first Judge. If the second Judge concurred with the first Judge, the appeal was disposed of accordingly; but if he differed, the appeal was referred to a third Judge, before whom the papers had to be read over again, and the case to be re-argued. The consequence was that, when an appeal went before three Judges in succession, it not unfrequently happened that there was an interval of a year between the date on which the first Judge recorded his opinion and the final disposal of the case. The practice just described continued to be followed until the year 1843, when an Act was passed (Act II of 1843), which provided that, "when a single Judge of the Sudder Court, trying a case in appeal, regular or special, from any subordinate Court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other Judges of the Court, to sit with him, and that the appeal shall be then heard by the three Judges sitting together, and be decided by them without any additional voices. In such cases the decree or final order shall be signed by the three Judges, if they agree together; but if one of them dissent from the view taken by the majority, by the two Judges who agree together, and the signature of the third Judge shall not be considered requisite, but his opinion shall be recited in the decree or final order." This was no doubt a great improvement upon the former practice, but as when the Judge who first heard the appeal was obliged, by reason of his differing from the

Court below, to call in two other Judges to enable him to dispose of the case, much valuable time and labor were lost, the Court, with the sanction of Government, passed a rule, requiring that all regular appeals should be heard and determined at once by three Judges sitting together. He was unable to say what was the effect of this rule in the Sudder Court at Calcutta, but he found it stated by the late Lieutenant-Governor of Bengal, in his evidence given before the House of Commons, that it was very remarkable of how much greater weight the decisions of the Sudder Court had been since the new rule was adopted than it was previously. At the time the rule was introduced into the Sudder Court at Agra, he (Mr. Harington) had the honor of a seat on the bench of that Court, and he could say, of his own knowledge, that the introduction of the rule was immediately followed by a very large increase in the number of decisions, and that the rule gave great satisfaction. Such then having been the beneficial effects, in practice, of the rule alluded to, it was only natural that they should wish to retain it in the new Code of Civil Procedure; and, accordingly, the Clause which he had already read to the Council was added to Section 332 when the Bill was passing through a Committee of the whole Council; but as it was quite impossible for the Sudder Court at Calcutta, with its present number of Judges, to give three Judges for the disposal of every appeal that came before it, and as he was informed that the Sudder Courts at Madras and Agra had also applied for additional assistance, which there was little probability of their getting, some modification of the rule was unavoidable. It was accordingly proposed to subtitute the words "two or more" for "three or more" in the last two lines of the Section, and in order to provide for any difference of opinion that might arise, to add to the Section that when the Court consisted of two Judges only, if they differed in opinion upon the evidence, and one Judge concurred in opinion with the Lower Court as to the facts, the case should be determined accordingly; but if in a Court so constituted a difference of opinion arose upon a point of law, the Judges should state the point upon which they differed, and the case should be re-argued upon that question before one or more of the other Judges of the Court, and should be determined in accordance with the opinion of the majority of the Judges.

It certainly had seemed to him that, when a difference of opinion arose between two Judges sitting together to decide an appeal, whether upon a point of fact, or upon any other point, the case should go before a third Judge. But it was thought by many that this would not afford the degree of relief required. It was moreover argued that, when one of the Judges of the Sudder Court concurred with the Judge of the Court below, who had had the advantage of hearing the witnesses and of cross-examining them, there would be a strong presumption that the decision of that Court upon the evidence was correct, and that the concurrent opinions of the two Judges, constituting, as they would, a majority, ought to satisfy reasonable men. There was, no doubt, much force in this argument, and he was accordingly willing to yield his own opinion. When any difference of opinion arose upon a question of law or upon the construction of a document, a third Judge would be referred to. This seemed to be proper in order to keep the law settled, and that the decision might in all such cases be that of a majority of the Judges of the Sudder Court. He believed he was right in saying that the proposed provision was concurred in by some of the Sudder Judges in this country, and that the authorities at home approved of it.

With respect to this part of the Bill he would only further remark that it was not pretended that the best remedy had been proposed; all that could be said was that it was the best remedy which, under existing circumstances, could be devised with any chance of its being adopted. Nor was it intended that this should be a final settlement of the question. At no distant date the Council would probably be called upon to consider the subject of the amalgamation of the Supreme and Sudder Courts and of the constitution of new District Courts, and it was hoped that some scheme would then be proposed for the hearing of appeals, where an appeal was allowed, which would be free from the objections to which many might

fairly consider the present Bill to be open.

