Saturday, 22nd December, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

EMIGRANT VESSELS.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill "relating to vessels carrying Emigrant Passengers to the British Colonies" to the President in Council, in order that it may be submitted to the Governor-General for his assent.

Agreed to.

STAMPS.

MR. BEADON gave notice that, at the next meeting of the Council, he would bring in a Bill for the further amendment of the Stamp law, and move for a suspension of the Standing Orders, to enable him to carry the Bill through its subsequent stages forthwith. The necessity for the proposed measure had arisen from the non-arrival of the adhesive Stamps expected from England, which it was thought would have arrived long ago.

MINORS.

MR. SCONCE moved that the Bill "to amend the law relating to Minors" be referred to a Select Committee consisting of Mr. Harington, Mr. Forbes, Mr. Erskine, and Mr. Sconce.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON gave notice that he would at the next meeting of the Council move 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.)"

The Council adjourned.

Saturday, December 22, 1860.

PRESENT :

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

Hon'ble C. Beadon,	C. J. Erskine, Esq.,
H. B. Harington, Esq.,	and
H. Forbes, Esq.,	Hon'ble Sir C. R. M.
A. Sconce, Esq.,	Jackson.

MYSORE GRANT.

The following Message from the President in Council was read by the President :—

MESSAGE NO. 248.

In reply to the Message from the Legislative Council, No. 182, the President in Council, with the concurrence of His Excellency the Governor-General, informs the Legislative Council that the interests of the public service forbid his ordering that the papers asked for by the Resolution, which accompanied the Message, should be laid before the Legislative Council, with the exception of the account specified in the first clause of the Resolution, which will be prepared and furnished to the Council as soon as practicable.

The other papers specified in the Resolution relate to a correspondence with the Secretary of State for India, which is yet incomplete; and the President in Council does not therefore feel that he would be justified in transmitting them to the Legislative Council.

The request of the Legislative Council will, however, at once be made known to the Secretary of State.

The President in Council has the honor to inform the Legislative Council, in reply to the concluding clause of the Resolution, that no payment beyond what has been usual of late years to the family of the late Tippoo Sultan is provided for in any account or estimate, of which the results have hitherto been laid before the Legislative Council.

By order of the Honorable the President in Council.

W. GREY,

Secy. to the Govt. of India.

FORT WILLIAM,
The 21st December 1860.

SIR CHARLES JACKSON said that, in the absence of the learned Chief Justice, he might perhaps be permitted to express his gratification at the purport of the Message which had just been received. As he understood it, it appeared to him that the Government had conceded all the information which it was able to give. The Honorable the President in Council had said the other day that he regarded the motion of the learned Vice President as equivalent to a vote of want of confidence. He (Sir Charles Jackson) was satisfied that the Message just received would increase that confidence which the Council had in the Executive Governments and would promote that harmonious action between the Executive Govern-

ment and this Council, which was so greatly to be desired.

LICENSING OF ARTS, TRADES, &c.

THE CLERK reported to the Council that he had received by transfer from the Home Department communications from the Commissioner of the Tenasserim and Martaban Provinces, the Government of the Punjab, and the Government of the North-Western Provinces, on the subject of the Bill "for imposing a Duty on Arts, Trades, and Dealings, and to require dealers in tobacco to take out a License."

SIR BARTLE FRERE moved that these communications be printed.

Agreed to.

DISCOVERY AND DISPOSAL OF HIDDEN TREASURE.

THE CLERK reported that he had received a communication from the Home Department, forwarding papers on the subject of the discovery and disposal of hidden treasure, with a view to the consideration by the Council of the expediency of extending the provisions of Regulations V. 1817 of the Bengal Code and XI. 1832 of the Madras Code to the whole of India, including the Presidency Towns.

SIR BARTLE FRERE moved that this communication be printed.

Agreed to.

WRECKED BOATS.

MR. ERSKINE presented a communication which he had received from the Bombay Government, and moved that it be referred to the Select Committee on the Bill "for the preservation of property recovered from wrecked boats."

Agreed to.

LAND FOR PUBLIC PURPOSES.

MR. FORBES presented the Report of the Select Committee on the Bill "to amend Act VI of 1857 (for the acquisition of land for public purposes)."

Sir Charles Jackson

STAMP DUTIES.

