Thursday, 13th September, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

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

fluenced by whatever motives, might have undertaken to corroborate his evidence: but while the one witness spoke the truth, the other, though the statement made by him was in itself true, seemed none the less to have committed perjury. If his (Mr. Sconce's) impression as to the meaning of the Section were correct, it seemed to him that this would be an encouragement to concoct evidence, than which they had no greater source of difficulty to contend with in the judicial investigations of this country.

There was another matter which he also wished to notice. We had agreed to strike out the provision which required the point, if falsely deposed, to be material to the result of the proceeding. He did not wish to re-open that question, but in adopting that change, it might be advisable to introduce some words which would define more broadly the character of the offence—something that would, if possible, be a guide to the Courts in restraining them from convicting persons for perjury upon an immaterial issue, and in leading them to convict only when false evidence was wilfully and corruptly given.

THE CHAIRMAN said, he would endeavor as far as he could to answer the question of the Honorable Member as to the alteration which had taken place in the definition of false evidence, and to show that the Section, as passed, was correct. The Section as it stood in the Original Code defined false evidence as follows:—

"Whoever * * states for truth that which he knows or believes to be false, or which he does not know or in good faith believe to be true, is said to give false evidence.

According to the best of his recollection, when this Section came under the consideration of the Select Committee, an objection was made that a man might state that which was false, but which he knew or believed to be true, and that would not therefore come under the definition. Suppose a witness were asked by a Judge—"you have heard what that man (another witness) has said; do you think his statement to be true?", and he replied "Yes, I have heard what he has said, stated that which was false regarding that which he knew to be true. To meet such a case the Section was altered by the Select Committee as follows:—

"Whoever * * makes any statement which is false and which he either knows or believes to be false, or does not know or believe to be true &c."

But the latter part of this definition was not accurate, because a man might state what was false, and yet believe it to be true, but he could not state what was false, *knowing* it to be true. That was rather stating a thing that was true and not false. Therefore in Committee of the whole Council the words "know or" were omitted, and the definition was made to run as follows:—

"Whoever * * makes any statement which is false and which he either knows or believes to be false, or does not believe to be true &c."

Suppose A to state on oath that he believed that a deed was executed by B, and it turned out that the deed was not executed by B; would you punish A for perjury? Would you punish a man for perjury upon a statement of his belief? The question simply was whether, at the time A made his statement, he believed it to be true or not. If he did not, then he must have stated what was false.

With regard to the question raised by the Honorable Member for Bengal, the Honorable Member had mentioned the case of a witness who said that he saw A strike B, whereas it subsequently came out in evidence that A was not there, and could not therefore have struck B. That would be perjury under the definition of the present Code, inasmuch as A made a statement which he knew to be false. Then supposing A did strike B, and the witness was not there, it would still be perjury, because the statement which he made was false, and false to his own knowledge. The object of the alteration therefore was to get rid of remote questions and deal with the evidence as given by the witness. The offence was perjury when the witness committed himself to a statement which was false to his knowledge

MR. SCONCE said, he had understood the word "statement" in the Section to refer to the narrative or substance of a deposition and not to the words as spoken by a witness. But the explanation of the Honorable and learned Chairman showed that the word should be otherwise construed, and that, to establish false evidence, the false statement would be personal to the witness. He was under the apprehension that this Section changed the present law.

THE CHAIRMAN said, he thought the words were scarcely open to the objection of the Honorable Member for Bengal. He (the Chairman) believed that the Honorable Member for Bombay called the attention of the Council at the last Meeting to illustration C, as being inconsistent with the definition. Now the question of hand-writing was not always proved as a matter of fact, and depended a great deal on evidence as to belief. In this manner a son or a friend was frequently called to prove the handwriting of a deceased party on a Bill of Exchange. The Court did not require the witness to swear to the fact of the hand-writing being that of the deceased, but simply to his belief. Of course it was always a question for those who decided upon the fact to consider what grounds the witness had for his belief and whether he had any object or inducement to give false evidence. Suppose a witness were asked—"Do you believe that signature to be A's," and he replied, that he could not swear to that being A's signature. On the Judge telling him that he was not required to swear to the fact but to his belief of that being A's hand-writing, the witness might say, "I do not believe that that is A's hand-writing." In such a case the witness could hardly be indicted for perjury; but if it could be proved that, before he went into Court, he told others that, although he knew that to be A's hand-writing, he would swear that it was not so, he would be guilty of perjury. The first allegation against him would be that he had made a statement which was false, and the second that he had made a statement knowing it to be false.