The next Section of the Code referred to in the new Bill was Section 215. Under that Section the Court was required, on receiving an application for the execution of a decree, to cause the same to be compared with the original decree contained in the record of the suit. But it had been brought to his notice that the whole or nearly the whole of the records in the North-Western Provinces had been destroyed during the late mutinies, and that, consequently, it would often be found impossible to comply with this requirement of the law. There would also be some difficulty in conforming to it, when the Court, which originally decided a suit, was called upon to execute a decree passed in appeal in the same case for which the Code made provision. It was proposed, therefore, to omit certain words of the Section, and to leave it to the Court to satisfy itself in each case that the application was right and contained the necessary particulars, either by comparing it with the original decree sought to be executed, if that was at hand, or in some other way.

Lastly, the Bill proposed an alteration in Section 385 of the Code. That Section set forth that "the Act should not take effect in any part of the territories not subject to the general Regulation of Bengal, Madras, and Bombay, until the same should be extended thereto by the Governor-General of India in Council, or by the Local Government, to which such territory was subordinate and notified in the Gazette." Honorable Members might have observed in a recent number of the Calcutta Gazette that the Lieutenant-Governor of Bengal had extended the Act to certain Non-Regulation Districts under his Government, but that in doing so His Honor had added a proviso that no sale of land should be made without the sanction of the Commissioner of the Province. The Code contained no such provision, and a question might arise as to the competency of the Lieutenant-Governor to pursue this course, and whether, if he extended the Code at all, he was not bound to extend the whole Code. But as it seemed very desirable that the power exercised by the Lieutenant-Governor of Bengal in this instance should exist somewhere, the Bill proposed to authorize the Government of a Non-Regulation Province to which the Act might be extended, with the previous sanction of the Governor-General of India in Council, to declare that the Act should take effect therein, subject to any restriction, limitation, or proviso which it might think proper.

These were the alterations which were proposed to be made in the original Code, and it was intended that the Sections, as altered, should stand as part of the Code.

The Bill was read a first time.

BILLS OF EXCHANGE.

MR. HARINGTON moved the first reading of a Bill for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays. He said, England had lately witnessed the solemn but pleasing spectacle of an entire nation uniting to offer up, in public, praises and thanksgiving to Almighty God, on a day specially appointed for the purpose by Her Majesty the Queen, for the signal success which had attended the Military operations in this country during the fearful contest in which they had lately been engaged, for the restoration of peace and tranquillity to India, and for the many and great mercies which had been vouchsafed to them as a nation and as individuals, and which had brought them through a crisis unparalleled in the history of the world. He felt sure that all who heard him would agree in the necessity and propriety of this national and public thanksgiving; but, if necessary and proper in England, how much more necessary and proper must it be in this country, which had been the scene of the many victories gained by our noble army, under its gallant leaders, one of the most gallant, most distinguished, and most chivalrous of whom they had the honor of numbering amongst their Members, and which had also been the scene of those mercies and of that great deliverance, the recollection of which must ever fill their minds with astonishment and wonder, and call forth the liv liest feelings of gratitude to Him, by whose blessing alone on the means used that deliverance had been effected, and our rule in this country