MR. BEADON moved the first reading of a Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the Law relating to Stamp Duties)." He said that, when he had the honor to lay before the Council the Bill for amending Act XXXVI of 1860, which was afterwards passed into law as Act XL of this year, he had endeavored to explain the reason which made it necessary to defer the operation of Act XXXVI of 1860 in respect to certain classes of documents, and he had shown that this postponement was necessary in consequence of some delay in preparing the stamps which were required for carrying the Act into effect. But Section 1 Act XL of 1860 was so worded as to apply to all the descriptions of documents for which Stamps had not then been provided, namely, Bills of Exchange, Letters of Credit, Drafts, Cheques on Bankers and others, Promissory Notes, and other orders and obligations for the payment of money, except drafts or orders on demand; and thus to postpone the operation of the Stamp Act, if exercised at all, must be exercised in respect to all the descriptions of documents mentioned in that Section. The Governor-General in Council could not postpone the operation of the law as regarded some of those documents, and at the same time allow it to come into force as regarded others. In the interval, between the passing of Act XL of 1860 and the present time, stamps had been prepared for all the documents mentioned in the Section which did not require adhesive stamps, that is to say, for all except Foreign Bills of Exchange drawn out of India; but the adhesive Stamps for these Bills had not yet been received from England. The object, therefore, of the Bill, of which he now had the honor of moving the first reading, was to allow the Stamp Law to take effect from the 1st January next in regard to all the kinds of documents abovementioned, except Foreign Bills of Exchange drawn out of India, and to give to the Governor-General in Council the power to suspend the operation of the law in regard to those documents, until the

adhesive Stamps were received from England.

It had been suggested to him that the present opportunity might be taken to amend the Stamp Law in other respects in which it had been thought defective. But as it was his intention to move the suspension of the Standing Orders, in order that the Bill might be passed through all its stages to-day, he was unwilling to introduce any subject that might lead to a discussion.

The Bill was read a first time.

MR BEADON moved that the Standing Orders be suspended, in order that the Bill might pass through its remaining stages forthwith. It was absolutely necessary that the Act should be passed into law before the 1st January next, and the probability was that the Council would not again meet before that date.

MR. HARINGTON seconded the Motion which was put and carried.

MR. BEADON moved that the Bill be read a second time

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

MR. BEADON moved that the Council resolve itself into a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and, the Council having resumed its sitting, was reported

MR. BEADON then moved that the Bill be read a third time and passed.

The Motion was carried, and the Bill read a third 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)." In doing so, he said he did not know whether the introduction of this Bill to amend the Code of Civil Procedure contained in Act VIII of 1859, at comparatively so early a date after the passing of that Act, called for any apology from him. The difficulty of framing laws which should meet every case for which provision was intended to be made, which should be perfectly clear in themselves and leave no doubt as to their meaning and as to the intention of the framers, and which should at the same time be capable of easy execution, was well known to all who had any practical acquaintance with the science of legislation, and was abundantly attested by the numerous declaratory Acts, and Acts to amend former Acts, which were to be found in the Statute Books. This difficulty was sufficiently great at home, but it was increased a hundred fold here by the vast extent and the character of the country over which Indian legislation extended, the various races and classes in every stage of civilization which they had to consider, and the want so frequently found to exist of proper agents to administer the laws which they passed. It was this want which so often obliged them to impose restrictions, rendered necessary to prevent the law from being abused, but which they would gladly avoid if they could safely trust more to individual discretion. As regarded Codes generally, he believed he was right in saying that few Codes had been passed which had not required constant revision in order to cure defects which experience in their working had brought to light, and if he was not mistaken, some of the American Codes contained an express provision for their periodical revision. The Code of Civil Procedure, which was passed by the Council last year, would, no doubt, occasionally require to be subjected to the same process, but he thought that the time had not yet arrived for a general revision of that Code, and he was happy to be able to add that, so far as he knew, no necessity for such revision existed at present. It seemed proper that he should here advert to the two Acts which had already been passed to amend Act VIII of 1859. Neither of those Acts touched the general principles of the new Code, and the same remark applied to a great extent to the amendments now proposed. The object of the first of the Acts just referred to was to give power to two Judges of the Sudder Court to dispose of regular and special appeals, in-

stead of requiring that every such appeal should be heard and determined by a bench consisting of not less than three Judges. The second Act followed naturally on the passing of the Bill for establishing Courts of Small Causes beyond the Presidency Towns, of which it at one time formed a part, and provided that no special appeal should lie to the Sudder Court in any action of debt and the like, in which the amount or value of the property in dispute did not exceed the sum of 500 Rupees. It was a principal object of this Act, equally with that of the Act previously passed, to afford relief to the Sudder Courts of the Bengal Presidency, the state of whose files rendered it quite impossible for those Courts to dispose of the business brought before them with anything like reasonable despatch.