Sections 11 to 13 of Chapter XI were passed as they stood.

Section 14 (which provided against the secreting or destruction of a document to prevent its production as evidence) was passed after the insertion of words providing for the offence of obliterating or rendering illegible any such document, whether in whole or in part.

Sections 15 to 21 were passed as they stood.

Section 22 was passed after a verbal amendment.

Sections 23 to 28 were passed as they stood.

Section 29 provided as follows:—

"Whoever, being a public servant, makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

MR. FORBES said, he thought this Section introduced too great a refinement. It involved a question of belief.

THE CHAIRMAN said, it was not a question of belief, but a question of knowledge.

MR. FORBES said, he did not see how the knowledge of the Judge was to be proved except by his belief.

SIR CHARLES JACKSON asked, who was to prosecute a Judge of the Supreme Court? He thought that the policy of the English law was to prevent Judges from being exposed to vexatious or vindictive proceedings.

THE CHAIRMAN said that a Judge ought to be punished if he passed a sentence contrary to law. A Judge might, before going into Court, say that he would punish a man whether right or wrong. The Section under consideration stood as Section 142 in the Original Code, which provided as follows:—

"Whoever, being a Judge, pronounces on any question which comes before him in any stage of any judicial proceeding, a decision which he knows to be unjust, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

The following was an extract from the Report of the Law Commissioners with reference to that Section :—

"Objections to this Clause are made by many Officers, which may be summed up in the question of Sir H. Seton, 'who is to decide what is unjust, and how is the knowledge of it to be proved?' Her Majesty's Justices are required by their oath to 'do equal law and execution of right,' that is, as it is expressed in the margin, 'to do justice' to all her Majesty's subjects, and it is provided in the Digest, (that is, the Digest which was prepared by the Criminal Law Commissioners in England, but which had never been passed) that all who shall be found in default in any of the points contained in the oath shall be punished with imprisonment not exceeding three years and fine, with a saving Clause that 'no judicial officer shall be criminally liable in respect of any error in giving judgment.' It seems to us that a Judge, who by his decision, does injustice, not by error of judgment, is in other words a Judge who pronounces a decision which he knows to be unjust. We apprehend that the expression 'which he knows to be unjust' was adopted purposely to exclude the excuse of an error of judgment, and that the meaning is that a Judge who pronounces a decision which is unjust without the excuse of an error of judgment, must be presumed to have pronounced the decision conscious of its injustice, and shall be liable to punishment accordingly. So understood, the Clause appears to us no more exceptionable than the English law in the same matter, as it is expressed in the Digest. Mr. A. D. Campbell suggests that the words 'contrary to law,' should be substituted for 'unjust.' 'as it is not intended that the Code should meet individual opinions of justice, except as these may coincide with the sentiments of the Legislature;' but such a substitution would narrow the provision to a degree that would greatly impair its efficacy, for many a decision may be unjust, which cannot be said to be contrary to any law, except the general law which requires justice to be done."

After some conversation, the consideration of Section 29 and also of Section 30 (relating to commitment for trial or confinement by a person having authority who knew that he was acting contrary to law), was postponed, on the Motion of Sir Charles Jackson.

Sections 31 to 34 were passed as they stood.

Section 35 (providing for cumulative punishment) was omitted.

Section 36 was passed as it stood.

Section 37 (providing for cumulative punishment) was omitted.

Section 38 was passed as it stood

Section 39 (providing for unlawful return from banishment) was omitted.

Sections 40 and 41 were passed as they stood.

Section 42 (providing for cumulative punishment) was omitted.

Section 43 was passed after a verbal amendment.

Chapter XII provided for offences relating to Coin and Government Stamps.

Section 1 was passed after amendments.

Section 2 was omitted.

Section 3 was passed after a verbal amendment.

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

The Council adjourned.

Saturday, September 15, 1860.

PRESENT :

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

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

COTTON-FRAUDS.

THE CLERK presented a Petition from Messrs. Fischer and Co., merchants of Salem, in Madras, praying for the extension to the Madras Presidency of the provisions of Act XV of 1851 (for the better suppression of frauds in respect of Cotton in Bombay).

MR. FORBES moved that the Petition be printed.

Agreed to.

PAPER CURRENCY.

THE CLERK reported that he had received by transfer from the Finan-