

Tuesday, 11th September, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF

INDIA

Vol. VI

(1860)

under construction, be laid upon the table and referred to the Select Committee on the Bill "to amend Act XVIII of 1854 (relating to Railways in India.)"

Agreed to.

Mr. FORBES moved that Mr. Erskine be added to the Select Committee on the above Bill.

Agreed to.

REGISTRATION OF ASSURANCES.

Mr. FORBES moved that Mr. Erskine be added to the Select Committee on the Bill "to provide for the Registration of Assurances."

Agreed to.

PARSEES.

SIR BARTLE FRERE moved that Mr. Erskine be added to the Select Committee on the Petition from the Parsees of Bombay with the draft of a Code of laws adapted to the Parsee Community.

Agreed to.

VACATIONS (CIVIL COURTS).

Mr. SCONCE moved that the Bill to amend the law relating to vacations in the Civil Courts within the Presidency of Fort William in Bengal," be referred to a Select Committee consisting of Mr. Beadon, Mr. Harington, and the Mover.

Agreed to.

FLOGGING.

THE VICE-PRESIDENT moved that a Select Committee be appointed, consisting of Mr. Harington, Mr. Forbes, Mr. Sconce, and Mr. Erskine, to consider and report on the punishment of flogging, and to prepare such Bill as they might consider necessary.

Agreed to.

The Council adjourned at half past 5 o'clock on the Motion of Sir Bartle Frere, till Tuesday the 11th instant, at 7 o'clock in the morning.

Tuesday Morning, September 11, 1860.

PRESENT:

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

Hon'ble C. Beadon,
H. B. Harington, Esq.,
H. Forbes, Esq.,
A. Sconce, Esq.

C. J. Erskine, Esq.,
and
Hon'ble Sir C. H.
M. Jackson.

PENAL CODE.

THE Order of the Day being read for the adjourned Committee of the whole Council on the "Indian Penal Code," the Council accordingly resolved itself into a Committee for the further consideration of the Bill.

The Sections of Chapter IX (of offences by or relating to public servants) were passed as they stood, except Section 12 (providing for cumulative punishment) which was omitted.

Mr. ERSKINE said, he saw no provision in this Chapter for the offence of offering or attempting to bribe a Judicial Officer.

THE CHAIRMAN said, he thought such a case would come under the head of abetment. At any rate he did not think it right to make both the parties, that is the briber and the person bribed, liable to punishment, for then this difficulty would arise, that neither would come forward and inform.

Mr. ERSKINE said, he apprehended that such a difficulty would only arise in the case of a bribe being accepted.

THE CHAIRMAN said, the point was fully considered by the Select Committee, who thought it unnecessary to introduce any provision on the subject. The following was what the Law Commissioners said in the matter:—

"One important question still remains to be considered. We are of opinion that we have provided sufficient punishment for the public servant who receives a bribe. But it may be doubted whether we have provided sufficient punishment for the person who offers it. The person who, without any demand express or implied on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under the General Rule contained in

Clause 88 as an instigator. But the person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not propose that such a person shall be liable to any punishment, and, as this omission may possibly appear censurable to many persons, we are desirous to explain our reasons.

In all states of society, the receiving of a bribe is a bad action, and may properly be made punishable. But whether the giving of a bribe ought or ought not to be punished is a question which does not admit of a short and general answer. There are countries in which the giver of a bribe ought to be more severely punished than the receiver. There are countries, on the other hand, in which the giving of a bribe may be what it is not desirable to visit with any punishment. In a country situated like England, the giver of a bribe is generally far more deserving of punishment than the receiver. The giver is generally the tempter, the receiver is the tempted. The giver is generally rich, powerful, well educated, the receiver needy and ignorant. The giver is under no apprehension of suffering any injury if he refuses to give. It is not by fear, but by ambition that he is generally induced to part with his money. Such a person is a proper subject of punishment. But there are countries where the case is widely different—where men give bribes to Magistrates from exactly the same feeling which leads them to give their purses to robbers, or to pay ransom to pirates—where men give bribes because no man can, without a bribe, obtain common justice. In such countries we think, that the giving of bribes is not a proper subject of punishment. It would be as absurd, in such a state of society, to reproach the giver of a bribe with corrupting the virtue of public servants, as it would be to say that the traveller who delivers his money when a pistol is held to his breast, corrupts the virtue of the highwayman.

We would by no means be understood to say that India, under the British Government, is in a state answering to this last description. Still we fear that it is undeniable that corruption does prevail to a great extent among the lower classes of public functionaries, that the power which those functionaries possess renders them formidable to the body of the people, that in the great majority of cases the receiver of the bribe is really the tempter, and that the giver of the bribe is really acting in self-defence.