Before proceeding to notice the particular amendments in Act VIII of 1859, which were now proposed, he would, with the permission of the Council, make a few remarks on the subject of the working of the Code contained in that Act. During the recent recess of the Council he had visited some of the most important stations in the North-Western Provinces, and whenever the opportunity offered, he had gladly availed himself of it to discuss the provisions of the Code with the Judges, Covenanted and Uncovenanted, whom he had the pleasure to meet in the course of his travels, and with the people themselves—amongst these were some natives of rank and several influential bankers and landholders. The Sudder Court at Agra, where he remained some time, kindly admitted him to a conference, at which the Court went over with him those Sections of the Act, upon the construction of which a doubt had arisen, or which appeared to the Judges or to himself to call for amendment. He was also permitted to see the reports submitted by the District Judges subordinate to the Court on the working of the new Code, and he wished to take this opportunity of expressing the obligations under which he felt himself to the Judges of the Sudder Court at Agra for their courtesy, and of thanking them for much valuable information which he had found of very great use in preparing the present Bill.

From the Sudder Court downwards, there appeared to be a very general concurrence of opinion as to the vast superiority of the new Code of Civil Procedure over the Code whose place it had taken, and as to the satisfactory manner in which the Code was working. There was scarcely a dissentient voice. Judges who differed materially on other important points connected with the administration of Civil Justice in this country, all agreed that the new Code was a great success, that it had fully answered the purpose for which it was introduced, and that it had conferred a great boon on the country and on the people. One Judge reported that the Act operated beneficially; that it provided for greater despatch in the disposal of suits; that it checked fraud, admitted of satisfactory justice being done, and tended to lessen litigation. Another Judge declared that the Act had given universal satisfaction to the Judge and suitors. Another Judge bore testimony to the peculiar suitability or adaptation of the Act to the wants of the country, and declared that it saved both time and money, in proof of which he had furnished a statement which showed that, while under the old procedure the average time that suits remained pending in his district was in the Judge's Court 8 months and 19 days, in the Principal Sudder Ameen's Court 10 months and 7 days, and in the other Courts of the District 7 months and 21 days, under the new Procedure it was only 2 months and 20 days in the Judge's Court, and in the Principal Sudder Ameen's and Moonsiffs' Courts it was only one month and 23 days; and that while under the old procedure the costs of twenty-five suits, taken at random, amounted to Rupees 1,711-3-0, the costs of the same number of suits similarly taken, under the new procedure, amounted to only Rupees 687, or very much less than one-half. Testimony no less favorable to the working of the new Code of Civil Procedure was to be found in the report of the Indigo Commission which was lately

sitting. In paragraph 147 of their report the Commissioners, one of whom was a very distinguished Member of the Punjab Civil Service, said :—

"As regards the working of the new Code of Civil Procedure, we have the opinion of some planters that it has already shortened delay. Previous to the passing of this Code, the great delay of the law was a just cause of complaint, and we have no doubt that planters were deterred by the expense and delay from seeking redress in a proper manner. We have examined Mr. Lautour, a Judge of large experience, on this particular head, and it will be seen from his opinion that, if the Moonsiffs are not overburdened and can keep their files clear, the procedure may be expected to work almost like that of a Small Cause Court. That such a desirable result can be effected, we have no reason to doubt, and if so, the planters will have a speedy means of recovering their just dues, and establishing their rights in all cases where real property is not involved, or an hereditary succession is not disputed. A glance at the Code will show this. Suppose one person to sue another for debt, for breach of simple contract, or for damages done to crops, it is clear that under the new Code the plaint, describing the cause and origin of the action, and the remedy prayed for, can be comprised in a few lines. The defendant is not called on to put in any written defence ; he is even forbidden to do so : his answer, which in many instances would be a simple denial, is to be collated from his own lips or from those of his counsel, by the presiding Judge. No local investigation can be necessary in such a case, and as soon as the witnesses of the parties can be brought into Court, the case may be heard and decided, and execution may follow a decree. It is perhaps too much to expect that all cause of complaint and all delay should be at once removed by the new procedure. But if the above provisions are honestly worked by competent Judges, not overburdened with arrears, and if the appellate Courts have leisure to take up appeals as they become ripe for decision, it is quite clear that suits, other than suits for real property, may become as summary as the nature of things will allow, or as the most eager suitor could wish."

