

Wednesday, 3rd October, 1860

PROCEEDINGS

OF THE

**LEGISLATIVE COUNCIL OF
INDIA**

Vol. VI

(1860)

"to alter the Customs Duty on Pepper exported by Sea from the British Port of Cochin" be referred to a Select Committee consisting of Mr. Forber, Mr. Erskine, and Mr. Harrington.

Agreed to.

RECOVERY OF RENTS (BENGAL.)

MR. SCONCE moved that 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,") be referred to a Select Committee consisting of Mr. Beadon, Mr. Harrington, and the Mover.

Agreed to.

EMIGRATION TO ST. KITTS.

SIR BARTLE FRERE moved that Mr. Beadon be requested to take the Bill "relating to the Emigration of Native Laborers to the British Colony of St. Kitts" to the Governor-General for his assent.

Agreed to.

The Council adjourned at 5 o'clock on the Motion of Sir Bartle Frere, till Wednesday, the 3rd of October, at 11 o'clock.

Wednesday, October 3, 1860.

PRESENT :

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

Hon'ble Sir H. B. E. Frere,	A. Sconce, Esq., and
Hon'ble C. Beadon,	C. J. Erskine, Esq.
H. B. Harrington, Esq.,	

PENAL CODE.

THE CLERK presented to the Council a Petition signed by 332 British and Christian inhabitants of Calcutta against "The Indian Penal Code."

THE VICE-PRESIDENT moved that the above Petition be printed, and that it be now read at the table by the Clerk of the Council.

The Motion was carried, and the Petition read accordingly.

PORT DUES (CALINGAPATAM AND MUNSOORCOTTAH).

MR. HARRINGTON, in moving the first reading of a Bill "for the levy of Port-dues at Calingapatam and Munsoorcottah within the Presidency of Fort St. George," said that the Honorable Member for Madras, by whom this Bill had been prepared, was still, he regretted to say, prevented by indisposition from attending the Council, and he had therefore asked him (Mr. Harrington) to move the first reading of the Bill. The object of the Bill was simply to carry out the provisions of Section XLI Act XXII of 1855 (for regulating Port and Port-dues) in respect to two Ports in the Madras Presidency, named Calingapatam and Munsoorcottah. The Council were aware that similar Acts had already been passed at different times in regard to other Ports in the three Presidencies. Looking to the number of vessels now resorting to the Ports of Calingapatam and Munsoorcottah, and to the value of the Export and Import Trade thereat, it was considered that the time had arrived for declaring those Ports subject to the provisions of Act XXII of 1855. This was the opinion of the local Authorities and of the Government of Madras, and the present Bill was introduced at the request of that Government. The Bill had been framed on Acts II and VII of 1858.

The Bill was read a first time.

CIVIL PROCEDURE.

MR. HARRINGTON 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 must be scarcely necessary for him to remind Honorable Members that the amendment of Act VIII of 1859, known as the Code of Civil Procedure, which was proposed to be made by this Bill, originally formed the subject of two Sections in another Bill before the Council, entitled a 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. The Sections were not in that Bill as it was read a first and second time, but were introduced into it when the Bill was passing through a Committee of the whole Council on the Motion of the Honorable and learned Vice-President. He (Mr. Harrington) concurred in the rules contained in the two Sections in question, and he had willingly assented to their being introduced into the Small Cause Courts Bill. On the re-committal of that Bill, however, the Sections were considered to be out of place in it, and they were ordered to be struck out, but upon the understanding that a separate Bill should at once be introduced in which they should be embodied. This had been done in the Bill of which he now moved the first reading.

Section 1 of the Bill provided that—

“No special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any Court subordinate to the Sudder Court in any suit of the nature cognizable in Courts of Small Causes under Act of 1860, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred Rupees. But every such order or decision shall be final.”

The object of the Legislature in allowing a special appeal in cases of a comparatively trifling nature and amount equally with larger and more important cases was to keep the law settled, which could only be done by devolving the duty of construing the law in the last resort upon the highest Civil Tribunal. In no other way could a uniform administration of the law, which was so essential to the well-being of society, and which had such an important bearing on mercantile and other ordinary transactions of daily life, be secured. But he thought that Honorable Members would concur with him in opinion that the decisions of the Sudder Court on points of law in the cases which would still be open to special appeal to that Court, other than the cases in which

it was proposed to abolish such appeal, would suffice to keep the law settled in the latter cases also, and would furnish a large body of precedents for the guidance of the subordinate Courts in disposing of those cases; and as the remaining Sections of the Bill provided for the lower Court stating a case for the opinion of the Sudder Court whenever any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, arose in respect to which the presiding Officer might entertain reasonable doubts, it appeared to him that the Bill did all that justice could require to secure a correct decision in such cases on questions of both law and fact. He was unable to say what would be the extent of the relief which the Bill would be the means of affording to the Sudder Courts, but he believed that it would be considerable; and whatever might be the amount, he had reason to know that it would be very acceptable to the Sudder Courts on this side of India.

The Bill was read a first time.

PENAL CODE.

The Order of the Day being read for the third reading of “The Indian Penal Code”—

THE VICE-PRESIDENT moved that the Bill be recommitted to a Committee of the whole Council for the purpose of considering proposed amendments therein.

A verbal amendment was made in the Preamble.