Under these circumstances we are strongly of opinion that it would be unjust and cruel to punish the giving of a bribe, in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant who, unless temptation had been put in his way, would have acted uprightly."

Mr. ERSKINE said, he would give the matter further consideration, and

if necessary, on some future occasion, propose a Clause on the subject.

SIR CHARLES JACKSON said, there was another matter, for which he thought there should be some punishment. When a case was decided in a Court of Justice, it was a common practice for the officials of the Court to go and ask the successful party for a present. He had occasion himself, not long ago, to dismiss one of his peons for such a cause.

THE CHAIRMAN said, perhaps the Honorable Member for Bombay would consider that point also, and provide for it, if necessary, in any amendment which he might propose to the Council.

Mr. ERSKINE signified assent. SIR CHARLES JACKSON said, he would also endeavor to frame a Clause to that effect.

Section 1, Chapter X (of contempt of the lawful authority of public servants) was passed as it stood.

Section 2 was passed after a verbal amendment.

Section 3 (providing for cumulative punishment) was omitted.

Sections 4 to 7 were passed as they stood.

Section 8 prescribed the punishment for a person refusing to bind himself by an oath to save the truth, when required by a public servant legally authorized in that behalf.

Mr. ERSKINE asked, if there was any provision in the Code, exempting a Quaker or any other person from the obligation of taking an oath.

THE CHAIRMAN said, in England there was a special law on the subject, which was applicable in India so far as the Supreme Courts were concerned. He did not know what was the law in the Mofussil.

Mr. BEADON said, he supposed that the same law would be applicable in the Mofussil, if the party was a British subject.

THE CHAIRMAN said, he was in favor of the abolition of oaths altogether. But the Section now before the Council merely provided for the refusal to take an oath so long as the law required oaths to be taken.

The Section was then passed as it stood.

Sections 9 and 10 were passed as they stood.

Section 11 was passed after a verbal amendment.

Section 12 was passed as it stood.

Section 13 was passed after a verbal amendment.

Section 14 (providing for cumulative punishment) was omitted.

Section 15 was passed as it stood.

Section 16 (providing for cumulative punishment) was omitted.

Sections 17 and 18 were severally passed as they stood.

Section 19 (providing for cumulative punishment) was omitted.

Sections 20 and 21 were passed as they stood.

Section 22 (providing for cumulative punishment) was omitted.

Sections 23 and 24 were passed as they stood.

Section 1, Chapter XI (of false evidence and offences against public justice) was passed after verbal amendments.

Section 2 was passed after a verbal amendment.

Section 3 was passed after the omission of the words "touching a point material to the result of that proceeding or gives" on the motion of THE CHAIRMAN.

Sections 4 and 5 were passed as they stood.

Section 6 was passed after a verbal amendment.

Sections 7 and 8 were passed as they stood.

Sections 9 and 10 were passed after verbal amendments.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council was adjourned at 10 o'clock, on the Motion of Mr. Bason, till Thursday morning at 7 o'clock.

Thursday Morning, Sept. 13, 1860.

PRESENT :

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

Hon'ble C. Bendon.

H. B. Harington, Esq.

H. Forbes, Esq.

A. Sconce, Esq.

C. J. Erskine, Esq.

and

Hon'ble Sir C. R. M.

Jackson.

STAMP DUTIES.

THE VICE-PRESIDENT read a Message informing the Legislative

Council that the Governor-General had assented to the Bill "to amend Act XXXVI of 1860."

PENAL CODE.

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

Mr. SCONCE said, he was afraid he might be irregular in now referring to the discussion which took place last Tuesday on Section 1 Chapter XI of the Code, but he thought that there was some material doubt as to the definition given in that Section. The doubt he felt was with reference to the amendment proposed by the Select Committee in the original Section, the reasons for which had not been clearly explained. The words to which he alluded were those which in the definition of false evidence required the statement made by a witness to be in itself false. Now it seemed to him (Mr. Sconce) that a witness going into Court was required to speak of his own knowledge what he knew, and he did so on his own responsibility. It might be that another person brought into Court might depose to a fact of which the first witness knew nothing: but the same fact, though thus truly spoken of, would be false as regards the first witness, who knew nothing of it. A statement made might be false evidence, even if in itself true. It seemed to him, if he rightly understood the effect of the Section, that, if any person made a statement which was not in itself false, he could not be convicted of perjury. He thought it most important to look to the bearing of statements as evidence; and if the evidence as given was false, the truth of the statement could not excuse the perjury. In illustration of his meaning, he would suppose a case of murder or homicide, in which a witness deposed that, as he was returning from the market, he saw A strike B with a club and kill him. Now it might be true that A did kill B, but the witness was not present, and did not see what he said he saw. If we supposed a second witness to have seen A strike the blow, the first witness in