He had laid great stress upon the saving of time which had been effected in the duration of suits by the operation of the new Code, because some Officers of considerable judicial experience had expressed their belief that the Code would perpetuate all the delays of the old system. The reports which he had quoted showed that the expectation of these officers had not been realized, and that there was no ground for the belief expressed by them. The very favorable testimony which he had thus been able to bear to the working of the new Code would, he was sure, be very gratifying to the Council, who had expended so much labor, time, and thought on this important law.

He would now proceed briefly to notice the amendments proposed in the present Bill.

The first alteration deemed necessary was in Section 23, to which it was proposed to add the words "within a period to be fixed by the Court issuing the process." He should not have considered this addition of sufficient importance to be made at the present time, were it not that a new Section was thought to be necessary in a subsequent part of the Act in connection with which the words proposed to be added at the end of Section 23 seemed to be required.

A question had been raised as to what was to be done in the event of its being discovered on the day fixed for a defendant to appear and answer that the usual notice had not been served on him in consequence of the failure of the plaintiff to deposit the sum required to defray the cost of issuing the same. He understood that a majority of the Judges of the Sudder Courts at Calcutta and Agra, and the Sudder Court at Madras, had held that such omission on the part of the plaintiff constituted a default, warranting the dismissal of the suit. On the other hand, it was contended that the Code made no provision for the dismissal of the suit under the circumstances stated, and that, even supposing the view taken by the Judges of the Bengal and Madras Sudder Courts to be correct, it was very clear that the rule as to judgments against plaintiffs by default for non-appearance contained in a later Section of the Act, which was the only rule in the Code in respect to defaults by plaintiffs, did not apply. A Section would be found in the present Bill, which would remove all doubts on the point, and, with the words proposed to be added to Section 23, would give the Courts a clear rule for their guidance.

The next alteration proposed was in Section 274 of Act VIII of 1859. That Section allowed of a party arrested under a warrant in execution of a decree for money to remain, pending an enquiry into his circumstances, in the custody of the officer of the Court charged with the service of the warrant, on his depositing the fees of such officer. It had been pointed out by the Sudder Court at Bombay that the Section did not authorise the levy of any fees which were not previously leviable, and that the Clause in the Section respecting the deposit of the fees for the Court's officer was, consequently, at present, inoperative. A few words proposed to be inserted in the proper part of the Section would cure the defect pointed out by the Sudder Court at Bombay.

Section 283 was the next Section which it was considered required to be amended. The amendment proposed in this Section was a very important one, and might be regarded as affecting in some degree the principle of that part of the Code to which the Section related. The Section declared that all questions regarding the amount of mesne profits and interest, as well as sums paid in satisfaction of decrees, should be determined by order of the Court executing the decree, and not by separate suit, and that the order passed by the Court should be open to appeal. But while the Section, as it now stood, allowed an appeal in the comparatively small matters described in the Section, it made no provision for an appeal in many more important matters which constantly came into dispute between the parties to a decree in the course of the execution thereof, and the Sudder Court had held that, under the terms of Section 364 of the Act, no appeal could be allowed in respect of such matters, however erroneous or unjust the order of the Court of first instance might appear upon the face of it. Suppose, for instance, the Court below refused to execute a decree as barred by lapse of time though the application was clearly within the period of limitation, or rejected an application for execution on any other ground equally untenable, or suppose the Court to deliver over either a larger or a smaller quantity of land than had been decreed, as none of these cases would fall within the scope of Section 283, as it had been construed, the aggrieved party would have no remedy—he could not appeal from the order and no new suit would lie. He (Mr. Harington) did not think that this could have been intended. It had been argued that the words "or the like" which were to be found in Section 283 were sufficiently wide to cover all such cases as those supposed, but the Sudder Court had held that the words in question must have been intended to apply only to matters of a similar character to those just before described. A very strong representation on the subject had come up from the Sudder Court at Agra, and a petition had been received from Madras, praying for an alteration of the law; he had reason to know that the Sudder Court at Calcutta concurred with the Sudder Court at Agra in considering the Section, as it was now worded, too restricted, and that, in order to prevent great injustice from being done, it should be enlarged so as to embrace all matters arising out of the execution of a decree as between the parties, not being matters the orders in respect to which were left by law to the discretion of the Court executing the decree. A Section had been introduced into the proposed Bill in accordance with these views. But in order to prevent as much as possible groundless or vexatious appeals or appeals preferred simply to gain time, it was proposed that the appellate Court should have power to reject the appeal without summoning the opposite party, if, on a perusal of the petition of appeal and of the order appealed against, it should see no reason to question the correctness of the order. This power would be exercised as well in cases falling under the Code, as it now stood, as in the cases which would become open to appeal under the present Bill, and, therefore, although the Bill would increase the number of appeals, it was hoped that the power of summary rejection proposed to be