re-established on a firm and, it might be hoped, a lasting basis. Accordingly, the example set them by Her Majesty's Government in England would have been promptly followed by Her Majesty's Government in this country, but at the time, although rebellion had nearly ceased in the greater part of the British Territories in India, it could not be said that it had been entirely put down, and so long as the official Gazettes continued to contain Despatches, which announced new contests with those still in arms against us, followed, as had invariably been the case, by fresh victories which, though small in comparison with the glorious triumphs of the past year, were nevertheless great and important in themselves and in their consequences, and most creditable to the troops by whom they were achieved, it was felt that the Government of India could not with propriety appoint a day for a public thanksgiving for the complete restoration of peace and tranquillity, and however anxious the Government may have been that the opportunity lately enjoyed by our countrymen at home of offering up public thanks to the Almighty for His great mercies during the last two years, it was considered better to pause for awhile. He was happy to say that no reason now existed for further delay. The good time, so eagerly looked for, had come. In the language of the Proclamation just issued by His Excellency the Viceroy and Governor-General of India, "War was at an end; Rebellion had been put down; the noise of Arms was no longer heard where the enemies of the State had persisted in their last struggle; the presence of large forces in the Field had ceased to be necessary; order was re-established; and peaceful pursuits had everywhere been resumed;" and, as stated in the Proclamation, His Excellency had it now in his power to perform the grateful duty of appointing a day for a solemn thanksgiving to Almighty God for His signal mercies and protection, while, in order that the day might be more marked, and that it might be a day of general rejoicing as well as of thanksgiving, a week day had been selected by His Excellency, and it was desired that it should be observed as a holiday throughout British India by all faithful subjects of the Queen. It was not necessary for him to tell the Council that no special legislation was required for the purposes of the Proclamation, and it might, therefore, naturally be asked what had the remarks which he had just ventured to address to the Council to do with the subject of the Bill of which he had given notice? The answer to the question was that the Bill owed its origin to a day having been appointed for the public thanksgiving, in which they had all been invited to take part, which was neither a Sunday nor other close holiday, and on which, therefore, but for the Proclamation, mercantile and other transactions would have gone on as usual. The title of the Bill set forth that it was "to declare the law in relation to Bills of Exchange and Promissory Notes becoming payable on days generally observed as Holidays." In England a law of this kind had been in force for many years, which made all Bills of Exchange falling due on Fast or Thanksgiving days payable on the day next preceding. It also pointed out when, in the event of a Bill which might fall due on any Fast or Thanksgiving day being dishonored, notice of the dishonor should be given. This law did not extend to India, but as similar doubts to those which had led to the passing of the English Act had arisen here, and it was advisable to remove the same with a view to prevent disputes and future litigation, it was proposed to pass a law containing the like provisions, in so far as they might be applicable, for this country. Hence the present Bill, which would apply not only to the particular day the appointment of which for a day of public thanksgiving had given rise to it, but to all future time. The Bill was also intended to have a retrospective effect. He believed he was right in saying that the custom of the country was in accordance with the provisions of the Bill, but it was considered desirable to give the sanction of law to what was now only custom or usage. This, he was given to understand, was the opinion of the Chamber of Commerce, who were in favor of the Bill.

The Bill was read a first time.

APPEALS.

MR. PEACOCK moved that the Report of the Select Committee on the

Bill "to provide for the more speedy disposal of Appeals in cases appealable to the Sudder Court and of applications for Special Appeals" be adopted.

Agreed to.

PENAL CODE.

MR. LEGEYT moved that a communication received by him from the Bombay Government, regarding the extension of Corporal Punishment under Act I of 1853, so as to embrace assaults and all petty offences, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

MR. LEGEYT moved that a communication received by him from the Bombay Government, relative to the transfer of an infant child by its mother to a Kalawunt or dancing girl, be laid upon the table and referred to the Select Committee on the same Bill.

Agreed to.

The Council adjourned.

Saturday, July 9, 1859.

PRESENT:

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

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

ACTS OF THE LEGISLATIVE COUNCIL.

THE CLERK reported to the Council that he had received from the Home Department a copy of a Despatch from the Secretary of State for India reviewing Acts XX to XLI of 1858.

MR. PEACOCK moved that the above communication be printed.

Agreed to.

AMALGAMATION OF SUPREME AND SUDDER COURTS.

THE CLERK also reported that he had received from the Home Department an Extract of a Despatch from the Secretary of State for India, relative to the amalgamation of the Supreme and Sudder Courts.

MR. HARINGTON moved that the above Extract be printed.

Agreed to.

MAGISTRATES.

MR. PEACOCK begged to move the first reading of a Bill "to amend the law relating to offences declared to be punishable on conviction before a Magistrate." He said, a case lately came before the Supreme Court for consideration, as to the effect of Section LII of the Post Office Act XVII of 1854. By that Section certain offences, which did not require to be now mentioned, were punishable, on conviction before a Magistrate, with imprisonment for two years, and also with fine. Several other Sections rendered offenders liable to imprisonment for two years and to fine on conviction before a Magistrate. Section LVIII enacted that—

"Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Justice of the Peace for any of the Presidency Towns of Calcutta, Madras, and Bombay, Magistrate, Joint Magistrate, or person lawfully exercising the powers of Magistrate; and any person hereby made punishable by a Justice of the Peace shall be punishable upon summary conviction."

Then Section LXVI declared that—

"The word 'Magistrate' in this Act shall include Joint Magistrates and persons lawfully exercising the powers of Magistrates."

The Supreme Court, putting the best construction upon the wording of the Act, without reference to what had passed in this Council at the time of its passing, came to the conclusion that the word "Magistrate" in Section LII meant a Zillah Magistrate, and did not include Justice of the Peace. Therefore, if an offence under any of those Sections were committed by any person who could not be tried before a Zillah Magistrate, that person could not be committed at all.