After some verbal amendments in Section 1—

THE CHAIRMAN said, it was a question whether the Code should be extended to the Straits Settlements or not, as he observed it was the intention of the Home Government to remove them from under the control of the Government of India. He thought that we ought to except those Settlements from the operation of the Code. We should probably know next year the determination of the Home Government in the matter. If the Straits

Settlements should continue under the Government of India, then they ought to come under the operation of the Code like any other part of India, and the Code could then be extended to them. Whereas if the Code were now extended to those Settlements, and they should be withdrawn from the control of the Government of India, they would not derive any benefit from any Acts passed in amendment of the Code subsequent to the transfer. He therefore moved an amendment to the above effect.

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

Verbal amendments were made in Sections 3 and 4, and in Illustration (b) of Section 6.

Section 14 provided as follows :—

"The words 'servant of the Queen' denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Vic. c. 106, entitled 'An Act for the better Government of India.'"

THE CHAIRMAN moved the addition of the words "or by or under the authority of the Government of India or any Government."

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

Section 15 (defining "British India") was passed after the addition of the words "except the Settlement of Prince of Wales' Island, Singapore, and Malacca."

A verbal amendment was made in Section 18.

THE CHAIRMAN moved the introduction of the following new Sections after Section 24 :—

"A person is said to do a thing 'fraudulently' if he does that thing with intent to defraud, but not otherwise."

"A person is said to 'have reason to believe a thing' if he has sufficient cause to believe that thing, but not otherwise."

Agreed to.

Chiefly verbal amendments were made in Sections 35, 36, and 52.

Section 53 authorized the Government to commute a sentence of trans-

The Chairman

portation for life or imprisonment not exceeding seven years.

After some verbal amendments—
THE CHAIRMAN moved the substitution of fourteen years for seven years.

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

Section 60 provided for the forfeiture of property belonging to offenders punishable with death, or with transportation or imprisonment for a term of four years or upwards.

MR. ERSKINE did not think that an offence punishable with four years' imprisonment should involve the forfeiture of the offender's property.

After some discussion, the Section was passed, with the substitution of seven years for four years, so as to include all cases in which a person might be transported.

Chiefly verbal amendments were made in Sections 69, 88, 89, 92, 97, 98, 103, 105, and 106.

MR. ERSKINE said, he had suggested before the advisability of introducing some provision to make the offering of a bribe penal. He had since observed, however, that provision to this effect had been contained in the two Illustrations (a) of Sections 5 and 13 Chapter V of the Code as originally printed. He was not aware of the reason of the omission of those Illustrations by the Select Committee, and if the Council had no objection, he should propose their restoration.

The Motion was carried, and the Illustrations with modifications, introduced into Sections 107 and 114.

Verbal amendments were made in Sections 111 and 113.

Section 116 provided for the punishment of

"Whoever voluntarily conceals, by any act or illegal omission, the existence of a design to commit an offence punishable with death or transportation for life."

THE CHAIRMAN moved the substitution, for the words quoted, of the words—

"Whoever intending to facilitate or knowing it to be likely that he will thereby facili-

tate the commission of any offence punishable with death or transportation for life."

The Motion was carried, and after a similar amendment in the Illustration, the Section was passed.

Similar amendments were made in Sections 117 and 118.

Verbal amendments were made in Sections 119, 122, 152, 157, and 159.

The word "simple" was inserted before the word "imprisonment" in Sections 171 to 173.

Chiefly verbal amendments were made in Sections 177, 189, 191, 194 to 198, and 207.

The consideration of the Code having been postponed, the Council resumed its sitting.

POLICE.

THE CLERK reported to the Council that he had received from the Home Department certain papers relating to the Police in India.

Sir BARTLE FRERE moved that the above papers be printed.

Agreed to.

The Council adjourned at 6 o'clock, on the Motion of Sir Bartle Frere, till to-morrow, at 10 o'clock.

Thursday, October 4, 1860.

PRESENT :

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

Hon'ble Sir H. B. E. Frere, and Hon. C. Beadon, H. B. Harrington, Esq., and C. J. Erskine, Esq.

PENAL CODE.

The Order of the Day being read for the adjourned recommittal of "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Verbal amendments were made in Sections 213, 219, 220, and 222.

Section 237 provided as follows :—

"Whoever having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, delivers the

same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if he delivers the same to any other person as genuine, or attempts to induce any other person to receive it as genuine, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

THE CHAIRMAN moved the insertion of the words "fraudulently or with intent that fraud may be committed" between the words "counterfeit" and "delivers," and the omission of the words "shall be punished with imprisonment of either description, for a term which may extend to three years, and shall also be liable to fine; and if he delivers the same to any other person as genuine, or attempts to induce any other person to receive it as genuine."

The Section, as proposed to be amended, was passed accordingly.

Similar amendments were made in Sections 238, 240, 241, 248 to 251, and verbal amendments in Sections 244 and 245, 253 to 261, 269, 270, 272, 290 and 298.

Section 306 was passed after the omission of the words "attempts to commit culpable homicide," and also of Illustration (b) as unnecessary and likely to mislead.

Verbal amendments were made in Sections 310, 344, 348, 352, 366, 378, 384, 401, 402, and 408; the heading "Of Dishonest Misappropriation of Property" being altered into "Of Criminal Misappropriation of Property."

Sections 419 to 421, under the heading "of Fraudulent Deeds and Dispositions of Property," severally provided that the offender "shall be punished with imprisonment of either description, for a term which may extend to three years, and shall also be liable to fine," and Section 422 under the same heading provided the same punishment, except that the term of imprisonment was fixed at two instead of three years.

After some verbal amendments—