given to the Appellate Court would act as a counterbalance and prevent any great addition to the actual labors of the presiding Judge, besides operating beneficially in other respects. A Section followed giving the benefit of the new law of appeal on certain conditions to parties who might have appealed from an order passed in execution of a decree under the law now proposed, had it formed part of the Code of Civil Procedure as it was passed, but whose appeal under that Code, as it now stood, could not be heard.

The next alteration considered necessary in the present law was also one of some importance. It was found that a large number of applications for special appeal was presented to the Sudder Court, which were not only not drawn up in the manner prescribed by Act VIII of 1859, but which, notwithstanding the restrictive character of the law, showed no ground on which a special appeal was admissible. In some instances this arose, no doubt, from ignorance, but in the great majority of cases it was supposed that the disregard of the law was wilful, and that the object was to gain time, or if an order could be obtained for staying the execution of the decree pending the decision of the appeal, to force the successful party in the Court below into a compromise. The Sudder Court at Agra held that no power of summary rejection existed in such cases, and that all the forms must be gone through, including the summoning of the respondent, before the application could be called up in the same manner as if the appellant had complied in all respects with the requirements of the law, the consequence of which was considerable delay in the final determination of the case, an unnecessary encumbering of the file of the Sudder Court, and great inconvenience and expense to the opposite party. To remedy this it was proposed to enact that the application for a special appeal might be summarily rejected without summoning the respondent if, on the face of the application, no special ground within the meaning of the law appeared, and that the order of rejection might be passed by a single Judge of the Court. He had ascertained from the Judges of the Sudder Court at Agra that the Section, amended as proposed, would quite meet their views and remove all objections to the law as it now stood.

An opinion seemed to be entertained in some quarters that the present Code had raised up obstacles in the way of the speedy disposal of applications for special appeal which did not exist under the former Code. He thought that, if the two Codes were compared, the result would be to show that this opinion was erroneous. The new Code certainly took away no powers previously possessed by the Sudder Court in disposing of applications for special appeal, and it imposed no new forms which should cause greater delay in passing final orders on such applications. On the other hand, it had removed three grounds of special appeal, on one of which at least the greatest number of special appeals was admitted under the old law, and it had done away with the double sitting which almost invariably took place under that law, as a matter of necessity, when a special appeal was admitted, and whether the appeal was admitted or rejected, it allowed of the case being disposed of at a single sitting. He was informed that this was generally regarded as a great improvement upon the old law.

Lastly, a Section was proposed which declared that, when the land sold in execution of a decree was a share of a *putteedaree* estate, paying revenue to Government as defined in Section II Act I of 1845, if the lot should have been knocked down to a stranger, any co-sharer other than the judgment debtor, or any other member of the coparcenary, might claim to take the share sold at the sum at which the lot was knocked down. Act I of 1845 admitted a right of pre-emption when the sale of a share of an estate, such as was described in the Act, was made in satisfaction of an arrear of revenue and under a Circular Order of the Western Sudder Court, which that Court was empowered to issue by another Act which had been virtually repealed

by the new Code of Civil Procedure, the right was extended to sales made in execution of decrees of Court. The Circular of the Sudder Court had of course become abrogated with the law under the authority of which it was issued; but as it seemed desirable, with reference to the peculiar character of the estates known as *puttecdaree* in the North-Western Provinces, to which the application of Act I of 1845 was almost entirely restricted, that the co-sharers of such estates should continue to enjoy the privilege of pre-emption in the case of a sale of a share of the common estate under an order of Court, the Section, to which he was now referring, had been introduced into the Bill.

