

Wednesday, 26th September, 1860

# PROCEEDINGS

OF THE

# LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

THE CHAIRMAN explained the reason of the distinction to be that, under Section 18, if any one of several persons conjointly committing dacoity, committed a murder, every one of those persons was liable to punishment; whereas Section 19 related to a particular offender.

The Sections were ultimately passed after the substitution of seven years for five years in Section 20.

Sections 21 to 24 were passed as they stood.

Section 25 was passed after a verbal amendment.

Section 26 (relating to the dishonest misappropriation of property in the possession of a deceased person at the time of his death) was passed after the addition, on the Motion of the Chairman of a provision rendering misappropriation by a clerk or servant employed by the deceased at the time of his death, punishable with imprisonment for seven years, instead of for three years, as provided by the Section in respect of other offenders.

Section 27 (defining criminal breach of trust) was passed after the addition of the following illustration:—

“A, a carrier, is entrusted with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.”

Section 28 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section 28:—

“Whoever being entrusted with property as a carrier, wharfinger, or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Agreed to.

Section 29 (relating to criminal breach of trust by a clerk or servant) was passed after the substitution of seven years for five years as the term of imprisonment.

Section 30 was passed as it stood.

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

The Council adjourned at 9 o'clock on the Motion of Mr. Harrington, till to-morrow morning at 7 o'clock.

Wednesday Morning, Sept. 26, 1860.

PRESENT:

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

H. B. Harrington, Esq.,	C. J. Erskine, Esq., and Hon. Sir C. R. M. Jackson.
H. Forbes, Esq.,	
A. Scounce, Esq.,	

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.

Sections 31 to 35 of Chapter XVII were passed as they stood.

Sections 36 and 37 were passed after a verbal amendment.

Section 38 was passed as it stood.

Sections 39 and 40 were passed after the substitution of three years for two years as the term of imprisonment for cheating, with the knowledge that wrongful loss might thereby be caused to a person whose interest the offender is bound to protect, and for cheating by personation.

Section 41 proposed three years as the term of imprisonment for cheating and dishonestly inducing a delivery of property.

SIR CHARLES JACKSON said that in some cases three years' imprisonment would be a very inadequate punishment for this offence. He would suggest ten years.

THE CHAIRMAN said, only three years' imprisonment was provided for theft.

SIR BARNES PEACOCK said, this was a more serious offence than simple theft. It required the employment of some skill and ingenuity, and was committed by a superior class of offenders. The offence, moreover, was one very prejudicial to trade.

The Section was passed after the substitution of seven years for three years, on the Motion of the Chairman, and with the understanding that an alteration should be made in the Code of Criminal Procedure, giving Magistrates jurisdiction over the offence in certain cases, and empowering them to commit to the Sessions cases exceeding their jurisdiction.

Sections 42 and 43 were passed as they stood.

Section 44 was passed after the substitution of three years for two years, as the term of imprisonment for the fraudulent execution of a deed of transfer containing a false statement of consideration.

Sections 45 to 57 were passed as they stood.

Sections 58 and 59 were passed after verbal amendments.

MR. SCONCIE moved the introduction of the following new Section after Section 59:—

“Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine.”

Agreed to.

Section 60 was passed after an amendment.

Section 61 defined Criminal Trespass.

SIR CHARLES JACKSON referred to the latter part of the definition, which provided that whoever “having lawfully entered into or upon such property unlawfully remains there with such intent, is said to commit Criminal Trespass.” He thought these words rather wide. A person might visit another in his house; the owner of the house might be guilty of some gross misconduct, which might provoke the visitor to say something; and upon being desired to quit the house, he would be liable to be charged with Criminal Trespass.

THE CHAIRMAN said, a beggar might walk into a house and, if he saw a lady there, might refuse to

leave the house, unless she gave him some money. This was one of the cases for which the definition referred to was intended to provide.

SIR CHARLES JACKSON admitted that there were some cases which the definition would very properly reach. His object was merely to prevent its extending to other cases like the one to which he had alluded.

The Section was ultimately passed after a verbal amendment.

Section 62 (defining house-trespass) was passed after the omission of Explanation 2, which was considered unnecessary.

Sections 63 and 64 (severally defining lurking house trespass, and lurking house trespass by night) were passed after a similar amendment.

Section 65 (defining house-breaking) was passed as originally printed, with verbal amendments in the Explanation and Illustrations.

Section 66 was passed as it stood.

Section 67 was passed after the substitution of three months for one month as the term of imprisonment for criminal trespass.

Section 68 was passed as it stood.

Sections 69 and 70 were passed after amendments.

Section 71 (relating to house trespass in view to the commission of an offence punishable with imprisonment) was passed after a similar amendment, and with the addition of the following words:—

“and if the offence intended to be committed is theft, the term of imprisonment may be extended to seven years.”

Section 72 (relating to house-trespass, after preparation made for causing hurt to any person) was passed after the substitution of seven for three years as the term of imprisonment.

Section 73 was passed as it stood.

Section 74 (relating to lurking house-trespass or house-breaking in view to the commission of an offence punishable with imprisonment) was passed after corresponding amendments to those made in Section 71, the term of extended imprisonment being fixed at ten years.

Section 75 was passed after the substitution of ten for five years as the term of imprisonment for lurking house trespass or house-breaking after preparation made for causing hurt to any person.

Section 76 was passed as it stood.

Section 77 (relating to lurking house trespass or house-breaking in view to the commission of an offence punishable with imprisonment) was passed after corresponding amendments to those made in Sections 71 and 74, the term of extended imprisonment being fixed at fourteen years.

THE CHAIRMAN, with the permission of the Council, went back to Section 14 (relating to robbery) and proposed the addition of the following words:—

“and if the robbery be committed on the highway, between sunset and sunrise, the imprisonment may be extended to fourteen years.”

Agreed to.

Section 78 was passed after the substitution of fourteen for seven years' imprisonment for lurking house trespass or house-breaking after preparation made for causing hurt to any person.

Section 79 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section 79:—

“If at the time of the committing of lurking house trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine.”

Agreed to.

Sections 80 and 81 were passed as they stood.

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

The Council adjourned at 10 o'clock on the Motion of Mr. Harington, till to morrow morning, at 7 o'clock.

Thursday Morning, Sept. 27, 1860.

PRESENT :

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

H. B. Harington, Esq.,	C. J. Erskine, Esq.,
H. Forbes, Esq.,	and
A. Sconce, Esq.,	Hon'ble Sir C. R. 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 resolved itself into a Committee for the further consideration of the Code.

THE CHAIRMAN, pursuant to the understanding come to on a former occasion, that there should be a special provision for the crime of larceny in dwelling houses, moved the introduction of the following new Section after Section 2 of Chapter XVII:—

“Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling or as a place for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Agreed to.

THE CHAIRMAN said that Section 3 of the same Chapter related to theft by a clerk or servant of property in the possession of his master or employer, punishable “with imprisonment of either description which may extend to seven years, or with fine, or both.” He thought that this was too heinous an offence to be punished only with fine, and that it ought to be punished both with imprisonment and fine. He should therefore propose the substitution for the words in italics of the words, “and shall also be liable to fine.”

The Motion was carried, and the Section then passed.

Section 1 of Chapter XVIII (of offences relating to documents and to trade or property marks) was passed as it stood.

Section 2 (defining what making a false document was) was passed after verbal amendments.