In connection with this subject, he wished to refer to another question which had given rise to much discussion, namely the expediency of prohibiting by law the forced sale of real ancestral property in execution of decrees of Court. A law to this effect was strongly advocated by some of their ablest and most experienced officers and by many respectable and intelligent natives, and he was bound to confess that what he had lately heard had rather shaken the views which he had previously held on this most important subject. In introducing a Bill in the early part of the year 1858, to facilitate the recovery of property of which possession had been wrongfully taken during the mutiny of the preceding year, he observed that

"it was the opinion of several old and experienced officers, that in allowing the compulsory sale of land in satisfaction of money decrees, we had acted unwisely, and without a due regard to native feeling and custom. It was alleged that the practice, if not altogether unknown in Native States, was rarely, if ever, resorted to in them, and the frequency with which such sales had taken place under our system, was said to have made our rule very unpopular amongst the people. It was also objected that by removing the old landholders from the position which they had so long held, we had deprived ourselves of the support which they were able to afford us in times of trouble, such as we had lately passed through; and that the new men, who had taken their places, having no local influence and being looked upon with dislike by the old proprietors and the ryots generally, were elements rather of weakness than of strength."

The subject had continued to occupy his earnest attention, and after much consideration, the conclusion to which he had come was that it might be advisable to give the local Governments power to declare in any part of the Territories, subject to their authority, that real ancestral property should not be liable to be sold by order of Court in satisfaction of a debt incurred after the date of the declaration, unless the property should have been expressly hypothecated to the judgment creditor as security for the payment of the money. The question was one of very great difficulty, and it had better perhaps be separately considered. A paper had recently been communicated to the Council, by which they learned that the Honorable the President of the Council had been asked to bring in a Bill of a somewhat similar character in respect to grants made to persons as a reward for services rendered during the mutinies. The subject he had been discussing might be considered at the same time as that Bill. Meanwhile, he might mention that much benefit had resulted from the introduction into the new Code of Civil Procedure of the rule which required that, whenever an Estate was ordered to be sold by the Collector in satisfaction of a decree for money, a reference should be made to the Collector, with a view to some arrangement being entered into, if possible, by means of which the judgment debt might be satisfied without the necessity of a sale. The effect of this rule had been to prevent a large number of sales, and the practice was found to give general satisfaction.

He had now explained the various amendments which were considered immediately necessary in the new Code of Civil Procedure. Some verbal alterations might be called for in Sections not noticed by him, but these could be considered, and, if found necessary, introduced in Committee. For instance, the Sudder Court at Bombay had pointed out that in the first line of Section 33, taking that Section

in connection with Section 12, the disjunctive conjunction "or" had been wrongly used instead of the copulative conjunction "and." He (Mr. Harington) did not feel sure that the Sudder Court at Bombay was right. At any rate he was quite confident that the intention of the Section was clear, and could not be misunderstood—but of course he could have no possible objection to the substitution of the word "or" for "and" if the former word were considered the more accurate of the two.

Mr. Harington concluded by apologizing to the Council for having occupied so much of their time with these remarks.

The Bill was read a first time.

FLOGGING.

MR. HARINGTON moved the second reading of the Bill "to provide for the punishment of flogging in certain cases."

SIR CHARLES JACKSON said he would ask the Honorable Member to postpone his Motion on two grounds. The first was a personal ground, namely, that from the pressure of his duties in Court, he had not had time to give the matter that attention which it deserved. The second was that, as the learned Chief Justice, who had devoted so much care upon the Penal Code, with which this Bill was proposed to be incorporated, was absent, he (Sir Charles Jackson) was desirous to have his assistance in the consideration of the measure.

MR. HARINGTON said that he could have no hesitation in acceding to the request of the Honorable and learned Judge for the postponement of the Motion for the second reading of this Bill. In reference to the second ground, upon which the Honorable and learned Judge had put his application, he (Mr. Harington) might be permitted to mention that, as soon as he heard that the Honorable and learned Vice-President might not be present at the meeting of the Council to-day, he wrote to him and offered to postpone the Motion for the second reading of the Bill. He quite agreed with the Honorable and learned Judge that, as this Bill was intended as a Supplement to the Indian Penal Code, which had been carried through the Council by the Honorable and learned Vice-President, it was very desirable that the Bill should be read a second time in his presence; but the Honorable and learned Vice-President, in reply to his (Mr. Harington's) note, had begged him not to delay the Motion, as he should be sorry to have any business delayed on his account. However, as he had already said, he was quite willing to accede to the Honorable and learned Judge's request, and he begged therefore to propose that the Motion for the second reading of the Bill be allowed to stand over until the next Meeting of the Council.

The consideration of the Bill was accordingly postponed.

ROHILCUND DIVISION.

MR. HARINGTON moved the second reading of the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the general Regulations and Acts."

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

ADMINISTRATION OF JUSTICE—IN THE SUPREME COURT (BOMBAY).

MR. ERSKINE moved the second reading of the Bill "for the improvement of the administration of Justice and despatch of business in the Supreme Court of Judicature in Bombay."

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

RAILWAYS.

MR. FORBES moved that the Bill "to amend Act XVIII of 1854 (relating to Railways in India)" be read a third time and passed.

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

RECOVERY OF RENTS (BENGAL).

The Order of the Day being read for the third reading of the Bill "to amend Act X of 1859 (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal)"—

MR. SCONCE said that, before moving the third reading of this Bill, he would ask permission to recommit the Bill to a Committee of the whole Council. The Council would recollect that last Saturday a change was made in the first Section, intending to benefit certain classes of suitors. The object was to allow parties, in whose cases the ordinary period of limitation might have expired between the passing of Act X of 1859 and the present time, a further period for preferring such claims. It was meant to give such suitors relief, so that the period unexpired at the passing of Act X of 1859 should still run on after the passing of this Act. He simply proposed the introduction of the words "reckoning from the passing of this Act," after the word "or" in the 8th line of Section I. Without these words the time might be reckoned from 1st August 1859.

Agreed to.

The Bill passed through Committee after the above amendment, and, the Council having resumed its sitting, was reported.

MR. SCONCE then moved that the Bill be read a third time and passed.

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

ADMINISTRATION OF JUSTICE IN THE SUPREME COURT (BOMBAY).

MR. ERSKINE said that, under ordinary circumstances, the Bill "for the improvement of the administration of Justice and despatch of business in the Supreme Court of Judicature in Bombay," which had passed the second reading to-day, would now have been referred to a Select Committee. This, however, would involve a delay of some months; and since this Bill, as the Council was already aware, had been drawn to meet a special and pressing emergency, and would not be efficacious unless it was passed immediately—as it was a purely local and temporary measure, and seemed to be quite unopposed—he considered that he would be justified in moving, at the next meeting of the Council, not for the appiontment of a Select Committee on the Bill, but that the Bill be then passed at once through its remaining stages, without further postponement of any kind—and this he intended to do.

RECOVERY OF RENTS (BENGAL).

MR. SCONCE moved that Mr. Beadon be requested to take the Bill "to amend Act X of 1859 (to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

RAILWAYS.

MR. FORBES moved that Mr. Beadon be requested to take the Bill "to amend Act XVIII of 1854 (relating to Railways in India)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

STAMP DUTIES.

MR. BEADON moved that he be requested to take the Bill "further to amend Act XXXVI of 1860 (to consolidate and amend the law relating to Stamp Duties)" to the President in Council, in order that it might be transmitted to the Governor-General for his assent.

Agreed to.

ROHILCUND DIVISION.

MR. HARINGTON moved that the Bill "to remove certain tracts of country in the Rohilcund Division from the jurisdiction of the tribunals established under the General Regulations

and Acts" be referred to a Select Committee consisting of Mr. Sconce, Mr. Erskine, and the Mover.

Agreed to.

CIVIL PROCEDURE.

MR. HARINGTON gave notice that, at the next meeting of the Council, he would move the second reading of the Bill "to amend Act VIII of 1859 (for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter)."

The Council adjourned at ½ past 12 o'clock, on the Motion of Mr. Beadon, till Saturday, the 5th January 1861.

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OF THE

LEGISLATIVE COUNCIL OF INDIA.

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